TRIANGLE PARKWAY (TIP U-4763B)

FINAL REQUEST FOR PROPOSALS:

VOLUME I – INSTRUCTIONS TO PROPOSERS

May 8, 2008

VOID FOR BIDDING

DATE AND TIME OF TECHNICAL AND PRICE PROPOSAL SUBMISSION: **June 25, 2008 at 4:00 PM**

DATE AND TIME OF PRICE PROPOSAL OPENING**:** **July 29, 2008 at 10:00 AM**

CONTRACT ID:	C201994
WBS ELEMENT NO.	39942.1.TA1
COUNTY:	Wake / Durham
ROUTE:	Triangle Parkway – A Portion of the Triangle Expressway
MILES:	4.2
LOCATION:	From NC 540 in Wake County to I-40 in Durham County
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 North Carolina Turnpike Authority (the "Authority") to seek proposals ("Proposals") for the design and construction of the Triangle Parkway, which is to extend from NC 540 to I-40 in both Durham and Wake Counties, North Carolina (the "Project"). The Project will be owned and operated by the Authority and will form part of the Triangle Expressway, a new 18.8 mile toll road to be constructed and operated by the Authority. The Triangle Expressway will also include the Western Wake Freeway from NC 55 at SR 1172 (Old Smithfield Road) to NC 55 near SR 1630 (Alston Avenue). Proposals for the design and construction of the Western Wake Freeway are being solicited under a separate request for proposals. Refer to the Authority website at http://www.ncturnpike.org/design-build/default.asp for additional information regarding the Project and the Triangle Expressway. The Authority, working in cooperation with 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 December 3, 2007.

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.

D. Project Overview.

The Project is a new, six-lane, median-divided toll road in both Durham and Wake Counties, North Carolina. The purpose of the Project is to improve commute mobility, accessibility and connectivity to Research Triangle Park employment centers and to reduce congestion on existing north-south routes that serve the Triangle Region, primarily NC 55 and NC 54.

A Draft Environmental Assessment document was distributed for NCDOT/FHWA review on November 2, 2007. A Public Hearing is anticipated in March, 2008. A Finding of No Significant Impact (FONSI) is anticipated by April 2008.

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 to:

- Complete the Project within the Authority's budget and available funding.
- Open the Triangle Parkway Project to revenue-generating traffic by December 31, 2010.
- Provide a safe Project for workers and the traveling public.
- Encourage design solutions that respond to environmental concerns, permits, and commitments in the NEPA documents for the Project.
- Achieve environmental and permit commitments.
- Provide a high-quality, aesthetic, durable, and sustainable highway.
- Minimize disruptions to existing traffic and local businesses and communities.

- Coordinate with the contractors of adjacent projects, including the Western Wake Freeway.
- 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 labelled copy of the RFP (Volume II) with all applicable Exhibits completed. Once executed by the 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 Authority 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 Authority 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 Authority 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 Authority or the NCDOT State Contract Officer bear the sole responsibility for obtaining any Addenda issued by the Authority. The last Addendum is expected to be issued no later than June 13, 2008. Each Proposer, upon receipt of each Addendum, shall submit written acknowledgement of receipt by email to designbuild@ncturnpike.org. The Authority 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.

NCTA may request written clarifications to Proposals. This process will be initiated by delivery of a written request from NCTA 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 Authority may conduct one-on-one meetings with Proposers so that the Authority may gain information or a better understanding regarding their Proposal or an Alternative Technical Concept ("ATC"). Prior to the submission of Proposals, the Authority 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. With the exception of ATCs, 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.

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 NCTA Chief Engineer through the Design-Build e-mail address (designbuild@ncturnpike.org). 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.

All questions and requests must be received at the e-mail address specified above no later than June 9, 2008. 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 Authority 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 NCTA 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 for the entire project that covers, as a minimum, the Mandatory Aesthetic Treatments identified in 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 date shown later in this section of the ITP.

