

# Guidelines for Alternative Project Delivery

2/16/2024

**NEBRASKA**

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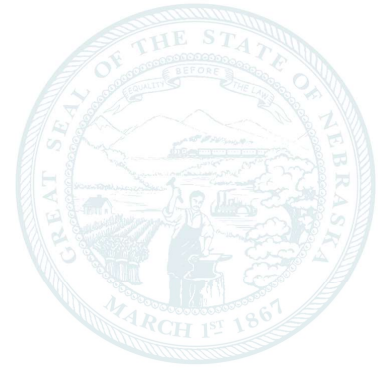
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**DEPARTMENT OF TRANSPORTATION**

# NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION



Jim Pillen, Governor

The Nebraska Department of Transportation Guidelines for Alternative Project Delivery, February 16, 2024, has been approved for use.

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# Contents

<b>1.0</b>	<b>Introduction</b> .....	<b>1-1</b>
1.1	Guidelines Purpose.....	1-1
1.2	Acronyms and Glossary.....	1-1
1.3	Guidelines Organization.....	1-2
1.4	APDM Summary.....	1-2
1.4.1	Construction Manager/General Contractor.....	1-2
1.4.2	Design-Build.....	1-2
1.4.3	Progressive Design-Build.....	1-2
1.4.4	Public-Private Partnership.....	1-2
1.5	Statutory Authority.....	1-3
1.6	State and Federal Requirements.....	1-3
1.7	Goals and Objectives.....	1-3
<b>2.0</b>	<b>Project Initiation and Development</b> .....	<b>2-1</b>
2.1	Project Proposals.....	2-1
2.1.1	Internal Proposals.....	2-1
2.2	Reserved.....	2-1
2.3	Procurement Team.....	2-1
2.3.1	NDOT Staff.....	2-1
2.3.2	Outside Consultants and Advisors.....	2-1
2.3.3	Stakeholders.....	2-1
2.3.4	Industry.....	2-2
2.4	Ex-Parte Communications.....	2-2
<b>3.0</b>	<b>Project Delivery Method Selection</b> .....	<b>3-1</b>
3.1	Introduction.....	3-1
3.1.1	NDOT Control of Detailed Design.....	3-1
3.1.2	Completion Schedule.....	3-1
3.1.3	Early Cost and Schedule Certainty.....	3-2
3.1.4	Overall Cost.....	3-2
3.1.5	Reduced NDOT Staff Involvement.....	3-2
3.1.6	Technical Innovation.....	3-2
3.1.7	Non-Standard NDOT Projects.....	3-3
3.2	Status of Funding.....	3-3
3.2.1	Project is Programmed and Funding is Committed.....	3-3
3.2.2	Project is Programmed but Funding is Not Fully Committed.....	3-3
3.2.3	Project is Not Programmed.....	3-3
3.3	Project Size.....	3-3
3.4	Project Complexity.....	3-4
3.5	Environmental Studies and Permitting.....	3-4
3.6	Public Endorsement.....	3-4
3.7	Project Types and Other Characteristics.....	3-5
3.7.1	P3 Variations.....	3-5
3.8	Summary.....	3-5
3.8.1	Why Consider CM/GC?.....	3-6
3.8.2	Why Consider DB?.....	3-6
3.8.3	Why Consider PDB?.....	3-6
3.8.4	Why Consider P3?.....	3-7

<b>4.0</b>	<b>General Procedures and Policies</b> .....	<b>4-1</b>
4.1	Communication.....	4-1
4.2	Conflict of Interest.....	4-1
4.2.1	Introduction.....	4-1
4.2.2	Conflict of Interest Disclosure - Selection Team.....	4-2
4.2.3	Statutory Authority.....	4-2
4.2.4	Prohibited Respondents/Proposers and Participants on Respondent/Proposer Teams.....	4-3
4.2.5	Requirements for Respondents that Have Identified Potential Conflict of Interest .....	4-4
4.2.6	Other Potential Conflicts of Interest.....	4-5
4.2.7	Failure to Comply with Policy.....	4-5
4.2.8	Potential Conflict of Interest Disclosure Statement – Respondents/Proposers.....	4-6
4.2.9	Continuing Obligations Regarding Conflict of Interest.....	4-6
4.3	Availability of the Guidelines.....	4-7
4.4	SOQ Evaluation Procedures.....	4-7
4.4.1	Overview.....	4-7
4.4.2	Pre-Statement of Qualifications Submittal Meeting.....	4-7
4.4.3	Organization.....	4-7
4.4.4	RFQ and SOQ Objective.....	4-11
4.4.5	Responsiveness and Pass/Fail Evaluation.....	4-11
4.4.6	Scored Evaluation.....	4-12
4.4.7	Optional Oral Presentations.....	4-13
4.4.8	Shortlisting Process.....	4-14
4.4.9	Information Release.....	4-14
4.4.10	Notification and Debriefing.....	4-14
4.5	Proposal Evaluation Procedures.....	4-16
4.5.1	Organization.....	4-16
4.5.2	Responsiveness and Pass/Fail Evaluation.....	4-20
4.5.3	Technical Proposal Evaluation.....	4-21
4.5.4	Financial Proposal Evaluation.....	4-24
4.5.5	Optional Oral Presentations.....	4-25
4.5.6	Selection Process.....	4-25
4.5.7	Information Release.....	4-25
4.5.8	Notification and Debriefing.....	4-26
4.5.9	Protests.....	4-26
4.6	Quality Assurance and Quality Control.....	4-28
4.6.1	Goals of the Quality Assurance and Quality Control Plan.....	4-28
4.6.2	Quality Assurance and Quality Control Responsibilities.....	4-28
4.6.3	Quality Assurance and Quality Control Program.....	4-29
4.6.4	Typical Quality Organization.....	4-39
4.7	Risk Management.....	4-42
4.7.1	Introduction to Project Risk Management.....	4-42
4.7.2	CM/GC Project Risk Management Process.....	4-42
4.7.3	DB Project Risk Management Process.....	4-43
4.7.4	PDB Risk Management Process.....	4-46
4.7.5	P3 Risk Management Process.....	4-46
<b>5.0</b>	<b>Construction Manager/General Contractor</b> .....	<b>5-1</b>
5.1	Procurement Methodology.....	5-1

5.1.1	Introduction .....	5-1
5.1.2	Roles and Responsibilities.....	5-1
5.1.3	Procurement Process.....	5-3
5.2	Request for Qualifications .....	5-7
5.3	Statement of Qualifications Evaluation .....	5-7
5.3.1	Evaluation Criteria .....	5-7
5.3.2	Shortlisting.....	5-8
5.4	Request for Proposals.....	5-9
5.5	Proposal Evaluation.....	5-10
5.5.1	Overview.....	5-10
5.5.2	Proposal Evaluation Categories .....	5-10
5.5.3	Qualifications-based Selection Process .....	5-11
5.6	Award and Implementation .....	5-11
5.6.1	Execution of the Pre-Construction Agreement .....	5-11
5.6.2	CM/GC Pre-Construction Scope of Work.....	5-12
5.6.3	CM/GC Debriefings.....	5-12
<b>6.0</b>	<b>Design-Build .....</b>	<b>6-1</b>
6.1	Procurement Methodology .....	6-1
6.1.1	Introduction .....	6-1
6.1.2	Roles and Responsibilities.....	6-1
6.1.3	Procurement Process.....	6-2
6.2	Request for Qualifications .....	6-7
6.3	Statement of Qualifications Evaluation .....	6-8
6.3.1	Evaluation Criteria .....	6-8
6.3.2	Shortlisting.....	6-9
6.4	Request for Proposals.....	6-9
6.4.1	Instructions to Proposers.....	6-10
6.4.2	Contract Terms and Conditions.....	6-13
6.4.3	Technical Provisions .....	6-14
6.4.4	Reference Information Documents.....	6-15
6.4.5	Industry Review Period .....	6-15
6.5	Proposal Evaluation.....	6-16
6.5.1	Overview.....	6-16
6.5.2	Technical Proposal Evaluation Categories .....	6-17
6.5.3	Apparent Best Value Determination Process .....	6-17
6.6	Award and Implementation .....	6-18
<b>7.0</b>	<b>Progressive Design-Build.....</b>	<b>7-1</b>
7.1	Procurement Methodology .....	7-1
7.1.1	Introduction .....	7-1
7.1.2	Roles and Responsibilities.....	7-1
7.1.3	Procurement Process.....	7-3
7.2	Request for Qualifications .....	7-6
7.3	Statement of Qualifications Evaluation .....	7-7
7.3.1	Evaluation Criteria .....	7-7
7.3.2	Shortlisting.....	7-8
7.4	Request for Proposals.....	7-8
7.4.1	Instructions to Proposers .....	7-9
7.4.2	Contract Terms and Conditions.....	7-10
7.4.3	Pre-Construction Phase Technical Requirements .....	7-13
7.4.4	Reference Information Documents.....	7-15

7.4.5	Industry Review Period .....	7-15
7.5	Proposal Evaluation.....	7-15
7.5.1	Overview.....	7-15
7.5.2	Proposal Evaluation Categories.....	7-16
7.5.3	Qualifications-based Selection Process .....	7-16
7.6	Award and Implementation .....	7-17
<b>8.0</b>	<b>Public-Private Partnership.....</b>	<b>8-1</b>
8.1	Procurement Methodology .....	8-1
8.1.1	Introduction .....	8-1
8.1.2	Roles and Responsibilities.....	8-1
8.1.3	Procurement Process.....	8-1
8.2	Request for Qualifications .....	8-6
8.3	Statement of Qualifications Evaluation .....	8-6
8.3.1	Evaluation Criteria .....	8-6
8.3.2	Shortlisting.....	8-8
8.4	Request for Proposals.....	8-8
8.4.1	Instructions to Proposers .....	8-9
8.4.2	Contract Terms and Conditions .....	8-9
8.4.3	Technical Provisions .....	8-11
8.4.4	Reference Information Documents .....	8-12
8.4.5	Industry Review Period .....	8-12
8.5	Proposal Evaluation.....	8-14
8.5.1	Overview.....	8-14
8.5.2	Pass/Fail Criteria.....	8-14
8.5.3	Technical Proposal Evaluation Categories .....	8-15
8.5.4	Apparent Best Value Determination Process .....	8-15
8.6	Award and Implementation .....	8-15

## Tables

Table 3-1.	Project Selection Guidelines .....	3-8
Table 4-1.	SOQ Rating Description Example.....	4-12
Table 4-2.	Descriptive Ratings Weighting Example .....	4-13
Table 4-3.	Proposal Rating Description Example.....	4-22
Table 4-4.	Descriptive Ratings Weighting Example .....	4-23
Table 4-5.	Technical Scoring Example .....	4-24
Table 4-6.	APDM Contractor QA/QC Responsibilities .....	4-28
Table 4-7.	Design-Build Risk Allocation Matrix .....	4-48
Table 6-1.	Stipend Guidelines.....	6-11
Table 6-2.	Apparent Best Value Calculation and Ranking Example .....	6-18
Table 8-1.	Sample Maintenance Table.....	8-13

## Figures

Figure 4-1.	SOQ Evaluation Flowchart.....	4-15
Figure 4-2.	Proposal Evaluation Organization for Large Projects .....	4-27
Figure 4-3.	Typical DB and P3 Design Review Process .....	4-40
Figure 4-4.	Typical ADPM Contractor's QA/QC Organization .....	4-41
Figure 4-5.	CM/GC Design Process and Risk Workshops Flowchart .....	4-47
Figure 5-1.	CM/GC Project Delivery Method Organization Chart .....	5-5

Figure 5-2. CM/GC Project Delivery Method Procurement Process Flowchart .....	5-6
Figure 6-1. DB Project Delivery Method Organization Chart .....	6-4
Figure 6-2. DB Project Delivery Method Procurement Process Flowchart.....	6-5
Figure 7-1. PDB Project Delivery Method Organization Chart.....	7-4
Figure 7-2. PDB Project Delivery Method Procurement Process .....	7-5
Figure 8-1. P3 Project Delivery Method Organization Chart.....	8-3
Figure 8-2. P3 Project Delivery Method Procurement Flowchart.....	8-4

## Appendices

Appendix A	Acronyms and Glossary
Appendix B	Conflict of Interest Statement Example
Appendix C	CM/GC RFQ Example
Appendix D	CM/GC RFP Example
Appendix E	CM/GC Pre-Construction Services Scope of Work Example
Appendix F	Design-Build RFQ Example
Appendix G	Design-Build ITP Example

# 1.0 Introduction

## 1.1 Guidelines Purpose

The information presented in these Guidelines for Alternative Project Delivery (Guidelines) provides a framework for using APDM. These Guidelines constitute an internal procedural document intended to provide NDOT staff with guidance on agency organization and operations involved in selecting and utilizing an appropriate project delivery method. These Guidelines do not constitute a “guidance document” as defined in Nebraska Revised Statute § 84-901(5). These Guidelines constitute general statements and are not intended and do not supersede the language of any RFQ, RFP, or contract. The Guidelines are intended to inform NDOT staff and provide insight and context into the use of different project delivery methods. Nothing in these Guidelines is intended to bind NDOT in the use of or process for any statutorily authorized APDM. The Guidelines also do not supersede other NDOT policies or procedures; this includes the *NDOT Right-of-Way Manual*, the *NDOT Utility Accommodation Policy*, *NDOT Environmental Procedures Manual (EPM)* and the associated *NDOT Environmental Guidance Library*, and *NDOT LPA Guidelines Manual for Federal-Aid Projects* which all contain policies or procedures applicable to alternative project delivery. Furthermore, while these Guidelines are for NDOT, they may be adopted by counties and cities pursuant to Nebraska Revised Statute § 39-2811. In such case, modifications may be required to comply with local laws, regulations, and policies, including those adopted pursuant to Nebraska Revised Statute § 39-2824.

The Construction Manager/General Contractor (CM/GC), Design-Build (DB), Progressive Design-Build (PDB), and Public-Private Partnership (P3) alternative project delivery methods (APDM) are four tools that the Nebraska Department of Transportation (NDOT) is authorized to use in meeting the needs of the state’s transportation program. These project delivery methods may not be appropriate for all projects, but when the right projects are selected, APDM may offer significant benefits for NDOT and the public.

The procedures presented illustrate approaches that have been proven successful and can be adapted as appropriate for each specific project. Commonly asked questions are presented and answered in the context of NDOT’s traditional Design-Bid-Build (DBB) project delivery method versus APDM.

The recommendations will need to be tailored to project decision-makers, who must correctly identify, assess, fund, and develop projects, and balance the benefits and risks of APDM contracting. The Guidelines may be useful to the project team members who will be involved in the final project development and procurement processes.

These Guidelines are the product of an accumulation of experience and understanding of public contracting using APDM and the multitude of topics surrounding each project delivery method. The processes described in these Guidelines substantially accomplish the objectives of NDOT and will be updated to align with “best practices and industry standards.”

The decision to use APDM is not made instantaneously, but rather through a series of key decisions weighing risks and benefits. These Guidelines provide insight to those risks and the decisions that must be made to be successful in developing a project scope and contract documents using the APDM.

## 1.2 Acronyms and Glossary

Refer to [Appendix A \(Acronyms and Glossary\)](#) for the meaning of various abbreviations, acronyms, and of various capitalized terms used herein.



## 1.3 Guidelines Organization

This Guideline is broken up into eight sections. This [Section 1.0](#) is a general introduction to these Guidelines. [Sections 2.0](#) through [3.0](#) discuss the guidelines for prior to and up to selecting an ADPM.

The guidelines in [Section 4.0](#) applies to all APDM, unless otherwise specifically noted.

The specific details surrounding the various ADPM can be found in the following sections:

- Construction Manager/General Contractor (see [Section 5.0](#))
- Design-Build (see [Section 6.0](#))
- Progressive Design-Build (see [Section 7.0](#))
- Public-Private Partnerships (see [Section 8.0](#))

## 1.4 APDM Summary

### 1.4.1 Construction Manager/General Contractor

The owner has a contract with a designer to design the project and a separate concurrent contract with a CM/GC Contractor for pre-construction services for the project. The designer and CM/GC Contractor are contractually required to work together during the pre-construction phase or design phase to complete the design and to establish a price for construction guaranteed by the CM/GC Contractor. Both selections are made primarily upon qualifications.

### 1.4.2 Design-Build

For DB, the owner has one contract with an entity to design and construct the project, with selection typically based on best value (a combination of price, qualifications and technical approach). Typically, the price is bid as a lump sum at the time of award for the design-build contract.

### 1.4.3 Progressive Design-Build

For PDB, the owner selects the Design-Builder based on qualifications early in the project development process and then the Design-Builder assists the owner with risk identification and scope definition, and develops the design. As the design is advanced, price, schedule, and other commitments are negotiated, and when the owner and Design-Builder agree, the contract is amended for the construction. Similar to DB, PDB often solves several key owner risks including reduction of changes and claims, but it also takes advantage of the ability to negotiate risks with the preferred Proposer and customize the contract to the program.

### 1.4.4 Public-Private Partnership

In a P3, the owner has one contract with an entity to design and construct the project, and any combination of project finance as well as operations and maintenance of the Facility for a fixed number of years. For P3 projects, selection is usually based on a combination of qualifications and price, where price is usually measured as net present value.

## 1.5 Statutory Authority

The governing statute for the use of APDM is the Transportation Innovation Act (Nebraska Revised Statute 39-2801 *et seq.*).<sup>1</sup>

## 1.6 State and Federal Requirements

These Guidelines must be implemented in accordance with State and, where applicable, local and federal laws, regulations, and policies. When federal funds are used to fund a portion of a project's delivery, additional federal laws, regulations, and policies may apply, including, but not limited to:

- National Environmental Policy Act of 1969 (NEPA),
- *Equal Employment Opportunity* (Title VI of the Civil Rights Act of 1964 and 23 Code of Federal Regulations [CFR] Part 230),
- *Disadvantaged Business Enterprises* (DBE)(49 CFR Part 26),
- *Small Business* requirements (15 USC [United States Code] § 631),
- *Buy America* requirements (2 CFR Part 184),
- Uniform Relocation Assistance and Real Property Acquisition Act (42 USC Chapter 61),
- *Construction and Maintenance* requirements (23 CFR Part 635), and
- *Design-Build Contracting* requirements (23 CFR Part 636).

## 1.7 Goals and Objectives

NDOT's goals and objectives are to accelerate and enhance the delivery of transportation projects benefiting Nebraska and its citizens by utilizing available APDM.

Although what follows is not an exhaustive list, NDOT determines whether the use of an APDM can provide some, or all, of the following:

- Greater partnership opportunities between the public and private sectors
- NDOT Control of Detailed Design
- Completed Schedule
  - Accelerated project delivery
- Early Cost and Schedule Certainty
  - Greater cost certainty
  - Greater schedule certainty
- Overall Cost
  - More choices in funding and delivery methods
  - Minimized public cost and investment, including better leveraging of limited public funds
  - Improved life-cycle costs and/or quality

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<sup>1</sup> <https://nebraskalegislature.gov/laws/statutes.php?statute=39-2801>

- Reduced NDOT Staff Involvement
  - Additional choices for project oversight
- Technical Innovation
  - Conservation of natural resources
  - Improved air quality, sustainability, and overall environmental management
  - Enhanced safety attributes

## 2.0 Project Initiation and Development

### 2.1 Project Proposals

#### 2.1.1 Internal Proposals

Any NDOT Division can request a meeting with the Alternative Delivery Program Manager to discuss the possibility of the use of an APDM for a project. To evaluate whether an APDM approach would be appropriate and advantageous, it is imperative that the requesting NDOT Division consider:

- Specific information about the current problem, process, or project, and how an APDM may be able to enhance the solution. Information should include whether a project is currently in NDOT's Five-Year Surface Transportation Program.
- If considering the use of P3, one or more potential revenue streams, which may include traditional public funding for use as an Availability Payment or other revenue sources, such as new or existing fees, tolls, or sponsorships.

The evaluation whether to use APDM is typically led by the Alternative Delivery Program Manager and performed and ultimately determined at the programming stage with the Program Management Division. See [Section 3.0](#) for details regarding APDM selection.

### 2.2 Reserved

### 2.3 Procurement Team

#### 2.3.1 NDOT Staff

Alternative Delivery Program Manager within NDOT's Roadway Design Division provides overall management for the procurement of projects and agreements using APDM.

Staff and resources of NDOT Divisions will be available to provide proper review and input into the development of APDM procurement documents and the evaluation of Proposals.

#### 2.3.2 Outside Consultants and Advisors

NDOT may procure and use the services from consultants to provide essential screening, planning, study, management, advisory, and oversight services to NDOT on a program and/or project-specific basis in accordance with Revised Statute 39-2810. These consultants would report to NDOT and could provide services for program management, financial, legal, technical, traffic and revenue, tolling technologies and operations, communications, and any others of expertise, as needed.

The procurement of an APDM project may require specialized expertise outside what may be normally required for DBB. NDOT should consider engaging the following types of advisors, depending on the needs of the project, where the advisors can assist in developing procurement documents, evaluating SOQs, Proposals, performing feasibility analysis, or otherwise providing counsel regarding technical, legal, financial, and communications related items.

#### 2.3.3 Stakeholders

NDOT may reach out and seek collaboration and input with stakeholders, as necessary, for both program and project development. Having key stakeholders involved early on in the development of

the project and through procurement may help expedite the procurement and project as the stakeholders may not be familiar with an APDM process.

### 2.3.4 Industry

NDOT may consider the interest of the design, construction and/or P3 industry in the project as part of a project feasibility effort, or may be used to develop procurement documents, or both. Industry input may come from NDOT issuing a request for information, an industry forum, a market sounding, and/or from individual meetings or conversations with industry representatives who may be interested in the project.

## 2.4 Ex-Parte Communications

Proposers may have open discussion with NDOT; however, during procurement by any proposer, all communication must cease for the proposed project with any of NDOT's staff, advisors, contractors or consultants involved with the procurement or review, except for communications expressly permitted, in these Guidelines, by the Request for Qualifications (RFQ), Request for Proposals (RFP), or except as approved in advance by the NDOT Director or his/her designee, in such individual's sole discretion (see [Section 4.1](#)). The foregoing restriction will not, however, preclude or restrict a proposer from communications with regard to matters unrelated to the RFQ, RFP, or from participation in public meetings. Any proposer engaging in prohibited communications may be disqualified in the sole discretion of NDOT.

## 3.0 Project Delivery Method Selection

### 3.1 Introduction

The decision to use an APDM depends on the simultaneous consideration of multiple, project-specific characteristics. There are no absolute tests that drive the decision one way or another and different project characteristics can affect the decision-making process in greater or lesser measures depending on circumstances of the project. These project selection guidelines are to be used to help NDOT staff in their decision-making processes and are not considered strict rules. In addition, NDOT must use the rules and regulations in determining when a P3 is used for a project in accordance with Revised Statute 39-2825.

These project selection guidelines are organized by project characteristics. [Table 3-1](#) (*Project Selection Guidelines*) includes these characteristics that correspond to the project selection guidelines and are provided at the end of this [Section 3.0](#). In [Table 3-1](#), the applicability of DBB and APDM are evaluated for individual project characteristics; reinforcing the need for holistically considering the applicability of different project delivery methods rather than looking to a few characteristics as tests to absolutely drive the decision.

After the scope is defined and a preliminary risk assessment is performed, the fundamental project characteristics need to be examined. These include level of NDOT control of detailed design desired, required completion schedule, early cost and schedule certainty, overall cost, reduced NDOT staff involvement, technical innovation, and Non-Standard NDOT Projects. Each of these is described in the following paragraphs. (See [Section 4.7](#) for details regarding Risk Assessment.)

#### 3.1.1 NDOT Control of Detailed Design

To the extent that, for a particular project, NDOT considers it necessary, or would prefer to maintain a high degree of control during final design, DBB or CM/GC will be considered; DB, PDB, and P3 are not suitable project delivery methods under such circumstances. An example might be constructing an intelligent transportation system. In that case, NDOT might want control over specific elements to be installed to ensure compatibility with NDOT's existing Intelligent Transportation System (ITS).

#### 3.1.2 Completion Schedule

The overall project delivery schedule, in particular the completion of construction and opening to the public is typically the primary reason for using APDM. APDM may accelerate construction completion relative to DBB, due to the partial overlap of design and construction with DB and PDB; and to the avoidance of a public bid process after 100% design with CM/GC. The degree to which a particular project would be feasible to implement with more concurrent activities may affect the potential magnitude of schedule acceleration with APDM. Note that while overall project duration (design and construction) may decrease, construction duration may remain essentially unchanged. In addition to schedule compression because of concurrent activities, construction duration may be shortened by efficiencies that result from the designer and contractor working together in the APDM.

If acceleration of project completion is the reason to select DB or PDB project delivery methods, there are outside constraints that could affect project delivery (such as, environmental permitting, extensive right-of-way (ROW) acquisition, and complex third-party agreements). It is possible that delays in the Design-Builder or Progressive Design-Builder addressing these constraints could eliminate any potential schedule advantage from DB or PDB project delivery methods. In such cases, consider one or more separate contracts to address these issues outside of the DB or PDB contract and preserve

the schedule compression potential of the DB or PDB project method; if this is not possible, the project is most likely not an appropriate candidate for DB or PDB project delivery methods.

The procurement schedule must be considered in regards to delivering the project with an accelerated schedule. The procurement process of drafting the project specific RFQ and RFP (as applicable), evaluation, and selection is a step that requires in depth planning. The approach to identification and selection of projects must be proactive for the successful delivery of the project.

Questions to ask related to whether DB or PDB project delivery methods can save time relative to DBB project delivery method include:

- Must the work begin or end by a specific date?
- Is the available time unusually short?
- Are work windows a significant issue?
- Are certain seasons or dates critical?
- Are traffic detours and/or closure periods limited?

If the answer to these questions is yes, the project is most likely an appropriate candidate for DB or PDB.

### 3.1.3 Early Cost and Schedule Certainty

If it is necessary and/or desirable to have cost or schedule certainty early in the project, DB or P3 project delivery method would be the most advantageous project delivery method, as the cost and schedule would be provided prior to design being complete. CM/GC and PDB would also provide cost certainty, but would be during a period prior to final design. Conversely, DBB does not provide cost or schedule certainty until after completion of final design and the public bidding process, or later.

### 3.1.4 Overall Cost

There is no universally accepted cost advantage associated with project delivery using DBB versus APDM. Lowest cost might be attained with any one of these project delivery methods, depending on specifics of the project and the quality of project management.

### 3.1.5 Reduced NDOT Staff Involvement

For reasons such as a large volume of project activity placing extraordinary workload demands on existing staff, inability to bring aboard additional staff due to a hiring freeze, or limited available staff resources with a particular skill set, NDOT may prefer to reduce the level of staff involvement in a particular project. Regardless of the reason, DB and P3 project delivery methods allow NDOT to reduce the level of staff involvement, relative to both DBB, CM/GC, and PDB.

For DB and P3 project delivery methods, be aware that scope definition and proposer selection require a greater NDOT effort up front and have a greater effect on project success than in DBB, CM/GC, or PDB project delivery methods. NDOT staff would manage and guide the project; however, a consultant can be used to supplement NDOT staff throughout procurement and the delivery of the project. It is important to note that the decision to use DB or P3 project delivery methods will not rest solely on availability of NDOT staff.

### 3.1.6 Technical Innovation

Technical innovation is typically constrained by the prescriptive nature of DBB project delivery method and stimulated by the flexible nature of DB, PDB, or P3 project delivery methods. CM/GC project

delivery method may foster technical innovation depending on the engagement level and cooperation level between the designer and the CM/GC Contractor, and the prime/sub relationship in the CM/GC Contractor team of the construction contractor and the technology provider.

### 3.1.7 Non-Standard NDOT Projects

Non-standard NDOT projects, including emerging technology projects such as broad band communications, electric vehicle charging facilities, and toll bridges may be the primary reason for using APDM rather than DBB project delivery method. NDOT may not have the expertise to implement nor the design to add the expertise and/or the capacity to operate and maintain such facilities. The P3 project delivery method is currently the only project delivery method that can provide long-term operations and maintenance work for the project under a single contract, where the other project delivery method would require a separate contract.

## 3.2 Status of Funding

Another fundamental consideration in selecting the most advantageous project delivery method is the status of project funding.

### 3.2.1 Project is Programmed and Funding is Committed

Having all project funding in place does not favor any of the project delivery methods available to NDOT. However, it is essential when using the DB project delivery method because the NDOT funding obligation is part of the DB contract.

### 3.2.2 Project is Programmed but Funding is Not Fully Committed

Partial funding, while unsuitable for DB project delivery method, is sufficient for initiating DBB or possibly CM/GC or PDB project delivery methods. The main advantage of P3 project delivery method is the ability of NDOT to secure outside third-party funding for a project. This will give NDOT an extra resource of funding that did exist on traditional projects. By utilizing the P3 project delivery method, funding resources can be expanded, allowing NDOT to meet project implementation goals earlier than might have been expected.

### 3.2.3 Project is Not Programmed

In the absence of construction funding, there may still be funding available to complete design, and if NDOT has a high level of confidence in the project ultimately proceeding, it may be desirable to pursue a design contract, following a DBB project delivery method strategy.

## 3.3 Project Size

The size or estimated cost of a project must be considered when determining the most advantageous project delivery method. The following size-related factors should be gauged to determine the best project delivery method.

- Large projects usually offer the greatest overall potential benefits from APDM due to the potential of innovative design or construction alternatives. However, larger projects may present a greater risk. At the same time, larger projects may limit the number of potential proposers because of the resources required to deliver such projects.
- DB and P3 may be the only project delivery methods available on large projects due to availability of NDOT staff.



- Smaller projects may present opportunities for specific benefits from DB, such as specialty work or ITS projects. The use of CM/GC, DB, or PDB contracting on smaller projects with lower risks may still achieve the benefits of compressed project schedule and lower contracting costs. Additionally, smaller firms can compete and gain experience with the CM/GC, DB, and PDB project delivery methods.

### 3.4 Project Complexity

Projects that are complicated present more coordination challenges and potential for design and/or construction innovation, and therefore more potential benefits from an APDM approach. A Best Value solution is often a direct function of the compatibility between the contractor's capabilities and the features of the design. Projects for which the answer to the following questions is yes may be best addressed through APDM contracting, where unique solutions, based on the specific characteristics, can be proposed.

- Will construction phasing be a major issue? (CM/GC, DB, and PDB)
- Does the site present unique or unusual conditions? (DBB, CM/GC, and PDB)
- Are specialty skills needed for design or construction? (DB, PDB, and P3)
- Does the project include emerging technology? (DB, PDB, and P3)
- Will extensive temporary facilities be required? (CM/GC, DB, and PDB)

### 3.5 Environmental Studies and Permitting

The status of completing environmental studies and securing approvals must be considered when determining a project's delivery method. The NDOT EPM and the associated *NDOT Environmental Guidance Library* provide a comprehensive guide to the environmental review process, including NEPA considerations, and should be referred to alongside these guidelines.

PDB and CM/GC projects typically begin at an earlier stage of development, similar to DBB projects. As such, the use of the PDB or CM/GC project delivery method is appropriate even when the NEPA process is in an early stage or the process of obtaining U.S. Army Corps of Engineers (USACE) approvals, such as under Sections 404 and 408 of the Clean Water Act, is just beginning.

DB or P3 project delivery methods are best employed when the NEPA process is complete. DB or P3 project delivery methods may be used while the NEPA process is ongoing, but the time required to complete the NEPA process and secure approvals should be considered. If federal funding is used for a portion of the project, 23 CFR 636.109 describes how the NEPA process relates to a DB procurement process.

Further consideration should be given to local or State-specific environmental regulations (e.g., Endangered Species Act of 1973 or the National Historic Preservation Act) when selecting a project delivery method.

### 3.6 Public Endorsement

A project that is well received by the public may be delivered using any of the project delivery methods available to NDOT. The effect an APDM could have on any controversy surrounding a project, whether positive or negative, should be considered when evaluating the project delivery method.

## 3.7 Project Types and Other Characteristics

NDOT may use CM/GC, DB, or PDB project delivery methods for design, and construction projects for political subdivisions when any of the funding for such projects is provided by or through NDOT in accordance with Nebraska Revised Statute 39-2822. When evaluating potential projects for APDM contracting, NDOT should consider the following example project characteristics to help identify likely candidates. However, NDOT is not allowed to use CM/GC, DB, or PDB project delivery methods for projects that are primarily resurfacing, rehabilitation, or restoration projects.

- Projects for which changes are anticipated during construction such as urban projects with high potential for unforeseen utility issues (these projects may be better suited for CM/GC and PDB project delivery methods).
- Projects that require minimum ROW acquisition and utility relocation; to avoid potential associated delays (these projects may be better suited for DB project delivery method).
- Projects that would have a well-defined scope for all parties (design and construction); this applies to DB and P3 project delivery methods and is required by the nature of the DB and P3 project delivery methods process.
- Projects that have room for innovation in the design and/or construction effort are able to take advantage of the flexibility offered by DB and P3 project delivery methods.
- Projects with low risk of unforeseen conditions that might offset or eliminate potential CM/GC, DB, or PDB project delivery methods schedule acceleration.
- Projects with low possibility for significant change during all phases of the work; CM/GC and PDB project delivery methods, and to a lesser extent DBB project delivery method, are better able to deal with changes than DB and P3 project delivery methods (these projects may be better suited for CM/GC and PDB project delivery methods than DB or P3 project delivery methods). The level of possibility can be evaluated during the risk assessment which is done during the procurement phase.

### 3.7.1 P3 Variations

When evaluating the P3 project delivery method, NDOT should consider the variations of P3 project delivery method to determine if the P3 project delivery method is the appropriate for the project. The variations of the P3 project delivery method includes:

- Design-Build-Finance Agreement
- Design-Build-Maintain Agreement
- Design-Build-Finance-Operate Agreement
- Design-Build-Operate-Maintain Agreement
- Design-Build-Finance-Operate-Maintain Agreement
- Concession Agreement providing for the Private Partner to design, build, operate, maintain, manage, or lease an eligible facility

## 3.8 Summary

NDOT should weigh the project goals, potential benefits, and probable risks carefully, and use all of the information provided in these Guidelines to determine if an APDM offers the best approach to successfully delivering a particular project. In this process, NDOT should examine candidate projects

for unusual or unique requirements (e.g., severe ROW limitations, extensive traffic handling, narrow construction windows, and time sensitive staging) that could be better addressed by using an ADPM.

Refer to [Table 3-1](#) for consideration of possible contracting strategies that may be used to meeting project characteristics.

### 3.8.1 Why Consider CM/GC?

The objective of the CM/GC project delivery method is to deliver projects better and faster than the conventional DBB project delivery method. Achievement of these objectives depends on careful consideration of the project scope in the project delivery selection process. Helpful questions to ask include:

- Does the scope suggest that construction phasing issues might be reduced by integrating constructability considerations provided by the CM/GC Contractor into the design process?
- Is the scope complex or does it include new technology in which the construction and implementation of which would benefit from the early participation of the CM/GC Contractor in the design process?

If the answer to these questions is yes, the project is most likely a good candidate to use the CM/GC project delivery method.

### 3.8.2 Why Consider DB?

The objective of the DB project delivery method is to deliver projects , faster and transfer some of the project risk, with fewer NDOT resources than required by the conventional DBB project delivery method. This objective is likely to be achieved however, only if certain characteristics are considered in the project selection process. The primary questions to ask are:

- Can significant time savings be realized through concurrent design and construction activities?
- Will higher quality products be realized from designs tailored to contractor capability?
- Do constraints of availability of NDOT staff affect the candidate project's schedule?
- Will there be less effect on the public with the use of expedited construction processes?

If the answer to these questions is yes, the project is most likely a good candidate to use the DB project delivery method.

### 3.8.3 Why Consider PDB?

The objective of the PDB project delivery method is to deliver projects better and faster than the conventional DBB project delivery method with specific advantages from both CM/GC and DB project delivery methods. Achievement of these objectives depends on careful consideration of the project scope in the project selection process. Helpful questions to ask include:

- Does project schedule allow a construction bid when the design has been progressed?
- Does the scope suggest that construction phasing issues might be reduced by integrating constructability considerations provided by the contractor into the design process?
- Does NDOT staff have the ability to remain engaged during the design decision making process, but release control of the project during the construction phase?

- Is the scope complex or does it include new technology in which the construction and implementation of which would benefit from the early participation of the contractor in the design process?

If the answer to these questions is yes, the project is most likely a good candidate to use the PDB project delivery method.

### 3.8.4 Why Consider P3?

The objective of P3 project delivery method is to deliver projects better, faster, and with outside financing than required by the conventional DBB project delivery method. This objective is likely to be achieved however, only if certain characteristics are considered in the project selection process. The primary questions to ask are:

- Do constraints of funding availability limit the project schedule?
- Can significant time savings be realized through concurrent design and construction activities?
- Will higher quality products be realized from designs tailored to contractor capability?
- Do constraints of availability of NDOT staff affect the candidate project's schedule?
- Does NDOT have the resources to operate and maintain the Facility?
- Is the facility to be constructed one that can be operated and maintained independently?
- Will there be less effect on the public with the use of expedited construction processes?

If the answer to these questions is yes, the project is most likely a good candidate to use the P3 project delivery method.

**Table 3-1. Project Selection Guidelines**

Delivery Method is Compatible with the Characteristic



Delivery Method May Be Compatible with the Characteristic



Delivery Method is Not Compatible with the Characteristic



Project General Characteristics	Likely Candidate for Delivery As				
	DBB	CM/GC	DB	PDB	P3
<b>Primary Project Delivery Objective</b>					
NDOT control of detailed design	Green	Green	Red	Green	Red
Completion schedule	Red	Yellow	Green	Green	Yellow
Cost	Green	Green	Green	Green	Green
Early cost and schedule certainty	Red	Red	Green	Yellow	Green
Reduced NDOT staff involvement	Red	Red	Green	Yellow	Yellow
Technical innovation	Red	Green	Green	Green	Green
<b>Funding</b>					
Programmed and funding committed	Green	Green	Green	Green	Green
Programmed but full funding not committed	Green	Yellow	Red	Yellow	Green
Not programmed	Green	Red	Red	Red	Green
<b>Project size</b>					
Greater than \$50 million	Green	Green	Green	Green	Yellow
\$10 million to \$49 million	Green	Green	Yellow	Green	Yellow
Less than \$10 million	Green	Yellow	Yellow	Yellow	Yellow
<b>Project complexity</b>					
Numerous primary features (road, bridges, ITS)	Green	Green	Green	Green	Green
Closely interrelated features	Green	Green	Green	Green	Green
Constrained construction phasing	Yellow	Green	Green	Green	Green
Unique or unusual site conditions	Green	Green	Yellow	Green	Green
Specialized skills need for design or construction	Yellow	Yellow	Green	Green	Green
Emerging technology included	Yellow	Yellow	Green	Green	Green
Extensive temporary features required	Yellow	Green	Green	Green	Green
<b>Environmental process status</b>					
NEPA process complete	Green	Green	Green	Green	Green

Project General Characteristics	Likely Candidate for Delivery As				
	DBB	CM/GC	DB	PDB	P3
Environmental process started with identification of required approvals and permit	Green	Green	Yellow	Green	Yellow
Environmental process not started	Green	Yellow	Red	Yellow	Yellow
<b>Public endorsement of project</b>					
Supported	Green	Green	Green	Green	Green
Controversial	Green	Yellow	Yellow	Yellow	Yellow
<b>Other project characteristics</b>					
Minimum ROW or utility relocation	Green	Green	Green	Green	Green
Well defined scope	Green	Green	Green	Green	Green
Projects with changes expected during construction	Yellow	Yellow	Red	Yellow	Red
<b>Project types</b>					
Emergency roadway or bridge repair	Green	Green	Yellow	Yellow	Red
Major bridge projects	Green	Green	Green	Green	Green
ITS projects	Yellow	Yellow	Green	Green	Yellow
Interchange improvements	Green	Green	Green	Green	Green
Interstate widening	Green	Green	Green	Green	Green
Buildings, rest areas, welcome stations, pedestrian overpasses	Green	Green	Green	Green	Green
Roadway/bridge rehab or repair	Green	Red	Red	Red	Yellow
Urban construction or reconstruction with major utilities, ROW, or other major unknown factors	Green	Green	Yellow	Green	Yellow
Mill and resurfacing	Green	Red	Red	Red	Red
Electric vehicle charging facility projects	Yellow	Yellow	Green	Yellow	Green
Toll bridge projects	Green	Red	Green	Red	Green
Non-standard NDOT projects	Yellow	Yellow	Green	Green	Green
Bridge bundling	Yellow	Yellow	Green	Green	Yellow

Notes:  
 DBB = Design-Bid-Build, CM/GC = Construction Manager/General Contractor, DB = Design-Build, PDB = Progressive Design-Build, P3 = Public-Private Partnership, NDOT = Nebraska Department of Transportation, ITS = Intelligent Transportation System, NEPA = National Environmental Policy Act, USACE = U.S. Army Corps of Engineers, ROW = right-of-way

## 4.0 General Procedures and Policies

### 4.1 Communication

NDOT's current communication protocols of allowing the public to discuss potential projects and/or project details with NDOT prior to issuance of associated procurement documents applies to the APDM. Additional requirements and limitations on communications may be included in the procurement documents for a project. NDOT will provide a list in the procurement documents of agencies, organizations, stakeholders, consultants and contractors with whom proposers must not communicate. Once procurement documents are issued, the public will no longer be able to have private discussions with NDOT, except as allowed in these Guidelines.

Once procurement documents are issued, NDOT will designate an NDOT point of contact, that will be the sole contact person and addressee for receiving all communications about the project during the procurement process. Any information from other sources may not be accurate. The procurement documents will state that all Respondents/Proposers are only to contact this point of contact and that contacting any other NDOT employee or NDOT consultants and advisors are prohibited. In addition, the procurement documents should specify what type of information NDOT would like clearly labeled on all written communication from Respondents/Proposers to NDOT, such as:

- Respondents/Proposers name and address;
- Respondent's/Proposer's authorized representative information (name, title, phone number, and e-mail);
- Project name and RFQ/RFP number; and
- The subject and/or material as it relates to the Project.

### 4.2 Conflict of Interest

#### 4.2.1 Introduction

NDOT strives to maintain the highest ethical standards, and requires strict adherence to the Conflict of Interest Policy regarding organizational conflict of interest when employing APDM project delivery methods. This Policy applies to firms that may seek to enter into APDM contracts with NDOT (prospective Respondents/Proposers and Respondents/Proposers).

Title 23 CFR Part 636.103 defines an 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.

As used in this excerpt, person means a natural person (i.e., a human being) or an artificial person (i.e., a legal entity treated as having the same legal rights as a human being, including the rights to own property, enter into contracts, and sue and be sued, including for example, corporations, partnerships, and associations.)

The goals of the NDOT Conflict of Interest Policy are:

- Protect the integrity and fairness of all aspects of a APDM project, including development, planning, procurement, design, and construction;

- Avoid circumstances where a Respondent/Proposer obtains, or appears to obtain, an unfair competitive advantage as a result of other work performed, and thereby prevent circumstances that might invite protests in response to NDOT's selection process; and,
- Provide guidance to Respondents/Proposers, and prospective consultants and contractors, so they may make informed business decisions concerning opportunities to provide support services to NDOT regarding a potential APDM project versus opportunities to propose in response to the subsequent APDM RFP after the final NDOT decision is made regarding project delivery method.

#### 4.2.2 Conflict of Interest Disclosure - Selection Team

The Conflict of Interest Policy does not address personal conflicts of interest on the part of NDOT selection team members; state laws and procedures governing improper business practices and personal conflicts of interest apply to NDOT selection team members. This includes the Nebraska Revised Statutes 49-1499.02 and .03. However, this policy does include a potential *Conflict of Interest Disclosure Statement – Selection Team Participant* (Appendix B-1), which must be completed by participating NDOT employees and NDOT's consultants and advisors with regard to a particular project, and which must be approved by NDOT's Procurement Manager before such NDOT employees, consultants, and/or advisors may participate in the procurement process for an NDOT APDM procurement.

SOQs and Proposals will be confidentially evaluated by an evaluation panel comprised of NDOT staff members. The evaluation panel members, and any other NDOT personnel present for any panel meetings and/or deliberations, must sign a confidentiality statement. Evaluation panel members must commit to maintain strict confidentiality and security regarding the contents of Proposals and proceedings of the evaluation panel meetings before, during and after the evaluation process.

It is essential that the integrity and transparency of the evaluation and selection process be maintained to:

- Ensure that NDOT is selecting the most qualified Respondents/Proposers;
- Avoid contractor or public perception of favoritism or partiality in contract awards; and,
- Ensure that all submittals are given fair and equal consideration.

It is also essential that evaluation panel members must not participate in any evaluation process if they have an actual, potential or perceived conflict of interest, as described in this [Section 4.2](#). Evaluation panel members who believe there is any actual, potential or perceived conflict of interest when serving on a panel shall notify the NDOT Agreements Engineer immediately and they will be excused from the panel.

#### 4.2.3 Statutory Authority

RFQs and RFPs for services related to potential APDM projects must clearly communicate the requirement for Respondents/Proposers to comply with all applicable state laws related to procurement and ethics, including the Nebraska Revised Statutes 49-1499.02 and .03, and 39-2810, which states in Section 10:

A contracting agency may hire an engineering or architectural consultant to assist the contracting agency with the development of project performance criteria and requests for Proposals, with evaluation of Proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the contracting agency to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a



provider of other services in a Proposal for the project for which he or she has been hired, and shall not be employed by or have a financial or other interest in a Design-Builder or construction manager who will submit a Proposal.

Nebraska Revised Statute 39-2813 (2) that:

A person or organization hired by a contracting agency under section 39-2810 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

Solicitations for consultants and/or advisors to support NDOT during an APDM procurement process should clearly and conspicuously indicate that firms selected to provide such support services will be precluded from: proposing to provide design or construction services for the resultant APDM project; participating as a subcontractor proposing in pursuit of that resultant project; providing technical, legal, or financial advice to prospective Respondents/Proposers or Respondents/Proposers; or directly discussing any aspect of the APDM RFQ or RFP with any prospective Respondents/Proposers or Respondents/Proposers.

For federal-aid projects and in certain other circumstances, NDOT must comply with the Federal Highway Administration's (FHWA's) organizational conflict of interest rules found in 23 CFR Part 636, Subpart A, including 23 CFR Part 636.116.

#### 4.2.4 Prohibited Respondents/Proposers and Participants on Respondent/Proposer Teams

Entities to which any of the following conditions (bullets listed below in this [Section 4.2.4](#)) apply may not be permitted to participate as a Respondent/Proposer or as a member of a Respondent/Proposer team and may not assist nor advise, neither any Respondent/Proposer nor Respondent/Proposer team member in connection with the relevant project. Entities to which any of the following conditions are known by NDOT to apply for a particular project must be identified in the Statement of Qualifications (SOQ) and repeated or updated in the RFP. It is not NDOT's intent to unduly restrict firms' ability to pursue competitive opportunities with NDOT, and while the applicability of any of the listed conditions to a firm with regard to a specific project will preclude that firm from pursuit of that specific project, it will not preclude their pursuit of other NDOT projects. Further, NDOT views these prohibitions as being only applicable to first tier consultants and advisors, typically prime contractors, that are privy to NDOT deliberations and discussions that affect the procurement process, and not necessarily applicable to second tier or lower tier consultants and advisors, typically subcontractors, that prepare and provide materials for NDOT use and consideration in the procurement process. Lastly, NDOT reserves the right, in its sole discretion, to make the final determination regarding whether a particular circumstance precludes a firm from pursuit of a particular APDM project.

- Serving as a consultant or advisor to NDOT with regard to NDOT's planning, development, or management of a procurement for a specific APDM project. (Note that subconsultants to such consultants or advisors, depending on work performed, would typically not be prohibited.)
- Assisting the sponsors in the management of a specific APDM project, including the preparation of RFQ language, RFP language, or RFQ or RFP evaluation criteria.
- Conducting preliminary design services for a specific project such as geometric layouts, bridge-type selection, or preliminary bridge design.
- Performing design work related to a specific project for other stakeholders.

- Performing environmental studies related to the National Environmental Policy Act (NEPA) and other federal permits.
- Performing work on a previous contract that specifically excludes them from participating as a Respondent/Proposer or a participant in a Respondent/Proposer team.
- Serving under contract with any other entity or stakeholder to perform oversight on a specific project.
- Obtaining information that is not publicly available related to a specific project or its procurement from, or having a material discussion regarding a specific project or its procurement with, any person or entity with an organizational conflict of interest including but not limited to the consultants and advisors who have provided technical support regarding the specific project for any such person or entity.

It is in the best interests of NDOT to maintain open and free communications with persons in businesses and professions related to the transportation industry, so long as it can be done fairly and without giving any entity a perceived or actual competitive advantage. Regardless of any other language in these Guidelines, the following conduct occurring prior to initiation of the formal procurement process will not constitute a conflict of interest and will not disqualify a person from competing for and being awarded a contract for an alternative delivery project:

- Submitting to NDOT examples of procurement documents used by other governmental entities which may be similar to a project NDOT is planning to build. This includes examples in projects which were awarded to the person submitting the example. This includes solicited and unsolicited examples.
- Engaging in written communications with NDOT concerning the submitted examples.

All examples and written communications received by NDOT shall be made available, upon request, to all persons interested in competing for the project. Submitting examples and engaging in communications shall be deemed to constitute agreement to disclosure. Refusal to consent to disclosure will render the submitting entity ineligible to compete for the project.

After initiation of the formal procurement process all contacts with NDOT, and between persons competing for the project, are governed by the terms of the procurement documents.

Prospective Respondents/Proposers and Respondents/Proposers must undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, potential, or perceived conflicts of interest arise. Due diligence should extend to investigation of past relationships with other entities and, if applicable, to officers or directors thereof. If a prospective Respondent/ Proposer or Respondent/Proposer becomes aware of an actual, potential, or perceived conflict of interest at any time during its participation in a project, it must promptly disclose the matter to NDOT.

#### 4.2.5 Requirements for Respondents that Have Identified Potential Conflict of Interest

Entities who may have potential conflicts of interest in relation to a specific project and who wish to participate as a Respondent/Proposer or join a Respondent/Proposer team pursuing that specific project must:

- Conform to applicable federal and state conflict of interest rules and regulations.
- Disclose all relevant facts relating to past, present, or planned interest(s) of the Respondent/Proposer team (including the Respondent/Proposer and its subconsultants and/or subcontractors) which may result in, or could be viewed as, an organizational conflict of interest in

connection with the specific project including present or planned contractual or employment relationships with any current employee of NDOT.

- Disclose all of the work performed in relation to the specific project, and if so, directed by NDOT, provide all records of such work performed so that all information can be evaluated and, if necessary, made available to all potential Respondents/Proposers for the specific project.
- Ensure that the entity's contract with any related entity to perform services related to the specific project has expired or has been terminated.
- In cases where the potential member of a Respondent/Proposer team is affiliated with an entity with an organizational conflict of interest, describe how the entities in question would avoid conflicts of interest during the procurement process.

On review of the information provided as previously described, NDOT will determine, in its sole discretion, if an unfair competitive advantage exists that would preclude the entity from participating on a Respondent/Proposer team.

#### 4.2.6 Other Potential Conflicts of Interest

Because other conflicts of interest may exist in addition to those identified herein, each prospective Respondent/Proposer or Respondent/Proposer must require its team members to identify potential conflicts of interest or any real or perceived competitive advantage relative to the specific project (for example, an employee changing companies, mergers or acquisitions of firms, property ownership, business arrangements, or financial interests). If an organizational conflict of interest is discovered, the prospective Respondent/Proposer or Respondent/Proposer must make an immediate and full written disclosure to NDOT that includes descriptions of the conflict or advantage, and the actions the prospective Respondent/Proposer or Respondent/Proposer has taken or intends to take to avoid or mitigate such conflict or advantage. Such disclosures must be received by NDOT on or before the deadlines identified in the relevant RFQ and/or RFP. In response to such disclosures, NDOT will render determinations regarding the eligibility of the potentially conflicted firm(s) to participate in the Respondent's/Proposer's team.

If a conflict of interest applies to an individual, the conflict of interest and prohibition with respect to the individual will not apply to the individual's new place of employment, unless the new employer is an affiliate of the employee's previous employer. If the new employer is not an affiliate of the previous employer and is otherwise eligible to perform services for NDOT pursuant to these guidelines and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigation measures may be required of the new employer with respect to the employee.

#### 4.2.7 Failure to Comply with Policy

If an entity fails to comply with NDOT's rules, including failure to comply with any mitigation measures imposed under the guidelines, or otherwise fails to disclose an actual, potential, or perceived conflict of interest, NDOT may, in its sole discretion:

- Preclude and/or disqualify the entity and its affiliates, including any member of the team which an APDM project is being pursued, from participation in the planning, procurement, design, construction, and/or development of the particular project, including any competitive process associated therewith;
- Require the entity and its affiliates, including any other entity with which an NDOT APDM project is being pursued, to implement mitigation measures;

- Terminate the entity and its affiliates from any contract with NDOT for the planning, procurement, design, construction, and/or development of a particular project; and/or,
- Pursue any and all other rights and remedies available at law, in equity or set forth in any relevant RFQs or RFPs, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the entity's failure to comply with this policy, including, but not limited to, costs resulting from third-party challenges to the procurement or NDOT's re-procurement of the affected project.

If, at any time during the procurement process, NDOT discovers a conflict of interest or potential advantage, other than those identified herein and not previously identified by the affected Respondent/Proposer, NDOT may, at its sole discretion, disqualify the affected Respondent/Proposer or cancel the procurement, or if said discovery occurs after the conclusion of the procurement process, terminate the DB, PDB, CM/GC, or P3 contract/agreement.

NDOT recognizes that prospective Respondents/Proposers and Respondents/Proposers must maintain business relationships with other public and private sector entities to continue as viable businesses. NDOT will consider this while evaluating the appropriateness of proposed measures to mitigate potential conflicts. NDOT would seek to disqualify Respondents/Proposers only in those cases where a potential conflict cannot be adequately mitigated.

#### 4.2.8 Potential Conflict of Interest Disclosure Statement – Respondents/Proposers

Respondents/Proposers and members of the Respondent/Proposer team must complete the Disclosure of Potential Conflict of Interest Statement provided as [Appendix B-2 \(Potential Conflict of Interest Disclosure Statement – Respondent/Proposer\)](#) and submit it along with an associated SOQ and Proposal. If a Respondent/Proposer determines a potential conflict of interest exists, it must disclose the conflict to NDOT; however, such a disclosure will not necessarily preclude a Respondent/Proposer for further consideration with regard to the relevant project. To be considered further, Respondents/Proposers that have determined a potential conflict of interest exists must propose measures to avoid, neutralize, or mitigate all potential conflicts. To avoid any unfair taint of the selection process, the Potential Conflict of Interest Disclosure Statement must be submitted in a separate envelope or package from the corresponding SOQ or Proposal, and it will not be provided to the Selection Committee (SC) members. NDOT will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the Respondent/Proposer is eligible to participate in the procurement notwithstanding the potential conflict. Resolution of the conflict of interest is ultimately at the sole discretion of NDOT. NDOT reserves the right to void a Respondent's/Proposer's having been shortlisted or cancel the procurement if said Respondent/Proposer failed to disclose a potential conflict, which it knew or should have known about, or if the Respondent/Proposer provided information on the disclosure form that is false or misleading.

#### 4.2.9 Continuing Obligations Regarding Conflict of Interest

Prospective Respondents/Proposers and Respondents/Proposers pursuing a particular APDM project shall arrange their affairs so as to prevent conflicts of interest from arising. Conflict of interest guidelines and policies shall continue to be monitored and enforced throughout the procurement process and during the term of the resultant APDM contract. If an organizational conflict of interest is discovered at any time during the procurement process, the Respondent/Proposer will make an immediate and full written disclosure to NDOT that includes a description of the action that the Respondent/Proposer has taken or intends to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and the Respondent/Proposer was aware of an organizational conflict of interest prior to submitting a Potential Conflict of Interest Disclosure

Statement and did not disclose the conflict, NDOT may remove the Respondent/Proposer from further participation in the procurement. Continuing obligations regarding organizational conflicts of interest must be identified to prospective Respondents/Proposers and Respondents/Proposers in RFQs and RFPs.

### 4.3 Availability of the Guidelines

The RFP must identify a publicly accessible location of these Guidelines, or either a physical or electronic copy of these Guidelines must be included with the RFP.

### 4.4 SOQ Evaluation Procedures

#### 4.4.1 Overview

The SOQ evaluation process described in these Guidelines is intended to ensure consistency and fairness in NDOT's evaluation of the SOQs and shortlisting of the Respondents eligible to receive an RFP.

The SOQ evaluation process is intended to ensure SOQs are evaluated according to the responsiveness requirements, pass/fail criteria, and qualitative evaluation factors set forth in the RFQ, and to facilitate NDOT's selection of shortlisted Respondents so that the procurement of the project proceeds on schedule.

A typical flowchart showing the SOQ evaluation process is provided as [Figure 4-1 \(SOQ Evaluation Flowchart\)](#).

Additional SOQ evaluation procedures specific for each APDM are include in each specific APDM section of these Guidelines.

#### 4.4.2 Pre-Statement of Qualifications Submittal Meeting

A public pre-SOQ submittal meeting may be held to discuss issues related to the procurement process, to discuss the goals of the contract, and to provide details of the project. These meetings typically are not mandatory. If a pre-SOQ submittal meeting is held, the notice must clearly state whether or not attendance is mandatory.

During the pre-SOQ submittal meeting, NDOT will discuss the overall procurement and selection process, provide a general explanation of the proposed contract terms and the expected outcomes, and describe project specific elements, both administrative and technical. This will provide potential Respondents with a better understanding of the project and NDOT's expectations.

The pre-SOQ submittal meeting would typically be held no sooner than 10 days after advertisement of the RFQ and no later than 10 days prior to the SOQ submittal date. NDOT should keep in mind the complexity of project when setting the actual pre-SOQ submittal meeting date, providing Respondents with adequate time to prepare for the pre-SOQ submittal meeting or sufficient time after the pre-SOQ submittal meeting to prepare their SOQ submittals.

#### 4.4.3 Organization

Security will be of utmost importance in protecting the confidentiality of SOQs and the evaluation process. The following information applies to a typical APDM SOQ evaluation process.

Depending on the size and complexity of the project, NDOT's organizational structure for the SOQ evaluation process may consists of up to three tiers:

- Selection Committee (SC);
- Evaluation and Recommendation Committee (ERC); and,
- Procurement Advisory Groups (PAGs).

The SOQ evaluation process is led by NDOT's SC. The SC will consist of both Deputy Directors. The SC will make the final shortlisting determination to the NDOT Director based, in part, on input from the ERC.

The ERC is made up of NDOT staff members, which may be the same personnel who will subsequently participate in the Technical Committee and Financial Committee for evaluation of Proposals. The ERC members will evaluate and perform the official scoring of the SOQs against the pre-set evaluation criteria and furnish to the SC their recommendations with respect to the SOQs. The ERC may include other agency stakeholders at the discretion of NDOT.

The PAGs are made up of non-scoring NDOT staff members (not assigned to the ERC) and outside consultants, as NDOT determines appropriate, with technical and legal expertise. These individuals will perform advisory and support roles only, performing research and answering technical and legal questions for the ERC and SC, and will not make recommendations with respect to the SOQs' performance against the evaluation criteria, point ratings or Descriptive Ratings, or shortlisting determinations.

Outside of the three groups previously described, there could be a number of other participants in the SOQ evaluation process who would support the overall process (for example, NDOT Agreements Engineer and/or staff, staff from FHWA, and other public agency stakeholders).

Detailed descriptions of the roles and responsibilities of the participants in the SOQ evaluation process are provided in the following sections.

#### 4.4.3.1 Role of the Selection Committee

The SC's responsibilities include the following:

- Ensure timely progress of and compliance with the SOQ evaluation process.
- In consultation with the legal staff, provide direction if participants in the SOQ evaluation process have questions or encounter issues relating to the evaluation of SOQs or the SOQ evaluation process in general.
- Coordinate with the NDOT Agreements Engineer to transmit clarification letters and other NDOT correspondence to Respondents.
- Establish the maximum points the SOQs may achieve for each qualitative evaluation factor, the relative weightings for the qualitative evaluation sub-factors, and the relative weighting of each Descriptive Rating, if applicable, in accordance with guidelines provided in this [Section 4.4](#).
- Refer matters regarding actual, potential, or perceived conflicts of interest to the individual or unit in NDOT responsible for resolution of conflicts of interest.
- Make final determinations with respect to each SOQ's responsiveness to the RFQ requirements and performance against the pass/fail criteria.
- Make the final shortlisting decision.
- Ensure written documentation of the SOQ evaluation process is properly maintained, and destroy documents that are not required to be maintained.

- If the SC determines it appropriate, the SC may elect to deviate from any procedure prescribed in these Guidelines, provided the deviation does not otherwise constitute a violation of applicable State or federal laws, regulations, or policies. The SC shall consult with the legal staff as to whether any proposed deviation constitutes such violation. Any change or modification should be documented in the SC's documentation regarding the final shortlisting determination.

#### 4.4.3.2 Role of the Evaluation and Recommendation Committee

The responsibilities of the ERC members include the following:

- Review the RFQ and a SOQ Evaluation Manual prior to reviewing any SOQ.
- If a PAG is used, review the PAG's summary of findings based on the PAG's responsiveness and pass/fail review of SOQs.
- Prepare for and participate in the meeting, where the PAG presents to the ERC the PAG's summary of findings from the responsiveness and pass/fail review of SOQs.
- Based on the PAG's presentation, draft a memorandum documenting the ERC's recommendations as to the responsiveness and pass/fail status of the SOQ for each Respondent. The ERC should consult each SOQ to the extent necessary to complete this memorandum.
- Individually review each Respondent's SOQ against the qualitative evaluation factors using a separate qualitative evaluation worksheet, and meet as a committee to draft clarification questions for each Respondent, if needed.
- Prepare for and participate in the ERC consensus meeting, and draft consensus (or majority) comments using a qualitative rating form for each qualitative evaluation factor and for each SOQ.
- Based on the ERC's consensus (or majority) comments, use a qualitative evaluation score sheet to calculate the SOQ Score for each Respondent and identify the Respondents that the ERC recommends for shortlisting based on the SOQ Scores.
- Prepare documentation regarding the ERC's shortlisting recommendation.
- Participate in any oral presentations if held and if requested by the SC.

If deemed necessary to complete its responsibilities set forth in the Guidelines, at the discretion of the SC or ERC chair, the ERC may be sequestered at a location that promotes confidentiality while maintaining collaboration within the ERC. The SC or ERC chair, as applicable, will select the location.

##### 4.4.3.2.1 ERC Evaluation and Scoring Materials

To create a consistent evaluation and documentation of the ERC activities, the documents will be developed as described in these guidelines; however, can be modified to fit projects-specific criteria. These manuals and worksheets would serve as a permanent record of the evaluation process and outcome of the evaluation and shortlisting process. The following manuals and worksheets, if used, will need to be formulated prior to the Respondent's submittal of the SOQ to NDOT for consideration.

- **The SOQ Evaluation Manual.** The manual should include:
  - The SOQ organization including ERC members by name and department or agency;
  - Copies of the confidentiality and disclosure agreement that must be executed by all members of the ERC and PAG;
  - The specific roles and duties of the ERC and PAG members;
  - An evaluation schedule including location and time of ERC consensus meeting; and

- The point rating or Descriptive Rating structure including examples of factors to consider for each point rating or Descriptive Rating.
- **Responsiveness and Pass/Fail Worksheet.** This worksheet should include legal, technical, and financial criteria, as defined in the RFQ, which must be included in the Respondent's SOQ. Failure of a Respondent to include the required information may be grounds to consider their SOQ non-responsive.
- **Project and Key Personnel Reference Interview Questionnaires.** Prior to evaluating the SOQs, NDOT may develop a script to be used when conducting phone interviews to check and verify the information contained in the SOQ by the Respondents on the project and Key Personnel. Having a pre-set script will ensure that during each reference check, the questions are consistent and contain the same type of information.
- **Qualitative Evaluation Worksheet.** To record individual assessments of the Respondent's SOQ, each member of the ERC should use a qualitative evaluation worksheet to record their assessment of the Respondent's SOQ strengths and weaknesses. These worksheets will then be used by the ERC member during consensus meeting.
- **Qualitative Rating Form.** To record the outcome of the ERC consensus meeting (technical and financial), the qualitative rating form will be used to record the agreed upon ERC assessment of the Respondent's strengths and weaknesses; this will also provide justification for the consensus point rating or Descriptive Rating being assigned to each evaluation criteria.

#### 4.4.3.2.2 Role of the Procurement Advisory Group

For procurements where a PAG is used, the responsibilities of members of the PAGs may include the following:

- Each member of the PAG will review the RFQ and a SOQ Evaluation Manual prior to reviewing the SOQs.
- Selected members of the PAG will log and assign tracking numbers to the SOQs.
- The PAG will perform the responsiveness and pass/fail review of each SOQ.
- The PAG will perform the project, personnel, and legal reference checks and complete the corresponding summary of findings.
- The PAG will assist the ERC with the qualitative evaluation of each Respondent's SOQ by presenting the summary of findings that highlight the strengths and weaknesses of each SOQ against the qualitative evaluation factors.
- The PAG should have a chair who will: 1) ensure the timely progress of its team members' evaluations of the SOQs; 2) coordinate any meeting or re-evaluations within the time frames set forth in the Guidelines or as directed by the chair of the ERC or the SC; and 3) deliver to the ERC all written materials developed by their PAG as part of the SOQ evaluation process.
- The PAG chair should report the progress of its evaluation to the chair of the ERC at the end of each day that its PAG meets or at such other time or frequency as may be requested by the chair of the ERC.
- The PAG chair plus members of the ERC may participate in oral presentations, if held and if requested by the SC.

If deemed necessary to complete their responsibilities set forth in these Guidelines, at the discretion of the SC, the PAG may be separately sequestered at a location that promotes confidentiality while maintaining collaboration within the PAGs. The SC will select the location.



#### 4.4.4 RFQ and SOQ Objective

The objective of the RFQ and SOQ step of a procurement is to shortlist Respondents with the best legal, technical, financial, and management capability, capacity, and experience necessary to successfully undertake and complete the project. SOQs will be evaluated in three parts: 1) determination of responsiveness; 2) pass/fail evaluation, and 3) scored evaluation. The pass/fail criteria and scored criteria set by NDOT will be identified in the RFQ.

#### 4.4.5 Responsiveness and Pass/Fail Evaluation

If used for the procurement, the PAG will perform a responsiveness review of each SOQ by comparing each SOQ to the requirements identified in the RFQ. If a PAG are not used for the procurement, the NDOT Agreements Engineer may direct that the ERC perform the responsiveness review.

Responsiveness requirements include all administrative and format requirements identified in the RFQ, such as timely delivery to NDOT, inclusion of all required forms and certifications, and application of wet signatures where required. NDOT, at its sole discretion and at the direction of the NDOT Director, may waive minor nonresponsive aspects of a Proposal.

At a minimum, the following items will be required to be completed and included in an SOQ for it to be considered responsive:

- Transmittal Letter signed by a duly authorized official or representative of the Respondent;
- Respondent information including the proposing entity, lead designer, lead construction contractor, and other major subcontractors; and
- Certification of the accuracy of the information submitted in the SOQ signed by a duly authorized official or representative of the Respondent.

The pass/fail evaluation criteria will be tailored for the specific project, but should generally fall within the following categories. For an SOQ to achieve a passing rating, information provided in each of the following categories will need to meet or exceed the minimum requirements, as determined by NDOT for the project and as listed in the RFQ.

- **Legal.** The objective will be to select Respondents whose organization, legal structure, team members, and history demonstrates the Respondent's ability to remain stable and viable for the duration of the project and be contractually bound to NDOT. Certifications regarding debarment, suspension, and other legal requirements must be provided using forms included in the RFQ.
- **Financial.** The objective will be to select Respondents whose team members possess the financial capacity to enter into a contract with NDOT and the resources to successfully complete the project. The Respondent must provide its current balance sheet and recent annual operating statements and evidence of the lead construction contractor's ability to obtain bonding as specified in the RFQ.
- **Safety.** The objective will be to identify those Respondents that can demonstrate an acceptable safety record and safety program. The lead construction contractor must provide safety record information using the forms provided in the RFQ.

Failed Pass/Fail scores for some SOQ elements may be reconsidered by allowing a Respondent to revise their SOQ to receive a passing score; the decision to allow a Respondent to revise their SOQ to receive a passing score is at NDOT's sole discretion and at the direction of the SC.

Once an SOQ is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFQ. Once an SOQ receives a "Pass" score, the PAG will pass their review findings to the ERC for

consideration. If the ERC members agree with the review findings of the PAG, the SOQs will then be eligible for the ERC to perform evaluation scoring.

#### 4.4.6 Scored Evaluation

Once the pass/fail criteria have been evaluated, NDOT will enter into the evaluation process where SOQs will be scored. The scored evaluation criteria (qualitative evaluation criteria) will be tailored for the specific project and the specific APDM.

The SOQ Score will be calculated by the ERC based on the ERC evaluation of the SOQ. 100 points will typically be used for the total SOQ.

The ERC will evaluate each Respondent's SOQ against the qualitative evaluation factors described in the RFQ and set forth in a qualitative evaluation worksheet. SOQs are evaluated relative to the criteria and are not compared to each other. Based on these evaluations, the ERC will document on a separate Qualitative Rating Form for each qualitative evaluation factor, and for each Respondent, the ERC's consensus (or majority) comments. The comments will include the respective Respondent's strengths and weaknesses.

NDOT may choose to use a point ratings or Descriptive Ratings for scored evaluation. Using point ratings is when the ERC comes to an agreement of the points scored for each evaluation criteria at the consensus meeting. Using Descriptive Ratings is when, at the consensus meeting, the ERC comes to an agreement of the Descriptive Rating for each evaluation criteria which are then converted to points using predetermined weight factors.

Example rating descriptions for both point ratings and Descriptive Ratings are included in [Table 4-1 \(SOQ Rating Description Example\)](#), which are intended to measure how well the Respondents' qualifications meet or exceed the various qualitative evaluation factors.

**Table 4-1. SOQ Rating Description Example**

No.	Point Rating	Descriptive Rating	Description
1.	9 to 10	Excellent (E)	The SOQ exceeds in a significant manner the stated requirements and objectives in a beneficial way, providing advantages, benefits, or added value to the project and provides a consistently outstanding level of quality and qualifications. There are essentially no weaknesses.
2.	7 to 8	Good (G)	The SOQ comfortably meets the stated requirements and objectives, provides some advantages, benefits, or added value to the project and provides a generally better-than-acceptable level of quality and qualifications. There may be minor, but essentially insignificant weaknesses.
3.	4 to 6	Acceptable (A)	The SOQ demonstrates an approach that meets the stated requirements and objectives, and provides an acceptable level of quality and qualifications. An Acceptable rating corresponds to a Respondent merely meeting the minimum SOQ standards.
4.	1 to 3	Poor (P)	The SOQ fails to meet the stated requirements and objectives, lacks essential information, or contains conflicting and/or unsupported information; the SOQ contains significant weaknesses or deficiencies and provides a poor level of quality and qualifications. Weaknesses or deficiencies are so major and/or extensive that they are not correctable or would require major revision of the SOQ.

The terms weakness and deficiency as used herein, means a flaw in the Proposal that increases the risk of unsuccessful contract performance. To provide a common basis for selecting Descriptive Ratings, the qualitative evaluation worksheet should include examples of factors to consider for each rating.

If assigning Descriptive Ratings, the ERC may assign "+" or "-" (such as, Excellent -, Good +, and Acceptable +) to better differentiate within each rating. However, the ERC may not assign ratings of Poor - or Excellent +. Accordingly, there are 10 qualitative Descriptive Rating options available to the ERC and each has a numerical translation, set by the NDOT Project Manager before the SOQs are received.

The following [Table 4-2](#) (*Descriptive Ratings Weighting Example*) is provided as an example to illustrate a potential distribution of weights for the different Descriptive Ratings:

**Table 4-2. Descriptive Ratings Weighting Example**

Descriptive Rating	Weight Conversion Factor
E	100%
E-	90%
G+	85%
G	80%
G-	75%
A+	70%
A	65%
A-	60%
P+	55%
P	50%

If using Descriptive Ratings, once consensus Descriptive Ratings are assigned to each criterion by the TC, the TC Chairperson will convert the Descriptive Ratings to a numbered point value for the purpose of arriving at an overall score rating for the SOQ. The weight conversion factor associated with the Descriptive Ratings are established by NDOT for the specific project before SOQs are submitted. These are held in confidence by the Members and may not be disclosed by anyone that has knowledge of such weight conversion factors. A qualitative evaluation scoring worksheet will be used to document the score for each SOQ.

#### 4.4.7 Optional Oral Presentations

NDOT may schedule interviews (Oral Presentations) with the Respondents, at the SC's sole discretion, to clarify information provided in the SOQs. If determined necessary, the Oral Presentations will be held with all Respondents, be part of the final evaluation process, and occur prior to the ERC consensus meeting. The applicable guidelines for conducting Oral Presentations are:

- The SC will determine which NDOT participants in the SOQ evaluation process will participate in Oral Presentations, and the NDOT Agreements Engineer will notify those individuals accordingly.
- Respondent attendees should be limited: 1) on large and complex projects, no more than eight representatives per Respondent team and 2) on small to medium projects, no more than five

representatives per Respondent team. These suggested limitations are presented as a general guideline; final determination of limitation should be determined by NDOT based on individual project scope, complexity, and size.

- Oral Presentations will be scheduled to last 30 to 60 minutes depending on the needs of the project.
- Formal presentations may or may not be required. At a minimum, Oral Presentations would consist of Respondent responses to NDOT-developed questions seeking to clarify issues in the SOQs. Except for their SOQs, Respondents will bring no exhibits, displays, or other documentation to the Oral Presentation except as specifically allowed by NDOT.
- If Oral Presentations are held, the SC may develop and transmit to the Respondents prior to the Oral Presentations additional procedures for such Oral Presentations.
- Oral Presentations may be recorded by videotape or other means at NDOT's discretion.

#### 4.4.8 Shortlisting Process

NDOT will shortlist at least two, but typically no more than three, Respondents that are the most qualified based on their SOQs.

#### 4.4.9 Information Release

Information regarding the contents of SOQs or the SOQ evaluation process may be released to parties outside of the SOQ evaluation process only if authorized by the SC.

All written materials generated by the participants in and as part of the SOQ evaluation process will be delivered to the NDOT Agreements Engineer before or immediately after the SC's shortlisting decision. On receiving the written materials, the NDOT Agreements Engineer will determine, for each document, whether it may be destroyed or must be retained for the final record of the SOQ evaluation process, in accordance with state law governing public records.

