



New York State Thruway Authority

**TAPPAN ZEE HUDSON RIVER  
CROSSING PROJECT**

**DESIGN-BUILD PROJECT**

**INSTRUCTIONS TO PROPOSERS**

**Revision (Addendum No. 12)  
September 7, 2012**

**Contract D214134  
PIN 8TZ1.00  
Project TA#: TANY 12-18B**

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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 Thruway Authority (the “Authority”) and the New York State Department of Transportation (the “Department”; the Authority and the Department are collectively referred to as the “Agencies”). The Agencies are seeking proposals (“Proposals”) for the design, construction and other identified activities for the Tappan Zee Hudson River Crossing Project (the “Project”).

The Project includes the design and construction of a replacement bridge crossing of the Hudson River adjacent to the existing Governor Malcolm Wilson Tappan Zee Bridge, associated approaches, a shared-use path, and demolition of the existing bridge. The Project’s approaches include development of certain Authority facilities and improvement of the existing toll plaza. Other Project components including replacement or rehabilitation of other Authority facilities are dependent on the Proposer’s construction methods and means.

The new bridge will be owned and operated by the Authority, which owns toll highways and bridges in the State of New York (the “State”). The Authority will enter into and administer any Contract awarded hereunder and oversee the design and construction of the Project.

The RFP is being issued concurrently with the development and review of the Environmental Approvals that will determine the final scope of the Work and many Project requirements. The Authority anticipates that the Record of Decision (“ROD”) for the Project will be issued by the Federal Highway Administration (“FHWA”) after the Proposal Due Date and prior to Contract award. Any changes in scope necessitated by the ROD will either be addressed through a request for revised Proposals or a change to the Contract based on limited negotiations with the selected Proposer prior to award as described in ITP Section 6.2. Proposers are advised that the environmental process has not been concluded and no commitment will be made as to any alternative under evaluation in the NEPA process, including the selection of a no-build alternative for the Project, in which event there will be no Project. The Proposer is not limited to the concept designs in the draft Environmental Impact Statement (DEIS) and is encouraged to innovate to develop Crossing and landings solutions that minimize environmental impacts, maximize future adaptability, provide the best value long-term investment and promote efficiency of cost and construction duration. The Authority has adopted the Design-Build process to ensure that there is opportunity for a broad range of construction and design expertise to be engaged in the determination of the final design and construction solution for the Crossing.

This solicitation is the second step of a two-step procurement process authorized by the Infrastructure Investment Act, 2011 N.Y. Laws ch. 56 (the “Act”) (see ITP Section 2.1). Proposals are invited from and will be considered only from those entities (“Proposers”) who have been notified of their inclusion on the Shortlist based on their Statements of Qualifications (“SOQs”) submitted in response to the Request for Qualifications issued on November 21, 2011, as amended (the “RFQ”).

This document provides instructions to be followed by Proposers in their responses to the RFP. Proposals must comply with these Instructions to Proposers (“ITP”) and shall address and consider the Project goals and objectives identified in ITP Section 1.4.

## **1.2 Definitions**

Refer to Appendix F of this ITP for the meaning of various abbreviations, acronyms and capitalized terms used herein.

## **1.3 Scope of Work**

Refer to Contract Documents Part 1 – Design-Build Agreement, Appendix I, for a description of the scope of the Project.

The Project is being advanced to address the structural and operational deficiencies of the existing Governor Malcolm Wilson Tappan Zee Bridge and is based on an assessment of available project funding opportunities for the foreseeable future. A goal of the Project is to maximize the public investment in the new crossing. To that end, the Project will not preclude the planning, design, construction or consideration of future transit modes in the Project area, and it is intended that the design of the new bridge will optimize flexibility for future transportation modes that may not be foreseeable now, but may become so during the lifespan of the Crossing. Specifically, certain design features to facilitate future transit provisions are included in the Project in order to maximize the public investment. These provisions include dimensional requirements, spatial configurations, gradings and increased design loadings. Through the inclusion in the Project of design features that maximize the public investment, the Crossing design will provide flexibility to allow for potential future transit modes, should a viable plan for these be developed and implemented in the future.

Although indicative preliminary designs are shown in the Indicative Plans contained in Contract Documents Part 6 - RFP Plans, the Design-Builder is not required to adopt concepts shown in Indicative Plans, and shall be responsible for any concepts adopted from the Indicative Plans. The Design-Builder's final design shall be consistent with the final EIS (FEIS) and ROD and shall comply with applicable requirements of the Contract Documents including but not limited to Contract Documents Part 3 - Project Requirements and the Directive Plans in Contract Documents Part 6 – RFP Plans. The design-build process is being used for the Project in order to enable the Design-Builder to use innovation to further avoid, minimize and mitigate environmental effects and promote efficiency in cost and construction duration.

## **1.4 Project Goals and Objectives**

The Agencies' goals and objectives for the Project are to:

- A) Ensure the long-term vitality of the Hudson River crossing at Tappan Zee by:
  - 1) Providing for sufficient strength and stability compliant with current standards to carry transport loading;
  - 2) Providing for a robust and redundant structure to survive extreme natural events, including earthquakes and hurricanes;
  - 3) Providing for a robust and redundant structure to survive extreme manmade events, including fires, vessel collisions, vehicular overloads, and vehicular accidents;
  - 4) Ensuring compliance with the Authority's operational requirements; and
  - 5) Providing for a serviceable structure with a service life span of 100 years before major maintenance is required.
- B) Improve transportation operations and safety at the crossing by:
  - 1) Ensuring compliance of horizontal and vertical geometry with current engineering design standards, as practicable;

- 2) Providing for horizontal geometry that maximizes sight distances;
  - 3) Providing for vertical geometry that minimizes grade changes;
  - 4) Providing for standard, 12-foot traffic lanes;
  - 5) Providing for adequate separation of eastbound and westbound traffic;
  - 6) Providing for shoulders that meet current engineering design standards;
  - 7) Eliminating reversible traffic lanes;
  - 8) Providing for security infrastructure to monitor bridge operations; and
  - 9) Providing for improved emergency response.
- C) Maximize the public investment in a new Hudson River crossing by:
- 1) Providing a cost-effective crossing that maximizes value over the lifespan of the structure;
  - 2) Minimizing adverse effects on existing highways;
  - 3) Maximizing the use of existing right-of-way;
  - 4) Sequencing construction to minimize adverse effects on vehicular traffic operations;
  - 5) Minimize adverse navigational impacts in the waterway during construction;
  - 6) Maintain navigational clearance in the waterway;
  - 7) Reducing maintenance requirements and operating costs;
  - 8) Providing for trans-Hudson access for cyclists and pedestrians; and
  - 9) Providing a crossing that does not preclude potential future trans-Hudson transit services;
- D) Deliver the Project safely, on schedule and within budget; and
- E) Provide best value to the Agencies, by optimizing long-term quality, cost and efficiency.

## **1.5 RFP Documents**

The RFP includes the following documents (the "RFP Documents"):

- A) Instructions to Proposers, including Appendices;
- B) Contract Documents:
  - Part 1 (Design-Build Agreement);
  - Part 2 (Design-Build §100 - General Provisions);
  - Part 3 (Project Requirements);
  - Part 4 (Utility Requirements);
  - Part 5 (Special Provisions);
  - Part 6 (RFP Plans) (excluding Indicative Plans contained therein, which constitute Reference Documents);
  - Part 7 (Engineering Data); and
  - Part 8 (Special Specifications);
- C) Any Addenda; and
- D) Reference Documents.



The Contract will also include portions of the Design-Builder's Proposal which will become Part 9 of the Contract in accordance with ITP Section 1.7.2.

The ITP and the Reference Documents will not form a part of the Contract. The Agencies make no representation or guaranty as to, and shall not be responsible for, the accuracy, completeness, or pertinence, of the Reference Documents and, in addition, shall not be responsible for the conclusions to be drawn therefrom. The Reference Documents are made available to the Proposer for the purpose of providing such information as is in the possession of the Agencies, whether or not such information may be accurate, complete or pertinent, or of any value.

## **1.6 Proposal Schedule**

### **1.6.1 Current Schedule**

The Agencies currently anticipate the following procurement schedule for the Contract.

<b>Activity</b>	<b>Due Date</b>
Issue RFP	March 9, 2012
Proposal period one-on-one meetings with all Proposers, specific dates to be confirmed	Between March 20, 2012 and July 13, 2012
TZ Contractor & Subcontractor Summit: Fostering DBE, M/W/BE and Small Businesses	April 20, 2012
Final date for Proposers to submit ATCs for review	June 8, 2012
Final date for requests for changes to Proposer's organization	May 30, 2012
Final date for Agencies' responses to ATCs submitted for review	June 22, 2012
Final date for receipt of Proposer's inquiries, other than for inquiries associated with Addenda dated June 29, 2012 and July 13, 2012	June 29, 2012
Final date for Proposer's submissions in accordance with ITP Section 5.1.1.4(B) <i>(if required)</i>	June 29, 2012
Final date for latest issue of Agencies' responses to inquiries received on or before June 29, 2012	July 13, 2012
Date of final addendum	September 7, 2012
Final date for latest issue of Agencies' responses to inquiries associated with Addenda dated June 29, 2012 and July 13, 2012	July 20, 2012
Final date for Proposer's delivery of any executed Stipend Agreement in accordance with ITP Section 6.3	July 27, 2012
Proposal Due Date	July 27, 2012
Due date for Electronic Pricing Documents	Three work days after Proposal Due Date
Post Proposal meetings (ITP Section 2.4.2) <i>(if required)</i>	August, 2012
Selection	September, 2012

<b>Activity</b>	<b>Due Date</b>
Award of Contract	October, 2012
Notice to Proceed	October, 2012

This is a tentative schedule. All dates set forth in the preceding table and in this RFP are subject to change, in the Agencies' sole discretion. Other than dates for meetings, to the extent that dates are changed, the Agencies will notify the Proposers by Addendum.

### **1.6.2 Date of Issuance of Final Addendum**

The Agencies do not anticipate issuing any Addenda later than the date specified in ITP Section 1.6.1. However, the Agencies reserve the right to issue Addenda after such date should the need arise, including issuance of Addenda after the Proposal Due Date. If the Agencies find it necessary to issue an Addendum after the date specified in ITP Section 1.6.1, any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum.

### **1.6.3 Proposal Due Date**

The completed Proposal shall be delivered to the Agencies' Designated Representative at the address specified in ITP Section 2.2.1, no later than 4:00 p.m. Eastern Time, on the Proposal Due Date specified in ITP Section 1.6.1. Late proposals will not be considered; see ITP Section 4.5.3.

## **1.7 General Provisions Regarding Proposals**

### **1.7.1 Proposal Contents**

Each Proposal shall include:

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

Instructions for Volumes 1, 2 and 3 are provided in ITP Appendices A, B and C, respectively, and required forms are set forth in ITP Appendix D. The forms presented in ITP Appendix D are supplied additionally as a Microsoft Word ® format file, for use by Proposers in preparing submissions. Any failure to provide all the information and all completed forms in the format specified may result in the Agencies' rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as noted. No change shall be made by a Proposer to the forms except as expressly permitted in the forms. Proposers can add rows to certain forms as indicated on the relevant form.

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

Portions of the Design-Builder's Proposal will become Part 9 of the Contract Documents, as specified in ITP Appendices A, B and C. At the discretion of the Agencies, additional portions of the Proposal may be incorporated into the Contract Documents as well. Prior to any such incorporation, the Proposal or parts thereof will be adjusted to reflect any clarifications provided after its submission that are accepted by the Agencies.

### **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.

### **1.7.4 Property of the Agencies**

All documents submitted by the Proposer in response to this RFP shall become the property of the Agencies and will not be returned to the Proposer, except for the Electronic Pricing Documents which may be retrieved by the unsuccessful Proposers as provided in ITP Section 4.7.2. In consideration for payment of a stipend to a Proposer in accordance with ITP Section 6.3, the Proposer’s Work Product (as defined in the Stipend Agreement) shall become the property of the Agencies.

### **1.7.5 Requirements for Security-related Material in Proposals**

The requirements for the security-related Proposal submittal components are not detailed in this ITP document. These requirements shall be communicated separately to Proposers. Specifically, the requirements for the submission of security-sensitive material that is required as part of Proposals shall be communicated by the Agencies’ Designated Representative to the Proposer’s Representative for Security Information (see ITP Section 2.2.3). The Proposer shall be responsible for ensuring that the Proposer’s Representative for Security Information contacts the Agencies’ Designated Representative in order to obtain the Instructions to Proposers (Security), which detail the security-sensitive Proposal submittals that are required as part of the Proposal, and which are in addition to the requirements set out in this ITP document. The Proposers shall be responsible for conforming to any special instructions for the delivery of security-sensitive Proposal submittals, which shall be kept separate from the Proposal submittals detailed in ITP Appendices A, B and C.

## **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 the Agencies, including agents or anyone representing the Agencies at any time during this procurement process, the Agencies shall immediately disqualify the Proposer, the Proposer shall forfeit its Proposal Bond, the Proposer shall not be entitled to any payment, and the Agencies may sue the Proposer for damages.

### **1.8.2 Non-Collusion**

The Proposer shall not undertake any of the prohibited activities identified in the Proposal affidavit (Form NC, ITP Appendix D).

### **1.8.3 Organizational Conflicts of Interest**

The Proposer is responsible for complying with the requirements of 23 CFR 636.116 and the conflicts of interest requirements included in ITP Appendix E, including the ongoing obligation to disclose any new actual, potential and perceived Organizational Conflicts of Interest on Form U.

Any firm that is rendered ineligible through any State or federal action is ineligible to participate on any Design-Build team.

By submitting its Proposal, each Proposer agrees that, if an Organizational Conflict of Interest is thereafter discovered, the Proposer shall make an immediate and full written disclosure to the Agencies that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an Organizational Conflict of Interest is determined to exist, the Agencies may, at their sole discretion, cancel the Contract. If the Proposer was aware of an Organizational Conflict of Interest prior to the award of the Contract and did not disclose the conflict to the Agencies, the Agencies may terminate the Contract for default.

#### **1.8.4 Remedies Not Exclusive**

The Agencies' remedies specified herein are not exclusive.

### **1.9 DBE Compliance**

This solicitation is subject to federal provisions concerning the utilization of Disadvantaged Business Enterprises (DBEs). The term Disadvantaged Business Enterprise is defined as a for-profit small business concern that is at least 51 percent owned by one or more individuals who are socially and economically disadvantaged and which meets the definition set forth in 49 CFR, Part 26. All federal DBE requirements are applicable to this solicitation.

The approved overall DBE participation goal for the Project is established at 10% of the Contract Price. Refer to ITP Appendices A and B for Proposal submittal requirements relating to DBE compliance. DBE firms certified by any state under 49 CFR Part 26 are eligible to be counted for goal attainment. DBE firms that are certified by states other than New York shall be required to have their certification verified by the Authority prior to being approved to work on the Project as a DBE firm. DBE certification is not an endorsement of the quality or performance of the business but simply an acknowledgment of the firm's status as a DBE. The list of certified DBE firms can be accessed via a link on the following Department website: <https://www.dot.ny.gov/main/business-center/civil-rights/general-info/dbe-certification>.

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

Proposers are required to attend a bid outreach event to be coordinated and scheduled by the Authority entitled "TZ Contractor & Subcontractor Summit: Fostering DBE, M/W/BE and Small Businesses," to be held on a date to be specified by Addendum. Each Proposer is encouraged to participate fully and actively in the summit.

See Part 2, DB §102-8, of the Contract Documents for further details regarding DBE-related requirements for the Project.

### **1.10 Resource Availability**

The Agencies are concerned that the resources planned to be used on the Contract (if awarded to the Proposer) in terms of people, equipment, material and supplies be available and not also be committed to other projects. Accordingly, the Proposal must include an affirmative commitment to provide all Key Personnel on a full time basis 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 under the Contract Documents. See Form CR (ITP Appendix D).

### **1.11 Confidentiality**

The issuance by the Agencies of any RFP Documents to a Proposer shall be subject to such Proposer executing and delivering a confidentiality and non-disclosure agreement in prescribed form to the Authority.

### **1.12 Insurance**

Refer to Contract Documents Part 1 Article 12 for information regarding insurance requirements. Insurance certificates shall be submitted prior to Contract execution.

If a Proposer wishes to seek approval of minor exceptions to, or deviations from, the insurance requirements set forth in the Contract Documents Part 1 Article 12, the Proposer shall include in its Proposal a detailed request for such approval, together with all substantiating information and documentation, and the Agencies will either approve such exception or deviation (with or without conditions) or disapprove same in writing prior to evaluation of the Price Proposals.

If the Agencies disapprove any such request, the Proposer will have an opportunity to withdraw or modify the exception or deviation through the request for clarification process.

### **1.13 Quality Assurance / Quality Control**

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

See Contract Documents Part 2, DB §§111, 112 and 113 for terms and conditions regarding the requirements, responsibilities and roles relating to QA/QC.

### **1.14 Project Labor Agreement**

The Authority has approved an agreement with appropriate trade unions concerning the applicability of a project labor agreement ("PLA") to the Project. The PLA approved by the Authority, FHWA and unions (including applicable collective bargaining agreements) is contained in Appendix VI of the Contract Documents, Part 1 – DB Agreement. The Design-Builder shall comply with, and ensure its Subcontractors comply with, the terms and conditions contained in the PLA. 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.

### **1.15 HARS / Non-HARS Alternatives**

The Authority has applied for a Section 103 permit to dispose of dredged material at the USACE and EPA-administered Historic Area Remediation Site (“HARS”) based on a prism of dredging identified in the DEIS and denoted Dredging Stage 1 and Dredging Stage 2 (the “HARS Prism”). If this permit is obtained by the Authority and if the Design-Builder complies with the permit conditions, the Design-Builder will have the right to use HARS for disposal of eligible dredged materials from the Project site. Materials that are not eligible would have to be disposed of elsewhere. Since the Agencies do not know yet whether this permit will be issued, Proposers are required to provide in Proposals alternate pricing addressing dredging disposal costs.

The “HARS Alternative” pricing shall be based on the assumption that HARS disposal is permitted only if the full volume of the HARS Prism is dredged, with any dredged materials outside the HARS Prism disposed of in an alternative location. A Proposer’s “HARS Alternative” pricing may be based on an assumption that dredging materials from demolition will be disposed of at the HARS ocean disposal site, in which case the Proposer (if awarded the Contract) shall be responsible for obtaining all necessary permits for disposal of dredging materials from demolition and shall bear all costs and expenses associated therewith, including those incurred by the Agencies to assist in the permitting process. Refer to Contract Documents, Part 2, for information regarding issuance of Orders on Contract if the Design-Builder is unable to obtain necessary permits for disposal of dredging materials from demolition despite diligent efforts and due to no fault of the Design-Builder or Subcontractors, or if less than the full volume of dredged materials (excluding dredging materials from demolition) can be disposed of within the HARS site due to no fault of the Proposer/Design-Builder or Subcontractors.

The “Non-HARS Alternative” shall be based on the Proposer’s estimated dredging volume and the assumption that HARS is not available for disposal.

See ITP Section 5.1.3 and ITP Appendix C and Contract Documents, Part 2, DB §104-5.2.

### **1.16 Public Outreach Meetings**

During the Proposal period, the Agencies will organize a series of public outreach meetings at venues in the local community. These public meetings are intended to provide an opportunity for discussion with, and feedback from, the public on the NEPA process, the Crossing, and the Project. Proposers are encouraged to attend the public outreach meetings during the Proposal period. The Agencies’ Designated Representative will provide to Proposers details of the venues, dates and times of the public outreach meetings scheduled in the period between issue of the RFP and the Proposal Due Date.

The confidentiality requirements and the rules of contact shall continue to apply throughout such meetings (see ITP Sections 1.11 and 2.2.2).

### **1.17 (Not used)**



### **1.18 Subsurface Investigation and Pile Installation Demonstration Program (PIDP)**

The Authority commissioned a subsurface geotechnical investigation for the Project, including exploratory holes along the alignment of the proposed Crossing. The final factual report of the geotechnical investigation has been provided by Addendum to Proposers in Contract Documents, Part 7 – Engineering Data.

The Authority has commissioned a program of pile installation and testing for the Project at four locations in the Hudson River near the alignment of the proposed Crossing. It is anticipated that the final factual results of the PIDP pile load tests will be provided in July 2012.

### **1.19 Prevailing Wage Rates**

Federal prevailing wages rates applicable to the Contract are set forth in Attachment 3 to Appendix IV of the Contract Documents, Part 1 – DB Agreement. The State prevailing wage rate schedule for the Contract has been determined and may be accessed by visiting the NYSDOL website (see Part 1 – DB Agreement, Appendix V). The Design-Builder will be required to pay the higher of the two wages and supplemental (fringe) benefits.

The Design-Builder will be required to obtain periodic wage rate schedule updates from the NYSDOL, and the cost of changes in wage rate schedules and supplements (fringes) over the Contract duration will be included in the Contract Price.

### **1.20 Authority Utility Agreements**

The Authority has not yet finalized the Authority Utility Agreements, but anticipates that such agreements will be executed prior to Contract award. Certain assumptions regarding the Authority Utility Agreements have been included in the RFP Documents, appended to Part 4 (Utility Requirements). These assumptions will be replaced with copies of final Authority Utility Agreements prior to Contract execution. Any changes in the scope of the Work, the Project schedule or other Project requirements arising from differences between the assumed terms and conditions of the Authority Utility Agreements as stated in the RFP and the final agreements will be addressed through limited negotiations with the selected Proposer prior to award as described in ITP Section 6.2.2.

## **2.0 PROCUREMENT PROCESS**

### **2.1 Method of Procurement**

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

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

The procurement process includes two steps:

- **Step One: RFQ** - determination of Shortlist; and
- **Step Two: RFP** - selection of Design-Builder from Proposers on Shortlist that submitted Proposals.

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

### **2.2 Issue of the RFP Documents**

Subject to a Proposer complying with the requirements of ITP Section 1.12, the Agencies will issue to each Proposer one set of the ITP and Contract Documents (see ITP Section 1.5A) and 1.5B) respectively) in electronic format on a portable hard drive or similar electronic device. The device will be delivered to the Proposer's Representative (see ITP Section 2.2.3).

The Reference Documents (see ITP Section 1.5) will be posted to a secure online document management system accessible only to shortlisted Proposers. Any Addenda to the RFP will also be posted to the secure online system and will be accessible only to shortlisted Proposers. Access to the secure online system (which will be via hyperlink) and access to the confidential password necessary to use the online system will be issued by the Agencies via email to the Proposer's Representative (see ITP Section 2.2.3).

#### **2.2.1 Agencies' Designated Representative**

The Agencies' Designated Representative for this procurement is:



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



## **2.2.2 Rules of Contact**

The following rules of contact shall apply during the Contract procurement process, which began upon November 21, 2011 (the date of issuance of the RFQ for the Project) and will be completed with the execution of the Contract. Contact includes face-to-face, telephone, email or formal written communication.

The specific rules are as follows:

- A) Proposers are advised that under New York State Finance Law, communication on procurements can be made only with designated contact persons. The Agencies' Designated Representative for this procurement is specified in ITP Section 2.2.1.

The Agencies' Designated Representative shall be the Agencies' single contact and source of information for this procurement.

- B) After the Shortlist is announced, neither a Proposer nor any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the Project or the Proposals. However, subject to the limitations in ITP Section 1.8.3, a Proposer may communicate with subcontractors/suppliers that are on both its team and another Proposer's team, provided that each Proposer has obtained a written certification from the proposed Subcontractor that it will not act as a conduit of information between the teams.
- C) Unless otherwise specifically authorized by the Agencies' Designated Representative or in the RFP, a Proposer may contact the Agencies only through the Agencies' Designated Representative and only in writing via email.
- D) Except for communication on security-sensitive matters, contact between each Proposer and the Agencies shall be through only the Agencies' Designated Representative and that Proposer's Representative (see ITP Section 2.2.3).
- E) For communication on security-sensitive matters, contact between each Proposer and the Agencies shall be through only the Agencies' Designated Representative and that Proposer's Representative for Security Information (see ITP Section 2.2.3).
- F) The Agencies' Designated Representative will contact a Proposer through the Proposer's Representative (see ITP Section 2.2.3), normally in writing.
- G) Communications between a Proposer and the Agencies' team of staff and consultants is allowed during any joint Proposer-Agencies workshops and meetings organized by the Agencies.
- H) During one-on-one meetings convened by the Agencies including meetings to discuss ATCs, communications between a Proposer and the Agencies' team of staff and consultants is allowed. In advance of each such meeting, each participant from the Agencies' team will be designated as an approved contact, or delegated as such by the Agencies' Designated Representative, for the duration of the meeting.
- I) Neither a Proposer nor its agents may contact employees of the Agencies or consultants under contract with either the Department or the Authority 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.

- J) Except as permitted in this ITP Section 2.2.2(J), no Proposer may engage in communications with public agency stakeholders regarding the Project. This prohibition applies to communications by the Proposer or any agent or other representative of a Proposer with employees of any state agency (other than the Agencies) or any federal agency, including FHWA, engaged in the environmental process for the Project or otherwise having jurisdiction over the Project. This prohibition does not apply to communications with public utility owners with respect to any of their facilities potentially affected by the Project and in accordance with Contract Documents, Part 4 – Utility Requirements.
- K) Any contact by a Proposer determined to be improper may result in disqualification of the Proposer.
- L) Written communications regarding the Project by the Agencies will be disseminated on Agencies' letterhead and will be signed by the Agencies' Designated Representative. Email communications by the Agencies regarding the Project will be sent from the email address set forth in ITP Section 2.2.1.
- M) The Agencies 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 Agencies' Designated Representative.

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

The Proposer's Representative shall be the Proposer's point of contact for communication between the Agencies' Designated Representative and the Proposer, other than for communications relating to security-sensitive material. This is not intended to restrict communications by participants during one-on-one meetings or any joint Proposer-Agencies workshops and meetings organized by the Agencies. Unless notified otherwise by a Proposer, the Agencies shall assume that the Proposer's Representative is the person so identified in the Proposer's SOQ. Using Form C, a Proposer shall promptly notify the Agencies 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 Agencies. Failure by a Proposer to provide such information in writing in a timely manner may result in the Proposer failing to receive important communications from the Agencies, for which the Agencies shall not be responsible.

For communication of security-sensitive information, the Proposer shall designate a point of contact denoted the Proposer's Representative for Security Information. All communications between the Proposer and the Agencies that is related to security-sensitive material shall only be via the Proposer's Representative for Security Information. The Proposer's Representative for Security Information can also be the Security Professional specified in Contract Documents Part 3 Project Requirements – 20 Security but cannot be the Proposer's Representative. Not more than 5 working days after the date of issue of the RFP (see ITP Section 1.6.1), the Proposer shall submit Form C(S) to the Agencies' Designated Representative notifying the Agencies of the contact details of the Proposer's proposed Representative for Security Information. The Proposer's proposed Representative for Security shall pass a security threat

assessment before being accepted by the Authority as the Proposer's Representative for Security. As part of the security threat assessment, the individual shall be asked to provide in person certain requested information and to submit appropriate documentation to verify the individual's identity and immigration status (if applicable).

Using Form C(S), the Proposer shall also promptly notify the Agencies of any proposed changes in the Proposer's Representative for Security Information or changes in the contact details for the Proposer's Representative for Security Information. Failure by a Proposer to provide such information in writing in a timely manner may result in the Proposer failing to receive important communications from the Agencies, for which the Agencies shall not be responsible.

#### **2.2.4 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.

### **2.3 Addenda and Responses to Inquiries**

#### **2.3.1 Addenda**

The Agencies may at any time modify conditions or requirements of this RFP by issuance of an Addendum. The Agencies will provide the Addenda only to the Proposers. Persons or firms that obtain the RFP from sources other than the Agencies bear the sole responsibility for obtaining any Addenda issued by the Agencies. The Proposal shall include written acknowledgement of receipt of all RFP addenda (Form AR, ITP Appendix D). The Agencies 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 Agencies or anyone representing the Agencies regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with ITP Section 2.2.

#### **2.3.3 Inquiries and Responses to Inquiries**

The Agencies will consider questions regarding the RFP, including requests for clarification and requests to correct errors, only if submitted in writing via email by a Proposer. All questions and requests must be submitted on Form CF (see Appendix D to this ITP) emailed to the Agencies' Designated Representative. Form CF shall be submitted as a Word® format or a searchable PDF format file only.

All questions and requests must be received at the email address of the Agencies' Designated Representative no later than 12:00 p.m. Eastern Time on the date specified in ITP Section 1.6.1 (item: *Final date for receipt of Proposer's inquiries, other than for inquiries associated with Addenda dated June 29, 2012 and July 13, 2012*) except that Proposers are additionally permitted to submit questions on topics that are directly associated with the amendments and modifications in Addenda (if any) dated June 29, 2012 and July 13, 2012, provided that such

questions are submitted only during the period June 30 to July 3, 2012 (inclusive) and the period July 14 to July 17, 2012 (inclusive), respectively.

The Authority may disregard any questions and requests not delivered as specified. Form CF may be submitted only by a Proposer's Representative (see ITP Section 2.2.3). The text of questions shall not include any information identifying the Proposer or any of its team members.

All responses will be in writing and will be disseminated only by posting on a secure portion of the Agencies' Procurement Website that will be accessible only to Proposers (for which a confidential password will be issued by the Agencies to each Proposer). Responses will not indicate which Proposer raised particular questions. The Agencies may rephrase questions as they deem appropriate and may consolidate similar questions. It is anticipated that multiple sets of responses will be issued. The last response will be issued no later than the date specified in ITP Section 1.6.1.

The Agencies will not consider any correspondence delivered in any way except as specified above, except the Agencies may engage in one-on-one meetings with Proposers, as they deem necessary. (See ITP Section 2.4.)

Each Proposer is responsible for reviewing the RFP prior to the dates specified for submission of inquiries in ITP Section 1.6.1 and for requesting clarification or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer otherwise fails to understand. The responses will not be considered part of the Contract but may be relevant in resolving any ambiguities in the Contract. Inquiries resulting in any modifications to the RFP will be documented in Addenda.

The Proposal shall include written acknowledgement of receipt of all RFP questions and responses (Form AR, ITP Appendix D).

## **2.4 One-on-One Meetings**

Prior to and/or after submission of Proposals, the Agencies may conduct one-on-one meetings with Proposers as described below. If one-on-one meetings are held, they will be held with each Proposer, provided that with respect to Alternative Technical Concepts ("ATCs") one-on-one meetings will be held only with each Proposer submitting an ATC. The Agencies reserve the right to disclose to all Proposers any issues raised during one-on-one meetings. However, the Agencies will not disclose to other Proposers any information pertaining to an individual Proposer's technical concepts, Proposal or ATCs. Although the Agencies reserve the right to hold one-on-one meetings on matters they deem appropriate, ITP Subsections 2.4.1 and 2.4.2 list the one-on-one meetings that are contemplated.

### **2.4.1 Meetings During Proposal Period**

For each Proposer, one-on-one meetings will be held between the Agencies and the Proposer. The period indicated in ITP Section 1.6.1 for these meetings is provisional. Specific meeting dates will be confirmed in advance of each meeting by the Agencies to each Proposer's Representative.

During the Proposal period at each one-on-one meeting with each Proposer, the agenda will be in two parts: the first part of the agenda will be topics set by the Agencies, and the second part of the agenda will be topics nominated by the Proposer in advance of the meeting. The Proposer's Representative shall send the Proposer's nominated agenda topics to the Agencies' Designated Representative at least 5 working days in advance of the relevant meeting. The Agencies propose the following agenda topics for the initial three one-on-one meetings:

- A) First meeting: alignments, configuration and EIS requirements;

- B) Second meeting: foundations and staging; and
- C) Third meeting: facilities, forms, visual quality.

In addition, during the first one-on-one meeting during the Proposal period each Proposer will be offered a debriefing regarding any weaknesses in its SOQ. The Proposer's SOQ ratings in relevant categories will be reviewed by the evaluators, but its overall SOQ rating will not be considered as a separate evaluation factor.

Each Proposer that is interested in submitting an ATC may request one or more additional one-on-one meeting(s) with the Agencies to discuss general concepts for potential ATCs and obtain preliminary feedback from the Agencies, to be held prior to the ATC submittal deadline (see ITP 1.6.1). The Agencies may also schedule one-on-one meetings with any Proposer that has submitted ATC(s), to allow the Agencies to fully understand the ATC(s) and to request clarifications.

In addition to the one-on-one meetings to which Proposers are invited by the Agencies and one-on-one meetings requested by Proposers to discuss ATCs, Proposers can request additional one-on-one meetings. Such requests shall be made by the Proposer's Representative via email to the Agencies' Designated Representative at least 5 working days in advance of the relevant meeting. The request shall include the Proposer's agenda for the meeting and it shall present sufficient detail of the agenda items to enable the Agencies to arrange for appropriate personnel to attend the requested meeting. The Authority may, in its sole discretion, issue one or more Addenda to address any issues raised in the one-on-one meetings.

#### **2.4.2 Post-Proposal Meetings**

The Agencies may schedule post-Proposal interviews and presentations, and reserve the right to hold such meetings. If interviews or presentations occur, Proposers shall not modify their Proposals or make additional commitments regarding Proposals at such meetings. The Agencies do not currently anticipate the need for post-Proposal discussions, but reserve the right to enter into discussions and request revised Proposals. The Agencies anticipate engaging in limited negotiations with the selected Proposer prior to Contract award regarding such matters as are deemed advisable for negotiations by the Agencies, as described in ITP Section 6.2. The selected Proposer shall have no right to open negotiations on any matter that has not been raised by the Agencies. See ITP Section 5.3.

#### **2.4.3 Statements at Meetings**

Nothing stated at any meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to ITP Section 2.3.1 or, in the case of an ATC, approved in writing in accordance with ITP Section 3.0.

### **2.5 Freedom of Information Legislation**

#### **2.5.1 Freedom of Information Law (FOIL)**

The Agencies will maintain a non-public process for the duration of this procurement. Pursuant to Section 87(2)(c) of FOIL, all records related to this procurement, including, but not limited to, SOQs, evaluation and Shortlist procedures, Proposals, requests for ATC review, evaluation and selection procedures, and any records created during the evaluation and selection process, will remain deniable records until the Contract has been fully executed and delivered.



All records pertaining to this procurement will become public information after execution of the Contract, unless such records are determined to be deniable under FOIL, including records that are deniable because they constitute trade secrets or because disclosure of such records would cause substantial injury to the competitive position of the Proposer or its team members. Unless otherwise provided by law, records marked as "Exempt from Disclosure under FOIL" in an SOQ or Proposal submitted by an unsuccessful Proposer are not subject to inspection at any time by third Persons under FOIL, and the records so marked by the successful Proposer in its SOQ and Proposal will remain confidential. Each Proposer shall mark as confidential the portion of its Technical Proposal relating to security, including all material pertaining accident and terrorist vulnerability assessment and mitigation.

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 such 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; 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.

Under no circumstance will the Agencies, the State, or their respective agents, employees or consultants be responsible or liable to the Proposer or any other party for the disclosure of any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of the Agencies, the State or their respective agents, employees or consultants. In the event of litigation concerning the disclosure of any material submitted by the submitting party, the Agencies' and State's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk. The submitting party shall indemnify and hold harmless the Agencies and the State and their respective agents, employees and consultants from and against any losses, costs or expenses any of them may incur in connection with any such litigation (including, without limitation, attorney's fees). This indemnification shall survive any cancellation or termination of this procurement or any award and subsequent execution of a Contract. In submitting a Proposal, the Proposer agrees that this indemnification survives as long as the deniable records are in possession of the Agencies or the State.

