



**GARDEN PARKWAY-EAST (TIP U-3321C&DA)**  
**INDUSTRY DRAFT REQUEST FOR PROPOSALS:**  
**VOLUME I – INSTRUCTIONS TO PROPOSERS**

**February 23, 2012**

*VOID FOR BIDDING*

DATE AND TIME OF TECHNICAL AND PRICE PROPOSAL SUBMISSION: **See RFP (Volume II)**

DATE AND TIME OF PRICE PROPOSAL OPENING: **See RFP (Volume II)**

CONTRACT ID: C202697

WBS ELEMENT NO.: 34922.5.TA1

COUNTY: Gaston and Mecklenburg

ROUTE: Garden Parkway-East

MILES: 9.5 (20.9 for ITS)

LOCATION: From West of SR 2428 (Wilson Farm Road) to I-485

TYPE OF WORK: DESIGN-BUILD SERVICE AS SPECIFIED IN THE SCOPE OF WORK  
CONTAINED IN THE REQUEST FOR PROPOSAL (Volume II)

# Table of Contents

<b>1. INTRODUCTION AND GENERAL PROVISIONS .....</b>	<b>1</b>
A. INTRODUCTION .....	1
B. PURPOSE OF ITP.....	1
C. USE OF TERMS .....	1
D. PROJECT OVERVIEW .....	2
E. PROJECT GOALS.....	3
F. RFP AND CONTRACT DOCUMENTS .....	3
G. THE PROCUREMENT PROCESS .....	4
<b>2. SUBMISSION OF DESIGN-BUILD PROPOSAL.....</b>	<b>8</b>
A. RESPONSIVE PROPOSAL .....	8
B. EXECUTION OF BID, NON-COLLUSION, AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION .....	9
C. SUBMITTAL OF TECHNICAL PROPOSAL AND PRICE PROPOSAL .....	9
D. PROPOSAL VALIDITY PERIOD.....	11
E. FORFEITURE OF BID SECURITY .....	11
<b>3. CONTENTS OF DESIGN-BUILD PROPOSAL.....</b>	<b>11</b>
A. GENERAL .....	11
B. TECHNICAL PROPOSAL CONTENTS.....	11
C. PRICE PROPOSAL CONTENTS AND ESTIMATE OF QUANTITIES .....	17
<b>4. ALTERNATIVE TECHNICAL CONCEPTS AND CONFIDENTIAL QUESTIONS. 18</b>	
A. DEFINITIONS .....	18
B. CONFIDENTIAL QUESTIONS.....	18
C. ALTERNATIVE TECHNICAL CONCEPTS .....	19
D. ATC SUBMITTALS .....	19
E. FORMAL ATCS .....	20
F. REVIEW OF FORMAL ATCS.....	20
G. NCTA RESPONSE TO FORMAL ATCS .....	21
H. FORMAL ATC INCLUSION IN TECHNICAL PROPOSAL .....	21
I. PRELIMINARY ATCS.....	22
<b>5. EVALUATION OF PROPOSALS.....</b>	<b>22</b>
A. TECHNICAL EVALUATION .....	22
B. PASS/FAIL EVALUATION.....	23
C. TECHNICAL EVALUATION CRITERIA .....	23
<b>6. DETERMINATION OF BEST VALUE PROPOSAL.....</b>	<b>25</b>
A. TECHNICAL PROPOSAL SCORE .....	25
B. OPENING OF PRICE PROPOSALS.....	26
<b>7. BEST AND FINAL OFFER.....</b>	<b>27</b>
<b>8. CONTRACT AND CONTRACT AWARD.....</b>	<b>28</b>

<b>9. STIPEND .....</b>	<b>28</b>
<b>10. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM .....</b>	<b>28</b>
A. DESCRIPTION .....	28
B. DEFINITIONS APPLICABLE TO SECTION 10 OF THIS ITP .....	28
C. FORMS AND WEBSITES REFERENCED IN THIS PROVISION .....	29
D. CONTRACT GOAL .....	30
E. DIRECTORY OF TRANSPORTATION FIRMS (DIRECTORY) .....	30
F. LISTING OF DBE SUBCONTRACTORS .....	30
G. DBE PRIME CONTRACTOR .....	31
H. WRITTEN DOCUMENTATION – LETTER OF INTENT .....	31
I. SUBMISSION OF GOOD FAITH EFFORT .....	32
J. CONSIDERATION OF GOOD FAITH EFFORT .....	32
K. DECERTIFICATION REPLACEMENT PRIOR TO REQUEST FOR SUBCONTRACT .....	34
L. NON-GOOD FAITH APPEAL .....	34
M. COUNTING DBE PARTICIPATION TOWARD MEETING DBE GOAL .....	35
N. COMMERCIALY USEFUL FUNCTION .....	36
O. REPLACING AND REPORTING DBE PARTICIPATION .....	37
<b>11. FEDERAL-AID CONTRACT PROVISIONS .....</b>	<b>37</b>
<b>12. PRICE PROPOSAL DOCUMENTATION ESCROW .....</b>	<b>37</b>
A. GENERAL .....	37
B. PRICE PROPOSAL DOCUMENTATION DEFINED .....	38
C. SUBMITTAL OF PRICE PROPOSAL DOCUMENTATION .....	38
D. AFFIDAVIT .....	38
E. VERIFICATION .....	39
F. FAILURE TO PROVIDE PRICE PROPOSAL DOCUMENTATION .....	39
G. ESCROW AGREEMENT .....	39
<b>13. PROTESTS .....</b>	<b>40</b>
A. WRITTEN PROTESTS ONLY .....	40
B. PROTEST CONTENTS .....	40
C. TIME FOR FILING .....	40
D. PROTEST DECISION .....	41
E. RIGHT OF APPEAL .....	41
F. IRREVOCABILITY OF PROPOSALS PENDING RESOLUTION OF PROTEST .....	41
<b>14. ADDITIONAL PROVISIONS .....</b>	<b>42</b>
A. THREE-YEAR GUARANTEE .....	42
B. DIVISION ONE, HIGHLIGHTED REQUIREMENTS .....	42
C. ACKNOWLEDGEMENTS AND RESERVED RIGHTS .....	42
D. DISCLAIMERS .....	44
E. IMPROPER CONDUCT .....	44
F. CONFIDENTIALITY AND PUBLIC DISCLOSURE .....	45

## **1. INTRODUCTION AND GENERAL PROVISIONS**

### **A. INTRODUCTION**

This Request for Proposals (“RFP”) is issued by the Department of Transportation, North Carolina Turnpike Authority (the “Authority” or “Department of Transportation, NCTA”) to seek proposals (“Proposals”) for the design and construction of the Garden Parkway-East, which will be a controlled-access all-electronic toll road extending from west of SR 2428 (Wilson Farm Road) in Gaston County to I-485 near Charlotte Douglas International Airport in Mecklenburg County, North Carolina (the “Project”). The proposed roadway consists of a new four-lane median divided toll facility. The 9.5 mile Project will be owned and operated by the Authority and will be the eastern portion of the approximately 20 mile long Garden Parkway. Refer to the North Carolina Turnpike Authority website at [www.ncdot.gov/projects/gardenparkway/gardenparkwayEast.html](http://www.ncdot.gov/projects/gardenparkway/gardenparkwayEast.html) for additional information regarding the Project. The Authority, working in cooperation with other divisions of the North Carolina Department of Transportation (“NCDOT”), is responsible for the NEPA decision documents for the Project, environmental permits to the extent denoted in the RFP (Volume II), acquiring property to the extent denoted in the RFP (Volume II), preparation and execution of contracts, and the design-build plan review for the Project.

This solicitation is a request for competitive proposals pursuant to North Carolina General Statute §136-89.180 *et seq.* Proposals are only invited from and will only be considered from those entities (“Proposers”) on the Reduced Candidate List as determined through the evaluation of Statements of Qualifications (“SOQ”) submitted in response to the Request for Qualifications (“RFQ”) made available on January 3, 2011.

These Instructions to Proposers (“ITP”) provide instructions to be followed by Proposers in the preparation of their Proposals. Proposals must comply with this ITP and shall address the Project goals identified in this ITP, Section 1.E.

### **B. PURPOSE OF ITP**

This ITP contains Technical Proposal, Price Proposal, and other submittal requirements, a description of the procurement process to be used, Technical Proposal evaluation criteria, and other instructions to Proposers. This ITP shall be used by Proposers in conjunction with the other RFP Documents for the generation and submission of responsive Technical Proposals, sealed Price Proposals, and other required pre-award submittals.

Submittal of a Price Proposal and the execution by Proposer of the signature sheets contained in the RFP (Volume II), Exhibit IV, shall constitute Proposer’s acknowledgement and understanding of the procurement process, submittal requirements, and evaluation criteria contained herein.

### **C. USE OF TERMS**

Throughout this ITP, the rest of the RFP (Volume II) and all manuals, documents and standards referred to therein, the terms Bidder, Team, Firm, Company, and Proposer are synonymous, the terms Contractor, Design-Build Team, and Successful Proposer are

synonymous, and the terms North Carolina Turnpike Authority, Authority, NCTA, State, and Engineer are synonymous. In addition, throughout this ITP, the rest of the RFP (Volume II) and all manuals, documents and standards referred to therein, references to the Technical Proposal include all Technical Proposal supplemental information that may be submitted in response to a request for a Best and Final Offer (“BAFO”). Reference the Standard Special Provision entitled “Division One”, contained in the RFP (Volume II), for additional definitions and synonyms.

In addition, the terms Department of Transportation, Department, and NCDOT are synonymous and are defined so as to include the North Carolina Turnpike Authority as described in Article 6H of Chapter 136 of the North Carolina General Statutes and transferred to the Department of Transportation pursuant to G.S. 136-89.182(b).

#### **D. PROJECT OVERVIEW**

The proposed roadway consists of a new four-lane divided toll facility. The purpose of this project is to improve mobility and capacity by providing a facility that allows for high-speed regional travel consistent with the designations of the North Carolina Strategic Highway Corridor Program and the North Carolina Intrastate Highway System, while maintaining existing I-85.

A preferred alternative was announced in November 2009, a Final Environmental Impact Statement (FEIS) was signed by FHWA and NCDOT on December 21, 2010. A Record of Decision (ROD) is expected to be issued by March 2012.

It is important to note that the proposed project remains in the environmental process and final environmental approvals and related requirements have not been secured. Additional alternatives, including a no-build alternative, are always considered in the environmental process, and it is possible that the project scope may need to be modified to comply with the environmental process, or that a no-build alternative may be adopted. Nothing contained in this RFP is intended to modify, limit, or otherwise constrain the environmental process or commit NCDOT or any other entity to undertake any action with respect to the this project, including any procurement or the final design and construction of the proposed project.

The Work shall include but is not limited to:

- **Design Services** – completion of construction plans.
- **Permitting, Utility Relocation and Construction, and Right of Way Acquisition** - all to the extent denoted in the RFP (Volume II).
- **Construction Services** – construct and ensure workmanship of the designed facility.
- **Toll Facilities** - design and construction of support structures for toll technology components (to be installed by others).
- **Construction Engineering Inspection** - provide qualified technical personnel, in appropriate numbers and at the proper times, such that all contract administration responsibilities are effectively carried out.

