

**REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, FINANCE, OPERATE AND MAINTAIN
THE SH 183 MANAGED LANES PROJECT**

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

**A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION
RFP ISSUED NOVEMBER 7, 2013
ADDENDUM # 1 ISSUED JANUARY 17, 2014
ADDENDUM # 2 ISSUED MARCH 11, 2014**



**Texas Department of Transportation
4777 E. Highway 80
Mesquite, Texas 75150**

KEY DATES

EVENT	DATE
Issue Final Request for Proposals	November 7, 2013
Issue Addendum # 1	January 17, 2014
Issue Addendum # 2	March 11, 2014
Last date for Proposers to submit questions regarding Addendum # 2 to the Request for Proposals	March 18, 2014
Last date for Proposers to submit questions regarding any Addenda to the Request for Proposals	April 4, 2014
Proposal Due Date	April 14, 2014, 12:00 noon
Agreement Conditionally Awarded (anticipated)	May 29, 2014

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Form B-2	Information About the Proposer Organization
Form B-3	Information About Major Participants, Major Professional Services Firms and Identified Subcontractors
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Form E	Personnel Work Assignment Form
Form F	Non-Collusion Affidavit
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INSTRUCTIONS TO PROPOSERS

(Request for Proposals: SH 183 Managed Lanes Project)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This document comprises the Instructions to Proposers (“ITP”), Volume I of the Request for Proposals dated November 7, 2013, as amended (“RFP”), issued by the Texas Department of Transportation (“TxDOT”), an agency of the State of Texas (“State”). This RFP solicits competitive detailed proposals (individually, a “Proposal” and collectively, “Proposals”) for the design, construction, financing, operation and maintenance of the State Highway (“SH”) 183 Managed Lanes Project (the “Project”) as further described below pursuant to a public-private partnership evidenced by a Development Agreement (the “Agreement”). The Agreement defines work to be performed by the entity or entities identified in the successful Proposal (referred to as the “Developer” herein) to develop, design, construct, finance, operate and maintain managed lanes, additional general purpose lanes and associated facilities along an approximately 14-mile portion of SH 183 in Dallas and Tarrant Counties as more particularly described herein and in the Agreement. The form of the Agreement is included in Volume II of the RFP.

TxDOT is issuing this RFP to those Proposers shortlisted based on TxDOT’s evaluation of Qualification Statements (“QSS”) delivered to TxDOT on July 19, 2013, in response to the Request for Qualifications for the Project issued on February 20, 2013, as thereafter amended (the “RFQ”).

The intent of this procurement is to select the Proposer that delivers the best value for the base scope that includes the Minimum Base Scope and as many Additional Scope Components as possible within the Available Public Funds Amount. As described in Section 1.5 and in the Technical Provisions, this RFP identifies the Minimum Base Scope and four Additional Scope Components. Each Proposer may submit only one Proposal and that Proposal shall identify a Base Scope, including the Minimum Base Scope and as many Additional Scope Components added in order from 1-4 as the Proposer can deliver within the Available Public Funds Amount set forth in Section 1.9. Proposals will establish the price for delivering such Base Scope, prices for delivering any Additional Scope Components not included in the proposed Base Scope, and the prices for associated long-term operations and maintenance responsibilities. See Section 5 for a more detailed description of the evaluation and post-selection process.

Proposers must comply with this ITP during the procurement and in their responses to the RFP. Proposers also shall take the Project goals identified in Section 1.4 below into consideration in drafting their Proposals.

This RFP permits a Proposer to identify an entity other than the Proposer to act as the Developer for the Agreement, thus allowing unsuccessful Proposers to avoid unnecessary costs associated with formation of such entity or entities. However, if any entity identified as a Developer in the

successful Proposal is not formed as contemplated herein, or fails to comply with the requirements set forth herein, the entity that signed the Proposal shall have the obligation either to enter into the Agreement itself or to provide a substitute Developer acceptable to TxDOT in its discretion.

1.2 Documents in RFP

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:

Volume I - the Instructions to Proposers (the “ITP”) (including exhibits and forms);

Volume II – the Contract Documents; and

Volume III - Reference Information Documents.

Please refer to Sections 1.2 and 1.3 of the Agreement for a list of the Contract Documents and their order of precedence, and to Volume III for the Reference Information Documents.

The Reference Information Documents are included in this RFP for the purpose of providing information to Proposers. TxDOT has not determined whether the Reference Information Documents are accurate, complete or pertinent, or of any value to Proposers. The Reference Information Documents will not form a part of the contract between TxDOT and the Developer. Except as may be provided otherwise in the Agreement, 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.

All forms named in this ITP are found in Exhibit K unless otherwise noted.

1.3 Construction and Interpretation of this ITP

1.3.1 Definitions and Acronyms

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used but not defined herein, and refer to Exhibit 1 to the Agreement for the meaning of capitalized terms and acronyms used but not defined herein or in Exhibit A.

1.3.2 Number and Gender

In this ITP, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa, and words in one gender include all genders.

1.3.3 Headings

The division of this ITP into sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this ITP. The headings in this ITP are

not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.3.4 References to this ITP

The words “herein”, “hereby”, “hereof”, “hereto” and “hereunder” and words of similar import refer to this ITP as a whole and not to any particular portion of it. The words “Section”, “paragraph”, “sentence”, “clause” and “Exhibit” mean and refer to the specified article, section, paragraph, sentence, clause or exhibit of, or to, this ITP. A reference to a subsection or clause “above” or “below” refers to the denoted subsection or clause within the Section in which the reference appears.

1.3.5 References to Agreements and Other Documents

Unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

1.3.6 References to Any Person

A reference in this ITP to any Person at any time refers to such Person’s permitted successors and assigns.

1.3.7 Meaning of Including

In this ITP, the word “including” (or “include” or “includes”) means “including without limitation” and shall not be considered to set forth an exhaustive list.

1.3.8 Meaning of Discretion

In this ITP, the word “discretion” with respect to any Person means the sole and absolute discretion of such Person.

1.3.9 Notice, Approval, Etc., in Writing

Whenever the RFP Documents require or provide for any notice, approval, consent, acceptance, determination, decision, certificate, order, waiver, explanation, policy, information or the like, the same and any request therefor must be in writing (unless otherwise waived in writing by the other Party).

1.3.10 Meaning of Promptly

In this ITP, the word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances.

1.3.11 Trade Meanings

Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

1.3.12 Laws

Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws and (d) all future Laws pertaining to the same or similar subject matter.

1.3.13 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

1.3.14 Times

All times in this RFP are for local Central time in Austin, Texas.

1.4 TxDOT Goals

TxDOT's goals for the Project are as follows:

- (i) Maintain a safe environment for all Project personnel and the public at all times;
- (ii) Deliver as much Base Scope as possible with Available Public Funds Amount, reduce temporary improvements and minimize right of way impacts;
- (iii) Maintain mobility within the Project area and minimize the inconvenience to surrounding communities and businesses during construction in an environmentally sensitive manner;
- (iv) Achieve the highest degree of quality possible in design, construction, operations and maintenance given available funds;
- (v) Promote connectivity of managed lane systems in the region.
- (vi) Improve mobility within the Project area after the construction period; and
- (vii) Maximize the utilization of Disadvantaged Business Enterprises (“**DBEs**”) for the Project through a comprehensive outreach program.

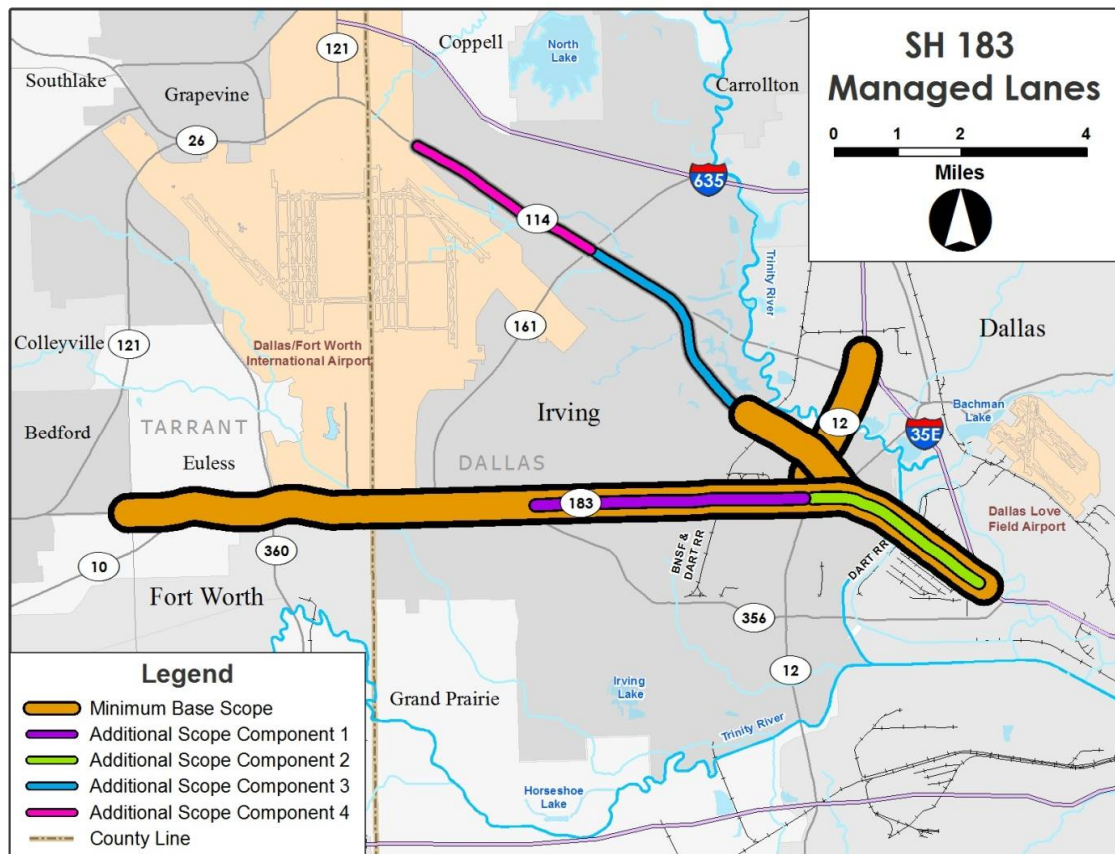
1.5 General Project Description, Scope of the Developer’s Obligations, Etc.

1.5.1 General Project Description

TxDOT, in cooperation with local and regional stakeholders, has developed a project to reconstruct an approximately 14-mile section of SH 183 from SH 121 to I-35E/proposed Trinity Parkway in Dallas and Tarrant Counties. The reconstruction of this section of SH 183 and related work on Loop 12 and SH 114 is included in the Minimum Base Scope described below. Additional work related to SH 183 is included in the Additional Scope Components 1 and 2 (defined below) and additional work related to SH 114 from Rochelle Boulevard to International Parkway is included in the Additional Scope Components 3 and 4, as described further below. Additional Scope O&M Work will be required for Additional Scope Components 1 and 2, but not 3 and 4, as described below.

The Project generally consists of improvements along and connecting to SH 183, SH 114 and Loop 12 from SH 121 to I-35E in Tarrant and Dallas Counties and includes the construction of managed lanes, general purpose lanes, frontage roads, ramps and connecting roadways along with associated drainage, structures, signing and pavement marking, lighting, landscaping, and right of way acquisition and utility adjustments.

A map of the Project is set forth below.



The Project

Design and Construction Scope

The scope of work during the Construction Period is generally described below. A more detailed description is included in Section 1 of the Technical Provisions.

