TRIANGLE EXPRESSWAY LANDSCAPE
(TIP R-2635 & U-4763B)

FINAL REQUEST FOR PROPOSALS:

VOLUME I – INSTRUCTIONS TO PROPOSERS

Includes Addendum #1 Dated March 8, 2011

March 8, 2011

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:	C202507
WBS ELEMENT NO.	35520.5.TA1
COUNTY:	Durham and Wake
ROUTE:	NC 540 and NC 147
MILES:	18.8
LOCATION:	NC 540 from NC 55 near Apex to NC 54 near RTP and NC 147 from I-40 to NC 540
TYPE OF WORK:	DESIGN-BUILD SERVICE AS SPECIFIED IN THE SCOPE OF WORK CONTAINED IN THE REQUEST FOR PROPOSAL (Volume II)

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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") to seek proposals ("Proposals") for the design and construction of landscaping planting on the Triangle Expressway Project (the "Project"). The Triangle Expressway will follow a generally north-south orientation parallel to NC 55 and will have 11 interchanges. The Triangle Expressway toll road system is approximately 18.8 miles in length and is comprised of three projects, existing NC 540 between NC 55 and NC 54, Triangle Parkway, and the Western Wake Freeway both are under construction and in Durham and Wake Counties in North Carolina. For additional information regarding the Project, see the Authority website at http://www.ncturnpike.org/procurement/triangleexpresswaylandscape.asp

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 November 15, 2010.

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 and sealed Price Proposals.

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 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.

The Work shall include but is not limited to:

- **Design Services –** landscape and traffic management.
- **Construction Services –** landscape planting

E. Project Goals

The Authority's goals for the Project are:

- Provide a safe project for workers and the traveling public
- Provide a context sensitive design which enhances municipalities' land use plan
- Provide a high-quality, aesthetic and sustainable highway
- Complete the Project within the budget and available funding
- Minimize disruptions to existing traffic
- 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 Authority, 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 Authority and the Department harmless for any additional costs and all claims against the Authority and/or Department which may arise due to errors or omissions of the Authority and/or Department 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_triangle_landscape@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.

One-on-One Meetings.

Prior to or 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 Design Concept ("ADC"). Prior to the submission of Proposals, the Department will conduct at least one meeting with each Proposer to allow the Proposer to discuss issues and clarifications regarding the RFP Documents and the Project. If one-on-one meetings are held, they will be held with each Proposer. Nothing stated at any one-on-one meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to this ITP.

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_triangle_landscape@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.

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 Standard Special Provision entitled “Division One” contained in the RFP (Volume II).

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 Procurement Timeline is subject to revision at any time. Revisions to the Procurement Timeline will be uploaded to Constructware. The Proposer is responsible for tracking and adhering to all updates to the Procurement Timeline.

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 to Constructware, 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 Articles 102-8, 102-10, or 102-11 of the Standard Special Provisions, Division One contained in the RFP (Volume II); and

(ix) 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. R-2635 & U-4763B in Durham and Wake Counties"
"Submitted By: (Proposer's name and address)"
"Contract Number C202507"
"Triangle Expressway Landscape"

Twelve (12) 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. Volume I shall be printed on one side only with double-spaced, 12-point font. Volume I shall not exceed 25 pages in length. In addition, 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, 11 inch by 17 inch, depicting those elements required by the RFP Documents. Fold out sheets, maximum 24 inch by 36 inch, are only allowed to present interchange plans.

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. . R-2635 & U-4763B in Durham and Wake Counties"
"Submitted By: (Proposer's name and address)"
"Contract Number C202507"
"Triangle Expressway Landscape"

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. 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 after the Notice of Award is received by the successful Proposer 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 contractors are required to be prequalified by NCDOT for the work they are identified to perform. Landscape contractors shall have a current registration certificate of title issued by the NC Landscape Contractors Registration Board. Design 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

Landscape design firms shall be licensed by the North Carolina Board of Landscape Architects prior to submittal of a Technical Proposal.

The traffic management design firm shall meet the requirements of the Traffic Management Scope of Work.

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 Techncial 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 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):

Management

(i) Design Management.

a. Describe Proposer's concept of design management. The Proposal shall identify key positions and staff. DBE firms to be used in preconstruction activities shall be noted in the Technical Proposal.

b. Describe the plan for the coordination of traffic maintenance and landscape construction.

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.

