

**REQUEST FOR PROPOSALS
TO DESIGN, CONSTRUCT, AND POTENTIALLY MAINTAIN
THE
DALLAS HORSESHOE PROJECT**

THROUGH A DESIGN-BUILD CONTRACT

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

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

ISSUED JULY 3, 2012

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

CERTAIN KEY DATES

<u>EVENT</u>	<u>DATE</u>
Last date for Proposers to Submit Initial Comments to the Industry Review Package	May 14, 2012
Initial One-on-One Meetings with Proposers to Discuss the Industry Review Package	May 22-23, 2012
Last date for Proposers to Submit Additional Comments to the Industry Review Package	June 18, 2012
Final One-on-One Meetings with Proposers to Discuss the Industry Review Package	June 21, 2012
Last date for Proposers to Submit Insurance-Related Comments to the Industry Review Package	June 28, 2012
Issue Final Request for Proposals	July 3, 2012
Proposal Due Date	September 25, 2012
DBA and CMA Conditionally Awarded (anticipated)	October 25, 2012
DBA and CMA Executed and Delivered (anticipated)	January 2, 2013

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INSTRUCTIONS TO PROPOSERS
(Request for Proposals: Dallas Horseshoe Project)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“RFP”) is issued by the Texas Department of Transportation (“TxDOT”), an agency of the State of Texas, to seek competitive detailed proposals (individually, a “Proposal” and collectively, “Proposals”) for a design-build contract (“DBC”) that will consist of a Design Build Agreement (“DBA”) and a Capital Maintenance Agreement (“CMA”). The DBA shall provide that the successful Proposer (“Design-Build Contractor” or “DB Contractor”) shall design, construct, and, at TxDOT’s sole option, that the entity identified as the Capital Maintenance Contractor shall provide capital maintenance for the Dallas Horseshoe Project (the “Project”) as further described below. DB Contractor’s capital maintenance rights and obligations will be set forth in the separate CMA. The forms of DBA and CMA are included in Volumes II and III of the RFP.

TxDOT is issuing the RFP to those Proposers shortlisted based on TxDOT’s evaluation of Qualification Statements (“QSs”) delivered to TxDOT on February 22, 2012 in response to the Request for Qualifications for the Project issued on December 9, 2011, as amended (the “RFQ”).

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

The RFP requires each Proposer to be prepared to act as the DB Contractor for the Project if the Proposer is selected.

All forms identified in this ITP are found in Exhibit D unless otherwise noted. All times in this ITP are Central Standard Time (CST) or Central Daylight Savings Time (CDT), as applicable.

1.2 Project Goals

TxDOT’s goals for the Project are as follows:

(a) Maintaining mobility through the Project area during construction of the Project while minimizing negative impacts to the public, business, communities and adjacent property owners through effective communication, cooperation and coordination;

(b) Replacing functionally obsolete and structurally deficient structures in the Project area;

(c) Reducing congestion and improving mobility within the Project area after the construction period;

(d) Securing quality design, construction and capital maintenance services meeting or exceeding TxDOT technical requirements at fair and competitive prices to optimize the operational life cycle performance of the Project;

(e) Safe construction;

(f) Expediting delivery of Project improvements;

(g) Facilitating participation by DBEs, women-owned business enterprises and minority business enterprises, consistent with the DBA Documents, CMA Documents and applicable Laws;

(h) Cooperating and coordinating with Stakeholders in the design, construction and capital maintenance of the Project; and

(i) Recognizing the unique characteristics of the Project and its impact on the community and involving the public accordingly.

1.3 General Project Description and Scope of DB Contractor's Obligations

1.3.1 General Project Description

The Project includes the design, construction, and potential maintenance of IH 30 from Sylvan Avenue to west of IH 45 and IH 35E from north of Eighth Street to north of IH 30 in Dallas County. The Margaret McDermott Bridges form a fixed-design component within the Project. This component consists of the integrated pedestrian/bicycle lanes for a length of approximately 1125 feet of the IH 30 portion of the Project. 90% drawings and specifications for this component of the project are posted on the RFP Site, and Proposers will bid on the construction of the Margaret McDermott Bridges as a component of the DBA.