## E. PROJECT GOALS

The Authority's goals for the Project are:

- Provide a safe project for workers and the traveling public
- Encourage design solutions that respond to environmental concerns, permits, and ROD commitments
- Achieve environmental and permit commitments
- Provide a context sensitive design which enhances municipalities' land use plan
- Provide a high-quality, aesthetic, durable, and sustainable highway with state of the art ITS and All-Electronic Tolling
- Complete the Project within the budget and available funding
- Minimize disruptions to existing traffic and local businesses and communities
- Coordinate work with other contractors performing work on the project
- Provide proactive public relations and maintain public trust and integrity
- Meet Disadvantaged Business Enterprise (DBE) goals

## F. RFP AND CONTRACT DOCUMENTS

The "Contract" or "Contract Documents" are as defined in Article 101-3 of the Standard Special Provision, Division One, contained in the RFP (Volume II).

The RFP Documents consist of the following documents (the "RFP Documents"):

- These Instructions to Proposers (Volume I);
- The form of Agreement (Volume II);
- The Project Special Provisions (Volume II);
- Standard Special Provisions (Volume II);
- Scopes of Work (Volume II)
- Required Forms and Exhibits (Volume II);
- Referenced Documents – those documents that are referenced within the other Contract Documents that provide additional design and construction requirements or standards that by reference are incorporated into the Contract;

The Price Proposal shall be submitted by returning the labeled copy of the RFP (Volume II) with all applicable Exhibits completed. When executed by the Department of Transportation, NCTA, the RFP becomes a part of the Contract Documents, along with the items identified in Article 101-3, including:

- Design-Build Team's Price Proposal and Technical Proposal (but subject to the constraints of ITP, Section 5.A); and
- Addenda to the RFP Documents which may be issued by the Authority.

The ITP and other Provided Materials (“Provided Materials”) will not form a part of the Contract. Provided Materials are defined as those documents, engineering data, designs, drawings, etc., conveyed to the Proposers on the Reduced Candidate List during the course of the procurement process to aid the Proposer in the development of their Technical Proposal, Project design, and the construction of the Project. The Authority makes no representation or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of the Provided Materials, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the Proposer for the purpose of providing such information as is in the possession of the Authority, whether or not such information may be accurate, complete, pertinent, or of any value.

The Design-Build Team shall be fully and totally responsible for the accuracy and completeness of all work performed under the Contract, and shall indemnify and hold the NCTA and the NCDOT harmless for any additional costs and all claims against the NCTA and / or NCDOT which may arise due to errors or omissions of the NCTA and / or NCDOT in the Provided Materials, and of the Design-Build Team in performing the work.

## **G. THE PROCUREMENT PROCESS**

### Method of Procurement

The Contract will be for design-build services to be paid on a lump sum basis. Subject to Section 14.C below, the Department will award the Contract to the Proposer that submits a responsive Proposal that is determined by the Authority to offer the lowest Adjusted Price considering the evaluation factors set forth in this ITP.

The procurement process includes two steps:

- Step One**            **RFQ** (determination of Reduced Candidate List); and,
- Step Two**            **RFP** (selection of Design-Build Team from Proposers on the Reduced Candidate List that submitted responsive Proposals).

Evaluation of Proposals will be based on information submitted in the Proposals or otherwise available to the Authority, and will involve both pass/fail factors and a combined evaluation of technical factors and price, as further detailed below.

### Addenda

The Department may at any time modify conditions or requirements of these RFP Documents by issuance of an addendum (referred to herein individually as an “Addendum” and collectively as “Addenda”). The Department will provide the Addenda only to the Proposers on the Reduced Candidate List. Persons or firms that obtain the RFP Documents from sources other than the NCDOT State Contract Officer bear the sole responsibility for obtaining any Addenda issued by the Department. Each Proposer, upon receipt of each Addendum, shall submit written acknowledgement of receipt by email to **designbuild\_GardenParkwayEast@ncdot.gov**. The Department will not be bound by, and the Proposer shall not rely on, any oral or written communication or representation regarding the

RFP Documents, except to the extent that it is contained in an Addendum to these RFP Documents and is not superseded by a later Addendum to these RFP Documents.

### Clarifications

The Department may request written clarifications to Proposals. This process will be initiated by delivery of a written request from the Department to the Proposer identifying the information needed and a date and time by which the information must be provided. Proposer shall provide the requested information in writing by the date and time indicated. If the requested information is not timely received, Proposer's ratings may be adversely affected and/or the Proposal may be declared non-responsive and not eligible for award.

### Individual Meetings with Proposers

The Department will provide at least two Question and Answer Sessions to meet with each proposer individually to specifically address questions regarding the draft Requests for Proposals.

The Department will attempt to arrange for a meeting between each individual proposer and the affected utility owners.

The Department will afford each proposer two additional meetings with the Department to discuss project specifics and address the proposers' concerns and questions. These meetings may occur at any time after the first Question and Answer Session with the proposers and before two weeks prior to the date of Technical and Price Proposals submission. The proposer shall request this meeting in writing to the State Contract Officer, providing the Department a minimum of one week advance notice of the requested date. The proposer shall also state in the request those disciplines within the Department that are requested to be in attendance. The Department makes no assurance that the request may be honored on that specific date or that all disciplines requested can be in attendance.

Additional individual meetings may be permitted in accordance with the *Alternative Technical Concepts and Confidential Questions* Project Special Provision found elsewhere in this RFP.

After submission of Proposals, the Department may conduct one-on-one meetings with Proposers so that the Department may gain information or a better understanding regarding their Proposal or an Alternative Technical Concept ("ATC"). With the exception of ATCs, if one-on-one meetings are held, they will be held with each Proposer.

### Constructware

The Authority will use the Autodesk Constructware™ online construction management tool to distribute Provided Materials for this project. The Proposers on the Reduced Candidate List will be responsible for ensuring that they have downloaded the Provided Materials and associated updates. In addition, this software will be used to house design submittals and the responses thereto after award of the contract. Instructions for the use of this tool will be distributed to all Proposers on the Reduced Candidate List.

### Limited Contact

To ensure that information is distributed equitably to all Proposers on the Reduced Candidate List, all questions and requests for information shall be directed to the Design-Build e-mail address, **designbuild\_GardenParkwayEast@ncdot.gov**. This precludes all Proposer members, or any representative, from contacting other representatives of the Authority, NCDOT, other North Carolina State agencies or federal agencies, either by phone, e-mail or in person, concerning the Project. No requests will be considered unless delivered as specified above.

After issuance of the Industry Review Draft of the RFP Documents, neither a Proposer nor any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the Project or the Proposals. However, a Proposer may communicate with a Subcontractor that is on both its team and another Proposer's team, provided that the Subcontractor does not act as a conduit of information between the teams.

### Oral Explanations

The Department will not be bound by oral explanations or instructions given by anyone at any time during the proposal process or after award. Only information that is received in response to the RFP Documents or is otherwise available to the Department will be evaluated; reference to information previously submitted will not suffice as a response to this solicitation.

### Aesthetics Details Submittal

The Proposer shall submit aesthetics details (5 copies) for the entire project (reference the Aesthetic Design Scope of Work contained in the RFP, Volume II). The details shall be submitted to the NCTA Chief Engineer no later than the applicable date shown on the Procurement Timeline.

It is not the intent of the NCTA for the Proposer to submit design plans. The details submitted shall be of sufficient detail to illustrate color, texture, pattern, emblems, proportion, corridor consistency, complementing details, or other such visual effects. For those details used in multiple locations, typical details will suffice with the locations for their use noted in narrative or graphic form. Provide a description of the various methods of proposed construction/fabrication and maintenance issues surrounding these aesthetic treatments.

The NCTA will review the details for context sensitivity and implementation of the Garden Parkway Aesthetic Inspiration, dated September 1, 2011, as provided by the NCTA. The NCTA will review the aesthetic treatments contained within the submittal with the Proposer and within ten business days of such meeting, provide the Proposer with written acceptance, conditional acceptance, or rejection of the aesthetic treatments or portions thereof. If not fully accepted by the NCTA, the Proposer shall modify the details and re-submit to the NCTA until such time that full acceptance is obtained.

All aesthetic treatments, as accepted by NCTA, shall be included in Volume II of the Technical Proposal. The Technical Review Committee will review this portion of the

Technical Proposal to ensure that the aesthetics treatments included in the Technical Proposal are those previously accepted by the NCTA.

The Proposer may elect to offer any or all of the Voluntary Aesthetic Treatments, examples of which are contained in the Aesthetics Design Scope of Work in the RFP (Volume II), in their Technical Proposal.

The Technical Review Committee will evaluate all aesthetic treatments as part of the evaluation criteria of Section 3.B.(vi) of this ITP.

The contents of the Aesthetics Details Package submitted by the Proposer will be treated as confidential in accordance with Section 14.F. of this ITP.

#### Schedule of Estimated Completion Submittal

The Proposer's attention is called to the Project Special Provision entitled "Schedule of Estimated Completion" contained in the RFP (Volume II) which outlines conditions and requirements for the Proposer to submit an anticipated payout schedule by fiscal year with their Price Proposal.

#### Examination of Work Site

The Proposer is expected to examine carefully the site of the proposed Work and the complete RFP Documents, including any Referenced Documents, before submitting a Proposal. The Proposer's attention is called to Article 102-6 of the 2012 *Standard Specifications for Roads and Structures*.

Any Authority-furnished or NCDOT-furnished Provided Materials does not abrogate the Proposer's responsibility for further verifications and inquiries as are necessary to utilize such information in the development of the Technical Proposal, Price Proposal, or plans, or during construction.

The submission of a Proposal shall be considered conclusive evidence that the Proposer has made such examination and is satisfied as to the conditions to be encountered, the character, quality and scope of the Work to be performed, the quantities of materials to be furnished, and the conditions and requirements of the Contract Documents.

#### The Procurement Timeline

The Authority will maintain and update the Procurement Timeline at:

**[www.ncdot.gov/projects/gardenparkway/gardenparkwayEast.html](http://www.ncdot.gov/projects/gardenparkway/gardenparkwayEast.html)**

The Proposer is responsible for tracking and adhering to all updates to the Procurement Timeline at the above website. Notifications of updates to the timeline will not be provided.

This is a tentative schedule. All dates set forth are subject to change, in the Authority's sole discretion. To the extent such dates are changed, the Authority shall post updated dates on its website, and Proposers shall be responsible for complying with these dates. The completed

Proposal shall be delivered to the addressee at the address specified herein, no later than the time (Eastern) and date specified in the Procurement Timeline. LATE PROPOSALS WILL NOT BE CONSIDERED.

## **2. SUBMISSION OF DESIGN-BUILD PROPOSAL**

### **A. RESPONSIVE PROPOSAL**

Proposer shall submit a Proposal that provides all the information required by this ITP and in accordance with the other requirements contained in the RFP (Volume II). Proposals that do not fully comply with this ITP and the rest of the RFP may be deemed non-responsive and may not be considered for award.

Each Proposal must be submitted in the official format specified in this ITP. Proposer shall sign each copy of the Proposal submitted. Multiple or alternate proposals may not be submitted.

Proposals may be considered non-responsive for any of the following reasons:

- (i) If Proposer is not prequalified with NCDOT prior to submitting its Proposal;
- (ii) If the Proposal is delivered to a place other than as indicated herein or at a time later than prescribed herein;
- (iii) If the Proposal is submitted on a paper form or disk other than that furnished or specified by the Authority; if it is not properly signed by an authorized official of Proposer; or if any part thereof is deleted from the Proposal package;
- (iv) If the Proposal is illegible or contains any omissions, erasures, alterations, unauthorized additions or deletions, conditional or alternate Proposals, or other irregularities of any kind; if the Authority determines that such irregularities make the Proposal incomplete, indefinite, or ambiguous as to its meaning;
- (v) If Proposer adds any provisions reserving the right to accept or reject an award or to enter into a contract following award;
- (vi) If Proposer attempts to limit or modify the bonds, if the Bid Bond or Bid Deposit is not provided, and/or requested information deemed material by the Authority is not provided;
- (vii) If the Proposal does not include a completed Exhibit III, Listing of DBE Subcontractors form contained in this RFP (Volume II) prepared in accordance with Section 10 of this ITP;
- (viii) If Proposer fails to comply with any of the requirements of Article 102-8 of the Standard Special Provisions, Division One contained in the RFP (Volume I), Article 102-9 of the 2012 *Standard Specifications for Roads and Structures*, or Article 102-10 of the 2012 *Standard Specifications for Roads and Structures* and as amended in the Standard Special Provisions, Division One contained in the RFP (Volume I) may result in a Design-Build Proposal being rejected.

