

**REQUEST FOR PROPOSALS  
FOR THE DESIGN AND FABRICATION OF TOLL BOOTHS  
THROUGH A COMPREHENSIVE DEVELOPMENT AGREEMENT**

**VOLUME I  
INSTRUCTIONS TO PROPOSERS**

**A PROJECT OF THE  
TEXAS DEPARTMENT OF TRANSPORTATION**

**ISSUED MAY 14, 2004**

**Texas Department of Transportation  
1421 Wells Branch Parkway, Suite 107  
Pflugerville, Texas 78660**

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## INSTRUCTIONS TO PROPOSERS

### (Request for Detailed Proposals: Design and Fabrication of Toll Booths)

#### 1.0 INTRODUCTION

This document comprises the Instructions to Proposers (“**ITP**”), Volume 1 of the Request for Detailed Proposals (“**RFP**”) package dated May 14, 2004, issued by the Texas Department of Transportation (“**TxDOT**”), an agency of the State of Texas. This RFP solicits competitive proposals (individually, a “**Proposal**” and collectively, “**Proposals**”) for a Comprehensive Development Agreement (the “**CDA**”). The CDA shall provide that the successful proposer (the “**Fabricator**”) shall design, construct and deliver to TxDOT approximately 95 pre-fabricated toll booths (the “**Work**”) on a lump sum, fixed price/guaranteed completion date basis as more specifically set forth in the CDA. The form of CDA is included in Volume II of the RFP Documents (as hereinafter defined).

TxDOT is issuing this RFP to those Proposers shortlisted based on TxDOT’s evaluation of Qualification Submittals (“**QSSs**”) delivered to TxDOT on or before March 26, 2004 in response to the Request for Qualifications for the Work issued on February 27, 2004 (as amended, the “**RFQ**”).

Capitalized terms used but not defined herein shall have the meaning set forth in the CDA.

#### 1.1 PROCUREMENT METHOD

This RFP is issued pursuant to Chapter 361 of the Texas Transportation Code (the “**Code**”), Sections 27.1-27.5 of Title 43, Texas Administrative Code (the “**Rules**”) and other applicable provisions of Texas law. TxDOT will award the CDA (if at all) to the responsible Proposer offering a Proposal meeting the high standards set by TxDOT and which is determined by TxDOT, through evaluation based upon the criteria set forth in this RFP, to provide the best value to TxDOT and to be in the best interest of the State of Texas.

TxDOT will accept Proposals only from those Proposers TxDOT has shortlisted for the Work pursuant to the RFQ.

#### 1.2 PROCUREMENT SCHEDULE

The following dates are anticipated procurement milestones.

<u>EVENT</u>	<u>DATE</u>
Issue Request for Proposals	May 14, 2004

<u>EVENT</u>	<u>DATE</u>
Addendum No. 1	June 17, 2004
One on one meetings with Proposers to discuss RFP	June 21 – July 5, 2004
Last Date for Proposer submittal of Requests for Clarifications	July 5, 2004
TxDOT Response to Clarifications; Addenda Issued (if necessary)	July 12, 2004
Detailed Proposal Date	July 19, 2004
CDA Awarded	July 29, 2004

All dates set forth above and in this RFP are subject to change, in TxDOT's sole discretion.

### **1.3 SCOPE OF WORK**

The Work consists of furnishing design services and the fabrication and delivery of toll booths in accordance with the schedule and requirements contained in the CDA, and as described in detail in the Specifications (Attachment B to the CDA). Applicable federal requirements and insurance requirements are set forth in the CDA.

### **1.4 PROJECT FUNDING AND FINANCE**

TxDOT's plan of finance contemplates that TxDOT will fund the Price and other costs associated with the Work. Proposer's involvement with the financial plan shall be through submission of a Price Proposal. Proposer should not include in its Price Proposals any Proposer-provided, supported or coordinated financing or equity contribution.

### **1.5 AUTHORIZED REPRESENTATIVE**

TxDOT has designated Richard Wilkison, Toll Facilities Engineer, to be its authorized representative for the Work. His contact information is as follows:

Texas Department of Transportation  
 1421 Wells Branch Parkway, Suite 107  
 Pflugerville, Texas 78660  
 Attention: Richard Wilkison

From time to time during the procurement process or during the term of the CDA, TxDOT may designate another authorized representative to carry out some or all of TxDOT's obligations pertaining to the Work.

## **2.0 PROCUREMENT PROCESS**

### **2.1 IDENTIFICATION OF PROPOSER REPRESENTATIVE**

The Proposer shall provide TxDOT with the name and address of a representative to receive documents communications or notices hereunder. Failure to so identify a representative in writing may result in the Proposer failing to receive important communications from TxDOT. TxDOT is not responsible for any such failure.

### **2.2 EXAMINATION OF RFP DOCUMENTS AND WEBSITE**

One copy of the RFP Documents will be issued to Proposers in electronic format at no cost. Proposers may request additional CDs of the RFP Documents by contacting the Authorized Representative, Richard Wilkison, at the address listed above in Section 1.5. The Proposer will be required to pay the cost of any additional CDs requested at \$20 per CD.

As used herein, "**RFP Documents**" means these Instructions to Proposers, the Proposal Forms and the CDA, including the Scope of Work and all other exhibits, appendices and attachments thereto, and all addenda hereto.

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP Documents, including any addenda issued and material posted on the Website (<http://www.dot.state.tx.us/aus>), and for informing itself with respect to any and all conditions which may in any way affect the amount or nature of its Proposal, or the performance of the Work following award if Proposer enters into the CDA with TxDOT. Failure of the Proposer to so examine and inform itself shall be at its sole risk and no relief for error or omission will be provided by TxDOT.

### **2.3 INTERPRETATION OF RFP DOCUMENTS; QUESTIONS AND ANSWERS**

The Proposer shall be responsible for reviewing the RFP Documents and any addenda issued by TxDOT prior to the Proposal Date and for requesting clarification or interpretation of any discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which the Proposer fails to understand. Any such request shall be submitted in writing at any time during the Proposal preparation period, but TxDOT will have no obligation to answer such request unless it arrives at the address set forth in Section 1.5 no later than 4:00 p.m. Central Time on the date set forth in Section 1.2 herein, provided that requests in connection with an Addendum issued after five days before such date must arrive no later than five days after issuance of the Addendum. Requests for clarification or interpretation must specifically reference the volume, section and page number of the RFP Documents at issue, unless such request is of general application.

