

Exhibit A

DEFINITIONS AND ACRONYMS

“**Addenda/Addendum**” means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

“**Alternative Technical Concepts**” or “**ATCs**” means the concepts described in ITP Section 3.1.

“**Authorized Representative**” has the meaning set forth in ITP Section 2.2.1.

“**Code**” has the meaning set forth in ITP Section 1.7.4.

“**Commission**” means the Texas Transportation Commission.

“**Developer**” has the meaning set forth in ITP Section 1.1.

“**Development Price**” has the meaning set forth in Section 3.1 of Exhibit C to the ITP.

“**Development Plan Evaluation Subcommittee**” or “**DPES**” means the subcommittee that performs the initial review of the Technical Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.0.

“**Disadvantaged Business Enterprise**” or “**DBE**” has the meaning set forth in 49 CFR Part 26.

“**EPDs**” has the meaning set forth in ITP Section 4.3.2.

“**Equity Participant**” means (a) each entity with a direct equity interest in Proposer (whether as a member, partner, joint venture member or otherwise), (b) each entity proposed to have a direct equity interest in Developer, and (c) each entity that will hold a 10% or greater indirect interest in Proposer. Notwithstanding the foregoing, if Proposer is a publicly traded company, shareholders with less than a 10% interest in Proposer shall not be considered Equity Participants.

“**Escrow Agent**” means the individual or entity designated in the Escrow Agreement who is authorized to act as the escrow holder with respect to the Escrowed Materials.

“**Escrow Agreement**” means the agreement entered into between Proposer and Escrow Agent, with TxDOT as a named, intended third party beneficiary, concerning the protection of the Escrowed Materials in the form of Form L.

“**Escrowed Materials**” means the EPDs delivered into escrow pursuant to ITP Section 4.3.2.

“Evaluation and Selection Recommendation Committee” or **“ESRC”** means the committee that will review and evaluate the Proposals and make a recommendation to the Texas Turnpike Authority Director as set forth in ITP Section 5.1.

“Financial Proposal” means the financial proposal submitted by a Proposer providing the information requested in Exhibit C of the ITP.

“Financial Proposal Evaluation Subcommittee” or **“FPES”** means the subcommittee that performs the initial evaluation of the Financial Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.0.

“FTP site” has the meaning set forth in ITP Section 2.2.

“Instructions to Proposers” or **“ITP”** means those documents, including exhibits and forms in Exhibit D, included in the RFP containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

“ITP Forms” means the forms provided in Exhibit D of the ITP.

“Key Personnel” means the individuals designated by a Proposer pursuant to Section 3.2.5 of Exhibit B to the ITP.

“Maintenance Price” has the meaning set forth Section 3.2 of Exhibit C to the ITP.

“Major Participant” means each Equity Participant and each member of Proposer’s organization with: (a) primary responsibility for design; (b) primary responsibility for construction; (c) primary responsibility for capital maintenance; or (d) a proposed subcontract with a value greater than or equal to \$10 million (excluding subcontracts with Suppliers).

“Major Professional Services Firm” has the meaning set forth in Section 3.2.2 of Exhibit B to the ITP.

“NTTA” means the North Texas Tollway Authority.

“Post-Selection Deliverables” has the meaning set forth in ITP Section 5.12.

“Preliminary Baseline Schedule” means the Project schedule required to be submitted with the Proposal and meeting the requirements set forth in Section 4.1.3 of Exhibit B to the ITP.

“Pre-Proposal Submittal” has the meaning set forth in ITP Section 2.4.

“Project Development Plan” means the plan submitted by a Proposer in accordance with Section 4.0 of Exhibit B to the ITP.

“Project Management Plan” means the portion of the Project Development Plan providing the information requested in Section 4.2 of Exhibit B to the ITP.

“Proposal” means the documents submitted by a Proposer in response to the RFP.

“Proposal Due Date” means the deadline (date and time) for submission of Proposals identified in ITP Section 1.6.

“Proposal Revisions” have the meaning set forth in ITP Section 5.8.

“Proposal Security” means the proposal bond or letter of credit as described in Section 3.3 of Exhibit B to the ITP.

“Proposer” means the entity submitting a Proposal for the Project in response to the RFP.

“Proposer Authorized Representative” has the meaning set forth in ITP Section 2.2.2.

“Qualifications Submittal” or **“QS”** means the submission made by a Proposer in response to the RFQ, including all clarifications thereto submitted in response to requests by TxDOT.

“Quality Management Plan” means the portion of the Project Development Plan providing the information requested in Section 4.3 of Exhibit B to the ITP.

“Reference Information Documents” means the documents and information included in Volume IV and described in ITP Section 1.4.

“Request for Qualifications” or **“RFQ”** means TxDOT’s Request for Qualifications issued on December 29, 2006, as amended.

“Request for Proposals” or **“RFP”** means the set of documents identifying the Project and the work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer/Developer. The RFP includes the ITP, CDA Documents, CMA Documents and Reference Information Documents. The RFP is issued only to Proposers that have been shortlisted following RFQ review.

“Rules” has the meaning set forth in ITP Section 2.1.

“Stakeholder” means parties that may have a stake in the Project by virtue of their location or funding, including the North Central Texas Council of Governments (“NCTCOG”), NTTA, DFW International Airport, Dallas Area Rapid Transit, Fort Worth Transportation Authority, cities, counties, United States Department of Transportation, and FHWA and their officers, directors, and employees.

“Surety” means the individual or entity committing to provide any of the bonds identified in the RFP.

“Technical Proposal” means the technical proposal submitted by a Proposer providing the information requested in Exhibit B of the ITP.

“Technical Solutions” means the portion of the Project Development Plan providing the information requested in Section 4.1 of Exhibit B to the ITP.

For definitions of other initially capitalized terms, please refer to the CDA Documents and CMA Documents, as applicable.

Exhibit B

TECHNICAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit B describes the submission format for Technical Proposals and outlines the required information that will comprise a Technical Proposal.

Proposer shall submit the information required by this Exhibit B in the organization and format specified herein. The Technical Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Technical Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D, unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms. Item B of the section entitled "Additional Information To Be Provided With Proposal Letter" of Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other signatories.

2.0 Format

The Technical Proposal shall be limited to an aggregate of 100 pages (if double-sided, 50 sheets), plus the executive summary, resumes, appendices and exhibits containing required forms, graphs, matrices, schedule, drawings and other pertinent data.

3.0 Contents of the Technical Proposal

The required contents and organization of the Technical Proposal are presented in this Exhibit B and summarized in the Proposal checklist provided in Exhibit E. Proposers are to provide all the information set out in this Exhibit B. A copy of the checklist for the Technical Proposal shall be included in the Technical Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

The Technical Proposal shall consist of the following major elements:

- (a) Executive Summary;
- (b) Proposal Security;
- (c) Proposer Information, Certifications and Documents (including required Forms A through J, L, M, Q, R and S); and
- (d) Project Development Plan.

3.1 Executive Summary

The Executive Summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with Proposer's Proposal and Proposer's ability to satisfy the financial and technical requirements of the Project. The Executive Summary shall not exceed ten single-sided pages. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

- (a) An explanation of the organization and contents of the Proposal.
- (b) A summary of any changes to Proposer's QS.
- (c) A summary of any changes in Proposer's organization, Equity Participants, other Major Participants and Key Personnel since submission of the QS.
- (d) A summary of the proposed management, decision making and day-to-day operation structure of Proposer, and a statement that each Major Participant has committed to provide the specified people.
- (e) A summary of the Technical Solutions
- (f) A summary of the Project Management Plan.
- (g) A summary of the Quality Management Plan.

3.2 Proposer Information, Certifications and Documents

3.2.1 Proposal Letter

The Proposal shall include the Proposal Letter (Form A). Proposer shall attach to the Proposal Letter the documents and information described in the section entitled "Additional Information To Be Provided With Proposal Letter" of Form A.

3.2.2 Information About Proposer, Major Participants and Other Subcontractors

The Proposal shall include a completed chart on Form B-1, including the names, contact information, role in the organization, licensing information, and description of work (if applicable) for Proposer and Equity Participants.

The Proposal shall include a completed Form B-2 providing information about Proposer and its team as specified therein.

The Proposal shall include a completed Form B-3 providing information regarding (i) each Major Participant (excluding Equity Participants that do not fall into categories (a) through (d) of the definition of Major Participant); (ii) each firm that will provide engineering, architectural, surveying, planning, quality assurance and/or other

professional services for development of the Project valued at \$2 million or more (“Major Professional Services Firm”); and (iii) all other subcontractors identified by Proposer as of the Proposal Due Date. Proposer is advised that all Major Professional Services Firms must be identified at the time of the Proposal, and that, as a condition to final award and execution of the CDA and Capital Maintenance Agreement, the successful Proposer must provide evidence that it and its Major Participants hold all necessary licenses and professional registrations.

The Proposal shall include copies of organizational documentation described in the section entitled “Additional Information To Be Provided With Proposal Letter” of Form A for Proposer, Developer and Equity Participants, as well as other documentation required by Form B-2. If any modification to the organizational documents for such entity is contemplated prior to award or, if Proposer intends to form an affiliated entity to be the Developer, Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in the section entitled “Additional Information To Be Provided With Proposal Letter” of Form A) for such proposed entity.

3.2.3 Responsible Proposer Questionnaire

The Proposal shall include Form C, the “Responsible Proposer Questionnaire”, signed by Proposer. As noted on the form, it may be provided by Proposer on its own behalf and on behalf of the Developer and Equity Participants, or it may be provided by Proposer on its own behalf and the individual Equity Participants on their own behalf. The form executed by Proposer shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by Equity Participants shall be signed by an authorized representative of such Equity Participant and the Proposal shall include evidence of signature authorization for such individual.

