



Department of  
Environmental  
Conservation

The New York State Department of Environmental Conservation  
in partnership with Nassau County Department of Public Works

WESTERN BAYS RESILIENCY INITIATIVE

# **THE BAY PARK CONVEYANCE PROJECT**

A DESIGN-BUILD PROJECT

DEC Contract No. D011883

**REQUEST FOR PROPOSALS**

**VOLUME 1**

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DEC Contract No. D011883

Issuance Date: April 29, 2020

**REQUEST FOR PROPOSALS**

**INSTRUCTIONS TO PROPOSERS**

**GENERAL INSTRUCTIONS**

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- APPENDIX E: FORMS
- APPENDIX F: PROJECT LABOR AGREEMENT DETERMINATION

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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 Environmental Conservation (the “Department”) to seek competitive Proposals (“Proposals”) for the design, construction and other identified and related activities for the Project.

The Project involves Design-Build services as indicated in RFP Volume 1, Appendix A, and as required in the RFP Volume 2, Design Criteria Package.

This RFP solicitation is the second step of a two-step procurement process granted by the New York State Infrastructure Investment Act under the provisions set forth in Part F of Chapter 60 of the Laws of 2015, amended by Part RRR of Chapter 59 of the Laws of 2017 and Part WWW of Chapter 59 of the Laws of 2019 (hereinafter, the “Act”). Proposals are requested 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”) issued on February 24, 2020 for this Project.

This document provides instructions to be followed by Proposers in their responses to the RFP. Proposals shall comply with these Instructions to Proposers (“ITP”), and related appendices, while considering the Project goals and objectives identified in ITP Appendix A.

### **1.2 SCOPE OF WORK**

The Project Scope of Work as described in Volume 1 of the RFP, Appendix A, and detailed in Volume 2 of the RFP, Design Criteria Package, stipulates design criteria, performance requirements, quality standards, preliminary plans, and other Project related scope documents, for the basis of each Proposer’s Proposal in response to this RFP.

### **1.3 PROJECT GOALS**

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

### **1.4 ABBREVIATIONS AND DEFINITIONS**

#### **1.4.1 Abbreviations**

ATC	Alternative Technical Concept
AHJ	Agency Having Jurisdiction
BAFO	Best and Final Offer
CSP	Certified Safety Professional
COI	Conflict of Interest
DB	Design-Build
DBIA	Design-Build Institute of America
DEC	New York State Department of Environmental Conservation

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EA	Environmental Assessment
EFC	Environmental Facilities Corporation
EOR	Engineer of Record
EPA	United States Environmental Protection Agency
ESD	New York State Empire State Development Corporation
ET	Eastern Time
FEMA	Federal Emergency Management Agency
FOIL	Freedom of Information Law
ITP	Instructions to Proposers, Volume 1 of the RFP documents
JV	Joint Venture
LLC	Limited Liability Company
MGD	Million Gallons per Day
M/WBE	Minority/Women Owned Business Enterprise
MBE	Minority-owned Business Enterprise
N/A (NA)	Not Applicable
NEPA	National Environmental Policy Act
NTP	Notice to Proceed
NYSDEC	New York State Department of Environmental Conservation
NYSDOT	New York State Department of Transportation
OR	Owner's Representative
PIO	Public Information Officer
PLA	Project Labor Agreement
PPE	Personal Protection Equipment
QA	Quality Assurance
QC	Quality Control
QPM	Quality Management Plan
RFI	Request for Information
RFP	Request for Proposals (RFP Package)
RFQ	Request for Qualification
RMP	Risk Management Plan

ROW	Right(s)-of-Way
SDVOB	Service-Disabled Veteran-Owned Business
SOQ	Statement of Qualifications
SOV	Schedule of Values
STP	Sewage Treatment Plant
TBD	To be Determined
USDHS	US Department of Homeland Security
WBE	Women-owned Business Enterprise
WPCP	Water Pollution Control Plant
WPS	Work Payment Schedule

#### 1.4.2 Definitions

“**Addenda/Addendum**” means supplemental additions, deletions and modifications to the provisions of this RFP issued by the Department after the Issuance of this RFP.

“**Administrative Proposal**” means Part 1 of the Proposer’s Proposal that includes all administrative, legal and financial submittals required in this RFP.

“**Alternative Technical Concept**” (**ATC**) means a solution proposed by a Proposer that achieves the goals of the Project but deviates from the prescribed elements of the Project in the RFP and draft Contract Documents. The rules and requirements related to the submission of Alternative Technical Concepts will be defined in the RFP.

“**Award**” means the final decision of the Department to accept the Proposal from the Proposer that provides the Best Value, and the Award is subject to execution and approval of the Contract by the Department, Nassau County, and the New York State Office of the State Controller.

“**Bay Park Alignment**” means the general alignment or route of the proposed 72-inch microtunnel and its appurtenant facilities, temporary or permanent, that extend between the Bay Park Sewage Treatment Plant and the 72-inch aqueduct in Sunrise Highway.

“**Best Value**” means the basis for awarding contracts for services to the owner that optimize quality, cost and efficiency, and price and performance criteria. It includes scoring and ranking Proposers, highest to lowest, on their technical and Price Proposals, combining price and quality (non-price) factors as indicated in the RFP.

“**Cedar Creek Alignment**” means the general alignment or route of the proposed 72-inch microtunnel and its appurtenant facilities, temporary or permanent, that extend between the Cedar Creek Water Pollution Control Plant and the 72-inch aqueduct in Sunrise Highway

“**Clarification**” means a written exchange of information that takes place between a Proposer and the Department after the receipt of all Proposals during the evaluation process. The purpose

for Clarifications is to address minor ambiguities, omissions, errors or mistakes and clerical revisions in a Proposal.

**“Commissioner”** means the Commissioner of the New York State Department of Environmental Conservation.

**“Commissioning”** means the process of assuring that all systems and components of the Project are designed, installed, tested and operated in accordance with the Contract Documents and includes effectuating the safe and orderly turnover of the Project from the Design-Builder to the County, guaranteeing its operation in terms of performance, reliability and safety.

**“Conflict of Interest”** means a situation where a Person or Entity: (1) has or had familial relations with Persons; (2) engaged or is engaging in activities; or (3) performed or is performing services for the Department, Nassau County or another Entity concerning the Project or a related project, that afford such Person or Entity with a competitive advantage or that render such Person or Entity unable, or potentially unable, to render impartial assistance or advice on the Project.

**“Construction Inspection”** means to inspect all construction operations and to enforce all safety measures (for employees and the public) to ensure conformance with the Contract Documents. This includes performing daily inspection and testing activities in accordance with all the requirements set forth in the Contract Documents.

**“Construction Inspection Professional Engineering Firm”** means an independent engineering firm, licensed in New York State to perform engineering services and having experience in Construction Inspection as defined herein. This Firm shall be hired by the Design-Builder to perform independent Construction Inspection for the Project. The Construction Inspection Professional Engineering Firm may not be owned in any part or controlled by the Design-Builder, any Equity Participant, or by any construction subcontractor.

**“Construction Manager”** means the Design-Builder’s on-site designated representative who oversees the construction of the Design-Build Contract, including but not limited to directing and coordinating the activities of the Design-Builder’s workforce and all subcontractors, ensuring that the work progresses according to schedule, and ensuring that material and equipment are delivered to the site on time.

**“Constructor(s)”** means an Equity Participant(s), other Entity(ies), or subcontractor(s) who are hired/employed by the Design-Builder, and has(have) the primary responsibility for all, or a major component, of the construction of the Project.

**“Consultant”** means any Person or legal Entity that is currently performing or has previously performed professional or consulting services for the Department, for the County or for another public agency with respect to the Project. The term includes, without limitation, any Person or legal Entity providing accounting, auditing, architecture, landscape architecture, construction project management, engineering, environmental consulting, land surveying, legal, or right of way acquisition services for the Project, and includes subconsultants at all tiers.

**“Contract”** means the written agreement between the Department, the Design-Builder and the County setting forth the obligations of the parties thereunder, including, but not limited to, the

performance of the Work, the furnishing of labor and materials, and the basis of payment subject to the laws of the State of New York. The Contract will include any amendments, supplemental agreements, change orders, documents and appendices that are required to complete the Project in an acceptable manner, including any authorized extensions, together will constitute one instrument.

**“Contract Documents”** means all the documents that form the Project Contract, including all New York State, Department, Nassau County and United States Department of Homeland Security provisions, the Project Contract and general provisions, and any supplementary provisions, and all attachments, appendices, and exhibits to said documents, and all changes and/or addenda to such documents issued by the Department.

**“Conveyance System”** means a pumping and large diameter piping system, inclusive of valves and other hydraulic controls or structures, used to transmit or convey treated water from one location to another.

**“County”** means the County of Nassau, a municipal corporation of the State of New York, acting through its Department of Public Works.

**“Deficiency”** means a material failure of a Proposal to meet the Department’s requirements or a combination of significant Weaknesses in a Proposal that leads the Department to conclude that the Proposer has not demonstrated that they are likely to perform successfully to an acceptable level.

**“Department”** means the New York State Department of Environmental Conservation, which includes staff who have been delegated certain contractual and technical authority by the Commissioner.

**“Department’s Project Director”** means the staff member representing the Department and having direct supervision of the procurement and overall administration of the Contract under the direction of the Commissioner.

**“Design-Build (DB)”** means a project delivery methodology under which a single Entity has responsibility for completion of the design and construction of a project under a single contract with the owner.

**“Design-Build (DB) Contract”** means a binding agreement between the Department and the Design-Builder to complete a specified scope of Work as defined in the RFP.

**“Design-Builder”** means the Entity selected pursuant to the RFP that enters into the Contract with the Department for completion of the Work, which includes both design and construction of the Project under a single contract.

**“Design-Build Team”** means the Design-Builder and its designers, constructors, subcontractors, subconsultants, and suppliers that contribute materials, equipment, work and services to execute the Project with and for the Design-Builder.

**“Design Criteria Package”** means Volume 2 of the RFP which contains all technical basis for the Proposer’s Technical and Price Proposal such as Project scope descriptions, performance

requirements, preliminary plans and specifications, restrictions, reference documents and other technical data and information.

**“Design Manager”** means the Design-BUILDER’s designated individual who shall have primary responsibility for coordination and oversight of all Project designs including design plans, calculations, and specifications. He/she shall be a registered Professional Engineer in the State of New York.

**“Designer(s)”** means an Equity Participant, subcontractor, or in-house designer or other Entity(ies) licensed in New York State to perform engineering services and has(have) the primary responsibility for design services of the overall, or any major component, of the Project.

**“Entity”** means any individual, firm, corporation, company, limited liability company (LLC), joint venture, voluntary association, partnership, trust, unincorporated organization, other legal Entity, or combination thereof.

**“Equity Participant”** means any Entity holding (directly or indirectly) an ownership interest in the Proposer’s Team.

**“Final Acceptance”** means all Contract performance requirements are completed including, but not limited to, 1) all physical works and other punch list items, and 2) that warranties, final record drawings, certified payrolls, documentation of any outstanding claims, lien releases and permit close-outs have been accepted by the Department’s Project Director or designee for submittal for final Contract close-out and subsequent final payment.

**“Issuance”** means the date the Department issues the RFP to the Shortlist of Proposers inviting them to submit a Proposal.

**“Key Personnel”** means the Project Manager, Design Manager, Construction Manager, Design-Build Coordinator, Quality Manager, Safety Manager, Tunneling Lead Superintendent; Aqueduct Rehabilitation Lead Superintendent; Pump Station Lead Mechanical Designer; Lead Hydraulic Engineer / Modeler; the Public Information Officer (PIO); and Construction Inspection Professional Engineer all of whom must be employed by the Design-BUILDER or a Design-BUILDER Team member, and serve in that position within their respective Entities.

**“Mechanical Completion”** means the date when all hydrostatic testing is complete for all Project components, including the microtunnels, pipelines, pumps, and appurtenant vaults and structures. All thoroughfares including Sunrise Highway, and the Bay Park and Cedar Creek alignments, are completely vacated of construction activity and equipment, all open pits are backfilled and preliminarily restored, and there are no more multilane-road closures on Sunrise Highway. The Conveyance System is functionally ready for the initiation of low flow testing at twenty million gallons per day (20 MGD).

**“Minority or Women’s Owned Business Enterprise (M/WBE)”** means an Entity or firm certified by the New York State Empire State Development Corporation (“ESD”) pursuant to New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of Economic Development), as either a Minority-owned Business Enterprise (“MBE”) or a Women-owned Business Enterprise (“WBE”).



**“Notice to Proceed (NTP)”** means official authorization by the Department, directing the Design Builder to proceed with the Work as described in the Contract. It is the official commencement date of the contract and to which all milestones, as described in the Schedule of Contract Durations (SCD) form are based.

**“Organizational Conflict of Interest”** means a circumstance arising out of existing or past activities, business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e. parent Entities, subsidiaries, Equity Participants, etc.) of a Proposer or any of its Team’s members that results in (i) impairment or potential impairment of a Consultant’s ability to render impartial assistance or advice to the Department, or of its objectivity in performing work for the Department; (ii) an unfair competitive advantage for any Proposer with respect to the procurement process for the Project, including access to information that is not generally available to the other Proposers, based on services previously provided by a Consultant with respect to the Project; or (iii) a perception or appearance of impropriety with respect to the procurement process for the Project (regardless of whether any such perception is accurate).

**“Owner Advisor”** means Owner’s Representative where mentioned. Both terms shall be one and the same.

**“Owner’s Representative”** means the consulting firm retained by the Department to assist, represent, and advise the Department in the overall management and quality assurance of the design and construction for the Project.

**“Person”** means any Entity.

**“Price Proposal”** means financial offer made by the Proposer to perform the Scope of Work defined in the RFP and presented in a sealed envelope in accordance with ITP, Appendix D and submitted as Part 3 of the Proposer’s Proposal.

**“Project”** means the improvements to be designed and constructed and all other Work to be provided in accordance with the Contract Documents for the Bay Park Conveyance Project.

**“Project’s Designated Representative”** means the staff member representing the Department and having direct supervision of the procurement and overall administration of the Contract under the direction of the Commissioner.

**“Project Labor Agreement”** means a Project-specific, uniform agreement covering all the crafts on the Project, and lasting for the duration of the Project. It is a comprehensive labor relations agreement that governs over various area craft agreements, setting uniform terms and conditions for the Project.

**“Project Manager”** means the Proposer’s designated representative responsible for all aspects of the Project, including but not limited to construction oversight, design oversight, project finances, project scheduling.

**“Project Owner” or “Owner”** means the Department and the County. The Department procures and manages the Contract and the County owns and will operate the facilities upon Project Final Acceptance.

**“Proposal”** means the Proposal submitted by the Proposer in response to an RFP in the prescribed format and on the prescribed forms, including any revisions. If the RFP requests submittal of best and final offers, the term ‘Proposal’ means the best and final offer submitted by a Proposer, including any revisions thereto.

**“Proposal Bond”** means security instrument furnished by the Proposer with its Proposal for the Contract as a guarantee that the Proposer will enter into the Contract for the Work, if the Proposal is accepted by the Department.

**“Proposer”** means an Entity that is selected for the Shortlist and submits a Proposal.

**“Proposer’s Authorized Representative”** means the individual who has or has been given the authority to bind the Proposer in all matters and will be the signatory to the Design-Build Contract, if awarded to Proposer. The Proposer’s Authorized Representative shall sign when indicated on all forms, letters and other portions of the Proposal. If the Proposer is not yet a legal Entity or is a joint venture or general partnership that has not yet been formed, authorized representatives of all Equity Participants shall give power of attorney to this individual to sign on their behalf.

**“Proposer’s Team”** means the Proposer and the Proposer’s Team members including the Designer(s), Constructor(s), subcontractor(s) and subconsultant(s), that contributed experience qualifications and/or Key Personnel in the Proposer’s Statement of Qualifications and additional Key Personnel to the Proposal.

**“Quality Assurance”** means the process, procedures, and controls employed by the Design Builder to ensure that design and construction is in full compliance with contract, regulatory requirements; and the work products perform/operate as intended and meet all functional objectives for acceptance by the Owner.

**“Quality Manager”** means the individual identified by the Proposer who is responsible for the overall quality program of the Proposer, including the quality of management, design and construction; the oversight of the preparation of the Quality Management Plan; direct supervision of the implementation of the Quality Management Plan; and for ensuring its compliance for all quality aspects of the Project.

**“Quality Management Plan”** means a plan to be prepared by the Design-Builder that sets the quality related responsibilities of the Design-Builder during design and construction, including the activities of any subcontractors and suppliers.

**“Request for Information (RFI)”** means an email request submitted by a Proposer seeking an explanation, clarification, or response to an inquiry that is related to the legal, administrative or technical requirements of the RFP.

**“Request for Proposals (RFP)”** means the written solicitation issued by the Department seeking Proposals from the Shortlist of Proposers.

**“RFP Documents” (also “RFP” and “RFP Package”)** means the documents that comprise the RFP solicitation which consists of three (3) volumes: Volume 1, Instructions to Proposers and its

appendices; Volume 2, Design Criteria Package and its appendices, attachments and exhibits; and Volume 3, Project Contract, including its components.

**“Request for Qualifications (RFQ)”** means the previous written solicitation issued by the Department on February 24, 2020 seeking SOQs to be used to identify and establish a Shortlist of Proposers to be invited to respond to the RFP.

**“Schedule of Values (SOV)”** means the breakdown of the Proposer's Price Proposal by the Proposer for the purpose of defining all Work as a basis for progress measurement and payment.

**“Selection Committee”** means the committee comprising of five (5) members appointed by the Department, and designated the authority of reviewing the Technical Proposals for the purpose of selecting a qualified Design-Builder that proposes to design and construct the requested Scope of Work in a manner that delivers the Best Value to the Department, and is in compliance with requirements set forth in the RFP.

**“Service-Disabled Veteran’s Owned Business (SDVOB)”** means an Entity or firm certified as such in accordance with New York State Executive Law, Article 17-B and 9 NYCRR Part 252.

**“Shortlist”** means the list of those Entities that have submitted SOQs that the Department determines through evaluation of the SOQs are eligible to receive an RFP and invited to submit Proposals.

**“Site”** means the location, alignment, route, corridor, or limits of the proposed project which shall include the compounds of the Bay Park Sewer Treatment Plant, Cedar Creek Water Pollution Control Plant, Bay Park alignment, Cedar Creek alignment, and Sunrise Highway along which various elements of the conveyance project shall be constructed.

**“Stakeholder”** means individuals or organizations who are invested or affected in some capacity by the Project.

**“State”** means the State of New York.

**“Statement of Qualifications (SOQ)”** means the information prepared and submitted by an Entity in response to the RFQ issued by the Department on February 24, 2020.

**“Stipend”** means a payment by the Department to a Proposer as compensation for its work product (Proposal), under certain conditions, as part of procurement.

**“Stipend Agreement”** means a legal agreement that the Stipend-Eligible Proposer must enter into and execute with the Department in order to receive the Stipend payment.

**“Stipend-Eligible Proposer”** means a Proposer who is responsive in meeting all RFP compliance requirements by submitting a compliant and complete Technical and Price Proposal for consideration by the Department, who meets the requirements and limitations set forth in the Stipend Agreement in the RFP and who has executed the Stipend Agreement.

**“Substantial Completion”** means when the Project is sufficiently complete for its full purpose as intended; has demonstrated diversion functionality under low, average, and high flow conditions; and operations and maintenance responsibility can be transferred to the County’s operator.

