REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, AND POTENTIALLY MAINTAIN
THE
IH 35E MANAGED LANES PROJECT
VOLUME I
INSTRUCTIONS TO PROPOSERS
A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION
ISSUED JULY 13, 2012
ADDENDUM 1 ISSUED August 9, 2012
ADDENDUM 2 ISSUED September 7, 2012
ADDENDUM 3 ISSUED September 20, 2012
ADDENDUM 4 ISSUED September 25, 2012
ADDENDUM 5 ISSUED October 12, 2012
ADDENDUM 6 ISSUED October 19, 2012
ADDENDUM 7 ISSUED November 2, 2012

Texas Department of Transportation
125 East 11th Street – Fifth Floor
Austin, Texas 78701
CERTAIN KEY DATES

EVENT	**DATE**
Issue Final Request for Proposals	July 13, 2012
Issue Addendum ~~6~~7	~~October 19,~~November 2, 2012
Last date for Proposers to submit questions and comments regarding Addendum ~~6~~7	12:00 p.m. ~~October 24,~~November 6, 2012
Technical and Financial Proposal Due Date	12:00 p.m. November 12, 2012
Price Proposal Due Date	12:00 p.m. November 19, 2012
Anticipated conditional award by Texas Transportation Commission	December 13, 2012

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INSTRUCTIONS TO PROPOSERS

(Request for Proposals: IH 35E Managed Lanes Project)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals ("RFP"), as amended, is issued by the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas, to seek competitive detailed proposals (individually, a "Proposal" and collectively, "Proposals") for a Development Agreement. The Development Agreement shall provide that the entity identified in the successful Proposal ("Developer") shall develop, design, construct, and, at TxDOT's sole option, provide capital maintenance for the IH 35E Managed Lanes Project (the "Project"), as further described below. Developer's capital maintenance rights and obligations will be set forth in a separate capital maintenance agreement ("CMA"). The forms of Development Agreement and CMA are included in Volumes II and III of the RFP.

TxDOT is issuing the RFP to those Proposers shortlisted for the design-build project delivery method based on TxDOT's evaluation of qualification statements ("QSs") delivered to TxDOT on March 23, 2012 in response to the Request for Qualifications for the Project issued on January 23, 2012 (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 1.3 below into consideration in drafting their Proposals.

The intent of this procurement is to deliver as much base scope as possible for $1.102 billion, inclusive of design, construction, right of way, Utility Adjustments and portions of the toll collection systems. As described in Section 1.4.2 and Exhibit I, this ITP identifies four Work Packages containing successively smaller base scopes and larger Options. Each Proposer may submit only one Proposal, and that Proposal shall be based on the Work Package containing the largest base scope the Proposer can deliver within the Adjusted Available Public Funds Amount for that Work Package as set forth in Section 1.4.2.

The best value determination will be made (if at all) based solely on the responsive Proposal or Proposals submitted for the Work Package offering the largest base scope. For example, if TxDOT receives only one responsive Proposal for the Work Package offering the largest base scope relative to all other Proposals received, TxDOT will base the best value determination on that Proposal only. Proposals based on smaller Work Packages will be evaluated solely for the purpose of determining their responsiveness to the RFP requirements and determining the second and third ~~highest scoring~~(and fourth, if applicable) best value Proposals in the event TxDOT cannot negotiate a Development Agreement and, at its option a CMA, with the apparent best value Proposer, as described in Section 5.11.1. See Section 5.0 for a more detailed description of the evaluation and post-selection process. The RFP requires each Proposer to be prepared to act as Developer for the Project if the Proposer is selected to enter into the Development Agreement and CMA.

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 time (CDT), as applicable.

1.2 Request for Proposals

1.2.1 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 Development Agreement 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 Development Agreement for a list of the Development Agreement 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 Development Agreement for a list of the Reference Information Documents.

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

1.2.2 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 Development Agreement 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.

1.3 Project Goals

TxDOT's goals for the Project are as follows:

(a) Deliver as much base scope as possible with Available Public Funds Amount, reduce temporary improvements, and minimize right of way impacts;
(b) Maintain mobility within the Project area and minimize the inconvenience to surrounding communities and businesses during construction in an environmentally sensitive manner;
(c) Achieve the earliest possible completion of the entire Project;
(d) Achieve the highest degree of quality possible in design, construction and maintenance given available funds;
(e) Maintain a safe environment for all Project personnel and the public at all times; and
(f) Maximize the utilization of Disadvantaged Business Enterprises ("DBEs") during the design, construction and maintenance phases of the Project through a comprehensive outreach program.

1.4 Project Description and Scope of Developer's Obligations

1.4.1 General Project Description

The Project is being developed in cooperation with local and regional stakeholders to relieve traffic congestion along the IH 35E corridor from IH 635 to US 380. The Project is the first project of a multi-phased program that will be implemented through a series of contracts to achieve the Ultimate Project studied in the environmental assessments for the IH 35E north, middle and south segments. The Project generally consists of the construction of tolled managed lanes, the addition of general purpose lanes and collector distributor roads between President George Bush Turnpike and SH 121, and the construction of a new southbound bridge over Lake Lewisville in Denton County, Texas.

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

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

1.4.2 Work Packages

The Project has been configured into four separate Work Packages ranging in base scope from the largest (Work Package 1) to the smallest (Work Package 4). The four Work Packages and their respective funds available for the Proposer's scope of work ("Available Public Funds Amount") are summarized below in Table 1-1 and described in detail in Exhibit I. Each of Work Packages 2 through 4 contains certain Options which, together with their corresponding base scope, add up to the base scope of Work Package 1. Each Option is independent of the base scope and the other Options in its respective Work Package and (if applicable) will be exercisable by TxDOT under the Development Agreement as described in Section 4.4.3.

Table 1-1
Work Package Descriptions

Work Package No.	Base Scope	Options	Available Public Funds
1	As described in Book 2, Section 1.	None.	$789,000,000
2	As described in Book 2, Section 1 **except for** the following: 1. *IH 635 Interchange - Terminate all improvements south of Station 630+00.* 2. *Managed Lanes North of Turbeville* - Terminate managed lanes improvements north of Turbeville Road. The	1. *IH 635 Interchange* - Managed lane, general purpose lane and associated ramps as described in Book 2 Section 1 from Station 550+66 to Station 630+00. 2. *Managed Lanes from Turbeville Road to Loop 288* – Continue the two reversible managed lanes	$789,000,000

Work Package No.	Base Scope	Options	Available Public Funds
	termination transition shall consist of add/dropping one of the reversible managed lanes at the access point near Country Lane/South Denton Drive, continuing northward with one reversible managed lane until Turbeville Road at which point the managed lane shall terminate. 3. *General Purpose Lanes between I-635 and SH 121* - Terminate the ~~addition of one~~additional general purpose lane in each direction ~~south~~between I-635 and north of SH 121. ~~Termination~~Continuation of these additional lanes to the north shall consist of add/dropping lanes at the ramps at 1017+00.	from Country Lane/South Denton Drive reducing to one reversible managed lane north of Post Oak Road, approximately Station 1704+00,and terminating at Loop 288. The termination transition at Loop 288 shall be generally consistent with the Draft Interim Schematic. 3. *General Purpose Lanes ~~South of~~between I-635 and SH 121* - One additional general purpose lane each direction from Station 630+00 connecting to the additional general purpose lanes north of SH 121, except for between Station 885+00 and Station 967+50 where three general purpose lanes shall be maintained in each direction.	
3	As described in Book 2, Section 1 **except for** the following: 1. *IH 635 Interchange* - Terminate all improvements south of Station 630+00. 2. *Managed Lanes North of Turbeville* - Terminate managed lanes improvements north of Turbeville Road. The termination transition shall consist of add/dropping one of the reversible managed lanes at the access point near Country Lane/South Denton Drive, continuing northward with one reversible managed lane until Turbeville Road at which point the managed lane shall terminate. 3. *General Purpose Lanes between I-635 and SH 121* - Terminate the ~~addition of one~~additional general purpose lane in each direction ~~south~~between I-635	1. *IH 635 Interchange* - Managed lane, general purpose lane and associated ramps as described in Book 2 Section 1 from Station 550+66 to Station 630+00. 2. *Managed Lanes from Turbeville Road to Loop 288* – Continue the two reversible managed lanes from Country Lane/South Denton Drive reducing to one reversible managed lane north of Post Oak Road, approximately Station 1704+00 and terminating at Loop 288. The termination transition at Loop 288 shall be generally consistent with the Draft Interim Schematic. 3. *General Purpose Lanes ~~South of~~between I-635 and SH 121* – One additional general purpose lane each direction from Station 630+00 connecting to the	$796,000,000