#### 4.4.10 Notification and Debriefing

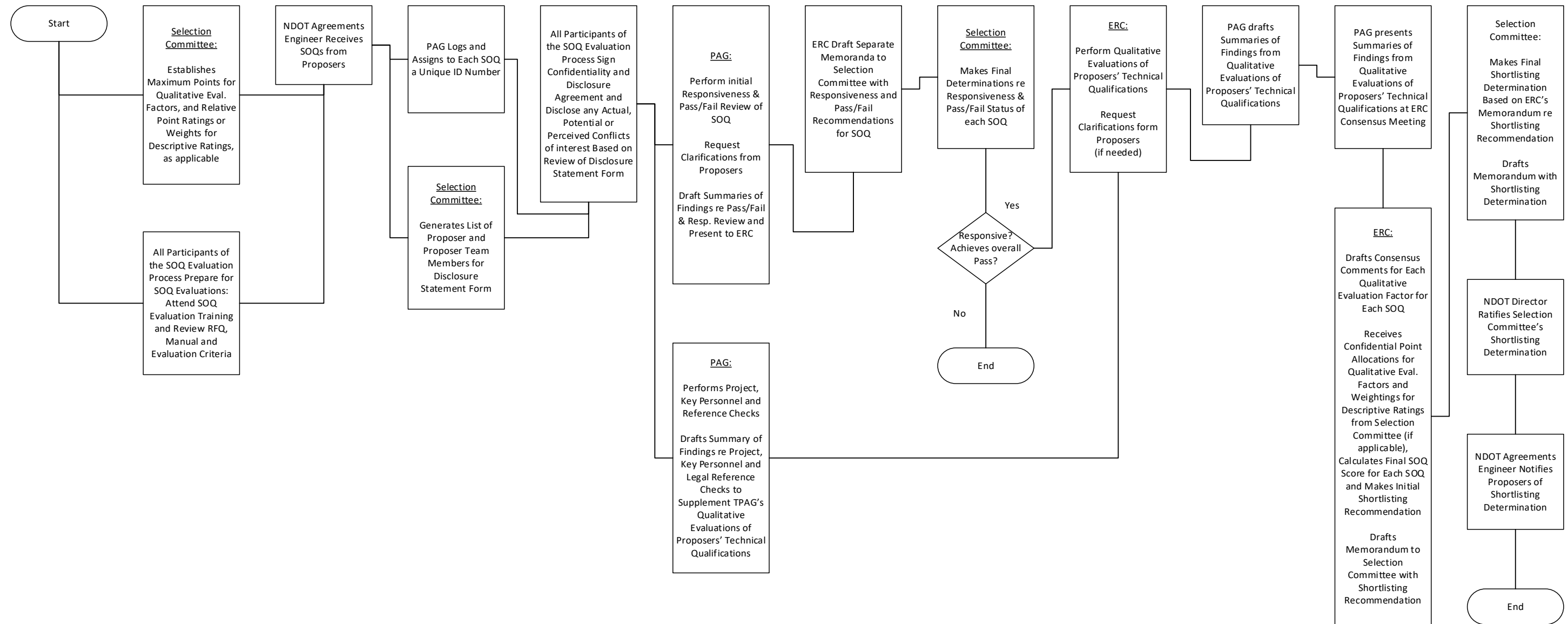
The NDOT Procurement Manager will notify Respondents of the final shortlisting determination. Respondents that are not shortlisted will be notified in writing concurrently with or promptly after shortlisted Respondents are notified.

After the shortlist is publicly announced, and at NDOT's discretion, the SC may coordinate with the NDOT Agreements Engineer to contact non-shortlisted Respondents and offer them an opportunity to request a debriefing; the debriefing would be conducted by the SC and the ERC. The SC will establish the dates, times, durations, and locations for debriefings.

Debriefings will:

- Be limited to discussion of the unsuccessful Respondent's SOQ and may not include discussion of any competing SOQ;
- Be factual and consistent with the evaluation of the unsuccessful Respondent's SOQ; and
- Provide information on areas in which the unsuccessful Respondent's SOQ had weaknesses or deficiencies, so as to benefit the unsuccessful Respondent's future NDOT procurement efforts.

Figure 4-1. SOQ Evaluation Flowchart



## 4.5 Proposal Evaluation Procedures

Additional Proposal evaluation procedures specific for each APDM are included in each specific APDM section of these Guidelines.

### 4.5.1 Organization

The following information represents a potential framework for the organization of the Technical Committee (TC), Technical Advisors (TA), Financial Committee (FC), Financial Advisors (FA) and other NDOT staff; the extent to which some or all of these groups are used is a function of the APDM, size, and complexity of the individual project. An overview of the proposed organizational structure to be used during the RFP evaluation process is presented in [Figure 4-2](#) (*Proposal Evaluation Organization for Large Projects*).

- Participants assigned to the Proposal evaluation process will be responsible to completely review the submitted Proposals.
- The TA will support and assist the members of the TC in connection with their review and evaluation of the Proposals and will provide comments on the strengths and weaknesses of the Proposals with respect to the qualitative evaluation criteria.
- If a TC member or Advisor has questions regarding the qualitative evaluation criteria, a clarification must be requested through the NDOT Agreements Engineer.
- During the evaluation process the TC, FC, or Advisors are allowed to ask Proposers for additional information and clarifications to enable them to gain a better understanding of the Proposals; including obtaining information necessary to determine whether the Proposal is responsive and meets the pass/fail evaluation criteria, and/or information needed to clarify ambiguities or inconsistencies in the Proposals.
- Requests for information or clarifications must be made in writing, which will then be forwarded to the appropriate Proposer by the NDOT Agreements Engineer.
- Each request for additional information or clarification, whether related to responsiveness, pass/fail criteria or otherwise, must specify a page limit and time period for delivery of such information, as determined by the requesting committee.

#### 4.5.1.1 NDOT Director

The NDOT Director's responsibility relative to DB procurements consists of:

- Approve the SC membership for each APDM procurement. The NDOT Director may add members or replace members for an individual procurement.
- Approve the recommendation of the SC.

#### 4.5.1.2 Selection Committee

The SC is a standing entity, at any given time and at the discretion of the NDOT Director, comprised of one or both Deputy Directors, the Roadway Design Division head, the Construction Division head, and the Materials and Research Division head. The NDOT Agreements Engineer serves as a non-voting member of the SC and is responsible to assure adherence to the required procurement process. The responsibilities of the SC include:

- Designate the Chairpersons to lead the TC and FC.

- Approve the ratings and point recommendations of the TC, or request the TC reconsider its evaluations.
- Select the Proposer based on the evaluation and scoring of the TC, through application of the formula set forth in the Instructions to Proposers (ITP), and direct staff to proceed with final contract negotiations.
- Notify those Proposers that have not been selected and coordinate with the Chairpersons of the TC and FC to schedule debriefing meetings, if desired.

#### 4.5.1.3 NDOT Project Manager

The NDOT Project Manager's responsibilities are outlined below.

- Prior to receipt of Proposals the NDOT Project Manager, with the assistance of selected Advisors (as may be needed), will determine how qualitative scoring will be translated to numerical values for each individual Technical Proposal evaluation criterion. Documentation of such decisions will be finalized prior to commencement of the evaluation of the Proposals and will be placed in a sealed, date-stamped envelope and retained by the NDOT Project Manager throughout the evaluation process. Only the NDOT Project Manager and selected Advisors (as may be needed), know the weightings and qualitative/numerical translation values. No other individuals will be authorized to access such information.
- Direct the NDOT Agreements Engineer to distribute each Proposer's Technical Proposal and Financial Proposal to the TC and FC, respectively.
- Direct the NDOT Agreements Engineer to collect Confidentiality and Disclosure Agreements and, if necessary, Disclosure Statement Forms from each participant.
- Upon receipt from the TC and FC of the initial responsiveness and pass/fail assessments for all Proposals, the NDOT Project Manager will issue requests for clarification and/or additional information, if necessary and as requested by the TC Chairperson or FC Chairperson.
- Upon receipt from the TC and FC of the initial responsiveness and pass/fail assessments for all Proposals, and if any Proposal is found to be nonresponsive or to have earned a failed pass/fail score, the NDOT Project Manager will prepare a formal recommendation to the NDOT Agreements Engineer and SC, to disqualify such Proposals.
- Upon receipt of the scoring worksheets for all Proposals from the TC, present these findings with a recommendation to the SC for review and approval.
- After acceptance by the SC of the TC qualitative rating recommendations for all Proposals, the NDOT Project Manager will apply the previously defined numerical values to the technical qualitative ratings to determine each Proposal's Technical Score.
- Upon receipt of the qualitative evaluation results for all Proposals from the FC, if any, present these findings with a recommendation to the SC for review and approval.
- After the Technical Scores and Financial Proposal evaluation results have been transmitted to the SC, and upon receipt of Price Scores from the FC, determine the Total Proposal Score for each Proposal according to the information identified in the ITP, and present the selection recommendation to the SC.

#### 4.5.1.4 Technical Committee Chairperson

Responsibilities of the Chairperson of the TC are outlined below:

- Serve as a point of contact in the event a TC Member or Advisor has questions or encounters issues relative to the evaluations, and forward such questions or issues to the NDOT Agreements Engineer or SC, as appropriate.
- Coordinate with the chairperson of the TA and facilitate the participation of Advisors as necessary during the course of the evaluation and selection process.
- Be responsible for ensuring the timely progress of the evaluation, coordinating any consensus meeting(s) or re-evaluation(s) and ensuring that appropriate records of the evaluation are maintained.
- Take appropriate steps to arrange for substitution and/or supplementation of evaluation personnel if a TC Member or Advisor is unable to complete their responsibilities to the extent the TC Chairperson deems necessary or if additional TC Members or Advisors are necessary to properly evaluate the Proposals.
- The TC Chairperson, with the assistance of selected TC Members and Advisors (as needed), will set out examples of information that would earn each of the defined qualitative ratings, otherwise known as “anchors”, to help establish a common baseline to be used in evaluating the Technical Proposal.
- Verify that each TC Member individually reviews and assesses each Technical Proposal using the responsiveness, pass/fail, and qualitative evaluation criteria established for the project.

#### 4.5.1.5 Technical Committee Members

TC Members’ responsibilities are outlined below:

- Review and adhere to the responsiveness, pass/fail, and qualitative evaluation criteria and evaluation procedures set forth in the RFP and these Guidelines prior to evaluating the Proposals.
- The TC will be made up of 5 or less NDOT staff members. If the SC determines that, due to Project size and complexity, 5 members are excessive, the number of members can be reduced as long as the total number of members on the TC remains an odd number.
- If a TC Member has any questions regarding the evaluation criteria, they may request clarification from the TC Chairperson.
- In a sequestered and confidential environment, the TC will evaluate the Technical Proposals based on the 1) responsiveness requirements and pass/fail criteria and 2) qualitative evaluation criteria applicable to the Technical Proposals.
- The TC will only evaluate and assign point ratings or Descriptive Ratings to qualitative evaluation criteria for each Technical Proposal; the TC will not assign numerical scores for any qualitative evaluation criteria.

#### 4.5.1.6 Financial Committee Chairperson

Responsibilities of the Chairperson of the FC are outlined below:

- Serve as a point of contact in the event a FC Member or Advisor has questions or encounters issues relative to the evaluations, and forward such questions or issues to the NDOT Agreements Engineer or SC, as appropriate.
- Coordinate with the chairperson of the FA and facilitate the participation of Advisors as necessary during the course of the evaluation and selection process.



- Be responsible for ensuring the timely progress of the evaluation, coordinating any re-evaluation(s) and ensuring that appropriate records of the evaluation are maintained.
- Take appropriate steps to arrange for substitution and/or supplementation of evaluation personnel if an FC Member or Advisor is unable to complete their responsibilities to the extent the FC Chairperson deems necessary or if additional FC Members or Advisors are necessary to properly evaluate the Proposals.
- Verify that each FC Member individually reviews and assesses each Financial Proposal using the qualitative evaluation criteria established for the project, if any.

#### 4.5.1.7 Financial Committee Members

FC Members' responsibilities are outlined below:

- Prior to evaluating the Proposals, review the responsiveness, pass/fail, and qualitative evaluation criteria and evaluation procedures set forth in the RFP and these Guidelines, and adhere to them during the evaluation process.
- The FC will normally be made up of either 2 or 3 NDOT staff members.
- If an FC Member has questions regarding the responsiveness, pass/fail, or qualitative evaluation criteria, they may request clarification from the FC Chairperson.
- The FC will evaluate the Financial Proposals in a sequestered and confidential environment based on the 1) responsiveness requirements and pass/fail criteria and 2) qualitative financial criteria applicable to the Financial Proposal.
- After the Technical Scores have been transmitted by the TC to the SC, the FC Chairperson will open the Price Proposal envelopes, and apply the previously identified methodology to calculate the Price Score for each Proposal.

#### 4.5.1.8 Advisors

Depending upon the size and complexity of an individual project, or if otherwise deemed necessary by the SC, NDOT Agreements Engineer or NDOT Project Manager, Technical, Financial and/or Legal Advisors may be made available to assist the TC, FC and other NDOT staff during the evaluation process. When more than one advisor in a given discipline is participating in a given evaluation process, the Advisors may elect a chairperson to serve as their point of contact. The responsibilities of the Advisors while supporting the evaluation process are outlined below.

##### 4.5.1.8.1 Technical Advisors

Technical Advisors may be available to assist the TC during the evaluation process. The TA may include consultant and/or agency personnel with expertise in specific fields relevant to the Proposal, and will be available to TC on an as needed basis to support the evaluation of Technical Proposals. The responsibilities of the TA are described below.

If used, the TA will assess the responsiveness of each Technical Proposal, including the pass/fail criteria set forth in the RFP, and submit its findings and report recommended outcomes to the TC. If the TA collectively concludes that a Proposal is nonresponsive to any of Proposal requirements or does not meet the Pass/Fail evaluation criteria, the TA, through their chairperson if applicable, shall promptly report that information to the TC Chairperson. In addition, Advisors shall send any clarification requests or requests for additional information needed to perform their analysis of the Proposals to the chairperson of TA who will coordinate with the NDOT Agreements Engineer to send the request(s) for clarification or additional information to the affected Proposer(s).

#### 4.5.1.8.2 Financial Advisors

Financial Advisors may be available to assist the FC during the evaluation process. The FA may include consultant and/or agency personnel with expertise in specific fields relevant to the Proposal, and will be available to FC on an as-needed basis to support the evaluation of Financial Proposals. The responsibilities of the FA while supporting the FC are described below.

If used the FA will assess the responsiveness of each Financial Proposal, including the pass/fail criteria set forth in the RFP, and submit its findings and report recommended outcomes to the FC. If the FA concludes that a Proposal is nonresponsive to any of Proposal requirements or does not meet the Pass/Fail evaluation criteria, the FA or its chairperson, if applicable, shall promptly report that information to the FC Chairperson. In addition, Advisors shall send any clarification requests or requests for additional information needed to perform their analysis of the Proposals to the chairperson of FA, if applicable, or to the FC Chairperson who will coordinate with the NDOT Agreements Engineer to send the requests for clarification or additional information to Proposers.

#### 4.5.1.8.3 Legal Advisors

Legal Advisors may be assembled to support NDOT in-house counsel and the TC, FC, TA, FA, and other NDOT staff as appropriate and necessary to address issues or questions concerning the procedures set forth in the RFP or the evaluation process. Such Legal Advisors would be selected and made available at the discretion of the SC and in-house legal counsel.

### 4.5.2 Responsiveness and Pass/Fail Evaluation

If used for the procurement, Advisors will perform a responsiveness review of each Technical Proposal and Financial Proposal by comparing each Proposal to the requirements identified in the RFP. If Advisors are not used for the procurement, the NDOT Agreements Engineer may direct that the TC or FC perform the responsiveness review.

Responsiveness requirements include all administrative and format requirements identified in the RFP, such as timely delivery to NDOT, inclusion of all required forms and certifications, and application of wet signatures where required. NDOT, at its sole discretion and at the direction of the NDOT Director, may waive minor nonresponsive aspects of a Proposal, such as the omission of a required signature.

Pass/Fail requirements include minimum experience, capabilities or capacity, such as years of experience of one or more proposed Key Personnel or bonding capacity commensurate with the size of the project, substantial completion dates comply with the allowable no later than date, and the preliminary baseline schedule is logical and consistent with the technical Proposal content. Failed Pass/Fail scores for some Proposal elements may be reconsidered by allowing a Proposer to revise their Proposal to receive a passing score; the decision to allow a Proposer to revise their submittal to receive a passing score is at NDOT's sole discretion and at the direction of the SC.

Once a Technical Proposal is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFP. Once a Technical Proposal receives a "Pass" score, the TA will pass their review findings to the TC for consideration. If the TC members agree with the review findings of the TA, the Technical Proposals will then be eligible for TC to perform evaluation scoring.

Once a Financial Proposal is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFP. Once a Financial Proposal receives a "Pass" score the FA will pass their review findings to the FC for consideration. If the FC members agree with the review findings of the FA, the FC will then evaluate the Financial Proposal and open the Price Proposal containing the Proposer's bid, which is submitted in a separate sealed envelope within the Financial Proposal. Opening of the Proposer's Price Proposal will not occur until all Technical Proposals have been evaluated and scored by the TC.

### 4.5.3 Technical Proposal Evaluation

The Technical Proposal Evaluation Process is as follows:

- TC Members will perform individual reviews of the Technical Proposals to identify strengths and weaknesses, and then meet as a group to develop a consensus qualitative technical score and recommendation.
- During the review of the Technical Proposals the TC members and TAs may capture their individual thoughts and evaluations of strengths and weaknesses of individual Proposals using unofficial copies of the Evaluation Form.
- The official Evaluation Form must be completed by the TC Chairperson during one or more meetings of the TC to establish consensus regarding scoring of all Proposals. The basis of the assessment of the TC, including the significant advantages, disadvantages and risks supporting the assigned qualitative ratings, must be documented. Reasoning for determinations of uncertain results or comments should also be documented. Evaluation statements should be as specific as practicable and not contain generalizations.
- To assist the TC in their evaluation of the Technical Proposals, qualitative score examples or “anchors” may have been developed by the TC Chairperson for each evaluation criteria. A Qualitative Evaluation Form should be completed for each individual evaluation criterion for each Proposer. At the request of the TC and for their consideration, the TA may present their opinions of each Proposal’s strengths and weaknesses. The TC may consider the TA’s opinions during the consensus meeting when assigning qualitative rankings.
- When the TC evaluation and consensus scoring of the Technical Proposals is complete, the TC qualitative scoring and recommendations will be presented to the SC through the NDOT Project Manager. The SC may accept the recommendation or request the TC to reconsider the recommendation.
- While the Technical Proposals are being evaluated, no Member or Advisor serving on or in support of the TC, TA or Legal Advisors will have access to the Financial Proposals.

#### 4.5.3.1 Technical Proposal Evaluation Progression

The following process outlines the steps needed to perform the Technical Proposal Evaluation:

- A Pass/Fail review of each Technical Proposal for responsiveness will be conducted by the TA. Results of the Pass/Fail review will then be provided to TC by means of a “Summary of Findings”.
- At the completion of the Pass/Fail review the TC will begin their independent scored review of the Technical Proposals.
- Once TC members complete their independent review of the Technical Proposals, the TC shall score each Technical Proposal, indicating on the Qualitative Evaluation Form the basis for each of its qualitative ratings.
- TC Members will perform individual reviews of the Technical Proposals to identify strengths and weaknesses, and then meet as a group to develop consensus qualitative scores and a recommendation. The members of the TA, if requested by the TC, may be available for consultation during the TC consensus meeting discussions.
- The completed Technical Proposal Evaluation Worksheets used by the TC will be presented by the NDOT Project Manager to the SC for consideration.

- After acceptance of the TC ratings by the SC, the NDOT Project Manager will place all TC Technical Proposal Evaluation Worksheets in a sealed, time stamped envelope and hold for safekeeping until such time as the evaluation of the Price Proposals has been completed. No one with access to the contents of the Technical Proposal Evaluation Worksheets shall disclose their contents without the permission of the NDOT Project Manager and the TC Chairperson.

#### 4.5.3.2 Scored Evaluation

Each Proposal will be evaluated in the context of the identified criteria in the ITP. Sub-criteria may be developed by NDOT prior to receipt of Proposals and incorporated into the evaluation process. For each Proposal, ratings will be applied by the TC to each technical criterion, and sub-criterion if applicable, and by the FC to each financial criterion, and sub-criterion if applicable. Proposals are evaluated relative to the criteria and are not compared to each other.

NDOT may choose to use a point ratings or Descriptive Ratings for scored evaluation. Using point ratings is when the TC comes to an agreement of the points scored for each evaluation criteria at the consensus meeting. Using Descriptive Ratings is when the TC comes to an agreement of the Descriptive Rating for each evaluation criteria at the consensus meeting.

Example rating descriptions for both the point ratings and Descriptive Ratings are defined in [Table 4-3 \(Proposal Rating Description Example\)](#).

**Table 4-3. Proposal Rating Description Example**

No.	Point Rating	Descriptive Rating	Description
1.	9 to 10	Excellent (E)	The Proposal exceeds in a significant manner stated requirements/objectives in a beneficial way providing advantages, benefits or added value to the Project, and provides a consistently outstanding level of quality. There are essentially no weaknesses.
2.	7 to 8	Good (G)	The Proposal comfortably meets the stated requirements/objectives, providing some advantages, benefits or added value to the Project, and offers a generally better than acceptable quality.
3.	4 to 6	Acceptable (A)	The Proposal has demonstrated an approach that is considered to meet stated requirements/objectives and has an acceptable level of quality. An Acceptable rating corresponds to a Proposer merely meeting the minimum Proposal standards.
4.	1 to 3	Poor (P)	The Proposal contains significant weaknesses or deficiencies and/or unacceptable quality. The Proposal fails to meet the stated objectives and/or requirements, and/or lacks essential information, and/or contains information that is conflicting and/or unsupported. Weaknesses or deficiencies are so major and/or extensive that a major revision to the Proposal would be necessary and/or are not correctable.

The terms weakness and deficiency as used herein, means a flaw in the Proposal that increases the risk of unsuccessful contract performance. To provide a common basis for selecting Descriptive Ratings, the qualitative evaluation worksheet should include examples of factors to consider for each rating.

If assigning Descriptive Ratings, the TC may assign "+" or "-" (such as, Excellent -, Good +, and Acceptable +) to better differentiate within each rating. However, the TC may not assign Descriptive Ratings of Poor - or Excellent +. Accordingly, there are 10 qualitative rating options available to the TC and each has a numerical translation, set by the NDOT Project Manager before the Proposals are received.

The following [Table 4-4](#) (*Descriptive Ratings Weighting Example*) is provided as an example to illustrate a potential distribution of weights for the different Descriptive Ratings:

**Table 4-4. Descriptive Ratings Weighting Example**

Descriptive Rating	Weight Conversion Factor
E	100%
E-	90%
G+	85%
G	80%
G-	75%
A+	70%
A	65%
A-	60%
P+	55%
P	50%

If using Descriptive Ratings, once consensus Descriptive Ratings are assigned to each criterion by the TC, the TC Chairperson will convert the Descriptive Ratings to a numbered point value for the purpose of arriving at an overall score rating for the Technical Proposal (the Technical Score). The weight conversion factor associated with the Descriptive Ratings are established by NDOT for the specific project before Proposals are submitted. These are held in confidence by the Members and may not be disclosed by anyone that has knowledge of such point values. A Technical Proposal Evaluation Scoring Worksheet will be used to document the Technical Score for each Proposal.

#### 4.5.3.3 Technical Score

The Technical Score will be calculated by the TC based on the TC evaluation of the Technical Proposal. 100 points will typically be used for the total Technical Proposal.

The following [Table 4-5](#) (*Technical Scoring Example*) is provided as an example of how the Technical Proposal scoring may be determined using Descriptive Ratings.

**Table 4-5. Technical Scoring Example**

Evaluation Criteria	Scoring Pts <sup>1</sup>		Proposer A		Proposer B		Proposer C	
			TC <sup>2</sup>	Pts <sup>3</sup>	TC <sup>2</sup>	Pts <sup>3</sup>	TC <sup>2</sup>	Pts <sup>3</sup>
Technical Approach	45							
Sub Criterion 1		20	E	20.00	G	16.00	E	20.00
Sub Criterion 2		15	G	12.00	E-	13.50	G	12.00
Sub Criterion 3		10	G	8.00	E	10.00	A	6.50
Project Delivery Approach	35							
Sub Criterion 1		15	G	12.00	E	15.00	G	12.00
Sub Criterion 2		15	E-	13.50	G	12.00	G+	12.75
Sub Criterion 3		5	A	3.25	G+	4.25	G	4.00
Quality Management Approach	20							
Sub Criterion 1		10	E	10.00	G	8.00	G	8.00
Sub Criterion 2		6	E	6.00	E-	5.40	G	4.80
Sub Criterion 3		4	G	3.20	G	3.20	G-	3.00
Total Technical Score	100	100	87.95		87.35		83.05	
Ranking			1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>	

## Notes:

- Scoring Points are assigned to each Technical evaluation criteria prior to TC evaluation and ranking by the NDOT Project Manager
- TC qualitative rating assigned during the consensus meeting
- Pts are determined by multiplying the rating weight by the total points assigned to the sub criteria

#### 4.5.4 Financial Proposal Evaluation

While financial information may be submitted in CM/GC, PDB, and DB Proposals for Pass/Fail evaluation, qualitative evaluation of Financial Proposals is not typically required. DBPrice Proposals are typically not required for CM/GC and PDB. For P3, Financial Proposals may require qualitative evaluation by the FC.

##### 4.5.4.1 Price Proposals

Individual Price Scores are determined at time the sealed Price Proposal is opened, after completion of the Technical Proposal evaluation and scoring process, and the Financial Proposal evaluation process have been completed. Price scores are calculated by determining the ratio of the lowest price to each other price, and applying that ratio to the previously determined points available for price to the lowest price. The points available for price must be at least 50% of the total points for evaluation in DB.

### 4.5.5 Optional Oral Presentations

NDOT may schedule interviews (Oral Presentations) with the Proposers, at the SC's sole discretion, to clarify information provided in the Proposals. If determined necessary, the Oral Presentations will be held with all Respondents, be part of the final evaluation process, and occur prior to the TC consensus meeting. The applicable guidelines for conducting Oral Presentations are:

- The SC will determine which NDOT participants in the Proposal evaluation process will participate in Oral Presentations, and the NDOT Agreements Engineer will notify those individuals accordingly.
- Proposer attendees should be limited: 1) on large and complex projects, no more than eight representatives per Proposer team and 2) on small to medium projects, no more than five representatives per Proposer team. These suggested limitations are presented as a general guideline; final determination of limitation should be determined by NDOT based on individual project scope, complexity, and size.
- Oral Presentations will be scheduled to last 30 to 60 minutes depending on the needs of the project.
- Formal presentations may or may not be required. At a minimum, Oral Presentations would consist of Proposer responses to NDOT-developed questions seeking to clarify issues in the Proposals. Except for their Proposals, Proposers will bring no exhibits, displays, or other documentation to the Oral Presentation except as specifically allowed by NDOT.
- If Oral Presentations are held, the SC may develop and transmit to the Proposers prior to the Oral Presentations additional procedures for such Oral Presentations.
- Oral Presentations may be recorded by videotape or other means at NDOT's discretion.

### 4.5.6 Selection Process

The NDOT Project Manager will determine the Total Proposal Score for each Proposal according to the information identified in the ITP.

Once the NDOT Project Manager has determined each Total Proposal Score and assigned rankings to the Proposals based on such Total Proposal Scores, the NDOT Project Manager will present the selection recommendation to the SC. The NDOT SC may:

- Accept the NDOT Project Manager's recommendation,
- Request the TC present an explanation of the evaluation process and potentially revisit portions of the evaluation, or
- Reject the recommendations and cancel the procurement.

Upon acceptance of the evaluation results, the SC will issue, or will authorize the NDOT Agreements Engineer to issue, a Notice of Intent to Award to the selected Proposer and commence finalization of the Contract Documents.

### 4.5.7 Information Release

Information regarding the contents of Proposals, the input of Advisors, the reviews/deliberations of the Technical Committees, recommendations to the SC, or other information relating to the evaluation process will be 1) released only to authorized persons and 2) made available only with the authorization of the NDOT Agreements Engineer or their designated representative.

#### 4.5.8 Notification and Debriefing

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process.

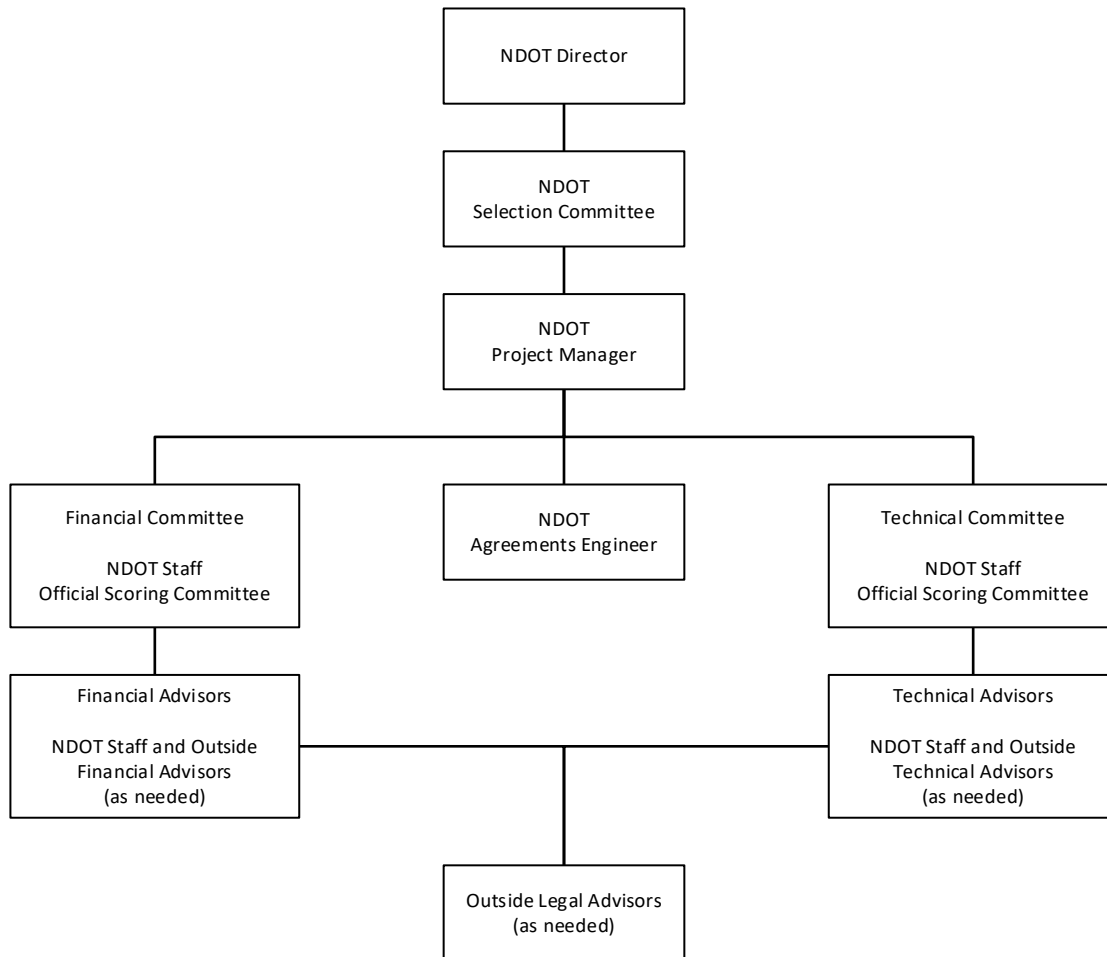
Those Proposers that are not selected will be contacted by the NDOT Project Manager, or their designee, and given the opportunity to request a debriefing, which may be conducted by a designee of the NDOT Project Manager at the discretion of NDOT. The NDOT Project Manager or their designee will coordinate with the Chairperson of the Technical Committee and/or Financial Committee to schedule such debriefings. Debriefing participants may include the Technical Committee Chairperson, legal counsel and/or any other person designated by the NDOT Project Manager. Only information pertaining to the Proposal submitted by the Proposer attending a debriefing will be shared with that Proposer. Proposals submitted by other Proposers will not be discussed.

#### 4.5.9 Protests

Any interested party may protest the final selection. The protest must be in writing and personally delivered or sent by certified mail, return receipt requested, to the NDOT Agreements Engineer. The protest is barred if it is received by the NDOT Agreements Engineer more than seven calendar days after the NDOT announcement of the final selection.



**Figure 4-2. Proposal Evaluation Organization for Large Projects**



## 4.6 Quality Assurance and Quality Control

### 4.6.1 Goals of the Quality Assurance and Quality Control Plan

An APDM contractor should develop and implement a project specific *Quality Assurance (QA)/Quality Control (QC) Plan* that:

- Establishes comprehensive quality management procedures;
- Integrates the quality goals of the design, construction, operation, and maintenance elements of the project, as applicable;
- Defines the minimum standards and procedures for quality management; and
- Assigns the responsibilities for specific quality management functions.

The description of the quality management program in this [Section 4.6](#) is not intended to be all encompassing, but to give an APDM contractor and NDOT flexibility and a general framework, within which to design a program that best fits the needs of the project and both parties. Furthermore, some project elements, such as design, operation, or maintenance, may not be applicable to some APDM.

### 4.6.2 Quality Assurance and Quality Control Responsibilities

**General.** For all APDMs, the quality responsibilities must be specified in the procurement documents whether the responsibility belongs to NDOT, and APDM contractor, or a third party as deemed appropriate by NDOT.

**APDM Contractor Responsibility.** An APDM contractor is responsible for fully complying with the project's quality management program as defined in the *QA/QC Plan*. Although quality responsibilities are project specific, the APDM contractor is generally responsible for the various QA/QC functions in accordance with [Table 4-6 \(APDM Contractor QA/QC Responsibilities\)](#).

**Table 4-6. APDM Contractor QA/QC Responsibilities**

APDM	Design QA/QC	Construction QA/QC	Operations QA/QC	Maintenance QA/QC
CM/GC	N/A	X	N/A	N/A
DB	X	X	N/A	N/A
PDB	X	X	N/A	N/A
P3	X	X	X	X

Maximizing project quality will require the daily attention and continued efforts of every worker who is involved with the design and construction of the project, from Notice to Proceed to Final Acceptance.

**NDOT Responsibility.** NDOT will perform Independent Quality Assurance (IQA) activities in support of an APDM contractor's quality management program, performing quality management oversight and Owner Verification Testing (OVT) activities on the project. NDOT reserves the right to conduct or hire an independent consultant to conduct the QA portion of an APDM contractor's *Construction QA/QC Plan*. For CM/GC projects, NDOT's designer will be responsible for design QA/QC functions.

### 4.6.3 Quality Assurance and Quality Control Program

NDOT will set the requirements to which the APDM contractor must adhere in developing its QA/QC program. These requirements include defining the quality control procedures for design, construction, operation, or maintenance of the project, as applicable.

An APDM contractor would then use these requirements to develop a project specific QA/QC program. The QA/QC program must include distinct QA/QC plans for design, construction, and operations and maintenance, as applicable. Each plan should separately identify QC activities and QA activities.

NDOT may approve or partially approve the *QA/QC Plan* and may request modifications to the *QA/QC Plan* as it deems necessary. An APDM contractor will not be allowed to start any work until NDOT has approved the APDM contractor's *QA/QC Plan* for that type of work.

#### 4.6.3.1 Quality Assurance and Quality Control Documentation

An APDM contractor will need to maintain a record of internal QA and QC activities for the project. The *QA/QC Plan* will address, at a minimum, the following:

- How the APDM contractor would provide QA and QC for elements of the Project, including but not limited to, design standards and checking procedures, sampling, testing, inspection, management control, change management, document control, communication requirements, and non-compliant work corrective action plans to ensure that the work conforms to the contract requirements;
- How the APDM contractor's *QA/QC Plan*—for all elements (design, construction, operations, and maintenance, as applicable)—would be performed by a subcontractor, supplier, vendor, agent, or other entity with contractual obligations to complete design, construction, or operation and maintenance elements of the Project;
- How the APDM contractor's QA/QC organization functions, including the expected minimum number of full-time equivalent employees with specific QA or QC responsibilities; and,
- The relationship and interface between and among the QA and QC organizations and the design, construction, and operation and maintenance organizations to ensure that the decisions made by QA/QC personnel are not based upon the impact such decisions may have on the project's schedule, APDM contractor's performance or project profitability.

QA/QC will be an integral part of each Work package. As part of each application for payment that includes completed Work packages, an APDM contractor's designated Quality Assurance Manager must certify that each Work package has been completed in accordance with the Contract Documents, and that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to the respective Work package have been resolved. For DB, PDB, and P3 project delivery methods, the APDM contractor must submit with each application for payment verifiable evidence from the design manager of the QA/QC reviews, including any checklists, summary data, high-level/outline calculations or design checks, and evaluations of the work and the qualifications of the responsible personnel that completed the work, that the relevant QA or QC reviewer relied on to make his/her determination the work is complete and conforms to the requirements of the Contract Documents.

#### 4.6.3.2 Design Quality Assurance and Quality Control Plan

For CM/GC, NDOT will require its designer to perform the design QA/QC in accordance with NDOT standard requirements when hiring a designer. For DB, PDB, and P3 project delivery methods, the objective of the *Design QA/QC Plan* is to place the responsibility for conducting design QC reviews and performance of design QA duties solely with the Design-Builder, Progressive Design-Builder, or Private

Party, yet allow the NDOT to fulfill its responsibilities of exercising due diligence in overseeing the design process and design products.

The *Design QA/QC Plan* will direct and assure that all investigations, reports, calculations, plans, and specifications are prepared in accordance with accepted design and engineering practices in the State of Nebraska and the Contract Documents.

The *Design QA/QC Plan* will outline:

- The APDM contractor's internal QC procedures to be followed by the design QC personnel during project design; and
- The APDM contractor's internal QA procedures to be followed by the design QA personnel during development and subsequent review of the design program.

The APDM contractor will need to submit the final *Design QA/QC Plan* to NDOT for review and approval, either independently or as an integral part of the APDM contractor *QA/QC Plan*. NDOT will instruct the APDM contractor that beginning design before receiving approval of the *Design QA/QC Plan* from the NDOT will be at the APDM contractor's sole risk, and that NDOT reserves the right to withhold payment for Work performed prior to NDOT's approval of the *Design QA/QC Plan* will be accepted. If the proposed *Design QA/QC Plan* is unacceptable to NDOT, the Design-Builder shall modify and resubmit the *Design QA/QC Plan* as necessary to make it acceptable to NDOT. Once the *Design QA/QC Plan* is approved by NDOT, the Design-Builder shall not revise any portion without the prior written approval of NDOT.

#### 4.6.3.2.1 Design Quality Assurance and Quality Control Plan Contents

The *Design QA/QC Plan* shall describe and include at least the following:

- **Responsibilities.** Clear definition of the specific responsibilities of the design firm's internal design QC functions and the internal design QA duties.
- **Design QC/Design QA Procedures.** The design QC and design QA procedures for the design plans; specifications; reports; calculations, and other construction documents, organized by engineering disciplines (such as structural, civil, and utilities). These procedures shall specify measures to ensure that appropriate quality requirements are specified and included in design documents and to control deviations from such requirements. The APDM contractor shall not deviate from such procedures unless the deviations have been previously approved by NDOT in writing.
- **Independent Plan Checking.** The design QC and design QA procedures for ensuring independent checking of the preparation, verification, and back-checking of all plans, specifications, calculations, reports, and other submitted items. All critical structural design elements subject to failure shall include a set of independent calculations for checking purposes. Such checking shall be in accordance with accepted engineering practices of NDOT and the requirements of the Contract Documents. The checking engineers shall meet the qualification requirements indicated in RFP, and have equal or more relevant experience than the engineer(s) whose work is being checked.
- **Procedures for Early Construction.** Specific design QC and design QA procedures for items planned for early construction, including specific procedures for verifying the final design and identification of any computer programs used for design.
- **Identification of Design Personnel.** Clear identification of the designer and checker on the face of all final design documents. Plans, specifications, calculations, reports, and other documents

shall be certified, signed, and dated by the engineer in responsible charge for that item or element of the project.

- **Adequacy of Design.** Description of the level, frequency, and methods of checking the adequacy of the project design for all design documents.
- **Coordination.** Procedures for coordinating the various design activities that are performed by different individuals or firms for related tasks. The coordination procedures shall include the review, approval, release, distribution, and revision of documents involving such parties. These procedures shall ensure that conflicts, omissions, or misalignments do not occur between drawings or between the drawings and the specifications.
- **Personnel Qualifications.** Procedures to:
  - Ensure that the APDM contractor personnel are familiar with all the provisions of the Contract Documents concerning their respective responsibilities; and,
  - Verify the required education, training and certification (as appropriate) of personnel performing activities affecting or assessing the quality of the project design to ensure that such personnel achieve and maintain reasonable proficiency.
- **Standards.** Procedures to ensure that the project design is performed according to the *Design QA/QC Plan*, generally accepted engineering practices of NDOT, and the Contract Documents.
- **Documentation.** The specific responsibilities of personnel responsible for satisfying documentation requirements and procedures for meeting documentation requirements; for filing and retaining design criteria, reports, notes, calculations, plans, specifications, schematic drawings, and supporting materials needed during the final design; and for developing as-built records. The APDM contractor shall maintain, organize, and index all design documents using ProjectWise and On Base, or other program specified by NDOT, for document management, and make copies available to NDOT upon request.
- **Audits.** Procedures and schedules for the Design Quality Manager to audit the design firm's QC procedures.

#### 4.6.3.2.2 Design Quality Personnel

The design quality personnel positions should be identified by the APDM contractor in the *Design QA/QC Plan*.

- **Quality Manager:** The APDM contractor shall designate a Quality Manager who will:
  - Be responsible for management and certifying that the requirements in the *Design QA/QC Plan* have been met;
  - Have no involvement with project scheduling or production activities; and
  - Reports to the APDM contractor's Project Manager.

The APDM contractor shall not replace the Quality Manager without prior written approval by NDOT. Any request to replace the Quality Manager shall name a proposed replacement manager, include his/her qualifications, and include a statement that he/she will be available full-time within twenty working days of receipt of the NDOT's written approval of the replacement.

- **Design QA Staff:** The design QA staff shall include senior experienced engineers to perform audits and quality assurance functions as defined by the *Design QA/QC Plan*. An engineer shall

be considered a design QA engineer if he/she is a Registered Professional Engineer in Nebraska and has adequate relevant experience as detailed in the RFP.

- **Design QC Staff:** The design QC staff shall include experienced engineers to perform detailed checks of all design calculations and review of construction plans as defined by the *Design QA/QC Plan*. An engineer shall be considered a design QC engineer if he/she is a Registered Professional Engineer in Nebraska and has adequate relevant experience as detailed in the RFP.

#### 4.6.3.2.3 Design Quality Control

The APDM contractor's design QC as outlined in the *Design QA/QC Plan* shall require:

- The preparation of all design elements under the direct supervision of a Nebraska Registered Professional Engineer;
- Performance of a complete check of all calculations and review of all drawings prepared by the APDM contractor's designer. The APDM contractor's designer may not perform the design QC activities for his or her own work, but may be designated as the design QC for the portion of the work that he/she was not directly been involved with; and
- Review of the APDM contractor's approach when performing the project design, including processes, procedures, and documentation that were used.

**Design QC Certification.** The design QC reviewer shall certify that the check of all calculations and review of all drawings has been performed and meets the requirements of the *Design QA/QC Plan*.

#### 4.6.3.2.4 Design Quality Assurance

The APDM contractor's design QA as outlined in the *Design QA/QC Plan* shall require:

- Performance of periodic checks of the design QC process. The design QA check shall include a general review of all plans, reports, calculations, specifications, and supporting materials incorporated into the design documents;
- Review of QC documentation to ensure that all QC checks were performed by engineers not directly involved with the design; and
- Performance of record, documentation, procedures, and process audits, verifying that all design work complies with the approved *Design QA/QC Plan*.

**Design QA Certification.** The APDM contractor's Quality Manager shall certify, prior to any design submittal to NDOT that the design has been through the design QC and design QA process and meets the *Design QA/QC Plan* standards.

#### 4.6.3.3 NDOT Design Review Process

As part of the *Design QA/QC Plan*, NDOT will reserve the right to review as many design packages on the project as it deems necessary. After NDOT has performed a design package review, the APDM contractor shall address all comments and concerns raised by NDOT by revising the design and/or plans to demonstrate to NDOT's satisfaction that the revised design and/or plans complies with the Contract Documents requirements.

The APDM contractor's Design Manager shall oversee the performance of all the design and hold oversight review meetings. NDOT may participate in these oversight reviews. Under this procedure, the APDM contractor's Design Manager will provide NDOT with draft design plans for review and comment to confirm that the design work complies with the requirements of the Contract Documents.

Any review comments made by NDOT should be provided, in writing, to the APDM contractor. NDOT should provide timely reviews per the Contract Documents and (if and to the extent required) approvals of interim design submissions, drawings, specifications, and other design submittals consistent with the turnaround times set forth in APDM contractor's schedule, provided that NDOT has a set number of days after receipt of such submissions to act upon them.

In addition to contractual reviews, NDOT may conduct regular monthly progress meetings in which quality issues are reviewed, discussed, and addressed.

A typical flowchart showing the review process for APDM contractor's design process is provided as [Figure 4-3 \(Typical DB and P3 Design Review Process\)](#).

#### 4.6.3.3.1 Over-the-Shoulder Reviews

Over-the-shoulder reviews are informal examinations by NDOT of design documents during the project design process. Over-the-shoulder reviews will mainly assess whether the requirements and design criteria of the Contract Documents are being followed and whether the APDM contractor's design QA and design QC activities are being undertaken in accordance with the approved *Design QA/QC Plan*. The reviews may, at NDOT's discretion, include review of design drawings, electronic files, calculations, reports, specifications, geotechnical data, progress prints, computer images, draft documents, draft specifications and reports, other design documents, and any other relevant design information as requested by NDOT.

The intent of these reviews will be to check for concept, level of detail, design criteria, and fatal flaws. These reviews will not routinely include detailed calculation or drawing reviews, although NDOT will retain the right to perform detailed reviews of any item at any time. If mutually agreed upon between the parties, for specific review items, the over-the-shoulder review may consist of an exchange of electronic files between the APDM contractor's designer and NDOT.

#### 4.6.3.3.2 Formal Design Reviews

##### **CM/GC Project**

The formal design review process would typically follow NDOT's standard formal design review under a design contract with a consultant; however, the CM/GC Contractor would now be involved in each formal design review stage to offer cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, lifecycle analysis, staging, methods, efficiency, material procurement strategies, risk identification/ management, and other areas related to construction of the project feedback based on the CM/GC Contractor's experience.

##### **PDB Projects**

The formal design review includes the steps below. For each of these steps, the Progressive Design-Builder must perform design quality activities as specified in the *Design QA/QC Plan*, including performing the appropriate reviews, comment resolutions, and certifications.

- **Preliminary (30%) Design Submittal.** The Progressive Design-Builder must submit a *Preliminary (30%) Design Submittal* when the design is approximately 30% complete that includes items such as plans and reports that captures the major project elements, and enough information to confirm the project limits to determine impacts the NEPA footprint and right-of-way limits. In addition, the submittal must also include any deviations and/or exceptions to design standards.
- **Construction Phase Amendment Proposal.** The Progressive Design-Builder must submit a construction phase amendment proposal when the design is approximately 60-90 percent complete that includes more refined components included in the *Preliminary (30%) Design*

*Submittal*, but the submittal must demonstrate that the Progressive Design-Builder has a comprehensive understanding of the project goals and design requirements.

- **Final (100%) Design Submittal.** After the GMP has been accepted by NDOT and the PDB Agreement has been amended, the Progressive Design-Builder must submit *Final (100%) Design Submittal* when the design is 100% complete. This submittal must include all plans, specifications, and reports as required in the Contract Documents and must be essentially ready for bid/construction, minus signatures and any minor comments NDOT may have. After all minor NDOT comments have been addressed and the applicable components of the submittal have been signed and sealed, the Progressive Design-Builder prepares *Release-for-Construction Plans* in accordance with [Section 4.6.3.3.3](#).

### **DB and P3 Projects**

Throughout the design process for DB and P3 project delivery methods, the APDM contractor or NDOT may request formal design reviews/workshops to discuss and verify design progress and to assist the APDM contractor and/or its designer(s) in resolving design questions and issues.

Formal design reviews/workshops shall be conducted prior to each of the following mandatory submittals:

- **Preliminary Bridge Submittal.** The APDM contractor shall prepare and submit for NDOT review *Preliminary Bridge Submittal(s)* in accordance with the requirements in the technical provisions of the RFP.
- **Preliminary (30%) Design Submittal.** The purpose of the *Preliminary (30%) Design Submittal* is to obtain acceptance by the Design QC Manager of the APDM contractor's horizontal and vertical geometric design, bridge clearances, and limits of the project. NDOT will review for compliance.
- **Intermediate (65%) Design Submittal.** The purpose of the *Intermediate (65%) Design Submittal* is to ensure that the design is progressing in accordance with the requirements of the Contract Documents, applicable law, and the governmental approvals. The *Intermediate (65%) Design Submittal* shall also ensure that: 1) existing field conditions have been properly identified and addressed and 2) various design disciplines and elements of the project are being properly coordinated between the APDM contractor and persons responsible for adjacent work, appropriate landowners, utility owners, developers, railroads, and governmental agencies. The submittal shall consist of detailed construction drawings and specifications, including traffic control and sequencing plans, a completed drainage design, and supporting reports and calculations consistent with the Contract Documents. The *Intermediate (65%) Design Submittal* shall fully address all comments made by the design quality reviewers and NDOT on the *Preliminary (30%) Design Submittal*.
- **Final (100%) Design Submittal.** The APDM contractor shall submit the *Final (100%) Design Submittal* to NDOT for review and comment. Construction packages for individual work elements can be organized such that the final document package can be assembled into a construction document that could be used to construct the entire work and/or could be used with minor revisions for as-built plans. When the APDM contractor has completed the final design of an item or element and wishes to obtain NDOT's approval to proceed with construction thereof, the APDM contractor Quality Manager shall certify that: 1) the design meets all applicable requirements of the Contract Documents, applicable law, and the governmental approvals; 2) the design has been checked in accordance with the APDM contractor's approved *Design QA/QC Plan*; 3) the item or element is ready for construction; and 4) all required ROW has been secured, along with any and all approvals from governmental agencies, utility owners, and railroads (as needed). After certifying the above items 1 through 4, the APDM contractor may elect to go directly to the construction phase of any item or element at its own risk pending NDOT's review. The Design



Quality Manager will conduct a formal review with NDOT of the *Final (100%) Design Submittal* for said item or element. The *Final (100%) Design Submittal* shall consist of complete Design Documents, fully addressing all of the *Intermediate (65%) Design Submittal* review comments. All relevant documentation must be available for review, including the comments of the design QA and design QC staff reviewers, Design Quality Manager written certifications, copies NDOT's approval of deviations from design standards, and/or design exceptions (when necessary). In the event the APDM contractor has opted to move forward with construction, and the NDOT review reveals that design changes are needed, the APDM contractor shall accomplish such changes without further consideration for time or compensation.

NDOT's concurrence with the Design Quality Manager's acceptance statement will not constitute approval of the design or subsequent construction, nor relieve the APDM contractor of its responsibility to meet the requirements hereof. Irrespective of whether NDOT provides the APDM contractor with the authority to begin construction on elements of the project prior to completion of the entire design, the APDM contractor shall bear the responsibility to ensure that construction meets the requirements of the Contract Documents, applicable law, and the governmental approvals.

If NDOT determines that the final design package does not meet the requirements of the Contract Documents, applicable law, and applicable governmental approvals, NDOT will notify the APDM contractor in writing of any specific deficiencies in the final design package. Upon receipt of NDOT's comments, the APDM contractor shall correct such deficiencies and modify the final design package and (if necessary) the construction.

The APDM contractor must maintain a written record of all formal design reviews, including at a minimum the following:

- A list of the participants in attendance;
- Description of the items covered and discussed;
- Identification of discrepancies and comments, and a report on corrective actions (both those taken and those planned); and
- Identification of follow-up action items, due dates, the parties responsible for action items requiring resolution, and deadlines for resolution.

#### 4.6.3.3.3 Release-for-Construction Plans

*Release-for-Construction Plans* shall aid and facilitate design review by NDOT, and provide adequate information for safe, efficient, and high-quality construction. *Release-for-Construction Plans* are intended to allow construction to begin on segments or elements of the project as the design progresses and before final design is complete. *Release-for-Construction Plans* and submittals shall be submitted for NDOT review prior to starting construction of depicted segments or elements.

The APDM contractor may proceed with construction of certain elements or portions of the project in accordance with *Release-for-Construction Plan* before the design of the entire project has been completed. NDOT will notify the APDM contractor in writing of its acceptance or rejection of the *Release-for-Construction Plan*.

The APDM contractor will need to acknowledge and agree that it may not issue any Release for Construction plan until the Design Quality Manager has obtained approval of them from NDOT and applicable governmental entities, utilities, and railroads. Construction of any item, element, or phase covered by the Design Quality Manager's statement approving construction shall progress only to the extent covered by the design documents included in that approval, except as noted above in [Section 4.6.3.3.2](#). Before progressing further with construction, the APDM contractor shall complete the next phas

e of design or complete the final design, and obtain NDOT's concurrence. Any subsequent phases of design to be released for construction shall be checked and approved by the Design Quality Manager in the same manner as indicated above for formal design submittal reviews.

NDOT's concurrence with the Design Quality Manager's acceptance statement will not constitute approval of the design or subsequent construction, nor relieve the APDM contractor of its responsibility to meet the requirements hereof. Irrespective of whether NDOT provides the APDM contractor with the authority to begin construction on elements of the project prior to completion of the entire design, the APDM contractor shall bear the responsibility to ensure that construction meets the requirements of the Contract Documents, applicable law, and the governmental approvals.

If NDOT determines that the *Release-for-Construction Plan* does not meet the requirements of the Contract Documents, applicable law, and the governmental approvals, NDOT will notify the APDM contractor in writing of any specific deficiencies in the *Release-for-Construction Plan*. Upon receipt of NDOT's comments, the APDM contractor shall correct such deficiencies and modify the *Release-for-Construction Plan* and (if necessary) the construction.

#### 4.6.3.3.4 Oversight Visits

Throughout the design process, NDOT may make oversight visits to discuss and verify design progress and ascertain the overall progress of the project with respect to the APDM contractor's *Design QA/QC Plan*. If, in the sole opinion of NDOT, the APDM contractor is not meeting the goals and objectives of the *Design QA/QC Plan*, the APDM contractor shall suspend all project work and NDOT will withhold payment until work elements are brought back into compliance with the *Design QA/QC Plan*.

#### 4.6.3.4 Construction Quality Assurance and Quality Control Plan

The objective of the *Construction QA/QC Plan* is to place the responsibility for conducting construction QC inspection and testing and performance of construction QA duties solely with the APDM contractor, including coordination of NDOT's construction QA oversight and OVT processes.

##### 4.6.3.4.1 Construction Quality Assurance and Quality Control Plan Contents

The APDM contractor's *Construction QA/QC Plan* shall describe and include at least the following:

- **Authority.** Clear definition of the authority and responsibility for administering the APDM contractor's construction QA/QC program.
- **Work Force Participation.** Methods and procedures to obtain active participation of the APDM contractor's work force in construction QC activities to achieve a quality project.
- **Reporting Forms.** Reporting forms to be used by the responsible construction QC personnel.
- **Staffing Plan.** A construction QC organization and staffing plan that includes the period of time that each QC staff member will be on-site.
- **Staffing Qualifications.** Resumes of the key staff members, and the experience, knowledge, and skill levels of the construction QC staff.
- **Procedures.** Procedures for inspecting, checking, and documenting the work completed and for the inspection, examinations, and measurements for each operation (such as demolition, clearing, drainage, grading, surfacing, and paving).
- **Controlled Conditions.** Procedures to ensure that all activities affecting the quality of the project are accomplished under controlled conditions, using appropriate equipment for the task being performed.

- **Personnel Standards.** Procedures to ensure that the personnel performing construction QC activities meet or exceed all applicable standards of education, training, and certification.
- **Critical Elements.** Procedures to ensure that critical elements of the project as identified by the contract, are not started or continued without on-site inspection and testing by construction QC personnel and the appropriate NDOT staff.
- **Conformance and Performance.** Specific procedures to ensure that all work conforms to the requirements of the Contract Documents, governmental approvals, applicable law, and the design documents, and that all materials, equipment, and elements of the project will perform satisfactorily for the purpose(s) intended.
- **Compliance Criteria.** A requirement that all activities undertaken by or on behalf of the APDM contractor affecting the quality of the project shall be prescribed and accomplished by documented instructions, procedures, and appropriate drawings, all of which shall include quantitative and qualitative criteria to be used to determine compliance.
- **Purchase Compliance.** Measures consistent with NDOT standards that ensure that purchased materials, equipment, and services conform to the Contract Documents, governmental approvals, applicable laws, rules, regulations, and the design documents (including measures for source evaluation and selection, provision of objective evidence of quality furnished by subcontractors and suppliers, inspection at the manufacture or vendor source, and examination of products upon delivery).
- **Requests for Information (RFI) Procedures.** Procedures for processing RFIs to resolve discrepancies and/or questions in the *Released-for-Construction Plans* so that all changes are documented and approved by APDM contractor's design engineers and, as applicable, NDOT.
- **Coordination.** A program for coordination of all inspections and testing with the inspections and tests of governmental entities, railroad(s), and utility owners.
- **Adverse Conditions.** Procedures to ensure that conditions adverse to quality (such as failures, malfunctions, deficiencies, defective material and equipment, deviations, and other Nonconforming Work) are promptly identified and corrected; to ensure that the cause of the condition is determined and prompt corrective action taken to preclude repetition; and to document and report the identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken, to NDOT in writing and to appropriate levels of APDM contractor's management.
- **Instrumentation.** Procedures and personnel to be used to assure that specified instrumentation is installed and monitored in accordance with applicable specifications.
- **Certificates of Compliance.** The form and distribution of certificates of compliance.
- **Construction Staking.** Procedures for checking and verifying the accuracy and adequacy of construction stakes, lines, and grades established by the APDM contractor.

#### 4.6.3.4.2 Construction Quality Personnel

The APDM contractor construction quality personnel positions shall be identified by the APDM contractor in the *Construction QA/QC Plan*.

- **Quality Manager.** The APDM contractor shall designate a Quality Manager who will:
  - Be responsible for management and certifying that the requirements in the *Construction QA/QC Plan* have been met;
  - Have no involvement with project scheduling or production activities; and

- Reports to the APDM contractor's Project Manager.

The APDM contractor shall not replace the Quality Manager without prior written approval by NDOT. Any request to replace the Quality Manager shall name a proposed replacement manager, include his/her qualifications, and include a statement that he/she will be available full-time within twenty working days of receipt of the NDOT's written approval of the replacement.

- **DB Construction QC Staff.** Each person on the APDM contractor's and subcontractors' construction work force is considered to be a member of the APDM contractor's QC staff, as each and every one is responsible for the quality of the project. Personnel responsible for performing the quality control inspection shall be knowledgeable and receive training to perform their quality control duties. Personnel performing quality control inspection shall be knowledgeable and certified in the inspection methods and procedures.
- **DB Construction QA Staff.** The APDM contractor shall assign construction QA personnel to perform material sampling/testing of all construction activities performed and materials incorporated into the project by any member of the APDM contractor's group. Personnel performing quality assurance sampling and testing shall be knowledgeable and certified in the testing and sampling methods and procedures.

#### 4.6.3.4.3 Construction Quality Control

The APDM contractor's construction QC as outlined in its *Construction QA/QC Plan* shall:

- Review the preparation of all Portland cement concrete and hot-mix asphaltic concrete mix designs by a Nebraska Registered Professional Engineer;
- Observe and perform daily field inspections of all project construction work and materials, and prepare a daily construction QC report to document the inspections;
- Review sampling and testing of all materials during the crushing, screening, or manufacturing processes to ensure materials meet the specifications of the project; and,
- Review the APDM approach when performing the project construction including any processes, procedures, and documentation that were used.

**Construction QC Documentation.** The APDM contractor QC staff shall maintain construction workmanship and materials quality records of all inspections and tests performed per the approved *Construction QA/QC Plan*, and report results to allow timely and accurate decisions on workmanship and material quality issues.

#### 4.6.3.4.4 APDM Contractor's Construction Quality Assurance

APDM contractor's construction QA as outlined in the *Construction QA/QC Plan* shall:

- Have the authority to stop portions of project if the *Construction QA/QC Plan* is not being implemented correctly;
- Perform material sampling and testing on the project;
- Audit the APDM contractor's records, documentation, procedures, and processes to verify compliance with the approved *Construction QA/QC Plan*;
- Review and certify all Portland cement concrete and hot-mix asphaltic concrete mix designs;
- Perform spot checks on construction alignment and grades; and,
- Retain authority to order a cessation of portions of or the entire project when unsafe conditions occur.

**Construction QA Certification.** The APDM contractor's Quality Manager shall certify that the construction has been through the construction QC and construction QA process and meets the *Construction QA/QC Plan* standards.

#### 4.6.3.4.5 NDOT Quality Assurance Acceptance

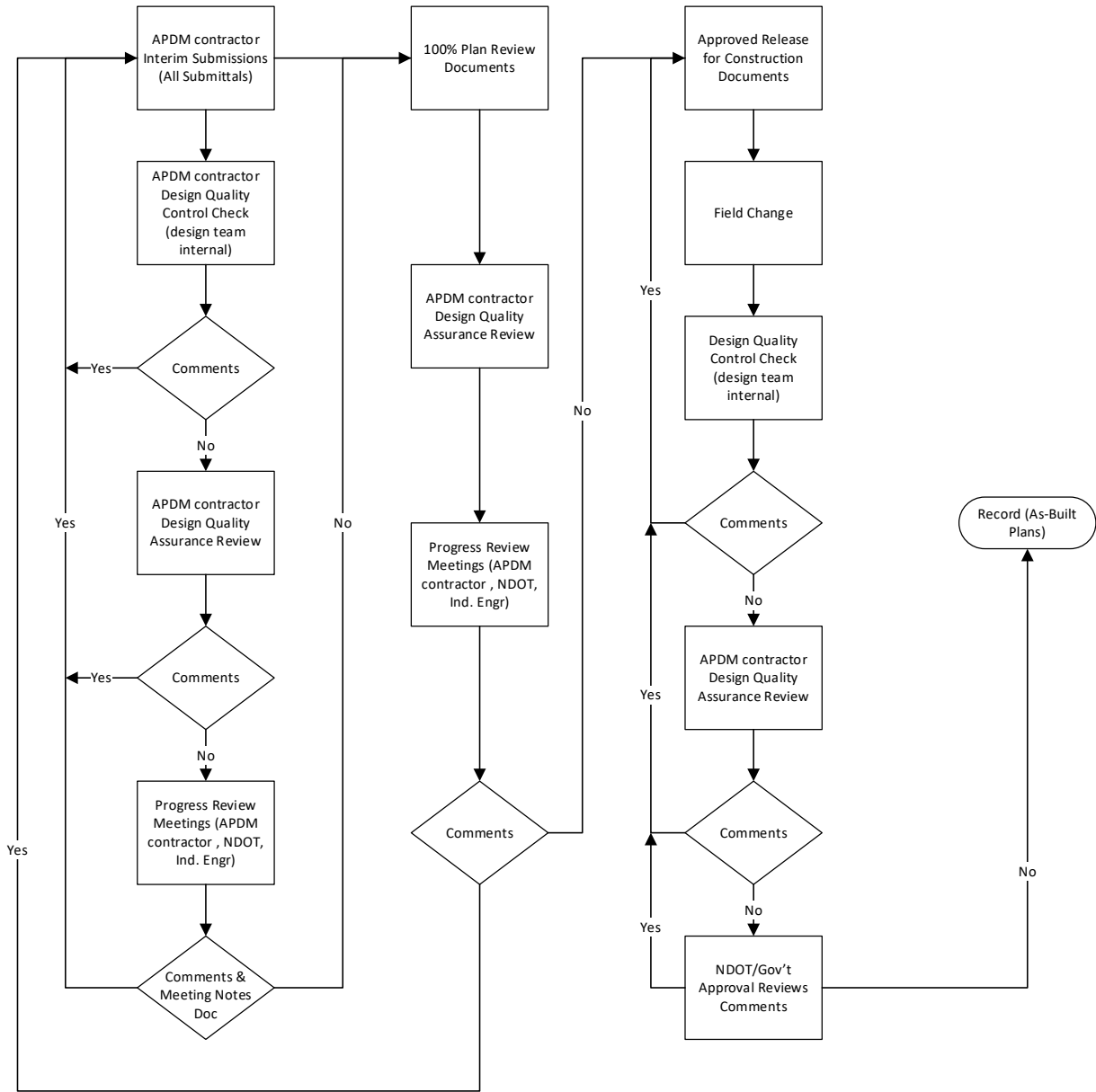
NDOT may hire an independent consultant to verify that the APDM contractor is following the project's *QA/QC Plan*. The APDM contractor shall furnish, upon request by NDOT or its consultant, all documentation related to inspection and materials testing. The NDOT or its consultant will perform an independent verification sampling and testing to verify the results of the QA/QC testing. If the results of the verification testing do not confirm the APDM contractor's QA/QC testing results, the APDM contractor will provide documentation to explain reasons for the difference. If NDOT or its consultant determines that the supporting documents does not satisfactorily explain the difference, the verification test results will govern. In the event the difference cannot be explained, the APDM contractor and NDOT or its consultant will perform Independent Assurance (side-by-side) testing to determine the cause of the difference. At each point in performance of the project at which specific inspection or approval by NDOT is required by the Contract Documents, governmental approvals, or applicable law, the APDM contractor shall not proceed further until NDOT has completed such inspection or approval or waived (in writing) its right to inspect or approve. If NDOT is not given adequate notice of and/or the opportunity for prior inspection of any work done or materials used, then NDOT may order that such work or materials be uncovered, removed, or restored at APDM contractor's expense, and the APDM contractor shall not be entitled to a time extension, even if the work proves to conform with the requirements of the Contract Documents, the governmental approvals, and applicable law after uncovering.

#### 4.6.4 Typical Quality Organization

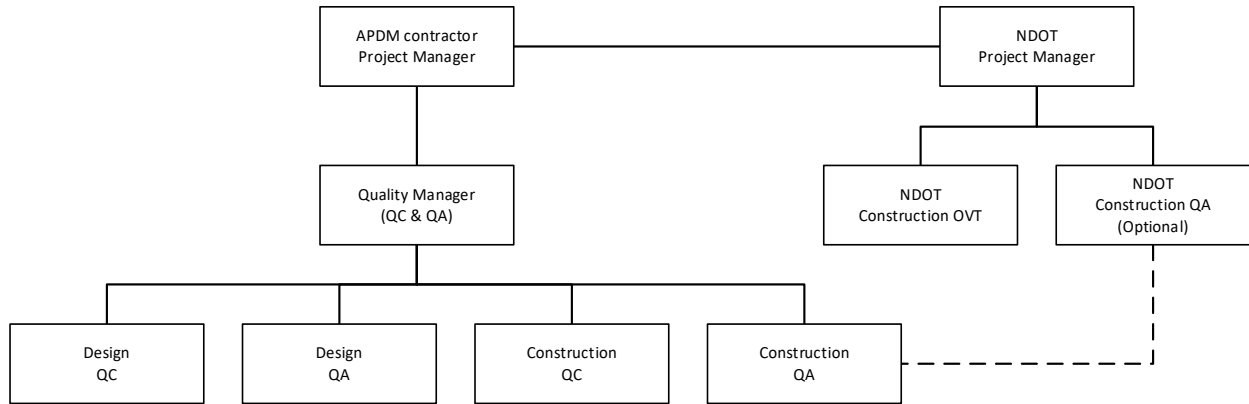
The APDM contractor's *QA/QC Plan* must include a description of its QC and QA organization, including the number of full-time equivalent employees with specific QC and/or QA responsibilities, and include an organization chart showing lines of authority and reporting responsibilities. The persons and organizations performing QC and/or QA functions shall have sufficient authority and organizational autonomy to identify quality problems and to recommend, initiate and verify implementation of solutions. Persons performing QC and/or QA functions shall be at an organizational level that ensures that they are not influenced by the impact of implementation of QC and/or QA measures on the project schedule or cost. To ensure the organizational independence, at the very least, the QA/QC will be established as a separate entity from the design and production organization and not reporting to the APDM contractor's Project Manager. All Key Personnel performing QC and/or QA functions must be exclusively designated to such and cannot be assigned to perform conflicting duties.

Figure 4-4 (*Typical ADPM Contractor's QA/QC Organization*) illustrates a typical APDM contractor's QA/QC organization.

**Figure 4-3. Typical DB and P3 Design Review Process**



**Figure 4-4. Typical ADPM Contractor's QA/QC Organization**



All Key Personnel performing QA or QC functions should be exclusively assigned to such functions and should not be assigned to perform conflicting duties or production work.

## 4.7 Risk Management

### 4.7.1 Introduction to Project Risk Management

This section provides information to NDOT Project Managers, project teams, and staff involved directly or indirectly with project risk management. It provides:

- Uniformity in project risk management activities.
- Techniques and tools for project risk management.
- Data requirements for risk analysis input and output.
- The project risk management role in overall project management.
- Guidance on how to proactively respond to risks.

Understanding project risks enables project teams to more effectively fulfill public service expectations. Assessing project risk and uncertainty informs decision-making in our project development and delivery mission. These decisions contribute to public safety and clarify project expectations. Informed project risk management adds value on many levels to every project we deliver.

Estimating the cost of transportation projects is a fundamental responsibility of NDOT and is directly affected by the risk management process. In recognition of the fundamental and strategic importance of cost estimating, these guidelines provide consistent practices across the agency to enhance methods for meeting this responsibility. Estimators must be shielded from pressures to prepare estimates that match any preconceived notions of what a project should cost. Estimators need to prepare estimates based on the scope of the project, the schedule of the project, and the bidding conditions that are anticipated.

Although risk management is an important part of all NDOT projects, including those delivered using APDM, all project risk management begins with internal NDOT meetings or workshops regardless of the project delivery method. The risk management process differs significantly depending on the APDM as described in this [Section 4.7](#).

### 4.7.2 CM/GC Project Risk Management Process

CM/GC is an APDM in which the owner enters in to simultaneous contracts for both the designer and the contractor. Due to nature of CM/GC contracting, the risk management under CM/GC is substantially different from that with DB and P3. Under DB and P3, the risk assessment and allocation are done during the RFP phase, allowing proposers to reflect the assignment of specific risk responsibilities in their Proposals. Under a CM/GC procurement, the final risk allocation and transfer will be performed jointly during the pre-construction phase, with the CM/GC Contractor working with the designer to:

- Reduce risk;
- Continuously update cost; and,
- Achieve a guaranteed maximum price at the end of design.

Because the CM/GC process reduces risk, the Guarantee Maximum Price (GMP) for construction is expected to be less than for conventional DBB projects.



#### 4.7.2.1 CM/GC Risk Workshops

During the pre-construction phase of the CM/GC project, NDOT, the designer, and the CM/GC Contractor will hold one or more risk workshops to discuss various elements of risk. The outcome of each risk workshop will be the allocations of risks that will apply during the remaining design effort and during the construction services phase of the *CM/GC Construction Contract*. The NDOT project team should plan for a limited number of half-day meetings to be held, during which risk philosophy, issues and allocation will be discussed by NDOT, the designer, the CM/GC Contractor and possibly other relevant stakeholders.

The risk workshops conducted during the CM/GC project delivery method and other APDM processes are similar, with both addressing as nearly a comprehensive a list of risk elements as possible, consistent with the specific project scope, project delivery method, and the extent to which design has been advanced at the time.

The designer must identify potential risks associated with the project during the development of the project similar to what is done on a project using DBB project delivery method. However, with the CM/GC risk workshops, having the input from the CM/GC Contractor will provide an additional viewpoint regarding the impact of individual risks on the project. A process diagram that illustrates the potential timing of multiple risk workshops while using the CM/GC project delivery method is provided in [Figure 4-5 \(CM/GC Design Process and Risk Workshops Flowchart\)](#).

### 4.7.3 DB Project Risk Management Process

Risk management, as an integral part of project management, occurs on a daily basis. With proactive risk management, we look at projects in a comprehensive manner, and assess and document risks and uncertainty. The essential steps for risk management for DB projects are provided below.

#### 4.7.3.1 Risk Management Planning

Risk management planning is the systematic process of deciding how to approach, plan and execute risk management activities throughout the life of a project. It is intended to maximize the beneficial outcome of opportunities and minimize or eliminate the consequences of adverse risk events.

Prior to preparing the procurement documents for a project, the NDOT project team may conduct an internal project risk analysis meeting, to develop the initial *Risk Allocation Matrix* to be used in making the initial or conceptual level risk recommendation. This meeting may take the form of an all-day workshop but may be accomplished more informally by NDOT staff depending upon the size and complexity of the given project scope. After shortlisting of DB Respondents, and during review of the draft RFP by the shortlisted Respondents, the initial *Risk Allocation Matrix* may be updated based on feedback obtained from Proposers through group and/or one-on-one meetings, or through a risk workshop. For each element of risk, the Proposers would indicate whether they can accept the risk, require the allocation to be modified (typically by providing suggested contract language), or cannot accept the risk.

#### 4.7.3.2 Assignment of Project Risk

Risk identification involves determining which risks might affect the project and documenting their characteristics in terms of magnitude of impacts and probability of occurring. Risk assignment involves identifying which party of parties will be responsible for each risk. Both types of information are included in the *Risk Allocation Matrix*.

The following recommended practices are not intended to be rigid requirements, but are intended to be flexible guidelines to be modified to meet the specific needs associated with each project.

- **Environmental Clearances.** NDOT is typically responsible for complying with State and Federal requirements and will be the signatory on many documents, such as records of decision and permit applications. Although a Design-Builder may provide information to support a permit application, they cannot control the actions or timing of third-party regulatory agencies. For most projects, NDOT will provide allowances for the required application time as the associated delay risks could be significant and could result in higher proposal prices.

Other permits required for construction trades or for temporary construction impacts of convenience are assigned to the Design-Builder.
- **Public Information.** As the project owner, NDOT is typically responsible for the risk of project public endorsement. This assignment of risk is based on NDOT having more directly relevant experience and greater expertise than a contractor in this area. Once the public has accepted a project, the Design-Builder should be tasked with the responsibility of developing and implementing a public participation program that provides ongoing information sharing and open communications.
- **Preliminary Plan.** NDOT will develop a DB project to only the minimum level necessary. Environmental requirements and risk definition may require NDOT to progress some portions of the design further than others. If the project is developed in too much detail, the opportunity to innovate and/or save time and possibly money may be reduced significantly or lost entirely.
- **Geotechnical.** NDOT is ultimately responsible for risks associated with changed and differing site conditions. Accordingly, NDOT must establish a baseline for Proposers to use to develop their Technical and Price Proposals. Preliminary geotechnical investigations will be conducted by NDOT and data provided to Proposers. The requirements for geotechnical investigation to be performed by the Design-Builder may be defined by NDOT and included in the RFP technical requirements. If deemed appropriate by NDOT for a particular project, Proposers may have an opportunity to request supplemental information during preparation of their Proposals. If no supplemental geotechnical information is offered by NDOT, each Proposer will need to obtain any additional data required.
- **ROW.** For small to mid-sized projects, ROW acquisitions required for the project should be complete, or imminent, prior to award of a DB contract; this prevents the need for Proposers to price the risk of delay and the risk of increased acquisition costs in their Proposals. Separate from the required ROW identified as part of preliminary design, the Design-Builder may identify additional beneficial or necessary ROW needs. In response, NDOT would assess the value or need of obtaining additional ROW prior to proceeding with the acquisition process. Adjustments to the contract would be made depending upon whether the additional ROW is necessary and/or beneficial to complete the project. On larger contracts, it can be advantageous to defer purchase of ROW until after selection.
- **Inter-Agency Agreements.** Agreements between and among NDOT and other government agencies, which are necessary for the completion of a project, will typically be obtained by NDOT prior to award of the DB contract to ensure that all commitments and requirements of these agencies are known when the Proposers prepare their Proposals. It is important to be aware that there may be projects for which it is advantageous to make such agreements part of the Design-Builder's scope of work.
- **Utility/Railroads.** For most projects, agreements with utility companies or railroads for relocation of their facilities will be obtained by NDOT prior to advertisement. However, there may be some instances in which it is advantageous to make such agreements part of the Design-Builder's scope of work. The arrangements for the actual construction work associated with such relocations will be coordinated by the Design-Builder to match their intended work program. When the construction work/coordination is allocated to the Design-Builder, it is imperative that the control

of the work also lie with the Design-Builder. NDOT should perform early subsurface utility engineering (SUE) and include the results with the procurement documents to provide as much information as possible to the Proposers that they can rely on to minimize the assumptions that they need to make in their Proposals.