Phone and e-mail requests will not be accepted. Responses to written questions received will be provided to all Proposers. Proposer must make itself available to

TxDOT to discuss any matters it submits to TxDOT under this Section. If TxDOT determines, in its sole discretion, that such interpretation or clarification requires a change in the RFP Documents, TxDOT will prepare and issue addenda.

TxDOT will not be bound by, and the Proposer shall not rely on, any oral communication or representation regarding the RFP Documents, and shall not rely on any communication except written communications from TxDOT as described in the RFP Documents.

## **2.4 ADDENDA**

TxDOT reserves the right, in its sole discretion, to revise, modify or change the RFP Documents and/or process at any time before the Proposal Date. Any such revisions will be implemented through issuance of an addendum to the RFP. Addenda will be posted on the Website and distributed to the Proposers. If any addendum significantly impacts this RFP, as determined in TxDOT's sole discretion, TxDOT may change the Proposal Date. The announcement of such new date will be included in the addendum.

## **2.5 CHANGES IN PROPOSER'S ORGANIZATION**

If a Proposer wishes to make changes in the Proposer organization or the equity owners of the Proposer from information provided in the QS, the Proposer shall request approval of the change from TxDOT prior to submitting its Proposal. Any such request shall be addressed to TxDOT at the address set forth in Section 1.5, accompanied by the information specified for such entities in the RFQ. TxDOT is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at its sole discretion.

## **2.6 EX PARTE COMMUNICATIONS**

Commencing with the issuance of this RFP and continuing until the earliest of (i) award and execution of the CDA, (ii) rejection of all Proposals by TxDOT or (iii) cancellation of this RFP, no Proposer or representative thereof shall have any ex parte communications regarding the RFP Documents or the procurement described herein with any member of the Texas Transportation Commission or with any TxDOT staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP Documents or except as approved in advance by the Austin District Engineer. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of TxDOT. The foregoing shall not preclude any Proposer from participating in public meetings of the Commission or any public or Proposer workshop related to this RFP.

## **2.7 SALES TAX**

The Work is exempt from Texas sales tax for items incorporated into the permanent Work.

## **2.8 CONFIDENTIALITY/PUBLIC INFORMATION ACT**

All written correspondence, exhibits, photographs, reports, printed material photographs, tapes, electronic disks, and other graphic and visual aids submitted to TxDOT during this procurement process, including as part of the Proposal submitted in response to this RFP, are, upon their receipt by TxDOT, the property of the State of Texas, may not be returned to the submitting parties and, except as provided by Section 361.3023 of the Code, are subject to the Public Information Act, Texas Government Code Chapter 552 (the "Act"). Proposers should familiarize themselves with the provisions of the Act and Section 361.3023 of the Code. In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of all or a portion of a Proposal submitted under this RFP.

If a responding Proposer team has special concerns about information which it desires to make available to TxDOT but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such responding Proposer team should specifically and conspicuously designate that information by placing **"CONFIDENTIAL" in the center header of each such page affected**. Blanket, all-inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets or confidential commercial or financial information are discouraged and may be deemed invalid. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Nothing contained in this provision shall modify or amend requirements and obligations imposed on TxDOT by the Act or other applicable law, and the provisions of the Act or other laws shall be followed in the event a request for a Proposal is received from a third party.

Subject to the Act, TxDOT will endeavor to keep the Proposal pricing information confidential within TxDOT (including its designees and consultants) until such time as a Notice of Intent to Award is issued. Once the CDA is executed, some or all of such data may lose its protection under the Act.

## **2.9 ONE-ON-ONE MEETINGS**

TxDOT intends to conduct one-on-one meetings with each Proposer interested in meeting with TxDOT on the dates set forth in Section 1.2 herein to discuss issues and clarifications regarding the RFDP Documents. The meetings, to be held between June 21, 2004 and July 5, 2004, are intended to offer the Proposers an opportunity to obtain

a better understanding of the current RFP requirements and to enable the Proposers to advise TxDOT of requested changes to the RFP. Any changes or modifications made to the RFP or to any other aspect of the Project procurement process shall be made solely through written changes to the RFP issued by TxDOT, and the Proposers cannot rely on statements made by TxDOT and/or its representatives at these meetings. No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of proposals will be based on the conduct or discussions that occur during these meetings. TxDOT reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that TxDOT determines, in its sole discretion, such disclosure would reveal a Proposer's confidential business strategies. The Proposers shall not seek to obtain an unfair competitive advantage over any other Proposer during these meetings.

### **3.0 PROPOSAL SUBMISSION REQUIREMENTS**

The Proposer is required to submit a Proposal without any exceptions to or deviations from the requirements of the RFP Documents. The Proposer shall provide responses to all information requested in this RFP. Failure to respond or to provide requested information may result in a determination by TxDOT, at its sole discretion, that a Proposal is non-responsive.

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.

#### **3.1 SUBMISSION OF PROPOSALS**

Each Proposal submitted shall be clearly addressed as instructed below, identified as a proposal for the Design and Fabrication of Toll Booths, and delivered to TxDOT prior to 4:00 p.m. (cst) on July 19, 2004 (the "**Proposal Date**") in sealed boxes at the following address:

Texas Department of Transportation  
1421 Wells Branch Parkway, Suite 107  
Pflugerville, Texas 28660  
Attention: Tim Weight

Failure to use a sealed container or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if TxDOT determines that the Proposer did not follow the instructions in this Section 3.1. It is the Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the time due may be rejected without consideration or evaluation.

#### **3.2 WITHDRAWAL AND VALIDITY OF PROPOSALS**

The Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Date by means of a written request signed by the Proposer or its properly authorized representative. Such written request shall be delivered to the address in Section 3.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that it is received before the time due on the Proposal Date. No Proposal may be withdrawn on or after the time due on the Proposal Date and any attempt to do so will result in a draw by TxDOT upon the Proposal Bond. Proposals shall initially be valid by TxDOT for a period of 120 days after the Proposal Date.