Work Package No.	Base Scope	Options	Available Public Funds
	and north of SH 121. ~~Termination~~Continuation of these additional lanes to the north shall consist of add/dropping lanes at the ramps at 1017+00. 4. *Belt Line Road Mainline Improvements* – Eliminate IH 35E mainline improvements at Belt Line Road interchange including U-turns. Construct only the frontage road and Belt Line Road intersection improvements and railroad grade separations. 5. *Dickerson Parkway Interchange* - Eliminate improvements on Dickerson Parkway. 6. *Corinth Parkway Interchange* - Eliminate improvements on Corinth Parkway and associated mainline profile grade modifications at the Corinth Parkway interchange.	additional general purpose lanes north of SH 121, except for between Station 885+00 and Station 967+50 where three general purpose lanes shall be maintained in each direction. 4. *Belt Line Road Mainline Improvements* – Construct IH 35E mainline improvements at Belt Line Road. 5. *Dickerson Parkway Interchange* – Construct new interchange at Dickerson Parkway interchange. 6. *Corinth Parkway Interchange* - Reconstruct side road and associated mainline profile grade modifications to accommodate new interchange at the Corinth Parkway interchange.	
4	As described in Book 2, Section 1 **except for** the following: 1. *IH 635 Interchange* - Terminate all improvements south of Station 630+00. 2. *Managed Lanes North of Turbeville* - Terminate managed lanes improvements north of Turbeville Road. The termination transition shall consist of add/dropping one of the reversible managed lanes at the access point near Country Lane/South Denton Drive, continuing northward with one reversible managed lane until Turbeville Road at which point the managed lane shall terminate. 3. General *Purpose Lanes between I-635 and SH 121*- Terminate the ~~addition of~~	1. *IH 635 Interchange* - Managed lane, general purpose lane and associated ramps as described in Book 2 Section 1 from Station 550+66 to Station 630+00. 2. *Managed Lanes from Turbeville Road to Loop 288* – Continue the two reversible managed lanes Country Lane/South Denton Drive reducing to one reversible managed lane north of Post Oak Road, approximately Station 1704+00. and terminating at Loop 288. The termination transition at Loop 288 shall be generally consistent with the Draft Interim Schematic. 3. *General Purpose Lanes ~~South of~~between I-635 and SH 121*- One additional general purpose lane each	$850,000,000

Work Package No.	Base Scope	Options	Available Public Funds
	~~one~~additional general purpose lane in each direction between I-635 and north of SH 121. ~~Termination~~Continuation of these additional lanes to the north shall consist of add/dropping lanes at the ramps at 1017+00. 4. *Belt Line Road Mainline Improvements* – Eliminate IH 35E mainline improvements at Belt Line Road interchange including U-turns. Construct only the frontage road and Belt Line Road intersection improvements and railroad grade separations. 5. *Dickerson Parkway* Interchange - Eliminate improvements on Dickerson Parkway. 6. *Corinth Parkway Interchange* - Eliminate improvements on Corinth Parkway and associated mainline profile grade modifications at the Corinth Parkway interchange. 7. *Collector-Distributor* System – Eliminate collector-distributor system in the area of President George Bush Turnpike and SH 121. 8. *Direct-Connect Ramps at SH 121* – Eliminate the four direct connector ramps on the north side of the interchange between IH 35E and SH 121. 9 Post *Oak Drive Interchange Improvements* – Eliminate Post Oak Drive interchange improvements and new bridge over IH 35E.	direction from Station 630+00 connecting to the additional general purpose lanes north of SH 121, except for between Station 885+00 and Station 967+50 where three general purpose lanes shall be maintained in each direction. 4. *Belt Line Road Mainline Improvements* – Construct IH 35E mainline improvements at Belt Line Road. 5. *Dickerson Parkway Interchange* – Construct new interchange at Dickerson Parkway interchange. 6. *Corinth Parkway Interchange* – Reconstruct side road and associated mainline profile grade modifications to accommodate new interchange at the Corinth Parkway ~~interchange~~Interchange. 7. *Collector-Distributor System* - construct a collector-distributor system in the area of President George Bush Turnpike and SH 121 consisting of one to three lanes in each direction generally between the frontage roads and general purpose lanes and connecting PGBT and SH 121. 8. *Direct-Connect Ramps* - Design and construct four direct connector ramps on the north side of the interchange between IH 35E and SH 121. 9. *Post Oak Drive Interchange* - Reconstruct side road and associated mainline profile grade modifications to accommodate new	

Work Package No.	Base Scope	Options	Available Public Funds
		interchange at the Post Oak Drive interchange.	

The Available Public Funds Amount for each Work Package are subject to adjustment in accordance with Section 3.3 ("Adjusted Available Public Funds Amount")..

As described in Section 1.1, each Proposer may submit only one Proposal, and that Proposal shall be based on the Work Package containing the largest base scope the Proposer can deliver within the Adjusted Available Public Funds Amount for that Work Package, as shown in Table 1-1 above and adjusted in accordance with Section 3.3. However, if any Proposer cannot deliver any Work Packages within the Adjusted Available Public Funds Amount allocated for the corresponding Work Package, then Proposer may submit a Development Price in excess of the Adjusted Available Public Funds Amount for Work Package 4 only, subject to the limitations set forth in ~~Section~~Sections 5.0 and 5.8. In order for a Proposal to be responsive, the Development Price must be below the Adjusted Available Public Funds Amount for the applicable Work Package, except in the case of Work Package 4.

1.4.3 Scope of Developer's Obligations

Developer's scope of Work under the Development Agreement and CMA will generally include: the design, permitting and construction of tolled managed lanes, general purpose lanes, frontage roads and crossing streets (collector distributor roads) as well as a bridge over Lake Lewisville; utility adjustments; the long-term capital maintenance of the Project facilities; and related right of way acquisition services. With respect to right of way acquisition services, Developer shall coordinate as necessary with TxDOT's existing contractors on the Project. TxDOT will pay the purchase price for parcels within the Draft Interim Schematic and other parcels TxDOT deems necessary for the Project. The cost of all administrative services in connection with the acquisition of any such right of way which TxDOT has not acquired as of the Effective Date of the Development Agreement (or as otherwise determined by TxDOT) shall be the responsibility of Developer.

Work under the Development Agreement will proceed as authorized by notices to proceed ("NTPs") issued by TxDOT. NTP1 will authorize Developer to perform certain Work related to the Project Management Plan and to engage in right of way acquisition and other activities. NTP2 will authorize Developer to proceed with the remaining Work.

The limits of work of the Project are as shown on the Draft Interim Schematic. Descriptions of the major work elements are listed in Section 1 of the Technical Provisions.

TxDOT will provide design exceptions associated with the Draft Interim Schematic as shown in Section 11.2.4 of the Technical Provisions. These design exceptions are currently under review and not yet approved. When preparing their Proposals, Proposers may assume the design exceptions as listed in Section 11.2.4 of the Technical Provisions will be provided by TxDOT. Design exceptions will be provided to Proposers once they are finalized.

1.4.4 Project Environmental Status

An environmental assessment was prepared for each of the south, middle and north segments of the Project. A description of the current status of NEPA approvals for each of the above-named Project segments is provided below. Approved environmental documents are included in the Reference Information Documents.

(a) South Segment: In December 2011, TxDOT received a Finding of No Significant Impact ("FONSI") from the Federal Highway Administration ("FHWA") for the south segment of the Project.

(b) Middle Segment: In January 2011, TxDOT received a FONSI from FHWA for the middle segment of the Project. In February 2011, TxDOT received a FONSI from the United States Army Corps of Engineers (USACE) for the middle segment of the Project.

(c) North Segment: In January 2012, TxDOT received a FONSI from FHWA for the north segment of the Project.

1.4.5 Developer's Scope for Toll Systems

TxDOT has entered into an agreement (the "Toll System Integrator Agreement") with TransCore ("System Integrator"). Under the Toll System Integrator Agreement, the System 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 has chosen to negotiate a "Project Segment Supplement" with System Integrator under the Toll System Integrator Agreement with respect to the Project; and, accordingly, the Toll System Integrator Agreement will apply to this Project. The responsibilities of the Developer and the System Integrator with respect to the design and construction of the civil components of the toll collection systems are more particularly described in Section 21 of the Technical Provisions. Developer shall coordinate the Work with TxDOT, TxDOT's consultant and System Integrator, as more particularly set forth in the Development Agreement.

1.4.6 Status of Required Right of Way Acquisition

TxDOT is currently preparing right of way maps for the IH 35E north, middle and south segments, and anticipates the maps will be completed in time for the release of the final RFP and provided to Proposers in the Reference Information Documents.

TxDOT has identified certain strategic parcels and may advance right of way activities for their early acquisition. If TxDOT advances such activities, then, at the appropriate time or as dictated by the terms of the Development Agreement, these parcels will be handed over to Developer for completion of right of way acquisition including relocation assistance and demolition of improvements.

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 Development Agreement. TxDOT will be responsible for eminent domain activities with Developer support and for the purchase price of right of way within the Draft Interim Schematic ROW. The Development Agreement provides further details regarding the right of way acquisition process and the responsibilities of Developer in this process.

1.4.7 Status of Required Utility Work

TxDOT is currently performing a subsurface utility engineering ("SUE") investigation for the Project. TxDOT will provide updates to Proposers as the SUE information is made available.

As it relates to reimbursement of eligible Utility Adjustment expenses, Proposers should proceed with interstate project designation that allows for 100% 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. 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 Development Agreement, utility activities will be handed over to Developer for completion.

1.4.8 Status of Required Railroad Services

TxDOT is currently coordinating with affected railroads regarding work at railroad crossings. Plan sheets detailing work to be performed on railroad right of way (Exhibits A to various railroad agreements) are being prepared for each railroad crossing. TxDOT anticipates the Development Agreement will require Developer to take over coordination 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 and Railroad Negotiations

IH 35E Station	Owner	Proposed Facilities Crossing RR	Location	Status of Exhibit A	Status of Ltr of Authority
748+00 and 753+00	Burlington Northern Santa Fe	Managed lanes, General Purpose lanes, frontage lanes	Belt Line Road	Submit to RR July 2012	Developer responsible for securing
1270+00	Kansas City Southern	Managed lanes, General Purpose lanes, frontage lanes	Approximately 3/4 of a mile south of FM 407	Submit to RR July 2012	Developer responsible for securing
1364+36.90	Denton County Transportation Authority	Garden Ridge Boulevard	Garden Ridge Boulevard	Submit to RR July 2012	Developer responsible for securing
1930+50	Union Pacific	General Purpose lanes,	Approximately 1000 feet south of Fort	Submit to RR July 2012	Developer responsible for

IH 35E Station	Owner	Proposed Facilities Crossing RR	Location	Status of Exhibit A	Status of Ltr of Authority
		frontage lanes	Worth Drive		securing

1.5 Procurement Schedule

A two-step Proposal submission process will be followed for this procurement. Technical Proposals and Financial Proposals, including required certifications and other information, shall be submitted to TxDOT on or before the Technical Proposal Due Date. Price Proposals, including pricing forms and a proposal bond, shall be submitted separately on or before the Price Proposal Due Date.

