

**SH 99 Grand Parkway Toll Road Project
Q & A Matrix #5**

(December 22, 2011)

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|-------------------|--|---|---|
| 1. | Part A, §§5.4.1 and 5.5.1/pp. A-25 – A-26 | <p>While the DB services being sought by both delivery approaches are identical, the experience requirements applicable to each delivery approach are significantly different. We believe the absence of specific experience criteria in the provision of DB Services under the Design Build delivery approach eliminates the objectivity from the evaluation process without serving a valid public purpose.</p> <p>Section 5.5.1 of Part A sets forth clear, objective criteria for the evaluation of the experience of the Proposer team firms. It requires the Lead Contractor, Lead Engineering Firm, and other members of the Proposer team to demonstrate satisfaction of specific experience requirements, such as, in the case of the Lead Contractor, at least 2 transportation projects, each with a value greater than \$400 million, and at least 1 transportation project in the United States with a value greater than \$250 million. This section applies to the provision of DB Services under the Full Toll Concession approach. In contrast, Section 5.4.1, which describes the Project Experience requirements under the Design-Build delivery model, does not include any objective, measurable criteria.</p> <p>The imposition of different experience requirements for the DB Work, depending on the method of delivery, appears to give preference to a method of delivery over the other, with no</p> | <p>Please see clarifications to Section 5.4 in Addendum #1 to the RFQ. The differences in the evaluation criteria for each model are appropriate due to differences in the agreements and specifications, including the level of TxDOT oversight, for the models.</p> |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|---|--|---|
| | | <p>apparent objective reasons.</p> <p>We respectfully request that the experience requirement for DB Services be the same, regardless of the method of delivery, because the DB Services to be provided by the Design Builder are the same. Given the magnitude of this Project, we believe the Design Builder member should be subject to the more objective standards set forth in Section 5.5.1 of Part A.</p> | |
| 2. | Part A, §4.2(c)/ p. A-22 | Font sizes must be at least 12 point, except for tables, which may be in 10 point font. Please confirm if text within graphics is permitted at the 10 point font size. | The text contained within graphics shall be no smaller than 10-point font size. |
| 3. | Part B, Vol. 1, §A, (a)/p. B-5 and Part A, §4.2(c)/ p. A-22 | TxDOT clarified that all forms count toward the page count; confirm if the required letters appended to Form A count as well. | For any Proposer that is a joint venture, partnership, limited liability company or other association, the transmittal letter (Form A) included in that Proposer's QS must have appended to it letters meeting the requirements set forth in Part B, Volume 1, §A(a). Please note that such letters <u>will not</u> count toward the page limits for Volume 1 (see Addendum #1, Part A, §4.2(c)). <u>However</u> , Form A will count toward said page limits. |
| 4. | Part B, Vol. 1, §A, (c)/ p. B-5 | This section provides that each Proposer may include in its QS "[a] page executed by the Proposer that sets forth the specific items in Volume 2 (and the section and page numbers within the QS at which such items are located) that the Proposer deems confidential, trade secret or proprietary information protected by Section 223.204 of the Code or the Act (as described in Part A, Section 6.2)." Are we permitted to include such items in Volume | As set forth in Part B, Volume 1, Section A(c), the Confidential Contents Index may include <u>only</u> items provided in Volume 2 of a QS which the Proposer deems to contain confidential financial information. Items included in Volumes 1 or 3 of any QS <u>will not</u> be deemed or treated as confidential even if such items are mistakenly |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|---|---|--|
| | | 1 and Volume 3? | listed in the index. |
| 5. | Part A, §4.2(d)/ p. A-22 | Page A-22 states that Volume 2 shall have all pages sequentially numbered. Can we add page numbers to TxDOT forms? | Volume 2 <u>does not</u> have any page numbering requirements (see Part A, § 4.2(d)). Volume 1, <u>however</u> , shall have all pages sequentially numbered (see § 4.2(c)). In complying with this requirement, Proposers should add page numbers to forms included in Volume 1 such that forms follow the page numbering sequence within the volume. |
