



Date: July 21, 2021
 Subject: PennDOT Pathways Major Bridge P3 Initiative
 Request for Qualifications
 Solicitation Number: RFQ Solicitation #: 5321R01
 Opening Date / Time: August 5, 2021 11:00 AM ET
 RFQ Questions Response Document #: 2

To All Respondents:

Please be advised that the Pennsylvania Department of Transportation (PennDOT) has issued the following responses to RFQ Questions. PennDOT responses will not be considered part of the RFQ or the RFP documents nor will they be relevant in interpreting any of the foregoing. Some RFQ Questions received by PennDOT are not included below, but may be addressed in future RFQ Questions Response document(s). Any RFQ responses to questions that require changes to the RFQ will result in changes in the future RFQ Amendment.

<u>No.</u>	<u>RFQ Question</u>	<u>Response</u>
1.	<p>Please consider the following language from the RFQ:</p> <ul style="list-style-type: none"> •Form G-1 instruction (d): “Projects disclosed under this Form G-4 shall not replicate projects nominated under Form G-1 (Project Development Qualifications), Form G-2 (Technical Qualifications – Construction), Form G-3 (Technical Qualifications – Design) or Form H-1 (Equity Member Experience).” •Section 5.4.1(d): “Without duplicating evaluation of the Respondent team’s experiences under subsection (a) above, the Respondent’s specific experience and capabilities with respect to maintenance for Alternative Project...” <p>Can the Department clarify if the same project disclosed in Forms G-1, G-2, or G-3 can also be disclosed in Form G-4 insofar as the Respondent’s team’s experiences will not duplicate experiences described in Forms G-1, G-2, or G-3?</p>	<p>The RFQ will be amended to remove the constraints on duplicating projects in the Forms.</p>



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2.	<p>Can PennDOT clarify its intent in Sections 2.6, 2.8, 2.10, 2.12 and 3.2 of Appendix 2, as well as the instructions to each of Forms G-1, G-2, G-3, G-4 and H-1 to not replicate projects that are listed on other forms? This presents a few issues for the Respondent Team, including the following:</p> <ul style="list-style-type: none"> •Coupled with the instruction to list all projects on form G-1 that meet the threshold requirements included in that form, some entities may not have any other projects in the US or Canada to list on G-2, G-3 or G-4 and would be unable to comply with the requirements to list a minimum number of projects in the US or Canada on each of those forms •Separate entities on the Respondent Team may have worked together on a past project. Does this requirement mean that the Respondent Team can only present a past project once, even though the Respondent Team’s experience is relevant across multiple disciplines, or can Respondent Teams present these roles on more than one of the above-mentioned forms and tailor the attached description of the project to the relevant role? 	<p>The RFQ will be amended to remove the constraints on duplicating projects in the Forms.</p>
3.	<p>Section 3.8 of Volume 3 (Financial) of Appendix 2 provides that a separate financial officer certificate shall be completed for each Equity Member, Lead Construction Contractor and Financially Responsible Party (if any). A substantially similar language is included in the instructions of Form H-4.</p> <p>Section 3.9 (d) states that “[i]f a Financially Responsible Party is a parent company of an entity for which a statement of support is provided in Form H-4 (Financial Officer Certificate), provide financial statements on a consolidated basis, only for each parent company entity (not for both the parent company and its subsidiary).”</p> <p>Please confirm whether separate Financial Officer Certificates for the Equity Member and the Lead Construction Contractor would still be required in addition to that of the Financially Responsible Party if the latter is a parent company of both the Equity Member and the Lead Construction Contractor and financial statements will be provided on a consolidated basis.</p>	<p>The RFQ will be amended to clarify that separate Financial Officer Certificates for the Equity Member and the Lead Construction Contractor are not required in addition to that of the Financially Responsible Party if the latter is a parent company of both the Equity Member and the Lead Construction Contractor and financial statements will be provided on a consolidated basis.</p>



