

REQUEST FOR PROPOSALS

A PROJECT TO PROVIDE A CUSTOMER SERVICE CENTER AND BACK OFFICE SYSTEM FOR RIVERLINK'S OHIO RIVER BRIDGES

ISSUED September 30, 2020

A Project of
Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204

Form M Submitted Questions and Responses

November 6, 2020

Key Dates

<u>EVENT</u>	<u>DATE</u>
Industry Forum	September 1, 2020
One-on-One Proposer Meetings	September 2-8, 2020
Mandatory Pre-bid Meeting	October 14, 2020
Last date for Proposer submittal of questions regarding the RFP	November 2, 2020
Last date for IFA responses to timely submitted questions regarding the RFP (if necessary)	November 23, 2020
Proposal due date	December 14, 2020
Notification of initial short-list of Proposers	January 8, 2021
Notification of final short-list of Proposers	February 5, 2021
Proof of Concept by final short-list of Proposers	April, 2021
Due date for Best and Final Offer by final short-list of Proposers	May 14, 2021
Anticipated notification of Preferred Proposer	May 31, 2021
Completion of negotiations	June 30, 2021
Execution of Contract and other Execution Documents by Preferred Proposer	July 1, 2021

Unless specifically addressed below, all other provisions and clauses of the RFP remain unchanged.

The Joint Board anticipates publishing an Addendum incorporating the answers provided to the questions at the end of the question and answer period.

The responses herein provided by the Joint Board Authorized Representatives are intended to provide more clarity to the RFP’s requirements in response to the submitted questions. As noted in Section 5.1.4.1 of the RFP, such responses are not considered part of the Contract Documents, nor are such responses relevant in interpreting the Contract Documents, except as expressly set forth in the Contract Documents. Any official changes to any RFP requirement or provision to the Contract will only be made through an Addendum issued by the Joint Board.

Capitalized Terms not otherwise defined in the responses provided by the Joint Board Authorized Representatives shall have the meanings set forth in the RFP and RFP Documents.

No.	Date Received	Date Responded	Document and Section Number	Category	Comment(s)	Reserved for Joint Board Representative Response
178	10/29/2020	11/6/2020	RFP Vol.I. Form J	Debarment and Suspension Certification	This form requires the Proposer to provide certifications on behalf of itself and all Equity Members, joint ventures and Subcontractors. The term “Subcontractor” is very broad since it includes any TSP2 subcontractors including Suppliers and any subcontractors (of any tier) of TSP2’s subcontractors. Please clarify that this form should only apply to Major Subcontractors and not to all Subcontractors. Please confirm that same should apply to any other similar forms using the term “Subcontractor(s)”.	Confirmed.

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179	10/29/2020	11/6/2020	RFP Vol. II. Exhibit 1	Equity Member	We understand the definition "Equity Member" would apply to a Proposer formed as a joint venture or a consortium but would not cover the immediate parent company of the Proposer (if the latter is made of one shareholder) for which the relevant concept is an Affiliate in the RFP. Could you please confirm this is the right interpretation in order to guide us through for filling in the forms, which cover very often the equity members (such as for e.g. Form J)? We would like to avoid misinterpretation and mobilize our group parent company if not necessary to do so.	Based on the information provided in the question, that appears to be the correct interpretation, but Proposers should review definition of "Equity Member" in Volume II, Exhibit 1 for further clarification on what constitutes an Equity Member
180	10/29/2020	11/6/2020	RFP Vol.I. Section 4.5.1	Documents to be delivered	In the RFP, it is mentioned that a letter from an Eligible Surety committing to provide a performance bond and a payment bond is required for an amount of <u>100% of the Contract Price</u> . However, in Volume II of the RFP, such bonds are to be provided for different amounts lower than 100% of the Contract Price. Please clarify and correct the documentation as may be necessary.	The performance and payment bond is required in an amount of 100% of the Initial Costs, as described in Section 8.1 of the Contract. The reference in Section 4.5.1 of Volume 1 (referring to 100% of the Contract Price) will be corrected in a forthcoming addendum.

