

**I-70 East Project RFQ Comment Responses (Set 2 of 2)
(As of May 20, 2015)**

The Colorado High Performance Transportation Enterprise and the Colorado Bridge Enterprise (together, the "Procuring Authorities") are providing the following responses to questions submitted by prospective Proposers in connection with the Request for Qualifications to Design, Build, Finance, Operate and Maintain the I-70 East Project (the "RFQ") issued March 25, 2015. Capitalized terms used but not defined herein have the meanings given to them in the RFQ. The Procuring Authorities are providing these responses in accordance with Section 5.1.2 of Part B of the RFQ. While the Procuring Authorities intend these responses to facilitate prospective Proposers' review of the RFQ, such responses do not constitute an addendum for purposes of Section 4.3 of Part B of the RFQ.

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| 11 | Part A (a) (Definitions), "Affiliate" Part E, Form D (Legal Disclosures) and Form E (Certifications) | <p>We kindly request that the definition of "Affiliate" be revised as set forth below.</p> <p>As is common for P3 projects, our consortium includes large multinational companies with thousands of affiliates throughout the world operating in a wide variety of industries and jurisdictions. As currently drafted, the definition of the term "Affiliate" is overly broad, in particular as the term applies to Form D (Legal Disclosures) and Form E (Certifications), and would require a level of diligence and disclosure that is overly onerous and impractical. As such, these proposed revisions, which we note are consistent with the requirements set forth in similar RFQs for recent US P3 procurements, are intended to provide information to CDOT that will be pertinent to the project and its performance of a thorough evaluation of our team members, while also making it feasible for us to provide the requested information.</p> <p>Further, for the reasons noted above, we kindly request that a clarification be included in Form E (Certifications) providing that the certifications to be made by Financially Responsible Parties cover only the Financially Responsible Party itself and not its Affiliates.</p> <p>"Affiliate" means in relation to any Person: (a) any other Person having Control of that Person; (b) any other Person over whom that Person has Control; (c) any Person over whom any other Person referred to in (a) above also has Control;</p> | <p>The Procuring Authorities intend to clarify in a future Addendum that the certifications in Form E (Certifications) are only required from Affiliates that have engaged in business or investments in North America during the past 10 years (i.e. the period covered by Form E).</p> <p>The Procuring Authorities do not intend to otherwise amend the definition of Affiliate as it is used in Forms D (Legal Disclosures) and E (Certifications).</p> <p>Proposers should, however, note that Form D (Legal Disclosures) is already limited to information on relevant instances or events (a) occurring within the last five years and (b) involving Reference Projects where the relevant Core Proposer Team Member, or Affiliate, had a material level of involvement as determined in accordance with instruction no. (1) to the Form.</p> |

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| | | <p>(d) any Financially Responsible Party for such Person; or (e) only with respect to the use of the term “Affiliate” in Forms D (<i>Legal Disclosures</i>) and E (<i>Certifications</i>) means: any Joint Venture involving such Person and the Joint Venture’s members or partners (but only as to activities of such members or partners in their roles as members or partners of such Joint Venture), <u>Persons having direct Control of that Person, subsidiary companies over whom that Person has Control, entities under direct common ownership and Control with that Person, and joint ventures and partnerships involving such Persons (but only as to activities of joint ventures and partnerships involving the Proposer, Equity Members, Lead Contractor, Lead Engineer or the Lead Operator as a joint venturer or partner and <i>not</i> to activities of other joint venturers or partners not involving the Proposer, Equity Members, Lead Contractor, Lead Engineer or the Lead Operator), that, in each case, have engaged in business or investment in North America within the past five years, measured from the date of issuance of the RFQ. The information sought for Affiliates is limited to the projects and matters that have occurred within the past five years (measured from the date of issuance of the RFQ) in North America.</u></p> <p>; where “Control” of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier <u>(except as set forth in clause (e) above)</u>): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises direct or indirect control over that controlled Person’s affairs.</p> | |
| 12 | Part A, Section 1 (Definitions) | “General Reference Project” is defined in part as “any transportation infrastructure project: (a) with a Construction Value equal to or greater than US\$150,000,000...” | The Procuring Authorities recognize that some transportation infrastructure projects that satisfy all of the criteria necessary to be considered a General Reference Project, other than the |