### **2.5.2 Freedom of Information Act (FOIA)**

FOIA applies to agencies and departments of the Executive Branch of the US Government, including FHWA. FOIA establishes a presumption that records in the possession of such agencies and departments are available to the public, subject to certain exemptions. FHWA has adopted a policy of clear presumption of disclosure on all FOIA requests. Therefore, all records in the possession of FHWA pertaining to this procurement may be disclosed under FOIA, except to the extent specifically exempted from disclosure under the act, which

exemptions include trade secrets and commercial or financial information obtained from a person that is privileged or confidential. To the extent such information of the Design-Builder is included in the executed Contract or otherwise provided to FHWA or other federal agency or department pursuant to this procurement, and the Design-Builder wishes to protect it from disclosure, the Design-Builder shall clearly mark such records “*Exempt from Disclosure under FOIA.*”

## **2.6 Examination of the RFP Documents and Work Site**

Each Proposer is expected to examine carefully the Site of the proposed Work and all of the RFP Documents before submitting a Proposal.

The fact that Agencies have furnished information does not abrogate the Proposer’s responsibility for further verifications and inquiries as are necessary to properly address permanent and temporary utility appurtenances in the preparation of the Proposal.

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 readily observable from a Site inspection prior to the Proposal Due Date or as shown or specified in the Contract Documents, and (ii) as to the requirements of the Contract.

Each Proposer may request to visit the site of the proposed Work (including the existing Governor Malcolm Wilson Tappan Zee Bridge) during the period following announcement of the Shortlist and the Proposal Due Date. Each such request shall be made by the Proposer’s Representative to the Agencies’ Designated Representative via email at least three work days in advance of the proposed date of the visit, and shall include: the requested date and time of the visit; the duration of the visit; the locations/features that the Proposer requests to visit; and the proposed number and identity of all persons in the Proposer’s visit group. No more than 10 persons will be permitted to visit the on-land areas of the site and the existing bridge at any given time. The Agencies may impose additional group size restrictions for on-water visits; details of such restrictions will be provided by the Agencies on a case-by-case basis, depending on the availability of vessels on the requested date and time of the visit. The Agencies reserve the right to deny any request or to postpone access to a date/time other than that requested by a Proposer, provided that each Proposer shall be given an opportunity visit the site so long as it has complied with the requirements of this ITP Section 2.6.

The Agencies will invite Proposers to visit and observe geotechnical borehole drilling and pile installation and testing operations commissioned by the Agencies for the Project during the period between the date of issuance of the RFP and the Proposal Due Date (see ITP Section 1.6.1). For these visits, a maximum of two persons from each Proposer shall be permitted at the work site at any one time. An invitation to participate in these observational visits will be emailed by the Agencies’ Designated Representative to each Proposer’s Representative.

During all visits to the site of the proposed Work, the Proposer’s visit team shall comply with all safety requirements and safety advisories issued to the visit team by the Agencies and/or the Agencies’ representatives.

## **2.7 Changes to the Proposer’s Organization**

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

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

A Proposer may propose substitutions for participants. Such changes require written approval by the Agencies. Requests for changes must be made in writing to the Agencies' Designated Representative no later than the date specified in ITP Section 1.6. Requests by Proposers for changes in any Major Participant or Key Personnel will be particularly scrutinized.

To request the Agencies' approval for an addition to the organization, the Proposer shall submit with its request that information specified for a Major Participant in the RFQ, including legal and financial data as well as the information for technical evaluation. If a request is made to allow deletion of a Major Participant, the Proposer shall submit such information as may be required by the Agencies to demonstrate that the changed team meets the criteria stated in the RFQ (pass/fail criteria and technical criteria). If a request is made to change any Key Personnel, the Proposer shall submit with its request the information specified for that Key Personnel in the RFQ, including a resume. In any event, the Proposer shall promptly notify the Agencies' Designated Representative if any Key Personnel leaves the Proposer's team.

The Agencies shall have sole discretion to grant or withhold approval of any requested change.

## **2.8 Changes to Proposer's Financial Position or Ownership**

Proposers shall promptly (see ITP Section 2.8C)) notify the Agencies of:

- A) any material adverse change in the financial position (including business, assets, financial condition, credit rating and/or surety bonding capacity) of any Principal Participant that was not reflected in and/or differs from its SOQ submission (inclusive of any subsequently required or approved modifications or additions to the Principal Participants described therein); and
- B) any direct or indirect transfer of legal or beneficial ownership, or issuance, of the shares (or equivalent ownership interests) of any Principal Participant, following the date of its SOQ submission, that (i) is equal to or greater than 20% of the total shares or (ii) results in ownership of 20% or more of the total shares by an entity that held less than such amount as of the date of such SOQ submission.

Any such notification shall be:

- C) made by the Proposer's Representative to the Agencies' Designated Representative in writing promptly upon the occurrence of any such change and, in any event, not later than 7 calendar days thereafter; and
- D) accompanied by such information as may be required by the Agencies in order to demonstrate that the Proposer continues to meet the pass/fail criteria set out in the RFQ and provides substantially the same or superior financial strength as demonstrated in the Proposer's SOQ (inclusive of any subsequently required or approved modifications or additions to the Principal Participants described therein) and that no Organizational Conflict of Interest arises from any change in ownership.

Irrespective of whether the Proposer provides notice as required under this ITP Section 2.8, the Agencies may, in their sole discretion:

- E) accept any such change if the Proposer still meets the RFQ pass/fail criteria; or
- F) if the Proposer does not meet the RFQ pass/fail criteria, does not provide substantially the same or superior strength as demonstrated in the Proposer's SOQ submission (inclusive of any subsequently required or approved modifications or additions to the Principal Participants described therein), or is unable to avoid any Organizational Conflict of Interest arising from any changes in



ownership, then: (i) require mitigating changes to the Proposer's organization; or (ii) disqualify the Proposer.

### **3.0 ALTERNATIVE TECHNICAL CONCEPTS**

#### **3.1 Alternative Technical Concepts**

The Agencies have chosen to use the confidential ATC process set forth in this ITP Section 3.0 to allow innovation and flexibility to be incorporated into the Proposals and considered in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring of technical concept reviews to the post-award period and, ultimately, to obtain the best value for the public.

The ATC process allows a Proposer to submit for pre-approval, on a confidential basis, proposed alternatives to the requirements of Contract Documents, Part 1 Appendix I – Scope of Work, Part 3 – Project Requirements, and design solutions included in the Directive Plans of Contract Documents, Part 6 – RFP Plans. ATCs may include proposals regarding the requirements for Form PPS-P-A and provisions of the Contract Documents regarding dredging and disposal of dredged materials. The Agencies will not approve any ATC that entails a deviation from the requirements of the as-issued Contract Documents unless the Agencies determine, in their sole discretion, that the proposed end product based on the deviation is equal to or better than the end product absent the deviation. Proposers should refer to Section 3.0 of Appendix I to the Design-Build Agreement (Part 1) with respect to any ATC affecting the Basic Project Configuration. An ATC that potentially conflicts with any Environmental Approvals may be approved conditionally, subject to resolution of the potential conflict prior to implementation of the ATC (see ITP Section 3.4).

Any ATC that has been approved or conditionally approved may be included in the Proposal, subject to any conditions set forth in the approval.

A Proposer may, in its discretion, ask the Agencies to discuss the Proposer's ATC(s) with any third parties, which request shall identify the third parties to whom disclosure is permitted and shall specifically acknowledge that the Agencies cannot guaranty the confidentiality of any information so disclosed.

#### **3.2 Submittal and Review of ATCs**

A Proposer may submit ATCs for review to the Agencies until the date identified in ITP Section 1.6.1. All ATCs shall be submitted in writing to the Agencies' Designated Representative at the email address identified in ITP Section 2.2.2, with a cover letter clearly identifying the submittal as a request for review of an ATC under this ITP. If the Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by the Agencies.

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

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

If an ATC is not approved or conditionally approved and the Proposer is of the view that the non-approval or the conditions for approval were due to an incorrect conclusion on the part of the Agencies, the Proposer may re-submit the ATC for one additional review to the Agencies'

Designated Representative at the email address identified in ITP Section 2.2.2 until the final date for ATC submittals set forth in ITP Section 1.6.1. If a re-submittal is made, it shall be accompanied by a cover letter clearly identifying such submission as an ATC submitted for an additional review. Upon receipt of a request for additional review in accordance with this Section, the Agencies will conduct its additional review of the ATC and provide a response to the Proposer by email not later than the date for such responses set forth in ITP Section 1.6.1.

The Proposer shall advise the Agencies in its ATC submittal if it believes a one-on-one meeting is appropriate.

The Agencies will seek to return its approval, non-approval, conditional approval, or additional questions pertaining to any specific ATC no later than two weeks after receipt of that ATC. If the Proposer does not receive a return response from the Agencies within two weeks of the Agencies' receipt of the ATC, the Proposer shall presume that the Agencies have rejected the ATC.

### **3.3 Contents and Submission of ATC Submittals**

#### **3.3.1 Contents of ATC Submittals**

Each ATC submittal shall include the following:

- A) Description: A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information;
- B) Usage: Where and how the ATC would be used on the Project;
- C) Deviations: References to any requirements of the RFP Documents or to any elements of the Contract Documents that are inconsistent with the proposed ATC, an explanation of the nature of the proposed deviation and a request for: (a) approval of such deviations; or (b) a determination that the ATC is consistent with applicable requirements;
- D) Analysis: An analysis justifying use of the ATC and why the deviations from the requirements of the RFP Documents should be allowed;
- E) Impacts: Discussion of potential impacts of the ATCs on vehicular traffic, river traffic, environmental impacts (favorable and unfavorable) identified in appropriate environmental documents (especially with regard to the impacts and commitments of the DEIS), community impact, safety and life-cycle Project and infrastructure costs (including impacts on the cost of repair and maintenance);
- F) Environmental Approvals: A discussion of what, if any, changes in the Environmental Performance Commitments (EPCs), compliance terms, best management practices and avoidance measures identified in any Environmental Approval would be required as a result of the ATC. A discussion of whether the ATC would require any deviation from the terms and conditions of any anticipated or existing Environmental Approval or new Environmental Approval and, if so, an analysis of the steps required, costs involved and time that would be required to obtain, and the likelihood of success in obtaining, the required approval from the appropriate Governmental Person(s), as well as an analysis of all potential impacts on the Project;
- G) History: A detailed description of other projects where the ATC has been used under comparable circumstances, the success of such usage, and names,

email addresses and contact telephone numbers of project owners that can confirm such statements;

- H) Risks: A description of any added or reduced risks to the Agencies and other Persons associated with implementing the ATC;
- I) Costs: An estimate of the implementation costs or savings to the Agencies, the Design-Builder and other Persons;
- J) Schedule: An estimate of the impact of the ATC upon the Contract duration and schedule shall be given, including the Proposer's estimate of the likely durations for any permits and consents necessary for the ATC;
- K) Price: An estimate of the impact of the ATC on the Proposal Price;
- L) ROW Requirements: A list of additional ROW requirements, if any, and a description of when additional ROW would be required in order to implement the ATC; and
- M) One-on-One Meeting: A statement as to whether, in the Proposer's view, a one-on-one meeting with the Agencies would be appropriate to discuss the ATC.

### **3.3.2 Submission of ATC Submittals**

Each ATC submittal shall be submitted to the Agencies' Designated Representative via email as follows:

- A) The ATC submittal contents as summarized in ITP Section 3.3.1;
- B) Each submitted document shall be presented as a searchable portable document format (pdf) without copy or password protection.

The subject line of the email and each document attached to the emailed submission shall be marked "Tappan Zee Hudson River Crossing Project – ATC Submittal" with the sequential number of the Proposer's ATC (i.e. 1, 2, 3 etc.) and the Proposer's name. Any subsequent communications about an ATC should quote the relevant sequential ATC submission number.

### **3.4 Determination by the Agencies**

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

- A) the ATC is approved;
- B) the ATC is not approved;
- C) the ATC is not approved in its present form, but is conditionally approved subject to satisfaction, in the Agencies' sole judgment, of specified conditions;
- D) The submittal does not qualify as an ATC but it may be included in the Proposal without an ATC (i.e. the concept complies with the RFP requirements); or.
- E) The submittal does not qualify as an ATC and it does not comply with the RFP.

Any approval of an ATC will constitute a change in the specific requirements of the Contract Documents to the extent: (i) specified in such approval; and (ii) the Proposer is awarded the Contract. Should the Design-Builder be unable to obtain required approvals for any ATC

incorporated into the Contract Documents, or if the concept otherwise proves to be infeasible, the Design-Builder will be required to conform to the original requirements of the Contract Documents. See Contract Documents Part 2, DB §104-4.6. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to the Agencies' determinations regarding the acceptability of ATCs.

### **3.5 Incorporation into Proposal**

Proposer may incorporate zero, one or more pre-approved ATCs into its Proposal, including conditionally approved ATCs, provided that all conditions to approval shall have been satisfied except for those conditions for which the Proposer is prepared to assume the risk as permitted by Contract Documents Part 2, DB §104-4.6. The Proposal shall state whether all conditions have been satisfied and shall specifically identify any conditions which will be satisfied at a later date, including the Proposer's planned course of action with respect thereto. Copies of the Agencies' ATC approval letters for each incorporated ATC shall be included in the Proposal as specified in Appendix B. Proposals with or without ATCs will be evaluated against the same technical evaluation factors, and the inclusion of an ATC, including an ATC that provides technical enhancements, may or may not receive a higher technical rating.

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

### **3.6 Confidentiality**

Subject to Section 6.3 of the ITP, ATCs properly submitted by a Proposer and all subsequent communications regarding its ATCs will be considered confidential. The foregoing shall not preclude the Agencies from modifying the RFP documents as necessary to comply with applicable law or to account for information obtained by the Agencies outside of the ATC process.

If a Proposer wishes to make any announcement or disclosure to third parties concerning any ATC, it shall first notify the Agencies in writing of its intent to take such action, including details as to date and participants, and obtain the Agencies' prior approval to do so.

## **4.0 SUBMITTAL REQUIREMENTS**

### **4.1 Compliant Proposal**

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

Each Proposal must be submitted in the official format specified by the Agencies, as detailed in this ITP and its Appendices. The Proposer shall sign each copy of the Proposal submitted to the Agencies. Multiple or alternate proposals shall not be submitted.

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

- A) If the Proposal is submitted on a paper form or disk other than that furnished or specified by the Agencies; if it is not signed; if the Form of Proposal (see ITP Appendix D) is altered except as expressly permitted hereby; or if any part thereof is deleted from the Proposal package;
- B) If the Proposal is illegible or contains any omission, erasures, alterations, or items not called for in the RFP or contains unauthorized additions, conditional or alternate Proposals, or other irregularities of any kind; if the Agencies determine that such irregularities make the Proposal incomplete, indefinite, or ambiguous as to its meaning;
- C) If the Proposer adds any provisions reserving the right to accept or reject an award or to enter into a Contract following award;
- D) If the Proposer attempts to limit or modify the bonds, if the Proposal Bond (see ITP Appendix D) is not provided, and/or requested information deemed material by the Agencies is not provided;
- E) If the Proposer is in arrears in the payment of any obligation due and owing the State, including the payment of taxes and employee benefits; and
- F) Any other reason the Agencies determine the Proposal to be non-compliant.

### **4.2 General Submittal Requirements**

- A) Volume 1 of the Proposal (the Administrative Submittal) shall be enclosed in one or more sealed containers that shall be clearly marked as detailed in ITP Appendix A. Volume 2 of the Proposal (the Technical Proposal) shall be enclosed in one or more sealed containers and shall be clearly marked as detailed in ITP Appendix B. Volume 3 of the Proposal (the Price Proposal) shall be sealed within one or more separate containers and shall be clearly marked as detailed in ITP Appendix C. The copies of the Electronic Pricing Documents shall be sealed within one or more separate containers and shall be submitted as detailed in ITP Sections 4.3 and 4.7.
- B) When sent by United States Postal Service or private carrier (such as Federal Express or United Parcel Service or similar), the sealed containers shall be sent in accordance with this ITP to the Agencies' Designated Representative, and shall be received by such representative no later than the time specified in ITP Section 1.6.2. In the alternative, a Proposal may be hand-delivered by

the Proposer to the Agencies' Designated Representative no later than the time specified in ITP Section 1.6.2. on the Proposal Due Date.

- C) Where certified copies are required, the Proposer shall stamp the document or cover with the words "Certified True Copy" and have the stamp oversigned by the Proposer's Representative.
- D) The Proposal affidavit (Form NC, ITP Appendix D) and Form PP (ITP Appendix D) shall be signed by the Proposer and by all joint venture members or general partners of the Proposer, if it is a joint venture or partnership. If any signatures are provided by an attorney-in-fact, the original or a certified copy of the power of attorney shall be provided, together with evidence of authorization by the governing body of the organization granting the power of attorney.

The Proposal submittal requirements for security-sensitive materials shall be communicated directly to the Proposer's Representative for Security Information (see ITP Section 2.2.3) and are not detailed within this ITP.

### **4.3 Number of Copies**

#### **4.3.1 Hard Copy of Proposal**

- A) One original, three certified copies and twelve copies of Volume 1 (see ITP Appendix A) shall be provided. At the Proposer's option, Volume 1 may be accompanied by three duplicate originals of the Stipend Agreement, signed by the Proposer.
- B) One original and fifteen copies of Volume 2 (see ITP Appendix B) shall be provided.
- C) One original and three certified copies of Volume 3 (see ITP Appendix C) shall be provided.
- D) See ITP Section 4.7.1 for the submission requirements for the Electronic Pricing Documents.

#### **4.3.2 Electronic Copy of Proposal**

In addition to the submission of copies of the Proposal printed on paper (see ITP Section 4.3.1), Proposers shall submit one copy of the full Proposal (but excluding the Electronic Pricing Documents; see ITP Section 4.7.1) in electronic format on non-copy-protected compact disks (CD). A separate CD (or, if needed, multiple CDs) shall be used for the submission of each of the three volumes of the Proposal (see ITP Appendices A, B and C).

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

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

The front of each CD shall be labeled with the text "*Tappan Zee Hudson River Crossing Project Proposal – Volume...*" followed by the relevant Proposal volume number, plus the date of issue of the Proposal and the Proposer's name. If it is necessary to use more than one CD



to submit a volume of the Proposal, each CD shall additionally be labeled “X of Y”, where X is the CD number and Y is the total number of CDs submitted by the Proposer for that volume.

The CD(s) for each volume shall be submitted with the original copy of relevant volume of the Proposal.

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

Requirements for the electronic submission of the Electronic Pricing Documents are detailed in ITP Section 4.7.1.

#### **4.4 Currency**

Pricing information shall be priced in U.S. dollars (\$) currency only.

#### **4.5 Modifications, Withdrawals and Late Submittals**

##### **4.5.1 Modifications**

A Proposer may modify its Proposal, or a portion thereof, in writing prior to the specified time for submittal of Proposals. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal, or a portion thereof, and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so the Agencies can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in ITP Appendices A, B and C. Line item changes will not be accepted. No telegraphic, facsimile, or other electronically transmitted modifications will be permitted.

##### **4.5.2 Withdrawal**

A Proposer may withdraw its Proposal only by a written and signed request that is received by the Agencies prior to the specified time for submittal of Proposals. Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to the specified time for submittal of Proposals.

The Proposer agrees that its Proposal will remain valid for 180 days following the Proposal Due Date, or such longer period as may be agreed to in writing by the Proposer and the Authority. See *also* ITP Section 7.6.

##### **4.5.3 Late Proposals**

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

#### **4.6 Forfeiture of Proposal Security**

Each Proposer further understands and agrees that it will forfeit its Proposal Bond: (a) if the Proposer withdraws, repudiates, or otherwise indicates in writing that it will not meet, all or any part of its commitments made in the Proposal prior to the time allowed for execution of the Contract under ITP Section 6.2; (b) if the Proposer is selected for negotiations and fails to engage in good faith negotiations with the Authority under ITP Section 6.2.2; (c) if the Proposer is selected for limited negotiations or for award and fails to provide all documents and other



requirements in accordance with ITP Section 6.2.1 or 6.2.3 within the time periods set forth in such sections; or (d) under the circumstances described in ITP Section 1.8.1. See Form PB, ITP Appendix D.

#### **4.7 Electronic Pricing Documents**

##### **4.7.1 Delivery of EPDs**

Requirements regarding the contents of Electronic Pricing Documents are set forth in Contract Documents Part 2, DB §110. The Proposer shall submit its EPDs in electronic format. One copy of its EPDs shall be submitted on CD-ROM and a second copy shall be submitted on USB flash drive. EPD spreadsheet files shall be in Microsoft Excel ® format, and all other EPD files shall be in searchable portable document format (.pdf), without copy protection. The Proposer may password protect the EPD files, CD-ROM and USB drive and retain such password(s), provided that the Proposer shall enter the relevant passwords to permit any joint review of the EPDs as provided below. In addition, the Proposer shall retain an identical set of the submitted EPDs in hard copy in a fireproof cabinet in a secure location, to be made available to the Agencies for review upon request.

Not later than three business days after the Proposal Due Date, each Proposer shall deliver to the address set forth below: (1) the EPDs in a sealed envelope(s), each of which (along with the CD-ROM and USB drive) shall be labeled “TZHRC Electronic Pricing Documents – Proposer: \_\_\_\_\_” with the name of the Proposer inserted in the blank and dated the EPD submittal date; (2) a printed index listing each document included in the EPD and briefly describing the document and its location in the EPD folder structure; and (3) a duly signed certification in the form of Form EPD (ITP Appendix D):

Chief Financial Officer  
NYS Thruway Authority  
200 Southern Blvd.  
Albany, NY 12209

A copy of the signed certification shall also be delivered concurrently to the Agencies' Designated Representative. The Agencies shall have a right to retain a copy of the index of EPDs.

The Agencies will keep the submitted EPDs in a locked safe in the Authority's vault or other secure location.

At such time as the Agencies have selected a Proposer that has presented the apparent best value Proposal, the Agencies and the Proposer shall conduct a joint review of such Proposer's EPDs at the Authority's offices or another mutually agreeable location. To the extent that any of the EPD files, CD-ROM or USB drive is password protected, the Proposer shall promptly enter the relevant password(s) to permit the timely conduct of any such joint review. If, at the initial review of the EPDs or any time thereafter, the Agencies determine that the EPDs are incomplete, the Agencies may require the Proposer to supply data to make the EPDs complete. Incomplete EPDs may render the Proposal non-responsive.

The EPDs will be available for joint review by the Proposer and the Agencies in conjunction with any pre-award discussions and negotiations. Following award of the Contract, the EPDs of the successful Proposer will be available for joint review as specified in the Contract.

##### **4.7.2 Return of EPDs**

The EPDs submitted by unsuccessful Proposers will be returned to them after the Contract has been executed and delivered, after the Agencies reject all of the Proposals, or after the Agencies terminate this procurement, as the case may be.

#### **4.8 No Public Opening**

There will be no public opening of Proposals. After the Proposal Due Date, all Proposals except for Volume 3 (Price Proposal) will be opened in the presence of two or more public employees and reviewed for completeness. A register of Proposals will be prepared that identifies each Proposer. Volume 3 (Price Proposal) will be held unopened in a secure location until after the evaluation of the Technical Proposals is complete.

Notwithstanding any provision of the RFP to the contrary, the Authority in its discretion may request from each Proposer summary high level narrative and graphical presentation materials that are suitable for public presentation, which presentation may be made by Authority representatives after the completion of the technical evaluation of Proposals but before selection. Any such request and resulting presentation by the Authority shall be consistent with a written protocol prepared by the Authority that has been approved by each Proposer and is the same for each Proposer. A Proposer that declines to approve the written protocol or to supply requested presentation materials shall not in any way be disadvantaged in the Authority's evaluation process by so declining.

## **5.0 EVALUATION OF PROPOSALS**

The Agencies have determined that its best opportunity to obtain the right Design-Builder to assure a successful Project will be gained by awarding the Contract based on a determination of the Proposal that offers the best value to the State and the Agencies (that is, by optimizing long term quality, cost and efficiency as specified in the Act), taking into consideration the technical and price factors discussed herein.

Each Technical Proposal will be evaluated on the pass/fail and technical evaluation factors identified herein. In order to be considered for award of the Contract, the Proposal must receive a “pass” rating on all pass/fail factors and receive a technical rating of at least “*Acceptable*” on each technical evaluation factor. A Technical Evaluation Team appointed by the Agencies will determine the overall technical strengths and weaknesses of each Proposal before the Price Proposals are opened and evaluated by a Selection Committee appointed by the Agencies. The Selection Committee will evaluate the technical findings and pricing information contained in the Price Proposals and prepare a recommendation to the Selection Official(s) appointed by the Agencies indicating which Proposal represents the “best value” to the State and the Agencies. The Selection Official(s) will then assess the Selection Committee’s recommendation and make a final determination as to which Proposal offers the best value to the State and the Agencies, considering the technical and price factors set forth in the ITP.

In determining “best value,” the Proposal Price will be approximately equal in importance to the combined overall technical ratings for design and construction solution; management approach; Key Personnel and experience; environmental compliance; and public outreach and coordination with stakeholders. The relative importance of each technical factor, and of major subfactors within each technical factor, is stated in ITP Section 5.1.2.

The Agencies reserve the right to reject any or all Proposals, to waive technicalities, or to advertise for new Proposals, if, in the judgment of the Agencies, the best interests of the public will be promoted thereby.

### **5.1 Evaluation Factors and Criteria**

The factors identified in ITP Section 5.1.1 will be evaluated on a “pass/fail” basis.

The factors identified in ITP Section 5.1.2 will be evaluated on how well the Proposer has met or exceeded the requirements.

Price will be evaluated as specified in ITP Section 5.1.3.

#### **5.1.1 “Pass/Fail” Evaluation Factors**

Each Proposal must achieve a rating of “pass” on each “pass/fail” evaluation factor listed in ITP Section 5.1.1.1 (legal), Section 5.1.1.2 (administrative), Section 5.1.1.3 (DBE/EEO information), Section 5.1.1.4 (financial information) and Section 5.1.1.5 (Price Proposal) in order for the Proposal to be eligible for award.

Failure to achieve a “pass” rating on any “pass/fail” factor listed in ITP Section 5.1.1 will result in the Proposal being declared unacceptable and the Proposer being disqualified.

#### **5.1.1.1. Legal Pass/Fail**

The legal pass/fail requirements are as follows:

- A) Provision of a properly completed and executed Proposal affidavit (Form NC, ITP Appendix D);
- B) Provision of evidence that the Persons proposed to carry out engineering, design, architecture, landscape architecture, and surveying within the State hold appropriate licenses or that they have the capability to obtain licensure prior to execution of Contract;
- C) Provision of all other specified forms and documents, properly completed and signed (if required) (see ITP Appendix A) that do not identify any material adverse information;
- D) The organizational documents shall show that the Proposer has legal capacity to undertake design and construction of the Project, shall include appropriate provisions for management and decision-making within the organization as well as for continuation of the Proposer in the event of bankruptcy or withdrawal of any of its members, and shall otherwise be consistent with Project requirements; and
- E) Compliance with any other legal requirements as identified in ITP Appendix A.

#### **5.1.1.2. Administrative Pass/Fail**

The administrative pass/fail requirements are the following:

- A) Provision of all forms required from ITP Appendix D, properly completed and signed (if required);
- B) Timely submittal of Form EPD and the Electronic Pricing Documents;
- C) Confirmation that the Major Participants and Key Personnel listed in the Proposer's SOQ have either not changed since submission of the SOQ, or that the Proposer has previously advised the Agencies of a change and received the Agencies' written consent thereto;
- D) The Proposer shall have provided letter(s) of commitment from one or more sureties in accordance with ITP Appendix A, Section A2.3.5, committing to provide a Performance Bond and a Payment Bond, each in an amount equal to:
  - (1) \$1.5 billion or 30% of the proposed Contract Price (whichever is greater), in which case the Proposer shall, in addition, satisfy the requirements of Section 5.1.1.4(B); or
  - (2) \$1.5 billion or 40% of the proposed Contract Price (whichever is greater);
- E) Provision of a Proposal Bond in the form of Form PB (ITP Appendix D), and
- F) Provision of all other information specified in ITP Appendices A, B and C in the manner, format, and detail specified, without alteration of the forms except as expressly permitted by the instructions.

### **5.1.1.3. DBE/EEO Information Pass/Fail**

To be eligible for award of the Contract, each Proposer must provide the following DBE and EEO submittals meeting the requirements specified herein.

- A) A completed Form DBE, Record of DBE Performance (see ITP Appendix D) either (i) showing no change in the Proposer's record of DBE performance, relative to the Proposer's SOQ submission, or (ii) including supplemental information regarding the Proposer's record of DBE performance showing that the Proposer and its team members have a record of meeting DBE participation.
- B) A completed Form EEO, Equal Employment Opportunity Certification, for the Proposer, each other Major Participant and each proposed known Subcontractor.
- C) Information on Proposer's letterhead in the form of Form GF (see ITP Appendix D) showing that the Proposer has undertaken appropriate good faith efforts during the Proposal period to obtain DBE participation in its Proposal;
- D) A list of DBE firms on the Proposer's team on Form LDB (included in the Administrative Proposal) and LDB-PP (included in the Price Proposal) (see Appendix D); and
- E) A DBE Plan meeting the requirements specified in ITP Appendix A Section A2.4 and showing that the Proposer plans to undertake appropriate good faith efforts over the course of the Contract to achieve the DBE goal for the Contract, and shall achieve the DBE goal or provide good faith effort documentation.

Failure to achieve a "pass" rating on this pass/fail factor shall result in the Proposal being declared non-responsive and the Proposer being disqualified.

### **5.1.1.4. Financial Information Pass/Fail**

The pass/fail requirements relating to financial information are as follows:

- A) Financial information submitted does not indicate any material adverse change in the financial position (including business, assets, financial condition, credit rating and/or surety bonding capacity) of the Principal Participant that was not reflected in and/or differs from its SOQ submission (inclusive of any subsequently required or approved modifications or additions to the Principal Participants described therein), or such change has been disclosed and accepted or mitigated to the satisfaction of the Agencies in accordance with Section 2.8;
- B) If the Proposer has elected to satisfy the financial and security requirements under Section 5.1.1.2(D)(1):
  - (1) the financial information submitted shall evidence a tangible net worth ("TNW") of the Proposer exceeding \$1.5 billion; provided that:
    - (a) the TNW of each Principal Participant (or, as the case may be, its Guarantor (if any)), but without double-counting subsidiary financial statements if the Guarantor or Principal Participant is a parent company, can be combined to meet this requirement; and
    - (b) except

as specified in Item (B)(2) below, only the TNW of firms with investment grade credit rating from a major credit rating agency (see ITP Appendix A Section A2.5.4) can be used to satisfy the TNW requirement. Tangible net worth of any Person means the sum of the amounts described in items (i) through (iii) below for such Person and its Subsidiaries, determined on a consolidated basis without duplication in accordance with GAAP or IAS:

- (i) the amount of capital stock; plus
  - (ii) the amount of surplus and retained earnings (or, in the case of a surplus or retained earnings deficit, minus the amount of such deficit); minus
  - (iii) the sum of the following: cost of treasury shares and the book value of all assets that should be classified as intangibles (without duplication of deductions in respect of items already deducted in arriving at surplus and retained earnings) but in any event including goodwill, minority interests, research and development costs, trademarks, trade names, copyrights, patents and franchises, unamortized debt discount and expense, all reserves and any write-up in the book value of assets resulting from a revaluation thereof subsequent to December 31, 2011;
- (2) If a Principal Participant or Guarantor does not have any credit rating (but, for the avoidance of doubt, not if such entity has a credit rating of less than investment grade) directly issued by Standard & Poor's Ratings Services; Moody's Investor Service; or Fitch Ratings, such entity's TNW may nevertheless be considered eligible and counted at the Agencies' discretion, provided that such Principal Participant or Guarantor provides sufficient information to supplement its financial statements and reasonably demonstrate its financial strength and stability. At a minimum, this information shall include:
- (i) All rating reports, commentaries, notes issued publicly or privately regarding any debt instruments since 2009 (or a statement that none were issued to the best of the entity's knowledge), produced by Dunn and Bradstreet or one of the major rating agencies (Moody's, Fitch Ratings, S&P or affiliates thereof) and, if necessary, translated into the English language;
  - (ii) Updated, audited financial statements and filings (see details in RFQ Section 4.4.2.2) to the extent not previously provided (or if available provide links to online public records thereof); and
  - (iii) A memorandum signed by the Chief Financial Officer of the entity attesting and reasonably demonstrating that the entity has ready and consistent access to necessary financial resources relative to current and future liabilities and other commitments, including this Project. Appropriate supporting information shall be attached. The memorandum should

reference the financial statements where appropriate and at a minimum shall discuss:

- a. The entity's backlog and business outlook;
- b. The entity's cash generation and deployment;
- c. The entity's liquidity (including working capital considerations) and debt structure;
- d. The entity's contingent liabilities;
- e. Current and anticipated litigation items in excess of \$10 million; and
- f. Any significant changes or trends in the above factors over the past three years.

In order to be considered for an exemption to the credit rating requirement, a preliminary version of the above-listed information must be submitted to the Agencies by the date stated in ITP Section 1.6.1;

- C) If the Proposer:
- (1) was advised by the Agencies that its members and/or parent companies or other entities are required to provide a Guaranty;
  - (2) indicated in its SOQ or otherwise agreed that a Guaranty will be provided by a specified entity; or
  - (3) desires the TNW of an entity to be considered for the purposes of complying with Section 5.1.1.4(B)(1) above,
- the Proposer shall have submitted an irrevocable letter of confirmation from each such entity that it is prepared to provide a Guaranty in the form of Form G, as specified in ITP Appendix A; and
- D) Provision of all other specified forms and documents, properly completed and signed (if required), and compliance with any other financial requirements, as identified in ITP Appendix A.

#### **5.1.1.5. Price Proposal Pass/Fail**

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

- A) The separately-packed documentation required in Volume 1, Appendix C of the Proposal (see ITP Appendix A Section A3.0) is complete and fully conforms to the requirements of the RFP;
- B) The Price Proposal is complete and fully conforms to the submission requirements of the RFP.

#### **5.1.2 Technical Evaluation Factors**

The technical evaluation factors are as follows:

- A) Design and construction solution;
- B) Management approach;
- C) Key Personnel and experience;



- D) Environmental compliance; and
- E) Public outreach and coordination with stakeholders.

The technical evaluation factors denoted A, B and C in the above list are of equal importance to each other, and are of more importance than factors D and E. Factors D and E are of equal importance.

The technical evaluation factors listed in this ITP Section 5.1.2 and the subfactors listed in ITP Sections 5.1.2.1 through 5.1.2.5 will be evaluated and rated using the evaluation guidelines specified in ITP Section 5.2, with special attention given to the desired quality expressed in the statement of each factor and/or subfactor. Proposals that receive a technical quality rating of less than “Acceptable” (see ITP Section 5.2) for any technical evaluation factor will not be selected for award.

ITP Sections 5.1.2.1 through 5.1.2.5 describe the expectations of the Agencies with regard to quality of Work to be performed and the related information to be submitted in the Technical Proposals. Along with the Project goals and objectives (see ITP Section 1.4), these objectives will guide the Agencies’ evaluation of the factors and subfactors.

#### **5.1.2.1. Design and Construction Solution**

Evaluates the Proposer’s understanding, approach, capabilities and commitments to the delivery of a design and construction solution that meets or exceed the Project’s goals and objectives.

**Objectives:** Design solutions that respond to: the environmental and community sensitivities and commitments; the context sensitive design and toll road nature of the highway, bridges and structures, the requirement for a coordinated aesthetic theme that includes bridges, walls, signing, landscaping, and toll and intelligent transportation systems structures; quality pavements, geotechnical challenges; and the well planned and coordinated design and relocation of utilities.