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 reasonable conformity to the Aesthetic Guidelines, dated September 28, 2007 as provided by the NCTA. The NCTA will review the Mandatory Aesthetic Treatments contained within the submittal with the Proposer and within five business days of such meeting, provide the Proposer with written acceptance, conditional acceptance, or rejection of the Mandatory 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 Mandatory 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, at a minimum, the Mandatory Aesthetics Treatments included in the Technical Proposal are those previously accepted by the NCTA.

The NCTA will also identify which, if any, of the details are deemed Voluntary Aesthetic Treatments. 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 both the Mandatory and Voluntary 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.

For further information and categorization of Mandatory and Voluntary Aesthetic Treatments, reference the Aesthetics Design Scope of Work contained in the RFP (Volume II).

Submittal of Right-of-Way Acquisition Priorities.

The Proposer's attention is called to the Right-of-Way Scope of Work contained in the RFP (Volume II). The Proposer shall submit to the NCTA a list of right-of-way acquisition priorities no later than the date specified later in this section of the 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 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 Schedule.

The Authority currently anticipates the following procurement schedule:

Meetings with Proposers on Reduced Candidate List	February 15, 2008
Issue Second Industry Review Draft of Request for Proposals to Proposers on Reduced Candidate List	March 10, 2008
Meetings with Proposers on Reduced Candidate List	March 20, 2008
Issue Final RFP	April 8, 2008
Deadline for Submission of Alternative Technical Concepts	May 23, 2008
Deadline for Submittal of Initial Right-of-Way Acquisition Priorities	May 23, 2008
Deadline for Submittal of Aesthetics Details	May 23, 2008
Deadline for Re-submittal of Alternative Technical Concepts	June 9, 2008
Deadline for Submitting Questions	June 11, 2008
Deadline for Issuance of Last Addendum	June 13, 2008
Deadline for Acceptance of Aesthetics Details	June 13, 2008
Deadline for Response to Alternative Technical Concepts	June 13, 2008
Technical Proposals and Sealed Price Proposals Due	June 25, 2008
Projected "Gap" Funding	July 1, 2008

Technical Presentations by Proposer Teams	July 21, 2008
Opening of Price Proposals	July 29, 2008
Projected Financial Closing Date	September 1, 2008

This is a tentative schedule. All dates set forth above and in this ITP 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 4:00 p.m. Eastern Time, on the date specified above. 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 to the Authority. 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) If Proposer fails to submit an Aesthetics Details package and gain NCTA acceptance thereof by the dates noted in Section 1.G. of this ITP.

(x) Any other reason the Authority determines the Proposal to be non-responsive.

B. Execution of Signature Sheets, Debarment Certification and Non-Collusion Affidavit.

Proposer's attention is directed to the various signature sheets in the RFP (Volume II) to be signed by Proposer. A list of these sheets is shown below. The signature sheets are located behind Exhibit III, Listing of DBE Subcontractors in the RFP (Volume II)

(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

The Authority Bid Bond form is available by contacting the Authority at 919-571-3030 or on-line at:

http://www.ncturnpike.org/procurement/#

Proposer shall also execute Exhibit IV, including “Debarment Certification” in accordance with the instructions and conditions included therein. 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 Proposer’s certification of "status" under penalty of perjury under the laws of the United States.

In addition, Proposer shall sign the Non-Collusion Affidavit certifying that it has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its Price Proposal.

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.

NCDOT will be assisting NCTA with the contract procurement for this project. Technical and Price Proposals will be accepted until 4:00 P.M. Eastern Time on the Proposal Due Date specified in ITP Section 1.G above, at the office of the NCDOT State Contract Officer:

Mr. Randy Garris, PE
NCDOT State Contract Officer
Project Services 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-4763B in Durham and Wake Counties"
"Submitted By: (Proposer's name and address)"
"Contract Number C201994"
"Triangle Parkway"

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 50 pages in length.

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.

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-4763B in Durham and Wake Counties"
"Submitted By: (Proposer's name and address)"
"Contract Number C201994"
"Triangle Parkway"

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 after notice of award 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 NCTA.