The following represents the current schedule for the procurement.

Event	Date and Time
Issue Final RFP	July 13, 2012
One-on-One Meetings with Proposers to discuss final RFP Documents	July 17 – 18, 2012
One-on-One Meetings with Proposers to discuss proposal submittal requirements	July 25 – 26, 2012
Last date for Proposers to submit initial questions regarding the RFP	August 3, 2012 12:00 noon
Issue Addendum #1	August 9, 2012
One-on-one meetings with Proposers (to discuss Technical Provisions, including posted responses to technical questions, and ATCs	August 14 - 15, 2012
Last date for Proposers to submit questions regarding Addendum #1	August 20, 2012 12:00 noon
Deadline for submittals of ATCs	August 24, 2012

Event	Date and Time
Last date for Proposers to submit: (1) changes in organization; and (2) changes in Key Personnel	August 31, 2012 12:00 noon
One-on-One meetings to discuss ATCs	September 6, 2012
Issue Addendum #2	September 7, 2012
Last date for Proposers to submit questions regarding Addendum #2	September 11, 2012 12:00 noon
Last date for new or revised ROW Credit ATCs	September 14, 2012 12:00 noon
Issue Addendum #3	September 20, 2012
Last date for TxDOT to respond to ATCs	September 21, 2012
Issue Addendum #4	September 25, 2012
Last date for Proposers to submit questions regarding Addendum #3	September 26, 2012 12:00 noon
Last date for Proposers to submit questions regarding Addendum #4	September 27, 2012 12:00 noon
Last date for TxDOT to respond to ROW Credit ATCs	October 5, 2012
Issue Addendum #5	October 12, 2012
Last date for Proposers to submit questions regarding Addendum #5	October 17, 2012 12:00 noon
Issue Addendum #6	October 19, 2012
Last Date for Proposers to submit questions regarding Addendum #6	October 24, 2012
One-on-One Meetings with Proposers	October 25, 2012
Issue Addendum #7	November 2, 2012
Last Date for Proposers to submit questions regarding Addendum #7	November 6, 2012 12:00 noon
Technical and Financial Proposal Due Date	November 12, 2012 12:00 noon
Price Proposal Due Date	November 19, 2012 12:00 noon
Anticipated conditional award by Texas Transportation Commission	December 13, 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 document will only be considered timely if TxDOT receives the document by the date and, if applicable, 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.

1.6 General Provisions Regarding Proposals

1.6.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including the (a) Technical Proposal, (b) Financial Proposal, and (c) Price Proposal. The instructions and requirements for the Technical Proposal, Financial Proposal and Price Proposal are set forth in Exhibits B, C-1 and C-2, 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 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 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.

1.6.2 Inclusion of Proposal in Development Agreement Documents and CMA Documents

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

1.6.3 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.

1.6.4 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.

1.7 Federal Requirements

1.7.1 General Obligations

In order to preserve the ability of TxDOT to use federal funding for the Project, the procurement process, the Development Agreement Documents and the CMA Documents must comply with applicable federal Laws and regulations. TxDOT

reserves the right to modify the RFP to address any concerns, conditions or requirements of the FHWA. Proposers shall be notified by Addendum of any such modifications.

1.7.2 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 Title 49 CFR Part 26, as well as applicable requirements set forth in the Development Agreement Documents, CMA Documents and TxDOT's DBE Program document.

The DBE participation goal for the Project under the Development Agreement shall be 6% of Price. TxDOT's DBE requirements applicable to the Development Agreement are set forth in Section 7.1 of the Development Agreement, the DBE Special Provisions for Non-Traditional Contracts attached as Exhibit 6 to the Development Agreement and TxDOT's DBE Program adopted pursuant to 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 Development Agreement 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 TxDOT's DBE Special Provisions for Non-Traditional Contracts, Exhibit 6 to the Development Agreement. 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 Development Agreement 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 for Non-Traditional Contracts, the approved DBE Performance Plan, and TxDOT's DBE Program.

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 Development Agreement.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

The RFP is issued pursuant to Chapter 223 of the Code, Sections 27.1-27.9 of Title 43, Texas Administrative Code (the "Rules") and other applicable provisions of Texas and federal Law.

The intent of this procurement is to deliver as much base scope as possible for the Available Public Funds. TxDOT therefore will award the Development Agreement and CMA (if at all) to the responsible Proposer offering the Proposal with the largest base scope (based on Work Packages 1 through 4, described in Table 1-1 and Exhibit I) which meets the high standards set by TxDOT and is determined by TxDOT, through evaluation based upon the criteria set forth in the Code, the Rules and the RFP, to provide the best value to TxDOT and to be in the best interest of the State of Texas. See Section 5.0 for a description of the evaluation and post-selection process for this procurement.

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 Proposals 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 at https://portal.corridorprogram.com/sites/IH35E/RFP/ (the "Project Website"). CDs containing copies of the Reference Information Documents will also be available for Proposers to pick up at the TxDOT Dallas District Office.

TxDOT shall provide shortlisted Proposers with the password for the Project Website. The password for the RFP Documents on the Project Website will be provided separately to each shortlisted Proposer and each will be required to treat the 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"):

Mr. John Hudspeth, P.E.
Texas Department of Transportation
4777 E. Highway 80
Mesquite, TX 75150
E-mail: TDOT-DAL-PPP-I-35#E@txdot.gov

Proposers shall provide a copy of all correspondence sent to the Authorized Representative to:

Texas Department of Transportation
7745 Chevy Chase Drive, Bldg 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 Development Agreement 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(s) shall initially be the person(s) identified in the QS as the single point of contact for the Proposer. If a Proposer changes its designated representative(s) to receive documents, communications or notices in connection with the procurement subsequent to its submission of its Proposal, Proposer shall provide TxDOT's Authorized Representative with the name and address of such new designated representative(s). Failure to identify a designated representative in writing may result in a 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 (January 23, 2012) until July 13, 2012, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on May 25, 2012, the date the industry review package was issued, and ending on the earliest of (i) execution and delivery of the Development Agreement and the CMA, (ii) rejection of all Proposals by TxDOT or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

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

(b) Each Proposer shall designate one designated representative responsible for 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 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):

(i) each Proposer may set up meetings with railroads and Utility Owners that will be affected by the Project; provided 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 such meeting; Proposers 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.

(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 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"), Proposals, Development Agreement 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 Responses 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 Technical Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which Proposer fails to understand. Failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for error

or omission will be provided by TxDOT. Proposers shall submit, and TxDOT will respond to, requests for written clarification in accordance with this Section 2.3.1. To the extent responses are provided, they will not be considered part of the Development Agreement Documents or CMA Documents, nor will they be relevant in interpreting the Development Agreement Documents or CMA Documents, except as expressly set forth in the Development Agreement Documents and CMA Documents, as applicable.

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

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.5 or such later date as may be specified in any Addendum and shall: (i) be sequentially numbered; (ii) identify the document (i.e., the Development Agreement, the Technical Provisions, etc.); (iii) identify the relevant section number and page number (e.g., Development Agreement Section 5.2, pages 20-21) or, if it is a general question, so indicate; (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 ~~15~~a specified number of questions per RFP version issued, including the draft RFP, final RFP and Addenda~~, if any~~. For Addendum 7, Proposers will be limited to 10 questions. 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 ~~15~~10-question limitation. Requests for TxDOT to provide additional information or data regarding the Project that is not already contained in the Reference Information Documents will be excluded from the ~~15~~10-question limitation, provided, however, that such requests must follow the format set forth in Section 2.3 and be identified as a request for information or data.

Except with respect to one-on-one meetings, no telephone or oral requests will be considered, and e-mail requests must be followed up by a facsimile or other hard copy delivery. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification 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(s), and must

include the requestor's name, address, telephone and facsimile numbers, 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 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 Proposer and may allow Proposer to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if TxDOT determines that it is appropriate to provide a general response, TxDOT will modify the question to remove information that TxDOT determines is confidential. TxDOT may rephrase questions as it deems appropriate and may consolidate similar questions. TxDOT contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to Addenda, the last set of responses will be issued no later than the date specified in Section 1.5. 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:

Rebecca Blewett, Esq.
Associate General Counsel
Texas Department of Transportation

150 E. Riverside Drive, Fourth 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 Technical 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 Project 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 Technical Proposal Due Date or Price 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 Technical and Financial Proposal Letter (Form A-1) and Price Proposal Letter (Form A-2) 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 Addendum or response to requests for clarifications. TxDOT does not anticipate issuing any Addenda later than five Business Days prior to the Technical 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 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 Technical 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 1.5, 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 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 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, 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.