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181	10/29/2020	11/6/2020	RFP Vol.I. Section 5.1.4.2	Questions and Responses regarding the addenda	Please clarify whether or not the question and answer postings will be deemed to form part of the Contract. We understand that they would be binding in accordance with Form A but this seems to be contradicted by Section 1.3 of the main body of the Contract.	Questions and Answers are <u>not</u> part of the Contract Documents, per Section 1.3 of the Contract. Each Proposer is required to acknowledge receipt of any Addenda and responses, per the ITP using Form A.
182	10/29/2020	11/6/2020	RFP Vol.I. Form A	Proposal Letter	Paragraph 1: Please advise the date to be inserted at “[INSERT DATE]” and if the IFA can reissue Form A formatted to accommodate an insertion; e.g., just a blank line.	Form A will be updated and provided in an upcoming Addendum.
183	10/29/2020	11/6/2020	RFP Vol.I. Exhibit B. C., pg 50	Financial Information	<p>Please clarify the proposal requirement to separately package the financial information as part of Proposal Part 1. Should the financial statements go in a separate binder?</p> <p>Also, given the paper volume of financial statements, please consider only electronic submission of financial statements.</p> <p>Also, given that financial statements with signature and certification are frequently scanned copy, please reconsider the requirement for searchable PDF copy.</p>	<p>Proposers can submit financial information for individual entity(ies) in its own separate, clearly indicated section to satisfy the entities' financial information requirement.</p> <p>Hard copy submittal of Proposer's Financial Information is required.</p>

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184	10/29/2020	11/6/2020	RFP Vol.II. Main Contract	General	In various places, the Contract contains erroneous cross-references (e.g. in Section 5.1.3(d); 5.1.5.2(c)). Please update the Contract.	Volume II Section 5.1 references will be updated and provided in upcoming Addendum.
185	10/29/2020	11/6/2020	RFP Vol.II. Main Contract	General	The project involves various interfaces and dependencies between TSP2 and the other contractors of the Authority, which may be regarded as a significant area of risks for the project. Please confirm the Authority remains liable for the other contractors' failure to perform which may adversely impact TSP2 and indemnifies TSP2 accordingly.	The Contract, particularly Section 17 and Section 18, provide detailed information regarding the liability (and limits thereof) and scope of indemnification for both TSP2 and the Joint Board. The Joint Board does not anticipate revisions to those sections.
186	10/29/2020	11/6/2020	RFP Vol.II. Main Contract	General	On several instances in the Contract, it is referred to an « Open-Book Basis » such as for instance in Sections 13.8.1.3, 15.4.5 and 19.11.3. This concept is not defined in exhibit 1. Please provide a definition. We expect such definition should not include any disclosure of the commercial margin of TSP2 nor of its subcontractors.	“Open Book Basis” means a process by which the Joint Board is provided full and complete access to and/or details of, all original invoices, vouchers and books of account (including information regarding overhead, profit and mark-up) necessary to demonstrate the TSP2's actual cost of performing the Work. Such definition will be added to Volume II Exhibit 1 as part of the upcoming Addendum.

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187	10/29/2020	11/6/2020	RFP Vol.II. Main Contract	General	In several instances in the Contract, it is provided that TSP2 is liable for implied warranties where the Joint Board disclaims any similar liability (18.7). It is also contrary to Section 11.1.2 which expressly disclaims such liability in respect of software. It is unlikely we may pass down such requirements to our subcontractors/suppliers and we kindly request the Authority to remove such requirement for implied warranties also in Sections 2.2.9.1 and 11.7.	The Joint Board does not anticipate any revisions to Sections 2.2.9.1 and 11.7 in regards to implied warranties.
188	10/29/2020	11/6/2020	RFP Vol.II. Main Contract	General	Concerning the various bonds required under the Contract, please confirm the Joint Board will act reasonably and will only draw on the bonds for the amounts commensurate with the Joint Board's estimated loss caused by a failure to perform under the Contract as per its terms.	The provisions of the Contract, particularly Sections 8 and Section 16, describe the amount of the surety bonds and circumstances by which the Joint Board may draw upon such surety bonds.