| 6. | Part A, §5.1/ p. A-23 and FORM E-3 | <p>Current text provides that “in order for project experience provided in the QS to be considered responsive Forms E1, E2, E3 shall list only projects for which the corporate entity (company, joint venture, partnership or consortium) providing the ... operation and maintenance or capital maintenance experience is respectively the..... the Lead Operations & Maintenance Firm or Capital Maintenance Firm itself, or a controlled subsidiary of such”</p> <p>Form E-3, note (1) provides that “in the case of experience provided by a company related to the Lead Operation & Maintenance Firm...(as permitted in Part A Section 5.1), specify its relation to the to the Lead Operation & Maintenance Firm”</p> <p>As is customary, the entities that operate roads, and especially toll roads under a PPP project scheme, are many times incorporated as an SPC (sole purpose company), that has the authority only to operate the relevant project, and thus cannot be a member of the Lead Operation & Maintenance Firm in this</p> | Yes, such a joint venture that together holds a 50% interest in the Lead Operations and Maintenance Firm may provide the experience of a controlled subsidiary of that joint venture. |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|--|---|---|
| | | <p>Project.</p> <p>In light of the above, in order to be able to present the experience of the SPCs, their shareholders should be named as the "member" of the Lead Operation & Maintenance Firm. In this respect, please confirm that a joint venture of shareholders that control the relevant SPC can qualify as a "member" of the Lead Operation & Maintenance Firm having the relevant experience? i.e – in FORM E-3 the said joint venture of the shareholders will be named as a "member" of the Lead Operation & Maintenance Firm (provided that the said shareholders hold together at least 50% of the Lead Operation & Maintenance Firm as required under the said form)?</p> | |
| 7. | Part A, §5.2(d)/ p. A-24 and Part B, Vol. 2, §A(f)(i)/ p. B-13 | <p>In the event TxDOT determines that a Proposer submitting a QS for the toll concession model does not have the financial capability to carry out the Project under the "pass/fail" qualification requirements set forth in the RFQ Part A, Section 5.2(d), please clarify whether TxDOT will provide such Proposer the opportunity to provide an acceptable Guarantor or additional Equity Member before being disqualified to participate in the Project.</p> <p>RFQ Part B, Volume 2, Section A(f)(ii) seems to indicate that TxDOT will provide a Proposer submitting a QS for the toll concession model the opportunity to provide an acceptable Guarantor or additional Equity Member as a condition of short listing and prior to TxDOT's disqualification of such Proposer from participating in the Project</p> | <p>TxDOT reserves the right to “require additional information from a Proposer concerning its QS and require additional evidence of qualifications to perform the work described in this RFQ” (see Part A, Section 8). Under the circumstances described in the question, TxDOT may but is under no obligation to request evidence of an acceptable Guarantor or additional Equity Member from the Proposer. Please note that TxDOT would exercise its discretion to do so based upon its review of the information provided in the QS.</p> |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|--------------------------------------|---|--|
| 8. | Part B, Vol. 2, §A /pp. B-12 –B-13 | Please clarify whether a Proposer, who is submitting a QS for the toll concession model as a consortium (and not as an existing or newly formed entity), is permitted, under RFQ Part B, Volume 2, Section A, to submit financial statements of (i) each of its consortium equity members and (ii) the equity member of each of its consortium equity members. If so, would it be correct to understand that the equity members of the Proposer's consortium members are not Guarantors under the RFQ? | If the Proposer is a consortium that intends, if selected to develop the Project, to form an SPV or other new entity, the Proposer shall provide financial statements for the Equity Members, in this case, the members of the consortium. The QS may include financial statements for parent companies of the members of the consortium to show financial capacity. TxDOT reserves the right to require a Guarantor or additional Equity Member as a condition to shortlisting, however the equity members of the consortium equity members would not automatically be required to be Guarantors. |
