

March 4, 2020

**ADDENDUM NO. 1**

**PROJECT:** Design-Build Program for the NYC Borough Based Jail System, Detention Facilities in Manhattan, the Bronx, Brooklyn, and Queens  
**PIN:** 8502020CR0049P-60P

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THIS ADDENDUM IS ISSUED FOR THE PURPOSE OF AMENDING THE REQUIREMENTS OF THIS REQUEST FOR QUALIFICATIONS AND IS HEREBY MADE A PART OF SAID REQUEST FOR QUALIFICATIONS TO THE SAME EXTENT AS THOUGH IT WERE ORIGINALLY THEREIN.

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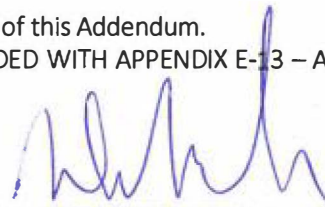
Request for Qualifications

1. Amendments to the RFQ, provided in the attached documents in redline, have been made affecting the following RFQ and pages:
  - RFQ Page i & ii (text change)
  - RFQ Page 6 (text change)
  - Appendix A Page 3 (text change)
  - Appendix H (added)A clean, revised copy of the entire RFQ is also included with this Addendum No. 1.
  
2. Questions and DDC Responses from the Pre-Submission Conference are attached to this addendum.
  - RFI Q&A

Contact: Nick Mendoza  
Email: nycbbj@ddc.nyc.gov  
Phone: 718-391-2022

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By signing in the space provided below, the Proposer acknowledges receipt of this Addendum. THIS ADDENDUM MUST BE SIGNED BY THE SUBMITTING FIRM AND INCLUDED WITH APPENDIX E-13 – Acknowledgement of Addenda.



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Nick Mendoza  
Agency Chief Contracting Officer

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Name of Submitting Firm

By \_\_\_\_\_

Title \_\_\_\_\_

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**APPENDICES**

**APPENDIX A: ABBREVIATIONS AND DEFINITIONS**

**APPENDIX B: PROJECT EXCELLENCE**

**APPENDIX C: PROJECT DESCRIPTION, DESIGN-BUILDER RESPONSIBILITIES AND PROJECT STATUS**

- C-1: Manhattan Detention Facility
- C-2: The Bronx Detention Facility
- C-3: Brooklyn Detention Facility
- C-4: Queens Detention Facility

**APPENDIX D: FORMAT AND ORGANIZATION FOR STATEMENT OF QUALIFICATIONS**

**APPENDIX E: SOQ FORMS**

- E-1: Construction Employment Report
- E-2: Doing Business Data Form
- E-3: Iranian Divestment Act
- E-4: Preliminary Insurance Information
- E-5: Safety Questionnaire
- E-6: Financial Questionnaire
- E-7: Project Profile Form
- E-8: Project Evaluation Form
- E-9: Prior Experience Working Together Form
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- E-13: Acknowledgment of Addenda Form

**APPENDIX F: DRAFT REQUEST FOR PROPOSALS (PHASE II) INFORMATION**

**APPENDIX G: LIST OF CONSULTANT SUPPORT TEAM**

**APPENDIX H: SUMMARY OF BBJ SELECT DBA PROVISIONS**

maximum budget for each Detention Facility is contained in the Project Description Appendices.

DDC is in the process of developing its form DB Agreement which will be used for each Detention Facility. A draft form DB Agreement will be provided with the subsequent RFP. ~~The DDC plans, if administratively feasible, to issue an Addendum to this RFQ prior to the SOQ Due Date describing expected key terms and provisions of the DB Agreement.~~ [A summary of key terms and provisions that DDC anticipates including in the DB Agreement is attached in Appendix H \(\*Summary of BBJ Select DBA Provisions\*\).](#)

(b) **Anticipated Payment Terms**

The DB Agreement will provide for a system of progress payments to the Design-Builder based on a percentage of the Work completed for each Detention Facility ~~(such payments and any amounts, where applicable, established by DDC as contract administration amounts for certain risk factors, in the aggregate, the "Contract Price").~~ A description of the method of periodic payment will be provided in the subsequent RFP.

DDC anticipates including provisions in the DB Agreement that (i) provide for the payment of performance incentives and (ii) enable the Design-Builder to submit value engineering proposals to drive shared savings between the City and the Design-Builder. The City reserves the right to implement an award fee program during the post-award phase to further encourage superior performance.

(c) **Insurance and Bonding**

Preliminary information regarding insurance that will be required for the Detention Facilities is set forth in Appendix E-4 (*Preliminary Insurance Information*). Details and requirements regarding insurance will be set forth in the RFP. DDC will require the Selected Proposer to provide evidence of insurance by certified copy (or certificates of such insurance) of complete policy or policies endorsed.

Each DB Agreement will require the Design-Builder to post a performance bond ~~and payment bond~~ sized to 50% of the Contract Price, [and a payment bond sized to 100% of the Contract Price, for](#) the benefit of DDC.

**1.8 Project Information**

High-level project descriptions for each Detention Facility are set forth in the Project Description Appendices.

This RFQ is being issued concurrently with the process of development and review of the final scope of Work for each Detention Facility. As a result of such process, or otherwise, any Work or project description included or described in this RFQ is subject to modification or adjustment, in DDC's sole discretion.

For more information about the City's plan to close the Rikers Island Jail Complex and replace it with a smaller network of Detention Facilities, please visit: <https://rikers.cityofnewyork.us/>

To view copies of BBJ's City Environmental Quality Review documents, including the Final Scope of Work and the Final Environmental Impact Statement, please visit: <https://a002-ceqraccess.nyc.gov/ceqr/ProjectInformation/ProjectDetail/13546-18DOC001Y#b>

A capital project scope development study ("CPSD") was also performed. A copy of the final draft CPSD is available upon request by emailing DDC's Designated Representative, identified in Section 3.2 (*Rules of Contact*).

**1.9 Early Works**

- (a) Prior to, or simultaneous with this RFQ, DDC has procured, or is procuring through separate solicitations and procurements, certain Early Works to be completed at each of the project sites for the Bronx Detention Facility, the Brooklyn Detention Facility and the Queens Detention Facility. Such Early Works are described in further detail in the applicable Project Description Appendices. Such Early Works are subject to change at any time during this RFQ, and may change based on the needs of the BBJ, the City or DDC, as may be deemed necessary by DDC.
- (b) Proposers or Persons participating in the Early Works projects under the BBJ are not precluded from participating in this solicitation for the Detention Facilities.

