

**INDIANA FINANCE AUTHORITY
ACTING ON BEHALF OF THE
LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT
JOINT BOARD**

**SUPPLEMENTAL PROVISIONS FOR
REQUEST FOR QUALIFICATIONS**

**TO PROVIDE, OPERATE, MANAGE, AND MAINTAIN A TOLL COLLECTION
SYSTEM AND PROVIDE BACK OFFICE TOLL COLLECTION AND
CUSTOMER SERVICE FOR**

the

LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT

THROUGH A

TOLL SERVICES AGREEMENT

Issued: October 18, 2013

SOQ Due Date: December 10, 2013

1.	COMMUNICATIONS, PUBLIC INFORMATION AND ORGANIZATIONAL CONFLICTS OF INTEREST	2
1.1.	Improper Communications and Contacts	2
1.2.	Public Records Act.....	3
1.3.	Organizational Conflicts of Interest	4
1.4.	Limitations on Proposer Team Membership.....	7
1.4.1.	Prequalification and Licensing Requirements	7
1.4.2.	Participation on More Than One Proposer Team	7
2.	PROTEST PROCEDURES.....	7
2.1.	Applicability.....	7
2.2.	Required Early Communication for Certain Protests.....	8
2.3.	Deadlines for Protests.....	8
2.4.	Content of Protest.....	8
2.5.	Filing of Protest.....	8
2.6.	Comments from Other Proposers.....	9
2.7.	Burden of Proof.....	9
2.8.	Decision on the Protest.....	9
2.9.	Protestant's Payment of Costs.....	9
2.10.	Rights and Obligations of Proposers.....	9
3.	RESERVED RIGHTS.....	10

1. COMMUNICATIONS, PUBLIC INFORMATION AND ORGANIZATIONAL CONFLICTS OF INTEREST

1.1. Improper Communications and Contacts

The following rules of contact shall apply during the procurement for the Project, effective as of the date of issuance of this RFQ through the execution of the Agreement. These rules are designed to promote a fair, competitive and unbiased procurement process. Additional rules or modifications to these rules may be issued by IFA in connection with the RFP process and in the RFP. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication, either directly or indirectly by an agent, representative, promoter or advocate.

The specific rules of contact are as follows:

(A) After submittal of SOQs, no Proposer or any of its team members may communicate with another Proposer or its team members with regard to the RFP or either team's Proposal; provided, however, that subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish reasonable protocols to ensure that the subcontractor will not act as a conduit of information between the teams (contact among Proposer organizations is allowed during Joint Board sponsored informational meetings);

(B) IFA shall be the sole contact for purposes of this procurement, the RFQ and the RFP. Proposers shall correspond with IFA regarding the RFQ and RFP only through designated representatives (which initially shall be the RFQ Procurement Contact identified in Part A, Section 3.4 of the RFQ);

(C) Commencing with the issuance of this RFQ and continuing until the earliest of (i) award and execution of the Agreement, (ii) rejection of all Proposals by the Joint Board or (iii) cancellation of the procurement, no Proposer or representative thereof through either of their respective employees, agents or representatives shall have any *ex parte* communications regarding the RFP or the procurement described herein with any member of the Joint Board, or any States Party, or with any Joint Board, or any States Party's board, staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative or the Public Finance Director, in her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFQ or Project, site visits undertaken by the States' Parties; or participation in public meetings of the Board or any public or Proposer workshop related to the RFQ or the Project.

Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of the Joint Board.

(D) Proposers shall not contact the following identified stakeholders regarding the Project, including employees, representatives, members, consultants and advisors of the entities listed below. IFA will provide any necessary coordination during the RFQ stage with such entities in order that, among other things, the procurement be implemented in a fair, competitive and transparent manner and with uniform information:

- FHWA;
- Developer;
- DB Contractor;
- Environmental, regulatory and permitting agencies; and
- Utilities.

Information requests concerning these entities shall be sent to the RFQ Procurement Contact. During the RFP phase of the procurement, IFA, on behalf of the Joint Board, may, in its discretion, set up joint workshops or meetings with some or all of the foregoing entities.

