

**REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, AND POTENTIALLY MAINTAIN
THE
DFW CONNECTOR PROJECT**

THROUGH A COMPREHENSIVE DEVELOPMENT AGREEMENT

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

**A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION**

ISSUED MARCH 28, 2008

ADDENDUM 1 ISSUED APRIL 14, 2008

ADDENDUM 2 ISSUED APRIL 30, 2008

ADDENDUM 3 ISSUED JUNE 4, 2008

ADDENDUM 4 ISSUED JUNE 17, 2008

ADDENDUM 5 ISSUED JULY 3, 2008

ADDENDUM 6 ISSUED JULY 8, 2008

ADDENDUM 7 ISSUED DECEMBER 10, 2008

ADDENDUM 8 ISSUED MARCH 6, 2009

**Texas Department of Transportation
125 East 11th Street – Fifth Floor
Austin, Texas 78701**

CERTAIN KEY DATES

<u>EVENT</u>	<u>DATE</u>
Last Date for Proposers to Submit Written Questions	November 14, 2008
TxDOT Response to Proposers' Written Questions Due	November 21, 2008
Issue Request for Proposal Revisions and BAFO	December 10, 2008
BAFO Due Date	January 12, 2009
Issue Addendum 8 (Request for Revised Development Price for Configuration 1)	March 6, 2009
Due Date for Proposer Response to Addendum 8	March 16, 2009
CDA and CMA Conditionally Awarded (anticipated)	March 26, 2009
CDA and CMA Executed and Delivered (anticipated)	April 30, 2009

TABLE OF CONTENTS

	Page
Section 1.0 INTRODUCTION AND GENERAL PROVISIONS	1
1.1 Introduction.....	1
1.2 Project Goals.....	2
1.3 General Project Description and Scope of Developer’s Obligations.....	3
1.3.1 General Project Description	3
1.3.2 Scope of Developer’s Obligations	3
1.3.3 Project Environmental Status	4
1.4 Documents in the Request for Proposals	4
1.5 Definitions and Acronyms.....	5
1.6 Procurement Schedule	5
1.7 General Provisions Regarding Proposals.....	5
1.7.1 Proposal Contents and Best and Final Offer Contents.....	5
1.7.2 Inclusion of Proposal in CDA Documents and CMA Documents.....	6
1.7.3 Commitments in the Proposal	6
1.7.4 Ownership of Proposal and Applicability of Public Information Act.....	6
1.8 Project Funding and Financing.....	7
1.9 Federal Requirements.....	7
1.9.1 General Obligations.....	7
1.9.2 DBE Requirements.....	7
Section 2.0 PROCUREMENT PROCESS.....	9
2.1 Procurement Method.....	9
2.2 Receipt of the Request for Proposal Documents, Communications and Other Information.....	9
2.2.1 Authorized Representative and Ombudsman.....	9
2.2.2 Identification of Proposer Authorized Representative	10
2.2.3 Rules of Contact.....	10
2.2.4 Language Requirement.....	11

2.3	Questions and Response Process, and Addenda	12
2.3.1	Questions and Responses Regarding the RFP.....	12
2.3.2	Addenda.....	13
2.3.3	Ombudsman.....	14
2.4	Pre-Proposal Submittals.....	14
2.5	Pre-Proposal Meetings	14
2.5.1	Informational Meetings.....	14
2.5.2	One-on-One Meetings.....	15
2.5.3	Questions and Responses During One-on-One Meetings.....	15
2.5.4	Statements at Meetings.....	16
2.6	Confidentiality/Public Information Act Disclosure Requests	16
2.6.1	Disclosure Waiver	16
2.6.2	Observers During Evaluation.....	16
2.6.3	Public Disclosure of Proposal Documents.....	16
2.6.4	Disclosure Process for Requests Under the Act.....	17
2.7	TxDOT Studies and Investigations	18
2.8	Examination of RFP and Site Access	18
2.8.1	Examination of RFP	18
2.8.2	Site Access.....	19
2.9	Errors.....	19
2.10	Improper Conduct.....	19
2.10.1	Non-Collusion.....	19
2.10.2	Organizational Conflicts of Interest.....	19
2.10.3	Equitable Treatment of Proposers.....	20
2.11	Changes in Proposer’s Organization	20
2.12	Sales Tax	20
Section 3.0 ALTERNATIVE TECHNICAL CONCEPTS.....		21
3.1	Alternative Technical Concepts	21
3.2	Pre-Proposal Submission of ATCs	21
3.3	TxDOT Review of Pre-Proposal Submission of ATCs.....	23
3.4	Incorporation of ATCs in the CDA Documents and CMA Documents	24
3.5	Confidentiality	25

Section 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS

	AND ACCEPTANCE OF DELIVERY BY TXDOT	26
4.1	General Submittal Requirements.....	26
	4.1.1 Proposal Due Date	26
	4.1.2 Signatures Required.....	26
	4.1.3 Certified Copies.....	26
	4.1.4 Consequences of Failure to Follow Requirements	26
	4.1.5 Requirement to Submit Compliant Proposal	26
	4.1.6 Format.....	27
	4.1.7 Additional Requirements for BAFO Delivery	28
4.2	Technical Proposal Submittal	28
	4.2.1 General	28
	4.2.2 Proposal Security and Escrow Agreement	28
4.3	Financial Proposal Submittal and Escrowed Proposal Documents	29
	4.3.1 Financial Proposal.....	29
	4.3.2 Escrowed Proposal Documents Submitted to Escrow	29
4.4	Currency.....	30
4.5	Modifications, Withdrawals and Late Submittals.....	30
	4.5.1 Modifications to a Proposal	30
	4.5.2 Withdrawal and Validity of Proposals	31
	4.5.3 Late Proposals	31
4.6	Forfeiture of Proposal Security	31
4.7	Acceptance of Delivery by TxDOT.....	31
4.8	Costs Not Reimbursable.....	32
	 Section 5.0 EVALUATION AND POST-SELECTION PROCESS.....	 33
5.1	Organization of the TxDOT Evaluation Committee and Subcommittees	33
5.2	Best Value Determination.....	34
	5.2.1 Calculation of the Price Score	34
	5.2.2 Calculation of the Technical Score	35
5.3	Pass/Fail and Responsiveness Evaluation	35
	5.3.1 Technical Proposals	35
	5.3.2 Financial Proposals	36
	5.3.3 TxDOT Right to Exclude Proposals from Consideration or to Waive Mistakes	37

5.4	Evaluation of Project Development Plan by DPES	37
5.4.1	Project Development Plan Evaluation Factors	37
5.4.2	Evaluation Guidelines.....	41
5.4.3	Technical Score.....	42
5.5	Evaluation of Financial Proposal by FPES	42
5.5.1	Present Value of the Development Price.....	42
5.5.2	Net Present Value of Cost Adjustments	43
5.5.3	Present Value of the Maintenance Price	43
5.6	ESRC Evaluation of Technical and Financial Proposals	43
5.7	Requests for Clarification	43
5.8	Requests for Proposal Revisions.....	43
5.9	Identification of Apparent Best Value Proposal.....	44
5.10	Recommendation to Commission.....	44
5.11	Finalization of the CDA Documents and CMA Documents; Post-Selection Process	45
5.11.1	Negotiation of CDA Documents and CMA Documents	45
5.12	Post-Selection Deliverables.....	45
5.12.1	Project Management Plan	45
5.12.2	Documents To Be Submitted Following Conditional Award	46
5.12.3	TxDOT Comments On Post-Selection Deliverables.....	46
Section 6.0	FINAL AWARD AND EXECUTION; POST-EXECUTION ACTIONS	47
6.1	Final Award, Execution and Delivery of CDA and CMA.....	47
6.1.1	Documents To Be Delivered By Proposer With Executed CDA and CMA	47
6.2	Debriefings	49
6.3	Payment to Unsuccessful Proposers.....	49
6.4	Disposition of EPDs Following Conclusion of Procurement Process.....	50
Section 7.0	PROTESTS	51
7.1	Applicability.....	51
7.2	Required Early Communication for Certain Protests	51
7.3	Deadlines for Protests	51
7.4	Content of Protest.....	51

7.5	Filing of Protest.....	51
7.6	Comments from other Proposers.....	52
7.7	Burden of Proof	52
7.8	Decision on Protest	52
7.9	Protestant's Payment of Costs	52
7.10	Rights and Obligations of Proposers	52
Section 8.0 TXDOT RIGHTS AND DISCLAIMERS		53
8.1	TxDOT Rights.....	53
8.2	TxDOT Disclaimers	54
Section 9.0 BEST AND FINAL OFFER (BAFO)		55
9.1	Submission of BAFO	55
9.2	Contents	55
9.3	Format	56
9.4	Number of Copies.....	56

EXHIBITS

Exhibit A	Definitions and Acronyms
Exhibit B	Technical Proposal Instructions
Exhibit C	Financial Proposal Instructions
Exhibit D	Required Forms
Form A	Proposal Letter
Form B-1	Identification of Proposer and Equity Participants
Form B-2	Information About Proposer Organization
Form B-3	Information About Major Participants, Major Professional Services Firms and Identified Subcontractors
Form C	Responsible Proposer Questionnaire
Form D	Industrial Safety Record for Team Members Performing Installation or Construction Work
Form E	Personnel Work Assignment Form
Form F	Non-Collusion Affidavit
Form G	Buy America Certification
Form H	DBE Certification
Form I	Child Support Statement for State Grants, Loans and Contracts
Form J	Conflict of Interest Disclosure Statement
Form BAFO K-1	Replacement Proposal Bond
Form BAFO K-1.a	Rider to Original Proposal Bond
Form BAFO K-2	Replacement Letter of Credit (Proposal)
Form BAFO K-2.a	Amendment to Letter of Credit (Proposal)
Form L	Escrow Agreement
Form BAFO L-1	Escrow Agreement Amendment
Form M	Opinion of Counsel
Form N-1.a	Development Price – Configuration 1
Form N-1.b	Development Price – Configuration 2
Form N-1.c	Development Price – Configuration 3
Form N-1.1.a	Development Price – Configuration 1
Form N-1.1.b	Development Price – Configuration 2
Form N-1.1.c	Development Price – Configuration 3
Form N-1.2.a	Development Price – Configuration 1
Form N-1.2.b	Development Price – Configuration 2
Form N-1.2.c	Development Price – Configuration 3
Form N-2.a	Cash Flow Adjustment Table/Maximum Payment Curve – Configuration 1
Form N-2.b	Cash Flow Adjustment Table/Maximum Payment Curve – Configuration 2
Form N-2.c	Cash Flow Adjustment Table/Maximum Payment Curve – Configuration 3
Form O.a	Maintenance Price – Configuration 1

Form O.b	Maintenance Price – Configuration 2
Form O.c	Maintenance Price – Configuration 3
Form P	Completion Deadline
Form Q	Equal Employment Opportunity Certification
Form R	Title 49, Code of Federal Regulations, Part 29 Debarment and Suspension Certification
Form S	Certification Regarding Use of Contract Funds for Lobbying
Exhibit E	Summary and Order of Proposal Contents
Exhibit F	Right of Entry Process
Exhibit G	Minute Order
Exhibit H	Sanctions

INSTRUCTIONS TO PROPOSERS
(Request for Proposals: DFW Connector Project)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“RFP”), as amended, is issued by the Texas Department of Transportation (“TxDOT”), an agency of the State of Texas, to seek competitive detailed proposals (individually, a “Proposal” and collectively, “Proposals”) for a public-private partnership to be evidenced by a Comprehensive Development Agreement (“CDA”). The CDA shall provide that the entity identified in the successful Proposal (“Developer”) shall develop, design, construct, and, at TxDOT’s sole option, provide capital maintenance for the DFW Connector Project (the “Project”). Developer’s capital maintenance rights and obligations will be set forth in a separate Capital Maintenance Agreement (“CMA”). The forms of CDA and CMA are included in Volumes II and III of the RFP.

All references to the “Proposal” and “Proposal Revision” contained in the RFP shall be deemed to refer to the Proposal as supplemented or revised by the BAFO and any other Proposal Revisions, and all references to the “Proposal Due Date” shall be deemed to refer to the “BAFO Due Date,” except where the context otherwise requires.

TxDOT is issuing the RFP to those Proposers shortlisted based on TxDOT’s evaluation of Qualification Submittals (“QSs”) delivered to TxDOT on May 1, 2007 in response to the Request for Qualifications for the Project issued on December 29, 2006 (as amended, the “RFQ”).