### 3.3 GENERAL FORMAT

#### 3.3.1 Format

The Proposal shall contain concise written material and drawings that enable a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the technical approach are essential. The Proposer should try to limit the Proposal to an aggregate of not more than 25 pages (if double-sided, 13 sheets), plus appendices and exhibits containing required forms, graphs, matrices, drawings and other pertinent data; provided, however, that TxDOT does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits. Exhibit A sets forth what shall be counted towards the 25 page maximum. An 8 1/2 by 11-inch format is required for typed submissions and an 11-inch x 17-inch format is required for drawings. Drawings shall be submitted on CDs in Adobe (.pdf) format. Submittals must be bound with all pages sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than twelve-point. The use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the proposal. Each 11 by 17-inch foldout will be considered 1 page. The use of section summaries is encouraged. Proposals shall be written in the English language using U.S. customary units and measurements.

#### 3.3.2 Number of Copies

Proposer shall provide:

- one unbound original of the Proposal (except for the Price Proposal), with original signatures in blue ink, along with one electronic copy of the Proposal in Adobe (.pdf) format on CD(s)
- 7 sequentially numbered, labeled, bound copies of the Proposal (except for the Price Proposal)
- one original and one copy of the Price Proposal and other components of the Proposal showing pricing information, along with one electronic copy of the Price Proposal on a CD (the “**Price Proposal Package**”)

The original Proposal and the separately sealed Price Proposal Package (original and copy) shall be submitted in a separate box, labeled as the original Proposal, and not intermingled with copies of the Proposal. Each copy of the Proposal shall be submitted in a separate binder from the other copies. The binders containing the separate copies shall be submitted in a box (or boxes) separate from the original Proposal.

## **4.0 CONTENTS OF PROPOSAL**

As used in this procurement, the term "**Proposal**" includes the Proposer's complete response to this RFP, with the properly completed Proposal forms and all required supporting documentation. To assist the Proposer in preparing its Proposal, the required contents, as well as any supplied forms, are listed in Exhibit A. The Proposal contents shall be organized in the order listed in Exhibit A, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified.

### **4.1 PROPOSER INFORMATION, CERTIFICATIONS AND DOCUMENTS**

#### **4.1.1 Certification Forms**

- A. The Proposal shall include the Proposal Letter on Form A. The Proposer shall attach to the Proposal Letter evidence of authorization to execute and deliver the Proposal and CDA, and shall identify its authorized representative(s).
- B. The Proposal shall include Form B regarding information about the Proposer (and its equity members, if applicable) and any design firms if separate from the Proposer. The Proposer shall also include copies of organizational documentation for such entities, as well as any other documentation required by Form B. Copies of Texas licenses shall be provided for the Proposer, as required by Form B. As a condition to award of the CDA, the successful Proposer must provide evidence that it and any proposed design firms hold all necessary licenses.
- C. The Proposal shall include Form C regarding the responsibility of the Proposer.
- D. The Proposal shall include Form D, certifying that the Proposal is not the result of and has not been influenced by collusion.
- E. The Proposal shall include Form E, regarding Buy America requirements.
- F. The Proposal shall include Form F, regarding child support obligations, for the Proposer and each Major Design Firm.

#### **4.1.2 Confidential Information List**

The Proposer shall provide a page executed by the Proposer that sets forth the specific items (and the section and page numbers within the Proposal at which such items are located) that the Proposer deems confidential, trade secret or proprietary information protected by Section 361.3023 of the Code. Blanket designations that do not identify

the specific information shall not be acceptable and may be cause for TxDOT to treat the entire Proposal as public information.

#### **4.1.3 Letter Approving Changes in Proposer's Organization**

If the Proposer's organization has changed since submission of the QS, the Proposer shall specifically describe such changes and, if applicable, include a copy of TxDOT's approval letter provided under Section 2.5.

#### **4.1.4 Financial Information**

The Proposal shall include the following financial information for the Proposer:

A letter from the chief financial officer or treasurer, providing information on any material changes in financial condition since submission of the QSs, or a statement certifying that no material change has occurred and none is pending. Additionally, Proposers shall be required to provide updated information following the Proposal Date as such information becomes public.

#### **4.1.4 Surety Letter**

The Proposal shall include the following information regarding the surety bonds:

- Name of bonding company; name and address of agent.
- A letter from a licensed surety meeting the requirements stated in Section 8 of the CDA, signed by an authorized representative, committing to provide a Performance Bond in the amount of \$2,000,000 in form attached as Exhibit D to the CDA and a Payment Bond in the amount of \$2,000,000 in the form attached as Exhibit E to the CDA. If multiple surety letters are provided, the Proposal shall identify which surety will be the lead surety. The commitment letter may include no conditions or qualifications, other than a statement that the commitment is subject to award of the CDA. The surety letter must commit to issuance of a bond on behalf of the Proposer.

### **4.2 TECHNICAL PROPOSAL**

The Technical Proposal shall consist of three components: Work Management, Quality Programs and Technical Approach.

#### **4.2.1 Work Management**

The Proposal shall set out the Proposer's management approach to design and fabrication of the toll booths and Proposer's plan for executing the Work and related

contract administration. The Proposal shall clearly illustrate the Proposer's capability to (a) control and coordinate subcontractors and other resources; (b) interface with TxDOT, its consultants and third parties; (c) control the costs and schedules of the Work; (d) comply with applicable law; and (e) provide the experienced personnel and facilities required to successfully complete the Work. Information presented shall apply to all phases of the Work. The Work Management component of the Proposal shall include:

4.2.1.1 Management of Fabrication, Construction and Delivery. Describe the Proposer's concept of the Work management organization and how it interrelates with the other elements of the Proposer's organization for the Work. Provide a brief narrative description of the proposed plan for fabrication, construction and delivery of the toll booths. Include at least the following:

- A description of those categories of work which the Proposer anticipates will be performed by the Proposer's own direct labor force and those categories which will be performed by subcontractors.
- A description of the Proposer's Safety and Health Plan, including training.