“**Contract Documents**” means the documents identified as such in the DB Agreement, including all performance security instruments, the Design-Builder Proposal, the final design documents and provisions required by law to be inserted in the DB Agreement whether actually inserted or not.

“**Contract Price**” is defined in ~~Section 1.7(b) (Anticipated Payment Terms)~~ [Appendix H \(Summary of BBJ Select DBA Provisions\)](#).

“**CPSD**” is defined in Section 1.8 (*Project Information*).

“**Day**” or “**Days**” means calendar days unless otherwise specifically noted to mean business days.

“**DB Agreement**” means the written agreement between DDC and the Design-Builder setting forth the obligations of the parties with respect to a Detention Facility, including, but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment, and including all provisions required by law to be inserted in the DB Agreement whether actually inserted or not.

“**DB Team**” means Principal Participants, Major Participants, Subcontractors, and all other Persons making up the team and acting on behalf of, or at the direction of, a Proposer or the Design-Builder, as applicable necessary to perform the Work.

“**DBIA**” means the Design-Build Institute of America.

“**DDC**” means the Department of Design and Construction of the City of New York acting by and through the Agency Head thereof, or their duly authorized representative.

“**DDC’s Designated Representative**” is defined in Section 3.2(a) (*Designated DDC Representative*).

“**Design-Build**” or “**DB**” means a project delivery methodology by which a single Design-Builder has responsibility for the design and construction of a project under a single design-build agreement.

“**Design-Build Construction Project Manager**” is the role and person to fill such role identified in number 8 of the table in Section 5.7(c) (*Description of Key Personnel Roles*).

“**Design-Build Project Executive**” is the role and person to fill such role identified in number 1 of the table in Section 5.7(c) (*Description of Key Personnel Roles*).

“**Design-Build Project Manager**” is the role and person to fill such role identified in number 4 of the table in Section 5.7(c) (*Description of Key Personnel Roles*).

“**Design-Builder**” means the Person selected pursuant to the RFP that enters into the DB Agreement with DDC to design and construct a Detention Facility.

“**Design Integrator**” is the role and person to fill such role identified in number 5 of the table in Section 5.7(c) (*Description of Key Personnel Roles*).

“**Design Lead (Firm)**” means the Major Participant that has responsibility for creative architectural design for each Detention Facility.

“**Design Lead (Individual)**” means the individual that has primary responsibility for creative architectural design for each Detention Facility, as further described in number 2 of the table in Section 5.7(c) (*Description of Key Personnel Roles*).

# APPENDIX H

## SUMMARY OF BBJ SELECT DBA PROVISIONS

## SUMMARY OF SELECT DBA COMMERCIAL TERMS

This document provides a summary of select commercial terms which may be included in a Design-Build Agreement (“**DBA**”) between each Design-Builder and DDC for each Detention Facility (and any associated demolition or related Work) procured in connection with this RFQ (a “**Project**”).

This document is being provided for informational purposes only and is not intended to be referenced for purposes of negotiating on actual terms of the DBA released in connection with any Project’s RFP.

Additionally, the terms included in this document are not final or binding on the DDC or the City of New York, and are subject to change by the DDC, in its sole discretion, at any time during Phase I or Phase II.

<b>A. CONTRACT PRICE, ALLOWANCE AMOUNTS, AND INCENTIVES / AWARD FEES</b>		
<b>1.</b>	<b>Contract Price</b>	The Design-Builder and DDC will enter into a fixed price, lump sum, date-certain design-build agreement under which payments to the Design-Builder will be made pursuant to monthly progress payments based on a percentage of Work completed and paid against the Design-Builder’s schedule of values (the “ <b>Lump Sum Amount</b> ”, with the Allowance Amounts <i>(defined in A.2 Allowance Amounts below)</i> in the aggregate, the “ <b>Contract Price</b> ”).
<b>2.</b>	<b>Allowance Amounts</b>	<ul style="list-style-type: none"> <li>• <b>Generally</b> - For ease of contract administration, and to accelerate payment for certain risk factors that are unquantifiable prior to submission of a Proposal, the DDC is considering including certain specified amounts for the funding of definable costs associated change proposal costs in certain circumstances (e.g., owner requested change proposals), economic price adjustments for certain labor and materials, differing site conditions, incentive provisions, and other non-fixed items (the “<b>Allowance Amounts</b>”).</li> <li>• <b>Unused Allowance Amounts</b> – To the extent included in the DBA, each Proposer will be required to include specified Allowance Amounts in its Proposal’s Contract Price, subject to adjustment to reflect any unused portions of such amounts.</li> <li>• <b>Additional Relief</b> – To the extent included in the DBA, where any Allowance Amount for a particular item is exceeded, the Design-Builder will still be entitled to claim recovery of amounts it believes is owed to it in connection with any Compensable Delay Event or other mechanisms in the DBA established to allow recovery of costs beyond a depleted amount, in either case, through a claim for a change order, as described further in Part F (<i>Events Impacting Schedule</i>) below.</li> </ul>
<b>3.</b>	<b>Mobilization Payment</b>	The Design-Builder will be entitled to payment for mobilization in an amount anticipated not to exceed 5% of the Lump Sum Amount, upon DDC approval of an acceptable requisition for the mobilization payment. The mobilization payment may include costs for certain Work completed prior to the DBA’s execution (with the DDC’s approval) and the cost for certain long-lead time equipment, such as detention hardware, sub-contractor mobilization costs and initial design fees for a specified number of months, insurance costs, performance bond and payment bond costs, office lease and mobilization costs, and general conditions costs for a specified number of months. It is