The technical evaluation subfactors for the design and construction solution factor are as follows:

- A) Construction Approach – evaluates how well the Proposer understands the construction challenges and proposes adequate measures to eliminate or mitigate them, including but not limited to protection of existing facilities, dredging, staging, piling, demolition, and rehabilitation of facilities if necessary due to the means and methods adopted by the Design-Builder;
- B) Service Life of the Crossing – evaluates how creative and robust the Proposer is in maximizing the service life of the Crossing, and in minimizing and simplifying maintenance operations during the service life of the Crossing;
- C) Maximizing the Public Investment – evaluates how creative and robust the Proposer is in design and construction solutions that maximize the public investment for potential future loading;
- D) Bridge, Structures and Aesthetic Design Concepts – evaluates how creative and robust the Proposer is in its design and construction solution to the bridge, structure and aesthetic challenges of the Project;



- E) Geotechnical — evaluates how well the Proposer understands and proposes to address the subsurface investigation, foundation design and construction, settlement, earth stability, and monitoring aspects of the Project;
- F) Roadway Design Concepts — evaluates how well the Proposer understands the design and construction challenges of the roadway, traffic, shared-use path, property utilization, toll plaza, ITS and electronic toll collection, drainage and utilities for the Project and the interaction and coordination required for the toll plaza and associated toll system; and
- G) NYSTA Operations and Security – evaluates how well the Proposer utilizes the available right-of-way, understands, integrates and plans for continued operation of NYSTA facilities as well as traffic operations, maintenance activities and security of the existing Governor Malcolm Wilson Tappan Zee Bridge and the new Crossing.

The technical evaluation subfactors denoted A, B and C in the above list are of equal importance to each other, and are of more importance than subfactors D, E, F and G. The subfactors D, E, F and G are of equal importance to each other.

See ITP Appendix B Section B1.0 for additional detail regarding this factor and the specific information to be submitted for evaluation of this factor.

#### **5.1.2.2. Management Approach**

Evaluates the Proposer’s understanding, approach, capabilities, commitments, and organization with respect to scheduling and completion of the Project on time and on budget, and the management of the Project, with emphasis on quality, design, and construction.

**Objective:** A design-build organization that is designed with clear lines of responsibility and well defined roles that respond to the Project and the Agencies; that includes integrated specialty subcontractors and subconsultants; that embraces partnering throughout; that contains the empowerment of all levels of the organization to make decisions in coordination with their counterparts at the Agencies and, if need be, a system to elevate issues to ensure rapid decisions; that encourages and facilitates quality through a well-defined and executed quality plans for design and construction; that has a disciplined strategy for design, design quality and design review; that likewise has a comprehensive strategy for construction management, logistics, hauling, access, construction sequencing, minimizing public disruptions, safety, and on-the-job training. Additionally, a well-coordinated network schedule that will reflect the integration of design and construction activities, fast-tracking, construction sequencing, and a short time for completion.

The technical evaluation subfactors for the management approach factor are as follows:

- A) Schedule — evaluates the integrated scheduling of design and construction and the hauling, access, work traffic zone protection and staging of construction including work relating to the toll plaza required to achieve Project completion within the proposed Contract Deadlines and to minimize disruption to the environment and the public;
- B) Organization and General Management — evaluates how well the Proposer is organized for quality, safety, design and construction to achieve the Project’s goals;

- C) Design Management — evaluates how well the Proposer understands and is organized for the integration of design and construction, design Quality Control, and design Quality Assurance and the Authority's design Oversight for the Project; and
- D) Construction Management — evaluates how well the Proposer understands and is organized to manage construction Quality Control and Quality Assurance and the necessary tools required to provide seamless interaction between the Agencies' construction Oversight for the construction of a quality Project along a constrained, environmentally sensitive site, addressing needs for public outreach, on-the-job training, and empowered problem solving.

The technical evaluation subfactors denoted A, B, C and D in the above list are of equal importance to each other.

See ITP Appendix B2.0 for additional detail regarding this factor and the specific information to be submitted for the evaluation of this factor.

### **5.1.2.3. Key Personnel and Experience**

Evaluates the Proposer's Key Personnel and experience, any changes in these since the Proposer submitted its SOQ.

**Objective:** The scope of the Project requires a highly qualified and integrated team of firms and technical specialists with expertise in and a record of producing quality work, including technical project management and technical delivery. It also demands experience in delivering large, preferably design-build, quality projects, on or ahead of schedule and/or budget, with environmental and public sensitivity.

The technical evaluation subfactors for the Proposer's Key Personnel and experience factor are as follows:

- A) Key Personnel - evaluates the integration and experience of the Proposer's proposed personnel, including Key Personnel and all staff for whom resumes are submitted in the Proposal and evaluates the proposed technical and management team structures around the Key Personnel. Evaluation of this subfactor will consider the SOQ rating relevant to this subfactor as well as changes in Key Personnel and other relevant information submitted in the Proposal.
- B) Experience of the Firms – evaluates the qualifications and experience of the Proposer and its team members including specific experience of the Major Participants relevant to the size, complexity and composition of the Proposer's proposed design and the Proposer's proposed means and methods of construction, including the relevant experience of each Major Participant in design-build, environmental permitting and quality compliance, highway and bridge structures, reconstruction, innovative designs, complex structures, methods and materials, construction over water, and construction in environmentally-sensitive areas. Evaluation of this subfactor will consider the SOQ rating relevant to this subfactor as well as any updated information regarding the qualifications and experience of the Proposer and its team members submitted in the Proposal.

- C) Past Performance – evaluates the demonstrated record performance of each Major Participant in the period from submission of SOQs to the Proposal Due Date, including: completion schedule; quality of work product including construction and/or design; completion within budget; claims history (including number of claims submitted that were ultimately disallowed or significantly reduced, number of disputes submitted to formal dispute resolution and disposition of such actions, claims brought against the firm under the false claims act); record of terminations for cause and defaults; disciplinary action, including suspension; safety record; client references; and awards, citations and commendations.

The technical evaluation subfactor denoted A in the above list is of more importance than subfactors B and C.

See ITP Appendix B3.0 for additional detail regarding this factor and the specific information to be submitted as part of the Proposal.

#### **5.1.2.4. Environmental Compliance**

Evaluates the Proposer's understanding, approach, capabilities, and commitments with respect to the environmental needs of the Project, and evaluates the creativity and rigor of the Proposer's measures and approaches to avoid, minimize or mitigate environmental impacts, including the Project's Environmental Performance Commitments, mitigation and monitoring requirements made in the DEIS, terms and conditions of Environmental Approvals (see Contract Documents, Part 3 Project Requirement 3 - Environmental Compliance), and all applicable environmental laws.

**Objective:** Understanding and commitment to the environmental sensitivity of the Project, to include: successful and timely performance of all environmental requirements, including but not limited to Environmental Performance Commitments; requirements and terms of existing and anticipated Environmental Approvals, and monitoring requirements; design expertise and solutions that respond to environmental concerns; the provision of quality environmental personnel and specialty subcontractors; real time compliance and stewardship during construction throughout the development and exceptional execution of plans for environmental compliance, including but not limited to compliance with water quality, ecological resources, noise and vibration, air quality, energy, stormwater management and erosion and sediment control requirements; and teamwork with the Agencies and regulatory agencies in the prevention of and the solutions for environmental challenges.

See ITP Appendix B4.0 for details regarding this factor and the specific information to be submitted as part of the Proposal. The Proposer's Initial Environmental Compliance Plan will be evaluated for this factor.

#### **5.1.2.5. Public Outreach and Coordination with Stakeholders**

Evaluates the Proposer's understanding, capability, approach, and commitments to providing support to the Agencies in the implementation of their Tappan Zee Hudson River Crossing Project Public Involvement Plan (PIP; see Part 3 Project Requirement 8 – Public Involvement). The PIP is intended to engage public and agency participants in a constructive exchange of views and information on aspects of the Project.

**Objective:** Quality planning and execution of support to the Agencies in community relations, public information, and community outreach.

See ITP Appendix B5.0 for additional detail regarding this factor and the specific information to be submitted as part of the Proposal. The Proposer's Initial PIP Support Plan will be evaluated for this factor.

### **5.1.3 Price**

The Proposer shall submit its Price Proposal for the Project in accordance with ITP Appendix C. Prices shall be rounded to the nearest dollar with no cents columns. Refer to Part 2, DB §109 for information regarding payment procedures that apply following Contract award.

The net present value as calculated using the maximum cash flow curve (Form PPS-P) shall be used as a component element in the determination of the best value Proposal.

The Price Proposal shall be evaluated to assess whether: (i) it is significantly unbalanced relative to the scope of the Work; and (ii) it contains inaccurate, incomplete or unreasonable prices on Form SP (Schedule of Prices; see ITP Appendix D). A Price Proposal shall be considered to be significantly unbalanced if it is unreasonably front-loaded or the amounts shown in Form SP do not reflect reasonable actual costs plus a reasonable proportionate share of the Proposer's anticipated profit, overhead costs, and other indirect costs that are anticipated for the performance of the Work.

Two versions of Form PPS-P are provided in ITP Appendix D: Form PPS-P-A (HARS Alternative) and Form PPS-P-B (Non-HARS Alternative). The Proposer may elect to provide pricing only on Form PPS-P-B, in which event the Proposer shall submit Form PPS-P-A in its Proposal with a note stating that Form PPS-P-B shall be considered as providing pricing for the HARS Alternative. See ITP Appendix C, Section C2.2.2.

Each Price Proposal shall also specify the total cost of the Work that will be performed according to the RFP (the "Proposal Price") through the methods required on Forms PPS-P and SP, for each of the HARS Alternative and the Non-HARS Alternative. Any reference in the ITP to Proposal Price includes both the HARS Alternative and the Non-HARS Alternative, unless the context otherwise requires. The HARS Alternative Proposal Price may be based on an assumption that dredging materials from demolition will be disposed of at the HARS ocean disposal site as provided in ITP Section 1.15.

If the Authority obtains the necessary Section 103 permit to dispose of dredged material at the HARS, the HARS Alternative pricing information will be the basis upon which the Price Proposal will be evaluated, unless the Proposer has indicated in its Proposal that only Form PPS-P-B should be evaluated. If the Authority does not obtain the necessary Section 103 permit, the Non-HARS Alternative pricing information will be the basis upon which all Price Proposals will be evaluated. If selection is based on the Non-HARS Alternative, and the HARS permit is obtained by the Authority between the date of opening of the Price Proposal and the date of Contract award, the Authority will not reconsider its selection decision.

If the Contract is awarded to the Proposer:

- A) if the Proposals were evaluated based on Form PPS-P-A, or if the Authority obtains the HARS Permit prior to the date of award and elects, in its sole discretion, to include the HARS Alternative pricing in the Contract, then the HARS Alternative Proposal Price shall be the Proposal Price, Form PPS-P-A

shall be incorporated into the Contract as Form PPS-C and the HARS Alternative provisions shall be included in the Contract Documents; and

- B) if Proposals were evaluated based on Form PPS-B, then the Non-HARS Alternative Proposal Price shall be the Proposal Price, Form PPS-P-B shall be incorporated into the Contract as Form PPS-C, and the Non-HARS Alternative provisions shall be included in the Contract Documents, unless the Authority has exercised its right, as described above, to include the HARS Alternative pricing in the Contract.

#### **5.1.4 Buy America Provision**

The Proposer shall provide a “Buy America” certification on Form BAC (ITP Appendix D).

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

### **5.2 Evaluation Guidelines**

#### **5.2.1 Technical Evaluation Factors**

The technical evaluation factors, subfactors, and requirements identified in ITP Section 5.1.2 (not the “pass-fail” factors) will be evaluated in accordance with the guidelines provided in this ITP Section 5.2.1.

The technical evaluation factors and the overall Technical Proposal will be rated by an adjectival (qualitative/descriptive) method. The following adjectival ratings shall be used in evaluation of each subfactor, technical evaluation factor and the overall technical rating of the Proposal:

**EXCEPTIONAL:** The Proposer has demonstrated an approach that is considered to significantly exceed stated objectives/requirements in a way that is beneficial to the Agencies. This rating indicates a consistently outstanding level of quality, with little or no risk that this Proposer would fail to meet the requirements of the solicitation. There are essentially no weaknesses (as such term is defined below).

**GOOD:** The Proposer has demonstrated an approach that is considered to exceed stated objectives/ requirements. This rating indicates a generally better than acceptable quality, with little risk that this Proposer would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor.

**ACCEPTABLE:** The Proposer has demonstrated an approach that is considered to meet the stated objectives/requirements. This rating indicates an acceptable level of quality. The Proposal demonstrates a reasonable probability of success. Weaknesses, if any, are very minor or not material or can be addressed readily.

**UNACCEPTABLE:** The Proposal does not meet any of the rating standards listed above and/or is non-responsive.

In assigning ratings the Agencies may assign “+” or “-” (such as, “Exceptional -”, “Good +”, and “Acceptable +”) to the ratings to better differentiate within a rating in order to more clearly differentiate between the technical evaluation factors and the overall Proposals.

The term “weakness,” as used herein, means any 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. The term “deficiency” means a material failure of a proposal to meet an RFP requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

Certain technical evaluation factors include subfactors (see ITP Section 5.1.2). Each subfactor will be assigned a consensus rating, and all subfactors under a technical evaluation factor will be combined through consensus, taking into account the relative importance of each subfactor (see ITP Sections 5.1.2.1 through 5.1.2.5), to arrive at an overall rating for that factor. Technical evaluation factors without subfactors will also be assigned a consensus rating. The ratings of all the technical evaluation factors will then be combined by consensus, taking into account the relative importance of the evaluation factors (see ITP Section 5.1.2), to arrive at the overall rating for the Technical Proposal.

### **5.2.2 Communications**

The Agencies may engage in communications with the Proposers after receipt of Proposals, allowing Proposers to provide clarifications to their Proposals as permitted by 23 CFR Part 636 or otherwise to address issues that might prevent the Proposal from being placed in the competitive range if the Agencies elect to proceed with discussions and a request for revised Proposals. This process will be initiated by delivery of a written request from the Agencies 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 timely received, the Proposer’s ratings may be adversely affected and/or the Proposal may be declared unacceptable.

### **5.2.3 Administrative Reconsideration Concerning DBE Good Faith Efforts**

Evaluation of good faith efforts will be conducted pursuant to 49 CFR Part 26. See Contract Documents, Part 2 §102-8.6 for information regarding types of actions which the Authority will consider as part of the Design-Builder’s good faith efforts to achieve the DBE goal.

If the Agencies determine that any Proposer has failed to undertake good faith efforts during the Proposal period to obtain DBE participation, or that the efforts to achieve the DBE goal set forth in the DBE Plan do not meet the DBE good faith effort requirements, the Agencies will, before making the best value determination, provide the Proposer an opportunity for administrative reconsideration by an official who did not take part in the original good faith efforts determination. As part of this reconsideration, the Proposer shall have the opportunity to provide written documentation or argument and to meet in person with the Agencies’ reconsideration official concerning the issue of whether it has met the good faith efforts requirements. The Agencies will send the Proposer a written decision on reconsideration, explaining the basis for finding that the Proposer did or did not meet the good faith efforts requirements.

### **5.3 Interviews/Presentations**

The Agencies may meet with and receive presentations and conduct interviews with Proposers after receipt of Proposals.



#### **5.4 Proposal Revisions**

The Agencies do not currently intend to request Proposal revisions, but reserve the right to establish a competitive range, hold discussions with Proposers in the competitive range and request revisions to Proposals when in the best interest of the State and the Agencies.

All terms and conditions of this ITP applicable to Proposals shall also be applicable to Proposal revisions except as otherwise specified in the request for Proposal revisions.



## **6.0 SELECTION FOR AWARD; POST-SELECTION AND PRE-AWARD ACTIONS**

### **6.1 No Obligation to Award**

The Agencies shall be under no obligation to award the Contract to the Proposer submitting the lowest priced Proposal or to award the Contract at all. (See also ITP Section 8.2.)

### **6.2 Selection of Proposer; Contract Award and Delivery of Documents**

#### **6.2.1 Selection; Delivery of Initial Documents**

Unless all Proposals are rejected or this procurement is canceled, the Agencies shall identify the Proposal offering the best value to the State and the Agencies and notify the successful Proposer in writing that it has been selected for limited negotiations or for award without negotiations. In order to be eligible for selection, the Proposal must be submitted by a responsible Proposer and must be responsive to the RFP requirements. The best value determination shall be made based on evaluation of the technical and price factors discussed in ITP Section 5.

Within 10 days after the selected Proposer is notified in writing that it has been selected, the Proposer shall:

- A) Notify the Agencies 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 Agencies;
- B) Provide the Agencies, in writing, the Proposer's Federal Internal Revenue Service Employer Identification Number; and
- C) Provide draft opinions of counsel for review and comment by the Agencies, including all opinions set forth in Form OC.
- D) Provide a complete DBE utilization package meeting the requirements of Part 2, DB §§102-8 and 108-1.3.4.

If the Agencies, following review of any of the items listed in (A) through (D) above, determine that said item(s) fails to comply with applicable requirements, the Agencies shall so notify the selected Proposer in writing, and the selected Proposer shall have seven work days to carry out the corrective action(s) described in the notification.

Following selection of the successful Proposer, the ATCs that were pre-approved by the Authority and incorporated in the Proposal by the selected Proposer will be included in the Contract Documents. If the Authority responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Contract Documents. The Contract Documents will be conformed after selection, but prior to execution of the DB Agreement, to reflect the ATCs, including any Authority conditions thereto. Notwithstanding anything to the contrary herein, if Design-Builder does not comply with one or more Authority conditions of pre-approval for an ATC or Design-Builder fails to obtain a required third party approval for an ATC, Design-Builder will be required to comply with the original requirements of the RFP without any increase in the Contract Price or extension of the Contract Deadlines

### **6.2.2 Limited Negotiations**

If negotiations occur, they will be limited to addressing changes in circumstances (such as requirements of the final NEPA approval or changes in requirements associated with the Authority Utility Agreements), clarification of any remaining issues regarding scope, schedule or other information provided by the selected Proposer, incorporation of any Work Product of other Proposers as provided below, and any other matters determined appropriate by the Agencies for negotiation, as permitted by 23 CFR Section 636.513. Any decision to commence limited negotiations is at the Agencies' sole discretion. By submitting its Proposal, each Proposer commits to enter into the Contract Documents included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of Contract Documents indicates is required from the Proposal. In the event the Agencies elect to commence negotiations with the selected Proposer, such Proposer will be deemed to have failed to engage in good faith negotiations with the Agencies and shall forfeit its Proposal Bond if it fails to attend and actively participate in reasonably scheduled negotiation meetings with the Agencies or insists upon terms or conditions for any documents to be negotiated or provided by the Design-Builder hereunder that are inconsistent with the RFP Documents.

Prior to execution of the Contract, Work Product (as defined in the Stipend Agreement) of unsuccessful Proposers that submitted a Stipend Agreement may, in the Authority's sole discretion, be presented to the selected Proposer for possible incorporation into the Contract Documents during any limited negotiation of the final terms of the Contract under this Section 6.2.2.

### **6.2.3 Delivery of Documents by Selected Proposer**

Following selection and, if applicable, successful conclusion of negotiations with the selected Proposer, the Agencies will provide execution sets of the DB Agreement (together with the other Contract Documents, in final form) to the selected Proposer. Within 10 days of receipt of said documents, the selected Proposer shall deliver to the Authority the following:

- A) The executed DB Agreement together with evidence (if not previously provided) as to the authority, power, and capacity of said individuals to bind the Proposer to the Contract. If the selected Proposer is a joint venture, the DB Agreement must be executed by all joint venture members;
- B) Executed letter of assent to Project Labor Agreement;
- C) Required Payment Bond and Performance Bond (Form PAB and Form PEB; ITP Appendix D);
- D) Insurance certificates in prescribed forms (see DB Agreement, Article 12) ;
- E) Executed guaranties in the form of Form G (if applicable) – see ITP Appendix D;
- F) Executed opinions of counsel, which counsel shall be approved by the Agencies (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the formation/organization of the entity for which the opinion is rendered (i.e., Design-Builder, joint venture member, etc.) and the qualification to do business in New York and the enforceability opinion shall be provided by an attorney licensed in the State of New York), in substantially the form attached hereto as Form OC (with such changes as agreed to by the Agencies in their sole discretion); provided, however, that the organization/ authorization/ execution opinion for an entity formed or organized under the

laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware; and

- G) Any other documents or requirements reasonably requested by the Agencies in connection with the finalization and execution of the Contract.

If the Agencies, following review of any of the items listed in (A) through (G) above, determine that said item fails to comply with applicable requirements, the Agencies shall so notify the selected Proposer in writing, and the selected Proposer shall have the time specified in the notification to carry out the corrective action(s) described therein.

Failure by the selected Proposer to comply with any of the above requirements is a default and may result in forfeiture of the Proposal Bond.

#### **6.2.4 Execution, Delivery and Award**

The Authority will execute the Contract and submit it to the New York State Office of the Attorney General and Office of the State Comptroller only after: (1) successful completion of negotiations (if held); (2) concurrence in award by FHWA; (3) receipt by the Authority of all of the documents required to be provided prior to execution of the DB Agreement, as set forth in ITP Sections 6.2.2 and 6.2.3, in form and substance satisfactory to the Agencies; and (4) authorization by the Authority's Board to execute the Contract.

The executed Contract will be delivered to the Design-Builder only after it is approved by the New York State Office of the Attorney General and Office of the State Comptroller.

If the selected Proposer fails to execute and deliver the DB Agreement or any other document specified above within the time periods identified above, award of the Contract may be made to the Proposer whose Proposal provided the next best value to the State and the Agencies, taking into consideration the technical and price factors identified above, or the Work may be re-advertised and completed under a different contract, or otherwise, as the Agencies may decide.

#### **6.2.5 Failure to Award**

The selected Proposer shall have the right to withdraw the Proposal without penalty if the Authority fails to award the Contract to the Proposer on or before the later of: (i) 45 days following receipt from the successful Proposer of the signed DB Agreement, Payment and Performance Bonds and other required documents; and (ii) 180 days following the Proposal Due Date.

#### **6.3 Payment for Work Product (Stipend)**

By submitting a Proposal in response to the RFP, the Proposer acknowledges that the Agencies reserve the right to use any technical concepts included in its Proposal or submitted by the Proposer for review in accordance with the RFP, including any ATCs, subject only to the Authority's obligation to pay a stipend as specified below. In consideration for such payment, the Agencies may, at their risk, use such technical concepts in connection with any Contract awarded for the Project as well as in subsequent procurements for the Project or other projects, and the Proposer waives all claims against the Agencies in connection with the procurement of the Project.

A stipend of up to \$2.5 million will be payable to each Proposer, subject to and pursuant to the terms and conditions of an agreement substantially in the form attached as ITP Appendix D, Form SA (Stipend Agreement), which is subject to approval by the Office of the New York State Comptroller. If a Proposer wishes to receive a stipend, it shall execute and deliver to the Authority three originally executed copies of the Stipend Agreement by the date set forth in ITP

Section 1.6.1. The Authority will return to the Proposer one fully executed original once it has been approved by the New York State Office of the Attorney General and the Office of the State Comptroller. If the Proposer wishes to receive payment under the Stipend Agreement, it shall submit its invoice and supporting documentation to the Agencies' Designated Representative for review within three business days following the Proposal Due Date. Payment of the stipend based on invoiced amounts that are approved by the Authority will be made as specified in the Stipend Agreement, subject to the terms and conditions set forth therein.

The Stipend Agreement also provides that, if the procurement is cancelled prior to the Proposal Due Date, the Authority may, in its sole discretion, elect to pay an amount to a Proposer that the Authority deems, in its sole discretion, to be appropriate consideration for work product completed as of the cancellation date, provided that the Proposer attends an interview with the Agencies, delivers to the Agencies all such work product and otherwise complies with the terms and conditions of the Stipend Agreement.

A stipend may also be paid to a Proposer not meeting all of the conditions specified in the Stipend Agreement, provided that any such payment, and the amount thereof, shall be in the sole discretion of the Authority and shall be subject to approval by the Authority's Board and the Office of the New York State Comptroller. If a Proposer wishes to apply for payment of a stipend under this paragraph, it shall so notify the Authority within 10 days of its receipt of notification that it was not entitled to such payment. The Agencies reserve the right to audit the costs incurred by the Proposer in preparing its Technical Proposal to assist in its determination of the appropriate stipend amount, if any. Should the Agencies elect to audit, the auditors shall have access to all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all costs and expenses of whatever nature claimed to have been incurred. Failure of the Proposer or its team members to maintain and retain sufficient records to allow the auditors to verify all or a portion of the claim or to permit the auditors access to the books and records of Proposer and its team members shall constitute a waiver of any payment of a stipend.

Each Proposer shall bear the cost of preparing the Proposal and any costs incurred at any time before or during the Proposal process, including costs incurred for any interviews, except for any amounts paid in accordance with this ITP Section 6.3.

#### **6.4 Debriefing of Unsuccessful Proposers**

Unsuccessful Proposers shall be debriefed upon their written request submitted to the Agencies' Designated Representative within a reasonable time. Debriefings shall be provided at the earliest feasible time after a Proposal is selected for award. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and Contract award.

Debriefing shall:

- A) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;
- B) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and
- C) Provide information on areas in which the unsuccessful Proposer's Technical Proposal had weaknesses or deficiencies.

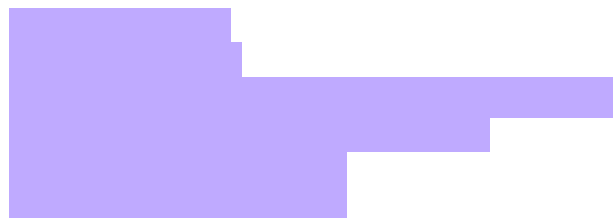
Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the Selection Committee, but may include a summary of the rationale for the selection decision and Contract award.

## **7.0 PROTESTS**

This ITP Section 7.0 sets forth the exclusive protest remedies available with respect to this RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision rendered on any protest, as provided herein, shall be final and conclusive. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFP, it shall indemnify, defend, and hold the Agencies and their respective directors, officers, officials, employees, agents, representatives, and consultants harmless from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of such Proposer actions. The submission of a Proposal shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

### **7.1 Written Protests Only**

All protests must be in writing, including pre-award, award, and post-award phases of the procurement process. Protests shall be submitted to the Protest Official designated below:



with a copy also sent to the Agencies' Designated Representative at the address identified in ITP Section 2.2.1.

Any protest not set forth in writing within the time limits specified in these procedures is null and void and shall not be considered. Protests regarding this RFP shall be filed only after the Proposer has informally discussed the nature and basis of the protest with the Agencies in an effort to remove the grounds for protest.

### **7.2 Protest Contents**

- A) All protests must include:
  - 1) The name and address of the Proposer;
  - 2) The Contract number;
  - 3) A detailed statement of the nature of the protest and the grounds on which the protest is made;
  - 4) All factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements must be provided under penalty of perjury; and
  - 5) A summary of the remedy being requested.
- B) The protestor must include information demonstrating a violation of a specific law or regulation.
- C) The Agencies will not be obligated to postpone selection of the best value Proposal or award of the Contract in order to allow a protestor an opportunity to correct a deficient protest or appeal, unless otherwise required by law or regulation.

- D) If the protest is denied, the protestor shall be liable for the Agencies' costs reasonably incurred in any action to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by the Agencies as a consequence of the protest. If the protest is granted, the Agencies shall not be liable for payment of the protestor's costs, including, but not limited to, legal and consultant fees and costs.
- E) Any protest regarding the RFQ or the Shortlist decision shall be governed by Sections 5.3 and 5.4, respectively, of the RFQ. Notwithstanding ITP Section 7.3, no protest under this ITP Section 7 may include grounds for protest that could have been raised under Section 5.3 or 5.4 of the RFQ.

### **7.3 Time for Filing**

- A) A protest based on alleged improprieties in the solicitation, which are apparent before the Proposal Due Date, shall be filed before said Proposal Due Date. A protest based on alleged improprieties arising from modifications to the original solicitation shall be filed not later than the next closing date for receipt of proposals following the modification.
- B) Any other protest shall be filed no later than seven days after the basis for the protest is known or should have been known, whichever is earlier.

### **7.4 Protest Decision**

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

### **7.5 Right of Appeal**

- A) In the event that a protestor receives an unfavorable decision from the Protest Official to its protest, the protestor shall have the right to appeal the decision of the Protest Official by submitting a written appeal to the Executive Director within seven days after receipt of the decision of the Protest Official, with a copy sent to the Agencies' Designated Representative. The Agencies will appoint a Protest Committee of at least three members to review the protest and the decision of the Protest Official;
- B) The Protest Committee will notify the protester in writing in a prompt manner of its decision regarding the protest and the appeal. If the protest and appeal were filed prior to award, the Agencies will not announce the award for 7 calendar days after the decision of the Committee, unless the conditions in ITP Section 7.3 are determined to exist; and
- C) If the matter is not resolved after the appeal, the protestor may continue the protest only by appeal to judicial authority.

### **7.6 Irrevocability of Proposals Pending Resolution of Protest**

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



## **8.0 AGENCIES' RIGHTS AND DISCLAIMERS**

### **8.1 Agencies' Rights**

The Agencies may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFP. Without limiting any other right expressly reserved by the Agencies under this ITP, the Agencies reserve the right, in their 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, including after the Proposal Due Date and including changes to conform the RFP to applicable legal requirements and address any changes in the scope of the Project arising from the environmental analysis process;
- E) Modify the RFP process (with appropriate notice to Proposers);
- F) Appoint the Selection Official(s), Selection Committee and evaluation teams to review Proposals;
- G) Seek the assistance of outside technical experts and consultants in Proposal evaluation;
- H) Approve or disapprove the use of particular Subcontractors and/or substitutions and/or changes in a Proposer's organization;
- I) 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 Agencies will post any such revisions or modifications on the Procurement Website. The Agencies may extend the Proposal Due Date if such changes are deemed by the Agencies, in their sole discretion, to be material and substantive;
- J) Hold meetings and communicate with the Proposers responding to this RFP to seek an improved understanding and evaluation of the Proposals. If meetings are held, all Proposers that submitted responsive Proposals shall be afforded an opportunity to participate in a meeting;
- K) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;
- L) Offer a Proposer the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to identify a guarantor and provide financial information for such entity
- M) Waive weaknesses, informalities, and minor irregularities in Proposals, and seek and receive clarifications to a Proposal;
- N) Establish a competitive range, hold discussions and/or request revisions to Proposals;

- O) Retain ownership of all materials submitted in hard-copy and/or electronic format; and/or
- P) Refuse to consider a Proposal, once submitted, or reject a Proposal, if such refusal or rejection is based upon, but not limited to, the following:
  - 1) Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with the Department, the Authority or other State agency;
  - 2) Default on the part of a Principal Participant or Designer under previous contracts with the Department, Authority or other State agency;
  - 3) Unsatisfactory performance of previous work by the Proposer, a Principal Participant, and/or Designer under previous contracts with the Department, Authority or other State agency;
  - 4) Issuance of a notice of debarment or suspension to the Proposer, a Principal Participant, and/or Designer;
  - 5) Submittal by the Proposer of more than one Proposal in response to this RFP under the Proposer's own name or under a different name;
  - 6) Existence of an Organizational Conflict of Interest, or evidence of collusion between a Proposer (or any Principal Participant or Designer) and other Proposer(s) (or Principal Participants or Designer) in the preparation of a proposal or bid for any Department or Authority design or construction contract;
  - 7) Uncompleted work or default on a contract in another jurisdiction for which the Proposer or a Principal Participant is responsible, which in the judgment of the Agencies 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 for each Major Participant on file with the Department, the Authority or other agency;
  - 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 Disclaimers**

This RFP does not commit the Agencies to enter into a Contract, nor does it obligate the Agencies 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, except for any costs paid in accordance with ITP Section 6.3.

The execution and performance of a Contract pursuant to this RFP is contingent upon authorization by the Authority's Board and subject to approval by the State of New York Office of the Attorney General and Comptroller of the State of New York.

In no event shall the Agencies 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 Agencies, has been fully executed and delivered to the Design-Builder as provided herein.

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

## **APPENDIX A**

### **VOLUME 1: ADMINISTRATIVE SUBMITTAL REQUIREMENTS**

#### **A1.0 GENERAL INSTRUCTIONS**

This ITP Appendix A provides the general instructions and establishes the content and formatting requirements for the administrative submittal (which includes the Proposal narrative, Proposer's offer and various administrative submittal forms) which, unless noted otherwise, shall be included in Volume 1 of the Proposal.

The Proposer shall submit the administrative submittal required pursuant to this ITP Appendix A, organized, separated and labeled in accordance with the checklist in Table A.

The administrative submittals shall be limited to the page limitations (if any) specified for that submittal in this ITP Appendix A. All the forms referenced in this ITP Appendix A are provided in ITP Appendix D unless otherwise noted. Each sheet shall be 8.5" by 11" and printed double-sided, unless otherwise stated below.

Volume 1 shall consist of the following major elements:

- a. Project narrative;
- b. Proposer's offer,
- c. Information, certifications and documents (including required forms), and
- d. DBE/EEO information.

#### **A2.0 CONTENTS OF VOLUME 1**

##### **A2.1 Project Narrative**

Each Proposal shall contain an Project narrative that meets the requirements set forth in this ITP Appendix A, Section A2.1. The Project narrative shall be written using non-technical language and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the Proposal and the Proposer's ability to satisfy the Project's financial and technical requirements. It shall not include any information that might lead the reader to determine the Proposal Price. The Project narrative shall, at a minimum, include the following items:

- A) Summary of changes in the Proposer's organization (if any) including changes to the Major Participants, Equity Participants, Subcontractors or Key Personnel since submission of the SOQ.
- B) Overview of the Proposer's design and construction approach, technical innovations, key risks anticipated and the mitigation methods proposed that will result in a world-class project.
- C) Summary of the Proposer's management, decision making and day-to-day operational structure for the Project.

- D) Summary of the Proposer's approaches to fulfilling the expectations of the Project's stakeholders and to working with the Agencies' Project team.
- E) Summary of the Proposer's approach to fulfilling, to the highest possible standards, the environmental requirements set forth in the Contract Documents.
- F) Summary of the Proposer's approach to the labor and job training requirements set forth in the Contract Documents.
- G) Summary of the Proposer's Project schedule, and anticipated milestones, including a statement of the proposed Contract Deadlines for removal of traffic from the existing Tappan Zee Bridge, moving traffic to the final configuration (Crossing Substantial Completion) and completion of physical Work (Physical Completion) stated as number of days from the effective date of the NTP.
- H) Summary statement outlining the specific areas where the Proposer has shown enhanced quality in long-term performance, durability and maintainability through the information submitted with its Proposal, indicating the specific section of Volume 2 of the Proposal where the information is shown.

Do not include any information regarding price in the Project narrative.

The Project narrative shall be suitable for presentation to, and review by, the Executive Director. It may be released to the media after selection, hence sensitive or confidential information should not be discussed in the Project narrative.

## **A2.2 Proposer's Offer**

Provide a firm offer to the Agencies valid for the period stated in ITP Section 4.5.2, using the Form of Proposal (Form FP, ITP Appendix D). The offer shall be executed by the Proposer or by its legally authorized representative. If the Proposer is a joint venture or a partnership, the offer shall be executed by all joint venture members or all general partners, as applicable.

Complete and submit the Appendix to Form of Proposal (Form FP(A), ITP Appendix D).

Upon Contract award, those portions of the selected Proposer's administrative submittal identified by asterisks in Table A to this ITP Appendix A , will be incorporated into the Contract at Part 9.

## **A2.3 Proposer Information, Certifications and Documents**

### **A2.3.1 Proposer Information**

Provide a detailed description of the legal structure of the entity submitting the Proposal (*i.e.* the Proposer), include organizational charts reflecting the roles and responsibilities of the Principal Participants and Subcontractors (design, construction and suppliers) named on Form NS and provide licensing information for the Proposer and each Principal Participant.

### **A2.3.2 Changes in Proposer's Organization**

Provide a copy of any letter issued by the Agencies to approve any change to the Proposer's organization as represented in the Proposer's SOQ. Attached to each letter, the Proposer shall provide a written description (two pages maximum) of the change(s) approved in the letter.