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| | | <p>We have two requested changes to the definition of “General Reference Projects”.</p> <p>First, given that “General Reference Projects” are used for both the design/construction qualifications as well as the financing/developer qualifications, we respectfully request the Procuring Authorities allow for the Construction Value requirement to be supplemented to include total financing commitment associated with any transportation infrastructure project.</p> <p>Second, we believe that there is valuable and applicable experience on Projects that might be smaller than \$150,000,000. Therefore we respectfully request that projects that had an aggregate financing in excess of \$125,000,000 also be included in the definition of General Reference Projects”.</p> <p>The proposed aggregate changes are:</p> <p style="padding-left: 40px;">“General Reference Project” means any transportation infrastructure project: (a) with a Construction Value equal to or greater than US\$150,000,000 or (b) <u>a total financing structure (defined as aggregate debt and equity financing repayment commitment) equal to or greater than \$125,000,000...</u>”</p> | <p>minimum Construction Value, could represent potentially valuable and relevant experience.</p> <p>Therefore, the Procuring Authorities intend to amend the RFQ in a future addendum to allow Proposers to include in their project experience submission (under Section 4.1 of the Volume 1 Submission Requirements) no more than ONE General Reference Project for each of the Equity Members (collectively), the Lead Contractor (collectively) and the Lead Engineer (collectively) where that project’s Construction Value is under \$150,000,000 (provided that such project otherwise satisfies paragraphs (b) and (c) of the definition of General Reference Project). Proposers should note that the Procuring Authorities may still consider the Construction Value of such project as a factor in their evaluation and scoring of a Proposer’s SOQ.</p> <p>Proposers should also note that the reference to Construction Value in the definition of General Reference Projects does not limit the use of the term General Reference Projects to demonstrating design/construction qualifications. The term also applies to the submission of financing/developer qualifications. When used in this context, the financed project simply must have had a Construction Value at or above the threshold.</p> |
| 13 | Part A (a) (Definitions), “General Reference Project” | Please confirm that “General Reference Projects” refer only to projects that are submitted within a Form F of a Proposers’ SOQ, and do not refer more broadly to <u>any</u> project that a Proposer team member (or members) has participated in that | The definitions of “General Reference Projects”, “O&M Reference Projects” and “Reference Projects” include all projects that satisfy the definitions of General Reference Project or O&M |

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| | | <p>meets the criteria set form therein.</p> <p>Currently, the definitions of General Reference Project, Reference Project and O&M Reference Project may be incorrectly interpreted to be overly broad by including projects outside those specifically included in the SOQ within a Form F.</p> | <p>Reference Project. There is no language in such definitions that limits these projects to such projects that are listed in Form F.</p> <p>Proposers should note that Forms D (Legal Disclosures), G (Safety Questionnaire), H (Stakeholder and Economic Engagement Questionnaire) and I (Key Personnel) require the submission of information related to Reference Projects, whether or not those projects have been specifically included in the SOQ within a Form F submission.</p> |
| 14 | General Reference Projects, as defined on page 6 (c) | <p>General Reference Projects, as defined on page 6 (c) of the RFQ, are the tool to be used through the SOQ by the Equity Members, Lead Contractor and Lead Engineer to demonstrate the extent and relevance of the Proposer’s experience. However, the Lead Contractor, as “primarily responsible for construction of the Project,” might have in its experience portfolio a number of urban road projects delivered through other contract methods, which are extremely similar in nature to the I-70 East, but that could not be presented as relevant due to the current restriction.</p> <p>Following this logic, and in respect of the Lead Contractor’s experience only, we respectfully propose to create a new category for Construction Reference Projects as it occurs with O&M Reference Projects for the Lead Operator. This new category could replicate the size and timing requirements from the General Reference Projects and widen the delivery method constraint only in the case that very relevant experience (i.e. urban road realignment) is to be presented by the Lead Contractor.</p> | The Procuring Authorities do not intend to change the current definition of “General Reference Projects.” |
| 15 | Part B, Section 2.4 | Please confirm that the information regarding the Project Agreement provisions are for informational purposes only and that by submitting a SOQ, Proposers will not be prohibited or prejudiced from making any questions or comments to the | The Procuring Authorities confirm that the information regarding the anticipated Project Agreement is for informational purposes only. As is anticipated by the indicative Procurement |

