

## PDB QUESTION REQUEST FORM QR

PROJECT: 19I065-S3-013    CONTRACT No.: PD2401

DATE: 10/17/2024

RFP Section ID	Question	Reserved for Agency Response
Appx A, Sample PDB Contract, Section 3.4.1	Appx A, Sample PDB Contract, Section 3.4.1, Termination for Convenience: If the State terminates the PDB Contract for convenience before the DBT has completed final design, the DBT should be released from all liability that may arise in relation to any State use of the design produced by the Design-Builder. Please modify Section 3.4.1 to clarify the Parties' respective liability with respect to design documents should the State elect to terminate the Contract for convenience prior to completion of final design.	<p><b>See additional language for Section 3.1 described below.</b></p> <p><b>In addition, a new Section 3.1.1 will be added:</b></p> <p><b>3.1.1. Termination Prior to Final Design</b> – If this Agreement is terminated by the STATE prior to delivery of final design plans by the DESIGN-BUILD TEAM, the STATE may use any of the DESIGN-BUILD TEAM's preliminary design work product at the STATE's sole risk, unless the STATE elects to enter into a separate contract with the DESIGN-BUILD TEAM's design consultant to complete the final design of the Project.</p>

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Appx A, Sample PDB Contract, Section 3.4.2	Appx A, Sample PDB Contract, Section 3.4.2, Termination for Cause: If the State terminates the PDB Contract for cause before the DBT has completed final design, the DBT should be released from all liability that may arise in relation to any State use of the design produced by the Design-Builder. Please modify Section 3.4.1 to clarify the Parties' respective liability with respect to design documents should the State elect to terminate the Contract for cause prior to completion of final design.	<b>A new Section 3.1.1 will be added as detailed above.</b>
Appx A, Sample PDB Contract, Section 3.4.2	Appx A, Sample PDB Contract, Section 3.4.2, Termination for Cause: The Sample PDB Contract provides that a material violation of the terms of the Agreement by the DBT is grounds for the State to immediately terminate the Agreement and withhold payments in excess of compensation for satisfactorily completed services. However, the Sample PDB Contract does not specify what constitutes a material violation of the Agreement and does not require the State to provide the DBT with advance written notice and a period of time to cure the alleged material breach prior to termination of the Agreement. Please modify Section 3.4.2 to require advance written notice and an appropriate cure period.	<b>Written notice and 15-day cure period will be added to Section 3.4.2.</b>

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Appx A, Sample PDB Contract, Section 3.24	Appx A, Sample PDB Contract, Section 3.24, Subject to Funds Availability: If the State terminates this Agreement because funds are not appropriate or available, the DBT should be released from all liability that may arise in relation to any State use of the design produced by the Design-Builder. Please modify Section 3.24 to clarify the Parties' respective liability with respect to design documents should the State elect to terminate the Contract due to lack of funding prior to completion of final design.	<b>A new Section 3.1.1 will be added as detailed above.</b>
Sample PDB Contract	Please add a mutual waiver of consequential damages provision to the Sample PDB Contract.	<b>TDOT is not authorized to waive consequential damages.</b>
Appx A, Sample PDB Contract, Section 4.4	Appx A, Sample PDB Contract, Section 4.4, Abandonment of the Project: If the State decides to abandon all or part of the Project prior to DBT's completion of final design, the DBT should be released from all liability that may arise in relation to the State's use of the design produced by the DBT. Please modify Section 4.4 to add that, if the Department elects to abandon the Project prior to DBT's completion of final design, the DBT shall be released from all liability that may arise in relation to the State's use of the design produced by the DBT.	<b>A new Section 3.1.1 will be added as detailed above.</b>

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Appx A, Sample PDB Contract, Section 4.5	Appx A, Sample PDB Contract, Section 4.5, Failure to Reconcile the GMP and Agree to a Construction Contract: If the Parties are unable to agree on a GMP or terms of a Construction Contract and the State elects to terminate the DBT prior to completion of the final design documents, the DBT should be released from all liability that may arise in relation to any State use of the design produced by the DBT. Please modify Section 4.5 to add that, if the Department elects to terminate the DBT prior to completion of final design, the DBT shall be released from all liability that may arise in relation to the State's use of the design produced by the DBT.	<b>A new Section 3.1.1 will be added as detailed above.</b>
Appx A, Sample PDB Contract, Section 4.5	Appx A, Sample PDB Contract, Section 4.5, Failure to Reconcile the GMP and Agree to a Construction Contract: Section 4.5 should also clarify that termination of the Agreement due to failure to reconcile the GMP or agree to a Construction Contract is not a breach of the Agreement by the DBT.	<b>The following sentence will be added to Section 4.5:</b>  Failure by the STATE to agree to the DESIGN-BUILD TEAM's GMP proposal, or failure by either party to enter into a final design and construction phase contract for the Project, shall not constitute a breach of this Agreement.