- (ix) If Proposer fails to submit an Aesthetics Details package and gain NCTA acceptance thereof by the dates noted in the Procurement Timeline.
- (x) Any other reason the Authority determines the Proposal to be non-responsive.

**B. EXECUTION OF BID, NON-COLLUSION, AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

The Proposer's attention is directed to the various signature sheets in the RFP (Volume II) to be signed by the Proposer. A list of these sheets is shown below.

- (i) Exhibit IV, Applicable Signature Sheets: 1, 2, 3, 4, 5, or 6 (form of Proposer entity dictates applicable signature sheet)
- (ii) Bid Bond or Bid Deposit dated the day of Technical and Price Proposal submission

The Proposer shall certify to the best of his knowledge all subcontractors, material suppliers and vendors utilized herein current status concerning suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency, in accordance with the "Debarment Certification" located behind the *Execution of Bid, Non-Collusion Affidavit, Debarment Certification and Gift Ban Certification* signature sheets in this RFP. Execution of the bid signature sheets in conjunction with any applicable statements concerning exceptions, when such statements have been made on the "Debarment Certification", constitutes the Proposer's certification of "status" under penalty of perjury under the laws of the United States.

**C. SUBMITTAL OF TECHNICAL PROPOSAL AND PRICE PROPOSAL**

Technical and/or Price Proposals that do not adhere to all the requirements noted below may be considered non-responsive and may result in the Authority not considering the Proposer for award of the Contract or reading their Price Proposal publicly.

Technical and Price Proposals will be accepted until 4:00 P.M. Eastern Time on the Proposal Due Date specified in the Procurement Timeline, at the office of the NCDOT State Contract Officer:

Mr. Randy Garris, PE  
NCDOT State Contract Officer  
Contract Standards and Development Unit  
Century Center – Building B  
Entrance B2  
1020 Birch Ridge Drive  
Raleigh, NC 27610

No Proposals will be accepted after the time specified.

Proposals shall be submitted in two separate, sealed parcels containing the Technical Proposal in one parcel and the Price Proposal in the other parcel.

Technical Proposal Format

Technical Proposals shall be submitted in a sealed package. The outer wrapping shall clearly indicate the following information:

“Technical Proposal for the Design-Build of North Carolina Turnpike Authority  
Project No. U-3321C&DA in Gaston and Mecklenburg Counties”  
“Submitted By: (Proposer's name and address)”  
“Contract Number C202697”  
“Garden Parkway-East”

If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope addressed to the Contract Officer to the address noted below. The outer envelope shall also bear the statement "Technical Proposal for the Design-Build of State Highway Contract No. C202697".

**Thirteen (13) copies** of each volume of the Technical Proposal shall be submitted. Volume I of the Technical Proposal shall consist of 8 ½ inch by 11 inch sheets and shall not contain any fold-out sheets except one which may only be used to illustrate an organization chart. Volume I shall be printed on one side only with double-spaced, 12-point font. Volume I shall not exceed 50 pages in length. In addition to the 50 page limit, an introductory letter, no more than 2 pages in length, is allowed. 10-point font is permissible within embedded tables, charts, or graphics.

Volume II shall include half-size plan sheets depicting those elements required by the RFP Documents. Fold out sheets, maximum 24 inch by 36 inch, are only allowed to present interchange plans.

In addition, one full size copy of the roadway horizontal plan sheets portion (excluding typical sections and details) of Volume II shall be submitted concurrently with the other thirteen copies.

Price Proposal Format

Price Proposals shall be submitted by returning the RFP (Volume II) with completion of the appropriate sheets in Exhibits I - IV in a sealed package. The outer wrapping will clearly indicate the following information:

“Price Proposal for the Design-Build of North Carolina Turnpike Authority  
Project No. U-3321C&DA in Gaston and Mecklenburg Counties”  
“Submitted By: (Proposer's name and address)”  
“Contract Number C202697”  
“Garden Parkway-East”

If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope addressed to the Contract Officer to the address noted below. The outer envelope shall also bear the statement "Price Proposal for the Design-Build of State Highway Contract No. C202697".

Price Proposals shall be submitted with all required item sheets completed and with all required signatures and bonds. Failure to execute the required documents may render the Proposal non-responsive.

#### **D. PROPOSAL VALIDITY PERIOD**

As evidenced by the Proposer's execution and submission of a Price Proposal, the Proposer agrees that its Technical Proposal and Price Proposal will remain valid in full effect in accordance with the Project Special Provision "Proposal Validity Period" contained in the RFP (Volume II).

#### **E. FORFEITURE OF BID SECURITY**

Each Proposer further understands and agrees that if it should refuse or be unable to enter into the Contract as provided herein; should refuse or be unable to furnish adequate and acceptable insurance as provided in the Contract Documents; should refuse or be unable to secure Payment and Performance Bonds within 14 days from the written solicitation for said bonds as provided in the Contract Documents; or should refuse or be unable to furnish any commitments made in its Proposal, it may result in forfeiture of its Bid Bond or Bid Deposit, at the sole discretion of the Department.

### **3. CONTENTS OF DESIGN-BUILD PROPOSAL**

#### **A. GENERAL**

As further described below, Technical Proposals shall address the technical elements of the design and construction of the Project. The Proposer's Technical Proposal shall be developed using narratives, tables, charts, plots, drawings and sketches as appropriate. The purpose of the Technical Proposal is to document the Proposer's understanding of the Project, demonstrate the team's capabilities to complete the Project, document the selection of appropriate design criteria, and state an approach and schedule for completing all design and construction activities.

Price Proposals shall be prepared and submitted in accordance with Article 102-8 of the Standard Special Provisions, Division One and this ITP.

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

#### **B. TECHNICAL PROPOSAL CONTENTS**

Key Project Team members identified in the SOQ shall not be modified in the Technical Proposal without written approval of the Department. Any request for modification shall be sent to the attention of Mr. Randy Garris, P.E., at the address identified in this ITP. In addition, Proposer shall not change team members, subconsultants or subcontractors identified in the Technical Proposal without written consent of the Engineer.

All firms are required to be prequalified by NCDOT for the work they are identified to perform. Design firms and natural systems firms are prequalified by the particular office doing the work. If the work is to be done by an office other than the one that is prequalified, it will be necessary to have the office doing the work prequalified. Prior to the opening of the Technical and Price Proposals, unless specifically exempted in the final RFP Documents, the following team members shall be prequalified with NCDOT:

- Prime Contractors (individually)
- All Joint Ventures, LLCs, or any other legal entity that is different from the existing prequalified firm
- Lead Design Firms
- All CEI Firms
- All testing / investigation firms

Design firms should be prequalified prior to submittal of a Technical Proposal. If not prequalified at the time of submitting the Technical Proposal, the prime contractor is solely responsible for either (1) ensuring that the design firm is prequalified prior to its first design submittal or (2) replacing that the firm with a prequalified firm.

The ITS Design firm(s) must be pre-approved, in writing by the NCTA, no later than February 15, 2012. This approval is in addition to any NCDOT prequalification. The process for pre-approval is located at:

**[www.ncdot.gov/projects/gardenparkway/gardenparkwayEast.html](http://www.ncdot.gov/projects/gardenparkway/gardenparkwayEast.html)**

Subcontractors need only be prequalified prior to performing the work.

The Proposer is encouraged to identify all major subcontractors in the Technical Proposal as omission of this information may affect the evaluation under the “Management” evaluation criteria. Subconsultants and Subcontractors not identified in the SOQ or Technical Proposal shall not perform any work without written consent by the Engineer. If personnel from other offices of any team member are used, they shall be noted in the Technical Proposal. Personnel from other offices or locations not identified in the SOQ or the Technical Proposal submitted shall not perform any work without written consent by the Engineer. Failure to comply with this requirement may be justification for removing the Team from further consideration for this Project and disqualification from submitting on future Department Design-Build projects.

The Technical Proposal shall include, at a minimum, the following information (see Sections 5 and 6 of this ITP for Proposal evaluation criteria):

- (i) Financial and Legal Responsibility
  - a. Proposer shall submit with its Proposal a Bid Bond or Bid Deposit in the amount of at least 5% of the amount of the Price Proposal.
  - b. Proposer shall confirm that the information submitted in its SOQ remains true and correct. If any changes to the Principal Participants, as defined in the Request for

Qualifications, have occurred then evidence of the Proposer's ability to acquire 100% Payment and Performance bonds shall be re-submitted.

(ii) Design Management

- a. Describe Proposer's concept of design management. The Proposal shall identify key positions and subordinate organizational units. DBE firms to be used in preconstruction activities shall be noted in the Technical Proposal.
- b. Describe the plan for the coordination of civil/structural, utilities, traffic maintenance, constructability and environmental responsibility.
- c. Provide a narrative description of the proposed location of the design office(s) and their respective responsibilities.
- d. Describe how the designs developed by different firms and offices will be integrated.
- e. Describe how design personnel will interface with the construction personnel.
- f. Describe the overall strengths of the Design Team and their ability to fulfill the design requirements of this Project.

(iii) Quality Management

- a. Describe how Proposer will comply with the quality control requirements for both design and construction. Specifically, include a narrative describing Proposer's understanding of NCTA's construction quality control/quality assurance program and how Proposer will implement it.
- b. Proposer shall provide a detailed narrative describing how the independent CEI firm intends to ensure full compliance with the plans, specifications, contract requirements, mandatory erosion and sedimentation control, and permit compliance. The Proposer shall provide specifics about the CEI team proposed for the project.
- c. Proposer shall provide a schedule indicating the minimum number of inspectors that will be supplied at different stages and coinciding with operations detailed within the Proposer's schedule. A narrative on how an ample number of personnel shall be provided without undue cost to the project.
- d. The narrative shall include both design and construction activities.

(iv) Construction Management

- a. Describe Proposer's concept of the Project construction management organization and how it interrelates with the other elements of Proposer's organization for the Project.

- b. Provide a brief narrative description of Proposer's proposed plan for performing construction on the Project. This description shall include at least the following:
    - A construction organization chart for the Project, showing the relationships between functions shown on the chart and the functional relationships with Subcontractors.
    - The chart shall indicate how Proposer intends to divide the Project into work segments to enable optimum construction performance.
    - Descriptions of those categories of Work that Proposer anticipates will be performed by Proposer's own direct labor force and those categories that will be performed by Subcontractors.
    - Proposer's plans and procedures to insure timely deliveries of materials to achieve the Project schedule.
  - c. Describe the overall strengths of the construction team and their ability to fulfill the construction and construction management requirements of this Project.
  - d. Describe the general approach to coordinating and managing the schedule and construction of the ITS and toll collection infrastructure components of the Project, including the phasing and schedule of toll collection equipment installed by others in relation to other Project phasing.
  - e. Describe Proposer's approach to construction site access, construction site management, and material storage specific to this Project.
- (v) Natural Environmental Responsibility
- a. Describe Proposer's approach to addressing environmental concerns within the Project boundaries.
  - b. Identify efforts to minimize impacts on wetlands, streams, riparian buffers, and other environmentally sensitive areas.
  - c. Identify innovative approaches to minimize any impacts in environmentally sensitive areas. Describe any temporary impacts and associated minimization approaches.
  - d. Describe Proposer's understanding of the overall approach to permitting and the Team's comfort level with obtaining the required permit application/ modification within the allowed timeframe.
  - e. Identify methods of construction in wetlands, streams and buffers.
  - f. Describe any Notice of Violations (NOV's) Proposer members have received from regulatory agencies in North Carolina or any other state and the disposition of each NOV's in the last five years.
  - g. Describe Proposer's approach to Sedimentation and Erosion Control for the Project.
  - h. Describe any construction noise abatement measures proposed, including when and where they will be employed.