“**Technical Proposal**” details the Proposer’s organizational structure, design, permitting, construction and scheduling approach to delivering the Project in compliance with stated objectives and performance criteria of the Project. The Technical Proposal is presented in Part 2 of the Proposer’s Proposal.

“**Weakness**” means a flaw in the Proposal that increases the risk of unsuccessful Contract performance. A significant Weakness in the Proposal is a flaw that appreciably increases the risk of unsuccessful Contract performance

“**Work**” or “**Scope of Work**” means the furnishing of all labor, services (professional or otherwise), materials, equipment, and other incidentals necessary or convenient to the successful completion of the design and construction of the Project and the carrying out of all the duties and obligations imposed by the Contract.

“**Work Payment Schedule (WPS)**” (also called “**Schedule of Values**”) means a breakdown of the Contract price within the major components of the Project provided in response to this RFP. The WPS will be further expanded by the Design-Builder for review and approval by the Department to create the Schedule of Values as a basis for Work measurement and progress payments.

## **1.5 RFP DOCUMENTS**

The RFP includes the following documents (the “RFP Documents”), which may be modified and/or amended by Addenda issued by the Department to such documents:

- A) Volume 1 – Instructions to Proposers, including Appendices A through F
- B) Volume 2 – Design Criteria Package, including attachments, exhibits and appendices
- C) Volume 3 – Draft DB Contract Documents, including General Provisions and appendices. Refer to the DB Contract provided in Volume 3 of the RFP for the list and precedent of draft Contract Documents.

### **1.5.1 Required Forms**

Unless indicated on a specific form, the forms provided in ITP Appendix E of this RFP are not to be altered other than to be expanded to provide the required information. Failure to provide all information and completed forms, and any form found to be materially altered may, at the discretion of the Department, be removed and discounted from the Proposal before evaluation. All forms shall be completed pursuant to Department’s instructions, and all information required by a form shall be supplied. Changes to the forms and/or provision of additional forms may be made by the Department and submitted to Proposers by addenda. Sample forms are labeled as such and are provided as an example.

### **1.5.2 Property of the Department**

Subject to applicable New York State law, contents of Proposals, except for proprietary information (See ITP Section 2.5) to the extent protected under applicable New York State law, will become public information upon final execution of the Contract and shall become the property of the Department and will not be returned to the Proposer. 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 and providing the Stipend Agreement (see ITP Appendix E, Forms) with its Proposal.

### **1.5.3 Errors in the RFP Documents**

If any mistake, error or ambiguity is recognized by the Proposer at any time during the Proposal process in any of the RFP Documents or communications with the Department, the Proposer shall notify the Department of the perceived error or ambiguity and recommended correction in writing will be made in accordance with ITP Section 2.3, as soon as identified.

## **1.6 PROCUREMENT SCHEDULE**

The anticipated procurement schedule for the RFP process and Award of the Contract is outlined in ITP, Appendix A.

## **1.7 GENERAL PROVISIONS REGARDING PROPOSALS**

### **1.7.1 Proposal Contents**

Each Proposal from a Proposer shall include three (3) main parts:

- (i) Part 1, Administrative Proposal (includes legal and financial submittals);
- (ii) Part 2, Technical Proposal; and
- (iii) Part 3, Price Proposal.

Further instructions for Parts 1, 2 and 3 are provided in ITP Appendices B, C, and D, respectively, and required related forms are set forth in ITP Appendix E. The forms presented in ITP Appendix E are supplied for use by Proposers in preparing submissions. Proposers may add additional lines to expand the capacities of certain forms within the intended format as indicated on the relevant form, and in compliance with the page limitations.

### **1.7.2 Inclusion of Proposal in Contract**

Selected parts of Proposer's Proposal will become exhibits in the Contract Documents as 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 or the County, including

their agents or anyone representing the Department or the County at any time during this procurement process, the Department shall immediately disqualify the Proposer, the Proposer shall forfeit its Proposal Bond, the Proposer shall not be entitled to any payment of a Stipend and the Department may seek any legal remedy available to address the action.

### **1.8.2 Non-Collusion**

The Proposer shall not undertake any activities prohibited as collusion that would disqualify their Proposal as indicated in this ITP Section 8.1.V.6 Department Rights.

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 Form COI, Organizational Conflict of Interest Disclosure Statement (see ITP Appendix E). In addition, any firm that is rendered ineligible through any State, federal or municipal action is ineligible to participate on any Design-Build Team.

Federal regulations prohibit the hiring of any Entity that has a Conflict of Interest. Proposers were 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 to date as having Conflicts of Interest that prevent their participation as a Proposer or inclusion on a Proposer's Team for the 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, modify or cancel the Contract to avoid the Conflict of Interest. 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 until after Award of the Contract, the Department may terminate the Contract for default.

### **1.9 M/WBE AND SDVOB UTILIZATION**

This solicitation is subject to State provisions concerning the utilization of Minority/Women Owned Business Enterprises (M/WBE) and Service Disabled Veteran's Owned Businesses (SDVOB). The overall M/WBE participation goal for the Contract is twenty-three percent (23%) as further described in ITP Appendix A. There is no goal for SDVOB; however, Proposers are encouraged to utilize SDVOB firms.

The selected Proposer must be responsive in submitting required documentation and forms and ensure that all information is timely, complete, accurate and truthful. The selected Proposer 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.

Only those Entity(ies) or firms certified by the New York State Empire State Development Corporation ("ESD") pursuant to New York State Executive Law, Article 15-A and New York Code of Rules and Regulations, Title 5 (5 NYCRR) Parts 140-145 (Regulations of the Commissioner of

Economic Development), as either a Minority-owned Business Enterprise (“MBE”) or a Women-owned Business Enterprise (“WBE”) 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 prior to starting work on this Project. Certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as an M/WBE.

The list of M/WBE firms certified by the New York State ESD can be accessed via the following link to ESD's Directory: <https://esd.ny.gov/doing-business-ny/mwbe>

The following Contract Documents in Volume 3 of the RFP, DB Contract Documents are to be referenced for requirements of M/WBE utilization:

- Appendix D: Environmental Facility Corporation Program Requirements and Bid Packet for Non-Construction Projects; and
- Appendix E: Environmental Facility Corporation Program Requirements and Bid Packet for Construction Projects

Submittal requirements associated with the above Appendices are outlined in ITP Appendix B.

#### **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 Design-Builder resources planned to be used in performing Work under this 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) within the approved schedule.

#### **1.12 INSURANCE**

Refer to the DB Contract Documents, Volume 3 of the RFP, regarding insurance requirements. Insurance certificates and endorsements shall be submitted to the Department by the selected Proposer prior to Contract execution by the Design-Builder.

#### **1.13 QUALITY MANAGEMENT**

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 that encompasses both quality control and certain activities of quality assurance. The Design-Builder will have responsibility for the quality of the Work conducted and materials utilized in the

Work. The Design-Builder will be required immediately upon NTP to develop and submit for Department review for compliance a Quality Management Plan that addresses both design and construction, and meets the Project requirements as detailed in Volume 2 of the RFP, Design Criteria Package.

Proposer 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 Management Plan, direct supervision of the implementation of the Quality Management Plan, and for ensuring its compliance for both design and construction. This individual shall be a direct report to the executive committee of the Design-Build Team, and will coordinate with, but not directly report to, the Design-Builder's Project Manager.

For design, the Quality Manager shall ensure that the design firm(s) on the Design-Build Team implement(s) the quality control procedures specified in the Design-Builder's Quality Management Plan for engineering, design and related Project activities.

For construction, the Design-Builder will be required to have, as part of the Design-Build Team, a subconsultant Construction Inspection Professional Engineering Firm to perform construction inspection, and a materials testing firm or laboratory to sample and test materials as specified in the Quality Management Plan and/or as required by the Project specifications. The Construction Inspection Professional Engineering Firm and the Materials Testing Firm or Laboratory may be the same company or separate companies, but in either case, the Construction Inspection Professional Engineering Firm and the Materials Testing Firm or Laboratory shall not be an Equity Participant in the Design-Build Entity.

The Construction Inspection Professional Engineering Firm shall report to the Design-Builder Quality Manager and shall coordinate with the Department's Owner's Representative including providing all Construction Inspection Professional Engineering Firm reports and correspondence to the Owner's Representative. The Materials Testing Firm or Laboratory, if not part of the Construction Inspection Professional Engineering firm, shall report to and support the Construction Inspection Professional Engineering Firm.

The Construction Inspection Professional Engineering Firm will be required to inspect all construction Work and perform construction quality control for conformance to the Design-Build plans, specifications, the Quality Management Plan and all Contract Documents. The Construction Inspection Professional Engineering Firm's inspection, measurement, and testing activities must adhere to, and be in accordance with, all requirements set forth in the Contract Documents, including Design-Builder specifications and the Quality Management Plan that becomes part of the Contract Documents.

All inspection and testing records must be kept in the Design-Builder's Project document control system, with record copies provided/supplied to the Department via a web-based document control/reporting system, as described in Volume 2 of the RFP, Design Criteria Package, and which will exist for the full duration of the Project. 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, and survey notes, photographic and video records of various phases of construction, and other pertinent data, records and reports which may be required by the Contract.

The Department will, at its sole option establish and maintain its own Quality Assurance oversight and audit function to conduct documentation verification of sampling and materials testing, its own independent testing, and review of the effectiveness of the Design-Builder's Quality Management Plan. The Department may utilize independent consultants to perform design and/or construction quality assurance and/or independent testing and inspections of the Design-Builder's Work.

No construction shall begin nor shall payments for construction progress be made before the Design-Builder's Quality Management Plan has been approved by the Department.

See the RFP Volume 2, Design Criteria Package, regarding the requirements, responsibilities and roles relating to quality assurance and quality control.

#### **1.14 CHANGES TO THE PROPOSER'S KEY PERSONNEL OR ORGANIZATION**

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 Equity Participants, Proposer's Team members 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 Proposer's Team member or Key Personnel cannot be made without Department approval. Should it become necessary to replace a Proposer's Team member or a Key Person during the Proposal period, the Proposer must provide a replacement with equal or better capacity, skills and qualifications. During the Proposal period, requests for changes to the Proposer's Team or Key Personnel must be made using Form RFC provided in ITP Appendix E. For changes of a Proposer's Team member, Proposer shall submit up to five (5) completed Form PI's (Form 8) to justify the new member is of equal or better capability. For changes of Key Personnel, Proposers shall submit up to five (5) completed Form KPR's (Form 7) to justify the new Key Person is of equal or better capability. For either a change in Proposer Team member or Key Personnel, a narrative (max. one page) justifying why the proposed Proposer Team member or Key Personnel change is being requested shall be submitted. The request for Proposer's Team member or Key Personnel change shall be submitted to the Department's Designated Representative no later than the Last Day for Proposer to Submit Questions (RFIs) as indicated in ITP Appendix A, Project Information.

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 Proposer's Proposal in Part 1, Administrative Proposal.

During the term of the Contract, substitutions for Design-Build Team members or Key Personnel cannot be made without Department approval. Refer to Contract General Provision DB §108.3.

During the term of the Contract, the Department's Project Director may direct the Design-Builder to replace any Key Personnel for reasonable cause. Refer to Contract General Provision DB §108.3.

### **1.15 PROJECT LABOR AGREEMENT**

The Department has signed a Determination relative to utilizing a Project Labor Agreement (PLA) for the Project, which is included in Appendix F to the ITP General Instructions of this RFP. The Design-Builder will be required to enter into the PLA with appropriate trade unions whose members will be anticipated to be performing Work included in the Contract. However, 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. If, and when a PLA is obtained, it will be issued by addendum to the RFP.

### **1.16 PREVAILING WAGE RATES**

The Design-Builder will be required to comply with all applicable labor laws, including but not limited to Federal Davis-Bacon requirements, State Prevailing Wage requirements, and Nassau County Living Wage Law, as amended. Federal and state prevailing wages rates applicable to the Contract are set forth in Appendix G of the DB Contract Documents (Volume 3 of the RFP). In the event that there is variation in the minimum wage for a certain job classification among Federal, State and County labor laws, the Design-Builder will be required to utilize the higher wage as the minimum for that job classification. In the event that a provision of an applicable Project Labor Agreement conflicts with any provisions of the New York State Labor Law or any applicable Federal law, the provisions of the Project Labor Agreement shall apply to the fullest extent allowed by law.

The Design-Builder will be required to obtain periodic wage rate schedule updates from the New York State Department of Labor, 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**

The Department intends to award the Design-Build Contract to the Proposer that submits the Proposal that is determined to offer the Best Value to the Department, considering the evaluation factors set forth in this RFP.

The procurement process included two steps:

- Step One: RFQ - The Department selected the most qualified Entities based on the requirements of the RFQ that resulted in a Shortlist of Entities to be invited to participate in Step 2; and
- Step Two: RFP - Selection of a Design-Builder from the Shortlist who will submit Administrative, Technical and Price Proposals that meet the requirements of this RFP. After the Department selects the Proposal that represents the Best Value to the Department, and issues a notice of selection accordingly, the Department reserves the right to negotiate final Contract terms and conditions, including cost.

Evaluation of Proposals will be based on information submitted in the Proposals, and will involve both pass/fail factors for compliance to determine that a Proposer is responsive, and an evaluation

of organizational factors, technical quality factors, schedule, and price factors, as further detailed in this RFP.

## **2.2 RECEIPT OF THE RFP DOCUMENTS**

The RFP will be sent to the Proposers who have been notified of their inclusion on the Shortlist by the Department's Designated Representative.

A Proposer shall return a completed RFP Response Form, found in ITP Appendix E, Forms, to the Department's Designated Representative within seven (7) days of its receipt of the RFP from the Department via email to [DesignBuild@dec.ny.gov](mailto:DesignBuild@dec.ny.gov).

### **2.2.1 Department's Designated Representative**

The Department's Designated Representative for the Project, including the procurement is:

**Susan McCormick, P.E.**  
**Project Director**  
**Attention: Bay Park Conveyance Project**  
**New York State Department of Environmental Conservation**  
**625 Broadway, 14<sup>th</sup> Floor, Albany, NY 12233-1010**  
**e-mail: [DesignBuild@dec.ny.gov](mailto:DesignBuild@dec.ny.gov)**

The Department's Alternate Designated Representative for the Project procurement only is:

**Ryan von Linden**  
**Project Assistant**  
**Attention: Bay Park Conveyance Project**  
**New York State Department of Environmental Conservation**  
**625 Broadway, 10<sup>th</sup> Floor, Albany, NY 12233-1080**  
**e-mail: [DesignBuild@dec.ny.gov](mailto:DesignBuild@dec.ny.gov)**

### **2.2.2 Rules of Contact**

The following rules of contact shall apply during the procurement process, which began upon issuance of the RFQ for the Project and will be completed with the final execution of the Project Contract by the New York State Office of the State Controller. Contact communications may include 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 Project is specified in ITP Section 2.2.1 above. The Department's Designated Representative shall be the Department's single contact and source of information for this Project with the Department's Alternate Designated Representative an additional point of contact for the Project's procurement only.

- B) 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).
- C) The Department's Designated Representative will contact a Proposer through the Proposer's representative, normally via email.
- D) 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.
- E) Neither a Proposer nor its agents may contact employees of the Department, County or their consultants under contract with the Department or the County 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.
- F) 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.
- G) 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.

### **2.2.3 Proposer's Representative**

The Proposer's representative, as identified on Form C, ITP Appendix E, shall be the Proposer's point of contact for communication between the Department's Designated Representative and the Proposer during the procurement period. 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 via email to [DesignBuild@dec.ny.gov](mailto:DesignBuild@dec.ny.gov) 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.

The Proposer's Authorized Representative shall be the individual who has or has been given the authority to bind the Proposer in all matters.

## **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. Addenda will be e-mailed directly to the Proposer's representative. The Proposer's representative shall acknowledge such Addenda to the RFP by return email. The Proposer shall also include written acknowledgement of receipt of all RFP addenda (Form AR; ITP Appendix E, Forms) with submittal of its Proposal. 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 shall be e-mailed to the Department's Designated Representative at DesignBuild@dec.ny.gov.

All questions and requests must be sent from a Proposer's representative to the attention of the Department's Designated Representative at the following e-mail address:

- DesignBuild@dec.ny.gov, no later than 1:00 p.m. Eastern Time on the date specified as Last Day for Proposers to Submit Questions (RFIs) in ITP Appendix A, Procurement Schedule.

The Department will not consider any communications delivered in any way except as specified above. Questions shall reference the specific RFP document(s), as applicable. No questions and/or requests will be considered unless delivered as specified. The Department will consider these questions "public" and responses will be sent to all Proposers.

Questions and discussions taking place in or as a result of the one-on-one meetings shall be treated as "confidential."

All Department responses will be in writing and issued from DesignBuild@dec.ny.gov to all Proposer's representatives. The Department may rephrase questions as it deems appropriate and may consolidate similar questions. It is anticipated that multiple sets of responses will be issued. The Department will make its best efforts to respond to all requests but is not obligated to respond to all questions, at its sole discretion.

Each Proposer is responsible for reviewing the RFP prior to the Last Day for Proposers to Submit Questions (RFIs) in ITP Appendix A, Procurement Schedule for submittal of questions, and for requesting Clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer otherwise fails to understand.

The Department's responses will not be considered part of the RFP but may be relevant in resolving any ambiguities. Inquiries resulting in any modifications or additions to the RFP will be documented in Addenda issued by the Department.

## **2.4 ONE-ON-ONE MEETINGS**

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

## **2.5 FREEDOM OF INFORMATION LAW**

### **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, SOQ evaluation and Shortlist procedures, Proposals, Proposal evaluation and selection procedures, and, if applicable, any records created during the evaluation and selection processes, 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.

## **2.6 PROPOSAL STIPEND**

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

Stipend-Eligible Proposers must execute the Stipend Agreement (see ITP Appendix E, Forms) and provide the Department with the licenses required by Article 3 of the Stipend Agreement with their Proposal not later than the Proposal Due Date identified in ITP Appendix A, Procurement Schedule. 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 by the Proposal Due Date will forfeit all rights to receive 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, the Department may use any ideas or information contained in the Proposal, including ATCs if submitted, 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, or any part thereof, that the Department deems, in its sole discretion, appropriate under the circumstances. Proposers 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 the Department.

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, Forms.

Note that Form SA in ITP Appendix E shall be completed and submitted with the Proposer's Proposal in Part 1, Administrative Proposal, if the Proposer is intending to be eligible for the Stipend.

## 2.7 ESCROWED BID DOCUMENTS

As a condition of the Award of the Contract, the successful Proposer must agree to submit all Proposal documents to the Department, which shall be held by the Department in escrow. The Bid Document Escrow Agreement (Form BDEA) and Appendix A to the Bid Document Escrow Agreement are included in the ITP Appendix E, Forms.

Note that Form BDEA and Appendix A to the BDEA, in ITP Appendix E, Forms, shall be completed and submitted with the Proposer's Proposal in Part 1, Administrative Proposal.

## 2.8 GENERAL SUBMITTAL REQUIREMENTS

Proposals shall be submitted by either mail or hand delivery to the submittal address below. All Proposals shall be received at the Department's submittal address no later than 1:00 P.M Eastern Time (ET) on September 14, 2020.