(E) Any communications determined to be prohibited or improper, at the sole discretion of the Joint Board, may result in disqualification;

(F) Any official information regarding the Project will be disseminated from IFA's office on agency letterhead. Any official correspondence will be in writing and signed by either the RFQ Procurement Contact or IFA's Public Finance Director;

(G) Neither IFA nor the Joint Board will be responsible for and Proposers may not rely on any oral or written exchange or any other information or exchange that occurs outside the official process specified herein; and

1.2. Public Records Act

Once submitted, the SOQs shall become the property of the Joint Board, may not be returned to Proposers and are subject to Indiana Public Records Act, Indiana Code 5-14-3 and relevant provisions of Indiana Code 8-15.5 (collectively, the "Public Records Act"). Proposers are encouraged to familiarize themselves with the Public Records Act. In the event Proposer submits any documents which Proposer believes are not subject to disclosure pursuant to the Public Records Act, it must conspicuously mark each document "CONFIDENTIAL" or

“CONFIDENTIAL TRADE SECRETS” in the header or footer of each such page affected and, in the Confidential Contents Index, identify the specific Public Records Act exemption asserted. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for IFA to treat the entire SOQ as public information.

Neither IFA nor the Joint Board will advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable laws, as to the interpretation of such laws, or as to definition of trade secret. Nothing contained in this provision shall modify or amend requirements and obligations imposed on IFA or the Joint Board by the Public Records Act, similar or corresponding laws of the Commonwealth or other applicable law. IFA reserves the right to disagree with Proposer’s assessment regarding confidentiality or proprietary nature of information in the interest of complying with the Public Records Act. The provisions of the Public Records Act or other laws shall control in the event of a conflict between the procedures described above and the applicable law.

Information submitted by Proposers may be made available to FHWA representatives. The Joint Board intends to follow procedures established by FHWA to avoid disclosure, to the extent possible, of such information under the Freedom of Information Act.

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the submitting party, IFA will be the custodian retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and the submitting party will be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that the Joint Board reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys’ fees and costs) incurred by the Joint Board or any of the States’ Parties in connection with any litigation, proceeding, or request for disclosure shall be reimbursed and paid by Proposer objecting to disclosure. Each Proposer shall be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

In no event shall IFA, the Joint Board, or any States’ Party or any of their respective agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of all or a portion of a SOQ submitted under this RFQ.

1.3. Organizational Conflicts of Interest

It is IFA’s policy that any person under contract, or previously under contract, with IFA or the other States’ Parties to prepare procurement documents, preliminary plans, planning reports or other project development products for the Project will not be allowed to participate in any capacity on a Proposer or Toll System Provider team. Exceptions to this policy may be

granted by the Joint Board, upon written request from such person, if it is determined that the person's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit such written request as soon as possible because the Joint Board shall not extend the SOQ Due Date or be responsible for any inability or failure to respond prior to the SOQ Due Date to any such request.

In addition to the foregoing, the organizational conflict of interest rules found in 23 CFR § 636, Subpart A, including 23 CFR § 636.116, also apply to this procurement. 23 CFR § 636.103 defines an "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer shall provide information concerning organizational conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. Proposer shall state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or key personnel thereof, may result in, or could be viewed as, an organizational conflict of interest.

Proposer is prohibited from teaming with, receiving any advice or discussing any aspect relating to the Project or the procurement of the Project with any person or entity with an organizational conflict of interest, including, but not limited to:

- KPMG LLP
- Nossaman LLP
- Ice Miller LLP
- Perkins Coie LLP
- Frost Brown Todd
- Computer Aid, Inc.
- Parsons Transportation Group
- Public Financial Management, Inc.
- CDM Smith

- Steer Davies & Gleave
- Haworth, Meyer, Boleyn, Inc.
- Beam, Longest and Neff, LLC
- TKT & Associates
- Qk4
- Michael Baker Corporation
- Butler, Fairman and Seufert
- HW Lochner, Inc.
- Golder Associates
- Cambridge Systematics
- Stoll Keenon Ogden, PLLC
- High Street Consulting Group
- Greyling Insurance
- Michael Bosc
- Wyatt Tarrant and Combs
- Atkins
- Affiliates (meaning includes parent companies, subsidiary companies, Persons under common ownership, joint venture members and partners, and other financially liable parties for a Person) of any of the above

Such Persons are also prohibited from participating on a Proposer team as an Equity Member, Major Subcontractor, contractor, subcontractor, consultant or subconsultant.