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| | | actual Project Agreement draft, which is distributed with the RFP. | Schedule in Section 4.2.a. of Part B, Short-listed Proposers will be able to (a) submit questions and comments on the form of Project Agreement included in the RFP and (b) discuss those questions and comments at one-on-one meetings with the Procuring Authorities. The Procuring Authorities will provide Short-listed Proposers with additional details on the question and comment process in the RFP. |
| 16 | Part B, 4.2.a. RFQ Process | The RFQ Comment Response Deadline is listed as June 1, 2015. We assume that an addendum to the RFQ will be issued on or after this date. Will the Procuring Authorities allow for an additional comment and answer period after the addendum is issued? | <p>The Procuring Authorities intend to issue an addendum to the RFQ on or prior to June 1, 2015.</p> <p>The Procuring Authorities do not intend to provide Proposers with an opportunity to comment on the amendments made to the RFQ pursuant to the addendum.</p> |
| 17 | Part B, Section 5.3.1 | <p>Is there a specific format that Proposers are to use in identifying potential Conflicts of Interest? On past CDOT design-build projects, the RFQ documents have specifically required disclosure of any current contractual relationships with CDOT (including CDOT contract number and Project Engineer), any current contractual relationships with the firms that CDOT has retained as part of the project team, and other specific information about current or planned relationships with CDOT employees.</p> <p>Please clarify what level of detail is required for the conflict of interest disclosures on this project?</p> | <p>There is no specific format that Proposers must use to fulfill the requirements of Section 5.3.1 of Part B of the RFQ. Current contractual relationships with CDOT and/or current or planned relationships with CDOT employees may constitute organizational conflicts of interest under 23 CFR § 636.116. Thus, Proposers should evaluate these relationships carefully and disclose pertinent information regarding these.</p> <p>At a minimum, CDOT contract numbers and CDOT points of contact should be provided in order to facilitate the Procuring Authorities' evaluation of the potential conflict of interest. Proposers should also provide as much additional detail as is necessary for the Procuring Authorities to fully and adequately</p> |

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| | | | <p>evaluate the nature and extent of any conflicts of interest. For example, more detail regarding the nature of work performed and access to information would be required if a member or potential member of a Proposer team had any involvement in the development of engineering, financing, the RFQ, or other elements of this Project. See e.g., 2 C.C.R. 601-15, Sec. 7.</p> <p>Proposers should consider the terms of the RFQ and also consult 23 C.F.R. Sec. 636.116 and 2 C.C.R. 601-15 Sec. 7 for guidance regarding organizational conflicts of interest and the types of facts that would be relevant to assessing them.</p> |
| 18 | Part B, Section 5.3.1.d.ii.J | <p>The article mentions Michael Major d/b/a Major Enterprises. We are not familiar with this company. Could you give background on this company?</p> | <p>Michael Major provides technical advisory services to CDOT in respect of the Project but is a Restricted Party.</p> |
| 19 | Part B, 5.7.3.e, Page 40 | <p><i>“No later than 10 Business Days following the SOQ Deadline, the Procuring Authorities expect to release each Public Disclosure SOQ to the public, including by posting their contents on the Project Website.”</i></p> <p>We would suggest that the Procurement Authorities do not publically release the Public Disclosure SOQ until after the evaluation and shortlisting process has concluded. Once the shortlist has been completed, all of the Public Disclosure SOQ’s could be posted.</p> | <p>The Procuring Authorities are continuously reviewing their approach to transparency and open records to ensure compliance with CORA and best practices. This includes consideration of the findings set out in the recently released Office of the State Auditor’s report on HPTE’s US 36 project. On this basis, the Procuring Authorities intend to clarify in a future addendum that the Public Disclosure SOQ will not be released before the conclusion of the shortlisting process. However, notwithstanding this intended clarification, the Procuring Authorities do not intend to change the required date for submission by Proposers of their Public Disclosure SOQs (i.e. the Public Disclosure SOQ Deadline).</p> |