3.2.4 Industrial Safety Record

The Proposal shall include an industrial safety record on Form D for each member of Proposer’s team that will perform or supervise installation and/or construction work on the Project, including information for any entity in which such team member holds a substantial interest. If any such entity does not have an industrial safety history (for example if the firm is newly formed), Form D is not required for such entity, but a statement shall be provided explaining why the form is not included. Should any of these parties have been a member of a joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D.

3.2.5 Key Personnel

3.2.5.1 Designation of Key Personnel Prior to Proposal Due Date

Each Proposer shall submit a package that includes an original and five copies of the information specified in this Section 3.2.5.1 to TxDOT, by the date and time for submittal of Key Personnel specified in ITP Section 1.6, for review and written approval by

TxDOT, in its sole discretion. The package shall be delivered to the address set forth in ITP Section 2.2.1, and shall include a list of the proposed Key Personnel for each category identified in Section 3.2.5.2, along with copies of resumes for each such person (which must contain the individual's qualifications and relevant work experience) and contact information for three references for each individual. If TxDOT, in its sole discretion, disapproves a proposed key person, Proposer shall submit the information required above for its proposed substitute, for review and approval by TxDOT in accordance with the foregoing process, at least ten Business Days prior to the Proposal Due Date. The Proposal may not include any Key Personnel not previously approved by TxDOT in writing.

Proposer may not make any changes in its Key Personnel after receipt of TxDOT approval as specified in this Section 3.2.5.1, except as provided in the CDA Documents and CMA Maintenance Agreement Documents, as applicable.

3.2.5.2 Information Regarding Key Personnel in Proposal

The individuals with direct responsibility for each of the following categories of work are considered Key Personnel:

- overall management of the Project (Project Director, Deputy Project Director – Design, and Deputy Project Director – Construction);
- public relations and community outreach (Public Relations Manager);
- right-of-way (Right of Way Manager);
- utility adjustment (Utility Manager);
- design of the Project (Design Manager);
- construction, coordination of subcontractors and scheduling (Construction Manager);
- control of quality, and the implementation and operation of the Project's quality systems (Professional Services Quality Control Manager and Construction Quality Control Manager);
- environmental compliance (Environmental Compliance Manager);
- independent quality acceptance (Independent Professional Services Quality Review Manager and Independent Construction Quality Acceptance Manager); and
- Project maintenance management and maintenance quality control (Maintenance Manager and Maintenance QC Manager).

The Proposal shall identify the pre-approved Key Personnel and shall include Form E identifying personnel work assignments, as well as a statement signed by Proposer and the employer of each designated key person, committing to maintain such individual's

availability for and active involvement in the Project. The Proposal also shall include copies of the resumes and contact information described in Section 3.2.5.1 for each designated key person. Refer to the CDA Documents and CMA Documents, as applicable, for information regarding time commitment requirements for Key Personnel and TxDOT's rights if it determines that any such personnel are not devoting sufficient time to the prosecution and performance of the work required for the Project.

3.2.6 Letter Approving Key Personnel and Changes in Proposer's Organization

The Proposal shall include a copy of the letter(s) issued by TxDOT pursuant to Section 3.2.5.1 approving the Key Personnel. If Proposer's organization has changed since submission of the QS, Proposer shall specifically describe such changes and, if applicable, include a copy of TxDOT's approval letter provided under ITP Section 2.11.

3.2.7 Non-Collusion Affidavit

The Proposal shall include Form F, certifying that the Proposal is not the result of and has not been influenced by collusion.

3.2.8 Certification Regarding Buy America

The Proposal shall include Form G, regarding Buy America requirements.

3.2.9 DBE Requirements

The Proposal shall include a Certification of DBE Goal Attainment or Good Faith Efforts (Form H) confirming that Proposer will obtain DBE commitments equal to or exceeding the DBE participation goal or will exercise good faith efforts to substantiate its attempts to meet the goal.

3.2.10 Child Support Statement for Negotiated Contracts and Grants.

The Proposal shall include Form I regarding child support obligations, for Proposer and each Major Participant.

3.2.11 Organizational Conflict of Interest Disclosure

Attention is directed to TxDOT's rules on conflicts of interest, which are set forth at 43 Texas Administrative Code §27.8. The Proposal shall include a certification on Form J describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest.

3.2.12 Certification Regarding Equal Employment Opportunity

The Proposal shall include Form Q, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports.

3.2.13 Guarantor Letter

The Proposal shall include: (a) an irrevocable letter signed by the guarantor committing to provide a guaranty in the form of Exhibit 13 of the CDA (if a guaranty is required by TxDOT) and Exhibit 9 of the Capital Maintenance Agreement (as applicable), concurrently with execution and delivery of the CDA Documents and Capital Maintenance Agreement by Proposer, (b) evidence of authorization of the signatory to that letter, (c) Form B-1 for the guarantor, (d) financial information described in Section 2.0 of Exhibit C; and (e) such other information concerning the guarantor as TxDOT may request. A guaranty is required under the following circumstances: (i) Proposer identified a guarantor in its QS or was advised by TxDOT that a guaranty would be required as a condition to the shortlisting of Proposer, (ii) Proposer's organization is a newly formed corporation or a limited liability entity, (iii) the combined Tangible Net Worth of Proposer and its equity members is less than \$200,000,000; or (iv) the form of organization of Proposer and/or the financially responsible parties comprising Proposer changes and TxDOT determines, in its sole discretion, to require a guarantor as a condition to approving such change under ITP Section 2.11. If a guarantor is required, the combined Tangible Net Worth of the guarantor, Proposer and its equity members must be at least \$200,000,000. Tangible Net Worth shall be determined based on audited financial statements for the fiscal year most recently ended.

3.2.14 Surety Information

The Proposal shall include the following information regarding the Surety for the bonds to be provided in accordance with Section 8 of the CDA and Section 7 of the Capital Maintenance Agreement:

- (a) Name of bonding company (must be 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) and the name and address of the agent.
- (b) Whether or not the listed bonding company defaulted on any obligation within the past ten years, and the details in the event of such default.

3.2.15 Debarment and Suspension Certification

The Proposal shall include Form R, certifying the status regarding debarment and/or suspension of proposer and all Major Participants, including each owner, partner, director, officer and manager.

3.2.16 Certification Regarding Use of Contract Funds For Lobbying

The Proposal shall include Form S, certifying that no federal appropriated funds have been or will be paid for lobbying activities and no other funds have been paid or will be paid to influence governmental decisions regarding this Project.

3.3 Proposal Security

The Proposal shall include either a proposal bond or irrevocable standby letter of credit as specified below.

Forfeiture of Proposal Security in accordance with Section 4.6 of the ITP will constitute liquidated damages. By submitting its Proposal, Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of TxDOT's transportation improvement program, including the CDA program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Proposal, Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that TxDOT would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Proposal, Proposer agrees to such liquidated damages in order to fix and limit Proposer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Proposer.

3.3.1 Proposal Bond

If a proposal bond is provided, it shall be in the amount of \$30 million and in the form of Form K-1 from a 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. The proposal bond shall be subject to forfeiture in accordance with ITP Section 4.6. Each proposal bond will be retained until the CDA Documents and CMA Documents have been fully executed, after which the proposal bond for each unsuccessful Proposer, except those proposal bonds which have been forfeited, will be returned to the respective Proposers. The proposal bond for the successful Proposer shall be returned at such time as Proposer has satisfied all conditions of execution and award set forth in ITP Section 6.1. If the next best value Proposer is notified during the 180-day period that it is selected for negotiations, such Proposer shall obtain an extension of the Proposal Bond for the period until 270 days after the Proposal Due Date.

3.3.2 Letter of Credit

If a letter of credit is provided, it shall be in the amount of \$30 million, which shall be in the form of Form K-2 issued by a financial institution with a credit rating of "A" or better according to Standard & Poor's and with an office in Austin, Fort Worth, Dallas, Houston

or San Antonio at which the letter of credit can be presented for payment or, alternatively, if the issuing bank does not have offices in any of said cities in Texas, the letter of credit may be submitted provided it is also confirmed by a financial institution with a credit rating of "A" or better according to Standard & Poor's having an office in Austin, Fort Worth, Dallas, Houston, or San Antonio at which the letter of credit can be presented for payment. The letter of credit shall be subject to forfeiture in accordance with ITP Section 4.6. Each letter of credit will be retained until the CDA Documents and CMA Documents have been fully executed or the RFP has been canceled, after which the letter of credit for each unsuccessful Proposer, except those letters of credits which have forfeited, will be returned to the respective Proposers. The letter of credit for the successful Proposer shall be returned at such time as Proposer has satisfied all conditions of execution and award set forth in ITP Section 6.1. The letter of credit shall be valid for 270 days after the Proposal Due Date.

3.4 Escrow Agreement

A copy of the Escrow Agreement (Form L) shall be provided with the Technical Proposal, in a separate envelope labeled "[Proposer Name]: Escrow Agreement for the DFW Connector Project."

4.0 Project Development Plan

Proposer shall submit a Project Development Plan which shall consist of three components: the Technical Solutions (Section 4.1), the Project Management Plan (Section 4.2) and the Quality Management Plan (Section 4.3).