Proposers must comply with these Instructions to Proposers (“ITP”) during the procurement and in their responses to the RFP. Proposers shall also take the Project goals identified in Section 1.2 below into consideration in drafting their Proposals.

The RFP permits a Proposer to identify an entity other than Proposer to act as Developer, thus allowing unsuccessful Proposers to avoid unnecessary costs associated with formation of such entity. However, if the entity identified as Developer in the successful Proposal is not formed as contemplated herein, or fails to comply with the requirements set forth herein, the entity(ies) that signed the Proposal shall have the obligation either to enter into the CDA and CMA itself or to provide a substitute Developer acceptable to TxDOT in its sole discretion.

All forms identified in this ITP are found in Exhibit D unless otherwise noted. All times in this ITP are central standard time (CST) or central daily savings time (CDT), as applicable.

The purpose of this Addendum 8 is to address a change in circumstances relating to the funding available for the Project, which eliminates the need to impose certain payment limitations contained in Addendum 7. TxDOT believes it is necessary and appropriate to modify the RFP documents in order to correctly reflect the changed circumstances and obtain the best value for the State. The RFP modification consists of (1) the replacement of the previous 71-month Maximum Payment Curve for Configuration 1 with the new Maximum Payment Curve provided with this Addendum 8; and (2) the requirement to submit revised pricing and cash flow forms for Configuration 1, as described in Section 3.1(b) of Exhibit C, to reflect the changed financial circumstances.

Notwithstanding anything contained elsewhere in the RFP documents, the only submittals required or allowed by this Addendum 8 are: (1) a new Form A (Proposal Letter), duly authorized and executed in the form accompanying this Addendum 8, and (2) revised Forms N-1.a, N-1.1.a, and N-2.a, as described in Section 3.1(b) of Exhibit C.

1.2 Project Goals

TxDOT's goals for the Project are as follows:

- (a) Maintaining mobility through the Project area during construction of the Project while minimizing impacts to the public, business, communities and adjacent property owners through effective communication, cooperation and coordination;
- (b) Reducing congestion and improving mobility within the Project area after the construction period;
- (c) Facilitate efficient management and operation of the managed lanes throughout Project performance;
- (d) Securing quality design, construction and capital maintenance services meeting or exceeding TxDOT technical requirements at fair and competitive prices to optimize the operational life cycle performance of the Project;
- (e) Safe construction;
- (f) Expediting delivery of Project improvements;
- (g) Facilitating participation by DBEs, women-owned business enterprises and minority business enterprises, consistent with the CDA Documents, CMA Documents and applicable Laws;
- (h) Cooperation and coordination with Stakeholders in the development, design, construction and capital maintenance of the Project; and
- (i) Use of public-private partnerships where acceptance of an offer from the private sector is in the public interest.

1.3 General Project Description and Scope of Developer's Obligations

1.3.1 General Project Description

TxDOT is planning improvements to the SH 114/SH 121 Corridor, including the addition of tolled managed lanes to be located along SH 114 from east of FM 1709 to east of International Parkway. The Project involves the reconstruction of, and increased capacity for, SH 114 from SH 114L Business to east of International Parkway and SH 121 from north of FM 2499 to south of SH 360. The proposed improvements include the reconstruction of several directional interchanges, highway merge/diverges, arterial flyover connections and cross-street interchanges. In addition, construction of collector-distributor roads, a managed lane facility, braided ramps, system ramps and frontage roads is included in the overall Project scope.

The initial configuration of the Project is dependent on various factors, including funding availability. The initial configuration of the Project will include, at a minimum, all of the elements described in Section 1 of Book 2 as Configuration 1, and at TxDOT's option may also include the elements described in Section 1 of Book 2 as Configuration 2 and Configuration 3. As set forth in CDA Section 4.1, TxDOT shall have the option, at its sole discretion, to direct Developer to commence Work on Configuration 2 or Configuration 3, or both. The deadline for exercising all such options is six months after issuance of NTP 1. If TxDOT does not issue an Option Notice to Proceed within 180 days after the BAFO Due Date, the Option Price will be subject to adjustment in accordance with Section 12.1.7 of the CDA.

TxDOT will also hold three five-year options, exercisable by TxDOT, in its sole discretion, to require that Developer perform capital maintenance on the Project. TxDOT's right to exercise the second and third options will be contingent on the immediately preceding option being exercised.

TxDOT is developing this project as a toll project and anticipates that the Project will be designated by the Texas Transportation Commission as a toll road project following environmental clearance. After designation, the provisions of Transportation Code Section 203.092 and Texas Administrative Code, Title 43, Section 21.23 will determine reimbursable relocation costs.

The design, installation, operation and maintenance of the toll collection system for the managed lanes portion of the Project will not be included in Developer's scope of work, and TxDOT will retain responsibility for such work. Developer will be required to coordinate its work with the toll systems integrator retained by TxDOT to perform the toll collection systems work and the toll systems operator, as more particularly set forth in the CDA Documents.

1.3.2 Scope of Developer's Obligations

Developer's obligations will generally include all efforts required to develop, design, and construct the Project in accordance with the requirements of the CDA Documents and,

at TxDOT's sole option, provide capital maintenance for the Project in accordance with the requirements of the CMA Documents.

1.3.3 Project Environmental Status

TxDOT currently anticipates that a Finding of No Significant Impact (FONSI) will be issued for the Project in early 2009. A draft Environmental Assessment ("EA") is currently under review by TxDOT and FHWA, and TxDOT has provided Proposers with anticipated environmental parameters in the form of a draft environmental commitments document ("Environmental Commitments Document") upon which Proposers should base their Proposals. The CDA addresses the possibility that a NEPA Approval issued by FHWA might diverge from those parameters.

Proposers are advised that it is possible that the NEPA process will result in a no-build alternative for the Project or an alignment that differs from the preferred alignment identified in the EA. Although federal regulations permit a CDA to be awarded and preliminary design work to be performed before FHWA issues a NEPA decision, nothing contained in this RFP or the CDA commits TxDOT or a Proposer to the construction of the Project or any Project alternative unless a NEPA Approval is obtained (and then only to the extent set forth in the NEPA Approval). The CDA addresses pricing and scheduling adjustments available to the Developer if NTP2 is delayed more than 90 days after issuance of NTP1 due solely to delay in issuance of the NEPA Approval.

1.4 Documents in the Request for Proposals

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented:

- (a) Volume I – this ITP (including exhibits and forms);
- (b) Volume II – the CDA Documents (Books 1 – 3);
- (c) Volume III – the CMA Documents; and
- (d) Volume IV – the Reference Information Documents.

Refer to Section 1.2.1 of the CDA for a list of the CDA Documents, and Section 1.2.2 of the CMA for a list of the CMA Documents, and their respective order of precedence, and to Volume IV for the Reference Information Documents.

The Reference Information Documents are included in the RFP for the purpose of providing information to Proposers that is in TxDOT's possession. TxDOT has not determined whether the Reference Information Documents are accurate, complete or pertinent, or of any value to the Proposers. The Reference Information Documents will not form a part of the contract between TxDOT and Developer. Except as may be provided otherwise in the CDA Documents or the CMA Documents, TxDOT makes no representation, warranty or guarantee as to, and shall not be responsible for, the

accuracy, completeness, or pertinence of the Reference Information Documents, and, in addition, shall not be responsible for any conclusions drawn therefrom.

1.5 Definitions and Acronyms

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used herein, and refer to Exhibit 1 of the CDA or Exhibit 1 of the CMA, as applicable, for the meaning of capitalized terms and acronyms used but not defined herein or in Exhibit A of this ITP.

1.6 Procurement Schedule

The following represents the current schedule for the procurement:

<u>EVENT</u>	<u>DATE and TIME</u>
Last Date for Proposers to Submit Written Questions	November 14, 2008
TxDOT Response to Proposers' Written Questions Due	November 21, 2008
Issue Request for Proposal Revisions and BAFO	December 10, 2008
BAFO Due Date	January 12, 2009 12:00 p.m. (central time)
Last Date for Proposers to Submit Written Questions	March 5, 2009 2:00 p.m. (central time)
TxDOT Response to Proposers' Written Questions Due	March 6, 2009
Issue Addendum 8 (Request for Revised Development Price for Configuration 1)	March 6, 2009
Due Date for Proposer Response to Addendum 8	March 16, 2009 12:00 p.m. (central time)
Conditional Award by Commission (anticipated)	March 26, 2009
CDA and CMA Executed (anticipated)	April 30, 2009

All dates set forth above and elsewhere in the RFP are subject to change, in TxDOT's sole discretion, by Addendum.

1.7 General Provisions Regarding Proposals

1.7.1 Proposal Contents and Best and Final Offer Contents

(a) As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including a (a) Technical Proposal, and (b) Financial Proposal. Requirements for the Technical Proposal and the Financial Proposal are set forth in

Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms in the format specified or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in TxDOT's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

(b) The Proposal evaluation process will consider the entire original Proposal, as revised by the BAFO and all other Proposal Revisions. Each Proposer must submit a BAFO that includes the items identified in the portion of ITP Exhibit E that is entitled "Revised Proposal for BAFO". Proposers shall also include revised narrative sections of the original Proposal as described in Section 9.2, including the revised sections specified in Section 4.1.1 of Exhibit B. The BAFO shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Although it is not necessary to resubmit the entire original Proposal that was submitted on July 15, 2008, each Proposer is responsible for assuring that its Proposal Revisions and BAFO submittals are clearly indexed, organized and explained with regard to the applicable ITP requirements and corresponding portions of the original Proposal.

1.7.2 Inclusion of Proposal in CDA Documents and CMA Documents

Portions of the successful Proposal will become part of the CDA Documents and CMA Documents, as specified in the CDA and the CMA. All other information is for evaluation purposes only and will not become part of the CDA Documents or CMA Documents.

1.7.3 Commitments in the Proposal

The verbiage used in each Proposal will be interpreted and evaluated based on the level of commitment provided by Proposer. Tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment.

1.7.4 Ownership of Proposal and Applicability of Public Information Act

Subject to the exceptions specified herein and in Section 223.203 of the Texas Transportation Code (the "Code"), all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to TxDOT during this procurement process, whether included in the Proposal or otherwise submitted, become the property of the State of Texas upon delivery to TxDOT, and will not be returned to the submitting parties.

Except as provided by Transportation Code, §223.204, all such items may be subject to the Public Information Act, Government Code, Chapter 552. Proposers should familiarize themselves with the provisions of the Public Information Act, Texas Government Code, Chapter 552 (the “Public Information Act”) requiring disclosure of public information, and exceptions thereto (including the exceptions set forth in Section 223.204 of the Code). In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to the RFP. See also Section 2.6.

1.8 Project Funding and Financing

TxDOT’s plan of finance contemplates that TxDOT, using TxDOT, State and/or federal funds, will fund the design, construction and capital maintenance of the Project. Payments will be made in accordance with the CDA Documents and the CMA Documents.

1.9 Federal Requirements

1.9.1 General Obligations

In order to preserve the ability of TxDOT to use federal funding for the Project, the procurement process, the CDA Documents and the CMA Documents must comply with applicable federal Laws and regulations. TxDOT reserves the right to modify the RFP to address any concerns, conditions or requirements of the Federal Highway Administration (“FHWA”). Proposers shall be notified by Addendum of any such modifications.

1.9.2 DBE Requirements

TxDOT has determined that Disadvantaged Business Enterprises (“DBEs”) requirements apply to the design and construction of the Project, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of TxDOT as service providers, vendors, contractors, subcontractors, advisors, and consultants. TxDOT has adopted the definition of DBEs set forth in 49 CFR § 26.5. Proposer’s DBE compliance obligations shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the CDA Documents, CMA Documents and TxDOT’s DBE Program document.

TxDOT’s DBE requirements applicable to the CDA are set forth in Section 7.1 of the CDA and the DBE Special Provisions attached as Exhibit 6 to the CDA and TxDOT’s DBE Program adopted pursuant to Title 49 CFR Part 26. The DBE participation goal for the Project is 12.12% for the professional services and construction portions of the Work performed under the CDA. TxDOT’s DBE requirements applicable to the CMA are set forth in Section 6.1 of the CMA. As set forth in Section 3.2.9 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal. Failure to provide the required DBE certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.