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

1.3.2 Scope of DB Contractor's Obligations

DB Contractor's obligations will generally include all efforts required to develop, design and construct the Project in accordance with the requirements of the DBA Documents and, at TxDOT's sole option, provide capital maintenance for the Project in accordance with the requirements of the CMA Documents.

1.3.3 Project Environmental Status

TxDOT currently anticipates that a Finding of No Significant Impact (FONSI) will be issued for the Project in late 2012. A draft Environmental Assessment (“EA”) is currently under review by TxDOT and FHWA, and TxDOT has provided Proposers with anticipated environmental parameters in the form of a draft environmental commitments document (“Environmental Commitments Document”) upon which Proposers should base their Proposals. The DBA addresses the possibility that a NEPA Approval issued by FHWA might diverge from those parameters.

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

1.3.4 Status of Required Right of Way Acquisition

TxDOT is advancing right of way acquisition prior to the Effective Date of the DBA. It is anticipated that the majority of the parcels will be acquired prior to contract execution. At the appropriate time, or as dictated by the terms of the DBA, these parcels will be handed over to DB Contractor for completion of right of way acquisition including relocation assistance and demolition of improvements. ROW status is contained in the RID.

DB Contractor’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 DBA. TxDOT will be responsible for eminent domain activities with DB Contractor support and for the purchase price of right of way within the Schematic ROW. The Technical Provisions provide further details regarding the right of way acquisition process and the responsibilities of DB Contractor in this process.

1.3.5 Status of Required Utility Work

TxDOT has completed subsurface utility engineering (“SUE”) investigations on IH 30 and IH 35. The SUE information is available in the RID.

The Project includes a complex relocation that may significantly impact the constructability of the Project. The Oncor overhead transmission lines are located within the Dallas Floodway. TxDOT is currently advancing activities in this area by undertaking the initial design for the relocation of the transmission towers based on the

design schematic. The transmission towers' foundations have been included in TxDOT's Initial Section 408 Submittal to the USACE. DB Contractor is responsible for completing all Utility Adjustments, including the Oncor relocation.

1.3.6 Status of Initial Section 408 Approval

TxDOT currently anticipates that Initial Section 408 Approval will be received from the USACE within two months following receipt of the anticipated FONSI from FHWA. The Initial Section 408 Submittal was submitted to the USACE for review on June 1, 2012. TxDOT has provided Proposers with an electronic copy of the Initial Section 408 Submittal and will provide Proposers with any revised data resulting from USACE technical reviews of such submittal. USACE technical reviews of the Initial Section 408 Submittal are currently anticipated to be completed by August 2012. Proposers should base their Proposals upon the Initial Section 408 Submittal and any revised data resulting from USACE technical reviews of such submittal provided to Proposers by TxDOT prior to the Proposal Due Date. Proposers are advised that it is possible that Section 408 review by USACE Headquarters staff, if required, may result in changes to Section 408 requirements. The DBA addresses the possibility that an Initial Section 408 Approval issued by USACE might diverge from the parameters set forth in the Initial Section 408 Submittal, as revised prior to the Proposal Due Date as a result of USACE technical reviews. Nothing contained in this RFP or the DBA Documents commits TxDOT or a Proposer to the construction of the components of the Project within the Dallas Floodway unless Initial Section 408 Approval is obtained from USACE.