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| 20 | Part B, Section 7.1.2.a | Could the Procuring Authority please describe the committees and positions within those committees that will perform the Substantive Evaluation and the Pass/Fail Evaluation? | This information is not relevant to Proposers in completing their SOQs. |
| 21 | Part C, Section 1.1.B.II | <p>This section reads "...and/or" at the end of the article but there is no subsequent article III.</p> <p>Please confirm that there are is no Part D Section 1.1.B.III</p> | Confirmed. There is no Part D Section 1.1.b.i.B.III (note that the Section referenced in the Question is Section 1.1.b.i.B.II of Part C, not Section 1.1.B.II). However, the "and/or" is not an error - it links Section 1.1.b.i with Section 1.1.b.ii, and therefore appears after the final subsection (B.II) in Section 1.1.b.i. |
| 22 | Part C, Section 2.1.a.iv. | Section 2.1.a.iv. is the fourth feature for which greater merit will be awarded. The feature is written "the financial project was located in North America; and." Please confirm the "and" was in error and that there are only 4 merit award features for Section 2.1.a. | <p>The "and" is not an error - it links Section 2.1.a with Section 2.1.b, and therefore appears after the final subsection (iv.) in Section 2.1.a.</p> <p>The Procuring Authorities otherwise confirm that there are only 4 merit award features in Section 2.1.a.</p> |
| 23 | Part D, Section 1.2.1.b | The RFQ asks for Volume 2 to be further divided into separate sub-Volumes as required by Section 2.1 of the Volume 2 Requirements. May the sub-Volumes that contain financial information of privately held firms be submitted in a sealed envelope that is placed in a sleeve that is bound in the ring binder? | Proposers may submit financial information of privately held firms in sealed envelopes that are then placed in a sleeve that is then bound in the appropriate ring binder. |
| 24 | Part D, Section 1.2.2.c | The RFQ asks that in addition to hard copy volumes, each Proposer shall submit a digital copy of the SOQ in PDF (searchable) format on a single flash drive. May the digital copy of financial information of privately held firms be submitted on a separate flash drive and be included within the sealed envelope proposed in question (9) that would be bound within Volume 2? | <p>See the response to comment No. 23 above.</p> <p>The Procuring Authorities intend to clarify Section 1.2.1.b. of Part D to enable Proposers to prepare and deliver a separate flash drive that contains only a copy of the financial information of a privately held firm.</p> |
| 25 | Part D, Volume 1 Submission Requirements, Section 4.1. | With respect to Reference Projects presented in Volume 1 Submission Requirement, Section 4.1 (<i>Project Experience</i>), could you please clarify how each General Reference Project / O&M Reference Project will be counted towards the General | If the Proposers want the Procuring Authorities to evaluate one project for multiple disciplines and a single Form F is used, for example, to show experience for all four listed Core Proposer |