Following conditional award of the CDA and the CMA, the selected Proposer will be required to submit a detailed DBE Performance Plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the Project, including Proposer's exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in the DBE Special Provisions, Exhibit 6 to the CDA. The DBE Performance Plan will be subject to review, comment and approval by TxDOT prior to and as a condition of final award of the CDA and the CMA.

The selected Proposer will also be required to provide DBE commitments in the form required by TxDOT as DBE subcontractors are identified, in accordance with the DBE Special Provisions, the approved DBE Performance Plan, and TxDOT's DBE program.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

The RFP is issued pursuant to Chapter 223 of the Code, Sections 27.1-27.9 of Title 43, Texas Administrative Code (the "Rules") and other applicable provisions of Texas and federal Law. The Commission approved proposed amendments to the Rules on November 16, 2006, which became effective on June 1, 2007.

TxDOT will award the CDA and CMA (if at all) to the responsible Proposer offering a Proposal meeting the high standards set by TxDOT and which is determined by TxDOT, through evaluation based upon the criteria set forth in the Code, the Rules and the RFP, to provide the best value to TxDOT and to be in the best interest of the State of Texas.

TxDOT will accept Proposals for the Project only from those Proposers TxDOT has shortlisted for the procurement based on their responses to the RFQ.

TxDOT will not review or consider alternative proposals.

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

The RFP will be issued to shortlisted Proposers in electronic format on the secure file transfer site for the Project (the "FTP site").

TxDOT shall provide shortlisted Proposers with the address of the FTP site that TxDOT will maintain related to this procurement. The FTP site address will be provided separately to each shortlisted Proposer and each will be required to treat the address as confidential information and to check the site regularly for addenda to this RFP and for other procurement related information.

2.2.1 Authorized Representative and Ombudsman

TxDOT has designated the following individual to be its authorized representative for the procurement (the "Authorized Representative"):

Sam E. Swan, P.E.
Texas Department of Transportation
125 East 11th Street, Fifth Floor
Austin, Texas 78701
Phone: (817) 370-3510
Fax: (817) 370-3513
E-mail: dfwc@dot.state.tx.us

Proposers shall provide a copy of all correspondence to:

Robert B. Stone, P.E.
Texas Department of Transportation
125 East 11th Street, Fifth Floor
Austin, Texas 78701
Phone: (512) 936-0912
Fax: (512) 936-0970
E-mail: rstone@dot.state.tx.us

From time to time during the procurement process or during the term of the CDA or, if applicable, the CMA, TxDOT may designate another Authorized Representative or representatives to carry out some or all of TxDOT's obligations pertaining to the Project.

TxDOT has designated the following individual who is not involved in the procurement to be the ombudsman for the procurement:

Rebecca Blewitt
Associate General Counsel
Texas Department of Transportation
125 East 11th Street, Fifth Floor
Austin, Texas 78701
E-mail: rblewit@dot.state.tx.us

The ombudsman's role and the methods for communicating with the ombudsman are described in Section 2.3.3.

2.2.2 Identification of Proposer Authorized Representative

A Proposer shall identify in its Proposal an individual authorized to act on behalf of Proposer relating to this procurement ("Proposer Authorized Representative"). If a Proposer changes its Proposer Authorized Representative to receive documents, communications or notices in connection with the procurement subsequent to its submission of its Proposal, Proposer shall provide TxDOT's Authorized Representative with the name and address of such new Proposer Authorized Representative. Failure to identify a Proposer Authorized Representative in writing may result in Proposer failing to receive important communications from TxDOT. TxDOT is not responsible for any such failure.

2.2.3 Rules of Contact

From the date of issuance of the RFQ until December 11, 2007, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on December 12, 2007, the date the industry review package was issued, and ending on the earliest of (i) execution and delivery of the CDA and the CMA, (ii) rejection of all Proposals by TxDOT or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer nor any of its team members may communicate with another Proposer or its team members with regard to the RFP or either team's Proposal, except that (i) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any TxDOT sponsored informational meetings.

(b) Each Proposer shall designate one designated representative responsible for contacts with TxDOT, and shall correspond with TxDOT regarding the RFP only through TxDOT's Authorized Representative (except communications with TxDOT's ombudsman as provided in subsection (c) of this Section 2.2.3 below) and Proposer Authorized Representative.

(c) No Proposer or representative thereof shall have any ex-parte communications regarding the RFP or the procurement described herein with any member of the Texas Transportation Commission, Stakeholder or with any TxDOT staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative or the Director of the Texas Turnpike Authority Division, in his/her sole discretion. Proposer requests to contact Stakeholders shall be submitted in writing and shall identify (1) the Stakeholder Proposer intends to contact, including the specific individual(s) Proposer intends to contact, if possible; and (2) the specific purpose and subject matter of the proposed contact. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Commission or any public or Proposer workshop related to the RFP.

(d) Any communications determined by TxDOT, in its sole discretion, to be improper may result in disqualification.

(e) Any official information regarding the Project will be in writing, on TxDOT letterhead, and signed by TxDOT's Authorized Representative or designee.

(f) TxDOT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

Proposer shall note that no correspondence or information from TxDOT or anyone representing TxDOT regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.3(e).

2.2.4 Language Requirement

All correspondence regarding the RFP, Alternative Technical Concepts ("ATCs"), Proposal, CDA Documents and the CMA Documents are to be in the English language. If any original documents required for the Proposal are in any other language, Proposer

shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Response Process, and Addenda

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by TxDOT prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which Proposer fails to understand. Failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by TxDOT. Proposers shall submit, and TxDOT will respond to, requests for written clarification in accordance with this Section 2.3.1. To the extent responses are provided, they will not be considered part of the CDA Documents or CMA Documents, nor will they be relevant in interpreting the CDA Documents or CMA Documents, except as expressly set forth in the CDA Documents and CMA Documents, as applicable.

TxDOT will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to the Authorized Representative or to TxDOT's designated ombudsman by hard copy, facsimile or other electronic transmission in the prescribed format.

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.6 or such later date as may be specified in any Addendum. Questions and comments, including requests for clarification or interpretation, shall: (i) be sequentially numbered; (ii) specifically reference the relevant RFP volume, section and page number, unless such request is of general application (in which case the request for clarification shall so note); (iii) identify the relevant section number and page number or, if it is a general question, indicate so; (iv) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information.

Proposers will be limited to 50 questions per RFP version issued, or to such other number of questions as specified in an Addendum. If a question has more than one subpart, each subpart will be considered a separate question. Corrections of typographical errors, incorrect cross references or internal inconsistencies within or among the RFP documents will be excluded from the above-referenced question limitation.

No telephone or oral requests will be considered, and e-mail requests must be followed up by a facsimile or other hard copy delivery. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any person other than TxDOT's Authorized Representative or, subject to compliance with this Section 2.3.1 and Section 2.3.3, to TxDOT's designated ombudsman will be considered. Questions may be submitted only by the

Proposer Authorized Representative, and must include the requestor's name, address, telephone and facsimile numbers, and Proposer he/she represents.

The questions and TxDOT's responses will be in writing and will be delivered to all Proposers, except that TxDOT intends to respond individually to those questions identified by a Proposer or deemed by TxDOT as containing confidential or proprietary information relating to Proposer's Proposal or ATCs. TxDOT reserves the right to disagree with Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, TxDOT will inform Proposers and may allow Proposer to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if TxDOT determines that it is appropriate to provide a general response TxDOT will modify the question to remove information that TxDOT determines is confidential. TxDOT may rephrase questions as it deems appropriate and may consolidate similar questions. TxDOT contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to Addenda, the last set of responses will be issued no later than the date specified in Section 1.6. A consolidated, final set of questions and answers will be compiled and distributed prior to final award.

TxDOT may convene pre-proposal meetings with Proposers as it deems necessary (see Section 2.5), and Proposers must make themselves available to TxDOT for such pre-Proposal meetings and to discuss any matters they submit to TxDOT under this Section 2.3.1. If TxDOT determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, TxDOT will prepare and issue an Addendum.

2.3.2 Addenda

TxDOT reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the FTP site, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts the RFP, as determined in TxDOT's sole discretion, TxDOT may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests permitted concerning the Addendum.

Proposer shall acknowledge in its Proposal Letter (see Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. TxDOT reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. TxDOT does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, TxDOT reserves the right to issue Addenda after

such date. If TxDOT finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum.

2.3.3 Ombudsman

As set forth in Section 2.2.1, TxDOT has designated an employee who is not involved in this procurement to act as an ombudsman for the purpose of receiving written communications submitted in accordance with this Section 2.3.3 on a confidential basis regarding the procurement process. Instead of submitting written communications to TxDOT's Authorized Representative as provided in Section 2.2.1, a Proposer may submit such confidential communications, comments or complaints regarding the procurement to the ombudsman, where Proposer believes in good faith that confidentiality is essential. A Proposer must submit such confidential communications in a separate document that does not include any information identifying Proposer. After receiving such confidential communications, the ombudsman shall forward only the separate document containing the confidential communication to TxDOT's Authorized Representative as identified in Section 2.2.1. If the ombudsman determines that the submitted material is not of a confidential nature, the ombudsman shall return the submission to Proposer and instruct Proposer to submit the communication directly to TxDOT's Authorized Representative in accordance with Section 2.2.1.

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required as provided in Section 2.11 (regarding changes in a Proposer's organization) and Exhibit B, Section 3.2.5 (regarding key personnel). In addition, any Proposer that wishes to submit an ATC pursuant to Section 3.2 must make a Pre-Proposal Submittal as described therein.

2.5 Pre-Proposal Meetings

2.5.1 Informational Meetings

TxDOT may hold joint informational meetings with all Proposers at any time prior to the Proposal Due Date. Informational meetings may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication between all Proposers and TxDOT. Written notice of any informational meetings will be sent to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

If any informational meeting is held, each Proposer shall attend with appropriate members of its proposed key management personnel, and if required by TxDOT, senior representatives of proposed team members identified by TxDOT.

2.5.2 One-on-One Meetings

TxDOT intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.6, and on such other dates designated by TxDOT in writing to the Proposers, to discuss issues and clarifications regarding the RFP and Proposer's ATCs. TxDOT reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that TxDOT determines, in its sole discretion, such disclosure would impair the confidentiality of an ATC or would reveal a Proposer's confidential business strategies. Participation at such meetings by the Proposers shall be mandatory.

The one-on-one meetings are subject to the following:

- The meetings are intended to provide Proposers with a better understanding of the RFP.
- TxDOT will not discuss with any Proposer any Proposal or ATC other than its own.
- Proposers shall not seek to obtain commitments from TxDOT in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules and to identify all participants from Proposer whether attending in person or by phone.

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions and TxDOT may provide responses. However, any responses provided by TxDOT during one-on-one meetings may not be relied upon unless questions were submitted in writing and TxDOT provided written responses in accordance with Section 2.3.1. The questions and TxDOT's responses will be provided in writing to all Proposers, except to the extent such questions are deemed by TxDOT to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs.

2.5.4 Statements at Meetings

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

2.6 Confidentiality/Public Information Act Disclosure Requests

2.6.1 Disclosure Waiver

Each Proposer, by submitting a Proposal to TxDOT in response to the RFP, consents to the disclosures described in this Section 2.6 and expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, under Section 223.204 of the Code, the Rules, the Public Information Act ("Act") or any other law relating to the confidentiality or disclosure of information. Under no circumstances will TxDOT be responsible or liable to a Proposer or any other party as a result of disclosing any such materials.

2.6.2 Observers During Evaluation

Proposers are advised that non-participating observers may observe the Proposal evaluation process and will have the opportunity to review the Proposals after the Proposal Due Date. TxDOT has agreed to allow FHWA officials and their outside advisors to oversee the procurement process, which includes access to the Financial Proposals. Outside advisors to FHWA will be required to sign TxDOT's standard confidentiality agreement.

2.6.3 Public Disclosure of Proposal Documents

Proposers are advised that the information contained in Form J (Conflict of Interest Disclosure Statement) and the Executive Summary of each Proposal and Proposal Revision may be publicly disclosed by TxDOT at any time, in TxDOT's sole discretion.