4.2.1.2 Management of Design Services. Include:

- A description of the plan for development and coordination of design.

4.2.1.3 Relevant Experience and Organizational Structure. Include a chart indicating the basic structure of the Proposer's organization and roles and responsibilities of the management team and each sub-organization, including any major subcontractors, suppliers and subconsultants.

4.2.1.4 Schedule and Cost Control and Quantity Estimating. Explain the Proposer's approach to quantity estimating and reporting and how costs will be controlled and reported. Indicate how the Proposer will maintain Work quality at the lowest overall cost to TxDOT and how price increases for change orders will be minimized. Explain how Proposer will maintain progress of the Work in accordance with the Work schedule.

Describe the Proposer's intended document, cost control and schedule management system to be used during the term of the CDA to control and coordinate the cost/schedule of the Work.

Provide a brief narrative description of the proposed Work cost and schedule control approach, which shall include at least the following:

- Description of the system for preparing and updating the Work schedule and calculating progress performance for the Work.
- Description of the proposed plan to integrate subcontract activities into its scheduling and reporting system.

- Description of how the Proposer will approach re-scheduling of its own and subcontractors' activities to achieve schedule recovery objectives and how these objectives will be enforced with its work force and its subcontractors.
- Description of the approach to implementation of Work controls.

#### 4.2.1.5 Work Schedule

Provide Work schedule to include Work approach, workflow and process for completing the Work in the required time.

### 4.2.2 Quality Programs

Describe the Proposer's quality program concept for the Work and how it interrelates with the other elements of the Proposer's organization for the Work. Include at least the following:

- Describe the proposed quality program organizations for design services and fabrication/construction, including the name(s) and resume(s) of the quality program manager(s) responsible for the above activities. Include a chart indicating the basic structure, including the interrelationships of Work management, design services, fabrication/construction, and quality, and a staffing plan by position title.
- A description of the Proposer's Design Quality Program, including the internal process for design reviews.
- A description of how design submittal and review will be implemented within the design Quality Program.
- A description of the Proposer's Construction Quality Program and how it will integrate with the design activities, including TxDOT oversight and all quality-related activities.

### 4.2.3 Technical Approach

The Technical component of the Proposal shall set forth the Proposer's approach to implementing the Work and shall include the following:

#### 4.2.3.1 Toll Facility Infrastructure. Describe:

- approach to coordination with TxDOT and its consultants and contractors to ensure on-time opening of the Project; and
- quality assurance and quality control approach.

#### 4.2.3.2 Use of Technology. Describe the proposed use of technology in Work development, including any use of innovative technology.

4.2.3.3 Warranty Work. Describe:

- Process for providing replacement components for toll booths due to damage or malfunction; and
- Warranty work required during the warranty period for the Proposer's last five toll booth projects.

## 4.3 PRICE PROPOSAL

The Proposer shall submit a Price Proposal for the Initial Order (as defined in the CDA) on Form G. The Price Proposal (Form G) shall be submitted in a sealed envelope, separate from the other portions of the Proposal and clearly marked with the words "Price Proposal – Toll Booths" and the name of the Proposer. Other than the envelope containing the Price Proposal, none of the information contained in the Price Proposal should include any identifying names or logos. All parts of the Proposal that indicate price are to be included in the sealed Price Proposal package.

If the Price Proposal does not include all required pricing information, the Price Proposal will be considered non-responsive. All prices included in the Price Proposal shall be in U.S. Dollar currency only. If there is a discrepancy between the hard copy and electronic copy versions of any prices, the hard copy version shall control. If there is a discrepancy between the individual lump sum prices and the total, the individual lump sum prices and unit prices will control. If there is a difference between individual line items on Form G and the total, the individual line items will control. Form G shall set forth the total Initial Order Price, as well as the Design/Administration Costs, Ramp Toll Booth Frame unit price, Mainline Toll Booth Frame unit price, Ramp Toll Booth ACM Platform unit price, Mainline Toll Booth unit price ("Initial Per Mainline Price"), and Ramp Toll Booth unit price ("Initial Per Ramp Price") for the CDA.

## 4.4 PROPOSAL BOND

The Proposal shall include a Proposal Bond in the amount of \$250,000 and in the form of Form H from a surety acceptable to TxDOT, or such other form of security as is acceptable to TxDOT. If a Proposer (i) withdraws its Proposal (or BAFO pursuant to Section 5.6) in a manner that is not permitted pursuant to Section 3.2; (ii) is awarded the CDA but fails to execute and deliver to TxDOT the CDA, together with all documents required hereby, within 10 business days following Proposer's receipt of the execution form of the CDA; or (iii) otherwise fails to comply with the terms for release of the Proposal Bond as set forth in Form H, then the funds represented by its Proposal Bond shall be released to TxDOT and become and remain the property of TxDOT. Each Proposal Bond will be retained until the CDA has been fully executed or this RFP has been canceled, after which the Proposal Bond for each unsuccessful Proposer, except those which have been forfeited, will be returned to the respective Proposers. The Proposal Bond for the successful Proposer shall be returned at such time as the

Proposer has satisfied all conditions of execution and award, including, without limitation, those set forth in Section 7.2 below.

## 5.0 EVALUATION PROCESS

TxDOT intends to make a selection of the Proposal offering the apparent best value to TxDOT and which is in the best interest of the State of Texas, considering the specific evaluation criteria set forth in Section 5.4. The intent of TxDOT in this evaluation process is to create a fair and uniform basis for the evaluation of the Proposals in accordance with the provisions of the Code and the Rules governing this procurement.

TxDOT will establish a specific Evaluation and Selection Recommendation Committee (“**ESRC**”) for evaluation of the Proposals. The following information will present a general framework for the organization of the ESRC and methodology for evaluating and scoring the Proposals.

### 5.1 ORGANIZATION OF THE EVALUATION COMMITTEES

TxDOT will organize a multidisciplinary ESRC of representatives from TxDOT to be chaired by the Austin District Engineer’s designee. In addition to voting members of the committee, the ESRC will also be assisted by subcommittees composed of TxDOT representatives and outside consultants who will offer advice on the technical, financial and legal aspects of each proposal. All evaluators and outside consultants and observers will be required to endorse confidentiality statements.