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4.	<p>Respondent kindly requests that PennDOT consider including the italicized and underlined clarifying language in the definition of Affiliate for Form C.</p> <p>“ The term “Affiliates” includes parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Respondent, any Equity Member or any Major Team Member as a joint venture or partner and not to activities of other joint ventures or partners not involving the Respondent, any Equity Member or any Major Team Member), and other financially liable or responsible parties for the entity, that (a) within the past five years have engaged in business or investment in the U.S. or Canada or (b) have been involved, directly or indirectly, in the debt or equity financing, credit assistance, design, construction, management or maintenance of any project listed by a Respondent in response to this RFQ. For the avoidance of doubt, entities shall be considered to be (x) “under common ownership” if a common parent entity possesses, directly or indirectly, a majority ownership interest in such entities, and (y) “subsidiary companies” of a person if such entities are, directly or indirectly, through one or more intermediaries, controlled by that person.</p>	No change will be made to the RFQ.
5.	Can PennDOT confirm that Form F-1 (Key Personnel Resume Cover) is a table and therefore can be prepared in 10-point font size in accordance with Section 4.1.2 of the RFQ.	Yes, Form F-1 can be considered a table and can be prepared in 10-point font.
6.	In the tables in Appendix 2, summarizing content of each Volume and Page Limit, we note that Page Limit for Forms is marked "N/A" should we conclude that the Forms do not count towards the overall 80 page limit?	The RFQ will be amended to delete the overall page limit of 80 pages.



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7.	RFQ states "By submitting such documents using the Microsoft® Word or Microsoft® Excel format, the Respondent certifies that the native format of the form has not been altered other than to include the Respondent's content." Is the Respondent permitted to alter the form by removing the "Instructions" section from each form before filling it out or would this be considered a change to the native format of the form?	The RFQ will be amended to clarify that the "Instructions" section of each form can be removed.
8.	Where there is a Financially Responsible Party for an Equity Member, please allow for a single Form H-4 to be submitted.	The RFQ will be amended to allow for a single Form H-4 when there is a Financially Responsible Party for an Equity Member.
9.	For the Development Entity's Project Manager, please consider replacing "highway transportation project" with "heavy civil projects, with transportation components" given the relevance between the two sectors including MOT, stakeholder management, and public safety. Please also change the cumulative years of experience under an Alternative Project Delivery method to 2 years to match the experience requirement in the previous bullet.	No change will be made to the RFQ.
10.	Form C: We would appreciate if the authority limited the questions on this form to just the specific entity responding to this form, rather than its affiliates. For a global, publicly listed entity, the sheer number of affiliates makes this exercise impossible to ascertain correctly.	No change will be made to the RFQ.
11.	It is our understanding that the Lead Construction Contractor self-performance range, identified in section 2.6.6, is intended to provide greater opportunity for the local subcontractor market. Given this intent, can you please confirm that the upper self-performance boundary would not be applicable if a Lead Construction Contractor is made up of one or more local Pennsylvania based contractors?	No change will be made to the RFQ. Additional details regarding the self-performance range will be provided as part of the draft RFP and there will not be a different requirement if the Lead Construction Contractor is made up of one or more local Pennsylvania based contractors.



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12.	Please clarify the timing requirement in determining compliance with the Pass/Fail requirements in respect to item (f) - Qualification and Classification for the Lead Construction Contractor, since the section relates to the responsiveness evaluation of Respondent's SOQ, but the timing alluded to relates to "Proposal submission".	The RFQ will be amended to clarify that the prequalification of Lead Construction Contractors is not a requirement for the Statement of Qualification submissions. The prequalification of Lead Construction Contractors is only a requirement for the Proposal submissions.
13.	Please clarify the requirement to "list all projects that meet the threshold requirements stated on Form G-2 (Technical Qualifications - Construction) and on Form G-5 (Technical Qualifications - Quality)". Form G-2 and Form G-5 instruction provide that "no more than 5 projects" should be listed on forms G-2 and G-5.	The RFQ will be amended to clarify the intent to limit the number of projects for certain categories. The project limits indicated in Forms G-2, G-3, G-4, and G-5 are correct and will also be included in the revised relevant sub-sections of 5.4.1.
14.	Please clarify the requirement to "list all projects that meet the threshold requirements stated on Form G-3 (Technical Qualifications - Design) and on Form G-5 (Technical Qualifications - Quality)". Form G-3 and Form G-5 instruction provide that "no more than 5 projects" should be listed on forms G-3 and G-5.	The RFQ will be amended to clarify the intent to limit the number of projects for certain categories. The project limits indicated in Forms G-2, G-3, G-4, and G-5 are correct and will also be included in the revised relevant sub-sections of 5.4.1.
15.	Please clarify the requirement to "list all projects that meet the threshold requirements stated on Form G-4 (Technical Qualifications - Maintenance)". Form G-4 provide that "no more than 5 projects" should be listed on form G-4.	The RFQ will be amended to clarify the intent to limit the number of projects for certain categories. The project limits indicated in Forms G-2, G-3, G-4, and G-5 are correct and will also be included in the revised relevant sub-sections of 5.4.1.



