

**New York State Thruway Authority
RFP #18C15**

Design, Construction, Financing, Operation and
Maintenance of 27 Service Areas on the New York State Thruway

May 29, 2019

ADDENDUM NO. 13

Notice is hereby given that the following Addendum No. 13 shall be made part of RFP #18C15 issued by the Authority on October 15, 2018 as amended by Addendum No. 1 dated November 8, 2018, Addendum No. 2 dated December 21, 2018, Addendum No. 3 dated December 27, 2018, Addendum No. 4 dated January 25, 2019, Addendum No. 5 dated January 29, 2019, Addendum No. 6 dated February 25, 2019, Addendum No. 7 dated February 27, 2019, Addendum No. 8 dated March 28, 2019, Addendum No. 9 dated April 3, 2019, Addendum No. 10 dated April 5, 2019, Addendum No. 11 dated April 11, 2019 and Addendum No. 12 dated April 25, 2019 (the "RFP").

Each Proposer shall acknowledge receipt of this Addendum No.13 in the cover letter submitted as part of their Proposal.

Addendum No.13 consists of the following changes to the RFP:

NOTE: Material to be deleted is in [], material to be added is in bold and underlined.

Change No. 1 The following three forms, TA-W1022; AAPHC 89 TA-W1037 (04/2018) PART 1; and TA-W1023, which were referenced in RFP Section 2.1.2, "Participation Opportunities for Minority and Women-Owned Business Enterprises (MWBE)," were inadvertently omitted from the RFP and are hereby incorporated. The forms are available on the Authority's Service Area RFP webpage at: <https://www.thruway.ny.gov/external/service-area-rfp/index.html>. Note: Change No. 2 below includes, but is not limited to, changes to the names of TA-W1022 and AAPHC 89 TA-W1037 (04/2018) PART 1.

Change No. 2 RFP Section 2.1.2, "Participation Opportunities for Minority and Women-Owned Business Enterprises (MWBE)" is hereby changed to read:

2.1.2 – Participation Opportunities for Minority and Women-Owned Business Enterprises (MWBE)

REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, the Authority is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of Authority contracts, including such contracts for the lease of real property where the terms of such leases provide for the construction, demolition, replacement, major repair or renovation of real property and improvements thereon.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, the Authority hereby establishes an overall aggregate goal of 28% for MWBE participation for the construction, demolition, replacement, major repair or renovation and related professional services throughout the life of the Lease Agreement and improvements thereon (including change orders in all phases of the project for the duration of the Lease Agreement) (to be determined based on the current availability of MWBEs at each project site). All service area locations shall be taken into account.

The Operator must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Lease Agreement. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how the Authority will evaluate an Operator’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. For construction contracts, the portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE. ~~[The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.]~~

In accordance with 5 NYCRR § 142.13, the Proposer further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Lease Agreement resulting from this RFP, such finding constitutes a breach of contract and the Authority may assess liquidated damages. Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Operator achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Lease Agreement. Additionally, the Authority may deny the approval of subcontractors who are not MWBEs.

By submitting a Proposal, a Proposer agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof to **Compliance@thruway.ny.gov**, provided, however, that a Proposer may arrange to

provide such evidence via a non-electronic method by contacting the Authority's Compliance Unit at (518) 471-5830.

Proposers will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. ~~{MWBE}~~ Utilization Plan **For All Subcontractors** (TA-W1022) (**hereinafter "Utilization Plan"**) and **New York State Thruway Authority – DBE/MWBE Utilization Worksheet (AAPHC 89 TA-W1037 (04/2018) PART 1)**, ~~{AAPHC-89-DBE/MWBE Utilization Worksheet /Approval to Subcontract (TA-W1037)}~~, which should provide ~~{MWBE}~~ utilization information for the duration of the Lease Agreement. The ~~{MWBE}~~ Utilization Plan shall take into account all 27 service areas. **The forms are available at: <https://www.thruway.ny.gov/external/service-area-rfp/index.html>**.

The Authority will review the submitted ~~{MWBE}~~ Utilization Plan(s) and advise the Proposer selected for the award of the Lease Agreement of the Authority's acceptance or issue a notice of deficiency within 30 days of receipt or the issuance of a tentative award, whichever is later.

- B. If a notice of deficiency is issued, the Proposer will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to the Compliance Unit, via Compliance@thruway.ny.gov, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Authority to be inadequate, the Authority shall notify the Proposer and direct the Proposer to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the Proposal.

The Authority may disqualify a Proposer as being non-responsive under the following circumstances:

- a) If a Proposer fails to submit the ~~{MWBE}~~ Utilization Plan(s);
- b) If a Proposer fails to submit a written remedy to a notice of deficiency;
- c) If a Proposer fails to submit a request for waiver; or
- d) If the Authority determines that the Proposer has failed to document good faith efforts.

The Operator will be required to attempt to utilize, in good faith, any MBE or WBE identified within its ~~{MWBE}~~ Utilization Plan(s), during the performance of the Lease Agreement. Requests to the Authority for a partial or total waiver of established goal requirements made subsequent to award of the Lease Agreement may be made at any time during the term of the Lease Agreement.

Any modifications or changes to an accepted ~~{MWBE}~~ Utilization Plan after the Lease Agreement award and during the term of the Lease Agreement must be reported on a revised ~~{MWBE}~~ Utilization Plan and submitted to the Authority for review and approval.

The Operator will be required to submit over the term of the Lease Agreement monthly Payments to DBE/MWBE Subcontracting Firms reports (form TA-W1023) to the Authority **at Compliance@thruway.ny.gov**, by the 10th day of the month, for the previous month being reported. These reports shall disclose payment activities during the preceding month to document the progress made toward achievement of the MWBE goals of the Lease Agreement. **Form TA-1023 is available at: <https://www.thruway.ny.gov/external/service-area-rfp/index.html>**.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Lease Agreement, leading to the assessment of damages, suspension or termination of the Lease Agreement or such other actions or enforcement proceedings as allowed by the Lease Agreement.