(ii) Quality Management.

Describe how Proposer will comply with the quality control requirements for both design and construction.

(iii) Landscape Planting 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 with work being performed by the other contractors working on the project.

e. Describe Proposer's approach to construction site access, construction site management, and material storage specific to this Project.

Responsiveness to Request for Proposals

(i) Design Features.

a. Include a narrative that discusses the relative merits of the design and your approach to the design.

b. Include plan sheets showing all planting identified in the Concept Report as "Zone 3 Enhancement Areas" and identified in the Concept Plans as "Enhancement". The Plans shall show individual trees for each bed. As a minimum, include typical planting details to be used for all other Zones identified in the Concept Report. Typical planting details should not be used for Enhancement unless the planting areas are not significantly different.

c. Include Summary Sheets for the plan sheets required above.

d. Include plan sheets for the entire project showing the proposed limits of all planting elements.

e. Include the estimated quantity of plants for the entire project, including ASNS (American Standard for Nursery Stock) item delineation and plant specific details (i.e. B&B, #3 cont., 18-24", "limbed up", "full", "multi-stem", "specimen", etc.). This estimate shall establish the minimum quantity of plants that shall be provided during project construction, unless otherwise approved by the Engineer.

f. Include a plan for soil testing and soil amendments for the Enhancement Areas and for each typical planting detail.

g. Include a conceptual narrative of the Establishment Maintenance Plan that is proposed.

(ii) Schedule and Milestones.

Provide a 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 the initial planting for each segment of the Project.

(iii) Innovation.

Identify any aspects of the design or construction elements that Proposer considers innovative.

Long Term Maintenance.

Discuss how your design will affect long-term maintenance costs. Describe the relative merits of your proposed planting configurations and plant species in terms of minimizing long term maintenance.

Maintenance of Traffic Plan and Safety Plan.

a. Describe any traffic control requirements that will be used for each construction activity.

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. Identify the Traffic Management Design Firm and list project traffic management designed in the past five years, including description and similarity to the subject project.

d. Discuss whether the design as proposed will require any lane closures, and if so, to what extent.

e. Describe the safety considerations specific to the Project.

f. Discuss Proposer's overall approach to safety.

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 20 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 60 minutes. No more than 10 people from Proposer may attend.

4. ALTERNATIVE DESIGN 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 Design Concepts.

A. Definitions.

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

An Alternative Design Concept (ADC) is a private query to Authority 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 Authority in its sole discretion and that have been used elsewhere under comparable circumstances.

B. Confidential Questions.

Proposer will be permitted to ask Confidential Questions of the Authority, and neither the question nor the answer will be shared with other Design-Build Teams. The Authority, 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 teams. Authority 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 NCDOT 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 Design Concepts.

Proposer may include an ADC in the Proposal only if the ADC has been received by Authority by no later than 2 weeks before the Proposal submittal deadline and it has been approved by Authority (including conditionally approved ADCs, if all conditions are met).

Should the Authority revise the RFP Documents after a Formal ADC has been approved, the Proposer shall be solely responsible for reviewing the RFP Documents and determining if the ADC 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 ADC shall in no way take advantage of an error or omission in the RFP Documents. If, at the sole discretion of the Authority, an ADC 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.

By approving an ADC, the Authority acknowledges that the ADC may be included in the design and RFC plans; however, approval of any ADC in no way relieves Proposer of its obligation to satisfy (1) other Contract requirements not specifically identified in the ADC submittal; and (2) any obligation that may arise under applicable laws and regulations.

D. ADC Submittals

Each ADC submittal shall be submitted in PDF format as and e-mail attachment to **designbuild_triangle_landscape@ncdot.gov**. Each ADC submittal shall include the following information:

(i) **Description**. A detailed description and drawings of ADC or other appropriate descriptive information;

(ii) **Usage**. Where and how the ADC would be used on the Project;

(iii) **Deviations**. References to all requirements of the Contract Documents, Concept Report and Concept Plans that are inconsistent with the proposed ADC, 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 ADC and why the variance to the requirements of the Contract Documents should be allowed;

(v) **Impacts**. Discussion of potential impacts to the project, including appearance, survivability and maintenance;

(vi) **Costs**. An estimate of the ADC implementation costs to Authority and the Proposer (initial installation, establishment, long term maintenance, etc.).

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

E. Review of ADC

A panel will be selected to review each ADC, 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 ADC.

