

NCDOT I-77 High Occupancy Toll Lanes Project
RFQ Questions/Requests for Clarification and Responses

March 2, 2012

#	<u>Section Reference (Page #)</u>	<u>Questions/Requests for Clarification</u>	<u>NCDOT Response</u>	<u>RFQ Action</u>
1.	N/A	Is the power of eminent domain available to NCDOT?	Yes.	None.
2.	N/A	Does North Carolina have sovereign immunity?	Like other states, North Carolina has sovereign immunity, which is waived under certain circumstances by statute or by common law. Proposers are advised to consult legal counsel on this issue.	None.
3.	N/A	Regarding NCDOT performing certain works pertaining the MLs such as snow and ice removal, our opinion is that the developer should be the one handling all the works related to the tolled facility as this might have a direct impact into the developer's source of revenue. If the idea is to lever NCDOT existing resources, maybe leaving this option up to proposer's choice could be the way to reach middle ground. In order to do so NCDOT should provide a services agreement including levels of performance and costs to all proposers.	The scope of the parties' respective responsibilities related to operations and maintenance of the HOT lanes and the GP lanes is under review. The RFP will provide additional information on this issue.	None.

4.	N/A	What level of public funds will be available for this project?	The amount of public funds that NCDOT will consider contributing to the Project, if any, will depend on, among other things, the scope of the Project (including which Project sections are included) and the parties' respective obligations. The RFP will provide additional information on this issue.	None.
5.	N/A	Do you have a traffic and revenue study that will be provided?	NCDOT will post certain traffic and revenue data, including underlying assumptions, on the procurement website for the full Project scope. However, the final Project scope will be determined and finalized in the RFP.	None.
6.	N/A	Number of shortlisted firms?	Please refer to Part A, Section 1.2 of the RFQ which states the following: "NCDOT will evaluate the SOQs received in response to this RFQ and intends, but is not bound to, short-list at least three and no more than five Proposers responding to this RFQ."	None.
7.	N/A	Who will be providing CEI services?	NCDOT anticipates that the Developer will play a significant role in QA/QC in all phases of the Project, and that NCDOT will have certain oversight and inspection rights. The RFP will provide additional information on this issue.	None.
8.	N/A	Would it be possible to obtain the forms in Word Format?	The RFQ Forms are available in Word on the Project procurement website.	None.

9.	N/A	What is the probability of the North and South Sections being part of this procurement? The two sections are important on our approach towards the project and the reliance on revenue.	While the scope of the Project is currently under review, NCDOT would like to include the North and South Sections as part of the overall Project. The RFP will provide additional information on this issue.	None.
10.	N/A	Can you confirm that HOT lanes will be +3?	Yes.	None.
11.	N/A	Does NCDOT have a ridership study and if so when will NCDOT make it available to the shortlisted proponents?	See response to Question No. 5.	None.
12.	N/A	Please confirm you intentions on the probability of including the O&M responsibilities from fence to fence and if so what level of Public Funds will be assigned to the GPL's?	See response to Question No. 3.	None.
13.	N/A	<p>We would appreciate if NCDOT could provide all the studies undertaken by NCDOT for the project. Among other documents, we would appreciate if NCDOT could post in the website of the project the following information:</p> <ul style="list-style-type: none"> - T&R Level two study of the Project undertaken by NCDOT (according to the oral presentation of NCDOT representatives during the industry forum held on February 23, 2012). - Any preliminary design of the Project undertaken by NCDOT (including any cost estimate and quantities) - Any preliminary design of the Project undertaken by the NCDOT for both general purpose lanes and managed lanes? - Any cost estimate and quantities? 	<p>See response to Question No. 5 with respect to traffic and revenue information.</p> <p>To the extent preliminary design information is available, such information will be provided to the Short-listed Proposers.</p> <p>No cost estimate or quantities will be provided.</p>	None.