A. CONTRACT PRICE, ALLOWANCE AMOUNTS, AND INCENTIVES / AWARD FEES		
		intended for the Design-Builder to include a draft of its mobilization payment request with its Proposal, and to confirm such amounts shortly following award. DDC's approval of the Design-Builder's mobilization payment request in advance of registration of the DBA will enable DDC to remit payment upon or shortly following registration of the DBA. Fundamental to this timing will be reaching agreement between the parties as far in advance of registration of the DBA as possible.
4.	<b>Early Completion Incentives and Award Fees</b>	<ul style="list-style-type: none"> <li>• <b>Early Completion Bonus</b> - The DDC anticipates including an early completion bonus for certain Completion Deadlines on the Project. Such early completion bonus may be sized to a percentage of the total Lump Sum Amount for the Project.</li> <li>• <b>Award Fee Program</b> - The DDC is considering inclusion of an award fee program. The purpose of the award fee program will be to motivate and incentivize the Design-Builder's performance under the DBA in areas that are susceptible to qualitative measurement and evaluation, including but not limited to technical solutions, logistics performance, community interruption, responsiveness and solutions, stakeholder engagement, overall responsiveness, submittals compliance, and organization and management. Generally, an award-fee program will provide for a total amount (above the Lump Sum Amount) that can be earned based upon the DDC's evaluation of the Design-Builder's performance in critical areas. The amount and the actual award fee program will be discussed and agreed with the DDC and the Design-Builder following award of the DBA and as part of the early partnering workshops following the DBA's agreement date.</li> </ul>

B. DESIGN & CONSTRUCTION GENERALLY, WARRANTY PERIOD AND INSURANCE		
1.	<b>Design &amp; Construction</b>	<p>The Design-Builder will be responsible for the overall design and construction of the Project in accordance with the DBA and any allowance approvals, change orders, amendments, record drawings and construction documents (the "<b>Contract Documents</b>").</p> <p>As part of the Design-Builder's obligation to perform the design and construction Work, the Design-Builder must furnish all materials, equipment, labor, installations, demolition (where applicable), engineering, site safety and security, construction management, quality management and controls, and other Work necessary and appropriate to ensure the Project is operational as of the Substantial Completion deadline in accordance with the performance criteria and technical requirements in the DBA.</p>
2.	<b>Warranties</b>	<p>The Design-Builder will warrant to the DDC that:</p> <ul style="list-style-type: none"> <li>(i) all design Work performed under the Contract Documents, including that performed by its Subcontractors and manufacturers, will be completed in accordance with the requirements of the Contract Documents, and will be performed in accordance with the standard of care, skill and diligence as would be provided by an engineering or architecture firm experienced in supplying similar services</li> </ul>

**B. DESIGN & CONSTRUCTION GENERALLY, WARRANTY PERIOD AND INSURANCE**

		<p>nationally in the U.S. to entities owning projects of similar technology, complexity and size to that of the Project;</p> <p>(ii) all construction Work (including all materials and equipment furnished as part of the construction Work) will be (A) completed in accordance with the requirements of the Contract Documents; (B) new, unless otherwise specified in the Contract Documents; (C) of good quality, undamaged and in conformance with all requirements of the Contract Documents; and (D) free of all defects in materials and workmanship. The completed Project must perform its intended functions as explicitly described or implied in the Contract Documents; and</p> <p>(iii) the final design documents, the final construction documents, the record drawings and all other records required under the DBA will be (A) accurate and complete; (B) in conformance with all requirements of the Contract Documents; and (C) accurate in their reflection of the Project's condition as of Final Completion.</p> <p>During the “<b>Warranty Period</b>”, which will be:</p> <p>(a) for all Work completed on, or prior to, Substantial Completion, 24 months from the date of Substantial Completion;</p> <p>(b) for all Work completed between Substantial Completion and Final Completion, twenty four months from the date of Final Completion; and</p> <p>(c) for any defect rectification Work during the periods stated in (a) and (b) above, a single additional twenty four months from completion of any such defect rectification Work,</p> <p>the Design-Builder must, at its cost, promptly and completely correct any defects and nonconforming Work.</p> <p>Should the Design-Builder fail to promptly remedy such defects or nonconforming Work during the Warranty Period in accordance with the DBA, the DDC may perform such corrective Work or engage a third party to do so, and the Design-Builder will be required to reimburse the DDC for all costs and expenses incurred by the DDC in performing such corrective Work.</p> <p>Any installed equipment (HVAC, elevators, etc.) used by the Design-Builder during the performance of the construction Work prior to Substantial Completion must be refurbished to the required warranty standard for Substantial Completion, and the Design-Builder must ensure that any manufacturers' warranties for such equipment are extended to meet the minimum warranties in the DBA that are required to commence upon the Substantial Completion date.</p> <p>The Warranty Period is in addition to, and without substitution for, any other statutory or legal rights afforded to the DDC or the City under applicable State or City law for any breach of the DBA or latent defect.</p>
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B. DESIGN & CONSTRUCTION GENERALLY, WARRANTY PERIOD AND INSURANCE		
3.	<b>Insurance</b>	DDC anticipates permitting, but not requiring, a contractor controlled insurance program for the Project. Other market-standard insurance provisions will also be included in the DBA.

C. COMPLETION DEADLINES AND DDC OVERSIGHT AND QUALITY CONTROL / ASSURANCE		
1.	<b>Completion Deadlines</b>	<p>The Design-Builder commits to develop the Project in accordance with the time periods set out in the Design-Builder’s proposed Project schedule to be attached to the DBA, to be achieved by the guaranteed deadlines, including the following “<b>Completion Deadlines</b>”:</p> <ul style="list-style-type: none"> <li>• a deadline for beneficial occupancy of the Detention Facility “<b>Substantial Completion</b>”; and</li> <li>• a deadline for “<b>Final Completion</b>”.</li> </ul> <p>The Project Description Appendices include specific outside dates which each Proposer may not exceed in its Proposal’s Completion Deadlines included in its Proposal to the DDC during Phase II.</p> <p>To the extent the Design-Builder fails to achieve Substantial Completion by the applicable Completion Deadline, a long-stop period is anticipated to be included in the DBA which will afford the Design-Builder additional time to achieve Substantial Completion prior to triggering an event of default under the DBA (the “<b>Long-Stop Date</b>”).</p> <p>In addition, other interim milestones may be identified in the DBA, for purpose of measuring potential early completion incentive payments (<i>as described in A.4 (Early Completion Incentives and Award Fees)</i>) and potential liquidated damages.</p>
2.	<b>The DDC’s Right to Review and Inspect and Design-Builder Quality Assurance and Quality Control</b>	<ul style="list-style-type: none"> <li>• <b>DDC Oversight Rights</b> - The DDC will have right to review, inspect and monitor the Work in the ordinary course and heighten such oversight in the event of a breach or default by the Design-Builder. The DDC also expects to take responsibility for performing certain special inspections for the Detention Facility, as further described in the RFP.</li> <li>• <b>Design-Builder QA/QC Obligations</b> - Notwithstanding the DDC’s inspection and monitoring rights, the Design-Builder will have full responsibility for quality assurance and quality control on the Project and the Design-Builder will be required to coordinate with DDC to comply with such responsibilities in accordance with a QA/QC plan to be delivered by the Design-Builder and approved by DDC.</li> </ul>