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16.	We note that the restriction in the use of affiliate experience will significantly limit bidders' available reference projects. Maintenance responsibilities on P3 projects are typically made through special purpose company(ies) specifically incorporated for each individual P3 project, and very often these investments and responsibilities do not sit under one entity. The instruction on form H-1 specifically recognizes this by allowing the experience of Affiliates to be used for Equity Members if a direct or indirect common parent is a Financially Responsible Party for purposes of presenting the Equity Member Experience. We therefore kindly request that PennDOT allow the use of Affiliates in similar fashion as in form H-1 for the purposes of Form G-4 (Technical Qualifications - Maintenance).	As a correction to response #9 that was included in the first RFQ Response document on July 14 th , 2021, the existing allowance for the use of affiliate experience in Form G-4 and H-1 will be retained. Additionally, the RFQ will be amended with a similar allowance for the use of affiliate experience in Form G-1. The RFQ will also be amended to clarify in Section 5.5 certain information pertaining to affiliates may be included as expressly permitted.
17.	Can PennDOT please confirm whether the DBE requirement will take effect at the signing of the PDA or at the signing of the Project Agreement?	Additional details regarding DBE requirements will be provided as part of the draft RFP.
18.	Please clarify if the organizational chart required by this section counts towards the two page limit for the section. In general, across the RFQ page limits, do required org charts count towards overall page limits for each section and towards the overall 80?	The RFQ will be amended to clarify that the organizational chart required in the Legal Structure section does count towards the 2 pages. The RFQ will be amended to delete the overall page limit of 80 pages.
19.	Are the provided Word forms considered tables and therefore can use 10 point size font?	Yes, the Forms provided in Word format can be considered tables and can be prepared in 10 point font.
20.	Can Tables, such as Form F-1 have the column widths adjusted, as long as the content remains the same?	Yes, column widths can be adjusted on the Forms as long as the content remains the same.



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21.	<p>RFQ Section 3.7 Pre-qualification requirements: “The Respondent demonstrates that the Lead Construction Contractor is, at the time Proposals are due, prequalified, pursuant to 67 Pa. Code Ch. 457 (a) (i) to perform structure “S” and “T” work types or (ii) as a “General Highway Contractor” and (b) has “unlimited financial capacity”. If Lead Construction Contractor is restricted to self-perform 30% min. - 35% max. of the construction work per RFQ Section 2.6.6 Self Performance, why is an unlimited bonding capacity required? Will PennDOT please re-evaluate the bonding requirements?</p>	<p>Section 3.7 refers to prequalification requirements under 67 Pa. Code Ch. 457 and the term “unlimited financial capacity” has a specific definition under the Code. The term “unlimited financial capacity” as used in Section 3.7 does not mean unlimited bonding capacity and is unrelated to the bonding requirement of \$750M under Appendix 2, Volume 3 – Financial, Part C- Financial Capacity, 3.6b(b)(i)(A).</p>
22.	<p>Given the constraints on the Lead Construction Contractor to self-perform only 30% to 35% of the construction work per RFQ Section 2.6.6 Self Performance, we ask the Surety Bonding Letter requirements be revised to \$500 million, which is more aligned with the overall expected project cost.</p>	<p>No change will be made to bonding requirement.</p>
23.	<p>Appendix 2 asks Respondent Teams to “provide a legal structure annotated organizational chart” in Section 1.2 and also to provide “An annotated organizational chart . . . that sets out the Respondent’s structure and teaming arrangements” in Section 2.2.</p> <p>These two requests appear to be redundant. There is also no request for an organizational chart that shows the relationships among Key Personnel for the Project during the predevelopment phase of the Project.</p> <p>Could PennDOT clarify in Appendix 2.2 that the three organizational charts requested are for the anticipated personnel structure during (1) predevelopment, (2) design and construction, and (3) maintenance? We believe this will provide PennDOT with a better overview of how the Key Personnel will work together during all phases, including the critical predevelopment phase.</p>	<p>The RFQ will be amended to clarify that the organizational chart requirements for Section 2.2 include the roles and relationships among the Key Personnel.</p>