See ITP Section 2.7.

### **A2.3.3 Forms and Certificates**

Provide the following:

- A) Form AR, *Acknowledgement of Receipt*;
- B) Form C, *Proposer's Representative*;
- C) Form NS, *Named Subcontractors and Suppliers*, listing proposed Subcontractors (including suppliers) as specified therein, and including the percentage of the Proposal Price that represents the anticipated participation of such entities (not the specific dollar value of participation). On Form NS, show all major Subcontractors (i.e. Subcontractors performing Work valued at 5% or more of the proposed Contract Price) or major Suppliers (i.e. suppliers providing products and material valued in excess of 5% of the proposed Contract Price), the Designer and known architectural and engineering subconsultants including any proposed subconsultants involved in QA/QC;
- D) Form KP, *Key Personnel Information*, to communicate any approved changes in the Proposer's proposed roster of Key Personnel, relative to the Proposer's SOQ submission. For each change in its Key Personnel since the SOQ, the Proposer shall include in the Proposal with Form KP a copy the written approval received from the Agencies for such change (see ITP Section 2.7), details of such Key Personnel's role and a 2 page resume of the substitute personnel. If no changes in Key Personnel have been requested since the SOQ, the Proposer shall use Form KP to state that there is no change relative to the SOQ;
- E) Form IS, *Certificate Regarding Ineligible Subcontractors*, for each proposed Subcontractor listed on Form NS;
- F) Form BAC, *Buy America Certificate*;
- G) Form LC, *Lobbying Certificate*;
- H) Form LSI, *Letter of Subcontract Intent*, which shall be separately packaged (see ITP Section A3.0);
- I) 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;
- J) Form IC, *Certificate Regarding Ineligible Contractors*, for the Proposer and each Principal Participant;
- K) Form NC, *Non-Collusion Affidavit*, certifying that the Proposal is not the result of, and has not been influenced by, collusion;
- L) Form SCD, *Substantial Completion Deadlines*, identifying the Contract Deadlines that will be included in Article 4 of the Agreement, consistent with the Initial Baseline Project Schedule; and

- M) Form U, *Organizational Conflicts of Interest Disclosure Statement* (see ITP Section A2.3.4).

#### **A2.3.4 Conflict of Interest Disclosure**

Provide a conflict of interest disclosure statement on Form U (ITP Appendix D) if and as required by ITP Appendix E, identifying and describing any potential Organizational Conflicts of Interest and any relevant facts concerning past, present or currently planned interests that may present an Organizational Conflict of Interest. The conflict of interest disclosure statement shall be signed by the Proposer's Representative.

#### **A2.3.5 Letter of Commitment from Surety**

Provide a letter from one or more surety(ies) licensed to issue bonds in the State, signed by an authorized representative of each surety as evidenced by a current certified power of attorney, indicating that the surety has reviewed the Contract and committing to provide a Performance Bond in the form set forth in Form PEB and a Payment Bond in the form set forth in Form PAB. The commitment letter shall specify the amount of each bond as "the greater of \$1.5 billion or 30% of the proposed Contract Price" or "the greater of \$1.5 billion or 40% of the proposed Contract Price." The letter shall not state the actual dollar amounts of the bonds. The surety's commitment under such letter will expire 180 days following the Proposer Due Date, unless extended by the surety. If multiple surety letters are provided, the Proposal shall identify which surety will be the lead surety. A single letter identifying the Proposer as the principal is acceptable, or alternatively separate surety letters may be provided for each of the Proposer's joint venture members.

Each surety providing such letter shall be (i) rated at least AA-/Aa3 by two nationally recognized rating agencies or at least A-VIII by A.M. Best and Company, (ii) listed on Treasury Department Circular 570, and (iii) on the list of companies approved by the State.

The commitment letter must specifically state that the surety has read the RFP (including the ITP) in determining its willingness to issue the Payment Bond and Performance Bond. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Contract and issuance of the NTP; provided, however, that the surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Contract Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments.

#### **A2.3.6 Letter of Commitment from Guarantor**

If applicable, provide a letter from each Guarantor, stating that the Guarantor is prepared to provide a Guaranty in the form of Form G (ITP Appendix D) if the Contract is awarded to the Proposer, together with appropriate evidence of authorization thereof.

### **A2.4 DBE/EEO Information**

Provide the following forms and other documentation:

- A) Form DBE, *Record of DBE Performance* updating the information submitted in the Proposer's SOQ;
- B) Form EEO, *Equal Employment Opportunity Certification*;



- C) On the Proposer's letterhead, in the format of Form GF, a written summary of the Proposer's good faith efforts to obtain DBE participation (see ITP Appendix D). Supporting evidentiary documentation as required under Note (2) of Form GF (see ITP Appendix D) shall be provided as specified in ITP Section A3.0;
- D) Form LDB, *List of Proposed DBEs* (without pricing information) (see ITP Appendix D);
- E) A DBE Plan documenting how the Proposer will obtain sufficient DBE participation to meet the goal, including information regarding good faith efforts to be undertaken. At a minimum, the plan shall: (a) identify specific, economically-feasible work units of the Project that the Proposer considers appropriate for performance by DBEs, including actual participation levels for each unit included in Form LDB and anticipated participation levels for each unit over the course of the Project; (b) describe the outreach efforts and other steps the Proposer will take to meet the Project's DBE goals; (c) include a system of reports and procedures that will document adjustments and maintenance of the DBE participation schedule, achievement of the Project's DBE goal and compliance with the requirements of applicable Governmental Rules; and (d) include an affirmation regarding the Proposer's intention to use good faith efforts to achieve the Project's DBE participation goal.

## **A2.5 Information To Be Included in Appendices to Volume 1**

### **A2.5.1 Evidence of Authorization**

Provide appropriate evidence that the Form of Proposal (Form FP) has been properly executed or that the representative has bound the Proposer, so that there is a valid Proposal that the Agencies can accept and constitute a binding Contract. Evidence shall include a legal opinion in the format of Form OC (but only including opinions 1 through 4 therein) by in-house or outside counsel with respect to the Proposer, its joint venture members or general partners and the Proposal, as well as the following documents:

- 1) **Corporation.** If the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation.
- 2) **Partnership.** If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner.
- 3) **Joint Venture.** If the Proposer is a joint venture, submit notarized powers of attorney executed by each joint venture or partnership member appointing and designating one or more individuals of the joint venture or partnership to execute the Proposal on behalf of the Proposer, and to act for and bind the Proposer in all matters relating to the Proposal. Submit evidence of authorization of the power of attorney with respect to each joint venture member, certified by an appropriate officer of such joint venture member.
- 4) **Limited Liability Company.** If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information.

### **A2.5.2 Joint and Several Liability Statement**

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

### **A2.5.3 Organizational Documents**

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

### **A2.5.4 Financial Information**

Submit financial statements, reports and other information updating the financial statements and information included in the SOQ (see RFQ Section 4.4.2.2), including financial information for any guarantors as well as the Proposer and Principal Participants or if available provide links to online public records thereof. Credit ratings from major credit rating agencies (Moody's, Fitch Ratings, S&P) shall be provided for the Proposer, Principal Participants and guarantor(s) if any. To the extent not already provided in accordance with Section 2.8, provide information regarding any applicable changes relative to the Proposer's SOQ submission in the financial condition of the Proposer. If no change has occurred and none is pending, the Principal Participants shall provide letters from their chief financial officers or treasurers so certifying.

Information shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization, its role in the Proposer's organization and its North American Industry Classification System (NAICS) Code.

### **A2.5.5 Insurance – Request for Exceptions/Deviations**

If the Proposer wishes to seek the Agencies' approval of exceptions to, or deviations from, insurance requirements under ITP Section 1.12, submit a detailed written request for same, together with all substantiating information and documentation.

### **A2.5.6 Proposal Bond**

Submit a Proposal Bond in the form of Form PB (ITP Appendix D). See ITP Section 4.6.

### **A3.0 FORMAT OF VOLUME 1**

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

**TZHRC DESIGN-BUILD PROPOSAL**

**VOLUME 1 ADMINISTRATIVE SUBMITTAL**

**PROPOSER: ...**

The total number of pages (sides of sheets) that shall be used for the Volume 1 Section 1 shall not exceed 10 pages. No specific page limit applies to the other sections and appendices of Volume 1.

Sections 1 through 4 of Volume 1 plus Appendix A to Volume 1 shall be submitted in a package together.

A single set of supporting evidentiary documentation required under Note (2) of Form GF (see ITP Appendix D) shall be provided, if use of Form GF is required. If Form GF is required, the single set of the supporting documentation shall be supplied alongside the copy of Form GF submitted in the original copy of Volume 1 (see ITP Section 4.3.1(A)). Copies of Form GF shall be supplied with all submitted copies of Volume 1.

Appendix B to Volume 1 (financial information; see ITP Section A2.6.4) shall be submitted in a separately-sealed package labeled with the text "*Tappan Zee Hudson River Crossing Project VOLUME 1 APPENDIX B - FINANCIAL INFORMATION*" plus the name of the Proposer.

Appendix C to Volume 1 (Form LSI; see ITP Section A2.3.3(H)) shall be submitted in a separately-sealed package labeled with the text "*Tappan Zee Hudson River Crossing Project VOLUME 1 APPENDIX C*" plus the name of the Proposer.



**Table A – Format of Volume 1**

Proposal Component	Required Information	ITP Reference
<b>Volume 1, Appendix A</b>	• Evidence of Authorization	A2.5.1
	• Opinion of Counsel with respect to the Proposal	A2.5.1
	• * Joint and Several Liability Statement ( <i>if applicable</i> )	A2.5.2
	• Organizational Documents	A2.5.3
	• Request for Insurance Exceptions/Deviations ( <i>if applicable</i> )	A2.5.5
	• Proposal Bond	A2.5.6
<b>Volume 1, Appendix B</b>	• Updated Financial Information ( <i>separately packaged</i> )	A2.5.4/ A3.0
<b>Volume 1, Appendix C</b>	• * Form LSI, Letter of Subcontract Intent ( <i>separately packaged</i> )	A2.3.3(h)

\* Submittals identified by an asterisk will be incorporated in the Contract at Part 9.

## **APPENDIX B**

### **VOLUME 2: TECHNICAL PROPOSAL SUBMITTAL REQUIREMENTS**

The Proposer shall submit the Volume 2 Technical Proposal information required by this ITP Appendix B, separated, labeled and organized in accordance with the checklist in Table B.

In Appendix A to Volume 2, provide copies of all ATC(s) approved or conditionally approved by the Agencies that are incorporated into the Technical Proposal.

Each sheet shall be 8.5" by 11" and printed double-sided, unless otherwise stated herein. Other than the mandatory use of 11" by 17" sheets explicitly stated herein, the Proposer can optionally use 11" by 17" sheets for the presentation of graphics if the Proposer wishes. For such optional use of 11" by 17" sheets, each 11" by 17" sheet used shall count as two sheets of 8.5" by 11" paper.

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

Upon award, the selected Proposer's Technical Proposal will be incorporated into the Contract at Part 9.

#### **B1.0 DESIGN AND CONSTRUCTION SOLUTIONS SUBMITTAL**

The Technical Proposal shall include a design and construction solutions submittal, which shall include the following three types of document:

- a. **Narrative documents:** The Proposer shall submit narratives as part of the design and construction solutions submittal in Volume 2, which shall: (i) provide an overview of the proposed design, (ii) provide the information requested in ITP Section B1.1 through B1.7; and (iii) describe the key features and any innovative aspects of Proposer's design concept, including a summary of any ATCs approved or conditionally approved by the Agencies.
- b. **Plan documents:** The Proposer shall submit the following plan documents as part of the design and construction solutions submittal in Volume 2 in accordance with ITP Sections B1.1 through B1.5, Section B1.7 and Table B:
  - i. Initial Design Plan
  - ii. Initial Geotechnical Work Plan
  - iii. Initial Corrosion Protection and Maintenance Plan
  - iv. Maximizing the Public Investment Plan
  - v. Initial Demolition and Removal Plan
  - vi. Initial Work Zone Traffic Control Plan
  - vii. Initial Bridge Access Strategy Plan.
- c. **Design plans (drawings):** The Proposer shall submit design plans (drawings) in Appendix B to Volume 2 of the Proposal, which shall be organized in accordance with ITP Sections B1.1, B1.4 and B1.6 and Table B. All plans (drawings) submitted with Proposals shall be printed single-sided on 11" by 17" sheets, and all as-printed text font sizes on plans shall be at least 8 point.

The design and construction solutions submittal shall: represent a level of design sufficient to enable a thorough evaluation of Proposer's design concepts; address all elements of the proposed design; allow for easy transferability into a 3-D virtual design and construction (VDC) format; and be consistent with the requirements of the Contract Documents.

## **B1.1 Construction Approach**

### **B1.1.1 Construction Staging and Facility Staging Narrative and Plans**

The Proposer shall provide plans showing and provide a narrative describing:

- a. Construction staging sequence in plan for the Crossing.
- b. Construction staging sequence of each landing and off-site facilities.
- c. Plans showing Authority facilities affected by construction staging.
- d. Temporary location and layout for Authority facilities.
- e. Final location and layout for Authority facilities.
- f. Schedule of effects on Authority facilities.
- g. List of permits and approvals required for staging areas.

### **B1.1.2 Piling and Dredging Narrative**

The Proposer shall provide a narrative description of the Proposer's approach to all construction activities related to dredging and piling, as follows:

- a. Provide plans showing the extent and arrangement of temporary platforms in the Hudson River. Include details of proposed circulation on and off the platforms and access to the Thruway and local roads.
- b. Provide plans showing the extent, sequence, depth, volume and duration of dredging for construction and demolition. Indicate months and years when dredging is planned to occur.
- c. If the Proposer's proposed dredging scheme does not conform to the dredging scheme and prism of dredging in the Authority's Section 103 dredging permit application (see ITP Section 1.15), then the Proposer's narrative shall include discussion of: (i) potential impacts of on vehicular traffic, river traffic, environmental impacts (favorable and unfavorable) identified in appropriate environmental documents (especially with regard to the impacts and commitments of the DEIS), community impact and safety; (ii) what changes in the EPCs, compliance terms, best management practices and avoidance measures identified in any Environmental Approval would be required; and (iii) whether the Proposer's proposed dredging scheme would require any deviation from the terms and conditions of any anticipated or existing Environmental Approval or new Environmental Approval and, if so, an analysis of the steps and time that would be required to obtain, and the likelihood of success in obtaining, the required approval from the appropriate Governmental Person(s);
- d. Provide narrative on approach to limiting suspended solids and river bed disruption to the levels included in the DEIS. Provide specific narrative on the extent of armor, placement method and integration with dredging activities.



- e. Provide narrative on the planned river equipment including numbers and types of vessels anticipated, size, draft and power output.

#### **B1.1.3 Protection of Facilities Narrative**

The Proposer shall provide a narrative description of the Proposer's approach to protecting facilities, as follows:

- a. Provide a description of the specific means the Proposer intends to use to minimize impacts to existing utilities, maintenance facilities, administrative buildings, bridge structures, private residences and properties, and Metro-North Railroad infrastructure adjacent to or within the Project Limits. This description shall identify how the Proposer intends to mitigate risks of settlement and/or instability of receptors and surrounding ground area due to vibrations and other effects of the Proposer's construction operations.
- b. Provide a narrative to describe the extent of existing condition assessment to be undertaken to establish a baseline against which subsequent monitoring results can be measured.
- c. Describe: anticipated vibration producing activities; the methodology of selecting potential receptors that may be impacted; the methodology for setting threshold limits; and how the type of monitoring necessary is determined.
- d. Describe types of instrumentation equipment that will be used, what each instrument type will monitor, and the format of the monitoring data.
- e. Provide a plan identifying the minimum receptors, what will be monitored and where, and describe the coordination that will be undertaken with the receptor owner(s).
- f. Describe the process to be used to notify workers when a threshold limit has been reached and the protocol and actions that will be implemented to address the threshold limit occurrence situation.
- g. Describe the proposed mitigation plan for addressing any defects that occur as a result of threshold limits being exceeded.

#### **B1.1.4 Utilities Narrative and Plans**

The Proposer shall provide:

- a. conceptual utility relocation plans that tie to the phasing of the construction Work;
- b. identification of any utility relocations on the critical path of the Project schedule; and
- c. a narrative description addressing how utility relocation work will be approached with minimal disruptions to utility operations and other activities on the Project. Identify specific and/or unique design and/or construction methods that will be implemented to minimize the impacts on existing utilities and facilities as a result of construction activities.

#### **B1.1.5 Property Utilization Plans**

The Proposer shall provide plans identifying the temporary and permanent requirements for the construction and sequencing of the Work, including all temporary use access and construction easements and staging areas, as well as the final permanent footprint of the constructed

improvements, defined easements, and access ways. The Proposer shall show on the plans the Limit of Construction that it shall use in Rockland County, within the minimum and maximum Limits of Construction in Rockland County as shown in Contract Documents, Part 6 RFP Plans (Directive Drawings) – Drawing DIR-001.

### **B1.1.6 Initial Demolition and Removal Plan**

The Proposer shall provide an Initial Demolition and Removal Plan that shall include a description of the Proposer's plans for:

- a. Any necessary phasing in the demolition of the existing bridge in relation to construction, including any proposals for salvage.
- b. Any elements to be demolished and removed in staging areas.
- c. A staging plan and specific means that the Proposer intends to use in order to maintain and if necessary replace the existing toll plaza.
- d. A staging plan and specific means that the Proposer intends to use in order to maintain and if necessary replace the existing NYSTA maintenance and operation facilities.

## **B1.2 Service Life of the Crossing**

### **B1.2.1 Service Life Narrative**

The Proposer shall provide a narrative that shall describe the Proposer's approach for the Project's maintenance and durability (*i.e.* sustainability) as follows:

- a. Describe the factors that affect the service life of the Crossing and show how these factors are accommodated in the design as an integrated system.
- b. Provide general procedure for replacement of elements.
- c. Describe the maintenance routines/inspections that will be required after a seismic or extraordinary event and how the design of the Project will accommodate this.
- d. Describe acceptable types of cable material and protection systems for cable stays, if these are used in the Proposer's proposed design.
- e. Describe the design of details, what materials will be used or evaluated, future maintenance tasks or routines and the expected schedule of future maintenance tasks or routines to achieve the required service life.
- f. Provide a life-cycle cost analysis that includes all scheduled maintenance, expected maintenance intervals, and cost in 2012 dollars.

### **B1.2.2 Initial Corrosion Protection and Maintenance Plan**

The Proposer shall submit an Initial Corrosion Protection and Maintenance Plan that describes: (i) how the Proposer's design and construction approach will achieve and/or extend the service life of structures and structural elements; and (ii) how the Proposer's design and construction approach will minimize short-term and long-term maintenance efforts and costs for the completed Project. Proposers should identify elements of the Proposal that will enhance the long-term beneficial use of the Project by the Agencies and the public.

### **B1.3 Maximizing the Public Investment**

The Proposer shall provide a plan, designated the Maximizing the Public Investment Plan, that describes how the Proposer intends to meet the Project goal of maximizing the public investment for potential future loading (see ITP Section 1.4 Item C). The plan shall present concept-level details for strengthening, configuring and dimensioning the Crossing superstructure and substructure elements to accommodate potential future loadings. The plan shall also present descriptions of the Proposer's approach to the design elements including but not limited to:

- a. The Main Span structure and Main Span foundations.
- b. The foundation design, including relevant measures incorporated into the design of piles and pile groups.
- c. All additional structural support included within the foundations and substructures such that these shall accommodate potential future loadings.
- d. Any superstructure design elements (including geometry, spacing and layout) that are intended to facilitate potential future loading. Identify the superstructure components that are designed specifically to accommodate potential future loading and potential future structure associated with potential future loading.
- e. Anchorages and anchorage blocks.
- f. The weight of additional or separate superstructure to accommodate potential future loading (expressed as an equivalent uniform dead load) assumed for design of shared or separate substructure and foundations.

The Proposer shall include in the Maximizing the Public Investment Plan, concepts indicating the range of potential service options that could be accommodated in the future. This shall include:

- g. Discussion of the ability to add future loading with minimal disturbance to existing infrastructure and the Project elements designed and constructed under the Contract, including impacts to the Main Span, Approach Spans, abutments, highways and facilities;
- h. Discussion of widths and access arrangements proposed for emergency and maintenance vehicles serving the potential future loading elements; and
- i. Discussion of a methodology for how the structural elements for the potential future loading would be connected to the Crossing, including possible construction activities.

### **B1.4 Bridge, Structures and Aesthetic Design Concepts**

#### **B1.4.1 Initial Design Plan**

The Proposer shall submit an Initial Design Plan which shall address the following bridge structures:

- a. the Crossing, including approach structures and the Main Span;
- b. temporary access bridge crossing Metro-North Railroad's Hudson Line railroad, if applicable; and
- c. shared-use path grade separated crossings.

The Initial Design Plan shall describe how the Proposer will apply the requirements of Contract Documents Part 3 Project Requirements to bridge structures, while complying with the environmental and permitting requirements and commitments and other Project requirements during the performance of the design and construction Work. At a minimum, the Initial Design Plan shall:

- d. Provide the design criteria for the structures listed above;
- e. Summarize the design parameters, including loads and load factors together with their proposed combinations, combined with the potential future loading;
- f. Verify all studies, analysis methods and testing proposed for determining the effects of earthquake, hydraulic, scour, ice, wind and ship impact loads on the Crossing;
- g. List the proposed materials and their properties; and
- h. Explain the proposed design and verification methods.

#### **B1.4.2 Structures and Architecture Narratives and Drawings**

The Proposer shall provide design plans showing elevation view, plan view, cross section and details as required to convey appropriately the information, with elements appropriately labeled and/or dimensioned, that include the information summarized in the following subsections, along with supporting narratives.

##### **B1.4.2.1 All bridges**

###### **(1) Foundations / Geotechnical**

- a. Provide plans showing the location and type of foundations that will be used at each foundation location. Include the proposed maximum and minimum number and size of foundation elements, the approximate maximum capacity of the proposed foundation elements and the configuration of foundations. Include details of the:
  - (i) unfactored and factored loads at each pile cap;
  - (ii) pile count at each pile cap (pile group);
  - (iii) diameter(s) of piles at each pile group
  - (iv) ultimate pile capacity(ies) of each pile group
  - (v) pile cap size(s).
- b. Describe any geotechnical investigation and testing that will be provided by the Proposer to substantiate its design
- c. Describe the geotechnical borings program, including proposed locations.
- d. Describe the pile load testing program and the locations where each pile load test will be performed.
- e. Describe the design method that will be used to determine foundation capacities.
- f. Describe the geotechnical aspects of the Project site as they relate to the Project and identify critical issues and how these critical issues such as seismic design, settlement and vibration will be addressed. This narrative shall include discussion on the design and construction of foundations, cofferdams, walls, slopes,

dredging, falsework or shorings, at a minimum. Identify areas where ground improvements will be used and the type of ground improvement.

(2) Substructures

- a. For each substructure type, provide plans showing the approximate footprint of the footing, number of columns, column shape and orientation, details of architectural shapes, tapers and finishes.
- b. Include in the plans the approximate dimensions of the substructure cross sections, the section type (e.g. solid or hollow), approximate minimum wall thickness and any unique details.

(3) Seismic

- a. Describe how the seismic criteria will be met for the major or critical elements of each bridge type or type of element. At a minimum, this shall be provided for the foundation, substructure and superstructure components of each bridge type.
- b. Provide plans showing details of any elements that will be used to meet seismic requirements including maximum / minimum sizes, shapes, details and architectural appearance.
- c. For bridges that require non-linear time-history analysis, confirm the software to be used for the analyses. Outline the design and verification methods to be used in the analysis, together with a summary of the initial model.
- d. Describe any testing that will be necessary for seismic devices including which elements will be tested, how testing will be conducted, the location of the facility testing will be conducted at and the plan in the event a test is not successful.

(4) Superstructures

- a. Provide drawings showing the cross section of the Crossing superstructure including locations and dimensions of lanes, barriers, shoulders, path(s), railings, noise barriers, fences, primary structural elements, deck joints and conduit locations.
- b. Provide plans showing the elevation, cross section and approximate size dimensions of the primary structural elements for each structure including the deck, floor beams, edge girders, segmental girders, stringers, stay cables and bearings. These can be included in other views such as the overall bridge cross section or elevation as long as the scale is reasonable so configuration of elements can be understood.
- c. Table of minimum vertical clearances to be provided at each bridge that lists the dimension, location on bridge, and location on crossing road, navigation channel, waterway or railroad. Plan sheets may be used in combination with or in place of the table.
- d. Table of minimum horizontal clearances to be provided at each bridge that lists the dimension, the object, and method of shielding, if required. Plan sheets may be used in combination with or in place of the table.
- e. Identify the principles and means of incorporating articulation for all portions of the Crossing superstructure. Indicate movements, restraints, bearings, joints, any equipment used to modify the free behavior of the superstructure under load.

- f. Provide plans that indicate how all the services, appurtenances and equipment will be incorporated into the superstructure. Indicate how these elements will interact with the visual quality of the Crossing.

(5) Constructability

- a. Provide a narrative describing the construction methods that will be followed and major equipment used to construct each bridge type. Include the associated temporary works, material types, equipment used, the construction sequence and falsework needs.
- b. Describe the erection procedure and approach that will be used to control geometry.
- c. Provide a superstructure cross section at each crossing showing the existing condition, each construction phase, and the final condition. All bridges at the crossing road are to be shown in one section to show the inter-relationship between the bridges. The cross section shall show as a minimum lanes, shoulders, railings, barriers, fencing, walls, slab, and beams.
- d. Describe critical construction events and clearances and provide the location and when the event or clearance will be critical.
- e. Describe how river traffic will be maintained throughout construction of the Crossing.

**B1.4.2.2 Main Span of the Crossing**

(1) Towers (if used)

- a. Provide plans showing the tower configuration and layout including height, shape, tapers, approximate dimensions, cross sections, orientation and architectural details.
- b. If using multiple components to form towers, provide plans indicating approximate size, shape, location, and description of purpose of components.
- c. Provide supporting narratives for the plans.

(2) For Stay Cables (if used)

Provide plans showing anchor locations, cable anchorage connections, details of guide pipes, cable arrangement including number and spacing, and proposed cable suppliers, along with supporting narratives.

**B1.4.2.3 Other Structures**

(1) Retaining Walls, Abutments and Noise Barriers

Provide plans for earth retaining walls, abutments and noise barriers along with the supporting narratives. Include elevation and plan views showing the extent of the Work and conceptual details for surface treatments.

(2) Demolition and Removals

- a. Provide plans showing the approximate limits of existing bridges, walls, buildings and embankment removals that are required to complete the Project.

- b. Describe the approach to meeting environmental requirements related to demolition and removals. Include salvage of specified elements and proposed disassembly, transport and storage methods.

### **B1.4.3 Visual Quality**

#### **(1) Architectural Concept**

Provide architectural concept plans and renderings, along with supporting narratives, that comply with the architectural criteria set forth in the Contract Documents that address:

- a. Aesthetic concepts for the Main Span structure addressing the different perspectives of a driver and a distant observer located from the points depicted on visualization pictures A1, A6, A7, A8, B3, B11, B15 and B17, provided in Contract Documents Part 7 Engineering Data (Part 7-15 Visualization Backgrounds).
- b. Aesthetic concepts for roadway and bridge approaches, demonstrating harmony with the main span concepts and approaches, as well as concepts for the support piers, columns, abutments and associated earth retaining structures.
- c. Concepts for the shared-user path with detailed examples of how non-vehicular users of the new crossing will interface and relate to the structure, roadway and project components.
- d. Color renderings in both daylight and night time settings showing architectural concepts proposed.

#### **(2) Lighting Concept**

Provide architectural concept plans and renderings, along with supporting narratives, that comply with the Project-wide architectural criteria set forth in the Contract Documents that address:

- a. Spacing and location of poles, types of luminaires, and controls.
- b. Aesthetic lighting plans for the main span structure (inclusive of towers, cables, deck, under-structure, and piers), the approach structures, and the shared-use path (including landing areas) from all primary perspectives and demonstrating compatibility among these elements
- c. Color renderings showing architectural concepts and lighting concepts for the bridges.

### **B1.5 Geotechnical**

The Proposer shall submit an Initial Geotechnical Work Plan, which shall include:

- A. A summary of the Proposer's knowledge and understanding of the geotechnical, geologic, hydrogeology and seismic settings of the Project site and how the nature and behavior of the soil, rock, groundwater and subsurface conditions will affect the design and methods of construction
- B. Anticipated methods of analysis and design for the Crossing foundations and a discussion of the foundation optimization process and rationale for selection of the foundation types.



- C. Identify key Project constraints and describe how the geotechnical work will be designed and constructed to meet these constraints.
- D. A risk register identifying all major design and construction risks of the geotechnical works, and describe how these risks are managed and mitigated.
- E. Minimum numbers, depths, types of subsurface investigations that the Proposer would, if awarded the Contract, carry out in order to facilitate the Crossing design and construction, including a narrative of the in-situ tests and laboratory tests to be carried out.
- F. Anticipated design approach and discussion of settlements and associated lateral ground movements and their effect on existing and proposed structures and foundations.
- G. Anticipated design approach and method of analysis to determine the site specific seismic response spectra and liquefaction assessment for the design earthquakes; and
- H. Summary of anticipated foundation systems.

## **B1.6 Roadway Design Concepts**

### **B1.6.1 Roadway Design Concepts Plans**

The Proposer shall provide plans showing, and supporting narratives describing the following:

- a. Project Limits, including both permanent and temporary use easements.
- b. Horizontal and vertical roadway alignment with mathematized baseline / centerline stationed at 100 feet for all roadways, ramps, and defined access ways within the Project limits.
- c. Existing and proposed ROW lines, and any additional ROW needs identified.
- d. Lane, shoulder, median, transitions and sidewalk dimensions.
- e. For guide signs structures, changeable message signs (“CMS”) and variable message signs (“VMS”), sign structures, and signalization poles (including locations).
- f. Beginning and end of bridge, and beginning and end of retaining wall stations and offsets.
- g. Connections to existing roadways.
- h. Typical roadway cross-sections, including right-of-way lines and special features including typical sections for all roadways, ramps, and defined access ways within the project limits.
- i. Specific cross sections at the limits of Work on the I-287 and at the toll plaza.
- j. Pavement design package to include pavement type with proposed limits; pavement design including typical section details for mainline, shoulders, ramps, cross streets; transition and tie-in details, and areas of roadbed improvement to existing at tie-ins.
- k. Provide plans showing the approximate limits of existing bridge, wall and embankment removals that will be completed as part of this Project.

### **B1.6.2 Shared Use Path Plans**

The Proposer shall provide plans showing shared-use path, including plan and profile drawings, cross-section drawings reflecting the various cross-sections proposed on the crossing and at the landings, transition area layouts, belvederes, road crossing layout plans, terminations, notification/ informational signing concepts, and preliminary surface and structural section designs.

### **B1.6.3 Drainage Concept Plans**

The Proposer shall provide concept drainage plans, including plan sheets, notes and concept for stormwater management facilities, drainage divides and ground elevations, drainage areas and flow directions, major conveyance structures, culverts and existing structures and pipes. Major conveyance structures, include all storm drains and/or cross drains (pipe culverts, box culverts, and bridges) necessary to convey stormwater runoff to the stormwater management facilities and/or receiving water bodies. If pump stations are required to adequately convey stormwater runoff to the stormwater management facilities and/or receiving water bodies, then such major conveyance structures shall also include pump stations.

## **B1.7 NYSTA Operations**

### **B1.7.1 Initial Work Zone Traffic Control Plan**

The Proposer shall provide an Initial Work Zone Traffic Control Plan, which shall describe the Proposer's plan to maintain the safety and use of traffic corridors and minimize disruption on existing roads as a result of the construction Work. At a minimum, the Initial Work Zone Traffic Control Plan shall:

- a. Describe the major phases of the Work, including any unique sub-phases required to address unique construction practices.
- b. Include complete typical sections by phase, including information regarding maintenance of access and egress. It shall provide phase notes and details regarding sequence of work activities (e.g., specialized equipment needs and falsework).
- c. Identify each road and access way within the vicinity of the Project site, and describe the potential impacts, mitigation measures, limitations of use, and the number and duration of time that each road and access way may be impacted in performing the Work, including information regarding detours.
- d. Identify how access to all Authority facilities will be maintained. Identify each water channel and rail line within the vicinity of the Project site, and describe the use and potential impacts on the water channels and rail lines that may be affected or utilized by the Proposer in performing the Work.
- e. Describe the Proposer's approach to accommodate local events, emergency service providers and commercial vehicles.

### **B1.7.2 Initial Bridge Access Strategy Plan**

The Proposer shall provide an Initial Bridge Access Strategy Plan that describes the Proposer's proposed plan for physical access by personnel and equipment to be used for operation and maintenance of the completed Crossing.

Provide plans showing how access to the Project will be achieved for future maintenance, inspection and replacement of elements. Include location of access elements with approximate sizes and clearances along with maintenance and inspection equipment that will be necessary.

## **B2.0 MANAGEMENT APPROACH SUBMITTAL**

The Proposer shall submit, as its management approach submittal in the Technical Proposal, initial plans relating to management aspects of the Project. Each initial plan shall outline the key features of that particular aspect and describe how it will be addressed during the Contract. Each initial plan should, therefore, be capable of being developed by the Design-Builder during early stages of the Contract into a full comprehensive plan for that aspect in accordance with the requirements of the Contract Documents.

The Proposer shall submit the following initial plans as part of the management approach submittal; the plans are described in the Sections B2.1 through B2.4 herein:

Section B2.1.1 Initial Project Phasing/Sequencing Plan (*Part 3 - 2. Project Management*)

Section B2.1.2 Initial Baseline Project Schedule (*Part 2 - DB §108*).

Section B2.2.1 Initial Workforce Participation Plan (*Part 2 - DB §102-9.4*)

Section B2.2.2 Initial Safety Plan (*Part 2 - DB §107-7.5*)

Section B2.3 Initial Project Management Plan (*Part 3 – 2. Project Management*)

Section B2.4 Initial Quality Plan (*Part 2 - DB §113*)

In the above list, references in parenthesis relate to the Contract Document requirements for the relevant plan after Contract award. The Proposer may refer to these references for assistance in understanding the requirements for the initial plans.

## **B2.1 Schedule**

### **B2.1.1 Initial Project Phasing / Sequencing Plan**

The Technical Proposal shall include an Initial Project Phasing/Sequencing Plan. See Contract Document Part 3 Project Requirements - 2 Project Management.

The Initial Project Phasing/Sequencing Plan shall be consistent with the Initial Work Zone Traffic Control Plan and shall include any proposed segmentation of the Project. The Initial Project Phasing/Sequencing Plan shall include: a description of the timing and phasing of the design and construction Work; an executive summary version of the Initial Baseline Project Schedule (see ITP Section B2.1.2); a narrative that lists and describes the assumptions used in preparing the Initial Baseline Project Schedule, which shall include the timing, duration and subject matter for the review and processing of all required submittals; a narrative that shall describe the restraints, critical path activities, activities requiring night work, activities that include contingencies, holidays and other non-work days, potential problem areas, permits, the timing and duration of temporary lane closures, utility relocations, proposed use of properties for staging and laydown activities, and the accommodation of any work restrictions; and a time-chainage schedule which shall show the major construction activities and how they occur in time relative to the chainage of work location(s) along the Crossing.

The Initial Project Phasing/Sequencing Plan shall include a specific description of the Proposer's planned coordination with other contractors working in the vicinity and impacted by the construction of the Project.

### **B2.1.2 Initial Baseline Project Schedule**

The Technical Proposal shall include a Initial Baseline Project Schedule comprising a logic-based, critical path method (CPM) project schedule in Oracle Primavera® P6 format for the Work to be performed from the execution of the Contract up to and including Final Acceptance. The Initial Baseline Project Schedule shall include a start date and the duration in days for all activities, as well as a detailed work plan with a hierarchical breakdown of work scope by location, type and task (known as a work breakdown structure, WBS). See Contract Document Part 2 - DB §108.

