PHOENIX METROPOLITAN AREA
FREEWAY LIGHTING PROJECT P3

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Questions and Answers Matrix #3
Issued October 5, 2017

ADOT No.	Doc/Sec/Page	Questions/Comments	Response
58.	5.3.1.(c) Project Descriptions	The Project Descriptions section states, "For the projects listed on more than one of Forms E-1, E-2, E-3, E-4 and E-5, Proposer shall provide a separate project description for each such listing." Based on this instruction, it is our understanding that if a project is listed on more than one Form, then in our Volume III(a) response we must include separate project descriptions, i.e., duplicating project descriptions on the same project. To prevent duplicate project descriptions, if a project is listed on more than one Form, please consider accepting a single project description in our Volume III(a) response.	See revised Section 5.3.1(c) of the RFQ in Addendum #4.
59.	5.3.1.(d) Relevant Experience - Narrative	This section includes information that will be covered in section 5.3.1.(c) Project Descriptions and in Forms E-1 through E-5. To prevent duplicating information, please consider deleting this section 5.3.1.(d) as it will be entirely covered in the Project Descriptions and in Forms E-1 through E-5. Alternatively, please consider moving this section to the beginning of our Volume III a) response, as this section could be drafted as an introduction to the Team Experience and Past Performance section.	No change.
60.	5.3.3.(b) Construction/Installation Manager	Most lighting projects in the US have been contracted as design-build or design-bid-build. Please consider including in the Construction/Installation Manager's experience design-bid-build and design-build. The third bullet could read: "5 years of major design-bid-build, design-build, DBOM or DBFOM project management of roadway or lighting projects"	See revised Section 5.3.3(b) of the RFQ in Addendum #4.

		This updated definition would also make it consistent with 5.3.1.(d).(8) and 5.3.3.(b) Design Manager's experience, and 6.3.1.(a).(6) Evaluation of Lead Contractor's experience	
61.	5.3.4.(b)	It is our understanding that responding to section 5.3.4.(b) will duplicate much of the narrative provided in response to section 5.3.2.Proposer Organization Please consider eliminating section 5.3.4(b), as this narrative can be fully covered under section 5.3.2	See revised Sections 5.3.2 and 5.3.4(b) of the RFQ in Addendum #4.
62.	6.3.1.(a).(1) 6.3.1.(a).(3) Lead Contractor Experience	We noted that "freeway" was updated to "roadway" in the definition of Similar Project. With this updated definition in mind, may we request that the word "freeway" be updated to "freeway or roadway" in sections 6.3.1(a)(1) and 6.3.1(a)(3). This would also be consistent with the way section 6.3.1(a)(2) is currently written.	See revised Sections 6.3.1(a)(1) and 6.3.1(a)(3) of the RFQ in Addendum #4.
63.	6.3.1.(b).(2) Lead Engineering Firm	This section references Similar Projects, which is defined as "projects with 5,000+ luminaires, and/or tunnel lighting projects with 500+ luminaires". 5,000 luminaires delivered as a single project on the same freeway system represents a very large lighting project. Using the Similar Project reference for this definition may limit the number of engineering firms in a manner that is disadvantageous to ADOT. To address this evaluation criterion, please consider altering this criterion to include experience designing roadway lighting projects with 1,000+ luminaires and/or allowing multiple projects on the same freeway system, performed at different times during the last 10 years, to be combined to achieve the required quantity of luminaires.	No change.
64.	5.1.4 (b) & 5.1.4 (c) (Pgs.26-27 of 58)	In Sections 5.1.4 (b) and (c), it refers to issues in "the last five (5) years related to (i) a lighting project, (ii) a transportation project in North America and (iii) those projects listed the SOQ […]." Please confirm that this is to be read as ""the last five (5) years related to (i) a lighting project in North America, (ii) a transportation project in North America and (iii) those projects listed the SOQ […]."	See revised Sections 5.1.4(b) and (c) of the RFQ in Addendum #4.
65.	5.1.7 (Pg. 29 of 58) & Form L-2	5.1.7 Form L-2 – Certification/Questionnaire states, "The SOQ shall include an executed original of Form L-2 for Proposer, each Equity Member, each Major Non-Equity Member, and any parent or sister company of the Lead Contractor or Lead O&M Firm if such company's project experience is used in Form E-2 or E-3."	See revised Section 5.1.7 of the RFQ in Addendum #4.