DB Contractor will be responsible for obtaining USACE Construction Approval of those Project components subject to USACE review and approval. Project components anticipated to require USACE review and approval are listed in Section 1.1, Project Information, of the USACE-TxDOT-NCTCOG Review Plan developed for the Project. The DB Contractor will bear the risk of failure to obtain USACE Construction Approval of those Project components subject to USACE review and approval. Proposers are also responsible for securing a New Section 408 Approval from the USACE in the event the Proposer's proposed Project components within or adjacent to the Dallas Floodway (a) do not adhere to the parameters set forth in the Initial Section 408 Approval and (b) warrant additional analyses and review as determined by the USACE, DB Contractor will bear the risk of failure to obtain the New Section 408 Approval, if required.

1.3.7 Status of Design Schematic

FHWA has approved the design schematic for further processing. The schematic is subject to change based on further developments resulting from public input and technical review.

1.4 Documents in the Request for Proposals

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

- (a) Volume I – this ITP (including exhibits and forms);

- (b) Volume II – the DBA Documents (Books 1 and 2);
- (c) Volume III – the CMA Documents; and
- (d) Volume IV – the Reference Information Documents.

Refer to Section 1.2.1 of the DBA for a list of the DBA Documents, and Section 1.2.2 of the CMA for a list of the CMA Documents, and their respective order of precedence, and to Volume IV for the Reference Information Documents. See Exhibit 19 of the DBA for a list of the Reference Information Documents available as of the time of issuance of this RFP. Additional Reference Information Documents may subsequently become available and will be distributed to Proposers via the RFP Website.

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

1.5 Definitions and Acronyms

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

1.6 Procurement Schedule

The following represents the current schedule for the procurement.

<u>EVENT</u>	<u>DATE and TIME</u>
Last date for Proposers to submit initial comments to the Industry Review Package	May 14, 2012 9:00 a.m.
Initial One-on-One Meetings with Proposers to discuss the Industry Review Package	May 22-23, 2012
Last date for Proposers to submit additional comments to the Industry Review Package	June 18, 2012 12:00 p.m.
Final One-on-One Meetings with Proposers to discuss the Industry Review Package	June 21, 2012
Last date for Proposers to submit insurance-related comments to the Industry Review Package	June 28, 2012 12:00 p.m.

<u>EVENT</u>	<u>DATE and TIME</u>
Issue Final Request for Proposals	July 3, 2012
One-on-one Meetings with Proposers to discuss the Margaret McDermott Bridges Design	July 11, 2012
One-on-one Meetings with Proposers to discuss ATCs as described below	July 16, 2012
One-on-one Meetings with Proposers to discuss ATCs as described below	July 31 – August 1, 2012
Last date for Proposer submittal of initial questions regarding the RFP	July 31, 2012 9:00 a.m.
Deadline for submittal of ATCs	August 8, 2012 12:00 p.m.
Last date for TxDOT responses to Proposers' questions regarding the RFP	August 17, 2012
One-on-one meetings with Proposers to discuss the Technical Provisions and Proposal submittal requirements	August 17-18, 2012
Last date for TxDOT responses to ATCs	August 21, 2012
Last Date for submittal of: (1) questions regarding RFP Addenda (2) changes in organization (3) changes in Key Personnel identified in QS and (4) new Key Personnel not required to be submitted with QS	August 21, 2012 12:00 p.m.
Last Date for TxDOT responses to: (1) final questions regarding the RFP (2) changes in organization (3) changes in Key Personnel identified in QS and (4) new Key Personnel not required to be submitted with QS	September 4, 2012 12:00 p.m.
Proposal Due Date	September 25, 2012 12:00 p.m.
Anticipated conditional award by Texas Transportation Commission	October 25, 2012
DBA and CMA Executed (anticipated)	January 2, 2012

All times set forth above and elsewhere in the RFP are for local Central time in Dallas, Texas. Where the RFP provides a deadline or due date for submission of documents, correspondence or other materials to TxDOT, the submission will only be considered

timely if TxDOT receives the submission by the date and, if applicable, the time identified. All dates set forth above and elsewhere in the RFP are subject to change, in TxDOT's sole discretion, by written notice to 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 the RFP, including a (a) Technical Proposal, and (b) Financial Proposal. The instructions and requirements for the Technical Proposal and the Financial Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms (Exhibit D) in the format specified or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in TxDOT's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.7.2 Inclusion of Proposal in DBA Documents and CMA Documents