The Initial Baseline Project Schedule shall include the following milestone dates, at a minimum:

- a. Notice to Proceed
- b. Design reviews
- c. Submissions for construction
- d. Construction commencement
- e. Major permits approval deadlines
- f. Construction closures
- g. Initial Traffic Relocation Deadline
- h. Crossing Completion Deadline
- i. Physical Completion Deadline
- j. Final Acceptance Deadline.

The Initial Baseline Project Schedule shall be provided in hard copy and electronically. Specifically, the schedule shall be presented: (i) in hard copy printed on 11" by 17" sheets with all as-printed font sizes at least 8 point; and (ii) electronically in Oracle Primavera® P6 format on compact disk without copy protection.

## **B2.2 Organization and General Management**

### **B2.2.1 Initial Workforce Participation Plan**

The Technical Proposal shall include an Initial Workforce Participation Plan covering the Proposer's proposed workforce and the workforce of all its proposed Subcontractors, together and coordinated with the proposed progress schedule that addresses the equal employment opportunity goals. See Contract Document Part 2 §102-9.4.

### **B2.2.2 Initial Safety Plan**

The Technical Proposal shall include an Initial Safety Plan. The plan shall describe the Proposer's program that ensures the Project is safe for the public, employees and proposed sub-contractors, staff from the Agencies, the Agencies' representatives, public safety personnel, stakeholders and all businesses and contractors operating within or affected by the construction of the Project, and the public during construction and upon service. See Contract Document Part 2 §107-7.5 and Part 3 Project Requirement – 20 Security.

In the Initial Safety Plan, the Proposer shall include the following:

- a. Roles and responsibilities for safety, at all levels of the organization;
- b. Required resources and Project schedule for safety activities;
- c. Procedures and programs to ensure safety integration into design, construction, testing and acceptance, and start-up activities;
- d. The process for the identification and effective communication of safety hazards associated with the operational phase of Project; and
- e. The process for sound decision-making that integrates the results of system safety activities into the requirements and specifications for the Project.

### **B2.3 Initial Project Management Plan**

The Technical Proposal shall include an Initial Project Management Plan. See Contract Document Part 3 Project Requirement - 2 Project Management. The Initial Project Management Plan shall include the Proposer's organization charts and describe its design management concept, construction management concept, and internal and external coordination approaches as described in Sections B2.3.1 to B2.3.5 herein.

#### **B2.3.1 Organization Charts**

The Proposer shall provide two organization charts (each on 11"x17" sheets of paper), illustrating the Proposer's Key Personnel and their prospective roles and responsibilities, as well as other principal participants and any known Subcontractors having a material role in the Project's design Work, design check Work and construction Work. The organization charts shall be titled "Proposed Design Organization" and "Proposed Construction Organization", respectively.

The Proposed Design Organization chart shall illustrate the proposed design organization, indicating the responsibilities and structure of the design staff, independent design check staff, down to and including discipline leads and the staff positions proposed in each discipline. The Proposer shall provide resumes (maximum of two 8.5" x 11" pages per person) for personnel listed in the Proposed Design Organization charts to the level of discipline leads.

The Proposed Construction Organization chart shall illustrate the proposed construction organization, indicating the responsibilities and structure of the construction staff, down to and including field superintendents and the staff positions proposed under each field superintendent for all shifts. The Proposer shall provide resumes (maximum of two 8.5" x 11" pages per person) for personnel listed in the Proposed Construction Organization charts to the level of senior site staff.

#### **B2.3.2 Design Management Concept**

The Initial Project Management Plan shall describe the Proposer's design management concept. The description shall, at a minimum, include: (i) the structure of the Proposer's design organization; (ii) the names of the individuals the Proposer commits to use in its design check Work; (iii) the proposed design and check sequencing; and (iv) the resources and personnel needed for timely implementation of design and design check activities taking into account construction schedule requirements.

Describe also the Proposer's approach to design deliverables, including definition, packaging, submission, review, approval and issue for construction, together with the names of the key individuals involved in the process.

Provide details of the Proposer's proposed document management system for document interfacing with the Authority.

### **B2.3.3 Construction Management Concept**

The Initial Project Management Plan shall describe the Proposer's construction management concept. The description shall, at a minimum, include: (i) the structure of the Proposer's construction organization; (ii) the resources and personnel needed to effectively and efficiently manage the Project during the construction phase; and (iii) the management and integration of Subcontractors and suppliers.

### **B2.3.4 Internal Coordination**

The Initial Project Management Plan shall describe the interrelationships and interfaces between each discipline within the Proposer's organization (e.g., design, design check, construction, quality management).

### **B2.3.5 External Coordination**

The Initial Project Management Plan shall describe the interrelationships and interfaces between the Proposer's organization and the Agencies, other governmental agencies, utility owners, stakeholders, businesses, the public and other contractors working in the vicinity and impacted by the construction of the Project. This description shall, at a minimum, address the following activities:

- a. Reviews of plans and permits;
- b. Progress, workshop, partnering and utility coordination meetings; and
- c. Construction, engineering and inspection activities.

## **B2.4 Initial Quality Plan**

The Technical Proposal shall include an Initial Quality Plan. The Initial Quality Plan shall describe the Proposer's proposed quality assurance/quality control program for the design Work, the QA/QC program for the construction Work, and how the design and construction activities performed by different entities will be coordinated to ensure consistency of quality. The Initial Quality Plan shall be considered an interim document for the purpose of conveying the overall philosophy of the Proposer regarding QA/QC, and shall be expanded and/or amended prior to implementation on the Project. See Contract Document Part 2 - DB §113.

The Initial Quality Plan shall include two, separate QA/QC organization charts (on 11"x17" sheets) for the design Work and the construction Work, clearly defining to whom the QA/QC staff shall report within the Proposer's organization. The Proposer shall provide resumes (each no more than two 8.5" x 11" pages per person) for key QA/QC personnel.

The narrative for the Initial Quality Plan shall describe the roles and responsibilities of key QA/QC personnel during each phase of the Project to ensure quality design and construction, and describe the inter-relationship and relative authority within the Proposer's organization of QA/QC staff and design and construction staff.

## **B3.0 KEY PERSONNEL AND EXPERIENCE**

### **B3.1 Key Personnel**

The Technical Proposal shall include a narrative with organizational diagrams, as necessary, describing the design and construction organizational arrangements it is intended to implement to support the Key Personnel named in the Proposer's SOQ. The organizational arrangements shall clearly identify responsibilities and reporting lines of staff, particularly relating to Key Personnel. Where the Proposer considers that staff roles, not previously identified as Key Personnel in its SOQ, are worthy of greater consideration, resumes shall be submitted for the staff assigned to these roles. The Proposer shall commit to designate these additional named staff and their roles in the category Key Personnel if the Proposer is awarded the Contract.

The narrative shall include a review of the Proposer's assessment of the roles that the Key Personnel named in the SOQ (and any further Key Personnel added by the Proposer) shall take in the Proposer's organization. The narrative will include the approximate time commitments (percentage of working time) of Key Personnel to the Project for each 12 month period of the Project from NTP.

### **B3.2 Experience of the Firms**

The Technical Proposal shall include a narrative describing the qualifications and experience of the Proposer and its team members including specific experience relevant to the nature, size, complexity and composition of the Proposer's proposed design and the Proposer's proposed means and methods of construction. This shall include, but not be limited to, relevant experience of the Proposer's team in design-build, environmental permitting and quality compliance, highway and bridge structures, reconstruction, innovative designs, complex structures, methods and materials, construction over water, and construction in environmentally-sensitive areas, as well as any other experience relevant to significant aspects of the Proposer's Proposal.



### **B3.3 Past Performance**

Form PPF (ITP Appendix D), in Volume 1 (Administrative Submittal) shall present the demonstrated record of performance for each of the Major Participants during the period of reporting between the date of submission of SOQs (SOQ Due Date defined in the RFQ) and the Proposal Due Date.

In Table 1 of Form PPF, list all awards, citations and/or commendations for performance relevant to the Project received by the entity in the relevant reporting period.

In Table 2 of Form PPF, include all claims, dispute proceedings, litigation and arbitration proceedings involving amounts in excess of \$100,000 and related to performance of a contract involving planning, permitting, design, construction or demolition of a public works project in which the entity has been involved during the relevant reporting period. Include all claims, dispute proceedings, litigation and arbitration proceedings initiated by or against owners and federal, State and local regulatory agencies. Indicate whether the claim, dispute proceeding, litigation or arbitration proceeding was resolved against the entity or its insurers/sureties or resulted in reduction in compensation to the participant. Indicate any unresolved, outstanding claims, dispute proceedings, litigation and arbitration proceedings.

In Table 3 of Form PPF, describe any contract, which resulted in assessment of liquidated damages against the entity involving amounts in excess of \$100,000 during the relevant reporting period. Describe the causes of the delays and the amounts assessed. Describe any outstanding damage claims by or damages due and owing to any owner/agency.

In Table 4 of Form PPF, describe the conditions surrounding any contract (or portion thereof) entered into by the entity during the relevant reporting period that has been terminated for cause or default, or which required completion by another party. Describe the reasons for termination and the amounts involved.

In Table 5 of Form PPF, indicate any disciplinary action taken against the entity within the relevant reporting period by any governmental agency or licensing board, including suspension from the right to propose or removal from any proposer list.

### **B4.0 ENVIRONMENTAL COMPLIANCE**

The Technical Proposal shall include an Initial Environmental Compliance Plan that describes how the Proposer will comply with applicable NEPA and SEQR commitments, and environmental and permitting commitments and requirements during the performance of the design and construction Work. The Initial Environmental Compliance Plan shall:

- 1) Provide resumes (maximum of two 8.5" x 11" pages per person) and identify the personnel that will be responsible for: NEPA and SEQR compliance, compliance with Environmental Performance Commitments, biological monitoring, cultural resource compliance, noise monitoring, water pollution control, stormwater monitoring, erosion control, historical and archaeological issues, the handling of Hazardous Materials, and any environmental permitting for which the Design-Builder will be responsible.
- 2) Describe how the Proposer intends to comply with the Project's environmental requirements and commitments, including the environmental requirements in the Contract Documents and the DEIS. Describe how the Proposer will identify, track, verify and report that these requirements and commitments have been met.

- 3) Identify any environmental impacts that are greater than those disclosed in the Environmental Requirements, and any additional impacts not identified in the Environmental Requirements, associated with approved or conditionally approved ATCs included in the Technical Proposal and other technical concepts that are not ATCs.
- 4) Identify all new Environmental Approvals and changes to existing Environmental Approvals, including supplements to the EIS, required for implementation of approved or conditionally approved ATCs included in the Technical Proposal and other technical concepts that are not ATCs. (See Contract Documents, Part 2 DB §104-4.4.)
- 5) Describe the Proposer's plan to obtain all new Environmental Approvals and changes to existing Environmental Approvals identified in Item (4) and associated schedule implications.
- 6) Identify the mitigation plans that the Proposer will develop for environmentally sensitive aspects of the Work, addressing potential Work activities related to the natural environment, physical environment, and cultural and historic resources, including the monitoring, treatment and discovery of existing and unknown archaeological and/or cultural resources encountered throughout the Contract term.
- 7) Explain how the Proposer will integrate environmental compliance into the construction activities in the river, and manage their mitigation and monitoring,
- 8) Provide a description of the specific means the Proposer intends to use to minimize impacts to the river, including impacts to the water, fish and wildlife.
- 9) Describe the Proposer's plan to train its personnel regarding EPCs, environmental issues, risks, mitigation measures and related environmental reporting requirements.
- 10) Describe the Proposer's plan for integrating efficient and renewable energy designs into the Project, where practicable, including options for renewable power production.

## **B5.0 PUBLIC OUTREACH AND COORDINATION WITH STAKEHOLDERS**

The Agencies have prepared a Tappan Zee Hudson River Crossing Project Public Information Plan (PIP; see Part 3 Project Requirement 8 – Public Involvement). The goal of the PIP is to engage a diverse group of public and agency participants, soliciting and utilizing their views, and providing timely information throughout the design and construction process

The Technical Proposal shall include an Initial PIP Support Plan which shall describe the Proposer's support to the Agencies in their implementation of the PIP.

The Proposer shall submit an Initial PIP Support Plan that describes how support will be provided in the public involvement activities including but not limited to:

- 1) Project Website: The Agencies will host and maintain the Project's website. The Initial PIP Support Plan shall describe support to the Agencies in the development and maintenance of the site to give the greatest positive impact to the viewing community.
- 2) Project Newsletter: The Initial PIP Support Plan shall include for the preparation of a Project newsletter to provide the public with updates on the Project. The frequency and timing of the newsletter will be as proposed in the PIP.

- 3) Project Phone Hotline: The Initial PIP Support Plan shall include for the provision of a phone hotline related to design and construction-related activities for individuals to call with concerns or questions.
- 4) Technical Media: The Initial PIP Support Plan shall include for the preparation of public information videos for use throughout the duration of the Project in various public involvement activities. The Initial PIP Support Plan shall include for state-of-the-art video and graphic methods for depicting various aspects of the Project.
- 5) Public Involvement Meetings: The Initial PIP Support Plan shall detail the proposed support to public involvement meetings, including convening meetings, preparing meeting materials, and fully documenting the results of meetings.

## **B6.0 FORMAT OF VOLUME 2**

Organize Volume 2 in the format shown in Table B, with the cover(s) of the parts of Volume 2 labeled as follows, with section / appendix details added as appropriate:

<p><b>TZHRC DESIGN-BUILD PROPOSAL</b></p> <p><b>VOLUME 2 TECHNICAL PROPOSAL</b></p> <p><b>PROPOSER: ...</b></p>
-----------------------------------------------------------------------------------------------------------------

The total number of pages (sides of sheets) that shall be used for the submission of the narrative documents (see Section B1.0 Item (a)) in Volume 2 Sections 1 through 3 shall together not exceed 200 pages. No specific page limit applies to the submission in Volume 2 Sections 1 through 5 of the plan documents that are listed in Section B1.0 Item (b) and that are listed in Section B2.0. No specific page limit applies to the submittal of Volume 2 Appendix A (letters regarding ATCs) and Volume 2 Appendix B (plan drawings).

Provide the Technical Proposal submittals in Volume 2 in the order set forth in Table B. Separate the individual submittals in Volume 2 with tabs labeled as outlined in Table B (e.g., "Initial Quality Plan"), and use a copy of the Table B checklist as the basis for the table of contents for Volume 2 (which shall be the first page of Volume 2).

<b>Table B – Format of Volume 2</b>	
<b>Proposal Component</b>	<b>ITP Reference</b>
<b>Volume 2 Section 1 – Design and Construction Solutions Submittal</b>	
<b>1 Construction Approach</b>	
1.1 Construction Staging & Facility Staging (narrative)	Appendix B, § B1.1.1
1.2 Piling and Dredging (narrative)	Appendix B, § B1.1.2
1.3 Protection of Facilities (narrative)	Appendix B, § B1.1.3
1.4 Utilities (narrative)	Appendix B, § B1.1.4
1.5 Initial Demolition and Removal Plan	Appendix B, § B1.1.6
<b>2 Service Life of the Crossing</b>	
2.1 Service Life (narrative)	Appendix B, § B1.2.1
2.2 Initial Corrosion Protection and Maintenance Plan	Appendix B, § B1.2.2
<b>3 Maximizing the Public Investment</b>	
3.1 Maximizing the Public Investment Plan	Appendix B, § B1.3
<b>4 Bridge, Structures and Aesthetic Design</b>	
4.1 Initial Design Plan	Appendix B, § B1.4.1
4.2 Structures and Architecture (narrative)	Appendix B, § B1.4.2
4.3 Visual Quality (narrative)	Appendix B, § B1.4.3
<b>5 Geotechnics</b>	
5.1 Initial Geotechnical Work Plan	Appendix B, § B1.5
<b>6 Roadway Design Concepts</b>	
6.1 Roadway Design Concepts (narrative)	Appendix B, § B1.6.1
<b>7 NYSTA Operations</b>	
7.1 Initial Work Zone Traffic Control Plan	Appendix B, § B1.7.1
7.2 Initial Bridge Access Strategy Plan	Appendix B, § B1.7.2
<b>Volume 2 Section 2 – Management Approach Submittal</b>	
Initial Project Phasing/Sequencing Plan	Appendix B, § B2.1.1
Initial Baseline Project Schedule	Appendix B, § B2.1.2
Initial Workforce Participation Plan	Appendix B, § B2.2.1
Initial Safety Plan	Appendix B, § B2.2.2

<b>Table B – Format of Volume 2</b>	
<b>Proposal Component</b>	<b>ITP Reference</b>
Initial Project Management Plan	Appendix B, § B2.3
Organization Charts	Appendix B, § B2.3.1
Design Management Concept	Appendix B, § B2.3.2
Construction Management Concept	Appendix B, § B2.3.3
Internal Coordination	Appendix B, § B2.3.4
External Coordination	Appendix B, § B2.3.5
Initial Quality Plan	Appendix B, § B2.4
<b>Volume 2 Section 3 – Key Personnel and Experience</b>	
Key Personnel (narrative and charts)	Appendix B, § B3.1
Experience of the Firms (narrative)	Appendix B, § B3.2
<b>Volume 2 Section 4 – Environmental Compliance</b>	
Initial Environmental Compliance Plan	Appendix B, § B4.0
<b>Volume 2 Section 5 – Public outreach and coordination with stakeholders</b>	
Initial Public Involvement Plan (PIP) Support Plan	Appendix B, § B5.0
<b>Volume 2 Appendix A – Letters regarding ATCs</b>	
A1 List of letters from Agencies regarding approved and conditionally approved ATCs	Appendix B1.0
A2 Copies of each letter, presented in the order listed in A1.	Appendix B1.0
<b>Volume 2 Appendix B - Design &amp; Construction Solutions Submittal (plan drawings)</b>	
<b>B1 Construction Approach</b>	
B1.1 Construction Staging & Facility Staging (drawings)	Appendix B, § B1.1.1
B1.2 Utilities (drawings)	Appendix B, § B1.1.4
B1.3 Property Utilization (drawings)	Appendix B, § B1.1.5
<b>B2 Bridge, Structures and Aesthetic Design</b>	
B2.1 Structures and Architecture (drawings)	Appendix B, § B1.4.2
B2.2 Visual Quality (drawings)	Appendix B, § B1.4.3
<b>B3 Roadway Design Concepts</b>	
B6.1 Roadway Design Concepts (drawings)	Appendix B, § B1.6.1
B6.2 Shared Use Path Plans (drawings)	Appendix B, § B1.6.2
B6.3 Drainage Concept Plans (drawings)	Appendix B, § B1.6.3

## APPENDIX C

### VOLUME 3: PRICE PROPOSAL SUBMITTAL REQUIREMENTS

#### C1.0 INTRODUCTION

This ITP Appendix C specifies the pricing information to be submitted by all Proposers and supplemental pricing information to be submitted by the selected Proposer prior to Contract execution.

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

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

#### C2.0 PRICE PROPOSAL

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

Upon award, the applicable Form PPS-P of the selected Proposer, as such schedule may have been revised during negotiation of the Contract, will be incorporated into the Contract as the initial Contract Period Payment Schedule (PPS-C) (see DB §109-1.2).

The Price Proposal shall consist of:

- A) Form PP, *Price Proposal cover sheet*;
- B) Form SP, *Schedule of Prices*;
- C) Form PPS-P-A (*HARS Alternative*) *Proposal Periodic Payment Schedule*;
- D) Form PPS-P-B (*Non-HARS Alternative*) *Proposal Periodic Payment Schedule*; and
- E) Form LDB-PP, List of Proposed DBEs including price information.

#### C2.1 PRICE PROPOSAL SUBMITTAL

The items listed in Section C2.0 shall be submitted in a separate, sealed envelope.

Mark the envelope "*Tappan Zee Hudson River Crossing Project: VOLUME 3*" plus the Proposer's name. Securely attach a duplicate copy of Form PP to the outside of the envelope. Have all persons signing the Proposal Form (Form FP) also sign Form PP.

#### C2.2 PRICING FORMS: FORMS SP and PPS-P

##### C2.2.1 Form SP

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

Form SP shall be in compliance with the following instructions:

- A) Price in real U.S. dollars;
- B) Provide a lump sum price (the Price Center value in Form SP) for each Price Center listed in Form SP; and

- C) The Price Center value shall be the total price to complete all Work in that Price Center, including such planning, management, overhead, design, materials, labor, use of tools and equipment and other Work as required to complete such Work and such costs necessary to integrate the Work with the Work in other Price Centers, except those costs included in other Price Centers.

Form SP requires the Proposer to submit Price Center values for each of the HARS Alternative and the Non-HARS Alternative. For the HARS Alternative: Price Center value item PC13-A1 shall represent the value of dredge spoil disposal in accordance with an Authority-obtained HARS permit; Price Center value item PC13-A2 shall represent the value of dredge spoil disposal from demolition; and Price Center value item PC13-A3 shall represent the value of any other dredge spoil disposal. For the Non-HARS Alternative, Price Center value item PC13-B shall represent the value of dredge spoil disposal based on the assumption that the HARS site may not be used for disposal. The Proposer shall provide two totals at the base of Form SP, one incorporating PC13-A1, PC13-A2 and PC13-A3, and the other incorporating PC13-B. If the Proposer has elected not to provide Form PPS-P-A, the cells for PC13-A1, PC13-A2 and PC13-A3 in Form SP shall be marked "N/A."

### **C2.2.2 Form PPS-P**

ITP Appendix D contains two versions of Form PPS-P, Proposal Periodic Payment Schedule:

- A) Form PPS-P-A (HARS Alternative); and
- B) Form PPS-P-B (Non-HARS Alternative).

Any reference herein to Form PPS-P means both Forms PPS-P-A and PPS-P-B.

Complete and submit both Form PPS-P-A and Form PPS-P-B. Form PPS-P-A shall set forth the Proposer's pricing for the HARS Alternative (including the values for Price Centers PC13-A1, PC13-A2 and PC13-A3). Form PPS-P-B shall set forth the Proposer's pricing for the Non-HARS Alternative.

Each Form PPS-P shall cover the entire period of the Contract specified in monthly increments through to Final Acceptance. Each Form PPS-P represents the Project's cash flow curve for the specified alternative. The monthly maximum cumulative values in Column B of Form PPS-P shall form the basis of the monthly payout limits during the Contract, as described in Contract Documents Part 2 DB §109.

Proposers shall limit the value of the Price Center for mobilization (Item PC1 in Form SP; see ITP Appendix D) to a maximum of 8% of the Proposal Price, with the distribution over time of Item PC1 (Price Center for mobilization) as follows:

- C) 50% of PC1 at the first invoice;
- D) 25% of PC1 at four months following NTP; and
- E) 25% of PC1 at eight months following NTP.

The net present value calculation submitted in each Form PPS-P shall be verified by the Agencies. The Agencies' calculation will prevail in case of a discrepancy with the Proposer's calculation.



### **C2.3 (Not used)**

### **C2.4 FORM LDB-PP**

Submit Form LDB-PP, List of Proposed DBEs including price information. This form shall be identical to Form LDB contained in the Price Proposal, but with price information added.

### **C3.0 FORMAT FOR VOLUME 3**

#### **C3.1 PRICE PROPOSAL**

Organize and submit the Price Proposal in the format shown in Table C by the Proposal Due Date, except submit Form EPD, Electronic Pricing Documents, per ITP Section 4.7.

No specific page limit applies to Volume 3 of the Proposal submission.

<b>Table C – Format of Volume 3</b>		
<b>Proposal Component</b>	<b>Form/Document</b>	<b>ITP Reference</b>
<b>Volume 3, Section 1</b>	<ul style="list-style-type: none"><li>Form PP, Price Proposal Cover Sheet</li></ul>	C2.1
<b>Volume 3, Section 2</b>	<ul style="list-style-type: none"><li>Form SP, Schedule of Prices</li><li>Form PPS-P-A, Proposal Periodic Payment Schedule (HARS Alternative);</li><li>Form PPS-P-B, Proposal Periodic Payment Schedule (Non-HARS Alternative )</li></ul>	C2.2 C2.2.3 C2.0 C2.0
<b>Volume 3, Section 3</b>	<ul style="list-style-type: none"><li>Form LDB-PP, List of Proposed DBEs (with pricing information)</li></ul>	C2.4

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**APPENDIX D**  
**FORMS**

## APPENDIX D

<u>Form Designator</u>	<u>Form Title</u>
------------------------	-------------------

Proposal Form

FP	Form of Proposal
FP(A)	Appendix to Form of Proposal

General Forms

AR	Acknowledgement of Receipt
BAC	Buy America Certificate
C	Proposer's Representative
C(S)	Proposer's Representative for Security Information *
CF	RFP Comment Form *
CR	Commitment to Assign Identified Resources to Project
DBE	Record of DBE Performance
EEO	Equal Employment Opportunity Certification
EPD	Escrow Agreement **
G	Guaranty **
GF	Proposer's DBE Good Faith Efforts
IC	Certificate Regarding Ineligible Contractors
IS	Certificate Regarding Ineligible Subcontractors
KP	Key Personnel Information
LC	Lobbying Certificate
LDB	List of Proposed DBEs
LSI	Letter of Subcontract Intent
NC	Non-Collusion Affidavit
NS	Named Subcontractors
OC	Opinion of Counsel **
PB	Proposal Bond
PAB	Payment Bond **
PEB	Performance Bond **
SA	Stipend Agreement *
SCD	Substantial Completion Deadlines
U	Conflicts of Interest Disclosure
PPF	Past Performance

Price Proposal Forms

PP	Price Proposal Cover Sheet
SP	Schedule of Prices
PPS-P-A	Proposal Periodic Payment Schedule (HARS Alternative)
PPS-P-B	Proposal Periodic Payment Schedule (Non-HARS Alternative)
LDB-PP	List of Proposed DBEs (Price Proposal)

\* Form for use before Proposal Due Date

\*\* Form to be submitted after Proposal Due Date

**FORM FP - FORM OF PROPOSAL**

<b>PROPOSER</b>	
<b>NAME</b>	
<b>TITLE</b>	
<b>TELEPHONE No.</b>	
<b>ADDRESS</b>	

**TO NEW YORK STATE THRUWAY AUTHORITY (THE “AUTHORITY”):**

The undersigned proposes to design and construct this Project in accordance with the Part 1 - Design-Build Agreement, Part 2 - Design-Build Section 100, Part 3 - Project Requirements and all other Contract Documents and certifies to furnish and deliver all the materials and to do all work and labor required for the design and construction and other identified activities for the Tappan Zee Hudson River Crossing Project, Contract D214134, TANY 12-18B in Rockland and Westchester Counties, New York, at the prices stated in the Schedule of Prices (Form SP). The undersigned also certifies that the undersigned has examined the Site and the RFP, including Parts 1 through 8 inclusive of the Contract Documents before submitting the Proposal and is satisfied as to the requirements therein. As further consideration for the award of this Contract, the undersigned agrees to the following terms, conditions and acknowledgments:

**SECTION 1.** *To keep this Proposal open for acceptance for 180 days after the Proposal Due Date without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the Proposer submitting this Proposal, without first obtaining the prior written consent of Authority, in Authority’s sole discretion; and to execute the Contract and to furnish Contract security, as specified in Contract Documents Part 2, DB Section 103-3 and Appendix (Part 1) to this Form FP within the time period prescribed in Section 6.2 to the Instructions to Proposers, and failing to do so, to forfeit the accompanying check or Proposal Bond to the Authority as liquidated damages, and the Agencies may proceed to award the Contract to others.*

**SECTION 2.** *To commence Work promptly following the effective date of the Notice to Proceed, and to complete the Work by the milestone dates and completion deadlines specified in the Contract Documents.*

**SECTION 3.** *To furnish a performance bond and a payment bond in the amount specified in the RFP for the full, complete and faithful performance of this Contract.*

**SECTION 4.** *The undersigned declares that it is the only entity or party interested in the Proposal as principal and that its officers, employees, subsidiaries or parent corporations (check appropriate box following):*

- Have not in any way participated in any activities in restraint of trade, or been debarred with relation to public contracts either in the State of New York or any other State of the United States or on any federally-assisted contract during the five-year period immediately preceding this Proposal or either directly or

indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this Contract.

Have participated in activities in restraint of trade with relation to public contracts either in the State of New York or any other State of the United States or on any federally assisted contracts during the five-year period immediately preceding this Proposal or entered into collusion, or restraint of free competitive bidding on this Contract, and are of the opinion that they are a responsible Proposer entitled to the award of a contract involving, public moneys and attach hereto an explanation of their activities in restraint of free trade, restraint of free competitive bidding, or collusion.

**SECTION 5.** *In accordance with the Contract to repair, maintain and guarantee all work performed thereunder as specified in the Contract Documents.*

**SECTION 6.** *The undersigned agrees that any and all claims that the undersigned may have for overcharges resulting from antitrust violations as to goods, services and materials purchased in connection with this Proposal are hereby assigned to the Authority, but only to the extent that such overcharges are passed on to the Authority. The undersigned further agrees to require its Subcontractors to assign any and all such claims for overcharges to the Authority, but only to the extent such overcharges are passed on to the Authority, by executing an assignment on a form obtainable from the Engineer prior to the commencement of work by a Subcontractor. The undersigned retains all rights to any such antitrust claims to the extent of any overcharges not passed on to the Authority.*

**SECTION 7.** *The undersigned certifies that it is not identified on the list of persons engaged in investment activities in Iran, promulgated under Section 165-a of the State Finance Law. The undersigned further certifies that it shall not use any Subcontractors identified on the same list in the performance of the Contract.*

*The undersigned tenders herewith a Proposal Bond in the form of Form PB (see Appendix D to Instruction to Proposers).*

*[insert appropriate signature blocks here]*

*[The Proposer shall sign in the space provided above, with its signature. An officer of a corporation or a member of a partnership signing for the Proposer shall place his or her signature and title after the word "By" under the name of the Proposer. The same procedure shall apply to the proposal of a joint venture with each party of the joint venture signing in a separate signature block. If the signature is by an agent or attorney-in-fact for the joint venturers, then the proposal shall be accompanied by an authenticated copy of the evidence of its authority to act on behalf of all of the joint venturers.]*

1. Sample signature block for corporation or limited liability company:

*[Insert Proposer's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. Sample signature block for partnership or joint venture:

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**New York State Thruway Authority**

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*[Insert the Proposer's name]*

By: *[Insert general partner's or member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Add signatures of additional general partners or members as appropriate]*

3. Sample signature block for attorney in fact:

*[Insert Proposer's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_





## FORM FP(A) - APPENDIX TO FORM OF PROPOSAL

**(To be completed by the Proposer as part of the Proposal documents)**

*Extend cell sizes for items 1 through 6 as needed and add rows to item 7 as needed*

<b>PROPOSER:</b>	
<b>1. Design-Builder's proposed insurance policy coverage</b>	
<b>2. Design-Builder's proposed Designer</b>	
<b>3. Design-Builder's Proposed Named Subcontractors</b>	
<b>4. Parts of the Project proposed to be subcontracted other than to Named Subcontractors</b>	
<b>5. Design-Builder's local address within worksite area</b>	
<b>6. Contract Time</b> (proposed Project completion time stated in number of calendar days from the date of the NTP)	
<b>7. RFP Addenda issued by the Agencies and received by the Proposer:</b>	
<b>Addendum No.:</b>	<b>Date:</b>

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

(to be attached to Volume 1 of Proposal)

<b>NAME OF PROPOSER</b>

We hereby acknowledge receipt of the Tappan Zee Hudson River Crossing Project RFP dated March 9, 2012 and subsequent responses to questions and Addenda issued by the Agencies, as listed below.

*Add additional lines in tables below, if needed.*

<b>Addendum number:</b>	<b>Date issued by Agencies:</b>

<b>Responses to questions number:</b>	<b>Date issued by Agencies:</b>

<b>SIGNED</b>	
<b>DATE</b>	
<b>NAME</b> (printed or typed)	
<b>TITLE</b>	

**FORM BAC**

**BUY AMERICA CERTIFICATE**

The undersigned certifies on behalf of itself and all proposed subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

A. Proposer shall comply with the Federal Highway Administration (“FHWA”) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Contract Price.

B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract be investigated, Proposer has the burden of proof to establish that it is in compliance.

<b>PROPOSER</b>	
<b>SIGNATURE</b>	
<b>NAME (printed or typed)</b>	
<b>TITLE</b>	
<b>DATE</b>	

**FORM C**

**PROPOSER'S REPRESENTATIVE**

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

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

**FORM C(S)**  
**PROPOSER'S REPRESENTATIVE FOR**  
**SECURITY INFORMATION**

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

<b>Proposer</b>	
<b>Name of Proposer's Representative for Security Information</b>	
<b>Company Affiliation</b>	
<b>Address</b>	
<b>Office phone (direct dial)</b>	
<b>Cell phone</b>	
<b>Email</b>	

**FORM CF - RFP COMMENT FORM**

*Add rows as needed. Submit as Microsoft Word® format file or searchable pdf file only.*

<b>PROPOSER:</b>			
<b>Comment sheet number</b>		<b>Date:</b>	
<b>RFP Part No.</b>	<b>RFP Section No.</b>	<b>Proposer's questions and/or requests</b>	<b>Reserved for Agencies' response</b>



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<b>PROPOSER:</b>			
<b>Comment sheet number</b>		<b>Date:</b>	
<b>RFP Part No.</b>	<b>RFP Section No.</b>	<b>Proposer's questions and/or requests</b>	<b>Reserved for Agencies' response</b>

<b>SIGNED</b>	
<b>NAME (printed or typed)</b>	
<b>EMAIL</b>	
<b>DATE</b>	

**FORM CR**

**COMMITMENT TO ASSIGN IDENTIFIED RESOURCES TO PROJECT**

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

---

(Name of Proposer)

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

In making this commitment, we include the following reservations:

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

Signed: \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*(To be executed by the Proposer's designated Project Executive or Project Manager)*

**FORM DBE - RECORD OF DBE PERFORMANCE**

<b>PROPOSER</b>	
The Proposer hereby confirms that there is no change in the Proposer's record of DBE performance, relative to the Proposer's SOQ submission	
<b>Signed</b>	
<b>Name</b>	
<b>Title</b>	
<b>Date</b>	
Or (B), the Proposer confirms that: (i) there have been changes in the Proposer's record of DBE performance relative to the Proposer's SOQ submission; and (ii) the Proposer has completed Form DBE Tables 1 and 2, as needed, addressing all such changes. The changes are the result of <i>[check applicable box(es)]</i> : <input type="checkbox"/> The addition of Principal Participant(s) and/or Designer(s) to the Proposer's organization since the SOQ. <input type="checkbox"/> Completion of additional projects involving DBE participation by the Proposer, Principal Participant(s) and/or Designer(s).	
<b>Signed</b>	
<b>Name</b>	
<b>Title</b>	
<b>Date</b>	

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*Add rows if needed*

Form DBE Table 1 RECORD OF DBE PERFORMANCE			
<b>NAME OF PROPOSER</b>			
<b>NAME OF FIRM</b>			
<b>ROLE OF FIRM</b>	Principal Participant:		Designer:
	Other (describe):		QC:
<p>Provide the information requested below for projects completed during the past 36 months and not included in the SOQ where the firm was the prime contractor or prime consultant. The term "firm" includes any Affiliate including parent companies and subsidiary companies.                      For any project where DBE goal was not achieved, use Form DBE Table 2 to provide an explanation, using relevant project name for cross-reference.</p>			
PROJECT NAME	DBE participation goal (%)	DBE participation achieved (%)	Current owner contact (Name/ telephone / email)

*Add rows if needed*

Form DBE Table 2 EXPLANATION FOR NON-ATTAINMENT OF DBE GOALS	
<b>NAME OF PROPOSER</b>	
<b>NAME OF FIRM</b>	
<p>For any project listed in Form DBE Table 1 for which the DBE goal was not achieved, provide a maximum ½ page explanation below. Insert more lines and rows below if needed.</p>	
PROJECT NAME	BRIEF EXPLANATION (maximum ½ page per project)

## **FORM EEO - Equal Employment Opportunity Certification**

**To be executed by the Proposer, other Major Participants and proposed known Subcontractors.**

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

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

If not Proposer, relationship to  
Proposer: \_\_\_\_\_

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

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

**FORM EPD**

**CERTIFICATION REGARDING ELECTRONIC PRICING DOCUMENTS**

The undersigned certifies that he or she is an authorized officer of the Proposer, has personally examined the Electronic Pricing Documents and has determined that the Electronic Pricing Documents meet the requirements of DB §110-5 and are adequate to enable a complete understanding and interpretation of how the Design-Builder arrived at its Proposal Price.