Proposals shall consist of hardcopy and electronic copies as outlined in Section 4.6 of this ITP. All shall be identified by the DEC Contract No. D011883, and shall be delivered to the office noted below:

**Attention: Katherine Calogero**  
Bureau of Expenditure Accounting & Travel  
NYS Department of Environmental Conservation  
625 Broadway, 10th Floor  
Albany, New York 12233-5027

Should there be any differences or discrepancies between the paper and electronic copies of the submittal, the paper copy shall control. Titles of parts shall be clearly shown on the cover of each envelope or package to include Part 1 Administrative Proposal, or Part 2 Technical Proposal or Part 3 Price Proposal, as applicable. Submittals shall be clearly labeled on the outside of the envelope or package with the following statement:

Project Name: Bay Park Conveyance Project - Design Build Services  
Contract No. D011883  
RFP Response Opening Date and Time: September 14, 2020 at 1:01 PM  
PROCUREMENT DOCUMENT  
Part No. X  
DO NOT OPEN PRIOR TO September 14, 2020 at 1:01 PM

Note that the above deadline is for receipt of the Proposals at the Department's Bureau of Expenditure Accounting & Travel in Albany, New York, not for mailing or entrusting to a delivery service. The Department is not responsible for lost or late mailings. Late submittals will be returned unopened. It is the Proposer's sole responsibility to ensure delivery of its Proposal to the Department by the time and at the place specified herein, and the Department shall therefore have no liability or responsibility regarding delivery of a Proposer's Proposal.

Proposals received after 1:00 PM (ET) on September 14, 2020 will not be considered, consistent with New York State procurement law.



Where multiple containers are used by a Proposer to submit a Proposal, the Proposer shall label each container "Package # of ##" where # denotes the number of the container, and ## denotes the total number of containers being submitted by the Proposer.

## **2.9 WITHDRAWALS AND LATE SUBMITTALS**

### **2.9.1 Withdrawal of a Proposal**

A Proposer may withdraw its Proposal only by a written and signed request that is received by the Department's Designated Representative at [DesignBuild@dec.ny.gov](mailto:DesignBuild@dec.ny.gov) prior to the Proposal Due Date and time identified in Section 2.8 above and in ITP Appendix A, Procurement Schedule. Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to the Proposal Due Date and time at the designated location.

The Proposer agrees that its Proposal will remain valid for one hundred eighty (180) days following the Proposal Due Date, or such longer period as may be agreed to in writing by the Proposer and the Department.

### **2.9.2 Late Proposals**

The Department will not consider any late Proposals or late requests to modify or withdraw Proposals after the Proposal Due Date. Proposals and/or modification or withdrawal requests received after the Proposal Due Date will be returned to the Proposer.

### **2.9.3 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 physical presence of two or more Department designated individuals and reviewed for completeness and compliance with the RFP requirements. Those Proposals found responsive will be evaluated in accordance with the criteria and the review and selection process outlined in this RFP.

## **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 with the Department if selected, 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 Proposal Bond and will not be entitled to payment of the Stipend.

## **2.11 EXAMINATION OF RFP DOCUMENTS AND WORK SITE**

The Proposer is expected to examine carefully the Sites of the proposed Work as identified in ITP Appendix A. The fact that the Department has furnished information does not abrogate the Proposer's responsibility for further verifications and inquiries as are necessary to the extent reasonably practical with respect to publicly available access and records, and such private access afforded by the Department and/or the County.

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 Form IP, Itemized Proposal/ Jurat (see ITP Appendix E, Forms) 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 (ATCs), as applicable for this Project.

### **4.0 PROPOSAL REQUIREMENTS**

#### **4.1 RESPONSIVE PROPOSAL**

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

Each Proposal must be submitted in the format specified as detailed in this ITP and its appendices. Multiple or alternate Proposals are not permitted.

Proposals may be considered, in the Department's sole discretion, non-responsive for any of the following reasons:

- A) If the Proposal is submitted in a format other than that of the form furnished or specified by the Department; if it is not properly signed; if the Form IP, Itemized Proposal/ Jurat (ITP Appendix E) is materially 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 the Award or to enter into the Contract following selection;
- D) If the Proposer attempts to limit or modify the bonds, or if Form BB, Proposal Bond (ITP Appendix E) is modified, and/or requested information deemed material by the Department is not provided by the Proposer;
- E) If the Proposer is in arrears in the payment of any obligation due and owing the State or County, including payment of taxes and employee benefits; and
- F) Any other reason the Department determines the Proposer or its Proposal to be non-responsive.

**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. Confirmation of proper licensing demonstrated in the SOQ is still in force and subject to resubmittal, including necessary license renewal and submittal of licenses not provided in the SOQ prior to the Proposal Due Date identified in ITP Appendix A, Procurement Schedule or as requested by the Department.

**4.3 CURRENCY**

The Price Proposal shall be priced in U.S. dollars (\$) currency only.

**4.4 PROPOSAL BOND**

**4.4.1 Bonding Requirements**

A Proposal Bond (Form BB, ITP Appendix E) must accompany each Proposal that is submitted for the Project. The Proposal Bond must be presented in the form of a check or a bond. The Proposal Bond shall be issued by a surety with a Best’s Financial Strength Rating of A-minus and Financial Size Category VIII or better by AM Best Company and shall meet the bonding capacity stated below in Table 4.1. A Proposal Bond is in ITP Appendix E, Forms.

Table 4.1 – Bonding Capacity

Proposal Bond/Security	Payment Bond/Security	Performance Bond/ Security
5% of Proposed Total Contract Amount	100% of Proposed Total Contract Amount	100% of Proposed Total Contract Amount

**4.4.2 Return of Proposal Bond**

All Proposal Bonds that were presented in the form of a check, except those of the apparent Best Value Proposer and the apparent “next” Best Value Proposer, will be returned immediately following the announcement of the selected Proposer through the Best Value determination. The retained surety of the Proposer who is not awarded the Contract, if presented in the form of a check, will be returned within ten (10) days following the execution of the Contract. The retained surety of the successful Proposer, if presented in the form of a check, will be returned after satisfactory payment and performance bonds have been furnished and the Contract has been executed.

Sureties that have been presented in the form of a bond will be returned only upon the request of the Proposers after execution of the Contract.

**4.4.3 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 one hundred eighty (180) 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 one hundred eighty (180) 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) and all Pricing information specified (ITP Appendix D); then it shall forfeit its Proposal 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 in the Proposal Bond (Form BB, ITP Appendix E), other than that requested by the Department, will render the Proposal non-responsive.

#### **4.5 SIGNATURES REQUIRED**

The Itemized Proposal/ Jurat (Form FP, ITP Appendix E) and the Price Proposal Cover Sheet (Form PP, ITP Appendix E) shall be signed by the Proposer's Authorized Representative.

#### **4.6 NUMBER OF COPIES**

##### **4.6.1 Hard Copy of Proposal**

Proposers shall deliver hard copy submissions of the Administrative, Technical, and Price Proposals which constitute Parts 1, 2, and 3, respectively, of their Proposal in separate sealed containers, and in the quantities described below:

- A) One (1) original and ten (10) copies of Part 1, Administrative Proposal (see ITP Appendix B) shall be provided;
- B) One (1) original and fifteen (15) copies of Part 2, Technical Proposal including Project Schedule (see ITP Appendix C) shall be provided; and
- C) One (1) original and three (3) copies of Part 3, Price Proposal (see ITP Appendix D) shall be provided.

##### **4.6.2 Electronic Copy of Proposal**

In addition to the submission of hard copies of the Proposal printed on paper, Proposers shall submit (3) electronic copies for each of the three (3) parts of the Proposal (nine (9) thumb drives total) in non-copy protected or password-protected, searchable PDF format.

For each thumb drive, the relevant part, section, 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 thumb drive indicating the name of the Project and Part #, and the Proposer's name. If it is necessary to use more than one thumb drive to submit a part of the Proposal, each thumb drive shall additionally be labeled "X of Y", where X is the thumb drive number and Y is the total number of thumb drives submitted by the Proposer for that part.

The thumb drives for each part shall be securely submitted bound with the original copy of the relevant part of the Proposal.

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

## **5.0 PRE-SUBMITTAL MEETING AND SITE VISIT**

- A) The Department will hold a mandatory pre-submittal meeting solely for the Proposers in accordance with the procurement schedule (ITP Appendix A).
- B) For the pre-submittal meeting, the Proposers will be expected to attend with its Team members and appropriate proposed Key Personnel, including a senior representative of the proposed Construction Inspection Professional Engineering Firm. No minimum number of attendees is required for the pre-submittal meeting and Proposer may bring as many attendees as desired. Subject to COVID-19 procedures at the time of the pre-submittal meeting, the meeting may be held virtually. Proposers will be notified by the Department's Designated Representative of the method, date and time of the pre-submittal meeting.
- C) Subject to COVID-19 procedures at the time of the site visit, each Proposer will be invited individually and will be able to bring no more than four (4) persons. Attendees shall bring their own personal protection equipment (PPE), including steel-toe shoes, hard hats, safety glasses and safety vests and will be required to wear masks and gloves. For the site visit, photos and video are permitted. Any use of drones shall comply with all federal, State and local laws. Each Proposer will be notified by the Department's Designated Representative of the date and time for their site visit.

## **5.1 QUESTIONS AND RESPONSES**

No responses to questions or statements by the Department or County staff or their consultant's during the pre-submittal meeting or site visit add to or change in any way the RFP documents. Proposers, at their sole option, may submit written questions after the meeting and site visit to the Department's Designated Representative at [DesignBuild@dec.ny.gov](mailto:DesignBuild@dec.ny.gov) and the Department will provide a response in accordance with ITP Section 2.3.3.

## **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 the Best Value Proposal to the Department taking into consideration the quality (non-price) and price factors as discussed in this RFP.

Within five (5) business days after the selected Proposer is notified it has been selected to be the Design-Builder, 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;

- B) Provide the Department, in writing, the Proposer's Federal Internal Revenue Service Employer Identification Number; and
- C) Attend a meeting as notified by the Department to occur within five (5) business days following compliance with A) and B) above to discuss and validate the selected Proposer's Proposal and schedule moving forward. If such discussions raise issues or concerns of the Department and resolution of same are not successful, the Department, at its sole option, may terminate and not reinstitute such discussions with that Proposer, and move to select the next Best Value Proposer to have similar discussions, and so on until, in the Department's view, such discussions are successful with a Proposer, or the Department cancels the procurement.

Following successful discussions / negotiations with the selected Best Value Proposer, the Department will deliver, for execution, up to eight (8) sets of the Contract Documents to the selected Proposer. Within ten (10) business days of receipt of said Contract Documents for execution, the selected Proposer shall deliver to the Department the following:

- A) The executed DB Contract 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 DB Contract must be executed by all joint venture members;
- B) Required Labor, Material and Performance Bonds (Form LMBF and Form PBF), samples of which are contained in ITP, Appendix E, Forms;
- C) Insurance certificates in compliance with the RFP requirements indicated in the DB Contract; and
- D) Any other documents or requirements reasonably requested by the Department in connection with finalization of the Contract.

Failure to comply with the above requirements is a default and may result in forfeiture of the Proposal Bond and right to receive any Stipend if such selected Proposer cannot or will not execute the Contract with the Department.

## **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 ten (10) business day period herein mentioned, the amount of the Proposal 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) one hundred and fifty (150) days following receipt of the signed Contract from the successful Proposer, including Payment and Performance Bonds, insurance certifications and other required documents; or (ii) one hundred and eighty (180) days following the Proposal Due Date.

If the selected Proposer fails to execute and deliver the signed DB Contract as required above within the ten (10) business day time period identified above, award of the Contract may be made to the Proposer whose Proposal was the next Best Value Proposal, or the Work may be re-advertised under a different contract, or the Department cancels the procurement.

The Contract will not be effective until the DB Contract has been fully executed by the New York State Office of the State Controller and delivered by all parties thereto. Performance of Work by the Design-Builder is not authorized until Notice to Proceed is provided in writing by the Department to the Design-Builder, unless the Contract stipulates that Contract execution effectively constitutes such Notice to Proceed.

### **6.3 OBLIGATION TO AWARD**

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

- A) Any Proposer deemed non-responsive by the Department; or
- B) The Proposer submitting the lowest proposed Base Design-Build Contract Price; or
- C) Any Proposer for which the Department considers has proposed an insufficient and/or inadequate quality technical approach; or
- D) Any Proposer on the Shortlist, or
- E) 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, taking into consideration the organizational, technical quality, schedule 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 factors to determine its compliance as a responsive Proposal, and those responsive Proposals will be evaluated on those factors identified in this RFP. In order to be considered for Award of the Contract, the Proposal must receive a “pass” rating on all pass/fail factors to be responsive. The Proposal offering the Best Value to the Department as determined in accordance with the procedures outlined in this RFP and selection scoring detailed in ITP Section 7.4 will be selected.

The Department, with support from their consultants, will determine the pass/fail status of the administrative portion of the Proposals to determine Proposers who are responsive. In such evaluation, the Department may require that a Proposer provide Clarifications and/or additional documentation to support their compliance with RFP requirements.

Technical Proposals of all responsive Proposers will then be evaluated by the Department appointed Selection Committee and an interview/presentation may be conducted individually with each Proposer. Subsequently, the Selection Committee will finalize their evaluation and scoring of the technical portion of the Proposals.

Separately sealed Price Proposals will be evaluated by the Department for responsiveness in meeting RFP requirements. Subsequent to finalizing scores of Technical Proposals, Price Proposals will be evaluated and scored based on the criteria indicated in this RFP. Once Price Proposals are scored, the Department will combine the Selection Committee's Technical Proposal scoring and the Price Proposal scoring to calculate the Best Value score for each overall Proposal. This will establish the ranking of Proposers, highest to lowest, based on their Best Value score. The Department will then prepare a recommendation for approval indicating the highest ranked Proposer who represents the Best Value Proposer to the Department.

The Best Value determination shall be weighted as follows:

- Price Proposal evaluation score weighted at fifty percent (50%) of the overall Proposal score;
- Project schedule weighted at twenty percent (20%) of the overall Proposal score; and
- Technical Proposal factors of organizational, communication, quality and technical approach, weighted at thirty percent (30%) of the overall Proposal score.

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

## **7.1 EVALUATION FACTORS AND CRITERIA**

The specific factors identified in this ITP Section 7.1 as pass/fail will be evaluated on a "pass/fail" basis. The specific factors identified in the ITP Appendix A, will be evaluated and scored on how well each Proposer has met or exceeded the criteria requirements. Price pass/fail factors will be evaluated as specified in ITP Section 7.1.1.5.

### **7.1.1 "Pass/Fail" Evaluation Factors**

Each Proposal must achieve a rating of "pass" on all "pass/fail" evaluation factors listed in ITP Sections 7.1.1.1 through 7.1.1.5 in order for the Proposal to be responsive and eligible for review of Technical and Price Proposals. Proposers whose Administrative Proposal is not in compliance with RFP requirements and, as such, are determined to be non-responsive, will not have their Technical Proposals evaluated by the Selection Committee. Failure to achieve a "pass" rating on any "pass/fail" factor may result in the Proposal being declared non-responsive.

#### **7.1.1.1 Legal Pass/Fail Factors**

The Legal pass/fail requirements are as follows:

- A) Provision of a properly completed and executed Non-Collusion Affidavit (Form NC, ITP Appendix E);
- B) Provision of evidence that the Entity(ies) 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 the Proposal Due Date;



- C) Provision of all other specified forms and documents, properly completed and signed (if required) (see ITP Appendix B);
- 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 and listed in Table B.

#### **7.1.1.2 Financial Pass/Fail Factors**

The financial pass/fail requirements are the following:

- A) Updated and validation of financial information that no adverse financial conditions have changed a Proposer's financial status and capacity since their SOQ submittal as indicated in ITP Appendix B, Section B2.3.4.

#### **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 Proposer's Team members 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 [see ITP Appendix E]) thereto;
- C) Provision of New York State and Nassau County Vendor Responsibility Information as set forth in ITP Appendix B; and
- D) Provision of all information specified in ITP Appendix B in the manner, format, and detail specified, without alteration of the forms except as expressly permitted by the instructions.

#### **7.1.1.4 M/WBE Compliance**

The M/WBE pass/fail requirements are the following:

- A) Proposer shall complete the following:
  - 1. Contract Appendix D: Environmental Facility Corporation Program Requirements and Bid Packet for Non-construction Contracts, Part 3 Guidance Materials, Section 1 I.A. 3. and 4., page 13 of 21:
    - Attachment 8 EPA Form 6100-3 DBE Subcontractor Performance Form, and
    - Attachment 9 EPA Form 6100-4 DBE Subcontractor Utilization Form; and

2. Contract Appendix E: Environmental Facility Corporation Program Requirements and Bid Packet for Construction Contracts, Part 3 Guidance Materials, Section 1 I.A. 2. and 3., page 19 of 31:

- Attachment 7 EPA Form 6100-3 DBE Subcontractor Performance Form, and
- Attachment 8 EPA Form 6100-4 DBE Subcontractor Utilization Form.

These forms can be found in the Contract Documents as described above or online at [www.efc.ny.gov](http://www.efc.ny.gov). Failure of Proposer to complete and submit the above forms in its Administrative Proposal may result in the Proposal being declared non-responsive.

#### **7.1.1.5 Price Proposal Pass/Fail Factors**

The Price Proposal pass/fail requirements are as follows:

- A) Provision of the Proposal Bond utilizing the format and requirements of ITP Appendix E, Form BB; and
- B) The Price Proposal is determined complete, in that it fully conforms to the requirements of the RFP. The Schedule of Prices (ITP Appendix E, Form SP) and Work Payment Schedules (ITP Appendix E, Form WPS) are completed as required and represent a reasonable and relative value of work items included such that the price breakdown is not significantly unbalanced relative to the Scope of Work, including any and all proposed ATCs; and does not contain inaccurate or incomplete data.

The Schedule of Prices and/or Work Payment Schedules will be considered significantly unbalanced if the breakdown is unreasonably front-loaded and/or the amounts shown in Form SP does not reflect reasonable relative 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 Work.

The agreed initial Work Payment Schedules will be appended to the Project Contract and be updated monthly as a basis for progress payments. It will be refined and expanded as the design is developed and submitted for Department approval within the first one hundred eighty (180) days following Notice to Proceed as the final Design-Builder WPS for the Project.

## **7.2 EVALUATION GUIDELINES**

### **7.2.1 Technical Proposal Quality Evaluation**

All Proposers who have been considered responsive by the Department will have their Technical Proposal evaluated by the Selection Committee. Technical Proposal quality evaluation factors will be reviewed and scored by the Selection Committee utilizing the numerical method specified in ITP Appendix A. Technical Proposals will be evaluated by the Selection Committee based on the extent to which such Proposals meet or exceed the criteria indicated for each of the evaluation factors in ITP Appendix C.

The Technical Proposal evaluation factor weighting is described in ITP, Appendix A, Section A13. ITP, Appendix A, Section A12 describes the expectations of the Department with regard to quality

of Work to be performed, Project Schedule and other deliverables to be submitted in the Technical Proposal.

### **7.2.2 Interviews**

Prior to finalizing Technical Proposal scores for each Proposer, the Selection Committee may conduct an individual interview / presentation for each Proposer as further discussed in ITP Appendix A, Section A10.4. Subsequent to interviews / presentations, each Selection Committee member will finalize their scores for the Technical Proposals.

### **7.2.3 Communications**

The Department, through its Designated Representative, may engage in communications with the Proposers, through their designated representative, after receipt of Proposals, allowing Proposers to provide Clarifications to their Proposals as requested by the Department. 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 non-responsive.

## **7.3 PRICE PROPOSAL QUALITY EVALUATION**

The Proposer shall submit its Price Proposal in accordance with the ITP Appendix D. The total price shown in the Price Proposal shall be the proposed Total Contract Amount. Specific information to be submitted is identified in ITP Appendix D. The Department may determine that the Price Proposal is non-responsive if the Department decides, in its sole discretion, that the Price Proposal does not provide all information in compliance with the RFP requirements.