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189	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 1.6	Standard for Approvals	We accept that cases where approvals or consents are required to be provided by the Joint Board, such approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified. However, there are other cases not requiring approvals or consents where sole discretion is specified and for which the decision shall not be subject to dispute resolution hereunder. The latter covers decisions which may be wrong, unfair or proceed from errors causing a material adverse to TSP2 who would be left without any remedy including any right to challenge such decision. We kindly request the Authority re-evaluate such decisions in particular in Sections 2.2.2/5.1.4/5.1.5.1(c)/6.6/15.9/16.2.1(c)/, so that TSP2 is given a chance not to incur increased costs or losses, bearing in mind Section 19 is drafted to urge the Parties towards amicable settlement.	The Joint Board will review such instances in the Contract where the referenced approvals, consents, decisions, etc. are to be made at the Joint Board's sole discretion, but at this time the Joint Board does not anticipate revising such instances.
190	10/29/2020	11/6/2020	RFP Vol. II. Main Contract. Section 2.7	Contract Duration	The design, development integration and acceptance appear to be a 2-year duration. Operations and Maintenance is 7 years. Is the total contract duration 9 years?	Confirmed

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191	10/29/2020	11/6/2020	RFP Vol. II. Main Contract. Sections 2.2.3 and 2.7	Contract Duration	Please confirm the extension of the duration will require the consent of both Parties (other than for the Software Maintenance Option) and modify Section 2.2.3 accordingly.	The Joint Board is the party that has the authority to exercise any Operations and Maintenance Option, provided, however, the Joint Board recognizes this requires a good faith negotiation with TSP2 as to the Operations and Maintenance Option Price and thus ultimately requires consent from both the Joint Board and TSP2.
192	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 4.3.1	Force majeure	Please confirm that force majeure is not the only ground which cause an extension of time under the Contract. Please clarify which other grounds are available such as any cause due to the Joint Board (Joint Board Caused Delay), etc.	Question is unclear as to the relevance of Force Majeure and Section 4.3.1. In general, there are items outside of a Force Majeure Event that may cause extensions of time under the Contract.
193	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 4.3.1	Delay Liquidated Damages	Save any omission, we could not identify any Delay Liquidated Damages in Exhibit 2. Please clarify and provide.	Volume II Exhibit 2 will be updated in an upcoming Addendum.
194	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 4.3.2	Cumulative	Please confirm Delay Liquidated Damages will be counted towards the applicable cap in Section 17.1.1.	Confirmed, this is clearly stated in Section 17.1.1.

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195	10/29/2020	11/6/2020		RFP Vol. II. Main Contract. Section 5.1.5.2(b)	We believe the lost toll revenues should be calculated as precisely as reasonably possible and not only by reference of the toll value initially foreseen which may increase the Performance Stipulated Damages depending on the comparable prior period for calculating the expected number of transactions. Please clarify which comparable prior period would be used and to which extent a more reliable formula is possible.	The manner by which a comparable time period is established is described in Section 5.1.5.2(b). The Joint Board does not anticipate revising such section.
196	10/29/2020	11/6/2020	RFP Vol. II. Main Contract. Section 5.1.3(d)	Performance Guarantees and Performance Liquidated Damages	Please correct the cross-references (there is no Section 4.8) for better understanding. Which additional remedy would be available to the Joint Board under Section 16.1.1(n) which would disapply the exclusive remedy principle set out in this Section 5.1.3(d)	Volume II Section 5.1 references will be updated and provided in upcoming Addendum
197	10/29/2020	11/6/2020	RFP Vol. II. Main Contract. Section 5.1.6	Cap on Total Performance Liquidated Damages and Performance Stipulated Damages	Please correct the cross-references (there is no Section 12.7) for better understanding.	Section 12.7 Interest is in the Contract. No correction needed as it relates to this question.

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198	10/29/2020	11/6/2020	RFP Vol. II. Main Contract. Section 5.1.5.2(c)	Amount of Key Performance Stipulated Damages	Please remove the following "TSP2 further acknowledges and agrees that Performance Stipulated Damages may be owing even though no TSP2 Event of Default has occurred" as liquidated damages may only be due if TSP2 has failed to perform its obligations.	The Joint Board does not anticipate revisions to that section. Performance Stipulated Damages may be assessed if KPIs are not met by TSP2, which does not require an Event of Default to have occurred.
199	10/29/2020	11/6/2020	RFP Vol. II. Main Contract; Section 7.2.2	Subcontracts	Allowing the Joint Board or the States' Parties to communicate directly with TSP2's subcontractors without the involvement TSP2 would interfere unnecessarily with the management and organization of TSP2 who remains responsible for its subcontractors. Please remove this provision or at least ensure that TSP2 is copied in every Joint Board or the States' Parties' communication to TSP2's subcontractors with no undue interference with TSP2 performance of its obligations under the Contract.	The Joint Board does not anticipate revising this section.