Proposers are advised that upon recommendation to the Commission of the selection of an apparent best value Proposer and in TxDOT's sole discretion, TxDOT may publicly release any of the selected apparent best value Proposer's Forms N-1.a, N-1.b, N-1.c, N-1.1.a, N-1.1.b, N-1.1.c, N-1.2.a, N-1.2.b or N-1.2.c (Development Price), Forms N-2.a, N-2.b, or N-2.c (Cash Flow Adjustment Table/Maximum Payment Curve), and Forms O.a, O.b and O.c (Maintenance Price), or any of the information contained therein. In the event TxDOT is unable to reach agreement on the CDA with the selected apparent best-value Proposer and TxDOT, in accordance with applicable law, chooses to enter into negotiations with the next highest ranking Proposer, then the same forms included in the Proposal of the next such highest ranking Proposer and any information contained in those forms may be disclosed as described in the previous sentence for the selected apparent best-value Proposer.

Prior to recommendation to the Commission of the selection of an apparent best-value Proposer, any of the forms identified in the preceding paragraph submitted by Proposers and the information contained in those forms shall be subject to disclosure as described in Section 2.6.4.

After recommendation to the Commission of the selection of an apparent best-value Proposer, but prior to execution of the CDA, any of the forms identified above submitted by Proposers and the information contained in those forms, other than those of the apparent best-value Proposer (or of the next highest ranking Proposer, if such Proposer is in CDA negotiations with TxDOT) shall be subject to disclosure as described in Section 2.6.4.

After final award, or in the event that the procurement is cancelled by TxDOT, TxDOT shall have the right to publicly disclose any and all portions of all the Proposals, except the EPDs and non-public financial statements. The EPDs and non-public financial statements shall be subject to disclosure as described in Section 2.6.4.

2.6.4 Disclosure Process for Requests Under the Act

If a Public Information Act request is made for disclosure of the Proposals or information contained therein, other than information which may be otherwise disclosed pursuant to the Proposer's express consent given in accordance with Section 2.6.1, TxDOT will submit a request for an opinion from the Office of the Attorney General prior to disclosing any such documents. By submitting a Proposal to TxDOT in response to the RFP, each Proposer consents to the release of all such information to the Attorney General for purposes of the Attorney General making a determination in response to a disclosure request under the Act. Proposer shall then have the opportunity to assert its basis for non-disclosure of such documents and claimed exception under the Public Information Act or other applicable Law to the Office of the Attorney General within the time period specified in the notice issued by TxDOT and allowed under the Public Information Act. However, it is the responsibility of Proposer to monitor such proceedings and make timely filings. TxDOT may, but is not obligated to, make filings of its own concerning possible disclosure; however, TxDOT is under no obligation to support the positions of Proposer. By submitting a Proposal to TxDOT in response to the RFP, Proposer consents to, and expressly waives any right to contest, the provision by TxDOT to the Office of the Attorney General of all, or representative samples of, the EPDs and non-public financial statements, in accordance with the Act. Under no circumstances will TxDOT be responsible or liable to a Proposer or any other party as a result of disclosing any such labeled materials, whether the disclosure is deemed required by Law or by an order of court or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

All Proposers should obtain and thoroughly familiarize themselves with the Public Information Act, Code and any Rules applicable to the issue of confidentiality and public information. TxDOT will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under the Code, the Public Information Act or other Texas Laws, as to the interpretation of such Laws, or as to definition of trade secret.

Proposer shall be solely responsible for all determinations made by it under applicable Laws. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to that Proposer's own circumstances.

In the event of any proceeding or litigation concerning the disclosure of any Proposal or portion thereof, including EPDs and non-public financial statements submitted by Proposer, Proposer shall be responsible for prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by TxDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by Proposer whose Proposal is the subject thereof.

2.7 TxDOT Studies and Investigations

TxDOT has completed its Site investigations and does not anticipate undertaking any further investigative activities prior to the Proposal Due Date. To the extent TxDOT undertakes any additional investigative activities, the information obtained by TxDOT from such activities may be made available to Proposers Proposers in the Reference Information Documents. All information provided by TxDOT will be subject to the same limitations applicable to similar information furnished in the Reference Information Documents. Specifically, TxDOT makes no representation or warranty as to the accuracy, completeness or suitability of the additional information.

2.8 Examination of RFP and Site Access

2.8.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Reference Information Documents and any Addenda, and material posted on the FTP site, and for informing itself with respect to any and all conditions which may in any way affect the amount or nature of its Proposal, or the performance of Developer's obligations under the CDA and the CMA with TxDOT. Each Proposer also is responsible for monitoring the FTP site for information concerning the RFP and the procurement. The Proposal Letter (Form A) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Failure of Proposer to so examine and inform itself shall be at its sole risk, and TxDOT will provide no relief for any error or omission.

Each Proposer is responsible for conducting such investigations as it deems appropriate in connection with its Proposal, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, and permanent and temporary Utility appurtenances, keeping in mind the provisions in the CDA and the CMA regarding assumption of liability by Proposer. Proposer's receipt of TxDOT-furnished information does not relieve Proposer of such responsibility.

The submission of a Proposal shall be considered prima facie evidence that Proposer has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and Maintenance Services, and as to the requirements of the CDA Documents and CMA Documents.

2.8.2 Site Access

An expedited process for obtaining rights of entry to access portions of the Project is attached hereto as Exhibit F. Proposers will be allowed access, through the Proposal Due Date, to those portions of the Project under TxDOT ownership that are not currently under construction, subject to the conditions specified in Exhibit F, for purposes of inspecting in-place assets and determining Site conditions through non-destructive investigations. This work may include surveys and site investigations, such as geotechnical, Hazardous Materials and Utilities investigations.

After conditional award has been made, the selected Proposer will be allowed access to the Project Right of Way that TxDOT owns, in accordance with the process described in this Section 2.8.2, in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and to engage in the other activities referenced in the CDA Documents that are allowed prior to NTP2.

2.9 Errors

If any mistake, error, or ambiguity is identified by Proposer at any time during the procurement process in any of the documents supplied by TxDOT, Proposer shall notify TxDOT of the recommended correction in writing in accordance with Section 2.3.1.

2.10 Improper Conduct

2.10.1 Non-Collusion

Neither Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form F).

2.10.2 Organizational Conflicts of Interest

The Rules at 43 Texas Administrative Code § 27.8 regarding organizational conflicts of interest apply to all CDA projects, including this Project. Proposers are advised that these rules may preclude certain firms and their subsidiaries and affiliates from participating on a Proposer team.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest (as defined in the rules) is thereafter discovered, Proposer must make an immediate and full written disclosure to TxDOT that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, TxDOT may, at its sole discretion, cancel the procurement, disqualify Proposer with a conflict or take other action as necessary to mitigate the conflict. If Proposer was aware of an organizational

conflict of interest prior to the award of the CDA and the CMA and did not disclose the conflict to TxDOT, TxDOT may pursue remedies under the CDA and CMA, including termination of the CDA or, if applicable, CMA, for default.

2.10.3 Equitable Treatment of Proposers

During the procurement process (including the process for evaluation of ATCs and Proposals), TxDOT will make every reasonable effort to treat Proposers equitably.

2.11 Changes in Proposer's Organization

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by TxDOT, Proposer's organization as identified in the QS must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the Major Participants identified in its QS, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, Proposer shall submit to TxDOT a written request for approval of the change from TxDOT as soon as possible but in no event later than the applicable last date set forth in Section 1.6. Any such request shall be addressed to TxDOT at the address set forth in Section 2.2.1, accompanied by the information specified for such entities in the RFQ. If a request is made to allow deletion or role change of any Major Participant identified in its QS, Proposer shall submit such information as may be required by TxDOT to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and five copies of each request package. TxDOT is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein, in the CDA Documents and, as applicable, the CMA Documents, a Proposer may not make any changes in the Major Participants identified in its QS after the applicable last date set forth in Section 1.6. Between the applicable date set forth in Section 1.6 and execution of the CDA and CMA, TxDOT, in its sole discretion, will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposer's control.

2.12 Sales Tax

Proposers should assume that the Project is exempt from sales tax for certain Expendable Materials as more particularly described in the CDA Documents and the CMA Documents. The selected Proposer will be required to submit a "Texas Sales and Use Tax Exemption Certification" to a seller for exempt items. The referenced form is available online to the public through the Texas Comptroller's website.

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPTS

3.1 Alternative Technical Concepts

Sections 3.1 through 3.5 set forth a process for pre-Proposal review of ATCs conflicting with the requirements for design, construction, and capital maintenance of the Project, or otherwise requiring a modification of the Technical Provisions. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing TxDOT to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the requirements of the as-issued CDA Documents and CMA Documents that result in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation, as determined by TxDOT in its sole discretion. A concept is not eligible for consideration as an ATC if, in TxDOT's sole judgment, it is premised upon or would require (a) a reduction in Project scope, performance or reliability; (b) the addition of a separate TxDOT project to the CDA or CMA (such as expansion of the scope of the Project to include additional roadways), (c) changes or additions to tolling operations, or (d) an increase in the amount of time required for Substantial Completion. ATCs that, if implemented, would require further environmental evaluation of the Project, may be allowed, provided that Developer will bear the schedule and cost risk associated with such additional environmental evaluation. If Developer is not able to obtain the approvals necessary to implement the ATC, Developer will be obligated to develop the Project in accordance with existing approvals without additional cost or extension of time.

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by TxDOT, TxDOT recommends that Proposer submit such concept for review as an ATC.

3.2 Pre-Proposal Submission of ATCs

Proposer may submit ATCs for review to TxDOT at the address specified in Section 4.1.7, until the applicable last date and time for submittal of ATCs identified in Section 1.6. All ATCs shall be submitted in writing, with a cover sheet identifying Proposer and stating "DFW Connector Project – Confidential ATCs." Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by TxDOT. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

3.2.1 Pre-Proposal ATC submissions shall include:

- (a) a sequential ATC number identifying Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);
- (b) a description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information, including a traffic operational analysis, if appropriate;
- (c) the locations where, and an explanation of how, the ATC will be used on the Project;
- (d) any changes in roadway or toll operations requirements associated with the ATC, including ease of operations;
- (e) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;
- (f) any changes in the capital maintenance transition requirements associated with the ATC;
- (g) any changes in the anticipated life of the item(s) comprising the ATC;
- (h) any reduction in the time period necessary to design and construct the Project resulting from implementing the ATC, including, as appropriate, a description of method and commitments;
- (i) references to requirements of the RFP which are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;
- (j) the analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;
- (k) a preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction), environmental permitting, community impact, safety, and life-cycle Project and infrastructure costs, including impacts on the cost of repair, maintenance and operation;
- (l) if and what additional right of way will be required to implement the ATC (and Proposers are advised that they shall (i) be solely responsible for the acquisition of any such right-of-way, including the cost thereof and obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order for time or money as a result of Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional right of way; and (iii) not be entitled to any Change Order for time or money as a result of any delay, inability or cost associated with the acquisition of such right-of-way);

(m) a description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such statements;

(n) a description of added risks to TxDOT or third parties associated with implementing the ATC;

(o) an estimate of any additional TxDOT, Developer and third-party costs associated with implementation of the ATC;

(p) an estimate of the Development Price and/or Maintenance Price adjustment should the ATC be approved and implemented; and

(q) an analysis of how the ATC is equal or better in quality and performance than the requirements of the CDA Documents or CMA Documents, as applicable.

3.2.2 Proposer shall not make any public announcement or disclosure to third parties concerning any ATC until after pre-approval (including conditional pre-approval) has been obtained. Following pre-approval (including conditional pre-approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify TxDOT in writing of its intent to take such action, including details as to date and participants, and obtain TxDOT's prior written consent, in its sole discretion, to do so.

3.2.3 If implementation of an ATC will require approval by a third party (e.g., a governmental authority), Proposer will have full responsibility for, and bear the full risk of, obtaining any such approvals after award of the CDA and the CMA and submission of data; provided, however, that TxDOT shall retain its role as liaison with any governmental authorities as more particularly described in the CDA Documents and CMA Documents, as applicable. If any required third-party approval is not subsequently granted with the result that Proposer must comply with the requirements of the original RFP, Proposer will not be entitled to a Change Order for additional compensation or time under the CDA or CMA, as applicable.

3.2.4 If TxDOT determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity or mistake, TxDOT reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC.

3.3 TxDOT Review of Pre-Proposal Submission of ATCs

TxDOT may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.6, provided that TxDOT has received all required and requested information regarding such ATC.

TxDOT's responses will be limited to one of the following statements:

(a) the ATC is acceptable for inclusion in the Proposal;

(b) the ATC is not acceptable for inclusion in the Proposal;

(c) the ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in TxDOT's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or

(d) the submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to be within the requirements of the RFP (TxDOT may not reject such submittal in the Proposal for the reason that it appears to be an ATC; provided, however, that should it turn out that such submittal is not within the requirements of the RFP, TxDOT reserves the right to require compliance with the requirements of the RFP and Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or time under the CDA or CMA, as applicable).