2.6.2 Observers During Evaluation

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

2.6.3 Public Disclosure of Proposal Documents

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

Proposers are advised that upon recommendation to the Commission of the selection of an apparent best value Proposer and in TxDOT's sole discretion, TxDOT may publicly release (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 Development 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 Proposers 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 Development Agreement, any Price Proposal submitted by Proposers 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 Development 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 publicly disclose 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 may be otherwise disclosed pursuant to the Proposer's express consent given in accordance with Section 2.6.1, TxDOT will submit a request for an opinion from the Office of the Attorney General prior to disclosing any such documents. 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 Proposer to monitor such proceedings and make timely filings. TxDOT may, but is not obligated to, make filings of its own concerning possible disclosure; however, TxDOT is under no obligation to support the positions of Proposer.

By submitting a Proposal to TxDOT in response to the RFP, Proposer consents to, and expressly waives any right to contest, the provision by TxDOT to the Office of the Attorney General of all, or representative samples of, the 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 labeled materials, whether the disclosure is deemed required by Law or by an order of court or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

All Proposers should obtain and thoroughly familiarize themselves with the Act, Code and any Rules applicable to the issue of confidentiality and public information. TxDOT will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under the Code, the Act or other Texas Laws, as to the interpretation of such Laws, or as to definition of trade secret. Proposer shall be solely responsible for all determinations made by it under applicable Laws. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to that Proposer's own circumstances.

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

2.7 TxDOT Studies and Investigations

TxDOT has completed substantial Site investigations. 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 Project 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 Developer's obligations under the Development Agreement and the CMA with TxDOT. Each Proposer also is responsible for monitoring the Project Website for information concerning the RFP and the procurement. The Technical and Financial Proposal Letter (Form A-1) and Price Proposal Letter (Form A-2) include 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 Development Agreement 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 Development Agreement 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 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 Interim Schematic ROW for purposes of inspecting in-place assets and determining Site conditions through non-destructive investigations, through the Proposal Due Date, provided that the conditions specified in Exhibits F-1 and F-2, as applicable, are met. This work may include surveys and site investigations, such as geotechnical, Hazardous Materials and Utilities investigations.

After conditional award has been made, the selected Proposer will be allowed access to the Project 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 Development Agreement Documents that are allowed prior to NTP2.

2.9 Errors

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

2.10 Improper Conduct

2.10.1 Non-Collusion

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

2.10.2 Organizational Conflicts of Interest

Section 27.8 of Title 43 of the Rules regarding organizational conflicts of interest apply 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, Proposer must make an immediate and full written disclosure to TxDOT that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, TxDOT may, at its sole discretion, cancel the procurement, disqualify Proposer with a conflict or take other action as necessary to mitigate the conflict. If Proposer was aware of an organizational conflict of interest prior to the award of the Development Agreement and the CMA and did not disclose the conflict to TxDOT, TxDOT may pursue remedies under the Development Agreement and CMA, including termination of the Development Agreement or, if applicable, CMA, for default.

2.10.3 Equitable Treatment of Proposers

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

2.11 Changes in Proposer's Organization

Proposers are advised that, in order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by TxDOT, Proposer's organization as identified in the QS must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the team members identified in its QS, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, Proposer shall submit to TxDOT a written request for approval of the change from TxDOT as soon as possible but in no event later than the applicable last date set forth in Section 1.5. Any such request shall be addressed to TxDOT at the address set forth in Section 2.2.1, accompanied by the information specified for such entities in the RFQ. If a request is made to allow deletion or role change of any Major Participant identified in its QS, Proposer shall submit such information as may be required by TxDOT to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and five copies of each request package. TxDOT is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein, in the Development Agreement Documents and, as applicable, the CMA Documents, a Proposer may not make any changes in the team members identified in its QS after the applicable last date set forth in Section 1.5. Between the applicable date set forth in Section 1.5 and execution of the Development Agreement and CMA, TxDOT, in its sole discretion, will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposer's control.

2.12 S.B. 1420 – Changes to Companies or Entities Filling Key Project Roles

In accordance with Section 33 of Senate Bill 1420 (2011 Tex. Sess. Law Serv. Ch. 1345), which amends various subsections of Section 223.203 of the Transportation

Code, a private entity responding to this RFP (i.e., a Proposer) must identify companies that will fill the roles of Key Subcontractors. Furthermore, any private entity selected for the Project may not make changes to the Key Subcontractors so identified unless the original company or entity: (a) 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; (b) voluntarily removes itself from the team; (c) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or (d) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the Project. If the Proposer makes team changes in violation of these requirements, any cost savings resulting from the change accrue to the state and not to the Proposer. Proposer shall identify all Key Subcontractors on Form Q. Note that all teaming agreements and subcontracts must be executed and provided to TxDOT before the execution of the Development Agreement 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 Development Agreement Documents and the CMA Documents. The selected Proposer will be required to submit a "Texas Sales and Use Tax Exemption Certification" to a seller for exempt items. The referenced form is available online to the public through the Texas Comptroller's website.

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPTS

3.1 Alternative Technical Concepts

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

ATCs eligible for consideration hereunder shall be limited to those deviations from the technical requirements of the as-issued Development Agreement 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 change in the aesthetic or landscaping provisions set forth in Volume II, Book 2 of the RFP, (b) a reduction in Project scope, performance or reliability; (c) an increase in the amount of time required for Substantial Completion of the Work under the Development Agreement; or (d) an increase in the Development Price under the Development Agreement. ATCs that, if implemented, would require further environmental evaluation of the Project, may be allowed, provided that Developer will bear the schedule and cost risk associated with such additional environmental evaluation. If Developer is not able to obtain the approvals necessary to implement the ATC, Developer will be obligated to develop the Project in accordance with existing approvals without additional cost or extension of time.

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

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

3.2 Pre-Proposal Submission of ATCs

Proposer may submit ATCs for review to TxDOT's Authorized Representative specified in Section 2.2.1, until the applicable last date and time for submittal of ATCs identified in Section 1.5. Notwithstanding the foregoing, Proposers that have submitted ATCs prior to the applicable last date and time for submittals of ATCs identified in Section 1.5 may revise and resubmit those ATCs to account for avoided ROW required to be described pursuant to Section 3.2.1(r). The deadline for submission of such revised ATCs is set forth in Section 1.5. In addition, a Proposer may submit a new ATC no later than the last date and time set forth in Section 1.5, provided, however, that such new ATC(s) must identify ROW parcel reductions as provided in Section 3.2.1(r). TxDOT will not accept any ATCs prior to this latter date unless such ATCs contain a ROW savings required to be described pursuant to Section 3.2.1(r).

Proposer may submit ATCs for both the base scope and/or Options corresponding with Proposer's Work Package. All ATCs shall be submitted in writing, with a cover sheet identifying Proposer and stating "IH 35E Managed Lanes – 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, the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers) the Work Package the ATC applies to, and whether the ATC is for the base scope or an Option corresponding with Proposer's Work Package;

(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 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 and maintenance;

(l) if and what additional right of way will be required to implement the ATC (and Proposers are advised that they shall (i) be solely responsible for the acquisition of any such right of way, including the cost thereof and obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order for time or money as a result of Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional right of way; and (iii) not be entitled to any Change Order for time or money as a result of any delay, inability or cost associated with the acquisition of such right of way);

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

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

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

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

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

(r) a description (including parcel numbers) of any not yet acquired Draft Interim Schematic ROW that would not be required to be acquired if the ATC were implemented. Any such avoided properties must be complete parcels. If the parcel is still required for the Ultimate Project and is within the area described as Ultimate in Section 1.2 of the Technical Provisions, the proposed avoided properties will be reviewed based on the impact that the proposed avoided property would have on Utility Adjustments.

3.2.2 Proposer shall not make any public announcement or disclosure to third parties concerning any ATC until after pre-approval (including conditional pre-approval) has been obtained. Notwithstanding the foregoing, Proposers may request meetings with Stakeholders pursuant to Section 2.2.3(d) to discuss ATCs, provided that such meetings shall take place only (a) with TxDOT's prior written consent, in its sole discretion, (b) with TxDOT in attendance, and (c) subject to any additional limitations set forth by TxDOT in the written consent. Following pre-approval (including conditional pre-approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify TxDOT in writing of its intent to take such action, including details as to date and participants, and obtain TxDOT's prior written consent, in its sole discretion, to do so.

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

3.2.4 If TxDOT approves an ATC that identifies any not yet acquired Draft Interim Schematic ROW that would not be required to be acquired if the ATC were implemented, Proposer shall pay for and be responsible for, and bear the full risk of, meeting any conditions attached to the ATC approval, including obtaining third party approvals, and for completing the Final Design such that the identified Draft Interim Schematic ROW is not required to be acquired. If the Proposer does not meet the conditions or does not complete the Final Design to avoid the identified parcels, Proposer shall be responsible for obtaining those parcels at its own cost and its own

risk, in accordance with the provisions regarding Developer Designated ROW. In such case the Proposer shall not be entitled to any additional time or compensation.

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

3.3 TxDOT Review of Pre-Proposal Submission of ATCs

TxDOT may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.5, provided that TxDOT has received all required and requested information regarding such ATC.

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

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

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

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

(d) the submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to be within the requirements of the RFP requirements; or

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

In addition, if TxDOT determines that implementation of the ATC will decrease overall project costs but will result in an increase in TxDOT's costs, TxDOT will provide in the ATC approval letter the amount of such increased TxDOT's costs as estimated by TxDOT. Such amount shall be the ATC cost adjustment and shall be added to the Development Price and Maintenance Price for evaluation purposes only in accordance with Section 5.5.2.

