

**REQUEST FOR PROPOSALS FOR**

**Legal Services for Broadband Network Public-Private Partnership (P3)**

**ISSUING OFFICE**

**Pennsylvania Turnpike Commission**

**Office of Information Technology**

**RFP NUMBER**

**16-10340-7495**

**DATE OF ISSUANCE**

**JULY 22, 2016**

# REQUEST FOR PROPOSALS FOR

16-10340-7495

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## PART I

### GENERAL INFORMATION FOR PROPOSERS

**I-1. Purpose.** This request for proposals (RFP) provides interested Proposers with sufficient information to enable them to prepare and submit proposals for consideration by the Pennsylvania Turnpike Commission (Commission) to satisfy a need for legal services in support of the broadband network public-private partnership (P3) project.

**I-2. Issuing Office.** This RFP is issued for the Commission by the Office of Information Technology.

**I-3. Scope.** This RFP contains instructions governing the proposals to be submitted and the material to be included therein; a description of the service to be provided; requirements which must be met to be eligible for consideration; general evaluation criteria; and other requirements to be met by each proposal.

**I-4. Problem Statement.** The Commission must supplement its in-house knowledge with attorneys having relevant experience and expertise in P3 procurements. The Commission is soliciting proposals from firms capable of providing legal services in support of the Commission's evaluation of proposers' statements of qualifications and proposals submitted pursuant to the Public-Private Transportation Partnership Law, 74 Pa.C.S. §§ 9101 – 9124 (P3 Law).

Additional detail is provided in **Part IV** of this RFP.

**I-5. Type of Contract.** It is proposed that if a contract is entered into as a result of this RFP, it will be a cost plus basis contract. The Commission may in its sole discretion undertake negotiations with Proposers whose proposals as to price and other factors show them to be qualified, responsible, responsive and capable of performing the work.

**I-6. Contractor Integrity Provisions.** Contractor Integrity Provisions will apply to this contract upon award and the awarded vendor may be required to complete a Background Qualifications Questionnaire prior to entering into an Agreement with the Commission and attend annual ethics training provided by the Commission. Proposers can find these two documents on the Commissions website at [www.paturnpike.com](http://www.paturnpike.com) (Doing Business, General Information, Integrity Provisions).

Include full disclosure of any potential conflict with the State Adverse Interest of State Advisor or Consultant Statute by the prime or any subconsultant. If there is no adverse interest you shall include the following statement: "I have reviewed the State Adverse Interest Statute and determined that there is no adverse interest for anyone on this Agreement team." This information should be included in your transmittal letter/cover page or executive summary.

**I-7. Rejection of Proposals.** The Commission reserves the right to reject any and all proposals received as a result of this request, or to negotiate separately with competing Proposers.

**I-8. Subcontracting.** Any use of subcontractors by a Proposer must be identified in the proposal. During the contract period use of any subcontractors by the selected Proposer, which were not previously identified in the proposal, must be approved in advance in writing by the Commission.

If a Joint Venture responds to this RFP, the Commission will not accept separate proposals from joint venture constituents. A firm will not be permitted to submit a proposal on more than one (1) joint venture for the same RFP. Also, a firm that responds to this RFP as a prime may not be included as a designated subconsultant to another firm that responds to the same RFP. Multiple responses under any of the forgoing situations will cause the rejection of all responses of the firm or firms involved. This does not preclude a firm from being set forth as a designated subconsultant to more than one prime consultant responding to the RFP.

**I-9. Incurring Costs.** The Commission is not liable for any costs the Proposer incurs in preparation and submission of its proposal, in participating in the RFP process or in anticipation of award of contract.

**I.10. Questions and Answers.** Written questions may be submitted to clarify any points in the RFP which may not have been clearly understood. Written questions should be submitted by email to [RFP-Q@paturndpike.com](mailto:RFP-Q@paturndpike.com) with **RFP# 16-10340-7495** in the Subject Line to be received no later than 2:00 PM local time on **August 1, 2016**. Proposers shall use the form provided in Appendix A to submit the questions. All questions and written answers will be posted to the website as an addendum to and become part of this RFP.

**I-11. Addenda to the RFP.** If it becomes necessary to revise any part of this RFP before the proposal response date, addenda will be posted to the Commission's website under the original RFP document. It is the responsibility of the Proposer to periodically check the website for any new information or addenda to the RFP.

The Commission may revise a published advertisement. If the Commission revises a published advertisement less than ten days before the RFP due date, the due date will be extended to maintain the minimum ten-day advertisement duration if the revision alters the project scope or selection criteria. Firms are responsible to monitor advertisements/addenda to ensure the submitted proposal complies with any changes in the published advertisement.

**I-12. Response.** To be considered, proposals must be delivered to the Pennsylvania Turnpike Commission's Contracts Administration Department, Attention: Wanda Metzger, on or before **2:00 PM** local time on August 18, 2016. The Pennsylvania Turnpike Commission is located at 700 South Eisenhower Boulevard, Middletown, PA 17057 (Street address). Our mailing Address is P. O. Box 67676, Harrisburg, PA 17106.

**Please note that use of U.S. Mail, FedEx, UPS, or other delivery method, does not guarantee delivery to the Contracts Administration Department by the above listed time for submission.** Proposers mailing proposals should allow sufficient delivery time to ensure timely receipt of their proposals. If the Commission office location to which proposals are to be delivered is closed on the proposal response date, due to inclement weather, natural disaster, or any other cause, the deadline for submission shall be automatically extended until the next Commission business day on which the office is open. Unless the Proposers are otherwise notified by the Commission, the time for submission of proposals shall remain the same.

**I-13. Proposals.** To be considered, Proposers should submit a complete response to this RFP, using the format provided in PART II. Each proposal should be submitted in six (6) hard copies of the Technical Submittal sealed in one envelope, six (6) hard copies of the Diverse Business (DB) participation submittal sealed in one envelope, and six (6) hard copies of the Cost Submittal sealed in

one envelope. In addition to the hard copies of the proposal, two **complete and exact electronic copies** of the Technical, Cost and DB submittals, along with all requested documents shall be provided on USB flash drives in Microsoft Office or Microsoft Office-compatible format or PDF format. For the avoidance of doubt, two (2) USB flash drives containing the Cost submittals shall be sealed with the hard copies of the Cost submittals, two (2) flash drives containing the Technical submittal shall be sealed in the Technical package, and two (2) flash drives containing the DB submittals shall be sealed with the DB package. The electronic copies must be a mirror image of the hard copy. Proposer should ensure that there is no costing information in the technical submittal. The USB flash drives should clearly identify the Proposer and include the name and version number of the virus scanning software that was used to scan each flash drive before it was submitted. The Proposer shall present the proposal to the Contracts Administration Department only. No other distribution of proposals will be made by the Proposer. Each proposal page should be numbered for ease of reference.

An official authorized to bind the Proposer to its provisions must sign the proposal. If the official signs the Proposal Cover Sheet (Appendix B to this RFP) and the Proposal Cover Sheet is attached to the proposal, the requirement will be met. For this RFP, the proposal must remain valid for at least 120 days. Moreover, the contents of the proposal of the selected Proposer will become contractual obligations if a contract is entered into.