(e) submittal does not qualify as an ATC and may not be included in the Proposer's Proposal.

TxDOT will make a preliminary determination on whether to accept and approve an ATC for submission. However, Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP.

Approval of an ATC will constitute a change in the specific requirements of the CDA Documents or CMA Documents, as applicable, associated with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to TxDOT's determinations regarding acceptability of ATCs.

TxDOT's rejection of a pre-Proposal submission of an ATC will not entitle Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; provided, however, that the foregoing shall not limit TxDOT's absolute and sole right to modify the Proposal Due Date or any other date in connection with this procurement.

TxDOT anticipates that its comments provided to a Proposer will be sufficient to enable Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.3.1.

3.4 Incorporation of ATCs in the CDA Documents and CMA Documents

Following award of the CDA and the CMA, the ATCs that were pre-approved by TxDOT and incorporated in the Proposal by the successful Proposer shall be included in the CDA Documents or the CMA Documents, as applicable. If TxDOT responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the CDA Documents and CMA Documents, as applicable. The CDA Documents and CMA Documents will be conformed after award, but prior to execution of the CDA and CMA, to reflect the ATCs, including any TxDOT conditions thereto. Notwithstanding anything to the contrary herein, if Developer does not comply

with one or more TxDOT conditions of pre-approval for an ATC or Developer fails to obtain a required third party approval for an ATC, Developer will be required to comply with the original requirements of the RFP without additional cost or extension of time as set forth in the CDA or CMA, as applicable.

Prior to execution of the CDA and CMA, ATCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected Developer for possible incorporation in the CDA Documents or CMA Documents, as applicable, during negotiation of the final terms of the CDA or CMA pursuant to Section 5.11.1. In addition, following execution of the CDA and CMA, ATCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected Developer as a TxDOT Change Order in accordance with the CDA or CMA, as applicable.

3.5 Confidentiality

Subject to the provisions of the Public Information Act and Section 223.204 of the Code, ATCs and all communications regarding ATCs will remain confidential until a decision is made to select a Proposer or cancel the procurement, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Public Information Act, applicable Law, and Section 2.6 of the ITP. By submitting a Proposal, Proposer agrees, if it is not selected, to disclosure of its work product to the successful Proposer.

SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY TXDOT

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal and a Financial Proposal meeting the requirements set forth in Exhibits B and C. The Proposal shall be submitted in sealed non-metallic containers in the format and manner set forth in Sections 4.2 and 4.3. See Section 9.0 for additional discussion of submittal requirements applicable to the BAFO.

4.1.1 Proposal Due Date

The completed Proposal (including BAFOs) shall be delivered in sealed non-metallic containers no later than the Proposal Due Date, which in the case of BAFOs will be the BAFO Due Date.

4.1.2 Signatures Required

The Proposal Letter (Form A) shall be signed in blue ink by all parties making up Proposer, and shall be accompanied by evidence of signatory authorization as specified in Form A.

4.1.3 Certified Copies

Where certified copies of the Proposal are required, Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark oversigned by the Proposer Authorized Representative.

4.1.4 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if TxDOT determines that Proposer did not follow the foregoing instructions. It is Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the time due will be rejected without consideration or evaluation.

4.1.5 Requirement to Submit Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits, it may be disqualified.

Each Proposal must be submitted in the official format which is specified by TxDOT in the RFP. Proposer shall sign the original copy of the Proposal submitted to TxDOT. Multiple or alternate proposals may not be submitted.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

(a) If the Proposal is submitted in paper form or on disk other than that specified by TxDOT; if it is not properly signed; if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;

(b) If TxDOT determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not called for in the RFP, or unauthorized additions;

(c) If multiple or alternate Proposals are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a CDA or CMA following award;

(d) If Proposer attempts to limit or modify the Proposal Security, if the Proposal Security is not provided (see Exhibit B, Section 3.3), and/or if requested information deemed material by TxDOT is not provided; and

(e) Any other reason TxDOT determines the Proposal to be non-compliant.

4.1.6 Format

The Proposal shall contain concise written material and drawings enabling a clear understanding and evaluation of the capabilities of Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Financial Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2.0. No page limit applies to appendices and exhibits, however, TxDOT does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8 ½ by 11-inch format is required for typed submissions and an 11 by 17-inch format is required for drawings, except that design drawings may be submitted on scroll mats not to exceed 34 inches in width (and such design drawings shall be submitted on CD or DVD in Adobe Acrobat (.pdf) format and in Bentley Microstation format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and manipulate the schedule in Primavera.

Submittals must be bound with all pages in a binder sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than 12-point. The

use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17–inch foldout will be considered one page.

4.1.7 Additional Requirements for BAFO Delivery

The completed Proposal Revision and BAFO shall be submitted and delivered in sealed non-metallic containers no later than the BAFO Due Date and time specified in Section 1.6. The Proposal Revision and BAFO is to be delivered to TxDOT at the following address, except for the EPDs, which shall be delivered to the Escrow Agent as specified in Section 4.3.2:

Mark Tomlinson, TTA Division Director
Texas Department of Transportation
CDA Program Office
7600 Chevy Chase Drive, Suite #400
Austin, TX 78752

Each binder of the Proposal Revision and BAFO shall be labeled to indicate its contents. The original Technical and Financial Proposal Revisions shall be clearly identified as “original”; copies of the Proposal Revisions shall be sequentially numbered, labeled and bound.

4.2 Technical Proposal Submittal

4.2.1 General

All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more CDs and the envelopes described in Section 4.2.2, shall be packaged in a single container, clearly addressed to TxDOT as provided herein, and labeled “[Proposer Name]: Original Technical Proposal for the TxDOT DFW Connector Project.” Proposer shall provide 20 certified copies of the Technical Proposal (except for the Proposal Security and Escrow Agreement). The containers that include the required hard copies of the Technical Proposal shall be labeled “Copies of Technical Proposal for the TxDOT DFW Connector Project.”

The electronic copy shall be in Adobe Acrobat (.pdf) format on CD(s); provided, however, that: (a) Proposal forms may be submitted in either Adobe Acrobat (.pdf) or Word format; and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

4.2.2 Proposal Security and Escrow Agreement

One original and three certified copies of the Proposal Security shall be provided with the Technical Proposal, and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the TxDOT DFW Connector Project.” A copy of the Escrow

Agreement shall be provided with the Technical Proposal, in a separate envelope labeled “[Proposer Name]: Escrow Agreement for the TxDOT DFW Connector Project.”

The same requirements shall apply to Proposal Security documents and Escrow Agreement Amendments provided with a Proposal Revision and BAFO.

4.3 Financial Proposal Submittal and Escrowed Proposal Documents

The Financial Proposal (including the Financial Proposal for the BAFO) shall be submitted directly to TxDOT by the Proposal Due Date, which in the case of BAFOs will be the BAFO Due Date, as set forth in Section 4.3.1, below, and the EPDs shall be submitted to escrow as set forth in Section 4.3.2 below.

The Proposal Revisions consisting of revised Development Price and cash flow forms for Configuration 1, as required pursuant to this Addendum 8, shall be submitted to TxDOT by the date designated in Section 1.6 for such submittal.

4.3.1 Financial Proposal

One original and six certified copies of the Financial Proposal shall be delivered to TxDOT at the address identified in Section 4.1.7. The documents shall be included in a sealed container labeled “[Proposer Name]: Financial Proposal for the TxDOT DFW Connector Project.” All parts of the Proposal that indicate pricing information shall be included in the sealed Financial Proposal container.

One original and six certified copies of the Proposal Revisions consisting of revised Development Price and cash flow forms for Configuration 1, as required pursuant to Addendum 8, shall be delivered to TxDOT at the address identified in Section 4.1.7. The forms, accompanied by the executed revised Form A (Proposal Letter), shall be delivered in a sealed non-metallic container labeled “[Proposer Name]: Configuration 1 Revised Financial Proposal for the TxDOT DFW Connector Project.”

4.3.2 Escrowed Proposal Documents Submitted to Escrow

(a) Proposer shall assemble and deliver in accordance with this Section 4.3.2 certain escrowed proposal documents (“EPDs”) containing information regarding Proposer’s assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 21.1 of the CDA and Section 18.1 of the CMA. The EPDs shall include detailed information from all subcontractors identified in the Proposal and any other potential subcontractors who provided data upon which the Proposal is based. The EPDs shall be delivered into escrow not later than seven days after the Proposal Due Date.

Proposer shall provide TxDOT with the name, address and contact information of Proposer’s selected Escrow Agent by the applicable last date set forth in Section 1.6. Proposer shall submit one set of EPDs to the Escrow Agent chosen by Proposer, along with three completed original Escrow Agreements executed by Proposer in substantially the form attached as Form L. The documents shall be in separately sealed non-metallic

containers labeled “[Proposer Name]: EPDs for the TxDOT DFW Connector Project” and delivered to the Escrow Agent at the address identified in the Escrow Agreement, which shall be located within a 10 mile radius of 125 East 11th Street, Austin, Texas. The Escrow Agent chosen by Proposer must be unaffiliated with Proposer and otherwise must be free of any conflict of interest. A copy of the executed Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.2.2.

(b) For its BAFO submittal Proposer shall, either 1) replace the EPDs provided with its original Proposal with an entirely new set of EPDs (“Replacement EPDs”), or 2) add Supplemental EPDs (“Supplemental EPDs”) to the existing EPDs. The Replacement EPDs or Supplemental EPDs shall contain information regarding Proposer’s assumptions made in determining the scope of work and calculating the Proposal prices for each configuration in its BAFO and shall meet all requirements of Section 21.1 of the CDA and Section 18.1 of the CMA. The Replacement EPDs or Supplemental EPDs shall include detailed information for each configuration from all subcontractors identified in the BAFO and any other potential subcontractors who provided data upon which the BAFO is based. The Replacement EPDs or Supplemental EPDs shall be delivered into escrow not later than seven days after the BAFO Due Date.

Proposer shall submit one set of Replacement EPDs or Supplemental EPDs to the Escrow Agent chosen by Proposer, along with three completed originals of Amendment No. 1 to the Escrow Agreement executed by Proposer in substantially the form attached as BAFO Form L-1. The documents shall be in separately sealed non-metallic containers labeled “[Proposer Name]: Escrowed Proposal Documents for the TxDOT DFW Connector Project” and delivered to the Escrow Agent at the address identified in the Escrow Agreement. A copy of the executed Amendment No. 1 to the Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.2.2.

4.4 Currency

All required pricing, financial and cost information shall be provided in US\$ currency only.

4.5 Modifications, Withdrawals and Late Submittals

4.5.1 Modifications to a Proposal

A Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so TxDOT can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

4.5.2 Withdrawal and Validity of Proposals

No Proposal may be withdrawn on or after the time due on the BAFO Due Date and any attempt to do so will result in a draw by TxDOT upon the Proposal Security. Proposals (including BAFOs and all subsequent Proposal Revisions) must initially be valid for a period of 180 days after the BAFO Due Date. TxDOT shall have the right to extend this period for up to an additional 90 days, provided that the Development Price for each Configuration will be subject to adjustment in accordance with Section 12.1.3 of the CDA if NTP1 does not occur within 180 days after the BAFO Due Date. A Proposer shall not withdraw its Proposal, which shall remain valid for an additional 90 days, if notified by TxDOT that it is selected for negotiations of the CDA and the CMA within such 180-day period. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

4.5.3 Late Proposals

TxDOT will not consider any late Proposals. Proposals and/or modification or withdrawal requests received after the time for submittal of Proposals will be returned to Proposer without consideration or evaluation.

4.6 Forfeiture of Proposal Security

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (i) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal; (ii) it is selected for negotiations, but fails to negotiate in good faith with TxDOT as set forth in Section 5.11; or (iii) it is selected as the apparent best value Proposer, but fails to provide the documents required under Sections 6.1 and 6.1.1.

Any Proposal that contains a material alteration, as determined by TxDOT, in its sole discretion, to the ITP Forms, including any material alteration to the form of Proposal Security (Forms K-1 and K-2), will be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by TxDOT will not be considered material. If a Proposal is deemed non-responsive or non-compliant, TxDOT may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

4.7 Acceptance of Delivery by TxDOT

TxDOT will provide a receipt for Proposals that are timely delivered to TxDOT as specified herein. Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements.