Signature:

\_\_\_\_\_

Name and Title:

\_\_\_\_\_

Name of Proposer:

\_\_\_\_\_

Date:

\_\_\_\_\_

---

**FORM G**

**TAPPAN ZEE HUDSON RIVER CROSSING PROJECT**

**GUARANTY**

THIS GUARANTY (this "Guaranty") is made as of \_\_\_\_\_, 2012 by \_\_\_\_\_, a \_\_\_\_\_ ("Guarantor"), in favor of the New York State Thruway Authority (the "Authority").

**RECITALS**

A. \_\_\_\_\_, a \_\_\_\_\_, as design-builder ("Design-Builder"), and Authority are parties to that certain design-build contract dated as of \_\_\_\_\_, 20\_\_\_\_, Contract D214134, TANY 12-18B (the "Contract"), pursuant to which the Design-Builder has agreed to undertake the design, construction and other identified activities for the Tappan Zee Hudson River Crossing Project (the "Project"). Initially capitalized terms used herein without definition will have the meaning given such terms in the Contract.

B. To induce Authority to (i) enter into the Contract; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Design-Builder is a [INSERT TYPE OF ENTITY], organized in the jurisdiction of \_\_\_\_\_. The Guarantor is [INSERT TYPE OF ENTITY], organized in the jurisdiction of \_\_\_\_\_, *[describe relationship with Design-Builder]* *[Do not include any statement in this recital implying that the Guarantor or any joint venture member does not have joint and several liability for the Design-Builder's obligations.]* The execution of the Contract by Authority and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, Authority would not have entered into the Contract with Design-Builder. Therefore, in consideration of Authority's execution of the Contract and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

**1. Guaranty.**

a. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Authority and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Design-Builder, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereinafter incurred, arising out of, in connection with, under or related to the Contract Documents (including, without limitation, the Design-Builder's obligation to make liquidated damages and indemnity payments to Authority). The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."



b. Guarantor covenants to Authority that if at any time the Design-Builder should default in the performance when due of, observance when due of, or should commit a breach of, any of the Guaranteed Obligations, Guarantor shall promptly, upon written notice by Authority, perform or pay the Guaranteed Obligations or cause the performance or payment of the Guaranteed Obligations.

c. Guarantor expressly agrees that, to the extent Guarantor's obligations hereunder relate to obligations of the Design-Builder which require performance other than the payment of money, Authority may proceed against Guarantor to effect specific performance thereof (to the extent that such relief is available). Guarantor hereby covenants and agrees to assume or to procure the assumption of the Contract Documents, and to perform or to procure the performance of all of the terms and conditions thereunder should any of the Contract Documents be disaffirmed or rejected by a trustee or court in a bankruptcy proceeding involving the Design-Builder, or, at the option of Authority, Guarantor shall, in the event of the Design-Builder's bankruptcy, make and enter into or have made and entered into, by one or more entities reasonably satisfactory to Authority, new contract documents for the balance of the term of the Contract Documents, which new contract documents shall be in form and substance identical to the replaced Contract Documents.

**2. Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. This Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, , subject to Section 23 of this Guaranty, and whether or not enforceable against the Design-Builder. If any payment made by the Design-Builder or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by:

a. any change in the Contract Documents or the obligations thereunder, any change in the existence, structure or ownership of Guarantor or the Design-Builder, or any dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or similar proceeding affecting the Design-Builder, Guarantor or their respective assets or any defense that may arise in connection with or as a result of such dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or other proceeding;

b. the existence of any claim or set-off which the Design-Builder has or Guarantor may have against Authority, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit;

c. any failure of consideration or lack of authority of the Design-Builder, any lack of validity or enforceability, illegality or defect or deficiency, or any other defense to formation of the Contract Documents (or any term, condition or covenant thereof);

d. any change in the time, manner, terms, place of payment of, or any other term of all or any of the Guaranteed Obligations, or any other amendment, waiver of, or any consent to departure from any Contract Document executed in connection therewith;

e. the incapacity or lack of power or authority of, or dissolution or change in, the members or shareholders of the Design-Builder; or

f. subject to Section 23 of this Guaranty, any other circumstance that might otherwise constitute a defense available to, or a discharge of, Guarantor with respect to the Guaranteed Obligations, other than performance or payment in full of the Guaranteed Obligations.

This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Contract Documents and Guaranteed Obligations or any part thereof, the pursuit by Authority of any remedies which Authority either now has or may hereafter have with respect thereto under any of the Contract Documents, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 23 of this Guaranty.

### **3. Independent Obligations.**

a. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Design-Builder and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Design-Builder is joined therein. Authority may maintain successive actions for other defaults of Guarantor. Authority's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been indefeasibly paid and fully performed.

b. Guarantor agrees that Authority may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the Design-Builder. Guarantor hereby waives the right to require Authority to proceed against the Design-Builder, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

### **4. Liability of Guarantor.**

a. Authority may enforce this Guaranty upon the occurrence of a breach by the Design-Builder of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between Authority and the Design-Builder with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. Authority, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the Design-Builder, if and as permitted by the Contract, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of Authority in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that Authority may have against any such security, as Authority in its discretion may determine, including all rights and remedies provided to a secured party by the Uniform Commercial Code as in effect in the State of New York at that time, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than infeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce an agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, , modification, amendment, agreement or stipulation between the Design-Builder and Authority or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) Authority's knowledge of or consent to the change, reorganization or termination of the corporate structure or existence of the Design-Builder; (iv) any defenses, set-offs or counterclaims that the Design-Builder may allege or assert against Authority in respect of the Guaranteed Obligations, except as provided in Section 23; (v) any failure to enforce the Guaranteed Obligations or any of the terms, covenants or conditions contained in any of the Contract Documents or any modification or amendment thereof; (vi) any waiver by the Authority of the Guaranteed Obligations that is not in writing and signed by the Authority's authorized representative or any waiver (whether or not in writing) that is made in the context of a bankruptcy or insolvency proceeding in which the Design-Builder is the debtor, unless otherwise specified in said waiver; or (vii) any release of the Design-Builder from liability that is not in writing and signed by the Authority's authorized representative or any release (whether or not in writing) that is made in the context of a bankruptcy or insolvency proceeding in which the Design-Builder is the debtor, unless otherwise specified in said release.

e. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand

**5. Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of:

a. any right to require Authority to proceed against the Design-Builder or any other Person or to proceed against or exhaust any security held by Authority at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in Authority's power before proceeding against Guarantor;

b. any defense that may arise by reason of the incapacity, lack of authority, dissolution of, or revocation hereby by Guarantor, the Design-Builder or any other Person or the failure of Authority to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person;

c. any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof;

d. any right or defense arising out of an election of remedies by Authority;

e. any defense based on statutes of limitations other than the State of New York;

f. all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, amendment or accrual of any of the obligations of the Design-Builder under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto;

g. any defense based upon any act or omission of Authority which directly or indirectly results in or aids the discharge or release of the Design-Builder, Guarantor or any security given or held by Authority in connection with the Guaranteed Obligations, except with respect to a release of the Design-Builder from liability that is in writing and signed by the Authority's authorized representative, other than any such release made in the context of a bankruptcy or insolvency proceeding in which the Design-Builder is the debtor, unless otherwise specified in said release;

h. any duty on the part of Authority to disclose to Guarantor any facts Authority may now or hereafter know about the Design-Builder, regardless of whether Authority has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor. Guarantor acknowledges that it is fully responsible for being and keeping informed of the financial condition of the Design-Builder and of all circumstances bearing on the risk of non-payment of any Guaranteed Obligations;

i. the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect ownership or economic interests in the Design-Builder; and

j. any and all suretyship defenses under applicable law.

**6. Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly performed in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the Design-Builder that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of Authority against the Design-Builder, or any other security or collateral that Authority now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor is subordinated to all of the Guaranteed Obligations until such time as all Guaranteed Obligations shall have been indefeasibly paid in full. Whenever and for so long as the Design-Builder shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor without the prior written consent of Authority. Any payment by Design-Builder or any shareholders, partners, members, or joint venturers of Design-Builder to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for Authority.

**7. Cumulative Rights.** All rights, powers and remedies of Authority hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to Authority, whether at law, in equity or otherwise.

**8. Representations and Warranties.** In addition to the representations and warranties with respect to solvency set forth in Section 20 of this Guaranty, Guarantor represents and warrants that:

a. it is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of \_\_\_\_\_ and is duly qualified to do business under the laws of said jurisdiction and in each jurisdiction in which the nature of its business requires qualification;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, subject only to bankruptcy, insolvency or other similar laws affecting creditors' rights generally;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination,



or cancellation, or a loss of rights under: (1) the article of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right, restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of the Design-Builder and the ability of the Design-Builder to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies Authority may pursue, with or without notice to the Design-Builder or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of the Design-Builder and will keep itself fully informed as to all aspects of the financial condition of the Design-Builder, the performance of the Guaranteed Obligations and of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of Authority to disclose any matter, fact or thing relating to the business, operations or conditions of the Design-Builder now known or hereafter known by Authority;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof;

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Entity which challenges the validity or enforceability of this Guaranty;

k. it is not subject to any outstanding judgment, rule, writ, injunction or decree of any Governmental Entity that adversely affects its ability to perform its obligations under this Guaranty; and

l. there are no conditions precedent to the effectiveness of this Guaranty;

m. it derives a substantial direct or indirect economic benefit from the Contract.

**9. GOVERNING LAW. THIS INSTRUMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS (INCLUDING WITHOUT LIMITATION THE LAWS OF ANY OTHER COUNTRY). THIS CHOICE OF LAW IS MADE PURSUANT TO NEW YORK GENERAL OBLIGATIONS LAW SECTION 5-1401.**

10. **WAIVER OF JURY TRIAL.** AUTHORITY BY ACCEPTING THIS GUARANTY AND GUARANTOR HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS GUARANTY. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR AND AUTHORITY, AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE OR ARISE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER PARTY.

11. **ADDITIONAL WAIVERS IN THE EVENT OF ENFORCEMENT.** GUARANTOR HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF AUTHORITY ON THIS GUARANTY, ANY AND EVERY RIGHT GUARANTOR MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT GUARANTOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST AUTHORITY WITH RESPECT TO ANY ASSERTED CLAIM.

12. **Jurisdiction.** Guarantor hereby irrevocably agrees that it is and shall remain subject to, and hereby irrevocably submits to, personal jurisdiction in all State and Federal courts located in the State and County of New York in any action or proceeding regarding this Guaranty. In furtherance of such agreement, Guarantor hereby designates \_\_\_\_\_, \_\_\_\_\_, as Guarantor's general agent for receipt of notice and service of process in any such action or proceeding. Section 5-1402 (Choice of Forum) of the General Obligations Law of the State of New York shall apply to this Guaranty, and Guarantor hereby waives any defense or right to stay or dismiss on the basis of *forum non conveniens* or lack of jurisdiction regarding any action or proceeding brought before any of said courts.

13. **Entire Document.** This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by Authority referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

14. **Severability.** If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

15. **Notices.** Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage



prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Authority: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either Guarantor or Authority may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 15 are effective upon delivery, if delivered personally or by overnight mail, and, are effective 5 days following deposit in the United States mail, postage prepaid if delivered by mail.

Notwithstanding the foregoing, service of any summons and complaint or other process in any action or proceeding may be made on Guarantor by (a) registered or certified mail, return receipt requested, or (b) U.S. Express Mail, return receipt requested, or (c) DHL, FedEx or other recognized international express next Business Day delivery service, receipt or delivery confirmation requested, Guarantor hereby waiving personal service thereof, or as may otherwise be permitted by law.

**16. Captions.** The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

**17. Assignability.** This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and Authority, but is not assignable by Guarantor without the prior written consent of Authority, which consent may be granted or withheld in Authority's sole discretion. Any assignment by Guarantor effected in accordance with this Section 17 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

**18. Construction of Guaranty.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

**19. No Waiver.** Any forbearance or failure to exercise, and any delay by Authority in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

**20. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty; Solvency.**

(a) The obligations of Guarantor under this Guaranty will continue to be effective, or be reinstated automatically, and will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Design-Builder or by any defense which the Design-Builder may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Authority is not obligated to file any claim relating to the Guaranteed Obligations if the Design-Builder becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of Authority so to file will not affect Guarantor's obligations under this Guaranty.

(b) Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and Authority that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve the Design-Builder of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay Authority, or allow the claim of Authority in respect of, any such interest accruing after the date on which such proceeding is commenced.

**21. Attorneys' Fees.** Guarantor agrees to pay to Authority without demand reasonable attorneys' fees and all costs and other expenses (whether by lawsuit or otherwise, and including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by Authority in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

**22. Joint and Several Liability.** If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to the Design-Builder and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

**23. Defenses; Amendments.** Notwithstanding any other provision to the contrary: (a) Guarantor shall be entitled to the benefit of all defenses available to the Design-Builder under the Contract except (i) those expressly waived in this Guaranty, (ii) failure of consideration, lack of authority of the Design-Builder and any other defense to formation of the Contract, and (iii) defenses available to the Design-Builder under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors; and (b) in the event that the Design-Builder's obligations have been changed by any modification, amendment, agreement or stipulation between Design-Builder and Authority or their respective successors or assigns, the term "Guaranteed Obligations" as used herein shall mean the Guaranteed Obligations as so changed, except that the Guaranteed Obligations

shall be determined without regard to the effect of any such modification, amendment, agreement or stipulation in the context of a bankruptcy or insolvency proceeding in which the Design-BUILDER is the debtor, unless otherwise specified in the modification, amendment, agreement or stipulation.

**24. Additional Guarantor Waivers and Acknowledgements.**

a. Guarantor hereby waives any and all defenses it might have that liquidated damages or stipulated damages constitute a penalty or that they do not bear a reasonable relation to the actual damages.

**b. GUARANTOR ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON EXECUTION OF THIS GUARANTY. NO FORMAL ACCEPTANCE BY AUTHORITY IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS EFFECTIVE AS OF THE DATE HEREOF.**

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

[NAME OF GUARANTOR]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**This Document is for Informational Purposes Only**  
**New York State Thruway Authority**

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**CORPORATE ACKNOWLEDGMENT**

STATE OF _____	}	
	:	<b>SS.:</b>
COUNTY OF _____	}	
<p>On the _____ day of _____ in the year _____ before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____ (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she/they is (are) the _____ (president or other officer or director or attorney in fact duly appointed) of the _____ (name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.</p>		
<hr/>		
<b>Notary Public</b>		

**ACKNOWLEDGMENT FOR OTHER ENTITIES (in New York)**

STATE OF NEW YORK	}	
	:	<b>SS.:</b>
COUNTY OF _____	}	
<p>On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.</p>		
<hr/>		
<b>Notary Public</b>		

**ACKNOWLEDGMENT FOR OTHER ENTITIES (outside of New York)**

STATE OF _____	}	
	:	<b>SS.:</b>
COUNTY OF _____	}	
<p>On the _____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument[, and that such individual made such appearance before the undersigned in the _____ (city or political subdivision and the state or county).</p>		
<hr/>		
<b>Notary Public</b>		

**FORM GF**

**PROPOSER'S DBE GOOD FAITH EFFORTS**

Form GF is not required if Form LDB demonstrates meeting of the Project DBE goals.

<b>PROPOSER:</b>	
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Proposers shall submit the following information to demonstrate that a good faith effort has been made to provide opportunities for DBE firms on the Project.

Proposers shall submit the following information to remain eligible for selection:

1. A list of the categories of subcontracts that the Proposer determined were appropriate for solicitation during the pre-Proposal period and an explanation regarding any categories not included:

--

2. The names and dates of advertisement of each newspaper, trade paper, and minority-focus paper (termed "papers") in which a request for DBE participation for this Project was placed by the Proposer.

*(Add rows as needed)*

<b>Papers</b>	<b>Dates of advertisement</b>

3. The names and dates of written notices of all certified DBEs solicited by direct mail or other means for this Project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested:

*(Add rows as needed)*

<b>Names of DBEs solicited</b>	<b>Dates of solicitations</b>	<b>Follow-up methods and dates</b>

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4. Items of Work for which the Proposer requested bids, proposals or material to be supplied by DBEs, if any; the information furnished to interested DBEs in the way of plans, specifications and requirements for the Work, and any breakdown of items of Work into economically feasible units to facilitate DBE participation. Where there are DBEs available for doing portions of the Work normally performed by the Proposer with its own forces, the Proposer will be expected to make portions of such Work available for DBEs to bid on.

<b>Items of work:</b>	
<b>Information furnished:</b>	
<b>Breakdown of items:</b>	

5. The names of DBEs who submitted bids or proposals for any of the Work indicated above which were not accepted, a summary of the Proposer's discussions and/or negotiations with them, the name of the Subcontractor or supplier who was selected for that portion of the Work, and the reasons for the Proposer's choice. If the reason for rejecting a DBE bid was price, give the price bid or proposed by the rejected DBE and the price bid or proposed by the selected Subcontractor or supplier. Since the utilization of available DBEs is expected, only significant price differences will be considered as cause for rejecting such DBE bids or proposals.

*(Add rows as needed)*

Name of rejected DBE	Summary of discussions and/or negotiations	Names of Subcontractors or suppliers who were selected over the rejected DBE and the reasons for that choice

6. Assistance that the Proposer has extended to rejected DBEs identified above to remedy the deficiency in their bids:

*(Add rows as needed)*

Name of rejected DBE	Assistance extended



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Name of rejected DBE	Assistance extended

6. Efforts to assist interested DBEs on obtaining required bonding, lines of credit or insurance.

7. Efforts to assist interested DBEs in obtaining necessary equipment, supplies, Material or related assistance or services

8. Effective use of services of available minority/women community organizations, contractor groups and local/State/Federal minority/women business assistance offices and other organizations to assist in recruitment and placements of DBEs

9. Any additional data to support a demonstration of good faith effort, such as contacts with DBE assistance agencies:

Notes:

- (1) See Federal Register, Vol. 64, No. 21, Tuesday, February 2, 1999/Rules and Regulations, and Vol. 68, No. 115, Monday June 16, 2003/Rules and Regulations, Appendix A to Part 26 – Guidance Concerning Good Faith Efforts.
- (2) Appropriate documentation such as copies of newspaper advertisements, letters soliciting bids, and telephone logs should accompany this form.



**ACKNOWLEDGMENT FOR OTHER ENTITIES (in New York)**

STATE OF NEW YORK            }  
                                          :    **SS.:**  
COUNTY OF \_\_\_\_\_        }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
**Notary Public**

**ACKNOWLEDGMENT FOR OTHER ENTITIES (outside of New York)**

STATE OF \_\_\_\_\_        }  
                                          :    **SS.:**  
COUNTY OF \_\_\_\_\_        }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument[, and that such individual made such appearance before the undersigned in the

\_\_\_\_\_  
(city or political subdivision and the state or county).

\_\_\_\_\_  
**Notary Public**

***Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all general partners or joint venturers of the Proposer.***

**FORM IC**

**CERTIFICATE REGARDING INELIGIBLE CONTRACTORS**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER  
INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS**

**FINANCED IN PART BY THE U.S. GOVERNMENT**

I, \_\_\_\_\_ hereby certify that  
(Name and title of Certifying Officer)

\_\_\_\_\_  
(Name of Contractor)

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

If any Principal Participant is unable to certify to any of the statements in this certification, such prospective Principal Participant shall attach an explanation to this certification.

I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 United States Code (U.S.C.) §3801 *et seq.* (Administrative Remedies for False Claims and Statements) are applicable hereto.

Name of Contractor \_\_\_\_\_

Street Address of Contractor \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone Number of Contractor \_\_\_\_\_

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Signature of Certifying Officer

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Date

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**Note:** The above certification merely certifies that a Proposer and its Subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended, or declared ineligible from doing transactions with the Federal Government or any of its agencies.

**FORM IS**

**CERTIFICATE REGARDING INELIGIBLE SUBCONTRACTORS**

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

- (1) The prospective lower tier participant (Subcontractor) certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Tappan Zee Hudson River Crossing Project, PIN 8TZ1.00, by any Federal department or agency.
  
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its proposal.

Signed:

Typed or printed name

Company name of Subcontractor

Date

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## FORM KP - KEY PERSONNEL INFORMATION

In accordance with ITP Appendix A Section A2.3.3, complete either (A) or (B) below

<b>PROPOSER:</b>							
Either (A), the Proposer hereby confirms that there is no change in the Proposer's Key Personnel relative to the Proposer's SOQ submission:							
<b>Signed</b>							
<b>Name</b>							
<b>Title</b>							
<b>Date</b>							
Or (B), the Proposer has proposed changes to the Proposer's Key Personnel relative to the Proposer's SOQ submission. The Proposer summarizes below <u>all</u> the Key Personnel proposed; states which Key Personnel differ from those named in the SOQ; and, for the substitute Key Personnel, attaches copies of resumes plus the Agencies' written consent for the personnel change.							
Key Personnel Role	Changed relative to SOQ? (Yes/No)	Name	Years of experience	Parent Firm name	% of time dedicated to Project	Resume attached (Yes/No)	Agencies' consent attached (Yes/No)
Project Executive							
Project Manager							
Deputy Project Manager							
Design Manager							



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<b>PROPOSER:</b>							
<b>Bridge (Main Span) Lead Designer</b>							
<b>Bridge (Approaches) Lead Designer</b>							
<b>Foundations Lead Designer</b>							
<b>Lead Demolition Engineer</b>							
<b>Lead Architectural Designer</b>							
<b>Environmental Compliance Manager</b>							
<b>Construction Manager</b>							
<b>Quality Manager</b>							
<b>Safety Manager</b>							

**FORM LC**  
**LOBBYING CERTIFICATE**

The undersigned certifies, by signing and submitting its Proposal, to the best of his or her knowledge and belief, that:

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

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

The Proposer/Design-Builder also agrees by submitting its Proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Date \_\_\_\_\_  
Company name \_\_\_\_\_  
Signature \_\_\_\_\_  
Name (typed or printed) \_\_\_\_\_  
Title \_\_\_\_\_

**Form LC - EXHIBIT 1**

**FORM LLL Disclosure of Lobbying Activities**



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(attach Continuation Sheet(s) if necessary)

**11. Amount of Payment (check all that apply)**

\$ \_\_\_\_\_  actual  planned

**12. Form of Payment (check all that apply):**

- a. cash  
 b. in-kind; specify: nature \_\_\_\_\_  
value \_\_\_\_\_

**13. Type of Payment (check all that apply)**

- a. retainer  
 b. one-time fee  
 c. commission  
 d. contingent fee  
 e. deferred  
 f. other, specify \_\_\_\_\_

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

(attach Continuation Sheet(s) if necessary)

**15. Continuation Sheet(s) attached:**

Yes  No

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

Signature:

Print Name:

Title:

Telephone No.:

Date:

**Federal Use Only:**

Authorized for Local Reproduction

Standard Form – LLL

Standard Form LLL Rev. 09-12-97

**Instructions for Completion of Standard Form LLL**  
**Disclosure of Lobbying Activities**

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

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

Identify the status of the covered Federal action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348 0046), Washington, D.C. 20503.





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Form LDB Table 1 PROPOSED LIST OF NAMED DBE PARTICIPANTS					
PROPOSER					
Firm Name <small>(Legal business name used for DBE certification in NYS)</small>	Address	In what role will the firm participate?	DBE classification	Description of Items of Work	Minimum Proposed Participation <small>(% of Proposal Price)</small>

Proposer to identify changes to Form LDB Table 1 if the Non-HARS Alternative is used



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Form LDB Table 2 PROPOSED AREA OF DBE ACTIVITY (excluding DBE participation listed in Table 1)				
PROPOSER				
In what role will the DBE firm participate?	Description of Items of Work	Efforts taken by Proposer to date to secure DBE participation in this role	Proposer's proposed efforts to secure DBE participation in this role	Minimum Proposed Participation (as percentage of Proposal Price)

Proposer to identify changes to Form LDB Table 2 if the Non-HARS Alternative is used

## FORM LSI - LETTER OF SUBCONTRACT INTENT

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

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

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

The minimum value of the Subcontract is:			
The Subcontractor/Consultant is not a certified DBE firm:	Yes		No
The Subcontractor/Consultant is a certified DBE firm:	Yes	(see below)	No
If Subcontractor/Consultant is a certified DBE firm:			
Certifying entity:			
Telephone number for certifying entity:			

**For the Proposer:**

**For the Subcontractor/Consultant:**

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Confirmed by: (Signature)

\_\_\_\_\_  
 (Printed or typed name)

\_\_\_\_\_  
 (Printed or typed name)

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

**FORM NC**  
**NON-COLLUSION AFFIDAVIT**

State of \_\_\_\_\_ }ss  
County of \_\_\_\_\_

Each of the undersigned, being first duly sworn, deposes and says that:

\_\_\_\_\_  
(Name) is the \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Firm)

\_\_\_\_\_  
(Name) is the \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Firm)

which entity(ies) are the \_\_\_\_\_ of \_\_\_\_\_  
(details) (Proposer)

the entity making the foregoing Proposal:

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

- (1) The prices in this Proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (2) Unless otherwise-required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
- (3) No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A Proposal shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) above have not been complied with; provided however, that if in any case the Proposer cannot make the foregoing certification, the Proposer shall so state and shall furnish with the Proposal a signed statement which sets forth in detail the reasons therefore. Where (a)(1)(2) and (3) above have not been complied with, the Proposal shall not be considered for award nor shall any award be made unless the head of the Agencies, or his designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph (a).

If the Proposal is made by a corporate Proposer, such Proposal shall be deemed to have been authorized by the board of directors of the Proposer and such authorization shall be deemed to include the signing and submission of the Proposal and the inclusion therein of the certificate as to non collusion as the act and deed of the corporation.

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Signature block for corporation or limited liability company:

*[Insert Proposer's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature block for partnership or joint venture:

*[Insert the Proposer's name]*

By: *[Insert general partner's or member's name]*

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Add signatures of additional general partners or members as appropriate]*



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*Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all general partners or joint venturers of the Proposer.*



**FORM NS - NAMED SUBCONTRACTORS**

*Add rows as needed*

Proposer					
Subcontractor	Specialty / Assignment / Percentage	Address of head office of Subcontractor	Contact name / telephone number / email	For last two projects by the subcontractor, list: project name / owner / owner contact's name, phone number and email	
				Last project 1	Last project 2

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Proposer					
Subcontractor	Specialty / Assignment / Percentage	Address of head office of Subcontractor	Contact name / telephone number / email	For last two projects by the subcontractor, list: project name / owner / owner contact's name, phone number and email	
				Last project 1	Last project 2

**FORM OC**

**OPINION OF COUNSEL**

[Letterhead of in-house or outside counsel, as applicable]

**New York State Thruway Authority**

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Re: Tappan Zee Hudson River Crossing Project  
Design-Build Contract dated \_\_\_\_\_ between New York State Thruway Authority (the  
“Authority”) and [Name of Design-Builder] (the “Design-Builder”)  
Contract D214134  
PIN 8TZ1.00  
TANY 12-18B  
(the “Contract”)

Gentlemen:

[Describe relationship to Design-Builder and its joint venture members, general partners, or any other entities whose approval is required in order to authorize execution, delivery and performance of the Contract.] This letter is provided to you pursuant to Section 6.2.3(F) of the Instructions to Proposers contained in the RFP.

In giving this opinion, we have examined \_\_\_\_\_. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable.

In making this response we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding formation and existence of Design-Builder and each of its joint venture members/general partners]
2. [opinion regarding good standing and qualification to do business in the State for the Design-Builder and each of its joint venture members/general partners]
3. [opinion that the Design-Builder has power and is duly authorized to execute and deliver the Contract]
4. [opinion that the Contract has been duly and validly executed and delivered]

5. [opinion that all required approvals have been obtained with respect to execution and delivery of the Contract; and that the Contract does not conflict with any agreements to which the Design-Builder or its joint venture members/general partners are a party or with any orders, judgments or decrees by which the Design-Builder or its joint venture members/general partners are bound]
6. [opinion that the Contract constitutes a legal, valid and binding obligation of the Design-Builder and its joint venture members/general partners, enforceable against the Design-Builder and its joint venture members/general partners in accordance with its terms, except as the same may be limited by bankruptcy and similar laws of general application affecting creditor's rights and remedies and equitable doctrines]
7. [opinion regarding formation and existence of Guarantor, if any]
8. [opinion that the Guarantor has power and is duly authorized to execute and deliver the Guaranty, if any]
9. [opinion that the Guaranty has been duly and validly executed and delivered, if any]
10. [opinion that all required approvals have been obtained with respect to the execution and delivery of the Guaranty, if any; and that the Guaranty if any does not conflict with any agreements to which Guarantor is a party or with any orders, judgments or decrees by which Guarantor is bound]
11. [opinion that the Guaranty, if any, constitutes a legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as the same may be limited by bankruptcy and similar laws of general application affecting creditor's rights and remedies and equitable doctrines]

**FORM PB**

**PROPOSAL BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that

\_\_\_\_\_

(Name of Proposer)

\_\_\_\_\_

(Address)

(hereinafter called the "Principal") and \_\_\_\_\_, as surety or as co-sureties ("Co-Sureties"), each a corporation duly organized and existing under the laws of the State indicated on the attached Appendix 1, having its principal office at the address (including City and State) listed on the attached Appendix 1, and authorized as a surety in the State of New York (such surety or Co-Sureties are hereinafter called the "Surety"), are held and firmly bound unto the New York State Thruway Authority (the "Obligee"), in the full just sum of **one hundred million dollars**, good and lawful money of the United States of America (the "Bonded Sum"), for the payment of which said sum of money, well and truly to be made and done, the said Principal binds itself, its heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the said Principal has submitted to the Agencies, a Proposal for the Tappan Zee Hudson River Crossing Project (the "Project"), Contract D214134, PIN 8TZ1.00, TANY 12-18B:

AND WHEREAS, under the terms of the Laws of the State of New York as above indicated, the said Principal has filed or intends to file this Proposal Bond to guarantee that the Principal will execute all required contract proposal documents and furnish such faithful performance or other bonds as may be required by law in accordance with the terms of the Principal's said Proposal;

AND WHEREAS, all capitalized terms used in this Proposal Bond and not otherwise defined herein shall have the meanings ascribed to such terms in the Instructions to Proposers in the Request for Proposals (as amended by any addenda) for this Project.

NOW, THEREFORE,

1. The condition of the foregoing obligation is such that, upon occurrence of any of the following events this obligation shall be null and void; otherwise it shall remain in full force and virtue and the Bonded Sum will be forfeited to the Obligee as liquidated damages and not as penalty, upon receipt by Principal and Surety of notice of such forfeiture from the Obligee;

- (a) Principal's receipt of written notice from the Obligee that either (i) no Contract for the Project will be awarded by the Obligee pursuant to the RFP, or (ii) the Obligee has selected a different proposer for award, has received the executed Contract and other required

documents and approvals required for award, and does not intend to award the contract to the Principal; or

- (b) if the Obligee has not previously delivered notice of forfeiture hereunder, failure of the Obligee to award the Contract to Principal within 180 days following the Proposal Due Date.

2. The Principal and Surety hereby agree to pay to the Obligee the full Bonded Sum, as liquidated damages and not as a penalty, within 10 days after occurrence of any of the following events:

- (a) Principal withdraws, repudiates, or otherwise indicates in writing that it will not meet, all or any part of its commitments made in its Proposal prior to the time allowed for execution of the Contract under the ITP; or
- (b) Principal is selected for negotiations and fails to engage in good faith negotiations with the Obligee under ITP Section 6.2.2; or
- (c) Principal is selected for limited negotiations or for award and fails to provide all documents and other requirements in accordance with ITP Section 6.2.1 or 6.2.3 within the time periods set forth therein; or
- (d) Principal, or anyone representing the Principal, offers or gives any advantage, gratuity, bonus, discount, bribe, or loan of any sort to the Agencies, including agents or anyone representing the Agencies at any time during the procurement process, and the Agencies disqualify the Proposer under ITP Section 1.8.1.

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate the Obligee for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. Such damages include potential harm to the Obligee's credibility and reputation, delays to the Project, costs associated with award to another proposer under this procurement, and/or costs of administering a new procurement (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that the Obligee would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this Proposal Bond:

- (a) This Proposal Bond shall not be subject to forfeiture in the event that the Obligee disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.
- (b) If suit is brought on this Proposal Bond by the Obligee and judgment is recovered, Principal and Surety shall pay all costs incurred by the Obligee in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
- (c) Any extensions of the time for award of the Contract that the Principal may grant in accordance with the Instruction to Proposers in the Request for Proposals for the Project, or otherwise, shall be subject to the reasonable approval of the Surety.
- (d) **[Note: Use in case of single surety; otherwise, delete.]** Correspondence or claims relating to this Proposal Bond should be sent to Surety at the following address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. **[Note: Use in case of multiple or co-sureties or, otherwise, delete.]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Proposal Bond, so that the Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee to the Co-Sureties and all claims under this Proposal Bond shall be sent to such designated representative, and all correspondence so sent shall be deemed to have been sent to all Co-Sureties. The Co-Sureties also agree to designate a single agent for service of process with respect to any actions on this Proposal Bond, which agent shall either be a natural person or a corporation qualified to act as an agent for service of process under the laws of the State of New York. The designated representative and agent for service of process may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative and/or agent, signed by all of the Co-Sureties. The initial representative shall be:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**[Note: Add name and address and delete this bracketed text.]**

The initial agent for service of process shall be:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**[Note: Add name and address and delete this bracketed text.]**

[SIGNATURE PAGE TO FOLLOW]



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**New York State Thruway Authority**

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IN TESTIMONY WHEREOF, the said Principal has hereunto set its hand and the said Surety or each Co-Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the presence of:

\_\_\_\_\_) )  
(Company)

By \_\_\_\_\_) Principal  
(Signature)

\_\_\_\_\_) )  
(Title)

\_\_\_\_\_) )  
(Company)

By \_\_\_\_\_) Surety [**or Co-Surety**]  
(Signature)

\_\_\_\_\_) )  
(Title of Authorized Officer)

\_\_\_\_\_) )  
(Company)

By \_\_\_\_\_) Co-Surety  
(Signature)

\_\_\_\_\_) )  
(Title of Authorized Officer)

\_\_\_\_\_) )  
(Company)

By \_\_\_\_\_) Co-Surety  
(Signature)

\_\_\_\_\_) )  
(Title of Authorized Officer)

(The Surety shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of bonds by officers of the Surety to the bond(s).)



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I hereby approve the foregoing contract and bond as to form and manner of execution.