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Sample PDB Contract	The Sample PDB Contract should clarify that transfers of ownership and other uses of the design drawings are subject to the following: i) until sealed, the designs documents are preliminary and are not intended or represented to be suitable as final design for the Project or for any use in connection with any other project; ii) any use of unsealed documents without the written consent of the DBT will be at the sole risk of the Party undertaking such use and without liability of the DBT.	<p><b>The following sentence will be added to the end of Section 3.1:</b></p> <p>The STATE acknowledges that, until the engineer's endorsement or seal is placed, the DESIGN-BUILD TEAM's design work product is preliminary, and such preliminary design work product is not intended or represented to be suitable as final design for the Project or for any use in connection with any other project without the written verification of the engineer.</p>
Appx A, Sample PDB Contract, Section 3.4.2	Appx A, Sample PDB Contract, Section 3.4.2: In the event of Termination for Cause the State should pay the DBT fair and equitable compensation for performance of services prior to receipt of a notice of termination less the amount of damages caused by Design-Builder's breach.	<b>TDOT is agreeable to a modification indicating that TDOT may withhold damages from any payments owed for satisfactorily completed work, in addition to any other remedies available.</b>
Appx A, Sample PDB Contract, Section 3.4.1, 3.24	Appx A, Sample PDB Contract, Section 3.4.1, 3.24, 4.4, 4.5: In the event of Termination for Convenience, Termination due to Funds Availability, Termination due to the State's Abandonment of the Project, or Failure to Reconcile the GMP and Agree to a Construction Contract, in addition to compensation for all authorized services completed as of the termination date, the DBT should also be compensated for all reasonable costs associated with the termination, including reasonable demobilization costs.	<b>TDOT is agreeable to a modification to these sections allowing for reasonable demobilization costs where applicable.</b>

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Appendix A: Sample PDB Services Contract, Article 3.22	Given the nature of the work under the preconstruction agreement and insurability, Proposer requests TDOT modify Article 3.22 of the Sample Pre-Construction Agreement as follows: Replace the second sentence with “The DESIGN-BUILD TEAM shall hold harmless and indemnify the STATE for all claims and damages to the extent caused by the failure of the DESIGN-BUILD TEAM to perform its duties in conformance with the reasonable standard of care as applicable to design professionals within the State of Tennessee.”	<b>TDOT is agreeable to this modification.</b>
Appendix A: Sample PDB Services Contract, Article 3.1	Please confirm, should the contract be terminated prior to completion any use, reuse or modification of the Work Product by the Owner or other persons will be at the Owner’s or such other persons’, as applicable, sole risk and without liability or legal exposure to DESIGN-BUILD TEAM; and (b) The Owner shall indemnify, defend and hold harmless the DESIGN-BUILD TEAM successors, assigns, officeholders, officers, directors, agents, representatives, consultants and employees from any claim asserted, incurred, suffered or awarded as a result of or that relate to any third-party claims, suits, actions, allegations or proceedings arising out of or caused by any acts, actions, negligence, errors, omissions, fault, willful misconduct, violation of Law or breach of contract by the Owner arising out of or resulting from any use, reuse or modification of the Work Product.	<p><b>See additional language for Section 3.1 and new Section 3.1.1 as detailed above.</b></p> <p><b>TDOT does not have the legal authority to indemnify or hold harmless.</b></p>

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Appendix A: Sample PDB Services Contract, Article 3.10 Engineer's Endorsement	It is not typical for Engineer to endorse Preliminary Plans or Estimates. We respectfully request TDOT edit the section to remove these requirements under section 3.10?	<b>TDOT is agreeable to removing "preliminary and" from Section 3.10.</b>
Appendix A: Sample PDB Services Contract, Article 3.11 Control	We respectfully request editing the requirements in the first sentence from 'satisfactory to the STATE' to 'consistent with the terms of this Agreement' and in the last sentence of 'wishes of the STATE' to 'terms of this Agreement'? The requirements for beyond the Agreement could lead to both Standard of Care and Insurability concerns.	<b>TDOT is agreeable to this modification.</b>
RFP Section 1.14	Will the Department consider an aggregate liability limit arising from or relating to the Pre-Construction Agreement shall not exceed _____ (i.e., value of the preconstruction contract)	<b>TDOT is not authorized to provide such a limitation of liability.</b>
Sample PDB Contract. Agreement. Section 4.5	Will TDOT provide indemnity to the contractor if the off-ramp provision is invoked and the design work is used?	<b>See above responses regarding additional design work product language for Section 3.1 and Section 3.1.1.</b>  <b>TDOT does not have authority to indemnify.</b>

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Sample PDB Contract	Would TDOT consider including a mutual waiver of consequential damages?	<b>TDOT is not authorized to waive consequential damages.</b>
Sample PDB Contract Section 4.5	Would it be possible for TDOT to post the the terms for the “Off-ramp”, specifically if there will be an indemnity provided to the DBT for use of the design in the event that the DBT is released if a GMP cannot be agreed. Would the Department consider including a cure period prior to termination for cause?	<p><b>See above responses regarding additional design work product language for Section 3.1 and Section 3.1.1. TDOT does not have authority to indemnify.</b></p> <p><b>See also above response regarding additional cure period language for Section 3.4.2.</b></p>



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