The Authority may request additional information regarding a proposed ADC at any time. The Authority will return responses to, or request additional information from, Proposer within 5 business days of the original submittal. If additional information is requested, the Authority will provide a response within 5 business days of receipt of all requested information.

The Authority may conduct confidential one-on-one meeting(s) to discuss Proposer's ADC. Under no circumstances will Authority or NCDOT be responsible or liable to Proposer or any other party as a result of disclosing any ADC 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 Authority or NCDOT or their respective officers, employees, contractors, or consultants.

F. Response to ADC

The Authority will review each ADC and the NCDOT State Contract Officer will respond to Proposer with one of the following determinations:

(i) The ADC is approved;

(ii) The ADC is not approved;

(iii) The ADC is not approved in its present form, but may be approved upon satisfaction, in Authority'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 ADC but may be included in the Proposal without an ADC (i.e., the concept complies with the baseline requirements of the RFP Documents);

(v) The submittal does not qualify as an ADC and may not be included in the Proposal;

(vi) The ADC is deemed to take advantage of an error or omission in the RFP Documents, in which case the ADC will not be considered, and the RFP Documents will be revised to correct the error or omission;

G. Inclusion of ADC in Technical Proposal

Proposer may incorporate one or more approved ADCs as part of its Technical and Price Proposals. If the NCDOT State Contract Officer responded to an ADC 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 ADC, and providing assurances to meet all attached conditions, Proposer shall also include a copy of the ADC approval letter, or other written notification from the NCDOT State Contract Officer in the sealed package that contains the Technical Proposal. This letter will be included in the distribution of the Technical Proposals to the Technical Review Committee.

Approval of a Formal ADC in no way implies that the Formal ADC 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 ADCs are included.

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

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 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. 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 traffic maintenance and landscape planting responsibility and how well design personnel will interface with landscape planting personnel.

(ii) Quality Management

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

(iii) Landscape Planting Management

Evaluates how well Proposer understands and is organized to achieve quality landscape planting of the Project, including evaluation of Proposer's landscape planting 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 Proposals

Evaluates Proposer's understanding, approach, capabilities, innovation and commitments to the delivery of design solutions that are aesthetically compatible, safe and maintainable. Evaluates Proposer's innovative design solutions that respond to the environmental and community sensitivities. Evaluates Proposer's schedule for delivery of the initial planting.

Long Term Maintenance

Evaluates Proposer's special designs or construction methods that would reduce future maintenance costs to the Authority.

Maintenance of Traffic and Safety Plan

Evaluates how well Proposer has planned the work to minimize impact to motorists, maintenance of traffic aspects of the Project and the safety of motorist and workers.

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	20
Responsiveness to Request for Proposals	50
Long Term Maintenance	20
Maintenance of Traffic and Safety Plan	5
Oral Interview	5
Maximum Score	**100**

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 30%. 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 Authority 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	30.0	84	14.0
99	29.0	83	13.0
98	28.0	82	12.0
97	27.0	81	11.0
96	26.0	80	10.0
95	25.0	79	9.0
94	24.0	78	8.0
93	23.0	77	7.0
92	22.0	76	6.0
91	21.0	75	5.0
90	20.0	74	4.0
89	19.0	73	3.0
88	18.0	72	2.0
87	17.0	71	1.0
86	16.0	70 or below	0.0
85	15.0		

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	25	3,000,000	750,000	2,250,000
B	90	20	2,900,000	580,000	2,320,000
C *	90	20	2,800,000	560,000	2,240,000
D	80	10	2,700,000	270,000	2,430,000
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 **$10,000** 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. Policy

It is the policy of the Department and the Authority that Disadvantaged Business Enterprises (DBEs) as defined in *49 CFR Part 26* shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by federal funds.

B. Obligation

The Design-Build Team, subcontractors, and sub-recipients shall not discriminate on the basis of race, religion, color, national origin, age, disability, or sex in the performance of this Contract. The Design-Build Team shall comply with applicable requirements of *49 CFR Part 26* in the award and administration of federally assisted contracts. Failure by the Design-Build Team to comply with these requirements is a material breach of the Contract, which may result in the termination of this Contract or such other remedy, as the Department deems necessary.

C. Definitions Applicable to Section 10 of this ITP

Commitment - The approved DBE participation submitted by the Design-Build Team during the Proposal process.