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 1 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 Authority. Any request for modification shall be sent to the attention of Mr. Steve DeWitt, P.E., at the address identified in this ITP, Section 13.A. 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
- All Design Firms
- All CEI Firms
- All testing / investigation firms

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 removing the Team from further consideration for this Project and disqualification from submitting on future NCTA 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 as defined in the Triangle Expressway Project Management Plan for this Project and how Proposer will implement it.

b. Proposer shall provide a schedule indicating the minimum number of inspectors that will be supplied at different stages during the Project duration.

c. 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 ITS and 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 (NOVs) or Immediate Corrective Actions (ICAs) Proposer members have received and the disposition of any NOVs or ICAs in the last five years.

g. Describe Proposer's approach to Sedimentation and Erosion Control for the Project.

(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.

d. Identify drainage modifications and designs to be implemented.

e. Identify the appropriate design criteria for each feature if not provided.

f. Identify all bridge types to be constructed, including any special design features or construction techniques needed.

g. Identify any deviations or proposed design exceptions, from the established design criteria that will be utilized. Explain why the deviation is necessary. Describe any geotechnical investigations to be performed by Proposer.

h. Identify all Mandatory and Voluntary Aesthetic Treatments that will be part of the design. At a minimum, include all Mandatory Aesthetic Treatments, as accepted by the NCTA, as a part of Volume II of the Technical Proposal. (4 points maximum out of 30 for this category)

i. 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.

j. Describe how the design will affect NCTA's right-of-way costs.

k. Identify types of any retaining walls and /or noise walls if applicable.

l. Address the approach to coordinating any necessary efforts with railroad owners, if applicable.

(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 minimum ten-year cost savings resulting from incorporation of these special materials, design, or construction methods into the Project.

d. Describe the maintenance associated with the aesthetic treatments included in the Technical Proposal.

(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. The Substantial Completion Date shall not be later than December 31, 2010. The Final Completion Date proposed shall not be later than July 1, 2011.

Liquidated damages apply to these Completion and Substantial Completion dates.

(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 and residential access will be maintained, if applicable.

d. Describe the safety considerations specific to the Project.

e. Discuss Proposer's overall approach to safety.

f. 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.

g. Describe any required road closures and duration thereof.

(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 30 minutes.

c. NCTA 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 90 minutes. No more than 10 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 1, 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 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, may result in the Technical and Price Proposals being 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 (ATC) 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 elsewhere under comparable circumstances.

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 teams. 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 NCTA Chief Engineer. 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 NCTA Chief Engineer 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.

The Proposers are encouraged to use confidential questions to assist them in the determination of whether or not an ATC is required for a particular design or construction concept. The NCTA may respond to this confidential question by assuring the Proposer that an ATC is, or is not, required to further pursue the concept.

C. Alternative Technical Concepts.

Proposer may include an ATC in the Proposal only if the ATC has been received by NCTA by the deadline identified in ITP Section 1.G. 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 has been revised in response to NCTA's requests for further information concerning a prior submittal shall be received by NCTA by the deadline identified in ITP Section 1.G.

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.

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 six individually bound copies and 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 ATC, if approved, shall be included in the Price Proposal if Proposer elects to include it in their Technical Proposal.

E. Review of 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 NCTA Chief Engineer. 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 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.

F. NCTA Response.

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; or

(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.

G. ATC Inclusion in Technical Proposal.

Proposer may incorporate one or more approved 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 from the NCTA Chief Engineer 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 an ATC in no way implies that the 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 ATCs are included.

The Price Proposal shall reflect all incorporated ATCs. Except for incorporating approved ATCs, the Technical Proposal may not otherwise contain exceptions to, or deviations from, the requirements of the RFP 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 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 Authority 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 Signature Sheets, Debarment Certification and Non-Collusion Affidavit.

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.

(ii) 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 Mandatory 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	20
Responsiveness to Request for Proposals	30
Long Term Maintenance	8
Schedule and Milestones	20
Innovation	10
Maintenance of Traffic and Safety Plan	7
Oral Interview	5
Maximum Score	**100**

The TRC will submit an overall consensus Technical Proposal score for each Proposer to the NCTA Chief Engineer.