Each and every Proposer submitting a proposal specifically waives any right to withdraw or modify it, except as hereinafter provided. Proposals may be withdrawn by written or fax notice (fax number (717) 986-8714) received at the Commission's address for proposal delivery prior to the exact hour and date specified for proposal receipt.

Overnight Delivery Address:  
Contracts Administration Department  
Attn: Wanda Metzger  
PA Turnpike Commission  
700 South Eisenhower Blvd.  
Middletown, PA 17057

US Mail Delivery Address:  
Contracts Administration Department  
Attn: Wanda Metzger  
PA Turnpike Commission  
P.O. Box 67676  
Harrisburg, PA 17106

However, if the Proposer chooses to attempt to provide such written notice by fax transmission, the Commission shall not be responsible or liable for errors in fax transmission. A proposal may also be withdrawn in person by a Proposer or its authorized representative, provided his/her identity is made known and he/she signs a receipt for the proposal, but only if the withdrawal is made prior to the exact hour and date set for proposal receipt. A proposal may only be modified by the submission of a new sealed proposal or submission of a sealed modification which complies with the requirements of this solicitation.

**I-14. Economy of Preparation.** Proposals should be prepared simply and economically, providing a straightforward, concise description of the Proposer's ability to meet the requirements of the RFP. Technical Submittals described in Part II-1.A through II-1.G **Proposals shall not exceed a total of 50 single-sided pages**, including resumes. Disadvantaged Business Submittals and Cost Submittals, described in Part II-2 and II-3 respectively, shall not exceed three (3) pages per submittal. Double-sided printing is preferred. Proposers should not include general marketing materials or other superfluous information that is unrelated to this project.

**I-15. Discussions for Clarification.** Proposers who submit proposals may be required to make an oral or written clarification of their proposals to the Issuing Office through the Contract Administration

Department to ensure thorough mutual understanding and Proposer responsiveness to the solicitation requirements. The Issuing Office through the Contract Administration Department will initiate requests for clarification.

**I-16. Best and Final Offers.** The Issuing Office reserves the right to conduct discussions with Proposers for the purpose of obtaining “best and final offers.” To obtain best and final offers from Proposers, the Issuing Office may do one or more of the following: a) enter into pre-selection negotiations; b) schedule oral presentations; and c) request revised proposals. The Issuing Office will limit any discussions to responsible Proposers whose proposals the Issuing Office has determined to be reasonably susceptible of being selected for award.

**I-17. Prime Proposer Responsibilities.** The selected Proposer will be required to assume responsibility for all services offered in its proposal whether or not it produces them. Further, the Commission will consider the selected Proposer to be the sole point of contact with regard to contractual matters.

**I-18. Proposal Contents.** Proposals will be held in confidence and will not be revealed or discussed with competitors, unless disclosure is required to be made (i) under the provisions of any Commonwealth or United States statute or regulation; or (ii) by rule or order of any court of competent jurisdiction. All material submitted with the proposal becomes the property of the Pennsylvania Turnpike Commission and may be returned only at the Commission’s option. Proposals submitted to the Commission may be reviewed and evaluated by any person other than competing Proposers at the discretion of the Commission. The Commission has the right to use any or all ideas presented in any proposal. Selection or rejection of the proposal does not affect this right.

In accordance with the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. § 67.707 (Production of Certain Records), Proposers shall identify any and all portions of their Proposal that contains confidential proprietary information or is protected by a trade secret. Proposals shall include a written statement signed by a representative of the company/firm identifying the specific portion(s) of the Proposal that contains the trade secret or confidential proprietary information.

Proposers should note that “trade secrets” and “confidential proprietary information” are exempt from access under Section 708(b)(11) of the RTKL. Section 102 defines both “trade secrets” and “confidential proprietary information” as follows:

Confidential proprietary information: Commercial or financial information received by an agency: (1) which is privileged or confidential; **and** (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

Trade secret: Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; **and** (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term includes data processing software by an agency under a licensing agreement prohibiting disclosure.

65 P.S. §67.102 (emphasis added).

The Office of Open Records has determined that a third party must establish a trade secret based upon factors established by the appellate courts, which include the following:

the extent to which the information is known outside of his business;  
the extent to which the information is known by employees and others in the business;  
the extent of measures taken to guard the secrecy of the information;  
the value of the information to his business and to competitors;  
the amount of effort or money expended in developing the information; and  
the ease of difficulty with which the information could be properly acquired or duplicated by others.

*See Crum v. Bridgestone/Firestone North Amer. Tire.*, 907 A.2d 578, 585 (Pa. Super. 2006).

The Office of Open Records also notes that with regard to “confidential proprietary information the standard is equally high and may only be established when the party asserting protection shows that the information at issue is either ‘commercial’ or ‘financial’ and is privileged or confidential, and the disclosure *would* cause substantial competitive harm.” (emphasis in original).

For more information regarding the RTKL, visit the Office of Open Records’ website at [www.openrecords.state.pa.us](http://www.openrecords.state.pa.us).

**I-19. Debriefing Conferences.** Proposers whose proposals are not selected will be notified of the name of the selected Proposer and given the opportunity to be debriefed, at the Proposer’s request. The Issuing Office will schedule the time and location of the debriefing. The Proposer will not be compared with other Proposers.

**I-20. News Releases.** News releases pertaining to this project will not be made without prior Commission approval, and then only in coordination with the Issuing Office.

**I-21. Commission Participation.** Unless specifically noted in this section, Proposers must provide all services to complete the identified work. The Office of Information Technology will not provide office space, reproduction facilities, or other logistical support.

**I-22. Cost Submittal.** The cost submittal shall be placed in a separately sealed envelope within the sealed proposal and kept separate from the technical submittal.

**I-23. Term of Contract.** The term of the contract will commence on the Effective Date (as defined below) and will end no later than four (4) years after the Effective Date. The Commission shall fix the Effective Date after the contract has been fully executed by the Contractor and by the Commission and all approvals required by Commission contracting procedures have been obtained.

**I-24. Proposer’s Representations and Authorizations.** Each Proposer by submitting its proposal understands, represents, and acknowledges that:

- a. All information provided by, and representations made by, the Proposer in the proposal are material and important and will be relied upon by the Issuing Office in awarding the contract(s). Any misstatement, omission or misrepresentation shall be treated as fraudulent concealment from the Issuing Office of the true facts relating to the submission of this proposal. A misrepresentation shall be punishable under 18 Pa. C.S. 4904.

- b. The price(s) and amount of this proposal have been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer.
- c. Neither the price(s) nor the amount of the proposal, and neither the approximate price(s) nor the approximate amount of this proposal, have been disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed on or before the proposal submission deadline specified in the response section of this RFP.
- d. No attempt has been made or will be made to induce any firm or person to refrain from submitting a proposal on this contract, or to submit a proposal higher than this proposal, or to submit any intentionally high or noncompetitive proposal or other form of complementary proposal.
- e. The proposal is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal.
- f. To the best knowledge of the person signing the proposal for the Proposer, the Proposer, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four (4) years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as disclosed by the Proposer in its proposal.
- g. To the best of the knowledge of the person signing the proposal for the Proposer and except as otherwise disclosed by the Proposer in its proposal, the Proposer has no outstanding, delinquent obligations to the Commonwealth including, but not limited to, any state tax liability not being contested on appeal or other obligation of the Proposer that is owed to the Commonwealth.
- h. The Proposer is not currently under suspension or debarment by the Commonwealth, or any other state, or the federal government, and if the Proposer cannot certify, then it shall submit along with the proposal a written explanation of why such certification cannot be made.
- i. The Proposer has not, under separate contract with the Issuing Office, made any recommendations to the Issuing Office concerning the need for the services described in the proposal or the specifications for the services described in the proposal.
- j. Each Proposer, by submitting its proposal, authorizes all Commonwealth agencies to release to the Commission information related to liabilities to the Commonwealth including, but not limited to, taxes, unemployment compensation, and workers' compensation liabilities.