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| | | <p>Reference Project limits (separately and in the aggregate for Equity Members, Lead Contractor, Lead Engineer and Lead Operator)?</p> <p>Our question stems from footnote 15, which states that a single completed Form F may be submitted to document the experience on such project for two or more Core Proposer team members. Does this mean that if we want the Procuring Authorities to evaluate one project for multiple disciplines and a single Form F is used, for example, to show experience for all four categories (Equity Members, Lead Contractor, Lead Engineer and Lead Operator), this will count as <u>one</u> Reference Project out of the 21 possible projects allowed, or would it be counted as <u>four</u> of the 21 possible projects allowed (one of each Equity Members, Lead Contractor, Lead Engineer and Lead Operator)?</p> | <p>Team Members (Equity Members, Lead Contractor, Lead Engineer and Lead Operator), then this will count as <u>four</u> of the 21 possible projects allowed (one of each of the Equity Members', Lead Contractor's, Lead Engineer's and Lead Operator's individual maximum number of Reference Projects).</p> |
| 26 | Part D, Vol. 1 Submission Requirements 4.1 | <p>Concerning footnote 15, <i>“A single completed Form F with respect to a particular project can be prepared and submitted to document the experience on such project of two or more Core Proposer Members”</i></p> <p>If the same project is submitted as contractor experience and as lead engineer experience, please confirm that it is permissible to write two perspectives of the project in order to highlight the specific relevance, challenges and solutions so that each party can elaborate on their respective experience to addresses the evaluation criteria of a respective category (e.g., one for contractor perspective and one lead engineer perspective)?</p> | <p>Confirmed. Proposers may write two perspectives on a Reference Project to elaborate on different Core Proposer Team Member's experience. A Proposer should clearly specify which Core Proposer Team Member the particulate experiences relate.</p> |
| 27 | Part D, General Requirements, Section 1.4. | <p>Should original signatures (as opposed to copies of original signatures) in the Original SOQ shall be provided for any and all of the documents therein (i.e. legal certifications, letters of support...etc.) or are original signatures only required for certain documents? If original signatures are required only for certain documents, please identify which documents require an</p> | <p>The Procuring Authorities intend to clarify the RFQ to allow Proposers to submit scans of signatures in the digital copy of the RFQ, together with scanned and printed copies of those signatures in the original SOQ.</p> |

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| | | original signature. | |
| 28 | Part D, Section 1.4 | <p>For the purposes of ease of execution of the needed Forms for each Core Team Member, can the Procuring Authorities please consider allowing Proposers to use electronic signatures? As some of the Forms require signatures by Core Team Members who's officers are based outside the US, we kindly ask that the Procuring Authorities please consider allowing Proposers to use electronic signatures, specifically color scans of original signatures, in line with other precedent transactions. The proposed change is suggested:</p> <p>"Signatures in the original SOQ required to be submitted under Section 1.2.1.a of these General Requirements should be made in blue ink (although use of a different color ink will not be considered a "fail" for purposes of the Pass/Fail Evaluation) and shall be original <u>or color scan of original</u> (and not electronic) signatures."</p> | The Procuring Authorities intend to clarify the RFQ to allow Proposers to submit scans of signatures or electronic signatures in the digital copy of the RFQ, together with scanned and printed copies of those signatures in the original SOQ. |
| 29 | Part D, Financial Requirements, Section 2.2. | If an Equity Member is a newly form entity, which doesn't yet have audited financial statements, and is supported by a Financial Responsible Party which (i) is its ultimate parent company and (ii) is the holding company of the group to which the Equity Member belongs, can the Financial Statements of such Financial Responsible Party be submitted on behalf of and instead of the Financial Statements of the Equity Member? | The Procuring Authorities intend to clarify Section 2.2.3 of Part D in a future Addendum to require any newly formed entity that does not have independent financial statements to submit financial statements from its Financially Responsible Party. |
| 30 | Part D, Section 2.2.8., US Dollar Requirements | <p>The RFQ document states that, " if financial statements for any entity are not available in US dollars, Proposers shall submit summaries (...) of such entity's balance sheet, income statement and statement of cash flow for the applicable time periods converted to US dollars (at an appropriate rate of conversion specified in the SOQ)".</p> <p>Please confirm that the rate of conversion to be used for each applicable period can be discretionarily chosen by the certified public accountant. Certified public accountant generally</p> | Proposers should use end-of-year exchange rates when submitting non-USD financial statements. The Procuring Authorities intend to clarify this in a future addendum. |