If TxDOT determines that implementation of the ATC will eliminate the need to acquire as yet unacquired Draft Interim Schematic ROW as identified by the Proposer pursuant to Section 3.2.1(r), TxDOT will provide in the ATC approval letter an Available Public Funds Amount Adjustment. The Available Public Funds Amount Adjustment will be based on a percentage of TxDOT's estimated savings relating to acquisition costs, relocation costs, and damages associated with not having to acquire the parcel. In order to qualify for this adjustment, any such avoided properties must be complete parcels and not require a second take. If an ATC receives an Available Public Funds Amount Adjustment, the Proposer may use the Available Public Funds Amount Adjustment to determine the Adjusted Available Public Funds Amount for each Work Package in which the ATC is applicable to the base scope (and not an Option) of that Work Package and is included in the Proposal. If the Proposer becomes the successful Proposer, any such parcels will be included in Appendix 4 of Exhibit 2 to the Development Agreement.

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

Approval of an ATC will constitute a change in the specific requirements of the Development Agreement Documents or CMA Documents, as applicable, associated

with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to TxDOT's determinations regarding acceptability of ATCs and any ATC cost adjustments made in accordance with this Section 3.3 and Section 5.5.2.

TxDOT's rejection of a pre-Proposal submission of an ATC will not entitle Proposer to an extension of the Technical Proposal Due Date, Price 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 Technical Proposal Due Date, Price Proposal Due Date or any other date in connection with this procurement.

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

3.4 Incorporation of ATCs in the Development Agreement Documents and CMA Documents

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

Prior to execution of the Development Agreement and CMA, ATCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected Developer for possible incorporation in the Development Agreement Documents or CMA Documents, as applicable, during negotiation of the final terms of the Development Agreement or CMA pursuant to Section 5.11.1. In addition, following execution of the Development Agreement and CMA, ATCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected Developer as a TxDOT Change Order in accordance with the Development Agreement 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 Act, applicable Law, and Section 2.6 of the ITP. By submitting a Proposal, Proposer agrees, if it is not selected, to disclosure of its work product to the successful Proposer.

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

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal, Financial Proposal and Price Proposal meeting the requirements set forth in Exhibits B, C-1 and C-2, respectively. The Technical Proposal, Financial Proposal and Price Propsal shall be submitted in recyclable, low cost sealed containers in the format and manner set forth in Sections 4.2, 4.3 and 4.4, respectively.

4.1.1 Proposal Due Date

The completed Technical Proposal and Financial Proposal shall be delivered no later than the Technical Proposal Due Date and its respective time specified in Section 1.5. The completed Price Proposal shall be delivered no later than the Price Proposal Due Date and its respective time specified in Section 1.5.

4.1.2 Signatures Required

The Technical and Financial Proposal Letter (Form A-1) and Price Proposal Letter (Form A-2) shall be signed in blue ink by all parties making up Proposer, and shall be accompanied by evidence of signatory authorization as specified in Forms A-1 and A-2.

4.1.3 Certified Copies

Where certified copies of the Proposal are required, Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark oversigned by the Proposer's designated representative(s).

4.1.4 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if TxDOT determines that Proposer did not follow the foregoing instructions. It is Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the 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 ITP exhibits, it may be disqualified. Any Proposal that contains a material alteration, as determined by TxDOT in its sole 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 sole discretion. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

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

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

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

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

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

(d) If Proposer attempts to limit or modify the Proposal Security, if the Proposal Security is not provided (*see* Exhibit C-2, Section 4.2), and/or if requested information deemed material by TxDOT is not provided; and

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

4.1.6 Format

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

An 8 ½ by 11-inch format is required for typed submissions and an 11 by 17-inch format is required for drawings, except that any support letters provided from parties outside the United States may be submitted in ISO A4 format and design drawings may be submitted on scroll mats not to exceed 34 inches in width (and such design drawings shall be submitted on CD or DVD in Adobe Acrobat (.pdf) format and in Bentley Microstation format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and manipulate the schedule in Primavera.

Submittals must be bound with all pages in a binder sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than 12-point, other than in tables and figures which may be prepared using ten-point font size. 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 Technical Proposal and Financial Proposal shall be submitted and delivered in sealed containers no later than the Technical Proposal Due Date and time specified in Section 1.5. The completed Price Proposal shall be submitted and delivered in sealed envelopes no later than the Price Proposal Due Date and time specified in Section 1.5. All components of the Proposal are to be delivered to TxDOT at the following address:

Texas Department of Transportation
4777 E. Highway 80

Mesquite, TX 75150
Attn: John Hudspeth, P.E.
E-mail: John.Hudspeth@txdot.gov

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

Proposers shall submit one original and 15 certified copies of the Technical Proposal consisting of the required items described in Exhibit B. All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more CDs, shall be packaged in a single container, clearly addressed to TxDOT as provided herein, and labeled "[Proposer Name]: Original Technical Proposal for the IH 35E Managed Lanes Project." The containers that include the required hard copies of the Technical Proposal shall be labeled "[Proposer Name]: Copies of Technical Proposal for the IH 35E Managed Lanes Project."

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

4.3 Financial Proposal

Proposers shall submit one original and six certified copies of the Financial Proposal consisting of the required items described in Exhibit C-1. All of the binders comprising the original Financial Proposal, together with an electronic copy on one or more CDs, shall be packaged in a single container, clearly addressed to TxDOT as provided herein, and labeled "[Proposer Name]: Original Financial Proposal for the IH 35E 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 IH 35E Managed Lanes Project."

4.4 Price Proposal

4.4.1 General

One original and six certified copies of the Price Proposal (except for the Proposal Security (see Section 4.4.2), as well as one digital copy in Adobe Acrobat (.pdf) on a CD, shall be delivered to TxDOT at the address identified in Section 4.1.7 by the Price Proposal Due Date. 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 IH 35E 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 Pricing Forms for the IH 35E Managed Lanes Project."

4.4.2 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 IH 35E Managed Lanes Project."

4.4.3 Options

TxDOT has defined several Options in Work Packages 2, 3 and 4. If Proposer bases its Proposal on any of Work Packages 2, 3 or 4, then Proposer must incorporate into its Price Proposal all of the Options corresponding to its respective Work Package, as described in Exhibit C-2. Proposer is not required to and, therefore, shall not address the Options in its Technical Proposal. The Options are further described in Section 1.4.2 and Exhibit I.

TxDOT shall have the option to include any of the Options in the Work by issuance of written notice in accordance with Section 13.2.1 of the Development Agreement.

4.5 Currency

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

4.6 Modifications, Withdrawals and Late Submittals

4.6.1 Modifications to a Proposal

A Proposer may modify its Technical Proposal and Financial Proposal in writing prior to the specified time due on the Technical Proposal Due Date. A Proposer may modify its Price Proposal prior to the specified time due on the Price Proposal Due Date. The modification shall conform in all respects to the applicable requirements for submission of the corresponding component of the 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, C-1 and C-2. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

4.6.2 Withdrawal and Validity of Proposals

Proposer may withdraw its Proposal at any time prior to the time due on the Price 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 Technical Proposal or Financial Proposal will not prejudice the right of a Proposer to file a new Technical Proposal or Financial Proposal, as applicable, provided that it is received before the time due on the Technical Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Price 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 Price 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 Development Agreement or CMA for the Project will be awarded by TxDOT pursuant to the RFP (ii) TxDOT has awarded the Development Agreement and CMA to another Proposer and has received the executed Development Agreement and CMA and other

required documents, (iii) TxDOT does not intend to award the Development Agreement and CMA 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 extend the validity of its Proposal for the period until 270 days after the Price Proposal Due Date.

Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

4.6.3 Late Proposals

TxDOT will not consider any late Proposals. Technical Proposals, Financial Proposals and/or any corresponding modification or withdrawal requests received after the time due on the Technical Proposal Due Date, and Price Proposals and/or corresponding modification requests received after the time due on the Price Proposal Due Date will be returned to Proposer without consideration or evaluation.

4.7 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-2, 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; or (iii) it is selected as the apparent best value Proposer, but fails to provide the documents required under Sections 6.1 and 6.1.1.

Any Proposal that contains a material alteration, as determined by TxDOT, in its sole discretion, to the ITP forms, including any material alteration to the form of Proposal 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 Proposer's Proposal Security.

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

4.8 Acceptance of Delivery by TxDOT

TxDOT will provide separate receipts for Technical Proposals, Financial Proposals and Price Proposals that are timely delivered to TxDOT as specified herein.

4.9 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before final award and execution of the Development Agreement 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.

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 the Technical Proposals and Financial Proposals, TxDOT will ~~open the envelopes containing~~review Form T-1 ("Work Package Identification") and place each Technical Proposal and Financial Proposal in a separate group for evaluation purposes based on its respective Work Package, as identified in Form T-1. Each Technical Proposal and Financial Proposal will then be reviewed for responsiveness and against the pass-fail criteria described in ~~Section 5.3.~~ Sections 5.3.1, 5.3.2 and 5.3.3. Upon receipt of the Price Proposals, TxDOT will review the Price Proposals for responsiveness and against the pass-fail criteria described in Section 5.3.4.

~~No less than three Proposals~~Responsive Proposals that score passes on all the pass-fail criteria and whose Development Prices are less than or equal to their respective Adjusted Available Public Funds Amounts will be evaluated further ~~and scored~~ (as described in Sections 5.4, 5.5 and 5.6) and be eligible for ~~purposes of determining the apparent best value Proposal and second and third highest scoring Proposals. If only~~ best value selection and award. However, if four Proposals qualify for further evaluation and one Proposal is ~~submitted for~~based on the Work Package ~~offering~~with the ~~smallest relative~~lowest base scope ~~within the Adjusted Available Public Funds Amount~~relative to the other three Proposals (whereby ~~the~~that Proposal is the clear 4th place Proposal), that Proposal will not be evaluated further but will be eligible for the payment for work product as described in Section ~~6.3 so long as it is deemed responsive. If more than one Proposal is submitted for the Work Package offering the smallest relative base scope within the~~6.3.