| 9. | Form C | Please consider narrowing the definition of "affiliate" under Form C (Certification) to parent companies, subsidiary companies, joint venture members and partners that have conducted business in the United States in the past 5 years. Due to the international nature of many of the potential Proposers for the Project, the current scope of information that is required to be provided under Form C is overly broad and will require a Proposer to obtain information from its foreign affiliates that have not recently conducted business in the United States. | Please see revisions to the definition of "affiliate" and other revisions to Form C described in Q&A Matrix #4 and included in Addendum #1 to the RFQ. |
| 10. | Part A, §2.11/ p. A-15 | RFQ states that "An investment grade traffic and revenue study was completed in August 2011. Traffic and Revenue Data is included in the Project Documents." The Project Documents page has links for only the stick diagram and the revenue forecast. Please advise when the full investment grade traffic and | The full investment grade traffic and revenue study will not be posted on the Project Website. The full study is confidential under Section 371.052 of the Texas Transportation Code and may not be disclosed until the execution of the |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|--------------------------------------|--|--|
| | | revenue study will be posted to the Project site. | P3A. |
| 11. | General | Does TxDOT keep a list or spreadsheet of respondents to RFIs/RFQs and LOIs. We found a list of respondents on the Grand Parkway website from an RFI that went out back in June 2011. It had no other details than just to list the companies that responded to the RFI. If there is a list that is maintained by TxDOT, it would be very helpful with contractor coordination and future teaming efforts. Please let me know if TxDOT has such a list - thanks for your help | The list maintained by TxDOT regarding respondents to the RFI is on the website. There is no current list of potential respondents to the RFQ as this information has not been requested by TxDOT in advance of the QS submissions. TxDOT intends to post a list of Proposers submitting Qs after the QS Due Date. |
| 12. | Form D, Form F | Regarding Form D – Reference Summary and Form F – Financial Reference Summary, please clarify if column headings entitled “Contact Name,” “Company / Agency,” “Current Address,” “Phone Number,” “E-Mail” and “Fax” (this last column contained in Form D, only) are regarding Client Contact or Toll Concession Contact. | With respect to Forms D and F, the column headings entitled “Contact Name,” “Company/ Agency,” “Current Address,” “Phone Number,” “E-Mail” and “Fax” are regarding the corresponding public owner. |
| 13. | Part A, §3.3/ p. A-18 | We respectfully request that TxDOT extend the QS Due Date in order to allow us meet the information requirements contained in the RFQ. We suggest January 31, 2012 as the new deadline. | As established in Part A, § 3.3, the QS Due Date is January 18, 2012. Please note that TxDOT does not currently anticipate extending the QS Due Date. |
| 14. | Part A, Section 5.1/ p. A-23 | Proposed revisions: In order for project experience provided in the QS to be considered responsive, Forms E-1, E-2, E-3 shall list only projects for which the corporate entity (company, joint-venture, partnership or consortium) providing the equity investment, engineering, | Part A, §5.1 will be revised in Addendum #1 to the RFQ as follows: ... In order for project experience provided in the QS to be considered responsive, Forms E-1, E-2, E- |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|--------------------------------------|--|--|
| | | <p>construction, operations and maintenance or capital maintenance experience is respectively the Equity Member, Lead Design Firm, Lead Contractors, Lead Operations & Maintenance Firm or Capital Maintenance Firm itself, or a controlled subsidiary <u>or parent or sister company</u> of such Equity Member, Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm. Project experiences provided by a parent or sister company of the Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm shall not be considered responsive to this QS.</p> <p>Key Personnel may be employed by the Equity Member, Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm itself, or a controlled subsidiary <u>or parent or sister company</u> of such Equity Member, Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm.</p> | <p>3 shall list only projects for which the corporate entity (company, joint-venture, partnership or consortium) providing the equity investment, engineering, construction, operations and maintenance or capital maintenance experience is respectively the Equity Member, Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm itself, or a controlled subsidiary of such Equity Member, Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm. Project experiences provided by a parent or sister company of the Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm shall not be considered responsive to this QS, <u>provided that, for the concession model only, project experience provided by a parent company of an Equity Member will be considered responsive.</u></p> <p>Key Personnel may be employed by: <u>(a) the Equity Member, Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm itself; or (b) a controlled subsidiary of such Equity Member, Lead Design Firm, Lead Contractor, Lead Operations & Maintenance Firm or Capital Maintenance Firm; or, for the concession model only, (c) a parent company of an Equity Member .</u></p> |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|--|--|---|