A TxDOT representative will visit the Escrow Agent's office on or shortly after the Proposal Due Date to examine the EPDs and obtain a fully executed copy of the Escrow Agreement.

4.8 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before final award and execution of the CDA and the CMA, including costs incurred for any interviews, payments owing to Proposer's Escrow Agent and costs associated with Post-Selection Deliverables, shall be borne by Proposer, except for any costs paid in accordance with Section 6.3.

SECTION 5.0 EVALUATION AND POST-SELECTION PROCESS

TxDOT's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness and pass-fail criteria, followed by a subsequent responsiveness and qualitative evaluation of the Project Development Plan, a subsequent responsiveness and quantitative evaluation of the Financial Proposal and a best value determination. The process may include a request for Proposal Revisions, and may include a negotiations phase with the selected Proposer(s). The steps in the process and evaluation criteria are set forth in Sections 5.3 through 5.11. The evaluation and selection process is subject to modification by TxDOT, in its sole discretion.

The evaluation process will involve the following steps:

1. TxDOT evaluation committee will:
 - (a) evaluate the Proposals and determine which Proposer has offered the apparent best value Proposal with specific analysis of the overall value of money to TxDOT, based on the specific evaluation criteria set forth herein; and
 - (b) provide a recommendation to TxDOT senior management regarding the apparent best overall value.
2. TxDOT senior management will review and consider the recommendations from the TxDOT evaluation committees, and will provide a recommendation for conditional award to the Commission. The Commission will issue notice of conditional award after considering the recommendations received.

The details of the evaluation and selection process are set forth more fully in this Section 5.0.

5.1 Organization of the TxDOT Evaluation Committee and Subcommittees

Evaluation of Proposals will be conducted by TxDOT's Evaluation and Selection Recommendation Committee ("ESRC") with assistance from three separate subcommittees – a pass/fail and responsiveness subcommittee, a Development Plan Evaluation Subcommittee ("DPES"), and a Financial Proposal Evaluation Subcommittee ("FPES").

The ESRC and the various subcommittees will be comprised of representatives from TxDOT and will be chaired by individuals designated by the Texas Turnpike Authority Division Director. In addition to TxDOT voting members, the ESRC and subcommittees may also be assisted by advisors, including TxDOT representatives and outside consultants who will offer advice on the technical, financial and legal aspects of each

Proposal. The primary responsibility of these advisors will be to assist the ESRC subcommittees in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, other observers, including representatives appointed by the FHWA and other observers requested by TxDOT, with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and will be subject to TxDOT conflict of interest control requirements.

5.2 Best Value Determination

The best value determination will be based on an 80-20 point scale. The Price Score will represent up to 80 points of the total score, and the Technical Score will represent up to 20 points of the total score. The determination of apparent best value shall be based on the highest Total Proposal Score computed based on the following formula:

$$\text{Total Proposal Score (max. 100 points)} = \text{Price Score (max. 80 points)} + \text{Technical Score (max. 20 points)}$$

5.2.1 Calculation of the Price Score

5.2.1.1 Except as otherwise set forth in this Section 5.2.1, the Price Score for each of the three Configurations will be calculated independently based on the following formula:

$$\text{Configuration 1 Price Score} = (\text{Lowest PV/PV}) * 60$$

$$\text{Configuration 2 Price Score} = (\text{Lowest PV/PV}) * 15$$

$$\text{Configuration 3 Price Score} = (\text{Lowest PV/PV}) * 5$$

Lowest PV = Lowest Price Value for the relevant Configuration submitted by a Proposer as determined pursuant to Section 5.5.

PV = Proposer's Price Value for the relevant Configuration as determined pursuant to Section 5.5.

5.2.1.2 If one or more responsive Proposals provides an Option Price for Configuration 2 within the Maximum Payment Curve shown in Column D of Form N.2.b, then the Configuration 2 Price Score for such Proposals will be worth a maximum of 75 points, the Configuration 1 Price Score will not be independently calculated, and any Proposal providing an Option Price for Configuration 2 that is not within the Maximum Payment Curve shown in Column D of Form N.2.b will receive no points for Configurations 1 and 2.

5.2.1.3 In the event that one or more responsive Proposals provides a Development Price for Configuration 1 at or below \$608.9 million on Form N-1.a and no responsive Proposal provides an Option Price for Configuration 2 within the Maximum

Payment Curve shown in Column D of Form N.2.b, then for any Proposal that does not provide a Development Price for Configuration 1 on Form N-1.a at or below \$608.9 million the Price Score for Configuration 1 will be zero.

5.2.1.4 In the event that no responsive Proposal provides a Development Price for Configuration 1 on Form N-1.a at or below \$608.9 million, then the Price Score (maximum of 80 points) will be comprised of the sum of the Price Scores for each of the three configurations, as set forth in the following formula:

$$\begin{aligned} &\text{Price Score (maximum of 80 points) =} \\ &\text{Configuration 1 Price Score (maximum of 60 points) + Configuration 2} \\ &\text{Price Score (maximum of 15 points) + Configuration 3 Price Score} \\ &\text{(maximum of 5 points)} \end{aligned}$$

5.2.1.5 The Configuration 1 Price Score for each Proposer shall be calculated on the basis of the revised Development Price for Configuration 1 set forth on Forms N-1.a, N-1.1.a, and N-2.a, submitted in accordance with Addendum 8.

5.2.2 Calculation of the Technical Score

The Technical Score will be calculated based on the ESRC evaluation score for the Project Development Plan (maximum of 100 points) as described in Section 5.4.2. The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = \text{ESRC evaluation score} * 0.20$$

5.3 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals and the Financial Proposals will be made available for review by the relevant pass/fail and responsiveness subcommittees. They will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. Any Proposer that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award.

5.3.1 Technical Proposals

Technical Proposals will be evaluated based on the following pass/fail or responsiveness criteria:

(a) The business form of Proposer, the proposed Developer and any entities that will have joint and several liability under the CDA or CMA, as applicable, or will provide a guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws or equivalent documents) is consistent with the requirements of the Project and CDA Documents or CMA Documents, as applicable.

(b) Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.9.

(c) Proposer information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.

(d) Proposer has delivered Proposal Security in the form of either 1) a complete, properly executed replacement proposal bond using Form BAFO K-1 that complies with the requirements of Exhibit B, Section 3.3.1 or a complete, properly executed rider to its original proposal bond using Form BAFO K-1.a that together with the original proposal bond complies with the requirements of Exhibit B, Section 3.3.1, or 2) a letter of credit using BAFO Form K-2 that complies with the requirements of Exhibit B, Section 3.3.2, or a complete, properly executed amendment to its original letter of credit using Form BAFO K-2.a that together with the original letter of credit complies with the requirements of Exhibit B, Section 3.3.2.

(e) The Proposal provides for Substantial Completion of Configuration 1 no later than 1644 days from NTP1, Substantial Completion of Configuration 2 no later than 1734 days from NTP1, and Substantial Completion of Configuration 3 no later than 1734 days from NTP1.

(f) Technical Proposal meets all applicable RFP requirements.

5.3.2 Financial Proposals

Financial Proposals will be evaluated based on the following pass/fail criteria:

(a) Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial data submitted in the QS and its original Proposal submitted on July 15, 2008, such that Proposer continues to have the financial capacity to develop, design, construct and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating Proposer's financial capacity include the following:

- (i) Profitability;
- (ii) Capital structure;
- (iii) Ability to service existing debt; and
- (iii) Other commitments and contingencies.

If TxDOT determines that a Proposer is undercapitalized, it will offer Proposer the opportunity to meet the financial requirement through one or more guarantors acceptable to TxDOT.

(b) Proposer has provided a Development Price and Option Prices using Forms N-1.a, N-1.b, N-1.c, N-1.1.a, N-1.1.b, N-1.1.c, N-1.2.a, N-1.2.b and N-1.2.c that comply with the requirements of Exhibit C, Section 3.1.

(c) Proposer has provided a Cash Flow Adjustment Table/Maximum Payment Curves using Forms N-2.a, N-2.b and N-2.c that comply with the requirements of Exhibit C, Section 3.1.

(d) Proposer has provided Maintenance Prices using Forms O.a, O.b and O.c that comply with the requirements of Exhibit C, Section 3.2.

5.3.3 TxDOT Right to Exclude Proposals from Consideration or to Waive Mistakes

Those Proposals not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and Proposer will be so advised. TxDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. TxDOT reserves the right to waive minor informalities, irregularities and apparent clerical mistakes which are unrelated to the substantive content of the Proposals.

5.4 Evaluation of Project Development Plan by DPES

After completion of the pass/fail and responsiveness review, the Project Development Plan will be evaluated by the DPES based on the factors set forth below to determine whether it includes any improvements over the requirements of the CDA Documents and CMA Documents, and brings additional benefits and/or value to TxDOT and the public.

5.4.1 Project Development Plan Evaluation Factors

The evaluation factors for the Project Development Plan are as follows:

- (a) Technical Solutions;
- (b) Project Management Plan; and
- (c) Quality Management Plan.

The Project Development Plan evaluation factors identified in clauses (a) through (c) above are listed in descending order of importance; provided, however, that the factors may have equal importance with the factors listed immediately above it. Subfactors and their relative weighting are listed in Section 5.4.1.1 through 5.4.1.3.

The evaluation factors will be evaluated and rated using the rating guidelines specified in Section 5.4.2, with special attention given to the objectives presented in Sections 5.4.1.1 through 5.4.1.3, which describe the expectations of TxDOT with regard to the work to be performed and the related information to be submitted in the Project

Development Plan. Along with the goals identified in Section 1.2, these objectives will guide TxDOT's assessment of the evaluation factors and subfactors.

5.4.1.1 Technical Solutions

Objectives: Innovative design, construction and capital maintenance solutions that effectively respond to and address the Project's requirements, including the following:

- the need to minimize traffic impact and disruption to the traveling public and surrounding communities;
- the requirement to plan and coordinate the design, construction and capital maintenance activities with other projects and Stakeholders;
- the efficient and coordinated design and relocation of Utilities;
- the requirement to interface with the toll systems integrator;
- the environmental and community sensitivities and commitments; and
- the requirement for a coordinated aesthetic theme that includes bridges, walls, signing, and landscaping.

The Technical Solutions evaluation subfactors are as follows:

(a) Group 1

- Construction Staging, Sequencing and Traffic Management
- Geotechnical and Earthwork Plan
- Bridges and Surface Structures
- Connectivity/Interconnections
- Right-of-Way Services
- Utilities
- Maintenance Plan
- Life Cycle Cost Methodology

- Preliminary Project Baseline Schedule

(b) Group 2

- Environmental Permitting, Mitigation and Impacts
- Drainage
- Roadway
- Managed Lane Tolling Facility Infrastructure
- Intelligent Transportation System
- Signing, Delineation, Pavement Markings, Signalization and Lighting
- Aesthetic Design

The groups are listed in descending order of importance; provided, however, that a subfactor within each group may have equal importance with the subfactors listed immediately above it.

See Exhibit B for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.1.2 Project Management Plan

Objective: An organization that is designed with clear lines of responsibility, quality Key Personnel and well-defined roles that respond to the Project and TxDOT that includes the following:

- integrated specialty subcontractors and subconsultants;
- partnering throughout;
- empowerment of all levels of the organization to make decisions in coordination with their TxDOT counterparts and, if need be, a system to elevate issues to ensure rapid decisions;
- quality through a well-defined and executed quality plan for design, construction and capital maintenance;

- a disciplined strategy for design, design quality and design review, safety, risk management, public involvement, and securing of third-party approvals; and
- a comprehensive strategy for construction management, logistics, hauling, access, construction sequencing, minimizing public disruptions, safety, subcontracting, DBEs, and other job training.
- a capital maintenance plan that provides (i) a well-maintained Project in compliance with all technical provisions; (ii) efficient and safe responses to the capital maintenance needs of the Project, the adjacent communities and the traveling public; (iii) effective interfacing, communication and coordination with separate contractors, Stakeholders, the Systems Integrator, and other third parties; and (iv) efficient transition of capital maintenance activities from Developer to TxDOT upon completion of capital maintenance obligations.