4.1 Technical Solutions

The Technical Solutions component of the Proposal shall describe Proposer's approach to implementing the work and shall include a Design and Construction Plan, a Maintenance Plan, a Preliminary Project Baseline Schedule and additional associated information, as described in this Section 4.1. The Technical Solutions shall also include information with respect to approved ATCs, perceived added value items and the incorporation of new technologies as follows:

- (a) Specifically, for all ATCs, Proposer shall:
 - Specifically state whether any approved ATCs are included in the Proposal, with reference to the ATC identification number assigned by TxDOT; and
 - Describe how the ATC is used and provide cross-references to other elements of the Proposal that are affected by the ATC.
- (b) For perceived added value components of the Proposal, Proposer shall:

Specifically identify characteristics of its Proposal which Proposer considers to improve upon the Project's technical requirements, as set forth in the

CDA Documents and the CMA Documents, and which bring additional benefits and/or value to TxDOT and the public; and

Provide an estimate of the value of such benefits.

4.1.1 Design and Construction Plan

The Design and Construction Plan shall include information identified in Section 4.1.1.1 through Section 4.1.1.14 relevant to Developer's schematic and proposed approach.

Developer's schematic shall clearly identify the work to be completed by Developer. Changes in alignments or other elements proposed by Developer's schematic to the extent they will require an evaluation for compliance with the TxDOT-Provided Approvals and possibly re-evaluations and delays associated with such re-evaluations will be at Developer's risk.

Items which do not apply to Developer's proposed approach are to be specifically noted as such. For all of the items not required, backup information is to be provided which supports the non-applicability of the items.

4.1.1.1 Construction Staging, Sequencing and Traffic Management

The Proposal shall provide a description of the construction staging, sequencing and traffic control to maintain traffic during the construction of the Project. The information shall include at least the following:

- (a) The overall traffic management and control and sequencing approach.
- (b) Concept drawings and description of the proposed construction staging and steps that will be taken to minimize disruptions to the traveling public and impacts on the Stakeholders and communities.
- (c) A description how business, airport and residential access will be maintained throughout the Project corridor during the construction.

4.1.1.2 Geotechnical and Earthwork Plan

The Proposal shall provide a description of the methods for taking into account the surface and subsurface conditions of the Project in designing and constructing the Project. The information shall include at least the following:

- (a) The proposed plan for geotechnical investigations, identifying the objectives, scope of the work, and the information to be obtained, and the manner in which Proposer will address property owners' concerns and minimize intrusiveness of investigations.
- (b) Details of proposed ground and groundwater control methods during construction.

- (c) Conceptual instrumentation plan to monitor pore pressures, settlements and stability.
- (d) Preliminary pavement design report providing details of the proposed designs, material types, roadway classifications, traffic loading and design life considerations, including the approach to address non-swell requirements.

4.1.1.3 Bridges and Surface Structures

The Proposal shall provide a description of the bridges and surface structures (representative retaining and noise walls) for the Project. The information shall include at least the following:

- (a) Concept plans for bridges with sufficient detail to indicate bridge type, foundation types, width, controlling clearances, and span arrangement. Lane configurations and clear zones of crossing roadways and railroads shall be clearly indicated as applicable.
- (b) Concept plans for retaining and noise walls shall indicate wall types (including a typical section for each type), proposed locations and limits.
- (c) Specifically for bridges and surface structures, Proposer shall include the following:
 - identification of type, material, appearance and design life considerations;
 - cross-sectional drawings of all proposed bridge types; and
 - a description of the methods of construction for build-out on existing and proposed structures.

4.1.1.4 Connectivity/Interconnections

The Proposal shall identify connectivity/interconnections with existing transportation and utility infrastructure in the Project area and describe the procedures for coordinating with other governmental agencies and Stakeholders to obtain planned transportation and utility infrastructure in the Project area.

4.1.1.5 Right-of-Way Services

The Proposal shall provide a description of its approach to performing right of way services for the Project. The information shall include at least the following:

- (a) The approach describing how the acquisition of right-of-way and any necessary relocation services will be managed by Proposer in conjunction with TxDOT, local officials and the Office of the Attorney General. The approach must also describe how acquisition of right of way will be incorporated into the Project schedule to avoid delays.

- (b) A description of the quality control methods that Proposer will employ to assure that all property owners' rights under the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, are being satisfied, including, without limitation, the safeguards and policies Proposer will implement to ensure, that no coercive actions, as described in 49 CFR 24.102(h), will result from advancing a portion of right of way to the construction stage or any other actions that may be undertaken that could adversely affect the right-of-way acquisition process.
- (c) A description of the acquisition and relocation process that will maintain the Project schedule but be sensitive to the needs and concerns of property owners, lessees, licensees and other occupants.

4.1.1.6 Utilities

The Proposal shall provide a description of the utility work required for the Project. The information shall include at least the following:

- (a) The proposed methods of locating utilities horizontally and vertically that encroach upon the footprint of the Project.
- (b) The intended means of communication and planning of construction to keep Utility Owners informed of the construction schedule, the means of construction and changes that may affect their facilities.
- (c) The proposed methods of design and construction related to utility relocation and protection.
- (d) The proposed methods to minimize utility conflicts during design and construction and the approach for managing conflicts.
- (e) The proposed methods to facilitate cooperation from Utility Owners, including, without limitation, the approach to negotiating utility adjustment agreements and resolving betterment issues.

4.1.1.7 Life Cycle Cost Methodology

The Proposal shall provide a description of the methodology to be used for life cycle cost analysis for the Project over the duration of the CDA and Capital Maintenance Agreement.

4.1.1.8 Environmental Permitting, Mitigation and Impacts

The Proposal shall provide a description of its approach to complying with the environmental requirements of the Project and any environmental issues that may arise. The information shall include at least the following:

- (a) A list of environmental permits, permit amendments and other approvals, whether state, federal or local, that will or may be required, together with the name of the issuing agency and a plan for obtaining required permits and permit amendments in a timely manner.
- (b) A description of the measures that will be undertaken to ensure compliance with environmental permits and approvals and approvals relating to cultural resources.
- (c) A description of the environmental issues anticipated to be encountered on the Project and how design and construction will address the anticipated impacts and be sensitive to the environment.

4.1.1.9 Drainage

The Proposal shall provide a description of the drainage for the Project. The information shall include at least the following:

- (a) Description of the drainage system, material(s) and components.
- (b) General concept plan drawing(s) showing the preliminary overall surface water collection system along with a general layout of the identified major drainage trunk lines, including outfall locations.
- (c) Proposer's concept plan for construction sequencing of portions of the drainage network prior to completion of entire drainage system.
- (d) Description of the approach for connecting to existing drainage system(s), including identification of impacted owners and/or operators.
- (e) Description and plan drawing(s) defining the approximate limits of temporary construction and drainage easements necessary for completion of the Project drainage work.

4.1.1.10 Roadway

The Proposal shall provide a description of the roadway components for the Project. The information shall include at least the following:

- (a) General project roadway information including right of way and Project limits, design speeds and functional classification(s).
- (b) Proposed refinements in the horizontal and vertical geometric configuration of the Schematic Design.
- (c) Plans, typical sections and profiles of mainline, frontage roads, interchanges and crossing roadways for the Schematic Design.

- (d) Roadway and interchange geometry.
- (e) A description of all existing roadways and structures to be closed, demolished, left as is, or incorporated into the Project.

4.1.1.11 Managed Lane Tolling Facility Infrastructure

The Proposal shall provide a description of its plan to coordinate and interface its work with the toll systems integrator. The information shall include at least the following:

- (a) The proposed method for coordinating with the toll systems integrator to ensure on-time opening of the Project.
- (b) The approach to quality acceptance and quality control.
- (c) A compliance table cross-referencing all of the ETCS requirements and the location(s) within the Proposal that describes the proposed solution for each requirement.

4.1.1.12 Intelligent Transportation Systems

The Proposal shall provide a description of the Intelligent Transportation Systems for the Project. The information shall include at least the following:

- (a) A schematic plan and layout showing the locations of ITS equipment, including cameras, DMS signs, traffic monitoring stations, and lane marking points.
- (b) A description of how the system will be monitored and connected to area traffic management centers to provide the required level of service to users, maintain interoperability for monitoring and control of subsurface systems.
- (c) A description for methods of coordinating information with other ITS systems in the region and for the incorporation into the North Texas Regional ITS Architecture.

4.1.1.13 Signing, Delineation, Pavement Markings, Signalization and Lighting

The Proposal shall provide a description of the signing, delineation, pavement markings, signalization and lighting for the Project. The information shall include at least the following:

- (a) A preliminary Operational Signing Schematic in sufficient detail and in a format acceptable for FHWA submittal.
- (b) A description of the approach for lighting of the general purpose lanes, managed lanes, frontage roads, intersections, ramps and interchanges.

4.1.1.14 Aesthetic Design

The Proposal shall provide a description of the aesthetic design for the Project. The information shall include at least the following:

- (a) A description of how Proposer plans to work with TxDOT to further enhance the design guidelines and provided aesthetic details.
- (b) A description of how Proposer will coordinate with adjacent Governmental Entities for additional aesthetic enhancements.
- (c) A description and concept drawing(s) of aesthetics items that may have not been covered by the Project details or are additional items proposed to be completed as a portion of Proposer's work.

4.1.2 Maintenance Plan

The Proposal shall provide a Maintenance Plan which shall describe how Proposer will meet the performance requirements set forth in the Capital Maintenance Agreement. For the Maintenance Plan, the Proposal shall address at least the following:

- (a) The plan and approach to transitioning and phasing from construction to capital maintenance activities.
- (b) The plan and approach to annual capital maintenance and capital maintenance reporting, and how they will be used to manage the Project.
- (c) The plan and approach for transfer of capital maintenance responsibility for the Project to TxDOT at the expiration or termination of the Capital Maintenance Agreement, including a preliminary list of specialized maintenance equipment that will be turned over to TxDOT.
- (d) Management tools (such as communications, computers, software and equipment).
- (e) The approach to traffic control and operations during capital maintenance activities, including lane closures and other traffic restrictions.
- (f) Inspection and testing of Project items (including pavements, shoulders, bridges, sound and retaining walls, drainage facilities, embankments and cut slopes) and the identification and classification of defects and inspection failures.
- (g) Record and document control plan for as built, inspection, capital maintenance and associated activities.
- (h) How defects or faults in any aspect of the Project's infrastructure shall be classified and rectified within appropriate time limits.