Minimum Base Scope:

SH 183 (Industrial Boulevard to I-35E) – 14.8 miles

- Construct or configure one managed lane in each direction from Industrial Boulevard (FM 157) to Empire Central
- Reconstruct general purpose lanes and frontage roads between Industrial Boulevard (FM 157) and Main Street
- Widen and rehabilitate eastbound and westbound general purpose lanes between Main Street and Belt Line Road and between Empire Central and IH-35E
- Rehabilitate eastbound and westbound frontage roads from east of Main Street to east of SH 161 (PGBT)
- Reconstruct frontage roads between SH 161 (PGBT) and Belt Line Road
- Intermittently reconstruct the general purpose lanes and frontage roads between Belt Line Road and Empire Central
- Construct managed lane and general purpose lane direct connectors between SH 183 and SH 114 and between SH 183 and Loop 12
- Remove, construct or reconstruct general purpose and managed lane entrance and exit ramps as set forth in Section 1 of the Technical Provisions
- Construct underpass and overpass cross street improvements including turnarounds as described in Section 1 of the Technical Provisions

SH 114 (Rochelle Boulevard to SH 183) – 2.5 miles

- Configure one managed lane in each direction between Rochelle (Boulevard) and Loop 12
- Construct one managed lane in each direction between Loop 12 and SH 183

Loop 12 (I-35E to SH 183) – 2.3 miles

- Construct and/or configure one managed lane in each direction between I-35E and SH 183
- Remove, construct or reconstruct general purpose and managed lane entrance and exit ramps

Additional Scope Components:

Additional Scope Component 1: SH 183 – 4.6 miles

- Partially reconstruct general purpose lanes, frontage roads, ramps and associated cross street improvements from east of Belt Line Road to Loop 12.

Additional Scope Component 2: SH 183 – 3.5 miles

- Partially reconstruct general purpose lanes, frontage roads, ramps and associated cross street improvements from Loop 12 to I-35E.

Additional Scope Component 3: SH 114 – 3.6 miles

- Construct one managed lane and ramps in each direction from SH 161 (PGBT) to Rochelle Boulevard

Additional Scope Component 4: SH 114 – 4.6 miles

- Construct or configure one westbound managed lane, ramps and associated general purpose lane widening from International Parkway (Spur 97) to SH 161 (PGBT)

During the Construction Period, the Developer will be responsible for routine maintenance for all scope components in accordance with Section 19 of the Technical Provisions.

Operations and Maintenance (O&M) Scope

During the O&M Period, the Developer will be responsible for the operations and maintenance, Renewal Work and Handback Requirements in accordance with Section 19 of the Technical Provisions:

Minimum Base Scope and Additional Scope Components 1 and 2

- For SH 183 from east of Main Street to east of Belt Line Road, perform routine operations and maintenance work within ROW during O&M Period with no handback.
- For all other Project elements, perform routine operations and maintenance and renewal work during O&M Period and meet handback requirements at completion of O&M Period in accordance with Section 19.12 of the Technical Provisions.

Additional Scope Components 3 and 4

- Routine operations and maintenance is not required during the O&M Period and no handback is required.

Project Location

The Project is located near the center of Texas’ Dallas-Fort Worth Metroplex (the “**DFW Metroplex**”) and serves as one of the main routes connecting downtown Dallas with downtown Fort Worth, as well as providing both cities with access to the southern entrance to the Dallas-

Fort Worth (“DFW”) International Airport. The Project is located within the limits of Bedford, Dallas, Euless and Irving. Refer to the map shown in the previous section.

Future Improvements

In Section 5.12 of the Agreement, TxDOT reserves the right to undertake, in its discretion, the design, construction, financing, operation, maintenance or rehabilitation of any Future Improvements and may award contracts related to such Future Improvements to Persons other than Developer. Further, pursuant to Section 5.13 of the Agreement, TxDOT may issue a Change Order to Developer requiring Developer to perform the operation, maintenance and rehabilitation of any Future Improvements. Future Improvements may include all or a portion of Additional Scope Components 1 and 2 if not otherwise included in the Base Scope or exercised within the time set forth in the Agreement, as well as the remaining work necessary to achieve the ultimate scope for SH 183 from SH 121 to I-35E as set forth in the environmental approvals and summarized below.

TxDOT anticipates that Future Improvements will be implemented as revenue and available funds permit. The Future Improvements may include the reconstruction and widening of the existing SH 183 to provide for two to three managed lanes in each direction, plus exit/entrance ramps at specified locations, four general purpose lanes in each direction, plus auxiliary lanes and exit/entrance ramps, and up to three frontage road lanes in each direction, including left/right turn lanes and related exit/entrance ramps, all as defined in the approved environmental documents outlined in Section 4.2.4 of the Technical Provisions and as shown in the Reference Information Documents.

1.5.2 Scope of the Developer’s Obligations

The scope of the Developer’s obligations for the Project will include the development, design, construction, financing, maintenance and operation of the Project under the terms set forth in the Agreement.

TxDOT intends to perform toll collection through an agreement with NTTA. TxDOT also intends to enter into a separate contract with the Systems Integrator to provide the Electronic Toll Collection System for the Project. It is anticipated that the Systems Integrator will be responsible for the installation and maintenance of toll gantries/foundations, advance toll signs/sign supports, and installation, testing, operation and maintenance of the toll equipment and related systems and that TxDOT’s Toll Systems design consultant will be responsible for the civil design of toll gantries/foundations and signs/sign supports. The Developer will be required to coordinate its work with NTTA and the Systems Integrator as set forth in the Contract Documents.

The Developer will be responsible for the design and construction of utility and railroad improvements affected by the highway improvements and all costs associated therewith in accordance with the Contract Documents. In addition to construction costs, the Developer will be responsible for utility adjustments and for acquiring ROW not previously acquired by TxDOT

as of the Effective Date, except that TxDOT will provide funds for the purchase price of any parcels in the right of way and any relocation assistance payments.

Work under the Agreement will proceed as authorized by notices to proceed (“NTP”) issued by TxDOT under the Agreement. An initial notice to proceed (“NTP1”) will authorize the Developer to perform certain Work related to the Project Management Plan, and to engage in certain investigative and other activities. A second notice to proceed (“NTP2”) will authorize the Developer to proceed with the remaining development Work required during construction for the Project. As set forth in Section 3.5.6 of the Agreement, TxDOT has the right to issue NTP for Additional Scope Components up to 180 days after issuance of NTP1 for any of the Additional Scope Components not included in Developer’s Base Scope Proposal.

Throughout the O&M Period, Developer will be responsible for routine operations and maintenance and Renewal Work within the O&M Limits as set forth in the Agreement and the Technical Provisions. Commencement of the O&M Work will be subject to satisfaction of certain conditions precedent to commencement of the O&M Work set forth in Section 3.10.3 of the Agreement.

Developer will be required to operate and maintain all Elements, including managed lanes, general purpose lanes, frontage roads and ramps, within the O&M Limits as generally described below and as described in further detail in the Agreement and Sections 19 and 22 of the Technical Provisions:

SH183 from east of SH 121 to Euless Main

- Routine operations and maintenance and Renewal Work within O&M Limits including Handback Requirements

SH 183 from east of Euless Main to east of Belt Line

- Routine operations and maintenance work within O&M Limits with no Handback Requirements

SH183 from east of Belt Line to I-35E

- Routine operations and maintenance and Renewal Work within O&M Limits including Handback Requirements

Developer will not be responsible for maintenance of roadways beyond the longitudinal limit of the Work determined by the end of transitions from the Project to existing roadways.

Additionally, the Developer shall be responsible for ultimately handing back the Project in a manner that is compliant with the Handback Requirements described in Section 19.4 of the Technical Provisions and Section 5.11 of the Agreement. Developer will be required to provide TxDOT with a Handback Plan that contains the methodologies and activities to be undertaken or employed to meet the Handback Requirements at the end of the Term of the Agreement.

1.5.3 Environmental Status

Environmental document approvals for segments located within the Project limits are summarized below in Table 1-1.

**Table 1-1
Summary of Previous Environmental Documentation**

Environmental Assessment/Project Limits	Environmental Assessment Finding of No Significant Impact (FONSI) Date	Re-Evaluation Date
SH 121/SH 183: From I-20 to SH 161 (NTE Segment 2E Airport Freeway) (Includes the section of SH 183 from SH 121 to SH 161)	October 2009	Revised schematic and EA Memo Re-Evaluation approved in 2011
SH 183: From SH 360 to I-35E (Excludes the section of SH 183 from Carl Rd to SH 114)	February 2004	Revised schematic and EA Re-Evaluation approved in April 2012
Loop 12/I-35E (Includes the section of SH 183 from Carl Rd to SH 114)	December 2002	Revised schematics and EA Re-Evaluation approved in June 2008
SH 114 Environmental Assessment	April 2009	N/A

TxDOT is currently pursuing 401 and 404 permits solely for the Minimum Base Scope of the Project. Through ongoing coordination, TxDOT and the Federal Highway Administration (“FHWA”) anticipate the completion of the following environmental re-evaluations to assess impacts related to changes to the designs and phasing associated with the previously cleared environmental documents:

- Loop 12/IH 35E Environmental Assessment Re-Evaluation
- SH 183 Environmental Assessment Re-Evaluation
- SH 121/SH 183 (Segment 2E) Environmental Assessment Re-Evaluation
- SH 114 Environmental Assessment Re-Evaluation

These documents and additional information on the environmental status of the Project are included in the Reference Information Documents and the Technical Provisions.

1.5.4 Status of ROW Acquisition

TxDOT is currently preparing right of way maps for the Project (including the Additional Scope Components). Such maps will be added to the Reference Information Documents as they become available.

TxDOT is advancing right of way acquisition prior to the Effective Date of the Agreement. TxDOT has identified strategic parcels and is currently advancing right of way activities for their early acquisition. At the appropriate time, or as dictated by the terms of the Agreement, these

parcels will be handed over to the Developer for completion of right of way acquisition including relocation assistance and demolition of improvements. TxDOT will provide Proposers with a status of those parcels being negotiated at this time by TxDOT.

The Developer’s responsibilities will include right of way acquisition activities for parcels that have not been acquired by TxDOT as of the Effective Date of the Agreement. TxDOT will be responsible for eminent domain activities with Developer support and for the purchase price of right of way and relocation assistance payments within the Draft Schematic ROW. The Agreement provides further details regarding the right of way acquisition process and the responsibilities of the Developer in this process.

1.5.5 Status of Required Utility Work

TxDOT intends to perform a subsurface utility engineering (“SUE”) investigation for the Project. TxDOT will provide updates to Proposers as the SUE information is made available.

Pursuant to Section 203.092 of the Transportation Code, as it relates to eligible utility adjustment/relocation expenses, the Project is subject to toll project designation that allows for 50% reimbursement of eligible costs for facilities located on public right-of-way and 100% reimbursement of eligible costs for facilities located on a compensable property interest on the Project, unless otherwise noted. The Developer will be responsible for performing or causing necessary Utility Adjustments to be performed in accordance with applicable standards and for the costs associated with Utility Adjustments, except to the extent the utilities are legally responsible for such costs. TxDOT may advance coordination activities in this area by initiating discussions and planning workshops with Utility Owners. At the appropriate time or as dictated by the terms of the Agreement, utility activities will be handed over to the Developer for completion.

1.5.6 Status of Required Railroad Services

The Agreement will require the Developer to coordinate efforts and design all railroad crossings in accordance with the requirements of the corresponding railroad. Railroad crossings within the Project limits are identified below in Table 1-2.

Table 1-2
Summary of Railroad Crossings

SH 183 Station	Owner	Proposed Facilities Crossing RR
405+00	BNSF & DART	General purpose lanes, managed lanes and frontage roads

1.6 Procurement Schedule

The following Table 1-3 represents the current schedule for the procurement.