The Project Management Plan evaluation subfactors are as follows:

- (a) General Project Management;
- (b) Risk Management;
- (c) Construction and Traffic Management During Construction Period;
- (d) Schedule and Cost Control Management;
- (e) Public Information and Communications;
- (f) Environmental Management;
- (g) Design Management;
- (h) Maintenance and Traffic Management During Maintenance Period; and
- (i) Mentoring and Job Training.

The subfactors are listed in descending order of importance; provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it.

See Exhibit B for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.1.3 Quality Management Plan

Objective: To provide a Quality Management Plan that is ISO 9001 compliant, that integrates TxDOT into the quality management system and enables TxDOT to monitor, audit, and measure Developer's performance in the management of design, construction and capital maintenance of the Project.

See Exhibit B for details regarding the specific information concerning this factor to be submitted as part of the Project Development Plan.

5.4.2 Evaluation Guidelines

The DPES will review the Project Development Plan with reference to the evaluation factors specified in Section 5.4.1, in accordance with the guidelines provided in this Section 5.4.2. The major categories of the Project Development Plan will be qualitatively evaluated and assigned a rating as follows:

ADJECTIVE RATING	DESCRIPTION
Excellent	The Proposal greatly exceeds the stated requirements/objectives, offering material benefits and/or added value, and providing assurance that a consistently outstanding level of quality will be achieved. There is very little or no risk that Proposer would fail to satisfy the requirements of the CDA Documents or CMA Documents, as applicable. Weaknesses, if any, are very minor and can be readily corrected. Significant unique and/or innovative characteristics are present.
Very Good	The Proposal significantly exceeds the stated requirements/objectives, offering advantages, benefits and/or added value, and providing assurance that a level of quality will be achieved that is materially better than acceptable. There is little risk that Proposer would fail to satisfy the requirements of the CDA Documents or CMA Documents, as applicable. Weaknesses, if any, are very minor and can be readily corrected. Some unique and/or innovative characteristics are present.
Good	The Proposal materially exceeds the stated requirements/objectives and provides assurance that the level of quality will meet or exceed minimum requirements. There may be a slight probability of risk that Proposer may fail to satisfy the requirements of the CDA Documents or CMA Documents, as applicable. Weaknesses, if any, are minor and can be readily corrected. Little or minimal unique and/or innovative characteristics are present.
Fair	The Proposal marginally exceeds stated requirements/objectives and provides satisfactory assurance that the level of quality will meet or marginally exceed minimum requirements. There may be questions about the likelihood of success and there is risk that Proposer may fail to satisfy the requirements of the CDA Documents or CMA Documents, as applicable. Weaknesses are correctable or acceptable per minimum standards.

Meets Minimum	The Proposal meets stated requirements/objectives and provides satisfactory assurance that the minimum level of quality will be achieved. There may be questions about the likelihood of success and there is some risk that Proposer may fail to satisfy the requirements of the CDA Documents or CMA Documents, as applicable. Weaknesses are correctable or acceptable per minimum standards.
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In assigning ratings TxDOT may assign “+” or “-” (such as, “Excellent -”, “Good +”, and “Fair +”) to the ratings to better differentiate within a rating in order to more clearly differentiate between the technical evaluation factors and the overall Project Development Plans. However, TxDOT will not assign ratings of “Meets Minimum –” or “Excellent +.”

The term “weakness,” as used herein, means any flaw in the Proposal that increases the risk of unsuccessful contract performance.

5.4.3 Technical Score

During the evaluation, each subfactor as described above will be assigned a consensus rating by the DPES, which will be converted to points. The points for each subfactor will be summed to determine the Proposal’s score for each of the corresponding evaluation factors. The score of each of the evaluation factors will then be summed to arrive at the overall ESRC score for the Project Development Plan, with 100 maximum possible points. The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = \text{ESRC evaluation score (maximum 100)} * 0.20$$

5.5 Evaluation of Financial Proposal by FPES

After completion of the pass/fail and responsiveness review, the Financial Proposal will be evaluated by the FPES. The FPES will conduct “blind” reviews and evaluations of the Financial Proposals to determine the Price Value of the Financial Proposal (“PV”). For each Configuration, the PV will be the sum total of the present value of the Development Price as determined in accordance with Section 5.5.1, the net present value of the cost adjustments as determined in accordance with Section 5.5.2 and the present value of the Maintenance Price as determined in accordance with Section 5.5.3.

5.5.1 Present Value of the Development Price

The present value of the Development Price will be the Development Price for each Configuration, as set forth in Forms N-1.a, N-1.b, and N-1.c discounted monthly using a discount rate of 5% per annum, using the discount factors shown in Forms N-2.a, N-2.b and N-2.c.

5.5.2 Net Present Value of Cost Adjustments

For each Configuration, the net present value of the ATC Adjustment will be the costs identified by TxDOT pursuant to Section 3.2 regarding the use of an ATC in a Proposal discounted monthly using a discount rate of 5% per annum, and set forth on Forms N-1.2.a, N-1.2.b and N-1.2.c.

5.5.3 Present Value of the Maintenance Price

The present value of the Maintenance Price will be the Maintenance Price for each Configuration, for the maximum term of the CMA as set forth in 2008 dollars on Forms O.a, O.b and O.c.

5.6 ESRC Evaluation of Technical and Financial Proposals

Before reviewing the Financial Proposal and FPES evaluation results, the ESRC will review the Project Development Plans and the ratings and points recommendations provided by the DPES with respect to each Project Development Plan. The ESRC may accept the recommendations provided by the DPES, may request the DPES to reconsider its recommendations, or may develop its own recommendations.

After determining each Proposal's Technical Score, the ESRC will review the Financial Proposal and FPES evaluation results and determine each Proposal's Price Score. The ESRC may accept the evaluation results provided by the FPES, may request the FPES to re-perform the evaluation, or may perform the evaluation itself.

Finally, the ESRC will determine the Total Proposal Score for each Proposal based on the formula set forth in Section 5.2 and determine the apparent best value.

5.7 Requests for Clarification

TxDOT may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by TxDOT) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, TxDOT.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.8 Requests for Proposal Revisions

TxDOT may, at any time after receipt of Proposals and prior to final award and execution of the CDA and the CMA, determine that it is appropriate to request changes to the Proposals ("Proposal Revisions"). If Proposal Revisions are requested, TxDOT

will follow the procedures for revised proposals described in 23 CFR Part 636. TxDOT may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP, shall mean the original Proposal, as modified by the Proposal Revision.

Upon receipt of Proposal Revisions, the ESRC, with assistance from the Technical or Financial Proposal pass/fail and responsiveness subcommittees, DPES, or FPES, as appropriate, will re-evaluate the Proposals as revised, and will determine ratings and value estimates as appropriate following the process described above.

5.9 Identification of Apparent Best Value Proposal

Once the ESRC has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions), the ESRC will present its recommended rankings to a Steering Committee comprised of the Texas Turnpike Authority Director, the Director of TxDOT's Finance Division and the Fort Worth District Engineer.

5.10 Recommendation to Commission

The Steering Committee will review the Proposals and the recommendations and supporting information provided by the ESRC, and may accept the recommendation, reject the recommendation and cancel the procurement or request the ESRC to reconsider the recommendation. If the Steering Committee accepts the ESRC's recommendation, the Steering Committee will provide the recommendation to the TxDOT Executive Director or his designee regarding which Proposal provides the best overall value. In completing its review, TxDOT will compare the Proposals with a reference case based on TxDOT's internal cost estimate for the Project.

Upon receipt of recommendations from the Steering Committee, the TxDOT Executive Director or his designee will review the recommendations and may accept the recommendation, reject the recommendation and cancel the procurement, or request the Steering Committee to reconsider the recommendation. If the Executive Director accepts the Steering Committee's recommendation, the Executive Director will make a recommendation to the Commission regarding the rankings of Proposers and designation of the best value. The Commission will evaluate the recommendations and will determine whether to proceed with award of a CDA and CMA to the apparent best value Proposer or take any other action. Award of the CDA and CMA would be conditioned upon (a) successful completion of negotiations (if held), (b) concurrence in award by FHWA, (c) receipt by TxDOT of all of the documents required to be provided prior to execution of the CDA and CMA under Section 6.1, (d) execution of the CDA and CMA by the Executive Director of TxDOT or his designee and (e) any other conditions required by the Commission.

The Commission's decision regarding award of the CDA and CMA shall be final.

5.11 Finalization of the CDA Documents and CMA Documents; Post-Selection Process

5.11.1 Negotiation of CDA Documents and CMA Documents

If authorized by the Commission, TxDOT will proceed with the apparent best value Proposer to finalize the CDA Documents and CMA Documents. TxDOT may agree to negotiate various aspects of the CDA Documents and CMA Documents with the apparent best value Proposer, including incorporation of unsuccessful Proposers' work product; however, any decision to commence negotiations regarding the terms of the CDA Documents and CMA Documents is at TxDOT's sole discretion. By submitting its Proposal, each Proposer commits to enter into the form of CDA and CMA included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of CDA and CMA indicates is required from the Proposal. As a condition precedent to final award of the CDA and CMA, the Office of the Attorney General must determine that the proposed forms of CDA and CMA are legally sufficient.

If a CDA or CMA satisfactory to TxDOT cannot be negotiated with the best value Proposer, TxDOT will formally end negotiations with that Proposer. and take action consistent with the direction provided by the Commission. Such action may include (a) rejection of all Proposals, (b) issuance of a request for Proposal Revisions to Proposers, but only if the ATCs of one or more Proposers have not been revealed to the original successful Proposer, or (c) proceeding to the next most highly ranked Proposal to attempt to negotiate a CDA and CMA with that Proposer in accordance with this Section 5.11.

In the event TxDOT elects to commence negotiations with a Proposer, such Proposer will be deemed to have failed to engage in good faith negotiations with TxDOT and shall forfeit its Proposal Security as set forth in Section 4.6 if Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with TxDOT or insists upon terms or conditions for any documents to be negotiated or provided by Developer hereunder that are inconsistent with the CDA Documents or CMA Documents.

5.12 Post-Selection Deliverables

5.12.1 Project Management Plan

During the period between conditional award and final award of the CDA, the selected Proposer may, but is not required to, submit all or portions of the Project Management Plan for review, comment and possible pre-approval. TxDOT encourages such early submittal(s), and will attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the CDA, but cannot guaranty that it will in fact undertake such review or provide comments or approval.

5.12.2 Documents To Be Submitted Following Conditional Award

As a condition precedent to final award of the CDA and CMA, the successful Proposer shall deliver the following to TxDOT within ten days after notification of conditional award:

(a) Evidence of authority to transact business in the State of Texas for all members of Proposer's team that will transact business in the State, dated no earlier than 30 days prior to the Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in Texas along with a Certificate of Good Standing from the state of organization of the member; (ii) a Certificate of Good Standing from the Texas Comptroller; or (iii) other evidence acceptable to TxDOT.

(b) If not previously submitted, a copy of the final organizational documents for Developer and, if Developer is a limited liability company, partnership or joint venture, for each member or partner of Developer. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.

(c) All security for Proposer's obligations under the CDA and CMA, as required by TxDOT pursuant to Exhibit C, Section 2.0, in the form of the proposed guarantees, which shall be in form and substance acceptable to TxDOT, in its sole discretion.

(d) Supplemental EPDs for Configuration 1 reflecting the changes in pricing assumptions and terms resulting from the RFP revisions contained in Addendum 8.

During the negotiation period, as a condition to final award, Proposer shall deliver drafts of the deliverables identified in Section 6.1.1, for pre-approval by TxDOT.

5.12.3 TxDOT Comments On Post-Selection Deliverables

TxDOT shall provide comments on any Post-Selection Deliverables required to be delivered to TxDOT hereunder within 14 days of the date of TxDOT's receipt of such deliverable. TxDOT shall have five Business Days to review and respond to subsequent submittals of the deliverable.

SECTION 6.0 FINAL AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of CDA and CMA

Upon the successful completion of negotiations, finalization of the CDA Documents and CMA Documents, and satisfaction of all conditions to final award specified in this ITP other than this Section 6.1, TxDOT will deliver four sets of execution copies of the CDA Documents and CMA Documents to the selected Proposer, along with a number of sets of execution copies as reasonably requested by Proposer. The selected Proposer shall obtain all required signatures and deliver all of the execution sets to TxDOT within seven Business Days of receipt, together with the required documents described in Section 6.1.1. If Developer is a joint venture or a partnership, the CDA and CMA must be executed by all joint venture members or general partners, as applicable. Within 15 Business Days of TxDOT's receipt of all required and compliant documents from Proposer, TxDOT will execute the agreements, retain four sets of the agreements and deliver the other executed sets to Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to Proposer.