- (i) The proposed program for the planning, implementation and completion of future capital maintenance repairs or replacements during the term of the Capital Maintenance Agreement. The information shall describe the approach to programming of works and costing and ensuring that maintenance transition requirements will be met.

4.1.3 Preliminary Project Baseline Schedule

The Proposal shall provide a Preliminary Project Baseline Schedule and narrative for all portions of the Project and include at least the following:

- (a) Narrative which describes the proposed execution of the work for the term of the CDA.
- (b) Preliminary Project Baseline Schedule to WBS Level V for the design and construction period and WBS Level IV for the maintenance period in accordance with the Technical Provisions.
- (c) The schedule shall contain all key activities or milestones relating to maintenance at WBS Level IV.
- (d) The Preliminary Project Baseline Schedule shall show achievement of Substantial Completion no later than 1734 days from NTP1. Proposer shall indicate the number of calendar days between NTP1 and its proposed Substantial Completion date on Form P.

Proposer's Preliminary Project Baseline Schedule submission shall not limit, modify or alter TxDOT's ability to review and approve the Preliminary Project Baseline Schedule, and selection of a Proposer shall not be deemed to be acceptance or approval of Proposer's Preliminary Project Baseline Schedule.

4.2 Project Management Plan

The Project Management Plan shall set out Proposer's management approach to design, construction, traffic management, maintenance, handback, documentation, testing and auditing/reporting for the Project, risk, community outreach and organizational structure. The minimum information to be provided within the Project Management Plan is detailed in this Section 4.2.

4.2.1 General Project Management

The Project Management Plan shall describe Proposer's overall Project management plan and approach to the work (including design, construction, and maintenance), including at least the following:

- (a) A description of the methods to be used to assure necessary communication and documentation within Proposer's team, including communication among the sub-organizations and management personnel.

- (b) A description of how Proposer intends to: (i) provide the experienced personnel, facilities and equipment, and to integrate such resources, to complete each aspect of the Project; (ii) control and coordinate the various Subcontractors; (iii) interface with TxDOT, its consultants and relevant federal, State and local agencies; (iv) interface with applicable railroads and Utility Owners; (v) control Project schedules and minimize Project costs; and (vi) comply with applicable Laws.
- (c) A description of Proposer's plan to manage permitting and third-party coordination and approvals.
- (d) An organization chart outlining the basic structure of Proposer's Project organization (including the design, construction and maintenance sub-organizations) and a description of the roles, responsibilities, interrelation and work to be accomplished by each member of the management team and each sub-organization, including identified Subcontractors and Suppliers (at all tiers).
- (e) Information describing how each of the Key Personnel will fit into the organization, including a description of each key person's function and responsibility relative to the Project, and indicating the percent of time that the person will devote to the Project.
- (f) A detailed description of how the team members will work together to provide a unified design, construction, maintenance, and quality approach to all elements of the work in respect of the operational life-cycle management.
- (g) A description of the team decision making process, how internal disputes between team members will be resolved and how Proposer will avoid adverse impacts to the Project (cost, schedule or quality) in the event of such disputes.
- (h) All major training program(s) to ensure that continuous improvement practices are being implemented.
- (i) Information regarding the current and projected workload and backlog of Proposer team (including all Major Participants).
- (j) A preliminary safety plan meeting the requirements set forth in the Technical Provisions.

4.2.2 Risk Management

The Project Management Plan shall describe the approach to identification, management, mitigation, and allocation of Project-specific risks, including a risk matrix which shall identify the following at a minimum:

- (a) Significant risk categories during the design, construction and maintenance of the Project.
- (b) The potential consequences of the identified risks.
- (c) The probability/likelihood of risks.
- (d) Proposed procedures and tools to conduct a risk sensitivity analysis.
- (e) Risk-mitigation strategies to eliminate or reduce specific risks.

4.2.3 Construction and Traffic Management During Construction Period

The Project Management Plan shall provide a description of Proposer's plan and approach for performing construction and traffic management on the Project, including at least the following:

- (a) A narrative description of how Proposer intends to schedule and sequence the construction to minimize impacts on the environment, communities and traveling public while still providing acceptable construction performance.
- (b) A description of the intended laydown, recycling, staging, disposal and maintenance locations (with approximate areas) to be used during construction.
- (c) A description of how the right of way and adjacent roads and properties will be maintained and protected, including the intended measures to be used to mitigate and minimize noise, vibration, light, dust, erosion/run-off and local road damage.
- (d) A description of how Proposer will coordinate its construction work with other projects that are expected to be under construction during the work.
- (e) A description of how Proposer will manage and control traffic during construction.

4.2.4 Schedule and Cost Control Management

The Project Management Plan shall provide a description of Proposer's plan and management approach for schedule and cost control on the Project, including at least the following:

- (a) Describe Proposer's document, cost control and schedule management system to be used to control and coordinate the cost and schedule of the work during the term of the CDA and the Capital Maintenance Agreement, including during design, construction, and maintenance.

- (b) Describe the proposed Project schedule methodology and cost control approach and include at least the following:
- A description of the system used for preparing and updating the Project schedule.
 - A description of the system used for preparing and updating the schedule of values.
 - A description of the proposed plan to integrate Subcontractor activities into Proposer's scheduling and reporting system.
 - A description of the proposed approach for calculating progress performance on a monthly basis and preparing payment requests.
 - A description of how Proposer will approach re-scheduling of its work to achieve schedule recovery objectives and how these objectives will be enforced with its work force and Subcontractors.
 - The number of full-time equivalent personnel who will perform scheduling, reporting, invoicing and other Project controls functions for the Project.

4.2.5 Public Information and Communications

The Project Management Plan shall provide a description of Proposer's plan and management approach for public information and communication, including at least the following:

- (a) Proposer's approach to positively implement and manage community relations and liaison with Stakeholders during the design, construction and maintenance stages of the Project, including consideration of all outreach activities, impacts on commuter travel and the adjacent community, and other specific aspects, such as air quality, noise impacts, fugitive light, construction traffic, Project marketing and advertising. Proposer shall describe its approach to public information activities, including identification of personnel for such effort and how Proposer will manage interaction with TxDOT, elected officials, public agencies, the communities, and other Stakeholders. Proposer shall address all elements of the proposed public information and communications plan as required in Technical Provisions.
- (b) Proposer's preliminary public information and communications plan, which shall specifically address the following:
- Qualifications and experience of proposed key staff members who will be engaged for purposes of community outreach.

- Adjustments to construction and maintenance activities in response to community and Stakeholder concerns.
- Proposed communications strategies, such as, a newsletter, websites, and hotlines.
- The proposed methodology for capturing and resolving complaints, concerns or questions from the public.
- The proposed methodology for dealing with the news media.

4.2.6 Environmental Management

The Project Management Plan shall provide a description of Proposer’s plan and management approach to environmental compliance and permitting, including at least the following:

- (a) Applicable laws, rules and regulations.
- (b) The method Proposer will use to ensure planning commitments are integrated into design, construction and maintenance of the Project.

4.2.7 Design Management

The Project Management Plan shall provide a description of Proposer’s plan and management approach for performing design on the Project, including at least the following:

- (a) A description of how Proposer intends to manage the development and coordination of design, including issues such as design of connecting projects, right of way, survey, environmental permitting, utilities, community relations and safety issues.
- (b) A description of the proposed approach for delivering the design for the Project, including where the designers will be located, how designs are to be developed by different firms, how offices will be integrated and work coordinated to ensure consistency and quality.
- (c) A description of how the design personnel will interface with the construction and maintenance personnel to achieve a quality constructed Project that minimizes long-term maintenance.

4.2.8 Maintenance and Traffic Management During Maintenance Period

The Project Management Plan shall provide a description of Proposer’s plan and management approach for providing maintenance for the Project, including at least the following:

- (a) The approach to interfacing and coordinating with TxDOT, contractors, consultants, other Governmental Entities and Stakeholders, operators of the managed lane facilities and adjacent sections of roads and adjacent landowners.
- (b) A description of how Proposer will manage and control traffic with simultaneous maintenance activities and other ongoing construction projects during the term of the Capital Maintenance Agreement.

4.2.9 Mentoring and Job Training

The Project Management Plan shall provide a description of Proposer's plan and management approach for mentoring and job training on the Project, including at least the following:

- (a) A description of Proposer's concept to utilize and train DBEs, including:
 1. A description of standard subcontracting methods to effectively manage subcontractor performance as it relate to the Technical Provisions.
 2. An outline of areas of work where DBEs may be utilized.
 3. A description of the training program to be utilized to educate and train employees in various job functions as well as training for environmental and site specific issues.
- (b) A description of Proposer's plan to mentor DBEs and other small businesses, including:
 1. Eligibility criteria for participation in the program.
 2. Program goals for mentoring on public private partnerships, design, construction and maintenance.
 3. A mentoring program for educational workshops, including the following:
 - A description of targeted technical disciplines;
 - Identification of specific audiences;
 - Development of a short term plan;
 - Development of a long term plan;
 - Identification of workshop administrative procedures; and
 - Identification of frequency of the workshops;
 4. Educational workshops for bonding and insurance requirements.