- **Other Issues.** For design-build contracting, NDOT will review and consider the risk associated with the following items early in the project development process:
  - Permit requirements
  - Utility relocations
  - Funding
  - QA/QC responsibilities
  - Labor disputes
  - Weather conditions
  - Inflation
  - Hazardous materials
  - Third-party involvement
  - Third-party claims
  - Schedule
  - Incremental acceptance of work
  - Site conditions/Differing site conditions
  - Contract changes
  - Liquidated damages
  - Performance schedule
  - Contract terms
  - Payment methodology
  - Incentives/disincentives
  - Bonding requirements
  - Errors and Omissions Insurance
  - Force majeure
  - Liability for design
  - Performance guarantees/warranties

Allocation of the risks inherent in highway projects will also define ownership and responsibility for each task of the project delivery process. On a standard DBB project, NDOT acts as both the owner and engineer. This owner/engineer role requires that NDOT own most of the risk for the success of the design. In DB, the guiding principle should be one of assigning risk to the party (owner or Design-Builder) that can best manage the risk. One key question to be asked in risk allocation is, “How much is NDOT willing to pay a Design-Builder to assume risk that NDOT typically owns?” This question should be asked for each individual task to tailor the DB contracting approach to each specific project. Project risk must be considered in all decisions related to developing the contract provisions.

#### 4.7.3.3 Project Risk Allocation Matrix

On each DB project, the NDOT project team must determine how far to advance the preliminary design. Based on the experiences of multiple public agencies with DB projects and published viewpoints from the design-build industry, contractors, and designers, there appears to be a national consensus that development of a *Risk Allocation Matrix* is the key to making this determination.

Early in the project, the designer must begin to identify potential risks associated with the project and assign responsibility for each of these risks either to NDOT or to the Design-Builder. The NDOT project team must periodically revisit the risk assignments as more information becomes available about the project, and make modifications accordingly. NDOT staff must utilize the *Risk Allocation Matrix* throughout development and implementation of the project. This *Risk Allocation Matrix* will not only document which party has been assigned responsibility for a given risk, but it will also help the NDOT project team determine how far to advance each technical element within the preliminary design during development of the RFP.

For reference, an example DB *Risk Allocation Matrix* is shown in [Table 4-7](#) (*Design-Build Risk Allocation Matrix*). The *Risk Allocation Matrix* will need to be tailored to each individual project. The allocation of risk on

this example matrix was determined based on general expectations of the construction and consulting industry. This example *Risk Allocation Matrix* is not intended to be all-inclusive. The NDOT project team will have to carefully review all elements that could impact the specific project and tailor the matrix to fit the project. The *Risk Allocation Matrix* should be available for review throughout the entire RFP development process.

Note that a sample risk allocation matrix for the CM/GC project delivery method is not provided; this is because risk allocation in a CM/GC project is very much like that in DBB project, whereby the owner carries most of the risks. One notable exception is regarding price risk after the maximum construction price has been negotiated and agreed, at which time such risk is assumed almost entirely by the CM/GC Contractor as opposed to being shared by the contractor and owner as in DBB project delivery method. A sample risk allocation matrix for the PDB project delivery method is not provided; this is because risk allocation in a PDB project could be a blend of DBB and DB project. A sample risk allocation matrix for the P3 project delivery method is not provided; this is because risk allocation in a P3 project is very much like that in DB project.

#### 4.7.4 PDB Risk Management Process

During the pre-construction phase of the PDB project, NDOT and the Progressive Design-Builder will hold one or more risk workshops to discuss various elements of risk. The outcome of each risk workshop will be the allocations of risks that will apply during the remaining design effort and during the construction services phase of the PDB contract. The NDOT project team should plan for a limited number of half-day meetings to be held, during which risk philosophy, issues and allocation will be discussed by NDOT and the Progressive Design-Builder and possibly other relevant stakeholders.

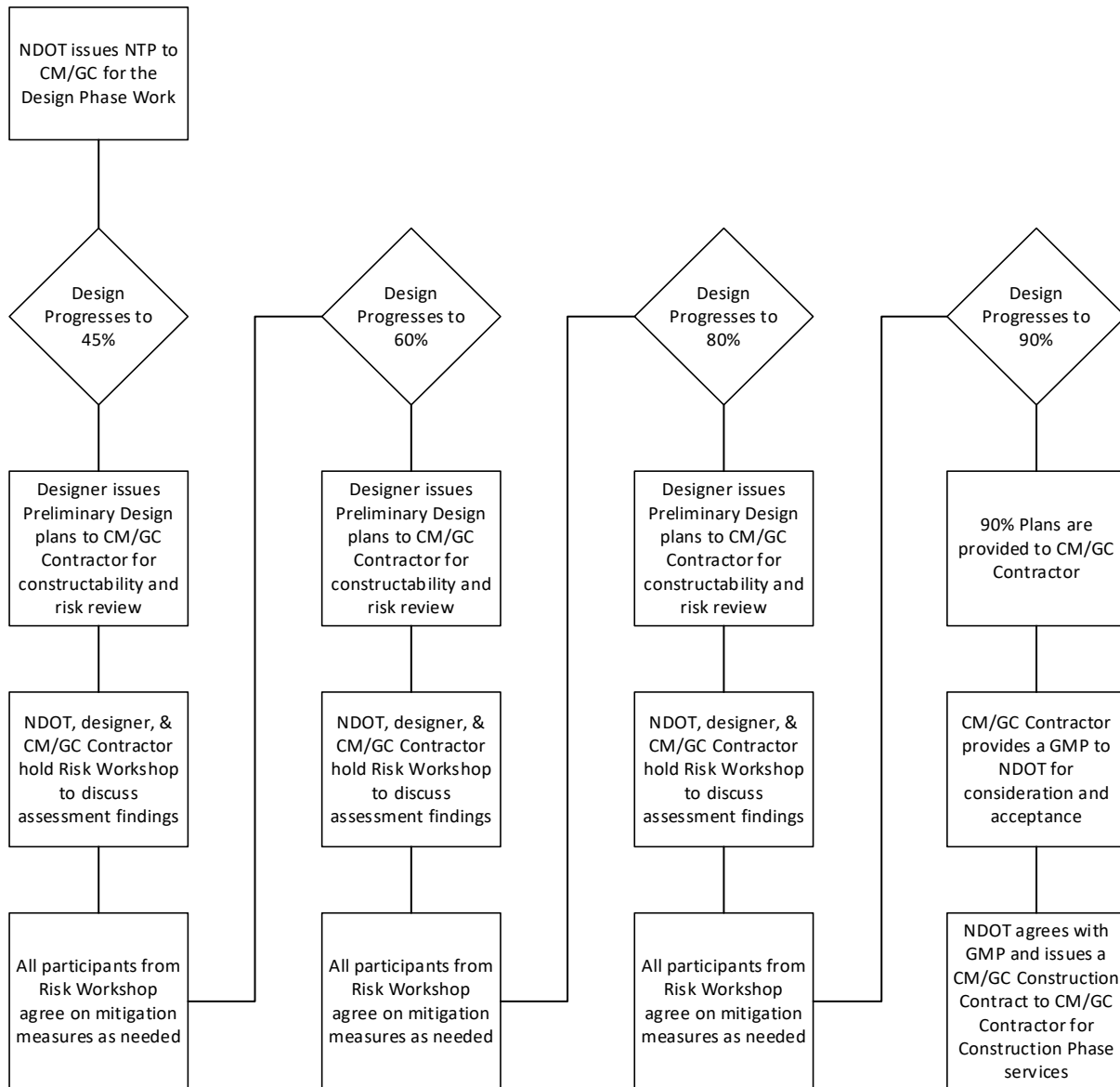
The risk workshops conducted during the PDB project delivery method and other APDM processes are similar, with both addressing as nearly a comprehensive a list of risk elements as possible, consistent with the specific project scope, project delivery method, and the extent to which design has been advanced at the time.

Similar to CM/GC project delivery method, input from both the designer and contractor, but as one entity (Progressive Design-Builder) will provide appropriate viewpoints on the impact of the individual risks on the project and to determine how to mitigate those risks.

#### 4.7.5 P3 Risk Management Process

Similar to DB projects, risk allocation for P3 projects allocates a majority of the project risk to the Private Party as opposed to being shared by NDOT as in DBB project delivery method. However, with P3 projects additional factors must be considered when determining the risk allocation and risk management. For example, with the Private Partner financing, operating, and/or maintaining the project, those factors may lead to determine that the Private Party may be more suitable to manage the risk than if another APDM was used for the project.

**Figure 4-5. CM/GC Design Process and Risk Workshops Flowchart**



**Table 4-7. Design-Build Risk Allocation Matrix**

Risk Element	Design-Bid-Build Process			Change	Design-Build Process	
	Owner	Shared	Contractor		Owner	DBer
Design Issues						
Definition of Scope	X				X	
Project Definition	X				X	
Establishing Performance Requirement	X				X	
Preliminary survey/base map	X				X	
Geotech Investigation - Initial Borings based on Preliminary Design	X				X	
Geotech Investigation - Initial Borings based on proposal	X			→		X
Establish/Define initial subsurface conditions	X				X	
Initial project Geotechnical Analysis/Report based on Preliminary Design	X				X	
Proposal specific Geotechnical Analysis/Report	X			→		X
Plan conformance with regulations/RFP	X			→		X
Plan accuracy	X			→		X
Design Criteria	X				X	
Conformance to Design Criteria	X			→		X
Design Review Process	X			→		X
Design QC	X			→		X
Design QA	X			→		X
Owner Review Time	X				X	
Changes in Scope	X				X	
Constructability of Design	X			→		X
Contaminated Materials	X				X	

Risk Element	Design-Bid-Build Process			Change	Design-Build Process	
	Owner	Shared	Contractor		Owner	DBer
Local Agency, Utility, Railroad Issues						
Identification of initial local agency impacts	X				X	
Obtaining Initial local agency permits	X				X	
Establishing initial local agency requirements	X				X	
Establishing final/actual local agency impacts	X			→		X
Modifications to existing local agency permits	X			→		X
Identification of initial utility impacts from Preliminary Design	X				X	
Establish initial Utility Locations / Conditions	X				X	
Defining required utility relocations from Preliminary Design	X				X	
Relocation of utilities prior to contract	X				X	
Relocation of utilities under agreement during contract			X			X
Modified agreement with private utility based on Final Design	X			→		X
Modified agreement with public utility based on Final Design	X			→		X
Damage to Utilities under Construction			X			X
Verification of Utility Locations/Conditions	X			→		X
Coordination with Utility Relocation Efforts during contract		X		→		X
Unforeseen delays - Utility/Third Party	X				X	
Utility/Third Party Delays resulting from proposal/mod design	X			→		X
Identification of RR impacts based on preliminary design	X				X	
Obtaining initial RR agreement based on preliminary design	X				X	
Coordinating with RR under agreement	X			→		X
Other work/Coordination		X		→		X
Third Party Agreements (Fed, Local, Private, etc.)	X				X	

Coordinating with Third Parties under agreement  
 Coordination/collection for third party betterments  
 Coordination with Other Projects  
 Coordination with Adjacent Property Owners

	X	
	X	
	X	
	X	

→  
→  
→  
→

	X
	X
	X
	X

Risk Element

Construction  
 DBE compliance  
 Safety / Safety QA  
 Construction Quality/Workmanship  
 Schedule  
 Materials Quality  
 Materials documentation  
 Material availability  
 Initial performance requirements of QA Plan  
 Final Construction/Materials QA/QC Plan  
 Construction/Materials QA  
 Construction QC  
 Construction QA Procedural compliance auditing  
 Construction IA testing/inspection  
 Construction Staking  
 Erosion Control  
 Spill Prevention  
 Accidents within work zone / liability

Design-Bid-Build Process		
Owner	Shared	Contractor
		X
		X
		X
		X
		X
		X
		X
X		
X		
X		
		X
X		
X		
	X	
	X	
	X	
		X

Change

→  
→  
→  
→  
→  
→  
→

Design-Build Process	
Owner	DBer
	X
	X
	X
	X
	X
	X
	X
X	
	X
	X
X	
X	
	X
	X
	X
	X



Third Party Damages			X			X
Operations and Maintenance During Construction			X			X
Maintenance under Construction - new features			X			X
Maintenance under Construction - exist. features			X			X
Maintenance of Traffic		X				X
Quantity/Cost of callbacks	X					X
Availability of callbacks	X				X	
Damage to Utilities under Construction			X			X
Falsework			X			X

Risk Element	Design-Bid-Build Process			Change	Design-Build Process	
	Owner	Shared	Contractor		Owner	DBer
Construction			X			X
Shop Drawing			X			X
Equipment failure/breakdown			X			X
Work Methods			X			X
Early Construction / At Risk Construction		X				X
Community Relations	X				X	
Performance of defined mitigation measures	X					X
Warranty	X					X

Force Majeure / Acts of God						
Strikes/Labor Disputes - on site labor	X					X
Tornado/Earthquake	X				X	
Epidemic, terrorism, rebellion, war, riot, sabotage	X				X	

Archaeological, paleontological discovery \*\*  
 Suspension of any environmental approval \*\*  
 Changes in Law  
 Lawsuit against project  
 Storm/Flooding  
 Fire or other physical damage

X		
X		
X		
X		
X		
X		

X	
X	
X	
X	
X	
X	

Differing Site Conditions/Changed Conditions  
 Changed Conditions  
 Differing Site Conditions

X		
X		

X	
X	

Completion and Warranty  
 Establishment/definition of any risk pool  
 Long term ownership / Final Responsibility  
 Insurance

X		
X		
		X

X	
X	
	X

Note: \*\* Will ultimately roll over to Environmental

## 5.0 Construction Manager/General Contractor

### 5.1 Procurement Methodology

#### 5.1.1 Introduction

The CM/GC project delivery method is an integrated team approach to the planning, design, and construction of a project. The CM/GC project delivery method has been developed as a result of public owner demands to enhance quality of the design product, decrease cost, compress the delivery period, and better plan for and manage risks. Primary characteristics of this project delivery method includes:

- Early participation of a contractor to provide input to the designer regarding construction phase considerations, such as constructability, cost implications of design decisions, construction phasing and materials issues.
- Compressed overall project delivery schedule due to elimination of the construction contract procurement cycle and enhanced contractor understanding of the design.
- A GMP for construction is negotiated between the CM/GC Contractor and NDOT at the conclusion of the pre-construction phase, providing NDOT with a high level of price certainty.

The CM/GC project delivery method consists of two phases, a pre-construction phase and a construction phase. During the pre-construction phase, under a *Pre-Construction Agreement*, the CM/GC Contractor acts as a construction manager consultant working with the designer to offer cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, lifecycle analysis, staging, methods, efficiency, material procurement strategies, risk identification/ management, and other areas related to construction of the project feedback based on the CM/GC Contractor's experience. This process also allows the owner to be an active participant during the design process and make informed decisions on design options based on the CM/GC Contractor's expertise.

When the design is sufficiently advanced, the CM/GC Contractor then has an opportunity to negotiate the construction of the project based on the design and schedule. If NDOT, based on feedback from the designer and an Independent Cost Estimator (ICE), agree that the CM/GC Contractor has submitted an acceptable price, NDOT issues a *Construction Contract* and the CM/GC Contractor then becomes the general contractor for the project.

#### 5.1.2 Roles and Responsibilities

##### 5.1.2.1 NDOT

NDOT remains primarily responsible for the success of a CM/GC project by selecting an appropriate project for the use of the CM/GC project delivery method, preparing the RFQs for the designer and the ICE, preparing the RFQ and RFP for the CM/GC Contractor, defining the scope of the *Pre-Construction Agreement* to be executed by the CM/GC Contractor, and performing other project development work.

NDOT's role in the pre-construction phase is very similar to the NDOT's role in the traditional departmental development process, with the exception of CM/GC Contractor involvement. NDOT will be engaged in the negotiation of the GMP with the selected CM/GC Contractor as well as the contract allowances and assumptions.

NDOT will provide guidance to the team during both the pre-construction phase and the construction phase. This can entail documenting background information on how the GMP was developed, the types of allowances, allowable mark-ups on *Supplemental Agreements*, and pay item documentation.

NDOT's responsibilities will include:

- Provide leadership;
- Hold the designer and CM/GC Contractor accountable;
- Review all potential *Supplemental Agreements* or *Contract Modification Request* forms; and
- Facilitate knowledge transfer of the process.

A typical CM/GC project organization chart is provided as [Figure 5-1](#) (*CM/GC Project Delivery Method Organization Chart*).

### 5.1.2.2 CM/GC Contractor

The CM/GC Contractor's main objective is to interface with NDOT and the designer during the pre-construction phase of the project. The CM/GC Contractor will be part of the team that reviews the plans for constructability and provides input on the sequence of construction. The CM/GC Contractor's technical experience, resources and approach (means and methods) will identify potential risks that can affect cost and schedule.

The CM/GC Contractor's candid discussions early in the design process allows the development of a clear, concise scope and validates NDOT's budget through compilation of a *Cost Model* that is frequently updated throughout the pre-construction phase until a GMP agreement is reached. The CM/GC Contractor will participate in value engineering type studies to abbreviate project schedule and reduce costs, without adversely affecting quality. The CM/GC Contractor's responsibility is to reconcile project quantities and develop a GMP for construction.

Other responsibilities may include, but are not limited to:

- Conducting a site investigation;
- Preparing construction estimates at various levels of design completion;
- Preparing a *Construction Management Plan*;
- Preparing a critical path method (CPM) project schedule for design and construction;
- Procuring long-lead time items (subject to NDOT approval);
- Permitting, subcontract preparation and packaging;
- Verifying design quantities; and
- Participating in risk analysis and risk mitigation sessions.

### 5.1.2.3 Designer

The project designer hired and under contract to NDOT, works collaboratively with the CM/GC Contractor. For the designer, there are many similarities between CM/GC and DBB project delivery methods. The same deliverables are required, with the exception that the contractor is now engaged and is part of the process.

If NDOT accepts the GMP and a *Notice of Award* is issued for the construction phase, there is no change to the designer's contract. The designer must complete and submit all deliverables in the final design scope of work. The designer has the potential to be working on both design and post design

tasks (i.e., construction phase support) for different elements of the project. Issues dealing with schedule slip during design are primarily the responsibility of the designer, who must develop a plan to get the design process back on track.

The designer also prepares a CPM schedule for design that the CM/GC Contractor incorporates into the pre-construction services schedule. The designer, in consultation with the CM/GC Contractor, will provide a bottom-up style construction estimate, including risk assessment, to NDOT at various levels of design completion. The following provides a minimum list of design completion targets that should be used in determining when construction estimates should be provided to NDOT:

- Baseline (30% design completion);
- Intermediate (60% design completion);
- Final (90% design completion);
- GMP (Greater than 90% design completion).

Per NDOT's *Conflict of Interest Policy*, the CM/GC Contractor shall not subcontract any portion of the contract to an entity that is, or has been, employed by the designer in the design of the project.

#### 5.1.2.4 Independent Cost Estimator

In accordance with Nebraska Revised Statute 39-2820, an independent cost estimate for the project must be performed prior to any construction activities. The independent cost estimate is a bottom-up construction estimate for the project and must be prepared independently from the designer and the CM/GC Contractor. Owners typically hire a separate firm to be the ICE to prepare the independent cost estimate. The independent cost estimates would be used by NDOT to compare and verify the construction estimates prepared by the designer and CM/GC Contractor at various times during the pre-construction phase of the project.

### 5.1.3 Procurement Process

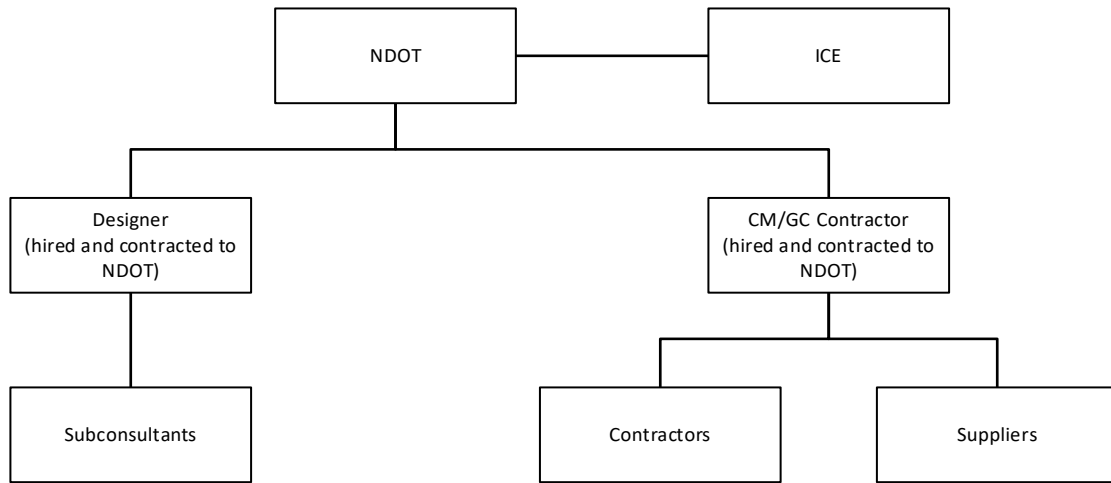
NDOT procurements using the CM/GC project delivery method, will include:

- NDOT will establish project specific goals early in the project development process. CM/GC procurement will not proceed without consensus and formal acceptance of shared project goals among key NDOT staff responsible for project success.
- In accordance with Nebraska Revised Statute 39-2817<sup>2</sup>, selection of a CM/GC Contractor is a two-step procurement process that includes an RFQ and RFP. *Figure 5-2 (CM/GC Project Delivery Method Procurement Process Flowchart)* provides a general overview of the RFQ process followed by the RFP process culminating in a contract award.
  - Prospective CM/GC Respondents will be shortlisted through the RFQ process. The most qualified Respondents will be shortlisted and invited to submit Proposals in response to an RFP.
  - NDOT will select the CM/GC Contractor through the RFP process. Proposals will focus on the Proposer's project understanding, approach to the construction manager role for the specific project, and approach to the construction of the specific project. Proposals may also include pricing information, such as labor rates and overhead rates applicable to the pre-construction phase. Proposal scores may be combined with SOQ and evaluation interview scores, to establish the final ranking for selection. Based on the final ranking for

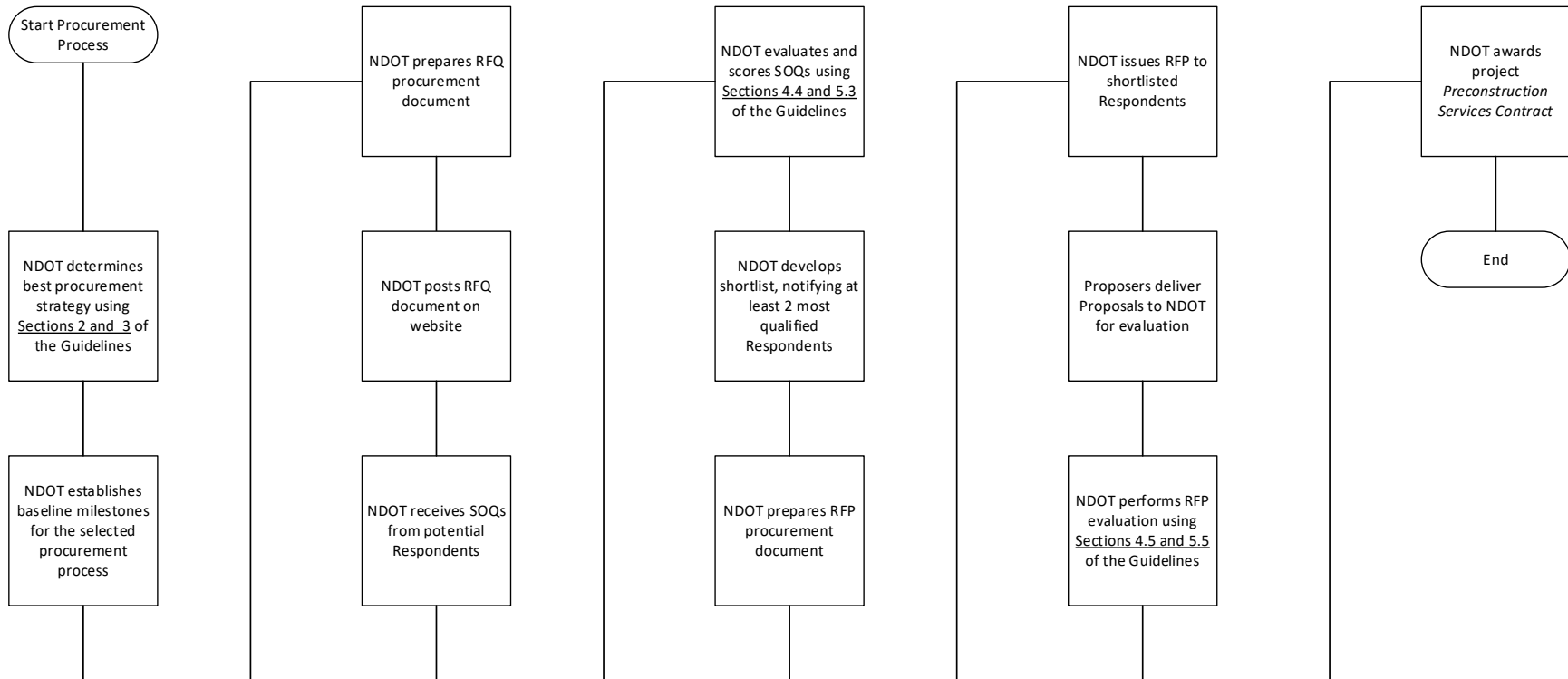
<sup>2</sup> <https://nebraskalegislature.gov/laws/statutes.php?statute=39-2817>

- selection a CM/GC Contractor, NDOT will award a *Pre-Construction Agreement* to perform the pre-construction services.
- Barring extenuating circumstances, NDOT would award the *Pre-Construction Agreement* to the responsive and responsible Proposer offering a Proposal that meets the criteria established by NDOT.
  - Concurrent with the procurement of the CM/GC Contractor, NDOT will select a designer through a separate, competitive, qualifications-based procurement to prepare the final design/construction documents.
  - NDOT may also procure an ICE through a separate, competitive, qualifications-based procurement to perform an independent, bottom-up, construction cost estimate to validate the price eventually negotiated with the CM/GC Contractor.
  - If NDOT did not establish or include a Target Maximum Price (TMP) in the RFP, the pre-construction phase scope of work can include requirements for the CM/GC Contractor to participate and assist in establishing a TMP for the project. The TMP that is developed with the CM/GC Contractor could give insight to NDOT where they may consider revising the scope of work of the project for cost reasons. The final GMP is usually based on design documents that are not less than ninety percent developed. Agreement on the final GMP initiates the second phase of the CM/GC contract. The work to start physical construction will be initiated once a final price is agreed by NDOT and the CM/GC Contractor and a separate *Construction Contract* is in place. The CM/GC *Construction Contract* will be similar to traditional DBB construction contracts.

**Figure 5-1. CM/GC Project Delivery Method Organization Chart**



**Figure 5-2. CM/GC Project Delivery Method Procurement Process Flowchart**





## 5.2 Request for Qualifications

NDOT will use a standard procurement process to select the CM/GC Contractor, beginning with the issuance of an RFQ and published in a newspaper of statewide circulation at least 30 days prior to the due date for SOQs. NDOT must also send RFQs electronically or by mail to any potential Respondent upon request. The RFQ must provide sufficient information about the project to enable Respondents to respond, and must identify the maximum number of Respondents NDOT will shortlist as qualified and therefore eligible to receive an RFP. Each prospective Respondent will be required to provide detailed information to address specific project elements and submit an SOQ that will be evaluated against a predetermined set of evaluation criteria. The RFQ will include, at a minimum, the following sections:

- **Background.** General information pertaining to the project, including but not limited to, roles and responsibilities, project description, project goals, project estimate, and project status.
- **Scope of Work Overview.** General overview of the scope of work for the CM/GC Contractor.
- **NDOT Regulations and Policies.** Regulations and policies that apply to the procurement and project.
- **Procurement Process.** Overview of the procurement process.
- **SOQ Submittal Requirements.** Requirements to submit SOQs.
- **SOQ Contents.** Required content to be included in SOQs.
- **Evaluation Process.** Evaluation process and procedures, scoring elements and weights, and notification process.
- **Communication, Public Information, and Organization Conflicts of Interest.** Communication disclosure of information, and conflict of interest requirements during the procurement.
- **Protest Procedures.** Information regarding applicable protest procedures.
- **Debriefing Meetings.** General information regarding debriefing process.
- **NDOT Reserved Rights.** List of rights being retained by NDOT concerning the procurement.

See [Appendix C \(CM/GC RFQ Example\)](#) for a typical example of an RFQ for a CM/GC.

## 5.3 Statement of Qualifications Evaluation

### 5.3.1 Evaluation Criteria

Consistent with [Section 4.4](#), CM/GC SOQs will be evaluated in three parts: 1) determination of responsiveness; 2) pass/fail evaluation, and 3) scored evaluation. Refer to [Section 4.4.5](#) for determination of responsiveness and for pass/fail evaluation.

#### 5.3.1.1 Scored Evaluation Criteria

Once the pass/fail criteria have been evaluated, NDOT will enter into the evaluation process where Respondents' SOQs will be scored using the ratings described in [Section 4.4.6](#). The scored evaluation criteria will be tailored for the specific project, but fall within the following guidelines. At a minimum, NDOT will include the following criteria:

- **Relevance, breadth, and depth of firm/team experience.** The objective will be to identify firms that demonstrate successful experience in or understanding of pre-construction services and

constructing projects that are directly relevant to the project being procured, in terms of their scope, size, and complexity. Project experience that is more recent would be considered more favorably than comparable experience that is less recent.

To achieve this measure, NDOT will identify relevant characteristics of the specific project being procured. These may include but are not limited to experience with: 1) specific types of transportation facilities; 2) highway and highway structures; 3) urban freeway or rural highway construction or reconstruction; 4) construction/reconstruction using innovative design, methods and/or materials; 5) construction in environmentally sensitive areas; 6) community relations; 7) ITS systems procurement, installation, and ITS systems; and 8) developing a team environment working towards project goals during performance of pre-construction services.

- **Relevance, breadth, and depth of Key Personnel experience.** The objective will be to determine the extent to which the identified Key Personnel have demonstrated successful experience at a comparable level of responsibility and authority to that proposed for the project being procured, on one or more project(s) of scope, size, and complexity similar to the project being procured. Relevance of project experience for Key Personnel will be evaluated using the same project characteristics identified for Respondent's team experience.

To achieve this measure, NDOT will establish preferred requirements for each Key Personnel role identified by NDOT in the RFQ. These preferred requirements may include but are not limited to: 1) overall number of years of experience; 2) number of projects that the Key Personnel held a similar role on past projects; and 3) past experience working jointly with owners and design firms. These preferred requirements will serve as target goals for evaluation purposes but should not be considered to be mandatory minimum requirements for a given position.

- In addition to the preferred requirements, Respondents will be required to provide, at a minimum, three references for each of the Key Personnel identified in the SOQ.

NDOT may decide, based on the complexity and size of the project, to expand the criteria and include some evaluation criteria that demonstrate the Respondent's understanding of the CM/GC project delivery method process. It should be mentioned that during the RFQ phase, detailed descriptions of the following approaches will not be project specific but more general in nature, showing an understanding of the CM/GC project delivery method process. To evaluate this understanding, the following criteria may be included:

- **General management approach to CM/GC project delivery method.** The objective will be to identify those Respondents that are able to demonstrate: 1) an understanding of and approach to how the CM/GC project delivery method process works and how it adds value to a project; and 2) how the Respondent's organization will contribute to the success of the project and meet NDOT's project goals.

### 5.3.2 Shortlisting

Based on the final SOQ scores, the SC will identify a shortlist of the most qualified Respondents to receive RFPs and be invited to submit Proposals. NDOT will shortlist at least two, but typically no more than three, Respondents that are the most qualified based on their SOQs. Pursuant to Nebraska Revised Statutes 39-2817(4), if only one SOQ is received, NDOT may continue or cancel the procurement. Only shortlisted Respondents will be provided with an RFP and invited to propose.

## 5.4 Request for Proposals

At the conclusion of the SOQ evaluation and shortlisting process, NDOT will provide the shortlisted Respondents the RFP and invite them to submit Proposals. Between the time the RFP is released and the Proposal due date, NDOT may hold meetings with all Proposers to confirm all participants' understanding of the RFP process. Proposers shall prepare Proposals in accordance with the requirements included in the RFP. Proposals received in response to the RFP will be evaluated against a predetermined set of evaluation criteria.

The primary purpose of the RFP is to outline the specific requirements for the Proposals, including any changes since the submittal of SOQs, pre-construction services approach, and construction work approach. The RFP will be organized (main sections) similar to the RFQ specified in [Section 5.2](#); however, additional components to be included in the RFP, must include the following:

- A project statement that contains information about the scope and nature of the project, as well as the NDOT budget for the project;
- A description of the project site, the schedule, and the estimated budget;
- The scope of services for the pre-construction services work;
- A copy of the proposed *Pre-Construction Agreement*;
- Identification of bonding and insurance required by law or by NDOT;
- The criteria that will be used for evaluation of Proposals, and the relative weight of each criterion;
- A statement that the CM/GC Contractor shall not be allowed to subcontract, assign, or otherwise dispose of any portion of the contract without the consent of NDOT, and that in no case shall the CM/GC Contractor be allowed to subcontract more than seventy percent of the work, excluding specialty items; and,
- Other information or requirements deemed appropriate by NDOT.

The following list includes additional components NDOT may request Proposers to describe or include within their Proposals, but NDOT should tailor the RFP based on the specific project requirements:

- General Management
- Management Approach
- Quality Control
- Project Controls
- Equal Employment Opportunity
- Subcontracting Plan
- Responsibilities of Subcontractors - Selection Plan
- DBE Utilization Plan
- Pre-Construction Phase
- Pre-Construction Approach
- Approach for working with the designer
- Risk Management
- Construction Phase

- Project Understanding
- Overall Construction Approach including Phasing
- Uninterrupted transportation services
- Innovative Approach
- Construction Safety Plan

See [Appendix D \(CM/GC RFP Example\)](#) for a typical example of a CM/GC RFP.

Proposals received in response to the RFP must remain sealed and shall not be opened until expiration of the Proposal due date specified in the RFP.

## 5.5 Proposal Evaluation

### 5.5.1 Overview

The objective of the RFP step of the CM/GC project delivery method procurement is to select the highest-ranked Successful Proposer with the legal, technical, financial, and management capability, capacity, and experience to successfully undertake and complete the pre-construction services and construction of the Project. The Proposal evaluation process essentially consists of three steps:

- Proposals are first screened for responsiveness and acceptability relative to pass/fail criteria. If a Proposal is deemed non-responsive or does not meet pass/fail criteria, the reviewers may request – through formal communication protocols – additional information and/or clarification necessary to address and potentially correct the determination of non-responsiveness and/or evaluation relative to pass/fail criteria. Refer to [Section 4.5.2](#) for further discussion of the determination of responsiveness and pass/fail evaluation.
- Proposals that are deemed responsive and that meet the pass/fail criteria are then evaluated relative to scored criteria identified in the RFP, which is essential to process transparency. As with the responsiveness and pass/fail screenings, reviewers may request additional information and/or clarification necessary to fairly evaluate the Proposals. At the conclusion of the evaluation of the scored criteria, each Proposal will have been assigned a Proposal score. Refer to [Section 4.5.3](#) for general guidance for Proposal score which is similar to technical Proposal evaluation.
- Once the Proposal scores are established for all Proposals, the total Proposal scores are calculated for all Proposals and the top Proposer selected.

### 5.5.2 Proposal Evaluation Categories

Final determination of the major evaluation categories will be driven by specific project needs as well as NDOT goals and objectives of the project. The major evaluation categories for the Proposal should include the following:

- Project Management Approach;
- Pre-Construction Services Approach; and
- Construction Work Approach.

Within each major evaluation category subfactors may need to be determined and identified in the RFP. Normal practice and accepted industry standard are to not indicate any points or weights for the evaluation subfactor, but only indicate that each subfactor contained in the major category is listed in

order of importance. When totaled under a major category, all subfactors shall not exceed the total points allowed for that individual major category.

### 5.5.3 Qualifications-based Selection Process

During the RFQ phase, NDOT may determine that SOQ evaluation results will be carried forward into the Proposal evaluation process. If SOQ evaluation results are not carried forward, the total Proposal score will be equal to the Proposal score discussed in [Section 5.5.1](#). If SOQ evaluation results are carried forward, the NDOT Project Manager will determine the total Proposal score for each Proposal by combining each Proposer's Proposal score and SOQ score in accordance with the predetermined relative weights established for the project.

Once the NDOT Project Manager has determined each total Proposal score and assigned rankings to the Proposals based on such total Proposal scores, the NDOT Project Manager will present the selection recommendation to the SC. The NDOT SC may:

- Accept the NDOT Project Manager's recommendation,
- Request the TC present an explanation of the evaluation process and potentially revisit portions of the evaluation, or
- Reject the recommendations and cancel the procurement.

Upon acceptance of the evaluation results, the SC will issue, or will authorize the NDOT Agreements Engineer to issue, a Notice of Intent to Award to the Successful Proposer and commence finalization of the Contract Documents.

NDOT has the right to reject any and all Proposals at no cost to NDOT. NDOT may thereafter solicit new Proposals or may cancel the CM/GC procurement process.

## 5.6 Award and Implementation

### 5.6.1 Execution of the Pre-Construction Agreement

After certification of the selection, NDOT may commence negotiations for the *Pre-Construction Agreement*, in accordance with Nebraska Revised Statutes 39-2819. Proposals may be withdrawn at any time prior to signing a *Pre-Construction Agreement*. The Successful Proposer will prepare a budget for pre-construction services with hours, direct labor rates and burdens, overhead, profit and expenses anticipated based upon an NDOT provided scope of service. The NDOT Project Manager will verify the Successful Proposer's pre-construction phase scope of work and the Procurement Manager will review the budget and negotiate any changes required with the Successful Proposer.

If NDOT and the Successful Proposer are unable to reach agreement on scope and budget, NDOT may terminate negotiations with the highest ranked Successful Proposer and begin negotiations with the firm with the second highest ranked qualifications. Once agreement is reached on a budget for services to be provided during the pre-construction phase, the NDOT Agreements Engineer will assemble the final contract. The *Pre-Construction Agreement* will be reviewed by the NDOT Project Manager for accuracy and completeness. The NDOT Agreements Engineer will transmit the final *Pre-Construction Agreement* to the CM/GC Contractor for execution. Once the *Pre-Construction Agreement* is executed by the CM/GC Contractor and NDOT, the *Pre-Construction Agreement* becomes effective. A copy of the executed *Pre-Construction Agreement*, along with a Notice to Proceed letter, will be mailed and/or electronically transmitted to the CM/GC Contractor and distributed to appropriate NDOT personnel.

If the NDOT is unable to negotiate a satisfactory *Pre-Construction Agreement* with any of the ranked Proposers, NDOT may either revise the RFP and solicit new Proposals or cancel the CM/GC solicitation. If NDOT solicits new Proposals through the same contract procurement process or another, the entities that submitted Proposals, but were unable to negotiate a *Pre-Construction Agreement* with NDOT shall be eligible to compete in the other contract procurement processes.

### 5.6.2 CM/GC Pre-Construction Scope of Work

An example of a CM/GC pre-construction services scope of work is provided in [Appendix E](#) (CM/GC Pre-Construction Services Scope of Work Example).

### 5.6.3 CM/GC Debriefings

As described in [Section 4.5.8](#), NDOT will provide the unsuccessful Proposers an opportunity to request a debriefing. Debriefings will not be scheduled to occur until after the *Pre-Construction Agreement* is finalized and executed.

## 6.0 Design-Build

### 6.1 Procurement Methodology

#### 6.1.1 Introduction

Employing the DB project delivery method is significantly different from the traditional DBB project delivery method in several ways; the three most important differences are the method of Proposer selection, the fact that the designer is working for the contractor instead of the owner, and the degree of owner involvement after Proposer selection. Unlike the separate, sequential contracts for design and construction found in DBB, a Design-Builder is selected based on a combination of qualifications and price, commonly referred to as Best Value, to perform both the design and construction roles. Also, unlike DBB in which the owner actively participates in the design process and reviews and approves a series of increasingly detailed levels of design, the owner does not actively participate in the design process in DB project delivery. All of these differences underscore the criticality of the owner having a clear understanding from the outset of its project goals and preparing procurement documents that will serve those goals, such as schedule acceleration, technology innovation, minimizing traffic impacts during construction, or minimizing impacts on environmentally sensitive sites.

#### 6.1.2 Roles and Responsibilities

##### 6.1.2.1 NDOT

NDOT remains primarily responsible for the success of a DB project by selecting a project for DB delivery, defining the scope of the work, determining prescriptive and performance-based requirements, and the overall program administration.

NDOT's responsibilities typically includes:

- Preparation of the RFQ and RFP, evaluation of SOQs and Proposals, determination of a shortlist of Respondents, and selection of a Design-Builder;
- Contract procurement, award, and administration;
- Providing available due diligence information and data;
- Acquisition of certain right-of-way (ROW) parcels and permanent easements;
- Obtaining certain environmental permits and approvals for the project;
- Seek master agreements and memoranda of understanding with certain utilities, agencies, and other agreements in connection with the project;
- Performance of preliminary surveying;
- Verification of compliance with the Contract;
- IQA and audits;
- Independent inspection and testing;
- Final Acceptance of the project facility and payment for work performed; and
- Oversight of Design-Builder relations with media, public, and public officials.

A typical DB project organization chart is provided as Figure 6-1 (*DB Project Delivery Method Organization Chart*).

### 6.1.2.2 Design-Builder

The Design-Builder is generally responsible for furnishing all labor, material, plant, equipment, services, and support facilities for the Project elements. Design-Builder is also responsible for the items listed below; however, the below list should be modified per project.

- Management of the project, design, and construction;
- Design and construction of all project components;
- Support NDOT in project-related public involvement activities;
- Coordination with project stakeholders, other contractors, and utility owners;
- Design quality;
- Construction quality;
- Environmental mitigation and compliance monitoring;
- Securing certain environmental and construction permits;
- Perform additional environmental investigations, monitoring, and investigation associated with or resulting from Design-Builder's activities;
- Maintenance and protection of traffic, including both temporary and permanent access to properties;
- Project safety and security;
- Perform preliminary and final engineering, such as surveys and geotechnical investigations;
- Management and remediation of harmful and hazardous materials;
- Drainage, stormwater management, and erosion control;
- Construction waste disposal and handling;
- Required clearances, licenses, construction easements, and permits for Design-Builder Work, Work sites, storage areas, etc., both on- and off-site;
- Ancillary works, such as temporary fencing, relocation of drainage, work sites, and temporary facilities works;
- Material location and storage, acquisition, permits, and transportation;
- Utility coordination and (as required) relocation, and protection of existing utilities;
- Site clearance; and
- Maintenance of the Project during the Contract period.

### 6.1.3 Procurement Process

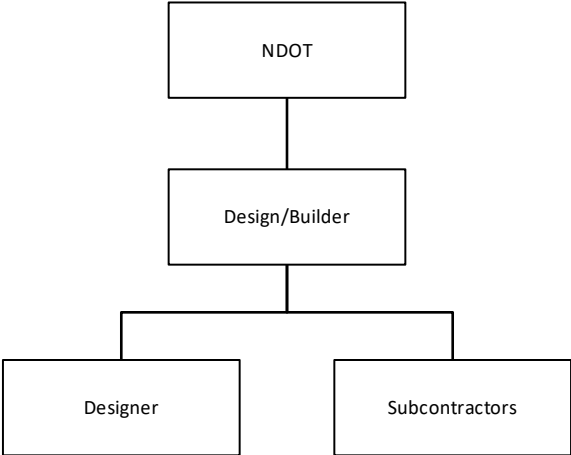
The following general policies are the basis of the NDOT DB procedures:

- NDOT will establish project specific goals early in the project development process. DB procurement will not proceed without consensus and formal acceptance of shared project goals among key NDOT staff responsible for project success.



- NDOT will follow a two-step procurement process that includes an RFQ and an RFP. [Figure 6-2 \(DB Project Delivery Method Procurement Process Flowchart\)](#) provides a general overview of the RFQ process followed by the RFP process culminating in a contract award.
  - Prospective DB Respondents will be shortlisted through the RFQ process. The most qualified Respondents will be shortlisted and invited to submit Proposals in response to an RFP.
  - NDOT will select the Design-Builder through a competitive, sealed, two-container Proposal method using Best Value selection criteria. One container shall contain the DB Proposer's Technical Proposal and the other container includes their Financial Proposal, including a separately sealed envelope with their Price Proposal. Proposals will focus on the Proposer's project understanding, approach to the Design-Builder role for the specific project, and approach to the design and construction of the specific project. NDOT will not review or consider alternative Proposals or Proposals with options, except as provided in the RFP Alternative Technical Concept (ATC) and Value-Added Proposal (VAP) processes.
  - Barring extenuating circumstances, NDOT would award the DB contract to the responsive and responsible Proposer offering a Proposal that meets the criteria established by NDOT and that is determined by NDOT to provide the Best Value through evaluation based upon the criteria set forth in the RFP.

**Figure 6-1. DB Project Delivery Method Organization Chart**



**Figure 6-2. DB Project Delivery Method Procurement Process Flowchart**





## 6.2 Request for Qualifications

The objective of the RFQ process is to determine the qualifications of the Respondents so that only the most qualified Respondents are shortlisted to receive an RFP and to submit detailed Proposals. The RFQ must be published in a newspaper of statewide circulation at least 30 days prior to the due date for SOQs. NDOT must also send RFQs electronically or by mail to any potential Respondent upon request. The RFQ must provide sufficient information about the project to enable Respondents to respond and identify the maximum number of Respondents NDOT will shortlist as qualified and therefore eligible to receive an RFP. NDOT's standard pre-qualification/shortlist process will not apply to DB Respondents; NDOT will rely solely on the RFQ process to identify the most qualified Respondents. The RFQ will focus primarily on the capabilities, experience, and past performance of the Respondents and Key Personnel regarding specific issues pertinent to the particular DB project, as well as team organization, QA/QC approach, current safety record, and financial capacity. The RFQ will include, at a minimum, the following eight sections:

- **Introduction and General Instructions.** Outline of general information pertaining to the project, including but not limited to, goals and objectives of the project, and roles and responsibilities.
- **Background Information.** General overview of the project including the proposed procurement schedule.
- **Content for SOQs.** Minimum requirements of the Respondent, Key Personnel, and project approach.
- **Evaluation Process.** Evaluation process and procedures, scoring elements and weights, and notification process.
- **SOQ Submittal Requirements.** Standard submittal information and formatting requirements.
- **Protest Procedures and Public Records Act.** Information regarding applicable protest procedures.
- **Debriefing Meetings.** General information regarding debriefing process.
- **NDOT Reserved Rights.** List of rights being retained by NDOT concerning the procurement.

The information requested in the RFQ considers the Respondent's SOQ preparation costs and is limited to the information necessary to shortlist the Respondents. The RFQ will not generally request a Respondent's detailed project approach and understanding; this information is included in the RFP after shortlisting.

The RFQ will not request more experience on the part of Key Personnel than is necessary. Doing so is unlikely to result in a better SOQ and may meaningfully reduce the number of individuals available for the project. Note that Key Personnel identified in an SOQ may not be changed after selection without written approval by NDOT. Therefore, required Respondent's team experience requested in the RFQ should be tied to the Key Personnel rather than corporate history. The RFQ will identify the ideal type of experience needed to obtain a maximum score in the evaluation.

A detailed description of the individual sub-sections contained under each section listed above can be found in [Appendix E \(Design-Build RFQ Example\)](#).

In response to the RFQ, all Respondents may submit an SOQ; providing required information identified in the RFQ to NDOT for evaluation and scoring as outlined in [Section 6.3](#).

## 6.3 Statement of Qualifications Evaluation

### 6.3.1 Evaluation Criteria

Consistent with [Section 4.4](#), DB SOQs will be evaluated in three parts: 1) determination of responsiveness; 2) pass/fail evaluation, and 3) scored evaluation. Refer to [Section 4.4.5](#) for determination of responsiveness and for pass/fail evaluation.

#### 6.3.1.1 Scored Evaluation Criteria

Once the pass/fail criteria have been evaluated, NDOT will enter into the evaluation process where Respondents' SOQs will be scored using the ratings previously described in [Section 4.4.6](#). The scored evaluation criteria will be tailored for the specific project, but fall within the following guidelines. At a minimum, NDOT will include the following criteria:

- **Relevance, breadth, and depth of firm/team experience.** The objective will be to identify design and construction firms that demonstrate successful project experiences that are directly relevant to the project being procured, in terms of their scope, size, and complexity. Project experience that is more recent would be considered more favorably than comparable experience that is less recent.

To achieve this measure, NDOT will identify relevant characteristics of the specific project being procured. These may include but are not limited to experience with: 1) specific types of transportation facilities; 2) highway and highway structures; 3) urban freeway or rural highway construction or reconstruction; 4) construction/reconstruction using innovative design, methods and/or materials; 5) construction in environmentally sensitive areas; 6) community relations; and 7) ITS systems procurement, installation, and ITS systems.

- **Relevance, breadth, and depth of Key Personnel experience.** The objective will be to determine the extent to which the identified Key Personnel have demonstrated successful experience at a comparable level of responsibility and authority to that proposed for the project being procured, on one or more project(s) of scope, size, and complexity similar to the project being procured. Relevance of project experience for Key Personnel will be evaluated using the same project characteristics identified for Respondent's team experience.

To achieve this measure, NDOT will establish preferred requirements for each Key Personnel role identified by NDOT in the RFQ. These preferred requirements may include but are not limited to: 1) overall number of years of experience; and 2) number of projects that the Key Personnel held a similar role on past projects. These preferred requirements will serve as target goals for evaluation purposes but should not be considered to be mandatory minimum requirements for a given position.

- In addition to the preferred requirements, Respondents will be required to provide, at a minimum, three references for each of the Key Personnel identified in the SOQ.

NDOT may decide, based on the complexity and size of the project, to expand the criteria and include some evaluation criteria that demonstrate the Respondent's understanding of the DB project delivery method. It should be mentioned that during the RFQ phase, detailed descriptions of the following approaches will not be project specific but more general in nature, showing an understanding of the DB project delivery method. To evaluate this understanding, the following criteria may be included:

- **General management approach to DB.** The objective will be to identify those Respondents that are able to demonstrate: 1) an understanding of and approach to how the DB project delivery method works and how the Respondent's organization will contribute to the success of the project and meet NDOT's project goals; and 2) an understanding of the risk sharing and the partnering relationship between the Design-Builder and NDOT.

- **General approach to DB quality.** The objective will be to identify those Respondents that are able to demonstrate an understanding of how to implement a quality management program for a DB project. The general description of the Respondent's quality approach should include: 1) QA/QC during design; 2) QA/QC during construction; 3) coordination between NDOT and the Design-Builder organization; and 4) coordination with other agencies.
- **Experience working together on other projects.** Describe whether, and if so how, the lead designer and lead construction contractor have worked together in the past, emphasizing DB projects. Respondents should identify the projects along with a description of the project scope and size.

### 6.3.2 Shortlisting

Based on the final SOQ scores, the SC will identify a shortlist of the most qualified Respondents to receive RFPs and be invited to submit Proposals. NDOT will shortlist at least two, but typically no more than three, Respondents that are the most qualified based on their SOQs. Pursuant to Nebraska Revised Statutes 39-2813(4), if only one SOQ is received, NDOT may continue or cancel the procurement. Only shortlisted Respondents will be provided with an RFP and invited to propose. SOQ evaluation results are not carried forward into the DB Proposal evaluation process and each Proposer starts the Proposal process on equal footing.

## 6.4 Request for Proposals

Formulation of the RFP is a significant effort for a DB procurement. The RFP defines the desired project outcome and ensures that the required information is incorporated. This section describes special staff needs, necessary document reviews, and NDOT's anticipated approach for developing the major components.

The RFP will be divided into four main parts:

- Part 1: Instructions to Proposers (ITP)
- Contract Documents
  - Part 2: Contract Terms and Conditions (Agreement)
  - Part 3: Technical Provisions (TPs)
- Part 4: Reference Information Documents (RIDs)

At the conclusion of the SOQ evaluation and shortlisting process, shortlisted Respondents will be provided with a draft RFP and invited to submit comments and questions. One-on-one meetings may be held with each shortlisted Respondent to discuss their comments on the draft RFP. Once comments are evaluated a final RFP is assembled and issued. See [Section 7.4.5](#) for additional details.

Between the times the final RFP is released and Proposals are due, a series of meetings will be held with all Proposers to confirm all participants' understanding of the Proposal process. These meetings will include a group meeting with all Proposers to confirm Proposers' understanding of the RFP and Proposal process, and individual sessions between NDOT and each of the Proposers to discuss ATCs and specific issues in the RFP.

In response to the RFP, all shortlisted Respondents will be invited to submit a Technical Proposal and a Financial Proposal (including a Price Proposal), providing required information identified in the ITP to NDOT for evaluation and scoring as outlined in [Sections 4.5](#) and [6.5](#). In accordance with Nebraska Revised Statutes 39-2814(8), the RFP must include the criteria for evaluation of Proposals and the relative weight of each criterion. The criteria must include, but are not limited to, price, construction experience, design experience, and financial, personnel, and equipment resources available to implemen

t the project, if the Respondents' responses to the criteria were not evaluated in the SOQ. The relative weight applied to any criterion will be based on the characteristics of each individual project, except that price must receive a relative weight of at least 50 percent.

Proposals received in response to the RFP must remain sealed and shall not be opened until expiration of the Proposal due date specified in the RFP. A Proposer may withdraw their Proposal at any time prior to opening of Proposals, in which case the Stipend will not be paid to the Proposer.

### 6.4.1 Instructions to Proposers

The ITP provides a significant amount of detail on the project and NDOT's expected outcomes. The ITP includes a project statement that contains information about the scope and nature of the project, as well as the NDOT budget for the project. The primary purpose of the ITP is to outline the expected outcomes and specific requirements for the project, as well as specific requirements for the Proposers' final Proposals regarding their technical approach to executing the project and their proposed cost to do so. The ITP will request information regarding project management, specific design and construction actions, intended final products, construction staging, and traffic control. In addition, NDOT may request descriptions or design development of specific project elements to a specified level, to demonstrate the intent of the Proposers. The ITP will call for other items, such as safety plans and public information plans, to be outlined in the Proposal and submitted after contract award. The ITP may also include any additional information NDOT needs to evaluate Proposals to determine the Apparent Best Value Proposer.

A detailed example of what may be included in an ITP can be found in [Appendix G \(Design-Build ITP Example\)](#).

#### 6.4.1.1 Questions and Responses Regarding the RFP

The ITP will contain specific guidelines and directions to Proposers that address the following:

- Proposers shall be responsible for reviewing the RFP and any Addenda issued by NDOT prior to the Proposal due date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that Proposer does not understand.
- Comments or questions regarding the RFP, including requests for clarification and requests to correct errors, shall be submitted by hard copy, facsimile, or other electronic transmission; no telephone or oral requests will be considered.
- Responses to comments or questions will be in writing and will be delivered to all Proposers, with the exception of those questions identified by a Proposer, and agreed by NDOT, as containing confidential or proprietary information relating to Proposer's Proposal and/or ATCs.
- NDOT may convene pre-Proposal meetings with Proposers.
- NDOT reserves the right, in its sole discretion, to revise, modify, or change the RFP and/or procurement process at any time before the Proposal due date through the issuance of Addendums. If necessary, the Addendum may extend the Proposal due date.

#### 6.4.1.2 Proposer Organization

The ITP will request the following declarations from the Proposers:

- The architect or engineer who will perform the architectural or engineering work for the project.
- The general contractor who will provide the labor, material, supplies, equipment, and construction services.



- If offering DB services with its own employees who are design professionals licensed to practice in Nebraska, certification of compliance with the Engineers and Architects Regulation Act and sufficient professional liability insurance.
- The rendering of architectural or engineering services by a licensed architect or engineer employed by the Design-Builder will conform to the Engineers and Architects Regulation Act.

### 6.4.1.3 Stipend

Due to the substantial amount of design work that is required, the development of a DB Proposal is substantially more costly than the development of separate design Proposals and construction bids under the DBB project delivery method. To encourage the development of well-prepared DB Proposals, NDOT may partially compensate DB Proposers for their Proposal materials, by paying Proposers for their Proposal work product (these payments are referred to as Stipends). Proposers that are issued an RFP and that submit a responsive Proposal (as defined in the ITP) but are ultimately not selected would be eligible to be partially compensated by means of the Stipend. The Best Value selected Proposer, known at that point as the Design-Builder, would not receive any Stipend.

Stipend payments for work product contained in the Proposal secure ownership of the intellectual property rights associated with the design materials in the Proposal. This allows NDOT to use these design materials as it sees fit, including sharing them with the selected Design-Builder for potential incorporation into their plans. A Proposer may elect to decline to accept the payment for work product, and thereby retain ownership of the intellectual property rights associated with their Proposal materials; such action is typically intended to protect information that the unsuccessful Proposer considers proprietary.

The RFP must state the amount of the Stipend and must include a copy of the Work Product Agreement Form. The amount of the Stipend will be commensurate with the value of the work and the number of shortlisted Respondents. The amount of the Stipend will be proportional to the estimated price of the DB contract for the project and generally consistent with the guidelines in [Table 6-1 \(Stipend Guidelines\)](#).

**Table 6-1. Stipend Guidelines**

Estimated Contract Value (ECV)	Payment for Work Product (Stipend)
\$5 million to \$50 million	$0.0025 \times \text{ECV}$
Over \$50 million	$\$125,000 + 0.001 \times (\text{ECV} - \$50 \text{ million})$

The amount of the Stipend may be increased for very complex projects and possibility of areas of innovation that may require more upfront design work to prepare a competitively priced Proposal. Project complexity and possibility of areas of innovation are not factored in in [Table 6-1 \(Stipend Guidelines\)](#) and must be accounted for by the project team. Payment of the Stipend will be made within 30 days of NDOT's receipt an invoice following the award of the contract or a decision not to award. Proposers will have an option to not request payment for their work product. In this case, the information contained in the Proposal or discussed with NDOT remains proprietary.

Should NDOT cancel the procurement after issuance of the RFP but prior to receipt of Proposals, NDOT may pay a reduced Stipend to all Proposers. The amount of the reduced Stipend to be paid will be determined by NDOT.

Should NDOT cancel the procurement after Proposals are received but prior to selection, all responsive Proposers may receive the payment for work product as defined in the RFP.

Under no circumstances will the State of Nebraska, NDOT, or any official or employee of the State or NDOT be liable for or reimburse any costs incurred by a Proposer, successful or unsuccessful, in developing a Proposal unless otherwise noted in the RFP. In the event the DB procurement process is terminated for any reason prior to issuance of the RFP, neither the State of Nebraska, NDOT, nor any official or employee of the State or NDOT shall be responsible for any Stipend, partial or in full, or for any costs incurred by Proposers in developing their Proposals.

#### 6.4.1.4 Proposer's Innovation

In the DB process, Proposer's innovation is a key element for consideration by NDOT. Innovation can be achieved under two concepts:

- ATCs
- VAPs

ATCs are ideas or concepts that relate directly to the scope of work provided in the RFP. An example of a potential ATC can be seen in the following: NDOT provides Proposers with the concept alignment, this concept alignment shows the use of retaining wall along the approach to the overhead structure; however, the Proposer determines that embankment can be used thereby saving the cost of the retaining structures while maintaining the proposed ROW—this would be considered a Proposer's ATC.

VAPs are ideas that are not required by the scope of work provided in the RFP and that add value without increasing cost. An example of a potential VAP can be seen in the following: NDOT informs Proposer's that a 2-year warranty is required on all lighting components; however, the Proposer determines that by selecting a certain LED element for the lights an extended 5-year warranty can be secured—this extended warranty would be considered a Proposer's VAP.

##### 6.4.1.4.1 Alternative Technical Concepts

ATCs are Proposer's ideas or concepts by which an element of the scope of work identified in the RFP might be accomplished to reduce cost, accelerate delivery, and/or improve quality of the competed project. ATCs provide flexibility to the Proposers to enhance innovation and achieve efficiency. ATCs are confidential elements of the Proposal process. ATCs are evaluated and are intended to be an additional means by which Proposers may differentiate themselves from their competitors in the selection process.

The use of ATCs is encouraged under the current FHWA DB rules and NDOT will typically use the ATC provision in all its DB project procurements. The use of ATCs on DB federal-aid projects is allowed under 23 CFR 636.209(b).

ATCs may consist of suggested changes to NDOT's supplied basic configurations, project scope, design, or construction criteria. These proposed changes provide a solution that is equal to or better than the requirements in the RFP. If the ATC is acceptable to NDOT and NDOT has communicated its approval in writing, the concept may be incorporated as part of the Proposer's technical and price submittal.

ATCs have been shown to be cost effective on large DB projects with significant scope and where the contracting agency believes that the Best Value selection may depend on the degree of innovation in the technical solutions offered by the Proposers.

The ITP must describe the ATC process and schedule for submittal of ATCs and NDOT responses to ATCs.

#### 6.4.1.4.2 Value Added Proposals

VAPs are Proposer's enhancements to the project, which are not included in the scope of work identified in the RFP that would add value through improved durability or other quality metric without additional cost to NDOT. VAPs are confidential elements of the Proposal process. VAPs are evaluated and are intended to be an additional means by which Proposers may differentiate themselves from their competitors in the selection process.

An NDOT DB RFP may include a provision for project VAPs, with a specified number of years of additional service life and/or other details as to what is to be covered. As a general rule, routine maintenance is not intended to be covered by a VAP. Standard Value-Added clauses may need to be modified to fit specific project needs.

### 6.4.2 Contract Terms and Conditions

The RFP must include a copy of the proposed DB Agreement, including any contract terms and conditions that are subject to further negotiation. The proposed DB Agreement must include general provisions, special provisions, and a description of risk transfer associated with the project.

#### 6.4.2.1 General Provisions and Special Provisions

General Provisions (GPs), sometimes referred to as General Conditions, are the contract terms and conditions that are used in multiple contracts, either as generic terms and conditions that apply to all contracts of a given type for a given owner, or to all contracts of a large, multi-contract project or program. Special Provisions (SPs), sometimes referred to as Special Terms and Conditions, are those contract provisions that are not universally applicable and that refer solely to the individual project. For purposes of NDOT DB Agreements, GPs and SPs will be adopted based on NDOT's current DBB contract GPs. Many of these provisions will come directly from NDOT's standard specifications. The RFP will define which sections of the standard specification will be included in the GPs that apply to the DB Agreement.

#### 6.4.2.2 Risk Responsibility Allocation Chart

For each DB project, NDOT will determine how far to carry the preliminary design. The development of a risk allocation matrix is a crucial part of making this determination.

Early in the project development process, the NDOT project team will identify potential risks associated with the project. These risks will then be assigned to NDOT or the Design-Builder. The risk allocation matrix will be used throughout the development and implementation of the project. The matrix will not only govern which party is responsible for a given risk but will help the project team determine how far to advance each technical element within the preliminary design during development of the RFP. The risk allocation matrix should be revisited and updated throughout the life of the procurement process as additional information becomes available.

The risk allocation matrix will vary from project to project to address the unique characteristics of each project. See [Section 4.7](#) for more information on developing the risk allocation matrix for a project.

#### 6.4.2.3 Design-Builder Progress Payments

NDOT projects delivered using the DB project delivery method will employ a progress-based payment methodology, similar to that employed on DBB projects. Following execution of the DB Agreement and prior to work being performed on the project, the Design-Builder will submit a cost-loaded Critical Path Method (CPM) schedule to NDOT for review and approval. If NDOT included a Cash Flow Schedule in the RFP, the Design-Builder shall ensure that their cost-loaded CPM schedule conforms to the cash

flow schedule. Once the CPM schedule is approved, it will serve as the basis for making monthly progress payments. A schedule of pay items will be developed from the cost-loaded CPM schedule that will serve as support for the monthly invoicing. Each month the Design-Builder will estimate the percent complete for each CPM schedule activity and multiply that percentage by the amount for that activity in the cost-loaded CPM schedule to determine the extended costs. The Design-Builder will assign those extended costs to the pay items in the schedule of pay items and produce an invoice for NDOT to process. The invoice will be submitted to NDOT's District representative. In the event the cash loaded CPM schedule changes in excess of two weeks, the Design-Builder will submit a revised cost-loaded CPM schedule with the invoice. The invoice will be reviewed and must be approved by NDOT staff prior to payment. Every effort will be made to pay the invoice within 30 days, up to the maximum amount allowed under the NDOT's Cash Flow Schedule.

#### 6.4.2.4 Incentives

Contract incentives can be used to motivate attainment of project goals, such as schedule acceleration. Projects that are suitable candidates for schedule acceleration incentives are those with critical completion dates, significant road user delay costs, and/or local community or local business impacts. Projects that are not suitable candidates for schedule acceleration incentives are ones with open-to-traffic constraints, such as weekends to accommodate seasonal traffic or special events, and projects with third-party coordination concerns, such as for utility relocations.

Incentives are paid if they are included in the DB Agreement and the Design-Builder meets the completion and/or open-to-traffic dates specified in the DB Agreement. The amount of the incentives, both per day and total amount available, must be specified in the DB Agreement. The amount of incentives per day will be based on road user delay costs with the total incentive amount limited to a maximum of 5 percent of the estimated construction costs. For these incentives, estimated construction cost only is used as the basis to determine a fixed amount to be included in the DB Agreement because incentives should be related to cost of construction only, not design or other costs that may be included in the Estimated Contract Value. Liquidated damages may apply if the Design-Builder fails to meet required schedule dates, regardless of the use of incentives.

#### 6.4.2.5 Bonds and Insurance

Any bonding and insurance required by law or as may be additionally required by NDOT must be included in the DB Agreement.

### 6.4.3 Technical Provisions

For the Technical Provisions (TPs), it is NDOT's goal that a performance approach be used whenever practicable. Use of prescriptive requirements, although allowed, will be minimized as the prescriptive nature of the terms may reduce the Proposers' potential for innovation in their Proposals.

#### 6.4.3.1 Performance versus Prescriptive Requirements

In addition to schedule acceleration and technological innovation, an additional benefit of DB project delivery method is the flexibility afforded to the Design-Builder. This flexibility must be considered reasonable and responsible by the owner. Such flexibility is maximized by using performance-driven requirements wherever possible and limiting the use of prescriptive requirements to those project elements for which a prescriptive requirement is demonstrably essential. Examples of requirements that are justifiably prescriptive include dimensional requirements such as lane widths, number of lanes, overhead bridge minimum clearances, and technological interfaces, such as for existing ITS variable message signs, wayside cameras, and traffic detection circuits.

### 6.4.3.2 Base Configuration

The Base Configuration consists of the mandatory design requirements or technical requirements for the project, consistent with the information presented in the environmental documentation. These include the project endpoints, alignment centerline (with permissible deviation defined), number of lanes, intersecting roadways with which interchanges are to be built, overcrossings and undercrossings, and dimensional requirements as previously mentioned, such as lane widths, shoulder widths, and minimum overhead clearances. Where appropriate, standards may be referenced rather than calling out individual dimensional requirements.

### 6.4.3.3 Environmental Requirements

The Technical Provisions should include the project's environmental requirements. Provisions that address environmental review responsibility, mitigation commitment tracking, and continuous training, among other items, should be considered. For projects where environmental impacts cannot be adequately predicted, consideration should be given to implementing an adaptive management strategy, where monitoring during project implementation leads to adjustments based on real-world observations.

### 6.4.4 Reference Information Documents

RIDs may include environmental documents and decisions, old contract plans or as-built plans, reports, condition surveys, utilities plans, agreements, other contracts, photographs, old boring logs, correspondence, and meeting minutes. RIDs will be used to provide information that may be useful or of interest to the Proposers in preparing their Proposals and in implementing the Contract Documents. The RFP and Contract Documents will clearly state that RIDs are provided to the Proposers for use at their own risk and come without NDOT warranties, except as specifically provided for in the Contract Documents. The Proposers will need to verify the accuracy of any information contained in the RIDs. RIDs are not to be confused with RFP technical requirements.

### 6.4.5 Industry Review Period

When possible, NDOT's procurement process will allow for an Industry Review (IR) period. The IR period occurs prior to release of the final RFP documents to the shortlisted Respondents. NDOT will distribute draft RFP documents to the Proposers, seeking feedback and comments on the planned transfer and assignment of contractual and technical risk being proposed on the project. Further discussion on risk and risk transfer can be found in [Section 4.7](#).

The greatest advantage of using an IR period in the DB procurement process can be seen when changes to the RFP documents are needed. Because the final RFP has yet to be issued, only a draft version of the RFP is provided to the Proposers; therefore, changes to the RFP can be performed without the need of Addendums. However, for any changes to the RFP that are needed after its final release, procurement rules dictate that those changes and/or modifications will need to be implemented by use of the Addendum process.

#### 6.4.5.1 Industry Review Process

The following highlights the steps and timelines of the IR process:

- **Step 1.** NDOT issues a draft version of the DB Agreement; this can be in the form of the actual agreement or a term sheet describing the risk transfer associated with the project. In addition to the contractual risk transfer, NDOT may include a draft version of the TPs that describe the risk transfer of technical elements planned for the project.

- **Step 2.** NDOT will provide a period of time, generally 10 to 14 days, for the Proposers to review the draft materials and formulate opinions regarding the risk associated with the upcoming procurement.
- **Step 3.** The Proposers will then prepare written questions and submit them to NDOT for consideration. NDOT will limit the number of questions depending on project size. This limitation will focus the Proposers to identify those questions of greatest concern. These questions will set the agenda for the upcoming meetings that will occur in the next step.
- **Step 4.** NDOT may hold individual meetings with each Proposer to discuss their questions and reasons behind the questions. The discussion that occurs during the IR individual meetings will be considered non-binding, allowing for open discussion. Questions and responses will be documented and shared with all Proposers, without identifying the Proposer that raised the concern or question.
- **Step 5.** After all IR period individual meetings have been conducted, NDOT will consider the feedback from the Proposers and determine if the risk allocation needs adjustment or modification. Because each Proposer may have a different opinion regarding the risk transfer, this is a critical step in the formulation of the final RFP document.
- **Step 6.** At the conclusion of Step 5, NDOT will revise the RFP documents as appropriate and issue their modified documents in the form of redline mark-ups to Proposers for further consideration. Proposers will be allowed 10 days for review and comment.

The following guidelines will be used when determining the number of IR period individual meetings:

- For DB projects, with a construction value less than or equal to \$50 million—one to two rounds of IR period individual meetings.
- For DB projects, with a construction value of more than \$50 million—two to three rounds of IR period individual meetings.

## 6.5 Proposal Evaluation

### 6.5.1 Overview

Each Proposal consists of two parts: a Technical Proposal and a Financial Proposal. These two Proposals are submitted to NDOT in separate, sealed containers. The Financial Proposal container includes any updated financial information since the submission of an SOQ plus another sealed envelope that contains the Proposer's Price Proposal or "bid", which will remain sealed until the evaluations of all of the Technical and Financial Proposals have been completed.

The Proposal evaluation process essentially consists of four steps:

- Technical Proposals and Financial Proposal are first screened for responsiveness and acceptability relative to pass/fail criteria. The Price Proposal will remain sealed during the responsiveness and pass/fail evaluation. If a Proposal is deemed non-responsive or does not meet pass/fail criteria, the reviewers may request – through formal communication protocols – additional information and/or clarification necessary to address and potentially correct the determination of non-responsiveness and/or evaluation relative to pass/fail criteria. Refer to [Section 4.5.2](#) for further discussion of the determination of responsiveness and pass/fail evaluation.
- Technical Proposals that are deemed responsive and that meet the pass/fail criteria are then evaluated relative to scored criteria identified in the ITP; this is essential to process transparency. As with the responsiveness and pass/fail screenings, reviewers may request additional

information and/or clarification necessary to fairly evaluate the Proposals. At the conclusion of the evaluation of the scored criteria, each Proposal will have been assigned a Technical Score. Refer to [Section 4.5.3](#) and [Section 6.5.2](#) for guidance for Technical Proposal evaluation.

- After the Financial Proposals are deemed responsive and that meet the pass/fail criteria and the Technical Scores have been established, the Price Proposal envelopes are opened and the Price Proposals are evaluated for responsiveness. Price Scores are then calculated. Refer to [Section 4.5.4](#) for general guidance for Price Proposal evaluation.
- Once the Technical Scores and Price Scores are established for all Proposals, those scores are combined to calculate the Total Proposal Score and determine the Apparent Best Value Proposer. Refer to [Section 4.5.6](#) for general guidance for selection process.

## 6.5.2 Technical Proposal Evaluation Categories

Final determination of the major evaluation categories will be driven by specific project needs as well as NDOT goals and objectives of the project. The major evaluation categories for the Technical Proposal should include the following, at a minimum, in order to evaluate the Proposer's proposed approach to the design and construction of the project:

- Technical Approach;
- Project Delivery Approach; and
- Quality Management Approach.

Within each major evaluation category subfactors may need to be determined and identified in the ITP. Normal practice and accepted industry standard are to not indicate any points or weights for the evaluation subfactor, but only indicate that each subfactor contained in the major category is listed in order of importance. When totaled under a major category, all subfactors shall not exceed the total points allowed for that individual major category.

## 6.5.3 Apparent Best Value Determination Process

Using a Best Value Compilation Form, the NDOT Project Manager will determine the Total Proposal Score for each Proposal by combining each Proposal's Technical Score and Price Score in accordance with the predetermined relative weights established for the project. The Price Score must have a relative weight of at least fifty percent (50%).

The Proposer with the highest Total Proposal Score is considered the Apparent Best Value Proposer.

Once the NDOT Project Manager has determined each Total Proposal Score and assigned rankings to the Proposals based on such Total Proposal Scores, the NDOT Project Manager will present the Apparent Best Value Proposer recommendation to the SC. The NDOT SC may:

- Accept the NDOT Project Manager's recommendation,
- Request the TC present an explanation of the evaluation process and potentially revisit portions of the evaluation, or
- Reject the recommendations and cancel the procurement.

Upon acceptance of the evaluation results, the SC will issue, or will authorize the NDOT Agreements Engineer to issue, a Notice of Intent to Award to the Apparent Best Value Proposer and commence finalization of the Contract Documents.

The following [Table 6-2](#) (*Apparent Best Value Calculation and Ranking Example*) illustrates how an Apparent Best Value Proposer may be calculated and determined.

**Table 6-2. Apparent Best Value Calculation and Ranking Example**

	Total Technical Score	Bid Price Value	Technical Score	Price Score	Total Proposal Score	Apparent Best Value Ranking
Proposer A	87.95	\$50.0 million	30.000	67.200	97.200	3rd
Proposer B	87.35	\$49.5 million	29.795	67.879	97.674	2nd
Proposer C	83.05	\$48.0 million	28.329	70.000	98.329	1st

Notes:

1. For the example, we used 30% of the points for Technical and 70% for Price
2. Technical Score will be determined by – Proposer’s Tech Score / Highest Tech Score x 30
3. Price Score will be determined by – Lowest Bid Price / Proposer’s Bid Price x 70

NDOT has the right to reject any and all Proposals at no cost to NDOT other than any stipend as specified in [Section 6.4.1.3](#). NDOT may thereafter solicit new Proposals using the same technical requirements or may cancel the DB solicitation.