		However, on Form L-2, it states, "Complete for the Proposer, each Equity Member, each Major Non-Equity Member, and any other entity if such company's project experience is used in Forms E-1 through E-5:" Can you please confirm which applies?	
66.	5.2.1 (Pg. 30 of 58)	Section 5.2.1 in the RFQ asks for a Performance Bond and a Payment Bond each in the amount of at least $100 million. What is the source of this initial evaluation for the project value?	Internal assessments of the value as needed to demonstrate financial capability. The amount is not intended to be indicative of a project value, but financial capability. As indicated, actual bonding/performance security amounts will be set forth in the RFP and may be higher or lower.
67.	5.2.2 (Pg. 30 of 58)	In Section 5.2.2 Financial Statements states that "At its election, Proposer, Equity Members or the Major Non-Equity Members, may also submit financial statements for a proposed Financially Responsible Party for the three (3) most recently completed fiscal years." Can you please confirm that if the Proposer, Equity Members or the Major Non-Equity Members is relying on a Financially Responsible Party, then the Financial Statements and other financial information requested in Sections 5.2.2 only need to be provided for each respective Financially Responsible Party?	No. All entities financials must still be provided.
68.	5.2.2 (f) (Pg.33 of 58)	If the proposer is required to provide Securities and Exchange Commission Filings (Form 10-K), is it permissible to solely provide an electronic version of the 10-K, as each can be hundreds of pages.	No. Addendum #3 reduced the number of required copies, but hard copies must still be provided.
69.	Form S	Form S requires the Proposer to input an EMR for each of the past three years. The NCCI calculates EMR using the company's past three years of performance (i.e. 2014 would be calculated with data from 2012-2014) and only if the company pays at least a $7,000 per year premium for Workman's Compensation in each of those years. For younger companies, or companies with a lower level of work in previous years, this may lead to no existing EMR for the given year. If this is the case for the proposer, is it permissible to input "N/A" for the years in which the Proposer did not qualify for an	See revised Form S of the RFQ in Addendum #4.

		EMR?	
70.	General Application	In order to meet ADOT financing goals, it is reasonable for the Proposer to include a financial partner to the response team. How should this financing partner be classified as they potentially will not be an Equity member as ADOT elects to pursue innovative or lower cost, debt-based financing under the RFP?	Proposer may include a lender on their team if they wish as an "other entity" pursuant to Section 5.3.1(e). Note, however, that ADOT's expectation is that the entire availability payment / revenue stream will be subject to set-off/deduction for non-performance. ADOT does not intend for the Project to be a receivables financing structure.
71.	6.3.1(d) (Pg. 43 of 58)	Section 6.3.1 (d) evaluates the proposers financial expertise based on: "(1) Experience with success financing project finance and P3 projects, with specific focus on comparable transportation or lighting infrastructure projects; (2) experience with participation as an equity owner in availability payment concessions; and (3) experience with using innovative financing and incentive structures to drive value for projects similar in size and complexity to the Project." Is the ordering (1,2,3) of these evaluation criteria significant with regards to weighting in the scorer's evaluation? i.e. Does 6.3.1 (d) (1) carry more weight than 6.3.1 (d) (3)? It is our opinion that 6.3.1 (d) (1), which evaluates the proposers financial expertise specifically based on experience successfully financing other transportation or lighting infrastructure projects, is immaterial with regards to the ability to successfully finance this project. We believe that (3) is a far more valid means of evaluating financial expertise by broadening the scope to projects of similar size and complexity, and specifically looking at experience with innovative financing and incentive structures. Would ADOT consider reforming Section 6.3.1 (d) to read: Financial Expertise – The extent and depth of relevant financial experience held by Proposer and Equity Members, as determined by: (1) Experience with using innovative financing and incentive structures to drive value for projects similar in size and complexity to the Project.	The ordering of (1), (2) and (3) is not indicative of an order of priority.