**I-25. Indemnification.** The Proposer shall be responsible for, and shall indemnify, defend, and hold harmless the Commission and its Commissioners, officers, employees, and agents from any claim, liability, damages, losses, causes of action, and expenses, including reasonable attorneys' fees, arising from damage to life or bodily injury or real or tangible personal property caused by the negligence or other tortious acts, errors, and omissions of Proposer, its employees, or its subcontractors while engaged

in performing the work of the Agreement or while present on the Commission's premises, and for breach of the Agreement regarding the use or nondisclosure of proprietary and confidential information where it is determined that Proposer is responsible for any use of such information not permitted by the Agreement. The indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or its subcontractors under Workers' Compensation Acts, Disability Benefits Acts, or other Employee Benefit Act.

**I-26. Insurance.** Proposer will comply with the Insurance requirements as described in Appendix C - Insurance Specification.

**I-27. Diverse Business (DB) Requirements.** Proposer will comply with the DB Requirements as described in Appendix D – Diverse Business (DB) Requirements.

## **PART II**

### **INFORMATION REQUIRED FROM PROPOSERS**

Proposals must be submitted in the format, including heading descriptions, outlined below. To be considered, the proposal must respond to all requirements in this part of the RFP. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. All cost data relating to this proposal and all Diverse Business cost data should be kept separate from and not included in the Technical Submittal. Each proposal shall consist of three separately sealed submittals:

1. Technical Submittal, which shall be a response to RFP **Part II, Section II-1**;
2. Diverse Business Participation Submittal, in response to RFP **Part II, Section II-2**; and
3. Cost Submittal, in response to RFP **Part II, Section II-3**.

The Commission reserves the right to request additional information which, in the Commission's opinion, is necessary to assure that the Proposer's competence, number of qualified employees, business organization, and financial resources are adequate to perform according to the RFP.

The Commission may make such investigations as deemed necessary to determine the ability of the Proposer to perform the work, and the Proposer shall furnish to the Issuing Office all such information and data for this purpose as requested by the Commission. The Commission reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy the Commission that such Proposer is properly qualified to carry out the obligations of the agreement and to complete the work specified.

#### **II-1 Technical Submittal.**

##### **A. Proposal Cover Sheet (See Appendix B)**

Show the name of your firm, Federal I.D. number, address, name of contact person, contact person's email and telephone number, date and the subject: Broadband Network/ Fiber Optic Public-Private Partnership (P3), RFP 16-10340-7495. Appendix B must be signed by an individual who is authorized to negotiate terms, render binding decisions and commit your firm's resources. In addition it is required that all information requested in Appendix B be provided including information pertaining to location of office performing the work, contact information, listing of all Pennsylvania offices and total number of Pennsylvania employees, and location of company headquarters.

##### **B. Table of Contents**

Include a clear identification of the material by section and by page number.

##### **C. Executive Summary**

Summarize your understanding of the work to be done and make a positive commitment to perform the work necessary. This section should summarize the key points of your submittal. (Limit to two pages.) Include in this section or in a transmittal letter/cover page a statement regarding full disclosure of any potential conflict with the State Adverse Interest of

State Advisor or Consultant Statute as instructed in Proposal Section 1.6 Contractor Integrity Provisions.

D. Firm Overview

Provide a brief history and description of your firm's business organization and its legal service expertise and experience as it relates to the scope, requirements and tasks discussed in Part IV of this RFP. Include the location of offices and the number and types of attorneys, consultants or other relevant professional staff in each office. Discuss your firm's presence in and commitment to the Commonwealth of Pennsylvania. Include a discussion of the specific expertise and services that distinguish your firm.

E. Personnel

Provide the names, proposed roles, years of P3 experience, background and experience, current professional licenses, office location and availability of the consulting personnel that would perform the legal services as described in Part IV of this RFP. Specifically identify the primary person(s) who will be responsible for managing the relationship with the Commission during this endeavor. Also identify the key personnel who will be most actively engaged on this assignment and delivering the bulk of the services. Proposer must submit a current resume for all proposed staff listing relevant experience and applicable professional affiliations. Do not include resumes for individuals who will not be actively involved in the project.

F. Relevant Experience and Expertise

Provide a narrative statement regarding your legal services expertise and experience as it relates to Part IV of this RFP. Additionally include a statement regarding your understanding of the scope, requirements, and tasks as outlined in this RFP and your ability to provide legal services in accordance with the same.

Describe your firm's experience in providing similar legal services to other clients, especially other governmental entities and/or similar public/private sector transportation organizations. Describe the business practices that enable you to complete these tasks in an efficient, timely and, at times, expeditious manner.

Provide a list of three references of clients for which your firm has performed similar work, as described in this RFP, within the past three years.

Include a statement regarding any other relevant specialized legal services your firm may offer.

G. Approach

Provide a description of the proposed approach/methodology that you will follow, along with a project plan and realistic timeline that identifies the phases and tasks required to complete the scope, requirements and tasks defined in Part IV. Include in this section the deliverables and reports that will be provided, the project controls that will be used, and the tasks that will be performed.

Provide a description of all of the deliverables that you will provide as an output of the project plan.

Provide relevant samples or summaries of deliverables and project plans from similar services that your firm was primarily responsible for producing.

## **II-2 Diverse Business (DB) Requirements (Appendix D).**

The Commission's Diverse Business (DB) Requirements for this procurement and a resulting contract are identified in Appendix D. There is no minimum participation level (MPL) for DBs established for this contract. However, the utilization of DBs are encouraged and will be considered as a criteria in the evaluation of proposals and may be considered as a factor in the Commission's selection of a firm for this contract.

The proposer must include in its DB participation submittal that it meets the requirements set forth in the Commission's DB Requirements - Appendix D. In particular, the proposer shall address the section of the DB Requirements labeled, "Actions Required by Proposer during the procurement/consultant selection phase". In addition, the DB participation submittal shall indicate the amount of DB participation incurred in the proposal in terms of dollars committed or percentage of total contract amount.

## **II-3 Cost Submittal.**

The information requested in this section shall constitute your cost submittal. **THE COST SUBMITTAL SHALL BE PLACED IN A SEPARATE SEALED ENVELOPE WITHIN THE SEALED PROPOSAL AND ON A USB FLASH DRIVE, SEPARATE FROM THE TECHNICAL SUBMITTAL. TWO (2) FLASH DRIVES SHALL BE SUBMITTED WITH EACH ONE CONTAINING A COMPLETE COPY OF THE COST SUBMITTAL.**

Proposers should **not** include any assumptions in their cost submittals. If the proposer includes assumptions in its cost submittal, the Issuing Office may reject the proposal. Proposers should direct in writing to the Issuing Office pursuant to Part I-10, Questions and Answers of this RFP any questions about whether a cost or other component is included or applies. All Proposers will then have the benefit of the Issuing Office's written answer so that all proposals are submitted on the same basis.