## 6.6 Award and Implementation

After certification of the selection, NDOT may commence final negotiations of the DB Agreement, in accordance with Nebraska Revised Statutes 39-2816. The NDOT Project Manager will verify the negotiated contract terms and scope of work negotiated with the Apparent Best Value Proposer. Concurrent with the negotiations, the Apparent Best Value Proposer would also need to begin to comply with certain conditions precedent Commercial Close.

If NDOT and the Apparent Best Value Proposer are unable to reach agreement on contract terms and scope of work, NDOT may terminate negotiations with the Apparent Best Value Proposer and begin negotiations with the firm with the second highest apparent Best Value ranking. Once agreement is reached on contract terms and scope of work, the NDOT Agreements Engineer will assemble the final contract. The DB Agreement will be reviewed by the NDOT Project Manager for accuracy and completeness. The NDOT Agreements Engineer will transmit the final DB Agreement to the Design-Builder for execution. Once the DB Agreement is executed by the Design-Builder and NDOT, the DB Agreement becomes effective. A copy of the executed DB Agreement, along with a Notice to Proceed letter, will be mailed and/or electronically transmitted to the Design-Builder and distributed to appropriate NDOT personnel. The Notice to Proceed will indicate what is allowed to begin, such as development of management plans, design, any limits on construction, etc. If the NDOT is unable to negotiate a satisfactory DB Agreement with any of the ranked Proposers, NDOT may either revise the RFP and solicit new Proposals or cancel the DB solicitation.



## 7.0 Progressive Design-Build

### 7.1 Procurement Methodology

#### 7.1.1 Introduction

While similar to the DB project delivery method presented in [Section 6.0](#), PDB differs from DB in the following ways:

- A Progressive Design-Builder is selected based on qualifications and past performance without consideration for cost of the Work.
- The Progressive Design-Builder may participate in the planning and design of the project during the pre-construction phase.
- A project cost is established at a certain point in the pre-construction phase. This is negotiated with an open-book pricing methodology.

The PDB project delivery method may consist of two main phases:

- a pre-construction phase; and
- a construction phase.

During the pre-construction phase, the Progressive Design-Builder starts constructability and cost estimating services while advancing the design to a certain level for the purpose of establishing a project cost. The level of design completed in the pre-construction phase may vary depending on the project and is normally in the range of 60% to 90% complete. At NDOT's option, as part of the pre-construction phase work, NDOT could include in the scope of work that the Progressive Design-Builder support NDOT in completion of the environmental process and preliminary engineering. Example support that the Progressive Design-Builder could provide includes conducting site investigations, preparing studies, perform third-party coordination, or prepare cost estimates. The final project scope, schedule, and level or risk sharing will be determined in the pre-construction phase.

At the conclusion of the pre-construction phase, the Progressive Design-Builder will provide a construction phase amendment proposal for the construction phase and the project cost will be negotiated with open-book pricing (refer to [Section 7.4.2.6](#)). If the project is split into multiple construction packages, a separate cost may be established for each package, or some combination thereof. NDOT will compare the project cost with an independent estimate to determine if the submitted project cost is acceptable.

The construction phase begins once NDOT and the Progressive Design-Builder agree to the construction phase amendment proposal and NDOT amends the PDB Agreement to incorporate the construction phase amendment proposal that includes the established project costs. The Progressive Design-Builder starts physical construction once construction documents are completed.

#### 7.1.2 Roles and Responsibilities

##### 7.1.2.1 NDOT

NDOT remains primarily responsible for the success of a PDB project by selecting an appropriate project for the use of the PDB project delivery method, preparing the RFQs for any owner consultants, preparing the RFQ and RFP for the Progressive Design-Builder, defining the scope of the pre-construction phase of Work to be executed by the Progressive Design-Builder, and performing other project development work.

NDOT's role in the pre-construction phase is very similar to the NDOT's role in the traditional departmental development process, with the exception of the Progressive Design-Builder involvement. NDOT will be engaged in the negotiation of the project cost with the selected Progressive Design-Builder as well as the contract assumptions and risk allocation.

NDOT will provide guidance to the team during the pre-construction phase. This can entail documenting background information on how the project cost was developed, the types of allowances, allowable mark-ups on supplemental agreements and pay item documentation.

NDOT's responsibilities will include:

- Provide leadership;
- Hold the Progressive Design-Builder accountable;
- Review all potential supplemental agreements or contract modification request forms; and
- Facilitate knowledge transfer of the process.
- Manage NDOT's consultants.
- Review design progression/submittals.

A typical PDB project organization chart is provided as [Figure 7-1](#) (*PDB Project Delivery Method Organization Chart*).

#### 7.1.2.2 Progressive Design-Builder

The Progressive Design-Builder's candid discussions early in the pre-construction phase allows the development of a clear, concise scope and validates NDOT's budget through compilation of a *Cost Model* that is frequently updated throughout the pre-construction phase until an agreement on project cost is reached. The Progressive Design-Builder will participate in value engineering type studies to abbreviate project schedule and reduce costs, without adversely affecting quality. The Progressive Design-Builder's responsibility is to reconcile project quantities and develop a project cost for construction.

Other responsibilities may include, but are not limited to:

- Preparing a *Project Management Plan*;
- Conducting site investigations including but not limited to survey, SUE, and geotechnical;
- Providing third-party coordination;
- Supporting development of environmental approvals;
- Preparing construction estimates at various levels of design completion;
- Preparing a CPM project schedule for design and construction;
- Providing constructability reviews;
- Procuring long-lead time items (subject to NDOT approval);
- Permitting, subcontract preparation and packaging;
- Verifying design quantities;
- Participating in risk analysis and risk mitigation sessions; and
- Preparing a construction phase amendment proposal.

### 7.1.2.2.1 Designer

The project designer hired and under contract to the Progressive Design-Builder, works collaboratively with the contractor and NDOT. Similar design deliverables are required as in DBB or CM/GC projects. This includes final design documents and construction engineering in the construction phase.

### 7.1.2.2.2 Contractor

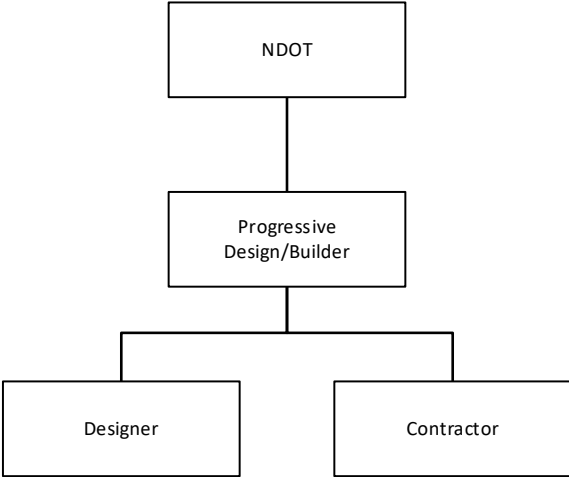
The contractor's main objective is to interface with NDOT and the designer during the pre-construction phase of the project. The contractor will review the plans for constructability and provide input on the sequence of construction. The contractor's technical experience, resources and approach (means and methods) will identify potential risks that can affect cost and schedule.

## 7.1.3 Procurement Process

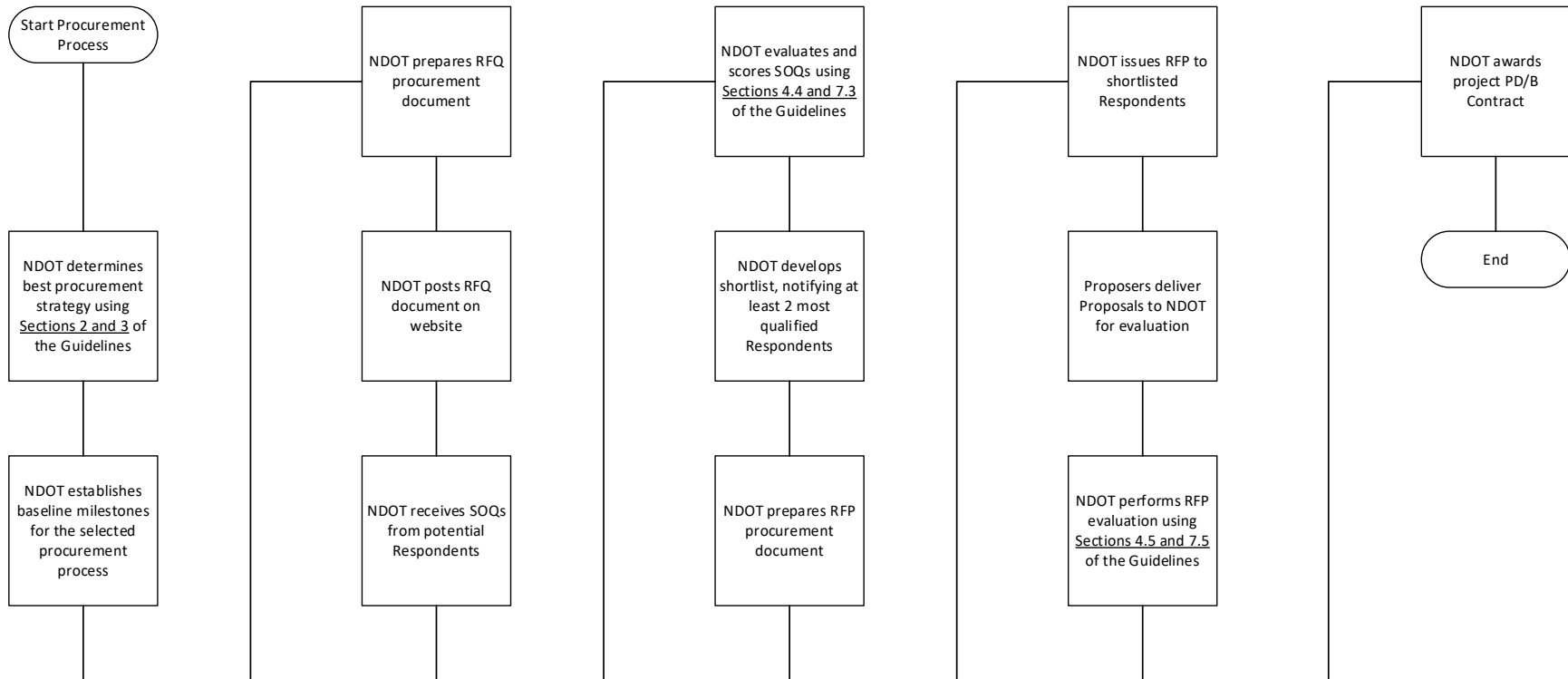
The following general policies are the basis of the NDOT PDB procedures:

- NDOT will establish project specific goals early in the project development process. PDB procurement will not proceed without consensus and formal acceptance of shared project goals among key NDOT staff responsible for project success.
- NDOT will follow a two-step procurement process that includes an RFQ and an RFP. [Figure 7-2 \(PDB Project Delivery Method Procurement Process\)](#) provides a general overview of the RFQ process followed by the RFP process culminating in a contract award.
  - Prospective PDB Respondents will be shortlisted through the RFQ process. The most qualified Respondents will be shortlisted and invited to submit Proposals in response to an RFP.
  - NDOT will select the Progressive Design-Builder through a competitive, sealed, Proposal method based on qualifications. Proposals will address at least the following criterion: construction experience, design experience, financial, personnel, and equipment resources available to implement the project, and the historic reasonableness of the Proposer's costs and expenses when bidding and completing projects.
  - Based on the final ranking for selection a Progressive Design-Builder, NDOT will award a PDB contract to perform the pre-construction services.
  - Barring extenuating circumstances, NDOT would award the PDB contract to the responsive and responsible Proposer offering a Proposal that meets the criteria established by NDOT.

**Figure 7-1. PDB Project Delivery Method Organization Chart**



**Figure 7-2. PDB Project Delivery Method Procurement Process**



## 7.2 Request for Qualifications

The objective of the RFQ process is to determine the qualifications of the Respondents so that only the most qualified Respondents are shortlisted to receive an RFP and to submit detailed Proposals. The RFQ must be published in a newspaper of statewide circulation at least 30 days prior to the due date for SOQs. NDOT must also send RFQs electronically or by mail to any potential Respondent upon request. The RFQ must provide sufficient information about the project to enable Respondents to respond and identify the maximum number of Respondents NDOT will shortlist as qualified and therefore eligible to receive an RFP. NDOT's standard pre-qualification process will not apply to PDB Respondents; NDOT will rely solely on the RFQ process to identify the most qualified Respondents. The RFQ will focus primarily on the capabilities, experience, and past performance of the Respondents and Key Personnel regarding specific issues pertinent to the particular PDB project, as well as team organization, QA/QC approach, current safety record, and financial capacity. The RFQ will include, at a minimum, the following sections:

- **Introduction and General Instructions.** Outline of general information pertaining to the project, including but not limited to, goals and objectives of the project, and roles and responsibilities.
- **Background Information.** General overview of the project including the proposed procurement schedule.
- **Scope of Work Overview.** General overview of the scope of work for the Progressive Design-Builder.
- **NDOT Regulations and Policies.** Regulations and policies that apply to the procurement and project.
- **Procurement Process.** Overview of the procurement process.
- **SOQ Submittal Requirements.** Standard submittal information and formatting requirements.
- **SOQ Content.** Minimum requirements of the Respondent, Key Personnel, and project approach.
- **Evaluation Process.** Evaluation process and procedures, scoring elements and weights, and notification process.
- **Communication, Public Information, and Organization Conflicts of Interest.** Communication disclosure of information, and conflict of interest requirements during the procurement.
- **Protest Procedures.** Information regarding applicable protest procedures.
- **Debriefing Meetings.** General information regarding debriefing process.
- **NDOT Reserved Rights.** List of rights being retained by NDOT concerning the procurement.

The information requested in the RFQ considers the Respondent's SOQ preparation costs and is limited to the information necessary to shortlist the Respondents. The RFQ will not generally request a Respondent's project approach and understanding; this information is included in the RFP after shortlisting.

The RFQ will not request more experience on the part of Key Personnel than is necessary. Doing so is unlikely to result in a better SOQ and may meaningfully reduce the number of individuals available for the project. Note that Key Personnel identified in an SOQ may not be changed after selection without written approval by NDOT. Therefore, required Respondent's team experience requested in the RFQ should be tied to the Key Personnel rather than corporate history. The RFQ will identify the ideal type of experience needed to obtain a maximum score in the evaluation.

In response to the RFQ, all Respondents may submit an SOQ; providing required information identified in the RFQ to NDOT for evaluation and scoring as outlined in [Section 7.3](#).

## 7.3 Statement of Qualifications Evaluation

### 7.3.1 Evaluation Criteria

Consistent with [Section 4.4](#), PDB SOQs will be evaluated in three parts: 1) determination of responsiveness; 2) pass/fail evaluation, and 3) scored evaluation. Refer to [Section 4.4.5](#) for determination of responsiveness and for pass/fail evaluation.

#### 7.3.1.1 Scored Evaluation Criteria

Once the pass/fail criteria have been evaluated, NDOT will enter into the evaluation process where Respondents' SOQs will be scored using the ratings described in [Section 4.4.6](#). The scored evaluation criteria will be tailored for the specific project, but fall within the following guidelines. At a minimum, NDOT will include the following criteria:

- **Relevance, breadth, and depth of firm/team experience.** The objective will be to identify firms that demonstrate successful project experiences in pre-construction services and constructing projects that are directly relevant to the project being procured, in terms of their scope, size, and complexity. Project experience that is more recent would be considered more favorably than comparable experience that is less recent.

To achieve this measure, NDOT will identify relevant characteristics of the specific project being procured. These may include but are not limited to experience with: 1) specific types of transportation facilities; 2) highway and highway structures; 3) urban freeway or rural highway construction or reconstruction; 4) construction/reconstruction using innovative design, methods and/or materials; 5) construction in environmentally sensitive areas; 6) community relations; 7) ITS systems procurement, installation, and ITS systems; and 8) developing a team environment working towards project goals during performance of pre-construction services.

- **Relevance, breadth, and depth of Key Personnel experience.** The objective will be to determine the extent to which the identified Key Personnel have demonstrated successful experience at a comparable level of responsibility and authority to that proposed for the project being procured, on one or more project(s) of scope, size, and complexity similar to the project being procured. Relevance of project experience for Key Personnel will be evaluated using the same project characteristics identified for Respondent's team experience.

To achieve this measure, NDOT will establish preferred requirements for each Key Personnel role identified by NDOT in the RFQ. These preferred requirements may include but are not limited to: 1) overall number of years of experience; 2) number of projects that the Key Personnel held a similar role on past projects; and 3) past experience working jointly with owners. These preferred requirements will serve as target goals for evaluation purposes but should not be considered to be mandatory minimum requirements for a given position.

- In addition to the preferred requirements, Respondents will be required to provide, at a minimum, three references for each of the Key Personnel identified in the SOQ.

NDOT may decide, based on the complexity and size of the project, to expand the criteria and include some evaluation criteria that demonstrate the Respondent's understanding of the PDB project delivery method. It should be mentioned that during the RFQ phase, detailed descriptions of the following approaches will not be project specific but more general in nature, showing an understanding of the PDB project delivery method. To evaluate this understanding, the following criteria may be included:

- **General management approach to PDB.** The objective will be to identify those Respondents that are able to demonstrate: 1) an understanding of and approach to how the PDB project delivery method works and how the Respondent's organization will contribute to the success of the project and meet NDOT's project goals; and 2) an understanding of the risk sharing and the partnering relationship between the Progressive Design-Builder and NDOT.
- **General approach to PDB quality.** The objective will be to identify those Respondents that are able to demonstrate an understanding of how to implement a quality management program for a PDB project. The general description of the Respondent's quality approach should include: 1) QA/QC during design; 2) QA/QC during construction; 3) coordination between NDOT and the Progressive Design-Builder organization; and 4) coordination with other agencies.
- **Experience working together on other projects.** Describe whether, and if so how, the lead designer and lead construction contractor have worked together in the past, emphasizing PDB or DB projects. Respondents should identify the projects along with a description of the project scope and size.

### 7.3.2 Shortlisting

Based on the final SOQ scores, the SC will identify a shortlist of the most qualified Respondents to receive RFPs and be invited to submit Proposals. NDOT will shortlist at least two, but typically no more than three, Respondents that are the most qualified based on their SOQs. Pursuant to Nebraska Revised Statutes 39-2813(4), if only one SOQ is received, NDOT may continue or cancel the procurement. Only shortlisted Respondents will be provided with an RFP and invited to propose. SOQ evaluation results are not carried forward into the PDB Proposal evaluation process and each Proposer starts the Proposal process on equal footing.

## 7.4 Request for Proposals

The RFP defines the desired project outcome and ensures that the required information is incorporated. This section describes special staff needs, necessary document reviews, and NDOT's anticipated approach for developing the major components.

The RFP will be divided into four main parts:

- Part 1: Instructions to Proposers (ITP)
- Part 2: Contract Terms and Conditions (Agreement)
- Part 3: Pre-Construction Phase Technical Requirements
- Part 4: Reference Information Documents (RIDs)

Between the times the RFP is released and Proposals are due, a series of meetings may be held with all Proposers to confirm all participants' understanding of the Proposal process. These meetings will include a group meeting with all Proposers to confirm Proposers' understanding of the RFP and Proposal process, and individual sessions between NDOT and each of the Proposers to discuss confidential and specific issues in the RFP.

In response to the RFP, all shortlisted Respondents will be invited to submit a Technical Proposal, providing required information identified in the ITP to NDOT for evaluation and scoring as outlined in [Sections 4.5](#) and [7.5](#). In accordance with Nebraska Revised Statutes 39-2814(8), the RFP must include the criteria for evaluation of Proposals and the relative weight of each criterion. The criteria must include, but are not limited to construction experience, design experience, and financial, personnel, and equipment resources available to implement the project, and also include consideration of the historic reasonableness of the Proposer's costs and expenses when bidding and completing projects, whether such pro



jects were completed using the PDB project delivery method or another project delivery method, if the Respondents' responses to the criteria were not evaluated in the SOQ. The relative weight applied to any criterion will be based on the characteristics of each individual project at the discretion of NDOT.

Proposals received in response to the RFP must remain sealed and shall not be opened until expiration of the Proposal due date specified in the RFP. A Proposer may withdrawal their Proposal at any time prior to opening of Proposals.

### 7.4.1 Instructions to Proposers

The ITP provides a significant amount of detail on the project and NDOT's expected outcomes. The ITP includes a project statement that contains information about the scope and nature of the project, as well as the NDOT budget for the project. The primary purpose of the ITP is to outline the expected outcomes and specific requirements for the project, as well as specific requirements for the Proposers' final Proposals regarding their technical approach to executing the project. The ITP will request a Technical Proposal that requests the Proposer's overall project approach and their approach to the pre-construction and construction phases of the project, including project specific approaches to certain project elements for each of the project phases. The ITP may also include any additional information NDOT needs to evaluate Proposals to determine the Successful Proposer.

#### 7.4.1.1 Questions and Responses Regarding the RFP

The ITP will contain specific guidelines and directions to Proposers that address the following:

- Proposers shall be responsible for reviewing the RFP and any Addenda issued by NDOT prior to the proposal due date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that Proposer does not understand.
- Comments or questions regarding the RFP, including requests for clarification and requests to correct errors, shall be submitted by hard copy, facsimile, or other electronic transmission; no telephone or oral requests will be considered.
- Responses to comments or questions will be in writing and will be delivered to all Proposers, with the exception of those questions identified by a Proposer, and agreed by NDOT, as containing confidential or proprietary information relating to Proposer's Proposal.
- NDOT may convene pre-Proposal meetings with Proposers.
- NDOT reserves the right, in its sole discretion, to revise, modify, or change the RFP and/or procurement process at any time before the Proposal due date through the issuance of Addendums. If necessary, the Addendum may extend the Proposal due date.

#### 7.4.1.2 Proposer Organization

The ITP will request the following declarations from the Proposers:

- The architect or engineer who will perform the architectural or engineering work for the project.
- The general contractor who will provide the labor, material, supplies, equipment, and construction services.
- If offering PDB services with its own employees who are design professionals licensed to practice in Nebraska, certification of compliance with the Engineers and Architects Regulation Act and sufficient professional liability insurance.

- The rendering of architectural or engineering services by a licensed architect or engineer employed by the Progressive Design-Builder will conform to the Engineers and Architects Regulation Act.

#### 7.4.1.3 Stipend

As design work is not a requirement for development of the PDB Proposal, a Stipend is not typically provided to unsuccessful Proposers.

#### 7.4.1.4 Proposer's Innovation

ATCs and VAPs will not be considered in evaluation of the Proposals. The Progressive Design-Builder's innovation may be considered during the pre-construction phase and after NDOT amends the PDB Agreement to incorporate the construction phase amendment proposal and the Progressive Design-Builder completes the design.

### 7.4.2 Contract Terms and Conditions

The RFP must include a copy of the proposed PDB Agreement, including any contract terms and conditions that are subject to further negotiation. The proposed PDB Agreement must include GPs and SPs for the pre-construction phase and construction phase, pre-construction phase scope of services, requirements for the Progressive Design-Builder to prepare a construction phase amendment proposal, details of the Progressive Design-Builder construction phase amendment proposal rejection process, PDB Agreement amendment procedures, the pricing method used for each phase, requirements for bonds and insurance, and any restrictions on subcontractors.

#### 7.4.2.1 General Provisions and Special Provisions

For purposes of NDOT PDB Agreements, GPs and SPs will be adopted based on NDOT's current DBB professional services and construction contract GPs. Many of these provisions will come directly from NDOT's standard specifications. The RFP will define which sections of the standard specification will be included in the GPs that apply to the PDB Agreement.

#### 7.4.2.2 Pre-Construction Phase Scope of Services

The PDB Agreement should include the scope of services for the pre-construction phase of work. The pre-construction phase will be primarily professional services to plan and design the project up to approximately 60-90% level, but will include additional elements such as support of criteria development, risk workshops, Opinion of Probable Construction Cost (OPCC) estimates, CPM scheduling, constructability reviews, development of a *Subcontracting Plan*, and identification of long lead items. The pre-construction phase scope of work can include requirements for the Progressive Design-Builder to participate and assist in establishing a TMP for the project. Once a TMP is established, this would provide a target budget for the Progressive Design-Builder to design to as it progresses the project to ultimately determine a GMP. Additional pre-construction phase scope items are described in [Section 7.4.3](#).

#### 7.4.2.3 Construction Phase Amendment Proposal Requirements

Upon completion of the pre-construction phase, the Progressive Design-Builder must submit a construction phase amendment proposal for completion of the next phase. The PDB Agreement should detail the requirements for the construction phase amendment proposal which should include the following items, as a minimum:

- Pricing elements

- Scope of services
- Final design requirements
- Specifications
- List of assumptions
- Schedule completion dates

#### 7.4.2.4 Construction Phase Amendment Proposal Rejection

The PDB Agreement should describe the process of NDOT not accepting a Progressive Design-Builder's construction phase amendment proposal. The following options apply to a typical project:

- NDOT and the Progressive Design-Builder agree to a modified construction phase amendment proposal through negotiations. This modified construction phase amendment proposal becomes an attachment to the PDB Agreement.
- NDOT terminates the PDB Agreement for convenience. Any conditions unique to this instance of termination (e.g., limits on payment for remaining Progressive Design-Builder costs) should be included in the PDB Agreement.
- NDOT terminates the PDB Agreement for convenience, but enters into a separate agreement with the Progressive Design-Builder's designer to complete the design. Any conditions unique to this termination and the process to enter a separate agreement with the Progressive Design-Builder's designer should be included in the PDB Agreement.

Another option available is NDOT authorizing the Progressive Design-Builder to continue with a different pricing method which is agreed to in the original PDB Agreement. For example, the contractor's fee (overhead and profit) could be established in the original PDB Agreement and NDOT would authorize the Progressive Design-Builder to continue work on a "cost plus" basis.

Providing a clear basis for rejection of a Progressive Design-Builder's construction phase amendment proposal enhances the partnership between NDOT and the Progressive Design-Builder. The following approaches should be considered:

- Establishing an acceptable percentage difference from an independent estimate.
- Using a third-party estimator to prepare an OPCC estimate, in addition to the independent OPCC estimate, for another opinion on the project cost.
- Setting a limit on construction phase amendment proposal resubmittals prior to rejecting a construction phase amendment proposal.

#### 7.4.2.5 PDB Agreement Amendment Procedures

The PDB Agreement will need to be amended to move onto the subsequent construction phase with the Progressive Design-Builder. At a minimum, the process for developing and executing this amendment should be provided in the PDB Agreement. Standardized forms can also be provided for the amendments to assist with negotiations and expedite the process. When federal funds are used to fund a portion of a project, FHWA will be part of the PDB Agreement amendment process.

#### 7.4.2.6 Pricing Method

A feature of PDB is the flexibility in the pricing methods used for the project, or even each individual phase. While different pricing methods could be used for any APDM, the open-book negotiation of the construction phase amendment makes use of pricing methods other than lump sum more feasible.

The pricing method intended to be used for each phase should be provided in the PDB Agreement. At a minimum, the pricing method for the pre-construction phase work should be established in the PDB Agreement. Below is a brief description of pricing methods to be considered:

### Pre-Construction Phase Pricing Method

- **Lump Sum or Stipulated Sum.** The PDB Agreement establishes a lump sum contract price for the pre-construction phase work. The Progressive Design-Builder is paid the entire lump sum amount in multiple payments based on progress or milestones completed. The Progressive Design-Builder retains any savings if the actual cost is lower than the contract price and is obligated to complete the work for the contract price.
- **Cost Plus.** The PDB Agreement establishes the Progressive Design-Builder's fee and a contract price for the pre-construction services work. The Progressive Design-Builder is paid for allowable costs plus the established fee, up to the contract price. The Progressive Design-Builder is not obligated to complete the work if the cost exceeds the contract price.

### Construction Phase Pricing Methods

- **Guarantee Maximum Price (GMP).** Once a GMP has been determined by the Progressive Design-Builder and agreed upon by NDOT during the pre-construction phase, the PDB Agreement is amended with the final GMP amount for the construction phase work, along with the associated schedule of values. The Progressive Design-Builder is paid based on progress or milestones completed, up to the GMP. The GMP pricing method is commonly used for PDB construction phase pricing as the construction phase amendment proposal, and the associated risk allocation, is negotiated and design has been completed to improve cost estimating accuracy.

Contingencies may be established for conditional use when the cost of an item of work exceeds the estimate provided in the schedule of values. In addition, provisions for the application of savings from one item of work to another can be included. The construction phase amendment should indicate how savings at the end of the project will be managed.

- **Lump Sum or Stipulated Sum.** The PDB Agreement establishes a lump sum contract price for the construction phase work. The Progressive Design-Builder is paid the entire lump sum amount in multiple payments based on progress or milestones completed. The Progressive Design-Builder is obligated to complete the work for the contract price. Allowances, either cash or quantity type, may be used for work not adequately defined at the time of the construction phase amendment. The Progressive Design-Builder retains any savings, minus unused allowance amounts, if the actual cost is lower than the contract price.
- **Cost Plus.** The PDB Agreement establishes the Progressive Design-Builder's fee and a contract price for the construction phase work. The Progressive Design-Builder is paid for allowable costs plus the established fee, up to the contract price. The Progressive Design-Builder is not obligated to complete the work if the cost exceeds the contract price. This is typically used if a GMP is not or cannot be established.
- **Cost Plus with GMP.** The PDB Agreement establishes the Progressive Design-Builder's fee and a GMP for the construction phase work. The Progressive Design-Builder is paid for the cost of the work plus the established fee, up to the GMP. NDOT retains any savings if the actual project cost is lower than the GMP and the Progressive Design-Builder is obligated to complete the work for the GMP. This is typically used for discrete items of work and only if NDOT and the Progressive Design-Builder cannot otherwise reach an agreement.

#### 7.4.2.7 Bonds and Insurance

Any bonding and insurance required by law or as may be additionally required by NDOT must be included in the PDB Agreement. The PDB Agreement should establish the process for obtaining performance and payment bonds and insurance, considering that the project cost will be determined in later phases. Bonds will at least be required prior to the start of construction (some period of time into the construction phase) but may be required earlier, with amounts adjusted as the project progresses. Similarly, different insurance will be required depending on the phase and work being performed.

#### 7.4.2.8 Subcontractors

The PDB Agreement should address the timing and type of subcontractor procurement allowed. As the Progressive Design-Builder is selected based on qualifications, NDOT will determine which, if any, subcontractors are competitively procured. NDOT may require involvement in subcontractor procurement or may place requirements on when certain subcontractors are engaged on the project. In addition, NDOT will establish limitations on the percentage of work split between the Progressive Design-Builder and its subcontractors. The Progressive Design-Builder's subcontractors should not be allowed to exceed 30% of the work.

### 7.4.3 Pre-Construction Phase Technical Requirements

The Pre-Construction Phase Technical Requirements provided in the RFP will define the scope of work during the pre-construction phase. The Pre-Construction Phase Technical Requirements should include the following sections, as applicable to the PDB project:

- **Project Description.** The project description section should describe the project at a high level to describe the project intent and main elements.
- **Meetings.** The meetings section should describe the minimum required meetings that the Progressive Design-Builder will be required to participate in during the pre-construction phase.
- **Design and Project Development Considerations.** The design and project development considerations section should include the following:
  - Requirements for Progressive Design-Builder Organizational information including Key Personnel contact information and organization chart.
  - Project standard requirements, including a list of standards that must be followed and describe the process for proposing additional standards and any deviations from standards required.
  - Information regarding NDOT's activities that NDOT plans to perform during to plan and advance the project such as hiring of consultants, surveying, utility investigations, geotechnical investigations, obtaining third-party agreements, permitting, ROW acquisitions, public engagement, etc. In addition, this section should describe any responsibilities the Progressive Design-Builder has to assist NDOT with such activities.
  - Requirements for the Progressive Design-Builder activities such as performing studies, advancing the design, third-party coordination, and project specific requirements to assist NDOT to achieve project goals.
  - A description of the stages for design submittals and the associated requirements and approvals.
  - Requirements for the Progressive Design-Builder to develop a *Transportation Management Plan* to manage traffic during the pre-construction phase activities. The requirements in

this section may not have a lot of detail as NDOT and the Progressive Design-Builder should collaborate during the pre-construction phase to share ideas on how best to manage traffic.

- **Quality Management.** The quality management section should describe the Progressive Design-Builder's responsibility regarding quality, including the requirements for preparing a *QA/QC Plan*, required quality personnel, and the review and approval process of the *QA/QC Plan*.
- **Project Schedule.** The project schedule section should include:
  - Requirements for the Progressive Design-Builder to prepare a *Schedule Coordination Plan* that describes how the Progressive Design-Builder intends to collaborate with NDOT to develop the projects schedule and defines the roles and responsibilities.
  - Requirements for the Progressive Design-Builder to prepare a pre-construction phase project schedule.
- **Risk Management.** The risk management section should describe the Progressive Design-Builder's responsibility regarding attending and participating in risk workshops and collaborating the NDOT in developing and maintaining a Risk Allocation Matrix.
- **Work Packaging Plan.** The *Work Packaging Plan* section should describe requirements for the Progressive Design-Builder to prepare a *Work Packaging Plan* to describe how the Progressive Design-Builder plans to divide the project into separate work packages to achieve the project goals.
- **Coordination Plan.** The *Coordination Plan* section should describe the Progressive Design-Builder's responsibility in developing a *Coordination Plan* that requires the Progressive Design-Builder to identify all known entities that requires coordination and the Progressive Design-Builder's approach to coordinating the work with such entities for the project.
- **Permitting and Environmental Mitigation Plan.** The *Permitting and Environmental Mitigation Plan* section should describe the Progressive Design-Builder's responsibility in developing a *Permitting and Environmental Mitigation Plan* that requires the Progressive Design-Builder to identify all known permits required to construct the project, the Progressive Design-Builder's approach to environmental mitigation, and the process and schedule to obtain approvals.
- **Material Sourcing Plan.** The *Material Sourcing Plan* section should describe the Progressive Design-Builder's responsibility in developing a *Material Sourcing Plan* that describes the materials required to construct the main and specialty elements of the project and the proposed sourcing of such materials.
- **Cost Estimating.** The cost estimating section should:
  - Describe how NDOT plans to collaborate with the Progressive Design-Builder to determine the pricing strategy for the project and how to evaluate pricing.
  - Describe the requirements for the Progressive Design-Builder to develop a cost model for the project.
  - Describe the requirements for the Progressive Design-Builder to develop OPCC estimates for the project or work packages, as applicable.
- **Safety.** The safety section should include requirements for the Progressive Design-Builder to develop a *Safety Plan* to manage safety for the pre-construction phase activities.
- **Basis of Construction Plan.** The *Basis of Construction Plan* section should include requirements for the Progressive Design-Builder to develop a *Basis of Construction Plan* that describes the Progressive Design-Builder's approach to constructing the project or work packages, as

applicable. The approach would describe the planning, coordination, procurement of materials, scheduling, sequencing, means and methods, and resourcing of the work.

- **Subcontracting Plan.** The *Subcontracting Plan* section should include requirements for the Progressive Design-Builder to develop a *Subcontracting Plan* that describes the Progressive Design-Builder's approach to subcontracting and its process for hiring subcontractors. The *Subcontracting Plan* should also describe the Progressive Design-Builder's approach to using DBE firms to comply with the projects' DBE goals.
- **Public Information Support.** The public information support section should describe the Progressive Design-Builder's responsibility in supporting NDOT with public information activities.
- **Construction Phase Amendment.** The construction phase amendment section should describe the deliverables that are precedent to obtaining an amendment to the PDB Agreement for the construction phase.
- **Work Package Amendments.** The work package amendments section should describe the deliverables that are precedent to obtaining a work package amendment to the PDB Agreement for the construction phase of a work package.

Each of the sections or a subsection of the Pre-Construction Phase Technical Requirements should describe the submittal process of all deliverables including the required timing of the submittal, review process of NDOT, the type of review of NDOT (e.g., review and comment, review and approval, etc.), and the process to resolve comments.

#### 7.4.4 Reference Information Documents

The guidelines regarding the RIDs is consistent with the DB project delivery method as described in [Section 6.4.4](#).

#### 7.4.5 Industry Review Period

As much of the planned transfer and assignment of contractual and technical risk will be determined during the pre-construction phase, an IR period is not necessary on a typical PDB project. Any changes to the RFP that are needed after its final release will need to be implemented by use of the Addendum process. If an IR period is implemented, refer to [Section 6.4.5](#) for further details.

## 7.5 Proposal Evaluation

### 7.5.1 Overview

The objective of the RFP step of the PDB project delivery method procurement is to select the highest-ranked Successful Proposer with the legal, technical, financial, and management capability, capacity, and experience to successfully undertake and complete the planning, pre-construction, and construction phases of the Project. The Proposal evaluation process essentially consists of three steps:

- Proposals are first screened for responsiveness and acceptability relative to pass/fail criteria. If a Proposal is deemed non-responsive or does not meet pass/fail criteria, the reviewers may request – through formal communication protocols – additional information and/or clarification necessary to address and potentially correct the determination of non-responsiveness and/or evaluation relative to pass/fail criteria. Refer to [Section 4.5.2](#) for further discussion of the determination of responsiveness and pass/fail evaluation.

- Proposals that are deemed responsive and that meet the pass/fail criteria are then evaluated relative to scored criteria identified in the RFP; this is essential to process transparency. As with the responsiveness and pass/fail screenings, reviewers may request additional information and/or clarification necessary to fairly evaluate the Proposals. At the conclusion of the evaluation of the scored criteria, each Proposal will have been assigned a Proposal Score. Refer to [Section 4.5.3](#) for general guidance for Proposal score which is similar to technical Proposal evaluation.
- Once the Proposal Scores are established for all Proposals, the total Proposal scores are calculated for all Proposals and the top Proposer selected.

### 7.5.2 Proposal Evaluation Categories

- Final determination of the major evaluation categories will be driven by specific project needs as well as NDOT goals and objectives of the project. The criteria will include consideration of the historic reasonableness of the Proposer's costs and expenses when bidding and completing projects. The major evaluation categories for the Proposal should include the following, at a minimum, in order to evaluate the Proposer's proposed approach to the design and construction of the project: General Project Approach;
- Pre-Construction Phase Approach;
- Construction Phase Approach; and

Within each major evaluation category subfactors may need to be determined and identified in the ITP. Normal practice and accepted industry standard are to not indicate any points or weights for the evaluation subfactor, but only indicate that each subfactor contained in the major category is listed in order of importance. When totaled under a major category, all subfactors shall not exceed the total points allowed for that individual major category. The relative weight applied to any criterion will be based on the characteristics of each individual project at the discretion of NDOT.

### 7.5.3 Qualifications-based Selection Process

During the RFQ phase, NDOT may determine that SOQ evaluation results will be carried forward into the PDB proposal evaluation process. If SOQ evaluation results are not carried forward, the total Proposal score will be equal to the Proposal score discussed in [Section 7.5.1](#). If SOQ evaluation results are carried forward, the NDOT Project Manager will determine the total Proposal score for each Proposal by combining each Proposer's Proposal score and SOQ score in accordance with the predetermined relative weights established for the project.

Once the NDOT Project Manager has determined each total Proposal score and assigned rankings to the Proposals based on such total Proposal scores, the NDOT Project Manager will present the selection recommendation to the SC. The NDOT SC may:

- Accept the NDOT Project Manager's recommendation,
- Request the TC present an explanation of the evaluation process and potentially revisit portions of the evaluation, or
- Reject the recommendations and cancel the procurement.

Upon acceptance of the evaluation results, the SC will issue, or will authorize the NDOT Agreements Engineer to issue, a Notice of Intent to Award to the Successful Proposer and commence finalization of the Contract Documents.

NDOT has the right to reject any and all Proposals at no cost to NDOT. NDOT may thereafter solicit new Proposals or may cancel the PDB procurement process.



## 7.6 Award and Implementation

After certification of the selection, NDOT may commence negotiations for the PDB Agreement. The Successful Proposer will prepare a budget for pre-construction services with hours, direct labor rates and burdens, overhead, profit and expenses anticipated. The NDOT Project Manager will verify the Successful Proposer's pre-construction phase scope of work and the Procurement Manager will review the budget and negotiate any changes required with the Successful Proposer.

If NDOT and the Successful Proposer are unable to reach agreement on scope and budget, NDOT may terminate negotiations with the Successful Proposer and begin negotiations with the firm with the second highest ranked qualifications. Once agreement is reached on scope and budget for services to be provided during the pre-construction phase, the NDOT Agreements Engineer will assemble the final PDB Agreement. The PDB Agreement will be reviewed by the NDOT Project Manager for accuracy and completeness. The NDOT Agreements Engineer will transmit the final PDB Agreement to the Progressive Design-Builder for execution. Once the PDB Agreement is executed by the Progressive Design-Builder and NDOT, the PDB Agreement becomes effective. A copy of the executed PDB Agreement, along with a Notice to Proceed letter, will be mailed and/or electronically transmitted to the Progressive Design-Builder and distributed to appropriate NDOT personnel. If the NDOT is unable to negotiate a satisfactory PDB Agreement with any of the ranked Proposers, NDOT may either revise the RFP and solicit new Proposals or cancel the PDB solicitation.

## 8.0 Public-Private Partnership

### 8.1 Procurement Methodology

#### 8.1.1 Introduction

Employing the P3 project delivery method includes a lot of similarities with the DB project delivery method. It should also be pointed out that the principal difference between P3 and DB project delivery method surrounds the elements being provided by the Private Partner under the P3 Agreement. Under a P3 Agreement, NDOT may require the Private Partner to secure and provide outside financing, requiring the Private Partner to include a financial element as part of their Proposal. NDOT will then, under the terms defined in the P3 Agreement, have a period of time in which to pay back the Private Partner for all work efforts. These terms will need to be defined in the Proposal. Similar to DB, a Private Partner is selected based on Best Value and the owner does not actively participate in the design process. This [Section 8.0](#) is consistent with the FHWA *Public-Private Partnership (P3) Procurement: A Guide for Public Owners*.

#### 8.1.2 Roles and Responsibilities

##### 8.1.2.1 NDOT

Similar to DB projects, NDOT remains primarily responsible for the success of a P3 project by selecting a project for P3 delivery, defining the scope of the work, determining prescriptive and performance-based requirements, and the overall program administration.

NDOT's responsibilities typically includes oversight of any function that is delegated to or otherwise performed by the Private Partner and being responsible for the items specified in [Section 6.1.2.1](#), however it should be modified per project. Depending on the project type and details, additional NDOT P3 specific responsibilities include, but not limited to financial, operations, and maintenance oversight.

A typical P3 project organization chart is provided as [Figure 8-1 \(P3 Project Delivery Method Organization Chart\)](#).

##### 8.1.2.2 Private Partner

Similar to DB projects, the Private Partner is generally responsible for furnishing all labor, material, plant, equipment, services, and support facilities for the Project elements and the various items specified in [Section 6.1.2.2](#). The Private Partner may also be responsible for the items listed below; however, the list in [Section 6.1.2.2](#) and the list below can be modified for a specific project.

- Financing the project;
- Operating the Facility; and
- Maintaining the facility.

#### 8.1.3 Procurement Process

Nebraska Revised Statutes 39-2825 govern NDOT with regard to application of P3 to NDOT projects.<sup>3</sup>

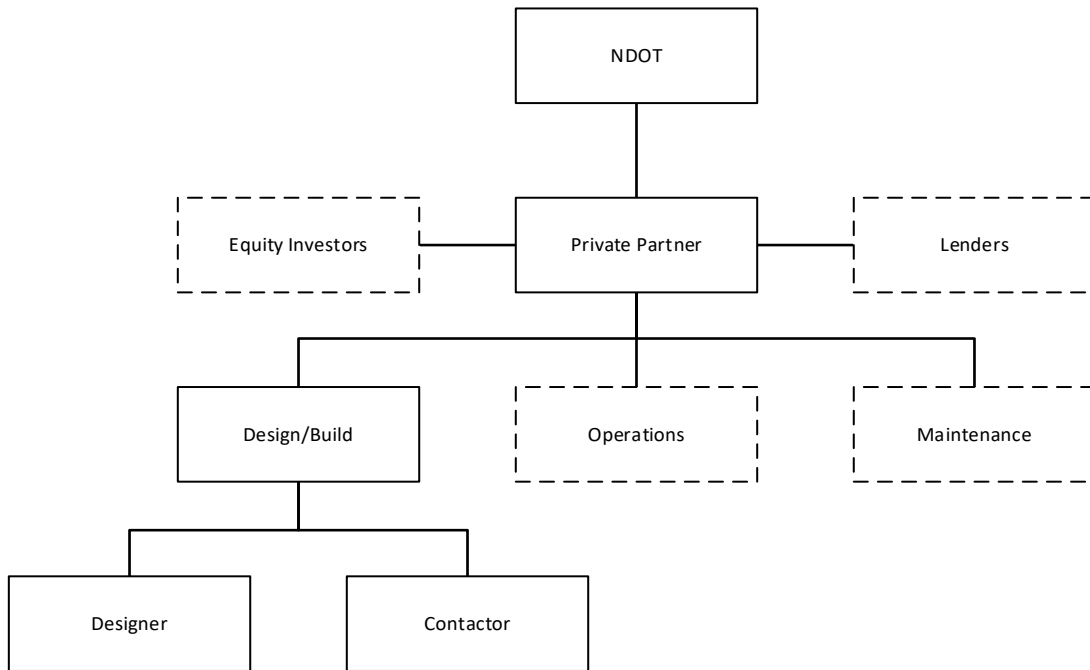
The following general policies are the basis of the NDOT P3 procedures:

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<sup>3</sup> <https://nebraskalegislature.gov/laws/statutes.php?statute=39-2825>

- NDOT will establish project specific goals early in the project development process. P3 procurement will not proceed without consensus and formal acceptance of shared project goals among key NDOT staff responsible for project success.
- NDOT will follow a two-step procurement process that includes an RFQ and an RFP. [Figure 8-2](#) (*P3 Project Delivery Method Procurement Flowchart*) provides a general overview of the RFQ process followed by the RFP process culminating in a contract award.
  - Prospective P3 Respondents will be shortlisted through the RFQ process. The most qualified Respondents will be shortlisted and invited to submit Proposals in response to an RFP.
  - NDOT will select the Private Partner through a competitive, sealed, two-container Proposal method using Best Value selection criteria. One container shall contain the P3 Proposer's Technical Proposal and the other container includes their Financial Proposal, including a separately sealed envelope with their Price Proposal. Proposals will focus on the Proposer's project understanding, approach to the Private Partner's role for the specific project, and approach to the design, construction, financing, operating, and maintenance of the specific project. NDOT will not review or consider alternative Proposals or Proposals with options, except as provided in the RFP Alternative Technical Concept (ATC) and Value-Added Proposal (VAP) processes.
  - Barring extenuating circumstances, NDOT would award the P3 Agreement to the responsive and responsible Proposer offering a Proposal that meets the criteria established by NDOT and that is determined by NDOT to provide the Best Value through evaluation based upon the criteria set forth in the RFP.

**Figure 8-1. P3 Project Delivery Method Organization Chart**



**Figure 8-2. P3 Project Delivery Method Procurement Flowchart**





## 8.2 Request for Qualifications

The DB RFQ guidelines included in [Section 6.2](#) applies to a P3 RFQ; however, depending on what P3 variation is used and project specifics, the RFQ may include qualification requirements for an operations and maintenance firm, a Facility system integrator and operator, financial firm, financial Key Personnel experience, and their understanding of the financing of the project.

In response to the RFQ, all Respondents may submit an SOQ; providing required information identified in the RFQ to NDOT for evaluation and scoring as outlined in [Section 8.3](#).

## 8.3 Statement of Qualifications Evaluation

### 8.3.1 Evaluation Criteria

Consistent with [Section 4.4](#), P3 SOQs will be evaluated in three parts: 1) determination of responsiveness; 2) pass/fail evaluation, and 3) scored evaluation. Refer to [Section 4.4.5](#) for determination of responsiveness and for pass/fail evaluation.

#### 8.3.1.1 Scored Evaluation Criteria

Once the pass/fail criteria have been evaluated, NDOT will enter into the evaluation process where Respondents' SOQs will be scored using the ratings previously described in [Section 4.4.6](#). The scored evaluation criteria will be tailored for the specific project, but fall within the following guidelines. At a minimum, NDOT will include the criteria specified in [Sections 8.3.1.1.1](#) and [8.3.1.1.2](#).

##### 8.3.1.1.1 Technical

This [Section 8.3.1.1.1](#) describes criteria specific to the technical aspects of the Respondent. The guidelines regarding the criteria for DB as described in [Section 6.3.1.1](#); applies to the P3 project delivery method; however, P3 specific criteria is described below.

- **Relevance, breadth, and depth of firm/team experience.** The objective may also include the Respondents capabilities, operations and maintenance experience, and Facility system integrator and operator experience.
  - Specific characteristics of the specific project may also include 1) operating a Facility; and 2) maintaining bridges or a Facility.
- **Relevance, breadth, and depth of Key Personnel experience.** Additional Key Personnel such as an O&M Manager or Facility Operations Manager could be included for P3 projects.

NDOT may decide, based on the complexity and size of the project, to expand the criteria and include some evaluation criteria that demonstrate the Respondent's understanding of the P3 project delivery method. It should be mentioned that during the RFQ phase, detailed descriptions of the following approaches will not be project specific but more general in nature, showing an understanding of the P3 project delivery method. To evaluate this understanding, the following criteria may be included.

- **General management approach to P3.** The objective will be to identify those Proposers that are able to demonstrate: 1) an understanding of and approach to how the P3 project delivery method works and how the Respondent's organization will contribute to the success of the project and meet NDOT's project goals; and 2) of the risk sharing and the partnering relationship between the Private Partner and NDOT.
- **General approach to P3 quality.** The objective will be to identify those Respondents that are able to demonstrate an understanding of how to implement a quality management program for a P3

project. The general description of the Respondent's quality approach should include. 1) QA/QC during design; 2) QA/QC during construction; 3) QA/QC during the operations and maintenance; 4) coordination between NDOT and the Private Partner organization; and 5) coordination with other agencies.

- **Experience working together on other projects.** Describe whether, and if so how, the lead designer and lead construction contractor have worked together in the past, emphasizing P3 projects. Respondent should identify the projects along with a description of the project scope and size.

### 8.3.1.1.2 Financial

This [Section 8.3.1.1.2](#) describes criteria specific to the financial aspects of the Respondent.

- **Relevance, breadth, and depth of firm/team experience.** The objective will be to identify finance firms that demonstrate successful project financing that are relevant to the project being procured, in terms of their scope, size, and complexity. Project experience that is more recent would be considered more favorably than comparable experience that is less recent.

To achieve this measure, NDOT will identify relevant characteristics of the specific project being procured. These may include but are not limited to experience with. 1) current resources (financial capacity); 2) availability of financial capacity to meet equity commitments; 3) ability to execute financing plan; 4) finance complexity; 5) experience in long and short-term financing; 6) partner sponsor; 7) experience in obtaining credit ratings; 8) P3 project delivery method experience; 9) equity commitment approval structure; 10) previous experience securing equity funding; and 11) financing delays.

- **Relevance, breadth, and depth of Key Financial Personnel experience.** The objective will be to determine the extent to which the identified key members of the financial team have demonstrated successful experience at a comparable level of responsibility and authority to that proposed for the project being procured, on one or more project(s) of scope, size, and complexity similar to the project being procured. Relevance of project experience for financial Key Personnel will be evaluated using the same project characteristics identified for Proposer's team experience.

To achieve this measure, NDOT will establish preferred requirements for each financial Key Personnel role identified by NDOT in the RFQ. These preferred requirements may include but are not limited to. 1) length and depth of experience in financing P3 projects; 2) demonstrated ability to develop finance plans and secure debt and equity financing for projects with credit characteristics similar to the Project; 3) experience in closing transactions utilizing a wide range of financing and funding tools and instruments; and 4) experience securing credit ratings necessary for project debt. These preferred requirements will serve as target goals for evaluation purposes but should not be considered to be mandatory minimum requirements for a given position.

- In addition to the preferred requirements, Respondents will be required to provide, at a minimum, three references for each of the financial Key Personnel identified in the SOQ.

NDOT may decide to include evaluation criteria regarding their conceptual project financing approach. It should be mentioned that during the RFQ phase, detailed descriptions of the following approaches may not be project specific but more general in nature, showing an understanding of the P3 project delivery method specific regarding financing. To evaluate this understanding, the following criteria may be included:

- **General understanding of current project financing markets.** The objective will be to identify those Respondents that are able to demonstrate an understanding of: 1) the private financing with equity proposed; 2) an understanding of the equity returns consistent with market rates; 3)



financial instruments appropriate for the project; 4) financial risk sharing; and 5) debt/equity reasonable levels.

- **General approach to the tools, requirements, and critical considerations to develop and implement a financing plan.** The objective will be to identify those Respondents that are able to demonstrate: 1) a logical plan that outlines potential public and private funding sources available to the project; and 2) a finance plan that indicates experience in combining a variety of debt products.

### 8.3.2 Shortlisting

Based on the final SOQ scores, the SC will identify a shortlist of the most qualified Respondents to receive RFPs and be invited to submit Proposals. NDOT will shortlist at least two, but typically no more than three, Respondents that are the most qualified based on their SOQs. If only one SOQ is received, NDOT may continue or cancel the procurement. Only shortlisted Respondents will be provided with an RFP and invited to propose. SOQ evaluation results are not carried forward into the P3 Proposal evaluation process and each Proposer starts the Proposal process on equal footing.

## 8.4 Request for Proposals

Consistent with DB project delivery method as described in [Section 6.4](#), formulation of the RFP is a significant effort for a P3 procurement as that effort will define the desired project outcome and ensure that the required information is incorporated. In addition, the RFP will define the roles, duties, and responsibilities of NDOT, the Private Partner, and any other party to the contract and NDOT's method for oversight of the project. This section describes special staff needs, necessary document reviews, and NDOT's anticipated approach for developing the major components.

The RFP will be divided into four main parts:

- Part 1: Instructions to Proposers (ITP)
- Contract Documents
  - Part 2: Contract Terms and Conditions (Agreement)
  - Part 3: Technical Provisions (TPs)
- Part 4: Reference Information Documents (RIDs)

At the conclusion of the SOQ evaluation and shortlisting process, shortlisted Respondents will be provided with a draft RFP and invited to submit comments and questions. One-on-one meetings may be held with each shortlisted Respondent to discuss their comments on the draft RFP. Once comments are evaluated a final RFP is assembled and issued. See [Section 8.4.5](#) for additional details.

Between the time the final RFP is released and Proposals are due, a series of meetings will be held with all Proposers to confirm all participants' understanding of the Proposal process. These meetings will include a group meeting with all Proposers to confirm Proposers' understanding of the RFP and Proposal process, and individual sessions between NDOT and each of the Proposers to discuss ATCs and specific issues in the RFP.

In response to the RFP, all shortlisted Respondents will be invited to submit a Technical Proposal and a Financial Proposal (including a Price Proposal), providing required information identified in the ITP to NDOT for evaluation and scoring as outlined in [Sections 4.5](#) and [8.5](#). The RFP must include the criteria for evaluation of Proposals and the relative weight of each criterion. The criteria must include, but are not limited to, design experience, construction experience, financing experience, operations and maintenance experience, and financial, personnel, and equipment resources available to implement the proj

ect. The relative weight applied to any criterion will be based on the characteristics of each individual project, except that price should receive a relative weight of at least 50 percent.

### 8.4.1 Instructions to Proposers

The ITP provides a significant amount of detail on the project and NDOT's expected outcomes. The ITP includes a project statement that contains information about the scope and nature of the project, as well as the NDOT budget for the project. The primary purpose of the ITP is to outline the expected outcomes and specific requirements for the project, as well as specific requirements for the Proposals regarding the technical and financial approach to executing the project and the proposed cost to do so. The ITP will request information regarding project management, specific design, construction, operations, and maintenance actions, intended final products, construction staging, traffic control, the plan for financing and operating the project, and the revenues, service payments, bond financings, and appropriations of public funds needed for the project. NDOT may request additional information, such as:

- Descriptions or design development of specific project elements to a specified level, to demonstrate the intent of the Proposers;
- Financing plan;
- Financial model (to support the financial plan); and
- Revenue payment calculations.

The ITP will call for other items, such as safety plans and public information plans, to be outlined in the Proposal and submitted after contract award. The ITP may also request any additional information NDOT needs to evaluate Proposals to determine the Apparent Best Value Proposer.

#### 8.4.1.1 Questions and Responses Regarding the RFP

The ITP will contain specific guidelines and directions to Proposers for questions and responses regarding the RFP. The questions and responses guidelines for P3 will be similar to the process used for DB. Refer to [Section 6.4.1.1](#) for further details.

#### 8.4.1.2 Stipend

Similar to DB, the amount of effort to develop a P3 Proposal is significant compared to DBB project delivery method. The stipend guidelines for P3 will be similar to the process used for DB. Refer to [Section 6.4.1.3](#) for further details.

#### 8.4.1.3 Proposer's Innovation

In the P3 process, Proposer's innovation is a key element for consideration by NDOT. Innovation can be achieved under two concepts:

- ATCs
- VAPs

The guidelines for ATCs and VAPs for P3 will be similar to the process used for DB. Refer to [Section 6.4.1.4](#) for further details.

### 8.4.2 Contract Terms and Conditions

The RFP must include a copy of the proposed P3 Agreement, including any contract terms and conditions that are subject to further negotiation. The proposed P3 Agreement must clearly indicate

that the P3 project delivery method is being used and it must include general provisions, special provisions, and a description of risk transfer associated with the project.

#### 8.4.2.1 General Provisions and Special Provisions

General Provisions (GPs), sometimes referred to as General Conditions, are the contract terms and conditions that are used in multiple contracts, either as generic terms and conditions that apply to all contracts of a given type for a given owner, or to all contracts of a large, multi-contract project or program. Special Provisions (SPs), sometimes referred to as Special Terms and Conditions, are those contract provisions that are not universally applicable and that refer solely to the individual project. For example, the SPs would include the financing requirements for P3 projects that include a financing component. For purposes of NDOT P3 Agreements, GPs and SPs will be adopted based on NDOT's current DBB contract GPs. Many of these provisions will come directly from NDOT's standard specifications. The RFP will define which sections of the standard specification will be included in the GPs that apply to the P3 Agreement.

#### 8.4.2.2 Risk Responsibility Allocation Chart

For each P3 project, NDOT will determine how far to carry the preliminary design. The development of a risk allocation matrix is a crucial part of making this determination.

Early in the project development process, the NDOT project team will identify potential risks associated with the project. These risks will then be assigned to NDOT or the Private Partner. The risk allocation matrix will be used throughout the development and implementation of the project. The matrix will not only govern which party is responsible for a given risk but will help the project team determine how far to advance each technical element within the preliminary design during development of the RFP. The risk allocation matrix should be revisited and updated throughout the life of the procurement process as additional information becomes available.

The risk allocation matrix will vary from project to project to address the unique characteristics of each. See [Section 4.7](#) for more information on developing the risk allocation matrix for a project.

#### 8.4.2.3 Payment

For projects delivered using the P3 delivery method without financing, NDOT will employ a progress-based payment methodology, similar to that employed on DBB projects for the design and construction portion of the project. Following execution of the P3 Agreement and prior to work being performed on the project, the Private Partner will submit a cost-loaded Critical Path Method (CPM) schedule to NDOT for review and approval. If NDOT included a maximum Cash Flow Schedule in the RFP, the Private Partner shall ensure that their cost-loaded CPM schedule conforms to the cash flow schedule. Once the CPM schedule is approved, it will serve as the basis for making monthly progress payments. A schedule of pay items will be developed from the cost-loaded CPM schedule that will serve as support for the monthly invoicing. Each month the Private Partner will estimate the percent complete for each CPM schedule activity and multiply that percentage by the amount for that activity in the cost-loaded CPM schedule to determine the extended costs. The Private Partner will assign those extended costs to the pay items in the schedule of pay items and produce an invoice for NDOT to process. The invoice will be submitted to NDOT's District representative. In the event the cash loaded CPM schedule changes in excess of two weeks, the Private Partner will submit a revised cost-loaded CPM schedule with the invoice. The invoice will be reviewed and must be approved by NDOT staff prior to payment. Every effort will be made to pay the invoice within 30 days, up to the maximum amount allowed under the NDOT's Cash Flow Schedule. The maintenance portion of the work is typically paid on a monthly basis, including escalation as specified in the P3 Agreement, for the routine maintenance services. If the Private Partner preforms capital asset replacement work (e.g.,

reconstruction, rehabilitation, restoration, renewal, replacement or major capital repair of certain elements of the project) during the maintenance period, then they would be paid during the year the work was performed.

For P3 projects with financing, the Private Party will be repaid for its investment in the project as defined by the terms and over a specified time in the P3 Agreement. The payments are dependent upon the project details and payment mechanisms, such as service fees, toll concessions, shadow tolls, or availability payments. A service fee would be paid by the users of the constructed facility (such as an EV charging station). For toll facilities, revenue can either be:

- Toll concession when the Private Partner receives payment through the collection of tolls from the motorists on a toll facility:
- Shadow tolls when the Private Partner receives a set payment from NDOT called a “shadow toll” for each vehicle that uses the facility: and
- Availability payment when the Private Partner receives a periodic payment from NDOT based on the availability of the facility meeting a specific performance level.

#### 8.4.2.4 Incentives

Contract incentives can be used to motivate attainment of project goals, such as schedule acceleration. Projects that are suitable candidates for schedule acceleration incentives are those with critical completion dates, significant road user delay costs, local community or local business impacts and/or loss of revenue. Projects that are not suitable candidates for schedule acceleration incentives are ones with open-to-traffic constraints, such as weekends to accommodate seasonal traffic or special events, and projects with third-party coordination concerns, such as for utility relocations.

Incentives are paid if they are included in the P3 Agreement and the Private Partner meets the completion and/or open-to-traffic dates specified in the P3 Agreement. The amount of the incentives, both per day and total amount available, must be specified in the P3 Agreement. The amount of incentives per day will be based on road user delay costs with the total incentive amount typically limited to a maximum of 5 percent of the estimated construction costs. For these incentives, estimated construction cost only is used as the basis to determine a fixed amount to be included in the P3 Agreement because incentives should be related to cost of construction only, not design or other costs that may be included in the Estimated Contract Value. Liquidated damages may apply if the Private Partner fails to meet required schedule dates, regardless of the use of incentives.

### 8.4.3 Technical Provisions

For the Technical Provisions (TPs), it is NDOT’s goal that a performance approach be used whenever practicable. Use of prescriptive requirements, although allowed, should be minimized as the prescriptive nature of the terms may reduce the Proposers’ potential for innovation. The guidelines regarding the TPs are consistent with DB as described in [Section 6.4.3](#); however, for P3 specific criteria are described below.

#### 8.4.3.1 Performance versus Prescriptive Requirements

For P3 projects with an operations and maintenance period or a maintenance period, NDOT’s approach to include performance and prescriptive requirements could change compared to other APDM. While prescriptive requirements may be used to align with NDOT’s maintenance goals, performance requirements may be more appropriate if a Private Partner is responsible for maintenance.

### 8.4.3.2 Operation Requirements

If the P3 project includes operation of a Facility, the TPs will include requirements such as measures of performance and times they must be met in order to meet availability criteria. Example requirements for operations of toll facility include marketing requirements, operating back-office systems, customer service, escalation and enforcement, pricing, and key performance indicators. The key performance indicators are quantifiable indicators that define NDOT's intended results of each element.

### 8.4.3.3 Maintenance Requirements

In addition to design and construction requirements, for P3 projects that include a maintenance component, the TPs will include maintenance requirements for which the Private Party will be responsible for. These requirements are typically included in a maintenance table that includes the element, performance requirements, repair response, and other requirements. See [Table 8-1 \(Sample Maintenance Table\)](#). In addition to these maintenance requirements, the TPs typically include requirements for surveillance, inspection, and reporting; incidents and emergencies; and capital asset replacement work.

### 8.4.3.4 Handback

The TPs will include requirements that define how the Private Partner needs to deliver the project to NDOT at the end of the operations and maintenance period. These requirements typically include handback and transition plans, requirements of the remaining useful life at the end of the operations and maintenance period for certain project elements, and final punchlist requirements.

## 8.4.4 Reference Information Documents

The guidelines regarding the RIDs is consistent with the DB project delivery method as described in [Section 6.4.4](#). P3 project delivery method items that are typically included in the RIDs are traffic projections, traffic and revenue studies, draft financial analyses, and maintenance records.

## 8.4.5 Industry Review Period

When possible, NDOT's procurement process will allow for an IR period. The IR process for P3 will be similar to the process used for DB. Refer to [Section 6.4.5](#) for further details.

**Table 8-1. Sample Maintenance Table**

Ref.	Element	Performance Requirement	Repair Response		Inspection Method	Inspection Frequency	Measurement Record	Target
			Temporary	Permanent				
<b>2 - Pavement</b>								
2.1	Potholes	All roadways have a smooth surface course.	2 hours for distress that presents a safety hazard to motorists on mainline lanes, ramps, crossroads, and frontage roads, even if Measurement Record is satisfied.	1 year	Physical measurement	Monthly	Repair when: 5 or more potholes of 1 inch depth or greater and a 1-foot length or greater in any direction, within any 1-mile section per direction.	100%
2.2	Ruts	All roadways have a smooth surface course.	2 hours for distress that presents a safety hazard to motorists on mainline lanes, ramps, crossroads, and frontage roads, even if Measurement Record is satisfied.	6 months	10-foot straightedge used to measure rut depth in localized areas.	Annually	Repair when: average rut depth of any 1-mile section is greater than 1/2 inch.	100%
							Repair when: any rut depth is greater than 1 inch.	100%
2.3	Cracks	Maintain cracks so they are sealed and watertight.	2 hours for distress that presents a safety hazard to motorists on mainline lanes, ramps, crossroads, and frontage roads, even if Measurement Record is satisfied.	1 year	Visual	Annually	Clean and seal cracks when: any individual crack is 1/2 inch wide or wider.	100%
<b>4 – Safety and Security</b>								
4.1	Safety Barriers, attenuators, barrier end treatments, and safety railing	All barriers, guard rail / bridge rail transitions, guard rail end treatments, and attenuators must be functional with no damage that impairs their ability to perform.	2 hours to install safety measures	1 week for attenuators and barrier end treatments; and 30 days for other failures.	Visual	Annually	Inspection records showing compliance.	100%
4.2	Signage and delineators	All signs, including sign lighting, and delineators function as designed, unauthorized signs are removed, obsolete signs are removed or replaced.	2 hours for safety critical signs (regulatory and warning); and 1 week for other signs.	6 weeks for signs 25 square feet or larger, and 2 weeks for other signs	Visual day and night	Annually	Inspection records showing compliance.	100%

## 8.5 Proposal Evaluation

### 8.5.1 Overview

Similar to the DB project delivery method, each Proposal consists of two parts: a Technical Proposal and a Financial Proposal. These two Proposals are submitted to NDOT in separate, sealed containers. The Financial Proposal container includes any updated financial information since the submission of an SOQ plus another sealed envelope that contains the Proposer's Price Proposal or "bid", which will remain sealed until the evaluations of all of the Technical and Financial Proposals have been completed.

The Proposal evaluation process essentially consists of four steps:

- Technical Proposals and Financial Proposal are first screened for responsiveness and acceptability relative to pass/fail criteria. The Price Proposal will remain sealed during the responsiveness and pass/fail evaluation. If a Proposal is deemed non-responsive or does not meet pass/fail criteria, the reviewers may request – through formal communication protocols – additional information and/or clarification necessary to address and potentially correct the determination of non-responsiveness and/or evaluation relative to pass/fail criteria. Refer to [Section 4.5.2](#) for further discussion of the determination of responsiveness and pass/fail evaluation.
- Technical Proposals that are deemed responsive and that meet the pass/fail criteria are then evaluated relative to scored criteria identified in the ITP; this is essential to process transparency. As with the responsiveness and pass/fail screenings, reviewers may request additional information and/or clarification necessary to fairly evaluate the Proposals. At the conclusion of the evaluation of the scored criteria, each Proposal will have been assigned a Technical Score. Refer to [Section 4.5.3](#) and [Section 6.5.2](#) for guidance for Technical Proposal evaluation.
- After the Financial Proposals are deemed responsive and meet the pass/fail criteria and the Technical Scores have been established, the Price Proposal envelopes are opened and the Price Proposals are evaluated for responsiveness. Price Scores are then calculated. Other financial information, such as a financing plan, financial model, or revenue payment calculations may require evaluation to validate or otherwise calculate Price Scores.
- Refer to [Section 4.5.4](#) for general guidance for Price Proposal evaluation.
- Once the Technical Scores and Price Scores are established for all Proposals, those scores are combined to calculate the Total Proposal Score and determine the Apparent Best Value Proposer. Refer to [Section 4.5.5](#) for general guidance for selection process.

Through the evaluation of Proposals, the Proposal must demonstrate that the Proposer is capable of performing any duty, responsibility, or function as described in the Contract Documents.

### 8.5.2 Pass/Fail Criteria

In addition to the pass/fail criteria used for other APDM and the pass/fail evaluation as described in [Section 4.5.2](#), NDOT should consider additional pass/fail criteria specific to financing for projects when applicable. Sample pass/fail financing criteria include if the financial plan demonstrates that there is sufficient financing, it's feasible, and that the financial plan has been developed enough to attract sufficient support and commitment from lenders and investors to satisfy the requirements of the Contract Documents.

### 8.5.3 Technical Proposal Evaluation Categories

Final determination of the major evaluation categories will be driven by specific project needs as well as NDOT goals and objectives of the project. The major evaluation categories for the Technical Proposal should include the following, at a minimum, in order to evaluate the Proposer's proposed approach to the project:

- Project Management Approach;
- Economic Development Approach, including Small Business Approach;
- Design and Construction Technical Approach;
- Operations and Maintenance Technical Approach; and
- Quality Management Approach.

Within each major evaluation category subfactors may need to be determined and identified in the ITP. Normal practice and accepted industry standard are to not indicate any points or weights for the evaluation subfactor, but only indicate that each subfactor contained in the major category is listed in order of importance. When totaled under a major category, all subfactors shall not exceed the total points allowed for that individual major category.

### 8.5.4 Apparent Best Value Determination Process

The Apparent Best Value Proposal determination for P3 will be similar to the process used for DB. Refer to [Section 6.5.3](#) for further details.

NDOT has the right to reject any and all Proposals at no cost to NDOT other than any stipend as specified in [Section 8.4.1.2](#) if it is determined in writing that such action is taken in the best interest of the State of Nebraska and approved by the purchasing officer.

## 8.6 Award and Implementation

After certification of the selection, NDOT may commence final negotiations of the P3 Agreement. The NDOT Project Manager will verify the negotiated contract terms and scope of work negotiated with the Apparent Best Value Proposer. Concurrent with the negotiations, the Apparent Best Value Proposer would also need to begin to comply with certain conditions precedent to Commercial Close. For P3 projects with a financing component, concurrent with the negotiations, the Apparent Best Value Proposer would also need to begin to comply with certain conditions precedent to Financial Close. Financial Close deadline would be specified for each project and will typically occur after Commercial Close.

If NDOT and the Apparent Best Value Proposer are unable to reach agreement on contract terms and scope of work, NDOT may terminate negotiations with the Apparent Best Value Proposer and begin negotiations with the firm with the second highest apparent Best Value ranking. Once agreement is reached on contract terms and scope of work, the NDOT Agreements Engineer will assemble the final contract. The P3 Agreement will be reviewed by the NDOT Project Manager for accuracy and completeness. The NDOT Agreements Engineer will transmit the final P3 Agreement to the Private Partner for execution. Once the P3 Agreement is executed by the Private Partner and NDOT, the P3 Agreement becomes effective. A copy of the executed P3 Agreement, along with a Notice to Proceed letter, will be mailed and/or electronically transmitted to the Private Partner and distributed to appropriate NDOT personnel. The Notice to Proceed will indicate what is allowed to begin, such as development of management plans, design, any limits on construction, etc. If the NDOT is unable to



negotiate a satisfactory P3 Agreement with any of the ranked Proposers, NDOT may either revise the RFP and solicit new Proposals or cancel the P3 solicitation.

# Appendix A

## **Acronyms and Glossary**



## Acronyms

Unless otherwise specified, wherever the acronyms listed below are used in this Guideline, they shall have the meaning set forth below.

Acronym	Definition
APDM	Alternative Project Delivery Method
ATC	Alternative Technical Concept
CM/GC	Construction Manager / General Contractor
CPM	Critical Path Method Schedule
DB	Design-Build
DBB	Design-Bid-Build
DBE	Disadvantaged Business Enterprise
EMR	Experience Modifier Rate
ERC	Evaluation and Recommendation Committee
FA	Financial Advisors
FC	Financial Committee
FHWA	Federal Highway Administration
GMP	Guaranteed Maximum Price
GPs	General Provisions
ICE	Independent Cost Estimator
IQA	Independent Quality Assurance
IR	Industry Review
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
NDOT	Nebraska Department of Transportation
NEPA	National Environmental Policy Act
OPCC	Opinion of Probable Construction Cost
OVT	Owner Verification Testing
P3	Public-Private Partnership
PAGs	Procurement Advisory Groups
PDB	Progressive Design-Build
QA	Quality Assurance
QC	Quality Control
RFP	Request for Proposals

Acronym	Definition
RFQ	Request for Qualifications
RIDs	Reference Information Documents
ROW	Right-of-Way
SC	Selection Committee
SOQ	Statement of Qualifications
SPs	Special Provisions
SUE	Subsurface Utility Engineering
TA	Technical Advisors
TC	Technical Committee
TMP	Target Maximum Price
TPs	Technical Provisions
USACE	U.S. Army Corps of Engineers
VAP	Value Added Proposal
VfM	Value for Money

## Definitions

Unless otherwise specified, wherever the following capitalized terms listed are used in these Guidelines, they shall have the following meanings.

Term	Definitions
<b>Alternative Project Delivery Method (APDM)</b>	Alternative Project Delivery Methods available for use by NDOT consisting of CM/GC, DB, PDB, and P3 project delivery methods.
<b>Addendum or Addenda</b>	Supplemental additions, deletions, and modifications to the provisions of the RFQ or RFP after the release date of the RFQ or RFP.
<b>Affiliate</b>	Includes parent companies, subsidiary companies, and partners of the proposing entity and other potentially financially liable parties for that entity.
<b>Alternative Technical Concept (ATC)</b>	Suggested changes, submitted by Proposers, to the contracting agency's supplied basic configurations, project scope, design, or construction criteria. These proposed changes must provide a solution that is equal to or better than the requirements in the RFP. If the ATC is acceptable to the contracting agency, the concept may be incorporated as part of the Proposers technical and price submittal. ATCs provide flexibility to the Proposers to enable them to enhance innovation and achieve greater efficiency.
<b>Apparent Best Value Proposer</b>	The Proposer that receives the highest total Proposal score after NDOT has completed its evaluation of Proposals in a Best Value selection process.
<b>Base Configuration</b>	Provides for a constraint on the Design-Builder's ability to deviate from a particular design and also establishes a design benchmark for payment to be made to the Design-Builder if the owner's assumed configuration that was the basis for its price estimate proves to be impossible to build. DB Proposers have the right to assume that the Base Configuration and the design contained in the contract drawings are feasible and represent a reasonable engineering approach to the project.
<b>Best Value</b>	The selection method for award of a contract based on the combination of qualitative non-price elements and quantitative cost/price elements.
<b>CM/GC Contractor</b>	The legal entity which enters into a <i>Pre-Construction Agreement</i> , acting as a construction manager that provides constructability input for the optimization of the project design. After which, if accepted by the agency or owner, enters into a <i>Construction Contract</i> , acting as a general contractor that constructs the project.
<b>Commercial Close</b>	Award and execution of the contract/agreement.
<b>Conflict of Interest Policy</b>	NDOT policy governing organizational conflicts of interest. The existing NDOT Conflict of Interest Policy does not address personal conflicts of interest.