		(2) Experience with participation as an equity owner in availability payment concessions; and (3) Experience with success financing project finance and P3 projects (both equity and debt) for projects similar in size and complexity to the Project;	
72.	RFQ Section 4.6.6	RFQ Section 4.6.6, Volume I states "e) Legal Qualifications and Supporting Documents; and Legal Structure." To be consistent with RFQ Section 5.1 SOQ Volume I – Legal Information, please confirm that this should read: e) Legal Qualifications and Supporting Documents; and f) Legal Structure.	See revised Section 4.6.6 of the RFQ in Addendum #4.
73.	RFQ Section 5.3.1	• RFQ Section 5.3.1 (d) Relevant Experience – Narrative states "this narrative shall be brief and ideally would cover all criteria in Section 6.3.1 and Section 6.3.2 not captured by Forms E-1, E-2, E-3, E-4, E-5, and F." • While the criteria in 6.3.1 is covered by Forms E-1, E-2, E-3, E-4, and E-5, it appears that most of the elements from 6.3.2 are covered in 5.3.2 Proposer Organization and 5.3.3 Key Personnel. Please confirm that 6.3.2 criteria (a), (b), (c), (d), and (e) should not be duplicated in 5.3.1 (d) Relevant Experience – Narrative.	See response to Question #58.
74.	RFQ Section 5.1.5	5.1.5 Legal Structure (c) states "Executed teaming agreements or summaries of teaming agreement key terms shall be included in an appendix to Volume 1 of the SOQ." Please clarify as to where the executed teaming agreements should be provided in Volume I Appendix I-A Supplemental Legal Forms and will the table in 4.6.6 be updated as such?	See revised Section 4.6.6 of the RFQ in Addendum #4.
75.	RFQ Section 5.1.1	5.1.1 Form A – Transmittal Letter states "The SOQ shall include a transmittal letter (Form A) executed in blue ink by the Official Representative of Proposer or Proposer's lead firm, if the Proposer entity is not legally formed as of the SOQ Due Date." Please confirm that Form A – Transmittal Letter can be submitted on offeror's letterhead as opposed to the template provided.	No. The Transmittal Letter should be provided as set forth in the template with all contents (including footers) unchanged.

76.	6.3.1(e) Page 44 of 58	We respectfully request that ADOT amends "roadway or Similar Projects" to "infrastructure projects" in RFQ Section 6.3.1(e) (1) and (2) based on the following rationale: • From a developer / equity investor perspective, the Alternative Delivery experience, roles and responsibilities are largely similar irrespective of the project's sector • There have been an extremely limited number of North American roadway and/or tunnel lighting DBFOM / DBM / DBOM projects in the last five years	See revised Section 6.3.1(e)(1) and (2) of the RFQ in Addendum #4.
77.	Second introductory paragraph, pg. 1; Section 2.5 (Required Licenses), pg. 13	We would be grateful if ADOT could kindly clarify whether it expects the Developer entity (as defined in the RFQ – "the entity or team forming the Proposer selected pursuant to the RFP to enter into the P3 Agreement with ADOT to design, supply, build/install, finance, operate and maintain the Project," and to further clarify, the special purpose entity project company to be formed if the Proposer team is the successful Proposer, which will hold the Equity Members' interests in the Project) – to hold any specific specialty professional licenses? If selected as the successful Proposer, the Proposer team expects and will have in place, for the Developer entity, certain state and local licenses required for the Developer entity generally to do business in the state. The Proposer team also expects and will have in place specialty professional licenses for the professional service members of the Proposer team, such as the Lead Contractor, Lead Engineering Firm, Lead Operations and Maintenance Firm, and all other such professional service providers. However, in our experience in other P3 transactions, the Developer entity has not been required to also obtain any specialty professional licenses (e.g. the licenses referenced in the statutes referenced as examples in the second introductory paragraph of the RFQ, "A.R.S. Title 32, Chapter 1 - Architects, Engineers, Geologists, Home Inspectors, Landscape Architects, and Surveyors; and A.R.S. Title 32, Chapter 10 – Contractors") for the Developer entity. It would be challenging, complex, and onerous for the Developer entity, as a newly-formed special purpose entity, to obtain any specialty professional licenses, as the requirements for such licenses typically involve criteria that a newly-formed special purpose entity would not have (e.g. direct previous contracting experience, and professional examinations and certifications). Timing would also be an issue, as the RFQ states these should be in place "at commercial close" (first sentence of Section 2.5) or "at award" (second introductory paragraph and third sentence of Section 2.5), and these types of licenses typically take long periods of time to obtain. In addition, those required licenses are usually provided by the main contractor or other subcontractors, which are frequently engaged	Proposers are instructed to seek legal advice regarding the interpretation of the statutes regarding professional licensing and registration. ADOT will also provide further details in the RFP.

