

**New York State Thruway Authority  
RFP #18C15  
Design, Construction, Financing, Operation  
and Maintenance of 27 Service Areas  
on the New York State Thruway**

**Authority Responses to Written Questions  
December 21, 2018**

On October 15, 2018, the New York State Thruway Authority (“Authority”) issued a Request for Proposals (RFP) for Design, Construction, Financing, Operation and Maintenance of 27 Service Areas on the New York State Thruway. Pursuant to the RFP, all prospective Proposers have the opportunity to submit written questions concerning this RFP to the Authority up to, and including, December 31, 2018.

Below are some of the questions the Authority has received to date, and the Authority’s responses to such questions in accordance with Section 1.2 of the RFP.

Q1: Does the New York State Thruway Authority have external legal counsel engaged for RFP No. 18C15? If so, what firm is advising on this project?

**A1: The Authority has engaged Hawkins Delafield & Wood LLP to assist on the procurement.**

Q2: We received a notice of this RFP. Would you be needing hotel accommodations for this project?

**A2: Please clarify.**

Q3: Since we are a SDVOB, is there any NAICS Code or Codes that we in particular to participate?

**A3: All codes should be updated to reflect any product and/or services that your Firm provides.**

Q4: Would the Authority share the list of interested parties who responded to the RFEI earlier this year?

**A4: The list of RFEI respondents is attached.**

Q5: When will the first draft of the Lease Agreement be provided, outlining service requirements and protections for the Operator?

**A5: As indicated in RFP Section 1.6, the Authority intends that the Lease Agreement will include and be based on the terms and conditions set forth in the Legal Appendices (i.e., Appendices A, B, C, D, E, F, G, H and W to the RFP). Proposers are encouraged to submit questions and comments in relation to such terms and conditions for**

**consideration by the Authority. Comments may include requests for clarification regarding service requirements and that additional protections for the Operator be reflected in the Legal Appendices. The final form of the Legal Appendices, as set forth in the RFP and any alterations issued by Addendum to the RFP, will serve as the common basis for all Proposals. The Authority intends to provide a draft Lease Agreement, consistent with and based on the final form of Legal Appendices, to the Successful Proposer for negotiation in accordance with the RFP following tentative award. The Authority has also reserved the right to negotiate with multiple Proposers, as well as to conduct a BAFO process. However, the current intent is that only the final form of Legal Appendices will be issued prior to receipt of Proposals.**

Q6: What is the rationale behind structuring the prospective agreement as a lease vs a traditional concession?

**A6: The prospective agreement has been structured as a lease because Public Authorities Law Section 354 (10) authorizes the Authority to lease the right to construct, reconstruct or improve and operate suitable facilities for the public. Please also see response A5, above.**

Q7: Please provide additional detail on the weighting of the Evaluation Criteria. Market participants need transparency on scoring criteria in order to optimally structure bids and provide value to NYSTA.

**A7: The Authority is considering the RFP Evaluation Criteria in light of the comments received to date, and, if the Authority elects to make any alteration to the RFP it will provide further detail via Addendum to the RFP.**

Q8: Noting items a-g in Section 4.3, are major capital improvements (in the form of a large-scale rebuild of each plaza) a requirement for the winning bid, or could the winning bid consist of a plan to make minor cosmetic updates (lower all-in capital investment) with higher rent payments to the Authority?

**A8: Please refer to RFP Section 2.2.1 for the scope of the required services. In particular, paragraph E of Section 2.2.1 establishes the minimum requirements for capital improvements to the Service Areas. The Authority's intent is to encourage innovation and to provide Proposers with the flexibility to determine the optimal approach to providing the required services. As noted above, the Authority is considering the RFP Evaluation Criteria in light of the comments received to date, and, if the Authority elects to make any alteration to the RFP, will provide further detail via Addendum to the RFP.**

Q9: Will a bid outlining no major capital improvements and associated capital expenditures be evaluated as a compliant bid?

**A9: Please see response A8, above.**

Q10: Does the Authority prefer a large capital improvement project or large annual payments in lieu of large capital improvement projects? Large capital improvement proposals would likely imply lower on going payments to the Authority while small capital improvement proposals would likely imply higher on going payments to the Authority.

**A10: Please see response A8, above.**

Q11: Is there any opportunity to include fuel operators into this RFP as a common project? For example, building integrated facilities would reduce construction and maintenance costs and provide value for the Authority over the long-term.