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

1.7.3 Commitments in the Proposal

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

1.7.4 Ownership of Proposal and Applicability of Public Information Act

Subject to the exceptions specified herein, the "Rules" (defined below in Section 2.1) and in the Texas Transportation Code (the "Code"), all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to TxDOT during this procurement process, whether included in the Proposal or otherwise submitted, become the property of the State of Texas upon delivery to TxDOT, and will not be returned to the submitting parties. Consequently, all such items may be subject to Texas Government Code, Chapter 552 (the "Public Information Act" or the "Act"). Proposers should familiarize themselves with the provisions of the Act requiring disclosure of public information, and

exceptions thereto. In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to the RFP. See also Section 2.6.

1.8 Project Costs, Funding and Financing

TxDOT's current construction cost estimate for the improvements to be developed for the Project is approximately \$700 million based on the improvements described in this RFP. The estimated construction costs reflect the currently developed schematic and environmentally studied project components at current construction prices. In addition, the estimates do not include design, ROW, utility adjustment, or operations and maintenance costs.

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

1.9 Federal Requirements

1.9.1 General Obligations

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

1.9.2 DBE Requirements

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

The DBE participation goal for the Project shall be 8% of the Price. TxDOT's DBE requirements applicable to the DBA are set forth in Section 7.1 of the DBA, the DBE Special Provisions attached as Exhibit 6 to the DBA and TxDOT's DBE Program adopted pursuant to Title 49 CFR Part 26. TxDOT's DBE requirements applicable to the CMA are set forth in Section 6.1 of the CMA. As set forth in Section 3.2.9 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal. Failure to provide the required DBE certification shall be considered a breach

of the Proposal requirements and shall render a Proposal non-responsive.

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

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

DB Contractor 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 the DBE Special Provisions in Exhibit 6 to the DBA.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

The RFP is issued pursuant to Chapter 223, Subchapter F, of the Code and other applicable provisions of law pertaining to design-build contracts, Sections 9.150-9.155 of Title 43, Texas Administrative Code (the “Rules”), which became effective on March 15, 2012, and other applicable provisions of Texas and federal Law.

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

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

TxDOT will not review or consider alternative proposals.

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

The RFP will be issued to shortlisted Proposers in electronic format on the secure file transfer 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. Other information related to the procurement that is to be made available to the general public may, at TxDOT’s discretion, be posted on the Project Website.

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

2.2.1 Authorized Representative

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

Kelly Selman, P.E.
Texas Department of Transportation
4777 East Hwy 80
Mesquite, TX 75150
E-mail: horseshoe@txdot.gov

Proposers shall provide a copy of all correspondence to:

Texas Department of Transportation
Design-Build Program office
7745 Chevy Chase, Building 5, Suite 300
Austin, Texas 78752
Attn: Dieter Billek
E-mail: dieter.billek@txdot.gov

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

2.2.2 Identification of Proposer Authorized Representative

The Proposer's designated representative shall initially be the person identified in the QS as the single point of contact for the Proposer. If a Proposer changes its designated representative to receive documents, communications or notices in connection with the procurement at any time, including subsequent to its submission of its Proposal, Proposer shall provide TxDOT's Authorized Representative with the name and address of such new designated representative. Failure to identify a designated representative in writing may result in Proposer failing to receive important communications from TxDOT. TxDOT is not responsible for any such failure.