### 5.2 BRIEF SYNOPSIS OF EVALUATION AND SELECTION PROCESS

TxDOT shall use an evaluation and selection procedure that separates evaluation of the Technical Proposals from evaluation of the Price Proposals. This separation will be maintained until the initial technical evaluation is made and recommendations are submitted by the ESRC to the Austin District Engineer.

The evaluation and selection process is subject to modification by TxDOT, in its sole discretion.

### 5.3 GENERAL EVALUATION PROCESS METHODOLOGY

The evaluation process will include a review for responsiveness and pass-fail criteria. Qualitative evaluations will focus on the integration of various components and steps of design, development and construction. The determination of apparent best value shall be computed based on the following formula:

$$\text{Proposal value} = P + \left[ \frac{(\text{Highest PP from any Proposer} - PP)}{100} \right] (0.15) (\text{Lowest P from any Proposer})$$

P = Lump sum Price as set forth on Form G.  
PP = Proposal points (100 points maximum)

By example, if the Price submitted by a Proposer was \$5,000,000, with 80 Proposal points, the lowest Price submitted by any Proposer was \$4,900,000 and 90 Proposal points represented the highest score of any Proposer, the Proposal value would be:

$$5,000,000 + \left[ \frac{(90-80)(0.15)(4,900,000)}{100} \right] = \$5,073,500$$

The Proposal offering the apparent best value will be deemed to be the Proposal with the lowest Proposal value, based on the foregoing calculation.

Specific evaluation criteria are set forth below.

### **5.3.1 Responsiveness Evaluation**

The Technical Proposals and the unopened Price Proposals will be distributed to the technical subcommittees of the ESRC. The Technical Proposals will be reviewed for (i) minor informalities, irregularities and apparent clerical mistakes which are unrelated to the substantive content of the Proposals, (ii) the Proposal's conformance to the RFP instructions regarding organization and format, and (iii) the responsiveness of the Proposer to the requirements set forth in the RFP. Those Proposals not responsive to this RFP may be excluded from further consideration and the Proposer will be so advised. TxDOT may also exclude from consideration any Proposer whose RFP contains a material misrepresentation.

### **5.3.2 Pass/Fail Criteria**

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

- A. Business form of the Proposers and team members (including any articles, bylaws or association agreements) shall be consistent with Work requirements.
- B. The Proposer has delivered a complete, properly executed Proposal Bond that complies with the requirements of Section 4.4.
- C. The Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial data submitted in the QS. If the Proposer is undercapitalized, the financial requirement can be met through one or more guarantors acceptable to TxDOT.
- D. The Proposer information, certifications and documents as listed in Section 4.1 above are included in the Proposal and do not identify any material adverse information.

Proposers failing to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation by the ESRC.

### 5.3.3 Technical Proposal Evaluation

The ESRC will review the Technical Proposals according to the criteria set forth in Section 5.4.

The evaluation categories set forth in Section 5.4 are listed in descending order of relative importance (i.e., Work Management, Quality Programs and Technical Approach). Evaluation criteria within evaluation categories are also listed in descending order of relative importance.

The major categories of the Technical Proposal will be qualitatively evaluated and assigned a rating as follows:

<b>ADJECTIVE RATING</b>	<b>DESCRIPTION</b>
Excellent	The Proposal is considered to exceed in a significant manner stated requirements/objectives in a beneficial way, providing advantages, benefits or added value to the Work, and provides a consistently outstanding level of quality. There is very little or no risk that this Proposer would fail to satisfy the requirements of the CDA. Significant unique and/or innovative characteristics are present.
Very Good	The Proposal exceeds the stated requirements/objectives in a beneficial way, providing advantages, benefits or added value to the Work, and offers a generally better than acceptable quality. There is little risk that this Proposer would fail to satisfy the requirements of the CDA. Weaknesses, if any are very minor and can be readily corrected. Some unique and/or innovative characteristics are present.
Good	The Proposer has demonstrated an approach that meets the stated requirements/objectives and meets a minimum level of quality. There is a slight probability of risk that the Proposer may fail to satisfy the requirements of the CDA. Weaknesses are minor and can be readily corrected. Little or minimal unique and/or innovative characteristics are present.
Fair	The Proposer has demonstrated an approach which is considered to marginally meet stated requirements/objectives and meets a minimum level of quality. There are questions about the likelihood of success and there is risk that the Proposer may fail to satisfy the requirements of the CDA. Weaknesses are correctable or acceptable per minimum standards.

ADJECTIVE RATING	DESCRIPTION
Poor	<p>The Proposer has demonstrated an approach which contains significant weaknesses/deficiencies and/or unacceptable quality. The Proposal fails to meet the stated requirements/objectives and/or lacks essential information and is conflicting and/or unproductive. There is not a reasonable likelihood of success and there is a high risk that the Proposer would fail to satisfy the requirements of the CDA.</p>

Once the qualitative ratings are assigned for the Technical Proposal, ESRC members will convert the ratings to a numbered value for the purpose of arriving at an overall rating for the Technical Proposal. TxDOT may, in its sole discretion, deem a Proposal to be ineligible for recommendation if the Proposal has received an overall rating of Poor on any major criterion.

#### **5.3.4 Price Proposal Evaluation**

The ESRC will conduct and conclude the evaluation of the Technical Proposals before reviewing the Price Proposals to determine the rankings of the Proposals based on the formula set forth in Section 5.3. To the extent reasonably practicable, the "blind" evaluation of the Price Proposals will be maintained throughout any requests for clarification.

### **5.4 TECHNICAL PROPOSAL EVALUATION CRITERIA**

The Proposers shall include in their Technical Proposals a reference summary, by page and section number, stating where each of the following evaluation criteria is addressed in the Technical Proposal.