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| | | advises to convert financial statements' figures with the end-of-year exchange rate (31st December), please confirm this criterion is appropriate. | |
| 31 | Part D, Section 2.2.1 | Regarding entities with unaudited financials, which can and will be certified and GAAP compliant, how many years of unaudited financials are required? | <p>Entities that only have unaudited financials must submit unaudited financial statements for (i) the most recently completed fiscal year (pursuant to Section 2.2.1.b of Part D of the RFQ) and (ii) the previous three completed fiscal years (pursuant to Sections 2.2.1.b and 2.2.1.d of Part D of the RFQ), for a total of four sets of financial statements.</p> <p>The Procuring Authorities intend to clarify this in a future Addendum.</p> |
| 32 | Part D, Section 2.2. Financial Statements | Please confirm whether the financial statements for each entity are to be submitted in its consolidated presentation only (if applicable) or the requirement pursues a submission of both its consolidated and individual presentation. | <p>In accordance with Section 2 of Part D, Proposers must include either audited financial statements or, if they are not available, unaudited financial statements for each <u>entity</u> within the Proposer team (not the entity's consolidated group) which is required to submit financial statements. The test of what qualifies as audited or unaudited financial statements is set out in Section 2.2.1 of Part D. Statements from a consolidated group would not clearly show the Procuring Authorities the financial position of the individual entity seeking to be qualified.</p> |
| 33 | Part D, Section 3 | Can you confirm that Mr. Nicholas Farber will be the addressee on the letters of support? | <p>Yes, the Financially Responsible Party, Eligible Surety, Eligible Financial Institution and equity funding letters of support must each be addressed to the Procuring Authorities care of Mr. Farber.</p> |

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| 34 | Part D, Volume 1 Submission Requirements (Section 4.1), Volume 2 Submission Requirements (Section 1.3) and Part E, Form F, Section (2) of the instructions | Can a Proposer submit as Reference Project experience in Form F (Project Experience) the experience of an Affiliate of a Core Proposer Team Member in satisfaction of the requirement to submit experience details in respect of such Core Proposer Team Member? | The Procuring Authorities intend to clarify in a future Addendum that a Proposer may submit as Reference Project experience in Form F the experience of an Affiliate of a Core Proposer Team Member. In doing so, the Proposer must describe the relationship of the Affiliate to the Core Proposer Team Member and explain how such experience will be made available to and applied by the relevant Core Proposer Team Member in the context of the Project. |
| 35 | Part D, Volume 2, Submission Requirement, 4.3. Off Balance Sheet Liabilities | Are the Proposer Team Members to submit a letter identifying off balance sheet liabilities or certifying that there are no such ones (whichever be the case) for the three most recently fiscal years or information for the last completed fiscal year would suffice? | The letter should identify off-balance sheet liabilities for each fiscal year for which financial information is submitted, so that the Procuring Authorities can properly evaluate each financial statement provided. The Procuring Authorities intend to clarify this in a future Addendum. |
| 36 | Part D, Form F, (11) Key Personnel Involved, Roles & Responsibilities | <p>Please clarify Key Personnel under this section.</p> <p>Can you confirm that “Key Personnel” in Form F refers to key staff involved in the respective Reference Project and are not necessarily Key Personnel as per Part D Form I.</p> | The reference in Form F to “Key Personnel” is to the term as defined in the RFQ, and therefore is limited to those individuals who have been identified in Form I. |
| 37 | Part E, Form D (Legal Disclosures) | <p>For the purposes of Form D, relevant experience is deemed to include experience on “any Reference Project” that satisfies the threshold set out in instruction (2) to Form F (Project Experience).</p> <p>Can the Procuring Authorities confirm that only those projects actually listed in Form F are applicable for the purposes of the Form D disclosure?</p> | Please see the response to comment No. 13 above. |

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| 38 | Part E, Form E | <p>Part A of Form E asks each entity to identify whether or not they have answered “Yes” to one or more of the certifications in Part B. Part B contains eight numbered certifications relating to issues such as debarment, felony convictions, safety, EEO or wage violations. However, Part B also includes a final unnumbered certification that the information provided for these eight numbered certifications “is correct, complete and not materially misleading” – to which each of the entities will check the “Yes” box.</p> <p>Please clarify whether CDOT intends Part A of Form E to address “Yes” answers to only the eight numbered certifications in Part B, or if a “Yes” answer to the final, unnumbered “correct, complete and not materially misleading” certification will require the entity to also check “Yes” in Part A.</p> | <p>The Procuring Authorities intend to clarify Part A of Form E in a future Addendum to make clear that the checklist only relates to numbered questions 1 through 8 in Part B.</p> |
| 39 | Part E, Form E, Part B | <p>It is customary in the North America’s P3 industry that these certifications, when made by an Equity Member on its own behalf, are limited to “affiliates”, which within the last few years (customarily 5) have engaged in business or investments in North America. Therefore, we kindly request that the term “Affiliate” in Part B of Form B be limited to those entities that within the past five years have engaged in business or investment in North America.</p> | <p>Please see the response to comment no. 11 above.</p> |
| 40 | Part E, Form E, Part B (Certifications) | <p>Question 5 asks Proposers to certify with respect to such entity whether “construction or project or operations and maintenance contract performed or managed by the entity or, to the knowledge of the undersigned, any Affiliate involved repeated or multiple failures to comply with safety rules, regulations or requirements within the past ten years?”</p> <p>Can the Procuring Authorities clarify that the reference to “safety rules, regulations or requirements” applies to OSHA regulations and related failures for any projects performed or managed by the entity? If so, do the repeated failures specifically reference OSHA citations?</p> | <p>Form E is a standard certification that could refer to OSHA regulations and OSHA citations, but is not limited to OSHA regulations or citations.</p> |