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200	10/29/2020	11/6/2020	RFP Vol. II. Main Contract; Section 7.2.3	Subcontracts	Please clarify the text to provide commercially sensible information in subcontracts may be provided to the Joint Board in a redacted manner for such portions.	The Joint Board does not anticipate making edits to Section 7.2.3, however, please note Section 20.4 of the Contract as it pertains to identifying any materials in the Joint Board's possession that TSP2 believes are trade secrets or otherwise exempt from disclosure under Indiana Code 5-14-3-4 and/or KRS 61.870 -61.844.
201	10/29/2020	11/6/2020	RFP Vol. II. Main Contract; Sections 8.1.1 and 8.1.2	Bonding	Is the 100% Performance Bond and the 100% Payment Bond for the Implementation Phase?	Question is unclear as to reference to "Implementation Phase". Section 8.1.1 and 8.1.2 describe the Performance and Payment Bond and the conditions upon which they may be released or reduced.
202	10/29/2020	11/6/2020	RFP Vol. II. Main Contract; Section 9.2.3	Subcontractor Insurance Requirements	Please confirm that TSP2 is not obliged to cover its subcontractors under its insurances policies if such subcontractors have their own insurance covers consistent with the requirements of the Contract.	Confirmed.
203	10/29/2020	11/6/2020	RFP Vol. II. Main Contract; Section 9.2.5	Waiver of Subrogation	Please confirm that TSP2 shall be still entitled to time extension if needed as the insurance proceeds would only cover the need for compensation. Please modify the text accordingly.	Question unclear, but Joint Board does not anticipate revising Section 9.2.5 in that TSP2 would not be necessarily entitled to time extension under the Contract to the extent compensated by any insurance specified in the Contract.

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204	10/29/2020	11/6/2020	RFP Vol. II. Main Contract; Section 9.2.7	No Recourse	Please confirm that the Joint Board shall remain liable for increases or adjustments in bond or insurance premiums to the extent caused or contributed to by the Joint Board or its other contractors.	The Joint Board does not anticipate revising this section. The Joint Board is not liable for increases or adjustments in bond or insurance premiums to the extent caused or contributed to by the Joint Board or its other contractors.
205	10/29/2020	11/6/2020	RFP Vol. II. Main Contract; Section 9.2.9	Commercial Unavailability of Required Coverages	Please confirm that TSP2 will be released from its obligation to take out insurance covers if unavailable and will be released from any liability to that effect. Please modify the text accordingly.	The Joint Board does not anticipate revising such section. Please review Section 9.2.9 for how the Joint Board will work with TSP2 in the event of Commercial Unavailability of Required Coverages and affect (if any) on Contract Price.
206	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 12.3.1	Invoices for Initial Costs	Please confirm that the Joint Board shall remain liable for increases or adjustments in bond or insurance premiums resulting from adverse changes in TSP2's financial condition, etc. to the extent caused or contributed to by the Joint Board or its other contractors.	The Joint Board does not anticipate revising this section. The Joint Board is not liable for increases or adjustments in bond or insurance premiums resulting from adverse changes in TSP2's financial condition, etc. to the extent caused or contributed to by the Joint Board or its other contractors.
207	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 12.15	Payment obligations Not Debt	Please clarify which remedy would be applicable in case of failure to pay by IFA under this section. Would Section 16.4 apply?	In that scenario (failure to pay by IFA due to lack of appropriation), 16.4 would potentially be applicable presuming the Joint Board then failed to pay undisputed amounts to TSP2 within the applicable notices.