Proposals whose Development Prices exceed their respective Adjusted Available Public Funds ~~Amount (whereby no Proposal is the clear 4th place Proposal), all Proposals will be evaluated and scored as described in Sections 5.4, 5.5 and 5.6.~~Amounts will not be evaluated further and will not be eligible for best value selection and award.

Notwithstanding the foregoing, if a Proposal for Work Package 4 has a Development Price in excess of ~~the~~its corresponding Adjusted Available Public Funds Amount ~~for Work Package 4,~~, that Proposal ~~will not~~may be further evaluated and ~~will not be~~ eligible for selection or award ~~unless~~only if Proposal Revisions are requested pursuant to Section 5.8. Such Proposal ~~will~~would be eligible for the Payment for Work Product as described in Section 6.3 so long as it is deemed responsive.

The evaluation and best value selection process may, at TxDOT's sole discretion, include a request for Proposal Revisions, and may include a limited negotiations phase with the selected Proposer(s). The steps in the process and evaluation criteria are set forth in Sections 5.3 through 5.10. The evaluation and best value selection process is subject to modification by TxDOT in its sole discretion.

The Proposal evaluation and best value selection process will involve the following steps:

1. TxDOT evaluation committees will:
   - (a) For all Proposals, perform the pass-fail and responsiveness review.
   - (b) For ~~no less than three Proposals (~~responsive Proposals that score passes on all the pass-fail criteria and whose Development Prices are less than or equal to their respective Adjusted Available Public Funds Amounts (except for a Proposal that would clearly rank 4th,

as described above), perform qualitative evaluations of their respective Project Development Plans, Financial Proposals and Price Proposals.

(c) Provide a recommendation to TxDOT senior management regarding the apparent best value Proposal and second and third ~~highest scoring Proposals.~~(and fourth, if applicable) best value Proposals. A Proposal's rank will be based, first, on the Proposal's base scope relative to all Proposals and, second, on the Proposal's Total Proposal Score relative to the scores of other Proposals (if any) offering the same base scope. In all cases, Proposals offering larger base scopes will rank higher than Proposals offering relatively smaller base scopes.

2. TxDOT senior management will review and consider the recommendations from the TxDOT evaluation committees, and will provide a recommendation for conditional award to the Commission. The Commission will issue notice of conditional award after considering the recommendations received.

The details of the evaluation and best value selection process are set forth more fully in this Section 5.

5.1 Organization of the TxDOT Evaluation Committee and Subcommittees

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

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 advisors, including TxDOT representatives and outside consultants who will offer advice on the technical, financial and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the ESRC and subcommittees in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, observers, including representatives from federal and other 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 for the largest base scope. The Price Score will represent up to 85 points of the Total Proposal Score, and the Technical Score will represent up to 15 points of the Total Proposal Score. For purposes of calculating Total Proposal Scores, each Proposal will be scored relative to other Proposals (if any) submitted for the same Work Package and not against Proposals submitted for other Work Packages. The Total Proposal Scores of Proposals submitted for smaller Work Packages will be discounted relative to Proposals submitted for larger Work Packages. The Total

Proposal Score(s) of the Proposal(s) submitted for the largest Work Package will not be discounted.

The determination of the apparent best value Proposal offering the largest base scope shall be based on the highest Total Proposal Score computed using the following formula:

Total Proposal Score (max. 100 points) = Price Score (max. 85 points) + Technical Score (max. 15 points) – adjustment factor

where:

- adjustment factor for Proposal(s) submitted for Work Package offering the largest base scope = 0 pts;
- adjustment factor for Proposal(s), if any, submitted for Work Package offering the second largest base scope = 16 pts; and
- adjustment factor for Proposal(s), if any, submitted for Work Packages offering the third largest base scope = 31 pts.

The Price Score component of the Total Proposal Score will be calculated for Proposals submitted for the same Work Packages based on the following formula:

Base Price Score + Options Price Score + Maintenance Price Score

where:

Base Price Score

- Base Price Score = (Lowest Base Price Value/Base Price Value) * 70
- Lowest Base Price Value = Lowest Base Price Value submitted by a Proposer for the same Work Package as determined pursuant to Section 5.5.
- Base Price Value = Proposer's Base Price Value as determined pursuant to Section 5.5.

Options Price Score

- Options Price Score = (Lowest Options Price Value/Options Price Value) * 10
- Lowest Options Price Value = Lowest Options Price Value submitted by a Proposer for the same Work Package as determined pursuant to Section 5.5.
- Options Price Value = Proposer's Options Price Value as determined pursuant to Section 5.5.

There are no Options for Work Package 1. For purposes of calculating the Price Score, any Proposal for Work Package 1 will receive the maximum Options Price Score of ~~5~~10 points.

Maintenance Price Score

- Maintenance Price Score = (Lowest Maintenance Price Value/Maintenance Price Value) * 5
- Lowest Maintenance Price Value = Lowest Maintenance Price Value submitted by a Proposer for the same Work Package as determined pursuant to Section 5.5.
- Maintenance Price Value = Proposer's Maintenance Price Value as determined pursuant to Section 5.5.

The Technical Score will be calculated as described in Section 5.4.3.

5.3 Pass/Fail and Responsiveness Evaluation

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

5.3.1 Technical Proposals

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

(a) The business form of Proposer, the proposed Developer and any entities that will have joint and several liability under the Development Agreement or CMA, as applicable, or that will provide a guaranty (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 Development Agreement Documents or CMA Documents, as applicable.

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

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

(d) Technical Proposal as outlined in Exhibit B meets all applicable RFP requirements.

5.3.2 Schedule Evaluations

The Preliminary Project Baseline Schedule and Form O will be evaluated on a pass/fail basis based on the Proposer's commitment to meet or beat "TxDOT Last Allowable Date for Substantial Completion" for the Project as set forth in Form O. In addition, the Preliminary Project Baseline Schedules will be evaluated for reasonableness in comparison to the technical solution provided and for compliance with the requirements listed in Exhibit B, Section 4.3.2.

5.3.3 Financial Proposals

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

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

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

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

5.3.4 Price Proposals

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

(a) Proposer has indicated using Form T-2 ("Development Price Verification") that either (i) Proposer's Development Price is equal to or less than the Adjusted Available Public Funds corresponding to Proposer's respective Work Package (as set forth in Section 1.4.2), or (ii) Proposer has submitted a Proposal based on Work Package 4 and Proposer's Development Price is greater than the Adjusted Available Public Funds for Package 4 (as set forth in Section 1.4.2).

(b) Proposer has provided a Development Price using Forms M-1, M-1.1 and M-1.2 that complies with the requirements of Exhibit C-2, Section 3.1.

(c) Proposer has provided the Cash Flow Adjustment Table/Maximum Payment Curve using Form M-2.1, M-2.2, M-2.3 or M-2.4, as applicable, for the submitted Work Package that complies with the requirements of Exhibit C-2, Section 3.1.

(d) Proposer has provided a Maintenance Price using ~~Forms~~Form N-1 ~~and N-1.1~~ that complies with the requirements of Exhibit C-2, Section 3.2.

(e) Proposer has provided an Option Price using Forms M-3 and M-3.2, in addition to an individual Form M-3.1(a) or Form M-3.1(b), as applicable, for each Option included in the submitted Work Package, and all Forms comply with the requirements of Exhibit C-2, Section 3.3. Forms M-3, M-3.1(a), M-3.1(b) and M-3.2 are not required if the Proposer submits Work Package 1.

(~~g~~f) Proposer has provided a Maintenance Option Price using Form N-2, in addition to an individual Form N-2.1 for each Option included in the submitted Work Package, and all Forms comply with the requirements of Exhibit C-2, Section 3.4. Forms N-2 and N-2.1 are not required if the Proposer submits Work Package 1.

5.3.5 (g) Proposer has delivered Proposal Security in the form of a complete, properly executed proposal bond that complies with the requirements of Exhibit C-2, Section 4.2.TxDOT Right to Exclude Proposals from Consideration or to Waive Mistakes

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

5.4 Evaluation of Project Development Plan by DPES

Upon receipt of the Technical Proposals, the Project Development Plans of no less than three Proposals (if appropriate; see above Section 5.0) will be evaluated by the DPES based on the evaluation factors and subfactors set forth below. In addition, in evaluating the Project Development Plan against the evaluation factors and subfactors, the DPES will consider the extent to which the Proposal meets the objectives stated below and includes any improvements over the requirements of the Development

Agreement Documents and CMA Documents, such as additional benefits and/or value to TxDOT and the public.

Value-added concepts as described in Exhibit B, Section 4.1(2) shall be reviewed and evaluated based on the Proposer's creativity and innovativeness to create a quality facility that meets or exceeds the requirements and objectives of TxDOT.

5.4.1 Project Development Plan Evaluation Factors

The evaluation factors for the Project Development Plan, in descending order of importance, are as follows:

(a) Technical Solutions;
(b) Traffic Management During Construction;
(c) Schedule;
(d) Quality Program; and
(e) Capital Maintenance.

Note that these evaluation factors are also the components of the Project Development Plan, the submittal requirements for which are described in Exhibit B, Section 4.0. Subfactors and their relative weightings are listed in Sections 5.4.1.1 through 5.4.1.5.