| 15. | Part B, Vol.1, § B(e)(2) (Legal Quals, Legal Liabilities)/ p. B-8 | <p>We appreciate TxDOT's desire to receive as much information as possible in order to conduct a thorough and informed analysis and request to limit the level of disclosure to those liabilities and proceedings between the Equity Member or Majority Non-Equity Member, as applicable, and the public owner of the applicable project.</p> <p>As currently drafted, these sections would require us to diligence and disclose all liabilities and proceedings related to the applicable Equity Member or Majority Non-Equity Member, regardless of the third party involved, which could include any subcontractors or any other third party, no matter how minimal their role or how insignificant the liability or proceeding. Ultimately, we believe that the disputes with public owners of the projects would be the most significant to TxDOT.</p> <p>Proposed revisions:</p> <p>Provide a list and a brief description of all instances during the last five years involving transportation projects in which the Proposer (or any other organization that is under common ownership with the Proposer), any equity member or any Major Non-Equity Member was (i) determined, pursuant to a determination in a court of law, arbitration proceeding or other dispute resolution proceeding <u>between the public owner and such entity</u>, to be liable for a material breach of contract, or (ii) terminated for cause. For each instance, identify an owner's representative with a current phone and e-mail address.</p> | No change will be made. See response to Q.9 on RFQ Q&A Matrix #3. |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|---|--|------------------------------------|
| 16. | Part B, Vol.1, § B(e)(3) (Legal Quals, Legal Proceedings)/ pp. B-8 – B-9 | <p>We appreciate TxDOT’s desire to receive as much information as possible in order to conduct a thorough and informed analysis and we request to limit the level of disclosure to those liabilities and proceedings between the Equity Member or Majority Non-Equity Member, as applicable, and the public owner of the applicable project. As currently drafted, these sections would require us to diligence and disclose all liabilities and proceedings related to the applicable Equity Member or Majority Non-Equity Member, regardless of the third party involved, which could include any subcontractors or any other third party, no matter how minimal their role or how insignificant the liability or proceeding. Ultimately, we believe that the disputes with public owners of the projects would be the most significant to TxDOT.</p> <p>Proposed revisions.</p> <p>Provide a list and a brief description (including the resolution) of each arbitration, litigation, dispute review board and other dispute resolution proceeding occurring during the last five years between <u>the public owner and</u> Proposer (or any other organization that is under common ownership with the Proposer), any Equity Member or any Major Non-Equity Member and involving an amount in excess of \$500,000 related to performance in transportation projects with a contract value in excess of \$25 million.</p> | The requested change will be made. |
| 17. | Part B, Vol. 2, § B (item no. 5 on List of Representative Material Changes)/ | As currently drafted, item number 5 under the List of Representative Material Changes in Section B of Part B, Volume 2 would require us to disclose every technical waiver or nominal modification to debt-financing covenants, regardless of the level of materiality. This broad requirement would be even more onerous in the event that we submit a bid with a foreign parent | No change will be made. |

| <u>No.</u> | <u>RFQ Section/ Page No.</u> | <u>Question/Comment</u> | <u>Response</u> |
|------------|--------------------------------------|---|-----------------|
| | pp. B-13 – B-14 | company as the Equity Member and the Major Non-Equity Member, given our parent companies' expansive global operations. As such, we respectfully request that TxDOT include a materiality qualifier in that specific provision, as set forth below: “5. Inability to meet <u>material</u> conditions of loan or debt covenants by the affected entity. . .” | |