5. Procedures and methodologies for dividing work into economically feasible units to encourage small business participation.
- (c) Criteria for evaluating the effectiveness of the small business program.
 - (d) A description of Proposer's individual job training plan to assist with developing women, Blacks, Hispanics and others (including, American Indian, Alaskan, Native, Asian or Pacific Islander) in the "critical crafts" designated annually by TxDOT. The plan shall include training goals for on-Site and off-Site, the cost of training, and a schedule for training. The schedule for training shall include job classifications, number of trainees per classification and the anticipated start times in each classification.

Proposer's Mentoring and Job Training plan, as approved by TxDOT, shall be incorporated into the CDA Documents as Exhibit 8 and into the CMA Documents as Exhibit 5 following award of the CDA and Capital Maintenance Agreement, and shall be subject to TxDOT review, comment and approval.

4.3 Quality Management Plan

The Quality Management Plan shall provide a description of Proposer's plan and approach to quality management during all stages of the Project through mobilization, the design and construction of the Project and the maintenance and handback of the Project at the end of the Capital Maintenance Agreement. The Quality Management Plan will outline the systems that will be employed to ensure that the work is executed with minimal requirement for corrective work. The plan shall detail the systems employed to detect noncompliance, correct the consequences of noncompliance and to prevent the reoccurrence of repeat noncompliance.

The Quality Management Plan shall include at least the following:

- (a) A description of the proposed design, construction and maintenance quality program organization, including the name and resume of Key Personnel responsible for quality management.
- (b) An organization chart showing the quality management structure, along with a staffing plan by position title.
- (c) A description of Proposer's quality management plan, including:
 - How the quality management staff will be functionally independent so that such individuals will have the authority to effect changes in the event of Developer's failure to comply with the CDA Documents and CMA Documents.
 - a description of the both the formal and the informal process for design submittals, reviews, design deficiency corrections and change tracking.

- Quality Assurance and Quality Control procedures for design, construction and maintenance.
- the interface between the design quality, construction quality and maintenance quality processes.
- proposed quality management documentation procedures.
- the approach to implement TxDOT oversight procedures.
- the approach to ensuring conformance with federal oversight requirements.
- interfacing with third parties and other Stakeholders.
- the proposed audit regime.
- the approach to curing noncompliance and ensuring that repeat mistakes are avoided.

Exhibit C

FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit C describes the submission format for Financial Proposals and outlines the required information that will comprise the Financial Proposal.

Proposer shall submit the information required by this Exhibit C in the organization and format specified herein. The Financial Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Financial Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D, unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.1 Format of Financial Proposal

All price, cost and financial information provided in the Financial Proposal shall be in U.S. Dollar currency only and all amounts, except the amounts on Form O, shall be stated as nominal dollars. Form O amounts shall be stated as 2008 dollars.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between individual line amounts and totals, the individual line amounts will prevail.

1.2 Contents of Financial Proposal

All parts of the Proposal that indicate price and financial information are to be included in the Financial Proposal.

The required contents and organization of the Financial Proposal are presented in this Exhibit C and summarized in the Proposal checklist provided in Exhibit E. Proposers are to provide all the information set out in this Exhibit C. A copy of the checklist for the Financial Proposal shall be included in the Financial Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

2.0 Financial Capacity Information

Proposers shall clearly identify any differences between the financial capacity information submitted in the Proposal and the information submitted in the QS.

The Financial Proposal shall include the following information for Proposer, all Equity Participants and any required guarantors:

- Audited financial statements for all periods subsequent to those included in the QS.
- In addition, interim unaudited financial statements for the period since the most recent completed fiscal year for Proposer, Equity Participants and any required guarantors are to be provided.

The financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must meet the following requirements:

- 1) Financial statement information must include:
 - i. Opinion Letter (Auditor’s Report)
 - ii. Balance Sheet
 - iii. Income Statement
 - iv. Statement of Changes in Cash Flow
 - v. Footnotes.
- 2) Financial statements must meet the following requirements:
 - a. **GAAP** – Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (“U.S. GAAP”). If financial statements are prepared in accordance with principles other than U.S. GAAP, a letter from the certified public accountant of the applicable entity, discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP.
 - b. **U.S. Dollars** - Financial statements must be provided in U.S. dollars. If financial statements are not available in U.S. dollars, Proposer must include summaries of the Income Statements and Balance Sheets for the applicable time periods converted to U.S. dollars by a certified public accountant.
 - c. **Audited** – Fiscal year end financial statements must be audited by an independent party qualified to render audit opinions (e.g. certified public accountant). If audited financials are not available for an Equity Participant and any required guarantors, the Financial Proposal shall include unaudited financial statements for such member, certified as true, correct and accurate by the chief financial officer or treasurer of the entity.
 - d. **English** – Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all Financial statement information must be accompanied with the original financial statement information.

- 3) Other information and requirements:
- a. **Newly Formed Entity** - If Proposer is a newly formed entity and does not have independent financial statements, financial statements for the Equity Participants and any required guarantors shall be provided (and Proposer shall expressly state that Proposer is a newly formed entity and does not have independent financial statements).
 - b. **Guarantor Letter of Support** - If financial statements of a parent company or affiliate company are provided to demonstrate financial capability of Proposer or Equity Participants, an appropriate letter from the guarantor must be provided confirming that it will guarantee all the obligations of Proposer or Equity Participants with respect to the Project. Proposers are advised that TxDOT may, in its discretion based upon the review of the information provided, specify that an acceptable guarantor is required as a condition to eligibility for award.
 - c. **SEC Filings** - If the team or any other entity for whom financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K.
 - d. **Credit Ratings** - Appropriate credit ratings must be supplied for each Proposer and Equity Participant, and guarantor to the extent such entities have credit ratings. If no credit ratings exist, include a statement specifying that no credit ratings exist for that entity.
 - e. **Material Changes in Financial Condition** - A letter from the chief financial officer or treasurer, providing information on any material changes in financial condition since submission of the QS and those that are pending. Additionally, Proposers shall be required to provide updated information following the Proposal Due Date as long as the dissemination of such information is permitted by law.

The following list identifies certain items that TxDOT would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of TxDOT, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each material change as certified by

the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the QS and the most recent completed periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

List of Representative Material Changes

- A. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;
- B. A downward change in tangible net worth of 10% of shareholder equity;
- C. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;
- D. A downward change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity;
- E. Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
- F. The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 200 positions or involving the disposition of assets exceeding 10% of the then shareholder equity; and
- G. Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition since submission of the QS or may be pending for the next reporting period.

- f. **Off-Balance Sheet Liabilities** - A letter from the certified public accountant, chief financial officer, treasurer or certified public accountant for each entity for which financial information is submitted, identifying all material off balance sheet liabilities

The information required under this Section 2.0 (for Proposer, all Equity Participants and any required guarantors) shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in Proposer's organization (i.e., Equity Participant, lead design firm, subcontractor, etc.).

3.0 Price Information

3.1 Development Price and Cash Flow Adjustment Table/Maximum Payment Curve

Proposer shall submit a Development Price using Form N-1 setting forth the total price for the work required under the CDA, including pricing for any approved (or conditionally approved) ATCs incorporated in the Proposal. Form N-2 shall set forth the cash flow corresponding to the anticipated draw requests for the work required under the CDA and shall not exceed the maximum payment curve set forth as Form N-2 at any point in time. The draw requests shall be established by anticipated percentage complete on a monthly basis, and shall be limited to the lesser of the anticipated cash flow or the maximum payment curve, both shown on Form N-2.

3.2 Maintenance Price

The Financial Proposal shall include Form O setting forth the annual lump sum price, in year 2008 dollars, for maintenance services for the years 1 through 5, 6 through 10 and 11 through 15 of the Capital Maintenance Agreement, as well as a breakdown of such price into routine pavement operations, pavement maintenance operations, bridge maintenance, drainage facilities, noise walls and retaining walls, traffic control, embankment and cut slopes, and miscellaneous maintenance items, as such concepts are described in the Capital Maintenance Agreement. The Capital Maintenance Agreement provides for the adjustment procedures and index for annual adjustments in the price for maintenance services.

In developing the Maintenance Price, the Proposers shall consider the limitations on private use under Section 141 of the Internal Revenue Code of 1986, as amended, and the management contract rules under Section 1.141-3(b)(4) of the Regulations of the Treasury Department.

3.3 EPDs

The Proposer's EPDs shall be delivered separately into escrow as provided in ITP Section 4.3.2.