D. PERFORMANCE SECURITY		
1.	<b>Performance Bond &amp; Payment Bond</b>	The Design-Builder will be required to deliver a performance bond and payment bond for the Project, on or prior to, the DBA’s agreement date. The DDC expects that the performance bond must be sized to an amount not to exceed 50% of the Contract Price ( <i>as defined in A.1 (Contract Price) above</i> )

D. PERFORMANCE SECURITY		
		<p>and the payment bond must be sized to an amount equal to 100% of the Contract Price.</p> <p>The DDC is exploring the possibility of permitting the bonds to step-down following Substantial Completion and Final Completion (<i>each as defined in C.1 (Completion Deadlines)</i>).</p> <p>The DDC will be entitled to claim on any performance bond following any Design-Builder default under the DBA.</p>
2.	<b>Retainage</b>	<p>As security for the Design-Builder's performance, the DDC will retain 5% from each monthly payment (each, a "<b>Retainage Amount</b>"). Alternatively, in lieu of the DDC's retention of the Retainage Amount, the Design-Builder may post a retainage bond, letter of credit or other liquid security as may be approved by the DDC in an amount equal to 5% of the Lump Sum Amount. The DDC may apply a portion of the total Retainage Amounts or liquid security that it holds or are made available to it at any time to cover any of the DDC's costs or losses incurred due to any Design-Builder breach or default or other reason stated in the DBA.</p> <p>Following Substantial Completion, the DDC will release and return to the Design-Builder the total Retainage Amounts that it holds, less 200% of any amounts estimated by the DDC (in consultation with the Design-Builder) to be necessary to secure the Design-Builder's completion of all remaining Work required for Final Completion, to be released as and when identified components of remaining Work are completed by the Design-Builder prior to Final Completion, with any remaining balance paid with the final payment.</p> <p>In addition, DDC plans to include certain earlier releases of Retainage Amounts back to the Design-Builder for discrete packages of Work (e.g. upon completion of all Design Work for the benefit of the Designers) or for the benefit of certain smaller Subcontractors to be identified in the RFP.</p>
3.	<b>Guaranty</b>	<p>Guaranties may be required by parent guarantors (approved by the DDC) of each Principal Participant if the Proposer or a Principal Participant is not a parent company for the Proposer or such Principal Participant, as applicable. If a guaranty is required, the Design-Builder must provide the DDC with a guaranty in which the parent guarantor guarantees all the Design-Builder's obligations under the DBA, executed by the applicable parent company on, or before, the DBA's agreement date.</p>

E. GOVERNMENTAL APPROVALS, ENVIRONMENTAL COMPLIANCE, THIRD-PARTY COORDINATION & LEED		
1.	<b>Governmental Approvals</b>	<p>Except with respect to the DDC's obligation to obtain, based on the agreed design, the final environmental impact statement and Notice of Completion, ULURP, changes to the City map, zoning amendments and State Commission on Correction approval for the Project, the Design-Builder will be responsible for obtaining and maintaining throughout the term of the DBA, all other governmental approvals (including any application, revision, modification, amendment, supplement, renewal or extension to any governmental approval) required in connection with its performance of the</p>

**E. GOVERNMENTAL APPROVALS, ENVIRONMENTAL COMPLIANCE, THIRD-PARTY COORDINATION & LEED**

		<p>Work (or any approved Design-Builder alternative technical concept), at its sole cost and expense. The Design-Builder will be required to comply with and maintain all governmental approvals and will be responsible for any amendments or modifications that may be necessary thereafter based on the Design-Builder's performance of the Work.</p>
<p><b>2.</b></p>	<p><b>Environmental Compliance</b></p>	<p>The Design-Builder will be required to design and construct the Project, so that it complies with, and can be operated in compliance with, all requirements and conditions (including all mitigation) to be satisfied under the Contract Documents, the final environmental impact statement, applicable laws, applicable standards and governmental approvals, and the other requirements, policies and guidelines of the DDC and the City, concerning the environment and hazardous materials that are applicable to the Project site or the Work.</p>
<p><b>3.</b></p>	<p><b>Hazardous Materials</b></p>	<p>As part of the Work, the Design-Builder will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport and disposal of all hazardous materials that are encountered in, under or on the Project site during performance of the Work.</p> <p>The Design-Builder will be responsible for obtaining and maintaining all governmental approvals relating to any remedial action and will be solely responsible for compliance with all governmental approvals and applicable laws concerning or relating to such hazardous materials.</p> <p>As between the DDC and the Design-Builder:</p> <p>(i) the Design-Builder will be deemed the sole generator and arranger under 40 C.F.R., Part 262 with respect to any hazardous materials brought to the Project site by the Design-Builder or Design-Builder Party or released by the Design-Builder or any Design-Builder Party; and</p> <p>(ii) the DDC or its designee will be deemed the sole generator and arranger under 40 C.F.R., Part 262 with respect to any hazardous materials removed from the Project site for disposal that are expressly not the responsibility of the Design-Builder under the DBA.</p> <p>Relief for unknown hazardous environmental conditions is described further in Part F (<i>Events Impacting Schedule</i>) below.</p>
<p><b>4.</b></p>	<p><b>Utilities and Other 3<sup>rd</sup> Party Interfaces</b></p>	<ul style="list-style-type: none"> <li>• <b>Generally</b> - The Design-Builder will be responsible for obtaining at its cost, all utilities that it requires to undertake and timely complete the Work, all in accordance with the general conditions. The DDC may assist, as reasonably requested by the Design-Builder, in coordinating and communicating with any utilities relevant to the Project.</li> <li>• <b>Utility Relocations</b> - The Design-Builder will be responsible for coordinating and causing all necessary utility relocations within their project scope. The Design-Builder will be required to fulfill this responsibility by coordinating directly with utilities to perform such utility relocations. The Design-Builder must preserve the integrity and</li> </ul>