Term	Definitions
<b>Construction Manager/General Contractor (CM/GC)</b>	The project delivery method which a contracting agency and a CM/GC Contractor enter into a <i>Pre-Construction Agreement</i> to furnish pre-construction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the contracting agency, enters into a <i>Construction Contract</i> for construction services for the construction phase of the project.
<b>Contract Documents</b>	All documents that, when combined, form the basis of the contract, including all pre-tender, tender, and contractual documentation.
<b>Contract Terms and Conditions (Agreement)</b>	The rights and obligations of the contracting parties once a contract is executed. These include general conditions that are common to a variety of NDOT contracts, as well as special conditions that are specific to an individual contract. (Examples of special conditions include contract change conditions, payment conditions, price variation clauses, and penalties.)
<b>Department</b>	The Nebraska Department of Transportation (NDOT).
<b>Descriptive Rating</b>	A descriptive term with which specific qualitative characteristics are associated for use by NDOT during the evaluation of an SOQ or Proposal. Prior to the evaluation process, NDOT will assign numerical scores or score ranges to correspond with each Descriptive Rating.
<b>Design-Bid-Build (DBB)</b>	The traditional project delivery method in which the agency or owner contracts with separate entities for the design and the construction of a project.
<b>Design-Build (DB)</b>	A project delivery method in which the design and construction services are contracted by a single entity known as the Design-Builder.
<b>Design-Builder</b>	The entity with which the agency or owner has contracted to perform the work effort for a project under a DB contract.
<b>Estimated Contract Value</b>	The estimated total price of a DB contract that includes both design and construction as well as other items for which the Design-Builder may be responsible such as utility relocation or ROW.
<b>Evaluation and Recommendation Committee (ERC)</b>	The selected NDOT staff that will serve as the official scoring body to evaluate and rank SOQ and Proposal submittals.
<b>Facility</b>	The element of a project where revenue can be collected for the project such as an electric vehicle charging facility, toll bridge, etc.
<b>Financial Close</b>	Is a milestone in a P3 project where various conditions specified in the procurement documents, must be met in order to ensure the financing to fund the project is in place and to begin to draw down funds. Example conditions include satisfying conditions precedent to Commercial Close, executed funding and security documents, executed lender agreements, legal opinions, etc.
<b>Financial Proposal</b>	The financial information, including a separately sealed Price Proposal, submitted by a Proposer in response to the request as identified in the ITP.

Term	Definitions
<b>General Conditions</b>	The conditions included in the contract that establish the minimum performance requirements for the Proposer.
<b>Guidelines</b>	The information contained in this NDOT manual that establishes the framework for CM/GC, DB, PDB, and P3 procurement. Guidelines are recommended, except for those identified in this manual as required.
<b>Industry Review (IR)</b>	A review period of the procurement documents during which the draft documents are provided to the shortlisted firms for their review and comment. This process allows NDOT to make any necessary changes to the draft documents without using the Addendum process before the final procurement documents are released for bidding purposes.
<b>Instructions to Proposers (ITP)</b>	The documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the Proposers in response to the RFP.
<b>Key Individuals or Key Personnel</b>	Those personnel categories designated by NDOT, for which individuals identified by Respondents/Proposers in an SOQ or Proposal may not be changed without NDOT approval. The credentials of these personnel will be evaluated and considered in the selection process.
<b>Liquidated Damages</b>	An amount determined by the owner during the formation of a contract, to compensate the owner for a specific breach of the contract (for example, late performance). Liquidated Damages are based on estimates of potential actual damages and are not punitive.
<b>NDOT Agreements Engineer</b>	The NDOT staff member that serves as the lead procurement officer on the specific project under procurement.
<b>NDOT Director</b>	The NDOT staff member that serves as the head of NDOT.
<b>Oral Presentations</b>	An in-person formal meeting between the Respondent/Proposer and Owner, at which the Respondent/Proposer may provide clarifying information and/or respond to specific questions formulated by NDOT, to assist NDOT in its final scoring and ranking of SOQs or Proposals.
<b>Owner</b>	The Nebraska Department of Transportation.
<b>Policy</b>	The definite course or method of action selected by NDOT to guide and/or constrain decisions regarding the state's use of APDMs.
<b>Potential Conflict of Interest Disclosure Statement</b>	A form provided by NDOT to be used by Respondents/Proposers and prospective Respondents/Proposers to identify any known or perceived conflict of interest, and the course of action proposed to mitigate the conflict.
<b>Pre-Construction Phase Technical Requirements</b>	The scope of work in the pre-construction phase of the project, including the technical requirements and criteria developed by NDOT for a specific PDB project.
<b>Price Proposal</b>	The pricing information or bid submitted by a Proposer in response to the request as identified in the ITP.

Term	Definitions
<b>Private Partner</b>	The entity that is a partner in a public-private partnership other than the State of Nebraska, any agency of the State of Nebraska, the federal government, any agency of the federal government, any other state government, or any agency of any government at any level.
<b>Procurement Advisory Groups (PAGs)</b>	A select group of personnel identified by the SC, consisting of either in-house NDOT staff or consultants will be available to assist the ERC during the entire procurement evaluation process. Members of this group will perform duties as identified in the SOQ Evaluation Manual and RFP Evaluation Manual <u>but are not authorized</u> to perform any scoring of SOQs or Proposals.
<b>Progressive Design-Build</b>	A project delivery method in which the design and construction services are contracted by a single entity known as the Progressive Design-Builder.
<b>Progressive Design-Builder</b>	The entity with which the agency or owner has contracted to perform the work effort for a project under a PDB contract.
<b>Project Manager</b>	The APDM contractor's designated individual responsible for the overall design, construction, quality, and contract administration for the project.  Also could refer to NDOT's employee with responsibility for administering the project contract.
<b>Proposal</b>	The information prepared and submitted by a Proposer in response to the RFP.
<b>Proposer</b>	The shortlisted Respondents submitting a Proposal for the project in response to an RFP.
<b>Public-Private Partnerships</b>	A project delivery method in which the design, construction, operations, maintenance, with or without financing are contracted by a Private Partner.
<b>Reference Information Documents (RIDs)</b>	The set of documents assembled by NDOT and included in the RFPs to provide definition and insight into the project. These documents may include: 1) environmental reports, 2) geotechnical information and data, 3) ROW information, 4) utility information, and 5) any other information NDOT considers to be relevant to project definition. These documents are provided to the Proposers for reference purposes only and may not be relied upon. Selected procurement documents must notify Proposers that using these documents for the preparation of a Proposal is solely at their risk.
<b>Request for Proposals (RFP)</b>	A written solicitation issued by NDOT seeking Proposals to undertake the project to be used to identify the most qualified Proposer.
<b>Request for Qualifications (RFQ)</b>	The written solicitation issued by NDOT seeking SOQs to identify shortlisted Respondents eligible to receive the RFP for the project.
<b>Respondent</b>	The entity submitting an SOQ for the project in response to an RFQ.
<b>Right-of-Way (ROW)</b>	The parcels of land necessary to construct and operate the planned facility.



Term	Definitions
<b>Selection Committee (SC)</b>	The NDOT staff members that will oversee and facilitate the evaluation process for the procurement.
<b>Statement of Qualifications (SOQ)</b>	The information prepared and submitted by a Respondent in response to the RFQ.
<b>SOQ Evaluation Manual</b>	The NDOT manual that establishes the methodology and criteria for the evaluation of the Respondent's submittal to NDOT in response to the RFQ.
<b>Special Terms and Conditions or Special Provisions (SPs)</b>	The detailed standard rules that will apply to the Proposer that enters into a contract with NDOT, forming an integral part of the final agreement or contract.
<b>Standard Specification</b>	The current NDOT standards for construction.
<b>State</b>	The State of Nebraska.
<b>Stipend</b>	A payment made to an unsuccessful Proposer in exchange for ownership of the work product included in their Proposal and all intellectual property rights associated therewith. These payments are only made to shortlisted Proposers who submit responsive Proposals.
<b>Successful Proposer</b>	The Proposer that receives the highest total Proposal score after NDOT has completed its evaluation of Proposals in a qualifications-based selection process.
<b>Technical Proposal</b>	The submittal prepared by a Proposer that outlines their concepts, ideas, processes, and approaches to deliver a specific project.
<b>Technical Provisions (TPs)</b>	The technical requirements and criteria developed by NDOT for a specific project, which will serve as the basis for the final design and construction.
<b>Transmittal Letter</b>	The formal letter, prepared by the Respondent/Proposer, which transmits the SOQ or Proposal to NDOT for consideration and evaluation.
<b>Unsolicited Proposal</b>	A written proposal for a new project that is submitted to an agency from an offeror for the purpose of obtaining a contract with the owner.
<b>Value Added Proposal (VAP)</b>	The Proposer's concept or idea that is not included in the scope of work, and that will enhance the performance of the selected element without changing the technical requirements or adding additional cost (for example, improved life cycle features).
<b>Work Product Agreement Form</b>	A written agreement between the Proposer and NDOT that gives NDOT ownership of said Proposer's Proposal and any concepts or ideas contained in the Proposal, in exchange for the Stipend.

# Appendix B

## **Conflict of Interest Statement Example**



## Appendix B-1 Conflict of Interest Disclosure Statement – Selection Team Participant

I, \_\_\_\_\_ as a participant in the preparation of the Request for Qualifications (RFQ) and/or Request for Proposal (RFP), and/or development of associated evaluation criteria, and/or in agreeing to participate in the selection process by reviewing and evaluating Statements of Qualifications and/or Proposals (the Procurement Process), for the design and construction or design support and potential subsequent construction of the \_\_\_\_\_ (the Project), make the following representations:

- A. Except as set forth in this Disclosure Statement, neither I nor any member of my immediate family has a direct or indirect financial interest in any entity participating in any SOQ/Proposal with regard to the Project;
- B. Except as set forth in this Disclosure Statement, no business or organization with which I am associated has a direct or indirect financial interest in any entity participating in any SOQ/Proposal with regard to the Project;
- C. Except as set forth in this Disclosure Statement, no member of my immediate family or other person, business, or organization with which I am associated is negotiating or has an arrangement concerning prospective employment relating to any entity participating in any SOQ/Proposal with regard to the Project;
- D. Except as set forth in this Disclosure Statement, neither I nor any member of my immediate family is involved in discussions with any business participating in any SOQ/Proposal with regard to the Project;
- E. I will not solicit or accept, directly or indirectly, any gratuities, unwarranted privileges or exemptions, favors or anything of value from any firm under consideration for the Construction Manager/General Contractor (CM/GC), Design-Build (DB), Progressive Design-Build (PDB), or Public-Private Partnership (P3) contract associated with the Project, and I recognize that doing so may be contrary to statutes, ordinances, and rules governing or applicable to NDOT or may otherwise be a violation of law; and,
- F. In the event that the circumstances under which I made this Disclosure Statement change such that a revised response pertaining to items A through E must be provided, I will promptly contact the NDOT Planning and Project Development Engineer and prepare a revised Disclosure Statement.

Further, I hereby affirm that I have disclosed any potential conflicts of interest where indicated below on this Conflict of Interest Disclosure Statement, or alternately, I hereby certify that to the best of my knowledge, I do not have a conflict of interest, either real or apparent, as a result of a direct or indirect financial interest on my part or that of any member of my immediate family, nor of my employer, partner(s), or joint venture members, in any firm under consideration for the CM/GC, DB, PDB, or P3 contract/agreement associated with the Project.

Further, I acknowledge that NDOT may require revisions to the management plan described in Section II below of this disclosure statement prior to approving it and that NDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential conflicts of interest described in Section I below of this disclosure statement.

This Agreement is subject to the laws of the State of Nebraska and applicable rules and regulations.

No Conflict of Interest to Disclose

Conflict of Interest and Mitigation Identified  
(Attach additional pages as necessary)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Printed or Typed Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_

**Section I – Description of Potential Conflicts of Interest**

**Section II – Plan for Mitigating or Managing Potential Conflicts of Interest**

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Approved by the Nebraska Department of Transportation

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Title: \_\_\_\_\_

## Appendix B-2 Potential Conflict of Interest Disclosure Statement – Respondent/Proposer

I, \_\_\_\_\_ as an authorized representative of the Respondent/Proposer or prospective Respondent/Proposer, or as a member of the Respondent's/Proposer's or prospective Respondent's/Proposer's team, identified below, pursuing the \_\_\_\_\_ Construction Manager/General Contractor (CM/GC), Design-Build (DB), Progressive Design-Build (PDB), or Public-Private Partnership (P3) contract (the Project), hereby affirm that I have disclosed any potential organizational conflicts of interest where indicated below on this Conflict of Interest Disclosure Statement, or alternately, I hereby certify that to the best of my knowledge, that the Respondent/Proposer or prospective Respondent/Proposer identified below does not have a conflict of interest, either real or apparent, as a result of any contractual relationships, work performed previously or currently being performed, or any personal relationships.

This Agreement is subject to the laws of the State of Nebraska and applicable rules and regulations.

- No Conflict of Interest to Disclose                       Conflict of Interest and Mitigation Identified  
(Attach additional pages as necessary)

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Printed or Typed Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Respondent/Proposer Team Name: \_\_\_\_\_

Description of Potential Conflicts of Interest

Plan for Mitigating or Managing Potential Conflicts of Interest

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Approved by the Nebraska Department of Transportation

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Appendix C  
CM/GC RFQ Example





### Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFQ.

The official RFQ will need to be tailored for the project specifics.

See attached separate document.

**NEBRASKA**

Good Life. Great Journey.

**DEPARTMENT OF TRANSPORTATION**

## **NEBRASKA DEPARTMENT OF TRANSPORTATION**

**Construction Manager / General Contractor  
(CM/GC) Services**

### **REQUEST FOR QUALIFICATIONS**

**For**

**[Project Name]**

**[Project Number]**

**[Control Number]**

**RFQ Issuance Date: [Issuance Date]  
SOQ Submittal Deadline: [SOQ Due Date]  
RFQ Procurement Contract: [RFQ Number]**

# Table of Contents

<b>1</b>	<b>Background.....</b>	<b>3</b>
1.1	Introduction .....	3
1.2	Overview of CM/GC Delivery .....	3
1.3	Integrated Project Team .....	3
1.3.1	NDOT .....	3
1.3.2	Designer ([Designer Name]) .....	4
1.3.3	CM/GC Contractor .....	4
1.4	Independent Cost Estimator .....	4
1.5	Abbreviations and Definitions .....	4
1.6	Project Description.....	8
1.7	Project Goals .....	8
1.8	Project Status .....	8
1.9	Plan of Finance.....	8
<b>2</b>	<b>Scope Of Work Overview .....</b>	<b>8</b>
2.1	Pre-Construction Services .....	9
2.2	GMP Component Validation Process .....	12
2.3	Construction Services.....	12
2.4	Co-Location Requirements .....	12
<b>3</b>	<b>NDOT Regulations and Policies .....</b>	<b>13</b>
3.1	State and Federal Requirements.....	13
3.2	Bonds and Indemnity .....	13
3.3	Prequalification and Required Licenses .....	13
3.4	Insurance Requirements.....	14
3.5	Required Percentage of Work .....	14
<b>4</b>	<b>Procurement Process .....</b>	<b>15</b>
4.1	Statutory Authority .....	15
4.2	Overview .....	15
4.3	Procurement Schedule .....	15
4.4	Questions and Requests for Clarifications.....	15
4.5	Addenda .....	17
4.6	Pre-Contractual Expenses.....	17
4.7	Intellectual Property .....	17
<b>5</b>	<b>Statement of Qualifications Submittal Requirements.....</b>	<b>17</b>
5.1	General Requirements.....	17
5.2	Format Requirements .....	18
5.3	Packaging Requirements.....	18
5.4	Due Date, Time, and Location .....	18
5.5	Quantities.....	18
<b>6</b>	<b>Statement of Qualifications Contents .....</b>	<b>19</b>
6.1	SOQ.....	19
6.1.1	Respondent Team Experience and Past Performance.....	19
6.1.2	Respondent Organization .....	21
6.1.3	Key Personnel.....	21
6.1.4	Understanding and Approach to CM/GC Contracting.....	23
6.1.5	Safety Information.....	23
6.1.6	Form PP-1 – Environmental Past Performance.....	23
6.2	Appendix A - Legal .....	23
6.2.1	Form A – Transmittal Letter .....	23

# Table of Contents

6.2.2	Executive Summary .....	24
6.2.3	Confidential Content Index.....	24
6.2.4	Legal Structure.....	24
6.2.5	Form L-1 – Respondent’s Organization Information .....	24
6.2.6	Form L-2 – Certification/Questionnaire .....	24
6.2.7	Organizational Conflicts of Interest .....	24
6.3	Appendix B – Financial Information .....	25
6.3.1	Surety Letters.....	25
6.3.2	Financial Statements .....	26
<b>7</b>	<b>Evaluation Process .....</b>	<b>26</b>
7.1	Responsiveness Review.....	26
7.2	Pass/Fail Evaluation .....	26
7.3	Qualitative Evaluation Factors and Weightings .....	28
7.3.1	Respondent’s Team Experience and Past Performance ( % ) .....	28
7.3.2	Respondent’s Organization and Key Personnel ( % ).....	28
7.3.3	Understanding and Approach to CM/GC Contracting ( % ).....	29
7.4	SOQ Evaluation Procedure and Shortlisting Notification.....	29
7.5	Changes in Respondent Organization and Key Personnel .....	30
<b>8</b>	<b>Communication, Public Information &amp; Organizational Conflicts of Interest ..31</b>	
8.1	Improper Communications and Contacts .....	31
8.1.1	Communication Process .....	31
8.2	Public Records.....	32
8.3	Organizational Conflicts of Interest.....	33
8.3.1	NDOT Consultant.....	33
8.3.2	NDOT Employees Involved In Procurement.....	34
8.3.3	Participation in More than One Respondent Organization.....	34
<b>9</b>	<b>Protest Procedures .....</b>	<b>34</b>
9.1	Applicability .....	34
9.2	Required Early Communication for Certain Protests .....	34
9.3	Deadlines for Protests .....	35
9.4	Content of Protest.....	35
9.5	Filing of Protest.....	35
9.6	Comments from Other Respondents .....	36
9.7	Burden of Proof.....	36
9.8	Decision on the Protest.....	36
9.9	Protester’s Payment of Costs .....	36
9.10	Rights and Obligations of Respondents .....	36
<b>10</b>	<b>Debriefing Meetings .....</b>	<b>36</b>
<b>11</b>	<b>NDOT Reserved Rights .....</b>	<b>37</b>

**APPENDIX A: PROJECT DESCRIPTION AND PROJECT STATUS**

**APPENDIX B: FORMAT AND ORGANIZATION OF STATEMENT OF QUALIFICATIONS**

**APPENDIX C: FORMS**

**APPENDIX D: INSURANCE**

**ATTACHMENT 1: NDOT CONFLICT OF INTEREST POLICY FOR [PROJECT NAME] PROJECT**

# 1 BACKGROUND

## 1.1 Introduction

The Nebraska Department of Transportation (“NDOT”) is presenting this Request for Qualifications (“RFQ”) inviting prospective contractors and joint ventures (“Respondents”) to submit Statements of Qualifications (“SOQs”) for a Construction Manager/General Contractor (“CM/GC Contractor”) for Pre-Construction Services and Construction Work for \_\_\_\_\_ (the “Project”).

The purpose of the RFQ is to solicit information, in the form of SOQs, which NDOT will evaluate in order to select a shortlist of Respondents eligible to participate in the next step of the procurement process. ONLY SHORTLISTED RESPONDENTS WILL BE ELIGIBLE TO SUBMIT PROPOSALS FOR THE PROJECT.

## 1.2 Overview of CM/GC Delivery

CM/GC is a contracting method that involves NDOT executing a professional services agreement for Pre-Construction Services (“Pre-Construction Agreement”) with a construction firm to provide constructability, estimating, and other services during the Pre-Construction Services of the Project. The selected CM/GC Contractor will work collaboratively with NDOT and NDOT’s Design Consultant (“Designer”) as an Integrated Project Team (“IPT”) to mitigate risk, improve the construction schedule, streamline the design process, and develop a project that adheres to NDOT’s budget.

Provided NDOT and the CM/GC Contractor have successfully collaborated in the pre-construction phase, NDOT will enter into negotiation for the Guaranteed Maximum Price (“GMP”) with the CM/GC Contractor for a scope of Construction Work, with associated commercial/risk allocations, for the Project. Upon successful negotiation of a final GMP, NDOT intends to enter into a contract with the CM/GC Contractor to provide such Construction Work for the Project (the “Construction Contract”).

If NDOT and CM/GC Contractor fail to reach agreement on the GMP, or any component thereof, or the GMP is not within NDOT’s budget, then NDOT may reduce the construction scope and/or terminate the negotiations with the CM/GC Contractor and advertise the Project for public bidding and initiate separate procurement for selection of a general contractor to construct the Project.

## 1.3 Integrated Project Team

The Integrated Project Team, as referenced herein, is composed of NDOT, Designer, and the CM/GC Contractor. The roles and responsibilities of each entity are described below.

### 1.3.1 NDOT

NDOT will administer and manage the Project. The NDOT Project Manager set forth in Section 4.4 of this RFQ will be the point of contact and primary NDOT position for Pre-Construction Services. The NDOT Project Manager will guide design decisions while overseeing the collaborative process among the IPT.

### 1.3.2 Designer ([Designer Name])

The Designer ([Designer Name]) is under contract with NDOT and is responsible for performing design and engineering services, preparing plans, specifications, and estimates (“PS&E”) and working collaboratively with the CM/GC Contractor and NDOT during the Pre-Construction Services for the Project. The Designer will also provide design support services during the construction stage.

### 1.3.3 CM/GC Contractor

The CM/GC Contractor will be responsible under the Pre-Construction Agreement for performing Pre-Construction Services for the Project, which are to include reviewing the Designer’s design plans and specifications for constructability, providing Value Engineering alternatives, and preparing construction cost estimates, risk register, and overall construction schedule at every design phase submittal, among other activities. The CM/GC Contractor will also, as part of the Pre-Construction Services, develop existing condition analysis, maintenance of traffic, and disruption avoidance planning, determine and identify any advance Construction Work that would be to the advantage of the Project or NDOT, and provide site logistics, construction sequences, and construction phasing analysis for the Project.

If NDOT and the CM/GC Contractor agree to terms, the CM/GC Contractor will also construct the Project, subject to the agreed budget, schedule, terms, and conditions of a Construction Contract negotiated as part of the Pre-Construction Services.

## 1.4 Independent Cost Estimator

NDOT will retain an Independent Cost Estimator (“ICE”) who will provide comparative price estimates during the project and at the Project milestone submittals. The ICE will use existing market conditions for the cost estimates and to evaluate the GMP proposed by the CM/GC Contractor. The ICE will be involved in each discussion regarding risk and associated cost and schedule impact throughout the development of the Project.

## 1.5 Abbreviations and Definitions

The following abbreviations are used in this document and are defined as shown below:

<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>CM/GC</b>	Construction Manager/General Contractor
<b>EE</b>	Engineering Estimator
<b>EIS</b>	Environmental Impact Statement
<b>GMP</b>	Guaranteed Maximum Price
<b>H&amp;H</b>	Hydraulic and Hydrology
<b>ICE</b>	Independent Cost Estimator
<b>IPT</b>	Integrated Project Team
<b>LOC</b>	Limits of Construction
<b>MOT</b>	Maintenance of Traffic

<b>NDOT</b>	Nebraska Department of Transportation
<b>NDEE</b>	Nebraska Department of Environment and Energy
<b>NEPA</b>	National Environmental Protection Act
<b>NESCA</b>	Nebraska Endangered Species Coordination Act
<b>NGPC</b>	Nebraska Game and Parks Commission
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NPS</b>	National Park Services
<b>OPCC</b>	Opinion of Probable Construction Cost
<b>PM</b>	Project Manager
<b>PS&amp;E</b>	Plans, Specifications and Estimates
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>ROD</b>	Record of Decision
<b>ROW</b>	Right-of-Way
<b>SHPO</b>	State Historic Preservation Office
<b>SOQ</b>	Statement of Qualifications
<b>SWPPP</b>	Storm Water Pollution Prevention Plan
<b>USACE</b>	United States Army Corps of Engineers
<b>USFWS</b>	U.S. Fish and Wildlife Service

Use of the term “include”, “includes” or “including” should be read as if followed by the words “without limitation” or “but not limited to”, as the case may be. Capitalized terms not otherwise defined in this RFQ are defined as shown in Exhibit A-1.2.

**EXHIBIT A-1.2**

<b>Term</b>	<b>Definition</b>
<b>Addenda/Addendum</b>	Supplemental additions, deletions, and modifications to the provisions of the RFQ issued after the advertisement date of the RFQ.
<b>Affiliate</b>	With respect to any member of the Respondent team, as applicable: <ul style="list-style-type: none"> <li>(a) any member, partner, or joint venture of such firm;</li> <li>(b) any individual or entity that directly or indirectly controls, or is controlled by, or is under common control with, such firm or any of its members, partners or joint venturers; and</li> <li>(c) any other entity for which 20% or more of the equity interest in such other entity is held directly or indirectly, beneficially or of record by (i) such firm, (ii) any of such firm’s members, partners or joint venturers or (iii) any Affiliate of such firm under clause (b) of this definition.</li> </ul>

<b>Term</b>	<b>Definition</b>
<b>Apparent Successful Proposer</b>	The shortlisted Respondent initially selected, following evaluation of Proposals, pursuant to the RFP.
<b>Construction Contract</b>	The written contract executed between NDOT and the CM/GC Contractor setting forth the obligations of the parties with respect to the Project, including, but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.
<b>Construction Work</b>	The furnishing of labor, materials, equipment, services and other incidentals necessary to, or convenient for, the successful completion of the construction of the Project and otherwise the carrying out of the duties and obligations imposed by the Construction Contract.
<b>Cost Model</b>	The cost model for the OPCC and corresponding GMP.
<b>CM/GC Contractor</b>	The firm responsible for completing all CM/GC services on this Project.
<b>Designer</b>	Has the meaning set forth in <u>Section 1.3</u> .
<b>Draft Record of Decision</b>	The draft document prepared pursuant to the environmental process for the Project, reflecting the preferred alternative.
<b>Guarantor</b>	The parent company or other Affiliate of an Equity Member, or other entity (if any), that the Respondent may identify as an intended guarantor of Pre-Construction Agreement obligations and liabilities.
<b>Independent Cost Estimator</b>	Has the meaning set forth in <u>Section 1.4</u> .
<b>Integrated Project Team (IPT)</b>	Has the meaning set forth in <u>Section 1.3</u> .
<b>Key Personnel</b>	Individuals from the Respondent's organization, as identified in the Respondent's SOQ, to fill the positions specified in <u>Section 6.1.3</u> of the RFQ. Additional key personnel positions for the Project may be identified in the RFP.
<b>Opinion of Probable Construction Costs</b>	The estimated construction cost developed by the CM/GC Contractor at established milestones for the Project.
<b>Plans, Specifications and Estimates (PS&amp;E)</b>	The plans, specifications and estimates to be developed by the Designer during the pre-construction phase with the CM/GC Contractor's input serving as construction manager.
<b>Pre-Construction Agreement</b>	The written agreement executed between NDOT and the CM/GC Contractor, outlining the scope of work for the Pre-Construction Services they were selected to provide and the payment method. The Pre-Construction Agreement includes reference to the qualifications-based selection, scope of work, notice to proceed, schedule, staffing, total cost and payment provisions, dispute resolution, suspension/termination, and other contractual requirements such as, business registration and licensing,



<b>Term</b>	<b>Definition</b>
	performance and accountability for its services, conflict of interest, and responsibilities for claims and liability insurance.
<b>Pre-Construction Services</b>	The services provided during the pre-construction phase of the Project.
<b>Project</b>	The proposed [Short project description].
<b>Project Baseline Schedule</b>	A schedule that clearly and unmistakably shows the critical path of activities demonstrating completion within the allotted time that supports each estimate
<b>Proposal</b>	The proposal submitted by the shortlisted Respondent in response to the RFP, including any revisions thereto.
<b>Proposer</b>	The proposed CM/GC Contractor submitting a Proposal for the Project in response to an RFP.
<b>Public Records Act</b>	Nebraska Public Records Law; Section 84-712.
<b>Record of Decision</b>	The document prepared pursuant to the environmental process for the Project, reflecting the preferred alternative.
<b>Request for Proposals (RFP)</b>	A written solicitation issued by NDOT seeking Proposals to undertake the Project to be used to identify the most qualified Proposer.
<b>Request for Qualifications (RFQ)</b>	The written solicitation issued by NDOT to identify shortlisted Respondents eligible to receive the RFP for the Project.
<b>Respondent</b>	The proposed CM/GC Contractor submitting an SOQ for the Project in response to this RFQ.
<b>Right-of-Way</b>	The real property rights within which the Project is situated.
<b>Risk Register</b>	A listing of risk and opportunities, risk assessments, and an evaluation of mitigation and responsibility for those risks.
<b>SOQ Due Date</b>	The deadline to submit the SOQs set forth in <u>Section 4.3</u> ; as such date may be revised by Addenda.
<b>Statement of Qualifications (SOQ)</b>	The information prepared and submitted by a Respondent in response to this RFQ.
<b>Storm Water Pollution Prevention Plan</b>	Has the meaning set forth in <u>Section 2</u> .
<b>Value-Added Key Personnel</b>	Individuals identified by Respondents or Proposers in response to this RFQ or any subsequent RFP for roles that, if the proffering Respondent or Proposer is the Apparent Successful Proposer, will be contractually obligated to engage for the Project
<b>Value Engineering</b>	A proposal or solution that provides equal or better performance as it relates cost, schedule or quality of the work.
<b>Website</b>	The website for the Project procurement, at <a href="http://dot.nebraska.gov">http://dot.nebraska.gov</a> .

## 1.6 Project Description

The proposed Project includes \_\_\_\_\_.

For depictions of the Project, please see [Appendix A](#).

## 1.7 Project Goals

NDOT's vision is to \_\_\_\_\_.

The project is needed due to \_\_\_\_\_.

Consistent with NDOT's vision, NDOT has established a set of goals for the Project. These goals are considered to be equal in value and importance to the Project, reflecting NDOT's view of a successful Project.

- a. Improve safety and operation of the transportation system and create a more resilient and reliable corridor.
- b. Challenge and motivate Respondents to identify cost savings through efficiency and innovation for an agreeable GMP.
- c. Successfully deploy the CM/GC project delivery method of early contractor involvement in the design process.
- d. Provide high-quality design and construction.
- e. Minimize inconvenience to the traveling public and maximize safety of workers and the traveling public.
- f. Maintain excellent public and stakeholder relations through an effective outreach program and efficient maintenance of traffic.
- g. \_\_\_\_\_.

## 1.8 Project Status

For a detailed description of the Project's status, please see [Appendix A](#). Note that the information in [Appendix A](#) is currently under further development by NDOT and may be modified, reduced, or expanded with the release of the final RFP.

## 1.9 Project Funding

The Project is programmed in NDOT Transportation Construction Program. The preliminary estimate generated for the [Project Name] Project is \_\_\_\_\_ which includes preliminary engineering, utilities, ROW, mitigation, construction, and construction engineering.

## 2 SCOPE OF WORK OVERVIEW

The CM/GC Contractor is being selected for this Project to join the IPT. The CM/GC Contractor will be expected to provide the IPT with construction expertise and technical experience, to assist in making decisions that meet the goals of the Project, support technical and logistical

challenges, minimize risk, and provide input on items affecting construction schedule and costs.

The following are the Project elements to which the CM/GC Contractor will bring the most value during the Pre-Construction Services:

- a. Project grading and earthwork including means and methods.
- b. Borrow source identification necessary to construct the Project.
- c. Construction phasing, including but not limited to temporary paving and grading operations and durations which may impact environmental resources identified in the environmental documents and permits.
- d. Maintenance of traffic and accesses along the Project.
- e. Configuration and footprint needed for bridge and drainage structure construction including most economical means and methods and temporary elements required.
- f. Storm Water Pollution Prevention Plan ("SWPPP") means and methods that maximize effectiveness for protection and restoration of temporary wetland impact.
- g. Mitigation site construction and cost.

As the IPT progresses through the pre-construction phase, this list may be altered or refined.

## **2.1 Pre-Construction Services**

The CM/GC Contractor is an integral part of the IPT during the Pre-Construction Services. The Pre-Construction Services intend for the IPT to develop, implement, and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, problems are resolved promptly, and upon completion, the Project is deemed a success by all.

The CM/GC Contractor shall provide input on constructability, phasing, materials availability, cost, and schedule throughout the Pre-Construction Services of the Project. As a member of the IPT, the CM/GC Contractor offers the skills and knowledge to provide:

- a. Information on constructability, phasing, and other design input as directed by NDOT.
- b. Estimates of the quantities of materials, labor, duration, sequencing, and equipment needed for construction.
- c. An understanding of the availability, cost, and capacities of materials, labor, and equipment.
- d. Identification of the potential risks and methods to mitigate them during the design process.

The CM/GC Contractor tasks during the Pre-Construction Services include, but are not limited to, the following:

- a. Provide a Project Manager and associated staff (including Key Personnel) to consult with, advise, assist, and provide recommendations to NDOT and the design team on all aspects of the planning, design, and proposed construction, as requested by NDOT. Please see Section 6.1.3 for a list of Key Personnel.
- b. Attend an initial Project Workshop that includes the following agenda items:
  - 1) Introduction of the IPT.
  - 2) Introduction of the Project Stakeholders as determined by NDOT.
  - 3) Discussion of Project status, goals, objectives, schedule, funding, etc.
  - 4) Presentation of Project elements.
  - 5) Discussion of implementation of the Risk Register and how it will be used on the Project.
  - 6) Question and answer session.
- c. Implement a risk management strategy and develop and monitor the Risk Register.
- d. Provide technical assistance during the Pre-Construction Services as alternatives are evaluated and the environmental process is completed. The technical assistance may include providing risk assessments, constructability input, cost estimate, and schedule impacts for items such as construction access, laydown and staging areas, and MOT for alternatives being evaluated.
- e. Participate in design coordination meetings with the IPT.
- f. Participate in the interim pricing milestone process, anticipated to occur at initial, functional, and final design plans and specifications submissions. More detail about these milestones will be provided in the Pre-Construction Agreement. This includes the following at each milestone:
  - 1) Conduct formal constructability, material, equipment, and labor availability reviews. These formal reviews will focus on identifying revisions to improve clarity for bidding, identifying potential design revisions that would reduce construction costs, and identifying elements to improve the time performance of the Project.
  - 2) Conduct formal risk analysis workshops with the IPT. The focus of the risk analysis workshops will be to identify potential risks and to assign cost and schedule impacts to each risk in order to better define pricing and contingency.
  - 3) Participate in price reconciliation meetings to reconcile components of the price that deviate from that of the ICE more than a stipulated amount. During

price reconciliation meetings, NDOT may request that the CM/GC Contractor share the Cost Model in an “over-the-shoulder” environment with them to more fully understand how the proposed pricing was derived and to help reconcile differences. During these meetings, any sharing of or discussions about the CM/GC Contractor’s Cost Model will be limited to NDOT’s Project Manager, key estimating staff, and possibly the ICE. At the conclusion of each meeting all Cost Model data presented by the CM/GC Contractor will remain with the CM/GC Contractor and remain their property. The CM/GC Contractor is responsible for preparing and updating the Cost Model.

- 4) Provide written documentation and recommendations to document decisions of the conceptual drawings being prepared by NDOT and the Designer, including conflicts and/or deficiencies noted.
  - 5) Prepare and submit a schedule that clearly and unmistakably shows the critical path of activities demonstrating completion within the allotted time that supports each estimate.
- g. Provide informal oversight and constructability reviews with the IPT on various specific elements of the Project and provide recommendations, including input on staging, sequencing, equipment storage, access, traffic control, storm water management, accelerated construction techniques (as applicable), evaluation of bridge types, and materials that may be cost-effectively recycled during construction.
  - h. During the development of the GMP, prepare and submit the Project Baseline Schedule, finalized budget, and schedule control management plan to ensure completion of construction within budget and within the allotted time.
  - i. Confirm that environmental commitments will be implemented during construction including those from permits as applicable through review of design and permit applications. NDOT will provide the CM/GC Contractor with anticipated timelines required to obtain the necessary environmental clearances and permits on this Project.
  - j. Provide constructability input on temporary construction and staging areas for environmental permits based on the proposed construction operations necessary for the design plans and specifications. Identify time and cost impacts and propose alternatives to minimize these environmental impacts.
  - k. Assist NDOT in preparing the draft and final submissions of a Storm Water Pollution Prevention Plan (SWPPP).
  - l. Develop, propose, and track innovations for Project construction. Document and track cost savings and schedule impacts associated with innovations in a matrix and submit to NDOT.
  - m. Prepare and submit GMP Proposals to NDOT with appropriate backup documentation for construction schedule and estimate based on the requirements of the Pre-Construction Agreement.

## **2.2 GMP Component Validation Process**

When NDOT determines, with the CM/GC Contractor input, that the Project has been designed to a sufficient level of detail to allow for a constructible Project, the CM/GC Contractor and NDOT will utilize a validation process to be detailed in the RFP. The process generally involves validation of the overall GMP, and its components (including risk contingencies and CM/GC Contractor fees and markups) proposed by the CM/GC Contractor during negotiations with NDOT for the price of the Construction Work and utilization of the open-book estimates prepared throughout the Pre-Construction Services by the CM/GC Contractor in its role as construction manager.

## **2.3 Construction Services**

If the CM/GC Contractor and NDOT are successful in negotiating a GMP, and the CM/GC Contractor complies with requirements and conditions of award, the CM/GC Contractor shall:

- a. Execute a Construction Contract with NDOT.
- b. Construct and manage construction while meeting Project requirements as per the Construction Contract.
- c. Complete the construction within the time allotted in the Construction Contract.

## **2.4 Co-Location Requirements**

The CM/GC Contractor's Key Personnel will be expected to attend workshops with the IPT. These workshops are expected to take place in the Lincoln, Nebraska area at key design milestones (such as project kickoff, initial, functional, and final designs). Other meetings will be required and can be facilitated by use of teleconferences and/or internet meetings, as applicable.

# **3 NDOT REGULATIONS AND POLICIES**

## **3.1 State and Federal Requirements**

The procurement documents and any agreements thereunder will conform to requirements of applicable State laws, regulations, and policies.

Respondents are advised that the RFP will be drafted based on the assumption that the Project's plan of finance will remain eligible for Federal-aid funds, including Transportation Investment Generating Economic Recovery (TIGER) grants. Therefore, the procurement documents and any agreements thereunder must conform to requirements of applicable Federal law, regulations, and policies. These include Equal Employment Opportunity (Title VI of the Civil Rights Act of 1964, as amended), Disadvantaged Business Enterprises ("DBE") (Title 49 Code of Federal Regulations Part 26, as amended), Small Business requirements (United States Code sections 631 et seq.), Buy America requirements (49 Code of Federal Regulations Part 661), and Davis-Bacon wage rates. Details as to the extent and applicability of Federal requirements to the entire Project will be set forth in the RFP. NDOT reserves the right to modify

the procurement process described in this RFQ to address any concerns, conditions, or requirements of Federal agencies, including, but not limited to FHWA.

### **3.2 Bonds and Indemnity**

The selected CM/GC Contractor will be required to indemnify NDOT with respect to certain third-party claims arising out of the Pre-Construction Agreement or Work. The selected CM/GC Contractor will also be required to indemnify NDOT with respect to certain third-party claims arising out of the Construction Contract or work. The required indemnity provisions will be set forth in the RFP.

The CM/GC Contractor will be required to furnish a payment and performance bond upon execution of the Pre-Construction Agreement. A required bond form will be provided in the RFP.

The CM/GC Contractor will also be required to furnish a payment and performance bond upon execution of the Construction Contract. A bond form will be provided in the RFP.

As part of NDOT's evaluation of Respondent qualifications, and in accordance with Section 6.2, Respondents will be required to demonstrate in their SOQs the capacity to obtain these payment and performance bonds. The Respondent's eligible surety or sureties ultimately committing to issue the bonds must evaluate a Respondent's financial capacity as sufficient to issue the Pre-Construction Agreement bond with a penal sum at or in excess of \$10 million and a Construction Contract bond with a penal sum at or in excess of \$300 million.

### **3.3 Prequalification and Required Licenses**

Each Respondent, including any Respondent submitting an SOQ as a joint venture, must be authorized to do business in Nebraska and prequalified with the Construction Division (as provided in Nebraska Revised Statutes §§39-1351 and 1352 and NDOT Rules and Regulations Title 49 Section 002) in an amount deemed by NDOT to be sufficient to carry all Pre-Construction Services, the Construction Work, and all other work anticipated in this Project.

Any Respondent that is currently prequalified with the Construction Division must certify, in a letter, signed by the President, Chief Executive Officer, Chief Financial Officer, Treasurer, or equivalent position, in each case authorized and empowered to certify on behalf of its company, dated no earlier than 14 calendar days prior to the deadline for submission of the SOQ, certifying that:

- a. No material change has occurred in the respective entity's financial position since the date of its most recent prequalification by NDOT.
- b. No voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments, scheme or arrangement, appointment of provisional liquidated, receiver, or administrative receiver, resolution or petition for winding-up or similar proceeding, under any applicable law, in any jurisdiction, is imminent or threatened.
- c. Its financial position does not reflect any material contingent liabilities (including off-balance sheet liabilities), unusual forward or long-term commitments, and that, if a

shortlisted Respondent is ultimately selected as the “Apparent Successful Proposer” (with its then-identified CM/GC team), the entity has sufficient financial capacity, strength, and ability to carry out the Project responsibilities for the Project.

Any Respondent that is not currently prequalified must submit an application and be prequalified at the time of submission of the Statement of Qualifications. NDOT requests the Respondent submit the application at least **14 days** prior to the date for submission of the Statement of Qualifications.

Additional information for prequalification requirements can be found using the link below:

<https://dot.nebraska.gov/business-center/business-opp/hwy-bridge-lp/prequal/>

### **3.4 Insurance Requirements**

The Pre-Construction Agreement will require proof of insurance providing coverage as set forth in Pre-Construction Insurance Requirements (Appendix D). The Construction Contract will require proof of insurance providing coverage as required in Construction Work Insurance Requirements (Appendix D).

### **3.5 Required Percentage of Work**

The CM/GC Contractor shall not be allowed to sublet, assign, or otherwise dispose of any portion of the Pre-Construction Agreement without consent of NDOT.

The CM/GC Contractor shall not be allowed to sublet, assign, or otherwise dispose of any portion of the Construction Contract without consent of NDOT. NDOT will not allow the CM/GC Contractor to sublet more than seventy percent (70%) of the work under the Construction Contract, excluding specialty items. Specialty items are those services or items that are not usually furnished by a contractor performing the particular type of service contained in this RFQ and will be defined in the Construction Contract.

## **4 PROCUREMENT PROCESS**

### **4.1 Statutory Authority**

NDOT is issuing the RFQ in accordance with the provisions of Nebraska Revised Statutes Section 39-2818 to 39-2820 and other applicable provisions of law.

### **4.2 Overview**

NDOT will use a two-step procurement to select the CM/GC Contractor. This RFQ represents the first step in the procurement to solicit from the Respondents’ information, in the form of SOQs. In accordance with Section 7, NDOT will evaluate the SOQs received in response to this RFQ and, on the basis of these evaluations, intends, but is not bound, to shortlist **up to three** (3) Respondents in accordance with the procedures and evaluation criteria described in this RFQ.



As the second step in the procurement, NDOT intends to invite shortlisted Respondents to prepare and submit proposals in response to the RFP (“Proposals”). NDOT will evaluate and score all Proposals and select one of the shortlisted Proposers in accordance with the criteria and procedures to be set forth in the RFP.

NDOT anticipates that the successful Respondent, if also the Apparent Successful Proposer, will enter into a Pre-Construction Agreement with NDOT to provide Pre-Construction Services and is intended to be the general contractor for the Construction Work. The construction phase is not guaranteed. An agreement must be reached as to a GMP for the Construction Work and resulting Construction Contract.

### 4.3 Procurement Schedule

NDOT anticipates the following dates as Project milestones leading to Contract award. This schedule is subject to revision by Addenda and the RFP.

Task	Date
Advertise RFQ	[Issuance Date]
Final date for receipt of Respondents’ RFQ questions	
SOQ Due Date	[SOQ Due Date]
Shortlisting Notification	
Anticipated issuance of RFP	
Final date for receipt of Respondents’ RFP questions	
Anticipated issuance of Final RFP Addendum	
Anticipated Proposal Due Date	
Anticipated Announcement of CM/GC Contractor Selection	
Anticipated Pre-Construction Agreement Approval and Execution	

### 4.4 Questions and Requests for Clarifications

The below named individual shall serve as the “NDOT Project Manager” for the Project.

**Nebraska Department of Transportation  
 Roadway Design Division  
 1500 HWY 2  
 Lincoln, Nebraska 68502  
 Attention: [NDOT Project Manager’s Name]  
 [NDOT Project Manager’s Title]**

**e-mail: [NDOT Project Manager’s E-mail]**

Comments, questions, and requests for clarification shall be submitted using [Form RFQ-C](#). Questions and comments, including requests for clarification or interpretation, shall (i) be sequentially numbered; (ii) specifically reference the relevant RFQ section and page number, unless such request is of general application (in which case the request for clarification shall so note); (iii) not identify the Respondent’s identity in the body of the question; (iv) conspicuously identify whether Respondent views its question or comment as confidential or proprietary in

na [Form RFQ-C](#) and delivered by email will be considered. No verbal comments, questions, or requests for clarification, including those communicated by phone, will be accepted or considered. No comments, questions, or requests for clarification to any other NDOT office, consultant, or employee, or to other agency, will be considered.

The NDOT Project Manager is the only individual allowed to discuss this procurement with any interested parties, including Respondents. This restriction is in effect until time of Agreement execution. Any information from other sources may not be accurate and should not be relied upon by Respondents.

Include an electronic copy of the questions on [Form RFQ-C](#) on compact disc or thumb drive if the written request is sent by letter.

NDOT will respond only to those comments, questions, and requests for clarifications that NDOT deems to be material and that are not adequately addressed in previously provided documents. NDOT will state the comments, questions, and requests for clarification along with its responses. NDOT reserves the right to rephrase and consolidate comments, questions, and requests for clarification concerning the same or similar subject. NDOT will not post or formally respond to comments, questions and requests for clarification that (1) are claimed to be confidential or to contain confidential information or (2) request confidential responses. NDOT reserves the right to disagree with Respondent's assessment regarding the confidentiality of information in the interest of maintaining a fair process or complying with applicable law. Under such circumstances, NDOT will inform Respondent and may allow Respondent to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if NDOT determines that it is appropriate to provide a general response, NDOT will modify the question to remove information that NDOT determines is confidential. NDOT may rephrase questions as it deems appropriate and may consolidate similar questions. NDOT may also create and answer questions independent of the Respondents' questions. NDOT will provide responses within a reasonable time following receipt, subject to the dates set forth in [Section 4.3](#). NDOT will post its responses on the Website listed below.

<https://dot.nebraska.gov/business-center/business-opp/consult-service-opp/>

## 4.5 Addenda

NDOT reserves the right to revise this RFQ by issuing Addenda to this RFQ up to a week prior to the SOQ Due Date specified in [Section 4.3](#). NDOT will post Addenda on the Website.

Respondents shall monitor the Website identified above for information concerning this procurement, as teams responding to this RFQ must acknowledge in the transmittal letter ([Form A](#)) that they had access to and reviewed all materials posted on the Website. Courtesy notifications by NDOT of Addenda issuance will not be made. Failure by the Respondent to acknowledge, using [Form A](#), that they have reviewed all materials and Addenda may, in NDOT's sole discretion, result in the disqualification of the Respondent's SOQ.

Receipt of Addenda issued prior to submission of the Statement of Qualifications shall be acknowledged in the Transmittal Letter ([Appendix C, Form A](#)).

## 4.6 Pre-Contractual Expenses

Respondents are solely responsible for all costs and expenses of any nature associated with responding to the RFQ, including attending briefing(s) and providing supplemental information. NDOT will not reimburse such costs in whole or in part in any circumstance.

## 4.7 Intellectual Property

The material and estimates prepared and submitted by the CM/GC Contractor for the Pre-Construction Services as part of the Pre-Construction Agreement shall become the property of NDOT.

# 5 SOQ SUBMITTAL REQUIREMENTS

This section describes requirements that all Respondents must satisfy in submitting SOQs. NDOT expects SOQs submitted in response to this RFQ to provide enough information about the requested items so as to allow NDOT to evaluate the Respondents based on the criteria in this RFQ. Respondents are advised that inclusion of cost, work hours, and/or plan-sheet estimates in the SOQ is not allowed. Failure of any Respondent to submit its SOQ as required in this RFQ may, in NDOT's sole discretion, result in rejection of its SOQ. All rejected SOQs will be returned to the contact person identified in the SOQ.

## 5.1 General Requirements

[Appendix C](#) contains the required forms for the SOQ. Any material modification to the forms may result in the SOQ being declared non-responsive. If the Respondent submits information in its SOQ that it believes to be protected records under the Nebraska Public Records Act and that it wishes to protect from disclosure, the Respondent shall mark such information as provided in [Section 8.2](#).

## 5.2 Format Requirements

The Respondent's SOQ shall adhere to the format requirements regarding organization, number of copies, pages and binders, page format, clarity and conciseness, and other general format requirements set forth in [Appendix B](#). SOQs may contain additional information or materials beyond that required in [Appendix B](#), however, NDOT shall have no obligation to review such additional information or materials.

## 5.3 Packaging Requirements

Respondents shall individually label all packages constituting the SOQ as follows:

**RESPONSE TO THE  
REQUEST FOR QUALIFICATIONS  
FOR [PROJECT NAME] PROJECT**

## 5.4 Due Date, Time, and Location

All SOQs must be received no later than **3:00 pm (Central Standard Time)** on the SOQ Due Date specified in [Section 4.3](#). All SOQs shall be delivered by hand or express mail courier to the following address:

**NEBRASKA DEPARTMENT OF TRANSPORTATION  
ROADWAY DESIGN DIVISION  
1500 HWY 2  
LINCOLN, NEBRASKA 68502  
ATTENTION: [NDOT Project Manager's Name], [NDOT Project Manager's Title]**

NDOT will acknowledge receipt of each SOQ by issuing a receipt stating the date and time the SOQ is received. Any SOQ submitted after the deadline set forth above will be rejected without opening, consideration, or evaluation and will be returned, unopened, to the sender.

Respondents are solely responsible for assuring that NDOT receives their SOQs by the specified delivery date and time at the address listed above. NDOT shall not be responsible for delays in delivery caused by weather, difficulties experienced by couriers or delivery services, misrouting of packages by courier or delivery services, improper, incorrect, or incomplete addressing of deliveries and other occurrences beyond the control of NDOT.

## 5.5 Quantities

Each Respondent must provide NDOT with **six (6)** identical hard copies of the SOQ, plus **six (6)** identical digital copies in a read-only, fully searchable format on a flash drive. The SOQ must be identified on its front cover, in the upper right-hand corner, and on the spine as “# of 6,” as applicable.

Each SOQ shall be separated into loose-leaf three-ring binders (one binder for each copy) as described in [Section 5](#). Additional formatting requirements for the SOQ submittal can be found in [Appendix B](#) of this RFQ. All six (6) sets of the SOQ must be packed together in one or more sealed package. The outside of each sealed package must be clearly identified, labeled, and addressed as follows:

- a. Return address: Respondent's name, contact person's name, mailing address.
- b. Date of submittal.
- c. Contents labeled as “[Project Name], [Project Number], [Control Number]” and “Statement of Qualifications.”

## 6 SOQ CONTENTS

The contents in each SOQ shall include the items described below, organized in accordance with the outline set forth in [Appendix B, Table B-1](#). The Respondent shall provide brief, concise information that addresses the requirements of the Project consistent with the evaluation criteria described in [Section 7](#). Lengthy narratives containing extraneous information are discouraged.

## 6.1 SOQ

NDOT's objective in requesting the information below is to identify Respondents whose team members and Key Personnel possess the technical qualifications, experience, capability, and capacity to successfully provide Pre-Construction Services, build the Project, and have a record of quality work and safety on similar projects.

The SOQ shall contain the following:

### 6.1.1 Respondent Team Experience and Past Performance

The SOQ shall contain the following items documenting the Respondent team's experience and past performance:

a. Form E – Project Contact Information

Complete [Form E](#) for each project listed on [Forms E-1](#) and [E-2](#).

b. Forms E-1 and E-2 – Relevant Experience Tables

The SOQ shall contain completed [Forms E-1](#) and [E-2](#), as follows:

1. Form E-1: Relevant Alternative Delivery Experience – Provide details for no more than three projects for highway construction, in compliance with the instructions set forth in the notes in [Form E-1](#), and best meeting the evaluation criteria set forth in [Section 7.3.1a](#) for relevant CM/GC or alternative delivery experience. Respondents' inability to provide previous relevant experience examples will not disqualify the submitted SOQ.
2. Form E-2: Relevant Construction Experience – Provide details for at least two, but no more than four, projects of similar size and complexity to the Project\*, in compliance with the instructions set forth in the notes in [Form E-2](#), and best meeting the evaluation criteria set forth in [Section 7.3.1a](#) for relevant construction experience.

*\* Note: A project of "similar size, environmental features, and complexity to the Project" includes any significant limited access highway project with multiple travel lanes and bridges.*

c. Project Descriptions

The SOQ shall include a project description for each project listed in [Forms E-1](#) and [E-2](#). Each project description shall be brief, meeting the page limitation found in [Appendix B](#), and shall include the following information:

1. Description of how the work experience on the project addresses each of the evaluation criteria set forth in [Section 7.3.1](#).
2. Techniques used to achieve the owner's price and schedule objectives.
3. Initial bid price and final contract price for the project. Provide the quantity (i.e.,

number) and dollar value of contract modifications and include the quantity and dollar value of contract modifications and claims, and explanation of the causes for contract price change(s), whether upward or downward.

4. Techniques used to avoid delays and minimize claims.
5. Initial scheduled completion date and actual completion date for the project. Include the amount of schedule delay or savings, and an explanation of the causes for the delay or savings.

d. Relevant Experience - Narrative

The SOQ shall contain a narrative that summarizes the Respondent's relevant experience in the areas listed below. For each such area, the Respondent shall identify the team member(s) to which the relevant experience applies, and the projects (from Forms E-1 and E-2) on which the team member(s) gained such experience. This narrative shall be brief and meet page limitation defined in Appendix B. Ideally, this would cover all criteria in Section 7.3.1 not captured by Forms E-1 and E-2.

1. Construction of highway bridges and highway structures.
2. Construction of highways under traffic with grade differentials, including strategies to minimize cost and maximize value.
3. Construction using innovative methods and materials.
4. Construction of rural highways in environmentally and culturally sensitive areas and community areas.
5. Identifying and managing items that add or reduce risk and cost to a project.
6. Experience with pre-construction services (e.g. CM/GC, value engineering, and constructability reviews) similar to the Pre-Construction Services for projects of similar size and complexity to the Project.

*\* Note: A project of "similar size and complexity to the Project" includes any significant limited access highway project with multiple travel lanes and bridges.*

## 6.1.2 Respondent Organization

a. Management Structure

Provide a narrative describing the Respondent's team and management structure, how the Respondent will operate during the Pre-Construction Services, and transition into the construction phase for the Project under the Construction Contract.

b. Organizational Charts

Provide a graphic organizational structure chart, complete with working titles, for the Key Personnel and other team members (as applicable) during both the Pre-Construction

Services and Construction Work of the Project.

### 6.1.3 Key Personnel

a. Form F – Proposed Key Personnel Information

The SOQ shall contain a completed [Form F](#) providing the information requested therein for each Key Personnel position.

b. Key Personnel Résumés

Provide separate résumés for all Key Personnel, as well as other relevant personnel included in the organization chart required under [Section 6.1.2](#). Résumés shall be limited to **two pages** each, will not be counted towards the overall SOQ page limit, and shall include the following information relevant to the experience set forth in the table below.

The table below provides a brief job description of the Key Personnel assigned to the Project. The number of years of relevant experience listed for each Key Personnel position represents a target goal for evaluation purposes and is not a mandatory or minimum requirement for that position. Respondents should note that, notwithstanding that a Respondent may be shortlisted, NDOT reserves the right to disapprove a particular Key Personnel individual and require a shortlisted Respondent to replace such individual.

Key Personnel	Job Description/ Relevant Years of Experience
Project Manager	<p>This position is responsible for the CM/GC Contractor’s overall management and coordination during the Pre-Construction Services phase of the Project. This person could also serve the role of Construction Manager for this Project. This person will be the main point of communication to the IPT:</p> <ul style="list-style-type: none"> <li>• Must have recent experience as a project manager, including managing the construction of at least one project of similar scope and complexity ( _ years).</li> <li>• Demonstrated relevant experience collaborating with project owners and stakeholders, with a particular focus on improving constructability and developing staging/maintenance of traffic plans for highway construction.</li> <li>• Demonstrated relevant experience cost estimating, schedule development, and identifying and mitigating risk to a project.</li> </ul>
Construction Manager	<p>This position is primarily responsible for the CM/GC Contractor’s planning and execution of the Construction Work in the field. This position is expected to be an integrated member of the IPT and attend project meetings where matters related to constructability, risk, schedule, and cost are discussed. This person could also</p>

Key Personnel	Job Description/ Relevant Years of Experience
	serve the role of Project Manager for this Project. This person is expected to be on site during the construction of the Project: <ul style="list-style-type: none"> <li>• Must have recent experience as a construction manager, including managing the construction of at least one project of similar scope and complexity (_ years).</li> <li>• Demonstrated relevant experience collaborating with project owners, designers, and stakeholders, with a particular focus on improving constructability and developing staging/maintenance of traffic plans.</li> <li>• Demonstrated relevant experienced with highway design plan constructability reviews.</li> </ul>
Value Added Staff (up to two)	Include up to two (2) additional staff considered to be key to the success of the project. Examples include subject matter experts in estimating, risk analysis, MOT, scheduling, safety, public information or others.

c. Express Commitment Regarding Key Personnel

Provide an express, written statement committing that the Key Personnel designated in the SOQ for the positions or roles described Section 6.1.3 shall be available to serve the role so identified in connection with the Project. While NDOT recognizes personnel availability and scheduling issues impact the Respondents, Respondents are urged only to identify and proffer personnel that they intend to make available for, and intend to assign to work on, the Project for the positions identified. See Section 7.5 regarding requirements for NDOT’s written consent to changes in the Key Personnel. Procedures concerning such changes will be set forth in the RFP.

**6.1.4 Understanding and Approach to CM/GC Contracting**

Provide the following:

- a. A narrative explanation of the Respondent’s understanding of CM/GC projects and the most important risks and challenges to their successful design and construction.
- b. A narrative description of the CM/GC Contractor’s management and organizational approach for accomplishing the Project. The narrative should describe the methodology for integrating the different areas of expertise needed for Pre-Construction Services and construction functions into an efficient and effective organization. The management approach must reflect an understanding of the use of the CM/GC project delivery methodology for transportation projects. The narrative shall also provide a brief description of the significant functional relationships among participants outlined in the organization chart as described in Section 6.1.2.

**6.1.5 Safety Information**

The SOQ shall contain a [Form S](#) for each Respondent.



### 6.1.6 Form PP-1 – Environmental Past Performance

The SOQ shall contain a separate, completed [Form PP-1](#).

## 6.2 Appendix A - Legal

Each Respondent, including any Respondent submitting a Proposal as a joint venture, must meet the criteria described in [Section 3](#).

[Appendix A](#) of the SOQ shall contain the following:

### 6.2.1 Form A – Transmittal Letter

The SOQ shall include a transmittal letter ([Form A](#)) executed in blue ink by a duly authorized official of the Respondent. For Respondents that are joint ventures, partnerships, limited liability companies, or other associations, the transmittal letter shall have appended to it separate letters (in the form of [Form A-1](#)) printed on the letterhead stationary of each Equity Member, with each such letter executed by the Official Representative of the corresponding Equity Member stating that representations, statements, and commitments made in the SOQ on behalf of the Equity Member's firm have been authorized by, are correct, and accurately represent the role of the Equity Member's firm in the Respondent team, in each case with such powers of attorney as may be required pursuant to instructions within the forms.

### 6.2.2 Executive Summary

The SOQ shall contain an executive summary, not exceeding **2 pages**. The executive summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the Respondent's SOQ and Respondent's ability to satisfy the legal, financial, and technical requirements of the Project.

### 6.2.3 Confidential Content Index

The SOQ shall include a page executed by the Respondent that sets forth the specific items, including the section and page numbers within the SOQ at which such items are located, that the Respondent deems confidential, trade secret, or proprietary information protected by the Nebraska Public Records Act. The index shall be consistent with and identify all the Respondent's designations of "TRADE SECRET" or "CONFIDENTIAL INFORMATION" pursuant to [Section 8.2](#). Blanket designations that do not identify the specific information shall not be acceptable and may be cause for NDOT to treat the entire SOQ as public information. Notwithstanding the foregoing, the list required under this section is intended to provide input to NDOT as to the confidential nature of a Respondent's SOQ, but in no event shall such list be binding on NDOT, determinative of any issue relating to confidentiality or a request for records under the Nebraska Public Records Act, or override or modify the provisions of the Nebraska Public Records Act or NDOT's responsibilities thereunder. If the SOQ contains no items that the Respondent deems confidential, trade secret or proprietary information protected by the Nebraska Public Records Act, the page executed by the Respondent shall so state.

#### **6.2.4 Legal Structure**

Respondents are to be prequalified as described in [Section 3.3](#).

#### **6.2.5 Form L-1 – Respondent’s Organization Information**

The SOQ shall include an executed original of [Form L-1](#) for the Respondent.

#### **6.2.6 Form L-2 – Certification/Questionnaire**

The SOQ shall include an executed original of [Form L-2](#) for the Respondent.

#### **6.2.7 Organizational Conflicts of Interest**

The SOQ shall include the following:

a. Conflict of Interest Statement

A statement from the Respondent identifying any actual and/or potential conflicts of interests the Respondent may have as identified pursuant to the conflict of interest policy for the Project provided as [Attachment 1](#) to this RFQ. If any actual or potential conflict of interest is identified, the Respondent shall describe how it would be avoided or resolved by the participants through the RFQ and RFP phases of this procurement.

b. Affirmation Statement

A statement affirming that neither the Respondent nor any member of the Respondent team has offered employment to an NDOT procurement officer, procurement employee, or other NDOT employee having a significant procurement role with respect to the Project, nor have they had discussions with any such NDOT officer or employee concerning any such employment. For more information, see [Section 8.3](#).

c. Disclosure and Certification

A disclosure listing and identifying all former NDOT employees included in the Proposal team that have left NDOT in the 12 months preceding the date of issuance of this RFQ and a certification that no such former employee has made any material decisions about the Project while employed by NDOT. If there are no such individuals, the Respondent shall affirmatively state that there are none.

### **6.3 Appendix B – Financial Information**

NDOT’s objective in requesting the information below is to identify that the Respondent has resources to successfully complete the Project.

[Appendix B](#) of the SOQ shall contain the following:

### 6.3.1 Surety Letters

Provide evidence from a surety or an insurance company indicating that the Respondent is capable of obtaining a Performance Bond and Payment Bond upon execution of the Pre-Construction Agreement in an amount of at least \$10 million. This evidence shall take the form of a letter from a surety/insurance company indicating that such capacity exists for the Respondent. Letters indicating “unlimited” bonding capability are not acceptable.

Provide evidence from a surety or an insurance company indicating that the Respondent is capable of obtaining a Performance Bond and Payment Bond upon execution of the Construction Contract in an amount of at least \$300 million. This evidence shall take the form of a letter from a surety/insurance company indicating that such capacity exists for the Respondent. Letters indicating “unlimited” bonding capability are not acceptable.

The surety/insurance company providing such letter must be rated in one of the two top categories by two nationally recognized rating agencies, or “A minus” or better or “Class VIII” or better by “AM Best Company,” and must indicate the relevant rating in the letter. The letter must specifically state that the surety/insurance company is an admitted surety or insurer (approved by the Nebraska Department of Transportation), and has read this RFQ and evaluated the Respondent’s backlog and work-in-progress in determining its bonding capacity. In instances where the response to [Section 3.3](#) contains descriptions of proposed or anticipated changes in the financial condition of the Respondent, or any other entity for which financial information is submitted as required hereby for the next reporting period, the surety/insurance company must certify that its analysis specifically incorporates a review of the factors surrounding such changes and identifying any special conditions which may be imposed before issuance of surety bonds for the Project.

NDOT has not yet determined the specific amount or form of payment and performance bonds that it will require. Respondents are advised that the RFP may, to the extent commercially available and determined appropriate by NDOT, require payment and performance bond amounts in an amount other than the amounts referenced in this RFQ. The bonds to be submitted at the time of the construction contract shall be in the amount of the GMP.

### 6.3.2 Financial Statements

Any Respondent that, on the date of the issuance of this RFQ, is prequalified with the Construction Division must comply the requirements set forth in [Section 3.3](#)

## 7 EVALUATION PROCESS

The objective of the RFQ step of this procurement is to shortlist Respondents with the legal, technical, financial, and management capability, capacity, and experience to successfully undertake and complete the pre-construction and construction of the Project. Accordingly, SOQs will be reviewed for responsiveness and evaluated against certain pass/fail criteria and qualitative evaluation factors, as described below. The information provided is intended to assist Respondents in organizing their teams and preparing their SOQs.

Consistent with the NDOT *Guidelines for Alternative Project Delivery*, combined SOQ and Proposal scores will establish a final combined score for each proposer, and thereafter ranking

for ultimate selection. The value of the SOQ and Proposal scores will be set forth in the RFP distributed to shortlisted Respondent.

## 7.1 Responsiveness Review

Each SOQ will be reviewed for (a) the Respondent's responsiveness to the requirements set forth in this RFQ, including review with respect to provisions of this RFQ that describe grounds for disqualification, (b) conformance to the RFQ instructions regarding organization and format, and (c) nonconformities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the SOQ. Those SOQs deemed not responsive to this RFQ may be excluded from further consideration and the Respondent will be so notified. NDOT may also exclude from consideration any Respondent whose SOQ contains a material misrepresentation or failure to fully disclose required information.

## 7.2 Pass/Fail Evaluation

Following, or in conjunction with, evaluation of each SOQ for responsiveness, NDOT will evaluate each SOQ against the pass/fail criteria described below. A Respondent must achieve a "pass" on all such pass/fail criteria in order for its SOQ to be evaluated qualitatively against the evaluation criteria described in [Section 7.3](#). To the extent any pass/fail criterion requires a determination or judgement by NDOT, such determination or judgement shall be made in NDOT's sole discretion.

- a. The SOQ contains an original Transmittal Letter ([Form A](#)) signed by the lead Equity Member, supplemental letters ([Form A-1](#)) signed by each other Equity Member on its firm letterhead, and, if necessary, copies of powers of attorney, as may be required in [Section 6.2](#).
- b. Neither the Respondent nor any other entity that has submitted [Forms L-1](#) and [L-2](#), legal information is currently disqualified, removed, debarred, or suspended from performing or bidding on work for the federal government or any state government.
- c. The information disclosed in the SOQ in response to [Sections 6.2](#), including in [Forms L-1](#) and [L-2](#) does not indicate a material risk that the Respondent is unable to carry out the Project responsibilities potentially allocated to it.
- d. The SOQ contains the statements, disclosure and certification regarding organizational conflicts of interest required under [Section 6.2.7](#), and NDOT has determined that (i) any actual or potential conflict of interest that is disclosed can be avoided or resolved through the RFQ and RFP phases of the procurement, and (ii) there exists no known violation by the Respondent (or each consortium or joint venture participant in Respondent, if applicable) of Nebraska Revised Statutes Section 39-2810.
- e. The Respondent's team does not include any Equity Member or Major Non-Equity Member that belongs to more than one Respondent organization or that has an Affiliate that belongs to another Respondent organization, unless NDOT in its sole discretion has granted a written waiver of the conflict of interest, and such written waiver is included with the SOQ.

- f. The Respondent makes the express, written commitments regarding Key Personnel, as required in Section 6.1.3c.
- g. The Respondent, or CM/GC Contractor, has provided a letter or letters from one or more sureties, meeting the rating requirements set forth in, and making the required statements under, Section 6.3.1.
- h. The Respondent (or each consortium or joint venture participant in Respondent, if applicable) is prequalified as of the SOQ Due Date with the Construction Division to at least the amount identified in Section 3.2.
- i. The Respondent (or each consortium or joint venture participant in Respondent, if applicable) has provided the certification meeting the requirements set forth in Section 3.3.
- j. The information disclosed in the SOQ in response to Section 6.1.6, including Form S, for the most recent three-year period and the average recordable injury/lost work rate. None of the information provided by Respondent in response to Section 6.1.6 reflects serious, repeated, or multiple failures to comply with safety rules, regulations, or requirements within the most recent, preceding three-year period

### **7.3 Qualitative Evaluation Factors and Weightings**

Each responsive SOQ that achieves a “pass” on all of the “pass/fail” criteria described in Section 6.2 will be evaluated against the qualitative evaluation factors, and scored based on the corresponding weightings, set forth below.

*Note: A project of “similar size and complexity” includes any significant highway project with multiple travel lanes and bridges.*

#### **7.3.1 Respondent’s Team Experience and Past Performance (\_%)**

The background and experience of the Respondent and its individual team members, in Pre-construction Services (as applicable) and constructing projects similar in size and complexity to the Project will be evaluated in accordance with the sub-factors described below.

The extent to which the Respondent satisfies or exceeds the requirements for relevant construction experience as follows:

- a. Construction of at least two transportation projects each with a construction value of \$\_ million or more that reached completion or substantial completion within the last ten years.
- b. Experience in phasing, staging, and managing maintenance of traffic for projects in a rural community area.
- c. Extent and depth of experience completing or substantially completing work for rural highways on time and within a fixed price.

- d. Experience in managing construction for rural highways projects in environmentally and culturally sensitive areas and community areas.
- e. Extent and depth of experience in completing construction of highway bridges.
- f. Experience developing a team environment working towards project goals during performance of pre-construction services similar to that anticipated within the scope of the Pre-Construction Services (e.g. CM/GC, value engineering, and constructability reviews) for projects of similar size and complexity to the Project.

### **7.3.2 Respondent's Organization and Key Personnel ( \_%)**

The Respondent's organization and Key Personnel will be evaluated in accordance with the lead-factors described below.

- a) The length and depth of experience of the Respondent's Project Manager and Construction Manager in successfully managing projects of size and complexity similar to the Project.
- b) Provide a narrative describing how the Respondent's Key Personnel will contribute to building a professional and collaborative environment with NDOT and the Designer.
- c) A description of any past experience working jointly with owners and/or design firms on highway and/or bridge projects, with a particular focus on improving constructability and developing staging/maintenance of traffic plans for highways and how that experience provided value to the project owner.
- d) Provide a narrative describing the roles and responsibilities of the Respondent's Value-Added Key Personnel. The description should include their previous experience pertaining to that role and how this individual will add value to the Project.
- e) A commitment of time and availability for each of the Key Personnel. Describe where each of the Key Personnel will be headquartered during the Pre-Construction Services and Construction Work and identify any other commitments each of the Key Personnel have and how those will be managed to meet the commitments for this project.

### **7.3.3 Understanding and Approach to CM/GC Contracting ( \_%)**

The Respondent's Project Understanding and Approach will be evaluated in accordance with the lead-factors described below.

- a) The extent to which the Respondent demonstrates a complete understanding of CM/GC contracting, how it will add value to the Project, and of the most important risks and challenges to their successful design and construction.
- b) The extent to which the Respondent demonstrates how the Respondent's significant functional relationships among the participants outlined in the organization chart as described in Section 6.1.2, including its approach to successfully meet NDOT's goals described in Section 1.7.

## 7.4 SOQ Evaluation Procedure and Shortlisting Notification

NDOT anticipates utilizing one or more committees to review and evaluate the SOQs in accordance with the above criteria and to make a shortlisting determination and recommendation to NDOT Deputy Director(s) for ratification. At various times during the deliberations, NDOT may issue one or more requests for written clarification to the individual Respondents. At its discretion, NDOT may also schedule interviews with one or more Respondents on a one-on-one basis, for the purpose of enhancing NDOT's understanding of the SOQs and obtaining clarifications of the terms contained in the SOQs.

NDOT may request the Respondents to verify or certify certain aspects of their SOQs. The scope, length, and topics to be addressed shall be prescribed by and subject to the discretion of NDOT. At NDOT's sole discretion, interviews may be requested at a later date. At the conclusion of this process, Respondents may be required to submit written confirmation of any new information and clarifications provided during an interview. Upon receipt of requested clarifications and additional information as described above, if any, the SOQs will be re-evaluated to factor in the clarifications and additional information.

Evaluations and rankings of SOQs are subject to the sole discretion of NDOT, NDOT staff, and such professional and other advisors as NDOT may designate. NDOT Deputy Director - Operations and Deputy Director - Engineering will make the final determination of the Respondents to be shortlisted as deemed appropriate in NDOT's sole discretion applying the criteria described in Section 7.3 and in the best interests of the State of Nebraska.

Each Respondent will be notified in writing via e-mail and a hard copy letter whether it has been selected for the RFP. If only one Respondent responds to the RFQ or attains shortlisting status, NDOT may re-advertise, shortlist, or cancel the procurement in its sole discretion.

## 7.5 Changes in Respondent Organization and Key Personnel

NDOT wants to ensure that Respondents are able to develop and attract the greatest range and depth of expertise as may be necessary to participate in the procurement to optimally design and construct the Project in an innovative, effective, and efficient manner. Accordingly, NDOT reserves the right and discretion to authorize Respondents to add or change team members, reorganize the Respondent entity and change Key Personnel throughout the procurement process until submittal of the Proposals, except in the event of potential organizational conflicts of interest and/or deficiencies in qualifications and experience for the proposed role.

Following submittal of the SOQs, the following actions may not be undertaken without NDOT's prior written consent, in its sole discretion:

- a. Deletion or substitution of a Respondent team member identified in its SOQ or a change in the role or scope of work of a Respondent team member.
- b. Deletion or substitution of Key Personnel identified in its SOQ or a change in the role or position of such personnel.
- c. Deletion or substitution of an Equity Member identified in its SOQ, a Guarantor or any other entity identified in its SOQ that will bear financial responsibility or liability for the performance of the Respondent.

- d. Other changes, direct or indirect, in the equity ownership or team membership of a Respondent as identified in its SOQ (excluding the transfer of shares in a publicly traded company that do not result in a change in control of such company).

Should a Respondent wish to make such a change it shall request, in writing, NDOT's consent. The written request shall provide, for any new or substitute entity or personnel, the same information required under this RFQ for such entity or personnel had it, he or she been part of the Respondent team as of the SOQ submission (including, without limitation, legal, financial, qualifications/ experience, and other information). If a Respondent wishes to delete an entity or change Key Personnel, the Respondent shall provide NDOT with information establishing that the Respondent remains qualified for shortlisting as contemplated under this RFQ. Any such change made without the written consent of NDOT may, at NDOT's sole discretion, result in the Respondent being disqualified.