By submitting its SOQ, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, Proposer must make an immediate and full written disclosure to IFA that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, the Joint Board may disqualify Proposer in its sole discretion. If an organizational conflict of interest that Proposer knew, or should have known about, but failed to disclose exists and Proposer has entered into an Agreement as Toll System Provider, the Joint Board

may, at its sole discretion, terminate the Agreement. In either case, the Joint Board reserves all legal rights and remedies.

Proposers are also advised that IFA's guidelines in this RFQ are intended to augment applicable federal and state law, including federal organizational conflict of interest laws and rules and the laws and rules relating to NEPA. Such applicable law will also apply to Proposer teams and teaming and may preclude certain firms and their entities from participating on a Proposer team.

1.4. Limitations on Proposer Team Membership

1.4.1. Prequalification and Licensing Requirements

Proposer will not be required to be licensed or qualified by IFA or the Joint Board. However, Toll System Provider must be qualified to do business in the State and the Commonwealth at the time of the award. No Proposal will be invalidated by IFA or the Joint Board if Proposer, has not obtained the appropriate licenses in the State and the Commonwealth at the time Proposer submits its Proposal.

In addition, other members of Proposer team that will be undertaking work that requires an INDOT or KYTC prequalification or a State or Commonwealth license must be prequalified and licensed prior to performing the applicable work assigned to such member. Prequalification and licensing requirements with respect to the submission of Proposals will be set forth in the RFP.

1.4.2. Participation on More Than One Proposer Team

To ensure a fair and competitive procurement process, Equity Members and Major Subcontractors (see definition in Part B, Book 1, Section 1) are forbidden from participating, in any capacity, on another Proposer team during the course of the procurement. The foregoing prohibition does not apply to any non-Equity Member of a Proposer team that is not a Major Subcontractor. If a Proposer is not qualified as part of the RFQ evaluation process, the members of the unsuccessful Proposer team (including Equity Members and Major Subcontractors) are thereafter free to participate on Qualified Proposer teams, subject to the requirements of this Part A, Section 5.4 and Section 1.3 above. Any Proposer that fails to comply with the prohibition contained in this Section 1.4 may be disqualified from further participation as a Proposer for the Project.

2. PROTEST PROCEDURES

2.1. Applicability.

This Section 2 sets forth the exclusive protest remedies available with respect to this RFQ. These provisions prescribe the exclusive procedures for protests regarding:

- (a) allegations that the terms of the RFQ are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed the authority of IFA or the Joint Board; and
- (b) qualification determinations.

2.2. Required Early Communication for Certain Protests.

Protests concerning the issues described in this Section 2.1(a) may be filed only after Proposer has informally discussed the nature and basis of the protest with IFA, following the procedures prescribed in this Section 2.2. Informal discussions shall be initiated by a written request for a one-on-one meeting delivered to the address specified in Part A, Section 3.4. The written request shall include an agenda for the proposed one-on-one meeting. IFA, on behalf of the Joint Board, will meet with Proposer as soon as practicable to discuss the nature of the allegations. If necessary to address the issues raised in a protest, the Joint Board may, in its sole discretion, make appropriate revisions to the RFQ documents by issuing addenda.

2.3. Deadlines for Protests.

- (a) Protests concerning the issues described in Section 2.1(a) must be filed as soon as the basis for the protest is known, but no later than 5 calendar days prior to the SOQ Due Date, unless the protest relates to an addendum to the RFQ, in which case the protest must be filed no later than 5 business days after the addendum is issued.
- (b) Protests concerning the issues described in this Section 2.1(b) must be filed no later than 5 calendar days after the earliest of the notification of the Qualified Proposers and the public announcement of the Qualified Proposers.

2.4. Content of Protest.

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. The protest shall also include the name and address of the protestor and the RFQ or contract number. Statements shall be sworn and submitted under penalty of perjury.

2.5. Filing of Protest.

Protests shall be filed by hand delivery on or before the applicable deadline to IFA's Public Finance Director with a copy to IFA General Counsel at Indiana Finance Authority, Public Finance Director of the State of Indiana, One North Capitol Avenue, Suite 900. Indianapolis, Indiana 46204, as soon as the basis for protest is known to Proposer. For any protests filed after the SOQ Due Date, Proposer filing the protest shall concurrently send a copy of the

protest to the other Proposers whose addresses may be obtained by contacting the RFQ Procurement Contact.