2.2.3 Rules of Contact

From the date of issuance of the RFQ (December 9, 2011) until April 26, 2012, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on April 26, 2012, the date the industry review package was issued, and ending on the earliest of (i) execution and delivery of the DBA and the CMA, (ii) rejection of all Proposals by TxDOT or (iii) cancellation of the RFP, the rules of contact set forth below shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

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

(b) Each Proposer shall designate one representative responsible for all communications between the Proposer and TxDOT, and such designated representative shall correspond with TxDOT regarding the RFP only through TxDOT's

Authorized Representative (except communications with TxDOT's ombudsman as provided in subsection (c) of this Section 2.3.2 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 Texas Transportation Commission ("Commission"), Stakeholder or with any TxDOT staff, advisors, contractors or consultants involved with the procurement or the Project, except for communications with TxDOT consultants who have completed their services for the Project and been released by TxDOT, communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative or the Chief Planning and Project Officer, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Commission or any public or Proposer workshop related to the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of TxDOT.

(d) 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(d). Notwithstanding the foregoing, each Proposer may set up meetings with the Dallas Flood Control District and the Dallas Water Utilities to discuss issues relating to the Project; provided, however, that the Proposer shall provide written notice to TxDOT of the date, time, location and anticipated attendees of such meetings no later than three business days in advance of each such meeting.

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

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

(g) 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 correspondence will be in writing, on TxDOT letterhead and signed by TxDOT's Authorized Representative or designee.

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

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

2.2.4 Language Requirement

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

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

2.3 Questions and Response Process, and Addenda

2.3.1 Questions and Responses Regarding the RFP

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

TxDOT will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to the Authorized Representative in writing via submission to the RFP Website or, if it is a confidential communication regarding the procurement process, to TxDOT's designated ombudsman by hard copy or electronic transmission in the format prescribed herein (see Section 2.3.2 for a description of the instances in which communications may be submitted to the ombudsman).

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.6 or such later date as may be specified in any Addendum and shall: (i) be sequentially numbered; (ii) identify the document (i.e., the DBA, the Design-Build Technical Provisions, etc.); (iii) identify the relevant section number and page number (i.e., DBA Section 5.2, pages 20-21) or, if it is a general question, indicate so; (iv) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information; and (v) 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 50 questions per RFP version issued, including the draft

RFP, final RFP and Addenda to the final RFP, if any; provided, however, that (a) Proposers will be permitted to submit 15 additional questions regarding the draft RFP at any time after May 22, 2012 and prior to the applicable last date for such additional questions specified in Section 1.6 and (b) Proposers will be permitted to submit 25 additional questions regarding the insurance provisions of the draft RFP at any time prior to the applicable last date for such additional questions specified in Section 1.6. If a question has more than one subpart, each subpart will be considered a separate question. Corrections of typographical errors, incorrect cross references or internal inconsistencies within or among the RFP documents will be excluded from the 50-question limitation.

Except during one-on-one meetings, no telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification submitted 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, e-mail address, and the Proposer he/she represents.

The questions and TxDOT's responses will be in writing and will be delivered to all Proposers, except that TxDOT intends to respond individually to those questions identified by a Proposer or deemed by TxDOT as containing confidential or proprietary information relating to Proposer's Proposal or ATCs. TxDOT reserves the right to disagree with Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, TxDOT will inform the 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 sole 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 TxDOT's Authorized Representative as provided in Section 2.3.1, a Proposer may submit such confidential communications, comments or complaints regarding the procurement to the ombudsman, where Proposer believes in good faith that confidentiality is essential. Please note that the deadline set forth in Section 2.3.1 applies to comments and questions regarding the RFP that are submitted to the Ombudsman. A Proposer must submit such confidential communications in a separate document that does not include any information identifying Proposer. After receiving such confidential communications, the ombudsman shall forward only the separate document containing the confidential communication to TxDOT's Authorized Representative as identified in Section 2.2.1. If the ombudsman determines that the submitted material is not of a confidential nature or has been submitted past the applicable deadline set forth in Section 2.3.1, the ombudsman shall return the submission to Proposer and instruct Proposer to submit the communication directly to TxDOT's Authorized Representative in accordance with Section 2.3.1. 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
150 E. Riverside Drive, 4th Floor North Tower
Austin, Texas 78704
E-mail: 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 sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested pursuant to 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 RFP Website, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts the RFP, as determined in TxDOT's sole discretion, TxDOT may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for Proposers to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests permitted concerning the Addendum.