The qualitative evaluation of the Technical Proposals will focus on the following criteria listed in descending order of relative importance:

#### **5.4.1 Work Management**

- Management of Fabrication and Construction
- Management of Design Services
- Relevant Experience and Organizational Structure
- Coordination of Team Members/Subcontractors
- Schedule and Cost Control and Quantity Estimating

#### **5.4.2 Quality Programs**

#### **5.4.3 Technical Approach**

- Toll Facility Infrastructure
- Use of Technology
- Warranty Work

### **5.5 REQUESTS FOR CLARIFICATION**

TxDOT may issue one or more requests for clarification to the individual Proposers. TxDOT may at any time request additional information or clarification from the Proposer or may request the Proposer to verify or certify certain aspects of its proposal. The scope, length and topics to be addressed shall be prescribed by, and subject to the discretion of, TxDOT.

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

### **5.6 BEST AND FINAL OFFERS**

TxDOT does not currently intend to request Best and Final Offers (“**BAFOs**”), but reserves the right to do so. If BAFOs are authorized, TxDOT will enter into discussions with one or more Proposers, revise the RFP and request BAFOs. All Proposers selected to participate in discussions shall be advised of deficiencies in their Proposals, and TxDOT may issue a change in the scope of the Work. The selected Proposers shall be offered a reasonable opportunity to correct or resolve the deficiencies and to submit such price or other revisions to their Proposals that may result from the discussions. At the conclusion of the discussions, a final common cut-off date which allows a reasonable opportunity for submission of written final revisions shall be established, and those Proposers selected to remain will be notified to submit Proposal revisions. TxDOT will consider the revised information and re-evaluate and revise ratings as appropriate.

### **5.7 DISCUSSION/NEGOTIATION OF CDA**

Upon completion of the evaluation process, all of the Proposals will be ranked and TxDOT will announce the rankings. The highest ranking Proposal will be the apparent best value. If the highest ranking Proposal is determined by TxDOT to be financially feasible and to provide a reasonable basis for further development of the Proposal, TxDOT may, in its sole discretion, elect to proceed with discussions/negotiations of the CDA with the apparent best value Proposer. If TxDOT elects to proceed with discussions/negotiations with the apparent best value Proposer to finalize the CDA,

such discussions/negotiations shall be limited to one or more of the following areas: (1) incorporation of aspects of other Proposals for the purpose of achieving the overall best value for TxDOT, (2) obtaining clarifications of or minor adjustments in scheduling, cash flow and similar items; and (2) other matters that have arisen since the submission of the Proposal. If a CDA satisfactory to TxDOT cannot be negotiated with that Proposer, TxDOT will formally end discussions/negotiations with that Proposer and, in its sole discretion, (a) reject all Proposals, (b) terminate or suspend the evaluation of all Proposals; (c) cancel the RFP; (d) modify the RFP and begin again the submission of Proposals; or (e) proceed to the next most highly ranked Proposal and attempt to negotiate a CDA with that Proposer in accordance with this Section 5.7. If during the course of discussions/negotiations with the apparent best value Proposer it appears that the Proposal will not provide TxDOT with the overall best value, TxDOT may enter into discussions/negotiations with the Proposer submitting the next highest ranking Proposal.

## **5.8 PROTESTS**

This Section 5.8 sets forth the exclusive protest remedies available with respect to this RFP. 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 unless wholly arbitrary. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. Such waiver and agreement by each Proposer also act as consideration to each other Proposer for making the same waiver and agreement. If a Proposer disregards, disputes or does not follow the exclusive protest remedies set forth in this RFP, it shall indemnify, defend and hold TxDOT, its directors, officers, 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's actions. By submitting a Proposal, each Proposer shall be deemed to have irrevocably and unconditionally agreed to accept such indemnification obligation.

### **5.8.1 Protests Regarding RFP Documents**

The Proposers may protest the terms of the RFP Documents on the grounds that (a) a material provision in the RFP Documents is wholly ambiguous, (b) any aspect of the procurement process described herein is contrary to legal requirements applicable to this procurement, or (c) the RFP Documents in whole or in part exceed the authority of TxDOT. Protests regarding the RFP Documents shall be filed only after the Proposer has informally discussed the nature and basis of the protest with TxDOT in an effort to remove the grounds for protest. Protests regarding the RFP Documents shall completely and succinctly state the grounds for protest and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Protests regarding the RFP Documents shall be filed by hand delivery to the address specified in Section 3.1 above, with a copy to the Office of General Counsel, Texas Department of

Transportation, 125 E. 11th Street, Suite 702, Austin, TX 78701-2483, as soon as the basis for protest is known to the Proposer, but in no event later than 20 days before the Proposal Date, provided that protests regarding an addendum shall be filed no later than five business days after the addendum is issued. TxDOT will distribute copies of the protest to other Proposers and may, but need not, request other Proposers to submit statements or arguments regarding the protest and may, in its sole discretion, discuss the protest with the protestant. The protestant shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest, but it shall be decided, on the basis of the written submissions, by the Austin District Engineer or his designee, whose decision shall be final and conclusive. Austin District Engineer or his designee shall issue a written decision regarding any protest to each Proposer. If necessary to address the issues raised in a protest, TxDOT may, in its sole discretion, make appropriate revisions to the RFP Documents by issuing addenda. The failure of a Proposer to file a basis for a protest regarding the RFP Documents shall preclude consideration of that ground in any protest of a selection unless such ground was not and could not have been known to the Proposer in time to protest prior to the final date for such protests. TxDOT may extend the Proposal Date, if necessary, to address any such protest issues.

### **5.8.2 Protests Regarding Responsiveness Determination or Award**

The Proposers may protest any determination by TxDOT regarding lack of responsiveness or any award of TxDOT by hand delivery to TxDOT at the address specified in Section 3.1 above, with a copy to the Office of General Counsel, Texas Department of Transportation, 125 E. 11<sup>th</sup> Street, Suite 702, Austin, TX 78701-2483. Any protest regarding lack of responsiveness must be filed within five business days after receipt of notification of non-responsiveness. Any protest regarding award must be filed within five business days after the earliest of (i) notification by TxDOT of the intent to award; (ii) initial posting of the Notice of Intent to Award by TxDOT; or (iii) public announcement of the apparent best value Proposer. The Proposer filing the protest shall concurrently file a copy of the protest with the other Proposers whose addresses may be obtained from TxDOT. The notice of protest shall specifically state the grounds for the protest.