## **8 COMMUNICATION, PUBLIC INFORMATION & ORGANIZATIONAL CONFLICTS OF INTEREST**

### **8.1 Improper Communications and Contacts**

The following rules of contact shall apply during the procurement for the Project, effective as of the date of issuance of this RFQ through the execution of the Pre-Construction Agreement. These rules are designed to promote a fair, unbiased, legally defensible procurement process. Additional rules or modifications to these rules may be issued by NDOT in connection with the draft RFP process and in the RFP. Contact includes face-to-face, telephone, facsimile, electronic mail (e-mail), or formal written communication, either directly or indirectly by an agent, representative, promoter, or advocate of a Respondent.

NDOT's Project Manager will serve as the primary point of contact during the RFQ procurement.

#### **8.1.1 Communication Process**

NDOT is the single source of information regarding the Project and procurement. The procurement begins on the date of issuance of this RFQ and is anticipated to be completed with the award of the Pre-Construction Agreement.

The following rules of contact are now in effect and shall remain in effect until the earliest of (i) award and execution of the Pre-Construction Agreement, (ii) rejection of all Proposals by NDOT, or (iii) cancellation of the procurement:

- a. After submittal of SOQs, no Respondent or any of its team members may communicate with another Respondent or members of another Respondent's team with regard to the Project or the SOQs, except that a Respondent may communicate with a subcontractor that is on both its team and another Respondent's team (where neither this RFQ nor the conflict of interest policy set forth in [Attachment 1](#) precludes the subcontractor from being on more than one Respondent team), so long as those Respondents establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. (Contact among Respondents and team members is allowed during NDOT sponsored workshops and meetings.)



- b. Contact between the Respondents and NDOT (questions and responses to questions) shall only be through NDOT's and Respondent's designated representative and shall be in writing. NDOT's designated representative is identified in Section 4.4.
- c. Respondents shall not contact NDOT employees, advisors, and any other person who will evaluate the SOQs regarding the Project or the procurement.
- d. Respondents shall not contact employees of those parties identified under Section 7.3.2 who are directly involved with the Project. NDOT shall provide any necessary coordination during the RFQ stage with such entities in order that, among other things, the procurement is implemented in a fair, competitive, and transparent manner and with uniform information.
- e. Any contact determined to be improper, at the sole discretion of NDOT, may result in disqualification.
- f. Any official contact regarding the Project will be disseminated in writing from NDOT on NDOT letterhead and signed by NDOT Project Manager identified in Section 4.4.
- g. NDOT will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified herein.
- h. Respondents shall not contact the following identified stakeholders regarding the CM/GC services and the Project, including employees, representatives, members, consultants, and advisors of the entities listed below. NDOT shall provide necessary coordination during the RFQ stage in order that the procurement is implemented in a fair, competitive, and transparent manner and with uniform information:
  - Environmental, regulatory and permitting agencies;
  - Utilities owners along the Project corridor;
  - \_\_\_\_\_; and
  - \_\_\_\_\_.

## 8.2 Public Records

All written documents, correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to NDOT during this procurement, including as part of the response to this RFQ, are, upon their receipt by NDOT, the property of NDOT and are subject to the Nebraska Public Records Act. None of the aforementioned materials will be returned to the submitting parties. Respondents should familiarize themselves with the provisions of the Nebraska Public Records Act. In no event shall NDOT, or any of its agents, representatives, consultants, directors, officers, or employees be liable to a Respondent for the disclosure of all or a portion of an SOQ submitted under this RFQ.

If a Respondent has special concerns about information that it desires to make available to NDOT but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such Respondent shall specifically and conspicuously designate that information as "TRADE SECRET" or "CONFIDENTIAL" in its filed response to this RFQ. Blanket, all-inclusive identifications by designation of whole pages or sections as

containing proprietary information, trade secrets, or confidential commercial or financial information shall not be permitted and NDOT shall not be bound by such designation. The specific proprietary information, trade secrets, or confidential commercial and financial information must be clearly identified as such. NDOT will endeavor to advise the Respondent of any request pursuant to the Nebraska Public Records Acts and any other applicable laws for the disclosure of any material properly labeled as proprietary, trade secret, or confidential so as to allow the Respondent the opportunity to seek a court order to protect such materials from disclosure.

Under no circumstances, however, will NDOT be responsible or liable to the Respondent or any other party for the disclosure of any such labeled 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 NDOT or its officers, employees, contractors, or consultants.

NDOT will not be required to advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Nebraska Public Records Act, as to the interpretation of the Nebraska Public Records Act, or as to the definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the Nebraska Public Records Act and other applicable laws and their application to the submitting party's own circumstances.

In the event of litigation concerning the disclosure of any material submitted by the submitting party, NDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk. The submitting party shall reimburse NDOT for any expenses it incurs in connection with any such litigation.

## 8.3 Organizational Conflicts of Interest

### 8.3.1 NDOT Consultant

NDOT has developed a project-specific conflict of interest policy for the Project. A copy of the current policy is provided as [Attachment 1](#) to this RFQ. Respondents shall comply with this conflict of interest policy.

NDOT has engaged a number of consultants to assist and participate in the Project development stages, as well as assist NDOT during the procurement process for the Project. Respondents are prohibited from teaming with, receiving any advice or discussion (except discussion in a forum established pursuant to the RFP) any aspect relating to the Project or the procurement of the Project with any such consultants, including:

- [Designer Name]
- \_\_\_\_\_
- \_\_\_\_\_

NDOT may disqualify a Respondent, and refuse to enter into the Pre-Construction Agreement with the Apparent Successful Proposer, if NDOT determines that:

- a. The Respondent or the affiliated Proposer has made impermissible contact with any of NDOT consultants listed above with respect to this procurement and/or Pre-Construction Agreement; or
- b. The Respondent or the affiliated Proposer includes any of NDOT consultants listed above on the Respondent's or affiliated Proposer's team.

Any violation of the foregoing restrictions by any Respondent or the Apparent Successful Proposer will, in NDOT's sole discretion, constitute a failure to execute the Pre-Construction Agreement.

### **8.3.2 NDOT Employees Involved In Procurement**

Respondents or any member of a Respondent team shall not offer employment to an NDOT procurement officer, procurement employee or other NDOT employee having a significant procurement role with respect to the Project.

NDOT has adopted the following conflict of interest policies for NDOT officers and employees:

- "Guidelines for Alternative Project Delivery" (2023), Section 4.2 (Conflict of Interest); and
- [Attachment 1](#) to this RFQ.

NDOT may disqualify a Respondent from continued participation in this procurement process if it or any member of the Respondent's team violates these provisions.

### **8.3.3 Participation in More than One Respondent Organization**

NDOT may disqualify a Respondent from continued participation in this procurement process if it has any financial interest in any other Respondent or affiliate of any other Respondent.

## **9 PROTEST PROCEDURES**

### **9.1 Applicability**

This section sets forth the exclusive protest remedies available with respect to this RFQ. These provisions prescribe the exclusive procedures for protests which may only be brought for the following reasons:

- a. Allegations that the terms of the RFQ are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed NDOT's authority;
- b. A determination as to whether the SOQ filed by the Protester is responsive to the requirements of the RFQ or passes the pass/fail criteria set forth in this RFQ; and
- c. A determination whether to shortlist the Protester.

Respondents may only protest decisions made by NDOT on their SOQ and shortlisting. Respondents have no right to protest determinations made by NDOT regarding the SOQs or shortlisting of other Respondents.

The protest remedies described in this section are available regarding the above matters listed above notwithstanding other provisions in this RFQ which state that NDOT's determination of a particular matter is in its sole discretion.

## 9.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 9.1 may be filed only after the Respondent has informally discussed the nature and basis of the protest with NDOT, following the procedures prescribed in this section. The Respondent shall initiate such informal discussions by a written request for a one-on-one meeting delivered to the address specified in Section 4.4 no later than **three** business days after the issuance of the RFQ (for protests concerning the issues described in Section 9.1a), the responsiveness or pass/fail determination at issue (for protests concerning the issues described in Section 9.1b), or the shortlisting determinations (for protests concerning the issues described in Section 9.1c), as applicable. The Respondent's failure to observe any of these deadlines shall constitute a waiver of the Respondent's right to the corresponding protest. The written request shall include an agenda for the proposed one-on-one meeting. NDOT will then set a date and time to discuss the nature and basis of the protest with the Respondent. If necessary to address the issues raised in a protest, NDOT may, in its sole discretion, make appropriate revisions to the RFQ documents by issuing Addenda.

## 9.3 Deadlines for Protests

- a. Protests concerning the issues described in Section 9.1a must be filed as soon as the basis for the protest is known, but no later than **seven** calendar days prior to the SOQ Due Date, unless the protest relates to an Addendum to the RFQ, in which case the protest must be filed no later than **five** business days after the Addendum is issued and NDOT gives notice that the discussion under Section 9.2 is concluded.
- b. Protests concerning the issues described in Section 9.1b must be filed no later than **ten** calendar days after receipt of the notification of non-responsiveness or failure to pass all pass/fail criteria set forth in this RFQ and NDOT gives notice that the discussion under Section 9.2 is concluded.
- c. Protests concerning the issues described in Section 9.1c must be filed no later than **ten** calendar days after the earliest of the notification of the shortlist and the public announcement of the shortlist and NDOT gives notice that the discussion under Section 9.2 is concluded.

## 9.4 Content of Protest

A protest shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. The protest shall also include the name and address of the protestor and the Project number. Statements shall be sworn and submitted under penalty of perjury.

## 9.5 Filing of Protest

Protests shall be filed by hand delivery, as soon as the basis for protest is known to the Respondent or before the applicable deadline, to:

**Nebraska Department of Transportation,  
Director's Office  
1500 HWY 2  
Lincoln, NE 68502**

For any protests filed after the SOQ Due Date, the Respondent filing the protest shall concurrently send a copy of the protest to the other Respondents whose addresses may be obtained by contacting NDOT representative provided in [Section 4.4](#).

## 9.6 Comments from Other Respondents

Other Respondents may file statements in support of or in opposition to the protest within **five** business days of receipt of the protest. The time limit in which such statements must be filed may be extended by NDOT in its sole discretion. NDOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

## 9.7 Burden of Proof

The protestant shall have the burden of proving its protest by clear and convincing evidence. NDOT may, in its sole discretion, discuss the protest with the protestant and other Respondents. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

## 9.8 Decision on the Protest

NDOT's Director (who has not been involved in evaluation) shall issue a written decision regarding the protest within 30 calendar days after the filing of the detailed statement of protest. NDOT may, in its sole discretion, extend that time limit up to an additional 30 calendar days in which case NDOT shall notify the Protestant and other Respondents of that extension. If necessary to address the issues raised in a protest, NDOT may, in its sole discretion, make appropriate revisions to this RFQ by issuing an Addendum.

The written decision of NDOT's Director shall be final and non-appealable.

## 9.9 Protester's Payment of Costs

If a protest is denied, the Respondent filing the protest shall be liable for NDOT's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by NDOT as a consequence of the protest.

## **9.10 Rights and Obligations of Respondents**

Each Respondent, by submitting its SOQ, expressly recognizes and agrees to the limitation on its rights to protest provided in this section, and expressly waives all other rights and remedies that may be available to the Respondent under law. These provisions are included in this RFQ expressly in consideration for such waiver and agreement by the Respondents. If a Respondent disregards, disputes, or does not follow the exclusive protest remedies provided in this section, it shall indemnify and hold NDOT and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Respondent's actions. Each Respondent, by submitting a SOQ, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

## **10 DEBRIEFING MEETINGS**

All Respondents submitting SOQs will be notified in writing of the results of the evaluation process. Respondents not shortlisted may request a debriefing. If requested, debriefings will be provided at the earliest feasible time after notification of the shortlisted Respondents. The debriefing will be conducted by a procurement official familiar with the rationale for the shortlist decision.

Debriefings shall:

- a. Be limited to discussion of the unsuccessful Respondent's SOQ and may not include specific discussion of a competing SOQ.
- b. Be factual and consistent with the evaluation of the unsuccessful Respondent's SOQ.
- c. Provide information on areas in which the unsuccessful Respondent's SOQ had weaknesses or deficiencies.

Debriefing will not include discussion or dissemination of the thoughts, notes, or rankings of individual evaluator.

## **11 NDOT RESERVED RIGHTS**

In connection with this procurement, NDOT reserves to itself all rights (which rights shall be exercisable by NDOT in its sole discretion) available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- a. Develop the Project in any manner that NDOT, in its sole discretion, deems necessary.
- b. Modify the procurement process to address applicable law and/or the best interests of NDOT.
- c. Revise the scope, type, structure, and specific terms of this procurement.

- d. Negotiate with a Respondent without being bound by any provision in its proposal or other submittal provided in connection with this procurement and suspend or terminate negotiations at any time.
- e. Elect not to commence or continue negotiations with any responding Respondent.
- f. If NDOT is unable to negotiate a Contract to its satisfaction with a Respondent, elect to negotiate in succession with the next highest rated Respondent(s), terminate this procurement and pursue other developments or solicitations relating to the Project, or exercise such other rights under applicable law, as NDOT deems appropriate.
- g. Accept or reject any SOQs, proposals, responses, supplemental information or data, other submittals, or any parts thereof, received Respondents or Respondents at any time.
- h. Waive any informalities, irregularities, deficiencies, or omissions in or in connection with the SOQs, accept and review a non-conforming SOQ, or permit clarifications and supplements to any SOQ.
- i. Modify all dates set or projected in this RFQ.
- j. Issue Addenda, supplements, and modifications to this RFQ and the RFP.
- k. Require confirmation of information furnished by a Respondent, require additional information from a Respondent concerning its SOQ, and require additional evidence of qualifications to perform the work described in the RFQ.
- l. Cancel this RFQ, or the subsequent RFP, in whole or in part at any time prior to the execution by NDOT of the Contract, without incurring any cost obligations or liabilities, except as otherwise provided in the RFP.
- m. Modify the shortlisting determination based on subsequently learned information.
- n. Permit a Respondent to add, delete, or change firms and/or Key Personnel.
- o. Make all final determinations.
- p. Appoint evaluation committees to review SOQs and make recommendations regarding the SOQs, and seek the assistance of outside technical, financial, and legal experts and consultants in connection with the SOQ evaluations.
- q. Hold meetings and conduct discussions and correspondence with one or more of the Respondents regarding their SOQs.
- r. Seek and obtain information or data, from any source, that may assist NDOT in evaluating the SOQs.
- s. Disqualify any Respondent or Proposer under this RFQ, the RFP, or during the period between the RFQ and the RFP, for violating any rules or requirements of the procurement set forth in this RFQ, the RFP, or in any other communication from NDOT in connection with this procurement.

- t. Disqualify any Respondent that changes its submittal after the SOQ Submittal Deadline without NDOT's approval.
- u. Not issue a notice to proceed after execution of the Contract.
- v. Exercise any other right reserved or afforded to NDOT under this RFQ or applicable laws or regulations.
- w. Add or modify NDOT's reserved rights in Addenda to this RFQ and the subsequent RFP.

**THE RFQ DOES NOT COMMIT NDOT TO ENTER INTO THE PRE-CONSTRUCTION SERVICES AGREEMENT OR ANY OTHER CONTRACT OR TO PROCEED WITH THE PROCUREMENT AS DESCRIBED HEREIN. NDOT ASSUMES NO OBLIGATIONS, RESPONSIBILITIES, OR LIABILITIES, FISCAL OR OTHERWISE, TO REIMBURSE ALL OR PART OF THE COSTS INCURRED OR ALLEGED TO HAVE BEEN INCURRED BY ANY PERSON OR ENTITY CONSIDERING A RESPONSE TO OR RESPONDING TO THIS RFQ, OR ANY SUBSEQUENT RFP. ALL SUCH COSTS SHALL BE BORNE SOLELY BY EACH RESPONDENT AND PROPOSER.**



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**APPENDIX A:**  
**PROJECT DESCRIPTION AND PROJECT STATUS**

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## 1. Project Description

[SPECIFIC TO THE PROJECT]

## 2. Design and Construction Requirements

### Design

[SPECIFIC TO THE PROJECT]

### Construction

[SPECIFIC TO THE PROJECT]

Further requirements and details will be provided within the RFP.

## 3. Project Status

The status of the work being completed for the Project by NDOT is summarized as follows. Information will be updated in the RFP as applicable.

### Survey

[SPECIFIC TO THE PROJECT]

### Preliminary Engineering

[SPECIFIC TO THE PROJECT]

### Utilities

[SPECIFIC TO THE PROJECT]

### National Environmental Policy Act (NEPA)

Possible descriptions of the status of a project are shown below. The Project is currently undergoing NEPA environmental review by the NDOT. Additional alternatives, including a no-build alternative, are being considered in the environmental process, and it is possible that the Project scope may be modified through the environmental process or that a no-build alternative may be adopted. Nothing contained in this RFQ is intended to modify, limit, or otherwise constrain the environmental process or commit the Department or any other entity to undertake any action with respect to the Project, including any procurement or the final design and construction of the proposed Project.

A Categorical Exclusion (CE) is currently being prepared by the Department and NDOT to satisfy the requirements of NEPA. The CE includes an evaluation and mitigation measures for the following resources:

Aesthetics and Visual

Air Quality

Community Impacts / Environmental Justice

Cultural Resources

Hazardous Waste / Contaminated materials

Wetlands, Water Quality

Essential Fish Habitat

Floodplains

Land Use / Planning / Tax Base / Business Impacts

Noise

Public Services

Construction Impacts

Recreation / Public Lands

Transportation Patterns / Safety / Community Services

Utilities

Growth Inducement/Cumulative Impacts

The CE is expected to be approved by the Federal Highway Administration in \_\_\_\_\_.

**Plans**

NDOT has designed the Project to a level of detail that does show LOC's; however, plan set production is still at a concept level.

**Geotechnical**

Any soil boring information collected by NDOT will be provided during the Pre-Construction Services.

**Permitting**

The Project will require several agency permits/approvals. The following table summarizes the anticipated required permits/approvals and their associated status:

**Anticipated Permits and Approvals Needed [SPECIFIC TO THE PROJECT]**

<b>Permit / Action</b>	<b>Agency</b>	<b>Status</b>
Clean Water Act Section 404 Individual Permit	U.S. Army Corps of Engineers (USACE)	Construction will be permitted by a Section 404 permit.

Permit / Action	Agency	Status
Clean Water Act Section 401 Water Quality Certification	Nebraska Department of Environment and Energy (NDEE)	
NEPA Compliance	U.S. Army Corps of Engineers (USACE)	NDOT will prepare environmental documentation for use by USACE for NEPA compliance. NEPA approval will be completed in conjunction with Section 404 permitting.
Endangered Species Act Section 7 Consultation	U.S. Fish and Wildlife Service (USFWS)	Section 7 Consultation will be completed by NDOT
Nebraska Endangered Species Coordination Act (NESCA) Consultation	Nebraska Game and Parks Commission (NGPC)	NESCA consultation with NGPC will be completed by NDOT
National Historic Preservation Act Section 106 Compliance	Nebraska State Historic Preservation Office (SHPO)	Consultation with Nebraska SHPO will be completed by NDOT
Floodplain Development Permit	Local Administrators	NDOT will obtain local floodplain permits.
NPDES Construction Storm Water General Permit	Nebraska Department of Environment and Energy (NDEE)	The NPDES Construction Storm Water General Permit and associated Stormwater Pollution Prevention Plan (SWPPP) will be the responsibility of the Design-Builder.
Section 7a	National Park Services (NPS)	NDOT will obtain the necessary approval for the Project.

**4. Additional Project Documentation**

The selected CM/GC Contractor will be provided additional documentation and NDOT resources during the Pre-Construction Services.

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**APPENDIX B:**  
**FORMAT AND ORGANIZATION OF STATEMENT OF QUALIFICATIONS**

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## 1. Organization

The SOQ shall be organized as follows and as depicted in Table B-1 below:

**One Volume** with divided (tabbed) sections:

- a) Appendix A – Legal Information
- b) Appendix A-1: Supplemental Legal Forms
- c) Appendix B – Financial Information
- d) Appendix C – Supplemental Narrative Forms
- e) Appendix C-1: Résumés

## 2. Pages and Binders

The volumes and appendix shall consist of loose-leaf pages that are 8 ½” by 11” and white, except for charts, exhibits, and other illustrative and graphical information, which may be submitted on 11” by 17” paper and folded to 8 ½” by 11”. The SOQ shall conform to the following page limitation requirements:

- a) Main SOQ narrative – a limit of **20 pages** in total
- b) Appendix A: Legal Information – no page limitation except the Executive Summary which will be limited to **2 pages** in total.
- c) Appendix A-1: Supplemental Legal Forms – no page limitation.
- d) Appendix B: Financial Information – no page limitation.
- e) Appendix C: Supplemental Narrative Forms – no page limitation.
- f) Appendix C-1: Résumés – a maximum of **2 pages** per individual Key Personnel.

The SOQ shall be organized into one separate three-ring binder, for SOQ narrative and appendices. The sections (and, optionally, subsections) shall be separated with lettered or numbered dividers (dividers will not be counted against the page limitation). Color photographs, renderings, and brochures shall be adequately bound and suitably protected for handling and circulation during review and evaluation.

## 3. Page Format

To meet the page limits requirement listed above, all text shall be in an Arial font that is a minimum of 11 points in size, single-spaced, and printed single-sided. Each page shall be numbered consecutively within each section (i.e., 1-1, 1-2...; 2-1, 2-2...; 3-1, 3-2..., etc.), and the page numbers shall be centered at the bottom of each page. Margins shall be not less than one inch at the top, bottom, and sides of all pages, except for headers and footers.

## 4. Clarity and Conciseness

Respondents should make every effort to present information clearly and concisely. Documentation that is difficult to read may be rejected and may lead to disqualification.

**5. Reproducibility**

All SOQ pages shall be easily reproducible in black and white by standard photocopying machines.

**6. Submittal Quantities**

Respondents shall deliver to NDOT **six (6)** copies of the SOQs. See Section 5.5 of the RFQ for additional requirements.

**Table B-1: Specifications for SOQs**

<b>SOQ Section</b>	<b>Section Title and Required Information</b>	<b>RFQ Reference</b>
<b>Main</b>	<p><b>Technical Information:</b></p> <ul style="list-style-type: none"> <li>• Respondent Team Experience and Past Performance:               <ul style="list-style-type: none"> <li>• Narrative of Relevant Experience;</li> <li>• Narrative of Project Descriptions;</li> </ul> </li> <li>• Respondent Organization               <ul style="list-style-type: none"> <li>• Narrative of Management Structure; and</li> <li>• Proposed Organizational Charts.</li> </ul> </li> <li>• Key Personnel:               <ul style="list-style-type: none"> <li>• Brief narrative of Key Personnel experience; and</li> <li>• Commitment Regarding Key Personnel.</li> </ul> </li> <li>• CM/GC Understanding and Approach:               <ul style="list-style-type: none"> <li>• Narrative of CM/GC projects; and</li> <li>• Narrative of management and organizational approach.</li> </ul> </li> </ul>	<b>6.1</b>
<b>Appendix A</b>	<p><b>Legal Information:</b></p> <ul style="list-style-type: none"> <li>• Executive Summary;</li> <li>• Confidential Content Index;</li> <li>• Legal Qualifications and supporting documents;</li> <li>• Legal Structure;</li> <li>• <a href="#">Form A</a>, Transmittal Letter (to be signed by the Official Representative of the Respondent);</li> <li>• <a href="#">Form A-1</a>, SOQ Certification (to be signed by the Official Representative of the Respondent); and</li> <li>• Powers of Attorney (if applicable).</li> </ul>	<b>6.2</b>
<b>Appendix A-1</b>	<ul style="list-style-type: none"> <li>• <a href="#">Form L-1</a> Respondent's Organization Information;</li> <li>• <a href="#">Form L-2</a>, Certification / Questionnaire;</li> <li>• Conflict of Interest Statement; and</li> <li>• Executed teaming agreements or - summaries of teaming agreement key terms.</li> </ul>	<b>6.2</b>
<b>Appendix B</b>	<p><b>Financial Information:</b></p> <ul style="list-style-type: none"> <li>• Surety Letters;</li> <li>• Prequalification Letter, <a href="#">Section 3.3</a></li> </ul>	<b>6.3</b>



**Table B-1: Specifications for SOQs**

<b>SOQ Section</b>	<b>Section Title and Required Information</b>	<b>RFQ Reference</b>
<b>Appendix C</b>	<p><b>Supplemental Narrative Forms:</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Form PP-1</a>, Environmental Past Performance, with copies of citations;</li> <li>• <a href="#">Form E</a>, Project Contact Information;</li> <li>• <a href="#">Form E-1</a>, Relevant Alternative Delivery Experience;</li> <li>• <a href="#">Form E-2</a>, Relevant Construction Experience;</li> <li>• <a href="#">Form F</a>, Proposed Key Personnel Information; and</li> <li>• <a href="#">Form S</a>, Respondent Safety Questionnaire.</li> </ul>	<b>6.1</b>
<b>Appendix C-1</b>	<p><b>Résumés:</b></p> <ul style="list-style-type: none"> <li>• Key Personnel Résumés.</li> </ul>	<b>6.1.3</b>

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**APPENDIX C:  
FORMS**

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## Appendix C – List of Forms

<a href="#">Form A</a>	Transmittal Letter
<a href="#">Form A-1</a>	SOQ Certification
<a href="#">Form E</a>	Project Contact Information
<a href="#">Form E-1</a>	Relevant CM/GC Experience
<a href="#">Form E-2</a>	Relevant Construction Experience
<a href="#">Form F</a>	Proposed Key Personnel Information
<a href="#">Form L-1</a>	Respondent's Organization Information
<a href="#">Form L-2</a>	Certification / Questionnaire
<a href="#">Form PP-1</a>	Environmental Past Performance
<a href="#">Form RFQ-C</a>	Respondent's Clarification Request
<a href="#">Form S</a>	Respondent Safety Questionnaire

## Form A

### TRANSMITTAL LETTER

RESPONDENT: \_\_\_\_\_

SOQ Date: [Insert Date]

Nebraska Department of Transportation  
Roadway Design Division  
1500 HWY 2  
Lincoln, NE 68502

Attn: [NDOT Project Manager's Name],

The undersigned ("Respondent") is pleased to submit this Statement of Qualifications (this "SOQ") in response to that certain Request for Qualifications dated as of [Issuance Date] (as amended, the "RFQ"), issued by the Nebraska Department of Transportation ("NDOT") to provide Pre-Construction Services for the [Project Name] project. Capitalized terms have the meanings ascribed in the RFQ.

Enclosed, and by this reference incorporated herein and made a part of this SOQ Volume Binder, are the following:

- Main narrative
- Appendix A: Legal Information
- Appendix A-1: Legal Information
- Appendix B: Financial Information
- Appendix C: Supplemental Narrative Forms
- Appendix C-1: Résumés.

Respondent acknowledges receipt, understanding, and full consideration of all materials posted on NDOT's website <http://dot.nebraska.gov> as set forth in Section 4.5 of the RFQ, and the following Addenda and sets of questions and answers to the RFQ:

*[Respondent to list any addenda to this RFQ by dates and numbers prior to executing Form A. Respondent to also list the latest "as of" the RFQ Respondent' Clarification Request and NDOT Responses as posted on NDOT website.]*

Respondent represents and warrants that it has read the RFQ and agrees to abide by the contents and terms of the RFQ and the SOQ. Without limiting the foregoing, Respondent accepts and agrees to all the terms and conditions for protest set forth in Section 9 (Protest Procedures) of the RFQ, and specifically acknowledges NDOT's reserved rights in Section 11 (NDOT Reserved Rights) of the RFQ.

**Form A**

**TRANSMITTAL LETTER**

Respondent understands that if it is selected the legal entity constituting the CM/GC Contractor will enter into an Pre-Construction Services Agreement and, if the GMP is agreed by NDOT, execute a Construction Contract with NDOT for performance of the Construction Work.

Respondent understands that NDOT is not bound to shortlist any Respondent and may reject each SOQ NDOT may receive.

Respondent further understands that all costs and expenses incurred by it in preparing this SOQ and participating in the Project procurement process will be borne solely by the Respondent, except, to the extent of any payment made by NDOT following shortlisting determination, as described in Section 4.6 of the RFQ.

Respondent agrees that NDOT will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this SOQ.

This SOQ shall be governed by and construed in all respects according to the laws of the State of Nebraska.

If this Transmittal Letter is executed by a person acting under a power of attorney, the Respondent shall include with the Transmittal Letter a true and complete copy of the executed power of attorney.

Respondent's business address:

\_\_\_\_\_

(No.) (Street) (Floor or Suite)

\_\_\_\_\_

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: \_\_\_\_\_

*[insert appropriate signature block from following pages]*

**Form A**

**TRANSMITTAL LETTER**

1. Sample signature block for corporation or limited liability company:

*[Insert Respondent's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. Sample signature block for partnership or joint venture:

*[Insert Respondent's name]*

By: *[Insert general partner's or equity member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Add signatures of additional general partners or equity members as appropriate]*

3. Sample signature block for attorney in fact:

*[Insert Respondent's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Attorney in Fact

**Form A-1**  
**SOQ CERTIFICATION**

[OFFICIAL LETTERHEAD OF ENTITY EXECUTING LETTER.]

[SOQ DATE]

Nebraska Department of Transportation  
Roadway Design Division  
1500 HWY 2  
Lincoln, NE 68502

ATTN: [NDOT Project Manager's Name],

I, [NAME OF AUTHORIZED REPRESENTATIVE], am the [TITLE OF AUTHORIZED REPRESENTATIVE] of [NAME OF MAJOR TEAM MEMBER], which is a member of the [NAME OF RESPONDENT] team.

I certify that:

- a) I have read and understand the information contained in the Request for Qualifications issued by the Nebraska Department of Transportation for the [Project Name] Project and the attached statement of qualifications (SOQ) submitted by [NAME OF THE RESPONDENT TEAM];
- b) to the best of my knowledge and belief all information contained in the SOQ, and information submitted concurrently or in supplemental documents with the SOQ, is complete, current and true;

*[DELETE THE THIRD BULLET, BELOW, ONLY IF THE ENTITY SIGNING THIS CERTIFICATION IS THE RESPONDENT'S LEAD FIRM. OTHERWISE, DELETE THIS NOTE AND KEEP THE THIRD BULLET.]*

- c) all representations, statements, and commitments in the SOQ made by [NAME OF LEAD FIRM] on behalf of [NAME OF MAJOR TEAM MEMBER] have been authorized by, are correct, and accurately represent the role of [NAME OF MAJOR TEAM MEMBER] on the [NAME OF RESPONDENT] team.

I acknowledge that any false, deceptive, or fraudulent statements in the SOQ can result in denial of shortlisting status and other consequences provided by law.

---

(Signature)

---

(Name Printed)

## Form E

### PROJECT CONTACT INFORMATION

**Name of Respondent:**

Provide the information requested below for each project listed in Forms E-1 and E-2.

<b>Project Name</b>	<b>Respondent Team Members Participating on Project</b>	<b>Name of Project Owner</b>	<b>Name and Title of Owner's Contact Person</b>	<b>Contact Person's Address, Telephone Number and Email Address</b>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				



**Form E-1 – RELEVANT CM/GC EXPERIENCE**

Experience of Alternative Delivery or Pre-Construction Services of Reference Projects

Name of Respondent:

PROJECT AND LOCATION (1), (2) & (3)	GENERAL PROJECT DESCRIPTION	PROJECT COST (4) & (5)	START/END DATES OF RESPONDENT TEAM'S SERVICE	% OF WORK COMPLETED BY [Issuance Date]	LEVEL OF COMPANY'S PARTICIPATION (6) & (7)	ROLE OF COMPANY FOR PRE- CONSTRUCTION SERVICES
1.						
2.						
3.						

Notes:

1. A maximum of three projects may be included. In order for project experience cited in this [Form E-1](#), list only projects for Alternative Delivery or Pre-Construction Services for highway construction projects. [Form E-1](#) and previous experience is not counted towards responsiveness.
2. Only list projects on which the Respondent worked within the past 10 years (measured from the date of issuance of this RFQ).
3. Only list projects where the Respondent held a minimum 30% of the ultimate responsibility for the Project.
4. In thousands of United States Dollars. Identify exchange rates of amounts in other currencies using the exchange rate as of [Issuance Date], including the benchmark on which the exchange rate is based.
5. Project Cost means the total construction cost budgeted or, if the project is complete, the total construction cost of the completed project.
6. Show company's participation in terms of money and percentage of the Pre-Construction Services.
7. For projects/contracts list role(s) (lead estimator, grading specialist, etc.).

**Form E-2 – RELEVANT CONSTRUCTION EXPERIENCE**

Experience of the CM/GC Contractor in the Construction of Reference Projects

Name of Respondent: \_\_\_\_\_

Name of CM/GC Contractor: \_\_\_\_\_

PROJECT NAME AND LOCATION (1), (2) & (3)	GENERAL PROJECT DESCRIPTION	PROJECT COST (4) & (5)	START/END DATES OF RESPONDENT TEAM'S SERVICE	% OF WORKS COMPLETED BY [Issuance Date]	LEVEL OF COMPANY'S PARTICIPATION (6) & (7)	ROLE OF COMPANY FOR THE PROJECT
1.						
2.						
3.						
4.						

Notes:

1. A maximum of four projects may be included. In order for project experience cited in this [Form E-2](#) to be considered responsive, list only projects for which the corporate entity (company, joint-venture, partnership or consortium) providing the construction experience is the Respondent's CM/GC Contractor itself, or a controlled subsidiary of said CM/GC Contractor. If the latter is the case, so indicate. Project experience provided by a parent or sister company of the CM/GC Contractor shall not be considered responsive to this RFQ.
2. Only list projects on which the CM/GC Contractor worked within the past 10 years.
3. Only list projects where the CM/GC Contractor did not sublet more than seventy percent (70%) of the work. If the CM/GC Contractor is a joint venture, only list projects from joint-venture members that did not sublet more than seventy percent (70%) of the work of the CM/GC Contractor's potential construction work for the Project.
4. In thousands of United States Dollars. Identify exchange rates of amounts in other currencies using the exchange rate as of [Issuance Date] and identify the benchmark on which the exchange rate is based.
5. Project Cost means the total construction cost budgeted or, if the project is complete, the total construction cost of the completed project.
6. Show company's participation in terms of money and percentage of the construction work for the listed project.
7. The information sought above shall be limited only to the construction contract.

## Form F

### PROPOSED KEY PERSONNEL INFORMATION

Name of Respondent: \_\_\_\_\_

Key Personnel Position	Name of Individual	Years of Relevant Experience <sup>1</sup>	Education and Registrations <sup>2</sup>	Firm Name	Reference Name, Title, Telephone Numbers & Email Address <sup>3</sup>
<b>Project Manager</b>		_____ years on transportation projects. _____ years managing the construction of transportation projects (_____ years of CM/GC experience).			
<b>Construction Manager</b>		_____ years on transportation projects. _____ years managing the construction of transportation projects (_____ years of CM/GC experience).			
<b>Value Added</b>					
<b>Value Added</b>					

## Form F

### PROPOSED KEY PERSONNEL INFORMATION

- <sup>1</sup> *For each individual proposed, please enter the number of years of relevant experience in the blank spaces provided. In cases where the individual has no relevant experience, please enter "0" in the corresponding blank space.*
- <sup>2</sup> *For each individual proposed, please indicate any degrees, professional licenses, registrations, and training relevant to the corresponding Key Personnel position.*
- <sup>3</sup> *Provide three references for each position identified on [Form F](#).*

# Form L-1

## RESPONDENT'S ORGANIZATION INFORMATION

### PART 1

#### RESPONDENT TEAM SUMMARY

<b>RESPONDENT</b>	
<b>CONTACT PERSON</b>	
<b>ADDRESS</b>	
<b>TELEPHONE NUMBER</b>	
<b>EMAIL ADDRESS</b>	

<b>MAJOR TEAM MEMBER</b> <i>(Duplicate Part 1 for each Major Team Member)</i>	
<b>NAME OF FIRM</b>	
<b>CONTACT PERSON</b>	
<b>ADDRESS</b>	
<b>TELEPHONE NUMBER</b>	
<b>EMAIL ADDRESS</b>	

### PART 2

#### TEAM MEMBER INFORMATION

Name of Respondent: \_\_\_\_\_

Name of Entity Completing [Form L-1](#): \_\_\_\_\_

Entity's Role (check one box for entity completing [Form L-1](#) as applicable):

Respondent;  Major Team Member;  Guarantor; or

Other (describe): \_\_\_\_\_

Year Established: \_\_\_\_\_ State of Organization: \_\_\_\_\_

# Form L-1

## RESPONDENT'S ORGANIZATION INFORMATION

Federal Tax ID No. (if applicable): \_\_\_\_\_ Telephone No.: \_\_\_\_\_

North American Industry Classification Code: \_\_\_\_\_

Name of Official Representative Executing Forms A and A-1: \_\_\_\_\_

Individual's Title: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Type of Business Organization\* (check one):

- Corporation
- Partnership
- Joint Venture
- Limited Liability Company
- Other (describe): \_\_\_\_\_

\* If the entity completing this [Form L-1](#) is a partnership or any other form of a joint venture, attach to this [Form L-1](#) the executed teaming agreement. If an executed teaming agreement does not yet exist, attach a summary of the key terms of the anticipated agreement, including the percentages of ownership roles of the various parties and anticipated execution date.

A. Business Address: \_\_\_\_\_  
Headquarters: \_\_\_\_\_  
Office Performing Work: \_\_\_\_\_

B. Describe the role of the entity in the space below.

\_\_\_\_\_  
\_\_\_\_\_

C. If the entity completing this [Form L-1](#) is a joint venture or newly formed entity (formed within the past two years), complete a separate [Form L-1](#) and [Form L-2](#) for each member or partner of the entity and attach it to the SOQ. In addition, identify the name of such members or partners in the space below.

Name

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Form L-1**

**RESPONDENT'S ORGANIZATION INFORMATION**

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the firm's Official Representative:

By: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

*[Please make additional copies of this form as needed.]*

## Form L-2

### CERTIFICATION / QUESTIONNAIRE

Name of Respondent: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Complete for each Major Team Member and Guarantor:

1. Has the firm or any Affiliate<sup>1</sup>, or the owners, officers, or managing employees of either the firm or any affiliate, failed to complete any work it agreed to perform, or had a contract terminated because it was in default, within the past ten years (measured from the date of issuance of this RFQ) and within North America? If yes, describe.
2. Has the firm or any Affiliate<sup>1</sup>, or any director, officer, or employee of either the firm or any affiliate been, in North America, indicted or convicted of bid or other contract-related crimes or violations (e.g., fraud, bribery, collusion, conspiracy, antitrust, etc.) or any felony or misdemeanor related to performance under a contract within the past five years (measured from the date of issuance of this RFQ)? If yes, describe.
3. Has the firm or any Affiliate<sup>1</sup> sought protection under any provision of any bankruptcy act or been subject to a receivership or involuntary bankruptcy proceeding within the last ten years (measured from the date of issuance of this RFQ)? If yes, describe, and provide information concerning any work completed by a surety as a result of the bankruptcy or receivership.
4. Has the firm or any Affiliate<sup>1</sup> been debarred, disqualified, removed, or suspended from performing work for the federal government, any state or local government, or any foreign government within North America, within the last five years (measured from the date of issuance of this RFQ)? If yes, describe.
5. Has the firm or any Affiliate\* been found liable in a civil suit or found guilty in a criminal action for making any false claim or other material misrepresentation to a public entity (including any foreign government in North America) within the past ten years (measured from the date of issuance of this RFQ)? If yes, as to each such inquiry, state the name of the public agency, the date of the inquiry, the grounds on which the public agency based the inquiry, and the result of the inquiry.
6. Has any construction project in North America performed or managed by the firm or, to the knowledge of the undersigned, any Affiliate<sup>1</sup>, involved repeated or multiple failures to comply with safety laws, regulations, rules, or requirements as commonly tracked by the construction industry (including those of a foreign government) within the past ten years (measured from the date of issuance of this RFQ)? If yes, please identify the team members and the projects, provide an explanation of the circumstances, and provide owner contact information including telephone numbers.

<sup>1</sup> Note: "Affiliate" has the meaning set forth in Section 1.5 of the RFQ.



## Form L-2

### CERTIFICATION / QUESTIONNAIRE

<p>7. Has the firm or any Affiliate<sup>1</sup> been disqualified by an owner of a public works project in North America for submitting a “nonresponsive” bid or proposal, or having been found “not responsible” within the last five years (measured from the date of issuance of this RFQ)? If yes, describe.</p>
<p>8. Has the firm or any Affiliate<sup>1</sup> been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Industrial Commission of Nebraska, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state within the past ten years (measured from the date of issuance of this RFQ) governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?</p>
<p>9. Have any adverse claims, disputes, or lawsuits between the owner of a public works project in North America and the firm or any Affiliate<sup>1</sup>, in which the claim, settlement, or judgment exceeds \$50,000, settled within the past five years (measured from the date of issuance of this RFQ)? If yes, describe. Provide any information concerning any work completed by a surety during the past five years.</p>
<p>10. Has the firm or any Affiliate<sup>1</sup> been convicted of violating a State or Federal law relating to the employment of undocumented aliens within the past five years (measured from the date of issuance of this RFQ)? If yes, describe.</p>
<p>11. List (on a separate page) up to five financial institutions with which the firm or any Affiliate<sup>1</sup> has done the most business within the past five years and identify the individual at each institution who was in charge of the firm’s accounts. Indicate the address, telephone number, and Email address of each individual.</p>
<p>12. Has a surety firm completed performance of a contract in North America on behalf of the firm or any Affiliate<sup>1</sup> or paid for completion of a contractor’s performance because the firm or any affiliate was in default or terminated by the project owner within the last five years (measured from the date of issuance of this RFQ)? If yes, describe.</p>
<p>13. Has the firm or any Affiliate<sup>1</sup> been issued a citation by any governmental body for violation of any environmental law, regulation, or permit pertaining to performance of work on a transportation project in North America within the last ten years (measured from the date of issuance of this RFQ)? If yes, describe in <a href="#">Form PP-1</a>.</p>

*(Must be signed by an officer of the firm)*

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the firm’s Official Representative:

**Firm:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Form PP-1**

**ENVIRONMENTAL PAST PERFORMANCE**

**Name of Respondent:**

---

**Name of Firm:**

---

**Environmental Citations of Non-Compliance:**

Attach all listed citations to this Form.

Name of Citation	Year Received	Project and Location	Work for Which Citation Received

**Form RFQ-C**

**Respondent's Clarification Request**

**[Project Name] Project**

**Respondent/Firm Name:** \_\_\_\_\_

**Respondent Address:** \_\_\_\_\_

**Respondent Contact Information**

**Authorized Representative:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

<b>RFQ Section No. or Appendix</b>	<b>Question</b>	<b>Reserved for Department Response</b>

# Form S

## RESPONDENT'S SAFETY QUESTIONNAIRE

Name of Respondent: \_\_\_\_\_

Firm Name: \_\_\_\_\_

*Note: Safety Questionnaire shall be provided by each Major Team Member.*

(a) Provide the following information for the past three years:

Item	2019	2020	2021
<b>Experience Modification Rate</b>			
<b>Lost Work Rate</b>			
<b>Employee hours worked</b> (Do not include non-work time, even though paid)			
<b>Number of lost workday cases</b>			
<b>Number of restricted workday cases</b>			
<b>Number of cases with medical attention only</b>			
<b>Number of fatalities</b>			

(b) Are internal accident reports and report summaries sent to management? To what levels and how often?

Position	No	Yes	Monthly	Quarterly	Annually

(c) Do you hold site meetings for supervisors?      Yes \_\_\_\_\_      No \_\_\_\_\_  
How Often?      Weekly\_\_\_      Biweekly\_\_\_      Monthly\_\_\_      Less often, as needed\_\_\_

(d) Do you conduct Project Safety Inspections?      Yes \_\_\_\_\_      No \_\_\_\_\_  
By Whom? \_\_\_\_\_

How Often?      Weekly\_\_\_      Biweekly\_\_\_      Monthly\_\_\_

## Form S

### RESPONDENT'S SAFETY QUESTIONNAIRE

(e) Does the firm have a written Safety Program?      Yes \_\_\_\_\_      No \_\_\_\_\_

(f) Does the firm have an orientation program for new hires?      Yes \_\_\_\_\_      No \_\_\_\_\_

If yes, what safety items are included? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(g) Does the firm have a program for newly hired or promoted foremen?

Yes \_\_\_\_\_      No \_\_\_\_\_      If yes, does it include instruction of the following?

Topic	Yes	No
Safety Work Practices		
Safety Supervision		
On-site Meetings		
Emergency Procedures		
Accident Investigation		
Fire Protection and Prevention		
New Worker Orientation		

(h) Does the firm hold safety meetings which extend to the laborer level?

Yes \_\_\_\_\_      No \_\_\_\_\_

How often?      Daily \_\_\_\_\_      Weekly \_\_\_\_\_      Bi-Weekly \_\_\_\_\_      Less often, as needed \_\_\_\_\_

(i) (For Respondent only) Indicate the safety record on the last Project to which the indicated key personnel were assigned:

Key Person	Total Hours Worked by All	Number of Lost Workday	Number of Restricted Workday	Number of Cases with Medical	Number of Fatalities on Project

## Form S

### RESPONDENT'S SAFETY QUESTIONNAIRE

	Employees on Project	Cases on Project	Cases on Project	Attention Only on Project	
<b>Project Manager</b>					
<b>Construction Manager</b>					
<b>Value Added</b>					
<b>Valued Added</b>					

- (j) Has OSHA cited and assessed penalties against your firm for any "serious," "willful," or "repeat" violations of its safety or health regulations in the past five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(If yes, attach a separate signed page describing the citations, including information about the dates of the citations, nature of the violation, the project on which the citation(s) was or were issued, and the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.)

- (k) Has the Federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(If yes, attach a separate signed page describing each citation.)

---

**APPENDIX D:  
INSURANCE**

---

## PRE-CONSTRUCTION SERVICES INSURANCE REQUIREMENTS

### A. CM/CG Contractor agrees to:

- (1) Make a detailed review of its existing insurance coverage.
- (2) Compare that coverage to the expected scope of the work under this Agreement.
- (3) Obtain the insurance coverage that it deems necessary to fully protect CM/CG Contractor from loss associated with the work. Also, CM/CG Contractor shall have, at a minimum, the insurance described below:

### B. General Liability –

- (1) Limits of at least:
  - a. \$\_\_\_\_\_ Per Occurrence
  - b. \$\_\_\_\_\_ General Aggregate
  - c. \$\_\_\_\_\_ Completed Operations Aggregate (if applicable)
  - d. \$\_\_\_\_\_ Personal/Advertising Injury
- (2) CM/CG Contractor shall be responsible for the payment of any deductibles.
- (3) Coverage shall be provided by a standard form Commercial General Liability Policy (CG0001 or equivalent) covering bodily injury, property damage including loss of use, and personal injury.
- (4) General Aggregate to apply on a Per Project Basis.
- (5) The State of Nebraska, Department of Transportation, must be named as Additional Insured on a primary and non-contributory basis.
- (6) Consultant agrees to waive its rights of recovery against State. Waiver of subrogation in favor of the State of Nebraska, Department of Transportation must be added to, or included in, the policy.
- (7) Contractual liability coverage must be on a broad form basis and not be amended by any limiting endorsements.
- (8) If work is being done near a railroad track, the 50' railroad right of way exclusion must be deleted.
- (9) Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations (as per standard CG0001 Pollution Exclusion or equivalent). (If the standard pollution exclusion as provided by CG0001 has been amended, please refer to the following section entitled "Pollution Coverage.")

### C. Pollution Coverage –

- (1) In the event that the standard pollution exclusion as provided by CG0001 has



## PRE-CONSTRUCTION SERVICES INSURANCE REQUIREMENTS

been amended, coverage may be substituted with a separate Pollution Liability policy or a Professional Liability policy that includes pollution coverage in the amount of

\$\_\_\_\_\_ per occurrence or claim, and \$\_\_\_\_\_ aggregate.

- (2) If coverage is provided by a "claims made" form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of CM/CG Contractor.

### **D. Automobile Liability –**

- (1) Limits of at least:
  - a. \$\_\_\_\_\_ CSL Per Accident
- (2) Coverage shall apply to all Owned, Hired, and Non-Owned Autos.
- (3) CM/CG Contractor agrees to waive its rights of recovery against the LPA and the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the LPA and the State of Nebraska, Department of Transportation, shall be added to the policy.

### **E. Workers' Compensation –**

- (1) Limits: Statutory coverage for the state where the project is located.
- (2) Employer's Liability limits:
  - a. \$100,000 Each Accident
  - b. \$100,000 Disease – Per Person
  - c. \$500,000 Disease – Policy Limit
- (3) CM/CG Contractor agrees to waive its rights of recovery against State. Waiver of subrogation in favor of the State of Nebraska, Department of Transportation shall be added to, or included in, the policy

### **F. Professional Liability –**

- (1) Limits of at least:
  - a. \$\_\_\_\_\_ Per Claim
  - b. \$\_\_\_\_\_ Annual Aggregate
- (2) Coverage shall be provided for three years after work/project completion.

### **G. Electronic Data and Valuable Papers –**

- (1) Limits of at least:
  - a. \$\_\_\_\_\_ Electronic Data Processing Data and Media

## PRE-CONSTRUCTION SERVICES INSURANCE REQUIREMENTS

b. \$\_\_\_\_\_ Valuable Papers

### H. Umbrella/Excess –

- (1) Limits of at least:
  - a. \$\_\_\_\_\_ Per Occurrence
  - b. \$\_\_\_\_\_ Annual Aggregate
- (2) Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Auto Liability.
- (3) The State of Nebraska, Department of Transportation, must be an “Additional Insured”.
- (4) CM/CG Contractor agrees to waive its rights of recovery against State. Waiver of subrogation in favor of the State of Nebraska, Department of Transportation must be added to, or included in, the policy.

### I. Additional Requirements –

- (1) If any of the work is sublet, equivalent insurance shall be provided by or on behalf of the subconsultant or subconsultants (at any tier).
- (2) Any insurance policy shall be written by a reputable insurance company acceptable to State or with a current Best’s Insurance Guide Rating of A – and Class VII or better and authorized to do business in Nebraska.
- (3) Prior to CM/CG Contractor beginning work on a project under this agreement, CM/CG Contractor shall provide State evidence of such insurance coverage in effect in the form of an ACORD (or equivalent) certificate of insurance executed by a licensed representative of the participating insurer(s). Certificates of insurance must show the State as the certificateholder.
- (4) For so long as insurance coverage is required under this agreement CM/CG Contractor shall notify State when CM/CG Contractor knows, or has reason to believe, that any insurance coverage required under this agreement will lapse, or may be canceled or terminated. CM/CG Contractor shall forward any pertinent notice of cancellation or termination to State at the address listed below by mail (return receipt requested), hand-delivery or facsimile transmission within two (2) business days of receipt by CM/CG Contractor of any such notice from an insurance carrier. Notice shall be sent to:

Nebraska Department of  
Transportation Consultant  
Services – Insurance  
1500 Highway 2, P. O. Box 94759

## PRE-CONSTRUCTION SERVICES INSURANCE REQUIREMENTS

Lincoln, NE 68509-4759

[NDOT.ConsultantInsurance@nebraska.gov](mailto:NDOT.ConsultantInsurance@nebraska.gov)

- (5) Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this Agreement.
- (6) The Limits of Coverage's set forth in this document are minimum limits of coverage. The limits of coverage shall not be construed to be a limitation of the liability on the part of CM/CG Contractor or any of its subconsultants/tier subconsultants. The carrying of insurance described shall in no way be interpreted as relieving CM/CG Contractor, or any tier subcontractor of any responsibility or liability under the Agreement.
- (7) If there is a discrepancy of coverage between this document and any other insurance specification for this project, the greater limit or coverage requirement will prevail.

# CONSTRUCTION WORK INSURANCE REQUIREMENTS

1. Prior to execution of the Construction Services Contract, the CM/GC Contractor shall obtain insurance coverage to fully protect it from loss associated with the work, and have at a minimum the insurance described below:

a. General Liability:

(1) Limits of at least:

- (i) \$ 1,000,000 per Occurrence
- (ii) \$ 2,000,000 General Aggregate
- (iii) \$ 2,000,000 Completed Operations Aggregate
- (iv) \$ 1,000,000 Personal and Advertising Injury

(2) CM/GC Contractor shall be responsible for the payment of any deductibles.

(3) Coverage shall be provided by a standard form Commercial General Liability Policy (CG0001 or equivalent) covering bodily injury, property damage including loss of use, and personal injury.

(4) The General Aggregate shall apply on a Per Project Basis.

(5) The State of Nebraska, Department of Transportation, shall be named as an Additional Insured on a primary and non-contributory basis including completed operations for three (3) years after final acceptance and payment.

(6) CM/GC Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation shall be added to the policy.

(7) Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.

(8) If work is being performed near a railroad track, the 50' railroad right-of-way exclusion must be deleted.

(9) Products and completed operations coverage in the amount provided above shall be maintained for the duration of the work and shall be further maintained for a minimum period of three (3) years after final acceptance and payment.

(10) Coverage shall be included for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below surface of ground (XCU coverage).

(11) Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations

## CONSTRUCTION WORK INSURANCE REQUIREMENTS

as per standard CG0001 Pollution Exclusion or equivalent. If the standard pollution exclusion as provided by CG0001 has been amended, coverage must be substituted with a separate Pollution Liability policy of \$1,000,000 per occurrence and \$2,000,000 aggregate. If coverage is provided by a "claims made" form, coverage will be maintained for three (3) years after project completion. Any applicable deductible is the responsibility of the CM/GC Contractor.

b. Automobile Liability:

(1) Limits of at least:

(i) \$\_\_\_\_\_ CSL per Accident

(2) Coverage shall apply to all Owned, Hired, and Non-Owned Autos.

(3) If work is being performed near a railroad track, the 50-foot railroad right-of-way exclusion must be deleted.

(4) CM/GC Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation, shall be added to the policy.

(5) Automobile liability coverage shall be obtained from an insurance carrier who is licensed in Nebraska and any other State in which the project is located.

c. Workers' Compensation:

Limit: Statutory coverage for Nebraska and for any other State in which the project is located.

(1) Employer's Liability limits:

(i) \_\_\_\_\_ Each Accident

(ii) \_\_\_\_\_ Disease – Per Person

(iii) \_\_\_\_\_ Disease – Policy Limit

(2) CM/GC Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of Subrogation in favor of the State of Nebraska, Department of Transportation shall be added to the policy.

(3) Workers' compensation coverage shall be obtained from an insurance carrier who is licensed in Nebraska and any other State in which the project is located.

(4) Where applicable, the Longshore and Harborworkers Compensation Act endorsement shall be attached to the policy.

d. Umbrella/Excess:

(1) Limits of at least:

## CONSTRUCTION WORK INSURANCE REQUIREMENTS

(i) \$\_\_\_\_\_ per Occurrence

(2) Policy shall provide liability coverage in excess of the specified Employers Liability, Commercial General Liability and Automobile Liability.

(3) The State of Nebraska, Department of Transportation, shall be an "Additional Insured."

(4) CM/GC Contractor agrees to waive its rights of recovery against the State of Nebraska, Department of Transportation. Waiver of subrogation in favor of the State of Nebraska, Department of Transportation shall be provided.

e. Pollution Liability:

(1) When "hazardous wastes" or contaminated or polluted materials must be handled and/or moved, the CM/GC Contractor shall obtain Pollution Liability Coverage with minimum limits of \$\_\_\_\_\_ per occurrence and \$\_\_\_\_\_ aggregate.

(2) If, during the course of construction, hazardous wastes, contaminated or polluted material are discovered on the project, the CM/GC Contractor shall immediately cease any operation that may disturb these materials, and shall immediately notify the Engineer of all facts related to the discovery of these materials.

f. Additional Requirements:

(1) The CM/GC Contractor shall provide and carry any additional insurance required by the Construction Services Contract.

(2) Except as otherwise provided herein, all insurance shall be kept in full force and effect until after the State releases the CM/GC Contractor from all obligations under the Construction Services Contract.

(3) (i) If any of the work is sublet, equivalent insurance shall be provided by or on behalf of the subcontractor or subcontractors (at any tier) to cover all operations.

(ii) Approved trucking subcontractors (at any tier) who are being utilized only for the purpose of hauling materials shall be exempt from the requirements of Paragraphs 1.a., 1.d. and 1.e. of this Specification.

(iii) (a) When a CM/GC Contractor or subcontractor chooses to employ a trucker by carrying the driver on his or her payroll and entering into a lease agreement for the truck, the owner-operator of the truck shall be required to comply with the Automobile Liability provisions of Paragraph 1.b. of this Specification.

(b) Furthermore, it shall be the duty of the CM/GC Contractor to ensure that the owner-operator of the truck has such insurance in effect. The CM/GC Contractor shall maintain evidence that any truckers so utilized (at any tier) are insured to the

## CONSTRUCTION WORK INSURANCE REQUIREMENTS

minimum limits specified and be able to furnish documentation of the same on demand.

(c) Failure to ensure that insurance coverage exists and failure to maintain evidence thereof shall be considered a breach of the Construction Services Contract.

(4) Any insurance policy shall be written by an insurance company with a Best's Insurance Guide Rating of A – VII or better.

(5) Prior to execution of the Construction Services Contract, CM/GC Contractor shall provide the State of Nebraska, Department of Transportation evidence of such insurance coverage in effect in the form of an ACORD® (or equivalent) certificate of insurance executed by a licensed representative of the participating insurer(s). Certificates of insurance shall show the Nebraska Department of Transportation as the certificate holders.

(6) Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this Construction Services Contract.

(7) The limits of coverage set forth in this document are suggested minimum limits of coverage. The suggested limits of coverage shall not be construed to be a limitation of the liability on the part of the CM/GC Contractor or any of its subcontractors/tier subcontractors. The carrying of insurance described shall in no way be interpreted as relieving the CM/GC Contractor, subcontractor, or tier subcontractors of any responsibility or liability under the Construction Services Contract.

(8) If there is a discrepancy of coverage between this document and any other insurance specification for this project, the greater limit or coverage requirement shall prevail.

(9) For so long as insurance coverage is required under this Construction Services Contract, the CM/GC Contractor shall have a duty to notify the State of Nebraska Department of Transportation when the CM/GC Contractor knows, or has reason to believe, that any insurance coverage required under this Construction Services Contract will lapse or may be cancelled or terminated. The CM/GC Contractor must forward any pertinent notice of cancellation or termination to the State of Nebraska Department of Transportation by mail (return receipt requested), hand delivery, or email within two (2) business days of receipt by CM/GC Contractor of any such notice by an insurance carrier. Notice shall be sent to the following address:

# CONSTRUCTION WORK INSURANCE REQUIREMENTS

Nebraska Department of Transportation  
Construction Division - Insurance Section  
1500 Highway 2, Lincoln, NE 68502

or

P.O. Box 94759 Lincoln, NE 68509-4759

Email: [NDOT.ConstructionInsurance@nebraska.gov](mailto:NDOT.ConstructionInsurance@nebraska.gov)



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**ATTACHMENT 1:  
CONFLICT OF INTEREST POLICY**

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# ATTACHMENT 1

## NDOT Conflict of Interest Policy For [Project Name] Project

Capitalized terms used in this NDOT Conflict of Interest Policy (this “Policy”), but not otherwise defined, in the RFQ, have the meanings ascribed in Section 2 below.

Without limiting the Respondents’ obligations, and NDOT’s rights, under Section 11 of the RFQ and Section 3.8 of this Policy, no Respondent may engage the Services (with respect to the Project), or include among the Respondent team, any Consultant that presents a Conflict of Interest.

### 1.0 Purpose

This Policy prescribes Conflict of Interest rules applicable to private entities, including Consultants and Respondents, participating or desiring to participate in NDOT's planning, procurement, design, and construction of the Project. A private entity's failure to comply with this Policy may result in potential liability to NDOT and the private entity's preclusion from participation in the Project. This Policy is intended to apply in the context of NDOT's development of the Project.

### 2.0 Definitions

Term	Definition
<b>Affiliate</b>	Means with respect to any Person: (a) any member, partner or joint venture of such Consultant; (b) any individual or entity that directly or indirectly controls, or is controlled by, or is under common control with, such Consultant or any of its members, partners or joint venturers; and (c) any other entity for which 20% or more of the equity interest in such other entity is held directly or indirectly, beneficially or of record by (i) such Consultant, (ii) any of such Consultant's members, partners or joint venturers or (iii) any Affiliate of such Consultant under clause (b) of this definition.
<b>Conflict of Interest</b>	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 NDOT, or the Person’s objectivity in performing the scope of the work for the Project is, or might be, otherwise impaired, or a Person has an unfair competitive advantage. The following are non-exclusive examples of conflicts of interest: (a) a Person is among NDOT consultants (identified in <u>Section 8.3.1</u> of the RFQ); (b) a Person previously provided Services to NDOT with respect to the Project (whether as a direct or indirect Consultant to or an employee of NDOT);

Term	Definition
	(c) a Person who currently or previously provides/d services to NDOT is an equity owner, team member, direct or indirect Consultant of or to a Respondent for the Project; and (d) a Person who currently or previously provides/d services to NDOT is/ has a financial interest in any of the foregoing entities.
<b>Conflict of Interest Policy or Policy</b>	Means this Attachment 1 NDOT Conflict of Interest Policy for [Project Name] Project.
<b>Consultant</b>	Means any Person or business entity, any individual employee of such entity, or any division and/or Affiliate of such entity previously or currently retained, or in the process of being retained, by NDOT to provide Services in connection with the Project, including subconsultants and individual employees of subconsultants.
<b>NDOT</b>	Means the Nebraska Department of Transportation.
<b>Person</b>	Individual person or entity, including joint ventures, partnerships, limited liability companies, corporations, consortiums, teams or other groups or organizations of individuals or entities, or the individuals and entities that make up such groups,
<b>Policy</b>	Means this Attachment 1 NDOT Conflict of Interest Policy for [Project Name] Project.
<b>Project</b>	[Project Description].
<b>Respondent</b>	Means any Person that have submitted a statement of qualifications or proposal for work on the Project or are interested in submitting a statement of qualifications or proposal for services on the Project.
<b>Services</b>	Means, in the context of this Policy, consulting services related to the Project, which may include, but are not limited to, some or all of the following: planning services; procurement services; federal and state environmental services; financial advisory services; legal services; risk management analysis or services; insurance advice or services; traffic and revenue studies; program oversight; design and construction management services; design concept services; preliminary engineering services (including right-of-way, structures, survey and utility); and public and community outreach services.

**3.0 Conflicts of Interest**

**3.1 Public Policy Purpose**

This section prescribes NDOT's public policy guiding the Conflicts of Interest Policy relating to Consultants participating or desiring to participate in the planning, procurement, design, or construction of the Project. The Policy:

- Protects the integrity and fairness of the planning, procurement, design, or construction of the Project;

- Avoids circumstances where a Consultant or Respondent obtains, or appears to obtain, an unfair competitive advantage as a result of Services performed for NDOT by a Consultant or information obtained from NDOT by a Consultant;
- Provides guidance to Consultants and Respondents, or potential Consultants and Respondents, so they may assess, and make informed decisions concerning, their decision to provide Services on the Project or to submit or participate on a Respondent team submitting a statement of qualifications and/or proposal related to the design, or construction of the Project; and
- Protects NDOT's interests and confidential and sensitive Project-specific information.

### **3.2 Applicability**

This Policy applies to Consultants who desire to participate in, have participated in or are participating in the performance of Services for NDOT related to the Project. This Policy may prohibit or restrict the ability of a Respondent to have a Consultant participate on a Respondent team as an equity owner or team member, act as a consultant or subconsultant to the Respondent, or have a financial interest in the Respondent or an equity owner or team member of a Respondent. This Policy relates solely to the Project and does not address NDOT's approach or policy(ies) with respect to conflicts of interest on other state transportation projects, if any.

### **3.3 Conflicts of Interest Disclosure**

#### **3.3.1 Obligation to Disclose**

Consultants and Respondents participating in the Project shall arrange their affairs so as to reasonably prevent Conflicts of Interest. Any Consultant or Respondent having an actual or potential Conflict of Interest shall disclose the matter to NDOT in writing to the following individual:

**Nebraska Department of Transportation  
Roadway Design Division  
1500 HWY 2  
Lincoln, NE 68502**

**Attention: [NDOT Project Manager's Name], [NDOT Project Manager's Title]**

**Email: [NDOT Project Manager's E-mail]**

Disclosures will also be requested of Respondents as part of responses to this RFQ and any subsequent Request for Proposals relating to the design and construction of the Project.

A Consultant's and Respondent's Conflict of Interest disclosure obligation is ongoing. Consultants and Respondents shall undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual or potential Conflicts of Interest arise. Due diligence should extend to investigation of past relationships and, if the Consultant being investigated is an entity, to officers or directors of the Consultant. If a Consultant or Respondent becomes aware of an actual or potential Conflict of Interest at any time during its participation in

the Project, the Consultant or Respondent, as applicable, shall promptly disclose the matter to NDOT as described herein.

Respondents shall deliver all requests for waiver of an actual or potential Conflict of Interest to the Procurement Manager specified above.

### **3.3.2 Failure to Comply**

If a Consultant or Respondent fails to comply with this Policy (to include the submission and response process in [Section 3.8](#) below), including failure to comply with any mitigation measures imposed under this Policy, or otherwise fails to disclose an actual or potential Conflict of Interest, NDOT may, in its sole discretion:

- Preclude and/or disqualify the Consultant and its Affiliates, including any Respondent with whom the Consultant is or had affiliated, from participation in the planning, procurement, design, and/or construction of the Project, including any competitive process associated therewith;
- Require the Consultant and its Affiliates, including any Respondent with whom the Consultant is or had Affiliated, to implement mitigation measures;
- Segregate or terminate the Consultant and its Affiliates, including any Respondent with whom the Consultant is or had Affiliated, from planning, procurement, design, and/or construction of the Project; and/or
- Pursue any and all other rights and remedies available at law, in equity or set forth in the RFQ or subsequent Request for Proposals, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the Consultant's or Respondent's failure to comply with this Policy, including, but not limited to, costs resulting from third-party challenges to the procurement or NDOT's re-procurement of the Project.

### **3.4 Period in Which a Conflict of Interest Applies**

If NDOT Director or designee determines that the performance of services by a Consultant creates an actual or potential Conflict of Interest, the provisions in this Policy and any decisions made by NDOT related to such actual or potential Conflict of Interest (including prohibitions, mitigation measures, etc.) shall continue and apply for the duration of the planning, procurement, design, and construction of the Project, provided that NDOT Director or designee may, on a case-by-case basis and in his or her sole discretion, modify the length of this time period in writing if he/she determines that the modification is in the best interests of NDOT and the Project.

### **3.5 Application to Consultant Employees and New Employers**

If, in NDOT's determination, the performance of the Services described in this Policy raises a potential or actual Conflict of Interest for a Consultant, such Conflict of Interest shall apply individually to any employee of such Consultant that has participated in a material way in the performance of the Services on the Project. If such individual leaves the Consultant's employment, the potential or actual Conflict of Interest shall continue to apply to both the

individual as well as the Consultant for the applicable period set forth in Section 3.4 of this Policy. If a Conflict of Interest applies to an individual, the Conflict of Interest and prohibition with respect to the individual will not apply to the individual's new place of employment (subject to the next sentence), unless the new employer is an Affiliate of the employee's previous employer. If the new employer is not an Affiliate of the previous employer and is otherwise eligible to perform Services for NDOT pursuant to this Policy and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigation measures may be required of the new employer with respect to the employee.

### **3.6 Federal and State Requirements**

#### **3.6.1 Federal Laws**

For federal-aid projects and in certain other circumstances, NDOT must comply with the Federal Highway Administration's organizational conflict of interest regulations found in 23 Code of Federal Regulations §636.116. NDOT reserves the right to cancel any contract without penalty or further obligation if any Person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of NDOT is, at any time while the contract or an extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. Respondents' attention is directed to such federal and state laws and regulations. Nothing in this Policy is intended to limit, modify, supersede or otherwise alter the effect of those laws and regulations, and NDOT will apply this Policy consistent with those laws and regulations.

#### **3.6.2 Limitations on NDOT Consents and Approvals**

To the extent that application of the federal and state laws and regulations described in Section 3.6.1 of this Policy would preclude or limit participation by a Consultant or an individual with respect to the Project, then notwithstanding any other aspect of this Policy or any contrary decision by NDOT in response to an actual or potential Conflict of Interest under this Policy, such federal and state laws and regulations shall control and be determinative. Under no circumstances shall a decision, approval or consent by NDOT in response to a disclosure, request or actual or potential Conflict of Interest under this Policy be considered an opinion with respect to the applicability or effect of such federal and state laws or regulations, and Consultant shall bear all responsibility and liability for determining if a conflict under federal and/or state laws or regulations exists in relation to the Consultant's Services to NDOT or proposed work on the Project.

### **3.7 Reserved**

### **3.8 Determination Regarding Provision of Services for the Project**

#### **3.8.1 Discretion of NDOT**

Unless otherwise indicated in this Policy, all approvals, actions or discretion under this Policy and with respect to an actual or potential Conflict of Interest shall be within the sole discretion of NDOT.

### 3.8.2 Determination Process

In response to a disclosure under Section 3.3 above or information NDOT obtains independent of a Consultant or Respondent, and in response to requests for waiver, NDOT will conduct a review. NDOT Director or designee will determine whether a Consultant has an actual or potential Conflict of Interest that should prevent the Consultant from (i) being a Respondent, (ii) participating as an equity owner, team member, consultant or subconsultant of or to a Respondent for the Project, (iii) having a financial interest in any of the foregoing entities with respect to the Project or (iv) otherwise participating in the design and/or construction of the Project. NDOT will also analyze what actions may be appropriate to avoid, neutralize or mitigate any actual or potential Conflict of Interest.

NDOT Director or designee retains the ultimate and sole discretion to act on behalf of NDOT hereunder and to determine on a case-by-case basis whether an actual or potential Conflict of Interest exists, whether to grant a waiver, and what actions may be appropriate to avoid, neutralize, or mitigate any actual or potential Conflict of Interest. Once NDOT Director or designee makes this determination, NDOT will send the Consultant a written notice regarding the decision and, if participation is approved, whether the approval and participation is limited or subject to the Consultant meeting certain conditions.

### 3.8.3 Determination Factors

NDOT Director or designee will consider some or all of the following factors when making the determination:

**PART A** Whether the Consultant will not, or in the case of the previous performance of Services did not, have access to or obtain knowledge of confidential or sensitive information, procedures, policies, decisions and processes that does or could provide an unfair competitive advantage with respect to the procurement, design, or construction of the Project;

**PART B** Whether the data and information provided to the Consultant in the performance of the Services is either not material to the procurement for the Project or is generally available on a timely basis to all Respondents;

**PART C** The type of Services at issue;

**PART D** The particular circumstances at issue, including the Consultant's ability to effectively implement the safeguards described in Section 3.8.4 of this Policy, including an ethical wall, or to otherwise mitigate the Conflict of Interest in a manner satisfactory to NDOT;

**PART E** The specialized expertise, if any, needed by NDOT and Respondents to implement the Project;

**PART F** The period of time between the previous work for NDOT and the potential Conflict of Interest situation;

**PART G** Whether the Consultant's work for NDOT has been completed or is ongoing;

**PART H** The potential impact on the procurement and implementation of the Project, including impacts on competition;

**PART I** Whether, with respect to a Consultant's prior environmental services related to the Project, if any, a record of decision or finding of no significant impact has been issued for the Project; and

**PART J** Any other factors or circumstances deemed relevant by NDOT.

### **3.8.4 Restrictions, Conditions and Exceptions**

In order to address actual or potential Conflicts of Interest, NDOT Director or designee as part of providing his or her consent to the participation of a Consultant may, in his or her sole discretion:

- (a) Restrict the scope of Services the Consultant may be eligible to perform for NDOT or the Respondent team in order to further the intent and goals of this Policy; and
- (b) Condition a consent, approval, determination or exception as NDOT Director determines appropriate to further the intent and goals of this Policy, including by requiring the Consultant or Respondent to implement certain safeguards, including:
  - i) The execution of confidentiality agreements satisfactory to NDOT, which may, among other things, include the segregation and protection of information obtained as a result of the Consultant's prior or ongoing work for NDOT or from former or current NDOT employees; and/or
  - ii) The execution of ethical wall agreements satisfactory to NDOT, which (i) segregate certain personnel from participation in the Project, (ii) bar such personnel from communicating regarding the Project, the procurement or Services with any person working for or with the Consultant, and (iii) require implementation of procedures to prevent such personnel from accessing any files and communications of the Consultant regarding the Project, the procurement or Services; and/or
  - iii) The execution of agreements satisfactory to NDOT regarding the dissemination of work product and materials created as a result of the Consultant's prior or ongoing work for NDOT, including dissemination to NDOT and restrictions on dissemination by the Consultant to any Respondent team, including a team on which they intend to participate.

### **3.8.5 Withdrawal or Amendment of NDOT Consents and Approvals**

NDOT shall not withdraw or amend a prior consent or approval granted to a Consultant under this Policy unless:

- a. The application of the federal and state laws and regulations described in Section 3.6 of this Policy requires the consent or approval to be withdrawn or amended; or



- b. NDOT decides, in its sole discretion, to withdraw or amend the consent or approval based on factual circumstances that NDOT has been made aware of that were not disclosed when NDOT made its original decision, or factual circumstances that are new or have changed since NDOT made its original decision; or
- c. The Consultant or Respondent team fails to comply with any mitigation measures imposed under this Policy.

### **3.9 Procurement and Financial Services**

Independent of the process described in Section 3.8 of this Policy, a Consultant actively engaged in performing procurement services or financial services with respect to the Project may not be a Respondent or participate as an equity owner, team member, consultant or subconsultant of or to a Respondent for the Project, or have a financial interest in any of the foregoing entities with respect to the Project.

### **3.10 Multiple Services**

If a Consultant is providing more than one category or type of Services to NDOT for the Project (e.g., environmental services as well as procurement services) and there are differences in this Policy's considerations, standards, restrictions, limitations and outcomes applicable to those categories or types of Services, the standards, restrictions, limitations and outcomes applicable to a category that are more stringent will be applied (e.g., if a Consultant were only providing preliminary engineering services that have been completed, they may be approved to participate on a Respondent team, whereas, if they were also providing ongoing procurement services for the Project, they may not be approved to participate on a Respondent team).

### **3.11 Provisions are Nonexclusive**

The provisions in this Policy do not address every situation that may arise in the context of NDOT's planning, procurement, design, or construction of the Project nor require a particular decision or determination by NDOT Director or designee when faced with facts similar to those described in this Policy. In addition, at any time NDOT may impose additional policies, procedures and limits related to conflicts of interest or similar issues with respect to the Project or any other NDOT projects.

### **3.12 Specific Matters Which Do Not Constitute a Conflict of Interest**

Prior to the issuance of procurement documents it is in the best interest of NDOT that it have access to some information which may be most easily obtained by interactions with persons performing consultant or construction work.

Appendix D  
**CM/GC RFP Example**



### Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFP.

The official RFP will need to be tailored for the project specifics.

See attached separate document.