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208	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 13.2	Change order	Please clarify the interaction between Section 13.2 and Sections 13.3 and/or 13.4. Section 13.2 seems to allow the Joint Board to force a change order on TSP2 in case of disagreement or to issue a reductive change without any consent of both parties. What are the remedies or compensation of TSP2 in case of reductive change, which may have an adverse effect on TSP2?	Change Orders are only effective upon execution in writing by both Parties (See section 13.3).
209	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 13.4.2	Change order	This Section 13.4.2 seems to be limited to the Initial Work. We miss the rationale for not extending this section to all change orders initiated by the Joint Board. Please clarify.	Section 13.4.2 is not limited to the Initial Work. There is particular language if the Change Order does involve a change to the Initial Work, but the rest of the section should not be read as limited to only applicable to Initial Work.
210	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 13.5.1	Change order	This Section 13.5.1 does not allow TSP2 to any change order adjusting the KPIs save if it results from a Joint Board Initiated Change Order under Section 13.4. However, Sections 13.5.1 and 13.5.2 seem to permit TSP2 to claim an adjustment of KPIs. Please clarify.	The Joint Board does not anticipate revising this section. TSP2 shall not be <u>entitled</u> to any Change Order adjusting KPIs except for ones initiated by the Joint Board under Section 13.4. As part of its written proposal for a Change Order under Section 13.5.2, TSP2 may <u>request</u> adjustments to KPIs.
211	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 13.5.3	Change order	Should the Joint Board disapprove of a TSP2 Initiated Change Order, please include text so that the Joint Board is to give explanatory grounds for its decision.	The Joint Board does not anticipate adding such language to Section 13.5.3.

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212	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 13.6	Excusable Delay	The concept of Excusable Delay in Section 13.6.2 is defined in broad terms but its application is limited to delays for items on the critical path in relation to the Progress Milestone Dates or the Revenue Service Date. We believe this definition of "Excusable Delay" should be applied to any phase of the project including the operation phase to cover a delay or a failure to perform due to events beyond the control of TSP2 or its subcontractors as the definition of force majeure in Section 13.6.2.1 is too narrow to provide appropriate protection in all such cases. Please modify Section 13.6 accordingly.	The Joint Board does not anticipate revising this section.
213	10/29/2020	11/6/2020	RFP Vol.II. Main Contract, Section 13.6.2.2	Force majeure and Covid-19	Please clarify this section would grant protection (extension of time, relief from performance) in case performance is prevented or rendered commercially unreasonable due to epidemics or the like. In the negative, please clarify which protection the Contract would provide to TSP2 in case of epidemics, pandemics, etc. such as in the current Covid-19 context.	Force Majeure definition will be added to Volume II Exhibit 1 as part of the upcoming Addendum.

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214	10/29/2020	11/6/2020	RFP Vol. II. Main Contract, Section 13.6.2.2	Force majeure	<p>The definition of force majeure is restrictive based on a limited list of events. Please include a broader definition providing relief from performance to the extent that such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable control of such party including, but not limited to, acts of God or the public enemy, fires, explosion, riots, strikes (not including strikes of the TSP2's staff Personnel), or war, or the like including, but not limited to, fire, earthquake, explosion, epidemic, riots, civil disturbance, strike, war, injunctions of governmental entities, embargoes and blockades where the party whose performance was delayed did not otherwise cause or contribute to the cause or not prevent when able to prevent such delay.</p> <p>Please confirm the above is eligible to a responsive exception without prejudice to the Authority's right to not accept.</p>	Force Majeure definition will be added to Volume II Exhibit 1 as part of the upcoming Addendum.

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215	10/29/2020	11/6/2020	RFP Vol. II. Main Contract, Section 13.6.2.2	Force majeure	This section does not provide a right to terminate for either Party in case of prolonged force majeure. Please provide text to cover this case so that either Party may terminate the Contract after a force majeure period to be determined. Otherwise, TSP2 is likely to incur significant costs during a force majeure period which may become unreasonable at some stage.	The Joint Board does not anticipate revising this section.
216	10/29/2020	11/6/2020	RFP Vol.II. Main Contract, Section 13.6.2.2 and Section 13.7.1.2	Change in Law	In 16.6.2.2: no protection is granted to TSP2 in case that a change in law is enacted as of the Executed Date but which becomes effective after the Execution Date while in 13.7.1.2 excludes protection for legislation enacted as of the Proposal Due Date but which becomes effective after the Execution Date. This is not customary and we request the change in law regime is harmonised and grants protection for any change in law coming into effect after the execution date of the Contract other than any legislation, which on the date of the submission of the Proposal has been published. Please confirm the above is eligible to a responsive exception without prejudice to the Authority's right to not accept.	The Joint Board does not anticipate revising such section. Legislation enacted on or before the Execution Date (but not yet effective) would be known by TSP2 at time of execution. Proposers, at their discretion and without prejudice, may include Exceptions listed in Form P, provided as part of its Proposal.