**Table 1-3
Procurement Schedule**

<u>EVENT</u>	<u>DATE and TIME</u>
Issue final Request for Proposals	November 7, 2013
One-on-One meetings with Proposers	November 18 - 19, 2013
One-on-One meetings with Proposers	December 17 - 18, 2013
Issue Addendum #1 to the RFP	January 17, 2014
Insurance One-on-One meetings with Proposers	Week of January 27, 2014
Last date for Proposers to submit questions regarding Addendum #1 to the Request for Proposals	January 29, 2014
Technical One-on-One meetings with Proposers	February 4 - 5, 2014
Commercial One-on-One meetings with Proposers	February 11 - 12, 2014
Last date for submittal of ATCs and last date to request ATC meetings	February 24, 2014
Final Deadline for Pre-submittals for changes to Proposer Organization and Key Personnel	March 10, 2014
Issue Addendum #2 to the RFP	March 11, 2014
ATC One-on-One meetings with Proposers and O&M One-on-One meetings with Proposers	March 12, 2014
Last date to meet regarding ATCs (excluding ATC Presentation Meeting)	March 12, 2014
Last date for TxDOT to respond to ATCs	March 18, 2014
Last date for Proposers to submit questions regarding Addendum #2 to the Request for Proposals	March 18, 2014
Last date for Proposers to request ATC Presentation Meeting and submit required agenda	March 19, 2014 5:00 PM
ATC Presentation Meeting (if requested)	March 24, 2014
One-on-One meetings with Proposers	March 25 - 26, 2014
Deadline for Pre-submittal for Benchmark Rates and proposed information source	March 28, 2014

<u>EVENT</u>	<u>DATE and TIME</u>
Deadline for TxDOT approval of Pre-Submittals for changes to Proposer Organization and Key Personnel	March 28, 2014
Last date for Proposers to submit questions regarding the RFP	April 4, 2014
Last date for TxDOT to verify independently and approve Benchmark Rates as described in <u>Section 5.11.2</u>	April 4, 2014 10:00 AM
Last date for TxDOT responses to questions regarding the RFP	April 9, 2014
Last date for an Addendum	April 9, 2014
Proposal Due Date	April 14, 2014 12:00 noon
Anticipated Conditional Award by Commission	May 29, 2014

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

1.7 General Provisions Regarding Proposals

1.7.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to this RFP, including: (a) the Technical Proposal, including a development plan for the Work (the "**Project Development Plan**"), (b) the Financial Proposal and (c) the Price Proposal.

The instructions and requirements for the Technical Proposal, including the Project Development Plan, the Financial Proposal and the Price Proposal are set forth in Exhibits B, B-1, C and C-1, respectively, and a checklist showing the required contents of the entire Proposal is set forth 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 tabbed, 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 (Exhibit K) in the format specified or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in TxDOT rejecting 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.

1.7.2 Inclusion of Proposal in Contract Documents

Portions of the successful Proposal will become part of the Contract Documents, as applicable and to the extent specified in the Agreement. All other information is for evaluation purposes only and will not become part of the Contract 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 the 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, in the Rules and in 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 upon delivery to TxDOT and will not be returned to the submitting parties.

The Proposers should familiarize themselves with the provisions of the Public Information Act, Texas Government Code, Chapter 552 (the “Act”) requiring disclosure of public information, and exceptions thereto. In no event shall the State, TxDOT or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or any Proposer team member for the disclosure of any materials or information submitted in response to this RFP. See also Section 2.6.

1.8 Federal Requirements and Funding

In order to preserve the ability of the parties to use federal funding for the Project, the procurement process and the Agreement must comply with applicable federal Laws and regulations. TxDOT reserves the right to modify the RFP to address any concerns, conditions or requirements of FHWA. Proposers shall be notified by Addendum of any such modifications.

1.8.1 DBE Requirements

TxDOT has determined that Disadvantaged Business Enterprises (“DBE”) requirements apply to the Project under the Agreement, 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. The 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 Contract Documents and TxDOT’s DBE Program document.

The DBE participation goal for the Project shall be 7% for professional services and 7% for construction of the Project under the Agreement. TxDOT’s DBE requirements applicable to the Agreement are set forth in Section 7.1 of the Agreement, the DBE Special Provisions for Non-Traditional Contracts attached as Exhibit 6 to the Agreement and TxDOT’s DBE Program adopted pursuant to Title 49 CFR Part 26. As set forth in Section 3.2.7 of Exhibit B, each Proposer shall submit certifications 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 Agreement, 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 the Proposer's exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in the DBE Special Provisions for Non-Traditional Contracts, Exhibit 6 to the Agreement. The DBE Performance Plan will be subject to review, comment and approval by TxDOT prior to and as a condition of final award and execution of the Agreement.

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 for Non-Traditional Contracts, TxDOT's DBE Program, and for the Agreement, the approved DBE Performance Plan.

Developer shall not cancel or terminate any subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of subcontracts with DBE firms set forth in TxDOT's DBE Special Provisions for Non-Traditional Contracts in Exhibit 6 to the Agreement.

1.9 Available Public Funds Amount

TxDOT intends to make available up to \$850 million of public funds (the "**Available Public Funds Amount**") for the costs of the initial design and construction work for the Project, including Utility Adjustments. \$600 million of the Available Public Funds Amount will be available to the Developer prior to Substantial Completion and in accordance with the Maximum D&C Payment Schedule set forth in Exhibit 5-1 to the Agreement. Up to \$250 million of the Available Public Funds Amount will be available to the Developer on a deferred basis under the terms set forth in the Agreement beginning on the first anniversary of the Scheduled Substantial Completion Date and in annual installments of \$50 million on each anniversary thereafter until the D&C Price is fully paid.

1.10 Toll Collection System

1.10.1 TransCore Toll System CDA

TxDOT has entered into a comprehensive development agreement (the "**Toll System CDA**") with TransCore Loop, the Statewide Tolling Systems Integrator (the "**Systems Integrator**"). Under the Toll System CDA, the Systems Integrator has responsibility to design, construct, install and maintain open-road toll collection systems on projects designated by TxDOT pursuant to the terms thereof.

TxDOT will negotiate a "Project Segment Supplement" with the Systems Integrator under the Toll System CDA with respect to the Project and, accordingly, the Toll System CDA will apply to this Project.

1.10.2 NTTA Tolling Services Agreement

The North Texas Tollway Authority (“NTTA”) is required to provide, for reasonable compensation, customer service and other toll collection and enforcement services for the Project pursuant to Section 366.038 of the Code. TxDOT expects to enter into a tolling services agreement with NTTA in relation to the Project.

1.11 Insurance Requirements

Proposers should review carefully the minimum insurance requirements set forth in the Agreement. Each Proposer shall take these minimum requirements into account in developing its Proposal.

1.12 Qualification To Do Business

As of commercial close, the Developer and Major Participants (excluding the Equity Members) must be qualified to do business in the State.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

This 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 intent of this procurement is to deliver as much base scope as possible for the Available Public Funds Amount. TxDOT therefore will award the Agreement (if at all) to the responsible Proposer offering the Proposal with the largest base scope that meets the high standards set by TxDOT and that is determined by TxDOT, through evaluation based upon the criteria set forth in the RFP in accordance with the Code and the Rules, to provide the best value to TxDOT and to be in the best interest of the State.

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 and most portions of the Reference Information Documents will be available to Proposers and the public on the Project Website. However, portions of the Reference Information Documents containing confidential information will instead be posted only to the secure file transfer and sharing site for the Project (the “**RFP Website**”). The RFP Website is distinct from the Project Website viewable by the public. Access to the RFP Website will be granted only to shortlisted Proposers.

TxDOT has provided shortlisted Proposers with the address of the RFP Website. The RFP Website address, username and password have been provided separately to each shortlisted Proposer. Each shortlisted Proposer will be required to treat the username and password as confidential information and to check the site regularly for Addenda to this RFP, confidential Reference Information Documents and for other procurement related information.

Other information related to the procurement may, at TxDOT's discretion, be made available to the public on the Project Website.

2.2.1 Authorized Representative

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

Texas Department of Transportation
4777 E. Highway 80
Mesquite, Texas 75150
Attn: Mr. Dan H. Peden, P.E.
E-mail: TxDOT-DAL-PPP-SH183@txdot.gov

From time to time during the procurement process or during the terms of the Agreement, TxDOT may designate another Authorized Representative or representatives to carry out some or all of TxDOT's obligations pertaining to the Project.

2.2.2 Identification of Proposer Designated Representative

Each Proposer's designated representative shall initially be the person identified in the Proposer's QS as the single point of contact for the Proposer. If a Proposer changes its designated representative at any time, including subsequent to the submission of its Proposal, the Proposer shall provide TxDOT's Authorized Representative with the name and address of such new designated representative. A Proposer's failure to identify a designated representative in writing may result in the Proposer not receiving 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 (February 20, 2013) until September 2, 2013, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on September 3, 2013, the date the industry review package was issued, and ending on the earliest of (i) the execution and delivery of the Agreement, (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 or any of its team members may communicate with another Proposer or its team members with regard to this 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 representative responsible for all communication between the Proposer and TxDOT, and such designated representative shall correspond with TxDOT regarding this RFP only through TxDOT's Authorized Representative (except for communications with TxDOT's ombudsman as provided in Section 2.3.2 below).

(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 Commission or with any TxDOT staff, advisors, contractors or consultants involved with the procurement of the Project, except for communications with TxDOT consultants who completed their services for the Project and have been released by TxDOT, communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative or the Chief Project and Planning Officer in his discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or from participation in public meetings of the Commission or any public or Proposer workshop related to this RFP. Any Proposer engaging in such prohibited communications may be disqualified at the discretion of TxDOT.

(d) Except to the extent that the Systems Integrator participates in meetings facilitated by TxDOT or as otherwise approved in writing by TxDOT, Proposers shall not communicate with NTTA or the Systems Integrator regarding the Project. TxDOT expects to facilitate meetings between Proposers and the Systems Integrator during the RFP process.

(e) Proposers shall not contact any of the Stakeholders regarding the Project, including employees, representatives, members and consultants of the Stakeholders, except as specifically approved in advance by TxDOT in writing or as set forth in this Section 2.2.3(e):

- (i) each Proposer may set up meetings with railroads and Utility Owners that will be affected by the Project; provided that Proposer shall provide notice to TxDOT of the date, time, location and anticipated attendees of such meetings no later than three Business Days in advance of such meeting; each Proposer may also submit requests for documents to railroads and Utility Owners that do not require additional interaction or discussions between the Proposer and the railroad or Utility Owner; and
- (ii) each Proposer may contact private landowners along the Project corridor for the purpose of performing due diligence and discussing aspects of the Proposal, including temporary construction easements, staging areas and borrow; *provided, however*, the Proposer shall not discuss other Proposers or

their Proposals, negotiate exclusive arrangements to the detriment of other Proposers or otherwise seek an unfair competitive advantage. Furthermore, Proposers shall not attempt to obtain from such landowners rights of entry during the procurement, which are governed by Section 2.8.2.

(f) Proposers shall not communicate with the Texas Comptroller of Public Accounts.

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

(h) Any official information regarding the Project will be disseminated from TxDOT's office on Department letterhead, on the RFP Website or on the Project Website. Any official information regarding the Project will be in writing, on TxDOT letterhead and signed by TxDOT's Authorized Representative or designee.

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

(j) Proposers 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(h).

2.2.4 Language Requirement

All correspondence regarding the RFP, Alternative Technical Concepts ("ATCs"), the Proposal and the Agreement and all other matters pertaining to this Procurement are to be in the English language. If any original documents required for the Proposal are in any other language, the 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, Role of the Ombudsman, 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 mistake, discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision that Proposer fails to understand. Failure of a 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 Contract Documents nor will they be relevant in interpreting the Contract Documents, except as expressly set forth in the Contract Documents.

TxDOT will only consider comments/questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to the

Authorized Representative in writing by electronic file uploaded to the RFP Website, with notice of submission provided to the e-mail address identified in Section 2.2.1; *provided, however*, that any confidential communication regarding the procurement process shall be submitted to TxDOT's designated ombudsman, by hard copy, facsimile or other electronic transmission in the format described in Section 2.3.2 (*see Section 2.3.2* for a description of the instances in which communications may be submitted to the ombudsman).

Such comments/questions may be submitted at any time prior to the applicable date specified in Section 1.6 or such later date as may be specified in any Addendum and shall: (i) be submitted in writing in Word in the form of Form T; (ii) be sequentially numbered; (iii) identify the document (*e.g.*, the Agreement, Technical Provisions, etc.); (iv) identify the relevant section number or whether the comment or question is general in nature; (v) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information; and (vi) indicate whether the question is a Category 1, 2, 3 or 4 question.

As used above, "Category 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal. "Category 2" means a major issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal. "Category 3" means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 and Category 2 issue. "Category 4" means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

Proposers will be limited to 100 comments/questions per RFP version issued, including any Addendum; provided however, that Proposers are limited to 50 comments/questions to Addendum 2 to the RFP. If a question has more than one subpart, each subpart will be considered a separate question. Questions relating to the Technical Provisions, corrections of typographical errors, incorrect cross references or inconsistencies within or among the RFP Documents will be excluded from any limitations on comments/questions. Proposers are encouraged to provide specific drafting alternatives in the submitted comments with changes marked with strikethrough for deletions and underline for additions.