Exhibit D

REQUIRED FORMS

(see attached)

Exhibit E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Proposal Component	Form (if any)	ITP Section Cross-Reference
Technical Proposal		
Proposers shall follow the order of this checklist in their submissions. A referenced copy of this document shall be submitted with the Technical Proposal.		
A. Executive Summary		
Executive Summary (Exclude price information)	No forms are provided	<u>Exhibit B, Section 3.1</u>
B. Proposer Information, Certifications & Documents		
Proposal Letter	<u>Form A</u>	<u>Exhibit B, Section 3.2.1</u>
Authorization Documents	No forms are provided	<u>Exhibit B, Section 3.2.1</u>
Identification of Proposer and Equity Participants	<u>Form B-1</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Proposer Organization	<u>Form B-2</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Major Participants, Major Professional Services Firms and Identified Subcontractors	<u>Form B-3</u>	<u>Exhibit B, Section 3.2.2</u>
Responsible Proposer and Major Participant Questionnaire	<u>Form C</u>	<u>Exhibit B, Section 3.2.3</u>
Industrial Safety Record for Team Members Performing Installation or Construction Work	<u>Form D</u>	<u>Exhibit B, Section 3.2.4</u>
Personnel Work Assignment Form	<u>Form E</u>	<u>Exhibit B, Section 3.2.5</u>
Key Personnel statement of availability	No forms are provided	<u>Exhibit B, Section 3.2.5</u>
Letters Approving Key Personnel	No forms are provided	<u>Exhibit B, Section 3.2.6</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Letters Approving Changes in Proposer's Organization	No forms are provided	<u>Exhibit B, Section 3.2.6</u>
Non-Collusion Affidavit	<u>Form F</u>	<u>Exhibit B, Section 3.2.7</u>
Buy America Certification	<u>Form G</u>	<u>Exhibit B, Section 3.2.8</u>
DBE Certification	<u>Form H</u>	<u>Exhibit B, Section 3.2.9</u>
Child Support Statement for State Grants, Loans and Contracts	<u>Form I</u>	<u>Exhibit B, Section 3.2.10</u>
Conflict of Interest Disclosure Statement	<u>Form J</u>	<u>Exhibit B, Section 3.2.11</u>
Equal Employment Opportunity Certification	<u>Form Q</u>	<u>Exhibit B, Section 3.2.12</u>
Guarantor Letter (if required)	No forms are provided. If a guaranty is required, <u>Form B-1</u> is required for the guarantor.	<u>Exhibit B, Section 3.2.13</u>
Surety Information	No forms are provided.	<u>Exhibit B, Section 3.2.14</u>
Debarment and Suspension Certification	<u>Form R</u>	<u>Exhibit B, Section 3.2.15</u>
Certification Regarding Use of Contract Funds for Lobbying	<u>Form S</u>	<u>Exhibit B, Section 3.2.16</u>
C. Project Development Plan		
Technical Solutions	No forms are provided	<u>Exhibit B, Section 4.1</u>
Project Baseline Schedule	<u>Form P</u>	<u>Exhibit B, Section 4.1.3</u>
Project Management Plan	No forms are provided	<u>Exhibit B, Section 4.2</u>
Quality Management Plan	No forms are provided	<u>Exhibit B, Section 4.3</u>
D. Appendices		
Key Personnel Resumes and References	No forms are provided	<u>Exhibit B, Section 3.2.5.1</u>
Technical Drawings, Graphs and Data	No forms are provided	<u>Exhibit B, Section 4.1</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Project Schedules	No forms are provided	<u>Exhibit B, Section 4.1.3</u>
E. Proposal Security (Proposal Bond or Letter of Credit)		
Proposal Bond	<u>Form K-1</u>	<u>Exhibit B, Section 3.3.1</u>
Letter of Credit	<u>Form K-2</u>	<u>Exhibit B, Section 3.3.2</u>
F. Escrow Agreement		
Escrow Agreement	<u>Form L</u>	<u>Exhibit B, Section 3.4</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Financial Proposal		
Proposers shall follow the order of this checklist in their submissions. A referenced copy of this document shall be submitted with the Financial Proposal.		
A. Updated Financial Information		
Audited fiscal financial statements for all periods subsequent to the QS and unaudited interim financial statements	No forms are provided	<u>Exhibit C, Section 2.0</u>
Guarantor letters of support (as required)	No forms are provided	<u>Exhibit C, Section 2.0</u>
For publicly held companies, most recent SEC 10-K and 10-Q reports and any 8-Ks filed since the QS	No forms are provided	<u>Exhibit C, Section 2.0</u>
Credit ratings	No forms are provided	<u>Exhibit C, Section 2.0</u>
Letter regarding material change in financial condition since submission of the QS and for next reporting period	No forms are provided	<u>Exhibit C, Section 2.0</u>
Letter disclosing all material off balance sheet liabilities	No forms are provided	<u>Exhibit C, Section 2.0</u>
B. Price Information		
Development Price	<u>Form N-1</u>	<u>Exhibit C, Section 3.1</u>

Proposal Component	Form (if any)	ITP Section Cross-Reference
Cash Flow Adjustment Table/Maximum Payment Curve	<u>Form N-2</u>	<u>Exhibit C, Section 3.1</u>
Maintenance Price	<u>Form O</u>	<u>Exhibit C, Section 3.2</u>
EPDs (to be delivered separately into escrow as provided in ITP <u>Section 4.3.2</u>)	No forms are provided	<u>Exhibit C, Section 3.3</u>

Exhibit F

RIGHT OF ENTRY PROCESS

Proposers must comply with the following steps in order to obtain a right of entry from TxDOT to the _____ Right of Way at various locations prior to execution of the CDA and Capital Maintenance Agreement.

1. Proposer shall complete the Agreement for Engineering Investigations on State Highway Right of Way and forward a signed original agreement and Exhibit B, TxDOT Form 1560, Certificate of Insurance, to Sam E. Swan, P.E., with a copy to _____ in the District Tollway Office.
2. Exhibit A, CDA Site Investigation on Highway Right of Way in the Fort Worth District, shall be completed by Proposer for each request for right of entry upon State highway Right of Way. One Exhibit A can cover a request for multiple days of access. Exhibit A may be turned in with the signed original Agreement for Engineering Investigations on State Highway Right of Way and Exhibit B, or may be turned in subsequent to Proposer's receipt of the fully executed copy of the agreement.
3. Dependant upon the location of the Right of Way for which Proposer seeks entry, Proposer shall submit Exhibit A to each of the following persons:

Access on _____
Responsible Area Office: _____
Submit Exhibit A to:

- a) Sam E. Swan, P.E
- b)

4. Prior to a Proposer's entry onto State highway Right of Way, Proposer must receive Approval from the appropriate area office.
5. Proposer may perform investigations in areas only as requested in each Exhibit A.

***Note: Exhibit A may be faxed, e-mailed or submitted in hard copy. Approval of Exhibit A shall occur in written format which may include e-mail.

*** Exhibit A preparation:

In addition to location and general description of investigations to be performed, if the investigations require closure of a lane(s) of traffic for any reason, Proposer shall submit a traffic control plan for TxDOT review and approval with the appropriate Exhibit A.

**AGREEMENT FOR
ENGINEERING INVESTIGATIONS
ON STATE HIGHWAY RIGHT OF WAY**



STATE OF TEXAS)

COUNTY OF TARRANT)

THIS AGREEMENT made this _____ day of _____ by the State of Texas, acting by and through the Texas Department of Transportation, referred to as "TxDOT," party of the first part, and _____, hereinafter referred to as the "Requestor," party of the second part.

WITNESSETH

WHEREAS, TxDOT owns and operates a system of highways for public use and benefit, including _____, in Tarrant, County; and

WHEREAS, the Requestor has requested permission from TxDOT to use _____ Right of Way at various locations to be determined based on submittal of Exhibit A for each instance of access requested. Exhibit A is attached hereto and made a part of this Agreement, for the purpose of asset assessment, engineering studies and site investigations; and

WHEREAS, in accordance with Tex. Adm. Code, § 27, TxDOT seeks to enter into a Comprehensive Development Agreement with a private sector partner and desires the private sector partner have access to the proposed Project limits for performance of due diligence work in preparation of its Proposal; and

WHEREAS, this Agreement is intended to encourage and facilitate access to TxDOT highway facilities and their adjacent Right of Way for the promotion of that goal

while protecting the safety of the traveling public and the integrity of state highway facilities and Right of Way.

AGREEMENT

1. The Requestor's description of the activities, including the placement of people and equipment on TxDOT highway Right of Way, will be submitted in writing as outlined in Exhibit A and shall be made part of this Agreement upon approval of TxDOT.
2. It is expressly understood that TxDOT does not purport hereby to grant any right, claim, title, or easement in or upon its Right of Way. Furthermore, approval of this Agreement by TxDOT does not constitute approval by any other Texas State agency.
3. The Requestor agrees to accept full responsibility for coordinating and making arrangements with the local law enforcement personnel to provide adequate and safe traffic control during the above referenced activity. If, during the activity, the local law enforcement personnel determine that the above referenced use of the Right of Way is creating a traffic hazard, the Right of Way will be opened to traffic and the activity will be rescheduled to a time agreeable to TxDOT, the Requestor, and the local law enforcement personnel.
4. The Requestor shall provide necessary safeguards to protect the public during the above referenced activity, including adequate insurance for payment of any damages which might result from activities during occupation of the Right of Way, and shall save TxDOT and the State of Texas harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so.

5. The Requestor agrees to indemnify and save harmless TxDOT and the State of Texas and its officers, agents, contractors, and employees from all suits, actions, or claims and from all liability and damages for any and all injuries or damages sustained by any person or property as a consequence of any neglect in the performance of the above referenced activity and any related activity by the Requestor and from any claims or amounts arising or recovered under the “Workers’ Compensation Laws”; V.T.C.S., Civil Practice & Remedies Code 101.021, 101.051; or any other laws.
6. The Requestor shall further indemnify TxDOT and the State of Texas and accept responsibility for all damages or injury to property of any character occurring during the prosecution of the activity resulting from any act, omission, neglect or misconduct on the part of the Requestor in the manner or method of executing the activity. The Requestor assumes all costs associated with the inspections, investigations and assessments.
7. TxDOT, having the legal right to occupy TxDOT highway Right of Way, will not be responsible or liable for damages to the Requestor’s property or operations. The Requestor’s attention is directed to the fact that utility installations owned by others exist in the Right of Way. The Requestor shall save harmless TxDOT and the State of Texas from any and all suits or claims resulting from damage to any utility installation due to the above referenced activity.
8. The Requestor shall restore the Right of Way to its original condition, free of any damage to the roadway and drainage structures, signs, and pavement and, to the extent practicable, restore the natural environment, including landscape

features. The Requestor will avoid or minimize damage outside the Right of Way and will, at its own expense, restore or repair damage outside the Right of Way. The Requestor's performance shall be in compliance with all federal, State and local laws, ordinances, and regulations including:

- the Endangered Species Act of 1973, 16 USC § 1531 et seq. and the regulations there under as amended;
- TxDOT's erosion and sedimentation control standards and TxDOT's Vegetation Management Standards, which may in any way regulate or control the activity;
- all State and federal environmental laws and any conditions required by TxDOT to protect the environment.
- Any costs incurred by TxDOT for repairs to highway facilities, for the removal of debris, or for any other necessary restoration work performed by TxDOT as a result of the activity will be billed to the Requestor at cost. The Requestor shall make full and complete payment to TxDOT within thirty (30) days from receipt of TxDOT's written notification.