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| 41 | Part E, Form E, Part B (Certifications) | <p>Question 8 asks Proposers to certify with respect to such entity and if not already disclosed in Question 1-7, whether “any notice, warning, investigation, proceeding, claim, matter, suit, indictment, etc. currently pending against the entity ...” is pending and could result in liability under the laws referenced in such questions.</p> <p>Can the Procuring Authorities please confirm that it is only formal notices of legal action that are known to the entity in relation to items captured by Question 1-7 that are required to be disclosed for the purposes of this question?</p> | The Procuring Authorities intend to clarify in a future Addendum that this refers to a legally effective or recognized form of notice. |
| 42 | PART E, Form A,B,C,D,E,F,G,H,I,J ; Instructions | May we delete the instructions boxes at the top of Forms A,B,C,D,E,F,G,H,I,J when they are completed? | Proposers may delete the instruction boxes. The Procuring Authorities intend to clarify this in a future Addendum. |
| 43 | Part E, Form F, Instructions, (2),(a) (Project Experience) | <p>Project experience for Equity Members currently requires each equity member hold a minimum 30% equity interest in projects. The Procuring Authorities have stated in RFQ Comment Responses (as of April 20, 2015) #6 that the minimum equity threshold would be reduced to 10% if that same company or its affiliates also had a 30% interest in the construction contract. We believe the Procuring Authority should further amend the requirement to only extend to Equity Members who acted as developer during the project development/procurement</p> | The Procuring Authorities intend to reflect the substance of this comment in a future Addendum. |

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| | | <p>process and committed direct or indirect equity at financial close of such project.</p> <p>We respectfully request the Procuring Authorities make the following amendment (Noting that this is in line with precedent US PPP qualification criteria):</p> <p>In order to qualify as relevant experience for Sections 1.1.b and 2.1.a of the Substantive Evaluation Criteria, the entity or entities to which such experience relates shall have had at least the following level of involvement in that project or transaction: (a) for Equity Members, at least a 30% direct or indirect equity investment (including shareholder loans) in the company <u>where the Equity Member was an original investor (i.e., did not acquire shares via a secondary market transaction) and participated in the project development/procurement process acting as the developer;</u></p> | |
| 44 | Part E, Form F. Instructions (2). (b), (c) and (d). | <p>In order to qualify as relevant experience the RFQ states that it be necessary “for a Lead Contractor (/Engineer/Operator), at least 30% of primary responsibility for the project (...)”. Given the case that those responsibilities are ultimately backed by a holding company within a corporation structure (a structure which moreover stands as a market standard), could that primary responsibility be transferred to another subsidiary of that holding company as long as a 30% responsibility may be accredited through percentages of ownership so that this holding may participate as a Proposer Team Member through that wholly-owned subsidiary? Or should the holding company itself be the one that is to be presented as a Proposer Team Member?</p> | Please see the response to comment no. 34 above. |
| 45 | Part E, Form F. Instructions (2). (b), (c) and (d). | <p>Please confirm that it is permitted to describe and detail this ownership structure and how the 30% or higher percentage of responsibility climbs and descends through the organizational corporation’s structure in Form F, item (9) “Proposer Team Member (s) Involved”.</p> | Proposers should describe how the applicable threshold percentage of responsibility flows through the relevant corporate organizational structure and therefore satisfies the requirements for a Reference Project to be |