## **7.4 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 responsibility on the Design-Builder to plan, design, construct and control the quality, schedule, cost and safety of the Project.

Subsequent to the interview / presentations as described in ITP, Appendix A, Section A10.4, each Selection Committee member will evaluate and finalize their scores for the Technical Proposal for each Proposer including organizational and quality approach, technical quality and project schedule factors within the maximum assigned points for each factor, and total their total Technical Proposal score.

A Selection Committee official will total the Technical Proposal scoring from all Selection Committee members for each Proposer. (The maximum available points is 200 (schedule) + 300 (technical) = 500 X 5 members = 2500 points.) The total technical score from each member is totaled and then divided by the number of members, rounding an integer with 0.5 and higher up, to achieve an average total Technical Proposal score for each Proposer. Example: The total of all Technical Proposal scores from all five (5) Selection Committee members for an individual

Proposer is 2249.  $2249 / 5 = 449.8$  which is rounded to 450 for the average total points for the Technical Proposal of that Proposer.

The Price Proposal score for each Proposer shall be determined by:

- Evaluating the reasonableness and sufficiency of the Schedule of Prices and Work Payment Schedules, and
- Calculating the Price Proposal score as follows:
  - o dividing the lowest proposed Base Design-Build Contract Price by each Proposer's proposed Base Design-Build Contract Price, rounding to three decimals and rounding an integer of 0.0005 or higher up, and
  - o multiplying that 3-decimal figure by five hundred (500) points, rounding an integer with 0.5 and higher up, for the final Price Proposal score for each Proposer.

Example: Proposer with the lowest responsive Proposal Price receives 500 points. If the lowest Proposal Price is \$449,000,000 and a higher Proposal Price is \$469,000,000, then  $\$449,000,000 / \$469,000,000 = 0.957 \times 500 \text{ points} = 478.5$  which is rounded to 479 points for the Proposer with the Proposal Price of \$469,000,000.

For developing the Best Value score for each Proposal, the Technical Proposal score will be combined with the Price Proposal score to reach the Best Value score. Example: Technical Proposal score of 450 points + Price Proposal score of 479 points = 929 total points which is the Best Value score for that Proposal, out of the maximum available 1,000 points for the overall Proposal.

If there is a tie in the ranking of the Best Value score of the Proposers, the Proposer with the higher price score will be ranked higher.

## **7.5 POST SELECTION MEETINGS**

The Department will meet with the recommended selected Proposer after ranking of all responsive Proposers prior to Award of the Contract as indicated in ITP Section 6.1.

## **8.0 THE DEPARTMENT'S RIGHTS AND DISCLAIMERS**

### **8.1 THE DEPARTMENT'S RIGHTS**

The Department may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by any 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 Committee and evaluation support team to review and report on Proposals;
- G) Seek the assistance of outside technical experts and consultants in Proposal evaluation;
- H) Use Proposal submission and information provided through references, interviews, and the Department'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 RFP;
- I) Approve or disapprove the use of particular subcontractors and/or substitutions and/or changes in a Proposer's Team members or Key Personnel;
- 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 email any such revisions or modifications to the Proposers. 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 Proposers to submit Proposal modifications addressing subsequent RFP Addenda;
- L) Hold meetings and communicate with the Proposers responding to this RFP in an interview 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 an interview;
- 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 RFP;
- O) Waive anomalies, informalities and minor irregularities in Proposals, and seek and receive Clarifications to a Proposal;
- P) Waive any requirements that are not material;
- Q) Make changes by Addenda to the RFP after receipt of Proposals and request a best and final offer from all Proposers as indicated in Section 8.2 below;
- R) Disqualify any Proposer that changes its Team (as represented in its SOQ) without Department written approval;
- S) Disqualify any Proposer whose conduct and/or Proposal fails to conform to the

requirements of the RFP;

- T) Make an Award under the RFP in whole or in part;
- U) Hold the Proposals under consideration for a maximum of one hundred eighty (180) days after the specified Proposal Due Date until the Award is made; and/or
- V) 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 an Equity 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 an Equity Participant or Proposer's Team member under previous contracts with the Department or other State agency;
  - 3) Documented unsatisfactory performance of previous work by the Proposer, an Equity Participant and/or Proposer's Team member under previous contracts with the Department or other State agency;
  - 4) Issuance of a notice of debarment or suspension to the Proposer, an Equity Participant and/or Proposer's Team member;
  - 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 Equity Participant or Proposer's Team member) and other Proposer(s) (or Equity Participants or Proposer's Team members) 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 an Equity 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 and the County;
  - 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.

## **8.2 BEST AND FINAL OFFERS**

The Department reserves the right, at its discretion, to request Best and Final Offers (BAFOs) from all responsive Proposers if and when changes to the RFP are made by the Department through issuing Addenda subsequent to the Proposal Due Date and receipt of Proposals.

## **8.3 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.

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 the New York State Office of the State Controller 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.

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Department of  
Environmental  
Conservation

The New York State Department of Environmental Conservation in  
partnership with Nassau County Department of Public Works

WESTERN BAYS RESILIENCY INITIATIVE

# **THE BAY PARK CONVEYANCE PROJECT**

A DESIGN-BUILD PROJECT

DEC Contract No. D011883

Issuance Date: April 29, 2020

**REQUEST FOR PROPOSALS**

**INSTRUCTIONS TO PROPOSERS**

**APPENDIX A**

**PROJECT INFORMATION**

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**A1.0 DESCRIPTION OF THE PROJECT****A1.1 PROJECT BACKGROUND AND GENERAL SCOPE**

The Bay Park Conveyance Project (the Project) is located in Nassau County, Long Island, New York. The Project will utilize the design-build method of project delivery.

In an effort to improve the water quality in the Western Bays, the Department and County have entered into a cooperative agreement to implement the Project to remove a significant portion of the nitrogen load from a compromised area. The Project will accelerate rejuvenation of vital marshlands and grasses that protect communities from wave action and coastal surge. In addition to increasing the resiliency of areas along the Western Bays to coastal flooding, this Project will give the local ecosystem a chance to regenerate, bringing back cleaner, healthier bays for wildlife, shellfish, fish, visitors, and local residents alike.

This innovative Project will divert treated effluent from the Bay Park Sewage Treatment Plant (STP) which currently discharges an average of fifty million gallons per day (50 MGD) of treated effluent into Reynolds Channel. This treated effluent will be conveyed via the construction of a 2-mile long force main from the Bay Park facility to an existing aqueduct under the Sunrise Highway, whereby rehabilitation of a 7.3-mile stretch of the aqueduct, and construction of an approximately 1.6-mile long force main will connect to the existing Cedar Creek Water Pollution Control Plant (WPCP) outfall. The Project will utilize the existing outfall to diffuse the treated effluent three miles offshore into the Atlantic Ocean.

**A1.2 OVERVIEW OF THE PROJECT SCOPE OF WORK**

Overview of the Project Scope of Work includes, but is not limited to, the following:

**A) At Bay Park STP:**

1. A dedicated Effluent Diversion Pump Station at the Bay Park STP;
2. Pumping capacity up to 75 MGD of treated effluent;
3. Pumps to divert treated effluent to Cedar Creek ocean outfall diffusers;
4. Instrumentation and controls to manage flow between the existing Bay Park Pump station and Cedar Creek WPCP;
5. Operability and flows at Bay Park STP shall be maintained during construction; and
6. System testing and Commissioning to include manuals, standard operating procedures, maintenance schedules, and training of County operators.

**B) Two microtunnel routes which pass under railroads, roads, rivers, wetlands, parks, and private properties:**

1. Approximately 2 miles of underground force main between Bay Park STP and Sunrise Highway;
2. Approximately 1.6 miles of underground force main between Sunrise Highway and Cedar Creek WPCP;
3. Minimum internal force main diameter of 72-inches;

4. Drive lengths typically over 1,000-feet; and
  5. Operability and flows at both plants shall be maintained during construction.
- C) Sunrise Highway Pipe Rehabilitation of approximately 7.3 miles of unused 72-inch diameter steel pipe aqueduct with lockbar joints. Inspection reports are available for over 70% of the length.
1. Slip-lining with minimum 60-inch internal diameter carrier pipe and/or reinforced epoxy lining of 72- inch host pipe;
  2. Carrier pipe to withstand full vacuum, static and transient pressures;
  3. Removal of approximately 14 existing 48-inch gate valves and gate valve structures;
  4. Installation of a series of air release/intake valves;
  5. Construction to minimize disruption to traffic, businesses and communities;
  6. Community outreach to provide information, status and respond to stakeholder inquiries; and
  7. Coordination and compliance with NYSDOT maintenance and protection of traffic requirements.
- D) At Cedar Creek WPCP:
1. An Effluent Receiving Station with connection to the existing 84-inch ocean outfall, downstream of the effluent pump building;
  2. Replacement of five (5) pumps and associated controls in the existing Cedar Creek effluent pump building;
  3. Operability and flows at Cedar Creek WPCP shall be maintained during construction; and
  4. System testing and Commissioning to include operation and maintenance manuals, standard operating procedures, and training of County operators.
- E) Other Project related activities:
1. Geotechnical and structural monitoring;
  2. Perform evaluation of the Department's initial hydraulic model, including all components of the conveyance system, update the model to reflect the Design-Builder design approach for both steady-state and transient conditions. Perform 3D computational fluid dynamic analysis of the Bay Park effluent diversion pump station;
  3. Prepare the final design and construct the Project in compliance with the Contract Documents, as well as Federal, State, and local laws;
  4. Durability analyses of pipes to demonstrate that design life will be achieved;
  5. Permanent repair of the inspection cover on the Cedar Creek ocean outfall pipe (at the junction of the outfall pipe with the diffusers);

6. At Cedar Creek WPCP, permanent repair of sluice gate #7 and tide gate; and
7. Assist and coordinate with the Department and the County to provide open lines of communication among the Project team members and with the public including residential, commercial, municipal and business stakeholders. Methods of communication will include frequent meetings, updates via the Project website and other materials, and responsiveness to all Project questions and concerns.

The Department and the County are conducting environmental review, permitting, land acquisition, easements and rights-of-way for microtunnel alignments. The selected Proposer proposing any alternative technical concepts (ATCs) outside the planned right of way shall be responsible for all permitting, land acquisition, easements, and rights-of-way beyond what is being provided by the Department.

**The Project Scope of Work, including design criteria, performance requirements, quality standards, plans, and other project related documents, are provided for the basis of the Proposer’s Technical and Price Proposal in the RFP Volume 2, Design Criteria Package.**

### A1.3 PROJECT LOCATION

The Project location includes the physical locations of two wastewater treatment plants and other locations of the Work shown on the Project area map below. The physical locations of the two wastewater treatment plants that are part of the Project are:

- Bay Park STP | 2 Marjorie Lane, East Rockaway, NY 11518-2020
- Cedar Creek WPCP | 3340 Merrick Road, Wantagh, NY 11793-2723

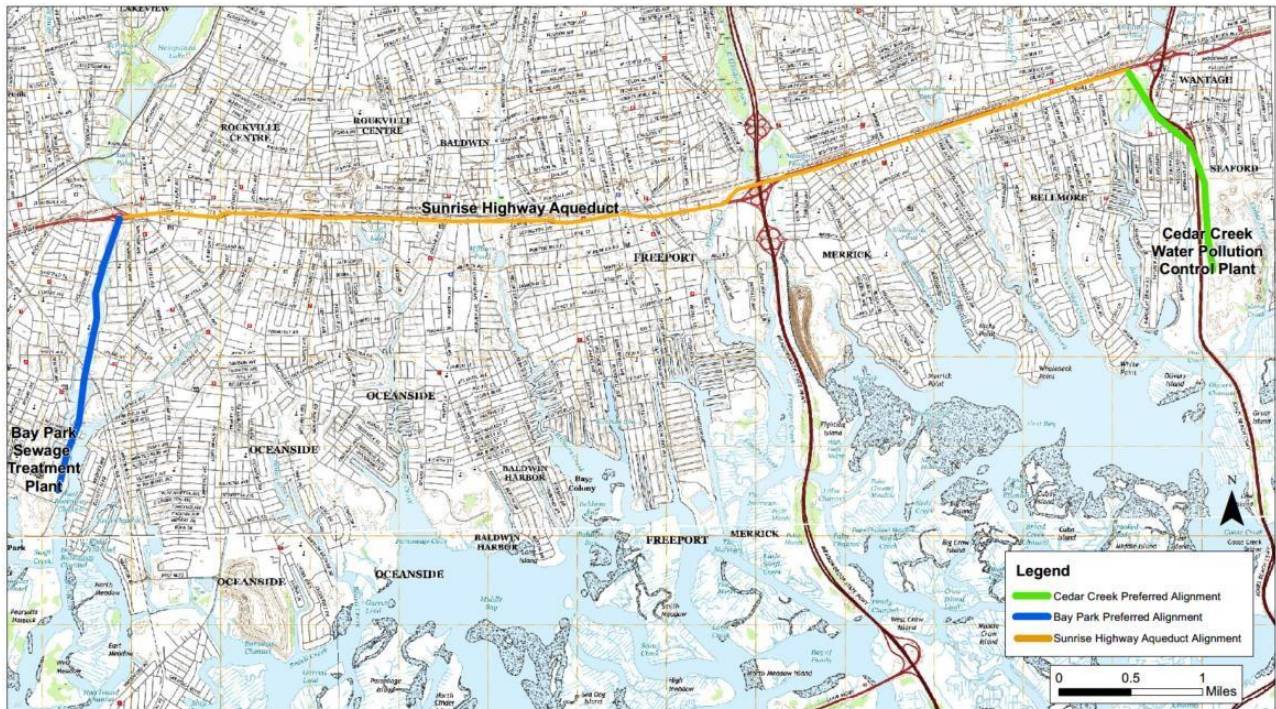


Figure 1: Project Area Map

#### **A1.4 PROJECT STATUS**

General Project status is the following:

- A) Scope of Work: A detailed description of the Work to be performed by the Design-Builder for the Project is provided in the RFP, Volume 2, Design Criteria Package.
- B) Utilities: Existing utilities, to the extent known to the County, are identified in the Preliminary Plans. A Geotechnical Baseline Report and Geotechnical Data Report of known conditions is provided in the RFP, Volume 2, Design Criteria Package.
- C) Right-of-way (ROW): The Department is responsible for obtaining permanent and temporary surface easements as well as permanent sub-surface easements as indicated in the preliminary design plans for the purpose of constructing the project. Additional easements that the Design-Builder determines necessary or convenient for the completion of the Work must be obtained by the Design-Builder, unless the Department determines otherwise. The Design-Builder will be responsible for coordinating and complying with NYSDOT maintenance and protection of traffic requirements along Sunrise Highway.
- D) Environmental Review: The County is working with the New York State Department of Homeland Security and Emergency Services and FEMA to conduct a NEPA review for the Project. The NEPA clearance and other appropriate environmental clearances and permits will be obtained by the County, except those identified in the RFP to be specifically assigned to the Design-Builder. Completion of the NEPA process is expected to occur prior to execution of the Contract. The Project has a mandated remedial purpose and is accordingly specifically designated as a Type II Action under the State Environmental Quality Review Act.

#### **A1.5 PROJECT SCHEDULE AND CONTRACT AMOUNT**

The anticipated date for Contract execution is indicated in the planned Procurement Schedule in Section A6.0 of this Appendix A, and Project Contract Milestones are specified in Form SCD, Appendix E, Forms. Project Mechanical Completion to provide initial effluent flow diversion is anticipated being achieved by February 2024. A proposed shortened Project Schedule by any Proposer to achieve the Mechanical Completion Contract Milestone sooner will receive a higher score in the selection process as indicated in Section A13.0 of this Appendix A; however, if a Proposer is selected as Design-Builder on the basis of an earlier Milestone completion time, the Design-Builder will be accountable to meet such Contract times for those Milestones. Failure to meet the Contract times for such Milestones will be subject to liquidated damages for Design-Builder performance delays. The value of the Project Design-Build Scope of Work is currently estimated to be up to US\$500 million.

#### **A2.0 PROJECT OBJECTIVES**

The Department's overall objectives for the Project are to:

1. Promote a resilient and sustainable coastal environment, with restored / rejuvenated marshlands and grasses that protect communities from wave action, surge, and consequential flooding through the removal of nitrogen that has historically suppressed growth of natural vegetation.



2. Leverage the use of existing assets and infrastructure, such as the previously retired aqueduct along Sunrise Highway, to economically redirect treated effluent.
3. Invest in new pumping and conveyance infrastructure with an intended long-term service life that will provide for the discharge of the current and future treated effluent flows.

### **A3.0 ROLES AND RESPONSIBILITIES**

#### **A3.1 PROJECT OWNER: DEPARTMENT AND COUNTY**

This Project is a cooperative effort between the Department and the County of Nassau acting through its Department of Public Works (County). The Department will conduct the procurement process, execute and manage the Contract. During the Project, the County will serve as reviewer and advisor to the Department and, in coordination with the Department, make payments directly to the Design-Builder. The Department and County agree to collaborate and cooperate to carry out the responsibilities of the Project Owner.

The Department has engaged a consultant, AECOM USA, as Owner's Representative. The Owner's Representative reports directly to the Department via the Department's Project Director. The Owner's Representative will provide management, administrative and technical and quality assurance services for the procurement, contracting, execution, and oversight associated with the Project.

The County has retained the services of WSP to provide preliminary engineering and environmental consultation services. In parallel, the County has also obtained the services of Hazen and Sawyer and Arcadis, joint-venture partners, to provide overall program management services on behalf of the County for the Project.

#### **A3.2 DESIGN-BUILDER**

The selected Design-Builder will have primary responsibility for design, permitting, construction, acceptance testing, start-up and commissioning to deliver a quality Project in a safe and timely manner within the Project Schedule.

**A minimum self-performance goal of twenty-five percent (25%) of the total direct construction Cost of the Work, as defined in the Project Contract, shall be completed by the Design-Builder Entity, or Equity Participants of the Design Builder Entity.** This requirement excludes items such as, but not limited to, engineering, design, all subconsultant and subcontracted work, and Design-Builder general conditions costs such as Design-Builder management and staff, offices and office equipment, utilities, and operation, construction inspection, safety programs and equipment, general transportation, and other indirect construction services costs, bonding and insurance and Design-Builder overhead and profit.

Much of the Work will occur in a densely populated, urban environment including a major highway thoroughfare. As part of the Work, the Design-Builder will need to address issues as they arise in the field and communicate efficiently and effectively to the Department or their Owner's Representative. The Department expects that Design-Builder and its subcontractors working in the field shall be able to report on, respond to, and effectively manage public and local business interactions through an active community outreach and information program.

The Design-Builder will establish a collaborative relationship with the Department and Owner’s Representative to deliver design and construction in a safe manner within specified quality standards, schedule requirements and Contract price. Project performance communication during Project execution by the Design-Builder shall be with the Department and/or the Owner’s Representative.

**A3.3 DEPARTMENT, COUNTY AND DESIGN-BUILDER RESPONSIBILITIES SUMMARY**

Anticipated lead responsibilities of the Department, the County, and the Design-Builder are generally summarized below. Refer to the Contract Documents which govern with respect to the Design-Builder responsibilities.