Except during one-on-one meetings, no telephone or oral requests will be considered. The 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 SH 183 Managed Lanes Project. No requests for additional information or clarification to any Person other than TxDOT's Authorized Representative or, subject to compliance with Section 2.3.2, to TxDOT's designated ombudsman will be considered. Questions may be submitted only by the Proposer's designated representative, and must include the requestor's name, address, telephone and facsimile numbers, and the name of the Proposer represented.

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 a Proposer's

Proposal or ATCs. TxDOT reserves the right to disagree with a 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 the applicable Proposer and may allow it 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 the Proposal Due Date.

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 discretion, that its interpretation or clarification requires a change in the RFP, TxDOT will prepare and issue an Addendum.

2.3.2 Ombudsman

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 2.3.2 on a confidential basis regarding the procurement process. Instead of submitting written communications to the Authorized Representative as provided in Section 2.3.1, a Proposer may submit such confidential communications, and any confidential comments or complaints regarding the procurement, to the ombudsman, in circumstances in which a Proposer believes in good faith that confidentiality is essential. Please note that the deadline set forth in Section 1.6 applies to comments and questions regarding the RFP that are submitted to the ombudsman. A Proposer must submit such confidential communication in a separate document that does not include any information identifying the 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 or has been submitted past the applicable deadline set forth in Section 1.6, the ombudsman shall return the submission to the Proposer with instructions to submit the communication directly to TxDOT's Authorized Representative in accordance with Section 2.3.1. TxDOT has designated the following individual who is not involved in the procurement to be the ombudsman for the procurement:

Ms. Rebecca Blewett, Esq.
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701

E-mail Address: Becky.Blewett@txdot.gov

All other questions and requests for clarification should be submitted to the Authorized Representative in accordance with Section 2.3.1.

2.3.3 Addenda

TxDOT reserves the right, in its discretion, to revise, modify or change the RFP or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested as provided in Section 5.8, 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 Project Website, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts this RFP, as determined in TxDOT's 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 Proposers to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any permitted clarification requests concerning the Addendum.

Each 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.

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required as provided in Section 2.12, as applicable (regarding changes in Proposer's organization), Section 2.14 and Exhibit B, Sections 3.2.4.1 and 3.2.4.2 (regarding Key Personnel), and Section 5.11.2 (regarding Benchmark Rate). In addition, any Proposer that wishes to submit an ATC pursuant to Section 3 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. 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 the 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 herein, and on such other dates designated by TxDOT in writing to Proposers, to discuss issues and clarifications regarding the RFP and each 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 discretion, such disclosure would impair the confidentiality of an ATC or would reveal a Proposer's confidential business strategies. Participation at such meetings by Proposers shall be mandatory. FHWA may also participate in all one-on-one meetings.

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

- 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 the Proposer's 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 provisions. Each Proposer will be required to identify in writing all of its participants in the meeting 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 2.3.3.

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 ITP and all other disclosures required by law 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 the Act, the Code, the Rules 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. Each Proposer hereby further agrees to assist TxDOT in complying with these disclosure requirements if it is the selected apparent best value Proposer.

2.6.2 Observers During Evaluation

Proposers are advised that observers from federal or other agencies, including representatives of local agencies and municipalities, 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 and its outside advisors to oversee the procurement process, which includes access to the Financial Proposals and Price Proposals. Outside observers (other than FHWA officials) will be required to sign TxDOT's standard confidentiality agreement.

2.6.3 Public Disclosure of Proposal Documents

The information contained in Form J (Conflict of Interest Disclosure Statement) and the Executive Summary (described in Exhibit B, Section 3.1) of each Proposal may be publicly disclosed by TxDOT at any time and at TxDOT's discretion.

Upon recommendation to the Commission of the selection of an apparent best-value Proposer and in TxDOT's discretion, TxDOT may publicly release (a) each Proposal with the exception of the Price Proposal and (b) the selected apparent best value Proposer's Price Proposal, or any of the information contained therein. In the event TxDOT is unable to reach agreement on the Agreement 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 Price Proposal submitted by the next such highest ranking Proposer and any information contained therein 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 Price Proposal submitted by any Proposer and the information contained therein 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 Agreement, any Price Proposal submitted by any Proposer and the information contained therein, other than that of the apparent best-value Proposer (or that of the next highest ranking Proposer, if such Proposer is in Agreement 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 disclose publicly any and all portions of all the Proposals, except the non-public financial statements of privately held entities. However, the non-public financial statements of privately held entities shall be subject to disclosure as described in Section 2.6.4.

2.6.4 Disclosure Process for Requests Under the Act

If a request is made under the Act for disclosure of the Proposals or information contained therein, other than information which otherwise may be 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. The Proposer shall then have the opportunity to assert its basis for non-disclosure of such documents and claimed exception under the 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 Act. However, it is the responsibility of the Proposer to monitor such proceedings and make timely filings. TxDOT may, but is not obligated to, make filings of its own concerning possible disclosure. TxDOT is under no obligation to support the positions of the Proposer.

By submitting a Proposal to TxDOT in response to the RFP, each 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 Proposal, including any non-public financial statements of privately held entities and other confidential or proprietary information, in accordance with the Act and 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. Under no circumstances will TxDOT be responsible or liable to a Proposer or any other party as a result of disclosing any such 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 Act, the Code, any related rules and other Law 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 Act, the Code or other State Laws, as to the interpretation of such Laws, or as to the definition of trade secret. Each 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, the 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 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 the Proposer whose Proposal is the subject thereof.

2.7 TxDOT Studies and Investigations

TxDOT has completed Site investigations. To the extent TxDOT undertakes any additional investigative activities, the information obtained by TxDOT from such activities may be made available to the 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 Project Website and the RFP Website and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal or the performance of each Developer's obligations under the Agreement with TxDOT. Each Proposer also is responsible for monitoring the Project Website and RFP Website for information concerning this RFP and the procurement. The Proposal Letter (Form A) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Failure of a 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, permanent and temporary Utility appurtenances, area population, traffic patterns and driver preferences, keeping in mind the provisions of the Agreement regarding assumption of liability by the Proposer. A Proposer's receipt of TxDOT-furnished information does not relieve the 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 as to the requirements of the Contract 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. Exhibit F-1 is the process for obtaining rights of entry to property that is not owned by the State, and Exhibit F-2 is the process for obtaining a right of entry to enter State-owned ROW. Pursuant to the terms of Exhibits F-1 and F-2, as applicable, and subject to the Proposer obtaining any required administrative or governmental approvals, Proposers may be allowed access to portions of the Draft Schematic ROW for purposes of inspecting in-place assets and determining Site conditions through non-destructive investigations and pavement coring until the Proposal Due Date, *provided* that the conditions specified in Exhibits F-1 and F-2, as applicable, and this Section 2.8.2 are met. This work may include surveys and site investigations, such as geotechnical, Hazardous Materials and Utilities investigations. This work also may include pavement coring, subject to the following requirements: (1) Proposers must coordinate a schedule for pavement coring with TxDOT; (2) Proposers shall only perform pavement coring at the times specified by TxDOT; (3) each Proposer may not extract more than 20 pavement cores within the Draft Schematic ROW; (4) Proposers may perform pavement coring solely in the specific locations within the Draft Schematic ROW that are approved by TxDOT; (5) Proposers will be granted access for pavement coring in the order they submit a request for pavement coring in accordance with these provisions (*i.e.*, on a first come, first served basis); (6) only one Proposer will be permitted to perform pavement coring per night; and (7) no pavement coring shall be done on bridges.

Any Proposer seeking such access shall contact TxDOT's Authorized Representative with proposed dates and locations for such work, which shall be subject to TxDOT's review and approval. The Proposer shall submit a preliminary testing plan for approval to the Authorized Representative before beginning any geotechnical investigations within the Project ROW or on the existing roadway. This plan shall indicate the proposed extent of removal or disturbance of any in place sub-grade or in place roadway material. The plan shall describe surface location and depth of testing as well as specific test description to be performed. The Proposer shall also submit the proposed method to refill and replace any removed roadway material to ensure the safe function of the in-place pavement. Finally, the Proposer shall submit for approval the proposed traffic control supplier and traffic control plan needed to complete any and all testing.

After conditional award has been made, the selected Proposer will be allowed access to the Project ROW 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 Technical Provisions that are allowed prior to NTP2.

2.9 Errors

If any mistake, discrepancy, deficiency, ambiguity, error or omission is identified by a Proposer at any time during the procurement process in any of the documents supplied by TxDOT, the Proposer shall have a duty to 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

Section 27.8 of Title 43 of the Rules regarding organizational conflicts of interest applies to all comprehensive development agreement 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, the Proposer must make an immediate and full written disclosure to TxDOT that includes a description of the action that the 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 discretion, cancel the procurement, disqualify the Proposer with a conflict or take other action as necessary to mitigate the conflict. If the Proposer was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to TxDOT, TxDOT may pursue remedies under the Agreement, including termination of the Agreement 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 the Proposers equitably.

2.11 Reserved

2.12 Changes in Proposer's Organization

For a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved by TxDOT, the 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 additions, deletions, reorganizations, changes in equity ownership or role changes in or of any of the foregoing, the Proposer shall submit to TxDOT a request for approval of the change from TxDOT as soon as possible but in no event later than the date set forth in Section 1.6. Any such request shall be addressed to the Authorized Representative set forth in Section 2.2.1, accompanied by the information specified for such entities or individuals in the RFQ. If a Proposer requests the deletion or role change of any Major Participant identified in its QS, the 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). The 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 discretion. Except as provided herein and in the Agreement, a Proposer may not make any changes in any Major Participants identified in its QS after the deadline set forth in Section 1.6 for submission of changes in the Proposer's organization. Between the deadline set forth in Section 1.6 and execution of the Agreement, TxDOT will consider requests by a Proposer to make changes in its organization based only on unusual circumstances beyond such Proposer's control.

2.13 Changes to Companies or Entities Filling Key Project Roles

In accordance with Section 223.203 of the Transportation Code, Proposers must identify companies that will fill the roles of Key Subcontractors. Furthermore, the Proposer selected for the Project may not make changes to its Key Subcontractors unless the original company or entity: (1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the private entity; (2) voluntarily removes itself from the team; (3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or (4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the Project. If a Proposer makes team changes in violation of these requirements, any cost savings resulting from the change shall accrue to the State and not to the Proposer. Each Proposer shall identify all Key Subcontractors on Form D. Note that all teaming agreements and subcontracts must be executed and provided to TxDOT before execution of the Agreement.

2.14 Changes in Key Personnel and Designation of New Key Personnel

Proposers should review the qualification requirements for all Key Personnel set forth herein and in the Contract Documents as certain qualifications for Key Personnel included in the RFQ have changed. If Proposer must make a change to any Key Personnel due to such changes in qualifications, the Proposer shall submit such changes to TxDOT as set forth in this Section 2.14. TxDOT discourages changes in Key Personnel from the individuals listed in the QS. Any proposed changes in Key Personnel from those identified in the QS are subject to TxDOT approval as specified in this Section 2.14.

Each Proposer shall submit a package that includes a list of (a) any proposed changes in Key Personnel from those identified in the QS and (b) any new Key Personnel that were not required to be submitted with the QS falling within any of the categories identified in Exhibit B, Section 3.2.4.2, along with a copy of a resume for each such person (which must contain the individual's qualifications and relevant work experience) and contact information for three references for each individual.

In addition, if any individual to be included in the Proposal is also proposed as a Key Personnel or for another position on any other TxDOT procurement, the Proposer shall include in the package either: (a) a statement certifying that said individual will be available to assume its designated role on the TxDOT SH 183 Managed Lanes Project if the Proposer is the successful Proposer or (b) the resume of a qualified alternate.

Each such package shall include an original and five copies of the information specified above. The package shall be submitted to TxDOT by the date for submittal of changes in Key Personnel specified in Section 1.6 for review and approval by TxDOT in its discretion. The package shall be delivered to the address set forth in Section 2.2.1.