## (vi) Design Features

- a. Show plan view of design concepts with key elements noted.
- b. Identify preliminary horizontal and vertical alignments of all roadway elements.
- c. Show typical sections for the mainline of the Project specifying the pavement alternate chosen.
- d. Identify the base option (ABC or asphalt) that was chosen for all -Y- Lines.
- e. Identify drainage modifications and designs to be implemented.
- f. Identify the appropriate design criteria for each feature if not provided.
- g. Identify all bridge types to be constructed, including any special design features or construction techniques needed.
- h. Describe the ITS and toll infrastructure components to be provided, with appropriate sketches regarding locations, and other innovations or details proposed.
- i. Identify any deviations or proposed design exceptions, from the established design criteria that will be utilized. Explain why the deviation is necessary.
- j. Describe any geotechnical investigations to be performed by Proposer.
- k. Identify all aesthetic treatments that will be part of the design. As a minimum, include all aesthetic concepts and treatments, as accepted by the NCTA, as a part of Volume II of the Technical Proposal. A maximum of 3 total points out of 35 will be awarded for aesthetics, except that an additional 1 point will be available for proposed voluntary aesthetic treatments.
- l. Describe how any utility conflicts will be addressed and any special utility design considerations. Describe how Proposer's design and construction methods minimize NCTA's utility relocation costs.
- m. Describe how the design will affect NCTA's right-of-way costs. In addition, provide a list of the relocatees and the parcels impacted along the length of the project.
- n. Identify types of any retaining walls and /or noise walls if applicable.
- o. Address the approach to coordinating any necessary efforts with railroad owners.
- p. The pavement type chosen for the mainline will not be a part of the evaluation of the Technical Proposals and the selection thereof will not impact the technical scores.
- q. Describe the effects the future median widening will have on the conduit, lighting and drainage placement shown in the Technical Proposal.

## (vii) Long Term Maintenance

- a. Describe any special materials not referenced anywhere in the Contract Documents to be incorporated into the Project that would result in long term reduction in cost of maintenance.

- b. Describe any special designs or construction methods that would reduce future maintenance costs to the Authority.
- c. Estimate a ten-year cost savings resulting from incorporation of these special materials, design, or construction methods into the Project.
- d. Describe the maintenance associated with aesthetic treatments included in the Technical Proposal.
- e. No technical scoring credit will be granted for providing a warranty period beyond that required in the RFP.

(viii) Schedule and Milestones

- a. Provide a detailed schedule for the Project including both design and construction activities (the "Project Schedule"). The Project Schedule shall show the sequence and continuity of operations, as well as the month of delivery of usable segments of the Project.
- b. The Project Schedule shall also include Proposer's Substantial Completion Date and Final Completion Date. These dates shall be clearly indicated on the Project Schedule and labeled "Final Completion Date" and "Substantial Completion Date".

The Substantial Completion Date and Final Completion Date to be included in the Contract Documents shall be the dates proposed in the successful Technical Proposal.

(ix) Innovation

Identify any aspects of the design or construction elements that Proposer considers innovative. Include a description of alternatives that were considered, whether implemented or not.

(x) Maintenance of Traffic Plan and Safety Plan

- a. Describe any traffic control requirements that will be used for each construction phase.
- b. Describe how traffic will be maintained as appropriate and describe Proposer's understanding of any time restrictions noted in the RFP (Volume II).
- c. Specifically describe how business, schools and residential access will be maintained, if applicable.
- d. Address how hauling will be conducted and identify any pavement improvements anticipated to existing facilities to accommodate hauling.
- e. Include all proposed offsite detours; reason for need and duration.
- f. Describe the safety considerations specific to the Project.
- g. Discuss Proposer's overall approach to safety.

- h. Describe any proposed improvements that will be made prior to or during construction that will enhance the safety of the work force and/or traveling public both during and after the construction of the Project.
  - i. Describe any required road closures and duration thereof.
  - j. Identify the Traffic Control Supervisor and their qualifications to fulfill this role.
- (xi) Oral Interview
- a. Proposer's Project Management Team shall present a brief introduction of the Project team and design / construction approach.
  - b. Introductory comments shall be held to no more than 40 minutes.
  - c. The Department will use this interview to ask specific questions about the Team's Technical Proposal, background, philosophies, and/or approach to the Project.
  - d. Presentation, questions, and answers shall not exceed 120 minutes. No more than 15 people from Proposer may attend.

### **C. PRICE PROPOSAL CONTENTS AND ESTIMATE OF QUANTITIES**

In addition to the requirements set forth in Article 102-8 of the Standard Special Provisions, Division One, additional information shall be submitted as outlined below:

- (i) Proposer shall submit quantities on the *Fuel Usage Factor Chart and Estimate of Quantities* sheet, located as Exhibit II of the RFP (Volume II), following the Itemized Proposal Sheet.
- (ii) Proposer shall prepare an Estimate of Quantities that it anticipates incorporating into the completed Project and upon which the Price Proposal is based. The Estimate of Quantities is for those items for which fuel price adjustments will be made, if so elected by the Design-Build Team. The quantity breakdown shall include all items of work that appear in the *Fuel Usage Factor Chart and Estimate of Quantities* sheet described above. Only those items of work which are specifically noted in this chart will be subject to fuel price adjustments. The quantity estimate submitted in the Price Proposal shall be the final total quantity limit for which fuel price adjustments will be made for each item, regardless of supplemental agreements. NCTA will review the Estimate of Quantities to ensure its reasonableness to the proposed design. Agreement as to quantities will be a prerequisite prior to execution of the Contract.
- (iii) Exhibit II shall be signed and dated by an authorized official of Proposer. The information shall be copied and the copy submitted in a separate sealed package with the outer wrapping clearly marked "Fuel Price Adjustment" and shall be delivered at the same time and location as the Technical and Price Proposals. The original shall be submitted in the Price Proposal.
- (iv) Information submitted on the *Fuel Usage Factor Chart and Estimate of Quantities* sheet will be considered "Trade Secret" in accordance with the requirements of G.S. 66-152(3) until such time as the Price Proposal is opened.

- (v) If Proposer elects not to pursue reimbursement for fuel price adjustments, a quantity of zero shall be entered for all quantities in the *Fuel Usage Factor Chart and Estimate of Quantities* and the declination box shall be checked. Failure to complete this Exhibit will be deemed to mean that the Proposer is declining the fuel price adjustments for this Project.
- (vi) Proposer will not be permitted to change its election after the Price Proposal and the copy of the *Fuel Usage Factor Chart and Estimate of Quantities* sheet are submitted.
- (vii) Failure to submit the completed *Fuel Usage Factor Chart and Estimate of Quantities* sheet, separately and in the Price Proposal, will result in the Technical and Price Proposals being considered irregular by NCTA and the Technical and Price Proposal may be rejected.

#### **4. ALTERNATIVE TECHNICAL CONCEPTS AND CONFIDENTIAL QUESTIONS**

To accommodate innovation that may or may not be specifically allowed by the RFP Documents, Proposer has the option of submitting Confidential Questions and Alternative Technical Concepts.

##### **A. DEFINITIONS**

A Confidential Question is defined as a private query to NCTA containing information whose disclosure could alert others to certain details of doing business in a particular manner.

An Alternative Technical Concept is a private query to NCTA that requests a variance to the requirements of the RFP (Volume II) or other Contract Documents that is equal or better in quality or effect as determined by NCTA in its sole discretion and that have been used successfully in other states, preferably in comparable circumstances. The NCTA encourages Proposer's to present alternate details from other states for consideration on this project.

##### **B. CONFIDENTIAL QUESTIONS**

Proposer will be permitted to ask Confidential Questions of NCTA, and neither the question nor the answer will be shared with other Design-Build Teams. NCTA, in its sole discretion, will determine if a question is considered confidential.

Confidential Questions arising prior to issuance of the final RFP Documents will be allowed during the industry review of the draft RFP Documents with the individual Proposer. NCTA will answer the Confidential Question verbally at the industry review meeting, if possible, and/or through subtle changes in the final RFP Documents, which will clarify the scope by either allowing or disallowing the request. To the greatest extent possible, the revision will be made in such a manner as to not disclose the Confidential Question.

After the issuance of the final RFP Documents, Confidential Questions may be asked by requesting a meeting with the NCDOT State Contract Officer. The request shall be in writing and provide sufficient detail to evaluate the magnitude of the request. Questions shall be of such magnitude as to warrant a special meeting. Minor questions will not be

acknowledged or answered. After evaluation, the State Contract Officer will respond to the question in writing to Proposer and/or through subtle changes in the final RFP Documents as reflected in an Addendum, which will clarify the scope by either allowing or disallowing the request. To the greatest extent possible, the revision will be made in such a manner as to not disclose the Confidential Question. It is recommended that the Proposer familiarize themselves with Section 14.F of this ITP as it relates to Confidentiality and Public Disclosure.

If Proposer includes work based on the Confidential Questions and answers, the work shall be discussed in the Technical Proposal.

### **C. ALTERNATIVE TECHNICAL CONCEPTS**

Proposer may include an ATC in the Proposal only if the ATC has been received by NCTA by no later than ATC submittal deadline on the Procurement Timeline and it has been approved by NCTA (including conditionally approved ATCs, if all conditions are met).

The submittal deadline above applies only to initial ATC submittals. Resubmittal of an ATC that (1) has been revised in response to the NCTA's requests for further information concerning a prior submittal or (2) is a Formal ATC for a Preliminary ATC that received a favorable response from the NCTA shall be received by the NCTA no later than two weeks prior to the deadline for submitting Technical and Price Proposals.

Should the NCTA revise the RFP Documents after a Formal ATC has been approved, the Proposer shall be solely responsible for reviewing the RFP Documents and determining if the ATC deviates from the revised requirements. If necessary, the Proposer must submit a request for approval of all additional required variance(s) within five business days of the revised RFP Documents distribution.

An ATC shall in no way take advantage of an error or omission in the RFP Documents. If, at the sole discretion of the NCTA, an ATC is deemed to take an advantage of an error or omission in the RFP Documents, the RFP Documents will be revised without regard to confidentiality. If at any time, the NCTA receives a question on the project similar to a concept submitted in the form of a Preliminary ATC or Formal ATC, the NCTA reserves the right to revise the RFP without further regard for confidentiality.

By approving an ATC, the NCTA acknowledges that the ATC may be included in the design and RFC plans; however, approval of any ATC in no way relieves Proposer of its obligation to satisfy (1) other Contract requirements not specifically identified in the ATC submittal; (2) any obligation that may arise under applicable laws and regulations; and (3) any obligation mandated by the regulatory agencies as a permit condition.

### **D. ATC SUBMITTALS**

Each ATC submittal shall include three individually bound copies and one electronic copy in pdf format. All ATCs shall be submitted to the NCDOT State Contract Officer at the address listed above. ATCs will only be accepted after the issuance of the Second Industry Draft RFP.