		after the contract is awarded. We therefore request clarification on the proposed approach, which we hope is in line with our precedent transactions, where the Developer entity is not required to obtain any specialty professional licenses (and rather, only the general "doing business" state and local licenses). Furthermore, the RFQ appears somewhat inconsistent in its description of the timing for when such licenses are required to be obtained. For example, in the second introductory paragraph and in the third sentence of Section 2.5, the RFQ states that such licenses must be obtained at award, but in the first sentence of Section 2.5 it states that these must be in place at commercial close. Could ADOT please clarify the requirements?	
78.	Section 1.2 (Acronyms and Definitions), pg. 4	We kindly request that the "Affiliate" definition with respect to joint ventures and partnerships be revised as suggested below, which is consistent with the formulation used in other RFQs for P3 projects in the U.S. market. The current formulation would require a level of diligence and disclosure (e.g. with respect to Form L-2 ("Certification Questionnaire")) that would be onerous and impractical, as the members of the Proposer team are often engaged in many joint ventures with otherwise unrelated third parties, and would ultimately provide ADOT little value. The individual activities of such third parties that are unrelated to any joint venture or partnership involving the Proposer, an Equity Member, or a Major Non-Equity Member are not relevant to ADOT's evaluation of the Proposer team members participating on the bid for this project. The revision below ensures that ADOT receives the information that is relevant to its evaluation of the Proposer team's qualifications and background while also ensuring that, from a practical perspective, the disclosure requirements are appropriately tailored so as to enable Proposers to comply. "With respect to any member of the Proposer team, as applicable: (a) any member, partner, or joint venture of such firm <u>(but only as to the activities of joint ventures and partnerships involving the Proposer, any Equity Member, or any Major Non-Equity Member as a joint venturer or partner and not to activities of joint venturers or partners not involving the Proposer, any Equity Member or Major Non-Equity Member)</u>; (b) any individual or entity that directly or indirectly controls, or is controlled by, or is under common control with, such firm or any of its members, partners or joint venturers; (c) any other entity for which 20% or more of the equity interest in such other entity is held directly or indirectly, beneficially or of record by (i) such firm, (ii) any of such firm's	See revised <u>Section 1.2</u> of the RFQ in Addendum #4.