---

State of New York Office of the Attorney General

**Appendix 1 to Proposal Bond**

**SURETY/CO-SURETIES INFORMATION**

SURETY NAME

SURETY ADDRESS

JURISDICTION OF ORGANIZATION

**FORM PAB**

**FORM OF PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that

\_\_\_\_\_  
(Name of Design-Builder)

\_\_\_\_\_  
(Address)

(hereinafter called the "Principal") and \_\_\_\_\_, as surety or as co-sureties ("Co-Sureties"), each a corporation duly organized and existing under the laws of the State indicated on the attached Appendix 1, having its principal office at the address (including City and State) indicated on the attached Appendix 1, and authorized as a surety in the State of New York (such surety or Co-Sureties are hereinafter called the "Surety"), are hereby jointly and severally held and firmly bound unto the New York State Thruway Authority (the "Obligee") in the full and just sum of [*the greater of 30% of the Contract Price and \$1.5 billion*][OR][*the greater of 40% of the Contract Price and \$1.5 billion*] good and lawful money of the United States of America, to the payment of which said sum of money, well and truly to be made and done the said Principal binds itself, its heirs, executors, administrators or assignees and the said Surety binds itself, its successors or assigns, jointly and severally, firmly by these presents:

WHEREAS, said Principal has entered into a certain written contract, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ with the Obligee, 200 Southern Boulevard, Albany, New York, 12209 (mailing address: P.O. Box 189, Albany, New York 12201-0189), for design, construction and other specified activities for the Tappan Zee Hudson River Crossing Project in the counties of Rockland and Westchester which constitutes Contract No. D214134, PIN 8TZ1.00, TANY 12-18B.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay all monies due to all persons furnishing labor or materials to it or its subcontractors in the prosecution of the work provided for in said contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that the Comptroller of the State of New York having required the said Principal to furnish this bond in order to comply with the provisions of Section 137 of the State Finance Law, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions and limitations of said Section to the same extent as if they were copied at length herein; and

Further, provided, that the place of trial of any action on this bond shall be in the county in which the said contract was to be performed, or if said contract was to be performed in more than one county then in any such county, and not elsewhere.

**[Note: Use in case of multiple or co-sureties or, otherwise, delete.]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee to the Co-Sureties and all claims under this Bond shall be sent to such designated representative, and all correspondence so sent shall be deemed to have been sent to all Co-Sureties. The Co-

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**New York State Thruway Authority**

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Sureties also agree to designate a single agent for service of process with respect to any actions on this Bond, which agent shall either be a natural person or a corporation qualified to act as an agent for service of process under the laws of the State of New York. The designated representative and agent for service of process may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative and/or agent, signed by all of the Co-Sureties. The initial representative shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[Note: Add name and address and delete this bracketed text.]**

and the initial agent for service of process shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**[Note: Add name and address and delete this bracketed text.]**

[SIGNATURE PAGE TO FOLLOW]

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**New York State Thruway Authority**

---

IN TESTIMONY WHEREOF, the said Principal has hereunto set its hand and the said Surety or each Co-Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the presence of:

\_\_\_\_\_  
(Company)

By \_\_\_\_\_ ) Principal  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company)

By \_\_\_\_\_ ) Surety [**or Co-Surety**]  
(Signature)

\_\_\_\_\_  
(Title of Authorized Officer)

\_\_\_\_\_  
(Company)

By \_\_\_\_\_ ) Co-Surety  
(Signature)

\_\_\_\_\_  
(Title of Authorized Officer)

\_\_\_\_\_  
(Company)

By \_\_\_\_\_ ) Co-Surety  
(Signature)

\_\_\_\_\_  
(Title of Authorized Officer)

(The Surety shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of bonds by officers of the Surety to the bond(s).)





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**New York State Thruway Authority**

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I hereby approve the foregoing contract and bond as to form and manner of execution.

---

State of New York Office of the Attorney General

**FORM PEB - FORM OF PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that

\_\_\_\_\_  
(Name of Design-Builder)

\_\_\_\_\_  
(Address)

(hereinafter called the "Principal") and the \_\_\_\_\_, as surety or as co-sureties ("Co-Sureties"), each a corporation duly organized and existing under the laws of the State indicated on the attached Appendix 1, having its principal office at the address (including City and State) indicated on the attached Appendix 1, and authorized as a surety in the State of New York (such surety or Co-sureties are hereinafter called the "Surety"), are held and firmly bound unto the New York State Thruway Authority (hereinafter the "Obligee"), in the full and just sum of *[the greater of 30% of the Contract Price and \$1.5 billion][OR][the greater of 40% of the Contract Price and \$1.5 billion]* good and lawful money of the United States of America, for payment of which said sum of money, well and truly to be made and done, the said Principal binds itself, its heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, said Principal has entered into a certain written contract, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ with the Obligee, 200 Southern Boulevard, Albany, New York, 12209 (mailing address: P.O. Box 189, Albany, New York 12201-0189), for design, construction and other specified activities for the Tappan Zee Hudson River Crossing Project in the counties of Rockland and Westchester which constitutes Contract No. D214134, PIN 8TZ1.00, TANY 12-18B.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall well, truly and faithfully perform the work in accordance with the terms of the contract and as said contract may be modified or amended, and will commence and complete the work within the time prescribed in the contract, and shall protect the Obligee against, and pay any excess of cost as provided in said contract, and all amounts, damages, costs and judgments which may be recovered against the Obligee or its officers or agents of which the Obligee may be called upon to pay to any person or corporation by reason of any damages, direct or indirect, arising or growing out of the doing of said work, or from the negligence, nonfeasance, misfeasance or malfeasance of any officer, agent or employee of the Obligee thereof, or suffered or claimed on account of said public works contract during the time thereof or the manner of doing the same, or the neglect of the said Principal, or its agents, or servants, or the improper performance of the said work by the said Principal, or its agents, or servants, or from any other cause, then this obligation shall be null and void, otherwise to remain in full force and virtue.

In the event of a failure of performance of the contract by the Principal, which shall include, but not be limited to, any breach or default of the contract by the Principal, or in case said contract is forfeited by the Principal in the manner provided for in the contract, and the said Surety, for value received, hereby stipulates and agrees, if requested to do so by the Obligee, has the option to either remedy the default, or breach or forfeiture of the Principal or take charge and fully perform and complete the work, mentioned and

described in said contract, pursuant to the terms, conditions and covenants thereof and as may be amended, at its own expense. The procedure by which the Surety undertakes to discharge its obligations under the bond shall be subject to the advance written approval of the Oblige. If the Surety completes the contract, it shall be paid for the actual items of work performed in accordance with the Principal's contract terms and prices. In this event the Surety assumes the rights and obligations of the Principal.

It shall be the duty of the Surety to give unequivocal notice in writing to the Oblige, within 45 days after receipt of written notice from the Oblige to the Surety, of the Surety's election to remedy default(s) or breach(es) or forfeiture(s) promptly or to perform and fully complete the contract promptly as provided herein, time being of the essence of this bond. In said notice of election, the Surety shall state the date on which the remedy or performance shall commence. During the period between the Oblige's notice and Surety's performance of the contract or remedy of the default, breach or forfeiture, the Surety shall be liable for and agrees to pay any and all reasonable and necessary costs as determined by the Oblige to maintain the contract site safe and convenient to the public.

It shall also be the duty of the Surety to give prompt notice in writing to the Oblige upon the completion of the remedy and/or correction of each breach or default or completion of the contract. The Surety shall not assert solvency of its Principal or its Principal's denial of default as justification for its failure to give notice of election or for its failure to promptly remedy the breach or default or to complete the contract.

In the event the Surety shall fail to exercise either option or to act promptly then the Oblige shall give 10 days' notice of such failure, both to Principal and Surety, and after the expiration of the 10 days the Oblige may cause the work to be completed, and the Surety and the Principal shall be jointly and severally liable for the amount of excess cost of completing the contract work beyond the amounts remaining for this contract adjusted for the work actually performed. When the cost of completion of performance by the Oblige is estimated, the Principal and Surety shall pay, free from all liens and encumbrances, the estimated completion costs determined by the Oblige above the funds remaining for this contract, to the Oblige within 30 days of receipt of the estimate. Adjustment of the Oblige's estimated completion cost will be made upon the Oblige's final acceptance of the work and appropriate refunds, if any, will be promptly made to the Surety. Any actual costs in excess of the estimated price shall be paid to the Oblige promptly on demand. Additionally, Principal and Surety shall be liable for any applicable warranties, liquidated and/or engineering costs or damages.

In addition, the said Principal and Surety further agree, as part of this obligation, to pay all damages of any kind to person or property that may result from a failure in any respect to perform and complete said contract including, but not limited to costs necessary to protect the traveling public or to avoid inconvenience to the traveling public, liquidated damages as provided above, all repair and replacement costs necessary to rectify construction errors, architectural and engineering costs and fees, all consultant fees, all testing and laboratory fees, and all interest, legal fees and litigation costs incurred by the Oblige.

And the said Surety thereby stipulates and agrees that no change, extension, alteration, deduction or addition in or to the terms of the said contract or the plans, requirements or specifications accompanying the same, shall in any way affect the obligations of said Surety of its bond.

**[Note: Use in case of multiple or co-sureties or, otherwise, delete.]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee to the Co-Sureties and all claims under this Bond shall be sent to such designated representative, and all correspondence so sent shall be deemed to have been sent to all Co-Sureties. The Co-Sureties also agree to designate a single agent for service of process with respect to any actions on this Bond, which agent shall either be a natural person or a corporation qualified to act as an agent for service of process under the laws of the State of New York. The designated representative and agent for service of process may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative and/or agent, signed by all of the Co-Sureties. The initial representative shall be:

\_\_\_\_\_  
\_\_\_\_\_

**[Note: Add name and address and delete this bracketed text.]**

and the initial agent for service of process shall be:

\_\_\_\_\_  
\_\_\_\_\_

**[Note: Add name and address and delete this bracketed text.]**

[SIGNATURE PAGE TO FOLLOW]

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**New York State Thruway Authority**

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IN TESTIMONY WHEREOF, the said Principal has hereunto set its hand and the said Surety or each Co-Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the presence of:

\_\_\_\_\_) )  
(Company)

By \_\_\_\_\_) Principal  
(Signature)

\_\_\_\_\_) )  
(Title)

\_\_\_\_\_) )  
(Company)

By \_\_\_\_\_) Surety [**or Co-Surety**]  
(Signature)

\_\_\_\_\_) )  
(Title of Authorized Officer)

\_\_\_\_\_) )  
(Company)

By \_\_\_\_\_) Co-Surety  
(Signature)

\_\_\_\_\_) )  
(Title of Authorized Officer)

\_\_\_\_\_) )  
(Company)

By \_\_\_\_\_) Co-Surety  
(Signature)

\_\_\_\_\_) )  
(Title of Authorized Officer)

(The Surety shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of bonds by officers of the Surety to the bond(s).)



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I hereby approve the foregoing contract and bond as to form and manner of execution.

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State of New York Office of the Attorney General

**Appendix 1 to Performance Bond**

**SURETY/CO-SURETIES INFORMATION**

SURETY NAME

SURETY ADDRESS

JURISDICTION OF ORGANIZATION



**FORM SA**  
**STIPEND AGREEMENT**

**COMPTROLLER'S CONTRACT NO.** \_\_\_\_\_

**PIN:** \_\_\_\_\_

**PROJECT: Tappan Zee Hudson River Crossing Stipend Contract**

This Agreement made this \_\_\_ day of \_\_\_\_\_, 2012, by and between NEW YORK STATE THRUWAY AUTHORITY (hereinafter "Authority"), a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, whose principal office is located at 200 Southern Boulevard, Albany, New York 12209 (mailing address: P.O. Box 189, Albany, New York 12201-0189) (hereinafter referred to as the "Authority"), and \_\_\_\_\_, a duly organized and existing under the laws of the State of \_\_\_\_\_, having its principal office at \_\_\_\_\_ (hereinafter referred to as "Proposer").

WITNESSETH:

WHEREAS, the New York State Department of Transportation (the "Department") and the Authority (collectively, the "Agencies") are currently procuring a design-build contract (the "Contract") for the Tappan Zee Hudson River Crossing Project (the "Project");

WHEREAS, the Proposer is a member of the shortlist for the Project;

WHEREAS, it is anticipated that the Proposer will submit a proposal in response to the Request for Proposals issued by the Agencies on March 9, 2012, as amended by addenda (as amended, the "RFP"); and

WHEREAS, on April 30, 2012 at Meeting No. 691, the Authority Board adopted Resolution No. 5923, which authorizes the Authority's Executive Director, or his designee, to enter into this Agreement;

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

**ARTICLE 1. PERFORMANCE OF WORK.** The Proposer shall perform all of the work described in ARTICLE 3, WORK PRODUCT AND INTELLECTUAL PROPERTY RIGHTS, and cause such work to be performed in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Proposer shall perform the work in accordance with professional standards and with the diligence and skill expected of a company with extensive experience in the performance of work of the type described in ARTICLE 3. The Proposer shall furnish such personnel and shall procure such materials, supplies, tools,

equipment, and other items as may reasonably be necessary or appropriate to perform the work in accordance with this Agreement.

**ARTICLE 2. TRANSFER AND USE OF WORK PRODUCT.** This Agreement addresses the Agencies' right, both collectively and individually, to engage in technical transfer (as defined below in this ARTICLE 2) of the Work Product (as defined in ARTICLE 3, WORK PRODUCT AND INTELLECTUAL PROPERTY RIGHTS).

The Project involves the design and construction of a new crossing over the Hudson River with an alignment that begins at the existing western landing of the existing bridge (at Nyack) and ends at the existing eastern landing (at Tarrytown).

Technical transfer, for purposes of this Agreement, means the Agencies' disclosure and use of Work Product that results in improvement of the Project or other projects of the Agencies, whether collectively or individually.

Under the terms of this Agreement, the Agencies, collectively or individually, may engage in technical transfer of the Work Product for the purposes of improvement of the Project (including providing the Work Product to the successful Proposer to incorporate into the Work and/or the Contract) or any other project which the Agencies, collectively or individually, may progress at any later date. All work performed by Proposer and its team members pursuant to this Agreement shall be considered work for hire. The Work Product shall become the property of the Agencies, without restriction or limitation on its use other than as expressly set forth in this Agreement, as of the date the Authority sends payment of the Stipend Amount (as defined in ARTICLE 5(B)) to the Proposer. Neither the Proposer nor any of its team members shall copyright any of the material developed under this Agreement.

**ARTICLE 3. WORK PRODUCT AND INTELLECTUAL PROPERTY RIGHTS.** The term "Work Product" shall mean any technical concepts included in the Proposer's Proposal (as defined in the RFP) or submitted by the Proposer for review by the Agencies in accordance with the RFP, including any Alternative Technical Concepts, ideas, innovation, technology, techniques, methods, processes, unique uses of commercial items, design concepts, solutions, construction means and methods, project execution approach, drawings, reports, plans and specifications and information that constitutes intellectual property in the proposal or any ATC submittal. The full details and requirements of the Work Product are contained in the RFP for the Project, which are hereby incorporated by reference. The Agencies reserve the right to modify such requirements at any time without adjustment in the completion date of this Agreement, as found in ARTICLE 4, COMPLETION OF WORK, and without adjustment to the Stipend Amount. Notwithstanding ARTICLE 9, PROPOSER LIABILITY, and ARTICLE 18A, RESPONSIBILITY OF THE PROPOSER, if the Proposer is not awarded the Contract, to the extent the Agencies or the successful proposer uses any of the Proposer's Work Product, any such use shall be at the sole risk of the Agencies and the successful proposer and shall in no way confer or be deemed to confer liability on the Proposer.

With respect to any Work Product that incorporates intellectual property owned by third parties (for greater certainty, other than the Proposer's team members), the Proposer represents and warrants that it has the right to grant the Agencies an irrevocable, non-exclusive, perpetual, royalty-free license to use such intellectual property for the purposes specified herein. The Proposer hereby assigns such license to the Agencies effective upon the Proposer's

acceptance of payment hereunder. The foregoing shall not be deemed a requirement for the Proposer to provide off-the-shelf software to the Agencies.

**ARTICLE 4. COMPLETION OF WORK.** As a condition to payment of the Stipend Amount, the Proposer shall complete all the work set forth in ARTICLE 3 as required by this Agreement by the date defined as the Proposal Due Date in the Instructions to Proposers (ITP) of the RFP for the Project, as amended by any addenda thereto.

**ARTICLE 5. PROVISION FOR PAYMENT.**

A) Consideration for the Proposer's Work Product will be paid by the Authority to the Proposer only under the circumstances specified in this Article 5 and in accordance with ARTICLE 6, PAYMENT OF STIPEND AND WAIVER OF CLAIMS. The Proposer will not be entitled to payment of any Stipend Amount if its proposal fails to:

- 1) Achieve a rating of "pass" on all "pass/fail" evaluation factors found in the ITP for the Project; or
- 2) Achieve an overall rating of "Acceptable" or greater on the technical proposal; or
- 3) Include a competitive and responsible price proposal for the Project.

The Proposer will not be entitled to payment of any Stipend Amount if the Proposer: (i) files or has filed a protest of the procurement process, award or cancellation of the procurement; (ii) fails to submit an invoice (or a revised invoice, if required) in accordance with (F), below, or fails to provide satisfactory evidence substantiating its Qualified Costs (as defined in (G), below) in accordance with (F), below; (iii) is selected for limited negotiations or for award without negotiations and fails to comply with any of its obligations under ITP Section 6.2; or (iv) subject to (E) below, fails to submit a Proposal on or by the Proposal Due Date.

B) Subject to the requirements and limitations set forth herein, the Authority shall pay to the Proposer, and the Proposer agrees to accept as full compensation for its Work Product, an amount (the "Stipend Amount") equal to 50% of the Proposer's total Qualified Costs, as substantiated in accordance with (G), below, not to exceed \$2,500,000.

C) If the Proposer is awarded the Contract for the Project and a Notice to Proceed (as defined in the Contract) is issued in accordance with the terms of the Contract, the Proposer will not be entitled to payment of any Stipend Amount. If a Stipend Amount is paid by the Authority to the Proposer pursuant to ARTICLE 6(B) and the Proposer is awarded the Contract, such payment shall be credited as a payment under the Contract, offsetting the first payment(s) otherwise owing under the Contract. If the Authority awards the Contract to the Proposer, but subsequently does not issue a Notice to Proceed in accordance with the terms of the Contract, then, subject to the terms of this Agreement (including, without limitation, Article 5(A)), the Authority will pay to the Proposer the Stipend Amount.

D) If the Agencies cancel the procurement after the Proposal Due Date, or the Authority does not award the Contract within 180 days following the Proposal Due Date or any longer period agreed to by the Authority and the selected proposer (the "Proposal Validity Period"), then, subject to the terms of this Agreement (including, without limitation, Article 5(A)), the Authority will pay to the Proposer the Stipend Amount.

E) If the Agencies cancel the procurement prior to the Proposal Due Date, the Authority may, in its sole discretion, elect to make a payment to the Proposer for its Work Product completed as of the date of cancellation if the Proposer (i) submits to the Authority all such Work Product, (ii) submits to the Authority an invoice and satisfactory evidence substantiating its Qualified Costs in accordance with (F) and (G), below, and (iii) attends a meeting with the Agencies to discuss its completed Work Product. Notwithstanding (B), above, any Stipend Amount to be paid by the Authority to the Proposer pursuant to this Article 5(E) shall be determined at the sole discretion of the Authority.

F) In order to request payment of the Stipend Amount, the Proposer shall submit to the Agencies' Designated Representative (as set forth in ITP Section 2.2.1) a single invoice for its proposed Stipend Amount, together with all documentation required under (G), below, not later than three business days following the Proposal Due Date. The Authority will review such submitted invoice and documentation and, based on such review, make a determination as to the appropriate Stipend Amount. If the Authority disagrees with the proposed Stipend Amount set forth in the Proposer's initial invoice, the Authority will notify the Proposer in writing of its determination of the appropriate Stipend Amount based on its aforementioned review, and the Proposer shall submit a revised invoice to the Authority within three business days following delivery of any such notice. By delivery of its invoice (or any revised invoice, if required by the Authority) and documentation required under (G) to the Authority, the Proposer agrees to accept the Stipend Amount, as determined by the Authority hereunder. The Proposer acknowledges and agrees that it shall be deemed to have accepted the Stipend Amount, and that all of its rights to the Work Product are transferred to the Authority, effective as of the date the Authority sends payment of the Stipend Amount to the Proposer.

G) The Proposer shall maintain written records substantiating all Qualified Costs incurred by the Proposer and all Subcontractors (as defined in the RFP) in producing its Work Product in sufficient detail to permit a proper audit thereof. Such records shall be made available upon request of the Authority at all times during the period of this Agreement and for six years after final payment is made. "Qualified Costs" shall comprise all reasonable costs and expenses incurred by the Proposer in the production of the Work Product, provided that travel expenses, and costs of production of the proposal and other marketing-type costs and expenses, and costs of secretarial or word processing time shall be excluded. The Proposer shall submit to the Authority copies of all substantiating documentation of Qualified Costs concurrently with the submission of its invoice for the Stipend Amount, and at any other time upon the Authority's request.

#### **ARTICLE 6. PAYMENT OF STIPEND AND WAIVER OF CLAIMS.**

A) The Proposer is required, if it is a foreign, or out of state, corporation or entity, to obtain and submit the required tax clearance certificate to the Authority to enable the processing of the payment of the Stipend Amount. It should be noted that any time taken to satisfy or furnish this tax clearance certificate shall extend any required payment date by an equal period of time.

B) The Authority will pay to the Proposer the Stipend Amount to which the Proposer is entitled under the terms of this Agreement no later than 30 days after the award of the Contract, cancellation of the procurement or the end of the Proposal Validity Period, as the case may be. Nothing in this Agreement shall prevent the Authority from electing to make such payment earlier.

C) Acceptance by the Proposer of payment of the Stipend Amount from the Authority shall constitute a waiver by the Proposer of any and all rights, equitable or otherwise, to bring any claim (including, without limitation, any protest under Section 7 of the ITP) against either of the Agencies or the State of New York, or any of their respective Board members, officers, directors, agents, employees, representatives or advisers and their successors and assigns, in connection with the procurement of the Project, including, without limitation, with respect to the procurement process, any award of the Contract or any cancellation of the procurement.

**ARTICLE 7. AUTHORITY'S PROJECT MANAGER.** The following person is the Authority's Interim Project Manager until such time as he may be succeeded by the Authority's Project Manager (written notice of which will be provided to the Proposer's Authorized Representative):

[Redacted Name and Address]

The Authority's Interim Project Manager or any successor Authority's Project Manager has final authority to accept or reject the Proposer's deliverable under this Agreement.

**ARTICLE 8. PROPOSER'S PERSONNEL.**

A) The following person, or his/her successor, is the Proposer's Authorized Representative:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

If the Proposer's Authorized Representative changes at any time during this Agreement, the Proposer must immediately notify the Authority's Interim Project Manager or Authority's Project Manager, as applicable.

B) The Proposer's team consists of the following entities:

- 1) Principal Participants: \_\_\_\_\_  
\_\_\_\_\_
- 2) Designer: \_\_\_\_\_
- 3) Key Personnel: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 9. PROPOSER LIABILITY.** The Proposer shall be responsible for all damage to life and property due to acts, errors, or omissions of the Proposer or its subcontractors, agents, or employees in the performance of its service under this Agreement. Further, it is expressly understood that the Proposer shall indemnify and save harmless the Agencies from claims, suits, actions, damages, and costs of every name and description resulting from the performance of the services of the Proposer under this Agreement, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Performance of service, within the meaning of this ARTICLE, shall include claims founded upon tort; claims based upon the Proposer's failure to meet professional standards; or claims based upon breach of copyright, trade secrets, or other protected material. Nothing in this ARTICLE or in this Agreement shall create or give to third parties any claim or right of action against the Proposer or the Agencies beyond such as may legally exist irrespective of this ARTICLE or this Agreement.

**ARTICLE 10. CODE OF ETHICS, COMMUNICATIONS AND CONFIDENTIALITY.**

A) The Proposer specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the provisions of Section 74 of the New York State Public Officer's Law, as amended, establishing a Code of Ethics for the Agencies' officers and employees.

B) The Proposer shall not engage, on a full-time, part-time, or other basis any professional or technical personnel who are or have been at any time during the period of this Agreement in the employ of the Federal Highway Administration or the highway organizations of any public employer, except regularly retired employees, without the consent of the public employer of such person.

C) No communications with the Agencies or with any of the Project's stakeholders or their representatives will be permitted, except as specifically permitted in the ITP for the Project. Failure to comply with this requirement may result in the Proposer's disqualification from further participation in the procurement of the Contract.

D) During the term of this Agreement, the Proposer shall not engage any person who is, or has been at any time, in the employ of the Authority or New York State to perform services under this Agreement in violation of: the provisions of the Public Officers Law, other laws applicable to the service of current or former Authority or New York State employees, and/or the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics (collectively, "Ethics Provisions"). The Proposer certifies that all of its employees who are former employees of the Authority or New York State and who are assigned to perform services under this Agreement shall be assigned in accordance with all Ethics Provisions. Further, during the term of this Agreement, no person who is employed by the Proposer and who is disqualified from providing services under this Agreement pursuant to any Ethics Provision may share in any portion of the Stipend Amount paid.

The Proposer shall identify and provide the Authority with notice of those Proposer employees who are former employees of the Authority or New York State and will be assigned to perform services under this Agreement. The Authority may request that the Proposer provide it with whatever information the Authority deems appropriate about each such person's engagement, work cooperatively with the Authority to solicit advice from the New York



State Joint Commission on Public Ethics, and, if deemed appropriate by the Authority, instruct any such person to seek the opinion of the New York Joint Commission on Public Ethics. The Authority shall have the right to cancel or terminate this Agreement at any time if any work performed under this Agreement is in conflict with any Ethics Provision.

E) Confidentiality

1. "Confidential Information" means any information not generally known to the public, whether oral or written, that the Authority claims is confidential and discloses to the Proposer so that the Proposer can provide services to the Authority pursuant to this Agreement. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information and data; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Authority deems confidential. The Authority will identify written Confidential Information by marking it with the word "Confidential" and will identify oral Confidential Information as confidential at the time of disclosure to the Proposer.

2. Confidential Information does not include information which, at the time of the Authority disclosure to the Proposer: (a) is already in the public domain or becomes publicly known through no act of Proposer; (b) is already known by the Proposer free of any confidentiality obligations; (c) is information that the Authority has approved in writing for disclosure; or (d) is required to be disclosed by the Proposer pursuant to law so long as the Proposer provides the Authority with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.

3. The Proposer may use Confidential Information solely for the purposes of providing services to the Authority pursuant to this Agreement. The Proposer shall not make copies of any written Confidential Information without the express written permission of the Authority. The Proposer may share Confidential Information with third parties that agree to the confidentiality provisions of this Agreement and are necessary to Proposer's provision of services to the Authority pursuant to this Agreement (e.g. consultants and subcontractors); however, the Proposer shall share only that Confidential Information that is necessary to the third party's development of its contribution to the Proposer's provision of services to the Authority pursuant to this Agreement. The Authority's disclosure of Confidential Information to the Proposer shall not convey to the Proposer any right to or interest in such Confidential Information and the Authority shall retain all right and title to such Confidential Information at all times.

4. The Proposer shall hold Confidential Information confidential to the maximum extent permitted by law. The Proposer shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Proposer uses to maintain its own confidential information.

5. Upon the written request of the Authority, the Proposer shall return all written Confidential Information to the Authority.

**ARTICLE 11. INDEPENDENT CONTRACTOR.** The Proposer, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistently with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of

the Agencies by reason hereof, and that it will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Agencies, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

**ARTICLE 12. COVENANT AGAINST CONTINGENT FEES.** The Proposer warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Proposer, to solicit or secure this Agreement or the Contract and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement or the Contract. The foregoing shall not be deemed to prohibit payment by the Proposer to potential subcontractors of the Proposer strictly for work performed in developing the Proposal. For breach or violation of this warranty, the Authority shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the lump sum payment or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

**ARTICLE 13. TRANSFER OF AGREEMENT.** The Proposer specifically agrees that it is prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of the Agreement or of its right, title, or interest therein, or its power to execute this Agreement, to any other party, including, but not limited to, any other person, company, or corporation, without the previous consent in writing of the Authority.

If this provision is violated, the Authority shall revoke and annul this Agreement and the Proposer shall be disqualified from the Contract procurement and the Agencies shall be relieved from any and all liability and obligations to such party to whom the Proposer shall assign, transfer, convey, sublet, or otherwise dispose of this Agreement, and such transferee shall forfeit and lose all moneys therefore assigned under this Agreement.

**ARTICLE 14. [RESERVED]**

**ARTICLE 15. SUBCONTRACTORS.** All subcontractors performing work on the Project shall be bound by the same required contract provisions as the Proposer. All agreements between the Proposer and a subcontractor shall include all standard required contract provisions, and such agreements shall be subject to review by the Agencies.

**ARTICLE 16. CERTIFICATION REGARDING DEBARMENT.** The signatory to this Agreement, being duly sworn, certifies to the following that, except as noted below, the Proposer and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

- A) Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B) Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three years;
- C) Does not have a proposed debarment pending; and



- D) Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

**ARTICLE 17. CERTIFICATION FOR FEDERAL AID CONTRACTS.** The Proposer certifies the following, by signing this Agreement, that to the best of his or her knowledge and belief:

A) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any cooperative agreement; and extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and

B) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering this Agreement imposed by 31 United States Code 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

The Proposer also agrees by submitting its proposal that it shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000.00 and that all such subcontractors shall certify and disclose accordingly.

**ARTICLE 18. RESPONSIBILITY OF THE PROPOSER.**

A) The Proposer shall be responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the Proposer under this Agreement.

B) Neither the Authority's nor the Department's review, approval, or acceptance of, or payment for, the services required under this Agreement, as applicable, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Proposer shall be and remain liable to the Agencies in accordance with applicable law for all damages to either or both of them caused by the Proposer's negligent performance or breach of contract of any of the services furnished under this Agreement.

C) The rights and remedies of the Authority provided for under this Agreement are in addition to any other rights and remedies provided by law.

D) If the Proposer is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**ARTICLE 19. STANDARD CLAUSES**

The clauses attached hereto as Appendix I are hereby incorporated into, and shall form part of, this Agreement, provided that references to "Contractor" therein shall be deemed to mean the Proposer.

**ARTICLE 20. NEW YORK STATE FINANCE LAW §§ 139-J AND 139-K CERTIFICATION**

By execution of this Agreement, the Proposer certifies that all information the Proposer has provided to the Authority with respect to New York State Finance Law §§ 139-j and 139-k is complete, true and accurate. The Authority shall have the right, to terminate this Agreement if the Authority finds that the certification made by Proposer in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete. The Authority may also terminate this Agreement if the Authority finds that the Proposer is non-responsible or has failed to accurately disclose vendor responsibility information.

**ARTICLE 21. DEFINITIONS**

All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to such terms in the RFP.

**ARTICLE 22. SEVERABILITY**

If any clause, provision, section or Article of this Agreement is ruled invalid by a court having proper jurisdiction, the invalidity or unenforceability of any such clause, provision, section or Article shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, section or Article.

**ARTICLE 23. FURTHER ASSURANCES**

The Proposer shall promptly execute and deliver to the Authority all such instruments and other documents and assurances as are reasonably requested by the Authority to further evidence the obligations of the Proposer hereunder.

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

Recommended by \_\_\_\_\_

Contract No. \_\_\_\_\_

\_\_\_\_\_  
(Signature)

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

ATTORNEY GENERAL: \_\_\_\_\_

**This Document is for Informational Purposes Only**  
**New York State Thruway Authority**

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New York State Thruway Authority

Date

Approved

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature) (Title)

\_\_\_\_\_  
For State Comptroller



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**New York State Thruway Authority**

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*[PROPOSER TO COMPLETE AND SIGN APPLICABLE SIGNATURE BLOCK(S) AND SUBMIT, FOR EACH PERSON SIGNING: (1) AN ACKNOWLEDGEMENT IN THE APPLICABLE FORM PROVIDED BELOW; AND (2) SATISFACTORY EVIDENCE OF AUTHORIZATION\* FOR SUCH INDIVIDUAL TO SIGN ON BEHALF OF, AND BIND, THE ENTITY.]*

*[For corporation or limited liability company:]*

Name of Proposer: \_\_\_\_\_

By: \_\_\_\_\_

*[Insert managing member's name, if applicable]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[For partnership or joint venture; signature required for each general partner or member]*

Name of Proposer: \_\_\_\_\_

By: \_\_\_\_\_

*[Insert general partner's or member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

*[Insert general partner's or member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

*[Insert general partner's or member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

*[Insert general partner's or member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

*[Insert general partner's or member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*\* (1) For a corporation: a resolution of its board of directors certified by an appropriate officer of the corporation;*

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- (2) For an LLC: (a) a limited liability company resolution, certified by an appropriate officer of the LLC and (b) a resolution of each managing member, certified by an appropriate officer of such managing member (if no managing member, each member shall provide the foregoing information);*
- (3) For a general partnership: a partnership resolution and a general partner resolution (as to each general partner), in each case, certified by an appropriate officer of the general partner; and*
- (4) For any other type of entity, evidence of authorization satisfactory to the Authority.*



THIS CONTRACT IS NOT TO BE EXECUTED OR BECOME EFFECTIVE UNTIL IT SHALL FIRST BE APPROVED BY THE STATE COMPTROLLER AND FILED IN HIS/HER OFFICE.



**APPENDIX I TO STIPEND AGREEMENT**

**STANDARD CLAUSES FOR ALL NEW YORK STATE THRUWAY  
AUTHORITY CONSTRUCTION CONTRACTS AND FEDERALLY-  
FUNDED PROCUREMENT CONTRACTS**

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The parties to the attached contract, license, lease, amendment or other agreement of any kind ("the Contract" or "this Contract") agree to be bound by the following clauses which are hereby made a part of the Contract (the word "Contractor" herein refers to any party and its agents, successors and assigns, other than the Thruway Authority ("Authority"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. NON-ASSIGNMENT CLAUSE.**

This Contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority and any attempts to assign the Contract without the Authority's written consent are null and void.

**2. COMPTROLLER APPROVAL.**

Unless otherwise provided by resolution of the Authority, if this Contract involves the expenditure of funds for goods or services in excess of \$50,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this Contract, the Authority agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this Contract shall not be valid, effective or binding upon the Authority until it has been approved by the State Comptroller and filed in his office.

**3. WORKERS' COMPENSATION AND DISABILITY BENEFITS.**

This Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

**4. NON-DISCRIMINATION REQUIREMENTS.**

To the extent required by Article 15 of the State Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with State Labor Law Section 220-e, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in State Labor Law Section 230, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50 per person

per day for any violation of State Labor Law Section 220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**5. WAGE AND HOURS PROVISIONS.**

If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the State Labor Law.

**6. NON-COLLUSIVE BIDDING CERTIFICATION.**

In accordance with State Public Authorities Law Section 2878, if this Contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority a non-collusive bidding certification on the Contractor's behalf.

**7. INTERNATIONAL BOYCOTT PROHIBITION.**

In accordance with State Labor Law Section 220-f, if this Contract exceeds \$5,000, the Contractor agrees, as a material condition of this Contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership, or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Section 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the Authority within five business days of such conviction, determination, or disposition of appeal.

**8. SET-OFF RIGHTS.**

The Authority shall have rights of set-off. These rights shall include, but not be limited to, the Authority's option to withhold for the purposes of set-off any moneys due to the Contractor under this Contract up to any amounts due and owing by the Contractor to the Authority with regard to this Contract, or any other contract with the Authority, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the Authority for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority and third parties in connection therewith.

## **9. RECORDS.**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this Contract, whichever is later, and any extensions thereto. The Authority, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the Contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this Contract" shall mean the later of completion of the work of the Contract or the end date of the term stated in the Contract. The Authority will take reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law Section 87 ("Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority official, in writing, that said records should not be disclosed; (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Authority's right to discovery in any pending or future litigation.

## **10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Authority must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in State Tax Law Section 5. Disclosure of this information by the seller or lessor to the Authority is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

## **11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with State Executive Law Section 312, if this Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Authority; or (ii) a written agreement in excess of \$100,000

whereby the Authority is committed to expend or, does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of this Contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods, or services unrelated to this Contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities.