The Proposer must complete Appendix E (Cost Breakdown.) Proposer must provide information that identifies the Resources (by position) that will be devoted to the effort and the loaded rates for those resources.

The selected Proposer shall only perform work on the Contract after the Effective Date is affixed and the fully-executed contract sent to the selected Proposer. The Commission shall issue a written Notice to Proceed to the selected Proposer authorizing the work to begin on a date which is on or after the Effective Date. The selected Proposer shall not start the performance of any work prior to the date set forth in the Notice of Proceed and the Commission shall not be liable to pay the selected Proposer for any service or work performed or expenses incurred before the date set forth in the Notice to Proceed. No Commission employee has the authority to verbally direct the commencement of any work under the Contract.

## PART III

### CRITERIA FOR SELECTION

**III-1. Mandatory Responsiveness Requirements.** To be eligible for selection, a proposal shall be (a) timely received from a Proposer; and (b) properly signed by the Proposer.

**III-2. Technical Nonconforming Proposals.** The two (2) Mandatory Responsiveness Requirements set forth in Section III-1 above (a&b) are the only RFP requirements that the Commission will consider to be non-waivable. The Issuing Office reserves the right, in its sole discretion, to (1) waive any other technical or immaterial nonconformities in the proposal, (2) allow the Proposer to cure the nonconformity, or (3) consider the nonconformity in the evaluation of the proposal.

**III-3. Proposal Evaluation.** Proposals will be reviewed, evaluated, and rated by a Technical Evaluation Team (TET) of qualified personnel based on the evaluation criteria listed below. The TET will present the evaluations to the Professional Services Procurement Committee (PSPC). The PSPC will review the TET's evaluation and provide the Commission with the firm(s) determined to be highly recommended for this assignment.

The Commission will select the most highly qualified firm for the assignment or the firm whose proposal is determined to be most advantageous to the Commission by considering the TET's evaluation and the PSPC's determination as to each firm's rating. In making the PSPC's determination and the Commission's decision, additional selection factors may be considered, taking into account the estimated value, scope, complexity and professional nature of the services to be rendered and any other relevant circumstances. Additional selection factors may include, when applicable, the following: geographic location and proximity of the firm, firm's Pennsylvania presence or utilization of Pennsylvania employees for the assignment; equitable distribution of work; diversity inclusion; and any other relevant factors as determined as appropriate by the Commission.

Award will only be made to a Proposer determined to be responsive and responsible in accordance with Commonwealth Management Directive 215.9, Contractor Responsibility Program.

**III-4. Evaluation Criteria.** The following criteria will be used, in order of relative importance from the highest to the lowest, in evaluating each proposal:

#### **1. Proposer and Personnel Qualifications and Experience**

- a. Proposer's relevant experience and expertise in providing legal services for transportation public-private partnerships as it relates to the scope, requirements, and tasks discussed in Part IV of this RFP.
- b. The extent to which a proposer can demonstrate a proven record of successfully providing assistance and guidance to public sector transportation entities in the areas of project development, project delivery, and federal and state requirements for P3s.
- c. Demonstrated ability to provide transportation P3 advisory services resulting in transactions that deliver savings and best value to the public entity.
- d. Qualifications, experience and competency of professional personnel who will be assigned to the contract by the Proposer including tenure with firm, length of time in the industry and type of experience.

- e. Financial ability of the Proposer to undertake a project of this size.
- f. Response of references if the Commission elects to solicit them.

**2. Approach**

- a. Understanding of the Commission's needs and scope of work.
- b. Soundness of proposed approach, methodology, and deliverables for providing legal services as it relates to the scope, requirements and tasks discussed in Part IV of this RFP.
- c. Responsiveness to the Commission's desire for expeditious timeline for completion.
- d. Quality, completeness and applicability of sample deliverables provided or summarized.
- e. Responsiveness, organization, and clarity of Proposal.

**3. Cost.**

While this area may be weighted heavily, it will not normally be the deciding factor in the selection process. The Commission reserves the right to select a proposal based upon all the factors listed above, and will not necessarily choose the firm offering the best price. The Commission will select the firm with the proposal that best meets its needs, at the sole discretion of the Commission.

- 4. Commitment to Diversity and Inclusion.** This refers to the inclusion of DB firms, as described in Part II-2. Participation may be measured in terms of total dollars committed or percentage of total contract amount to certified DB firms.

## PART IV

### WORK STATEMENT

#### IV-1. Objectives.

- a. **General.** The Commission intends to enter into a public-private partnership (P3) in which a private development entity would design, build, finance, operate and maintain a broadband network in the Turnpike right of way for the benefit of the Commission and the private entity. The broadband network will consist of fiber optic cable, wireless antennas, towers, and related appurtenances.
- b. **Specific.** The Commission's specific goals for the project are as follows:
  1. Develop and enter into a Public-Private Partnership Agreement that represents the best value to the Commission;
  2. Deliver long-term savings in communications costs;
  3. Provide a reliable network with sufficient bandwidth for existing and future needs;
  4. Build sufficient capacity for future needs of the commonwealth;
  5. Serve as a catalyst for the expansion of affordable broadband services to rural areas and other underserved populations;
  6. Advance the project with minimal interference with the Commission's existing operations and future plans;

#### IV-2. Nature and Scope of the Project. - The scope of work is expected to include, but is not limited to include the following:

- a. Participating in meetings with the Commission, staff and other personnel, counsel and/or consultants and commonwealth agencies to discuss the P3 proposal;
- b. Evaluating proposed project delivery methods and plans with Commission personnel and/or consultants;
- c. Evaluating required permits and approvals identified by the P3 proposers;
- d. Evaluating with Commission personnel or consultants, the proposers' financial documents, financing plans and operation plans;
- e. Negotiating, in conjunction with Commission personnel, attorneys, consultants, and other interested parties, the public-private transportation partnership agreement.
- f. Participating in presentations to the Commission's decision makers concerning P3 proposals;

- g. Drafting legal documents relating to the P3 transaction, including a public-private transportation partnership agreement, instructions to proposers, and any other legal documents required to implement the project;
- h. Providing other general legal advice and counsel regarding evaluation, negotiation, and financing of P3 proposals pursuant to the P3 Law.

**IV-3. Requirements.** The selected law firm will be required to staff the project and deliver the services described in Section IV-2 of this RFP to assist the Commission on an ambitious schedule which is currently planned as follows: Issuance of the P3 Request for Qualifications in the fourth quarter of 2016; evaluation and shortlisting of firms in the first quarter of 2017; conducting a series of meetings with the shortlisted proposers and finalizing the draft P3 RFP documents in the second quarter of 2017; selecting a proposer in the third quarter of 2017; and achieving commercial and financial close in the third or fourth quarter of 2017.