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217	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 13.7.1.6	Joint Board-Caused Delays	Please define those capitalized terms (to the extent necessary) which are not defined in Exhibit 1.	Joint Board will review for such instances and any updates will be provided in the forthcoming Addendum.
218	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 15.2.6	Termination for Convenience	Please confirm the termination costs of the subcontracts are covered by Sections 15.6, 15.7 and 15.8.	Yes, subject to the provisions of Section 15 (particularly Section 15.6, 15.7, 15.8 and 15.11).
219	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 15.6	Call on the bonds	Please clarify on which occasions the Joint Board could call on any performance bond or any other bonds for completed or non terminated work where any amount due under Section 15.6 would be already reduced by the applicable work not terminated.	As noted in Section 15.6, any executed Settlement Agreement would not affect the Joint Board or TSP2 under any performance / payment / maintenance bonds.
220	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 15.7	No agreement as to Amount of Termination Settlement for Initial Work and Operations and Maintenance Work	Please clarify that any determination by the Joint Board under this section may cause a dispute which may be resolved in accordance with Section 19.	Yes, see Section 15.14 of the Contract.
221	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 16.2.8	Duty to mitigate damages	Please confirm the Joint Board is to perform a duty to mitigate damages under this section.	The Joint Board does not have a duty to mitigate damages in the event of a TSP2 Event of Default.

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222	10/29/2020	11/6/2020	RFP Vol.II. Main Contract ; Section 16.3	Failure to Comply Caused by Delay Event	<p>In this Section 16.3*, despite TSP2's performance is delayed due to a Delay Event, the text provides for a sanction of TSP2 by the Joint Board and a possibility to convert a Delay Event into a TSP2 Event of Default by reference to "Operations Readiness" which terms are not defined, potentially leading to termination for cause. Please clarify what is meant by "Operations Readiness" and the rationale for not granting full exemption of liability as well as an extension of time under this Section 16.3 in case of a Delay Event which is by definition beyond the reasonable control of TSP2.</p> <p><i>* (ii) occurrence of a Delay Event shall not excuse TSP2 from its obligation to pay damages, including Liquidated Damages, for failure to achieve Operations Readiness by the applicable Completion Deadline; provided, however, that to the extent that TSP2 is excused from payment of Liquidated Damages by reason of Section 17 or otherwise, the Joint Board shall be entitled to treat the Delay Event as a TSP2 Event of Default and terminate this Contract and exercise any and all remedies available under the Contract Documents.</i></p>	"Operations Readiness" is a term inadvertently included in the Contract and will be removed from Section 16.3 in the forthcoming Addendum.

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223	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Sections 16.4	Failure by IFA and/or KYTC to make Undisputed Payment	In case failure to pay is due to lack of funding (appropriation risk or similar), please modify to allow TSP2 to cause immediate termination for convenience under Section 15 without waiting for 180 days after the Joint Board's receipt of written notice of non-payment from TSP2.	The Joint Board does not anticipate revising this section.
224	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Sections 17.1.1	Limitation of TSP2's Liability	We miss the rationale for not counting Delay Liquidated Damages under this Section 17.1.1. Please clarify. We kindly request the text is changed to ensure Delay Liquidated Damages are counted towards the applicable cap.	Delay Liquidated Damages <u>are</u> counted towards the liability cap. See excerpt of Section 17.1.1 (emphasis added) as follows: "In addition, Delay Liquidated Damages , Performance Liquidated Damages and Performance Stipulated Damages assessed against and paid by TSP2 for events occurring prior to System Acceptance will be credited towards the amount set forth in clause (a) above ... "
225	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Sections 17.1.1 and 17.1.2	Limitation of TSP2's Liability	Please modify the text to exempt TSP2's liability for indirect, special, consequential or punitive damages in a similar manner as the Joint Board exempts its liability for same for example under Section 15.12 (No Consequential Damages).	The Joint Board does not anticipate revising this section.