**A11: The existing agreements with fuel service providers are in their first five year renewal term. They contain an additional five year renewal that is at the option of the fuel service provider, subject to certain conditions being met. If the fuel service providers opt to renew for a second five year term, the contract will not expire until March 31, 2027. Accordingly, the Authority has determined to exclude fuel services from the scope of the Contract Services.**

Q12: While there is a limited sample size, it would be atypical to exclude fuel stations from the Lease Agreement. What is the rationale for excluding fuel?

**A12: Please see response A11, above.**

Q13: Is there an opportunity to include convenience stores associated with fueling stations into the Lease Agreement as current agreements for these convenience stores expire?

**A13: Please see response A11, above.**

Q14: Will fuel operators be required to pay CAM charges to the F&B operator for snow clearing, repairs and maintenance costs?

**A14: No. The fuel operators' leased space is outside of the food operators' leased space. Please refer to RFP Exhibit 6, Service Area Responsibility Maps.**

Q15: Is the fuel operator solely responsible for environmental risks and mitigation? How are the lines of responsibility drawn?

**A15: The fuel operators occupy premises that are separate from the premises that will be leased to the food operators. The fuel operators are responsible for environmental risks and mitigation relating to the premises that they occupy in accordance with the terms of their agreements with the Authority. Please refer to RFP Appendix B, Section 4, Hazardous/Regulated Substances.**

Q16: Will the NYSTA establish commercial terms between gas station convenience stores and F&B offerings in term of prices policy, range of products, etc. (if defined)?

**A16: Please provide more information as this question is unclear. The pricing requirements for Operator food/beverage and other items are set forth in the “Food and Beverage Prices” and “Prices for Non-Food and Beverage Items” provisions of Section 5 of RFP Appendix B.**

Q17: How will the Thruway regulate convenience store competition between the concessionaire and fuel operators?

**A17: The Authority does not currently intend to regulate such competition. The terms of the fuel operators’ agreements are separate from those that will be included in the Authority’s agreements with the Operator of the Service Areas. The Authority welcomes any specific suggestions for provisions to include in the Legal Appendices and will consider such suggestions in accordance with RFP Section 1.6. If the Authority elects to make any alteration to the RFP, the Authority will provide further detail via Addendum to the RFP.**

Q18: What is the scope of the construction – is the Operator responsible for the refurbishment of the entire plaza, or just the portion that is under the management of the Operator?

**A18: The Operator will be required make the Initial Improvements to the Service Areas, which are the portions of the Food/Fuel Facilities demised to the Operator under the Lease Agreement. Please refer to RFP Appendix B, Section 1 and Section 4, and see response A8 above.**

Q19: Will the Thruway ensure concession language that protects the Operator from any future liability for property taxes? We would note it is uncommon for operators to hold this responsibility; usually owner / Public Sector entity holds this responsibility.

**A19: New York State Public Authorities Law Section 371 exempts the real property of the Authority from taxation. The Authority welcomes any specific language suggestions for inclusion in the Legal Appendices and will consider such suggestions in accordance with RFP Section 1.6. If the Authority elects to make any alteration to the RFP, the Authority will provide further detail via Addendum to the RFP.**

Q20: Under the current construct, which party will be responsible for changes in Property Tax calculation methodologies that impact the service areas?

**A20: As noted above, New York State Public Authorities Law Section 371 exempts the real property of the Authority from taxation.**

Q21: Noting geography, is NYSTA willing to include blizzards / snow events under (1) in Section 13 - Force Majeure?

**A21: The Authority will consider this suggestion in accordance with RFP Section 1.6. However, blizzards and snow events should be considered normal events for the Service Areas.**

Q22: Does the Authority have a preference for advancing a number of respondents to a Best and Final Offer process vs. selecting a winning bidder based solely on responses to this RFP?

**A22: No. However, the Authority has reserved the right to conduct a BAFO process, as well as the right to negotiate with multiple Proposers. Please refer to RFP Section 4.5 and paragraph 15 of RFP Section 4.6.**

Q23: Has the Authority considered running a more traditional two-stage process with a preliminary RFQ stage followed by a more formal RFP stage? The two-stage process is a common procurement practice and facilitates a better outcome for the Public Sector by affording potential bidders more time to assess the scope of the project and assess the competitive landscape.