**IV-4. Tasks.** The selected law firm will provide the following tasks, as directed:

- a. Request for Qualifications (RFQ) Phase services
  - 1. Assist with documentation of the project background, the need for the project, alternatives considered, and project benefits;
  - 2. Assist in the preparation and review the draft RFQ;
  - 3. Review proposer Statements of Qualifications (SOQs) prepared in response to the RFQ;
  - 4. Provide advice regarding the responsiveness of proposal submissions;
  - 5. Provide advice and counsel on the extent to which each proposer has demonstrated the ability to manage P3 legal requirements.
- b. RFP Phase
  - 1. Prepare draft RFP documents, particularly the Instructions to Proposers and the draft Public-Private Transportation Partnership Agreement (PPA);
  - 2. Participate in meetings with proposers;
  - 3. Review proposals for responsiveness;
  - 4. Provide advice and counsel relative to compliance with the P3 Law;
  - 5. Assist Commission staff and consultants with the evaluation of the submitted proposals;
  - 6. Assist with communications with proposers throughout the RFP process;
  - 7. After the Commission's selection of a proposer, provide legal services throughout the commercial and financial close process including tracking and reporting on the proposer's progress toward satisfying the requirements for closing;
- c. Post-Closing Services
  - 1. Prepare executed digital and hard copies of the PPA and related documents;
  - 2. Assist the Commission with interpretations regarding compliance of the Commission and the development entity with the terms of the PPA.
- d. Provide other legal services as requested.

**IV-5. Reports and Project Control.**

**a. Task Plan.** The selected law firm will be required to prepare a work plan for each task that identifies the work elements of each task, the resources assigned to the task, and the time allotted to each element and the deliverable items to be produced.

**b. Status Report.** A monthly periodic progress report covering activities, problems, and recommendations; the report should be keyed to the work plan developed by the Proposer in its proposal, as amended or approved by the Commission.

**c. Problem Identification Report.** An “as required” report, identifying problem areas. The report should describe the problem and its impact on the overall project and on each affected task. It should list possible courses of action with advantages and disadvantages of each, and include Proposer recommendations with supporting rationale.

# Appendix A

## Proposer Questions Form

#		Page		Section		Section Description		Proposer Question		Commission Response	
						Section Description		Proposer Question		Commission Response	
1.											
2.											
3.											
4.											

**APPENDIX B – PROPOSAL COVER SHEET**  
**Pennsylvania Turnpike Commission**  
**LEGAL SERVICES FOR BROADBAND NETWORK P3**

**RFP# 16-10340-7495**

**Enclosed in three separately sealed submittals is the proposal for the Proposer identified below for the above referenced RFP:**

<b>Proposer Information:</b>	
Proposer Name	
Proposer Mailing Address	
Proposer Website	
Proposer Contact Person/Title	
Contact Person's Phone Number	
Contact Person's Fax Number	
Contact Person's Email Address	
Proposer Federal ID Number	
Location of Headquarters	
Location of Office(s) Performing the Work	
Listing of all Pennsylvania Offices and Total Number of Pennsylvania Employees	

<b>Submittals Enclosed and Separately Sealed:</b>
---

<input type="checkbox"/> Technical Submittal <input type="checkbox"/> Diverse Business Participation Submittal <input type="checkbox"/> Cost Submittal
<b>Signature</b>
Signature of an official authorized to bind the Proposer to the provisions contained in the Proposer's proposal: _____
Print Name
Title

**An official authorized to bind the Proposer to its provisions must sign the proposal. If the official signs this Proposal Cover Sheet and the Proposal Cover Sheet is attached to the proposal, the requirement will be met.**

Prior to the commencement of any work and until completion and final payment is made for the work / final acceptance of the work, the Professional Service Contractor (Contractor) will provide and maintain the following minimum levels of insurance at Contractor's own expense. The cost of the required insurance shall be included in the Contractor's cost proposal and no adjustment shall be made to the contract price on account of such costs. Contractor shall furnish Certificates of Insurance evidencing and reflecting the effective date of coverage as outlined below. In no event shall Work be performed until the required evidence of Insurance is provided in accordance with the terms of the contract. Contractor shall be responsible for ensuring that all Sub-contractors are properly insured in accordance with the limits and terms described herein. Contractor shall not permit any Sub-contractor to commence work hereunder until such evidence has been provided to the Contractor.

- a) All insurance shall be procured from insurers permitted to do business in the State in which the project is taking place and having an A.M. Best Rating of at least "A-, Class VIII".
- b) Contractor shall not have a Self-Insured Retention (SIR) on any policy greater than \$50,000, which is the responsibility of the Contractor. If Contractor's policy(ies) has a Self-Insured Retention exceeding \$50,000 on any policy, approval must be received from the Commission prior to starting work. In the event any policy includes an SIR, the Contractor is responsible for payment within the SIR of their policy(ies) and the Additional Insured requirements specified herein shall be offered within the SIR amount(s).
- c) All insurance required herein, with the exception of the Professional Liability Insurance, shall be written on an "occurrence" basis. Claims-Made coverage must include:
  - i. The retroactive date must be on or prior to the start of work under this contract; and
  - ii. The Contractor must purchase "tail coverage/an extended reporting period" or maintain coverage for a period of three years, subsequent to the completion of their work / final payment.
- d) The Contractor's insurance carrier (s) shall agree to provide at least thirty (30) days prior written notice to the Commission in the event coverage is canceled or non-renewed, unless cancellation is for non-payment of premium. In the event of cancellation or non-renewal of coverage(s) for any reason, it is the Contractor's responsibility to replace coverage to comply with the Contract requirements so there is no lapse of coverage for any time period.

In the event the insurance carriers will not issue or endorse their policy(s) to comply with the above it is the responsibility of the Contractor to report any

notice of cancellation or non-renewal at least thirty (30) days prior to the effective date of this notice.

- e) Contractor shall provide the Commission with Certificates of Insurance, evidencing the insurance coverages listed below prior to the start of work of this Project and thereafter upon renewal or replacement of each coverage. The Contractor shall not begin any work until the Commission has reviewed and approved the Certificate of Insurance.

Failure of the Commission to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Commission to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

- f) The Commission, and its Commissioners, officers, employees, and agents shall be added as ADDITIONAL INSUREDS on all liability policies (except Workers' Compensation and Professional Liability Policy, where applicable), for ongoing operations and completed operations on a primary noncontributory basis. Coverage should be provided for a period of three years subsequent to the completion of work/final payment.

The Commission reserves the right to require Contractor to name other parties as additional insureds as required by the Commission.

- g) Waiver of Rights of Subrogation: Contractor shall waive all rights of recovery against the Commission and all the additional insureds for loss or damage covered by any of the insurance maintained by the Contractor.
- h) The amount of insurance provided in the aforementioned insurance coverages, shall not be construed to be a limitation of the liability on the part of the Contractor.
- i) The carrying of insurance described shall in no way be interpreted as relieving the Contractor of any responsibility or liability under the contract.
- j) Any type of insurance or any increase in limits of liability not described above which the Contractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
- k) Contractor shall promptly notify the Commission and the appropriate insurance company(ies) in writing of any accident(s) as well as any claim, suit or process received by the insured Contractor arising in the course of operations under the contract. The Contractor shall forward such documents received to his insurance company(ies), as soon as practicable, or as required by its insurance policy(ies).