Within 10 days after delivery of the notice of protest to TxDOT, the protestant shall file by hand delivery to TxDOT, at the address specified in Section 3.1 above, with a copy to the Office of General Counsel, Texas Department of Transportation, 125 E. 11<sup>th</sup> Street, Suite 702, Austin, TX 78701-2483, a detailed statement of the grounds, legal authority and facts, including all documents and evidentiary statements in support of the protest. The protestant shall concurrently file a copy of the detailed statement with the other Proposers. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protestant shall have the burden of proving its protest by clear and convincing evidence. Failure to file a protest within the applicable ten-day period shall constitute a waiver of the right to protest the determination, decision or award, as

applicable, other than any protest based on facts not reasonably ascertainable as of such date.

Other Proposers may file by hand delivery to TxDOT at the address specified in Section 3.1 above, with a copy to the Office of General Counsel, Texas Department of Transportation, 125 E. 11<sup>th</sup> Street, Suite 702, Austin, TX 78701-2483, statements in support of or in opposition to the protest within seven days of the filing of the detailed statement of protest. TxDOT shall promptly forward copies of any such statements to the protestant. Any evidentiary statements shall be submitted under penalty of perjury.

Austin District Engineer or his designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except, in the sole discretion of the Austin District Engineer or his designee, a hearing or argument may be permitted if necessary for the protection of the public interest or an express, legally recognized interest of a Proposer or of TxDOT.

If Austin District Engineer or his designee concludes that the Proposer filing the protest has established a basis for protest, the Austin District Engineer will determine whether the CDA should be awarded.

### **5.8.3 Liability for Costs and Damages**

If the protest is denied, the Proposer filing the protest shall be liable for TxDOT's costs reasonably incurred in any action to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by TxDOT as a consequence of the protest. If the protest is granted, TxDOT shall not be liable for payment of the protestant's costs. TxDOT shall not be liable for any damages to the Proposer filing the protest or to any participant in the protest, on any basis, express or implied.

## **6.0 ESCROWED PROPOSAL DOCUMENTS**

### **6.1 Introduction; Format of EPDs**

The Proposer shall assemble and deliver certain documentation (the “**EPDs**”) containing information regarding the Proposer’s assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 18.2 of the CDA. The Proposer shall submit its EPDs in hard copy format. The EPDs shall include detailed information from all subcontractors identified in the Proposal and any other potential subcontractors who provided data upon which the Proposal is based.

### **6.2 Delivery of EPDs**

At such time as TxDOT has selected a Proposer that has presented the apparent best value Proposal, TxDOT shall notify the selected Proposer. The selected Proposer shall deliver one set of EPDs to TxDOT’s locked cabinet at the address specified in Section 3.1, by 4:00 p.m. Central Time two business days after the Proposer has been notified by TxDOT that such Proposer has been selected as the apparent best value Proposer. TxDOT and the Proposer shall conduct a joint review of such Proposer’s EPDs at TxDOT’s offices or such other mutually agreeable location. The reviewers shall organize the EPDs, labeling each page so that it is obvious that the page is a part of the EPDs and so as to enable a person reviewing the page out of context to determine where it can be found within the EPDs, and shall compile an index listing each document included in the EPDs and briefly describing the document and its location in the EPDs. TxDOT shall have a right to retain a copy of the index. If, at the initial review of the EPDs or any time thereafter, TxDOT determines that the EPDs are incomplete, TxDOT may require the Proposer to supply data to make the EPDs complete. Incomplete EPDs may render the Proposal non-responsive.

The EPDs will also be available for joint review by the Proposer and TxDOT in conjunction with discussions to finalize the CDA hereunder. Following award of the CDA, the EPDs of the successful Proposer will be available for joint review as specified in the CDA.

### **6.3 Acknowledgment**

TxDOT acknowledges that the EPDs may contain and/or constitute trade secrets or proprietary information. This acknowledgment is based upon TxDOT's understanding that the information contained in the EPDs is not known outside the Proposer's business, is known only to a limited extent and by a limited number of employees of the Proposer, is safeguarded while in the Proposer's possession, and may be valuable to the Proposer's construction strategies, assumptions and intended means, methods and techniques of design and construction. Except as set forth in the CDA or as required by the Public Information Act, TxDOT acknowledges that the EPDs will remain in the locked filing cabinet at all times and will at no time be received by, or become the property of, TxDOT.

## **7.0 AWARD; DEBRIEFINGS; PAYMENT TO UNSUCCESSFUL PROPOSERS**

### **7.1 SELECTION FOR AWARD**

Following successful finalization of the CDA, the Austin District Engineer will request that the Texas Transportation Commission approve award of the CDA.

### **7.2 EXECUTION AND DELIVERY OF CDA**

Promptly following award, TxDOT will deliver four sets of execution copies of the CDA to the selected Proposer along with the number of sets of execution copies requested by the Proposer. The selected Proposer shall execute and deliver all such execution copies to TxDOT within seven days of receipt, together with the required documents described below. TxDOT will retain four sets of the agreements and return the rest of the executed copies of the agreements within seven days of receipt of all required documents from the Proposer.

As a condition to award, the successful Proposer shall deliver the following required documents to TxDOT concurrently with the executed CDA:

- A. Evidence of approval of the final form of the CDA, in the form of a certified resolution of the governing body of the Proposer expressly stating such body's approval of the final form of the CDA and, if the Proposer is a partnership, joint venture, unincorporated association or limited liability company, of the governing bodies of the entity's partners or members;
- B. Payment and Performance Bonds in the form attached to the CDA or a form acceptable to TxDOT;
- C. A favorable written opinion from counsel for the Fabricator, which counsel shall be approved by TxDOT (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the Fabricator's formation/organization and the qualification to do business in Texas and the

enforceability opinion shall be provided by an attorney licensed in the State of Texas), addressing the matters in and in substantially the form attached hereto as Form I (with such changes as TxDOT shall agree to in its sole discretion); and

D. Evidence of insurance required to be provided by the Fabricator under the CDA.

### **7.3 DEBRIEFINGS**

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing.