Committed DBE - Any DBE listed on the DBE commitment list approved by the Department at the time of Price Proposal submission or any DBE utilized as a replacement for a DBE firm listed on the commitment list.

Department – North Carolina Department of Transportation 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).

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

Goal - The DBE participation specified herein.

Letter of Intent - Written documentation of the Design-Build Team's commitment to use a DBE subcontractor and confirmation from the DBE that it is participating in the contract.

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 or operates distribution equipment. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

SAF Subcontract Approval Form - Form required for approval to sublet the contract.

North Carolina Unified Certification Program - A program that provides comprehensive information to applicants for 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, including but not limited to the Department of Transportation and the Authority. The Certification Program is in accordance with *49 CFR Part 26*.

USDOT - United States Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

D. Contract Goal

The following goal for participation by DBEs is established for this Contract:

Disadvantaged Business Enterprises **10%**

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

Utilization of DBE firms performing design and other preconstruction services are not included in this goal.

E. Contract Requirement.

The approved DBE participation submitted by the Design-Build Team shall be a requirement of the Contract ("Contract Requirement").

F. Certified Transportation Firms Directory

Real-time information about firms doing business with the Department of Transportation and firms that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering https://apps.dot.state.nc.us/vendor/directory/ in the address bar of a web browser. Only firms identified as DBE certified in the Directory can be utilized to meet the Contract goal.

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.

G. Listing of DBE Subcontractors

Only those DBE firms with current certification are acceptable for listing in the Proposer's submittal of DBE participation. Proposers, at the time the Price Proposal is submitted, shall submit a listing of DBE participation on the Listing of DBE Subcontractors form contained as Exhibit III in the RFP (Volume II) in order for the Proposal to be considered responsive. Proposers shall indicate the total dollar value of the DBE participation for the Contract. If the Proposer has no DBE participation, the Proposer shall indicate this on the Listing of DBE Subcontractors form by entering the word or number zero**.** This form shall be completed in its entirety. **Blank forms will not be deemed to represent zero participation.** Price Proposals submitted that do not have DBE participation indicated on the Listing of DBE Subcontractors form will not be read publicly during the opening of Price Proposals. These Price Proposals will not be considered for award, and the Price Proposal will be returned to the Proposer.

H. Written Documentation – Letter of Intent.

The Proposer shall submit written documentation of the Proposer's commitment to use a DBE subcontractor whose participation it submits to meet the Contract goal and written confirmation

from each DBE listed in the Proposal indicating their participation in the Contract. This documentation shall be submitted on the Department's form titled "Letter of Intent to Perform as a Subcontractor". This letter of intent form is available at:

http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf.

The written documentation shall be received in the office of the NCDOT State Contractor Utilization Engineer and the office of the NCDOT State Contract Utilization Engineer no later than 12:00 noon of the sixth calendar day following opening of Price Proposals.

If the Proposer fails to submit the letter of intent from each committed DBE listed in the Proposal indicating their participation in the contract, the DBE participation will not count toward meeting the Contract goal.

I. Counting DBE Participation Toward Meeting DBE Goal

(i) If a firm is determined to be an eligible DBE firm, the total dollar value of the participation by the DBE will be counted toward the Contract requirement. The total dollar value of participation by a certified 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) When a DBE performs as a participant in a joint venture, the Design-Build Team may count toward its DBE goal 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.

(iii) (a) The Design-Build Team may count toward its DBE 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 and installing (where applicable) the material 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 other relevant factors.

(b) A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the Contract requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the Contract 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, the DBE shall be presumed not to be performing

a commercially useful function. The DBE may present evidence to rebut this presumption for commercially useful functions. The Authority's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

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

(1) 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 requirements.

(2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates and using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE which leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE which leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the Contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. The value of services performed under lease agreements between the DBE and Design-Build Team shall not count toward the contract requirement.

(6) For purposes of this paragraph (c), a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude use of 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. Leased trucks shall display the name and identification number of the DBE.

(iv) 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 to a DBE manufacturer.