**NEBRASKA**

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

## **NEBRASKA DEPARTMENT OF TRANSPORTATION**

**Construction Manager / General Contractor  
(CM/GC) Services**

### **REQUEST FOR PROPOSALS**

**For**

**[Project Name]  
[Project Number]  
[Control Number]**

**RFP Issuance Date: [Issuance Date]  
Proposal Submittal Deadline: [Proposal Due Date]  
RFQ Procurement Contract: [RFQ Number]**

# Table of Contents

<b>1</b>	<b>Background</b> .....	<b>3</b>
1.1	Introduction .....	3
1.2	Overview of CM/GC Delivery .....	3
1.3	Integrated Project Team .....	3
1.3.1	NDOT .....	3
1.3.2	Designer (Benesch) .....	4
1.3.3	CM/GC Contractor .....	4
1.4	Independent Cost Estimator .....	4
1.5	Abbreviations and Definitions .....	4
1.6	Project Description.....	4
1.7	Project Goals .....	5
1.8	Project Status .....	5
1.9	Plan of Finance.....	6
<b>2</b>	<b>Scope Of Work Overview</b> .....	<b>7</b>
2.1	Pre-Construction Services .....	7
2.2	GMP Component Validation Process .....	8
2.3	Construction Contract .....	8
2.4	Co-Location Requirements .....	10
<b>3</b>	<b>NDOT Regulations and Policies</b> .....	<b>10</b>
3.1	State and Federal Requirements.....	10
3.2	Payment and Performance Bond Requirements .....	10
3.3	Prequalification and Required Licenses .....	10
3.4	Insurance and Indemnity Requirements .....	10
3.5	Required Percentage of Work .....	11
<b>4</b>	<b>Procurement Process</b> .....	<b>11</b>
4.1	Statutory Authority .....	11
4.2	Overview .....	11
4.3	Procurement Schedule .....	11
4.4	Questions and Requests for Clarifications.....	12
4.5	Addenda .....	13
4.6	Pre-Contractual Expenses.....	13
4.7	Intellectual Property .....	13
<b>5</b>	<b>Proposal Submittal Requirements</b> .....	<b>13</b>
5.1	General Requirements.....	13
5.2	Format Requirements .....	13
5.3	Packaging Requirements.....	14
5.4	Due Date, Time, and Location .....	14
5.5	Quantities.....	14
<b>6</b>	<b>Proposal Contents</b> .....	<b>15</b>
6.1	Volume A – Legal Information .....	15
6.1.1	Executive Summary .....	15
6.1.2	Form A – Transmittal Letter .....	15
6.1.3	Confidential Content Index.....	15
6.1.4	NDOT Prequalification Certification .....	16
6.1.5	Form L-1 – Proposer’s Organization Information/Certification.....	16
6.1.6	Form L-2 – Certification/Questionnaire .....	16
6.1.7	Organizational Conflicts of Interest .....	17
6.1.8	Form DB – Certification Regarding Debarment, Suspension and Other	

# Table of Contents

Responsibility Matters.....	17
6.2 Volume B – Technical Information.....	17
6.2.1 Proposer Organization.....	17
6.2.2 Key Personnel.....	18
6.2.3 Project Management Approach.....	19
6.2.4 Pre-Construction Services Approach.....	19
6.2.5 Construction Work Approach.....	19
6.3 Volume C – Financial Information.....	19
6.3.1 Personnel Rates and Hours.....	20
6.3.2 Surety Letters.....	20
<b>7 Evaluation Process .....</b>	<b>20</b>
7.1 Responsiveness Review.....	21
7.2 Pass/Fail Evaluation.....	21
7.3 Qualitative Evaluation Factors and Weightings.....	22
7.3.1 Project Management Approach (20%).....	22
7.3.2 Pre-Construction Services Approach (50%).....	23
7.3.3 Construction Work Approach (30%).....	24
7.4 Evaluation Procedure and Notification.....	25
7.5 Changes in Proposer Organization and Key Personnel.....	25
<b>8 Communication, Public Information &amp; Organizational Conflicts of Interest ..26</b>	
8.1 Improper Communications and Contacts.....	26
8.1.1 Communication Process.....	26
8.2 Public Records.....	27
8.3 Organizational Conflicts of Interest.....	28
8.3.1 NDOT Consultant.....	28
8.3.2 NDOT Employees Involved In Procurement.....	29
8.3.3 Participation in More than One Proposer Organization.....	29
<b>9 Protest Procedures .....</b>	<b>29</b>
9.1 Applicability.....	29
9.2 Required Early Communication for Certain Protests.....	30
9.3 Deadlines for Protests.....	30
9.4 Content of Protest.....	31
9.5 Filing of Protest.....	31
9.6 Comments from Other Proposers.....	31
9.7 Burden of Proof.....	31
9.8 Decision on the Protest.....	31
9.9 Protester’s Payment of Costs.....	31
9.10 Rights and Obligations of Proposers.....	32
<b>10 Debriefing Meetings .....</b>	<b>32</b>
<b>11 NDOT Reserved Rights .....</b>	<b>32</b>

**EXHIBIT A: ABBREVIATIONS AND DEFINITIONS**

**APPENDIX A: PROJECT DESCRIPTION AND PROJECT STATUS**

**APPENDIX B: FORMAT AND ORGANIZATION OF PROPOSALS**

**APPENDIX C: FORMS**

**ATTACHMENT 1: NDOT CONFLICT OF INTEREST POLICY FOR NIOBRARA E&W PROJECT**

# Table of Contents

[ATTACHMENT 2](#): FORM OF PRE-CONSTRUCTION SERVICES AGREEMENT

[ATTACHMENT 3](#): CONCEPT PLANS AND QUANTITIES

# 1 BACKGROUND

## 1.1 Introduction

The Nebraska Department of Transportation (“NDOT”) is issuing this Request for Proposals (“RFP”) to those prospective contractors and joint ventures (“Proposers”) shortlisted based on NDOT’s evaluation of Statement of Qualifications (SOQs) delivered to NDOT on \_\_\_\_\_, in response to the Request for Qualifications (“RFQ”) for a Construction Manager/General Contractor (“CM/GC Contractor”) for Pre-Construction Services and Construction Work for \_\_\_\_\_ (the “Project”).

NDOT will select the successful CM/GC Contractor in accordance with the procurement method described in Section 4.

## 1.2 Overview of CM/GC Delivery

CM/GC is a contracting method that involves NDOT executing a professional services agreement for Pre-Construction Services (“Pre-Construction Services Agreement”) with a construction firm to provide constructability, estimating, and other services during the Pre-Construction Services of the Project. The selected CM/GC Contractor will work collaboratively with NDOT and NDOT’s Design Consultant (“Designer”) as an Integrated Project Team (“IPT”) to mitigate risk, improve the construction schedule, streamline the design process, and develop a project that adheres to NDOT’s budget.

Provided NDOT and the CM/GC Contractor have successfully collaborated in the pre-construction phase, NDOT will enter into negotiation for the Guaranteed Maximum Price (“GMP”) with the CM/GC Contractor for a scope of Construction Work, with associated commercial/risk allocations, for the Project. Upon successful negotiation of a final GMP, NDOT intends to enter into a contract with the CM/GC Contractor to provide such Construction Work for the Project (the “Construction Contract”).

If NDOT and CM/GC Contractor fail to reach agreement on the GMP, or any component thereof, or the GMP is not within NDOT’s budget, then NDOT may reduce the construction scope and/or terminate the negotiations with the CM/GC Contractor and advertise the Project for public bidding and initiate separate procurement for selection of a general contractor to construct the Project.

## 1.3 Integrated Project Team

The Integrated Project Team, as referenced herein, is composed of NDOT, Designer, and the CM/GC Contractor. The roles and responsibilities of each entity are described below.

### 1.3.1 NDOT

NDOT will administer and manage the Project. The NDOT Project Manager set forth in Section 4.4 of this RFP will be the point of contact and primary NDOT position for Pre-Construction Services. The NDOT Project Manager will guide design decisions while overseeing the collaborative process among the IPT.



### **1.3.2 Designer ([Designer Name])**

The Designer ([Designer Name]) is under contract with NDOT and is responsible for performing design and engineering services, preparing plans, specifications, and estimates (“PS&E”) and working collaboratively with the CM/GC Contractor and NDOT during the Pre-Construction Services for the Project. The Designer will also provide design support services during the construction stage.

### **1.3.3 CM/GC Contractor**

The CM/GC Contractor will be responsible under the Pre-Construction Services Agreement for performing Pre-Construction Services for the Project, which are to include reviewing the Designer’s design plans and specifications for constructability, providing Value Engineering alternatives, and preparing construction cost estimates, risk register, and overall construction schedule at every design phase submittal, among other activities. The CM/GC Contractor will also, as part of the Pre-Construction Services, develop existing condition analysis, maintenance of traffic, and disruption avoidance planning, determine and identify any advance Construction Work that would be to the advantage of the Project or NDOT, and provide site logistics, construction sequences, and construction phasing analysis for the Project, among other activities.

If NDOT and the CM/GC Contractor agree to terms, the CM/GC Contractor will also construct the Project, subject to the budget, schedule, terms, and conditions of a Construction Contract negotiated as part of the Pre-Construction Services.

## **1.4 Independent Cost Estimator**

NDOT will retain an Independent Cost Estimator (“ICE”) that will provide comparative price estimates during the project and at the OPCC milestone submittals. The ICE will use existing market conditions for the OPCCs and to evaluate the GMP proposed by the CM/GC Contractor. The ICE will be involved in each discussion regarding risk and associated cost and schedule impact throughout the development of the Project.

## **1.5 Abbreviations and Definitions**

Refer to [Exhibit A](#) to this RFP for a list of abbreviations and defined terms used in this RFP. Capitalized terms not otherwise defined in this RFP are also defined in [Exhibit A](#). Use of the term “include”, “includes” or “including” should be read as if followed by the words “without limitation” or “but not limited to”, as the case may be.

## **1.6 Project Description**

The proposed Project includes \_\_\_\_\_.

For depictions of the Project, the concept design, and quantities, please see [Appendix A](#) and [Attachment 3](#) respectively.

## 1.7 Project Goals

NDOT's vision is to \_\_\_\_\_.  
The project is needed due to \_\_\_\_\_.  
Consistent with NDOT's vision, NDOT has established a set of goals for the Project. These goals are considered to be equal in value and importance to the Project, reflecting NDOT's view of a successful Project.

- a. Improve safety and operation of the transportation system and create a more resilient and reliable corridor.
- b. Challenge and motivate Proposers to identify cost savings through efficiency and innovation for an agreeable GMP.
- c. Successfully deploy the CM/GC project delivery method of early contractor involvement in the design process.
- d. Provide high-quality design and construction.
- e. Minimize inconvenience to the traveling public and maximize safety of workers and the traveling public.
- f. Maintain excellent public and stakeholder relations through an effective outreach program and efficient maintenance of traffic.
- g. \_\_\_\_\_.

## 1.8 Project Status

For a detailed description of the Project's status, please see [Appendix A](#). Note that the information in [Appendix A](#) remains under further development by NDOT and may be modified, reduced, or expanded during this procurement.

## 1.9 Project Funding

The Project is programmed in NDOT Transportation Construction Program. The preliminary estimate generated for the [Project Name] Project is \_\_\_\_\_ which includes preliminary engineering, utilities, ROW, mitigation, construction, and construction engineering.

## 2 SCOPE OF WORK OVERVIEW

The CM/GC Contractor selected for this Project will join the IPT. The CM/GC Contractor will be expected to provide the IPT with construction expertise and technical experience, to assist in making decisions that meet the goals of the Project, support technical and logistical challenges, minimize risk, and provide input on items affecting construction schedule and costs.

The following are the Project elements to which the CM/GC Contractor is expected to focus its contributions and will bring the most value during the Pre-Construction Services:

- a. Project grading and earthwork including means and methods.
- b. Borrow source identification necessary to construct the Project.
- c. Construction phasing, including but not limited to temporary paving and grading operations and durations which may impact environmental resources identified in the environmental documents and permits.
- d. Maintenance of traffic and accesses along the Project.
- e. Configuration and footprint needed for bridge and drainage structure construction including most economical means and methods and temporary elements required.
- f. Storm Water Pollution Prevention Plan (“SWPPP”) means and methods that maximize effectiveness for protection and restoration of temporary wetland impact.
- g. Mitigation site construction and cost.
- h. Alterations to NDOT's standard content and detail of the design plans and specifications needed to construct the project.

As the IPT progresses through the pre-construction phase, this list may be altered or refined.

## **2.1 Pre-Construction Services**

The CM/GC Contractor is an integral part of the IPT during the Pre-Construction Services. The Pre-Construction Services intend for the IPT to develop, implement, and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, problems are resolved promptly, and upon completion, the Project is deemed a success by all.

The CM/GC Contractor shall continually provide input on constructability, phasing, materials availability, cost, and schedule and at the Initial, Function, and Final Design Milestones of the Pre-Construction Services of the Project. After selection, the highest-ranked “Successful” Proposer will prepare and submit to NDOT a budget for the Pre-Construction Services Agreement scope of services with hours, direct labor rates and burdens, overhead, profit and expenses anticipated as well as a schedule for completion of the Pre-Construction Services within the constraints identified in the body of the Pre-Construction Services, and within the scheduling requirements set forth in the scope of services attached thereto. NDOT will verify the finalized scope of services under the Pre-Construction Services Agreement, review the budget and schedule information submitted, and negotiate any changes required with the Successful Proposer. The final amount as agreed upon between the Successful Proposer and NDOT will become a contractual not-to-exceed fee payable to the CM/GC Contractor under the Pre-Construction Services Agreement. If NDOT and the CM/GC Contractor are unable to reach agreement on scope and budget for the Pre-Construction Services, NDOT may terminate negotiations with the Successful Proposer and begin negotiations with the second Successful Proposer, which shall be the “highest-ranked Proposer” for purposes of the Pre-Construction Services Agreement. This process will continue, with the third, and so forth, unless and until NDOT exercises any of its other reserved rights.

The final scope of the Pre-Construction Services Agreement and fee for the services to be provided under such Pre-Construction Services Agreement must be agreed by the would-be CM/GC Contractor and NDOT prior to execution and notice to proceed.

A form of Pre-Construction Services Agreement, including a scope of services for the CM/GC Contractor during the Pre-Construction Services is set forth in [Attachment 2](#). NDOT may continue to modify such form during the procurement process. The successful Proposer will provide input on the scope and prepare a fee proposal that satisfies the requirements of the Pre-Construction Services as exists in final form prior to submission.

## **2.2 GMP Component Validation Process**

When NDOT determines, with CM/GC Contractor input, that the Project has been designed to a sufficient level of detail to allow for a constructible Project, the CM/GC Contractor and NDOT will utilize a validation process described in the Pre-Construction Services Agreement. The process generally involves validation of the overall GMP, and its components (including risk contingencies and CM/GC Contractor fees and markups) proposed by the CM/GC Contractor during negotiations with NDOT for the price of the Construction Work and utilization of the open-book estimates prepared throughout the Pre-Construction Services by the CM/GC Contractor in its role as construction manager. For the final GMP, NDOT will evaluate the bid to determine if the CM/GC Contractor's proposed GMP is within the target of 3% of NDOT's estimate or the ICE's estimate and is otherwise acceptable.

Refer to the form of Pre-Construction Services Agreement in [Attachment 2](#) for further details regarding OPCC requirements and the GMP preparation process.

## **2.3 Construction Contract**

The Construction Contract will be drafted as part of the process of negotiating the GMP and with use of the Risk Register. The CM/GC Contractor shall calculate the GMP based on the draft Construction Contract.

The draft Construction Contract will generally follow the form used by NDOT in its design-bid-build projects. The NDOT Standard Specifications for Highway Construction, 2017 Edition ("Standard Specifications"), will be part of the Construction Contract. Section 100 of those Standard Specifications will be substantially revised to reflect the CM/GC procurement process.

NDOT will provide the CM/GC Contractor with the first draft Construction Contract as soon as feasible after selection of the Successful Proposer and sufficiently prior to the time the first Opinion of Probable Construction Cost ("OPCC") is due as to allow the CM/GC Contractor reasonable time to compute the first OPCC, all as more specifically set forth in the scope of services to Pre-Construction Services Agreement. The first draft of the Construction Contract will shift all risks to the CM/GC Contractor including, but not limited to, differing site conditions and unsuitable soils.

This notwithstanding, certain Standard Specifications will remain; for example:

1. Standard Specification Subsection 603.05(4) concerning reduced payment or removal of concrete that fails to meet specified strength will remain in effect with reduced payments for corresponding Contact Items within the final GMP.

2. Standard Specification Subsection 603.05(5) concerning reduced payment or removal of concrete that fails to meet specified thickness will remain in effect with reduced payments for corresponding Contact Items within the final GMP.
3. Standard Specification Section 602 concerning incentive payments for smoothness will remain in effect with additional payments for corresponding Contact Items within the final GMP payments (i.e., total payments may exceed the GMP).

In addition, the draft Construction Contract *will* contain provisions wherein the CM/GC Contractor payment for certain Contract items will be reduced as relates to contractor performance (e.g., pertaining to removal of nonconforming work). Generally, references to conditions for which the remedy is compensable “Extra Work” (e.g., Standard Specification Subsection 104.02(5)) will be removed in favor of cost and schedule impact adjustments to the Risk Register under the Pre-Construction Services processes described below and in greater detail in the Pre-Construction Services Agreement.

Similarly, the draft Construction Contract *may* also contain provisions for incentives associated with certain specific contractor performance (i.e., additional payments).

The draft Construction Contract will contain a list of “Contract Items,” as defined in Standard Specification Subsection 101.0320. The CM/GC Contractor will be required to price each “Contract Item” and the sum of the “Contract Items” must equal the OPCC or GMP, as appropriate.

During construction, progress payments will be made in accordance with Standard Specification Subsection 109.07. Total progress payments under the Construction Contract will not exceed the final GMP, except for additional payments, examples of which are set out above.

The draft Construction Contract will be revised as the CM/GC Contractor identifies and prices risks and as NDOT determines whether to reassume such risks. NDOT will provide the CM/GC Contractor with an updated draft of the Construction Contract prior to each stage where an OPCC or a GMP is required, as more specifically set forth in the scope of services to the Pre-Construction Services Agreement. The OPCC will be re-calculated based on the updated draft.

If the CM/GC Contractor and NDOT are successful in negotiating an acceptable final GMP, and the CM/GC Contractor complies with other requirements and conditions to execution of the Construction Contract, the CM/GC Contractor will execute and deliver a Construction Contract to and with NDOT and perform the “Work” thereunder in accordance with the terms and subject to the conditions of the Construction Contract and in accordance with the Project Baseline Schedule thereunder.

NDOT is under no obligation to execute a Construction Contract with the highest-ranked “Successful” Proposer.

## **2.4 Co-Location Requirements**

The CM/GC Contractor’s Key Personnel will be expected to attend workshops with the IPT. These workshops are expected to take place in the Lincoln, Nebraska area at key design milestones (such as project kickoff, initial, functional, and final design milestones). Additional meetings will be required and can be facilitated by use of teleconferences and/or internet meetings, as applicable.

### **3 NDOT REGULATIONS AND POLICIES**

#### **3.1 State and Federal Requirements**

The procurement documents and any agreements thereunder will conform to requirements of applicable State and Federal laws, regulations, and policies.

Proposers are advised that the Pre-Construction Services Agreement have been and the Construction Contract will be drafted based on [receiving or not receiving] Federal-aid funds for the Project.

#### **3.2 Payment and Performance Bond Requirements**

The CM/GC Contractor will be required to furnish a payment and performance bond in the form attached as [Form B](#) upon execution of the Pre-Construction Services Agreement.

The CM/GC Contractor will also be required to (a) increase the penal sum of the existing payment and performance bond, or (b) furnish separate payment and performance bonds upon execution of the Construction Contract. The forms of such latter bonds will be provided to the CM/GC Contractor during negotiations of the final GMP for the Construction Work.

Proposers will be required to demonstrate in their Proposals the capacity to obtain these bonds. The Proposer's eligible surety or sureties ultimately committing to issue the bonds must evaluate a Proposer's financial capacity as sufficient to issue the payment and performance bond securing performance under the Pre-Construction Services Agreement with a penal sum of \$10 million and either increasing the penal sum of the existing bond, or obtaining separate payment and performance bonds, securing performance under the Construction Contract bond with penal sums at or in excess of \$350 million.

#### **3.3 Prequalification and Required Licenses**

Each Proposer, including any Proposer submitting a Proposal as a joint venture, must be authorized to do business in Nebraska and prequalified with the Construction Division (as provided in Nebraska Revised Statutes §§39-1351 and 1352 and NDOT Rules and Regulations Title 49 Section 002) in an amount deemed by NDOT to be sufficient to carry all Pre-Construction Services, the Construction Work, and all other work anticipated in this Project.

Additional information for prequalification requirements can be found using the link below:

<https://dot.nebraska.gov/business-center/business-opp/hwy-bridge-lp/prequal/>

#### **3.4 Insurance and Indemnity Requirements**

Refer to the form of Pre-Construction Services Agreement set forth as [Attachment 2](#) for insurance and indemnity requirements relating to the Pre-Construction Services. Insurance and indemnity requirements for the Construction Contract will be set forth in the draft Construction Contract developed by NDOT during GMP negotiations.

### 3.5 Required Percentage of Work

The CM/GC Contractor shall not be allowed to sublet, assign, or otherwise dispose of any portion of the Pre-Construction Services Agreement, except as identified in the Proposer’s preceding SOQ, without consent of NDOT.

The CM/GC Contractor shall not be allowed to sublet, assign, or otherwise dispose of any portion of the Construction Contract without consent of NDOT. NDOT will not allow the CM/GC Contractor to sublet more than seventy percent (70%) of the work under the Construction Contract, excluding specialty items. Specialty items are those services or items that are not usually furnished by a contractor performing the particular type of service contained in this RFP and will be defined in the Construction Contract.

## 4 PROCUREMENT PROCESS

### 4.1 Statutory Authority

NDOT is issuing the RFP in accordance with the provisions of Nebraska Revised Statutes Section 39-2818 to 39-2820 and other applicable provisions of law.

### 4.2 Overview

This RFP represents the second step in the procurement to solicit from the Proposers’ information, in the form of Proposals. In accordance with Section 7, NDOT will evaluate the Proposals received in response to this RFP and, on the basis of these evaluations, intends, but is not bound, to select the highest-ranked “Successful” Proposer in accordance with the procedures and evaluation criteria described in this RFP.

The successful Proposer will enter into a Pre-Construction Services Agreement with NDOT to provide Pre-Construction Services and is intended to be the general contractor for the Construction Work. The construction phase is not guaranteed.

### 4.3 Procurement Schedule

NDOT anticipates the following dates as Project milestones leading to Contract award. This schedule is subject to revision by Addenda and the RFP.

Task	Date
RFP Issuance	[Issuance Date]
Final date for receipt of request of Key Personnel change	
Final date for receipt of Proposers’ RFP questions	
Final RFP Addendum Issuance	
Proposal Due Date	[Proposal Due Date]
Anticipated Announcement of CM/GC Contractor Selection	
Anticipated Pre-Construction Services Agreement Approval and Execution	

## 4.4 Questions and Requests for Clarifications

The below named individual shall serve as the “NDOT Project Manager” for the Project.

**Nebraska Department of Transportation  
Roadway Design Division  
1500 HWY 2  
Lincoln, Nebraska 68502  
Attention: [NDOT Project Manager’s Name]  
[NDOT Project Manager’s Title]**

**e-mail: [NDOT Project Manager’s E-mail]**

Comments, questions, and requests for clarification relating to this RFP or to the form of Pre-Construction Services Agreement shall be submitted using [Form RFQ-C](#). Questions and comments, including requests for clarification or interpretation, shall (i) be sequentially numbered; (ii) specifically reference the relevant RFP section and page number, unless such request is of general application (in which case the request for clarification shall so note); (iii) not identify the Proposer’s identity in the body of the question; (iv) conspicuously identify whether Proposer views its question or comment as confidential or proprietary in nature; (v) identify the category of the question (as explained on [Form RFQ-C](#) itself) and (vi) be in a format compatible and readable by Microsoft Word. Only written comments, questions, and requests for clarification on [Form RFQ-C](#) and delivered by email will be considered. No verbal comments, questions, or requests for clarification, including those communicated by phone, will be accepted or considered. No comments, questions, or requests for clarification to any other NDOT office, consultant, or employee, or to other agency, will be considered.

The NDOT Project Manager is the only individual allowed to discuss this procurement with any interested parties, including Proposers. This restriction is in effect until time of Agreement execution. Any information from other sources may not be accurate and should not be relied upon by Proposers.

Include an electronic copy of the questions on [Form RFQ-C](#) on compact disc or thumb drive if the written request is sent by letter.

NDOT will respond only to those comments, questions, and requests for clarifications that NDOT deems to be material and that are not adequately addressed in previously provided documents. NDOT will state the comments, questions, and requests for clarification along with its responses. NDOT reserves the right to rephrase and consolidate comments, questions, and requests for clarification concerning the same or similar subject. NDOT will not post or formally respond to comments, questions and requests for clarification that (1) are claimed to be confidential or to contain confidential information or (2) request confidential responses. NDOT reserves the right to disagree with Proposer’s assessment regarding the confidentiality of information in the interest of maintaining a fair process or complying with applicable law. Under such circumstances, NDOT will inform Proposer and may allow Proposer to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if NDOT determines that it is appropriate to provide a general response, NDOT will modify the question to remove information that NDOT determines is confidential. NDOT may rephrase questions as



it deems appropriate and may consolidate similar questions. NDOT may also create and answer questions independent of the Proposers' questions. NDOT will provide responses within a reasonable time following receipt, subject to the dates set forth in [Section 4.3](#). NDOT will send responses via e-mail to the Proposers.

## 4.5 Addenda

NDOT reserves the right to revise this RFP by issuing one or more Addenda to this RFP up to a week prior to the Proposal Due Date specified in [Section 4.3](#). NDOT will post Addenda on the Website.

Proposers shall monitor their e-mail for information concerning this procurement, as teams responding to this RFP must acknowledge in the transmittal letter ([Form A](#)) that they had access to and reviewed all materials provided by NDOT. Failure by the Proposer to acknowledge, using [Form A](#), that they have reviewed all materials and Addenda may, in NDOT's sole discretion, result in the disqualification of the Proposer.

Receipt of Addenda issued prior to submission of the Statement of Qualifications shall be acknowledged in the Transmittal Letter ([Form A](#)).

## 4.6 Pre-Contractual Expenses

Proposers are solely responsible for all costs and expenses of any nature associated with responding to the RFP, including attending briefing(s) and providing supplemental information. NDOT will not reimburse such costs in whole or in part in any circumstance.

## 4.7 Intellectual Property

Refer to the Pre-Construction Services Agreement set forth as [Attachment 2](#).

# 5 PROPOSAL SUBMITTAL REQUIREMENTS

This section describes requirements that all Proposers must satisfy in submitting Proposals. NDOT expects Proposals submitted in response to this RFP to provide enough information about the requested items so as to allow NDOT to evaluate the Proposals based on the criteria in this RFP. Failure of any Proposer to submit its Proposal as required in this Proposal may, in NDOT's sole discretion, result in rejection of its Proposal. All rejected Proposals will be returned to the contact person identified in the Proposal.

## 5.1 General Requirements

[Appendix C](#) contains the required forms for the Proposal. Any material modification to the forms may result in the Proposal being declared non-responsive. If the Proposer submits information in its Proposal that it believes to be protected records under the Nebraska Public Records Act and that it wishes to protect from disclosure, the Proposer shall mark such information as provided in [Section 8.2](#).

## 5.2 Format Requirements

The Proposal shall adhere to the format requirements regarding organization, number of copies, pages and binders, page format, clarity and conciseness, and other general format requirements set forth in [Appendix B](#). Proposals may contain additional information or materials beyond that required in [Appendix B](#), however, NDOT shall have no obligation to review such additional information or materials.

## 5.3 Packaging Requirements

Proposers shall individually label all packages constituting the Proposal as follows:

**RESPONSE TO THE  
REQUEST FOR PROPOSAL  
FOR [PROJECT NAME] PROJECT**

## 5.4 Due Date, Time, and Location

All Proposals must be received no later than **3:00 pm (Central Standard Time)** on the Proposal Due Date specified in [Section 4.3](#). All Proposals shall be delivered by hand or express mail courier to the following address:

**NEBRASKA DEPARTMENT OF TRANSPORTATION  
ROADWAY DESIGN DIVISION  
1500 HWY 2  
LINCOLN, NEBRASKA 68502  
ATTENTION: [NDOT Project Manager's Name], [NDOT Project Manager's Title]**

NDOT will acknowledge receipt of each Proposal by issuing a receipt stating the date and time the Proposal is received. Any Proposal submitted after the deadline set forth above will be rejected without opening, consideration, or evaluation and will be returned, unopened, to the sender.

Proposers are solely responsible for assuring that NDOT receives their Proposals by the specified delivery date and time at the address listed above. NDOT shall not be responsible for delays in delivery caused by weather, difficulties experienced by couriers or delivery services, misrouting of packages by courier or delivery services, improper, incorrect, or incomplete addressing of deliveries and other occurrences beyond the control of NDOT.

## 5.5 Quantities

Each Proposer must provide NDOT with **six (6)** identical hard copies of the Proposal, plus **six (6)** identical digital copies in a read-only, fully searchable format on a flash drive. The Proposal must be identified on its front cover, in the upper right-hand corner, and on the spine as “# of 6,” as applicable.

Each Proposal shall be separated into loose-leaf three-ring binders (one binder for each copy) as described in [Section 5](#). Additional formatting requirements for the Proposal submittal can be found in [Appendix B](#) of this RFP. All six (6) sets of the Proposal must be packed together in one or mor

e sealed package. The outside of each sealed package must be clearly identified, labeled, and addressed as follows:

- a. Return address: Proposer's name, contact person's name, mailing address.
- b. Date of submittal.
- c. Contents labeled as "[Project Name], [Project Number], [Control Number]" and "Proposal."

## 6 PROPOSAL CONTENTS

The contents in each Proposal shall include the items described below, organized in accordance with the outline set forth in [Appendix B, Table B-1](#). The Proposer shall provide brief, concise information that addresses the requirements of the Project consistent with the evaluation criteria described in [Section 7](#). Lengthy narratives containing extraneous information are discouraged.

### 6.1 Volume A – Legal Information

Each Proposer, including any Proposer submitting a Proposal as a joint venture, must meet the criteria described in [Section 3](#).

[Volume A](#) of the Proposal shall contain the following:

#### 6.1.1 Executive Summary

The Proposal shall contain an executive summary, not exceeding **2 pages**. The executive summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the Proposer's Proposal and Proposer's ability to satisfy the legal, financial, and technical requirements of the Project.

#### 6.1.2 Form A – Transmittal Letter

The Proposal shall include a transmittal letter ([Form A](#)) executed in blue ink by a duly authorized official of the Proposer. For Proposers that are joint ventures, partnerships, limited liability companies, or other associations, the transmittal letter shall have appended to it separate letters (in the form of [Form A-1](#)) printed on the letterhead stationary of each Equity Member, with each such letter executed by the Official Representative of the corresponding Equity Member stating that representations, statements, and commitments made in the Proposal on behalf of the Equity Member's firm have been authorized by, are correct, and accurately represent the role of the Equity Member's firm in the Proposer team, in each case with such powers of attorney as may be required pursuant to instructions within the forms.

#### 6.1.3 Confidential Content Index

The Proposal shall include a page executed by the Proposer that sets forth the specific items, including the section and page numbers within the Proposal where such items are

located, that the Proposer deems confidential, trade secret, or proprietary information protected by the Nebraska Public Records Act. The index shall be consistent with and identify all the Proposer's designations of "TRADE SECRET" or "CONFIDENTIAL INFORMATION" pursuant to [Section 8.2](#). Blanket designations that do not identify the specific information will not be acceptable and may be cause for NDOT to treat the entire Proposal as public information. Notwithstanding the foregoing, the list required under this section is intended to provide input to NDOT as to the confidential nature of a Proposer's Proposal, but in no event shall such list be binding on NDOT, determinative of any issue relating to confidentiality or a request for records under the Nebraska Public Records Act, or override or modify the provisions of the Nebraska Public Records Act or NDOT's responsibilities thereunder. If the Proposal contains no items that the Proposer deems confidential, trade secret or proprietary information protected by the Nebraska Public Records Act, the page executed by the Proposer shall so state.

#### **6.1.4 NDOT Prequalification Certification**

Proposers shall be prequalified as described in [Section 3.3](#). Each Proposer must certify, in a letter, signed by the President, Chief Executive Officer, Chief Financial Officer, Treasurer, or equivalent position, in each case authorized and empowered to certify on behalf of its company, dated no earlier than 14 calendar days prior to the Proposal Due Date, certifying that:

- a. No material change has occurred in the respective entity's financial position since the date of its SOQ.
- b. No voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments, scheme or arrangement, appointment of provisional liquidated, receiver, or administrative receiver, resolution or petition for winding-up or similar proceeding, under any applicable law, in any jurisdiction, is imminent or threatened.
- c. Its financial position does not reflect any material contingent liabilities (including off-balance sheet liabilities), unusual forward or long-term commitments.
- d. If the Proposer is ultimately selected as the "Successful" Proposer (with its then-identified CM/GC Contractor team), the CM/GC Contractor entity has sufficient financial capacity, strength, and ability to carry out the responsibilities for the Project.

If any changes to the Proposer's prequalification status occurred after SOQ submittal, the Proposer shall detail the nature of such changes in a narrative not exceeding **1 page**. Such narrative shall not count towards the page limit for the Proposal set forth in this RFP.

#### **6.1.5 Form L-1 – Proposer's Organization Information/Certification**

The Proposal shall include an executed original of [Form L-1](#) for the Proposer. If no change has occurred to [Form L-1](#) since SOQ submittal, Proposer shall indicate so on [Form L-1](#). If any changes to [Form L-1](#) occurred after SOQ submittal, the Proposer shall complete and resubmit [Form L-1](#) with the Proposal.

#### **6.1.6 Form L-2 – Certification/Questionnaire**

The Proposal shall include an executed original of [Form L-2](#) for the Proposer. If no change has occurred to [Form L-2](#) since SOQ submittal, Proposer shall indicate so on [Form L-2](#). If any changes to [Form L-2](#) occurred after SOQ submittal, the Proposer shall complete and

resubmit [Form L-2](#) with the Proposal.

### **6.1.7 Organizational Conflicts of Interest**

The Proposal shall include the following:

a. Conflict of Interest Statement

A statement from the Proposer identifying any actual and/or potential conflicts of interests the Proposer may have pursuant to the conflict of interest policy for the Project provided as [Attachment 1](#) to this RFP. If any actual or potential conflict of interest is identified, the Proposer shall describe how it would be avoided or resolved by the participants through the RFQ and RFP phases of this procurement.

b. Affirmation Statement

A statement affirming that neither the Proposer nor any member of the Proposer team has offered employment to an NDOT procurement officer, procurement employee, or other NDOT employee having a significant procurement role with respect to the Project, nor have they had discussions with any such NDOT officer or employee concerning any such employment. For more information, see [Section 8.3](#).

c. Disclosure and Certification

A disclosure listing and identifying all former NDOT employees included in the Proposal team that have left NDOT in the 12 months preceding the date of issuance of the RFQ for the Project and a certification that no such former employee has made any material decisions about the Project while employed by NDOT. If there are no such individuals, the Proposer shall affirmatively state that there are none.

### **6.1.8 Form DB – Certification Regarding Debarment, Suspension and Other Responsibility Matters**

The Proposal shall include an executed original of [Form DB](#).

## **6.2 Volume B – Technical Information**

NDOT's objective in requesting the information below is to identify Proposers whose team members and Key Personnel possess the most desirable combination of technical qualifications, experience, capability, and capacity to successfully provide Pre-Construction Services and build the Project.

The Proposal shall contain the following:

### **6.2.1 Proposer Organization**

a. Management Structure

Provide a narrative describing the Proposer's team and management structure, how the Proposer will operate during the Pre-Construction Services, and transition into the construction phase for the Project under the Construction Contract.

b. Organizational Charts

Provide a graphic organizational structure chart, complete with working titles, for the Key Personnel and other team members (as applicable) during both the Pre-Construction Services and Construction Work of the Project.

**6.2.2 Key Personnel**

a. Form F – Updated Key Personnel Information

The Proposal shall contain an updated [Form F](#) providing the information requested therein for each personnel position. If no such updates have occurred since SOQ submittal, the Proposer shall indicate so on [Form F](#).

b. Updated Key Personnel Résumés

Provide separate résumés for any Key Personnel not previously identified in the SOQ who are included in the organization chart required under [Section 6.2.1](#). Résumés shall be limited to **two pages** each, will not be counted towards the overall Proposal page limit, and shall include the following information relevant to the experience set forth in the table below. Proposers should also provide a brief job description of any Key Personnel assigned to the Project which were not already identified in the SOQ. NDOT reserves the right to disapprove a particular Key Personnel individual and require a Proposer to replace such individual.

The foregoing requirements pertaining to updated Key Personnel résumés shall include those Value-Added Key Personnel identified in the Proposer’s SOQ.

Key Personnel	Job Description/ Relevant Years of Experience
Project Manager	<p>This position is responsible for the CM/GC Contractor’s overall management and coordination during the Pre-Construction Services phase of the Project. This person could also serve the role of Construction Manager for this Project. This person will be the main point of communication to the IPT:</p> <ul style="list-style-type: none"> <li>• Must have recent experience as a project manager, including managing the construction of at least one project of similar scope and complexity (_ years).</li> <li>• Demonstrated relevant experience collaborating with project owners and stakeholders, with a particular focus on improving constructability and developing staging/maintenance of traffic plans for highway construction.</li> <li>• Demonstrated relevant experience cost estimating, schedule development, and identifying and mitigating risk to a project.</li> </ul>
Construction Manager	<p>This position is primarily responsible for the CM/GC Contractor’s planning and execution of the Construction Work in the field. This position is expected to be a member of the IPT and attend project</p>

Key Personnel	Job Description/ Relevant Years of Experience
	<p>meetings where matters related to constructability, risk, schedule, and cost are discussed. This person could also serve the role of Project Manager for this Project. This person is expected to be on site during the construction of the Project:</p> <ul style="list-style-type: none"> <li>• Must have recent experience as a construction manager, including managing the construction of at least one project of similar scope and complexity (_ years).</li> <li>• Demonstrated relevant experience collaborating with project owners, designers, and stakeholders, with a particular focus on improving constructability and developing staging/maintenance of traffic plans.</li> <li>• Demonstrated relevant experienced with highway design plan constructability reviews.</li> </ul>
Value Added personnel from SOQ	The Proposal must include the Value-Added Key Personnel submitted in the SOQ.

c. Express Commitment Regarding Key Personnel, Value-Added Personnel

Provide an express, written statement committing that the Key Personnel designated in the Proposal for the positions or roles described Section 6.2.2 shall be available to serve the role so identified in connection with the Project. While NDOT recognizes personnel availability and scheduling issues impact the Proposers, Proposers are urged only to identify and offer personnel that they intend to make available for, and intend to assign to work on, the Project for the positions identified. See Section 7.5 regarding requirements for NDOT’s written consent to changes in the Key Personnel.

**6.2.3 Project Management Approach**

The Proposal shall contain a narrative that explains the Proposer’s relevant experience and approach in the areas listed in Section 7.3.1.

**6.2.4 Pre-Construction Services Approach**

The Proposal shall contain a narrative that explains the Proposer’s relevant experience and approach in the areas listed in Section 7.3.2.

**6.2.5 Construction Work Approach**

The Proposal shall contain a narrative that explains the Proposer’s relevant experience and approach in the areas listed in Section 7.3.3.

**6.3 Volume C – Financial Information**

NDOT’s objective in requesting the information below is to identify that the Proposer has resources to successfully complete the Project.

Volume C of the Proposal shall contain the following:

### **6.3.1 Personnel Rates and Hours**

Provide the hourly rates and anticipated amount of hours for each Key Personnel identified in the Proposal with respect to the Pre-Construction Agreement Scope of Services and schedule. Proposer shall submit such information in a single table or spreadsheet. Proposers may not include a range for any of the individual rates. Proposers may indicate a range for the amount of hours an individual personnel is anticipated to perform work on the project. Rates should be indicated in United States dollars.

### **6.3.2 Surety Letters**

Provide evidence from a surety or an insurance company indicating that, if selected, the surety or insurance company will place a payment and performance bond, in the form of that attached as [Form B](#), as a condition to execution of the Pre-Construction Services Agreement in an amount of \$10 million.

Provide evidence from a surety or an insurance company indicating that (a) the surety or insurance company will increase the penal sum to an amount of at least \$350 million as a condition to execution of the Construction Contract or (b) that the Proposer is capable of obtaining separate payment and performance bonds upon execution of the Construction Contract, each in an amount of at least \$350 million. This evidence shall take the form of a letter from a surety/insurance company indicating either its willingness or that such capacity exists for the Proposer, as applicable. In the latter case, letters indicating “unlimited” bonding capability are not acceptable.

The surety/insurance company providing such letter(s) must be rated in one of the two top categories by two nationally recognized rating agencies, or “A minus” or better or “Class VIII” or better by “AM Best Company,” and must indicate the relevant rating in the letter. The letter(s) must specifically state that the surety/insurance company is an admitted surety or insurer (approved by the Nebraska Department of Transportation), and has read this RFP and evaluated the Proposer’s backlog and work-in-progress in determining (i) the surety’s commitment to place the Pre-Construction Services Agreement bond and (ii) the Proposer’s – as CM/GC Contractor’s - bonding capacity. In instances where the response to [Section 3.3](#) contains descriptions of proposed or anticipated changes in the financial condition of the Proposer, or any other entity for which financial information is submitted as required hereby for the next reporting period, the surety/insurance company must certify that its analysis specifically incorporates a review of the factors surrounding such changes and identifying any special conditions which may be imposed before issuance of surety bonds for the Project.

Refer to [Form B](#) of this RFP for the form of the surety bond required for the Pre-Construction Services Agreement and, if elected, for the Construction Contract. Notwithstanding the foregoing \$350 million requirement, the final penal sum of the [Form B](#) bond, or such separate bonds, to be submitted as a condition to execution of the Construction Contract shall be in the amount of the negotiated GMP.



## 7 EVALUATION PROCESS

The objective of the RFP step of this procurement is to select the highest-ranked “Successful” Proposer with the legal, technical, financial, and management capability, capacity, and experience to successfully undertake and complete the pre-construction and construction of the Project. Proposals will be reviewed for responsiveness and evaluated against certain pass/fail criteria and qualitative evaluation factors, as described below. The information provided is intended to assist Proposers in organizing their teams and preparing their Proposals.

After the Proposal scores have been finalized, NDOT will compile the SOQ and Proposal scores to establish a final combined score for each Proposer. The final combined scores will establish the ranking of the Proposers. After certification, NDOT may commence negotiations for the Pre-Construction Services Agreement, in accordance with Nebraska Revised Statutes 39-2819.

### Scoring Weighting

SOQ	40%
Proposals	60%

### 7.1 Responsiveness Review

Each Proposal will be reviewed for (a) the Proposer’s responsiveness to the requirements set forth in this RFP, including review with respect to provisions of this RFP that describe grounds for disqualification, (b) conformance to the RFP instructions regarding organization and format, and (c) nonconformities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Proposal. Those Proposals deemed not responsive to this RFP may be excluded from further consideration and the Proposer will be so notified. NDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation or failure to fully disclose required information.

### 7.2 Pass/Fail Evaluation

Following, or in conjunction with, evaluation of each Proposal for responsiveness, NDOT will evaluate each Proposal against the pass/fail criteria described below. A Proposer must achieve a “pass” on all such pass/fail criteria in order for its Proposal to be evaluated qualitatively against the evaluation criteria described in [Section 7.3](#). To the extent any pass/fail criterion requires a determination or judgement by NDOT, such determination or judgement shall be made in NDOT’s sole discretion.

- a. The Proposal contains an original Transmittal Letter ([Form A](#)) signed by the lead Equity Member, supplemental letters ([Form A-1](#)) signed by each other Equity Member on its firm letterhead, and, if necessary, copies of powers of attorney, as may be required.
- b. Neither the Proposer nor any other entity that has submitted [Forms L-1](#) and [L-2](#), legal information is currently disqualified, removed, debarred, or suspended from performing or bidding on work for the federal government or any state government.

- c. Any information disclosed in the Proposal that was not included in the SOQ, including updates to [Forms L-1](#) and [L-2](#), does not indicate a material risk that the Proposer is unable to carry out the Project responsibilities potentially allocated to it.
- d. The Proposal contains the statements, disclosure and certification regarding organizational conflicts of interest required under [Section 6.1.7](#), and NDOT has determined that (i) any actual or potential conflict of interest that is disclosed can be avoided or resolved through the RFP phase of the procurement, and (ii) there exists no known violation by the Proposer (or each consortium or joint venture participant in Proposer, if applicable) of Nebraska Revised Statutes Section 39-2810.
- e. The Proposer’s team does not include any principal(s) that belong(s) to more than one Proposer organization or that has an Affiliate that belongs to another Proposer organization, unless NDOT in its sole discretion has granted a written waiver of the conflict of interest, and such written waiver is included with the Proposal.
- f. The Proposer makes the express, written commitments regarding Key Personnel, as required in [Section 6.2.2c](#).
- g. The Proposer has provided a letter or letters from one or more sureties, meeting the rating requirements set forth in, and making the required statements under, [Section 6.3.2](#).
- h. The Proposer (or each consortium or joint venture participant in Proposer, if applicable) is prequalified as of the Proposal Due Date with the Construction Division pursuant to [Section 3.3](#).
- i. The Proposer (or each consortium or joint venture participant in Proposer, if applicable) has provided the prequalification certification meeting the requirements set forth in [Section 6.1.4](#).
- j. The Proposer does not offer all certifications required under [Form DB](#).

### 7.3 Qualitative Evaluation Factors and Weightings

Each responsive Proposal that achieves a “pass” on all of the “pass/fail” criteria described in [Section 7.2](#) will be evaluated against the qualitative evaluation factors, and scored based on the corresponding weightings, set forth below.

#### 7.3.1 Project Management Approach (\_\_\_%)

Discuss the Proposer’s strategic project approach that illustrates understanding of CM/GC project delivery method, the Project, and NDOT Project goals from [Section 1.7](#). As part of the project management approach, Proposer must:

- a) Provide a description of the organizational structure of the Key Personnel, and the commitment of time and availability for each. Include their specific role(s), contributions, and anticipated engagement with NDOT, Designer, and ICE, during performance of the Pre-Construction Services, and a narrative describing

how the Key Personnel will contribute to building a professional and collaborative environment with the IPT.

- b) Discuss any unique experience that will add value to the Pre-Construction Services.
- c) Discuss project-specific strategies that will be employed consistent with a CM/GC delivery model to benefit the overall design, development of a GMP, and construction of the Project.
- d) Discuss other potential project-specific challenges and a plan to mitigate these challenges.

### 7.3.2 Pre-Construction Services Approach (\_\_\_%)

**Collaboration:** The CM/GC project delivery method is based on principles of communication, collaboration, and cooperation between NDOT, Designer, ICE, and CM/GC Contractor.

- a) Discuss the Proposer's project-specific approach to providing successful Pre-Construction Services and how it applies to meeting NDOT's Project goals.
- b) Discuss establishing a collaborative environment with the IPT and working together to resolve challenges. Demonstrate that the Key Personnel proposed for this Project have the ability to work successfully in a collaborative team environment both internally and with the IPT.
- c) Discuss the approach to involving key subject matter experts including timing for engagement, primary focus, and limitations on their contributions.
- d) Discuss the collaboration with the IPT regarding development of major design elements, the approach to the constructability, the approach to identifying measures to protect areas outside the LOC and satisfy anticipated environmental commitments, and the development of the MOT plan for the Project.

**Cost Estimating and Cost Modeling:** Project estimating on CM/GC projects is a process where team members discuss and negotiate the factors that affect the price of a project.

- a) Describe the estimating process that will be used to communicate the cost of each NDOT bid item and the cost of any risk. Discuss the use of NDOT bid items cost data for cost evaluation and comparison. Explain comparison of estimated cost to market conditions, including communicating assumptions, risk, and Value Engineering.
- b) Provide a narrative of how the Cost Model will be used to communicate design decision choices and design elements to the IPT. This model will be used as part of the open-book estimating and collaboration throughout the Pre-Construction Services and used to develop each OPCC and the GMP.

- c) Discuss additional factors in the current design or scope that could impact costs, including risk, opportunities, innovation, market conditions, subcontracting opportunities, means and methods, and potential challenges.

**Risk Management:** The CM/GC process is intended to eliminate or reduce the risk of individual activities. Risk mitigation can help reduce construction costs, save time, and improve project quality.

- a) Explain the process that will be used to identify, price, and mitigate risk. Include discussion of how the IPT will be supported during the Pre-Construction Services in achieving a reduced cost, improved quality, and a more efficient construction schedule.
- b) Discuss development and maintenance of the Risk Register and steps taken and criteria used for re-assigning risk responsibility to be an NDOT risk or a shared CM/GC Contractor and NDOT risk.

**Decision Analysis and Resolution:** Proposer's experience in the design effort should help to reduce errors and omissions, improve constructability, and reduce the cost of construction.

- a) Describe means and methods that will be used to support the design development and decision-making process in both the Pre-Construction and Construction Work of the Project.
- b) Discuss how the proposed processes help NDOT decide which suggestions to use and how will the cost savings, risk mitigation, and value added proposals be tracked and documented.

### 7.3.3 Construction Work Approach ( \_\_%)

- a) Discuss the approach in transitioning from the Pre-Construction Services to the Construction Work.
- b) Discuss the approach to internal quality control and managing quality.
- c) Discuss conceptual construction approaches and sequences that optimize value to the Project for the known constraints.
- d) Discuss the plan for worker and public safety during the Construction Work for this Project.
- e) Discuss the plan to comply with the environmental commitments established for this Project.
- f) Discuss procedures for enforcing schedules, quality, safety, and environmental compliance on subcontracted work.
- g) Provide a discussion of the Project Baseline Schedule, those things that frequently impact schedules, including but not limited to pre-fabrication of construction

components, relocation of utilities, outside constraints, construction phasing, seasonal work, and the availability of materials, equipment, and labor.

- h) Discuss the MOT plan for maintaining two-lane, two-way traffic and minimizing impacts to adjacent landowners.
- i) Discuss potential Project challenges and a plan to mitigate these challenges.

## **7.4 Evaluation Procedure and Notification**

NDOT anticipates utilizing one or more committees to review and evaluate the Proposals in accordance with the above criteria and to make a selection determination and recommendation to NDOT Deputy Director(s) for ratification. At various times during the deliberations, NDOT may issue one or more requests for written clarification to the individual Proposers. At its discretion, NDOT may also schedule interviews with one or more Proposers on a one-on-one basis, for the purpose of enhancing NDOT's understanding of the Proposals and obtaining clarifications of the terms contained in the Proposals.

NDOT may request the Proposers to verify or certify certain aspects of their Proposals. The scope, length, and topics to be addressed shall be prescribed by and subject to the discretion of NDOT. At NDOT's sole discretion, interviews may be requested at a later date. At the conclusion of this process, Proposers may be required to submit written confirmation of any new information and clarifications provided during an interview. Upon receipt of requested clarifications and additional information as described above, if any, the Proposals will be re-evaluated to factor in the clarifications and additional information.

Evaluations and rankings of Proposals are subject to the sole discretion of NDOT, NDOT staff, and such professional and other advisors as NDOT may designate. After the evaluation of the Proposal, NDOT will compile the SOQ and Proposal scores to establish a final combined score for each Proposer. The final combined scores will establish the ranking of the Proposers. NDOT Deputy Director -Operations and Deputy Director - Engineering will make the final determination of the Proposers ranking and the Successful Proposer as deemed appropriate in NDOT's sole discretion applying the criteria described in Section 7 and in the best interests of the State of Nebraska.

Each Proposer will be notified in writing via e-mail regarding "Successful" or "Unsuccessful" for the RFP. If only one Proposer responds to the RFP, NDOT may re-advertise or cancel the procurement in its sole discretion.

## **7.5 Changes in Proposer Organization and Key Personnel**

NDOT wants to ensure that Proposers are able to develop and attract the greatest range and depth of expertise as may be necessary to participate in the procurement to optimally design and construct the Project in an innovative, effective, and efficient manner. Accordingly, NDOT reserves the right and discretion to authorize Proposers to add or change team members previously submitted in the SOQ, reorganize the Proposer entity and change Key Personnel throughout the procurement process until submittal of the Proposals, except in the event of potential organizational conflicts of interest and/or deficiencies in qualifications and experience for the proposed role.

Following submittal of the SOQ, the following actions may not be undertaken without NDOT's prior written consent, in its sole discretion:

- a. Deletion or substitution of a Proposer team member previously identified in its SOQ or a change in the role or scope of work of a Proposer team member.
- b. Deletion or substitution of Key Personnel identified in its SOQ or a change in the role or position of such personnel.
- c. Deletion or substitution of an Equity Member identified in its SOQ, a Guarantor or any other entity identified in its SOQ that will bear financial responsibility or liability for the performance of the Proposer.
- d. Other changes, direct or indirect, in the equity ownership or team membership of a Proposer as identified in its SOQ (excluding the transfer of shares in a publicly traded company that do not result in a change in control of such company).

Should a Proposer wish to make such a change from its SOQ, it shall request, in writing, NDOT's consent. NDOT must be in receipt of requested change by the deadline in Section 4.3. The written request shall provide, for any new or substitute entity or personnel, the same information required under this RFP for such entity or personnel had it, he or she been part of the Proposer team as of the Proposal submission (including, without limitation, legal, financial, qualifications/ experience, and other information). If a Proposer wishes to delete an entity or change Key Personnel, the Proposer shall provide NDOT with information establishing that the Proposer remains qualified for shortlisting as contemplated under from the RFQ. Any such change made without the written consent of NDOT may, at NDOT's sole discretion, result in the Proposer being disqualified.

## **8 COMMUNICATION, PUBLIC INFORMATION & ORGANIZATIONAL CONFLICTS OF INTEREST**

### **8.1 Improper Communications and Contacts**

The following rules of contact shall apply during the procurement for the Project, effective as of the date of issuance of the RFQ through the execution of the Pre-Construction Agreement. These rules are designed to promote a fair, unbiased, legally defensible procurement process. Contact includes face-to-face, telephone, facsimile, electronic mail (e-mail), or formal written communication, either directly or indirectly by an agent, representative, promoter, or advocate of a Proposer.

NDOT's Project Manager will serve as the primary point of contact during the procurement.

#### **8.1.1 Communication Process**

NDOT is the single source of information regarding the Project and procurement. The procurement began on the date of issuance of the RFQ and is anticipated to be updated with the award of the Pre-Construction Agreement.

The following rules of contact are now in effect and shall remain in effect until the earliest of (i) award and execution of the Pre-Construction Agreement, (ii) rejection of all Proposals by NDOT, or (iii) cancellation of the procurement:

- a. After submittal of SOQs, no Proposer or any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the Project, the SOQs, or the Proposals, except that a Proposer may communicate with a subcontractor that is on both its team and another Proposer's team (where neither this Proposer nor the conflict of interest policy set forth in [Attachment 1](#) precludes the subcontractor from being on more than one Proposer team), so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. (Contact among Proposers and team members is allowed during NDOT sponsored workshops and meetings.)
- b. Contact between the Proposers and NDOT (questions and responses to questions) shall only be through NDOT's and Proposer's designated representative and shall be in writing. NDOT's designated representative is the NDOT Project Manager identified in [Section 4.4](#).
- c. Proposers shall not contact NDOT employees, advisors, and any other person who will evaluate the Proposals regarding the Project or the procurement.
- d. Proposers shall not contact employees of those parties identified under [Section 8.3.1](#) who are directly involved with the Project. NDOT shall provide any necessary coordination during the RFP stage with such entities in order that, among other things, the procurement is implemented in a fair, competitive, and transparent manner and with uniform information.
- e. Any contact determined to be improper, at the sole discretion of NDOT, may result in disqualification.
- f. Any official contact regarding the Project will be disseminated in writing from NDOT on NDOT letterhead and signed by NDOT Project Manager identified in [Section 4.4](#).
- g. NDOT will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified herein.
- h. Proposers shall not contact the following identified stakeholders regarding the CM/GC services and the Project, including employees, representatives, members, consultants, and advisors of the entities listed below. NDOT shall provide necessary coordination during the RFP stage in order that the procurement is implemented in a fair, competitive, and transparent manner and with uniform information:
  - Environmental, regulatory and permitting agencies, including the United States Army Corps of Engineers.
  - Utilities owners along the Project corridor.
  - \_\_\_\_\_.
  - \_\_\_\_\_.

## 8.2 Public Records

All written documents, correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to NDOT during this procurement, including as part of the response to the RFQ or this RFP, are, upon their receipt by NDOT, the property of NDOT and are subject to the Nebraska Public Records Act. None of the aforementioned materials will be returned to the submitting parties. Proposers should familiarize themselves with the provisions of the Nebraska Public Records Act. In no event shall NDOT, or any of its agents, representatives, consultants, directors, officers, or employees be liable to a Proposer for the disclosure of all or a portion of a Proposal submitted under this RFP.

If a Proposer has special concerns about information that it desires to make available to NDOT but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such Proposer shall specifically and conspicuously designate that information as "TRADE SECRET" or "CONFIDENTIAL" in its filed response to this Proposal. Blanket, all-inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets, or confidential commercial or financial information shall not be permitted and NDOT shall not be bound by such designation. The specific proprietary information, trade secrets, or confidential commercial and financial information must be clearly identified as such. NDOT will endeavor to advise the Proposer of any request pursuant to the Nebraska Public Records Acts and any other applicable laws for the disclosure of any material properly labeled as proprietary, trade secret, or confidential so as to allow the Proposer the opportunity to seek a court order to protect such materials from disclosure.

Under no circumstances, however, will NDOT be responsible or liable to the Proposer or any other party for the disclosure of any such labeled 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 NDOT or its officers, employees, contractors, or consultants.

NDOT will not be required to advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Nebraska Public Records Act, as to the interpretation of the Nebraska Public Records Act, or as to the definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the Nebraska Public Records Act and other applicable laws and their application to the submitting party's own circumstances.

In the event of litigation concerning the disclosure of any material submitted by the submitting party, NDOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk. The submitting party shall reimburse NDOT for any expenses it incurs in connection with any such litigation.



## 8.3 Organizational Conflicts of Interest

### 8.3.1 NDOT Consultant

NDOT has developed a project-specific conflict of interest policy for the Project. A copy of the current policy is provided as [Attachment 1](#) to this RFP. Proposers shall comply with this conflict of interest policy.

NDOT has engaged a number of consultants to assist and participate in the Project development stages, as well as assist NDOT during the procurement process for the Project. Proposers are prohibited from teaming with, receiving any advice or discussion (except discussion in a forum established pursuant to the RFP) any aspect relating to the Project or the procurement of the Project with any such consultants, including:

- [Designer Name]
- \_\_\_\_\_
- \_\_\_\_\_

NDOT may disqualify a Proposer, and refuse to enter into the Pre-Construction Services Agreement with the Successful Proposer, if NDOT determines that:

- a. The Proposer or the affiliated Proposer has made impermissible contact with any of NDOT consultants listed above with respect to this procurement and/or Pre-Construction Services Agreement; or
- b. The Proposer or the affiliated Proposer includes any of NDOT consultants listed above on the Proposer's or affiliated Proposer's team.

Any violation of the foregoing restrictions by any Proposer or the Successful Proposer will, in NDOT's sole discretion, constitute a failure to execute the Pre-Construction Services Agreement.

### 8.3.2 NDOT Employees Involved In Procurement

Proposers or any member of a Proposer team shall not offer employment to an NDOT procurement officer, procurement employee or other NDOT employee having a significant procurement role with respect to the Project.

NDOT has adopted the following conflict of interest policies for NDOT officers and employees:

- "Guidelines for Alternative Project Delivery" (2023), Section 4.2 (Conflict of Interest); and
- Conflict of Interest Policy – [Attachment 1](#) to this RFP.

NDOT may disqualify a Proposer from continued participation in this procurement process if it or any member of the Proposer's team violates these provisions.

### 8.3.3 Participation in More than One Proposer Organization

NDOT may disqualify a Proposer from continued participation in this procurement process if it has any financial interest in any other Proposer or affiliate of any other Proposer.

## 9 PROTEST PROCEDURES

### 9.1 Applicability

This section sets forth the exclusive protest remedies available with respect to this RFP. These provisions prescribe the exclusive procedures for protests which may only be brought for the following reasons:

- a. Allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed NDOT's authority;
- b. A determination as to whether the Proposal filed by the Protester is responsive to the requirements of the RFP or passes the pass/fail criteria set forth in this RFP. (Respondents may only protest responsiveness and pass/fail decisions made by NDOT on their Proposal, not those of other Respondents.); and
- c. Determination of the Successful Proposer.

The protest remedies described in this section are available regarding the above matters listed above notwithstanding other provisions in this RFP which state that NDOT's determination of a particular matter is in its sole discretion.

### 9.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 9.1 may be filed only after the Proposer has informally discussed the nature and basis of the protest with NDOT, following the procedures prescribed in this section. The Proposer shall initiate such informal discussions by a written request for a one-on-one meeting delivered to the address specified in Section 4.4 no later than **three** business days after the issuance of the RFP (for protests concerning the issues described in Section 9.1a), the responsiveness or pass/fail determination at issue (for protests concerning the issues described in Section 9.1b), or the determination of the Successful Proposer (for protests concerning the issues described in Section 9.1c), as applicable. The Proposer's failure to observe any of these deadlines shall constitute a waiver of the Proposer's right to the corresponding protest. The written request shall include an agenda for the proposed one-on-one meeting. NDOT will then set a date and time to discuss the nature and basis of the protest with the Proposer. If necessary to address the issues raised in a protest, NDOT may, in its sole discretion, make appropriate revisions to this RFP document by issuing Addenda.

### 9.3 Deadlines for Protests

- a. Protests concerning the issues described in Section 9.1a must be filed as soon as the basis for the protest is known, but no later than **seven** calendar days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than **five** business days after the Addendum is issued and NDOT gives notice that the discussion under Section 9.2 is concluded.

- b. Protests concerning the issues described in Section 9.1b must be filed no later than **ten** calendar days after receipt of the notification of non-responsiveness or failure to pass all pass/fail criteria set forth in this RFP and NDOT gives notice that the discussion under Section 9.2 is concluded.
- c. Protests concerning the issues described in Section 9.1c must be filed no later than **ten** calendar days after the earliest of the notification of the Successful Proposer and the public announcement of the Successful Proposer and NDOT gives notice that the discussion under Section 9.2 is concluded.

## 9.4 Content of Protest

A protest shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. The protest shall also include the name and address of the protestor and the Project number. Statements shall be sworn and submitted under penalty of perjury.

## 9.5 Filing of Protest

Protests shall be filed by hand delivery, as soon as the basis for protest is known to the Proposer or before the applicable deadline, to:

**Nebraska Department of Transportation,  
Director's Office  
1500 HWY 2  
Lincoln, NE 68502**

For any protests filed after the Proposal Due Date, the Proposer filing the protest shall concurrently send a copy of the protest to the other Proposers whose addresses may be obtained by contacting NDOT representative provided in Section 4.4.

## 9.6 Comments from Other Proposers

Other Proposers may file statements in support of or in opposition to the protest within **five** business days of receipt of the protest. The time limit in which such statements must be filed may be extended by NDOT in its sole discretion. NDOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

## 9.7 Burden of Proof

The protestant shall have the burden of proving its protest by clear and convincing evidence. NDOT may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

## **9.8 Decision on the Protest**

NDOT's Director (who has not been involved in evaluation) shall issue a written decision regarding the protest within 30 calendar days after the filing of the detailed statement of protest. NDOT may, in its sole discretion, extend that time limit up to an additional 30 calendar days in which case NDOT shall notify the Protestant and other Respondents of that extension. If necessary to address the issues raised in a protest, NDOT may, in its sole discretion, make appropriate revisions to this RFP by issuing an Addendum.

The written decision of NDOT's Director shall be final and non-appealable.

## **9.9 Protester's Payment of Costs**

If a protest is denied, the Proposer filing the protest shall be liable for NDOT's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by NDOT as a consequence of the protest.

## **9.10 Rights and Obligations of Proposers**

Each Proposer, by submitting its Proposal, expressly recognizes and agrees to the limitation on its rights to protest provided in this section, and expressly waives all other rights and remedies that may be available to the Proposer under law. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this section, it shall indemnify and hold NDOT and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

## **10 DEBRIEFING MEETINGS**

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Unsuccessful Proposers may request a debriefing. If requested, debriefings will be provided at the earliest feasible time after notification of the Unsuccessful Proposers. The debriefing will be conducted by a procurement official familiar with the rationale for the selection of Successful Proposer.

Debriefings shall:

- a. Be limited to discussion of the Unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal.
- b. Be factual and consistent with the evaluation of the Unsuccessful Proposer's Proposal.
- c. Provide information on areas in which the Unsuccessful Proposer's Proposal had weaknesses or deficiencies.

Debriefing will not include discussion or dissemination of the thoughts, notes, or rankings of individual evaluator.

## **11 NDOT RESERVED RIGHTS**

In connection with this procurement, NDOT reserves to itself all rights (which rights shall be exercisable by NDOT in its sole discretion) available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- a. Develop the Project in any manner that NDOT, in its sole discretion, deems necessary.
- b. Modify the procurement process to address applicable law and/or the best interests of NDOT.
- c. Revise the scope, type, structure, and specific terms of this procurement.
- d. Negotiate with a Proposer without being bound by any provision in its Proposal or other submittal provided in connection with this procurement and suspend or terminate negotiations at any time.
- e. Elect not to commence or continue negotiations with any responding Proposer.
- f. If NDOT is unable to negotiate a Contract to its satisfaction with a Proposer, elect to negotiate in succession with the next highest ranked Proposer(s), terminate this procurement and pursue other developments or solicitations relating to the Project, or exercise such other rights under applicable law, as NDOT deems appropriate.
- g. Accept or reject any SOQs, Proposals, responses, supplemental information or data, other submittals, or any parts thereof, received from a Proposer at any time.
- h. Waive any informalities, irregularities, deficiencies, or omissions in or in connection with the Proposals, accept and review a non-conforming Proposal, or permit clarifications and supplements to any Proposal.
- i. Modify all dates set or projected in this RFP.
- j. Issue Addenda, supplements, and modifications to this RFP.
- k. Require confirmation of information furnished by a Proposer and require additional information from a Proposer concerning its Proposal.
- l. Cancel this RFP in whole or in part at any time prior to the execution by NDOT of the Pre-Construction Agreement, without incurring any cost obligations or liabilities.
- m. Modify the shortlisting determination based on subsequently learned information.
- n. Permit a Proposer to add, delete, or change firms and/or Key Personnel.
- o. Make all final determinations.

- p. Appoint evaluation committees to review Proposals and make recommendations regarding the Proposals, and seek the assistance of outside technical, financial, and legal experts and consultants in connection with the Proposal evaluations.
- q. Hold meetings and conduct discussions and correspondence with one or more of the Proposers regarding their Proposals.
- r. Seek and obtain information or data, from any source, that may assist NDOT in evaluating the Proposals.
- s. Disqualify any Proposer or Proposer under this RFP for violating any rules or requirements of the procurement set forth in this RFP, or in any other communication from NDOT in connection with this procurement.
- t. Disqualify any Proposer that changes its Key Personnel or Proposer team after the deadline without NDOT's approval.
- u. Not issue a notice to proceed after execution of the Pre-Construction Agreement.
- v. Exercise any other right reserved or afforded to NDOT under this RFP or applicable laws or regulations.
- w. Add or modify NDOT's reserved rights in Addenda to this RFP.

**THE RFP DOES NOT COMMIT NDOT TO ENTER INTO THE PRE-CONSTRUCTION SERVICES AGREEMENT OR ANY OTHER CONTRACT OR TO PROCEED WITH THE PROCUREMENT AS DESCRIBED HEREIN. NDOT ASSUMES NO OBLIGATIONS, RESPONSIBILITIES, OR LIABILITIES, FISCAL OR OTHERWISE, TO REIMBURSE ALL OR PART OF THE COSTS INCURRED OR ALLEGED TO HAVE BEEN INCURRED BY ANY PERSON OR ENTITY CONSIDERING A RESPONSE TO OR RESPONDING TO THIS RFP, OR ANY SUBSEQUENT RFP. ALL SUCH COSTS SHALL BE BORNE SOLELY BY EACH PROPOSER.**

**EXHIBIT A**  
**ABBREVIATIONS AND DEFINITIONS**

The following abbreviations and definitions used in this document are defined as shown below:

<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>CM/GC</b>	Construction Manager/General Contractor
<b>EE</b>	Engineering Estimator
<b>GMP</b>	Guaranteed Maximum Price
<b>H&amp;H</b>	Hydraulic and Hydrology
<b>ICE</b>	Independent Cost Estimator
<b>IPT</b>	Integrated Project Team
<b>LOC</b>	Limits of Construction
<b>MOT</b>	Maintenance of Traffic
<b>NDOT</b>	Nebraska Department of Transportation
<b>NDEE</b>	Nebraska Department of Environment and Energy
<b>NEPA</b>	National Environmental Protection Act
<b>NESCA</b>	Nebraska Endangered Species Coordination Act
<b>NGPC</b>	Nebraska Game and Parks Commission
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NPS</b>	National Park Services
<b>OPCC</b>	Opinion of Probable Construction Cost
<b>PM</b>	Project Manager
<b>PS&amp;E</b>	Plans, Specifications, and Estimates
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>ROD</b>	Record of Decision
<b>ROW</b>	Right-of-Way
<b>SHPO</b>	State Historic Preservation Office
<b>SOQ</b>	Statement of Qualifications
<b>SWPPP</b>	Storm Water Pollution Prevention Plan
<b>USACE</b>	United States Army Corps of Engineers
<b>USFWS</b>	U.S. Fish and Wildlife Service

<b>Term</b>	<b>Definition</b>
<b>Addenda/Addendum</b>	Supplemental additions, deletions, and modifications to the provisions of the RFP issued after the advertisement date of the RFP.
<b>Affiliate</b>	With respect to any member of the Proposer team, as applicable: (a) any member, partner, or joint venture of such firm;

Term	Definition
	<p>(b) any individual or entity that directly or indirectly controls, or is controlled by, or is under common control with, such firm or any of its members, partners or joint venturers; and</p> <p>(c) any other entity for which 20% or more of the equity interest in such other entity is held directly or indirectly, beneficially or of record by (i) such firm, (ii) any of such firm's members, partners or joint venturers or (iii) any Affiliate of such firm under clause (b) of this definition.</p>
<b>Apparent Successful Proposer</b>	The shortlisted Respondent initially selected, following evaluation of Proposals, pursuant to the RFP.
<b>Construction Contract</b>	The written contract executed between NDOT and the CM/GC Contractor setting forth the obligations of the parties with respect to the Project, including, but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.
<b>Construction Work</b>	The furnishing of labor, materials, equipment, services and other incidentals necessary to, or convenient for, the successful completion of the construction of the Project and otherwise the carrying out of the duties and obligations imposed by the Construction Contract.
<b>Cost Model</b>	The cost model for the OPCC and corresponding GMP.
<b>CM/GC Contractor</b>	The firm responsible for completing all CM/GC services on this Project.
<b>Designer</b>	Has the meaning set forth in <u>Section 1.3</u> .
<b>Draft Record of Decision</b>	The draft document prepared pursuant to the environmental process for the Project, reflecting the preferred alternative.
<b>Guarantor</b>	The parent company or other Affiliate of an Equity Member, or other entity (if any), that the Proposer may identify as an intended guarantor of Pre-Construction Services Agreement obligations and liabilities.
<b>Independent Cost Estimator</b>	Has the meaning set forth in <u>Section 1.4</u> .
<b>Integrated Project Team (IPT)</b>	Has the meaning set forth in <u>Section 1.3</u> .
<b>Key Personnel</b>	Individuals from the Proposer's organization, as identified in the Proposer's SOQ, to fill the positions specified in <u>Section 6.2.2</u> of this RFP.
<b>Opinion of Probable Construction Cost</b>	The estimated construction cost developed by the CM/GC Contractor at established milestones for the Project.
<b>Plans, Specifications and Estimates (PS&amp;E)</b>	The plans, specifications and estimates to be developed by the Designer during the pre-construction phase with the CM/GC Contractor's input serving as construction manager.
<b>Pre-Construction Services Agreement</b>	The written agreement executed between NDOT and the CM/GC Contractor, outlining the scope of work for the Pre-Construction



Term	Definition
	Services they were selected to provide and the payment method. The Pre-Construction Services Agreement includes reference to the qualifications-based selection, scope of work, notice to proceed, schedule, staffing, total cost and payment provisions, dispute resolution, suspension/termination, and other contractual requirements such as, business registration and licensing, performance and accountability for its services, conflict of interest, and responsibilities for claims and liability insurance.
<b>Pre-Construction Services</b>	The services provided during the pre-construction phase of the Project.
<b>Project</b>	The proposed [Short project description].
<b>Project Baseline Schedule</b>	A schedule that clearly and unmistakably shows the critical path of activities demonstrating completion within the allotted time that supports each estimate.
<b>Proposal</b>	The proposal submitted by the Proposer in response to this RFP, including any revisions thereto.
<b>Proposal Due Date</b>	The deadline to submit a Proposal set forth in <u>Section 4.3</u> ; as such date may be revised by Addenda.
<b>Proposer</b>	The proposed CM/GC Contractor submitting a Proposal for the Project in response to this RFP.
<b>Public Records Act</b>	Nebraska Public Records Law; Section 84-712.
<b>Record of Decision</b>	The document prepared pursuant to the environmental process for the Project, reflecting the preferred alternative.
<b>Request for Proposals (RFP)</b>	A written solicitation issued by NDOT seeking Proposals to undertake the Project to be used to identify the most qualified Proposer.
<b>Request for Qualifications (RFQ)</b>	The written solicitation issued by NDOT to identify shortlisted Respondents eligible to receive the RFP for the Project.
<b>Respondent</b>	The proposed CM/GC Contractor who submitted an SOQ for the Project in response to the RFQ.
<b>Right-of-Way</b>	The real property rights within which the Project is situated.
<b>Risk Register</b>	A listing of risk and opportunities, risk assessments, and an evaluation of mitigation and responsibility for those risks.
<b>Statement of Qualifications (SOQ)</b>	The information prepared and submitted by a Respondent in response to the RFQ.
<b>Storm Water Pollution Prevention Plan</b>	Has the meaning set forth in <u>Section 2</u> .
<b>Successful Proposer</b>	The highest-ranked Proposer from totaling the scores of the RFQ and this RFP.
<b>Unsuccessful Proposer</b>	Proposer(s) that do not that have the highest-ranked score from totaling the RFQ and RFP.
<b>Value-Added Key Personnel</b>	Individuals identified by Respondents or Proposers in response to the RFQ or this RFP for roles that, if the proffering Respondent or

Term	Definition
	Proposer is the Apparent Successful Proposer, will be contractually obligated to engage for the Project.
<b>Value Engineering</b>	A proposal or solution that provides equal or better performance as it relates cost, schedule or quality of the work.
<b>Website</b>	The website for the Project procurement, at <a href="http://dot.nebraska.gov">http://dot.nebraska.gov</a> .

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**APPENDIX A:  
PROJECT DESCRIPTION AND PROJECT STATUS**

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## **1. Project Description**

[SPECIFIC TO THE PROJECT]

## **2. Design and Construction Requirements**

### **Design**

[SPECIFIC TO THE PROJECT]

### **Construction**

[SPECIFIC TO THE PROJECT].

## **3. Project Status**

The status of the work being completed for the Project by NDOT is summarized as follows.

### **Survey**

[SPECIFIC TO THE PROJECT]

### **Preliminary Engineering**

NDOT is currently preparing preliminary engineering documentation for the Project.

### **Utilities**

[SPECIFIC TO THE PROJECT]

### **Plans and Quantities**

[SPECIFIC TO THE PROJECT]

### **Geotechnical**

Any soil boring information collected by NDOT will be provided during the Pre-Construction Services.