14.	N/A	We would appreciate if NCDOT could facilitate and identify the expected location of the access and exits to the HOT lanes.	The expected location of the access and exits to the HOT lanes is under review. NCDOT intends to seek feedback from Short-listed Proposers on this topic as part of finalizing the RFP.	None.
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15.	Part A, Section 4.3 (A-15)	<p>The RFQ provides for a stipend of \$500,000 to be paid to each unsuccessful Short-listed Proposer that submits a Proposal that is responsive to the RFP. This amount is well below what we have seen in the market for comparable transactions requiring comparable work from the consortium. We request that NCDOT reconsider this amount in light of the above. If you would find it helpful, we of course would be happy to provide information regarding the stipends that have been proposed in other similar transactions throughout North America.</p> <p>Furthermore, we would expect the stipend to be paid in the event that NCDOT cancels the procurement. Again, this is consistent with what we have seen in the market for comparable transactions. It is unclear from the language in the RFQ whether this is currently contemplated. We would ask that you please confirm.</p>	<p>NCDOT will offer to pay a stipend as follows:</p> <p>(a) If NCDOT cancels the procurement between issuance of the final RFP and the Proposal Due Date, NCDOT will pay a stipend in the amount of \$250,000 to each Short-listed Proposer that is actively participating in the procurement (e.g., attending all required meetings, submitting questions on documents, etc.), has not withdrawn from the procurement and has not been disqualified at the time of cancellation.</p> <p>(b) NCDOT will pay a stipend in the amount of \$500,000 to each unsuccessful Short-listed Proposer who submits a compliant and responsive Proposal.</p> <p>(c) If NCDOT cancels the procurement between conditional award and commercial close, NCDOT will pay the selected Proposer a stipend in the amount of \$500,000 if such Proposer is in compliance with the post-selection requirements of the RFP and the cancellation has not been caused in whole or in part by the acts or omissions of the Proposer.</p> <p>(d) If the Developer has complied with the terms of the Comprehensive Agreement and NCDOT terminates the Comprehensive Agreement due to no fault, act or omission of the Developer between commercial close and financial close, NCDOT will pay the Developer a stipend in the amount of \$1,000,000.</p>	Part A, Section 4.3 of the RFQ will be revised accordingly in Addendum No. 1.
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16.	Part A, Section 5.1 (A-20)	The second paragraph of Section 5.1 refers to "English units of measure". Can you please clarify what this means.	English units of measure refers to feet, miles, miles per hour, etc.	None.
17.	Part A, Section 5.2 (A-20)	"Volume 1 (as described in Part B) shall have all pages sequentially numbered and not exceed 60 pages." There are several items which are excluded from the page count bulleted below this statement. Are only counted pages to be sequentially numbered so the total does not exceed 60 or should all pages, even those which are not counted to be sequentially numbered?	Only counted pages should be sequentially numbered.	Part A, Section 5.2 of the RFQ will be revised accordingly in Addendum No. 1.
18.	Part A, Section 5.2 (A-20); Part B, Volume 3	Please clarify whether sequential numbering is required for Volume 3. First sentence on the last paragraph of page A-20 indicates that it is required, yet further down the same paragraph, it states that Volumes 2 and 3 do not have page numbering formatting, page limitation or type font size requirements.	Sequential numbering is required for Volume 3.	Part A, Section 5.2 of the RFQ will be revised accordingly in Addendum No. 1.
19.	Part A, Section 5.2 (A-20)	The submittal of the SOQ will include the original and 14 copies. Considering the number of copies and the volume of the requested Financial Statements, we would like to receive NCDOT approval to submit the financial statements only electronically. If NCDOT agrees with this approach, 15 CDROM (1 original + 14 copies) would be submitted as part of the SOQ.	NCDOT will not make the referenced change.	None.
20.	Part A, Section 5.2 (A-20)	Section 5.2 formatting instructions are confusing. Our assumptions is that Volumes 1, 2, and 3 shall have pages sequentially numbered and can be printed single-spaced and double sided- printing is allowed. Font sizes and all volumes shall be no smaller than 12 point with fonts and tables allowed to be reduced to 10-point. Are our assumptions correct? If not, please clarify.	The stated assumptions are correct, except that sequential numbering is not required for Volume 2.	Part A, Section 5.2 of the RFQ will be revised accordingly in Addendum No. 1.