**E. GOVERNMENTAL APPROVALS, ENVIRONMENTAL COMPLIANCE, THIRD-PARTY COORDINATION & LEED**

		<p>maintain the ability of the DDC, the City or any other City agency or stakeholder (or its respective contractors and suppliers) to use and operate utilities that are not required to be relocated.</p> <ul style="list-style-type: none"> <li>• <b>Early Work</b> – The DDC is procuring certain design-bid-build utility relocation Early Work packages as described in each of the respective Project Description Appendices.</li> <li>• <b>Relief</b> – To the extent applicable, if there is a defect or delay in any such Early Work package described above, the Design-Builder may be entitled to claim a Compensable Delay Event as described further in F.2 (<i>Compensable Delay Events</i>) below. Additionally, the DDC is considering including an Allowance Amount / Compensable Delay Event for unknown utilities discovered within the Project site, as described further in F.2 (<i>Compensable Delay Events</i>) and Part G (<i>Unknown Conditions</i>) below.</li> </ul>
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<p>5.</p>	<p><b>Other Third-Party Interface</b></p>	<ul style="list-style-type: none"> <li>• <b>Early Work Design-Builder Interface</b> - The Design-Builder will be expected to dedicate, where applicable, a portion of its project coordination plan, for its interface with any Early Work contractors that are required to complete their work (including with respect to utilities coordination) as a prerequisite to the Design-Builder taking over the Project site.</li> <li>• <b>NYC Agency Interface</b> – The DDC is coordinating with various New York City agencies, including, but not limited to, New York City Department of Transportation, New York City Department of Environmental Protection and the New York City Department of Citywide Administrative Services, to prepare City agencies for the expectations and requirements of the BBJ. The Design-Builder will be expected, in coordination with DDC, to manage its interface with City agencies and will be required to dedicate a portion of its Project coordination plan for its interface with such City agencies.</li> <li>• <b>MTA</b> - The DDC anticipates having an understanding or memorandum of understanding in place with the Metropolitan Transportation Authority and the New York City Transit Authority (collectively, the “<b>MTA</b>”) in advance of the DBA’s agreement date, to govern key interfaces between the MTA, the DDC, the Design-Builder and the Project. As a result, the DDC anticipates it will serve as a pass-through conduit for communication with MTA and the Design-Builder will be required to comply with the terms of any agreement between MTA and the DDC relevant to the Project on a back-to-back basis, as applicable. Such terms of any MTA interface may cover indemnities and the provision of force account services by MTA to support any component of the Project that interfaces with MTA stations or assets. The DDC will be responsible for funding any such force account on terms to be provided in the DBA.</li> <li>• <b>Relief</b> – See Part F (<i>Events Impacting Schedule</i>) below for relevant relief DDC is considering providing to the Design-Builder.</li> </ul>
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E. GOVERNMENTAL APPROVALS, ENVIRONMENTAL COMPLIANCE, THIRD-PARTY COORDINATION & LEED		
6.	<b>LEED Certification and Sustainability Design Guidelines</b>	The Design-Builder will be obligated to perform the Work in order to achieve a minimum LEED Gold certification, and to comply with certain other sustainability design goals and guidelines set forth in the DBA.

F. EVENTS IMPACTING SCHEDULE		
1.	<b>General Information</b>	DDC is planning to include in the DBA design-build market standard provisions for relief and compensation payable to the Design-Builder (“ <b>Compensable Delay Events</b> ”) and for time extensions in favor of the Design-Builder for specific events which are consistent with Design-Build best practice and are beyond the control of the Design-Builder (“ <b>Delay Events</b> ”), except to the extent attributable to either (A) any breach of (i) the DBA, (ii) applicable law, or (iii) any agreement with a utility owner or any governmental approval or (B) any negligence, recklessness or willful misconduct, in each case, by the Design-Builder, any Principal Participant, any Project Guarantor, any Subcontractor, or any other person performing any of the Work on, or behalf of, the Design-Builder (a “ <b>Design-Builder Party</b> ”).
2.	<b>Seeking Relief for a Delay Event / Compensable Delay Event / Force Majeure Event / Change in Law</b>	<p>If a Delay Event occurs, the Design-Builder may (where provided for in the DBA) request an Allowance Amount approval / withdrawal, and/or a change order, as applicable, for one or more of the following in accordance with, and subject to, the requirements for timely notice, mitigation, exhaustion of all float, and evidentiary support required in the DBA:</p> <p>(a) an extension to the Completion Deadlines for one or more Completion Milestones;</p> <p>(b) in the case of a Compensable Delay Event only, either an Allowance Amount draw request or an adjustment to the Contract Price, as applicable for any net costs that the Design-Builder has incurred, or will incur, as a direct result of a Compensable Delay Event; and</p> <p>(c) relief from default for failing to perform any Work directly impeded by such Delay Event.</p> <p>Any net costs calculated as part of a Compensable Delay Event will be based upon various factors including:</p> <p>(i) direct labor costs, (ii) necessary materials, (iii) reasonable rental values, (iv) insurance and bonding costs, (v) extended field overhead, (vi) labor and material escalation, (vii) storage costs, and (viii) extended home office overhead.</p> <p>To the extent provided for in the DBA, the Design-Builder will be entitled to request either: (i) Allowance Amount draw requests only to the extent any Allowance Amounts remain available, and (ii) change orders, where such Allowance Amounts have been depleted.</p>