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226	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 18.1.1(c)	Indemnifications by TPS2	Please delete the term "assertion" as we believe it is not fair nor legally practical to provide for indemnification as a result of a mere assertion by a contractor of inconvenience, etc. caused by an alleged interference of a TSP2-Related Entity under the Contract.	The Joint Board does not anticipate revising this section.
227	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Sections 18.2.6 ; 18.2.7 ; 18.2.8	Defense and Indemnification Procedures	The assessment of the various cases set out in Section 18.2.6 (in particular b) and c) is very subjective and may deprive TSP2 of its right to lead the defense with the lead counsel and to settle or compromise. Therefore, in 18.2.7(c), we kindly request that the right of the Indemnified Party to settle or compromise a claim is subject to TSP2's prior written consent which shall not be unreasonably withheld, conditioned or delayed. In the alternative, please modify Section 18.2.8 so that TSP2 is entitled to dispute the settlement or compromise made under 18.2.7(c).	The Joint Board does not anticipate revising this section.
228	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 19.8.1(o)	Dispute	Please make this right to refer a dispute to state court litigation reciprocal for both Parties.	The Joint Board does not anticipate revising this section.

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229	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 19.8.2(b)	Dispute	This requirement for reimbursement by a party of the other party's litigation costs in case of state court litigation (after arbitration occurred) is not consistent with the letter and intent of the preceding arbitration, which is supposed to be non-binding. Please delete this Section 19.8.2(b) which is an unnecessary deterrent for dispute resolution.	The Joint Board does not anticipate revising this section.
230	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 19.8.2(b)	Other proceedings	Please clarify such joinder of actions would be at the expenses of the Joint Board, should TSP2 incur costs and expenses as a result thereof.	<p>For purposes of a response, the Joint Board is presuming the intent of the question is in relation to Section 19.13 (not Section 19.8.2(b) as listed).</p> <p>In the scenario of other proceedings described in Section 19.13, it is anticipated the Joint Board would be responsible for costs and expenses as a result TSP2 being joined.</p>

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231	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 20.2	Audit	It is not customary to condition the right to pursue a dispute under dispute resolution provisions to compliance with an audit undertaken by the other Party. Such audit should not procure that TSP2 is to act against its reasonable commercial interests or to be used a discovery procedure by the Joint Board to build its case anticipating the provisions of Section 19.8.1(g). We kindly request removal of at least Section 20.2.8.	The Joint Board does not anticipate revising this section.
232	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 20.5	Source Code Escrow	Please confirm any update of the Software is to be deposited with the escrow at charge to the Joint Board. To limit the costs, we recommend annual deposit with the escrow in lieu of a deposit each time there is an update or other changes to the source code.	<p>For purposes of a response, the Joint Board is presuming the intent of the question is in relation to Section 20.6.3 (not Section 20.5 as listed).</p> <p>The Joint Board does not anticipate revising this section to provide for an annual deposit in lieu of deposits made as the Software and updates are implemented. As per Section 20.6.3, TSP2 should include in its monthly invoices any Pre-Existing Software updates and upgrades completed during the invoice period, which may include any costs associated with depositing with the escrow.</p>

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233	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 21.7	Assignment	Please modify such provision so that any assignment is subject to the other party's prior consent.	For purposes of a response, the Joint Board is presuming the intent of the question is in relation to Section 21.5 (not Section 21.7 as listed). The Joint Board does not anticipate revising this section.
234	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 21.7	Survival	It is not customary to cause TSP2's representations and warranties and the warranties in Section 11 to survive without limitation in time after termination of the Contract. As regards the warranties in Section 11, this Section 21.7 seems to conflict with Section 11.6, which provides that such warranties are to come to an end. Please clarify.	TSP2 shall not be liable for W arranties (emphasis added) described in Section 11 upon expiration of the Warranties. TSP2's representations and w arranties (emphasis added) survive per the terms of Section 21.7.
235	10/29/2020	11/6/2020	RFP Vol.II. Main Contract; Section 21.11.3	Copy of written correspondence	We kindly request deletion of such section which lacks clarity due to the number of exceptions to the term "Person" and which may cause uncertainty for TPS2 as regards its duty to inform the Joint Board.	The Joint Board does not anticipate revising this section. As noted in Section 21.11.3, the requirement to copy the Joint Board is limited by virtue of it not including correspondence with TSP2's Subcontractors, consultants and attorneys and any otherwise standard correspondence with Customers.