2.6. Comments from Other Proposers.

Other Proposers may file statements in support of or in opposition to the protest within 5 calendar days of the filing of the protest. IFA will promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

2.7. Burden of Proof.

The protestant shall have the burden of proving its protest by clear and convincing evidence. IFA, on behalf of the Joint Board may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

2.8. Decision on the Protest.

IFA's Public Finance Director or her designee shall issue a written decision regarding the protest within 30 calendar days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, the Joint Board may, in its sole discretion, make appropriate revisions to this RFQ by issuing an addendum. The written decision of IFA's Public Finance Director shall be final and non-appealable.

2.9. Protestant's Payment of Costs.

If a protest is denied, Proposer filing the protest shall be liable for the costs reasonably incurred by IFA and the Joint Board to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by either or both of IFA and the Joint Board as a consequence of the protest.

2.10. Rights and Obligations of Proposers.

Each Proposer, by submitting its SOQ, expressly recognizes and agrees to the limitation on its rights to protest provided in this Section 2, and expressly waives all other rights and remedies that may be available to Proposer under law. These provisions are including in this RFQ expressly in consideration for such waiver and agreement by Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this section, it shall indemnify and hold IFA, the Joint Board, the States' Parties and their respective officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting an

SOQ, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

3. RESERVED RIGHTS

In connection with this procurement, IFA reserves to itself and the Joint Board all rights (which rights shall be exercisable by IFA and the Joint Board, in their respective sole discretion) available to it under the Statute and applicable law, including without limitation, with or without cause and with or without notice, the right to:

- Modify the procurement process to address applicable law and/or the best interests of the Joint Board, the State and the Commonwealth.
- Revise the scope, type, structure and specific terms of this procurement.
- Modify the procurement process described herein to address any concerns, conditions or requirements of FHWA.
- Modify the scope of the Project during the procurement process.
- Develop the Project, including any portion thereof, in any manner that it, in its sole discretion, deems necessary. If the Joint Board is unable to negotiate an Agreement to its satisfaction with a Preferred Proposer, it may negotiate in succession with the next highest rated Proposer(s), terminate this procurement and pursue other development or solicitations relating to the Project or exercise such other rights under the Statute and other provisions of State law, as it deems appropriate.
- Cancel this RFQ or the subsequent RFP in whole or in part at any time prior to the execution by IFA of an Agreement, without incurring any cost obligations or liabilities.
- Issue a new request for qualifications after withdrawal of this RFQ or a subsequent RFP.
- Not qualify any Proposer responding to this RFQ.
- Not issue an RFP.
- Reject any and all submittals, responses and SOQs received at any time.
- Modify all dates set or projected in this RFQ.
- Terminate evaluations of responses received at any time.

- Suspend and terminate Agreement negotiations at any time, elect not to commence Agreement negotiations with any Qualified Proposer, and engage in negotiations with other than the highest ranked Qualified Proposer.
- Issue addenda, supplements and modifications to this RFQ.
- Appoint evaluation committees to review SOQs, make recommendations and seek the assistance of outside technical, financial and legal experts and consultants in SOQ evaluation.
- Require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its SOQ and require additional evidence of qualifications to perform the work described in this RFQ.
- Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQ.
- Add or delete Proposer responsibilities from the information contained in this RFQ or any subsequent RFP.
- Negotiate with a Qualified Proposer without being bound by any provision in its Proposal.
- Waive deficiencies in a SOQ, accept and review a non-conforming SOQ or permit clarifications or supplements to a SOQ.
- Disqualify any Proposer that changes its submittal without Joint Board approval.
- Disqualify any Proposer under this RFQ, the RFP or during the period between the RFQ or RFP for violating any rules or requirements of the procurement set forth in this RFQ, the RFP or in any other communication from IFA.
- Add to the qualification of Proposers any Proposer that submitted an SOQ in order to replace a previously Qualified Proposer that withdraws or is disqualified from participation in this procurement.
- Not issue any notice to proceed after execution of the Agreement.
- Develop some or all of the Project itself.
- Exercise any other right reserved or afforded to IFA and the Joint Board under this RFQ or applicable laws and regulations.

This RFQ does not commit or bind IFA or the Joint Board to enter into a contract or proceed with the procurement described herein. Neither IFA nor the Joint Board assume any obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to or responding to this RFQ, or any subsequent RFP. All of such costs shall be borne solely by each Proposer.