**G. UNKNOWN CONDITIONS**

<p>1. <b>Unknown Site Conditions</b></p>	<ul style="list-style-type: none"> <li>• <b>DDC Site Investigation Work</b> – The DDC’s project management consultant is currently performing detailed site investigations of each Project site within the BBJ. These site investigations include surveys of the existing buildings, geotechnical borings, utility surveys, asbestos testing and other similar investigations. To the extent legally permissible, the DDC anticipates providing any such relevant information to each of the Short-listed Proposers during Phase II (RFP).</li>   <li>• <b>Design-Builder Responsibility</b> –   <p>Notwithstanding the DDC’s advance site investigations, the Design-Builder will also be required to undertake all tests, inspections and investigations of the Project site (including additional geotechnical evaluations, hazardous materials or utility studies) as the Design-Builder deems necessary to perform its obligations under the DBA.</p> <p>The Design-Builder will also represent and warrant in the DBA that it has familiarized itself with the Project site, its physical conditions, including all site conditions, normal and usual soil conditions, roads, the existence of obstacles to performing the Work, the availability and presence of utilities, topographical conditions and air and water quality conditions, the location and character of existing or adjacent work and structures, the surrounding locations and other general and local conditions (including equipment and labor), based on the documents made available during Phase II and a visible inspection of the Project site and surrounding locations, and all other conditions which may be material to the Design-Builder’s performance of the Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor).</p> <p>Accordingly, as described in the definition of Compensable Delay Events, and subject to the Site Validation Period described in G.2 (<i>Site Validation</i>) below, the DDC will only provide compensation and/or schedule relief to the Design-Builder for those unknown site conditions that:</p> <ul style="list-style-type: none"> <li>(i) existed in, on or under a portion of the Project site prior to the date on which the Design-Builder gains possession of the relevant portion of the Project site and that represents a materially different condition to that described in the available documents (provided by the DDC) (the “<b>Available Documents</b>”); and</li>   <li>(ii) are not conditions that could reasonably have been identified or discovered by an appropriately qualified and experienced contractor, engineer or expert working in that field exercising due care and skill and best management practice in the same or equivalent circumstances through review and analysis of (A) the Available Documents or (B) through the equivalent type of Project site access granted to</li> </ul> </li> </ul>
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G. UNKNOWN CONDITIONS		
		<p>the Design-Builder, that, in each case, were available prior to the Proposal Due Date.</p> <ul style="list-style-type: none"> <li>• <b>Defined Terms</b> – Unknown site conditions, as described above, will include unknown hazardous environmental conditions, unknown geotechnical conditions, unknown physical conditions (e.g., physical structures existing within, or on, the Project site), unknown utilities, unknown endangered species and unknown archaeological remains.</li> <li>• <b>Relief Provided</b> – Subject to the Site Validation Period described in G.2 (<i>Site Validation</i>) below, if at any time during the performance of the Work, the Design-Builder becomes aware of any unknown site condition, as defined above, the Design-Builder will be entitled to claim a Compensable Delay Event in accordance with the terms of the DBA and the DDC is considering providing compensation through an Allowance Amount draw or, where applicable Allowance Amounts have been depleted, through a change order (<i>as described above in A.2 (Allowance Amounts)</i>).</li> </ul>
2.	<b>Site Validation</b>	<p>In the DBA, the DDC anticipates limiting the ability of the Design-Builder to claim a Compensable Delay Event for certain specified (<i>not all</i>) unknown conditions by allowing claims to be made only during a set time period to be specified in the DBA (“<b>Site Validation Period</b>”). The precise time period for the Site Validation Period and the specific unknown conditions for which the Design-Builder will be limited in making Compensable Delay Event claims to the Site Validation Period, are still being assessed by the DDC; however, the DDC anticipates that they will largely be selected based on (i) the DDC’s lack of certainty regarding such condition, (ii) the potential impact discovery of such condition would have on the overall critical path and any Work already completed on the Project and (iii) the amount of time reasonably necessary to discover any such conditions.</p> <p>Proposers should note that for those Project sites that have dismantle Work being completed as part of the Early Work in advance of the Design-Builder’s commencement of construction Work under any Project (e.g. Queens and Brooklyn), a Site Validation Period may be used for purposes of validating the Early Work, but may not be necessary or appropriate for other conditions, since most site conditions will have already been investigated and discovered by the dismantle design-builders.</p> <p>Following the Site Validation Period, (where provided for in the DBA) the Design-Builder will not be entitled to an Allowance Amount draw, change order or to otherwise claim any extension of time or recovery of cost, on the basis of any unknown conditions for which claims are permitted solely during the Site Validation Period.</p>

H. EVENTS OF DEFAULT		
1.	<b>Design-Builder Defaults / DDC</b>	The DDC will be entitled to terminate the DBA on market standard terms as well as subject to various cure periods, for several market-standard events of default. Failure to achieve Substantial Completion by the applicable

<b>H. EVENTS OF DEFAULT</b>		
	<b>Termination of the DBA</b>	<p>outside Completion Deadline (Long-Stop Date) will be deemed a Design-Builder default and entitle the DDC to terminate the DBA.</p> <p>The DDC anticipates including a process for remedial plans to avoid any hair-trigger termination scenarios.</p> <p>The DDC also anticipates including other market-standard remedial and termination rights for the benefit of the DDC in the DBA.</p>
<b>2.</b>	<b>Design-Builder Suspension Rights</b>	The DDC anticipates including suspension rights for the benefit of the Design-Builder for any DDC material failure to timely make payment.

<b>I. M/WBE / SUBCONTRACTING</b>		
<b>1.</b>	<b>Minority and Women-owned Business Enterprise Provisions</b>	The Design-Builder must comply, and must require its Subcontractors to comply, with the M/WBE requirements described more fully in the RFQ.
<b>2.</b>	<b>Subcontracting</b>	<p>Subject to the terms of the DBA, the Design-Builder will be required to subcontract portions of the Work only to Subcontractors that have been approved by DDC in writing. The DDC may grant its approval subject to reasonable conditions and may rescind its approval of a Subcontractor in accordance with the terms of the DBA.</p> <p>If a Subcontractor fails to perform its Work in accordance with the DBA, the Design-Builder must perform the Work itself or through other approved Subcontractors.</p> <p>The Design-Builder must retain or cause to be retained only Subcontractors that are qualified, experienced and capable of performing the portion of Work to be performed by that Subcontractor at least in accordance with best management practice.</p> <p>The Design-Builder will be fully responsible under the DBA for the acts and omissions of all Subcontractors performing any work or services in relation to the Work, as if they were the acts and omissions of the Design-Builder. All Subcontractors identified in the SOQ must be carried forward as the Subcontractors performing the Work under the DBA, except where expressly authorized by the DDC to replace any such Subcontractor for good cause.</p>
<b>3.</b>	<b>Key Personnel and Subcontractors</b>	The Design-Builder must retain, employ and utilize (or where applicable, must ensure that the relevant Key Subcontractor retains, employs and utilizes) the individuals specifically listed as Key Personnel (or any replacements approved) to fill the corresponding positions until all responsibilities of that position have been completed. All Key Personnel identified in the SOQ must be carried forward as the Subcontractors performing the Work under the DBA, except where authorized by the DDC due to certain specified uncontrollable life events, (e.g. death, injury, relocation, termination, etc.).