Project Element	Department	County	Design-Builder
Design criteria package, geotechnical information for RFP		✓	
Owner Contract procurement and administration	✓		
Rights-of-Way, Easements, and Agreements	✓	✓	
NEPA process and other environmental approvals	✓	✓	
Construction permits			✓
Submittals reviewed by DB EOR			✓
Review submittals for compliance with Contract Documents	✓	✓	
Risk Management	✓	✓	✓
Review payment requests from Design-Builder	✓	✓	
Make payments to Design-Builder		✓	
Complete final design and record documents			✓
Compliance with M/WBE goals			✓
Review compliance with M/WBE goal and SDVOB participation	✓	✓	

Project Element	Department	County	Design-Builder
Coordinating with Project stakeholders, other contractors and utility owners, including implementing the community outreach program	✓	✓	✓

**A4.0 PROJECT LABOR AGREEMENT**

The Department has signed a Determination relative to utilizing a Project Labor Agreement (PLA) for the Project, which is included in Appendix F to the ITP General Instructions of this RFP. The Design-Builder will be required to enter into the PLA with appropriate trade unions whose members will be anticipated to be performing Work included in the Contract. However, 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. If, and when a PLA is obtained, it will be issued by addendum to the RFP.

**A5.0 REFERENCE DOCUMENTS**

Reference Documents to assist as a basis for this RFP are included in the Volume 2, Design Criteria Package.

**A6.0 PROCUREMENT SCHEDULE**

The following represents the current anticipated Procurement schedule. The schedule date, time and location for Proposals due date is currently as indicated in the RFP, unless modified at the discretion of the Department by Addendum.

Activity	Date
RFP issued to Shortlist of Proposers	April 29, 2020
RFP Pre-Proposal Meeting and Site Visit - Meeting may be One-on-One video conference calls - Site Visit may be earlier with individual Proposer small groups - Department will notify Proposers accordingly with arrangements	May 20, 2020
One-on-One Meetings – Technical ATCs and Contract discussions	June 1–August 7, 2020
Last Day for Proposer to Submit Questions (RFIs)	August 31, 2020
Last Day for Department to issue Addenda	September 7, 2020
<b>Proposal Due Date</b>	<b>September 14, 2020</b>

Selection of Best Value Proposer	October 15, 2020
*Discussions / Negotiations w/ Selected Proposer	October 22-29, 2020
**Design-Builder Executes Contract	November 5, 2020
**Final Contract Execution	February 23, 2021
Notice to Proceed (NTP)	February 26, 2021

\*Note - The Department anticipates engaging in discussions / negotiations with the selected (highest ranked Best Value) Proposer regarding such matters as deemed advisable by the Department, which will typically include confirming technical and commercial aspects of the Proposer’s Technical and Price Proposals. Any Clarifications or changes to the Proposal as approved by the Department will be conformed into the Contract Documents.

\*\*Note – “Design-Builder Executes Contract” means that Contract discussions / negotiations have concluded, and the Design-Builder has signed the DB Contract. “Final Contract Execution” means the County and the Department have executed the Contract, and the New York State Office of the State Controller has approved the Contract, after which the Design-Builder will be issued Notice to Proceed.

**A7.0 PROPOSER CONFLICTS OF INTEREST**

The Department’s goals in adopting the policies and requirements for avoiding Organizational Conflicts of Interest includes:

- A. Protecting the integrity, transparency, competitiveness and fairness of the procurement and execution of the Project;
- B. Avoiding circumstances where a Proposer can obtain, or appears to obtain, any unfair competitive advantage;
- C. Providing guidance to potential Proposers in establishing its organization for the Project to avoid potential conflicts of interest; and
- D. Ensuring compliance with all applicable legal and regulatory requirements.

Each Proposer is responsible for determining whether a potential or actual Conflict of Interest exists with respect to itself and its Project Team members.

The Proposer obligation is to disclose actual, potential and perceived Conflicts of Interest throughout this procurement process. Proposers should undertake reasonable due diligence, including necessary conflict searches, to determine whether any new actual, potential or perceived Conflicts of Interest have arisen. Due diligence should extend to investigation of past relationships and to officers or directors of the Proposer and its organization.

If information is discovered requiring disclosure by Proposer since its SOQ submittal, the Proposer shall complete and submit Form COI, Appendix E, Organizational Conflicts of Interest Disclosure Statement with its Part 1, Administrative Proposal.

If no changes have occurred since submittal of the SOQ, Proposer shall so indicate, complete and submit the Form COI with its Part 1, Administrative Proposal.

Based upon a review of the Form COI information submitted, the Department may determine that an actual or potential Organizational Conflict of Interest exists. If this occurs, the Department may identify actions that must be taken to avoid, neutralize, or mitigate such conflicts. Alternatively, the Department may disqualify the Proposer as a result of the potential or actual conflict, or may advise the Proposer that a member of its Project Team must be removed in order to remain in the RFP process.

If a Proposer or any of its Project Team Members fails to comply with the requirements set forth herein, or otherwise fails to timely disclose an actual, potential or perceived Organizational Conflict of Interest, the Department, in its sole discretion, may:

- A) Preclude and/or disqualify the affected Proposer and their Equity Participants or a Project Team Member from participation in the Project;
- B) Require the affected Proposer and their Equity Participants or a Project Team Member to implement mitigation measures; and
- C) Pursue any and all other rights and remedies available at law, in equity or set forth in applicable procurement or Contract Documents, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from failure to comply with this Policy, including, but not limited to, costs resulting from third-party challenges to the procurement or the Department's re-procurement of the Project.

**A8.0 MINORITY / WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAM, SERVICE DISABLED VETERAN OWNED BUSINESSES (SDVOB) AND EQUAL EMPLOYMENT OPPORTUNITY**

**A8.1 POLICY**

The Department shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any New York State Department of Environmental Conservation assisted contract or in the administration of M/WBE and/or SDVOB programs. Equal employment is given to M/WBE and/or SDVOB entities to participate in a contract and/or procurement for supplies, construction, equipment and design and other services.

**A8.2 M/WBE PARTICIPATION GOAL**

Funding for the Project is from federal, State, and local sources and subject to each funding program reporting requirements. Proposers shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this Project. The M/WBE goal for this Project is twenty-three percent (23%). There is no goal for Service-Disabled Veteran-Owned Businesses (SDVOB); however, Proposers are encouraged to utilize SDVOB firms

**A8.3 EQUAL EMPLOYMENT OPPORTUNITY**

Discrimination in all phases of contracted employment, consultant activities, contracting activities, and training is prohibited. Proposers shall make good faith efforts to employ M/WBE and SDVOB group members to participate in the Project and performance of Work.

**A9.0 DEPARTMENT'S DESIGNATED REPRESENTATIVE FOR THE PROJECT**

The Department's Designated Representative for the Project, including the procurement is:

**Susan McCormick, P.E. Project Director**  
**Attention: Bay Park Conveyance Project**  
**New York State Department of Environmental Conservation**  
**625 Broadway, 14<sup>th</sup> Floor, Albany, NY 12233-1010**  
**e-mail: [DesignBuild@dec.ny.gov](mailto:DesignBuild@dec.ny.gov)**

The Department's Alternate Designated Representative for the Project procurement only is:

**Ryan von Linden, Project Assistant**  
**Attention: Bay Park Conveyance Project**  
**New York State Department of Environmental Conservation**  
**625 Broadway, 10<sup>th</sup> Floor, Albany, NY 12233-1080**  
**e-mail: [DesignBuild@dec.ny.gov](mailto:DesignBuild@dec.ny.gov)**

**A10.0 ONE-ON-ONE MEETINGS**

During the Proposal preparation period by Proposers, the Department will make available to each Proposer One-on-One meetings, which may be in-person or by video conference call, within the dates as indicated in the Procurement Schedule and described in this RFP. The Department will not disclose to other Proposers any information pertaining to discussions with an individual Proposer in these meetings or in any related correspondence. However, the Department reserves its right to issue Addenda to address any items discussed in such meetings that the Department determines, in its sole discretion, are required to maintain the integrity and competitive fairness of the RFP and procurement selection process.

**A10.1 MEETINGS DURING PROPOSAL PERIOD**

The Department will notify Proposers of a schedule for meeting dates to propose any Alternate Technical Concept (ATC) and/or Clarifications / modifications to the Contract Documents. The period indicated in the Procurement Schedule for these meetings is subject to change. Specific meeting dates, times and locations will be confirmed in advance by the Department to each Proposer's Representative.

At least five (5) business days prior to the first scheduled meeting, each Proposer shall submit their suggested agenda of items it desires to present and discuss at the meeting, and a list of planned Design-Build Team attendees, to the Department's Designated Representative. The Department will confirm the meeting and agenda with each Proposer.

**A10.2 ALTERNATIVE TECHNICAL CONCEPTS**

The RFP will include an Alternative Technical Concept (ATC) process to promote innovation and flexibility in Technical Proposals. ATCs brought forth by each Proposer, at their sole option, are only applicable to eliminate, add to, change or replace mandatory technical requirements in the RFP Volume 2, Design Criteria Package. ATCs may be presented by each Proposer and discussed confidentially with the Department through One-on-One scheduled meetings by the Department during the period indicated in the Procurement Schedule.

The following procedures and criteria are applicable to the ATC process:

- Presentation and submittal of ATCs and expending related Proposer costs for developing an ATC and participating in ATC meetings are at the sole option and at the expense of each Proposer. ATCs that can reduce the schedule, while not sacrificing quality, performance, safety, sustainability and reliability of the Project, will receive the highest priority for consideration from the Department.
- At the first One-on-One meeting, a Proposer can present to the Department, County and their advisors / consultants, the purpose, general approach and advantages / disadvantages of each proposed ATC. Such initial presentation should be very conceptual with minimum if any presentation materials to minimize Proposer costs. In preparation for such meeting, the Proposer shall provide, not later than five (5) business days in advance of the meeting date, a proposed agenda and list of Proposer personnel attending. The Department will confirm the meeting and agenda with each Proposer.
- Within five (5) business days after the first meeting, the Department will express to each Proposer whether or not it has an interest in each proposed ATC and the Proposer, at its sole option with no obligation, may develop the detailed justification with supporting documents, including the ATC Form, Appendix E for those ATCs.
- A statement of interest by the Department in no way obligates the Proposer to pursue the ATC, or the Department to approve the ATC, when further submitted by the Proposer with its supporting documentation and justification. If the Department indicates it is not interested in an ATC, and wants to maintain the RFP mandatory requirements, that specific ATC will not be considered any further by the Department. At any time, the Department may seek Clarifications regarding previously submitted ATCs.
- If the Proposer decides to pursue an ATC for which the Department expresses an interest, the Proposer will submit it to the Department with its detailed justification and supporting documents, including the ATC Form, Appendix E, for the Department's review, evaluation and decision. Such submittal will be provided to the Department's Designated Representative at least three (3) business days before the next Department scheduled ATC meeting with clear marking of Project title, ATC title, and Proposer's name.
- At the second One-on-One ATC Meeting, the Proposer will present each ATC based on ATC materials previously submitted to the Department, and respond to any Department, County, and consultant's questions. The Department may also schedule a follow-up

meeting to further discuss any proposed ATC, request further information from the Proposer with respect to the ATC, or solely respond to the Proposer with their decision.

- Based on the Proposer presentation and related discussion at the second One-on-One meeting, the Department will evaluate each ATC submittal and decide to approve, conditionally approve, or disapprove each ATC. If approved or conditionally approved, the Proposer, at their sole option, may include the ATC in their Technical Proposal demonstrating compliance with any Department conditions provided. For any conditionally approved ATC, the Proposer will be required to confirm in writing that it accepts such Department conditions if it intends to include the ATC in its Technical Proposal.
- In the interest of time and efficiency, the Department intends to limit their approval to a maximum of ten (10) ATCs from each Proposer, although the Department is not under any obligation to approve or conditionally approve any ATCs. Proposers should prioritize their proposed ATCs for those most critical that add value to their Proposal.
- ATCs will be evaluated on the basis of an ATC providing the technical quality, performance, safety and reliability that is equal to or better than the RFP mandatory requirements. Except for maintenance, operation and life cycle cost advantages / disadvantages, no Design-Build Contract cost or pricing data shall be provided with ATC documentation submittals or discussed in meetings.
- The Department maintains the right to query outside sources, such as suppliers or other owners to clarify or better understand an ATC, while taking all reasonable measures to maintain confidentiality of the details of the ATC and the Proposer.
- The Department may, in its sole discretion, issue one or more Addenda to address any issues raised in the One-on-One meetings which it believes is critical to maintain a fair competitive environment while maintaining confidentiality with a Proposer. For example, if the Department found it necessary to change site boundaries, or standard work hours, or performance criteria, or a limitation on suppliers, or some other restriction or limitation provided in the RFQ documents to accommodate an ATC, the Department may issue an Addendum to modify the related RFP requirement, but not reveal the purpose or content of any related ATC or the Proposer. Such decisions to issue an Addendum with respect to any ATC meeting discussions and/or submitted ATCs are at the sole discretion of the Department.
- Proposers, at their sole option, may decide whether or not to include an ATC in their final Technical Proposal, notwithstanding that it has been approved or conditionally approved by the Department. In this regard, Proposers shall provide in their Technical Proposal a list and a copy of the ATCs with the Department's notice of approval or conditional approval that Proposer has included as a basis of their Technical and Price Proposal.

### **A10.3 PROJECT CONTRACT CLARIFICATIONS, ADDITIONS AND/OR CHANGES**

At the request of the Department, Proposers will be invited, at their sole option, to provide proposed written Clarifications, additions or changes to the Project Contract during the time period



indicated in the Procurement Schedule. Only proposals received within the time period specified by the Department will be considered.

Each proposed item should be stated, referenced back to the Contract Document's article and section and title, with the proposed modification and/or change explained with regard to the benefits to the Project and Owner. Each Proposer may choose the format for their written proposal containing the information stipulated above and address it to the Department's Designated Representative.

The Department will evaluate all proposals and conduct a One-on-One meeting with each Proposer to discuss their proposed Contract modifications. Subsequently, the Department may, at its sole option, incorporate any or none of the proposed modifications into the Contract Documents. If proposed modifications are accepted, the Department will issue an Addendum to the Proposers for updating the Contract Documents, which will serve as the basis for each Proposer to provide their Technical and Price Proposal. The Department will contact the Proposer confidentially if it believes that further information from the Proposer is warranted prior to its decision to accept or reject each proposal.

#### **A10.4 POST-PROPOSAL SUBMITTAL PRESENTATIONS / INTERVIEWS**

The Department will conduct Post-Proposal submittal presentations / interviews with each Proposer. The purpose of such presentation by each Proposer is for the Selection Committee to better understand each Technical Proposal, the Proposer Team and the benefits of each Proposer's approach to the Project, especially with regard to technical approach, schedule, quality and safety. Proposers shall not modify or add to their Proposal or make any additional commitments regarding their Proposal at such meetings. Unless initiated by the Selection Committee, no presentation or discussion shall include any materials not currently included in or related to their Technical Proposal. No marketing materials shall be provided.

No cost or pricing information in its Price Proposal shall be presented or discussed at this presentation / interview.

Each Proposer will be notified of the location, date and time for their presentation / interview with any specific advance questions for the Proposer to address in their presentations. Proposer presentations shall not exceed one (1) hour. Interviews will also incorporate a question and answer period of approximately one (1) hour for Selection Committee questions and responses from Proposers, which may be extended at the Committee's discretion.

Proposers shall include at their presentation / interview, as a minimum, the following personnel:

- Project Manager
- Design Manager
- Construction Manager
- Design-Build Coordinator
- Safety Manager
- Lead Scheduler
- Quality Manager
- Tunneling - Lead Construction Representative

- Aqueduct Rehabilitation - Lead Construction Representative
- Pump Station Lead Designer (Mechanical)
- Lead Hydraulic Modeling Engineer
- Public Involvement Officer (PIO)

No maximum number of attendees is established for the Post-Proposal meeting. Other Proposer individuals may attend, at the option of each Proposer that a Proposer believes are important to discussing their Proposal. The Department may request other individuals to attend in their notice to Proposer of the presentation / interview day, date, time and location.

Proposer's presentation shall become part of the procurement record.

The Department reserves the option to utilize teleconferencing in lieu of individual's physical attendance for presentation / interviews and for meetings, as appropriate.

#### **A10.5 STATEMENTS AT MEETINGS, IN CORRESPONDENCE, OR CONFERENCE CALLS WITH PROPOSERS**

Nothing stated or discussed at any meetings, correspondence, or conference calls with Proposers during the RFP process, including Post-Proposal submittal presentations / interviews, modify or add to the RFP Documents unless any such modifications or additions are incorporated in an Addendum issued by the Department. Notwithstanding the aforementioned, Proposers may include approved or conditionally approved ATCs in their Technical Proposals as advised by the Department in writing.

#### **A11.0 PROPOSAL STIPEND**

The Department intends to provide payment of a stipend to Proposers who submit a responsive Proposal in response to the RFP and include in their Administrative Proposal an executed Stipend Agreement as provided in Forms, Appendix E. The stipend is subject to the requirements and limitations set forth in such Stipend Agreement. The Department intends to pay to each Stipend-Eligible Proposer, who is not selected as the Design-Builder, and agrees to accept the stipend as full compensation for its work product, an amount up to a maximum of US\$500,000 ("Stipend Amount"), as justified and documented based on the provision of Qualified Costs in accordance with the Stipend Agreement.

The Proposer selected for Contract award and executes a Contract with the Department will not be eligible to receive such stipend, including any Proposer selected for award that cannot satisfactorily fulfill their obligations and meet the conditions to execute the Design-Build Contract.

No Proposer will be obligated to accept a stipend. Any unsuccessful Proposer that has not completed and provided a fully executed Stipend Agreement in its Proposal by the Proposal Due Date will not be eligible for a stipend.

The Stipend Agreement shall be fully completed and submitted in the Administrative Proposal if a Proposer desires to be considered as Stipend-Eligible based on submitting a responsive Proposal.

#### **A12.0 TECHNICAL PROPOSAL EVALUATION FACTORS**

Evaluation factors are established for the Selection Committee to evaluate the Proposer's Technical approach to the Project, and to provide a value score based on such factors. Based on the scoring approach indicated in this RFP, the Selection Committee will determine how each Proposer provides the Best Value to the Project considering their organizational and management approach, and design, construction and schedule approach to meet the Owner's objectives for the Project.

See ITP Appendix C for additional details regarding the specific deliverables to be submitted for the evaluation of various factors.

#### **A12.1 ORGANIZATIONAL AND MANAGEMENT APPROACH**

The Committee will review and evaluate a Proposer's overall organizational and management approach that considers the Proposer's organizational resources, and management approach for communications, risk management and maintaining quality for all activities throughout the Project duration. The Selection Committee will evaluate the following:

- **Organizational Approach**

Proposer Project Team with respect to its management, technical, and commercial resources, including the experience and qualifications of its Key Personnel, and its approach to organizing such resources to obtain efficiencies and effectiveness to meet the Project objectives.

- **Project Communication Protocols**

Clarity and completeness of the Proposer's understanding and approach for communicating with the Department, its Owner's Representative, permitting agencies, its subcontractors and suppliers, other potential contractors on site, and the public to conduct safe and efficient activities in the ROW, on Plant sites and in the communities.

- **Project Risk Management**

Propose understanding of the most critical management, technical, design, construction, environmental, safety and maintenance of traffic risks, and its plans to manage such risks.

- **Quality Management**

Proposer's overall approach to planning, executing and monitoring the Work quality through its quality control and quality assurance activities in all Project activities, and responding to and resolving any quality issues in a timely and effective manner.

#### **A12.2 DESIGN-BUILDER APPROACH TO DESIGN**

The Selection Committee will evaluate the Proposer's understanding of the design challenges associated with this Project in how a Proposer intends to: comply with the design requirements; meet or exceed the Project objectives; design solutions that will benefit the tax payers of New York State and Nassau County; and provide a long term solution in addressing the Department's Project objectives. The Selection Committee will evaluate the following:

- **Summary Narrative**

How and from where the Proposer will conduct the design and permitting activities, including offices, subconsultants, discipline teams, coordination within the design team and major suppliers, and interface with QC activities to manage design quality that meets all Project technical requirements.