## **12. CONFLICTING TERMS.**

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix I, the terms of this Appendix I shall control. Notwithstanding the foregoing, nothing in these standard clauses shall limit the effect of any provision in the Contract that are more favorable to the Authority than the terms of these Clauses.

## **13. GOVERNING LAW.**

This Contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**14. LATE PAYMENT.**

Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880 and 21 NYCRR Part 109.

**15. NO ARBITRATION.**

Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**16. SERVICE OF PROCESS.**

In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the Authority's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Authority, in writing, of each and every change of address to which service of process can be made. Service by the Authority to the last known address shall be sufficient. The Contractor will have 30 calendar days after service hereunder is complete in which to respond.

**17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.**

The Contractor certifies and warrants that all wood products to be used under this Contract will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Section 165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the Authority.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in State Finance Law Section 165. Any such use must meet with the approval of the Authority; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the Authority.

**18. PURCHASES OF APPAREL.**

In accordance with State Finance Law Section 162(4-a), the Authority shall not purchase apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws; and (ii) vendor will supply with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the Authority, if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**19. OBSERVANCE OF LAWS.**



The Contractor agrees to observe all Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

**20. NO WAIVER OF PROVISIONS.**

The Authority's failure to exercise or delay in exercising any right or remedy under this Contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority of any right or remedy under this Contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this Contract.

**21. ENTIRE AGREEMENT.**

This Contract, together with this Appendix II and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This Contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

**22. PUBLIC AUTHORITIES LAW SECTION 2879-C.**

By signing this Contract, each person and each person signing on behalf of any other party certifies, and each party hereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-A of the State Finance Law.

**23. STANDARD CLAUSES FOR NON FEDERAL-AID THRUWAY AUTHORITY CONTRACTS.**

The following articles are not applicable to non-Federal-Aid contracts:

(a) **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Design-Builder hereby stipulates that the Design-Builder either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

(b) **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St --7th Floor  
Albany, New York 12245



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Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from: NYS Department of Economic Development Division of Minority and Women's Business Development 30 South Pearl St --2nd Floor Albany, New York 12245 Telephone: 518-292-5250 Fax: 518-292-5803 <http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Design-Builders certify that whenever the total bid amount is greater than \$1 million: a) The Design-Builder has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State; (b) The Design-Builder has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) The Design-Builder agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Design-Builder agrees to document these efforts and to provide said documentation to the State upon request; and (d) The Design-Builder acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

(c) **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**FORM SCD**  
**SUBSTANTIAL COMPLETION DEADLINES**

<b>Proposer</b>	
<b>Proposal Commitment Date for Initial Traffic Relocation Deadline</b> (number of calendar days after effective date of NTP)	
<b>Proposal Commitment Date for Crossing Completion Deadline</b> (number of calendar days after any traffic removed from existing Tappan Zee Bridge, not to exceed 15 months)	
<b>Physical Completion Deadline</b> (number of calendar days after effective date of NTP)	
<b>Final Acceptance Deadline</b> (number of calendar days after Physical Completion)	

The Proposer commits to meet the Contract Deadlines specified above.

<b>SIGNED</b>	
<b>DATE</b>	
<b>NAME</b> (printed or typed)	
<b>TITLE</b>	

**FORM U**

**ORGANIZATIONAL CONFLICTS OF INTEREST**  
**DISCLOSURE STATEMENT**

**1. Definition**

Refer to ITP Appendix E for information regarding the Agencies' organizational conflicts of interest policies and related laws and regulations.

**2. Disclosure**

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present or planned interest(s) of the Proposer and its team (including all Principal Participants, and all subcontractors identified at the time of the submittal of the Proposal, and their respective personnel) which may result, or could be viewed as, an organizational conflict of interest, as identified in ITP Appendix E, in connection with the RFP.

PROPOSER	

**3. Explanation**

In the space below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid or mitigate any organizational conflicts of interest described herein.

PROPOSER	

**4. Certification**

The undersigned hereby certifies that, to the best of his or her knowledge and belief, the information provided above is complete, true and accurate, and no interest exists that is required to be disclosed in this Organizational Conflicts of Interest Disclosure Statement, other than as disclosed in this Form U.

<b>Signature</b>	
<b>Name (typed or printed)</b>	
<b>Title</b>	
<b>PROPOSER</b>	
<b>Date</b>	

## **FORM PPF** **PAST PERFORMANCE**

For each Major Participant, complete a copy of Form PPF (all tables) for the period between submission of the Proposer's SOQ and the Proposal Due Date. Do not repeat items that were presented in the SOQ, unless the status of the item has changed during the period between submission of the Proposer's SOQ and the Proposal Due Date. Insert additional rows to any table in Form PPF, if needed.

Form PPF Table 1    AWARDS, CITATIONS and COMMENDATIONS			
NAME OF PROPOSER			
NAME OF FIRM			
Name of award, etc and name of awarding Body	Year received	Project name and project location	Work for which award, etc was received

Form PPF Table 2    LITIGATION, CLAIMS, DISPUTE PROCEEDINGS and ARBITRATION				
NAME OF PROPOSER				
NAME OF FIRM				
Project name	Owner / agency / entity that initiated the action	Brief statement of the issue	Resolution / outcome / or outstanding	Current owner details: Contact Name/Phone/Email

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Form PPF Table 2 LITIGATION, CLAIMS, DISPUTE PROCEEDINGS and ARBITRATION				
NAME OF PROPOSER				
NAME OF FIRM				
Project name	Owner / agency / entity that initiated the action	Brief statement of the issue	Resolution / outcome / or outstanding	Current owner details: Contact Name/Phone/Email

Form PPF Table 3 LIQUIDATED DAMAGES				
NAME OF PROPOSER				
NAME OF FIRM				
Project name	Causes of delay(s)	Amount assessed (US \$)	Summary of outstanding damage claims by any owner	Current owner details: Contact Name/Phone/Email

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Form PPF Table 4    TERMINATION FOR CAUSE			
NAME OF PROPOSER			
NAME OF FIRM			
Project name	Description of reason for termination	Amount involved (US \$)	Current owner details: Contact Name/Phone/Email

Form PPF Table 5    DISCIPLINARY ACTION		
NAME OF PROPOSER		
NAME OF FIRM		
Project name	Description of action taken	Current owner details: Contact Name/Phone/Email

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Form PPF Table 6 NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE		
<b>NAME OF PROPOSER</b>		
<b>NAME OF FIRM</b>		
<b>Status of firm's submission of vendor responsibility questionnaire</b>	<b>Confirm Yes or No</b>	<b>State whether submitted to Department, Authority, or other</b>
A current New York State vendor responsibility questionnaire is on file with the Department or the Authority or another agency		





**FORM SP**  
**SCHEDULE OF PRICES FORMAT**

PROPOSER		
Price Center Code	Price Center Title (component identification)	Price Center Value \$
<b>SECTION A Project-Wide Activities</b>		
<b>PC1</b>	<b>Mobilization</b> <i>(including surety bond and insurance premiums; any forward price agreement premiums; and other Project mobilization)</i>	
<b>PC2</b>	<b>Preliminaries and General Requirements</b> <i>(permits and regulatory approvals (non-environmental); Environmental compliance (plans, permits, approvals, reports, records, monitoring); project management; Quality Plan and updates; Project quality management and construction QC; Safety Plan and safety administration; liaison and coordination with local authorities and agencies; public information and liaison; on-site security, communications and Project identification signing; Design-Builder's temporary facilities (provide, erect, service and maintain); Design-Builder-provided facilities and equipment for the Authority; removal of temporary and Design-Builder-provided facilities and site clean-up / restoration; Work zone traffic control plans, updates and activities; construction staking; Project demobilization)</i>	
<b>PC3</b>	<b>Project-Wide Engineering &amp; Design Activities</b> <i>(design of temporary and permanent works through final design (including Design Documents, Design Plan and Project Specifications); geotechnical investigations; other preliminary engineering including preliminary surveys; design support during construction; As-Built Plans, manuals and reports; activities of Design QC Manager and staff.</i>	
<b>SECTION B Preliminary Construction Activities</b>		
<b>PC4</b>	Site clearance	
<b>PC5</b>	Site access	

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PROPOSER		
Price Center Code	Price Center Title (component identification)	Price Center Value \$
PC6	Utility relocations	
PC7	River staging areas	
PC8	Access roadway and temporary bridge crossing of Hudson Line railway tracks	
PC9	Bridge staging areas	
PC10	Removal of NYSTA Tappan Zee Bridge maintenance facility and NY State Police facility	
PC11	Inland staging areas	
<b>SECTION C Marine Work</b>		
PC12	Dredging	
PC13-A1	<b>HARS Alternative</b> – removal of dredge spoils and disposal at HARS site under Authority-obtained HARS permit	
PC13-A2	<b>HARS Alternative</b> – removal of demolition dredge spoils and disposal at HARS site under Design-Builder-obtained HARS permit	
PC13-A3	<b>HARS Alternative</b> – removal of dredge spoils and disposal outside of HARS site	
PC13-B	<b>Non-HARS Alternative</b> - dredge spoils removal and disposal	
PC14	Armoring	
PC15	Temporary access trestle	
<b>SECTION D Crossing</b>		
PC16	Foundations Westchester approach	
PC17	Foundations Main Span	
PC18	Foundations Rockland approach	
PC19	Substructure Westchester approach	
PC20	Substructure Main Span	

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<b>PROPOSER</b>		
<b>Price Center Code</b>	<b>Price Center Title</b> (component identification)	<b>Price Center Value \$</b>
<b>PC21</b>	Substructure Rockland approach	
<b>PC22</b>	Superstructure Westchester approach	
<b>PC23</b>	Superstructure Main Span	
<b>PC24</b>	Superstructure Rockland approach	
<b>PC25</b>	West abutment	
<b>PC26</b>	East abutment	
<b>PC27</b>	Deck pavement and appurtenances for roadway and shared-use path	
<b>PC28</b>	Temporary structures and works	
<b>SECTION E Westchester Landing</b>		
<b>PC29</b>	Reinstatement of NYSTA Tappan Zee Bridge maintenance facility and NY State Police facility	
<b>PC30</b>	Transition structure between new Crossing and toll plaza	
<b>PC31</b>	Toll plaza including administration and support facilities (permanent condition)	
<b>PC 32</b>	Interchange 9 ramps	
<b>PC33</b>	Roadway and shared-use path construction	
<b>SECTION F Rockland Landing</b>		
<b>PC34</b>	I-287 Approach roadway improvements	
<b>PC35</b>	[not used]	
<b>PC36</b>	Roadway and shared-use path construction	
<b>PC37</b>	Construction of NYSTA dockside maintenance facility	
<b>SECTION G Demolition of Existing Tappan Zee Bridge</b>		
<b>PC38</b>	Bridge Demolition (demolition at tie-ins)	

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<b>PROPOSER</b>		
<b>Price Center Code</b>	<b>Price Center Title</b> (component identification)	<b>Price Center Value \$</b>
<b>PC39</b>	Bridge Demolition (demolition of remainder of bridge)	
<b>SECTION H Hazardous Materials Remediation</b>		
<b>PC40</b>	Remediation of Hazardous Materials, including disposal of Hazardous Materials other than disposal of dredge spoil	
<b>SECTION I Noise Walls</b>		
<b>PC 41</b>	Noise walls	
<b>SUM OF ALL PRICE CENTER VALUES (HARS ALTERNATIVE)</b> (including PC13-A1, PC13-A2, PC13-A3; excluding PC13-B)		
<b>SUM OF ALL PRICE CENTER VALUES (NON-HARS ALTERNATIVE)</b> (including PC13-B; excluding PC13-A1, PC13-A2, PC13-A3)		

## **FORM PPS-P-A - PROPOSAL PERIODIC PAYMENT SCHEDULE**

### **HARS ALTERNATIVE**

**Notes:**

- (1) Add or delete rows (months) to the table to reflect proposed duration of Contract in months and, in Column A, write or delete consecutive month numbers as needed.
- (2) In Column B, enter the maximum cumulative payment by month between NTP and Crossing Substantial Completion.
- (3) In Column C, calculate the incremental monthly change by subtracting each row entry in Column B from the preceding row entry in Column B.
- (4) If the month number in column A extends past 60 months, then the discount factor for each month beyond 60 months shall be calculated by the Proposer as  $(0.8510 * (1/1.045)^{(M-60)/12})$  (where M is the month number from Column A).
- (5) In Column E, for each month, calculate the present value of the incremental monthly change as (Column C x Column D).
- (6) Copy the maximum cumulative payment value for the final month (i.e. the last row entry in Column B) into the Proposal Price cell.
- (7) Sum all the Column E entries (i.e. sum of the present values of incremental monthly changes). Write this total in the Net Present Value cell.
- (8) Write the Proposal Price in words.
- (9) Check that the Proposal Price amount matches the sum of all the Price Center amounts in Form SP.

<b>PROPOSER</b>				
<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>	<b>COLUMN E</b>
<b>Month after NTP <sup>(1)</sup></b>	<b>Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)</b>	<b>Incremental Monthly Change in Column B <sup>(3)</sup></b>	<b>Discount Factor <sup>(4)</sup></b>	<b>Present Value of Incremental Monthly Change in Column B <sup>(5)</sup></b>
1		\$0.00	0.9981	
2			0.9961	
3			0.9941	
4			0.9921	

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<b>PROPOSER</b>				
<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>	<b>COLUMN E</b>
<b>Month after NTP <sup>(1)</sup></b>	<b>Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)</b>	<b>Incremental Monthly Change in Column B <sup>(3)</sup></b>	<b>Discount Factor <sup>(4)</sup></b>	<b>Present Value of Incremental Monthly Change in Column B <sup>(5)</sup></b>
5			0.9901	
6			0.9882	
7			0.9862	
8			0.9841	
9			0.9821	
10			0.9801	
11			0.9780	
12			0.9760	
13			0.9739	
14			0.9718	
15			0.9697	
16			0.9676	
17			0.9655	
18			0.9632	
19			0.9609	
20			0.9586	

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<b>PROPOSER</b>				
<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>	<b>COLUMN E</b>
<b>Month after NTP <sup>(1)</sup></b>	<b>Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)</b>	<b>Incremental Monthly Change in Column B <sup>(3)</sup></b>	<b>Discount Factor <sup>(4)</sup></b>	<b>Present Value of Incremental Monthly Change in Column B <sup>(5)</sup></b>
21			0.9563	
22			0.9540	
23			0.9516	
24			0.9492	
25			0.9468	
26			0.9444	
27			0.9419	
28			0.9395	
29			0.9370	
30			0.9345	
31			0.9320	
32			0.9295	
33			0.9270	
34			0.9244	
35			0.9218	
36			0.9192	



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<b>PROPOSER</b>				
<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>	<b>COLUMN E</b>
<b>Month after NTP <sup>(1)</sup></b>	<b>Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)</b>	<b>Incremental Monthly Change in Column B <sup>(3)</sup></b>	<b>Discount Factor <sup>(4)</sup></b>	<b>Present Value of Incremental Monthly Change in Column B <sup>(5)</sup></b>
37			0.9166	
38			0.9140	
39			0.9114	
40			0.9087	
41			0.9060	
42			0.9033	
43			0.9006	
44			0.8978	
45			0.8950	
46			0.8922	
47			0.8894	
48			0.8866	
49			0.8838	
50			0.8809	
51			0.8780	
52			0.8751	

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PROPOSER				
COLUMN A	COLUMN B	COLUMN C	COLUMN D	COLUMN E
Month after NTP <sup>(1)</sup>	Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)	Incremental Monthly Change in Column B <sup>(3)</sup>	Discount Factor <sup>(4)</sup>	Present Value of Incremental Monthly Change in Column B <sup>(5)</sup>
53			0.8722	
54			0.8692	
55			0.8662	
56			0.8632	
57			0.8602	
58			0.8571	
59			0.8541	
60			0.8510	
<b>PROPOSAL PRICE FOR HARS ALTERNATIVE <sup>(6) &amp; (9)</sup></b>			\$	
<b>NET PRESENT VALUE (FOR HARS ALTERNATIVE) <sup>(7)</sup></b>			\$	
<b>Total Proposal Price in words <sup>(8)</sup></b>				

**FORM PPS-P-B - PROPOSAL PERIODIC PAYMENT SCHEDULE**  
**NON-HARS ALTERNATIVE**

**Notes:**

- (1) Add or delete rows (months) to the table to reflect proposed duration of Contract in months and, in Column A, write or delete consecutive month numbers as needed.
- (2) In Column B, enter the maximum cumulative payment by month between NTP and Crossing Substantial Completion.
- (3) In Column C, calculate the incremental monthly change by subtracting each row entry in Column B from the preceding row entry in Column B.
- (4) If the month number in column A extends past 60 months, then the discount factor for each month beyond 60 months shall be calculated by the Proposer as  $(0.8510 * (1/1.045)^{(M-60)/12})$  (where M is the month number from Column A).
- (5) In Column E, for each month, calculate the present value of the incremental monthly change as (Column C x Column D).
- (6) Copy the maximum cumulative payment value for the final month (i.e. the last row entry in Column B) into the Proposal Price cell.
- (7) Sum all the Column E entries (i.e. sum of the present values of incremental monthly changes). Write this total in the Net Present Value cell.
- (8) Write the Proposal Price in words.
- (9) Check that the Proposal Price amount matches the sum of all the Price Center amounts in Form SP.

<b>PROPOSER</b>				
<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>	<b>COLUMN E</b>
<b>Month after NTP <sup>(1)</sup></b>	<b>Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)</b>	<b>Incremental Monthly Change in Column B <sup>(3)</sup></b>	<b>Discount Factor <sup>(4)</sup></b>	<b>Present Value of Incremental Monthly Change in Column B <sup>(5)</sup></b>
1		\$0.00	0.9981	
2			0.9961	
3			0.9941	
4			0.9921	
5			0.9901	

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<b>PROPOSER</b>				
<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>	<b>COLUMN E</b>
<b>Month after NTP <sup>(1)</sup></b>	<b>Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)</b>	<b>Incremental Monthly Change in Column B <sup>(3)</sup></b>	<b>Discount Factor<sup>(4)</sup></b>	<b>Present Value of Incremental Monthly Change in Column B <sup>(5)</sup></b>
6			0.9882	
7			0.9862	
8			0.9841	
9			0.9821	
10			0.9801	
11			0.9780	
12			0.9760	
13			0.9739	
14			0.9718	
15			0.9697	
16			0.9676	
17			0.9655	
18			0.9632	
19			0.9609	
20			0.9586	
21			0.9563	

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<b>PROPOSER</b>				
<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>	<b>COLUMN E</b>
<b>Month after NTP <sup>(1)</sup></b>	<b>Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)</b>	<b>Incremental Monthly Change in Column B <sup>(3)</sup></b>	<b>Discount Factor<sup>(4)</sup></b>	<b>Present Value of Incremental Monthly Change in Column B <sup>(5)</sup></b>
22			0.9540	
23			0.9516	
24			0.9492	
25			0.9468	
26			0.9444	
27			0.9419	
28			0.9395	
29			0.9370	
30			0.9345	
31			0.9320	
32			0.9295	
33			0.9270	
34			0.9244	
35			0.9218	
36			0.9192	
37			0.9166	

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<b>PROPOSER</b>				
<b>COLUMN A</b>	<b>COLUMN B</b>	<b>COLUMN C</b>	<b>COLUMN D</b>	<b>COLUMN E</b>
<b>Month after NTP <sup>(1)</sup></b>	<b>Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)</b>	<b>Incremental Monthly Change in Column B <sup>(3)</sup></b>	<b>Discount Factor<sup>(4)</sup></b>	<b>Present Value of Incremental Monthly Change in Column B <sup>(5)</sup></b>
38			0.9140	
39			0.9114	
40			0.9087	
41			0.9060	
42			0.9033	
43			0.9006	
44			0.8978	
45			0.8950	
46			0.8922	
47			0.8894	
48			0.8866	
49			0.8838	
50			0.8809	
51			0.8780	
52			0.8751	
53			0.8722	

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PROPOSER				
COLUMN A	COLUMN B	COLUMN C	COLUMN D	COLUMN E
Month after NTP <sup>(1)</sup>	Maximum Cumulative Payment by Month since NTP <sup>(2)</sup> (in nominal dollars)	Incremental Monthly Change in Column B <sup>(3)</sup>	Discount Factor <sup>(4)</sup>	Present Value of Incremental Monthly Change in Column B <sup>(5)</sup>
54			0.8692	
55			0.8662	
56			0.8632	
57			0.8602	
58			0.8571	
59			0.8541	
60			0.8510	
<b>PROPOSAL PRICE FOR NON-HARS ALTERNATIVE <sup>(6) &amp; (9)</sup></b>			\$	
<b>NET PRESENT VALUE (FOR NON-HARS ALTERNATIVE) <sup>(7)</sup></b>			\$	
<b>Total Proposal Price in words <sup>(8)</sup></b>				





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Form LDB Table 1 PROPOSED LIST OF NAMED DBE PARTICIPANTS						
PROPOSER						
Firm Name <small>(Legal business name used for DBE certification in NYS)</small>	Address	In what role will the firm participate?	DBE classification	Description of Items of Work	Minimum Proposed Participation <small>(% of Proposal Price)</small>	Minimum Proposed Participation <small>(US dollars)</small>

Proposer to identify changes to Form LDB-PP Table 1 if the Non-HARS Alternative is used



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**Form LDB-PP Table 2 PROPOSED AREA OF DBE ACTIVITY (excluding DBE participation listed in Table 1)**

<b>PROPOSER</b>					
In what role will the DBE firm participate?	Description of Items of Work	Efforts taken by Proposer to date to secure DBE participation in this role	Proposer's proposed efforts to secure DBE participation in this role	Minimum Proposed Participation (as percentage of Proposal Price)	Minimum Proposed Participation (US Dollars)

Proposer to identify changes to Form LDB Table 2 if the Non-HARS Alternative is used

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## APPENDIX E

### CONFLICTS OF INTEREST REQUIREMENTS

#### E1.0 PURPOSE AND GOALS

This ITP Appendix E provides information regarding conflict of interest policies and requirements applicable to Proposers and their team members.

The Agencies' goals in adopting these policies and requirements include:

- (A) protecting the integrity, transparency, competitiveness and fairness of the planning, procurement, design, construction or development of the Project;
- (B) avoiding circumstances where a potential Design-Builder obtains, or appears to obtain, an unfair competitive advantage as a result of work performed by a Consultant;
- (C) providing guidance to potential Design-Builders in establishing teams for the Project; and
- (D) ensuring compliance with applicable legal requirements.

#### E2.0 DEFINITIONS

Refer to Contract Documents Part 2, DB §101 for the meanings of capitalized terms used but not defined herein. The following terms, as used in this ITP Appendix E, have the following meanings.

**“Consultant”** means any Person that is currently performing or has previously performed professional or consulting services for one or both Agencies 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.

**“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, Affiliates etc.) of a Proposer or any of its team members that results in (i) impairment or potential impairment of a Consultant's ability to render impartial assistance or advice to the Agencies, or of its objectivity in performing work for the Agencies; (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).

## **E3.0 FEDERAL AND STATE REQUIREMENTS**

### **E3.1 Federal Requirements**

The Project is subject to the Federal Highway Administration's organizational conflict of interest regulations found in 23 CFR Section 636.116. Among other things, the regulation restricts Consultants who have assisted the Agencies in preparation of an RFP from participating on design-build teams submitting a proposal in response to the RFP. However, the regulation allows the owner to determine there is not an organizational conflict of interest for a consultant or subconsultant where:

- (A) The role of the Consultant or subconsultant was limited to provision of preliminary design, reports, or similar low-level documents that will be incorporated into the RFP, and did not include assistance in development of instructions to offerors or evaluation criteria, or
- (B) All documents and reports delivered to the Agencies by the Consultant or subconsultant are made available to all offerors.

Section 636.116 precludes Consultants responsible for preparing documents under NEPA from participating on design-build teams prior to the date the final NEPA decision is issued, but allows the owner to permit NEPA subconsultants to participate on teams by releasing them from further responsibilities with respect to the preparation of the NEPA document. Refer to ITP Section E4.0.

### **E3.2 State Law**

Proposers and their team members are also subject to requirements of New York laws and regulations that affect Persons contracting with state agencies. Examples of such requirements include Public Officers Law Section 73(8) and State Finance Law Sections 139-j, 139-k and 163(2). Nothing in this Policy is intended to limit, modify, supersede or otherwise alter the effect of these laws and regulations. The Agencies' decision to place a Proposer on the Shortlist shall not preclude the Agencies from later determining that a violation of applicable requirements has occurred and taking appropriate action.

## **E4.0 NEPA CONSULTANTS**

Consultants responsible for preparing the Project EIS are precluded from joining any Proposer's team until after the Record of Decision has been issued.

## **E5.0 RESTRICTIONS AFFECTING PARTICIPATION ON MULTIPLE PROPOSER TEAMS**

No Principal Participant, nor Subcontractor that will act as the lead bridge contractor, lead highway contractor, lead bridge engineering firm or lead highway engineering firm, nor any firm that employs one or more of the individuals named as Key Personnel on behalf of one Proposer may participate on another Proposer's team, and no Affiliate of any such Principal Participant or Subcontractor may participate on another Proposer's team. Firms that employ the Quality Manager and/or Safety Manager, but no other Key Personnel, are exempted from this provision.

## **E6.0 OBLIGATION TO DISCLOSE CONFLICTS OF INTEREST**

Each Proposer is responsible for determining whether an actual, potential or perceived Organizational Conflict of Interest exists with respect to itself and its team members. The Proposer is required to disclose on Form U (see ITP Appendix D) all relevant facts concerning any past, present or currently planned interests of the Proposer, its team members, and Affiliates which may present a conflict, and to provide information regarding steps taken to mitigate the potential conflict.

The obligation to disclose actual, potential and perceived Organizational Conflicts of Interest is ongoing throughout the procurement. Proposers should undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, potential or perceived Organizational Conflicts of Interest have arisen. Due diligence should extend to investigation of past relationships and to officers or directors of the Proposer and its team members. If information is discovered requiring disclosure, the Proposer shall promptly submit a revised Form U to the Agencies' Designated Representative for review.

## **E7.0 REVIEW OF DISCLOSURES BY AGENCIES**

Based upon a review of the information submitted by a Proposer on Form U, the Agencies may determine that an actual or potential Organizational Conflict of Interest exists. If this occurs, the Agencies may identify any actions that must be taken to avoid, neutralize, or mitigate such conflict. Alternatively, the Agencies may disqualify the Proposer as a result of the conflict, or may advise the Proposer that the team member must be removed.

## **E8.0 FAILURE TO COMPLY**

If a Proposer or any of its 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 Agencies may, in their sole discretion:

- (A) Preclude and/or disqualify the affected Persons and their Affiliates from participation in the Project;
- (B) Require the affected Persons and their Affiliates to implement mitigation measures;
- (C) Terminate existing contracts with such Person and its Affiliates; and/or
- (D) 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 the Person's failure to comply with this Policy, including, but not limited to, costs resulting from third-party challenges to the procurement or the Agencies' re-procurement of the Project.

## APPENDIX F

### ABBREVIATIONS AND DEFINITIONS

All capitalized terms and abbreviations used in the ITP and not otherwise defined herein, including in this ITP Appendix F (Abbreviations and Definitions), shall have the meanings ascribed to such terms and abbreviations in the Contract Documents, Part 2, DB §101.

#### F1.0 ABBREVIATIONS

ATC	Alternative technical concept
CD	Compact disk
DEIS	Draft environmental impact statement
EPD	Electronic Pricing Documents
FEIS	Final environmental impact statement
FOIA	Freedom of Information Act (5 USC § 552)
FOIL	Freedom of Information Law (N.Y. Pub. Off. Law Art. 6)
GAAP	Generally accepted accounting principles (U.S.)
IAS	International accounting standards
pdf	Portable document format
PLA	Project labor agreement
TNW	Tangible net worth

#### F2.0 DEFINITIONS

**“Act”** means the Infrastructure Investment Act, 2011 N.Y. Laws ch. 56.

**“Addenda/Addendum”** means supplemental written additions, deletions, and modifications to the provisions of the RFP issued by the Agencies after the date of issuance of the RFP.

**“Affiliate”** means:

- A. Any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Proposer or any Principal Participant.
- B. Any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record, by the following:
  - the Proposer;
  - any Principal Participant; or
  - any Affiliate under part (A) of this definition.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.



“**Agencies**” means the Authority and the Department, acting jointly as the procuring authority for the Project.

“**Agencies’ Designated Representative**” means one or more individuals designated by the Agencies from time to time as the point(s) of contact for Proposers during the procurement of the Project.

“**Alternative Technical Concept**” means concepts that deviate from requirements set forth in the Request for Proposals and which a Proposer may include in its Proposal with the Agencies’ prior written approval in accordance with Section 3.0 of the ITP.

“**Authority**” means New York State Thruway Authority.

“**Construction Subcontractor**” means a subcontractor on the Proposer’s team that will be responsible for construction of the Project.

“**DBE Plan**” means the plan provided by each Proposer as described in ITP Appendix A Section A2.4

“**Department**” means New York State Department of Transportation.

“**Design-Build (DB)**” means a project delivery methodology by which a single firm has responsibility for the design and construction of the Project under a single contract.

“**Design-Builder**” means the Person selected pursuant to the RFP that enters into the Contract with the Authority to design and construct the Project.

“**Designer**” means the proposed Principal Participant, Specialty Subcontractor or in-house designer that will primary responsibility for design services for the Project if the Proposer is selected.

“**Disadvantaged Business Enterprise (DBE)**” means a for-profit small business concern that is at least 51 percent owned by one or more individuals who are socially and economically disadvantaged and which meets the definition set forth in 49 CFR Part 26.

“**Electronic Pricing Documents (EPD)**” means pricing data assembled by the Proposer which supports and explains the basis of the Price Proposal and complies with the requirements of DB Contract Documents, Part 2, DB §110.

“**Environmental Compliance Manager**” means the individual designated by the Design-Builder and under the authority of the Design-Builder’s Project Manager, with full-time responsibility for the environmental compliance of the Project during design and construction. The Environmental Compliance Manager may be an employee of a consultant firm or the Designer.

“**Environmental Compliance Plan**” has the meaning set forth in Section B1.3 of the ITP.

“**Equity Participant**” means any Person holding (directly or indirectly) a 15% or greater interest in the Proposer.

“**Executive Director**” means the Executive Director of the Authority.

“**GAAP**” means generally accepted accounting principles in effect in the United States, including the pronouncements and guidance published in the Federal Accounting Standards Advisory Board Handbook of Accounting Standards and Other Pronouncements, as amended.

“**HARS Alternative**” means the dredge disposal option in which the HARS Permit has been obtained, allowing majority of dredged material removed from the river bed at the Project site to be disposed of at the HARS ocean disposal site.

“**IAS**” means international accounting standards in effect and issued by the International Accounting Standards Board, as amended.

“**Instruction to Proposers (ITP)**” means these instructions to Proposers issued as of March 9, 2012 (as amended by any Addenda) for the procurement of this Project, including all Appendices thereto.

“**Key Personnel**” means the Proposer’s proposed:

- A) Project Executive;
- B) Project Manager;
- C) Deputy Project Manager;
- D) Design Manager;
- E) Bridge (Main Span) Lead Designer;
- F) Bridge (Approaches) Lead Designer;
- G) Foundations Lead Designer;
- H) Lead Demolition Engineer;
- I) Lead Architectural Designer;
- J) Environmental Compliance Manager;
- K) Construction Manager;
- L) Quality Manager; and
- M) Safety Manager.

“**Lead Principal Participant**” means the Principal Participant that is designated by the Proposer as having the lead responsibility for managing the Proposer’s organization.

“**Major Participant**” means: (i) each Principal Participant falling under paragraph (A) or (B) of the definition of “Principal Participant”; (ii) each proposed Guarantor; and (iii) each Specialty Subcontractor, including the lead bridge subcontractor, the lead highway subcontractor, the lead bridge engineering firm and the lead highway engineering firm.

“**Non-HARS Alternative**” means the dredge disposal option in which the HARS Permit has not been obtained, so that all of the dredged material removed from the river bed at the Project site must be disposed of at a location other than the HARS ocean disposal site.

**“Organizational Conflict of Interest”** has the meaning set forth in Section E2.0 of Appendix E (Conflicts of Interest Requirements).

**“Person”** means any individual or a corporation, sole proprietorship, limited liability company, joint venture, partnership or other legal entity.

**“Price Center (PC)”** means the components of the Project so designated in accordance with Contract Documents Part 2, DB §109. A PC may be a major contract item or series of interrelated items.

**“Price Proposal”** means the portion of the Proposal described in Appendix C.

**“Principal Participant”** means any of the following entities:

- A) the Proposer;
- B) if the Proposer is a partnership, joint venture, or limited liability company, any general partner or any member of the joint venture or LLC; and/or
- C) any Equity Participant.

**“Procurement Website”** means the website [www.thruway.ny.gov](http://www.thruway.ny.gov) and any Project-related websites accessible from that website via hyperlink.

**“Project”** means the improvements to be designed and constructed by the Design-Builder and all other Work products to be provided by the Design-Builder in accordance with the Contract Documents.

**“Proposal”** means a proposal submitted by a Proposer in response to this RFP including any revisions thereto in response to a request for revisions to Proposals or through pre-award negotiations. If the RFP requests submittal of best and final offers, the term “Proposal” means the best and final offer submitted by the Proposer including any revisions thereto.

**“Proposal Bond”** means a proposal bond in the form of Form PB to be submitted by a Proposer as part of its Proposal.

**“Proposal Due Date”** means the due date specified in ITP Section 1.6.1 with respect to the submission of Proposals.

**“Proposal Price”** has the meaning ascribed to such term in ITP Section 5.1.3.

**“Proposer”** means a Person on the Shortlist.

**“Proposer’s Representative”** means an individual authorized to bind a Proposer who is designated in writing by the Proposer (in the Proposer’s SOQ or other written notice to the Agencies’ Designated Representative) as the Proposer’s sole point of contact for the purposes of communications with the Agencies during the procurement of this Project.

**“Proposer’s Representative for Security Information”** means an individual authorized to represent a Proposer as the Proposer’s sole point of contact for the purposes of communications with the Agencies relating to security-sensitive information during the procurement of this Project.

**“Protest Official”** means the person designated in ITP Section 7.1.

**“Reference Documents”** means the documents provided with and so designated in the RFP, including the Indicative Plans contained in Part 6 (RFP Plans). The Reference Documents, including plans contained therein and/or so designated, are not Contract Documents and are provided to the Design-Builder for informational purposes only and are relied upon at the Design-Builder’s own risk.

**“Request for Proposals (RFP)”** means a written solicitation issued by the Agencies (and as amended by any Addenda) seeking Proposals (including technical and price) to be used to identify the Proposer offering the best value to the Agencies, and includes all of the RFP Documents. The RFP will be issued only to Proposers.

**“Request For Qualifications (RFQ)”** means the written solicitation, including all addenda thereto, issued by the Agencies on November 21, 2012 seeking SOQs in order to identify and shortlist Proposers to receive the RFP for the Project.

**“RFP Documents”** means the documents identified as such in Section 1.5(B) of the ITP.

**“Shortlist”** means the list of Persons that the Agencies determine are the best highly qualified potential Design-Builders for the Project, based on an evaluation of SOQs submitted by such Persons.

**“Specialty Subcontractor”** means those consultants or subcontractors identified to perform Work critical to the success of the Project, such as the Designer, the Design QC Manager, the Construction QC Manager, or any subcontractors for bridges, retaining structures, demolition, environmental compliance, erosion and sediment control, pavement, landscaping, or other specialty Work.

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

**“Stipend Agreement”** means an agreement, in the form of Form SA, ITP Appendix D, executed by a Proposer and the Authority, providing for the payment of a stipend under the terms and conditions set forth therein.

**“Statement of Qualifications (SOQ)”** means the information prepared and submitted by a Proposer in response to the RFQ.

**“Technical Proposal”** means the portion of a Proposal that addresses the requirements of Appendix B.