The NCTA Chief Engineer, 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 NCTA Chief Engineer will notify the Proposer of that fact. The NCTA Chief Engineer, or duly authorized representative, shall 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 NCTA elects to proceed with the Best and Final Offer process, the NCTA Chief Engineer will recommend to the NCTA Board of Directors 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 NCTA Chief Engineer 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 NCTA Chief Engineer, or duly authorized representative, 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 NCTA), 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 NCTA Chief Engineer, or duly authorized representative, 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 NCTA Chief Engineer 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 NCTA Chief Engineer 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 NCTA Chief Engineer will publicly read the Price Proposals only. The Authority will then determine whether to proceed to request a BAFO as outlined below.

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 Authority 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 **$100,000** 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 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-recipient 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 Authority 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 Authority 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

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.

Form RS-1-D - Form for subcontracts involving DBE subcontractors attesting to the agreed upon unit prices and extensions for the affected contract items.

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 **12%**

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.

This goal is to be met through utilization of highway construction contractors. Utilization of DBE firms performing design, other preconstruction services, or Construction Engineering and Inspection, are not included in this goal. DBE utilization for engineering related services is expected and is credited through the technical scoring process.

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. NCTA will not consider these Price Proposals 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 NCTA Chief Engineer no later than 12:00 noon of the seventh 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 goal. 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 goal 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 Authority 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 goal. Work that a DBE subcontracts to a non-DBE firm does not count toward the Contract goal. 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. 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.

(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 on other contracts 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 obtained from a DBE manufacturer.

(v) A Design-Build Team may count toward its DBE goal 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 NCTA 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 NCTA Chief Engineer no later than 12:00 noon of the seventh 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 NCTA will consider 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 NCTA 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 Business Development Manager in the NCDOT Office of Civil Rights 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.

If the Proposer with the apparent lowest Adjusted Price fails to meet the Contract DBE goal, and if there is a determination by the NCTA Goal Compliance Committee, based upon the information submitted, that the Proposer with the apparent lowest Adjusted Price failed to make sufficient reasonable efforts to meet the Contract DBE goal, the Proposer will be offered the opportunity to meet in person for administrative reconsideration. A committee appointed by the Authority will hear administrative reconsideration. Members of this committee will be officials that did not take part in the original determination by the NCTA Goal Compliance Committee. The Proposer will have the opportunity to present written documentation or argument concerning the issue of whether it met the goal or made an adequate good faith effort to do so. The Proposer will receive a written decision on the reconsideration, including the basis for the decision. This decision will not be administratively appealable to the USDOT, NCTA or NCDOT.

In the event that NCTA does not award the Contract to the Proposer with the apparent lowest Adjusted Price, NCTA reserves the right to award the Contract to the Proposer with the next lowest Adjusted Price that can satisfy the NCTA 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 NCTA 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. 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 NCTA. Such documentation shall be placed in escrow with a banking institution or other bonded document storage facility selected by NCTA 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 NCTA 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 number, and the County(ies) where the Project is located. Certified copies of Price Proposal Documentation must include a letter to NCTA 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. NCTA will not execute the Contract until the original, unaltered Price Proposal Documentation or a certified copy thereof has been received by NCTA.

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 NCTA Chief Engineer 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 NCTA Chief Engineer with the missing Price Proposal Documentation. Upon determining that the Price Proposal Documentation is complete, the NCTA Chief Engineer, 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 NCTA 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 NCTA's and 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 NCTA 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 NCTA 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 NCTA recommending to the NCDOT that the Successful Proposer be removed 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 NCTA 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 filed with 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
5400 Glenwood Avenue
Suite 400
Raleigh, NC 27612

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 NCTA Executive Director within 10 days from the date the protester receives the protest decision.

(ii) An appeal received by the NCTA Executive Director 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 NCTA Executive Director.

(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. 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. NCTA 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

C. Acknowledgements and NCTA Reserved Rights.

The 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 Authority reserves 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 Authority may extend the Proposal Due Date if such changes are deemed by the Authority, 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 Authority to enter into a contract, nor do they obligate the Authority 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 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, 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.

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 NCTA Employee Ethics Policy, the Authority 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 Authority 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 Authority 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.