		members, partners or joint venturers, or (iii) any Affiliate of such firm under clause (b) of this definition (but only as to the activities of joint ventures and partnerships involving the Proposer, any Equity Member, or any Major Non-Equity Member as a joint venturer or partner and not to activities of joint venturers or partners not involving the Proposer, any Equity Member or Major Non-Equity Member); and (d) any proposed Financially Responsible Party"	
79.	Section 4.5 (Quantities), pg. 21; Section 5.2.2 (Financial Statements), pg. 32	Section 4.5 clarifies that only one (1) original and two (2) identical copies for a total of three (3) hardcopies of the financial statements are required under Section 5.2.2. Further, Section 4.6.6. and Section 5.2.2 both confirm that such statements shall be provided in sealed envelopes. Section 5.2.2 further states that all Volume 2 information (Surety Letters, Financial Statements, Credit Ratings, Material Changes in Financial Condition, and Financially Responsible Party Letters of Support) shall be provided within sealed envelopes. This presents a dilemma due to the hardcopy count discrepancy – since currently Financial Statements are the ONLY item in Volume 2 permitted to be provided 3 times – while the remainder of the items (5.2.1 Surety Letter, 5.2.3 Credit ratings, 5.2.4 Material Changes and 5.2.5 Financially Responsible Party Letter of Support) fall under the requirements for one (1) original and nine (9) identical copies. Would ADOT please consider allowing all information required in Volume II to be provided as one (1) hardcopy and two (2) identical copies?	See revised Section 5.2.2 of the RFQ in Addendum #4 regarding sealing. As to the request re reducing the number of copies, no change.
80.	5.1.5(a) (Legal Structure - Proposer), pg. 29	The second sentence of Section 5.1.5(a) states that the "Proposer must be a legal entity…" and the following sentence requires that the Proposer "Identify the legal name and nature of Proposer and the state of its organization." However, the subsequent sentence acknowledges that the Proposer can be a consortium, partnership or any other form of a joint venture. We respectfully request clarification with reference to the above discrepancy and ask ADOT to confirm that the "Proposer" (as opposed to the "Developer" which we would expect will be an incorporated entity) is not required to be a legally formed entity and can instead be a consortium, partnership or any other form of unincorporated joint venture, as described in Section 5.1.5(a).	See revised Section 5.1.5(a) of the RFQ in Addendum #4.
81.	Section 5.2.2 (Financial Statements), pg. 32	We respectfully request that it be left up to the discretion of each Respondent as to whether or not they require items within Volume II to be considered of such a confidential nature that they require delivery within sealed envelopes. Given that each item is currently required between 3 to 10 times – providing each item in a sealed envelope presents an onerous administrative effort and a large number of separate envelopes to be organized and managed (potentially upwards of 200 envelopes in a scenario of a 5 member team – with current the requirements of 4 Sections (5.2.1., 5.2.3, 5.2.4, 5.2.5) x 10 binders x 5 team Members). Would ADOT consider changing	See response to Question #79.

		the language in Section 5.2.2. to read: " …..each member's financial statements (including digital copies) shall be provided to ADOT in sealed envelopes, and each member's Surety Letters, Credit Ratings, Material Changes in Financial Condition, and Financially Responsible Party Letters of Support may be provided to ADOT within sealed envelopes at their own discretion."	
82.	5.2.5 (Financially Responsible Party Letter of Support), pg. 35; Section 1.2 (Acronyms and Definitions), pg. 5	The Proposer team will be identifying and submitting the financial statements of proposed Financially Responsible Parties on the basis that these entities will ultimately be providing the required support to the Equity Members in their participation in the Project. However, it is inconsistent with P3 market standards in the U.S. to require Financially Responsible Parties to provide any type of guaranty (e.g. a parent company guaranty) for the Equity Members, as the Equity Members participation in P3 projects is undertaken on a limited recourse basis and the Equity Members' obligations to project lenders are typically backstopped by letters of credit. Consistent with market practice in the P3 industry, the Proposer does not expect to be required (and does not think there is a need to be required, given the benefits ADOT will receive from the incentives and protections created through lender arrangements) to provide any such guaranties. We therefore request that this obligation be removed.	No change. ADOT recognizes the market standard and the commercial structure. However, there are instances where, for instance, a Financially Responsible Partner, might be required to guaranty the investment of equity in the Proposer entity by Equity Members.
83.	Section 6.3.1(a)(3) and (4) (Proposer Team Experience and Past Performance), pg. 42-43	In regards to the criteria set forth in Section 6.3.1(a)(3) and (4) Proposer Team Experience and Past Performance relating to Lead Contractor experience we, again, would like you to consider the impact this has on the procurement for ADOT. These criteria ("freeway lighting projects with 5,000+ luminaires, and/or tunnel lighting projects with 500+ luminaires") represents a very high threshold and significantly limits potential projects to a relatively small share across the country, and specifically in Arizona. For example, the South Mountain 202 project currently under construction spans a total freeway distance of 22+ miles yet only has approximately 1,250 luminaires on it. We would also like to highlight again that related precedent projects (the Metro Region Freeway Lighting P3 Project in Michigan and the Smart Street Lighting P3 Project in Washington DC) were much less limiting in the requirements for comparable projects. This level of restriction could have unintended consequences by reducing the number of proposer teams that can meet this requirement which we do not believe represents a material threshold for qualification on this project. Further, this may limit participation from very qualified, local players, given the lack of this type of project experience within the State. We believe strong consideration should be given by ADOT to eliminate or reduce these strictly qualitative requirements and follow more of the approach taken in Michigan and DC.	No change.