REQUIRED COVERAGES - the following may be provided through a combination of primary and excess policies in order to meet the minimum limits set forth below:

**1. Workers' Compensation and Employer's Liability:**

Provided in the State in which the work is to be performed and elsewhere as may be required and shall include:

- a) Workers' Compensation Coverage: Statutory Requirements
- b) Employers Liability Limits not less than:
  - Bodily Injury by Accident: \$500,000 Each Accident
  - Bodily Injury by Disease: \$500,000 Each Employee
  - Bodily Injury by Disease: \$500,000 Policy Limit
- c) Includes sole proprietorships and officers of corporation who will be performing the work.
- d) Where applicable, if the Contractor is lending or leasing its employees to the Commission for the work under this contract, it is the Contractor's responsibility to provide the Workers Compensation and Employer's Liability coverage and to have their policy endorsed with the proper Alternate Employer Endorsement.

**2. Commercial General Liability:**

Provided on standard ISO forms or an equivalent form including Premises - Operations, Independent Contractors, Products/Completed Operations, Broad Form Property Damage, Contractual Liability, and Personal Injury and Advertising Injury.

- a) Occurrence Form with the following limits:
  - (1) General Aggregate: \$2,000,000
  - (2) Products/Completed Operations Aggregate: \$2,000,000
  - (3) Each Occurrence: \$1,000,000
  - (4) Personal and Advertising Injury: \$1,000,000

**3. Automobile Liability:**

- a) Coverage to include All Owned, Hired and Non-Owned Vehicles (or "Any Auto"), if you do not have any Owned Vehicles you are still required to maintain coverage for Hired and Non-Owned Vehicles as either a stand-alone policy or endorsed onto the Commercial General Liability policy above
- b) Per Accident Combined Single Limit \$1,000,000

**4. Commercial Umbrella Liability:**

- a) Policy(ies) to apply on a Following Form Basis of the following:
  - (1) Commercial General Liability,
  - (2) Automobile Liability, and
  - (3) Employers Liability Coverage.
  
- b) Minimum Limits of Liability
  - Occurrence Limit: \$4,000,000
  - Aggregate Limit (where applicable): \$4,000,000

**5. Professional Liability Insurance:**

- a) Minimum Limits of Liability
  - Per Claim Limit: \$2,000,000
  - Aggregate Limit: \$2,000,000
  
- b) The Definition of "Covered Services" shall include the services required in the scope of this contract.

## APPENDIX D

### Pennsylvania Turnpike Commission DIVERSE BUSINESS (DB) REQUIREMENTS

**Diverse Business Participation.** The Commission is committed to Diverse Business (DB) participation on competitive contracting opportunities. Firms or entities that have not previously performed work or provided services to the Commission are encouraged to respond to the solicitations. RFPs may include DB participation as part of the criteria for the evaluation of proposals, and the Commission may consider DB participation as a selection factor.

**Minimum Participation Level (MPL).** The minimum participation level (MPL) for the inclusion of DBs will be established in the RFP/advertisement as a percentage.

**(a) General Requirements.** Section 303 of Title 74 of the Pennsylvania Consolidated Statutes, 74 Pa.C.S. § 303, requires proposer on contracts funded pursuant to the provisions of Title 74 (Transportation) and 75 (Vehicle Code) administered and issued by the Commission to make Good Faith Efforts to solicit subconsultants that are Diverse Businesses (DBs) as defined in Section 303. The DB requirements of Section 303 apply to this contract.

Section 303 requires proposers to make Good Faith Efforts, as described below, to solicit subconsultants that are DBs during the proposal process to maximize participation of DBs in competitive contracting opportunities.

The Commission is committed to participation by DBs and will enforce the requirements of Section 303 and this section. Failure to make Good Faith Efforts and demonstrate such Good Faith Efforts in the solicitation of subconsultants may result in the proposer being declared ineligible for the contract.

Proposers shall document and submit to the Commission all Good Faith Efforts, as described in this section, to solicit subconsultants that are DBs during the solicitation process.

Proposers are encouraged to utilize and give consideration to consultants offering to utilize DBs in the selection and award of contracts.

Proposers shall not discriminate on the basis of gender, race, creed or color in the award and performance of contracts in accordance with 62 Pa.C.S. §3701.

Failure to comply with the requirements of Section 303 or this specification may result in the imposition of sanctions as appropriate under section 531 of the Procurement Code, 62 Pa.C.S. § 531 relating to debarment and suspension.

The Commission's Director of the Office of Diversity and Inclusion, or designee, is designated the Responsible Official who shall supervise the DB program and ensure that the Commission complies with the DB program.

**(b) Definitions.** The following definitions apply to terms used in this specification:

**1. Disadvantaged Business** – A business that is owned or controlled by a majority of persons, not limited to members of minority groups, who are subject to racial, social, ethnic prejudice or cultural bias.

**2. Diverse Business** – A disadvantaged business, minority-owned or women-owned business or service-disabled veteran-owned or veteran-owned small business that has been certified by a third-party certifying organization.

**3. Minority-owned Business** – A business owned and controlled by a majority of individuals who are African Americans, Hispanic Americans, Native Americans, Asian Americans, Alaskans or Pacific Islanders.

**4. Professional Services** – An industry of infrequent, technical or unique functions performed by independent contractors or consultants whose occupation is the rendering of the services, including: (1) design professional services as defined in 62 Pa.C.S. § 901 (relating to definitions); (2) legal services; (3) advertising or public relations services; (4) accounting, auditing or actuarial services; (5) security consultant services; (6) computer and information technology services; and (7) insurance underwriting services.

**5. Pro Forma Effort**-The act of completing a form or document identifying efforts to solicit DBs for a project in order to satisfy criteria with little or no expectation that the DBs contacted or identified will perform any of the work.

**6. Service-Disabled Veteran-Owned Small Business** – A business in the United States which is independently owned and controlled by a service-disabled veteran(s), not dominant in its field of operation, and employs 100 or fewer employees.

**7. Subconsultant**- Any individual, partnership, firm, or corporation entering into a contract with the prime consultant for work under the contract, including those providing professional and other services.

**8. Third-party Certifying Organization** – An organization that certifies a small business, minority-owned business, women-owned business or veteran-owned small business as a diverse business. The term includes: (1) the National Minority Supplier Development Council; (2) the Women’s Business Development Enterprise National Council; (3) the Small Business Administration; (4) The Department of Veteran Affairs; (5) the Pennsylvania Unified Certification Program.

**9. Veteran-owned Small Business** –A small business owned and controlled by a veteran or veterans.

**10. Women-Owned Business** – A business owned and controlled by a majority of individuals who are women.

**(c) Actions Required by Proposer during the procurement/consultant selection phase**

**1. Submission Requirements – Consultant Responsiveness.**

- a. **Minimum Participation Level (MPL) Documentation** - If the documentation submitted with the proposal demonstrates that the proposer has identified DBs sufficient to meet the MPL established for this contract, the proposer will be deemed to have satisfied the DB requirement during this phase. The proposer is required to provide the business name and business address of each DB and supporting documentation that includes proof of certification.