The evaluation factors 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 5.4.1.5. These goals (the same Project goals listed in Section 1.3) 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 will guide TxDOT's assessment of the evaluation factors and subfactors.

5.4.1.1 Technical Solutions

Goals: Deliver as much scope as possible with available construction funds, minimize temporary improvements and minimize ROW impacts.

The Technical Solutions evaluation subfactors are as follows:

(a) Group 1: Design and Construction Plan – Bridges and Surface Structures

- Overall understanding of the widening and rehabilitation Work with respect to existing bridge elements.
- Solution for reducing maintenance costs.
- Solution for minimizing negative impacts to existing facilities.
- Solution for maximizing the scope of the Ultimate Project.
- Solution for minimizing the cost of future improvements

(b) Group 2: Design and Construction Plan – Roadways

- Overall understanding of the Work with respect to the incorporation of managed lanes, additional general purpose lanes and other roadway improvements associated with the Project.
- Solution for minimizing right of way impacts.
- Solution for reducing temporary improvements.
- Solution for minimizing the cost of future improvements.

The groups listed and their respective subfactors are of equal importance.
See Exhibit B for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.1.2 Traffic Management During Construction

Goals: Maintain mobility within the Project area and minimize the inconvenience to surrounding communities and businesses during construction in an environmentally sensitive manner.
The evaluation subfactors for Traffic Management During Construction are as follows:

(a) Group 1: Traffic Control/Traffic Management Plan

- Overall understanding of Project-specific need to minimize impacts and disruptions to the travelling public and surrounding communities during construction.
- Approach to maximizing the number of available lanes and ensuring travel time certainty for the traveling public.
- Approach to providing adequate shoulders and safety zones.
- Approach to minimizing the number of traffic control configurations.

(b) Group 2: Public Information and Communications

- Overall understanding of Project-specific need for effective communications and public outreach during construction.
- Approach to ensuring two-way communications between Developer and the travelling public.
- Approach to ensuring two-way communication between Developer and surrounding businesses and communities.

The groups are listed in descending order of importance, however, the subfactors within each group are of equal importance.
See Exhibit B for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.1.3 Schedule

Goal: Achieve the earliest possible completion of the entire Project.
The evaluation subfactors for key schedule dates are as follows:

(a) Early completion of the South Segment Improvements.
(b) Early completion of Lake Lewisville Improvements.
(c) Early completion of remaining elements of the Project.

The subfactors are listed in descending order of importance.
See Exhibit B for details regarding the specific information concerning this factor 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 and maintenance given available funds.
- Maintain a safe environment for all Project personnel and the public at all times.

- Maximize the utilization of DBEs during the design, construction and maintenance phases of the Project.

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

(a) Group 1: Preliminary Project Management Plan

- Overall approach to the individual components of the Preliminary Project Management Plan.
- Level of integration into Proposer's organization of specialty subcontractors and subconsultants.
- Approach to integrating partnering techniques throughout all levels of Proposer's organization.
- Extent to which Proposer organization empowers personnel at various levels to make decisions in coordination with TxDOT counterparts, and incorporates a system to elevate issues accordingly to ensure rapid decisions.

(b) Group 2: Preliminary Quality Management Plan

- Proposer's Preliminary Quality Management Plan complies with ISO standards for quality systems, quality plans and quality audits.
- Extent to which Proposer integrates TxDOT into Proposer's quality management system for the Project.
- Extent to which Proposer enables TxDOT to monitor, audit and measure Developer's performance in the management of design, construction and capital maintenance.

The groups listed and their respective subfactors are of equal importance.
See Exhibit B for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.1.5 Preliminary Capital Maintenance Plan

Goals: Achieve the highest degree of quality possible in design, construction and maintenance given available funds.

The evaluation subfactors for the Preliminary Capital Maintenance Plan are as follows:

(a) Preliminary Capital Maintenance Plan complies with relevant requirements in the Technical Provisions.

(b) Approach to providing safe and efficient responses to capital maintenance needs of the Project, the adjacent communities and the traveling public

(c) Approach to providing effective interfacing, communication and coordination with separate contractors, Stakeholders and other third parties.

(d) Approach to providing efficient transition of capital maintenance activities and asset handover from Maintenance Contractor to TxDOT upon completion of capital maintenance obligations.

The subfactors listed are of equal importance.
See Exhibit B for details regarding the specific information concerning this factor to be submitted as part of the Project Development Plan.

5.4.2 Evaluation Guidelines

The DPES will review the Project Development Plan with reference to the evaluation factors and goals specified in Section 5.4.1, in accordance with the guidelines provided in this Section 5.4.2 and assign a qualitative rating for each of the evaluation subfactors in accordance with Table 5.1.

Table 5.1

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

Meets Minimum	The Proposal meets stated requirements/objectives and provides satisfactory assurance that the minimum level of quality will be achieved. There may be questions about the likelihood of success and there is some risk that Proposer may fail to satisfy the requirements of the Development Agreement Documents or CMA Documents, as applicable. Weaknesses are correctable or acceptable per minimum standards.

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

5.4.3 Technical Score

During the evaluation, each subfactor as described in Section 5.4.1 will be assigned a consensus rating by DPES, which will be converted to points. The points for each subfactor will be summed to determine the Proposal's score for each of the corresponding evaluation factors. The score of each of the evaluation factors will then be summed to arrive at the total evaluation score for the Project Development Plan, with 100 maximum possible points. The Technical Score will be calculated using the following formula:

Technical Score = total evaluation score (maximum 100) * (0.15)

5.5 Evaluation of Price Proposal by PPES

After completion of the pass/fail and responsiveness review, the Price Proposals of no less than three Proposers (if appropriate; see above Section 5.0) will be evaluated by the PPES. The PPES 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 Base Price Value will be the present value of the Development Price as determined in accordance with Section 5.5.1, plus the value of the ATC cost adjustments as determined in accordance with Section 5.5.2, less any applicable Available Public Funds Amount Adjustments. The Options Price Value will be the present value of the Option Price as determined in accordance with Section 5.5.4 plus the value of the ATC cost adjustments for Options as determined in accordance with Section 5.5.5. The Maintenance Price Value will be the sum total of the present value of the Maintenance Price as determined in accordance with Section 5.5.3 and the present value of the total Maintenance Option Price as determined in accordance with Section 5.5.6. The present value determinations are for evaluation purposes only and will not affect the Development Price, Option Price or Maintenance Price submitted in each Proposal.

5.5.1 Present Value of the Development Price

The present value of the Development Price will be the Development Price as set forth in Form M-1 discounted monthly using a discount rate of 5% per annum, using the discount factors shown in each Form M-2.

5.5.2 Value of ATC Cost Adjustments

The ATC cost adjustment will be the costs identified by TxDOT pursuant to Section 3.3 regarding the use of an ATC in a Proposal, and set forth on Form M-1.2.

5.5.3 Present Value of the Maintenance Price

The present value of the Maintenance Price will be the Maintenance Price for the maximum term of the CMA as set forth in 2012 dollars (as of Price Proposal Due Date) on Form N-~~1.~~1, inflated and discounted as follows.. The Annual Lump Sum values set

forth on Form N-1 will be inflated using a 3.0% inflation rate per annum and discounted annually at a discount rate of 5% per annum, based upon commencement of the Initial Maintenance Term two years after either (a) 1,580 days following NTP1 (for Work Packages 1, 2, or 3) or (b) Final Acceptance 1,398 days following NTP1 (for Work Package 4).

5.5.4 Present Value of the Option Price

The present value of the Option Price will be the Option Price set forth in Form M-3, which shall based solely on the Options included in the Work Package upon which the Proposal is based, discounted monthly using a discount rate of 5% per annum, using the discount factors shown in each Form M-3.1(a) or (b), as applicable. Form M-3 is not required if Work Package 1 is submitted.

5.5.5 Value of ATC Cost Adjustments for Options

The ATC cost adjustment will be the costs identified by TxDOT pursuant to Section 3.3 regarding the use of an ATC relating to an Option in a Proposal, and set forth on Form M-3.2.

5.5.6 Present Value of the Maintenance Option Price

The present value of the Maintenance Option Price will be the sum of the Maintenance Option Prices for all Options included in the Work Package upon which the Proposal is based, ~~as set forth under the Total Cost column of Form N-2.~~inflated and discounted as follows. The sum of the Annual Lump Sum values set forth on Form N-2 will be inflated using a 3.0% inflation rate per annum and discounted annually at a discount rate of 5% per annum, based upon commencement of the Initial Maintenance Term two years after either (a) 1,580 days following NTP1 (for Work Packages 1, 2, or 3) or (b) Final Acceptance 1,398 days following NTP1 (for Work Package 4).

5.6 ESRC Evaluation of Technical and Financial Proposals

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

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

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

5.7 Requests for Clarification

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

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

5.8 Requests for Proposal Revisions

Depending on the quality of Proposals or in the event that (i) all Proposals received are based on Work Package 4 and (ii) each Development Price included in such Proposals exceeds the maximum Adjusted Available Public Funds amount set forth in Section 1.4.2 for Work Package 4, TxDOT may, at any time after receipt of Proposals and prior to final award and execution of the Development Agreement and the CMA, determine that it is appropriate to request changes to the Proposals ("Proposal Revisions"). Before requesting 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 Part 636.501. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP, shall mean the original Proposal, as modified by the Proposal Revision.