<b>J. LEGAL ISSUES</b>		
<b>1.</b>	<b>Indemnification</b>	The Design-Builder will be required to release, defend, indemnify and hold harmless the DDC and the City of New York and their respective officials, employees, agents and authorized representatives for certain acts under the DBA in accordance with a market-standard indemnity clause.
<b>2.</b>	<b>Limitation on Liability</b>	<p>The maximum aggregate liability of the Design-Builder under the DBA and with respect to losses incurred by the DDC for termination of the Design-Builder for default will be limited to a certain percentage of the Contract Price to be set out in the DBA in a manner that is consistent with general market practice.</p> <p>A separate sub-limit on liability for liquidated damages may also be included in the DBA.</p> <p>The limitation of liability will be subject to certain market standard exclusions.</p>
<b>3.</b>	<b>Partnering &amp; Dispute Resolution</b>	<ul style="list-style-type: none"> <li>• <b>Partnering</b> - The DBA will include a partnering mechanism to enhance and secure a high-level of cross-collaboration and coordination between the DDC and the Design-Builder from the commencement of the Work. The focus of the partnering provisions will be to resolve all differences at the lowest levels before they advance to formal disputes.</li> <li>• <b>Escalation Ladder</b> - The DBA will require the Design-Builder and the DDC to submit to an escalating dispute resolution procedure commencing with discussions among personnel and if an informal dispute is unresolved after certain time periods, progressing to <ul style="list-style-type: none"> <li>○ (i) first senior representative negotiations (with a mandatory exchange of information and at the option of the parties, inclusion of a professional mediator); and</li> <li>○ (ii) if still unresolved through thirty-day senior representative negotiations, to a hearing before a Disputes Review Board.</li> </ul> </li> <li>• <b>Disputes Review Board –</b> <ul style="list-style-type: none"> <li>▪ <b>Composition</b> - The Disputes Review Board will be comprised of three independent members, one member appointed by each of the Design-Builder and the DDC and the third appointed from a list agreed between the Design-Builder and DDC appointed members.</li> <li>▪ <b>Hearings / Decisions</b> – All hearings and any decisions by the Disputes Review Board must be completed and made within a limited period of time by majority vote of the members, and each of the Design-Builder and the DDC will be afforded a reasonable opportunity to be heard by the Disputes Review Board and to offer evidence.</li> </ul> </li> </ul>

<b>J. LEGAL ISSUES</b>		
		<ul style="list-style-type: none"> <li>▪ <b>Not Final &amp; Binding</b> - The decisions of the Disputes Review Board will not be final and binding unless the Parties expressly accept such recommendations in writing.</li> </ul> <ul style="list-style-type: none"> <li>• <b>Judicial Action</b>  Only after exhausting each of the alternative dispute procedures above, and if any of the Parties do not accept a recommendation of the Disputes Review Board, is either Party then entitled to file a plenary claim with a court of competent jurisdiction sitting in the City and County of New York.</li> <li>• <b>Ineligible Disputes</b>  Certain types of disputes will not be subject to the alternative dispute resolution process and will be litigated under a plenary action as described above by a court of competent jurisdiction in the City of New York. These types of ineligible disputes are expected to include those that are beyond the scope of the Work, including patents, copyrights, trademarks or trade secrets, or relating to proprietary rights in computer software, as well as injunctive relief, insurance claims, torts, prevailing wage or employment disputes, ethical violations and disputes involving third-parties.</li> <li>• <b>Fast-Track Disputes</b>  The Parties may elect to fast-track the resolution of a dispute to the Disputes Review Board with respect to certain disputes relating to either (i) amounts or change orders that exceed 5% of the Contract Price or (ii) are in connection with DDC's refusal to certify Substantial Completion.</li> </ul>
<b>4.</b>	<b>Governing Law</b>	New York

BBJ Facilities RFQ Pre-Solicitation Conference Questions  
February 19, 2020

1. Question: Will there be veteran-owned business goals?
  - Answer: No.
2. Question: Will you release today's attendance list?
  - Answer: Yes, the attendee list is posted on DDC's website.
3. Question: Will all Proposers be listed on the website with contact info?
  - Short-listed Teams will be listed on the website with contact information.
4. Question: Will DDC help facilitate contractors/ Design-Build team form as partners?
  - Answer: DDC will not take an active role in facilitating partnerships between any firms. DDC provides some information regarding interested firms on its website.
5. Question: Is there any peer review other than architecture?
  - Answer: The peer review will cover architecture, urban design, landscape architecture, and constructability.
6. Question: How many SOQs were received for the Queens Parking Garage and Brooklyn Dismantle/Swing Space RFQs?
  - Answer: Nine SOQs were received for the Queens Parking Garage RFQ. Five SOQs were received for the Brooklyn Dismantle/Swing Space RFQ.
7. Question: The new Facilities will require significant electrical power, gas & water. Has DDC coordinated this work with Con Edison?
  - Answer: Yes, DDC has engaged all private utility companies and will continue to do so at an executive level, as necessary.
8. Question: Is the Design-Build contract guaranteed maximum price?
  - Answer: No, the contract is not a guaranteed maximum price contract, but is fixed-price lump sum
9. Question: How will DDC support the Design-Builder with community engagement?
  - Answer: Community engagement is currently being run through the Consultant Support Team. The Design-Builder will be supported by the City, DDC, and the Consultant Support Team in its engagement with the local community during the Project.
10. Question: What is budget for each Facility?
  - Answer: The current budget for each Facility is between \$1.5 and \$1.8 Billion.
11. Question: Please explain the stipend details.
  - Answer: Refer to RFQ Section 2.4. The stipend for Round I Proposers (Manhattan and The Bronx) is \$6 Million for each responsive unsuccessful Proposer that participates in the RFP (Phase II) for

each Detention Facility. Submission of a fully responsive Proposal and execution of a stipend agreement, which will be included with the RFP, will be prerequisites to be eligible for the Stipend. The Stipend amount may be used by eligible Proposers as they deem appropriate. DDC is also considering paying a smaller stipend where any RFP (Phase II) is terminated prior to the Proposal due date.

12. Question: Should Proposers include qualifications and approaches for handling asbestos and other environmental issues in the SOQ submission?

- Answer: Proposers must submit the information required in Section 5 of the RFQ. It is up to the discretion of the Proposer to determine additional information that may enhance its SOQ submission.

13. Question: Do we have to submit a complete submission for each borough? Will two different SOQs be required for each facility within a Round? If a team decides to submit for both facilities, can a team be selected for both short-lists in Phase 1?