- **Initial Design Activities to Accelerate the Project Schedule**

What design activities and actions the Proposer plans in the first one hundred eighty (180) days after NTP to reduce risk and acceleration of the Project schedule, including site investigations, studies, verification of design data, initiation of subconsultant activities, coordination with permitting agencies and other stakeholders such as NYSDOT, design deliverables, reviews, and how the Owner would be expected to participate and support those activities.

- **Design and Submittal Schedule and Approach**

Proposer's plan, scope, sequence and timing for developing and submitting design packages for Owner review, and its approach for expediting such reviews and responding to Owner comments so the process is timely and efficient.

- **Design Plans**

Proposer plans provided such that they meet the requirements for demonstrating the required components, features, interfaces, materials and equipment, and that the ATCs as approved or conditionally approved are included as appropriate to meet all conditions, and that such plans are in conformance with required quality standards.

- **Project Testing and Commissioning Approach**

Proposer approach to testing and commissioning including when development of testing and commissioning planning will commence, activities required to develop the testing and commissioning plan, such as studies, analyses, input from stakeholders, subconsultants and suppliers, and when the initial Testing and Commissioning Plan submittal will be provided for Owner review and comment.

- **Proposer Early Works Design Package** to the extent it is applicable for the Work required and provides sufficient detail to be at ninety percent (90%) complete so that permits and start of construction can likely be accomplished within six (6) weeks after NTP.

### **A12.3 DESIGN-BUILDER APPROACH TO CONSTRUCTION**

To evaluate the Proposer's intended construction approach, for mobilizing resources and providing construction equipment, material marshalling and storage, temporary works for access, and safety and environmental concerns, material disposal, as well as specialized construction activities for the various Project elements to meet or improve the schedule and maintain a safe Project Site, the Selection Committee will evaluate the following:

- **Summary Narrative - Mobilization**

Proposer plans for general mobilization and at major Work components including construction resources to meet the schedule, while providing a safe jobsite, including activities of various team members. Indicate where initial construction mobilization activities will be occurring, including offsite marshaling and storage, and what scope and level of coordination is required to prepare stakeholders, especially the community and the traveling public for construction activities.

- **Sunrise Highway Aqueduct Approach**

Proposer construction plan for refurbishing the aqueduct along Sunrise Highway, including resources, work locations, sequence of work, safety and management of traffic measures, what work hours are planned at what locations, what detours for road closures are anticipated, and how the Owner, public, business community, and the NYSDOT will be kept advised to maintain trust and understanding by all stakeholders.

- **Microtunnelling Construction Approach**

Proposer construction plan for the Bay Park and Cedar Creek microtunnel works, including equipment and material selection, drives and shafts, site access, materials disposal, and management of traffic to maintain flow in a safe environment.

- **Work at Existing Plants**

Proposer construction plan for work and interfaces at Bay Park and Cedar Creek treatment plants that will avoid interferences and maintain safe plant operations, including access, storage and laydown areas, waste material disposal approach, environmental measures, coordinated and pre-scheduled with plant staff for plant shutdowns for tie-ins of minimum time periods that do not interfere with normal plant service.

- **Proposer understanding of the PLA** and the Proposer's approach toward its implementation to provide value to the Owner.

#### **A12.4 PROJECT SCHEDULE**

For the Selection Committee to evaluate the clarity, completeness and logic sufficient for the Project Schedule to meet or improve completion times with respect to the Contract Milestones. The Selection Committee will evaluate:

- The proposed Initial Baseline Schedule integrated logic and sequencing of major design and construction activity start and end dates, including preliminary and final design activities, interfaces at microtunnels and aqueduct, and microtunnel and existing sewage treatment plants, work zone traffic protection activities, date(s) when traffic at various locations, including shafts, will be permanently transferred back onto existing roadway without further impact to motorists, and start and end dates of the construction stages and the critical path that meets or improves the Contract Milestones. Additionally, that the Initial Baseline is in sufficient detail for the first one hundred eighty (180) days after NTP,

prior to the Final Baseline Schedule being established, to provide a reasonable basis for progress payments.

- The proposed Initial Baseline Project Schedule includes the work restrictions and constraints as indicated in the Volume 2, Design Criteria Package.
- The reasonable sufficiency of the planned workforce and construction equipment, and relationship of peak workforce with peak construction activities with respect to construction activities over the total Project schedule duration.
- The allocation of work to subcontractors such that the Design-Builder or its Equity Participants would still self-perform the minimum twenty-five percent (25%) goal of the direct construction Cost of the Work, and that major subcontracted work is appropriate for the specialty resources of management, labor and equipment required.
- The reasonableness and confidence of the Proposer’s Initial Baseline Schedule to meet the proposed Contract Milestones, including the level of detail, completeness, integration logic, interface activities, and work activity durations in the critical path.

ITP Appendix C provides the Proposer deliverables for the various factors to be evaluated by the Selection Committee with the above criteria.

**A13.0 TECHNICAL PROPOSAL – QUALITY EVALUATION FACTORS WEIGHTING**

- A) The Technical Proposal is weighted at 50% or a maximum of five hundred (500) points of the total one thousand (1000) points maximum for the overall Proposal. Such five hundred (500) points are allocated as follows:
- B) Design-Builder Approach to the Project (300 points) as indicated below:
  - 1. Organizational and Management Approach (100 points)
  - 2. Design-Builder Approach to Design (100 points)
  - 3. Design-Builder Approach to Construction (100 points)
- C) Project Schedule (200 points), as indicated below;
  - 1. Initial Baseline Schedule (100 points):
    - a. Quality, clarity and completeness of the Initial Baseline Project Schedule, including the labor workforce, equipment and subcontracting plan, and meeting Contract Milestones within the durations required as indicated on Form SCD, Appendix E. Proposer shall address in the Project Schedule any work restrictions and constraints indicated in the RFP Volume 2, Design Criteria Package, including, but not limited to, restricting construction time of the reception shaft and MTBM removal at East Rockaway High School to summer months, June – August, while main school classes are not in session. Any Proposer that does not accommodate all such restrictions and constraints as well as meet all stated Milestones’ days after NTP, will receive lessor points.

- b. Proposer completes Form SCD, Appendix E:  
Provide a completed SCD Form indicating the Proposers' proposed times and days after NTP for meeting Contract Milestones.

2. Early Mechanical Completion (100 points):

The Proposers' Completion Milestones will be evaluated against the Mechanical Completion Milestone (in the SCD Form). Those Proposals which reduce the duration to Mechanical Completion (in the proposed Initial Baseline Schedule) will receive up to 100 points.

However, if a Proposer does propose an earlier completion date for the Mechanical Completion Milestone and is selected as the Proposer to become the Design-Builder, the proposed schedule completion dates that are required to meet or be earlier than the RFP required Milestone dates, specifically including the Proposer's earlier completion date for the Mechanical Completion Milestone, will be a DB Contract requirement subject to the liquidated damages as indicated in the SCD Form.

**A14.0 INELIGIBLE FIRMS**

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

Federal regulations and New York State practices prohibit the hiring of any Entity that has a Conflict of Interest. Proposers were required to disclose known or potential Conflicts of Interest in their SOQs. Because of their prior work associated with this Project, the following firms, listed in alphabetical order, have been identified as having Conflicts of Interest that prevent their consideration for the pending Project. Due to such 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) in their Proposal:

- AECOM USA, Inc.
- AKRF
- Arcadis
- CSA Group NY Architects and Engineers, PC
- CSM Engineering PC
- Foit-Albert Associates, Architecture, Engineering & Land Survey, PC
- \*Gayron de Bruin Land Surveying and Engineering, PC
- Hayduk Engineering, LLC
- Hazen and Sawyer, DPC
- LPE Engineering, PC
- Marine Tiger Technologies
- NASCO Construction Services, Inc.
- NOVA Consulting & Engineering, LLC
- O'Brien & Gere

- Public Works Partners
- Two Twelve
- WSP

\* Gayron de Bruin Land Surveying and Engineering, PC can be a subcontractor to the selected Design-Builder after Contract Award, but cannot participate with or on a Proposer Team until after the Design-Builder is chosen. Accordingly, the Proposers are prohibited from communicating with any of these firms during the RFP.

**Proposers including any of the above firms in their Proposals will be disqualified from participating in this procurement for this Project, unless such planned participation is submitted to the Department with written justification in advance of the Last Day for Proposer to Submit Questions (RFIs) as indicated in the Procurement Schedule of why no COI might exist for the specific firm, and the Department approves in writing their participation as planned. The Department, at its sole discretion, may withhold such approval.**





The New York State Department of Environmental Conservation in  
partnership with Nassau County Department of Public Works

WESTERN BAYS RESILIENCY INITIATIVE:

# **THE BAY PARK CONVEYANCE PROJECT**

A DESIGN-BUILD PROJECT

DEC Contract No. D011883

Issuance Date: April 29, 2020

**REQUEST FOR PROPOSALS**

**INSTRUCTIONS TO PROPOSERS**

**APPENDIX B**

**ADMINISTRATIVE PROPOSAL**

**SUBMITTAL REQUIREMENTS**

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**B1.0 GENERAL INSTRUCTIONS**

**B1.1** This ITP Appendix B provides the general instructions and establishes content and formatting requirements for the Administrative Proposal, Part 1, of each Proposer. The completed forms submitted in each Proposer’s SOQ remain in full force and effect. Any changes to said forms, from those provided earlier in the Proposer’s SOQ, shall be indicated in the Proposal transmittal letter, and the revised completed form(s) provided in the Proposer’s Part 1, Administrative Proposal.

**B1.2** Each Proposer shall submit their Administrative Proposal required pursuant to this ITP Appendix B, organized, separated and labeled in accordance with the checklist in Table B.

**B1.3** The Administrative Proposal shall be limited to page limitations, if specified for that submission in this ITP Appendix B. All forms referenced in this ITP, Appendix B are provided in ITP Appendix E unless otherwise noted.

**B1.4** Proposal pages for all Proposal Parts 1, 2 and 3 shall be 8.5” by 11” and printed double-sided, unless otherwise stated. Text shall be in Arial font, a minimum of ten (10) point.

**B1.5** The Administrative Proposal, Part 1, shall consist of the following major elements:

- A) Proposer’s offer as described in section B2.1 below, and
- B) Information, certifications and documents (including required forms).

**B1.6** Unless so indicated on a specific form, the supplied forms are not to be materially altered. Any form found to be materially altered, in the sole judgement of the Department, may be removed from the Proposal before evaluation, at the discretion of the Department. In addition, the following apply:

- 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 are only allowed when indicated on the form.

**B2.0 CONTENTS OF ADMINISTRATIVE PROPOSAL PART 1**

**B2.1 PROPOSER’S OFFER**

Provide a firm offer to the Department valid for the period stated in ITP Section 4.0, using the Itemized Proposal/Jurat (Form IP, ITP Appendix E). The offer shall be executed by the Proposer’s Authorized Representative. If the Proposer is a joint venture that has not been legally formed, the offer shall be executed by the legally authorized representative of each joint venture Equity Participant or all general partners, as applicable.

The selected Proposer’s offer (Form IP, ITP Appendix E), will be incorporated into the DB Contract Documents.

## **B2.2 PROPOSER INFORMATION, CERTIFICATIONS AND DOCUMENTS**

### **B2.2.1 Proposer Information**

Provide a detailed description of the legal structure of the Design-Builder Entity submitting the Proposal (i.e. the Proposer), as previously provided in the SOQ, with explanation of any changes.

### **B2.2.2 Changes in Proposer's Organization**

If Proposer desires to request a change to Proposer's Team members or its Key Personnel previously provided in its SOQ, during the RFP process, it must obtain prior approval from the Department to submit the change with its Administrative Proposal.

During the Proposal period, substitutions for a Proposer's Team member or Key Personnel cannot be made without Department approval. Should it become necessary to replace a Proposer's Team member or a Key Person during the Proposal period, the Proposer must provide a replacement with equal or better capacity, skills and qualifications. During the Proposal period, requests for changes to the Proposer's Team or Key Personnel must be made using Form RFC provided in ITP Appendix E. For changes of a Proposer's Team member, Proposer shall submit up to five (5) completed Form PI's (Form 8) to justify the new member is of equal or better capability. For changes of Key Personnel, Proposers shall submit up to five (5) completed Form KPR's (Form 7) to justify the new Key Person is of equal or better capability. For either a change in Proposer Team member or Key Personnel, a narrative (max. one page) justifying why the proposed Proposer Team member or Key Personnel change is being requested shall be submitted. The request for Proposer's Team member or Key Personnel change shall be submitted to the Department's Designated Representative no later than the Last Day for Proposer to Submit Questions (RFIs) as indicated in the ITP Appendix A, Project Information. The RFC Form and related documentation must be submitted to the Department's Designated Representative NOT LATER THAN the Last Date of Proposer Questions (RFIs) as indicated in the Procurement Schedule in ITP Appendix A.

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 Proposer's Proposal in Part 1, Administrative Proposal.

### **B2.2.3 Forms and Certificates**

Proposers shall submit the forms in the format as they are provided in ITP Appendix E and shall not materially 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; and
- not inserting company logos.

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

- A) Form AR, Acknowledgement of Receipt of RFP, Addenda and Responses to Questions;
- B) Form C, Proposer's Representative;
- C) 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;
- D) Form NC, Non-Collusion Affidavit;
- E) Form RFC, Request for Change (Changes in Equity Participants or Key Personnel (if approved by NYSDEC));
- F) Form SA, Stipend Agreement;
- G) Form BDEA, Bid Document Escrow Agreement; and
- H) Updated Conflict of Interest Form COI in Appendix E, Forms
- I) Contract Appendix D: Environmental Facility Corporation Program Requirements and Bid Packet for Non-construction Contracts, Part 3 Guidance Materials, Section 1 I.A. 3. and 4., page 13 of 21:
  - Attachment 8 EPA Form 6100-3 DBE Subcontractor Performance Form, and
  - Attachment 9 EPA Form 6100-4 DBE Subcontractor Utilization Form;
- J) Contract Appendix E: Environmental Facility Corporation Program Requirements and Bid Packet for Construction Contracts, Part 3 Guidance Materials, Section 1 I.A. 2. and 3., page 19 of 31:
  - Attachment 7 EPA Form 6100-3 DBE Subcontractor Performance Form, and
  - Attachment 8 EPA Form 6100-4 DBE Subcontractor Utilization Form.

#### **B2.2.4 Conflict of Interest Disclosure**

Refer to Form COI in Appendix E, Forms for the need to identify and describe any potential Organizational Conflicts of Interest and any relevant facts that have been identified since submittal of the Proposer's SOQ for the RFQ process. Proposer shall complete and submit Form COI to indicate any new information or changes in previously provided information in Organizational Conflicts of Interest and, if no changes or additions have occurred since SOQ submittal, indicate "none" on the Form and submit it with the Administrative Proposal.

### **B2.2.5 Vendor Responsibility**

All Entities within the Proposer's Team will be required to update New York State Vendor Responsibility Questionnaire no later than the due date of the Proposal. It is strongly encouraged that the Entities update the Questionnaire prior to the due date of the Proposal.. If there are approved changes to the Proposer's Team pursuant to B.2.2.2 above, each new approved Entity on the Proposer's Team must complete a New York State Vendor Responsibility Questionnaire.

All Entities within the Proposer's Team shall submit a Nassau County Vendor Disclosure and Business History online no later than the due date of the Proposal. It is strongly encouraged that the Entities submit the Nassau County Vendor Disclosure and Business History online prior to the Proposal Due Date. Pursuant to Nassau County Countywide Procurement & Compliance Policy and the Vendor Code of Ethics, vendors doing business with or seeking to business with Nassau County shall maintain and immediately update as necessary all vendor integrity and disclosure documents in the Nassau County Vendor Portal at:

<https://www.nassaucountyny.gov/4770/Vendor-Portal>

## **B2.3 INFORMATION TO BE INCLUDED IN APPENDICES TO PROPOSER'S SUBMITTAL OF ITS PART 1, ADMINISTRATIVE PROPOSAL**

### **B2.3.1 Evidence of Authorization**

Provide appropriate evidence that the Itemized Proposal/Jurat (Form IP) has been properly executed so there is a valid Proposal that the Department can accept and constitute in 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 a notarized Power of Attorney from each Equity Participant indicating the authority of each Equity Participant's representative to bind that Equity Participant and a notarized Power of Attorney from each Equity Participant's representative indicating the authority of the Proposer's Authorized Representative to sign documents for and on behalf of the Proposer.
- 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.



**B2.3.2 Joint and Several Liability Statement**

If the Proposer is a joint venture, resubmit evidence that each Equity Participant 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 selected by the Department. Submit evidence of authorization and acceptance of the joint and a several liability statement with respect to each joint venture Equity Participant, certified by an appropriate officer of such joint venture Equity Participant.

**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 Equity Participant, which documents shall be consistent with the responsibilities to be undertaken by the Proposer and Equity 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 Updated Financial Information**

If Proposer’s financial condition has changed from its SOQ submittal, provide a maximum 2 – page explanation of such change together with the applicable financial documents related to the change, including the updated SOQ Form 16, Financial Data - Net Worth.

If the financial situation has not changed since its SOQ was submitted, Respondent shall provide a declarative statement to that affect in Part 1, Administrative Proposal, as indicated in the Table B checklist in B3.0 herein. Specifically, the Proposer shall provide a letter from their chief financial officer or treasurer so certifying that the financial condition of the Proposer has not significantly changed.

Financial information shall be packaged separately for each Equity Participant of the joint venture or LLC with a cover sheet identifying the name of the joint venture or LLC and the Equity Participant, and the Equity Participant’s role in the Proposer’s Entity.

**B2.3.5 Proof of Professional Licenses**

Provision of evidence that the Entity(ies) 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 the Proposal Due Date.

**B3.0      FORMAT OF PART 1**

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

<p style="text-align: center;"><b>The Bay Park Conveyance Project</b></p> <p style="text-align: center;"><b>DESIGN-BUILDER'S PROPOSAL</b></p> <p style="text-align: center;"><b>PART 1</b></p> <p style="text-align: center;"><b>ADMINISTRATIVE PROPOSAL</b></p> <p style="text-align: center;"><b>PROPOSER: _____</b></p>
--

**Table B  
Format of Part 1, Administrative Proposal**

<b>Proposal Section No.</b>	<b>Required Information</b>	<b>ITP Reference</b>
Section 1	<ul style="list-style-type: none"> <li>• Form IP, Itemized Proposal/Jurat, with attached joint venture authorization for the signatory of the form</li> </ul>	B2.1
Section 2 (Proposer Information)	<ul style="list-style-type: none"> <li>• Form RFC, Request for Change (Changes in Team members or Key Personnel) including the Department's approval, and completed Form KPRs (Form 7), Key Personnel Resume for changed Key Personnel or Form PI's (Form 8), Project Information for changed Team members as previously submitted to the Department, if applicable</li> <li>• Confirmation of Vendor Responsibility submission: NYS update and Nassau County filing</li> </ul>	B2.2
Section 3 (Forms and Certificates)	<ul style="list-style-type: none"> <li>• Form AR, Acknowledgement of Receipt of RFP, Addenda and Responses to Questions</li> <li>• Form C, Proposer's Representative</li> <li>• Form CR, Commitment to Assign Identified Resources to Project</li> <li>• Form SA, Stipend Agreement</li> <li>• Form BDEA, Bid Document Escrow Agreement</li> <li>• Form NC, Non-Collusion Affidavit</li> <li>• Form COI, Updated Conflict of Interest</li> <li>• Forms in Attachments 8 and 9 only from the Environmental Facilities Corporation Program and Bid Packet for Non-Construction Contracts</li> <li>• Forms in Attachments 7 and 8 only from the Environmental Facilities Corporation Program and Bid Packet for Construction Contracts</li> </ul>	B2.2
Section 4	<ul style="list-style-type: none"> <li>• Evidence of Authorization</li> <li>• Joint and Several Liability Statement (If Applicable)</li> <li>• Organizational Documents</li> <li>• Professional licenses to be provided for all individuals providing professional services</li> </ul>	B2.3
Section 5	<ul style="list-style-type: none"> <li>• Updated Financial Information with Form 16 – Net Worth</li> <li>• (if change to financial condition from SOQ submittal) CFO statement <u>if no financial condition change</u> from SOQ</li> </ul>	B2.3.4

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Department of  
Environmental  
Conservation

The New York State Department of Environmental Conservation in partnership  
with Nassau County Department of Public Works

WESTERN BAYS RESILIENCY INITIATIVE:

# **THE BAY PARK CONVEYANCE PROJECT**

A DESIGN-BUILD PROJECT

DEC Contract No. D011883

Issuance Date: April 29, 2020

**REQUEST FOR PROPOSALS**

**INSTRUCTIONS TO PROPOSERS**

**APPENDIX C**

**TECHNICAL PROPOSAL**

**SUBMITTAL REQUIREMENTS**

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**C1.0 GENERAL INSTRUCTIONS**

**C1.1** This ITP Appendix C provides general instructions for the content and formatting requirements for the Proposer's Part 2, Technical Proposal. Criteria for evaluation of that content is outlined in ITP Appendix A.