9. Any action by the Requestor that indicates a commencing of the activity in the Right of Way will signify that the Requestor agrees to abide by the above requirements.

10. Any changes in the time frame, character, or responsibilities of the parties as outlined on the appropriate previously approved Exhibit A shall be enacted by a written approval by TxDOT.

11. It is mutually agreed and understood that if the above referenced section of paved Right of Way is to be partially or totally temporarily closed, it will be closed in accordance with a "Traffic Control Plan" provided as part of the appropriate Exhibit A and subject to approval by TxDOT. The Requestor hereby agrees to immediately reopen any partially or totally closed section of Right of Way to emergency vehicles, law enforcement personnel, or others in case of emergency. The traffic control shall be provided by the Requester through cooperation with the appropriate law enforcement personnel at no cost to TxDOT. Each Traffic Control Plan shall be provided by the Requestor, at no cost to TxDOT, and approved by TxDOT, and shall be in accordance with the Texas Manual on Uniform Traffic Control Devices, latest edition. The Requestor hereby agrees to accept full responsibility for the complete planning, design and implementation of each Traffic Control Plan. Each Traffic Control Plan shall include a traffic enforcement plan, including a letter by mail or facsimile from the law enforcement agency that will be providing the traffic control for the event or a contact name and telephone number of the responsible law enforcement agency. Law enforcement will be present at all times during a closure unless stated otherwise in the Traffic Control Plan.
12. The Requestor has provided TxDOT with Exhibit B, covering the below listed insurance limits for the duration of the activity. Exhibit B is attached hereto and made a part of this Agreement.
 - A. Worker's Compensation Insurance Amount – Statutory Endorsed with a Waiver of Subrogation in favor of TxDOT and the State of Texas.

B. Comprehensive General Liability Insurance Amounts -

Bodily Injury \$500,000 each occurrence

Property Damage \$100,000 each occurrence

OR

Commercial General Liability Insurance Amount -

\$600,000 combined single limit each occurrence and in the aggregate which includes Contractual Coverage; and, endorsed with a Waiver of Subrogation in favor of those parties named in paragraph A above, and endorsed with TxDOT and the State of Texas as an additional insured.

C. Comprehensive Automobile Liability Amounts -

Bodily Injury \$250,000 each person

\$500,000 each occurrence

Property Damage \$100,000 each occurrence

Endorsed with a Waiver of Subrogation in favor of those parties named in paragraph A above, and endorsed with TxDOT and the State of Texas as an additional insured.

13. This Agreement shall terminate upon execution of a Comprehensive Development Agreement, unless terminated by:

- Mutual agreement and written consent of both parties,
- TxDOT upon written notice to the Requestor as consequence of the Requestor's failure to perform the responsibilities set forth herein (TxDOT may grant allowances for circumstances beyond the control of the Requestor),

- TxDOT for reasons of its own and not subject to mutual consent of the Requestor upon not less than 15 days written notice to the Requestor, or
- By satisfactory completion of the Requestor's temporary use of the highway Right of Way.

The termination of this agreement and payment of any amount in settlement as prescribed herein shall extinguish all rights, duties, and obligations of TxDOT and the Requestor. Upon termination of this Agreement, the Requestor shall vacate the highway Right of Way and restore it to the original condition in a manner described herein within two days from the termination date of this Agreement.

14. Should disputes arise between the parties regarding the obligations and responsibilities established herein, TxDOT's decision shall be final and binding.
15. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
16. This Agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings and/or written or oral agreements between TxDOT and the Requestor respecting the within subject matter.
17. The undersigned for the Requestor represents and warrants that he or she is an officer of the Requestor for which he or she has executed this Agreement and

that he or she has the full and complete authority to enter into this Agreement on behalf of the Requestor.



Exhibit A

CDA SITE INVESTIGATION ON HIGHWAY RIGHT OF WAY IN THE FORT WORTH DISTRICT

_____ is giving written notice of proposed Work to take place within the right of way of _____ in Tarrant County, TX as follows:

(Give general written description of location and work to take place- Do not write "See Attached")

The Work listed above **is not to include** the following: The destructive testing of any in place pavement or structure, or other work that may be considered harmful to assets already in place. This Work is limited to Site investigations and Engineering Studies for the purposes of preparing a Proposal for the DFW Connector CDA and Capital Maintenance Agreement. This may include reviewing in place Work along the Project Right of Way, gathering pavement condition score information, subsurface soils investigations and other investigations as required in preparation of a Proposal in response to the TxDOT issued RFP.

At no time shall any Work activity that involves digging take place any closer than three feet from the edge of pavement or back of curb.

The Requestor will use best management practices to minimize erosion and sedimentation resulting from the proposed Work, and will revegetate the Work area as indicated under "Revegetation Special Provisions."

The Requestor will ensure that traffic control measures complying with applicable portions of the *Texas Manual of Uniform Traffic Control Devices* will be installed and maintained for the duration of this Work. (Approval of traffic control plans is required by area/maintenance office.)

Refer to attached location map and drawing for a more specific location and a description of the Work activity. The undersigned agrees to comply with the terms and conditions set forth in this notice.

The proposed Work will begin on the _____ day of _____, 20 ____ .

Requestor Party _____
By (Print) _____
Signature _____
Address _____

Phone _____

Texas Department of Transportation

Area Engineer or Maintenance Supervisor
Signature: _____

Date

COPY OF THIS DOCUMENT MUST BE KEPT ON JOBSITE
If Approved via e-mail, retain printed copy of e-mail approval on jobsite as well.

Texas Department of Transportation

NOTES TO AGENTS:

Agents must provide all requested information then either fax or mail this form directly to the address listed below.

Pre-printed limits are the minimum required, if higher limits are provided by the policy, enter the higher limit amount and strike-through or cross-out the pre-printed limit.

To avoid work suspension, an updated insurance form must reach the address listed below **one business day prior** to the expiration date. **Insurance must be in force in order to perform any work.**

Binder numbers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on this form.

The TxDOT certificate of insurance form is the only acceptable proof of insurance for department contracts.

List the contractor's legal company name, including the DBA (doing business as) name as the insured or list both the contractor and staff leasing service as insured when a staff leasing service is providing insurance.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manner.

This form may be reproduced.

The **SIGNATURE** of the agent is required. Stamped/typed/printed signatures are not acceptable.

CERTIFICATE OF INSURANCE REQUIREMENTS:

WORKERS' COMPENSATION INSURANCE:

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word STATUTORY, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or ACCIDENT INSURANCE is not an acceptable substitute for Workers' Compensation.

COMPREHENSIVE GENERAL LIABILITY INSURANCE or COMMERCIAL GENERAL LIABILITY INSURANCE:

If coverages are specified separately, they must be at least these amounts:

Bodily Injury	\$500,000 each occurrence
Property Damage	\$100,000 each occurrence
	\$100,000 for aggregate

MANUFACTURERS' or CONTRACTOR LIABILITY INSURANCE is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE or TEXAS BUSINESS AUTOMOBILE POLICY:

The coverage amount for a Texas Business Automobile Policy or Comprehensive Automobile Liability may be shown as a minimum of \$600,000 Combined Single Limit by a typed or printed entry and deletion of the specific amounts listed for Bodily Injury and Property Damage.

BASIC AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for Comprehensive Automobile Liability Insurance or Texas Business Automobile Policy.

MAIL ALL CERTIFICATES TO :

Texas Department of Transportation
CST – Contract Processing Unit (RA/200 – 1st Fl.)
125 E. 11th Street
Austin TX 78701-2483
512/416-2429 (V), 512/416-2536 (F)

Exhibit G

MINUTE ORDER

TEXAS TRANSPORTATION COMMISSION

TARRANT County

MINUTE ORDER

Page 1 of 2

FORT WORTH District

Transportation Code, Chapter 223, Subchapter E, prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement (CDA) with a private entity that provides for the design, development, construction, financing, maintenance, repair, operation, extension or expansion of a toll project on the state highway system.

On March 30, 2006, by Minute Order 110469, the Texas Transportation Commission (commission) authorized and directed the department to issue a request for qualifications (RFQ) to develop, design, and construct and to potentially finance, maintain, and operate SH 114 from SH 114L Business to east of International Parkway and SH 121 from FM 2499 to SH 360 (the SH 114/SH 121 corridor), including tolled managed lanes along SH 114 from east of FM 1709 to east of International Parkway, as well as other facilities to the extent necessary for connectivity, mobility, safety, and financing (formerly known locally as the Funnel but now known as the DFW Connector Project).

On December 29, 2006 the department issued a RFQ for the DFW Connector Project. The department determined that three of the proposing teams submitting qualification submittals in response to the RFQ were qualified to be on the short list of teams that will be requested to submit detailed proposals.

Transportation Code, §223.203(m) allows the department to pay an unsuccessful private entity that submits a responsive proposal in response to a request for proposals (RFP) a stipulated amount in exchange for the work product contained in that proposal. The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions.