- Answer: Refer to Section 2.2 in the RFQ. An SOQ submitted in each Round will be considered for either facility within that Round, but can only be short-listed for one facility within that Round. For example, an SOQ submitted in Round 1 can be considered and short-listed for either Manhattan or The Bronx at the discretion of DDC. However, if a Proposer wishes to be considered for both facilities within a Round, it can submit a Multi-Detention Facility Supplement with its SOQ that satisfies the requirements of the RFQ. However, for Rounds 1 and 2 Teams must submit a different SOQ in Round 1 and Round 2.

14. Question: How many firms will be short-listed for each facility? Could it be the same 3 short-listed firms for each of the two facilities within a Round?

- Answer: Each Detention Facility within each Round will have its own Short-list, which will not exceed three qualified Proposers for each Detention Facility. Yes, 3 short-listed DB Teams could be short-listed for each of the two facilities within a Round if each DB Team submitted a compliant Multi-Detention Facility Supplement with their SOQ.

15. Question: Beyond the key personnel resumes, does the SOQ require information/qualification on other design subconsultants to be submitted?

- Answer: Refer to Section 5.7(b) of the RFQ. The submission requirement for Key Personnel resumes includes providing a narrative introducing Key Personnel and major team organizations, including key trade and design partners, as well as providing an organization chart showing the team structure and relationship.

16. Question: When will the Design-Build contract form be provided? Since Design-Build is new for DDC, will DDC have new process for change orders, invoicing and payments, dispute resolution, project management, etc.?

- Answer: Yes, DDC plans to have a new process DB specific process for each of the above. DDC will issue an addendum prior to the SOQ due date describing expected terms and provisions of the Design-Build Agreement. A draft form Design-Build Agreement will be provided to the Short-listed firms with the subsequent RFP.

17. Question: Will the form of agreement between DDC and the Design-Builder be similar to a DBIA contract form number 520?
- Answer: The Design-Build Agreement will be a new contract form which will incorporate the principles and the ideals of the Design-Build Institute of America and design-Build Done Right.
18. Question: If a Design-Build Team is awarded one facility, can it compete for additional facilities?
- Answer: Yes. A proposer may choose to be considered for more than one Detention Facility and can be awarded multiple facilities if it submits a Multi-Detention Facility Supplement. However, no Key Personnel or Major Participant may be part of a Design-Build Team on more than one Detention Facility.
19. Question: Are all DB Team members required to be registered in PASSPort?
- Answer: No, all members of the DB Team are not required to be filed in PASSPort at this time; however, please be aware that per RFQ Section 5.1 (d) **Proposers, including the individual companies that make up a joint venture, must be filed in PASSPort** at least seven Days prior to the SOQ Due Date. Joint ventures selected as Short-listed Proposers will be required to submit the online disclosure application as a joint venture.
20. Question: Will a proposal submitted with a cost in excess of the DDC's estimate be considered Responsive?
- Answer: DDC anticipates it will provide an "unacceptable" with respect to "Price" in its scoring of any Price Proposal that exceeds the budget; however, such "unacceptable" will not render the Proposer ineligible for award. Notwithstanding the foregoing, given the extensive in-market period, with several in-person confidential one-on-one meetings, Proposers are expected to address any concerns about cost with DDC prior to submitting its Proposal.
21. Question: Is the 30% M/WBE goal universal, or will it vary between RFP tasks?
- Answer: DDC has set an initial draft M/WBE goal of 30%. The 30% is against the cost for performing Design Work and 30% for construction work for each of the Manhattan Detention Facility and the Bronx Detention Facility. Please see Section 8.1 of the RFQ for an explanation of the new M/WBE program developed for the BBJ.
22. Question: Do Asian MBE firms qualify for these RFQs?
- Answer: Yes, Asian MBEs will be considered as acceptable for the M/WBE program for this project.
23. Question: Is there financing available for M/WBE firms?
- Answer: There are programs available for financing for M/WBE firms through NYC Small Business Services.
24. Question: In light of the billions of dollars of work projected for NYC airports, SCA schools and other public works projects scheduled for the next 5 years, has DDC performed a survey of the M/WBE subcontractor community to ascertain if the capacity is there to provide over \$2 billion in construction related service targeted by the BBJ Program?

- Answer: DDC plans to be working collaboratively with proposers during the in-market period and with the selected proposer following award to ensure that any final goal set at the RFP (Phase II) is fully representative of the market capacity at that time and is achievable.
25. Question: Surety companies are questioning if any alternative bonding solutions will be acceptable such as a “rolling” \$250 million, etc.?
- Answer: DDC has discussed bonding requirements with its surety advisor and sureties in the market and determined a 50% performance bond to be sufficient to reduce capacity concerns for proposers, while also providing adequate coverage and protection for DDC. Alternative bonding solutions may be considered and should be offered as part of the RFP Phase (ii) process. The subsequent RFP will provide additional information on required bonds.
26. Question: Is it expected that M/WBE firms will have to wait 120 days for payment?
- No, payment terms are shorter under the proposed DB Agreement. DDC will issue an addendum prior to the SOQ due date describing expected key terms and provisions of the Design-Build Agreement. Payment terms and procedures will be defined in the subsequent RFP.
27. Question: Will M/WBE goals require the M/WBE to be identified at the time of SOQ submission or short-listing?
- Answer: No, however M/WBE firms submitted a part of the Design-Build Team will be considered in the evaluation of SOQs.
28. Question: Why does Section 3.9 - Exclusivity state that no Design-Build Team may have an exclusive arrangement with (c) mechanical, electrical, plumbing subcontractors?
- Answer: Section 3.9 limits exclusivity with certain categories of providers, subcontractors and suppliers in order to ensure ample competition in the market. DDC specifically identified those trades where there was particularly limited market capacity in these categories.
29. Question: Section 3.9 contradicts “Section 5.5 (x) Teaming Agreement” which allows design-build teams to team with key subcontractors - Please clarify this.
- Answer: Design-Builders can include key subcontractors as part of its DB Team under a teaming agreement without having to require them to be exclusive to such team. So for example notwithstanding Section 3.9(c) a plumbing subcontractor could be part of a teaming agreement, as long as they are not bound to exclusivity under such teaming agreement. Section 3.1 is identifying a limited number of trade subcontractors that if they were required to be exclusive could stifle competition given the current market.