TxDOT is under no obligation to approve requested changes in Key Personnel or designations of new Key Personnel and may disapprove such requests at its discretion. If TxDOT, in its discretion, disapproves a proposed Key Personnel or (if applicable) its proposed alternate, the Proposer shall submit the information required above for its proposed substitute for review and approval by TxDOT in accordance with the foregoing process at least ten Business Days prior to the Proposal Due Date. The Proposal may not include any Key Personnel previously disapproved by TxDOT in writing.

A Proposer may not make any changes in its Key Personnel after receipt of TxDOT approval as specified in this Section 2.14, except as provided in the Contract Documents.

2.15 Sales Tax

The Proposers should assume that the Project is exempt from sales tax for certain Expendable Materials as more particularly described in the Agreement. 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 Comptroller’s website.

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPT REVIEW

3.1 Alternative Technical Concepts

“Alternative Technical Concepts” or “ATCs” are concepts that conflict with the requirements for design and construction of the Project or otherwise require a modification of the Technical Provisions but that may nevertheless be proposed in accordance with the terms and conditions set forth in this ITP. Sections 3.1 through 3.4 set forth a process for early review of ATCs pertaining to the Agreement conflicting with the requirements for design, construction and operation and 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 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 technical requirements of the as-issued Contract 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 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 Agreement (such as expansion of the scope of the Project to include additional roadways); (c) an increase in the amount of time required for Substantial Completion of the

Work under the Agreement; or (d) changes in financial terms. ATCs that, if implemented, would require further environmental evaluation of the Project may be allowed, *provided* that the Developer will bear the schedule and cost risk associated with such additional environmental evaluation. If the Developer is not able to obtain the approvals necessary to implement the ATC, the 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

Proposers may submit ATCs for review to TxDOT's Authorized Representative until the applicable last date identified in Section 1.6. All ATCs shall be submitted in writing, with a cover sheet identifying the Proposer and stating "SH 183 Managed Lanes Project – Confidential ATCs." The Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If the 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 Submittal Requirements:

- (a) a sequential ATC number identifying the 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 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 Handback 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 that 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 ROW will be required to implement the ATC (it being understood that Proposers shall (i) be solely responsible for the acquisition of any such ROW, including the cost thereof and obtaining any necessary Environmental Approvals, (ii) not be entitled to any additional time or money as a result of Site conditions (*i.e.*, Hazardous Materials, differing site conditions, geotechnical issues, Utilities, etc.) on such additional ROW and (iii) not be entitled to any additional time or money as a result of any delay, inability or cost associated with the acquisition of such ROW);

(m) a description of other projects on which 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 any savings that would accrue to TxDOT should the ATC be approved and implemented;

(q) an analysis of how the ATC is equal or better in quality and performance than the requirements of the RFP;

(r) a preliminary analysis of potential impacts on the expected toll revenues, if any;

(s) an estimate of the D&C Price and/or the O&M Price adjustment (including information on whether such adjustments are applicable to the Base Scope or the Additional Scope Components) should the ATC be approved and implemented; and

(t) a description (including parcel numbers) of any not yet acquired Draft Schematic ROW that would not be required to be acquired if the ATC was implemented. Any such avoided properties must be complete parcels. If the parcel is still required for the ultimate configuration and is within the area described as Ultimate in the Technical Provisions, the proposed avoided properties will be reviewed based on the impact that the proposed avoided property would have on Utility Adjustments.

Proposers 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. Notwithstanding the foregoing, Proposers may request meetings with Stakeholders pursuant to Section 2.2.3(e) to discuss ATCs, *provided* that such meetings shall take place only (a) with TxDOT's prior consent, in its discretion, (b) with TxDOT in attendance and (c) subject to any additional limitations set forth by TxDOT in its consent. Following preapproval (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 consent, in its discretion, to do so.

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

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 date set forth in Section 1.6, *provided* that TxDOT has received all 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 discretion, of certain identified conditions that must be met or clarifications or modifications that must be made;

(d) the submittal does not qualify as an ATC but may be included in the Proposer's Proposal without an ATC (*i.e.*, the concept complies with the RFP requirements); or

(e) the 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, the Proposer will be responsible for ensuring that the final submittal complies with the RFP requirements.

After TxDOT has responded to each Proposer regarding its ATCs in accordance with this Section 3.3, Proposers will be provided a single final opportunity to meet with TxDOT to discuss reasons for a change to any of the ATC determinations previously delivered by TxDOT for the ATCs submitted by the applicable Proposer (the "ATC Presentation Meeting"). If a Proposer elects to participate in an ATC Presentation Meeting, it must submit to TxDOT in the manner set forth herein an agenda identifying each of the ATCs it intends to discuss and a list of attendees by no later than the date and time set forth in Section 1.6. The ATC Presentation Meetings (if any) will occur on the date set forth in Section 1.6 at a specific time and location to be determined by TxDOT. The ATC Presentation Meeting will last no longer than one hour for each Proposer and each Proposer may discuss solely the ATCs identified in its agenda. Proposers may not submit for discussion and TxDOT will not consider any ATCs that have been changed, modified or revised, in any form, from that which was originally submitted and clarified during the ATC submission period. If a Proposer elects to participate in an ATC Presentation Meeting, TxDOT will notify such Proposer of TxDOT's final determination for each of the ATCs discussed at such meeting. With regard to any ATC that is not shown on the Proposer's agenda or, is shown on the Proposer's agenda, but is not discussed by the Proposer in the ATC Presentation Meeting, the determination previously provided by TxDOT for the applicable ATCs shall become final.

Approval of an ATC will constitute a change in the specific requirements of the Contract Documents 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 the 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 the Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a request for clarifications under Section 2.3.1.

3.4 Incorporation of ATCs in the Agreement

Following conditional award of the Agreement, the ATCs that were pre-approved by TxDOT and incorporated in the Proposal by the successful Proposer shall be included in the Contract Documents. 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 Contract Documents. The Contract Documents will be conformed after conditional award, but prior to execution of the Agreement, to reflect the ATCs, including any TxDOT conditions thereto. Notwithstanding anything to the contrary herein, if the Developer does not comply with one or more TxDOT conditions of pre-approval for an ATC or the Developer fails to obtain a required third party approval for an ATC, the Developer will be required to comply with the original requirements of the RFP absent such ATC without additional cost or extension of time as set forth in the Agreement.

Prior to execution of the Agreement, ATCs from unsuccessful Proposers that have agreed, at their option, to execute the Payment for Work Product Agreement as described in Section 6.3, thus confirming their acceptance of the stipend, may, in TxDOT's discretion, be presented to the selected Developer for possible incorporation in the Agreement during negotiation of the final terms of the Agreement pursuant to Section 5.11.1. In addition, following execution of the Agreement, ATCs from unsuccessful Proposers may, in TxDOT's discretion, be presented to the selected Developer as a TxDOT Change Order in accordance with the Agreement.

3.5 Confidentiality of ATCs

Subject to the provisions of the Act, ATCs and all communications regarding ATCs will remain confidential until final award of the Agreement or cancellation of the procurement, *provided* that, upon conditional award, ATCs will be subject to disclosure to the successful Proposer as set forth in Section 6.3. Upon final award or cancellation, such confidentiality rights shall be of no further force and effect except as otherwise allowed under the Act, applicable Law and Section 2.6. By submitting a Proposal, each 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, a Financial Proposal and a Price Proposal meeting the requirements set forth in Exhibits B, B-1, C and C-1. The Technical Proposal, Financial Proposal and Price Proposal shall be submitted in recyclable, low cost, sealed containers, in the format and manner set forth in Sections 4.2 and 4.3, respectively.

4.1.1 Proposal Due Date

The completed Proposal shall be delivered no later than the Proposal Due Date and time specified in Section 1.6.

4.1.2 Signatures Required

The Proposal Letter (Form A) shall be signed in blue ink by all parties making up the 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, the Proposer shall mark the document or cover with the words “Certified True Copy” and have the mark oversigned by the Proposer’s designated 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. Each Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal that result from any inadvertent opening if TxDOT determines that the Proposer did not follow the foregoing instructions. It is each Proposer’s sole responsibility to see that its Proposal is received as required. Proposals received after the date and 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. Any Proposal that contains a material alteration, as determined by TxDOT in its discretion, to the ITP Forms, 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, in its discretion. Such disqualification will not result in the forfeiture of the Proposer's Proposal Security.

Each Proposal must be submitted in the official format that is specified by TxDOT in this RFP. Each 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 an electronic format other than that specified by TxDOT, if it is not properly signed, if any part of the Proposal is missing from the Proposal package, 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 an agreement following award;

(d) if a Proposer attempts to limit or modify the Proposal Security, if the Proposal Security (see Exhibit C-1, Section 4.2) is not provided, 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 the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity and completeness of the 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 8½ by 11-inch format is required for typed submissions, and an 11 by 17-inch format is required for drawings, except that any support letters provided from parties outside the United States may be submitted in ISO A4 format and design drawings may be submitted on roll plots not to exceed 34 inches in width (and such design drawings shall be submitted on DVD in PDF format and in Bentley Microstation format). 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 and sequentially numbered within each section of each volume. Printed lines may be single-spaced with the type font size being no smaller than 12-point, other than in tables and figures, which may be prepared using 10-point font size type. 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 Proposal Delivery

The completed Proposal shall be submitted and delivered in sealed containers no later than the Proposal Due Date and time specified in Section 1.6. All components of the Proposal are to be delivered to TxDOT at the following address:

Texas Department of Transportation
4777 E. Highway 80
Mesquite, Texas 75150
Attn: Mr. Dan H. Peden, P.E.

Each binder of the Proposal shall be labeled to indicate its contents and the corresponding Proposer. The binders containing the original Technical Proposal, Financial Proposal and Price Proposal shall be clearly identified as “original”; copies of the Technical Proposal, Financial Proposal and Price Proposal shall be sequentially numbered, labeled and bound.

4.2 Technical Proposal

All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more DVDs, shall be packaged in a single container, clearly addressed to TxDOT as provided herein and labeled “[Proposer Name]: Original Technical Proposal for the TxDOT SH 183 Managed Lanes Project.” In addition, each Proposer shall submit one original and 10 certified copies of the Technical Proposal consisting of the required items described in Exhibits B and B-1, excluding any roll plots, for which the Proposer shall provide four certified copies. The containers that include the required hard copies of the Technical Proposal shall be labeled “[Proposer Name]: Copies of Technical Proposal for the TxDOT SH 183 Managed Lanes Project.”

The electronic copies shall be in PDF format on DVDs; *provided, however*, that (a) Proposal forms may be submitted in either 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.

4.3 Financial Proposal and Price Proposal

4.3.1 Financial Proposal

Proposers shall submit one original and six certified copies of the Financial Proposal consisting of the required items described in Exhibit C. All of the binders comprising the original Financial

Proposal, together with an electronic copy on one or more DVDs, shall be packaged in a single container, clearly addressed to TxDOT as provided herein and labeled “[Proposer Name]: Original Financial Proposal for the SH 183 Managed Lanes Project.” The containers that include the required hard copies of the Financial Proposal shall be labeled “[Proposer Name]: Copies of Financial Proposal for the SH 183 Managed Lanes Project.”

4.3.2 Price Proposal

As part of the Financial Proposal, Proposers shall submit one original and six certified copies of the Price Proposal (excluding the Proposal Security, which must be submitted according to the requirement set forth below), as well as one digital copy in PDF format on a DVD. The Price Proposal shall also include a completed electronic copy of the pricing forms in Excel.

All parts of the Price Proposal that indicate information identifying the Proposer shall be submitted in a sealed container labeled “[Proposer Name]: Price Proposal for the SH 183 Managed Lanes Project.” All portions of the Price Proposal containing pricing information (including all pricing forms and the electronic copies of the Price Proposal) shall not include any information identifying the Proposer and shall be included in a separate sealed container labeled “[Proposer Name]: Price Proposal for the TxDOT SH 183 Managed Lanes Project.”

4.3.3 Proposal Security

One original and three certified copies of the Proposal Security shall be provided with the Price Proposal and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the TxDOT SH 183 Managed Lanes Project.”