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24.	<p>Section 5.5 of the RFQ states that “. . . information pertaining to Affiliates of any person or entity identified in this RFQ . . . shall be excluded. Improper reference to or inclusion of Affiliate experience shall be a material misrepresentation and basis for disqualification from further participation in the procurement for the Project.”</p> <p>At the same time, Appendix 1 of the RFQ defines “Affiliate” as “with respect to any person, any entity which, directly or indirectly through one or more intermediaries: (a) has a 10% or more voting or economic interest in such person or (b) controls, is controlled by or is under common control with such person.”</p> <p>The prohibition on using Affiliate experience and the broad definition of Affiliate pose problems for Respondent Teams. As is common in public-private partnerships and design-build contracting, construction, equity investment, and maintenance is often performed by special purpose vehicle subsidiaries to separate the financial liabilities of a project in order to make the project bankable and limit the risks a project might pose to the overall financial liabilities of the parent company. Often, such legal structures are even required by procuring authorities.</p> <p>Consequently, the projects completed by special purpose vehicle subsidiaries are not only relevant to Respondent team’s qualifications but form the core of their experience on projects of this nature.</p> <p>We firmly request that the prohibition on using the experience of Affiliates be removed. The experience of Affiliate entities is regularly shared across separate companies within the same group. This can often be shown through having a common parent entity act as a Financially Responsible Party accompanied with a brief explanation of how experience from past work will be transferred to the project in question. In the alternative, we firmly request that the experience of “controlled” Affiliates, meaning any entities falling within clause (b) of the definition of “Affiliate” under the RFQ, be permitted.</p>	<p>As a correction to response #9 that was included in the first RFQ Response document on July 14th, 2021, the existing allowance for the use of affiliate experience in Form G-4 and H-1 will be retained. Additionally, the RFQ will be amended with a similar allowance for the use of affiliate experience in Form G-1. The RFQ will also be amended to clarify in Section 5.5 certain information pertaining to affiliates may be included as expressly permitted.</p>



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25.	<p>RFQ – Form H-1 Instructions:</p> <p>“(a) List the financing experience and experience supporting project development and commercial management of the project after financial close of each Equity Member.”</p> <p>“(e) Projects disclosed under Form H-1 shall not replicate projects nominated under Form G-1 or Form G-4”</p> <p>Equity members are often Project Developers, or other Key roles such as Maintenance Providers.</p> <p>The projects listed under G-1 and G-4 are often also projects where financing experience occurs. We would assume PennDOT would want to see the most relevant financing projects from Equity members, which are likely to also be included on G1 for Project Development and G4 for Maintenance.</p> <p>We request that “(e)” be deleted in regard to H-1 Instructions.</p>	<p>The RFQ will be amended to remove the constraints on duplicating projects in the Forms.</p>
26.	<p>Will the information provided as part of 2.18 (c) with respect to DBE experience and approach be evaluated as part of the SOQ Evaluation Criteria?</p>	<p>The RFQ will be amended to clarify that the Evaluation Criteria includes consideration of the Respondent’s demonstrated experience, understanding, and approach to the achievement of DBE goals.</p>

Regards,

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