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236	10/29/2020	11/6/2020	RFP Vol. II. Exhibit 1	Subcontractor	This definition includes Suppliers. We believe this creates confusion as the RFP Volume I and the contract (and its exhibits) in Volume II clearly differentiate the respective obligations for subcontractors and suppliers. Please modify the definition so that it clarifies that Suppliers are not considered as subcontractors.	The Joint Board does not anticipate modifying this definition
237	10/29/2020	11/6/2020	RFP Vol.II. Exhibit 10; Section 4	Form of Guaranty	The Guaranty provides that the Joint Board is not to exhaust its right under the various bonds to call the Guaranty. Although this provision is understandable in case of a breach of payment due to bankruptcy or insolvency, we believe the Joint Board should primarily draw on the bonds for any other instances before implementing this Guaranty. Otherwise, the need for bonds or other security seems weak and unnecessarily priced. Please clarify that this matter is eligible as an exception so vendors may submit exceptions without prejudice to the right of the Authority to not accept.	The Joint Board does not anticipate revising this section. Proposers may without prejudice include any Exceptions in Form P as part of its Proposal. However, proposal, especially pricing, should not assume proposed exceptions will be accepted. If it does, proposal may be deemed non-compliant.

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238	10/29/2020	11/6/2020	RFP Vol.II. Exhibit 10; Section 3(e)	Form of Guaranty	This Section 3(e) provides that it is the intent of the Parties that the monetary amount of the Guarantor's liability for the Guaranteed Obligations shall be limited to the maximum amounts set forth in the contract. This wording in the form of "intentions" is not customary, and we kindly request a change in the form of a firm commitment whereby the liability of the Guarantor shall not exceed the exposure of the contractor under the contract. Please clarify that this matter is eligible as an exception so vendors may submit exceptions without prejudice to the right of the Authority to not accept.	The Joint Board does not anticipate revising this section. Proposers may without prejudice include any Exceptions in Form P as part of its Proposal. However, proposal, especially pricing, should not assume proposed exceptions will be accepted. If it does, proposal may be deemed non-compliant.
239	10/29/2020	11/6/2020	RFP Vol.II. Exhibit 10; Section 10	Assignment; Successors and Assigns	This section requires that a change of control of the Guarantor would require the prior consent of the Joint Board. This is not customary nor practical business-wise as the Guarantor may not control its shareholders. We kindly request the removal of last sentence of Section 10 or alternative mechanisms securing the interest of the Joint Board but without conditioning a change of control of the Guarantor. Please clarify that this matter is eligible as an exception so vendors may submit exceptions	The Joint Board does not anticipate revising this section. Proposers may without prejudice include any Exceptions in Form P as part of its Proposal. However, proposal, especially pricing, should not assume proposed exceptions will be accepted. If it does, proposal may be deemed non-compliant.

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					without prejudice to the right of the Authority to not accept.	
240	10/29/2020	11/6/2020	RFP Form K, Req. GSR-213	Technical Requirements Conformance Matrix	What are the parameters for a retrieval of archived data; i.e., would we bring back all data or would subsets be requested and need to be provided as available in the system.	No, all data would not need to be brought back for test. This will be an effort conducted in coordination with the JBR and TSP2 to see what makes sense to test at the time. This simply is an exercise to make sure the processes and procedures are in place should a retrieval event be needed.
241	10/29/2020	11/6/2020	RFP Form K, Req. GSR-214	Technical Requirements Conformance Matrix	Is this an annual Disaster Recovery Test which needs to show full recovery and systems operability from the DR site?	Yes.
242	10/29/2020	11/6/2020	RFP Form K, Req. IMI-069	Technical Requirements Conformance Matrix	Please define the requirements for "HOT TRANSFER". This term does not align with the stated RPOs and RTOs for Disaster Recovery.	Hot transfer should greatly minimize the level of effort needed to bring up the secondary site, as it is "ready to go" should a disaster event occur which should result in near-zero RPO.
243	10/29/2020	11/6/2020			Our company attended the Industry forum but not the One-on-One Meeting. We wish to Prime and pursue a submission as Prime with a Major Subcontractor who did attend the One-on-One Meeting. Will the Joint Board waive the requirement and pre-qualification of mandatory attendance for the One-on-One Meeting?	No.