		We suggest reducing or removing criteria (3) and (4) from Section 6.3.1(a).	
84.	Section 6.3.1(e)(2) – (Proposer Team Experience and Past Performance), pg. 44	Section 6.3.1(e)(2) – Proposer Team Experience and Past Performance looks for experience working together on "DBFOM and/or DBOM roadway or Similar Projects." Although we understand that there are other opportunities to show design-build experience in Sections 6.3.1(a)-(d), this section focuses on experience working together. As the working relationship between design and construction in a P3 is also similar in a DB contract, please expand these criteria to include DB, as follows: (2) The extent to which Proposer's Equity Members, Lead Engineering Firm, Lead Contractor and Lead O&M Firm individual team members have worked together in successful, DBFOM, DBM, DB and/or DBOM roadway or Similar Projects in the last five (5) years.	No change.
85.	Form L-2 (Certification/ Questionnaire), Footnote 5(a)	We note that the definition for "Affiliate" has been limited, in Footnote 5(a), to "business or investment in North America." We request that this geographical limitation also be limited on a timeframe basis, to "business or investment in North America in the last 10 years," as this revised formulation is consistent with market practice in the US P3 industry. The revised formulation would ensure that ADOT receives the information it needs to appropriately asses the background of the Proposer team members, while at the same time, enabling Proposers to practically comply with the disclosure requirements	See revised Form L-2 of the RFQ in Addendum #4.
86.	Form L-2 (Certification/ Questionnaire); 5.1.4 (Legal Qualifications), pg. 27	As stated in the RFP: Failure to fully disclose the information required under this Section 5.1.4, conditional or qualified submissions (e.g., "to our knowledge", "to the extent of available information", "such information is not readily available", "such information is not maintained in the manner requested", etc.), incomplete or inaccurate submissions or nonresponsive submissions, or failure to provide information enabling ADOT to contact owner representatives may, in the sole discretion of ADOT, lead to a lower evaluation score or a "fail" rating for the team or disqualification from the procurement process. Large international/Fortune 500 companies oftentimes have dozens of affiliated companies and it's not feasible to submit unconditional or unqualified responses to certain legal questions contained in Section 5.1.4 and Form L-2. We respectfully request clarification with reference to the above statements in bolded text and ask how strictly will ADOT be enforcing the requirements of RFQ Section 5.1.4 Legal Qualifications regarding a lower evaluation score or a fail rating for proposers who due to the large size & scope of their operations cannot unconditionally respond to certain legal questions?	No change.

87.	Form E-5	Since DBM and DBOM projects are very similar in nature, please consider revising Note (2) on Form E-5 to include DBM (in addition to DBOM and DBFOM) projects in agreement with the updated criteria set forth in Section 6.3.1(e) of Addendum 3 to the RFQ. i.e. "(2) Only list DBFOM, DBOM, and DBM projects"	See revised Form E-5 of the RFQ in Addendum #4.