If the consultant’s proposal demonstrates the consultant’s inability to meet the MPL established for this contract, the proposer shall demonstrate Good Faith Efforts with its proposal. Failure to submit the required documentation demonstrating Good Faith Efforts as further described below with the proposal may result in a rejection of the proposal.

- b. If no MPL has been established for this contract, the proposer is required to either provide a statement of intent that it will self-perform 100% of the work for the agreement, or demonstrate Good Faith Efforts to solicit subconsultants that are DBs. In either case documentation shall be provided with the proposal.

Failure to submit the required information identified above with the proposal may result in a rejection of the proposal.

**2. Good Faith Effort Requirements:** The documentation of Good Faith Efforts must include the business name and business address of each DB considered. Supporting documentation must also include proof of certification and any explanation of Good Faith Efforts the proposer would like the Commission to consider. Any services to be performed by a DB are required to be readily identifiable to the agreement. Good Faith efforts are demonstrated by seeking out DB participation in the project given all relevant circumstances. The Commission requires the proposer to demonstrate more than Pro Forma Efforts. Evidence of Good Faith Efforts includes, but is not limited to:

- a. Consultant solicits through all reasonable and available means the interest of all certified DBs with the capacity to perform the scope of work set forth in the agreement.
- b. The proposer must provide written notification at least 5 business days before proposals are due to allow the DBs to respond to the solicitation.
- c. The proposer must determine with certainty if DBs are interested by taking appropriate steps to follow up initial solicitations.
- d. The proposer must make efforts to select portions of the work to be performed by DBs to include, where appropriate, breaking out contract work into economically feasible units to facilitate DB participation;
- e. It is the proposer's responsibility to make a portion of the work available to DBs and, to select those portions of the work, so as to facilitate DB participation.
- f. The proposer shall provide evidence of such negotiations that include the names, addresses, and telephone numbers of DBs considered; A description of the information provided regarding the required work and services for the work selected for subconsultants; and evidence as to why additional agreements could not be reached for DBs to perform the work.
- g. Proposers cannot reject or withhold solicitation of DBs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- h. The DB's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example union v. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals in the proposer's efforts to meet the Good Faith Efforts requirement.
- i. Efforts to assist interested DBs in obtaining bonding, lines of credit or insurance.

**3. Actions Taken by the Commission.** As part of the proposal review process, the Commission will review the submissions to determine whether the proposer has complied with Section 303 and this requirement in the selection of DB subconsultants. The Commission will determine whether the proposer has either met the MPL or provided acceptable documentation as noted above. The Commission reserves the right to contact proposers for clarification during the review and negotiation process.

If the Commission determines that the proposer has failed to either meet the MPL or provide acceptable documentation as noted above, the proposal may be rejected.

**(d) Consultant Requirements During Performance of Services.**

**1. Replacement of a DB Subconsultant.** Consultant must continue good faith efforts through completion of the contract. The obligation to make Good Faith Efforts to solicit subconsultants for any type of service extends to additional work required for any service which is identified to be performed by a DB. If at any time during the performance of the work, it becomes necessary to replace or add a subconsultant that is a DB, the consultant, as appropriate, shall immediately notify the Commission and seek approval in writing in accordance with the Agreement of the need to replace the DB, which notice shall include the reasons for the replacement. If a prime consultant who originally indicated that it would self-perform all work subsequently decides to use a subconsultant for any work under the contract, the consultant must submit documentation of all Good Faith Efforts as to the work for which a subconsultant is obtained.

**2. Records.** Maintain project records as are necessary to evaluate DB compliance and as necessary to perform the reporting function addressed below. Maintain all records for a period of 3 years following acceptance of final payment. Make these records available for inspection by the Commission, its designees or agents. These records should indicate:

**2.a.** The number of DB and non-DB subconsultants and the type of services performed on or incorporated in this project.

**2.b.** The progress and efforts made in seeking out DB subconsultant organizations and individual DB consultants for work on this project to increase the amount of DB participation and/or to maintain the commitments made at the time of the proposal to DBs.

**2.c.** Documentation of all correspondence, contacts, telephone calls, and other contacts made to obtain the service of DBs on this project.

**3. Reports.** Maintain monthly reports and submit reports as required by the Commission concerning those contracts and other business executed with DBs with respect to the records referred to in subsection (e)2. above in such form and manner as prescribed by the Commission. At a minimum, the Reports shall contain the following:

**3.a** The number of Contracts with DBs noting the type of services provided, including the execution date of each contract.

**3.b** The amounts paid to each DB during the month, the dates of payment, and the overall amounts paid to date. If no payments are made to a DB during the month, enter a zero (\$0) payment.

**3.c** Upon request and upon completion of individual DB firm's work, submit paid invoices or a certification attesting to the actual amount paid. In the event the actual amount paid is less than the award amount, a complete explanation of difference is required.

**4. Subconsultant Contracts**

**4.a.** Subcontracts with DB firms will not contain provisions waiving legal rights or remedies provided by laws or regulations of the Federal Government or the Commonwealth of Pennsylvania or the Commission through contract provisions or regulations.

**4.b.** Prime consultant will not impose provisions on DB subconsultants that are more onerous or restrictive than the terms of the prime's contract with non-DBs.

**4.c.** Executed copies of subcontracts/purchase orders are to be received by the Commission before the commencement of work by the DB.

**5. Payments to DB Subconsultants.** Payments to DBs are to be made in accordance with the prompt payment requirements of Chapter 39, Subchapter D of the Procurement Code, 62 Pa.C.S. §3931 et seq. Performance of services by a DB subconsultant in accordance with the terms of the contract entitles the subconsultant to payment.

**(e) Actions to be Taken by Commission After Performance of Services.** Following completion of the Consultant's services, the Director of the Commission's Office of Diversity and Inclusion or his/her designee will review the overall DB participation to assess the Consultant's compliance with Section 303 and this contract. Appropriate sanctions may be imposed under 62 Pa.C.S. § 531 (relating to debarment or suspension) for a Consultant's failure to comply with Section 303 and the requirements of the contract.



# Addendum No. 1

RFP # 16-10340-7495

Legal Services for Broadband Network Public-Private Partnership (P3)

**Prospective Respondents: You are hereby notified of the following information in regard to the referenced RFP:**

## REVISION

- 1. Part I, General Information for Proposers, Section I-14 is revised to read:** Proposals should be prepared simply and economically, providing a straightforward, concise description of the Proposer's ability to meet the requirements of the RFP. Technical Submittals described in Part II-1.A through II-1.G, including resumes, shall not exceed 50 sides of paper with content (50 single-sided or 25 double-sided). Double-sided printing is preferred, but not required. Proposers should not include general marketing materials or other superfluous information that is unrelated to this project.

## QUESTIONS & ANSWERS

Following are the answers to questions submitted in response to the above referenced RFP as of August 1, 2016. All of the questions have been listed verbatim, as received by the Pennsylvania Turnpike Commission.

Proposer Questions		Pennsylvania Turnpike Commission (PTC)		RFP #: 16-10340-7495	
#	Page	Section	Section Description	Proposer Question	Commission Response
1.				Does the Commission wish the proposal in response to RFP# 16-10340-7495 be strictly limited to legal services, or should it include technical engineering expertise that may be required?	The RFP is limited to legal services.