4.4 Currency

All required pricing, revenue and cost information shall be provided in United States dollars (US\$) 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, B-1, C and C-1. 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

A Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a request signed by the Proposer's designated representative. Such request shall be delivered to TxDOT's Authorized Representative specified in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal, *provided* that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by TxDOT upon the Proposal Security.

Proposals shall be valid for a period of 180 days after the Proposal Due Date. Except as set forth in the previous paragraph, no Proposer shall withdraw its Proposal prior to expiration of the 180-day period, unless notified by TxDOT that (i) no Agreement for the Project will be awarded by TxDOT pursuant to the RFP, (ii) TxDOT has awarded the Agreement to another Proposer and has received the executed Agreement and other required documents, (iii) TxDOT does not intend to award the Agreement to the Proposer or (iv) such Proposer is not the apparent best value or next highest ranking Proposer. If the next best value Proposer is notified during the 180-day period that it is selected for negotiations, such Proposer shall enter into good faith negotiations with TxDOT and shall use its best efforts to negotiate an extension of the validity of its Proposal for the period until 270 days after the Proposal Due Date.

Any Proposer may elect, in its 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 any corresponding modification or withdrawal requests received after the time due on the Proposal Due Date will be returned to Proposer without consideration or evaluation.

4.6 Forfeiture of Proposal Security

The dollar amount of the Proposal Security to be submitted with each Price Proposal shall be \$50 million (*see* Exhibit C-1, Section 4.2). 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, except as specifically permitted hereunder; (ii) it is selected for negotiations but fails to negotiate in good faith with TxDOT as set forth in Section 5.11; (iii) it is selected as the apparent best value Proposer but fails to provide the documents required under the second paragraph of Section 6.1 and Section 6.1.1, unless such failure is directly attributable to (a) TxDOT's failure to provide timely responses to Post-Selection Deliverables in accordance with Section 5.12.3 or (b) TxDOT's election not to enter into the Agreement in the form included with the RFP, following (1) TxDOT's election to commence negotiations regarding the Development Agreement, (2) Proposer's engaging in good faith negotiations as set forth in Section 5.11.1 and (3) failure of the parties to agree upon changes to the terms of the Agreement; or (iv) it is selected the apparent best value Proposer and after execution of the Agreement fails to deliver

the D&C Performance Bond and the D&C Payment Bond in accordance with Sections 8.1.3 and 8.1.4 of the Agreement by the time set forth therein.

Any Proposal that contains a material alteration, as determined by TxDOT in its discretion, to the ITP forms, including any material alteration to the form of Proposal Bond (Form K), 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 the 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.

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 Agreement, including costs incurred for any interviews, costs associated with Post-Selection Deliverables and costs relating to the finance process, shall be borne by the 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.

Upon receipt of Proposals, the Technical Proposal and Financial Proposal will be reviewed for pass/fail and responsiveness criteria, followed by a subsequent responsiveness and qualitative evaluation of each Project Development Plan, an initial review of each Price Proposal for pass/fail and responsiveness criteria, a subsequent responsiveness and quantitative evaluation of each Price Proposal, a ranking determination and a best value determination. The process may, at TxDOT's discretion, 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 5.12.3. The evaluation and selection process is subject to modification by TxDOT, in its discretion.

The evaluation process will involve the following steps:

1. TxDOT evaluation committees will:
 - (a) evaluate the Proposals and determine which Proposer has offered the apparent best value Proposal based on the specific evaluation criteria set forth herein; and
 - (b) provide a recommendation to TxDOT senior management regarding the apparent best value Proposal and the next best value Proposals.
2. TxDOT senior management will review and consider the recommendations from the TxDOT evaluation committee 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.

5.1 Organization of the TxDOT Evaluation Committees

Evaluation of Proposals will be conducted by TxDOT's Evaluation and Selection Recommendation Committee ("ESRC") with assistance from subcommittees consisting of TxDOT personnel.

The ESRC and the various subcommittees will be comprised of representatives from TxDOT. In addition to TxDOT voting members, the ESRC and subcommittees may also be assisted by facilitators, including TxDOT representatives and outside consultants who will offer information on the technical, financial and legal aspects of each Proposal. The primary responsibility of these facilitators will be to assist the ESRC and subcommittees in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, observers from federal or other agencies, including representatives of local agencies and municipalities 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 the responsive Proposal with the highest Total Proposal Score from among those with the highest number of Additional Scope Components in their Base Scope.

5.2.1 Calculation of Total Proposal Score

Total Proposal Score shall be computed using the following formula:

$$\begin{aligned} \text{Total Proposal Score} &= \text{Price Score (max. 70 points)} \\ &+ \text{Technical Score (max. 30 points)} \end{aligned}$$

(a) The Price Score will be based on Proposer's Adjusted Proposal Amount, calculated solely for evaluation purposes pursuant to Section 5.5, and includes evaluation of the Base Scope Price, the Additional Scope Price(s), the O&M Base Scope Price, the O&M Additional Scope Price(s) and the Schedule Adjustment Amount, as applicable. The Price Score shall be calculated based on the following formula:

$$\text{Price Score (max. 70 points)} = (\text{Lowest Adjusted Amount} / \text{Adjusted Proposal Amount}) * 70$$

Where:

- **Lowest Adjusted Amount** = Lowest Adjusted Proposal Amount submitted by any Proposer among those Proposers submitting a Base Scope with the same number of Additional Scope Components as the Proposer's Base Scope
- **Adjusted Proposal Amount** = Proposer's Adjusted Proposal Amount determined as described in Section 5.5.1.

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

$$\text{Technical Score (max. 30 points)} = \text{Evaluation Score} \times 0.30$$

5.2.2 Ranking of Proposals

TxDOT will rank all Proposals received as follows:

1. Proposals will be sorted into tiers based on the number of Additional Scope Components each Proposer includes in its Base Scope as identified in Form M-1 with the highest ranked tier being the tier with the greatest number of Additional Scope Components in the Base Scope. Possible tiers are based on the number of Additional Scope Components that may be included in the Base Scope as follows (from highest to lowest rank):
 - Tier 1: Minimum Base Scope plus Additional Scope Components 1-4;
 - Tier 2: Minimum Base Scope plus Additional Scope Components 1-3;
 - Tier 3: Minimum Base Scope plus Additional Scope Components 1 and 2;
 - Tier 4: Minimum Base Scope plus Additional Scope Component 1; and
 - Tier 5: Minimum Base Scope.

The actual highest ranked tier will be determined by the Proposal or Proposals that include the greatest number of Additional Scope Components in the Base Scope. More than one Proposal may be in the same tier and certain tiers may include no Proposals.

2. The Price Score and Total Proposal Score for each Proposal will be calculated within the tier in which the Proposal is included and, if more than one Proposal is included in the same tier, by comparing among Proposals within the same tier.
3. If a tier includes more than one Proposal, Proposals within the tier will be ranked in order of highest to lowest Total Proposal Score.
4. As compared between tiers, the Proposal or Proposals in the tier with the greater number of Additional Scope Components in their Base Scope will be ranked higher than the Proposal or Proposals in a tier with fewer Additional Scope Components regardless of the calculated Total Proposal Score of each Proposal.

5.3 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals, Financial Proposals and Price Proposals will be made available for review by the relevant pass/fail and responsiveness subcommittees. They will be reviewed for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements of the RFP and based on the pass/fail criteria set forth below.

5.3.1 Technical Proposals

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

(a) The business form of the Proposer, the proposed Developer, and any entities that will have joint and several liability under the Agreement or that will provide a performance security (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws, association agreements or equivalent documents) is consistent with the requirements of the Project and Contract Documents.

(b) The Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.7.

(c) The 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) The Technical Proposal as outlined in Exhibit B, including the Project Development Plan outlined in Exhibit B-1, meets all applicable RFP requirements.

5.3.2 Financial Proposals

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

The Proposer's, all Equity Members', Lead Contractor's and any Guarantor's financial condition and capabilities evidenced by the financial and other data required to be submitted by Exhibit C shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the QS such that Proposer continues to have the financial capacity to complete, finance, operate and maintain a project of the nature and scope of the Project.

If TxDOT determines that a Proposer has insufficient financial capacity to fulfill its obligations under the Agreement, it may offer the Proposer the opportunity to meet the financial requirement through one or more guarantors acceptable to TxDOT.

5.3.3 Price Proposals

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

(a) The Proposer has provided a Base Scope Price using Forms M-1 and M-1.1 that complies with the requirements of Exhibit C-1, Sections 1.1, 1.2 and 3.1 and is less than or equal to the Available Public Funds Amount.

(b) The Proposer has provided an O&M Base Scope Price for the Proposer's identified Base Scope using Forms N-1 and N-2 that complies with the requirements of Exhibit C-1, Sections 1.1, 1.2 and 3.2.

(c) The Proposer has provided Additional Scope Prices for each Additional Scope Component not included in its Base Scope using Forms M-2, M-2.1 through 2.4 and M-3.1

through 3.4, as applicable, that complies with the requirements of Exhibit C-1, Sections 1.1, 1.2 and 3.3.

(d) The Proposer has provided O&M Additional Scope Price(s) for Additional Scope Components 1 and/or 2, using Forms N-3 and Forms N-4.1 and N-4.2, as applicable, that complies with the requirements of Exhibit C-1, Sections 1.1, 1.2 and 3.4 solely to the extent the Additional Scope Component is not included in Proposer's Base Scope (as identified in Form M-1).

(e) The Proposer has provided all other Forms required to be submitted pursuant to Exhibit C-1.

(f) The Proposer has delivered Proposal Security in the form of a complete, properly executed proposal bond that complies with the requirements of Exhibit C-1, Section 4.

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

Those Proposals not responsive to this RFP or that do not pass the pass/fail criteria may be excluded from further consideration. 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 that are unrelated to the substantive content of the Proposals.

5.4 Evaluation of Project Development Plan

Upon receipt of the Technical Proposals, the Project Development Plan will be evaluated based on the factors set forth below.

5.4.1 Project Development Plan Evaluation Factors

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

- (a) General Project Management;
- (b) Operations and Maintenance Management and Technical Solutions;
- (c) Design-Build Management and Technical Solutions; and
- (d) Quality Program.

Note that these evaluation factors are also the components of the Project Development Plan, the submittal requirements for which are described in Exhibit B-1.

The Project Development Plan Evaluation Factors identified in clauses (a) through (d) above are listed in descending order of importance. Subfactors and their relative weightings are listed in Section 5.4.1.1 through 5.4.1.4.

The evaluation factors and subfactors will be evaluated and rated using the rating guidelines specified in Section 5.4.2, with special attention given to the goals presented in Sections 5.4.1.1 through 5.4.1.4, 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. These goals are consistent with the goals identified in Section 1.4 and will guide TxDOT's assessment of the evaluation factors and subfactors.

5.4.1.1 General Project Management

Goals: Illustrate the Proposer's approach to efficient delivery of all Project activities, including design, construction, operations, routine and lifecycle maintenance, handback, documentation, scheduling, testing and auditing/reporting for the Project, risk analysis and mitigation, and community outreach.

The General Project Management plan subfactors are as follows:

- (a) *Safety and health plan, approach to maintaining and updating Project Schedule, approach to Cost Control and plan for Risk Management.*
- (b) *Overall management structure, personnel and Internal Organization Systems proposed for the Project.*
- (c) *Approach to Environmental management, compliance and permitting and environmental risk; Public Information and Communications; and job training, including DBE training and utilization and small business participation.*

These subfactors are of equal importance.

See Section 1.1 of Exhibit B-1 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 Operations and Maintenance Management and Technical Solutions

Goals: Achieve the highest degree of quality possible in operations and maintenance while providing for the safety of project personnel and the traveling public.

The Operations and Maintenance Management and Technical Solutions evaluation subfactors are as follows:

- (a) *General approach to operations and maintenance management, including preliminary Operations Management and Maintenance Management Plan and as described in Section 1.2.1 of Exhibit B-1.*
- (b) *O&M Technical Solutions – Approach to Roadway Operations, including emergency and incident response, emergency services and ITS operations.*

- (c) *O&M Technical Solutions - Approach to Routine Maintenance, including life-cycle cost analysis, maintenance facilities and equipment, traffic management during maintenance and record keeping system.*
- (d) *O&M Technical Solutions – Approach to Renewal Work, including programming of major maintenance / pavement / repairs / replacements and description of handback procedures.*

These subfactors are of equal importance.