6.1.1 Documents To Be Delivered By Proposer With Executed CDA and CMA

Proposer shall deliver the documents listed below to TxDOT concurrently with the executed CDA and CMA as a condition to execution of the CDA and CMA by TxDOT. On or before the date that TxDOT delivers the execution sets of the CDA and CMA to Proposer, TxDOT shall notify Proposer regarding the number of originals and copies required to be delivered.

(a) For each Proposer, its general partners and its joint venture members and each other Major Participant, (i) a Certificate of Authority to transact business in Texas along with a Certificate of Good Standing from the state of its organization; or (ii) a Certificate of Good Standing from the Texas Comptroller, in each case dated no earlier than 30 days prior to the Proposal Due Date and in form and substance acceptable to TxDOT. If such documents are not available due to the form of organization of the entity, Proposer shall provide appropriate documents evidencing its ability to transact business in the State of Texas.

(b) For entities formed after submission of the Proposal, a copy of the entity's final organizational documents. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.

(c) RESERVED

(d) Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the CDA and CMA by Developer and, if Developer is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to TxDOT. If Developer is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Developer is a partnership, such evidence shall be in the form of a

resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Developer is a limited liability company, such evidence shall be in the form of: (i) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, (ii) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (iii) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Developer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member.

(e) A written opinion from counsel for Developer, which counsel shall be approved by TxDOT (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the formation/organization of the entity for which the opinion is rendered (i.e., Developer, joint venture member, etc.) and the qualification to do business in Texas and the enforceability opinion shall be provided by an attorney licensed in the State of Texas), in substantially the form attached hereto as Form M (with such changes as agreed to by TxDOT in its sole discretion); provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware.

(f) Evidence of insurance required to be provided by Developer under the CDA Documents and CMA Documents;

(g) Evidence that Developer and its Major Participants hold all licenses required for performance of the work under the CDA Documents and CMA Documents;

(h) TxDOT approved DBE Performance Plan in accordance with the requirements of Section 1.9.2;

(i) A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond and Payment Bond, each in the amount specified and in the forms attached as Exhibits 9 and 10 to the CDA, and a Retainage Bond in the form attached as Exhibit 11 to the CDA. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the CDA and issuance of NTP1; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the CDA Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments;

(j) If required by TxDOT pursuant to Exhibit B, Section 3.2.13, a guaranty in the form of Exhibit 13 of the CDA and/or Exhibit 9 of the CMA, as applicable;

(k) A Job Training and Small Business Mentoring Plan as described in Section 7.9 of the CDA and Section 6.4 of the CMA.

(l) Any other requirements identified by TxDOT during pre-award negotiations.

6.2 Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided at the earliest feasible time after execution of the CDA and CMA. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and CDA and CMA award.

Debriefings shall:

(a) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and

(c) Provide information on areas in which the unsuccessful Proposer's Technical Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the ESRC, but may include a summary of the rationale for the selection decision and CDA and CMA award.

6.3 Payment to Unsuccessful Proposers

Each Proposer that submits a responsive, but unsuccessful, BAFO Proposal shall be entitled to receive payment from TxDOT for work product that is not returned to Proposer, on the terms and conditions described herein and in the Minute Order issued by the Commission, a copy of which is attached hereto as Exhibit G. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3.

The amount of the payment may not exceed the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions, up to the maximum stipulated amount per Proposer. The maximum stipulated payment for work product per Proposer for this procurement is \$750,000. The invoice may be submitted no earlier than 45 days after notice of final award, including execution of the CDA and CMA, is posted on the FTP site, or, if final award is not made, not earlier than 30 days after cancellation of the procurement or expiration of

the time period for award stated in the RFP (as such time period may be extended by mutual agreement of the apparent best value Proposer and TxDOT), as applicable. All Proposers eligible to receive a payment for work product shall be required to submit an invoice to TxDOT in a form acceptable to TxDOT in order to receive such payment. Payments will be made within 30 days of receipt of an invoice therefor.

In accordance with Section 223.203(m) of the Code, each Proposer agrees that TxDOT shall be entitled to use all work product that is not returned to Proposer (including ATCs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) contained in its Proposal or generated by or on behalf of Proposer for the purpose of developing its Proposal, in consideration for TxDOT's agreement to make payment as provided herein, without any further compensation or consideration to Proposer.

Each Proposer acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after award of the CDA and CMA, and that the CDA Documents and CMA Documents may incorporate the above-described work product or concepts based thereon. Upon Proposer's receipt of payment hereunder, this right shall extend to allow TxDOT to use such work product in the performance of its functions. As provided in Section 223.203(m) of the Code, the use of any of the work product by TxDOT is at the sole risk and discretion of TxDOT, and shall in no way be deemed to confer liability on the unsuccessful Proposer. Each Proposer acknowledges and agrees that it does not have the right to refuse the payment hereunder and keep the contents of its Proposal from being used by TxDOT, as described herein.

In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 be entitled to receive a payment for work product under this Section 6.3.

6.4 Disposition of EPDs Following Conclusion of Procurement Process

Following execution of the CDA and the CMA, the EPDs of the successful Proposer will be available for review as specified in the CDA Documents and the CMA Documents, as applicable.

In accordance with the procedures set forth in the Escrow Agreement (Form L), each unsuccessful Proposer shall have the right to retrieve its EPDs after the CDA Documents and the CMA Documents have been executed and delivered, after TxDOT rejects all of the Proposals or after TxDOT terminates this procurement.

SECTION 7.0 PROTESTS

7.1 Applicability

This Section 7.0 and Section 27.6 of Title 43 of the Texas Administrative Code set forth the exclusive protest remedies available with respect to the RFP and prescribe exclusive procedures for protests regarding:

- (a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed TxDOT's authority;
- (b) a determination as to whether a Proposal is responsive to the requirements of the Request for Proposals, as applicable; and
- (c) award of the CDA and CMA.

7.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 7.1(a) may be filed only after Proposer has informally discussed the nature and basis of the protest with TxDOT, following the procedures for those discussions prescribed in the RFP.

7.3 Deadlines for Protests

7.3.1 Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than 20 days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five business days after the Addendum is issued (but in any event, prior to the Proposal Due Date).

7.3.2 Protests concerning the issues described in Section 7.1(b) must be filed no later than five business days after receipt of the notification of non-responsiveness.

7.3.3 Protests concerning the issues described in Section 7.1(c) must be filed no later than 10 business days after the earliest of the notification of intent to award, and the public announcement of the apparent best value Proposer.

7.4 Content of Protest

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

7.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to the address specified in Section 2.2.1, with a copy to the Office of General Counsel, Texas

Department of Transportation, 125 E. 11th Street, Suite 702, Austin, TX 78701-2483, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained from the FTP site.

7.6 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within seven days of the filing of the protest. TxDOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

7.7 Burden of Proof

The protestant shall have the burden of proving its protest. TxDOT may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

7.8 Decision on Protest

The Assistant Executive Director for Engineering Operations or his designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, TxDOT may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda.

7.9 Protestant's Payment of Costs

If a protest is denied, Proposer filing the protest shall be liable for TxDOT's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by TxDOT as a consequence of the protest.

7.10 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section 7.0, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 7.0, it shall indemnify and hold TxDOT and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 8.0 TXDOT RIGHTS AND DISCLAIMERS

8.1 TxDOT Rights

TxDOT may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform Developer's obligations under the CDA Documents and CMA Documents. TxDOT reserves the right, in its sole discretion, to:

- (a) Develop the Project in any manner that it, in its sole discretion, deems necessary;
- (b) Reject any or all of the Proposals;
- (c) Modify any dates set or projected in the RFP;
- (d) Cancel, modify or withdraw the RFP in whole or in part;
- (e) Terminate this procurement and commence a new procurement for part or all of the Project;
- (f) Terminate evaluations of Proposals received at any time;
- (g) Suspend and terminate negotiations at any time, elect not to commence negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer;
- (h) Modify the procurement process (with appropriate notice to Proposers);
- (i) Waive or permit corrections to data submitted with any response to the RFP until such time as TxDOT declares in writing that a particular stage or phase of its review of the responses to the RFP has been completed and closed;
- (j) Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by TxDOT until such time as TxDOT declares that a particular stage or phase of its review of the responses to the RFP has been completed and closed;
- (k) Appoint evaluation committees to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- (l) Disclose information contained in a Proposal to the public as described herein;
- (m) Approve or disapprove changes in the Key Personnel identified in the QS;

- (n) Approve or disapprove changes in Proposer's organization;
- (o) Accept a Proposal other than that which requests the lowest public funds from TxDOT;
- (p) Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;
- (q) Not issue a notice to proceed after execution of the CDA Documents and CMA Documents;
- (r) Disqualify any Proposer that violates the terms of the RFP; and
- (s) Exercise any other right reserved or afforded to TxDOT under the RFP and applicable Law.

8.2 TxDOT Disclaimers

The RFP does not commit TxDOT to enter into any contract. Except as expressly set forth in Section 6.3, TxDOT and the State of Texas assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall TxDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the CDA Documents and CMA Documents, in form and substance satisfactory to TxDOT, has been authorized and executed by TxDOT and, then, only to the extent set forth therein. In submitting a Proposal in response to the RFP, Proposer is specifically acknowledging these disclaimers.

SECTION 9.0 BEST AND FINAL OFFER (BAFO)

9.1 Submission of BAFO

Each BAFO shall be delivered to TxDOT in non-metallic, sealed boxes, each of which shall be clearly labeled so that it is apparent it is a part of a proposal responding to this RFP. The BAFO shall be accompanied by a transmittal letter listing the number of boxes submitted and identifying the contents of each box. The original and all required copies of the BAFO shall be delivered prior to the time and date given in Section 1.6 for the BAFO Due Date.

Failure to use sealed boxes or to properly identify the BAFO may result in an inadvertent opening of the BAFO before the time and place for the opening of BAFOs and may result in disqualification of the BAFO. Proposer shall be entirely responsible for any consequences, including disqualification of the BAFO, resulting from any inadvertent opening of unsealed or improperly identified boxes. It is Proposer's sole responsibility to see that its BAFO is received as required. BAFOs received after the specified time will be rejected without consideration or evaluation. Proposers shall provide responses to all information requested in this RFP. Failure to respond or to provide requested information may result in a determination by TxDOT, in its sole discretion, that a BAFO is non-responsive. Except as provided in Section 6.3, TxDOT shall have no obligation to compensate any unsuccessful Proposer for its efforts in preparing a Proposal.

9.2 Contents

The BAFO shall include a revised Executive Summary, narrative revisions to the original Technical Proposal as applicable for each Configuration, and other information as deemed appropriate by the Proposer to respond to the modifications to the RFP included in this Request for BAFOs. It is not necessary, however, to revise the Proposal to address minor inconsistencies between the original Proposal and the requirements contained herein. The BAFO shall also include all revised forms as required by ITP Exhibit E and an index identifying which portions of the original Proposal have been revised.

Updated incumbency certificates, and evidence of authorization, and other certificates, documents and forms required to be included in the original Proposal are not required to be resubmitted unless the information contained in the original Proposal has changed. Instead, the BAFO shall include a statement signed by the Proposer's Authorized Representative confirming that no change has occurred to those documents.

If there are changes to the originally submitted Forms B-1, B-2, B-3, C, D, E, F, I, J, Q, R and S, new forms shall be provided using the original ITP forms, and BAFO Form A shall include a list of the newly submitted forms. If there are no changes to these forms included in the Proposal, they are not required to be resubmitted. Form BAFO A shall include a statement identifying the forms for which no change has occurred and stating

that the information and authorities identified in the original forms are still accurate and valid as of the BAFO Due Date.

9.3 Format

The BAFO shall be set up so as to enable TxDOT to easily ascertain what changes have been made to the original Proposal. Proposer may cross-reference provisions in the BAFO and/or original Proposal, or may restate provisions, as deemed appropriate, with the goal of providing a readily understandable proposal.

The revised Executive Summary, narrative revisions and revised forms shall be labeled with the word “BAFO” in the footer. The remainder of the BAFO shall also be labeled with the word “BAFO” in the footer, so that they can easily be distinguished from the original Proposal.

9.4 Number of Copies

Proposer shall provide the same number of copies of its BAFO as set forth in Section 4.2 for its original Proposal, except that only five (5) copies of full-size drawings and schematics are required.