21.	Part A, Section 5.2 (A-20)	The font size in Volume 1 shall be no smaller than twelve-point.” Please confirm if graphics (organization charts, etc.) may be submitted a 10-point font as well.	Organizational charts and graphics may be submitted in 10-point font.	Part A, Section 5.2 of the RFQ will be revised accordingly in Addendum No. 1.
22.	Part A, Section 6.6 (A-25)	Part A, Section 6.6: Can you please clarify what (d) means, which refers to “changes, direct or indirect, in the equity ownership of a shortlisted Proposer”. This is very broad. We suggest this entire clause be deleted.	NCDOT will not delete the requested language. Please note that NCDOT relies on, among other things, the structure, ownership and qualifications of a Proposer in making its shortlist determination. The RFP will provide additional information on this issue.	None.
23.	Part B, Volume 1, Section 1.7 (B-3)	Can you please confirm that a Proposer may include a project for which it was shortlisted and submitted a compliant proposal (but was not awarded preferred proposer status) as a credential in Section 1.7 – for example as illustrative of its demonstrated experience to raise financing (subparagraph 1.7(v)) or PABs financing (subparagraph 1.7(viii)), recognising that submitting a fully committed proposal requires successful raising of finance (debt, equity and other financing tools).	The Proposer may include a project for which it was shortlisted and submitted a compliant proposal but was not selected and did not close financing. In such an instance, the Proposer must clearly indicate that it was not awarded the project. Please note that such qualifications may be weighed and evaluated differently than experience on a project that achieved commercial and/or financial close.	None.
24.	Part B, Volume 1, Section 1.10 (B-5)	The following information regarding legal issues affecting the Proposer and its team members shall be submitted.” Please confirm the term “team members” is defined as the Proposer, equity owners, and Major Non-Equity Members.	Please note that the referenced language is merely introductory language and the other sections of Part B, Volume 1, Section 1.10 provide specificity regarding the submittals required from a particular entity. However, Section 1.10.1 only applies to the Proposer, equity owners, and Major Non-Equity Members.	Part B, Volume 1, Section 1.10.1 of the RFQ will be revised accordingly in Addendum No. 1.

25.	Part B, Volume 2 (B-9)	Package the information separately for each separate entity with a cover sheet identifying the name of the organization and its role in the Proposer's organization (i.e., equity owner, lead design firm, subcontractor, etc.). Please confirm that per the Section A instructions, financial information is required from the Proposer, equity owners of Proposer, lead contractor and the Financially Responsible Party only, and not subcontractors, etc.	Please note that the referenced language is merely introductory language and the other sections of Part B, Volume 2 provide specificity regarding the submittals required from a particular entity.	None.
26.	Part B, Volume 2, Section B (B-12, B-13)	In Volume 2, Section B, pages B-12 and B-13, under the List of Representative Material Changes, there appears the term "related business unit". This term is not defined. Could the NCDOT provide a definition of "related business unit"?	NCDOT will delete references to "related business unit" in the cited portions of the RFQ.	Part B, Volume 2, Section B of the RFQ will be revised accordingly in Addendum No. 1.
27.	Part B, Volume 2, Section D (B-13); Part C, Form F	For Form F, financial information for financial years 2009, 2010 and 2011 is requested. If financial statements for year 2011 are not audited at this moment, should this information be included or should we provide the information of the last three audited years?	Unaudited financial statements for year 2011 should be provided. Please refer to clause c of Part B, Section A of the RFQ.	None.
28.	Part B, Volume 3, Section C (B-15)	Does the Department consider the positions of Project Executive, Project Manager, and Deputy Project Manager to be on the concessionaire level of our overall team organization and, if not, which of these positions would be staffed at the Construction JV level?	The referenced positions are intended to address the overall team organization, which may be staffed on the concessionaire level or the construction joint venture level. Please note that individuals filling certain design, construction and operations/maintenance positions must also be identified (and resumes/references included).	None.
29.	Part B, Volume 3, Section C (B-15)	Please clarify whether the Department is looking for the CJV's Quality Control Manager, or are you looking for the team to identify a CEI firm?	NCDOT is looking for an individual for this position, and it is the Proposer's discretion whether the individual is from the construction joint venture or another firm.	None.