**C1.2** Each Proposer shall submit their Part 2, Technical Proposal, pursuant to this ITP Appendix C, organized, separated and tabbed by major section, and labeled in accordance with the checklist in Table C below.

**C1.3** The submittal should be compliant with the page limitations, if any, specified in this ITP Appendix C. Each page shall be 8 ½" x 11" and printed double-sided, unless otherwise stated below. A page counts for each printed side of the 8 ½" x 11" page. Text shall be a minimum of Arial eleven (11) point font in height, single-spaced, except that in graphics text may be Arial ten (10) point font. Charts and tables may be printed 8 ½" x 11" or 11" x 17", as desired. All design drawings submitted with Proposals shall be printed single-sided on 11" x 17" sheets, and all as-printed text font size on plans shall be at least Arial ten (10) point font.

The Proposer's Technical Proposal shall be structured as follows:

**C2.0 ORGANIZATIONAL AND MANAGEMENT APPROACH****C2.1 DESIGN-BUILD ORGANIZATION CHART UPDATE (MAX 3 PAGE NARRATIVE + CHART)**

Proposer shall include a narrative describing the organizational arrangements it intends to implement for meeting the Project schedule, quality, safety, and cost objectives. Organizational arrangements should clearly identify responsibilities and reporting lines of management and 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. Approach toward managing subconsultants and subcontractors to meet schedule and quality requirements should be clearly defined.

**C2.2 ADDITIONAL KEY PERSONNEL**

Provide the following additional Key Personnel resumes utilizing Form KPR (Form 7), Appendix E Forms, for these individuals: Tunneling Lead Superintendent; Aqueduct Rehabilitation Lead Superintendent; Pump Station Lead Mechanical Designer; Lead Hydraulic Engineer / Modeler; the Public Information Officer (PIO); and Construction Inspection Professional Engineering Firm Lead. Provide up to five (5) Form KPRs (Form 7) for each of the additional Key Personnel and add their information to and provide Form KP, Key Personnel Information, Appendix E Forms with the Technical Proposal. These additional Key Personnel shall be supplemental to the Key Personnel identified in the Proposers' SOQ and committed for the full duration of the Project.

**C2.3 ORGANIZATIONAL APPROACH**

The Proposer should provide an organizational chart (on an 11" x 17" sheet of paper), incorporating any changes, including any Department approved changes of Key Personnel from that submitted in the SOQ and the added Key Personnel illustrating and their prospective roles and responsibilities. The Proposer shall also identify all known subconsultants and subcontractors

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having a material role in the design, design quality control, construction, and construction inspection, and any other personnel the Design-Builder considers critical to the successful completion of the Project. For any significant Work that a subcontractor or subconsultant is not yet named, indicate TBD (to be determined). The Proposer should describe the interfaces between each member of the Proposer's Team (e.g., design, design quality control, permitting, procurement of materials and equipment, scheduling control, construction, construction inspection, etc.).

**Information in the Organizational Chart shall indicate: personnel name, title on Project, firm associated with / employed by, and the Key Personnel boxes shall be shaded in yellow.**

Proposer shall describe the interfaces between the Proposer's organization and third-parties such as permitting agencies, utility owners, and businesses, the public and other contractors working in the vicinity and impacted by the construction of the Project.

#### **C2.4 PROJECT COMMUNICATION PROTOCOL (MAX 3 PAGE NARRATIVE + GRAPHIC)**

Proposer shall provide a Communication Protocol graphic that addresses Design-Builder communication with the Department and the County.

Proposer should describe how and who will lead communications with the Department's Project Director and Owner's Representative with respect to coordination with various design, permitting and construction activities, daily site activities, design and construction progress, safety and security activities and any safety incidents, design and construction quality, site work inspections, testing and startup activities, and design-builder submittals, etc. The Proposer should also describe the means of reporting on and controlling progress of the Work.

#### **C2.5 PROJECT SCHEDULE RISKS UNDERSTANDING**

Proposer should provide the following as part of their understanding of the Project utilizing Form R-1, in Appendix E, Forms:

Proposers shall describe up to a maximum of ten (10) most critical Design-Builder risks envisioned in performing the Project Schedule to meet milestone completion dates for the Project.

- Indicate whether each identified risk is an organizational, design, permitting, construction, or testing and commissioning risk or a combination of the aforementioned;
- The probability of each risk to occur;
- The potential negative impact for each risk to schedule and other metrics such as quality, safety and cost, or a combination of those impacts;
- Indicate the Proposer's anticipated management approach for each risk indicating how they will either avoid, transfer or accept and mitigate each risk; and
- How they will monitor the risk management plan (RMP) including the effectiveness of their strategies and update the Plan quarterly during the Project.

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Proposers shall be as clear and as specific as possible in their identification of each risk and their management approach narrative.

The Risk Management R-1 Form submittal in their Proposal will be considered the Proposer's initial Risk Management Plan (RMP) which shall be further developed by the Design-Builder within the first thirty (30) days after NTP and submitted to the Department for review and compliance with the Contract Documents. The RMP shall be reviewed and updated by the Design-Builder to adjust the list of risk items, related data, and management strategies not less than Quarterly and discussed as part of monthly progress meetings.

## **C2.6 QUALITY MANAGEMENT PLAN SUMMARY (MAX 3 PAGES + CHARTS)**

Proposer shall include a summary of their intended Quality Management Plan. The summary should indicate the Proposer's Quality Management Organization, integrating the Professional Engineering Construction Inspection Firm with reporting requirements. Describe the Proposer's proposed Quality Management Plan approach for both design and construction Work, and how the design and construction activities performed by different entities, including subconsultants and subcontractors, will be coordinated and executed to ensure consistency, and achieve the required quality standards.

The summary shall be considered an initial document for the purpose of conveying the overall approach of the Proposer regarding the Quality Management Plan which shall be expanded and/or amended by Design-Builder in the initial thirty (30) days after Notice to Proceed (NTP) and submitted to the Department for review for compliance review. The Quality Management Plan serves as a "living document" throughout the project and may require updating as the Project progresses as determined by the Design-Builder or the Department.

This initial Quality Management Plan should include two separate organizational charts (on 11" x 17" sheets); one for the design and permitting Work and the other for construction, testing and commissioning Work, clearly defining Quality Management staff and reporting relationships, including that of the senior executive.

The summary shall describe the approximate number, roles and responsibilities of personnel during each phase of the Project to ensure quality design and construction, and describe the inter-relationships and authority within the Proposer's organization of Design-Builder, QA/QC staff, the subconsultant Construction Inspection Professional Engineering Firm, Design-Builder design and construction staff, and that of subconsultants and subcontractors.

## **C3.0 DESIGN-BUILD APPROACH TO DESIGN**

### **C3.1 DESIGN SUMMARY NARRATIVE (MAX 4 PAGES)**

The summary narrative description shall represent the Proposer's understanding of the design scope, design performance requirements, key design elements, design standards, and permitting requirements of the Project, highlighting the key design features. Knowledge of hydraulic objectives, key performance factors, design and permitting approach, and construction execution strategy and how it delivers value and benefit to the Owner, community, and the environment shall be presented.

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The Proposer shall describe in its Proposal a commitment to providing sustainable design and construction. The Proposer shall indicate how it will address key sustainability goals including low energy use, low maintenance costs, climate change resiliency, and reduced construction waste.

### **C3.2 DESIGN AND PERMITTING APPROACH (MAX 15 PAGES EXCLUDING PLANS)**

Describe the approach, and provide appropriate supporting documentation where available, for the Department to have confidence in the approach to sufficiently demonstrate the following:

#### **C3.2.1 General Plans/Schematics:**

- Scope and location of any proposed supplementary geotechnical or geophysical investigations, or environmental/contamination surveys/assessments by the Proposer after Notice to Proceed to support / validate the Proposer's design approach..
- Scope and location of any planned supplementary structural condition assessments, hydraulic model analysis, or non-destructive testing on existing pipelines, equipment, or structures to support or validate the Proposer's design approach, if any.
- Flow diagrams and design drawings developed with enough detail to validate the system hydraulics, sizing and operational intent of major equipment, structures, conveyance and pumping elements.
- Overall hydraulic summary of flow through the various key elements of the Project, Bay Park Diversion Effluent Pump Station, pipelines, Cedar Creek Upgraded Pump Station, Cedar Creek Receiving Station, and outfall, and collectively demonstrate operational resiliency of the system under various flow conditions (20 MGD – 150 MGD), including situations of power failure.
- A layout plan that indicates activities associated with a microtunnel operation, staging/mining/slurry management, can be successfully implemented within the confines of the available easements identified in the Contract Documents.
- Plan and profile with details of pipeline connections between new and existing force main, aqueducts, outfalls, and other structures that achieve a continuous, consistent, and watertight seal at all tie-in connections.
- Plan and profile with details and work sequence for wet-tapping the existing 84-inch PCCP aqueduct at the Cedar Creek Water Pollution Control Plant.
- Drawings and section details for sliplining noting minimum separations between host and disceet/carrier pipe and ancillary design features that support full annular encasement to achieve the quality objectives of the Project
- Drawings with details on the transition between two dissimilar materials such as: (1) sliplining and spray-on epoxy liners; (2) interfaces between sliplining products and newly installed valves.
- Plan and profile for temporary braced excavation structures such as shafts or pits required in Sunrise Highway with considerations for: siting above and/or around the

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existing aqueduct; removing or extracting valves; and protecting/preserving certain roadway features.

- Plan, profile, structural/load and fluid management calculations that support the design and construction of the longest microtunnel drive identified in the Technical Proposal.
- A 3-Dimensional plans/BIM model with renderings of the Mechanical and Electrical Rooms of the Bay Park Diversion Pump Station, accounting for the anticipated layout/orientation of the pumps, mechanical piping, switch gear, VFDs, monorails, and instrumentation/controls to demonstrate the required building code, operability, and life safety and emergency evacuation requirements/objectives are satisfied.
- Plans for upgrades for Cedar Creek Effluent Pump Station that demonstrate capacity to install new equipment within the existing facilities, and the approach to sequencing the pump and valve replacements to minimize disruption to existing plant operations.
- Plan layout to locate the reception shaft at East Rockaway High School that minimizes work site footprint and maintains access to the athletic fields
- Existing utilities or structures that require relocation, if required.

### **C3.2.2 Microtunnel Design Approach**

- Basis of design for sizing the microtunnel, establishing the horizontal and vertical alignments, and shaft locations.
- How basis of design provides adequate size, driving range/length, structural support, and water-tightness for the tunnel and shafts.
- Basis for selecting a specific shaft construction methodology, and dewatering approach based on intended purpose, location, and considering existing geological conditions.
- Whether ground improvement is anticipated, and if so, describe the techniques proposed to monitor and control, and basis of selection.
- Thrust reaction block design approach and other facilities inside the shaft required to launch the MTBM, including method to seal the tunnel at break-in and break-out and to prevent water and soil infiltration and supports launch of the MTBM on alignment and grade.
- Planned MTBM type and specifications to satisfy the performance requirements.
- Basis for selecting the 72-inch jacking pipe material and associated fittings to withstand both permanent and temporary construction loads, and to achieve the intended one hundred (100) year service life.

**C3.2.3 Rehabilitation - Sunrise Highway Aqueduct**

- Design approach for assessing the existing aqueduct to determine the specific sliplining pipe requirements including product type, pipe length, joint attributes, and grout port/injection configuration for the discreet pipe to be installed.
- Design approach for maintaining vertical and horizontal alignment of the discreet pipe within the aqueduct; providing sufficient annular space for continuous, consistent, and complete grouting seal; and minimizing pipe movement/displacement during the final grouting process.

**C3.2.4 Bay Park Effluent Diversion Pump Station**

- Pump operating ranges from minimum operating flows to maximum operating flows, and the full range between to show pump coverage.
- Overview of the design and construction features of the pump station that optimizes system hydraulics, minimizes vortexing in the wet well, and minimizes solid deposition.
- Construction sequencing including any electrical equipment, electrical rooms or areas that involve switching from existing equipment to new equipment, and any operating limitations that Design-Builder will need to stay within for shut-downs.

**C3.2.5 Cedar Creek Effluent Receiving Station and Ocean Outfall**

- Wet tap to the existing 84-inch outfall downstream of the Cedar Creek Effluent Pump Station and how temporary or excess flows are accommodated without interrupting existing service/operation.

**C3.2.6 Permitting and Regulatory Approach**

- Permits and Regulatory Requirements:
  - Provide a narrative explaining Proposer’s approach to identifying and obtaining all permits and other regulatory requirements that are responsibility of the Design-Builder. Proposer shall:
    - identify all known permits and regulatory requirements.
    - explain its role and responsibilities, organizational approach, integration into the Project Schedule, and activities required to obtain all permits and other regulatory approvals.
- Utility Agreements and Approvals
  - Provide a narrative explaining Proposer’s approach to coordinate with and obtain agreements and/or approvals with utility stakeholders that are responsibility of the Design-Builder. Proposer shall identify all known stakeholder utilities and address the Proposer’s role and responsibilities, organizational approach, integration into the Project Schedule, and activities required to obtain agreements and/or approvals.

**C3.3 Early Works Design Package**

- Prepare an advanced 90% complete design package, separately labeled and attached to the Technical Proposal, for the Bay Park STP shaft located within the STP boundary that would enable acquisition of permits and start of construction within six (6) weeks after NTP.

**C4.0 DESIGN-BUILDER APPROACH TO CONSTRUCTION**

**C4.1 CONSTRUCTION EXECUTION APPROACH (MAX 10 PAGES EXCLUDING GRAPHICS OR PLANS)**

Proposer shall describe its construction approach with narrative, diagrams, and data as desired to provide the following:

- Demonstrate how the selection of the MTBM will be successful given the geological conditions, alignment requirements, settlement requirements, and provide capability for corrective actions along the boring alignment, if necessary.
- Demonstrate how the proposed shaft construction methodology, excavation and shaft sealing plan, and ultimate dewatering strategy, meets design requirements.
- Demonstrate the approach for managing and handling of shaft and tunnel spoils to minimize excessive stock piling at the construction staging areas and minimizes traffic impacts including spillage during hauling and disposal operations.
- Methodology for determining an optimal location for tapping the active 84-inch active outfall such that the risk of breaching or joint failure is minimized during such activity.
- Construction sequence for grouting during the sliplining process to assure the 60-inch discreet remains on alignment and grade, joint deflection tolerances are not compromised, full annular seal is accomplished, and the installed line passes all hydrostatic pressure tests.
- Based on the proposed work areas, provide a Maintenance of Traffic (MOT) plan that demonstrates work along Sunrise Highway can be accomplished in compliance with NYS DOT and the County requirements.
- Proposed approach for emergency rescue of equipment in the event that the MTBM becomes immobile during tunneling, and for repair and maintenance of cutting tools.
- Proposed approach to implement the Project Labor Agreement such that it provides added value to the Owner.

**C4.2 ENVIRONMENTAL QUALITY APPROACH (MAX 3 PAGES)**

Proposer shall provide narrative, diagrams and/or data as desired to address the following:

- Minimizing community impacts from construction noise, dust and vibration, traffic disruption, temporary night illumination.

- Disposal of excavated materials, especially from shafts, the tunnel and pump station locations. Address planned approach for major locations, including know disposal alternatives and sites.
- Maintaining protected access to all business, educational institutions, and medical facilities abutting the project.
- Receiving, tracking, managing, and promptly responding to community complaints or reported construction incidents to the satisfaction of the County, the Department and other stakeholders.
- Correcting any resultant settlement and/or damage to any existing structures that are a consequence of the Proposer's construction activities.
- Prevention, containment or management of any discharges (wastewater, fluid or gases) from the existing 84-inch outfall during wet tapping, or during the application of the epoxy liner.

**C4.3 SAFETY AND HEALTH APPROACH (MAX 3 PAGES)**

Proposer shall provide narrative, diagrams and/or data to address the following:

- Obtaining, training and orienting workers and monitor their performance, to maintain a safe workplace, and prevent unsafe conditions.
- Securing the work areas to prevent unauthorized entry and activities.
- Addressing emergencies the may develop on the Project, especially in and around the shaft, tunnel, and active pump station facilities.
- Avoiding spills of any contaminants brought on to the Project to perform work.

**C4.4 COMMUNITY OUTREACH APPROACH (MAX 3 PAGES)**

Proposer shall provide narrative, diagrams and/or data as desired to address the following:

- Working with the Department and the County to establish and coordinate a construction Community Outreach Program
- Preparing and updating a project website
- Communicating project status information, schedule, etc. to the general public
- Advising public on traffic or other shutdowns
- Addressing community concerns
- Establishing and maintaining a project hotline
- Holding routine Stakeholder briefings with impacted community and business groups along the alignment



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**C5.0 PROJECT SCHEDULE****C5.1 INITIAL BASELINE SCHEDULE**

The Proposer shall submit an Initial Baseline Schedule to indicate understanding of the Project Schedule from Notice to Proceed through the design development, permitting, procurement of equipment and materials, construction, and testing and commissioning of the Project, as well as the Project close-out activities to meet the interim milestones and milestone completion dates, namely Mechanical Completion, Substantial Completion and Final Acceptance.

Proposers shall utilize a logic-based, critical path (CPM) project schedule for the Work to be performed from the Notice to Proceed up to and including Final Acceptance. The Initial Baseline Schedule shall also include a Gantt chart using Primavera P6 project scheduling software. The Schedule shall include a start date and the durations in calendar days for all major design and construction activities, as well as a detailed activities with a hierarchical breakdown of work scope by Project major component, including interfaces between components at the existing plants, pump station and the aqueduct. All constraints in the RFP Volume 2, Design Criteria Package, shall be considered. Indicate a clear methodology and approach to designing, permitting, constructing, testing and commissioning the Project while minimizing the impact to businesses, existing structures, and the traveling public. The Initial Baseline 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.