**E. FORMAL ATCS**

Each Formal ATC submittal shall include the following information:

- (i) Description. A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information (including, if appropriate, product details [i.e., specifications, construction tolerances, special provisions] and a traffic operational analysis, if appropriate);
- (ii) Usage. Where and how the ATC would be used on the Project;
- (iii) Deviations. References to all requirements of the RFP Documents that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such variance(s);
- (iv) Analysis. An analysis justifying use of the ATC and why the variance to the requirements of the RFP Documents should be allowed;
- (v) Impacts. Discussion of potential impacts on vehicular traffic, environmental impacts identified, community impact, safety and life-cycle Project impacts, and infrastructure costs (including impacts on the cost of repair and maintenance);
- (vi) History. A detailed description of other projects where the ATC has been used, the success of such usage, and names and telephone numbers of project owners that can confirm such statements;
- (vii) Risks. A description of added risks to NCTA and other entities associated with implementing the ATC; and
- (viii) Costs. An estimate of the ATC implementation costs to NCTA, Proposer, and other entities (right-of-way, utilities, mitigation, long term maintenance, etc.).

The Formal ATC, if approved, shall be included in the Price Proposal if Proposer elects to include it in their Technical Proposal.

**F. REVIEW OF FORMAL ATCS**

A panel will be selected to review each ATC, which may or may not include members of the Technical Review Committee. Proposer shall make no direct contact with any member of the review panel, except as may be permitted by the NCDOT State Contract Officer. Unapproved contact with any member of the review panel will result in a disqualification of that ATC.

NCTA may request additional information regarding a proposed ATC at any time. NCTA, through the NCDOT State Contract Officer, will return responses to, or request additional information from, Proposer within 10 business days of the original submittal. If additional information is requested, NCTA will provide a response within 5 business days of receipt of all requested information.

NCTA may conduct confidential one-on-one meeting(s) to discuss Proposer's ATC. Under no circumstances will NCTA or NCDOT be responsible or liable to Proposer or any other party as a result of disclosing any ATC materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of NCTA or NCDOT or their respective officers, employees, contractors, or consultants.

In the event that the NCTA receives ATCs from all Proposers that are deemed by the NCTA to be similar in nature, the NCTA reserves the right to modify the RFP Documents without further regard to confidentiality.

#### **G. NCTA RESPONSE TO FORMAL ATCS**

NCTA will review each ATC and will respond to Proposer with one of the following determinations:

- (i) The ATC is approved;
- (ii) The ATC is not approved;
- (iii) The ATC is not approved in its present form, but may be approved upon satisfaction, in NCTA's sole discretion, of certain identified conditions that shall be met or certain clarifications or modifications that shall be made (conditionally approved);
- (iv) The submittal does not qualify as an ATC but may be included in the Proposal without an ATC (i.e., the concept complies with the baseline requirements of the RFP Documents);
- (v) The submittal does not qualify as an ATC and may not be included in the Proposal;
- (vi) The ATC is deemed to take advantage of an error or omission in the RFP Documents, in which case the ATC will not be considered, and the RFP Documents will be revised to correct the error or omission;
- (vii) A question has been received outside of the ATC process on the same topic and the RFP will be revised to address that question; or
- (viii) An ATC has been received on the same topic from all Proposers and the NCTA has elected to exercise its right to revise the RFP Documents. This response could also follow and supersede one of the other previously supplied responses above.

#### **H. FORMAL ATC INCLUSION IN TECHNICAL PROPOSAL**

Proposer may incorporate one or more approved Formal ATCs as part of its Technical and Price Proposals. If NCTA responded to an ATC by stating that it would be approved if certain conditions were met, those conditions must be stipulated and met in the Technical Proposal.

In addition to outlining each implemented ATC, and providing assurances to meet all attached conditions, Proposer shall also include a copy of the ATC approval letter, or other written notification from the NCDOT State Contract Officer in each Technical Proposal. This letter will be included with the distribution of the Technical Proposals to the Technical Review Committee.

Approval of a Formal ATC in no way implies that the Formal ATC will receive a favorable review from the Technical Review Committee. The Technical Proposals will be evaluated in regards to the evaluation criteria found in this ITP, regardless of whether or not Formal ATCs are included.

The Price Proposal shall reflect all incorporated Formal ATCs. Except for incorporating approved Formal ATCs, the Technical Proposal may not otherwise contain exceptions to, or deviations from, the requirements of the RFP Documents.

## **I. PRELIMINARY ATCS**

At the Proposer's option, a Preliminary ATC submittal may be made that presents a concept and a brief narrative of the benefits of said concept. The purpose of allowing such a Preliminary ATC is to limit the Proposer's expense in the pursuit of a Formal ATC that may be quickly denied by the NCTA.

To the greatest extent possible, the NCTA will review Preliminary ATCs within 10 business days of submittal and provide written comments and one of the responses noted below. The NCTA's response to a Preliminary ATC submittal will be either (1) that the Preliminary ATC is denied; (2) that the Preliminary ATC would be considered as a Formal ATC if the Proposer so elects to pursue a Formal ATC submission; (3) that an ATC is not required; (4) a question has been received outside of the ATC process on the same topic and the RFP will be revised to address that question; or (5) that the ATC takes advantage of an error or omission in the RFP Documents or other documents incorporated into the contract by reference, in which case the ATC will not be considered and the RFP will be revised to correct the error or omission. The NCTA in no way warrants that a favorable response to a Preliminary ATC submittal will translate into a favorable response to a Formal ATC submittal. Likewise, a favorable response to a Preliminary ATC submittal is not sufficient to include the ATC in a Technical Proposal.

## **5. EVALUATION OF PROPOSALS**

### **A. TECHNICAL EVALUATION**

The Technical Proposal will be evaluated on the pass/fail and technical evaluation factors identified herein. There will be a Technical Review Committee (TRC) composed of five or more senior personnel from involved engineering groups that will evaluate the Technical Proposal on the basis of the criteria provided in this ITP.

The Authority reserves the right to reject any or all Proposals, to waive technicalities, or to advertise for new Proposals, if, in the judgment of the Authority, the best interests of the public will be promoted thereby. In putting together their Proposals, Proposers should keep in mind and address the Project goals stated herein.

The selection of a Design-Build Team will involve both technical quality and price. The Technical Proposals will be presented to the TRC for evaluation. The TRC shall first determine whether the Proposals are responsive to the requirements of the ITP. Each

responsive Technical Proposal shall be evaluated based on the rating criteria provided in this ITP.

The Technical Review Committee will consider the understanding of the Project, anticipated problems and solutions to those problems, as well as other evaluation criteria identified herein.

The award of the Contract does not in any way imply that the Department will modify, relax, or relieve the Contract Documents in favor of the details of the Technical Proposal submitted by Proposer.

## **B. PASS/FAIL EVALUATION**

Otherwise responsive Proposals will be evaluated on a “pass/fail” basis in regards to:

- (i) Financial and Legal Responsibility
- (ii) Execution of Bid, Non-Collusion, Affidavit, Debarment Certification and Gift Ban Certification.

Each Proposal must achieve a rating of “pass” on the above “pass/fail” evaluation factors to receive further consideration. Failure to achieve a “pass” rating on all “pass/fail” factors will result in rejection of the Proposal and disqualification of the Proposer. Prior to making such determination, the Authority may offer a Proposer the opportunity to provide supplemental information or clarify its Proposal, including the opportunity to identify a guarantor and provide financial information for such entity.

## **C. TECHNICAL EVALUATION CRITERIA**

Decisions based on cost alone will not establish the design standards for the Project. The Technical Proposal will be evaluated in each of the following major categories:

### Management

- (i) Design Management

Evaluates how well Proposer understands and is organized to achieve integration of design and construction, design quality control, and design review for the Project, including evaluation of Proposer’s plan for the coordination of civil/structural, utilities, traffic maintenance, constructability and environmental responsibility and how well design personnel will interface with construction personnel.

- (ii) Quality Management

Evaluates how well Proposer understands and is organized to achieve quality control and management for design and construction of the Project, including evaluation of Proposer’s understanding of NCTA’s construction quality control philosophy for this Project and how Proposer will implement it.

(iii) Construction Management

Evaluates how well Proposer understands and is organized to achieve quality construction of the Project, including evaluation of Proposer's construction organization for the Project showing the relationships between functions and the relationships with Subcontractors, how well Proposer will divide the Project into work segments to enable optimum construction performance, and Proposer's plans and procedures to ensure timely deliveries of materials to achieve the Project schedule.

Responsiveness to Request for Proposal

(i) Natural Environmental Responsibility

Evaluates Proposer's understanding, approach, capabilities, and commitments with respect to the sensitive and critical environmental needs of the Project, including evaluation of Proposer's successful and timely performance of all environmental commitments and permit requirements, expertise and solutions that respond to environmental concerns, real time compliance and stewardship during construction through the development and execution of plans for environmental compliance, including compliance with noise, air quality, stormwater management and erosion and sediment control requirements, innovative approaches to minimize any impacts in environmentally sensitive areas.

(iv) Design Features

Evaluates Proposer's understanding, approach, capabilities, innovation and commitments to the delivery of design solutions that are environmentally and aesthetically compatible, durable, safe and maintainable, including evaluation of Proposer's innovative design solutions that respond to the environmental and community sensitivities and commitments and the context sensitive design and toll road nature of the freeway, bridges and structures, Proposer's coordinated aesthetic theme that includes the aesthetic treatments accepted in writing by the NCTA and any other Voluntary Aesthetic Treatments, Proposer's solutions to achieve quality pavements, address geotechnical challenges and minimize right-of-way and utility costs, and how well Proposer has planned and coordinated the design and relocation of utilities.

Long Term Maintenance

Evaluates Proposer's special designs or construction methods that would reduce future maintenance costs to the Authority and Proposer's provision of special materials that would result in long term reduction in maintenance of the Project.

Schedule and Milestones

Evaluates Proposer's integrated scheduling of design and construction of the Project required to achieve early Project completion and to minimize disruption to the environment and the public.

Innovation

Evaluates any innovative design or construction solutions proposed by Proposer and how those solutions will better serve the Project.

Maintenance of Traffic and Safety Plan

Evaluates how well Proposer has planned the maintenance of traffic aspects of the Project, including avoiding adverse impacts to access to any affected businesses and residences.

Oral Interview

Evaluates how well the information presented by Proposer in the oral interview assists in the overall evaluation of the Technical Proposal. Evaluates Proposer's ability to anticipate and answer questions in support of the decisions made in the generation of the Technical Proposal.

**6. DETERMINATION OF BEST VALUE PROPOSAL****A. TECHNICAL PROPOSAL SCORE**

EVALUATION FACTORS	POINTS
Management	16
Responsiveness to Request for Proposals	35
Long Term Maintenance	7
Schedule and Milestones	15
Innovation	10
Maintenance of Traffic and Safety Plan	14
Oral Interview	3
<b>Maximum Score</b>	<b>100</b>

The TRC will submit an overall consensus Technical Proposal score for each Proposer to the State Contract Officer.

The State Contract Officer, or duly authorized representative, will use the table entitled "Quality Credit Percentage for Technical Proposals" to assign a Quality Credit Percentage to each Proposal based on the Proposal's overall technical score. The maximum quality credit percentage for this Project will be 25%. The TRC may elect to assign point values to the nearest one-tenth of a point (e.g. 85.2). In this event, the Quality Credit Percentage will be determined by linearly interpolating within the table entitled "Quality Credit Percentage for Technical Proposals."