**A23: The Authority has issued the RFP without a preliminary RFQ stage.**

Q24: Is the Authority willing to provide a stipend to unsuccessful bidders? The stipend would encourage more thorough diligence by bidders and provide stronger bids for the Authority.

**A24: The Authority will consider this suggestion in accordance with RFP Section 1.6. If the Authority elects to provide a stipend, the Authority will provide further detail via Addendum to the RFP. However, the Authority is not inclined to provide for a stipend to unsuccessful Proposers.**

Q25: Will the Lease Agreement include a Compensation on Termination for NYSTA Convenience regime?

**A25: Yes. Please see Addendum No. 2 being issued concurrently with these Authority Responses to Written Questions.**

Q26: Will the Lease Agreement include a Relief / Compensation Events regime (for instance: construction delays resulting from scheduling requirements imposed by utility companies; environmental / construction permitting delays, which party will be responsible for snow removal and de-icing of service areas while the service areas are closed for fuel station reconstruction? etc.)?

**A26: The Legal Appendices include a Force Majeure clause, but do not currently provide for relief associated with delays caused by utility companies or regulatory agencies. Snow removal and de-icing of fuel areas is not an Operator responsibility, as the fuel areas are not part of the demised Service Area premises. (Please refer to RFP Exhibit 6, Service Area Responsibility Maps.) The Authority welcomes any specific suggestions for provisions to include in the Legal Appendices and will consider such suggestions in accordance with RFP Section 1.6. If the Authority makes any alteration to the RFP, it will provide further detail via Addendum to the RFP.**

Q27: Is NYSTA willing to assume completion and scheduling risk associated with coordination with utility companies?

**A27: Please see response A26, above.**

Q28: Electric vehicle charging seems to be excluded. What is the rationale?

**A28: The Authority has reserved the right to require electric vehicle charging. At this time, the Authority is considering state initiatives pertaining to electric vehicle charging. Please refer to RFP Appendix B, Section 5, Reservation of Authority Rights.**

Q29: Is the winning party able to maximize Advertising revenue? What limits should be considered?

**A29: Please refer to Section 2.2.2, Recommended Services. The Federal Highway Administration has regulations concerning advertising on interstate highways. Please refer to [https://www.fhwa.dot.gov/real\\_estate/oac/](https://www.fhwa.dot.gov/real_estate/oac/). Note also that RFP Appendix B, Section 5, Future Revenue Opportunities, requires Authority approval and revenue sharing for non-retail revenue opportunities that are not expressly provided for in the Lease Agreement.**

Q30: Depending on the final construction cost of the plazas, would the Thruway be willing to contribute a subsidy for construction and / or to enter into an availability payment (and rent waiver) program for those service plazas that do not cover operating costs and earn a return on investment?

**A30: No. The Authority does not intend to provide any subsidy for construction or to provide for availability payments in the Lease Agreement.**

Q31: At what point in time does the Authority expect to hire a Financial Advisor and external Legal Counsel?

**A31: Please see response A1, above. The Authority has agreements with advisors that the Authority can use if it determines same to be necessary.**

Q32: Does the Authority plan on hiring a Technical Advisor to assist in evaluating the Technical Proposals?

**A32: The Authority has agreements with technical advisors that the Authority can use if it determines same to be necessary.**

Q33: Will the Thruway agree to the permanent closure of some service plazas? If yes, then how many service plazas would the Thruway allow to be closed?

Consultation with multiple industry experts suggests that this project is not viable from a private market perspective without closing locations.

**A33: No. The Authority does not intend to permit the permanent closure of any of the Service Areas. Please refer to Section 2.2 Scope of Services Subsection G, Conceptual Plan, which describes possible service levels for different Service Areas.**

Q34: Alternatively (to the previous question) would the Thruway consider converting a number of the smaller plazas to “fuel only” outlets with plaza snow, repair and maintenance responsibilities passing solely to the fuel operators?

**A34: No. The Operator must provide at least the minimum levels of service at the Service Areas required by the RFP. Please see Section 2.2.1 G. of the RFP and see response A35, above.**

Q35: What is the planned extension of the new Welcome Centers that have been proposed? These appear to be in direct competition with existing Thruway plazas.