2.	5 1	I-23 Appendix E	Term of Contract Cost Submittal Worksheet	Section I-23 states that the contract will be for a term of up to four years. Appendix E requests fully loaded hourly rates for the work effort, but has no provision for changes in rates over the four year period. Please clarify that the cost submittal may include proposed terms for adjusting hourly rates during the term.	Hourly rates submitted in the cost submittal shall remain the same for the contract term.
3.	3	I-14	Economy of Preparation	Section I-14 says the proposal is not to exceed 50 single-sided pages. It also says double-sided printing is preferred. Please clarify your intent. Is it expected that all parts of the proposal be printed double-sided, and that the total number of sides not exceed 50?	See Revision #1 above.
4.	3	I-14	Economy of Preparation	Section I-14 says the "Proposals" are not to exceed 50 single-sided pages. It also says that the "Disadvantaged Business Submittals and Cost Submittals" shall not exceed three pages each. Please clarify your intent. Is it expected that the 50 page limit is inclusive of the Business and Cost Submittals? Or does the 50-page limit apply only to the Technical Submittal?	See Revision #1 above for clarifications on page limitations. Reference to page limitations for Diverse Business Submittals or Cost Submittals has been stricken.

5.	1	Appendix C, Section b.	Self-insured retention	<p>Appendix C says that the proposer “shall not have a Self-Insured Retention (SIR) on any policy greater than \$50,000, which is the responsibility of the Contractor. If Contractor’s policy(ies) has a Self-Insured Retention exceeding \$50,000 on any policy, approval must be received from the Commission prior to starting work.” Our firm’s malpractice policy has a deductible, not a self-insured retention, of \$1,000,000 each claim, \$2,000,000 in the aggregate, and \$100,000 thereafter, which amount, or more, is common for law firms. Please clarify whether this section addresses only self-insured retentions, or also deductibles. If it addresses deductibles, please consider increasing the limit to at least the foregoing amounts for legal malpractice insurance.</p>	<p>This section only addresses self-insured retentions and is not applicable to deductibles.</p>
6.	N/A	N/A	N/A	<p>We request that PTC provide proposers access to more detailed information about the project, such as location, design, financial feasibility analysis, risk analysis, planned phasing, and the like. Among other things, please provide access to the report to the Public-Private Transportation Partnership Board concerning the project.</p>	<p>The Commission’s May 31, 2016 presentation to the Public-Private Transportation Partnership Board is posted on PennDOT’s website (<a href="http://www.PennDOT.gov">www.PennDOT.gov</a>) at the following <a href="#">link</a> under Projects &amp; Programs; Public-Private Partnerships; Meetings; May 31, 2016 P3 Board Presentation.</p>

7.	1 of 4 and 2 of 4, Appendix C	Appendix C, introductory paragraph and paragraph (e)	Minimum Insurance Requirements - Provision of Certificates of Insurance	Please confirm that the Certificates of Insurance are not required to be submitted at the time of submission of the response to the request for proposals.	Correct. Certificates of Insurance are not required to be submitted at the time of submission of proposals. The minimum levels of insurance defined in Appendix C are required prior to the commencement of work.
8.	1 of 4, Appendix C	Appendix C, paragraph (a)	Minimum Insurance Requirements – A.M. Best Rating	If an insurer is not rated by AM Best, will an equivalent rating by Standard & Poor's be acceptable?	An equivalent rating by Standard & Poor's is acceptable.
9.	1 of 4, Appendix C	Appendix C, paragraph (b)	Minimum Insurance Requirements – Self-Insured Retention	Paragraph (b) of Appendix C states that if the Contractor's policy(ies) has a Self-Insured Retention exceeding \$50,000 on any policy, approval must be received from the Commission prior to starting work. Assuming any Self-Insured Retention applicable to any policy exceeds \$50,000, but has been set in conjunction with an insurance broker as being appropriate for a firm of its size and risk profile, does the Commission anticipate any issue providing approval? What factors will the Commission consider in providing approval of a Self-Insured Retention in excess of \$50,000?	This section only addresses self-insured retentions and is not applicable to deductibles. With self-insured retentions in excess of \$50,000, the financials of the contractor are reviewed by the Commission's CFO/ Assistant CFO in order to provide approval.
10.	2 of 4, Appendix C	Appendix C, paragraph (g)	Minimum Insurance Requirements – Waiver of Rights of Subrogation	Please confirm that the requirement that the Contractor waive all rights of recovery against the Commission and all the additional insureds for loss or damage covered by any of the insurance maintained by the Contractor only applies to first party loss insurance policies.	The waiver of subrogation is applicable to the General Liability, Auto Liability, Umbrella/Excess and Workers' Compensation policies.

11.	4 of 4, Appendix C	Appendix C, section 4	Minimum Insurance Requirements – Required Coverages – Commercial Umbrella Liability	If cover is effected under primary and excess layer policies that meet or exceed the requirements for the primary and umbrella policies, will a separate commercial umbrella liability policy still be required?	As long as the primary and excess policies meet the per occurrence and aggregate requirements, no separate commercial umbrella liability policy is needed.
12.	2 of 5, Appendix D	Appendix D, paragraph (b), clause 8	Definition of Third-party Certifying Organization	Is the reference in sub-clause (2) to "Women's Business Development Enterprise National Council" in the definition of "Third-party Certifying Organization" a different entity than the Women's Business Enterprise National Council?	The referenced entity is the Women's Business Enterprise National Council.
13.	13	IV-1	Objectives	Is it anticipated that the contemplated broadband network, including wireless components, be limited to data services, or will it include voice?	The wireless network is envisioned to support the Commission's land mobile radio system.
14.	13	IV-1.b.6	Objectives	Section IV-1.b.6 refers to "Commission's existing operations ..." What are those operations in the right-of-way?	"Operations" includes essential core-business activities including maintenance, repairs, toll collection, construction, traffic management, incident management, and other activities.
15.	13	IV-2.c	Nature and Scope of the Project	Section IV-2.c refers to "evaluating required permits and approvals identified by P3 proposers." Would this effort include advising as to what other federal, state or local permits would be required or regulations that must be addressed?	Yes.

16.	14	IV-2.g	Nature and Scope of the Project	Section IV-2.g refers to “any other legal documents.” Would this potentially include tower site and co-location leases and, as to fiber optic, potential indefeasible rights of use?	The Commission does not currently envision a need for the selected firm to develop such documents.
17.	1	1	Purpose	Is the ability to advise on matters of Pennsylvania law a requirement or is the focus of this procurement on P3 counsel who would work in conjunction with local counsel separately appointed by the Commission or internal counsel on any specific PA law matters?	The ability to advise on matters of Pennsylvania law is a requirement of the legal advisor. As described in Section I-4 and IV-4(b)4, the legal advisor is required to advise on matters related to the P3 Law, which is a Pennsylvania law.
18.	30	Appendix E	Cost Submittal Worksheet	Would the Commission be open to alternatives to fully loaded hourly rates? Is the Commission interested in blended rate alternatives for example?	No. Hourly rates must be provided in the manner required in Appendix E – Cost Submittal Worksheet.

All other terms, conditions and requirements of the original RFP dated July 22, 2016 remain unchanged unless modified by this Addendum.