If any of the Technical Proposals were considered non-responsive, the State Contract Officer will notify the Proposer of that fact. The State Contract Officer will publicly open the sealed Price Proposals and multiply each Proposer's Price Proposal by the Quality Credit Percentage earned by Proposer's Technical Proposal to obtain the Quality Value of each Proposer's Technical Proposal. The Quality Value will then be subtracted from each

Proposer's Price Proposal to obtain an Adjusted Price based upon price and quality combined. Unless all Proposals are rejected or the Department of Transportation, NCTA elects to proceed with the Best and Final Offer process, the State Contract Officer will recommend to the Secretary of Transportation that the Proposer having the lowest Adjusted Price be awarded the Contract. The cost of the Contract will be the amount received as the Price Proposal.

### Quality Credit Percentage for Technical Proposals

Technical Score	Quality Credit (%)	Technical Score	Quality Credit (%)
100	25.00	84	11.67
99	24.17	83	10.83
98	23.33	82	10.00
97	22.50	81	9.17
96	21.67	80	8.33
95	20.83	79	7.50
94	20.00	78	6.67
93	19.17	77	5.83
92	18.33	76	5.00
91	17.50	75	4.17
90	16.67	74	3.33
89	15.83	73	2.50
88	15.00	72	1.67
87	14.17	71	0.83
86	13.33	70 or below	0.00
85	12.50		

The following table shows an example of the calculations involved in this process.

### Example of Calculating Quality Adjusted Price Ranking

Proposal	Technical Score	Quality Credit (%)	Price Proposal (\$)	Quality Value (\$)	Adjusted Price (\$)
A	95	20.83	3,000,000	624,900	2,375,100
B	90	16.67	2,900,000	483,430	2,416,570
C *	90	16.67	2,800,000	466,760	2,333,240
D	80	8.33	2,700,000	224,910	2,475,090
E	70	0.00	2,600,000	0	2,600,000

\* Successful Design-Build Team – Contract Cost \$2,800,000

## B. OPENING OF PRICE PROPOSALS

Prior to opening the Price Proposals, the State Contract Officer will provide to each Proposer their technical score in a sealed envelope. The sealed envelope will contain that team's score only.

At the time and date specified, the State Contract Officer will open the Price Proposals and calculate the percentage difference between the Price Proposals submitted and the Engineer's Estimate.

Should all of the Price Proposals be within an acceptable range above or below the Engineer's Estimate (as determined by the Department), the quality credit will be calculated and the Price Proposals, technical scores, and Adjusted Prices publicly read as outlined in the selection procedure above.

Should any one or more of the Price Proposals be within an acceptable range or below the Engineer's Estimate, and the remaining Price Proposals exceed an acceptable range of the Engineer's Estimate, the State Contract Officer will go to a separate location to calculate the quality credit and determine if the Proposer with the lowest Adjusted Price is within an acceptable range of the Engineer's Estimate. Should the Price Proposal of the Proposer with the lowest Adjusted Price be within an acceptable range of the Engineer's Estimate or below the Engineer's Estimate, the State Contract Officer will proceed to publicly read the Price Proposals, technical scores, and Adjusted Prices. Should the Price Proposal of the Proposer with the lowest Adjusted Price exceed an acceptable range of the Engineer's Estimate, the State Contract Officer will publicly read the Price Proposals only, and the Authority will then determine whether to proceed to request a BAFO as outlined below.

Should all Price Proposals submitted exceed an acceptable range of the Engineer's Estimate, the State Contract Officer will publicly read the Price Proposals only. The Authority will then determine whether to proceed to request a BAFO as outlined below.

In the event that the Authority elects to not proceed with a Best and Final Offer (BAFO), then the State Contract Officer will schedule a date and time to publicly reiterate all Price Proposals, and read all technical scores and adjusted prices.

Provided the Authority elects to proceed to request a BAFO, at the date and time specified, the NCTA Chief Engineer will open the BAFO Price Proposals and proceed to publicly read all Price Proposals, technical scores and Adjusted Prices.

## **7. BEST AND FINAL OFFER**

In the event initial Price Proposals exceed an acceptable range of the Engineer's Estimate, or if the Authority feels it is necessary for any reason, the Authority may choose to request a Best and Final Offer from all Proposers.

After receipt of the BAFO documents, Proposer has the option of changing their Technical Proposal details. If Proposer changes any component of the Technical Proposal, the TRC will review those amended components of the Technical Proposal and reevaluate the scores accordingly. Proposer shall highlight the changes to bring them to the Technical Review Committee's attention. A revised total score will be calculated, if appropriate, based on these amendments to the Technical Proposal.

Additional oral interviews will not be held. Proposers shall submit both a revised Price Proposal and a revised Technical Proposal (if applicable) at the time, place, and date specified in the

BAFO documents. A revised Quality Credit Percentage (if required) and Adjusted Price will be determined. This will constitute Proposer's Best and Final Offer. Award of the Contract may be made to the Proposer with the lowest Adjusted Price on this Best and Final Offer for the Project.

## **8. CONTRACT AND CONTRACT AWARD**

The RFP (Volume II) includes the printed contract forms and signature sheets for execution by the Authority and the Successful Proposer. In the event the Proposer is awarded the contract, execution of the RFP (Volume II) is deemed to constitute the execution of the contract.

In accordance with the provisions of *Title VI of the Civil Rights Act of 1964* (78 Stat. 252) and the regulations of the U.S. Department of Transportation (*49 C.F.R., Part 21*) issued pursuant to such act, the Department hereby notifies all Proposers that it will affirmatively insure that the Contract entered into pursuant to this solicitation will be awarded to the lowest responsible Proposer without discrimination on the ground of race, color, or national origin.

## **9. STIPEND**

A stipulated fee of **\$150,000** will be awarded to each Proposer on the Reduced Candidate List that provides a responsive, but unsuccessful, Proposal. If a contract award is not made, all Proposers on the Reduced Candidate List that submit a responsive Proposal shall receive the stipulated fee. The stipulated fee shall be paid to eligible Proposers within ninety days after the award of the Contract or the decision not to award. Once award is made, or decision is made not to award, unsuccessful Proposers will be notified of the opportunity to apply for the stipulated fee. If Proposer accepts the stipulated fee, the Authority and NCDOT reserve the right to use any ideas or information contained in the Proposals in connection with any contract awarded for the Project, or in connection with any subsequent procurement, with no obligation to pay additional compensation to the unsuccessful Proposers. Unsuccessful Proposers may elect to refuse payment of the stipulated fee and retain any rights to its Proposal and the ideas and information contained therein.

## **10. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

### **A. DESCRIPTION**

The purpose of this provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

### **B. DEFINITIONS APPLICABLE TO SECTION 10 OF THIS ITP**

*Additional DBE Subcontractors* - Any DBE submitted at the time of bid that will not be used to meet the DBE goal. No submittal of a Letter of Intent is required.

*Committed DBE Subcontractor* - Any DBE submitted at the time of bid that is being used to meet the DBE goal by submission of a Letter of Intent. Or any DBE used as a replacement for a previously committed DBE firm.

*Contract Goal Requirement* - The approved DBE participation at time of award, but not greater than the advertised contract goal.

*DBE Goal* - A portion of the total contract, expressed as a percentage, that is to be performed by committed DBE subcontractor(s).

*Disadvantaged Business Enterprise (DBE)* - A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

*Goal Confirmation Letter* - Written documentation from the Department to the Proposer confirming the Design-Build Team's approved, committed DBE participation along with a listing of the committed DBE firms.

*Manufacturer* - A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Design-Build Team.

*Regular Dealer* - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

*North Carolina Unified Certification Program (NCUCP)* - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.

*United States Department of Transportation (USDOT)* - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

### **C. FORMS AND WEBSITES REFERENCED IN THIS PROVISION**

*JC-1 Joint Check Notification Form* - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.

**[www.ncdot.gov/doh/forms/files/JC-1.pdf](http://www.ncdot.gov/doh/forms/files/JC-1.pdf)**

*Letter of Intent* - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the amount listed at the time of bid.

**[www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf](http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf)**

*Listing of DBE Subcontractors Form* - Form for entering DBE subcontractors on a project that will meet this DBE goal contained elsewhere in this RFP.

*Subcontractor Quote Comparison Sheet* - Spreadsheet for showing all subcontractor quotes in the work areas where DBEs quoted on the project. This sheet is submitted with good faith effort packages.

[www.ncdot.gov/business/ocs/goodfaith/excel/Ex\\_Subcontractor\\_Quote\\_Comparison.xls](http://www.ncdot.gov/business/ocs/goodfaith/excel/Ex_Subcontractor_Quote_Comparison.xls)

#### **D. CONTRACT GOAL**

The following DBE goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises **14%**

The Design-Build Team shall exercise all necessary and reasonable steps to ensure that DBEs participate in at least the percent of the contract as set forth above as the DBE goal.

This goal is to be met through utilization of highway construction contractors and/or right-of-way acquisition firms. Utilization of DBE firms performing design, other preconstruction services, or Construction Engineering and Inspection, are not included in this goal.

#### **E. DIRECTORY OF TRANSPORTATION FIRMS (DIRECTORY)**

Real-time information about firms doing business with the Department of Transportation and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory can be found at the following link.

<https://partner.ncdot.gov/VendorDirectory/default.html>

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

#### **F. LISTING OF DBE SUBCONTRACTORS**

At the time of bid, Proposers shall submit all DBE participation that they anticipate to use during the life of the contract. Only those identified to meet the DBE goal will be considered committed, even though the listing shall include both committed DBE subcontractors and additional DBE subcontractors. Additional DBE subcontractor participation submitted at the time of bid will be used toward the Department's overall race-neutral goal. Only those firms with current DBE certification at the time of Price Proposal opening will be acceptable for listing in the Proposer's submittal of DBE participation. The Design-Build Team shall indicate the following required information:

- (i) Proposers, at the time the Price Proposal is submitted, shall submit a listing of DBE participation, including the names and addresses on *Listing of DBE Subcontractors* contained elsewhere in the contract documents in order for the Price Proposal to be

considered responsive. Proposers shall indicate the total dollar value of the DBE participation for the contract.

- (ii) If Proposers have no DBE participation, they shall indicate this on the *Listing of DBE Subcontractors* by entering the word “None” or the number “0.” This form shall be completed in its entirety.
- (iii) The Proposer shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the opening of the Price Proposals, that DBE’s participation will not count towards achieving the DBE goal.

**Blank forms will not be deemed to represent zero participation.** Price Proposals submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of the Price Proposals. The Department will not consider these Price Proposals for award and the proposal will be rejected.

#### **G. DBE PRIME CONTRACTOR**

When a certified DBE firm proposes on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other proposer. In most cases, a DBE proposer on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE proposer and any other DBE subcontractors will count toward the DBE goal. The DBE proposer shall list itself along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE proposer will only perform 40% of the contract work, the prime will list itself at 40%, and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow Sections (i) and (ii) listed under *Listing of DBE Subcontractor* just as a non-DBE proposer would.

#### **H. WRITTEN DOCUMENTATION – LETTER OF INTENT**

The Proposer shall submit written documentation for each DBE that will be used to meet the DBE goal of the contract, indicating the Proposer’s commitment to use the DBE in the contract. This documentation shall be submitted on the Department’s form titled *Letter of Intent*.

The documentation shall be received in the office of the State Contractor Utilization Engineer or at **DBE@ncdot.gov** no later than 12:00 noon of the sixth calendar day following opening of Price Proposals, unless the sixth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than 12:00 noon on the next official state business day.