Upon receipt of Proposal Revisions, the ESRC, with assistance from the appropriate subcommittees, 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 determined a Total Proposal Score for each Proposal, assigned rankings to the Proposals based on the Total Proposal Scores and the relative base scopes (whether based on the original Proposals or Proposal Revisions), and determined the apparent best value, the ESRC will present its recommended rankings to a Steering Committee comprised of the Chief Planning and Projects Officer, the TxDOT's Chief Financial Officer and the Dallas District Engineer.

5.10 Recommendation to Commission

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

Upon receipt of recommendations from the Steering Committee, the TxDOT Executive Director or his designee will review the recommendations and may accept the recommendation, reject the recommendation and cancel the procurement, or request the Steering Committee to reconsider the recommendation. If the Executive Director accepts the Steering Committee's recommendation, the Executive Director will make a recommendation to the Commission regarding the rankings of Proposers and designation of the best value. The Commission will evaluate the recommendations and will determine whether to proceed with award of a Development Agreement and CMA to the apparent best value Proposer or take any other action. The Commission's decision

of conditional award of the Development Agreement and CMA to the apparent best value Proposer will be made in a public hearing and will be considered a public announcement of intent to award the Development Agreement and CMA by the Commission.

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

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

5.11.1 Negotiation of Development Agreement Documents and CMA Documents

If authorized by the Commission, TxDOT will proceed with the apparent best value Proposer to finalize the Development Agreement Documents and CMA Documents. TxDOT may agree to limited negotiations with the apparent best value Proposer to clarify any remaining issues regarding scope, schedule, financing or any other information provided by that Proposer. In addition, limited negotiations may be conducted as necessary to incorporate into the Development Agreement Documents or CMA Documents the ideas and concepts of unsuccessful Proposers' work product. Any decision to commence limited negotiations is at TxDOT's sole discretion. By submitting its Proposal, each Proposer commits to enter into the form of Development Agreement and CMA included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of Development Agreement and CMA indicates is required from the Proposal.

If a Development Agreement or CMA satisfactory to TxDOT cannot be negotiated with the apparent best value Proposer, TxDOT will formally end negotiations with that Proposer and take action consistent with the direction provided by the Commission. Such action may include (a) requiring the best value Proposer to enter into the Development Agreement and CMA in the forms included in the RFP, without variation except to fill in blanks and include information that the forms of the Development Agreement and CMA indicate is required from the Proposal, (b) rejection of all Proposals, (c) issuance of a request for Proposal Revisions to Proposers, but only if the ATCs of one or more Proposers have not been revealed to the original successful Proposer, or (d) proceeding to the next most highly ranked Proposal to attempt to negotiate a Development Agreement and CMA 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 4.7 if Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with TxDOT or insists upon terms or conditions for any documents to be negotiated or provided by Developer hereunder that are inconsistent with the Development Agreement Documents or CMA Documents.

5.12 Post-Selection Deliverables

5.12.1 Project Management Plan

During the period between conditional award and final award of the Development Agreement, the selected Proposer may, but is not required to, submit all or portions of

the Project Management Plan for review, comment and possible pre-approval. TxDOT encourages such early submittal(s), and will attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the Development Agreement, but cannot guaranty that it will in fact undertake such review or provide comments or approval.

5.12.2 Documents To Be Submitted Following Conditional Award

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

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

(b) If not previously submitted, a copy of the final organizational documents for Developer and, if Developer is a limited liability company, partnership or joint venture, for each member or partner of Developer. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal. If Developer is a joint venture, attach a letter from each joint venturer stating that the joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligation of the Developer under the Proposal and under any contract arising therefrom.

(c) If security for Proposer's obligations under the Development Agreement is required by TxDOT pursuant to Exhibit C-1, Section 2.0(3), the form of the proposed guarantees, which shall be in form and substance acceptable to TxDOT, in its sole discretion.

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

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 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 Development Agreement and Section 17.1 of the CMA. The EPDs shall include detailed information from all subcontractors identified in the Proposal and any other potential subcontractors who provided data upon which the Proposal is based. The documents shall be in sealed containers labeled "[Proposer Name]: Escrowed Proposal Materials for the IH 35E Managed Lanes Project." 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 Development Agreement 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 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 Development Agreement and CMA, the EPDs will be available for joint review only as specified in Development Agreement Section 21.1.1 and CMA Section 17.1.1.

SECTION 6.0 FINAL AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of Development Agreement and CMA

The following are conditions precedent to final award of the Development Agreement and CMA: (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 Development Agreement and CMA under Section 6.1.1, (d) execution of the Development Agreement and CMA by the Executive Director of TxDOT or his designee, (e) any other conditions required by the Commission, (f) 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 Development Agreement and CMA for legal sufficiency, as required by statute; and (g) a determination by the Office of the Attorney General that the Development Agreement and CMA are legally sufficient.

Upon satisfaction of the conditions set forth in Section 6.1(a), (b), (c), (e), (f) and (g), TxDOT will deliver execution copies of the Development Agreement Documents and CMA Documents to the selected Proposer, along with a number of sets of execution copies as reasonably requested by Proposer. The selected Proposer shall obtain all required signatures and deliver all of the execution sets to TxDOT within seven Business Days of receipt, together with the required documents described in Section 6.1.1. If Developer is a joint venture or a partnership, the Development Agreement and CMA must be executed by all joint venture members or general partners, as applicable. Within 15 Business Days of TxDOT's receipt of all required and compliant documents from Proposer, TxDOT will execute the agreements, retain TxDOT's sets of the agreements and deliver the other executed sets to Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to Proposer.

6.1.1 Documents To Be Delivered By Proposer With Executed Development Agreement and CMA

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

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

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

(c) If security for Proposer's obligations under the Development Agreement is required by TxDOT pursuant to Exhibit C-1, Section 2.0(3), Proposer shall submit one or more guarantees from guarantor(s) acceptable to TxDOT, in its sole discretion, in the

form of Exhibit 13 to the Development Agreement and/or Exhibit 9 to the CMA, as applicable.

(d) Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the Development Agreement and CMA by Developer and, if Developer is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to TxDOT. If Developer is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Developer is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Developer is a limited liability company, such evidence shall be in the form of: (i) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, (ii) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (iii) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Developer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member.

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

(f) Evidence of insurance required to be provided by Developer under the Development Agreement Documents and CMA Documents.

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

(h) TxDOT approved DBE Performance Plan in accordance with the requirements of Section 1.7.2.

(i) A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond and Payment Bond, each in the amount specified and in the forms attached as Exhibits 9 and 10 to the Development Agreement, and a Retainage Bond in the form attached as Exhibit 11 to the Development 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 Development Agreement and issuance of NTP1; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Development Agreement Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments.

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

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

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

6.2 Debriefings

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

Debriefings shall:

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

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

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

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

6.3 Payment to Unsuccessful Proposers

Each Proposer that submits a responsive, but unsuccessful, Proposal and that has timely executed and delivered the Payment for Work Product Agreement (Exhibit H) to TxDOT with its Proposal, shall be entitled to receive payment from TxDOT for work product that is not returned to Proposer, on the terms and conditions described herein and in the Minute Order issued by the Commission, a copy of which is attached hereto as Exhibit G. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3. Furthermore, no Proposer will be required by TxDOT to accept a payment for work product.

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 $1,000,000.00. The invoice may be submitted no earlier than 45 days after notice of final award, including execution of the Development Agreement and CMA, 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. All Proposers eligible to receive a payment for work product shall be required to submit an invoice to TxDOT in a form acceptable to TxDOT in order to receive such payment. Payments will be made within 30 days of receipt of an invoice therefor.

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

Each Proposer that has timely executed and delivered the Payment for Work Product Agreement (Exhibit H) to TxDOT acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after conditional award of the Development Agreement and CMA, and that the Development Agreement Documents and CMA Documents may incorporate the above-described work product or concepts based thereon. Upon Proposer's receipt of payment hereunder, this right shall extend to allow TxDOT to use such work product in the performance of its functions. As provided in Section 223.203(m) of the Code, the use of any of the work product by TxDOT is at the sole risk and discretion of TxDOT, and shall in no way be deemed to confer liability on the unsuccessful Proposer.

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 H) 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 the RFP and prescribe exclusive procedures for protests regarding:

(a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed TxDOT's authority;

(b) a determination as to whether a Proposal is responsive to the requirements of the Request for Proposals, as applicable; and

(c) award of the Development Agreement and CMA.

7.2 Required Early Communication for Certain Protests

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

7.3 Deadlines for Protests

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

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

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

7.4 Content of Protest

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

7.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to the address specified in Section 2.2.1, with a copy to the Office of General Counsel, Texas Department of Transportation, 150 E. Riverside Drive, 4th Floor North Tower, Austin, TX 78704, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained from the Project 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 sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

7.8 Decision on Protest

The Chief Planning and Projects Officer or his designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, TxDOT may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda.

7.9 Protestant's Payment of Costs

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

7.10 Rights and Obligations of Proposers

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

SECTION 8.0 TXDOT RIGHTS AND DISCLAIMERS

8.1 TxDOT Rights

TxDOT may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform Developer's obligations under the Development Agreement 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 Development Agreement Documents and CMA Documents;

(r) Disqualify any Proposer that violates the terms of the RFP; and

(s) Exercise any other right reserved or afforded to TxDOT under the RFP and applicable Law.

8.2 TxDOT Disclaimers

The RFP does not commit TxDOT to enter into any contract. Except as expressly set forth in Section 6.3, TxDOT and the State of Texas assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs

incurred or alleged to have been incurred by parties considering a response to and/or responding to the RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall TxDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Development Agreement 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.

Document comparison by Workshare Compare on Friday, November 02, 2012 11:14:32 AM

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