Design-Builder will be required to update the Initial Baseline Schedule each month as a basis for progress payments during the first six (6) months of the Project. Within one hundred fifty (150) days after NTP or earlier, Design-Builder shall further develop the Initial Baseline Schedule to establish the full Baseline Schedule and submit it to the Department for its review for compliance with the Contract Documents.

The Initial Baseline Schedule shall have sufficient detail, especially with respect to engineering, design and early purchasing activities, to use as a basis for progress payments for the first 6 months after NTP or earlier if the Design-Builder submits and obtains Department acceptance for the Final Baseline Schedule which will be utilized and updated monthly for the remaining Project duration. The Initial Baseline Schedule shall also demonstrate meeting or improving Contract interim milestones and Project completion milestone dates

The Initial Baseline Progress Schedule shall be provided in hard copy and electronically on a separate thumb drive. The schedule hard copy shall be presented on 11" x 17" paper with a minimum size ten (10) font. The electronic copy shall be in portable document format (pdf), labeled Bay Park Conveyance Project, INITIAL BASELINE SCHEDULE with Proposer's name. Proposer shall submit the Initial Baseline Schedule electronic file in P6V8.2 format to include, as a minimum, the following:

- A) Notice to Proceed;
- B) Design and design reviews, especially those activities during the first six (6) months for which progress payments will be requested;
- C) Major equipment and materials purchasing, and delivery on site, such as MTBMs and Pump Station main pumps;
- D) Mobilization and start of permanent works at the project site;
- E) Duration and dates of start and end for planned roadway closures, staging phases, detours;
- F) Dates for start and end of times for other major design and construction activities of each major component (i.e. microtunnels, aqueduct refurbishment, pump station, and interfaces at Bay Park Plant and the Cedar Creek Plant outfall;
- G) Date that all traffic will be permanently unencumbered, structure(s) and/or roadway(s);
- H) Refurbishment of Project site areas and off-site areas damaged or removed to accommodate construction activities;
- I) Start of testing at each major component; micro tunnels, aqueduct, pump station, etc.;
- J) Mechanical Completion date when all hydrostatic testing is complete for all Project components, Sunrise Highway is vacated and all open pits are backfilled, and the system is functionally ready for the initiation of low flow testing of approximately twenty million gallons per day (20 MGD);
- K) Substantial Completion date when Project is sufficiently complete for its full purpose intended; has demonstrated diversion functionality under low, average, and high flow conditions; and operations and maintenance responsibility can be transferred to the County operator;
- L) Final Acceptance date, after Substantial Completion when all remaining Contract performance requirements are completed including, but not limited to, all physical works, warranties, final record drawings, and permit close-outs have been accepted by the Department.

Subject to review and final agreement by the Department, the Initial Baseline Schedule will be included in the Contract Documents for the Proposer that serves as Design-Builder for the Project.

## **C5.2 WORKFORCE HISTOGRAM**

Provide a histogram chart, by month from NTP to Final Acceptance of the estimated number of construction craft workers (persons), including subcontractor workers, for each major craft category for each month of the project duration from NTP to Project Acceptance. Chart should indicate periods for peak craft labor during the Project.

**C5.3 SUBCONTRACTING PLAN**

Provide a bar chart indicating the planned duration for each major subcontractor’s work indicating subcontractor’s name, if available, and a short work scope description for each subcontractor firm. If the subcontractor assigned a work scope is not yet identified, indicate TBD (to be determined).

**C5.4 MAJOR CONSTRUCTION EQUIPMENT PLAN**

Provide a list of planned major construction equipment, including, tunneling machines, cranes, rolling stock, and water craft, designating planned work area and the approximate duration each item will be allocated to the Project.

**C5.5 FORM SCD CONTRACT MILESTONE DATES**

Proposer shall provide a completed Form SCD, Appendix E, Forms, to indicate its Initial Baseline Schedule durations in calendar days from NTP to each of the interim milestones and Project completion milestones.

**C6.0 FORMAT OF PART 2, TECHNICAL PROPOSAL**

Proposer shall organize Part 2, Technical Proposal, in the format shown in Table C below, with the cover labeled as follows:

<p style="text-align: center;"><b>The Bay Park Conveyance Project</b> <b>DESIGN-BUILDER’S PROPOSAL</b> <b>PART 2</b> <b>TECHNICAL PROPOSAL</b></p> <p><b>PROPOSER:</b> _____</p>
--

Provide the Technical Proposal in Proposer’s Part 2 in the order set forth in Table C below. Separate the individual sections with tabs labeled as outlined in Table C checklist as the basis for the table of contents for Part 2, Technical Proposal, which shall be the first page of Part 2.

Part 2, Section 2.2.1 General Plans/Schematics, shall be bound, 11” x 17” sheets, labeled and submitted in a separate package with the Technical Proposal.

**Table C**  
**Table of Contents for Part 2, Technical Proposal**

<b>Section</b>	<b>Proposal Component</b>	<b>Appendix C Reference</b>
	<b>Section 1.0 - Organizational and Management Approach</b>	<b>C2.0</b>
1.1	Design-Build Organizational Chart Update	C2.1
1.2	Additional Key Personnel Form KP and Form KPR's (Form 7)	C2.2
1.3	Organizational Approach	C2.3
1.4	Project Communication Protocol	C2.4
1.5	Project Schedule Risks Understanding Form R-1	C2.5
1.6	Quality Management Plan Summary	C2.6
	<b>Section 2.0 – Design-Build Approach to Design</b>	<b>C3.0</b>
2.1	Design Summary Narrative	C3.1
2.2	Design and Permitting Approach	C3.2
2.3	General Plans/Schematics	C3.2.1
2.4	Microtunnel Design Approach	C3.2.2
2.5	Rehabilitation - Sunrise Highway Aqueduct	C3.2.3
2.6	Bay Park Effluent Diversion Pump Station	C3.2.4
2.7	Cedar Creek Effluent Receiving Station and Ocean Outfall	C3.2.5
2.8	Permitting and Regulatory Approach	C3.2.6
2.9	Early Works Design Package	C3.3
	<b>Section 3.0 – Design Builder Approach to Construction</b>	<b>C4.0</b>
3.1	Construction Execution Approach	C4.1
3.2	Environmental Quality Approach	C4.2
3.3	Safety and Health Approach	C4.3
3.4	Community Outreach Approach	C4.4
	<b>Section 4.0 – Project Schedule</b>	<b>C5.0</b>
4.1	Initial Baseline Schedule	C5.1
4.2	Workforce Histogram	C5.2
4.3	Subcontracting Plan	C5.3
4.4	Major Construction Equipment Plan	C5.4
4.5	Completed SCD Form	C5.5



Department of  
Environmental  
Conservation

The New York State Department of Environmental Conservation in partnership  
with Nassau County Department of Public Works

WESTERN BAYS RESILIENCY INITIATIVE

# **THE BAY PARK CONVEYANCE PROJECT**

A DESIGN-BUILD PROJECT

DEC Contract No. D011883

Issuance Date: April 29, 2020

**REQUEST FOR PROPOSALS**

**INSTRUCTIONS TO PROPOSERS**

**APPENDIX D**

**PRICE PROPOSAL**

**SUBMITTAL REQUIREMENTS**

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    D2.3 WORK PAYMENT SCHEDULES (FORM WPS)..... 2

    D2.4 PROPOSAL BOND..... 2

D3.0 FORMAT FOR PRICE PROPOSAL, PART 3..... 2

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## **D1.0 INTRODUCTION**

**D1.1** This ITP Appendix D specifies the Price Proposal information and data to be submitted by Proposers for the Project Part 3, Price Proposal.

**D1.2** All forms named herein are found in ITP Appendix E unless otherwise noted.

**D1.3** Submit all information as specified herein, using the forms and formats specified. Alterations to the forms are permitted only 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 and data 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 with the results of any discussions / negotiations between the Department and selected Proposer will be incorporated into the Contract Documents.

The Price Proposal shall consist of:

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

Unless indicated on a specific form, the supplied forms are not to be altered.

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

Any form found to be materially altered may, at the sole discretion of the Department, be removed from the Price Proposal before evaluation and may result in that Proposer being determined to be non-responsive and therefore disqualified.

### **D2.1 PROPOSAL PRICE SUBMITTAL**

Price Proposal items listed in Section D2.0 shall be submitted in a separate, sealed envelope / package, as indicated in Sections 2.8 and 4.0 of the ITP.

Mark the envelope/package "The Bay Park Conveyance Project PART 3", Price Proposal, with the Proposer's name. Securely attach a duplicate copy of Form PP to the outside of the envelope/package. All Entities who signed the Itemized Proposal/Jurat (From IP), shall also sign the Price Proposal Cover Sheet (Form PP).

**D2.2 SCHEDULE OF PRICES (FORM SP)**

Form SP, Schedule of Prices shall be in compliance with the following instructions:

- A) Price in US dollars (\$);
- B) Provide an amount for each Price item shown in the Schedule of Prices, Form SP;
- C) The amount for each Price item shall be the total to complete all Work for that Price item as applicable in all respects including, but not limited to, planning, investigations and studies, management and supervision, quality inspections, all Project and site offices including their operations and maintenance, engineering and design, permitting, purchasing of materials and equipment, craft labor, tools and equipment, and remediation, utility work, community outreach, and other indirect and direct costs as required to complete each Work item and such costs necessary to integrate each Work item with all the Work of other Price items, and all overheads and profit; and

The sum of the amounts for each Price item shall be the proposed Design-Build Contract Lump Sum Price.

**D2.3 WORK PAYMENT SCHEDULES (FORM WPS)**

Using the Work Payment Schedule, Form WPS, provide the proposed percent of the proposed component price of each individual Work schedule item listed on the Form. The proposed total for all Work items on each Work schedule of Form WPS shall equal 100% of that Work, and the total of all subtotals of Work schedules plus the general mobilization payment shall be 100% of the proposed Base Design-Build Contract Price.

**D2.4 PROPOSAL BOND**

Using Form BB (ITP Appendix E), submit a Proposal Bond from the Proposer's qualified surety in the amount of five percent (5%) of the proposed Total Contract Amount indicated in the Form SP, Schedule of Prices. See also ITP, General Instructions, Section 2.10, Forfeiture of Proposal Security and 4.4, Proposal Bond.

**D3.0 FORMAT FOR PRICE PROPOSAL, PART 3**

Proposer shall organize Part 3, Price Proposal, in the format shown in Table D, with the cover labeled as follows:

<p><b>The Bay Park Conveyance Project</b> <b>DESIGN-BUILDER'S PROPOSAL</b> <b>PART 3</b> <b>PRICE PROPOSAL</b></p> <p><b>PROPOSER: _____</b></p>
--

Organize and submit the Price Proposal in the format shown in Table D by the Proposal Due Date as indicated in the Procurement Schedule in Appendix A.

**Table D**  
**Format of Part 3, Price Proposal**

<b>Section</b>	<b>Description</b>	<b>Appendix Reference</b>
Section 1	<ul style="list-style-type: none"> <li>• Form PP, Price Proposal Cover Sheet</li> </ul>	D2.1
Section 2	<ul style="list-style-type: none"> <li>• Form SP, Schedule of Prices</li> <li>• Form WPS, Work Payment Schedule</li> </ul>	D2.2 D2.3
Section 3	<ul style="list-style-type: none"> <li>• Form BB, Proposal Bond</li> </ul>	D2.4

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Department of  
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Conservation

The New York State Department of Environmental Conservation in  
partnership with Nassau County Department of Public Works

WESTERN BAYS RESILIENCY INITIATIVE

# **THE BAY PARK CONVEYANCE PROJECT**

A DESIGN-BUILD PROJECT

DEC Contract No. D011883

Issuance Date: April 29, 2020

**REQUEST FOR PROPOSALS**

**INSTRUCTIONS TO PROPOSERS**

**APPENDIX F**

**PROJECT LABOR AGREEMENT DETERMINATION**

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### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PROJECT LABOR AGREEMENT RECORD REVIEW AND DETERMINATION BAY PARK CONVEYANCE PROJECT - CONTRACT NO. D011883

Pursuant to New York State Labor Law Section 222 and the Infrastructure Investment Act<sup>1</sup> (the "Act"), the New York State Department of Environmental Conservation (DEC), in partnership with the Nassau County Department of Public Works (the "County"), and the County's contractor, Hazen and Sawyer / Arcadis Program Management Joint Venture (PMJV), has evaluated the appropriateness and the benefit of utilizing a Project Labor Agreement (PLA) for the Bay Park Conveyance Project (the "Project"). The PMJV was selected to assist in conducting the feasibility study (Study) due to their staff's experience preparing other PLA feasibility studies, preparing PLA addenda, and serving as PLA administrators and labor dispute mediators for a separate and ongoing project undertaken by the County at the Bay Park Sewage Treatment Plant (BPSTP) totaling more than \$800 million (Bay Park Rebuild).

#### PROJECT DESCRIPTION

The Project will be built using the design-build method and would divert treated BPSTP effluent that now goes to Reynolds Channel to the ocean outfall at the Cedar Creek Water Pollution Control Plant (CCWPCP). The primary components of the Project include: (1) construction of a dedicated pump station at the BPSTP; (2) sliplining rehabilitation of an existing aqueduct under Sunrise Highway; (3) new 72-inch diameter force mains between each of the two treatment plants and the existing aqueduct; and (4) new tide pumps and a receiving stand pipe connection at the existing CCWPCP effluent pump station (CCEPS). Construction of the new force mains would use microtunneling technology, requiring jacking and receiving shafts of approximately 30 feet in diameter and 30 to 70 feet deep.

Construction is currently scheduled to begin in April 2021 and complete (Final Acceptance) in October 2024. The design-build contract is currently estimated to have \$47,780,000 in costs attributable to construction labor.

#### ECONOMIC CONSIDERATIONS – ANALYSIS OF COST SAVINGS

To determine whether inclusion of a PLA in the Project would result in a net benefit to DEC and the County, the PMJV Study compares estimated construction labor costs both with and without a PLA. This comparative analysis evaluated the existing

<sup>1</sup> New York State Infrastructure Investment Act (Part F of Chapter 60 of the Laws of 2015, as amended by Part RRR of Chapter 59 of the Laws of 2017; Part WWW of Chapter 59 of the Laws of 2019; and Part DD of Chapter 58 of the Laws of 2020).



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collective bargaining agreements (CBAs) for all union/labor trades relevant to the Project. The Study also examines potential cost savings related to instituting an alternative dispute resolution for resolving Workers' Compensation claims within the framework of the PLA. These categories, detailed in the Study, are summarized below.

### **Standardized 40-Hour Work Week**

The PMJV Study notes that the regular work hours/days are not consistent across all relevant trade CBAs. Key trades on this project that normally work 7-hour days and 35-hour work weeks include Electricians, Ironworkers, Plumbers, Sheet Metal Workers, and Steamfitters. By working 8-hour days as opposed to 7-hour days, the PMJV Study estimates that increased productivity and shorter work durations will potentially result in a total savings to the Project of approximately \$168,819.

### **Working Stewards**

The PMJV notes in the Study that CBAs typically allow for the second journey-worker hired on site to be a union steward whose union duties can often occupy their entire workday. The PMJV notes that the existing Nassau County PLA for the Bay Park Rebuild requires stewards to be working stewards whose primary task is to do productive work and conduct union activities second. The PMJV estimates this requirement, if included within a PLA for the Project, would result in a savings of approximately \$368,400.

### **Lowered Shift Costs / Flexible Work Times**

The PMJV notes in the Study that PLA's typically provide uniform shift premiums (for 2<sup>nd</sup> and 3<sup>rd</sup> shifts) for all working trades. The PMJV notes that the existing Nassau County PLA for the Bay Park Rebuild provides for a shift premium of approximately 12.5% compared to the weighted average of the CBA shift premiums for the five most utilized trades of 22%. The Project is expected to require significant work on nights and weekends, and the microtunneling work is expected to be performed on a 24-hour basis. The PMJV estimates that a PLA with a uniform shift premium of 12.5% would result in a savings of approximately \$3,869,684.

### **Uniform Holiday Schedule**

The PMJV Study notes that several CBAs for trades relevant to the Project contain more holidays (between 10 and 12 holidays per year) than are allowed under the existing Nassau County PLA for the Bay Park Rebuild (9 holidays per year). The PMJV estimates this requirement, if included within a PLA for the Project, would result in a savings of approximately \$94,963.

### **Workers' Compensation Alternative Dispute Resolution**

The PMJV Study notes that other PLA studies have found potential cost savings from instituting an alternative dispute resolution for resolving Workers' Compensation claims



within the framework of the PLA. The PMJV Study estimates that such an alternative dispute resolution framework would discount applicable Worker' Compensation Insurance Rates from 14.40% to 12.24%. The PMJV estimates this requirement, if included within a PLA for the Project, would result in a savings of approximately \$632,660.

### **OTHER CONSIDERATIONS**

In addition to the quantifiable economic benefits of a PLA for the Project, the PMJV Study identifies other benefits of a PLA that are not quantified but are nonetheless important considerations.

#### **Labor Disputes**

The PMJV Study notes that one of the benefits of a PLA is the minimization of adverse impacts to the Project schedule due to labor disputes, or issues surrounding the expiration of various CBAs during the construction of the Project. The PMJV noted that such disputes are rare in this geographic area and therefore no cost savings were quantified from this benefit.

#### **Skilled Labor and Apprenticeship Recruitment and Training**

The PMJV Study notes that use of PLAs promotes well-trained, highly qualified, craft labor to maximize productivity and quality on the Project. The PMJV Study further notes that non-union labor can achieve a similar level of training; however, union apprenticeship programs are recognized by most municipal agencies in the region, and, without the benefit of union apprenticeship programs, non-union training and apprenticeship programs become a direct cost to the contractor and need to be approved in each instance. The PMJV Study did not quantify these benefits.

#### **Administrative Efficiency**

The PMJV Study notes that there are potential administrative cost savings and construction management cost savings that cannot be quantified at the present time but will be apparent once the Project is underway.

#### **Project Complexity**

This Project is schedule-driven and requires intricate work inside two (2) existing sewage treatment facilities that must remain in continuous operation. As such, the PMJV Study finds that the Project would benefit from a PLA. The PMJV study also notes that projects of this style and complexity within the New York City / Metropolitan region generally utilize union labor for most of the work. Finally, the PMJV Study notes that New York State Prevailing Wages for the Project align very closely with the local union CBA wages and benefits.

CONCLUSION

Based on the foregoing, I conclude that usage of a PLA for the Project is appropriate. This conclusion is based upon, among other things, the size and complexity of the Project, the need to obtain the best work at the lowest possible price, the reduction of the potential impact of delay, and the possibility of cost savings and efficiencies resulting from a PLA. I find that the documentation contained in the record is consistent with Article 8 of the Labor Law. To prevent favoritism, fraud and corruption, any PLA utilized for the Project must not preclude bidding by non-union contractors. To prevent delay, any PLA utilized for the Project must include a "No Strike" provision providing for a guaranteed supply of skilled labor for the duration of the Project. This will assure stability and consistency on the Project.

Estimated quantifiable cost savings through the use of a PLA for the Project are substantial, with the dollar amount totaling \$5,134,526, or 10.75% of the base estimated labor costs. I note that realizing the projected savings, as calculated in the PMJV Study, is dependent upon successful incorporation of the foregoing PLA terms, as well as other beneficial terms, into any PLA negotiated for the Project. As such, I hereby direct the DEC Project Team to make all necessary efforts to maximize the economic benefit of any PLA that is negotiated for the Project.

In consideration of the above, I hereby direct that a PLA be included in the Request for Proposals for the Project, either in the first issuance or by addendum. I find that the use of a PLA for the Project will be of material benefit to the State, the County, and their respective taxpayers.



Basil Seggos, Commissioner

4/22/20  
Date