If the Proposer fails to submit the Letter of Intent from each committed DBE to be used toward the DBE goal, or if the form is incomplete (i.e. both signatures are not present), the DBE participation will not count toward meeting the DBE goal. If the lack of this participation drops the commitment below the DBE goal, the Design-Build Team shall submit evidence of good faith efforts, completed in its entirety, to the State Contractor Utilization Engineer or **DBE@ncdot.gov** no later than 12:00 noon on the eighth calendar day following opening of the Price Proposals, unless the eighth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than 12:00 noon on the next official state business day.

#### **I. SUBMISSION OF GOOD FAITH EFFORT**

If the Proposer fails to meet or exceed the DBE goal the Proposer with the apparent adjusted low price shall submit to the Department documentation of adequate good faith efforts made to reach the DBE goal.

A hard copy and an electronic copy of this information shall be received in the office of the State Contractor Utilization Engineer or at **DBE@ncdot.gov** no later than 12:00 noon of the sixth calendar day following opening of the Price Proposals unless the sixth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer the next official state business day. If the Design-Build Team cannot send the information electronically, then one complete set and 9 copies of this information shall be received under the same time constraints above.

Note: Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

#### **J. CONSIDERATION OF GOOD FAITH EFFORT**

Adequate good faith efforts mean that the Proposer took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient DBE participation. Adequate good faith efforts also mean that the Proposer actively and aggressively sought DBE participation. Mere *pro forma* efforts are not considered good faith efforts.

The Department will consider the quality, quantity, and intensity of the different kinds of efforts a Proposer has made. Listed below are examples of the types of actions a proposer will take in making a good faith effort to meet the goal and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

- (i) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices through the use of the NCDOT Directory of Transportation Firms) the interest of all certified DBEs who have the capability to perform the work of the contract. The Proposer must solicit this interest within at least 10 days prior to the opening of the Price Proposals to allow the DBEs to respond to the

solicitation. Solicitation shall provide the opportunity to DBEs within the Division and surrounding Divisions where the project is located. The Proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- (ii) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- (iii) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (iv)
  - a. Negotiating in good faith with interested DBEs. It is the Proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
  - b. A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Proposer of the responsibility to make good faith efforts. Proposing Design-Build Teams are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (v) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Proposer's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Proposer's efforts to meet the project goal.
- (vi) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or proposer.
- (vii) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

- (viii) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and local minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs. Contact within 7 days from the opening of the Price Proposals the Business Development Manager in the Business Opportunity and Work Force Development Unit to give notification of the Proposer's inability to get DBE quotes.
- (ix) Any other evidence that the Proposer submits which shows that the Proposer has made reasonable good faith efforts to meet the DBE goal.

In addition, the Department may take into account the following:

- (i) Whether the Proposer's documentation reflects a clear and realistic plan for achieving the DBE goal.
- (ii) The Proposer's past performance in meeting the DBE goals.
- (iii) The performance of other proposers in meeting the DBE goal. For example, when the Proposer with the apparent adjusted low price fails to meet the DBE goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts the Proposer with the apparent adjusted low price could have met the goal. If the Proposer with the apparent adjusted low price fails to meet the DBE goal, but meets or exceeds the average DBE participation obtained by other proposers, the Department may view this, in conjunction with other factors, as evidence of the Proposer with the apparent adjusted low price having made a good faith effort.

If the Department does not award the contract to the Proposer with the apparent adjusted low price, the Department reserves the right to award the contract to the Proposer with the next adjusted lowest adjusted price that can satisfy to the Department that the DBE goal can be met or that an adequate good faith effort has been made to meet the DBE goal.

#### **K. DECERTIFICATION REPLACEMENT PRIOR TO REQUEST FOR SUBCONTRACT**

When a committed DBE is decertified prior to the Department receiving the SAF (*Subcontract Approval Form*) for the named DBE firm, the Design-Build Team shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the DBE goal requirement. If a DBE firm is not found to do the same amount of work, a good faith effort must be submitted to NCDOT (see the Disadvantages Business Enterprise Project Special Provision contained in the Request for Proposals (Volume II)).

#### **L. NON-GOOD FAITH APPEAL**

The State Contractor Utilization Engineer will notify the Design-Build Team verbally and in writing of non-good faith. A Design-Build Team may appeal a determination of non-good faith made by the Goal Compliance Committee. If a Design-Build Team wishes to appeal the determination made by the Committee, they shall provide written notification to the State

Contractual Services Engineer or at **DBE@ncdot.gov**. The appeal shall be made within 2 business days of notification of the determination of non-good faith.

#### **M. COUNTING DBE PARTICIPATION TOWARD MEETING DBE GOAL**

(i) Participation

The total dollar value of the participation by a committed DBE will be counted toward the contract goal requirement. The total dollar value of participation by a committed DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Design-Build Team.

(ii) Joint Checks

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of Form JC-1 (*Joint Check Notification Form*) and the use of joint checks shall be in accordance with the Department's Joint Check Procedures.

(iii) Subcontracts (Non-Trucking)

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract goal requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the DBE is not performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department. The Department's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

(iv) Joint Venture

When a DBE performs as a participant in a joint venture, the Design-Build Team may count toward its contract goal requirement a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.

(v) Suppliers

A Design-Build Team may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.

(vi) Manufacturers and Regular Dealers

A Design-Build Team may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:

- a. The fees or commissions charged by a DBE firm for providing a *bona fide* service, such as providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
- b. With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**N. COMMERCIALY USEFUL FUNCTION**

(i) DBE Utilization

The Design-Build Team may count toward its contract goal requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(ii) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function.

- a. The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.
- b. The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

- c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- d. The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.
- e. The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Design-Build Team will not count towards the DBE contract requirement.
- f. A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.
- g. Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

## **O. REPLACING AND REPORTING DBE PARTICIPATION**

For provisions regarding replacing DBEs and DBE reporting requirements, reference the Project Special Provision, "Disadvantaged Business Enterprise" contained in the Request for Proposals (Volume II).

## **11. FEDERAL-AID CONTRACT PROVISIONS**

Proposer's attention is directed to the requirements of the Project Special Provision entitled "Certification for Federal-Aid Contracts" contained in the RFP (Volume II).

Proposer's attention is also directed to the Standard Special Provision entitled "Required Contract Provisions Federal-Aid Construction Projects" contained in the RFP (Volume II).

## **12. PRICE PROPOSAL DOCUMENTATION ESCROW**

### **A. GENERAL**

The Successful Proposer shall submit the original, unaltered Price Proposal Documentation, or a certified copy thereof, used to prepare the Price Proposal to the Department. Such

documentation shall be placed in escrow with a banking institution or other bonded document storage facility selected by the Department and preserved by that institution or facility as specified in the following subsections of this Section 12.

For duration, use, and confidentiality of, and payment for, Price Proposal Documentation, reference the Project Special Provision entitled "Price Proposal Documentation" contained in the RFP (Volume II).

#### **B. PRICE PROPOSAL DOCUMENTATION DEFINED**

The term "Price Proposal Documentation" as used in this Section 12 mean all written information, working papers, computer printouts, and electronic media, charts, and all other data compilations which contain or reflect information, data, and calculations used by the Successful Proposer in the preparation of their Price Proposal. The term includes but is not limited to, Design-Build Team equipment rates, Design-Build Team overhead rates, labor rates, efficiency or productivity factors, arithmetical calculations, and quotations from Subcontractors and material suppliers to the extent that such rates and quotations were used by the Successful Proposer in formulating and determining the Price Proposal. The term also includes any manuals which are standard to the industry used by the Successful Proposer in determining the Price Proposal. Such manuals may be included in the Price Proposal Documentation by reference. Such reference shall include the name and date of the publication and the publisher. The terms do not include documents provided by NCTA or NCDOT for use by the Successful Proposer in submitting its Proposal.

#### **C. SUBMITTAL OF PRICE PROPOSAL DOCUMENTATION**

A representative of the Successful Proposer shall deliver the original, unaltered Price Proposal Documentation or a certified copy thereof to the Department in a container suitable for sealing within ten (10) days after receipt of the notice of award. The container shall be clearly marked "Price Proposal Documentation" and shall also show on its face the Successful Proposer's name and address, the date of submittal, the Project name and contract number, and the Counties where the Project is located. Certified copies of Price Proposal Documentation must include a letter to the Department signed by the chief financial officer or equivalent office holder of the Successful Proposer stating that the enclosed documentation is an exact copy of the original documentation. The letter must include the signatory's name and title typed below the signature, and the signature shall be notarized at the bottom of the letter. The Department will not execute the Contract until the original, unaltered Price Proposal Documentation or a certified copy thereof has been received by the Department. The container shall be no larger than 15.5 inches in length by 12 inches wide by 11 inches high and shall be water resistant. The container shall be clearly marked "Bid Documentation" and shall also show on the face of the container the Proposer's name, Proposer's address, the date of submittal, the Project Number, and the County.

#### **D. AFFIDAVIT**

In addition to the Price Proposal Documentation, an affidavit signed under oath by an individual authorized by the Successful Proposer to execute the Contract shall be included.

The affidavit shall list each piece of Price Proposal Documentation with sufficient specificity so a comparison may be made between the list and the submitted Price Proposal Documentation to ensure that all of the Price Proposal Documentation listed in the affidavit has been enclosed. The affidavit shall attest that the affiant has personally examined the Price Proposal Documentation and that all Price Proposal Documentation listed on the affidavit has been submitted.

#### **E. VERIFICATION**

Upon delivery of the Price Proposal Documentation, the State Contract Officer and the Successful Proposer's representative will verify the accuracy and completeness of the Price Proposal Documentation compared to the affidavit. Should a discrepancy exist, the Successful Proposer's representative shall immediately furnish the State Contract Officer with the missing Price Proposal Documentation. Upon determining that the Price Proposal Documentation is complete, the State Contract Officer, will, in the presence of the Successful Proposer's representative, immediately place the complete Price Proposal Documentation and affidavit in the container and seal it. The sealed container will be delivered to a banking institution or other bonded document storage facility selected by the Department and the successful Proposer for placement in a safety deposit box, vault, or other secure accommodation.

By submitting its Proposal, the Successful Proposer certifies and agrees that the sealed container placed in escrow contains all of the Price Proposal Documentation used to prepare the Price Proposal and that no other Price Proposal Documentation shall be relevant or material in litigation over claims brought by the Successful Proposer arising out of the Contract.

#### **F. FAILURE TO PROVIDE PRICE PROPOSAL DOCUMENTATION**

The Successful Proposer's failure to provide the original, unaltered Price Proposal Documentation or a certified copy thereof within ten (10) days after receipt of the notice of award may be just cause for rescinding the award of the Contract and may result in the removal of the Successful Proposer from NCDOT's list of qualified proposers for a period of up to 180 days. Award may then be made to the Proposer with the next lowest Adjusted Price, or the Department may take any other action as described below in Section 14.C.

#### **G. ESCROW AGREEMENT**

The Successful Proposer will be required to sign an escrow agreement within ten (10) days after it receives the notice of award. A copy of the escrow agreement will be mailed to the Successful Proposer with the notice of award for informational purposes. The Successful Proposer and the Department will sign the escrow agreement at the time that the Price Proposal Documentation is delivered into escrow as outlined above. The Successful Proposer's failure to sign the escrow agreement may be just cause for rescinding the award of the Contract and may result in the removal of the Proposer from the NCDOT's list of qualified Proposers for a period of up to 180 days. Award may then be made to the Proposer

with the next lowest Adjusted Price, or the Department may take any other action as described below in Section 14.C.