Proposer shall acknowledge in its Proposal Letter (see Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. TxDOT reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer

to discuss any Addenda or response to requests for clarifications. TxDOT does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, TxDOT reserves the right to issue Addenda after such date. If TxDOT finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum.

2.4 Pre-Proposal Submittals

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

2.5 Pre-Proposal Meetings

2.5.1 Informational Meetings

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

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

2.5.2 One-on-One Meetings

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

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

- The meetings are intended to provide Proposers with a better understanding of the RFP.

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

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

2.5.3 Questions and Responses During One-on-One Meetings

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

2.5.4 Statements at Meetings

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify this 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, including the disclosures in this Section 2.6 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 Public Information 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. Proposer further agrees to assist TxDOT in complying with these disclosure requirements if it is the selected apparent best value Proposer.

sole expense and risk; provided, however, that TxDOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by TxDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by Proposer whose Proposal is the subject thereof.

2.7 TxDOT Studies and Investigations

TxDOT has completed its Site investigations and does not anticipate undertaking any further investigative activities prior to the Proposal Due Date. To the extent TxDOT undertakes any additional investigative activities, the information obtained by TxDOT from such activities may be made available to Proposers 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 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 DB Contractor's obligations under the DBA and the CMA with TxDOT. Each Proposer also is responsible for monitoring the RFP Website for information concerning the RFP and the procurement. The Proposal Letter (Form A) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Failure of Proposer to so examine and inform itself shall be at its sole risk, and TxDOT will provide no relief for any error or omission.

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

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

2.8.2 Site Access

An expedited process for obtaining rights of entry to access portions of the Project is attached hereto as Exhibit F. Exhibit F-1 is the process for obtaining rights of entry to

subcontracts must be executed and provided to TxDOT before the execution of the DBA and CMA.

2.13 Sales Tax

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

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPTS

3.1 Alternative Technical Concepts

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

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

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

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

3.2 Pre-Proposal Submission of ATCs

Proposer may submit ATCs for review to TxDOT’s Authorized Representative specified in Section 2.2.1, until the applicable last date and time for submittal of ATCs identified in Section 1.6. All ATCs shall be submitted in writing, with a cover sheet identifying Proposer and stating “Dallas Horseshoe Project – Confidential ATCs.” Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by TxDOT. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

3.2.1 Pre-Proposal ATC Submittal Requirements

Pre-Proposal ATC submissions shall include:

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

included in the DBA Documents or the CMA Documents, as applicable. If TxDOT responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the DBA Documents and CMA Documents, as applicable. The DBA Documents and CMA Documents will be conformed after conditional award, but prior to execution of the DBA and CMA, to reflect the ATCs, including any TxDOT conditions thereto. Notwithstanding anything to the contrary herein, if DB Contractor does not comply with one or more TxDOT conditions of pre-approval for an ATC or DB Contractor fails to obtain a required third party approval for an ATC, DB Contractor will be required to comply with the original requirements of the RFP without additional cost or extension of time as set forth in the DBA or CMA, as applicable.

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

3.5 Confidentiality

Subject to the provisions of the Act and the Rules, ATCs and all communications regarding ATCs will remain confidential until a decision is made to select a Proposer or cancel the procurement, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Public Information Act, applicable Law, and Section 2.6 of this ITP. The foregoing shall not preclude TxDOT from modifying the documents as necessary to comply with applicable Law or to account for information obtained by TxDOT outside of the ATC process. By submitting a Proposal, Proposer agrees, if it is not selected, to disclosure of its work product to the successful Proposer.

the Technical Proposal, and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the TxDOT Dallas Horseshoe Project.”