See Section 1.2 of Exhibit B-1 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 Design-Build Management and Technical Solutions

Goals: Deliver as much scope with the highest degree of quality as possible with available construction funds, minimize temporary improvements, minimize ROW impacts, maintain mobility within the Project area and minimize the inconvenience to surrounding communities and businesses during construction in an environmentally sensitive manner.

The Design-Build Management and Technical Solutions evaluation subfactors are as follows:

- (a) *Management approach for design and construction, including the operations and maintenance during construction as described in Section 1.3.1 of Exhibit B-1.*
- (b) *D&C Technical Solutions – A preliminary plan for traffic control/traffic management, including conceptual staging schematics and approach to minimizing the impact of construction on the environment, traveling public and surrounding communities as described in Section 1.3.2.1 of Exhibit B-1.*
- (c) *D&C Technical Solutions – Design and Construction plan displaying an overall understanding and the Proposer’s approach to the improvement and rehabilitation Work with respect to bridges described in Section 1.3.2.2 of Exhibit B-1.*
- (d) *D&C Technical Solutions – Design and Construction plan displaying an overall understanding and the Proposer’s approach to the improvement and rehabilitation Work with respect to roadways described in Section 1.3.2.3 of Exhibit B-1.*
- (e) *D&C Technical Solutions – Design and Construction plan describing the approach to and the components of all other technical categories listed in Section 1.3.2.4 of Exhibit B-1.*

These subfactors are of equal importance.

See Section 1.3 of Exhibit B-1 for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.1.4 Quality Program

Goals: Achieve the highest degree of quality possible in design, construction, operations and maintenance given available funds while emphasizing safety throughout the entire Term. Maximize the utilization of DBEs during the design, construction, operation and maintenance phases of the Project through a comprehensive outreach program.

The evaluation subfactors for Proposer’s Quality Program are as follows:

- (a) *Design-Build Quality Management Plan, including design component QA/QC, reporting, TXDOT and federal oversight requirements, and documentation.*
- (b) *Design-Build Quality Management Plan for construction component, including acceptance testing and inspections, documentation and correction of deficiencies and TXDOT and federal oversight requirements, which incorporates safety for project personnel and the traveling public.*
- (c) *Operations and Maintenance Quality Management Plan, including reporting, TXDOT oversight, and incorporation of quality process into operations and maintenance to improve performance and address safety for project personnel and the traveling public.*

These subfactors are of equal importance.

See Section 1.4 of Exhibit B-1 for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.2 Evaluation Guidelines for Project Development Plan

The evaluation subcommittee will review the Project Development Plan with reference to the evaluation factors specified in Section 5.4.1 above and 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’s team would fail to satisfy the requirements of the Contract Documents. 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’s team would fail to satisfy the requirements of the Contract Documents. 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’s team may fail to satisfy the requirements of the Contract Documents. 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’s team may fail to satisfy the requirements of the Contract Documents. 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’s team may fail to satisfy the requirements of the Contract Documents. Weaknesses are correctable or acceptable per minimum standards.

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

During the evaluation, each subfactor as described in Section 5.4.1 above will be assigned a consensus rating by TxDOT, which will be converted to points. The points for each subfactor will be added to determine the Proposal’s score for each of the corresponding evaluation factors. The score of each of the corresponding evaluation factors will then be added to arrive at the overall Evaluation Score for the Project Development Plan, with 100 maximum possible points.

5.5 Price Proposal Evaluations

After completion of the pass/fail and responsiveness review, the Price Proposals will be evaluated by the evaluation subcommittee. The evaluation subcommittee will conduct “blind” reviews and evaluations of the Price Proposals to determine the Price Scores of the Proposals in accordance with Section 5.2. The Adjusted Proposal Amount for each Proposal will be determined in accordance with Section 5.5.1. The Adjusted Proposal Amount determination is

for evaluation purposes only and will not affect the Base Scope Price, Additional Scope Prices, O&M Base Scope Price or O&M Additional Scope Prices submitted in each Proposal.

5.5.1 Adjusted Proposal Amount

The Proposer's Adjusted Proposal Amount is determined as follows:

$$\text{Adjusted Proposal Amount} = A + B + \left[\sum_{i=1}^4 ((C_i + D_i) \times E_i) \right] - F$$

Where:

“i” refers to each Additional Scope Component

A = Base Scope Price per Form M-1, plus the ATC Adjustment for Base Scope per Form M-4

B = Adjusted Operations and Maintenance Value for Base Scope per Form N-1

C_i = Additional Scope Price for Component “i” per Form M-2, plus the ATC Adjustment for Component “i” per Form M-4

D_i = Adjusted Operations and Maintenance Value for Additional Scope Component “i” per Form N-3 (only applicable for Additional Scope Components 1 and 2)

E_i - Adjustment Factor for “i” as determined by TxDOT prior to the Proposal Due Date. The Adjustment Factors will not be published in the RFP. The Adjustment Factor will only apply to Additional Scope Components when they are not included in the Base Scope Price. Adjustment Factors for a given Additional Scope Component may vary depending on the number of Additional Scope Components in Developer's Base Scope (*i.e.*, there may be one Adjustment Factor for Additional Scope Component 2 when Additional Scope Component 1 is included in the Base Scope and a different Adjustment Factor when it is not). Adjustment Factors will be set prior to the Proposal Due Date taking into account the relative priority of the Additional Scope Components, which are listed below from highest priority to lowest:

1. Additional Scope Component 1
2. Additional Scope Component 2
3. Additional Scope Component 3
4. Additional Scope Component 4

F = Schedule Adjustment Amount, which shall be calculated using the following formula:

Schedule Adjustment Amount = (1540 - Proposed Schedule Days)*\$107,000.00

Where:

Proposed Schedule Days is the number set forth on Form M-1.

5.6 ESRC Evaluation of Technical and Financial Proposals

Before reviewing the Price Proposal and the recommendations from the subcommittee reviewing the Price Proposal, the ESRC will review the Project Development Plan and the ratings and points recommendations provided by the subcommittees with respect to each respective Proposal. The ESRC may accept the recommendations provided by each subcommittee, may request that the subcommittee reconsider the subcommittee's recommendations or may develop the ESRC's own recommendations. The ESRC will determine each Proposal's Technical Score based on the formula set forth in Section 5.2 and the guidelines set forth in Section 5.4.2.

Next, the ESRC will review the Price Proposal and Price Proposal evaluation recommendations from the subcommittee reviewing the Price Proposal and determine each Proposer's Price Proposal Score in accordance with Section 5.5. If the ESRC determines that a Price Proposal Score has not been correctly calculated by the subcommittee, then the ESRC may revise the recommended Price Proposal Score based on its calculation or may request that the subcommittee reconsider its recommendation.

Finally, the ESRC will determine the Total Proposal Score and the apparent best value proposal in accordance with the process set forth in Section 5.1.

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 any aspect of its Proposal. Any requests for clarification shall be in writing to the Proposer's designated representative. The Proposer 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, determine that it is appropriate to request changes to the Proposals ("**Proposal Revisions**"). Before requesting any such Proposal Revisions, TxDOT will engage in separate discussions (either in writing or in person through one-on-one meetings) with each Proposer and in accordance with the procedures for proposal revisions described in 23 CFR 636.501 *et seq.* 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. Each Proposer may determine in its discretion whether to deliver the requested Proposal Revisions. Failure of a Proposer to deliver the requested Proposal Revisions shall not, in and of itself, result in the forfeiture of such Proposer’s Proposal Security; *provided* that such Proposer’s original Proposal, together with the Proposal Security included therewith, shall remain valid and in effect notwithstanding its election not to deliver the requested Proposal Revisions.

Upon receipt of Proposal Revisions, the ESRC, with assistance from the appropriate subcommittee(s), will re-evaluate the Proposals as revised and will revise ratings and value estimates as appropriate following the process described above.

5.9 Identification of Apparent Best Value Proposal

Once the ESRC has assigned rankings to each of the Proposals (based on the original Proposals or Proposals that have been subject to Proposal Revisions, as applicable) and determined the apparent best value Proposal, the ESRC will present its recommended rankings to a PPP Project Steering Committee comprised of TxDOT personnel.

5.10 Recommendation to Commission

The PPP Project 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 that the ESRC reconsider the recommendation. If the PPP Project Steering Committee accepts the ESRC’s recommendation, the PPP Project Steering Committee will provide the recommendation to the TxDOT Executive Director regarding which Proposal provides the best value.

Upon receipt of recommendations from the PPP Project Steering Committee, the TxDOT Executive Director will review the recommendations and may accept the recommendation, reject the recommendation and cancel the procurement, or request the PPP Project Steering Committee to reconsider the recommendation. If the Executive Director accepts the PPP Project Steering Committee’s recommendation, the Executive Director will make a recommendation to the Commission regarding the rankings of the Proposers and designation of the apparent best value proposal. The Commission will evaluate the recommendations and will determine whether to proceed with conditional award of the Agreement to the apparent best value Proposer or take any other action. The Commission’s decision of conditional award of the Agreement to the apparent best value Proposer, as well as the rankings, will be made in a public hearing and will be considered a public announcement of intent to award the Agreement by the Commission.

The Commission’s decision regarding award of the Agreement shall be final.

5.11 Finalization of the Agreement; Post-Selection Process

5.11.1 Negotiation of Agreement

If authorized by the Commission, TxDOT will proceed with the apparent best value Proposer to finalize the Agreement. TxDOT may agree to negotiate various aspects of the Agreement with the apparent best value Proposer, including aspects of the Proposal that will be incorporated into the Contract Documents and incorporation of the unsuccessful Proposers' work product; however, any decision to commence or continue negotiations regarding the terms of the Agreement is at TxDOT's discretion.

By submitting its Proposal, each Proposer commits to enter into the form of Agreement included in the RFP, without negotiation or variation, except negotiation as provided in the immediately preceding sentence and to fill in blanks and include information that the form of the Agreement indicates is required from the Proposal.

If TxDOT elects to negotiate various aspects of the Contract Documents with the apparent best value Proposer and an Agreement satisfactory to TxDOT, in its discretion, cannot be negotiated, TxDOT will formally end negotiations with that Proposer and take action consistent with the direction provided by the Commission. Such action may include (a) requiring the best value Proposer to enter into the Agreement in the forms included in the RFP, without variation except to fill in blanks and include information that the form of the Agreement indicates is required from the Proposal, (b) rejecting all Proposals, (c) issuing a request for Proposal Revisions to the Proposers, but only if the ATCs of one or more Proposers have not been revealed to the successful Proposer, or (d) proceeding to the next most highly ranked Proposal to finalize or attempt to negotiate the Agreement with that Proposer in accordance with this Section 5.11. If option (d) is selected, the Proposer that submitted the next most highly ranked Proposal will be considered the apparent best value Proposer.

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 the following circumstances occur: (a) the Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with TxDOT, or (b) the Proposer insists upon terms or conditions for any documents to be negotiated or provided by the Developer hereunder that are inconsistent with the Contract Documents.

5.11.2 Market Interest Rate Adjustment and Adjustment for Change in Financial Plan; Financial Model

Each Proposer will have the option to utilize the market interest rate adjustment to the D&C Price under the terms set forth herein and in the Agreement. Upon election by the Proposer, TxDOT will bear the risk and have the benefit of changes in market interest rates (either positive or negative) for the period beginning at 10:00 a.m. on April 4, 2014 and ending on the date that is 30 days after the Effective Date; provided, that in the event Developer fails to execute its Funding Agreement and Security Documents on or before the end of the interest rate adjustment

period, the D&C Price will be decreased on such date to reflect a net decrease in market interest rates, but the D&C Price will not be increased to reflect a net increase in market interest rates.

As part of the Financial Proposal, each Proposer must identify its election whether to utilize the market interest rate adjustment by completing and submitting Part I of Form U. Any Proposer that elects to utilize the market interest rate adjustment to the D&C Price also shall complete Part II of Form U and shall submit a Financial Model consistent with Form U and in the form required in Exhibit C, Section 3.0.