(v) 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 professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-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) The fees or commissions charged for assistance in the procurement of the materials and supplies, or for 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 not from a manufacturer or regular dealer and provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

J. Good Faith Effort

If the DBE participation submitted in the Price Proposal by the Proposer with the apparent lowest Adjusted Price does not meet or exceed the DBE Contract goal, this Proposer shall submit to the Department documentation of its good faith efforts made to reach the Contract goal. One complete set and nine (9) copies of this information shall be received in the office of the State Contractor Utilization Engineer no later than 12:00 noon of the sixth calendar day following the opening of Price Proposals. 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 as necessary to demonstrate compliance with the factors listed below which Department considers in judging good faith efforts. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

The following factors will be used to determine if the Proposer has made adequate good faith efforts:

(i) Whether Proposer attended any pre-Proposal meetings that were scheduled by the Authority or NCDOT to inform DBEs of subcontracting opportunities.

(ii) Whether the Proposer provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the Disadvantaged) at least 10 calendar days prior to opening of the Price Proposals, and whether the Proposer provided written notice to all DBEs listed in the NCDOT Directory of Transportation Firms, within the NCDOT Divisions and surrounding NCDOT Divisions where the Project is located, that specialize in the areas of Work (as noted in the DBE Directory) that the Proposer will be subletting.

(iii) Whether the Proposer followed up initial solicitations of interests by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted NCDOT Divisions do not provide an intent to quote or no DBEs specialize in the subcontracted areas, the Proposer shall notify DBEs outside of the targeted NCDOT Divisions that specialize in the subcontracted areas, and contact the NCDOT Director of Business and Opportunity Workforce Development to give notification of the Proposer's inability to get DBE quotes.

(iv) Whether Proposer selected portions of the Work to be performed by DBEs in order to increase the likelihood of meeting the Contract goals. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate DBE participation, even when Proposer might otherwise perform these Work items with its own forces.

(v) Whether the Proposer provided interested DBEs with adequate and timely information about the plans, specifications and requirements of the Contract.

(vi) Whether the Proposer negotiated in good faith with interested DBEs without rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

(vii) Whether quotations were received from interested DBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firm’s quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that Proposer has the ability and/or desire to perform the Contract work with its own forces will not be considered as sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the Proposer to accept unreasonable quotes in order to satisfy the Contract goal.

(viii) Whether the Proposer specifically negotiated with subcontractors to assume part of the responsibility to meet the Contract DBE goal when the work to be sublet includes potential for DBE participation.

(ix) Whether the Proposer made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the Work requirements in the Proposal.

(x) Any other evidence that the Proposer submits which shows that Proposer has made reasonable good faith efforts to meet the Contract goal.

In the event that the Department does not award the Contract to the Proposer with the apparent lowest Adjusted Price, the Department reserves the right to award the Contract to the Proposer

with the next lowest Adjusted Price that can satisfy the the Department that the Contract goal can be met or that adequate good faith efforts have been made to meet the goal.

K. Decertification Prior to Request for Subcontract

When a committed DBE is decertified prior to the Department receiving a Request for Subcontract 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 Contract goal or demonstrate that it has made a good faith effort to do so.

L. Calculating and Reporting DBE Participation

For provisions on replacing DBEs and DBE reporting requirements, reference the Project Special Provision entitled "Disadvantaged Business Enterprise" contained in the RFP (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. ADDITIONAL PROVISIONS

A. Standard Special Provisions entitled "Division One", Highlighted Requirements

Proposer's attention is directed to 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 this special provision in this ITP, the Proposer is advised to review the Proposal submission requirements contained in the special provision. The Proposer is bound by the requirements of this special provision as if it were fully incorporated into this ITP.

The following articles of 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 102-1
• 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 102-10
• Bid Bonds	Articles 102-11 and 103-3(D)
• Delivery of Technical and Price Proposals	Article 102-12
• Award of Contract	Article 103-4
• Payment and Performance Bonds	Articles 103-7 and 103-9
• Liability Insurance	Article 107-16
• Subletting of Contract	Article 108-6

B. 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.

C. Disclaimers

By submitting its Proposal, Proposer acknowledges that Project documents and Reference Documents furnished by the Department or the Authority 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 the Department and the Authority harmless and shall be fully liable for any additional costs and all claims against the Department and the Authority 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 Authority 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 Authority 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.

D. 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 the Authority'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.

E. Confidentiality and Public Disclosure

The Authority and the Department 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 the Department 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 the Department 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 the Department 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 the Department arising out of any such actions. Nothing in this section shall preclude the State of North Carolina, the Authority and/or the Department from participating in the defense of such actions, at its option and expense through its counsel. The State of North Carolina, Authority and/or the Department 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.