### **7.4 PAYMENT TO UNSUCCESSFUL PROPOSERS**

Each Proposer that submits a responsive, but unsuccessful, Proposal shall be entitled to receive payment for work product from TxDOT on the terms and conditions described herein. No Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in this Section 7.4.

The amount of the payment shall be based upon the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions, up to the maximum stipulated amount per Proposer of \$1,000.00. If, after the Proposals are submitted, award is not made and the procurement is cancelled or expires, all Proposers submitting a responsive Proposal shall be eligible for the payment for work product. If award is made, payment shall be due 30 days after award. If award is not made, payment shall be due 30 days after cancellation of the procurement or expiration of the time period for award stated in the RFP (as such time period may be extended by mutual agreement of the successful Proposer and TxDOT), as applicable. All Proposers eligible to receive a payment for work product shall be required to submit an invoice to TxDOT in form acceptable to TxDOT in order to receive such payment.

Each Proposer agrees that TxDOT shall be entitled to use all work product (including ATCs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans and specifications) contained in its Proposal or generated by or on behalf of the Proposer for the purpose of developing its Proposal, in consideration for TxDOT's agreement to make payment as provided herein, without any further compensation or consideration to the Proposer.

Each Proposer acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after award of the CDA, and that the CDA may incorporate the above-described work product or concepts based thereon, even though the due date for the payment will occur after the award date for the CDA. Furthermore, upon the Proposer's receipt of payment hereunder, this right shall extend to allow TxDOT to use such work product in connection with projects other than the

Work, as may be appropriate. As provided in Section 361.3022 of the Code, the use of any of the work product by TxDOT at the sole risk and discretion of TxDOT, and shall in no way be deemed to confer liability on the unsuccessful Proposer.

In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 7.2 be entitled to receive a payment for work product under this Section 7.4.

## 8.0 TXDOT RIGHTS

TxDOT may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform the Obligations described in this RFP. TxDOT reserves the right, in its sole discretion, to:

- Develop the Work in any manner that it, in its sole discretion, deems necessary. If TxDOT is unable to negotiate a CDA to its satisfaction with a Proposer, it may negotiate with the next highest rated Proposer, terminate this procurement and pursue other development or solicitations relating to the Work or exercise such other rights under the Code and other provisions of Texas law as it deems appropriate.
- Reject any or all of the Proposals.
- Modify all dates set or projected in this RFP.
- Cancel the RFP in whole or in part at any time prior to the execution by TxDOT of a CDA, without incurring any cost obligations or liabilities (except as expressly set forth in Section 7.4).
- Terminate this procurement and commence a new procurement for part or all of the Work.
- Terminate evaluations of Proposals received at any time.
- Suspend and terminate CDA discussions/negotiations at any time, elect not to commence CDA discussions/negotiations with any responding Proposer and engage in discussions/negotiations with other than the highest ranked Proposer.
- Waive or permit corrections to data submitted with any response to this RFP until such time as TxDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
- Issue addenda, supplements and modifications to this RFP. Addenda to this RFP shall be distributed to the Proposers in advance of the Proposal Date and TxDOT may extend the Proposal Date if such modifications are deemed by TxDOT to be material and substantive.
- Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by TxDOT until such time as TxDOT declares that a particular stage or phase of its review of the responses to this RFP has been completed and closed.
- Appoint evaluation committees to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation.
- Revise and modify, at any time before the Proposal Date, the factors and/or weights of factors it will consider in evaluating responses to this RFP and to

otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, TxDOT shall distribute an addendum to the Proposers setting forth the changes to the evaluation criteria or methodology. TxDOT may extend the Proposal Date if such changes are deemed by TxDOT to be material and substantive.

- Hold interviews and conduct discussions and correspondence with one or more of the Proposers responding to the RFP to seek an improved understanding and evaluation of the responses to this RFP.
- Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
- Disclose information contained in a Proposal to the public as described herein.
- Accept other than the lowest price Proposal.
- Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal.
- Add or delete obligations.
- Disqualify any Proposer that changes its Proposal after the Proposal Due Date without TxDOT approval.
- Not issue a notice to proceed after execution of the CDA.
- Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the CDA by a third party.
- Request BAFOs at any time after receipt of the Proposals.
- Exercise any other right reserved or afforded to TxDOT under this RFP.

**This RFP does not commit TxDOT to enter into a contract. Except as expressly set forth in Section 7.4 above, TxDOT and the State of Texas assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Proposer and Proposer team.**

**In no event shall TxDOT be bound by, or liable for, any obligations with respect to the Work until such time (if at all) as the CDA, in form and substance satisfactory to TxDOT, has been executed and authorized by TxDOT and, then, only to the extent set forth therein.**

## Exhibit A

### Summary and Order of Proposal Contents

<b>Proposal Component</b>	<b>Form (if any)</b>	<b>Whether Counted in 25 Page Count</b>
<b>A. Proposer Information, Certifications &amp; Documents</b>		No
Proposal Letter	Form A	
Authorization Documents	No forms are provided	
Confidential Information List	No forms are provided	
Information About Proposer Organization	Form B	
Responsible Proposer and Major Participant Questionnaire	Form C	
Changes in Proposer's Organization	No forms are provided	
Non-Collusion Affidavit	Form D	
Buy America Certification	Form E	
Child Support Statement for Negotiated Contracts and Grants	Form F	
<b>B. Financial Information</b>		No
Financial Information (submit in separate volume)	No forms are provided	
<b>C. Technical Proposal</b>		Yes (excluding resumes and technical drawings, graphs and data)
Work Management	No forms are provided	
Quality Programs	No forms are provided	
Technical Approach	No forms are provided	
<b>D. Price Proposal</b>		No
Price Proposal	Form G	
<b>E. Proposal Bond</b>		No
Proposal Bond	Form H	
<b>F. Appendices</b>		No

Proposal Component	Form (if any)	Whether Counted in 25 Page Count
Technical Drawings, Graphs and Data		