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| | | | included in an SOQ in accordance with the instructions to Form F (Project Experience). |
| 46 | Part E, Form H (Stakeholder and Economic Engagement Questionnaire) | <p>For the purposes of Form H, experience is deemed to include experience on “Reference Projects.”</p> <p>Can the Procuring Authorities confirm that only those projects actually listed in Form F are applicable for the purposes of the Form H questionnaire?</p> | Please see the response to comment no. 13 above. |
| 47 | Part E, Form I | <p>It is typical in management structures for P3 organizations that the position of the Environmental Manager exists at both the Developer and the Lead Contractor levels during construction. It is common that the Developer’s environmental manager has an oversight position while the Lead Contractor’s environmental manager has the more hands-on position, working directly on the construction site (while both have authority to stop work in their respective positions).</p> <p>It is unusual to have the Environmental Manager being seconded to or employed by the Developer, as in previous successful P3 projects, the Key Personnel position of “Environmental Manager” was employed by or seconded to the Lead Contractor. Because of the highly active and engaged nature of the Lead Contractor’s Environmental Manager position, we feel that this is the more relevant of the two positions for the Procuring Authorities to review in the context of this SOQ (and generally, to apply the requirements that are typical of a Key Personnel position). We request that the Procuring Authorities please consider allowing the Environmental Manager being seconded to or employed by the Lead Contractor.</p> | It is intended that there is an Environmental Manager who is seconded or employed by the Developer and that this person is a Key Personnel. This is to ensure that adequate environmental oversight independent of the Lead Contractor is present on this Project where full environmental compliance is critical. The Procuring Authority will not be modifying the Key Personnel requirements for the Environmental Manager. |
| 48 | Part E, Form I | The Key Personnel list (Form I) does not request a Project Manager for the Developer. Please confirm that this is the Procuring Authority’s intent. | Confirmed. The Procuring Authority’s intent is to request that the Developer’s Project Manager be identified at the RFP stage. |
| 49 | Part E, Form I | The Key Personnel list (Form I) does not have an overall | Please see the response to comment no. 8. |

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| | | <p>Project Manager for the Design-Build Joint Venture. The Key Personnel list requests a Construction Manager and a Design Manager from the Lead Contractor and the Lead Engineer respectively. The Design-Build Joint Venture is the joint venture formed by the Lead Contractor to perform the construction and design of the project.</p> <p>Is it the Procuring Authority's intent to have the Construction Manager from the Design-Build Joint Venture in charge of design and construction, <u>or</u> does the Procuring Authority expect the Design-Build Joint Venture to have other positions above the Construction Manager and Design Manager, that are not Key Personnel, leading the construction and design portion of the project?</p> | |
| 50 | Part E, Form I | <p>The RFQ contemplates that the O&M Manager will be the same individual for both the construction period and through operations of the Project. There are key differences in the operations and maintenance responsibilities of the Developer during construction versus during the operating period that demand different skill sets and experience for the individuals the Proposers will set forth as candidates.</p> <p>We kindly request that the Procuring Authorities modify the RFQ to separate the obligations relative to these phases of the project and suggest that for the O&M Manager Key Personnel member, the teams are evaluated based on their ability to place a qualified O&M Manager during operating period given the significance of this role following substantial completion of the Project. We suggest the following:</p> <p>Minimum Period of Availability: From commercial <u>close substantial completion</u> to end of Project Agreement term</p> <p>Should the Procuring Authorities deem it appropriate that the construction period O&M obligations warrant evaluation of a Key Personnel member, we suggest the creation of an</p> | <p>It is intended that there will be similar O&M responsibilities on the existing asset during the construction period that get carried through to the operations period. The Procuring Authority will not be modifying the Key Personnel requirements for the O&M Manager.</p> |

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| | | additional classification of O&M Manager during the Construction Period with a “Minimum Period of Availability” from Commercial Close to Substantial Completion. | |