4.3 Financial Proposal

One original and six certified copies of the Financial Proposal shall be delivered to TxDOT at the address identified in Section 4.1.7 by the Proposal Due Date.

All parts of the Proposal that indicate pricing information shall be included in a sealed container labeled “[Proposer Name]: Financial Proposal/Pricing Information for the TxDOT Dallas Horseshoe Project.”

The financial statements and other financial capacity information submitted in response to Exhibit C, Section 2.0 shall be submitted in binders separately from the sealed Financial Proposal/Pricing Information container. One original and 6 hard copies, as well as one digital copy on CD, of the financial capacity information shall be submitted in a container labeled “[Proposer Name]: Financial Proposal/Financial Capacity information for the TxDOT Dallas Horseshoe Project.”

4.4 Currency

All required pricing, financial and cost information shall be provided in United States dollars (US\$) currency only.

4.5 Modifications, Withdrawals and Late Submittals

4.5.1 Modifications to a Proposal

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

4.5.2 Withdrawal and Validity of Proposals

Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by the Proposer’s designated representative. Such written request shall be delivered to the address 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

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 DBA and the CMA, including costs incurred for any interviews, and costs associated with Post-Selection Deliverables, shall be borne by Proposer, except for any costs paid by TxDOT in accordance with Section 6.3.

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

5.12.3 TxDOT Comments On Post-Selection Deliverables

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

5.12.4 Escrowed Proposal Documents

(a) Within the timeframe stated in Section 5.12.2, Developer shall deliver to TxDOT escrowed proposal documents ("EPDs") containing information regarding Proposer's assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 21.1 of the DBA and Section 17.1 of the CMA. The EPDs shall include information regarding the pricing for all components of the lump sum prices set forth in Forms M-1, M-1.1, M-1.2, M-3 and M-3.1. 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 Dallas Horseshoe Project (Base Proposal)" and "[Proposer Name]: Escrowed Proposal Materials for the Dallas Horseshoe Project (Margaret McDermott Bridges Proposal)." TxDOT shall have the right to review the EPDs for completeness and consistency with the Proposal.

(b) Representatives of TxDOT (and/or its consultants) and the successful Proposer shall review the EPDs prior to execution of the DBA and CMA 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 in 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 DBA and CMA, the EPDs will be available for joint review as specified in DBA Section 21.1.1 and CMA Section 17.1.1.

entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3.

The amount of the payment may not exceed the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions, up to the maximum stipulated amount per Proposer. The maximum stipulated payment for work product per Proposer for this procurement is 0.25% of the sum of the Design-Build Price and the Margaret McDermott Bridges Price. In the event the procurement is terminated before execution of the DBA, TxDOT may pay Proposers a partial amount of up to \$728,000. The invoice may be submitted no earlier than 45 days after notice of final award, including execution of the DBA and CMA, is posted on the RFP 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. All Proposers eligible to receive a payment for work product shall be required to submit an invoice to TxDOT in a form acceptable to TxDOT in order to receive such payment. Payments will be made within 30 days of receipt of an invoice therefor.

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

Each Proposer acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after award of the DBA and CMA, and that the DBA Documents and CMA Documents may incorporate the above-described work product or concepts based thereon. Upon Proposer's receipt of payment hereunder, this right shall extend to allow TxDOT to use such work product in the performance of its functions. As provided in Section 223.249(a) of the Code, the use of any of the work product by TxDOT is at the sole risk and discretion of TxDOT, and shall in no way be deemed to confer liability on the unsuccessful Proposer. Each Proposer acknowledges and agrees that it does not have the right to refuse the payment hereunder and keep the contents of its Proposal from being used by TxDOT, as described herein.

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

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 DB Contractor's obligations under the DBA Documents and CMA Documents. TxDOT reserves the right, in its sole discretion, to:

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

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

8.2 TxDOT Disclaimers

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

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