In the RFP, the department will request detailed engineering, design, financial, and other information from the short listed proposers that is anticipated to be of value to the department and able to be used by the department in the performance of its functions. Payment for this work product would allow the department to use the work product for the benefit of the DFW Connector Project or for other department projects without further payment to the applicable proposers. Payment for the work product of proposers will defray a portion of the costs to be incurred by the short listed proposers in preparing a proposal, and is thereby anticipated to increase the quality of detailed proposals submitted for the DFW Connector Project and to increase competition for the project.

TEXAS TRANSPORTATION COMMISSION

TARRANT County

MINUTE ORDER

Page 2 of 2

FORT WORTH District

IT IS THEREFORE ORDERED by the commission that the department is authorized and directed to issue an RFP to develop, design, and construct and to potentially finance, maintain, and operate the DFW Connector Project from SH 114L Business to east of International Parkway and SH 121 from FM 2499 to SH 360 (SH 114/SH 121 corridor), including tolled managed lanes along SH 114 from east of FM 1709 to east of International Parkway, as well as other facilities to the extent necessary for connectivity, mobility, safety and financing.

IT IS FURTHER ORDERED that the department is authorized to pay to each proposer that submits a responsive, but unsuccessful detailed proposal to develop, design, construct, and to potentially finance, maintain, and operate the DFW Connector Project an amount based upon the value of the work product provided in the proposal that can, as determined by the executive director of the department or his designee, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$500,000.

IT IS FURTHER ORDERED that compensation may only be paid if the work product submitted also meets the minimum criteria and other conditions for payment identified by the department in the DFW Connector Project procurement documents.

Submitted and reviewed by:

Recommended by:

Director, Texas Turnpike Authority Division

Executive Director

<u>111102</u>	<u>OCT 25 07</u>
Minute	Date
Number	Passed

Exhibit H

SANCTIONS

Texas Administrative Code
TITLE 43 TRANSPORTATION
PART 1 TEXAS DEPARTMENT OF TRANSPORTATION
CHAPTER 27 TOLL PROJECTS
SUBCHAPTER A COMPREHENSIVE DEVELOPMENT AGREEMENTS

RULE §27.9 Sanctions

(a) Procedure.

(1) Notification of rules. A copy of this section will be included in each request for qualifications, request for proposals, and request for competing proposals and qualifications issued under this subchapter. Failure to comply with this subsection does not affect the applicability of this section.

(2) Referral to executive director. In determining whether to refer a private entity to the executive director for possible sanctions, the department will consider the criteria set forth in subsection (c)(3) of this section.

(3) Notice of sanctions. The department will notify the private entity of a sanction by certified mail within five days after the executive director's decision to impose the sanction. The notice will summarize the facts and circumstances underlying the sanction, identify the effective date and period of the sanction, and state that the private entity may petition for a hearing within 10 days after receiving notice of the sanction. Except as provided in subsection (b) of this section, a sanction is effective on the date specified in the notice.

(4) Agreed modification of procedure. The procedure for considering a sanction may be modified by agreement of the executive director and the private entity.

(5) Contractual obligations unaffected. The imposition of sanctions does not affect a private entity's obligations under a comprehensive development agreement or any other agreement with the department or limit the commission's contractual remedies thereunder.

(6) Affiliated entities included. References to the term "private entity" also include an affiliate of the private entity, provided that the affiliate is an entity:

- (A) which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the private entity or any of its members, partners, or shareholders holding a 10% or greater interest in the private entity; or

- (B) for which 10% or more of the equity interest in such entity is held directly or indirectly by the private entity, any of the private entity's members, partners or 10% or greater shareholders or any affiliate of the private entity under subparagraph (A) of this paragraph.

(7) Responsibility for acts of others. The conduct of an individual or other entity acting on behalf of the private entity may be imputed to the private entity.

(b) Opportunity for hearing.

(1) Availability of hearing. The private entity will be given the opportunity for a hearing after receiving notice of a sanction and may petition for a hearing as provided in §1.21 et seq. of this title (relating to Procedures in Contested Cases). The petition must be filed within 10 days after the private entity receives notice of the sanction.

(2) Stay of sanctions pending hearing. A sanction, except a suspension, is automatically stayed from the date a petition for hearing is filed until a final order is entered by the commission. On entry of a final order imposing the sanction or dismissing the hearing, the full term of the sanction will be reinstated as if it were first imposed on the date of the final order unless the commission specifically orders that a lesser sanction be imposed.

(3) Commission discretion. In the public interest, the commission may reduce, eliminate, or modify sanctions imposed under this section at any time.

(4) Exception. The opportunity for a hearing described in subsection (b)(1) of this section does not apply to a private entity that has been sanctioned through the use of a reprimand. In such cases, the private entity may submit written documentation disputing the reprimand to the executive director for further consideration.

(c) Application of sanctions.

(1) Determination of offense. The executive director will determine whether a private entity has committed an act or omission listed under subsection (e)(1) of this section.

(2) Consideration of all circumstances. The existence of grounds for imposing a sanction does not mandate that a private entity be sanctioned. The seriousness of the acts or omissions (including the existence of and elapsed time since previous acts or omissions) and any mitigating circumstances will be considered before sanctions are imposed.

(3) Mitigating circumstances. The executive director will consider mitigating circumstances (or lack thereof) in deciding whether to impose sanctions. Mitigating circumstances may include:

- (A) the private entity's culpability;
- (B) the level of impact the sanction will have on a particular comprehensive development agreement project;

- (C) whether, in light of all facts and circumstances, a severe sanction is necessary to protect the interest of the state and the integrity of the comprehensive development agreement program;
- (D) restitution paid by the private entity or a third party for damages suffered by a governmental entity as a result of the private entity's actions;
- (E) cooperation by the private entity with a governmental entity in the investigation of bidding crimes, including the provision of a full and complete account of the private entity's involvement; and
- (F) the private entity's disassociation from individuals and firms that have been involved in a bidding crime.

(4) Determination of sanction level. The executive director, after consideration of all circumstances (including any mitigating circumstances) will determine a sanction level described in subsection (e)(2) of this section to be imposed on the private entity.

(5) Progressive sanctions. If the private entity has previously been sanctioned, the executive director may use increasingly more severe sanctions in order to achieve the private entity's compliance with department policies and procedures. Every effort will be made to resolve the situation with the imposition of the least severe sanction that is appropriate for the circumstances under consideration. However, in cases where the act or omission is of such a nature that progressive sanction action is not in the best interest of the state or the comprehensive development agreement program, a more severe sanction may be imposed even if such act or omission is the first act or omission by the private entity which warrants sanction action.

(6) Consecutive sanctions. In the case of multiple violations by the same private entity arising out of separate occurrences, the executive director may impose multiple sanctions consecutively and in any order.

(7) Imposition of lesser sanctions. A lesser sanction may be imposed instead of the maximum sanction permitted.

(8) Executive director discretion. In the best interest of the state or the comprehensive development agreement program, the executive director may reduce, eliminate, or modify sanctions at any time.

(d) Suspension.

(1) Grounds. The executive director may immediately suspend a private entity without a prior hearing if the private entity is notified of debarment under subsection (e) of this section.

(2) Duration. A suspension will terminate when a final order is entered after a hearing or when ordered by the executive director.

(e) Sanctions.

(1) Grounds. The executive director may sanction a private entity for the following reasons:

- (A) conviction of a bidding crime as defined in §9.101 of this title (relating to Contractor Sanctions), a plea of guilty or nolo contendere to a charge of a bidding crime, or a public admission to a bidding crime, whether made by the private entity or by an individual or other entity that acted on behalf of the private entity;
- (B) conviction of the private entity for an offense indicating a lack of moral or ethical integrity, such as bribery or payment of kickbacks or secret rebates to agents of a governmental entity, if the offense reflects on the business practices of the private entity;
- (C) commission of acts indicating a lack of moral or ethical integrity and reflecting on the business practices of the private entity, if the executive director has probable cause to believe that the acts have been committed;
- (D) disqualification of the private entity by a state or by an agency of the federal government for any of the reasons listed in this section;
- (E) failure of the private entity to notify the department promptly of a conviction of a bidding crime or debarment for any reason by a state or by an agency of the federal government;
- (F) the private entity is declared in default on a comprehensive development agreement in accordance with the terms of that agreement;
- (G) violation of the conflict of interest provisions applicable to private entities participating in the department's comprehensive development agreement program as set forth in §27.8 of this subchapter (relating to Conflict of Interest and Ethics Policies);
- (H) violation of the provision relating to offering, conferring, or agreeing to confer gifts and benefits to department employees as set forth in §27.8 of this subchapter; or
- (I) any other grounds described in §9.106(a) of this title (relating to Contractor Sanctions) exist.

(2) Sanction levels. The executive director will determine the level of sanction appropriate for the circumstances under consideration.

- (A) Level 1. Reprimand. After four reprimands in one calendar year, any subsequent act or omission committed by the private entity will result in the imposition of a more severe sanction.

- (B) Level 2. Prohibition against the private entity's participation in a particular procurement.
- (C) Level 3. Debarment of the private entity for a period of no more than 36 months.
- (D) Level 4. Permanent debarment of the private entity.

(3) Exception. Debarment under paragraph (2)(D) of this subsection may not be for more than the period of debarment established by the state or federal agency on whose actions the debarment is based.

(4) Use of sanction information. Information pertaining to any sanction(s) imposed against a private entity may be considered by the department during the evaluation of qualification submittals and other proposals submitted by the private entity during a procurement process. Use of this information is limited to sanction action(s) which occurred within 10 years of the date the qualification submittal or other proposal is received by the department.

Source Note: The provisions of this §27.9 adopted to be effective May 17, 2007, 32 TexReg 2670