### **13. PROTESTS**

This Section sets forth the exclusive NCTA protest remedies available with respect to these RFP Documents. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive. These provisions are included in these RFP Documents expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFP Documents, it shall indemnify, defend, and hold the Authority and NCDOT, and their respective Board members, directors, officers, officials, employees, agents, representatives, and consultants, harmless from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of such Proposer actions. The submission of a Proposal shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

#### **A. WRITTEN PROTESTS ONLY**

All protests must be in writing and delivered to the NCTA Chief Engineer at the address specified below. Any protest not set forth in writing, including oral objections, is not a protest and shall be null and void.

Mr. Steve DeWitt, PE  
NCTA Chief Engineer  
NCDOT Transportation Building  
1 South Wilmington Street  
Raleigh, NC 27601

#### **B. PROTEST CONTENTS**

All protests must include the following:

- (i) Name and Address of Protestor;
- (ii) Proposal or Contract number;
- (iii) Reasons for protest; and
- (iv) Supporting exhibits, evidence or documents to support the protest.

#### **C. TIME FOR FILING**

- (i) A protest based on alleged improprieties in the solicitation or amendment thereto, which were apparent or reasonably should have been recognized before the Proposal Due Date, shall be filed no later than 7 days after receipt of the final RFP addendum.

- (ii) Any other protest shall be filed no later than seven days after the basis for the protest is known or should have been known, whichever is earlier. In no event may any protest be filed more than seven calendar days after opening of Price Proposals.

#### **D. PROTEST DECISION**

- (i) A decision on a protest will be made by the NCTA Chief Engineer in writing as expeditiously as possible after receiving all relevant, requested information.
- (ii) The protest decision will include:
  - a. A description of the controversy;
  - b. A statement of the decision, with supporting material;
  - c. If the protest is not sustained, a statement clarifying the next step for the protester as allowed under the terms of the Contract Documents and applicable law.
  - d. The NCTA Chief Engineer will furnish a copy of the protest decision to the protester and all other interested parties, by certified mail, return receipt requested, or by any other method that provides evidence of its receipt.

#### **E. RIGHT OF APPEAL**

- (i) Written notice of an appeal of a protest decision must be filed with the NCDOT Technical Services Administrator within 10 days from the date the protester receives the protest decision.
- (ii) An appeal received by the NCDOT Technical Services Administrator after the time prescribed in above may not be considered unless it was sent by registered or certified mail not later than the fifth day before the final date for filing the appeal. A date affixed by postage meter will not be considered as evidence of the actual mailing date. The only acceptable evidence to establish the date of mailing shall be the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark is illegible, the appeal shall be deemed to have been filed when received by the NCDOT Technical Services Administrator.
- (iii) The appeal process will be concluded prior to the sale of the bonds.

#### **F. IRREVOCABILITY OF PROPOSALS PENDING RESOLUTION OF PROTEST**

All Proposals shall be irrevocable until final administrative and judicial disposition of a protest.

**14. ADDITIONAL PROVISIONS****A. THREE-YEAR GUARANTEE**

Proposer's attention is directed to the bonding requirements of the Project Special Provision entitled "Three-Year Guarantee" contained in the RFP (Volume II).

**B. DIVISION ONE, HIGHLIGHTED REQUIREMENTS**

Proposer's attention is directed to Division One of the 2012 *Standard Specifications for Roads and Structures* and modifications thereto made in the Standard Special Provision, Division One, contained in the RFP (Volume II). Although every effort has been made to incorporate the submission requirements contained in these documents in this ITP, the Proposer is advised to review the Proposal submission requirements contained in the the above documents. The Proposer is bound by the requirements of these documents as if they were fully incorporated into this ITP.

The following articles of the 2012 *Standard Specifications for Roads and Structures* and as may be amended by the Standard Special Provision entitled "Division One" are highlighted here solely for Proposer's convenience. The Department makes no representation that the highlighted articles below are a complete list of the Proposal submission requirements.

- |   |                              |
|---|------------------------------|
| • Definitions   | Article 101-3                |
| • Contractor and Subcontractor Prequalification       | Article 102-2                |
| • Contents of Instructions to Proposers and RFP       | Article 102-3                |
| • Examination of Contract and Site                    | Article 102-6                |
| • Preparation and Submission of Price Proposals       | Article 102-8                |
| • Non-Collusion Affidavit and Debarment Certification | Article 102-9                |
| • Bid Bonds   | Articles 102-10 and 103-3(D) |
| • Award of Contract                                   | Article 103-4                |
| • Payment and Performance Bonds                       | Articles 103-7 and 103-9     |
| • Liability Insurance                                 | Article 107-15               |
| • Subletting of Contract                              | Article 108-6                |

**C. ACKNOWLEDGEMENTS AND RESERVED RIGHTS**

The Department or Authority may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFP Documents. The Department and Authority reserve the right, in its sole and absolute discretion, to:

- (i) Reject any or all Proposals;
- (ii) Issue new RFP Documents;
- (iii) Cancel, modify, or withdraw the RFP Documents in their entirety;

- (iv) Issue Addenda;
- (v) Modify the RFP process (with appropriate notice to Proposers);
- (vi) Solicit subsequent BAFOs from Proposers;
- (vii) Appoint an evaluation committee and evaluation teams to review Proposals and seek the assistance of technical experts;
- (viii) Approve or disapprove the use of particular Subcontractors and/or substitutions and/or changes in a Proposer's organization;
- (ix) Revise and modify, at any time before the Proposal Due Date, the factors it will consider in evaluating Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Authority shall circulate an Addendum to all Proposers setting forth the changes to the evaluation criteria or methodology. The Department may extend the Proposal Due Date if such changes are deemed by the Department, in its sole discretion, to be material and substantive;
- (x) Hold meetings and communicate with Proposers responding to these RFP Documents to seek an improved understanding and evaluation of the Proposals. If meetings are held, all Proposers shall be afforded an opportunity to participate in a meeting;
- (xi) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;
- (xii) Waive weaknesses, informalities, and minor irregularities in Proposals, and seek and receive clarifications to Proposals;
- (xiii) Retain ownership of all materials submitted in hard-copy and/or electronic format; and/or
- (xiv) Refuse to issue RFP Documents to a Proposer; refuse to consider a Proposal, once submitted; or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following:
  - a. Failure on the part of a Proposer to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts with the Authority, NCDOT or any other North Carolina State agency;
  - b. Default on the part of a Proposer under previous contracts with the Authority, NCDOT or any other North Carolina State agency;
  - c. Unsatisfactory performance of previous work by Proposer under previous contracts with the Authority, NCDOT or any other North Carolina State agency;
  - d. Existence of a notice of debarment or suspension under Authority or federal regulations to Proposer;

- e. Submittal by Proposer of more than one Proposal in response to these RFP Documents under Proposer's own name or under a different name;
- f. Existence of an organizational conflict of interest, or evidence of collusion in the preparation of a proposal or bid for any Authority design or construction contract by (a) Proposer and (b) other proposers or bidders for that contract;
- g. Uncompleted work or default on a contract in another jurisdiction for which Proposer is responsible;
- h. Any other reason affecting Proposer's ability to perform, or record of business integrity; and/or
- i. Proposer is not otherwise qualified and eligible to receive an award of the Contract under applicable laws and regulations.

#### **D. DISCLAIMERS**

By submitting its Proposal, Proposer acknowledges that Project documents and Reference Documents furnished by NCDOT or NCTA are preliminary and provided solely to assist Proposer in the development of the project design. The Design-Build Team shall be fully and totally responsible for the accuracy and completeness of all Work performed under the Contract and shall save NCTA and NCDOT harmless and shall be fully liable for any additional costs and all claims against NCTA and NCDOT which may arise due to errors, omissions and negligence of the Design-Build Team in performing the Work required by the Contract.

These RFP Documents do not commit the Department of Transportation, NCTA to enter into a contract, nor do they obligate the Authority or Department to pay for any costs incurred in preparation and submission of Proposal(s) or in anticipation of a contract. By submitting its Proposal, Proposer disclaims any right to be paid for such costs, except for any costs paid in accordance with ITP Section 9.

In no event shall the Authority or Department be bound by, or liable for, any obligations with respect to the Work or the Project until such time (if at all) as the Contract, in form and substance satisfactory to the Authority and Department, has been executed and authorized by the Department of Transportation, NCTA and approved by all required authorities and, then, only to the extent set forth in a written Notice to Proceed if required.

In submitting its Proposal in response to these RFP Documents, Proposer is specifically acknowledging these disclaimers.

#### **E. IMPROPER CONDUCT**

If Proposer, or anyone representing Proposer, offers or gives any advantage, gratuity, bonus, discount, bribe, or loan of any sort to the Authority, including agents or anyone representing the Authority at any time during this procurement process, or otherwise takes action inconsistent with the standards found in the Ethics Policy of the NCTA Board or the Department's Ethics Policy, the Department shall immediately disqualify Proposer, Proposer

shall forfeit its Bid Bond or Bid Deposit, Proposer shall not be entitled to any payment, and the Authority may sue Proposer for damages.

Proposer is responsible for complying with the requirements of North Carolina State and federal law with respect to organizational conflicts of interest and must include a full disclosure of all potential organizational conflicts of interest in its Proposal.

23 CFR 636.103 defines “organizational conflict of interest” as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

By submitting its Proposal, Proposer agrees that, if an organizational conflict of interest is thereafter discovered, Proposer must make an immediate and full written disclosure to the Authority that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Department may, at its discretion, cancel the Contract. If Proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the Authority, the Department may terminate the Contract for default.

Any person or entity that has or will receive monetary compensation as a consultant and/or subconsultant under a contract with the State of North Carolina or the Authority to develop a conceptual plan for the Project and/or has been retained to review the State of North Carolina's or NCTA's proposed plans for this procurement, or any person or entity that is the employer of an individual that has been so retained, may not submit a Proposal for this procurement and will not be considered a “responsive Proposer”. Any Proposal received from such a person or entity will be rejected.

#### **F. CONFIDENTIALITY AND PUBLIC DISCLOSURE**

The Authority and NCDOT may maintain the confidentiality of information only as authorized in NCGS § 132-1 *et seq.* A Proposer, having formed a good faith opinion, upon consultation with legal or other knowledgeable advisors, that information submitted may contain a trade secret as defined in NCGS § 66-152 or is otherwise exempted from the North Carolina Public Records Act pursuant to NCGS § 132-1.2, may so designate appropriate portions of its Proposal by marking the top and bottom of pages containing confidential information in boldface type “CONFIDENTIAL.” The Authority and NCDOT, however, may serve only as a custodian of information a Proposer deems confidential. The Authority or NCDOT shall not act as an arbiter or defender of any claims related to assertions of confidential information. If a request is made for disclosure of information submitted, or an action is brought to compel the Authority or NCDOT to disclose information marked confidential pursuant to NCGS § 132-1 *et seq.*, the Authority will notify the affected Proposer of such request or action.

In submitting a Proposal in response to this RFP, a Proposer agrees to: (i) defend its assertions of confidentiality by instituting appropriate legal proceedings or intervening in an action brought against the Authority and/or NCDOT to compel disclosure, at its own expense and through its counsel; and (ii) hold the State of North Carolina, the Authority, NCDOT, and any officials or employees thereof harmless from any and all damages, costs, and attorney's fees awarded against the State of North Carolina, Authority and/or NCDOT arising out of any such actions. Nothing in this section shall preclude the State of North Carolina, Authority and/or NCDOT from participating in the defense of such actions, at its option and expense through its counsel. The State of North Carolina, Authority and/or NCDOT shall have no liability to a Proposer with respect to the disclosure of any information, including confidential information, subject to an order by a court of competent jurisdiction pursuant to NCGS§ 132-9 or any other applicable law.