30.	Part B, Volume 1, Section 1.10.2 (B-5, B-6)	<p>As currently drafted, these sections would require us to diligence and list all legal liabilities and legal proceedings in respect of transportation projects located anywhere in the world in which an “affiliate” of the Proposer, an equity owner or a Majority Non-Equity Member was involved. Our consortium comprises large multinational companies, many of which have vast numbers of international affiliates in a number of industries that operate different business units in different geographic locations around the world (for example, one of the equity owners is part of a group with a presence in over 65 countries worldwide with over 600 affiliated companies, many of which are involved in transportation projects). The activities of the business units are segregated into geographical areas (worldwide) that are managed on a regional basis and gathering the information from a business unit, regardless of whether or not that unit is in the same industry, in a different geographical area would require a level of due diligence that would be extremely onerous and which would be impossible given the tight timeframe for the prequalification submission.</p> <p>Below please find our proposed revisions to these sections. We have drafted these revisions to limit the scope of the disclosure to transportation projects in North America or those listed as relevant experience in the SOQ. Because we are very active in the P3 market in North America (and, indeed, throughout the world) we appreciate NCDOT's need to conduct meaningful diligence in respect of the consortia that will be responding to the RFQ. We believe that the projects most relevant to NCDOT in its review of the SOQs and in its diligence process are those in the same geographic region as the Project (i.e., North America) and that, as such, our proposed revisions will provide NCDOT with the information you need to conduct thorough and meaningful diligence while enabling us to provide the relevant information to you in the timeframe required by the RFQ.</p>	<p>Except for the addition of “final”, NCDOT will make the requested changes. NCDOT requires a proposer to disclose any determination of liability of a material breach of contract irrespective of whether there has been a final determination.</p>	<p>Part B, Volume 1, Section 1.10.2 of the RFQ will be revised accordingly in Addendum No. 1.</p>
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		<p>Part B / Volume 1 / Section 1.10.2 (Legal Liabilities):</p> <p><i>“Provide a list and a brief description of all instances during the last five years involving transportation projects <u>in North America or those projects listed pursuant to Part B, Section 1.7</u> in which the Proposer, any equity owner, any Major Non-Equity Member or any affiliate of the foregoing was (i) determined, pursuant to a <u>final</u> determination in a court of law, arbitration proceeding or other dispute resolution proceeding, 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 fax number (and e-mail address if available).</i>”</p>		
31.	Part B, Volume 1, Section 1.10.3 (B-6)	<p>In addition, the requirement to disclose “proceedings settled without completion of such proceedings” creates an onerous diligence requirement on the Proposer’s members, particularly given the global operations and the size/scope of each member’s existing projects, and may conflict with confidentiality obligations in respect of settlements of claims.</p> <p>Finally, given the size of the projects referenced in <u>Section 1.7</u>, we believe a \$500,000 threshold is more appropriate.</p> <p><i>“Provide a list and a brief description (including the resolution) of each arbitration, litigation, dispute review board and other formal dispute resolution proceeding occurring during the last five years related to a transportation project <u>in North America or those projects listed</u></i></p>	<p>NCDOT will make the following changes:</p> <p>(a) Add “in North America or those projects listed pursuant to Part B, Section 1.7” to the relevant section.</p> <p>(b) Change “Proposer affiliate” to “affiliate”.</p> <p>NCDOT will not make the remaining requested changes.</p>	Part B, Volume 1, Section 1.10.3 of the RFQ will be revised accordingly in Addendum No. 1.

		<p><u>pursuant to Part B, Section 1.7</u> and involving a claim or dispute between the project owner and Proposer, any equity owner any Major Non-Equity Member or any affiliate of the foregoing involving an amount in excess of the smaller of (a) 2% of the original contract value or (b) \$500,000 on projects with a contract value in excess of \$25 million. Include items that were subject to arbitration, litigation, dispute review board or other dispute resolution proceedings even if settled without completion of the proceeding. As used herein, “Proposer affiliate” has the same meaning as set forth in <u>Part B, Volume 1, Section 1.10.2</u> above.</p> <p>Include a similar list and description for all projects included in the response to <u>Section 1.7</u> involving an amount in excess of \$4500,000, regardless of the contract value. For each instance, identify an owner’s representative with a current phone and fax number (and e-mail address if available).”</p>		
32.	Part B, Volume 1, Section 1.10.2 (B-6)	<p>The definition of “affiliate” under <u>Part B / Volume 1 / Section 1.10.2</u> (which also applies to the disclosure required under <u>Section 1.10.3</u>) includes “joint ventures” and “partnerships.” The inclusion of “joint ventures” and “partnerships” as entities for which disclosure is required pursuant to <u>Sections 1.10.2</u> and <u>1.10.3</u> makes compliance with these provisions practically impossible, particularly in light of the provision at the end of <u>Section 1.10</u>, which renders all conditional or qualified submissions ‘non-responsive’.</p> <p>It is common practice in the industry for construction companies to create project specific joint ventures to bid jobs, or perform the work on a particular project. These joint ventures are created for a particular purpose, and outside of the particular purpose for which they have been</p>	NCDOT will not delete joint ventures and partnerships, but will clarify that the intent is to require disclosure involving the joint venture and partnership entities themselves, and not to the other co-venturer’s or partner’s involvement in other business organizations outside of the relationship.	The definition of “affiliate” in Part B, Volume 1, Section 1.10.2 of the RFQ will be revised accordingly in Addendum No. 1.