The interest rate adjustment will be based on the movement, if any, in the benchmark bonds or swap rates underlying the financing contained in Proposer's Financial Model in the benchmark rate submitted by the successful Proposer prior to the Proposal Due Date (the "**Benchmark Rate**"). The Benchmark Rate must be independently verifiable by TxDOT using Bloomberg, treasurydirect.gov (State and Local Government Securities), or Thompson Municap Monitor (Municipal Market Data) U.S. based screens. The Benchmark Rate's information source must be submitted to TxDOT for approval not later than the applicable last date specified in Section 1.6 and must be approved by TxDOT not later than the applicable last date specified in Section 1.6.

The Benchmark Rate will be recorded by TxDOT, or its designee, at 10:00 a.m. on the first and last day of the market interest rate adjustment period. The reading will be taken on the Bloomberg, treasurydirect.gov (State and Local Government Securities), or Thompson Municap Monitor (Municipal Market Data) U.S. based screen at 10:00 a.m. Readings will be sent to the selected Proposer immediately and Proposer will have up to one hour to dispute each reading. If no objection is made within the hour, the reading as taken by TxDOT from the Bloomberg, treasurydirect.gov (State and Local Government Securities), or Thompson Municap Monitor (Municipal Market Data) U.S. based screen shall be used for the purpose of determining the market interest rate adjustment. In the event of a dispute, TxDOT may elect to reexamine the 10:00 a.m. reading provided there is sufficient evidence to support the claim.

On the date set forth in Section 11.1.3 of the Agreement, the selected Proposer and TxDOT shall jointly adjust the D&C Price to reflect the change in the Benchmark Rate in accordance with Section 11.1.3 of the Agreement.

The Agreement sets forth the process, mechanics and constraints on any applicable market interest rate adjustment. Proposers should be aware that in the event any increase to the D&C Price due to the adjustment set forth in Section 11.1.3 of the Agreement would exceed \$6 million, TxDOT intends to consider terminating the Agreement.

If Developer elected to utilize the market interest rate adjustment to the D&C Price and closes financing on or before the Interest Rate Adjustment Expiration Date under a financial plan that is different from the financial plan included in its Proposal and such revised financial plan results in a reduction in the documented and verifiable costs due to Lenders under the Funding Agreements, TxDOT shall be entitled to 60% of the benefit of such reduced costs, which benefit shall be reflected in a reduction to the D&C Price. The specific process and mechanics for such adjustment is set forth in Section 11.1.3(c) and Exhibit 29 of the Agreement.

5.11.3 Financial Model Audit

For any Proposer required to submit a Financial Model as set forth in Section 5.11.2, the Proposer shall cause an independent audit of the Proposer's Financial Model ("Financial Model Audit") to be conducted by a firm engaged by the Proposer and qualified to perform the work described herein (the "Model Auditor"). Such independent audit shall be at the Proposer's sole cost and expense. The audit report for the Financial Model shall state that the Financial Model is:

- (i) free of mechanical error;
- (ii) suitable for use in connection with the interest rate adjustment to the D&C Price; and
- (iii) consistent with the requirements in Exhibit C, Section 3.0.

Copies of the audit report(s) and opinion(s) shall be co-addressed to TxDOT, and TxDOT shall be expressly identified therein as an entity entitled to rely upon such audit. Proposer shall cause the Financial Model Audit report(s) and opinion(s) to be delivered to TxDOT with its Financial Proposal in accordance with Exhibit C, Section 3.0.

5.12 Post-Selection Deliverables

5.12.1 Project Management Plan

During the period between conditional award and final award of the Agreement, the selected Proposer may, but is not required to, submit all or portions of the Project Management Plan for the Project 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 Agreement but cannot guarantee 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 Agreement, 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 for Developer and all other members of the 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 from the Texas Secretary of State indicating that such member is in existence, along with a Certificate of Good Standing from the state of organization of each Developer or other member, (ii) search results from the Texas State Comptroller's website (<https://ourcpa.cpa.state.tx.us/coa/Index.html>) indicating that such members is "Active"; or (iii) other evidence acceptable to TxDOT.

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

(c) If security for the Developer's obligations under the Agreement is required by TxDOT pursuant to Exhibit C, Section 2.0, the form of the proposed guarantees, which shall be in form and substance acceptable to TxDOT, in its discretion.

(e) Escrowed proposal documents ("EPDs") as required by Section 5.12.4.

During the negotiation period, as a condition to final award, the Proposer shall deliver drafts of the deliverables identified in Section 6.1.1 for preapproval 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 for review and approval hereunder (including documents required to be approved under Section 5.12.2) within 14 days of the date of TxDOT's receipt of such deliverable. TxDOT shall have three Business Days to review and respond to subsequent submittals of the deliverable.

5.12.4 Escrowed Proposal Documents

(a) Within the timeframe stated in Section 5.12.2, the Developer shall deliver to TxDOT 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 20.1 of the Agreement. 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 documents shall be in sealed containers labeled "[Proposer Name]: Escrowed Proposal Materials for the SH 183 Managed Lanes Project." TxDOT shall have the right to review the EPDs for completeness and consistency with the Proposal.

(b) Representatives of TxDOT (or its consultants) and the successful Proposer shall review the EPDs prior to execution of the Agreement to determine whether they are complete. Such representatives shall also organize the EPDs, labeling each page so that it is obvious that each page is a part of the EPDs, and to enable a person reviewing the page out of context to determine where it can be found within the EPDs. Such representatives shall compile an index that lists each document included in the EPDs and briefly describes the document and its location in the EPDs. TxDOT will have the right to retain a copy of the index. After the joint review, the EPDs shall be kept in a locked cabinet at TxDOT's offices.

(c) If, following the initial review and organization, TxDOT determines that the EPDs are incomplete, TxDOT may, as a condition to final award, require the selected Proposer to supply data to make the EPDs complete.

(d) Following execution of the Agreement, the EPDs will be available for joint review only as specified in Section 20.1 of the Agreement.

5.13 Notification to Legislative Budget Board

At least 30 days prior to final award, TxDOT is required to provide the Legislative Budget Board and the State Auditor with the following, in compliance with Sections 371.052 and 371.151 of the Code: (i) a copy of the Agreement; (ii) a copy of the selected apparent best value Proposal or, if applicable, the next best value Proposal; (iii) a financial forecast prepared by TxDOT for the Project and (iv) a copy of TxDOT's traffic and revenue report for the Project. TxDOT is also required, pursuant to Sections 371.052 and 371.151 of the Code, to publish certain financial information of the selected best value Proposer.

SECTION 6.0 FINAL CONTRACT AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of Agreement

The following are conditions precedent to final award of the Agreement: (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 Agreement under this Section 6.1, (d) any other conditions required by the Commission, (e) payment of an examination fee by the selected Proposer to the Office of the Attorney General for the Office of the Attorney General to review the Agreement for legal sufficiency, as required by statute and (f) a determination by the Office of the Attorney General that the Agreement is legally sufficient. Final award will be evidenced by execution of the Agreement by the Executive Director of TxDOT or his designee.

Upon satisfaction of the foregoing conditions, TxDOT will deliver four sets of execution copies of the Agreement to the selected Proposer along with the number of sets of execution copies reasonably requested by the 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 below. If the Developer is a joint venture or a partnership, the Agreement must be executed by all joint venture members or general partners, as applicable. Within 15 Business Days of TxDOT's receipt of all such documents and satisfaction of all conditions precedent, TxDOT will execute the Agreement, retain four sets and deliver the other executed sets to the Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to the Proposer.

6.1.1 Documents to Be Delivered by the Selected Proposer with Executed Agreement

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

(a) For Proposer's general partners and its joint venture members and each other Major Participant, (i) a certificate of authority to transact business in the State along with a certificate of good standing from the state of its organization; or (ii) a certificate of good standing from the State 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.

(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) If security for Proposer's obligations under the Agreement is required by TxDOT, Proposer shall submit one or more guarantees from guarantor(s) acceptable to TxDOT, in its discretion, in the form of Exhibit 13 to the Agreement.

(d) Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the Agreement 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 the State, and the enforceability opinion shall be provided by an attorney licensed in the State) in substantially the form attached hereto as Form L (with such changes as agreed to by TxDOT in its 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 Contract Documents.

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

(h) TxDOT approved DBE Performance Plan in accordance with the requirements of Section 1.8.1.

(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 D&C Performance Bond and Payment Bond, each in an amount equal to the total costs of construction for the Project and in the forms attached as Exhibits 9 and 10 to the Agreement, and a D&C Retainage Bond in the form attached as Exhibit 11 to the Agreement. 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 Agreement; *provided, however*, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Contract Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments.

(k) A Job Training and Small Business Opportunity Plan as described in Section 7.9 of the Agreement.

(l) Any Subcontract or teaming agreement entered into by the Developer as of such date, which shall include the Design-Build Contract, the O&M Contract and all other Subcontracts or teaming agreements with Key Subcontractors.

(m) 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. Those Proposers not selected for award may request a debriefing. Debriefings shall be provided at the earliest feasible time after execution of the Agreement. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and the award of the Agreement.

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 the award of the Agreement.

6.3 Payment to Unsuccessful Proposers

Each Proposer that submits a responsive, but unsuccessful, Proposal and that elects, at its option, to deliver to TxDOT an executed Payment for Work Product Agreement in the form attached hereto as Exhibit J shall be entitled to receive payment from TxDOT for work product that is not returned to the 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 I. 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 stipulated payment for work product per Proposer for this procurement will be \$1 million per Proposer except that 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.

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. The invoice may be submitted no earlier than 45 days after notice of final award, including execution of the Agreement, is posted on the Project Website 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. 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 the 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 the Proposer for the purpose of developing its Proposal, in consideration for TxDOT's agreement to make payment as provided herein, including Exhibit J, without any further compensation or consideration to the Proposer.

Each Proposer that timely executes and delivers to TxDOT a Payment for Work Product Agreement in the form attached hereto as Exhibit J acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after award of the Agreement and that the Contract Documents may incorporate the above-described work product or concepts based thereon. Upon the 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. In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 or that fails to timely execute and deliver the Payment for Work Product Agreement (Exhibit J) be entitled to receive a payment for work product under this Section 6.3.

SECTION 7.0 PROTESTS

7.1 Applicability

This Section 7.0 and Section 27.6 of Title 43 of the Rules set forth the exclusive protest remedies available with respect to this 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 Agreement.

7.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 7.1(a) may be filed only after the 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.

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 ten Business Days after the earliest of the Commission's conditional 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 above, 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 the Proposer. The Proposer filing the protest shall concurrently

submit a copy of the protest to the other Proposers whose addresses may be obtained from the RFP Website.

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 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 discretion, make appropriate revisions to the RFP by issuing Addenda.

7.9 Protestant's Payment of Costs

If a protest is denied, the 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, 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 the Developer's obligations under the Agreement. TxDOT reserves the right, in its discretion, to:

- (a) develop the Project and any facility in any manner that it, in its discretion, deems necessary;
- (b) reject any or all of the Proposals;
- (c) modify any dates set or projected in this RFP and extend any deadlines;
- (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, in its discretion;
- (g) suspend, discontinue or terminate negotiations of the Agreement at any time, elect not to commence negotiations of the Agreement 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 this RFP until such time as TxDOT declares in writing that a particular stage or phase of its review of the responses to this 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 this 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 a Proposer's organization;

(o) accept a Proposal other than that which requests the least 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 Agreement;

(r) request or obtain additional information about any Proposal from any source;

(s) disqualify any Proposer that violates the terms of this RFP;

(t) issue Addenda, including after the Proposal Due Dates, and including changes to conform the RFP to applicable legal requirements and address any changes to the scope to the Project arising from the environmental analysis process; and

(u) exercise any other right reserved or afforded to TxDOT under this RFP and applicable Law.

8.2 TxDOT Disclaimers

This RFP does not commit TxDOT to enter into a contract. Except as expressly set forth in Section 6.3, TxDOT and the State 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 this 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 Agreement, in form and substance satisfactory to TxDOT, have been authorized and executed by TxDOT and, then, only to the extent set forth therein. In submitting a Proposal in response to this RFP, each Proposer is specifically acknowledging these disclaimers.