**A35: There currently are no plans to add additional Welcome Centers on the New York State Thruway.**



**RFEI - #18C06**  
**Requests For Expressions of Interest (RFEI)**  
**To Redevelop and Operate The New York State**  
**Thruway Authority Service Areas**  
**Through a Public-Private Partnership**

**LIST OF RESPONDENTS**

1. 7-Eleven, Inc.
2. Airport Plazas, LLC
3. Apples and Oranges Public Relations LLC
4. Areas USA
5. Beyer Blinder Belle Architects & Planners LLP
6. CHA Consulting, Inc.
7. Cordogan Clark & Associates
8. Crown Architecture and Consulting, D.P.C.
9. Delaware North Companies Travel Hospitality Services, Inc.
10. Ernst & Young Global Limited
11. Halmar International
12. HMS Host Family Restaurants, Inc.
13. Hoschler Graziosi Architects, PC
14. Indus Hospitality Group
15. John Lang Investments Limited
16. Macquarie Infrastructure Developments LLC
17. Panda Restaurant Group
18. Petrogas Group US Inc. (D/B/A Applegreen)
19. Republic Land Development, LLC
20. Robert A.M. Stern Architects, LLP
21. Rover Technologies, Inc. And Others
22. Sano-Rubin Construction, LLC
23. Stracher-Roth-Gilmore, Architects
24. Travelers Marketing
25. Truck Specialized Parking Services, Inc.

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RFP #18C15**

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

December 21, 2018

**ADDENDUM NO. 2**

Notice is hereby given that the following Addendum No. 2 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 (the "RFP").

Each Proposer shall acknowledge receipt of this Addendum No. 2 in the cover letter submitted as part of their Proposal.

Addendum No. 2 consists of the following change to the RFP:

Appendix B of the RFP, is hereby revised to add the following new Section 18, "Termination for Convenience." Material to be added is underscored.

**Section 18. Termination for Convenience**

**Authority Right**

The Authority may, in its discretion and for its convenience, terminate the Lease Agreement at any time on or before the expiration of the Term (a "Termination for Convenience"). In the event of any Termination for Convenience, the Authority shall pay the Operator the Convenience Termination Amount (defined below). The right of the Authority to terminate the Lease Agreement for its convenience and in its discretion will constitute an essential part of the overall consideration for the Lease Agreement, and, without limiting any right of the Operator in respect of its entitlement to the Convenience Termination Amount, the Operator waives and covenants not to assert any right it may have under Applicable Law to claim that the Authority owes the Operator any duty of good faith or fair dealing in the exercise of such right.

**Convenience Termination Amount**

In the event the Lease Agreement is terminated upon a Termination for Convenience, the Authority will pay to the Operator a "Convenience Termination Amount" equal to the aggregate, without duplication, of each of the following:

- (1) The aggregate of all amounts then due and payable as of the termination date by the Operator for Eligible Project Debt, to be defined in the Lease Agreement; plus
- (2) A reasonable amount as of the termination date equal to the Operator's Eligible Return and Profit, to be defined in the Lease Agreement; plus
- (3) Any accrued but unpaid amounts owing and payable by the Authority to the

Operator under the Lease Agreement; plus

(4) All reasonable costs of the Operator associated with the demobilization of the construction work for any pending Initial Improvements as a result of the termination of the Lease Agreement, which amount shall not include any overhead or profit of the Operator; plus

(5) Certain reasonable amounts payable by the Operator to a subcontractor under the terms of a subcontract as a direct result of the termination of the Lease Agreement, which amount shall not include any overhead or profit of the Operator, to be defined in the Lease Agreement;

less, the aggregate, without duplication, of each of the following:

(6) All liquidated damages payable by the Operator pursuant to the Lease Agreement that have accrued but are unpaid amounts owing and payable by the Operator to the Authority under the Lease Agreement; plus

(7) Rent and any other amounts due and owing to the Authority from the Operator pursuant to the Lease Agreement.

**Termination Date and Convenience Termination Amount Disputes**

The effective date of any Termination for Convenience shall be the date specified in the Authority's written notice of termination which shall be no less than 30 days after the date on which such termination notice is given to the Operator. It shall not be a condition to the termination of the Lease Agreement that the Authority shall have paid the Convenience Termination Amount; provided, that, the Operator's right to payment of the Convenience Termination Amount shall survive termination of the Lease Agreement.