		<p>created, there is no relationship between the joint venturers. This means that, except in connection with such projects (in some cases where the bid has been rejected), the construction company has absolutely no control over its joint venture partner to require it to respond to questions under other procurement activities. The result is that even if the proposer exercises its utmost due diligence to request its single purpose joint venture partners to provide the information necessary for the proposer to comply with the disclosure provision, there is nothing that will guaranty that (i) the joint venture partner will respond to the proposer or (ii) that the information provided is accurate enough as to permit the proposer to respond to the questions regarding the joint venture partners without qualifying that the answers given are “to the best of proposer’s knowledge.”</p> <p>For the foregoing reasons, we respectfully request that “joint ventures” and “partnerships” be deleted from the definition of “affiliates” as set forth below:</p> <p style="text-align: center;"><i>As used herein, "affiliate" means and includes parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities, and other financially liable or responsible parties for the Proposer, that, (a) within the past five years have engaged in business or investment in North America or (b) have been involved, directly or indirectly, in the debt or equity financing, credit assistance, design, construction, management, operation or maintenance for any project listed by an entity pursuant to <u>Part B, Section 1.7.</u>”</i></p>		
33.	Part B, Volume 1, Section 1.10 (B-5, B-6)	The last paragraph of this section provides that “conditional or qualified submissions (i.e., “to our knowledge”, “to the extent of available information”, “such information is not readily available”, “such information is	No change will be made. Disclosure, as requested, is an important part of the SOQ. Lowering an evaluation score or failing or disqualifying a	None.

	<p>not maintained in the manner requested”, etc.)” may, in the sole discretion of NCDOT, lead to lower evaluation score or a fail rating for the team or disqualification for the procurement process.</p> <p>This provision ignores the fact that often times the information sought is not available to the Proposer, as in the case of information regarding a joint venture partner with which a proposer does not enjoy an active relationship, or which is not legally or practically required to provide the requested information.</p> <p>We respectfully request that the above paragraph be amended to establish a standard of reasonableness for NCDOT’s exercise of discretion and that, in the event that the definition of “affiliates” includes “joint ventures” and/or “partnerships,” an exception be made for information regarding such entities.</p> <p>Below please find our proposed revisions:</p> <p><i><u>“With respect to the information solicited in this Part B, Volume 1, Section 1.10.1, 1.10.2 and 1.10.3, (i) failure to fully disclose this information, (ii) conditional or qualified submissions (i.e., “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.) to requests or questions posed, (iii) incomplete or inaccurate submissions or non-responsive submissions, or (iv) failure to provide information enabling NCDOT to contact owner representatives may, in the sole discretion of NCDOT, lead to a lower evaluation score or a “fail” rating for the team or disqualification from the procurement process; provided that, in the case of clause (ii) above, NCDOT will permit conditional or qualified information in respect of any</u></i></p>	<p>Proposer team are not mandatory actions on behalf of NCDOT, but are discretionary.</p>	
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		<u>disclosing party's joint venture partners or as otherwise reasonably required.</u> "		
34.	Part C, Form C (C-7 thru C-9)	<p>To the extent that NCDOT requires this type of information in respect of affiliated firms, we would request that the definition of "Affiliates" be limited to any entities directly engaged in business in North America or involved in the experience referenced as part of the SOQ. Indirect involvement could include each parent company up the organizational chain. As previously noted, our consortium includes subsidiaries of large multinational companies with vast numbers of international affiliates in a number of industries, and the efforts necessary to diligence such activities would be impossible given the tight timeframe for the prequalification submission.</p> <p>Furthermore, for the reasons noted above, we respectfully request that "joint ventures" and "partnerships" be deleted from the definition of "Affiliates" as set forth below:</p> <p><i>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, and other financially liable or responsible parties for the entity, that (a) within the past five years have directly engaged in business or investment in North America or (b) have been directly involved, directly or indirectly, in the debt or equity financing, credit assistance, design, construction, management, operation or maintenance for any project listed by an entity pursuant to <u>Part B, Section 1.7.</u>"</i></p>	See response to Question No. 32. No further changes will be made.	The reference to joint venturers and partnerships of the definition of "affiliate" in Part C, Form C of the RFQ will be revised accordingly in Addendum No. 1.