### **ROW Acquisition**

[SPECIFIC TO THE PROJECT]

### **Permitting**

The Project will require several agency permits/approvals. The following table summarizes the anticipated required permits/approvals and their associated status:

**Anticipated Permits and Approvals Needed [SPECIFIC TO THE PROJECT]**

Permit / Action	Agency	Status
Clean Water Act Section 404 Individual Permit	U.S. Army Corps of Engineers (USACE)	Construction will be permitted by a Section 404 permit.
Clean Water Act Section 401 Water Quality Certification	Nebraska Department of Environment and Energy (NDEE)	
Section 408 Approval	U.S. Army Corps of Engineers (USACE)	NDOT will acquire at 408 approval for work with USACE Fee Title land and within Civil Works Property of Gavins Point Dam. The first 408 submittal is anticipated in October 2022.
NEPA Compliance	U.S. Army Corps of Engineers (USACE)	NDOT will prepare environmental documentation for use by USACE for NEPA compliance. NEPA approval will be completed in conjunction with Section 404 permitting and Section 408 approval.
Endangered Species Act Section 7 Consultation	U.S. Fish and Wildlife Service (USFWS)	Section 7 Consultation will be completed by NDOT
Nebraska Endangered Species Coordination Act (NESCA) Consultation	Nebraska Game and Parks Commission (NGPC)	NESCA consultation with NGPC will be completed by NDOT
National Historic Preservation Act Section 106 Compliance	Nebraska State Historic Preservation Office (SHPO)	Consultation with Nebraska SHPO will be completed by NDOT
Floodplain Development Permit	Local Administrators	NDOT will obtain local floodplain permits.
NPDES Construction Storm Water General Permit	Nebraska Department of Environment and Energy (NDEE)	The NPDES Construction Storm Water General Permit and associated Stormwater Pollution Prevention Plan (SWPPP) will be the responsibility of the Design-Builder.
Section 7a	National Park Services (NPS)	NDOT will obtain the necessary approval for the Project.

**4. Tentative Schedule**

**Pre-Construction Services**

1. Pre-Agreement Meeting (Scope and Fee) [Insert Date]

2. Project Scoping Workshop
3. Initial Risk Workshop
4. Initial Cost Workshop
5. Initial Design Milestone Deliverables
6. Functional Design Milestone Deliverables
7. Final Design Milestone Deliverables
8. A list of Applicable Standards
9. Final GMP

**NEPA Schedule** [SPECIFIC TO THE PROJECT]

1. Draft Record of Decision (ROD) [Insert Date]
2. USACE 404 Permit Decision

**5. Additional Project Documentation**

The selected CM/GC Contractor will be provided additional documentation and NDOT resources during its performance of the Pre-Construction Services.

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**APPENDIX B:  
FORMAT AND ORGANIZATION OF PROPOSAL**

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## 1. Organization

The Proposal shall be organized as follows and as depicted in Table B-1 below:

- a) Appendix A – Legal Information
- b) Appendix B – Technical Information
- c) Appendix C – Financial Information

## 2. Pages and Binders

The Proposal shall consist of loose-leaf pages that are 8 ½” by 11” and white, except for charts, exhibits, and other illustrative and graphical information, which may be submitted on 11” by 17” paper and folded to 8 ½” by 11”. The Proposal shall conform to the following page limitation requirements:

- a) Volume A: Legal Information – no page limitation except the Executive Summary which will be limited to **2 pages** in total.
- b) Volume B: Technical Information – a limit of **20 pages** in total as depicted in Table B-1 below.
- c) Volume C: Financial Information – no page limitation.

The Proposal volumes shall be organized into **one separate three-ring binder**. The sections (and, optionally, subsections) shall be separated with lettered or numbered dividers (dividers will not be counted against the page limitation). Color photographs, renderings, and brochures shall be adequately bound and suitably protected for handling and circulation during review and evaluation.

## 3. Page Format

To meet the page limits requirement listed above, all text shall be in an Arial font that is a minimum of 11 points in size, single-spaced, and printed single-sided. Each page shall be numbered consecutively within each section (i.e., 1-1, 1-2...; 2-1, 2-2...; 3-1, 3-2..., etc.), and the page numbers shall be centered at the bottom of each page. Margins shall be not less than one inch at the top, bottom, and sides of all pages, except for headers and footers.

## 4. Reproducibility

All Proposal pages shall be easily reproducible in black and white by standard photocopying machines.

## 6. Submittal Quantities

Proposers shall deliver to NDOT **six (6)** copies of the Proposal. See Section 5.5 of the RFQ for additional requirements.



**Table B-1: Specifications for Proposals**

Proposal Section	Section Title and Required Information	RFP Reference
<p><b>Volume A</b></p>	<p><b>Legal Information:</b></p> <ul style="list-style-type: none"> <li>• Executive Summary;</li> <li>• <a href="#">Form A</a>, Transmittal Letter (to be signed by the Official Representative of the Proposer);</li> <li>• <a href="#">Form A-1</a>, SOQ Certification (to be signed by the Official Representative of the Proposer);</li> <li>• Powers of Attorney (if applicable);</li> <li>• Confidential Content Index;</li> <li>• NDOT Prequalification Certification</li> <li>• <a href="#">Form L-1</a>, Proposer’s Organization Information/Certification;</li> <li>• Executed teaming agreements or summaries of teaming agreement key terms;</li> <li>• <a href="#">Form L-2</a>, Certification / Questionnaire; and</li> <li>• Conflict of Interest Statement.</li> <li>• <a href="#">Form DB</a>, Certification Regarding Debarment, Suspension and Other Responsibility Matters</li> </ul>	<p><b>6.1</b></p>
<p><b>Volume B</b></p>	<p><b>Technical Information:</b></p> <ul style="list-style-type: none"> <li>• Proposer Organization: <ul style="list-style-type: none"> <li>• Narrative of Management Structure; and</li> <li>• Proposed Organizational Charts (<i>not counted towards the 20-page limit</i>).</li> </ul> </li> <li>• Key Personnel: (<i>not counted towards the 20-page limit</i>). <ul style="list-style-type: none"> <li>• <a href="#">Form F</a>, Updated Key Personnel Information;</li> <li>• Updated Key Personnel Resumes (<i>2-page limit per individual</i>);</li> <li>• Express Commitment Regarding Key Personnel.</li> </ul> </li> <li>• Project Management Approach: <ul style="list-style-type: none"> <li>• Narrative of Relevant Experience and Approach to Project Management.</li> </ul> </li> <li>• Pre-Construction Services Approach: <ul style="list-style-type: none"> <li>• Narrative of Relevant Experience and Approach to Collaboration, Cost Estimating and Cost Modeling, Risk Management, and Decision Analysis and Resolution.</li> </ul> </li> <li>• Construction Work Approach: <ul style="list-style-type: none"> <li>• Narrative of Relevant Experience and Approach to Construction Work.</li> </ul> </li> </ul>	<p><b>6.2</b></p>

**Table B-1: Specifications for Proposals**

<b>Proposal Section</b>	<b>Section Title and Required Information</b>	<b>RFP Reference</b>
<b>Volume C</b>	<b>Financial Information:</b> <ul style="list-style-type: none"><li>• Personnel Rates and Hours; and</li><li>• Surety Letter(s)</li></ul>	<b>6.3</b>

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**APPENDIX C:  
FORMS**

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## Appendix C – List of Forms

<a href="#">Form A</a>	Transmittal Letter
<a href="#">Form A-1</a>	Proposal Certification
<a href="#">Form F</a>	Proposed Key Personnel Information
<a href="#">Form L-1</a>	Proposer's Organization Information
<a href="#">Form L-2</a>	Certification / Questionnaire
<a href="#">Form RFP-C</a>	Proposer's Clarification Request
<a href="#">Form B</a>	Payment and Performance Bond (Pre-Construction Services Agreement)
<a href="#">Form DB</a>	Certification Regarding Debarment, Suspension and Other Responsibility Matters

## Form A

### TRANSMITTAL LETTER

PROPOSER: \_\_\_\_\_

Proposal Date: [Insert Date]

Nebraska Department of Transportation  
Roadway Design Division  
1500 HWY 2  
Lincoln, NE 68502

Attn: Mr. [NDOT Project Manager's Name],

The undersigned ("Proposer") is pleased to submit this Proposal (this "Proposal") in response to that certain Request for Proposals dated as of [Issuance Date] (as amended, the "RFP"), issued by the Nebraska Department of Transportation ("NDOT") to provide Pre-Construction Services for the [Project Name]. Capitalized terms have the meanings ascribed in the RFP.

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Appendix A: Legal Information
- Appendix B: Technical Information
- Appendix C: Financial Information

Proposer acknowledges receipt, understanding, and full consideration of all materials provided by NDOT as set forth in Section 4.5 of the RFP, and the following Addenda and sets of questions and answers to the RFP:

*[Proposer to list any addenda to this RFP by dates and numbers prior to executing Form A. Proposer to also list the dates of all Clarification Requests and NDOT Responses as posted on NDOT website.]*

Proposer represents and warrants that it has read the RFP in its entirety and agrees to abide by the contents and terms of the RFP and the Proposal. Without limiting the foregoing, Proposer accepts and agrees to all the terms and conditions for protest set forth in Section 9 (Protest Procedures) of the RFP, and specifically acknowledges NDOT's reserved rights in Section 11 (NDOT Reserved Rights) of the RFP.

Proposer understands that if it is selected, then the legal entity constituting the CM/GC Contractor will enter into a Pre-Construction Services Agreement, and, if the GMP is agreed to by NDOT, execute a Construction Contract with NDOT for performance of the Construction Work.

# Form A

## TRANSMITTAL LETTER

Proposer understands that NDOT is not bound to select any Proposer and may reject each Proposal NDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the Project procurement process will be borne solely by the Proposer as described in Section 4.6 of the RFP.

Proposer agrees that NDOT will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this Proposal.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Nebraska.

If this Transmittal Letter is executed by a person acting under a power of attorney, the Proposer shall include with the Transmittal Letter a true and complete copy of the executed power of attorney.

Proposer's business address:

\_\_\_\_\_

(No.)

(Street)

(Floor or Suite)

\_\_\_\_\_

(City)

(State or Province)

(ZIP or Postal Code)

(Country)

State or Country of Incorporation/Formation/Organization: \_\_\_\_\_

*[insert appropriate signature block from following pages]*

**Form A**

**TRANSMITTAL LETTER**

1. Sample signature block for corporation or limited liability company:

*[Insert Proposer's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. Sample signature block for partnership or joint venture:

*[Insert Proposer's name]*

By: *[Insert general partner's or equity member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Add signatures of additional general partners or equity members as appropriate]*

3. Sample signature block for attorney in fact:

*[Insert Proposer's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Attorney in Fact

**Form A-1**  
**PROPOSAL CERTIFICATION**

[OFFICIAL LETTERHEAD OF ENTITY EXECUTING LETTER.]

[PROPOSAL DATE]

Nebraska Department of Transportation  
Roadway Design Division  
1500 HWY 2  
Lincoln, NE 68502

ATTN: [NDOT Project Manager's Name],

I, [NAME OF AUTHORIZED REPRESENTATIVE], am the [TITLE OF AUTHORIZED REPRESENTATIVE] of [NAME OF MAJOR TEAM MEMBER], which is a member of the [NAME OF PROPOSER] team.

I certify that:

- a) I have read and understand the information contained in the Request for Proposals issued by the Nebraska Department of Transportation for the [Project Name] and the attached Proposal (Proposal) submitted by [NAME OF THE PROPOSER TEAM];
- b) to the best of my knowledge and belief all information contained in the Proposal, and information submitted concurrently or in supplemental documents with the Proposal, is complete, current and true;

*[DELETE THE THIRD BULLET, BELOW, ONLY IF THE ENTITY SIGNING THIS CERTIFICATION IS THE PROPOSER'S LEAD FIRM. OTHERWISE, DELETE THIS NOTE AND KEEP THE THIRD BULLET.]*

- c) all representations, statements, and commitments in the Proposal made by [NAME OF LEAD FIRM] on behalf of [NAME OF MAJOR TEAM MEMBER] have been authorized by, are correct, and accurately represent the role of [NAME OF MAJOR TEAM MEMBER] on the [NAME OF PROPOSER] team.

I acknowledge that any false, deceptive, or fraudulent statements in the Proposal can result in denial of shortlisting status and other consequences provided by law.

---

(Signature)

---

(Name Printed)



## Form F

### PROPOSED KEY PERSONNEL INFORMATION

Name of Proposer: \_\_\_\_\_

Affirmatively state whether any changes to this form have occurred since SOQ submittal? \_\_\_ Yes \_\_\_ No

If you answered "Yes" above, please complete and resubmit this Form F with the Proposal.

Key Personnel Position	Name of Individual	Years of Relevant Experience <sup>1</sup>	Education and Registrations <sup>2</sup>	Firm Name	Reference Name, Title, Telephone Numbers & Email Address <sup>3</sup>
<b>Project Manager</b>		____ years on transportation projects. ____ years managing the construction of transportation projects (____ years of CM/GC experience).			
<b>Construction Manager</b>		____ years on transportation projects. ____ years managing the construction of transportation projects (____ years of CM/GC experience).			
<b>Value Added</b>					

## Form F

### PROPOSED KEY PERSONNEL INFORMATION

Key Personnel Position	Name of Individual	Years of Relevant Experience <sup>1</sup>	Education and Registrations <sup>2</sup>	Firm Name	Reference Name, Title, Telephone Numbers & Email Address <sup>3</sup>
Value Added					

1. *For each individual proposed, please enter the number of years of relevant experience in the blank spaces provided. In cases where the individual has no relevant experience, please enter "0" in the corresponding blank space.*
2. *For each individual proposed, please indicate any degrees, professional licenses, registrations, and training relevant to the corresponding Key Personnel position.*
3. *Provide three references for each position identified on [Form F](#).*

## Form L-1

### PROPOSER'S ORGANIZATION INFORMATION

#### PART 1

#### PROPOSER TEAM SUMMARY

<b>PROPOSER</b>	
<b>CONTACT PERSON</b>	
<b>ADDRESS</b>	
<b>TELEPHONE NUMBER</b>	
<b>EMAIL ADDRESS</b>	

<b>MAJOR TEAM MEMBER</b> <i>(Duplicate Part 1 for each Major Team Member)</i>	
<b>NAME OF FIRM</b>	
<b>CONTACT PERSON</b>	
<b>ADDRESS</b>	
<b>TELEPHONE NUMBER</b>	
<b>EMAIL ADDRESS</b>	

#### PART 2

#### TEAM MEMBER INFORMATION

Name of Proposer: \_\_\_\_\_

Name of Entity Completing [Form L-1](#): \_\_\_\_\_

Entity's Role (check one box for entity completing [Form L-1](#) as applicable):

Proposer;  Major Team Member;  Guarantor; or

Other (describe): \_\_\_\_\_

Year Established: \_\_\_\_\_ State of Organization: \_\_\_\_\_

# Form L-1

## PROPOSER'S ORGANIZATION INFORMATION

Federal Tax ID No. (if applicable): \_\_\_\_\_ Telephone No.: \_\_\_\_\_

North American Industry Classification Code: \_\_\_\_\_

Name of Official Representative Executing Forms A and A-1: \_\_\_\_\_

Individual's Title: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Type of Business Organization\* (check one):

- Corporation
- Partnership
- Joint Venture
- Limited Liability Company
- Other (describe): \_\_\_\_\_

\* If the entity completing this [Form L-1](#) is a partnership or any other form of a joint venture, attach to this [Form L-1](#) the executed teaming agreement. If an executed teaming agreement does not yet exist, attach a summary of the key terms of the anticipated agreement, including the percentages of ownership roles of the various parties and anticipated execution date.

A. Business Address: \_\_\_\_\_  
Headquarters: \_\_\_\_\_  
Office Performing Work: \_\_\_\_\_

B. Describe the role of the entity in the space below.

\_\_\_\_\_  
\_\_\_\_\_

C. If the entity completing this [Form L-1](#) is a joint venture or newly formed entity (formed within the past two years), complete a separate [Form L-1](#) and [Form L-2](#) for each member or partner of the entity and attach it to the Proposal. In addition, identify the name of such members or partners in the space below.

Name

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Form L-1**

**PROPOSER'S ORGANIZATION INFORMATION**

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the firm's Official Representative:

By: \_\_\_\_\_ Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

*[Please make additional copies of this form as needed.]*

## Form L-2

### CERTIFICATION / QUESTIONNAIRE

Name of Proposer:

---

Firm Name:

---

Complete for each Major Team Member and Guarantor:
1. Has the firm or any Affiliate <sup>1</sup> , or the owners, officers, or managing employees of either the firm or any affiliate, failed to complete any work it agreed to perform, or had a contract terminated because it was in default, within the past ten years (measured from the date of issuance of this RFP) and within North America? If yes, describe.
2. Has the firm or any Affiliate <sup>1</sup> , or any director, officer, or employee of either the firm or any affiliate been, in North America, indicted or convicted of bid or other contract-related crimes or violations (e.g., fraud, bribery, collusion, conspiracy, antitrust, etc.) or any felony or misdemeanor related to performance under a contract within the past five years (measured from the date of issuance of this RFP)? If yes, describe.
3. Has the firm or any Affiliate <sup>1</sup> sought protection under any provision of any bankruptcy act or been subject to a receivership or involuntary bankruptcy proceeding within the last ten years (measured from the date of issuance of this RFP)? If yes, describe, and provide information concerning any work completed by a surety as a result of the bankruptcy or receivership.
4. Has the firm or any Affiliate <sup>1</sup> been debarred, disqualified, removed, or suspended from performing work for the federal government, any state or local government, or any foreign government within North America, within the last five years (measured from the date of issuance of this RFP)? If yes, describe.
5. Has the firm or any Affiliate* been found liable in a civil suit or found guilty in a criminal action for making any false claim or other material misrepresentation to a public entity (including any foreign government in North America) within the past ten years (measured from the date of issuance of this RFP)? If yes, as to each such inquiry, state the name of the public agency, the date of the inquiry, the grounds on which the public agency based the inquiry, and the result of the inquiry.
6. Has any construction project in North America performed or managed by the firm or, to the knowledge of the undersigned, any Affiliate <sup>1</sup> , involved repeated or multiple failures to comply with safety laws, regulations, rules, or requirements as commonly tracked by the construction industry (including those of a foreign government) within the past ten years (measured from the date of issuance of this RFP)? If yes, please identify the team members and the projects, provide an explanation of the circumstances, and provide owner contact information including telephone numbers.

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<sup>1</sup> Note: "Affiliate" has the meaning set forth in Section 1.5 of the RFP.

## Form L-2

### CERTIFICATION / QUESTIONNAIRE

<p>7. Has the firm or any Affiliate<sup>1</sup> been disqualified by an owner of a public works project in North America for submitting a “nonresponsive” bid or proposal, or having been found “not responsible” within the last five years (measured from the date of issuance of this RFP)? If yes, describe.</p>
<p>8. Has the firm or any Affiliate<sup>1</sup> been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Industrial Commission of Nebraska, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state within the past ten years (measured from the date of issuance of this RFP) governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?</p>
<p>9. Have any adverse claims, disputes, or lawsuits between the owner of a public works project in North America and the firm or any Affiliate<sup>1</sup>, in which the claim, settlement, or judgment exceeds \$50,000, settled within the past five years (measured from the date of issuance of this RFP)? If yes, describe. Provide any information concerning any work completed by a surety during the past five years.</p>
<p>10. Has the firm or any Affiliate<sup>1</sup> been convicted of violating a State or Federal law relating to the employment of undocumented aliens within the past five years (measured from the date of issuance of this RFP)? If yes, describe.</p>
<p>11. List (on a separate page) up to five financial institutions with which the firm or any Affiliate<sup>1</sup> has done the most business within the past five years and identify the individual at each institution who was in charge of the firm’s accounts. Indicate the address, telephone number, and Email address of each individual.</p>
<p>12. Has a surety firm completed performance of a contract in North America on behalf of the firm or any Affiliate<sup>1</sup> or paid for completion of a contractor’s performance because the firm or any affiliate was in default or terminated by the project owner within the last five years (measured from the date of issuance of this RFP)? If yes, describe.</p>
<p>13. Has the firm or any Affiliate<sup>1</sup> been issued a citation by any governmental body for violation of any environmental law, regulation, or permit pertaining to performance of work on a transportation project in North America within the last ten years (measured from the date of issuance of this RFP)? If yes, describe in <a href="#">Form PP-1</a>.</p>

*(Must be signed by an officer of the firm)*

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the firm’s Official Representative:

**Firm:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Form RFP-C**

**Proposer's Clarification Request**

**[Project Name]**

**Proposer/Firm Name:** \_\_\_\_\_

**Proposer Address:** \_\_\_\_\_

**Proposer Contact Information**

**Authorized Representative:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

Category (1, 2 or 3) <sup>2</sup>	RFP Section No. or Appendix	Question	Reserved for Department Response

<sup>2</sup> Requests for clarification must indicate whether the question is a Category 1, 2 or 3 question. "Category 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal. "Category 2" means an issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal. "Category 3" means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.



## Form B

### Payment and Performance Bond (Pre-Construction Services Agreement)

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Letting: \_\_\_\_\_ Project No.: \_\_\_\_\_  
Call: \_\_\_\_\_  
Contract ID: \_\_\_\_\_  
Bond No: \_\_\_\_\_

#### FORM OF PERFORMANCE AND PAYMENT BOND

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT WHEREAS**, the **Nebraska Department of Transportation**, (the "Obligee") has awarded to [\_\_\_\_\_] [*Contractor's legal name*] (the "Principal"), that certain Pre-Construction Services Contract, dated as of [\_\_\_\_\_] [*date*] (the "Contract") to provide construction management and pre-construction services, and potentially construct approximately [Project Name], [County], Nebraska (the "Project");

**AND WHEREAS**, the Principal is a[n] [\_\_\_\_\_] [*entity type*], duly formed and validly existing under the laws of the [\_\_\_\_\_] [*jurisdiction*], and is duly authorized and in good standing to do business in the State of Nebraska;

**AND WHEREAS**, the Principal is required to furnish a bond guaranteeing faithful performance of its obligations under the Contract, and it is one of the conditions of the Contract that these presents shall be executed;

**NOW THEREFORE**, we the undersigned Principal and [\_\_\_\_\_] (the "**SURETY(IES)**"), are held and firmly bound unto the Obligee, Nebraska Department of Transportation ("NDOT"), in the penal sum of \$10,000,000.00 U.S. Dollars (the "Bonded Sum"), [subject to increase in accordance with the Guaranteed Maximum Price Construction Phase Rider]**[NTD: include only if the same bond/same surety/ies to be brought into the Construction Contract]**, and for the payment of which we do hereby bind ourselves, our heirs, executors and administrators, jointly, severally, and firmly by these presents.

**NOW THEREFORE, THE CONDITION OF THIS BOND IS SUCH THAT:**

1. If said **CONTRACTOR** as principal shall in all respects fulfill, observe and comply with this said Contract according to the terms, condition, provisions and the tenor thereof, and shall faithfully do and perform all matters and things undertaken by **CONTRACTOR** to be performed under the Contract, and shall faithfully discharge the duties and obligations therein assumed, all upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to **SURETY(IES)**, and shall indemnify and save harmless the State of Nebraska, its agencies, departments (including NDOT), divisions, and each of their respective members, managers, officers, directors, share/stockholders, commissioners and officeholders, partners, employees, agents, representatives, consultants, attorneys, contractors, successors, and permitted assigns, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the **CONTRACTOR** or its subcontractors, and shall in all respects perform the Contract according to law, then subject to the above obligation is to be void and of no effect; otherwise to be and remain in full force and virtue in law.

2. It is expressly understood and agreed that this bond is given to secure and does secure not only the faithful performance by the **CONTRACTOR** herein named of the Contract for the pre-construction work as specified in said pre-construction services contract and in strict accordance with the terms of said pre-construction services contract and the plans, scope, specifications and all special provisions made a part thereof; but that it is given to secure and does secure also the payment by the said bounden **CONTRACTOR** of all overpayments made to said principal by **NDOT**, and of all just claims of all laborers and mechanics for labor that shall be performed and for the payment

of all material, supplies and equipment which is used or rented in performing the Contract, and for the payment of all taxes, including contributions and interest due under the Nebraska Employment Security Law, on wages paid to individuals employed in the performance of the Contract including those performing under subcontract which may accrue, to the State of Nebraska and the political subdivisions thereof on account of the execution and performance of this Contract, and if such obligations of **CONTRACTOR** described in the above Paragraph 1 be fully performed and all such payments be made, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

[3. The **SURETY(IES)** agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any conditions precedent or subsequent in this bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this bond, or any rescission or attempted rescission of this Bond, solely due to acts of **CONTRACTOR**, or any fraud practiced by any other person other than the claimant seeking to recover from this bond, shall in any way affect its obligations on this bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.]

[4. Whenever the **CONTRACTOR** shall be, and is declared by **NDOT** to be, in breach or default under the Contract, the **SURETY(IES)** shall promptly, and in each case with **NDOT's** prior written consent, not to be unreasonably withheld:

- (a) remedy such breach or default; or
- (b) complete the work covered by this bond in accordance with the terms and conditions of the Contract then in effect; provided, however that completion of such work shall not be effected by the **CONTRACTOR** or any affiliate of the **CONTRACTOR**, for and on behalf of the **SURETY(IES)**, without **NDOT's** express prior consent, granted in its sole discretion; or
- (c) select a contractor or contractors (other than the **CONTRACTOR** or any affiliate of the **CONTRACTOR**) to complete all Work and perform all obligations covered by this Bond in accordance with the terms and conditions of the Contract then in effect, using a qualified contractor or contractors approved by **NDOT** arrange for a contract that contains substantially the same terms and conditions of the Contract between such contractor or contractors and **NDOT**, and make available as work progresses (even though there should be a breach or default (or a succession of such breaches or defaults) under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the [**NTE Amount for Pre-Construction Services**] (or less the cost of completion of the Project if the Bond has been increased in accordance with the Construction Phase Rider); but not exceeding, including other costs and damages for which Surety is (or Co-Sureties are) liable hereunder, the Bonded Sum; or
- (d) waive its right to remedy such breach or default, perform and complete, arrange for performance and completion, or obtain a new contractor or contractor (under the foregoing clauses (a) to (c)), and with reasonable promptness under the circumstances, in no case to exceed 60 days after dispatch of notice of **NDOT's** declaration of default under the Contract, determine the amount for which it may be liable to the **NDOT** and, as soon as practicable thereafter, make payment to **NDOT** in full, of the Bonded Sum.]

[5. If the **SURETY(IES)** do(es) not proceed as provided in the foregoing Section 4 with reasonable promptness (not to exceed such 60 day period), then the **SURETY(IES)** shall be in default on this bond seven days after receipt of an additional written notice from the **NDOT** to the **SURETY(IES)**' designated representative) demanding that the **SURETY(IES)** perform its (or their) obligations under this bond, and the **NDOT** shall be entitled to enforce any remedy available to the **NDOT** at law or in equity.

[6. If the **SURETY(IES)** elect(s), and **NDOT** consents, as applicable, to act under Section 4(a), Section 4(b), or Section 4(c), then the responsibilities of the **SURETY(IES)** to the **NDOT** shall not be greater than those of the **CONTRACTOR** under the Contract, and the responsibilities of the **NDOT** to the **SURETY(IES)** shall not be greater than those of the **NDOT** under the Contract. Subject to the commitment by the **NDOT** to pay the balance of the [*Insert term used for of Price for Preconstruction Services OR the Guaranteed Maximum Price (if the Bond has been increased in accordance with the Construction Phase Rider)*]; but not exceeding, including other costs and damages for which Surety is (or Co-Sureties are) liable hereunder, the Bonded Sum (as it may be amended by the Guaranteed Maximum Price Construction Phase Rider), the **SURETY(IES)** is/are obligated, without duplication, for:

- (a) the responsibilities of the **CONTRACTOR** for correction of defective work and completion of the Project under the terms, and subject to the conditions, of the Contract then in effect;
- (b) additional legal, design professional, delay costs, disruption costs, and other additional costs

resulting from the **CONTRACTOR**'s breach or default (to the extent not subject to damages, liquidated or otherwise, under clause (c), and resulting from the actions or failures to act of the **SURETY(IES)** under Section 4; and

(c) damages claimed by, and due and owing to the **NDOT** under, the terms of the Contract, including liquidated damages, if any.

For purposes of the foregoing, the "balance of the [Insert term used for of Price for Preconstruction Services OR Guaranteed Maximum Price]" is the total amount to be payable by the **NDOT** to the **CONTRACTOR**, if any, after all adjustments have been made (e.g., allowance to the **CONTRACTOR** for insurance proceeds or settlements or other claims for damages), in each case, to which the **CONTRACTOR** is entitled, collectively reduced by all payments made to or on behalf of the **CONTRACTOR** under the Contract.

[7. (Use in case of multiple sureties) The **SURETY(IES)** agree to empower a single representative with authority to act on behalf of all of the **SURETY(IES)** with respect to this bond, so that the **NDOT** and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the **NDOT** or claimants to the **SURETY(IES)** and all claims under this bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the **NDOT** designating a single new representative, signed by all of the **SURETY(IES)**. The initial representative shall be [\_\_\_\_], and correspondence to be directed at the following address(es): [\_\_\_\_].]

8. No contract shall be valid which seeks to limit the time to less than one year in which action may be brought upon the bond covering the pre-construction services work, and this bond is made, executed and delivered with such understanding.

**SIGNED and SEALED** this [\_\_\_\_] day of [\_\_\_\_], 2022.

**CONTRACTOR**

*Surety*

\_\_\_\_\_  
*Principal (Signature)*

\_\_\_\_\_  
*Principal (Printed Full Legal Name)*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Attorney-in-Fact (Signature)*

\_\_\_\_\_  
*Attorney-in-Fact (Printed Name)*

\_\_\_\_\_  
*Agency/Business Name*

\_\_\_\_\_  
*Agency/Business Address*

\_\_\_\_\_  
*Phone Number*

<u>Surety (full legal name):</u> _____  <u>Address:</u> _____  <u>By:</u> _____  <u>Contact Name:</u> _____  <u>Phone: (    )</u> _____
<u>Attest:</u> _____ (SEAL)  <u>Signature</u> <u>Bonding Agent's Name:</u> _____ <u>Agent's Address:</u> _____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

## Form DB

### **Certification Regarding Debarment, Suspension and Other Responsibility Matters**

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549 – Debarment and suspension. *Exec. Order No. 12,549, 51 Fed. Reg. 6370 (1986)*.

Proposer certifies to the Department, for itself, its principals, and for each person or entity identified in its SOQ and Proposal, as of the Proposal Due Date as follows:

1. Proposer has not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by Department.
2. None of Proposer, nor its principals, nor any person or entity identified in its SOQ or Proposal, is or are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any local, state, or federal department or agency;
3. None of Proposer, nor its principals, nor any person or entity identified in its SOQ or Proposal within a three-year period preceding the Proposal Due Date have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
4. None of Proposer, nor its principals, nor any person or entity identified in its SOQ or Proposal are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 3 above; and
5. None of Proposer, nor its principals, nor any person or entity identified in its SOQ or Proposal within a three-year period preceding the Proposal Due Date have had one or more public transactions (federal, state, or local) terminated for cause or default.

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the firm's Official Representative:

By: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

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**ATTACHMENT 1:  
CONFLICT OF INTEREST POLICY**

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# ATTACHMENT 1

## NDOT Conflict of Interest Policy For [Project Name]

Capitalized terms used in this NDOT Conflict of Interest Policy (this “Policy”), but not otherwise defined, in the RFQ or this RFP, have the meanings ascribed in Section 2 below.

Without limiting the Proposers’ obligations, and NDOT’s rights, under Section 11 of the RFQ, this RFP, and Section 3.8 of this Policy, no Proposer may engage the Services (with respect to the Project), or include among the Proposer team, any Consultant that presents a Conflict of Interest.

### 1.0 Purpose

This Policy prescribes Conflict of Interest rules applicable to private entities, including Consultants and Proposers, participating or desiring to participate in NDOT's planning, procurement, design, and construction of the Project. A private entity's failure to comply with this Policy may result in potential liability to NDOT and the private entity's preclusion from participation in the Project. This Policy is intended to apply in the context of NDOT's development of the Project.

### 2.0 Definitions

Term	Definition
<b>Affiliate</b>	Means with respect to any Person: (a) any member, partner or joint venture of such Consultant; (b) any individual or entity that directly or indirectly controls, or is controlled by, or is under common control with, such Consultant or any of its members, partners or joint venturers; and (c) any other entity for which 20% or more of the equity interest in such other entity is held directly or indirectly, beneficially or of record by (i) such Consultant, (ii) any of such Consultant's members, partners or joint venturers or (iii) any Affiliate of such Consultant under clause (b) of this definition.
<b>Conflict of Interest</b>	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 NDOT, or the Person’s objectivity in performing the scope of the work for the Project is, or might be, otherwise impaired, or a Person has an unfair competitive advantage. The following are non-exclusive examples of conflicts of interest: (a) a Person is among NDOT consultants (identified in <u>Section 8.3.1</u> of the RFQ); (b) a Person previously provided Services to NDOT with respect to the Project (whether as a direct or indirect Consultant to or an employee of NDOT);

<b>Term</b>	<b>Definition</b>
	(c) a Person who currently or previously provides/d services to NDOT is an equity owner, team member, direct or indirect Consultant of or to a Proposer for the Project; and  (d) a Person who currently or previously provides/d services to NDOT is/ has a financial interest in any of the foregoing entities.
<b>Conflict of Interest Policy or Policy</b>	Means this Attachment 1 NDOT Conflict of Interest Policy for [Project Name].
<b>Consultant</b>	Means any Person or business entity, any individual employee of such entity, or any division and/or Affiliate of such entity previously or currently retained, or in the process of being retained, by NDOT to provide Services in connection with the Project, including subconsultants and individual employees of subconsultants.
<b>NDOT</b>	Means the Nebraska Department of Transportation.
<b>Person</b>	Individual person or entity, including joint ventures, partnerships, limited liability companies, corporations, consortiums, teams or other groups or organizations of individuals or entities, or the individuals and entities that make up such groups,
<b>Policy</b>	Means this Attachment 1 NDOT Conflict of Interest Policy for [Project Name].
<b>Project</b>	[Project Description]
<b>Proposer</b>	Means any Person that have submitted a statement of qualifications or proposal for work on the Project or are interested in submitting a statement of qualifications or proposal for services on the Project.
<b>Services</b>	Means, in the context of this Policy, consulting services related to the Project, which may include, but are not limited to, some or all of the following: planning services; procurement services; federal and state environmental services; financial advisory services; legal services; risk management analysis or services; insurance advice or services; traffic and revenue studies; program oversight; design and construction management services; design concept services; preliminary engineering services (including right-of-way, structures, survey and utility); and public and community outreach services.

**3.0 Conflicts of Interest**

**3.1 Public Policy Purpose**

This section prescribes NDOT's public policy guiding the Conflicts of Interest Policy relating to Consultants participating or desiring to participate in the planning, procurement, design, or construction of the Project. The Policy:

- Protects the integrity and fairness of the planning, procurement, design, or construction of the Project;



- Avoids circumstances where a Consultant or Proposer obtains, or appears to obtain, an unfair competitive advantage as a result of Services performed for NDOT by a Consultant or information obtained from NDOT by a Consultant;
- Provides guidance to Consultants and Proposers, or potential Consultants and Proposers, so they may assess, and make informed decisions concerning, their decision to provide Services on the Project or to submit or participate on a Proposer team submitting a statement of qualifications and/or proposal related to the design, or construction of the Project; and
- Protects NDOT's interests and confidential and sensitive Project-specific information.

### **3.2 Applicability**

This Policy applies to Consultants who desire to participate in, have participated in or are participating in the performance of Services for NDOT related to the Project. This Policy may prohibit or restrict the ability of a Proposer to have a Consultant participate on a Proposer team as an equity owner or team member, act as a consultant or subconsultant to the Proposer, or have a financial interest in the Proposer or an equity owner or team member of a Proposer. This Policy relates solely to the Project and does not address NDOT's approach or policy(ies) with respect to conflicts of interest on other state transportation projects, if any.

### **3.3 Conflicts of Interest Disclosure**

#### **3.3.1 Obligation to Disclose**

Consultants and Proposers participating in the Project shall arrange their affairs so as to reasonably prevent Conflicts of Interest. Any Consultant or Proposer having an actual or potential Conflict of Interest shall disclose the matter to NDOT in writing to the following individual (the "Procurement Manager"):

**Nebraska Department of Transportation  
Roadway Design Division  
1500 HWY 2  
Lincoln, NE 68502**

**Attention: [NDOT Project Manager's Name], [NDOT Project Manager's Title]**

**Email: [NDOT Project Manager's E-mail]**

Disclosures will also be requested of Proposers as part of responses to this RFP and any subsequent Request for Proposals relating to the design and construction of the Project.

A Consultant's and Proposer's Conflict of Interest disclosure obligation is ongoing. Consultants and Proposers shall undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual or potential Conflicts of Interest arise. Due diligence should extend to investigation of past relationships and, if the Consultant being investigated is an entity, to officers or directors of the Consultant. If a Consultant or Proposer becomes aware of an actual or potential Conflict of Interest at any time during its participation in the Project, the Consultant or Proposer, as applicable, shall promptly disclose the matter to NDOT as described herein.

Proposers shall deliver all requests for waiver of an actual or potential Conflict of Interest to the Procurement Manager specified above.

### **3.3.2 Failure to Comply**

If a Consultant or Proposer fails to comply with this Policy (to include the submission and response process in [Section 3.8](#) below), including failure to comply with any mitigation measures imposed under this Policy, or otherwise fails to disclose an actual or potential Conflict of Interest, NDOT may, in its sole discretion:

- Preclude and/or disqualify the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had affiliated, from participation in the planning, procurement, design, and/or construction of the Project, including any competitive process associated therewith;
- Require the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had Affiliated, to implement mitigation measures;
- Segregate or terminate the Consultant and its Affiliates, including any Proposer with whom the Consultant is or had Affiliated, from planning, procurement, design, and/or construction of the Project; and/or
- Pursue any and all other rights and remedies available at law, in equity or set forth in the RFQ or subsequent Request for Proposals, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the Consultant's or Proposer's failure to comply with this Policy, including, but not limited to, costs resulting from third-party challenges to the procurement or NDOT's re-procurement of the Project.

### **3.4 Period in Which a Conflict of Interest Applies**

If NDOT Director or designee determines that the performance of services by a Consultant creates an actual or potential Conflict of Interest, the provisions in this Policy and any decisions made by NDOT related to such actual or potential Conflict of Interest (including prohibitions, mitigation measures, etc.) shall continue and apply for the duration of the planning, procurement, design, and construction of the Project, provided that NDOT Director or designee may, on a case-by-case basis and in his or her sole discretion, modify the length of this time period in writing if he/she determines that the modification is in the best interests of NDOT and the Project.

### **3.5 Application to Consultant Employees and New Employers**

If, in NDOT's determination, the performance of the Services described in this Policy raises a potential or actual Conflict of Interest for a Consultant, such Conflict of Interest shall apply individually to any employee of such Consultant that has participated in a material way in the performance of the Services on the Project. If such individual leaves the Consultant's employment, the potential or actual Conflict of Interest shall continue to apply to both the individual as well as the Consultant for the applicable period set forth in [Section 3.4](#) of this Policy. If a Conflict of Interest applies to an individual, the Conflict of Interest and prohibition with respect to the individual will not apply to the individual's new place of employment (subject to

the next sentence), unless the new employer is an Affiliate of the employee's previous employer. If the new employer is not an Affiliate of the previous employer and is otherwise eligible to perform Services for NDOT pursuant to this Policy and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigation measures may be required of the new employer with respect to the employee.

### **3.6 Federal and State Requirements**

#### **3.6.1 Federal Laws**

For federal-aid projects and in certain other circumstances, NDOT must comply with the Federal Highway Administration's organizational conflict of interest regulations found in 23 Code of Federal Regulations §636.116. NDOT reserves the right to cancel any contract without penalty or further obligation if any Person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of NDOT is, at any time while the contract or an extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. Proposers' attention is directed to such federal and state laws and regulations. Nothing in this Policy is intended to limit, modify, supersede or otherwise alter the effect of those laws and regulations, and NDOT will apply this Policy consistent with those laws and regulations.

#### **3.6.2 Limitations on NDOT Consents and Approvals**

To the extent that application of the federal and state laws and regulations described in Section 3.6.1 of this Policy would preclude or limit participation by a Consultant or an individual with respect to the Project, then notwithstanding any other aspect of this Policy or any contrary decision by NDOT in response to an actual or potential Conflict of Interest under this Policy, such federal and state laws and regulations shall control and be determinative. Under no circumstances shall a decision, approval or consent by NDOT in response to a disclosure, request or actual or potential Conflict of Interest under this Policy be considered an opinion with respect to the applicability or effect of such federal and state laws or regulations, and Consultant shall bear all responsibility and liability for determining if a conflict under federal and/or state laws or regulations exists in relation to the Consultant's Services to NDOT or proposed work on the Project.

### **3.7 Reserved**

### **3.8 Determination Regarding Provision of Services for the Project**

#### **3.8.1 Discretion of NDOT**

Unless otherwise indicated in this Policy, all approvals, actions or discretion under this Policy and with respect to an actual or potential Conflict of Interest shall be within the sole discretion of NDOT.

#### **3.8.2 Determination Process**

In response to a disclosure under Section 3.3 above or information NDOT obtains independent of a Consultant or Proposer, and in response to requests for waiver, NDOT will conduct a review. NDOT Director or designee will determine whether a Consultant has an actual or

potential Conflict of Interest that should prevent the Consultant from (i) being a Proposer, (ii) participating as an equity owner, team member, consultant or subconsultant of or to a Proposer for the Project, (iii) having a financial interest in any of the foregoing entities with respect to the Project or (iv) otherwise participating in the design and/or construction of the Project. NDOT will also analyze what actions may be appropriate to avoid, neutralize or mitigate any actual or potential Conflict of Interest.

NDOT Director or designee retains the ultimate and sole discretion to act on behalf of NDOT hereunder and to determine on a case-by-case basis whether an actual or potential Conflict of Interest exists, whether to grant a waiver, and what actions may be appropriate to avoid, neutralize, or mitigate any actual or potential Conflict of Interest. Once NDOT Director or designee makes this determination, NDOT will send the Consultant a written notice regarding the decision and, if participation is approved, whether the approval and participation is limited or subject to the Consultant meeting certain conditions.

### **3.8.3 Determination Factors**

NDOT Director or designee will consider some or all of the following factors when making the determination:

**PART A** Whether the Consultant will not, or in the case of the previous performance of Services did not, have access to or obtain knowledge of confidential or sensitive information, procedures, policies, decisions and processes that does or could provide an unfair competitive advantage with respect to the procurement, design, or construction of the Project;

**PART B** Whether the data and information provided to the Consultant in the performance of the Services is either not material to the procurement for the Project or is generally available on a timely basis to all Proposers;

**PART C** The type of Services at issue;

**PART D** The particular circumstances at issue, including the Consultant's ability to effectively implement the safeguards described in Section 3.8.4 of this Policy, including an ethical wall, or to otherwise mitigate the Conflict of Interest in a manner satisfactory to NDOT;

**PART E** The specialized expertise, if any, needed by NDOT and Proposers to implement the Project;

**PART F** The period of time between the previous work for NDOT and the potential Conflict of Interest situation;

**PART G** Whether the Consultant's work for NDOT has been completed or is ongoing;

**PART H** The potential impact on the procurement and implementation of the Project, including impacts on competition;

**PART I** Whether, with respect to a Consultant's prior environmental services related to the Project, if any, a record of decision or finding of no significant impact has been issued for the Project; and

**PART J** Any other factors or circumstances deemed relevant by NDOT.

### **3.8.4 Restrictions, Conditions and Exceptions**

In order to address actual or potential Conflicts of Interest, NDOT Director or designee as part of providing his or her consent to the participation of a Consultant may, in his or her sole discretion:

- (a) Restrict the scope of Services the Consultant may be eligible to perform for NDOT or the Proposer team in order to further the intent and goals of this Policy; and
- (b) Condition a consent, approval, determination or exception as NDOT Director determines appropriate to further the intent and goals of this Policy, including by requiring the Consultant or Proposer to implement certain safeguards, including:
  - i) The execution of confidentiality agreements satisfactory to NDOT, which may, among other things, include the segregation and protection of information obtained as a result of the Consultant's prior or ongoing work for NDOT or from former or current NDOT employees; and/or
  - ii) The execution of ethical wall agreements satisfactory to NDOT, which (i) segregate certain personnel from participation in the Project, (ii) bar such personnel from communicating regarding the Project, the procurement or Services with any person working for or with the Consultant, and (iii) require implementation of procedures to prevent such personnel from accessing any files and communications of the Consultant regarding the Project, the procurement or Services; and/or
  - iii) The execution of agreements satisfactory to NDOT regarding the dissemination of work product and materials created as a result of the Consultant's prior or ongoing work for NDOT, including dissemination to NDOT and restrictions on dissemination by the Consultant to any Proposer team, including a team on which they intend to participate.

### **3.8.5 Withdrawal or Amendment of NDOT Consents and Approvals**

NDOT shall not withdraw or amend a prior consent or approval granted to a Consultant under this Policy unless:

- a. The application of the federal and state laws and regulations described in Section 3.6 of this Policy requires the consent or approval to be withdrawn or amended; or
- b. NDOT decides, in its sole discretion, to withdraw or amend the consent or approval based on factual circumstances that NDOT has been made aware of that were not disclosed when NDOT made its original decision, or factual

circumstances that are new or have changed since NDOT made its original decision; or

- c. The Consultant or Proposer team fails to comply with any mitigation measures imposed under this Policy.

### **3.9 Procurement and Financial Services**

Independent of the process described in Section 3.8 of this Policy, a Consultant actively engaged in performing procurement services or financial services with respect to the Project may not be a Proposer or participate as an equity owner, team member, consultant or subconsultant of or to a Proposer for the Project, or have a financial interest in any of the foregoing entities with respect to the Project.

### **3.10 Multiple Services**

If a Consultant is providing more than one category or type of Services to NDOT for the Project (e.g., environmental services as well as procurement services) and there are differences in this Policy's considerations, standards, restrictions, limitations and outcomes applicable to those categories or types of Services, the standards, restrictions, limitations and outcomes applicable to a category that are more stringent will be applied (e.g., if a Consultant were only providing preliminary engineering services that have been completed, they may be approved to participate on a Proposer team, whereas, if they were also providing ongoing procurement services for the Project, they may not be approved to participate on a Proposer team).

### **3.11 Provisions are Nonexclusive**

The provisions in this Policy do not address every situation that may arise in the context of NDOT's planning, procurement, design, or construction of the Project nor require a particular decision or determination by NDOT Director or designee when faced with facts similar to those described in this Policy. In addition, at any time NDOT may impose additional policies, procedures and limits related to conflicts of interest or similar issues with respect to the Project or any other NDOT projects.

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**ATTACHMENT 2:**  
**FORM OF PRE-CONSTRUCTION SERVICES AGREEMENT**

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**ATTACHMENT 3**  
**NDOT CONCEPT PLANS AND QUANTITIES**

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# Appendix E

## CM/GC Pre-Construction Services Scope of Work Example



#### Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in a CM/GC contract.

The official RFP will need to be tailored for the project specifics.

## Example of a Typical Pre-Construction Scope of Work

The CM/GC Contractor is being selected to join the Project Team for this Project. The CM/GC Contractor will be expected to provide the Project Team with construction expertise and technical experience, to assist in Project decision-making and ensure the technical, social and economic challenges are addressed, and provide input on items affecting construction schedule and costs.

### Scope of Work (Pre-Construction Services)

The CM/GC Contractor shall consult with the Project Team during the pre-construction phase in order to develop, implement and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all.

As part of the designer, the CM/GC Contractor will provide input on schedule, phasing, constructability, materials availability, cost, etc. throughout the design development of the Project. The CM/GC Contractor tasks during the pre-construction phase include:

- Provide a Project Manager and associated staff to consult with, advise, assist, and provide recommendations to NDOT and the designer on all aspects of the planning, design, and proposed construction, as requested by NDOT. This may require the CM/GC Contractor's staff to be integrated at the designer's co-located facility.
- Attend an initial Project workshop that includes the following agenda items:
  - Introduction to the Project Team
  - Introduction of the Project Stakeholders
  - Project status, goals, objectives, funding, etc.
  - Presentation of Project elements.
  - Identify Project risks and provide input that will be used to develop a risk management plan.
  - Question and answer session.
- Participate in Project Team meetings with NDOT and the designer. It is anticipated that Project Team meetings will be held each week in \_\_\_\_\_.
- Participate in formal milestone reviews meetings, which are anticipated to occur during at the 30%, 60%, and 90% design submissions. For each milestone review meeting, provide the following services:
  - Participate in formal constructability, material, equipment and labor availability reviews. These formal reviews will focus on identifying revisions to improve clarity for bidding, identifying potential design revisions that would reduce construction costs, and identifying elements to improve the time performance of the Project.
  - Participate in formal risk workshops with NDOT and NDOT's designer. The focus of the risk workshops will be to identify potential risks and to assign cost and schedule impacts to each risk in order to better define pricing and contingency.
  - Assist NDOT and the designer with the selection process of design elements that assists in meeting Project goals.
  - Provide progressively refined Opinion of Probable Construction Cost (OPCC) estimates and participate in pricing reconciliation meetings for each work package.

- Prepare and submit a CPM schedule that supports each OPCC estimate and bid.
  - Provide written reports and recommendations of the conceptual drawings being prepared by NDOT and the designer, including conflicts and/or deficiencies noted.
- Continually provide informal oversight and constructability reviews with the Project Team on various specific elements of the Project and provide recommendations, including providing input on staging, sequencing, equipment storage, detour routes, traffic control, storm water management, accelerated bridge construction techniques, evaluation of bridge types, and materials that may be cost-effectively recycled during construction.
- Identify any long lead items that may cause schedule impacts.
- Develop and formulate a Subcontracting Plan to integrate subcontractors as needed to accomplish all construction work. Identify the proposed plan to meet Disadvantaged Business Enterprise (DBE) and veteran-owned small business contract goals for each separate and severable work package.
- Help ensure that environmental commitments are implemented during construction including those from permits as applicable through review of design and permit applications. NDOT will provide the CM/GC Contractor with anticipated timelines required to obtain the necessary environmental clearances and permits on this Project. Provide input on temporary construction or staging activities that may require additional environmental permits based on the proposed construction operations. Clearly reflect in the baseline CPM schedule the times required to obtain these clearances and permits. Identify time and cost impacts associated with schedule slippage and propose mitigation measures to minimize these impacts. Provide constructability feedback on mitigation measures proposed in the design plans.
- Assist NDOT and designer in preparing the draft and final submissions of a Storm Water Pollution Prevention Plan as applicable to local jurisdictional requirements.
- Develop, propose, and track innovations for Project construction. Document and track cost savings and schedule impacts associated with innovations in a written report to the NDOT.
- Coordinate with Project stakeholders in conjunction with NDOT and the designer.

### Scope of Work (Bid Validation Process)

When NDOT and the CM/GC Contractor agree that the Project has been designed to a sufficient level of detail to allow for a constructible and biddable Project or work package, the CM/GC Contractor will be given an opportunity to provide a bid to construct the Project. It is anticipated that the bid required on this Project will be a unit price bid based on bid schedule as is used by NDOT in DBB contracting. However, NDOT's Project Manager and the CM/GC Contractor may also elect to utilize other contract payment provisions, including Lump Sum bids or a Guaranteed Maximum Price bid. When preparing to submit a bid for the work, the CM/GC Contractor shall perform the following tasks:

- Participate in pre-bid plan workshop in order to review and provide final input on the Issue for Bid plans and specifications prepared by the designer.
- Participate in the final risk workshop for the Project or work package. Provide final input to NDOT regarding Project risks and clarify risk assumptions and assignments in preparation for submitting a bid for the work.
- Prepare and submit a Construction Service Cost proposal or bid (utilizing NDOT's bidding software) to NDOT for the Project or work package, including a cost model narrative in accordance with the process outlined in the CM/GC Bid Validation Process document on NDOT's CM/GC website.

- Include with the bid a detailed baseline cost and resource loaded CPM schedule to serve as the Project baseline schedule, which identifies all activities during construction. The schedule shall clearly identify milestones, showing the proposed start and finish dates and include a narrative that clearly describes the assumptions that were used to derive item prices (e.g., crew sizes, production rates, and other requirements outlined in Standard Specification \_\_\_\_\_).
- Include a narrative description about how the CM/GC Contractor will meet the DBE goal for the particular work package or the entire project. DBE participation goal will be established as early in the design process as possible.
- Include a narrative description of all other inclusions to, or exclusions from the bid, including all assumptions and clarifications that support the bid prices.
- NDOT will review the CM/GC Contractor's bid using the process outlined in these CM/GC Procedures.
  - Participate in the pricing reconciliation process, if needed, to reconcile differences.
  - If NDOT successfully validates the CM/GC Contractor's bid, NDOT will accept the CM/GC Contractor's bid and NDOT will prepare a construction contract based on the CM/GC Contractor's bid. The contract amount will include funding for any provisional contingency items included in the contract. However, the CM/GC Contractor will not be entitled to payment for any provisional contingency items without justification and authorization from NDOT.
  - If the prices are not acceptable, NDOT will enter into a process of risk identification that identifies price differences between the CM/GC Contractor and the ICE. Following the resolution of these risk issues, the CM/GC Contractor will have the option to re-bid the Project. NDOT has the option to accept the revised price or terminate the *Pre-Construction Agreement* without penalty or payment (except payment for pre-construction services already performed) and procure the construction of the Project by some other method or re-advertise the CM/GC Contract. If there are multiple work packages on a project, the CM/GC Contractor will be allowed to continue to perform construction services for previously awarded work packages, but NDOT will procure the construction of future work packages by another procurement method or by re-advertising the CM/GC Contract.
- The CM/GC Contractor's bid will not be exceeded except as allowed for quantity over-runs or changed conditions as defined in the NDOT *Standard Specifications*. However, when considering additional compensation for changed conditions, NDOT will consider the fact that the CM/GC Contractor participated in the design effort during the pre-construction phase and therefore has a more thorough understanding of the assumptions and risks which should have been reflected in the bid or in the provisional contingency items.

**Awarding Contracts for Severable Work Packages:** If NDOT elects to progress this project using severable work packages, NDOT may require the CM/GC Contractor to submit a **GMP** or **TMP** prior to awarding a contract for a severable work package. A GMP or TMP is a good-faith estimate of construction costs that are covered in a subsequent OPCC estimate(s) required to complete all work packages on a project. It is used by NDOT to confirm that the overall construction scope can be completed within the available project budget. A GMP or TMP is based on the assumptions and risks that are known at the time the estimated costs are submitted to NDOT. The CM/GC Contractor's GMP or TMP is supported by an estimating/cost model and narrative similar to OPCC estimates. When the CM/GC Contractor submits a GMP or TMP, NDOT assumes that the CM/GC Contractor intends to construct the overall project at or below the GMP or TMP, subject to documentable changes in bidding assumptions or scope that affects pricing. Exact timing for requesting a GMP or TMP from the

CM/GC Contractor is evaluated on a project-by-project basis based on design progression and project risks.

**Scope of Work (Construction Services)**

If NDOT is able to successfully validate the CM/GC Contractor's bid and the CM/GC Contractor complies with DBE requirements and all other conditions of award, the CM/GC Contractor shall:

- Execute a construction contract with NDOT.
- Construct and manage all construction related contracts while meeting all Project requirements and Federal Contract requirements, as per NDOT *Standard Specifications* and the prepared bid package.
- Substantially complete the construction no later than specified in the construction contract.

# Appendix F

## Design-Build RFQ Example



### Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the RFQ.

The official RFQ will need to be tailored for the project specifics.



**Nebraska Department of Transportation**

**Request for Qualifications (RFQ)  
Design – Build Project**

**Lincoln, Nebraska**

**NE Control Number:**

**Project Number:**

**Project [INSERT PROJECT NAME]**

**Nebraska Department of Transportation**

**1500 Highway 2**

**Lincoln, Nebraska 68502**

**Mailing address: P.O. Box 94759**

**Lincoln, NE 68509-4759**

**[INSERT PROJECT PICTURE]**

**Key RFQ Dates:**

Issue Request for Qualifications

Final Date for Receipt of Design-Build Teams'  
Questions

Statement of Qualifications Due Date

# Table of Contents

<b>1</b>	<b>Introduction and General Instructions</b>	<b>1</b>
1.1	Abbreviations	1
1.2	Definitions	1
1.3	Project Goals	4
1.4	Role of the Department	4
1.5	Design-Builder Responsibilities and Project Status	5
1.6	Federal Requirements	5
1.7	Overall Procurement Process	5
1.8	Contract Type	5
1.9	Addenda	6
1.10	Questions and Clarifications	6
1.11	Rules of Contact	6
1.11.1	Communication Process	7
1.12	Pre-Contractual Expenses and Stipend	7
1.13	Conflict of Interest	8
1.14	Design-Build Team Requirements	8
1.15	Equal Employment Opportunity	8
1.16	DBE Goal	9
1.17	Labor Policies	9
1.18	Insurance, Bonds, and Guarantees	9
<b>2</b>	<b>Background Information</b>	<b>10</b>
2.1	Project Description	10
2.2	Procurement Schedule	10
2.3	The Department Advisors/Consultant Support	11
<b>3</b>	<b>Content of Statement of Qualifications</b>	<b>11</b>
3.1	Design-Build Team's Transmittal Letter	11
3.2	Legal Structure	11
3.2.1	Minimum Requirement for Legal Structure	12
3.3	Financial Capacity	13
3.3.1	Minimum Requirement for Financial Capacity	13
3.4	Safety Program	13
3.4.1	Minimum Requirement for Safety Program	14

3.5	Firm Experience and Past Performance.....	14
3.5.1	Firm Experience and Past Performance Evaluation Criteria .....	15
3.6	Design-Build Team Organization and Key Personnel .....	16
3.6.1	Preferred Qualifications of Key Personnel.....	17
3.6.2	Changes in Design-Build Team Organization and Key Personnel.....	19
3.7	Project Understanding and Approach.....	20
3.8	Quality Assurance Program.....	20
<b>4</b>	<b>Evaluation Process .....</b>	<b>21</b>
4.1	SOQ Evaluation.....	21
4.2	Evaluation Objective.....	21
4.3	SOQ Evaluation Factors .....	21
4.3.1	Initial Responsiveness Review.....	22
4.3.2	Non-Scored SOQ Categories .....	22
4.3.3	Scored SOQ Categories.....	22
4.4	Evaluation and Scoring Process.....	23
4.5	Notification of Short Listing .....	23
<b>5</b>	<b>SOQ Submittal Requirements .....</b>	<b>23</b>
5.1	General Requirements.....	23
5.2	Due Date, Time, and Location.....	24
5.3	Format Requirements .....	24
5.4	Quantities.....	24
5.5	Challenges.....	24
<b>6</b>	<b>Protest Procedures and Public Records Act .....</b>	<b>25</b>
6.1	RFQ Protest.....	25
6.1.1	Written Protest Only .....	25
6.1.2	Protest Contents.....	25
6.1.3	Protest Regarding RFQ or Procurement Process .....	26
6.1.4	Protest Regarding Pre-Qualification Decision .....	26
6.1.5	Right of Appeal.....	27
6.2	Public Records Act .....	27
<b>7</b>	<b>Debriefing Meetings .....</b>	<b>28</b>
<b>8</b>	<b>The Department’s Reserved Rights.....</b>	<b>28</b>

APPENDIX A: PROJECT DESCRIPTION, DESIGN-BUILDER RESPONSIBILITIES, AND PROJECT STATUS

APPENDIX B: FORMAT AND ORGANIZATION OF STATEMENT OF QUALIFICATIONS

APPENDIX C: FORMS

ATTACHMENT 1:        SCORING FORM

**Subject: Notice of Request for Qualifications  
for a Design-Build Contract  
for Project A [Insert Name Of Project]**

Gentlemen/Ladies:

The Nebraska Department of Transportation (“Department”) invites Statements of Qualifications (“SOQs”) from entities (“Design-Build Teams”) wishing to submit proposals to design and construct [Project Name] (“Project”) through a design-build contract. The Department is issuing this Request for Qualifications (“RFQ”) pursuant to the Nebraska Transportation Innovation Act (Nebraska Revised Statute 39-2801 *et seq.*). The Department plans to request proposals from short-listed firms to perform design-build services. Pre-qualification will be based on the SOQs provided by responding firms, as set forth herein, and not on the Department’s traditional pre-qualification process.

Design-Build Teams are advised that the Design-Builder will be required to hold a State of Nebraska contractor’s license.

**SOQs must be submitted no later than 3:00 p.m. Central Standard Time on \_\_\_\_\_.**

The Design-Build Team’s SOQ will have certain page limitations. See the attached Format and Organization of Statements of Qualifications Appendix B for further details regarding submission of SOQs.

SOQs delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Nebraska Department of Transportation  
1500 Highway 2  
Lincoln, NE 68502**

**Attention: [NDOT Project Manager’s Name], [NDOT Project Manager’s Title]**

SOQs delivered using the U.S. Postal Service shall be addressed as follows:

**Nebraska Department of Transportation  
P. O. Box 94759  
Lincoln, NE 68509-4759**

**Attention: [NDOT Project Manager’s Name], [NDOT Project Manager’s Title]**

SOQs and amendments to SOQs received after the date and time specified above will be returned to the Design-Build Teams unopened. Faxed or electronically submitted SOQs will not be accepted.

It is the Department’s intent that all firms obtain the full content of this Request for Qualifications, Attachments, Appendices, Response to Questions, and all Addenda via the Department’s website located at: <http://www.transportation.nebraska.gov/>. The RFQ contains specific protocols relating to discussion and other communications regarding this RFQ. Any violation of these provisions may result in immediate disqualification of a Design-Build Team from further consideration with regard to the Project.

Prospective firms are encouraged to promptly notify the Department of any apparent inconsistencies, problems, or ambiguities in the RFQ.

# 1 Introduction and General Instructions

The Nebraska Department of Transportation (“Department”) hereby requests Statements of Qualifications (“SOQs”) from entities (“Design-Build Teams”) interested in submitting proposals for the design and construction of [Project Name] (“Project”) through a design-build contract. The Project, further defined in Appendix A, is intended to address the \_\_\_\_\_, and the Department is using the design-build procurement to reduce cost and expedite completion of the Project.

The Department is issuing this Request for Qualifications (“RFQ”) pursuant to the Nebraska Transportation Innovation Act (Nebraska Revised Statute 39-2801 *et seq.*). The Project will consist of \_\_\_\_\_, as further defined in Appendix A, which will be funded with Federal-aid dollars, thereby requiring that the successful Design-Build Team adhere to all pertinent Federal requirements.

The purpose of this document is to solicit information, in the form of SOQs, which the Department will evaluate to short-list the [INSERT QUANTITY] most qualified Design-Build Teams.

**Only the short-listed Design-Build Teams will be eligible to submit proposals for the Design-Build services for the Project.**

## 1.1 Abbreviations

The following abbreviations are used in this document and are defined as shown below:

<b>DBE</b>	Disadvantaged Business Enterprise
<b>EEO</b>	Equal Employment Opportunity
<b>FHWA</b>	Federal Highway Administration
<b>IA</b>	Independent Assurance
<b>NDOT</b>	Nebraska Department of Transportation
<b>OJT</b>	On the Job Training
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>SOQ</b>	Statement of Qualifications
<b>TRC</b>	Technical Review Committee

## 1.2 Definitions

The following terms are used in this document and are defined as shown below:

Term	Definition
<b>Acceptance</b>	All factors used by the Department to evaluate the degree of compliance with contract requirements and to determine the corresponding value for a given product. Acceptance activities for Design include reviews of plans, specifications, and other documents prepared by the Design-Builder. Construction Acceptance activities include sampling, testing, and inspection of Design-Builder's Work
<b>Addenda/Addendum</b>	Supplemental additions, deletions, and modifications to the provisions of the RFQ issued after the advertisement date of the RFQ.
<b>Affiliate</b>	Includes parent companies, subsidiary companies and partners (in the reporting entity), and other financially liable parties for that entity.
<b>Contract</b>	The written agreement between the Department and the Design-Builder setting forth the obligations of the parties with respect to the Project, including, but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.
<b>Conflict of Interest</b>	Shall mean a circumstance arising out of a Design-Build Team member's existing or past activities, including past activities as a consultant to or employee of the Department, business interests, familial relationships, contractual relationships, and/or organizational structure (i.e., Affiliates, etc.) wherein (i) the Design-Build Team member is or may be unable to render impartial assistance or advice to the Department, (ii) the Design-Build Team member's objectivity in performing the scope of work sought by the Department is or might be otherwise impaired, (iii) the Design-Build Team member has, or is perceived to have, an unfair competitive advantage; (iv) the Design-Build Team member's performance of services on behalf of the Department does or may provide an unfair competitive advantage to a third party; or (v) regardless of whether accurate, there is a perception or appearance of impropriety or unfair competitive advantage benefiting the Design-Build Team member or a third party as a result of the Design-Build Team member's participation on the Project.
<b>Design-Builder</b>	The team, if any, which is selected pursuant to the RFP by the Department to design and construct the Project.
<b>Designer</b>	The Major Participant or in-house designer of the contractor that has primary responsibility for design services for the Project. The designer is the engineering firm of record who will have primary responsibility for design work under the contract. "Firm" shall mean the firm that employs the Design Manager.
<b>Disadvantaged Business Enterprise (DBE)</b>	A for-profit small business concern as defined in 49 CFR Part 26.

Term	Definition
<b>Final Acceptance (FA)</b>	Written confirmation by the Department that the Project has been completed in accordance with the Contract, with the exception of latent defects and warranty obligations, if any, and has been accepted.
<b>Independent Assurance (IA)</b>	Activities that are an unbiased and independent evaluation of all the sampling and testing/inspection procedures used in the Quality Assurance program. Independent Assurance provides an independent verification of the reliability of the Acceptance (or Verification) data obtained by the Department and the Quality Control data obtained by the Design-Builder. The results of Independent Assurance testing or inspection are not to be used as a basis of acceptance. Independent Assurance provides information for Quality System management. The Independent Assurance for the Project will be performed by the Department or the Department's representative.
<b>Key Personnel</b>	Individuals from the Design-Build Team's organization, as identified in the Design-Build Team's SOQ, to fill the positions specified in <u>Section 3.6</u> of the RFQ. Additional key personnel positions for the Project may be identified in the RFP.
<b>Major Participant</b>	<p>Each of the following entities on the Design-Build Team's team:</p> <p>All partners or joint venture members;</p> <p>All individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional corporations, limited liability companies, business associations, or other legal entity however organized, holding (directly or indirectly) a 15% or greater equity interest in the Design-Build Team; and/or</p> <p>The lead engineering/design firm(s) (firms, partnerships, or joint venture members) and each engineering/design sub-consultant that will perform 20% or more of the design work.</p>
<b>Project</b>	[Project Name], which is the subject of this RFQ
<b>Proposal</b>	The proposal submitted by the Design-Build Team in response to the RFP, including any revisions thereto.
<b>Design-Build Team</b>	The entity comprised of an individual, person, proprietorship, firm, partnership, limited liability partnership, professional corporation, limited liability company, business association, corporation, joint venture, combination thereof, or other legal entity however organized, participating in the procurement process for the Project and that if successful, will enter into the Contract with the Department to design and construct the Project.
<b>Quality Assurance (QA)</b>	All policies and processes planned, implemented and verified, to ensure that a product or facility will perform satisfactorily in service. This includes development of specifications, integrated design to incorporate input from all relevant project participants, and the auditing and verification of quality control functions, such as through Independent Assurance and Testing, Laboratory Accreditation and Qualification, Personnel Qualification and Certification, and Dispute Resolution.



Term	Definition
<b>Quality Program</b>	The core programmatic elements required for Design Quality Assurance implementation and Construction Quality Assurance implementation.
<b>Quality Control (QC)</b>	The system used by the Design-Builder to monitor, assess and adjust their production or placement processes to ensure that the final product will meet the specified level of quality. Quality Control includes review and checking of design and construction documents, sampling, testing, inspection, evaluation, and corrective action (where required) to maintain continuous control of a production or placement process.
<b>Request for Proposals (RFP)</b>	A written solicitation issued by the Department seeking Proposals to undertake the Project to be used to identify the Design-Build Team offering the best value to the Department. The RFP will be issued only to short-listed Design-Build Teams.
<b>Request for Qualifications (RFQ)</b>	The written solicitation issued by the Department by which it may determine a limited number of the most qualified Design-Build Teams to be short-listed and therefor eligible to receive the RFP for the Project.
<b>Statement of Qualifications (SOQ)</b>	The information prepared and submitted by a Design-Build Team in response to this RFQ.
<b>Work</b>	The furnishing of labor, materials, equipment, and other incidentals necessary to, or convenient for the successful completion of, the design-build services for the Project and the carrying out of the duties and obligations imposed by the Contract.

### 1.3 Project Goals

The Department’s goals for the Project are:

- A. Minimize impact on the public during Project construction by reducing the number of closure days for the traveling public;
- B. Successfully deliver the Project no later than \_\_\_\_\_;
- C. Construct a high-quality Project with improved roadway safety that accommodates traffic volumes, bicyclists, and pedestrians, as defined within the Project scope;
- D. Maintain good public relations with all stakeholders during construction through an effective public information program and efficient maintenance of traffic; and
- E. Implement an effective safety program.

### 1.4 Role of the Department

In the context of the Project, the Department is responsible for:

- A. Serving as Project sponsor and lead agency in charge of overall program administration;
- B. Preparation of the RFQ and RFP, evaluation of SOQs and Proposals, determination of short-listed Design-Build Teams, and selection of Design-Builder;
- C. Contract procurement, award, and administration;

- D. Providing due diligence information and data included in the RFP;
- E. Acquisition of rights-of-way and permanent easements identified in the RFP;
- F. Owner acceptance, inspection, and testing;
- G. Final acceptance of the Work and payment for Work performed; and
- H. Relations with media, public, and public officials.

At the Department's sole discretion, it may use its consultants in fulfilling the responsibilities noted in this [Section 1.4](#).

## 1.5 Design-Builder Responsibilities and Project Status

See [Appendix A](#) for general descriptions of the Project, the Design-Builder responsibilities, and current project status. These general descriptions are currently under further development by the Department and could be changed, modified, reduced, or expanded with the release of the RFP.

## 1.6 Federal Requirements

Design-Build Teams are advised that the RFP will be drafted based on the assumption that the Project's plan of finance will remain eligible for Federal-aid funds, including Transportation Investment Generating Economic Recovery (TIGER) grants. Therefore, the procurement documents and any agreements thereunder must conform to requirements of applicable Federal law, regulations, and policies. These include Equal Employment Opportunity (Title VI of the Civil Rights Act of 1964, as amended), Disadvantaged Business Enterprises ("DBE") (Title 49 Code of Federal Regulations Part 26, as amended), Small Business requirements (United States Code sections 631 *et seq.*), Buy America requirements (49 Code of Federal Regulations Part 661), and Davis-Bacon wage rates. Details as to the extent and applicability of Federal requirements to the entire Project will be set forth in the RFP. The Department reserves the right to modify the procurement process described in this RFQ to address any concerns, conditions, or requirements of Federal agencies, including, but not limited to FHWA.

## 1.7 Overall Procurement Process

The procurement process for the Project consists of three steps. Step one starts with issuance of this RFQ and will result in the short-listing of [INSERT QUANTITY] potential Design-Build Teams eligible to receive the RFP. The second step includes issuance of an RFP to the short-listed Design-Build Teams requesting submittal of Proposals for a design-build contract for the Project and the Department's receipt and evaluation of Proposals. The third step will commence with the Department's selection of the apparent "best value" Design-Build Team and will conclude with Department approval and award of a Contract to the Design-Build Team that submitted the best value proposal, or with termination of the procurement. The Department will score the technical portion of the proposals based on criteria established in the RFP and use this score for the calculation of "best value". The method for determining "best value" will be clearly defined in the RFP. The Department, in its sole discretion, reserves the right, among others, to suspend, modify, or terminate this procurement at any time.

## 1.8 Contract Type

The Contract will be a fixed-price, lump-sum, design-build contract.

## 1.9 Addenda

The Department reserves the right to revise this RFQ by issuing addenda to this RFQ at any time before the SOQ due date specified in Section 2.2. The Department will post any addenda to this RFQ on the following website: <http://www.transportation.nebraska.gov/>.

Design-Build Teams are responsible for monitoring the website identified above for information concerning this procurement as teams responding to this RFQ will be required to acknowledge in the transmittal letter (Appendix C, Form A) that they have reviewed all materials posted thereon.

## 1.10 Questions and Clarifications

The Department will consider questions regarding the RFQ submitted by Design-Build Teams in writing, including requests for clarification and requests to correct errors. All such requests must be submitted in writing in the format shown on Appendix C, Form RFQ-C to the Department's Project Manager identified in Section 1.11. Only written requests will be considered. No oral requests or questions by phone will be accepted or considered. No requests for additional information or clarification to any other Department office, consultant, employee, or the FHWA or other agency will be considered.

Include an electronic copy of the questions on Appendix C, Form RFQ-C on compact disc (CD) or by electronic mail (e-mail) with the written request.

Questions must include the requestor's name, address, e-mail address, telephone and fax numbers, and the Design-Build Team he/she represents.

Design-Build Teams are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. The Department will provide responses to Design-Build Team clarification requests within a reasonable time following receipt, subject to the cut-off dates set forth in Section 2.2. The Department will post responses to those questions of general application and requests for clarifications on the following website: <http://www.transportation.nebraska.gov/>.

## 1.11 Rules of Contact

The following rules of contact shall apply during the procurement for the Project. These rules are designed to promote a fair, unbiased, legally defensible procurement process. Contact includes face-to-face, telephone, facsimile, e-mail, or formal written communication.

The Department's Project Manager will serve as the primary point of contact during the RFQ procurement phase of the Project. A core team of engineering, operations, contracts, and public relations staff members and advisors will support the Project Manager, including those groups listed in Section 2.3 below. As the Department point of contact, the Project Manager is the Department's sole contact person and addressee for receiving all communications about the Project during the RFQ procurement process, and Design-Build Teams are prohibited from contacting any Department employee or any of the groups listed in Section 2.3, regarding the Project or this RFQ. Submit any and all inquiries and comments regarding the Project by fax, e-mail, or letter as follows. Only written inquiries will be accepted:

Mr. [NDOT Project Manager's Name], P.E.  
Nebraska Department of Transportation

\_\_\_\_\_ Division

P.O. Box 94759

Mail: Lincoln, Nebraska 68509-4759

Fax:

E-mail:

The NDOT Project Manager is the only individual allowed to discuss this RFQ with any interested parties, including Design-Build Teams. Any information from other sources may not be accurate, and use of such information is at the sole risk of the Design-Build Team(s).

### **1.11.1 Communication Process**

The Department is the single source of information regarding the Contract procurement. The procurement process begins on the date of issuance of this RFQ, and is anticipated to be completed with the award of the Contract. The following rules of contact are now in effect:

- A. Contact between the Design-Build Teams and the Department (questions and responses to questions) shall only be through the Department's and Design-Build Team's designated representatives. The Department's designated representative is identified in Section 1.11;
- B. The Design-Build Teams shall not contact Department employees or advisors, including members of the evaluation committee(s) and any official who will participate in evaluation of the SOQs, regarding the Project;
- C. The Design-Build Teams shall not contact those parties identified under Section 2.3 regarding the Project;
- D. Any contact determined to be improper, at the sole discretion of the Department, may result in disqualification;
- E. Any official information regarding the Project will be disseminated in writing from the Department on Department letterhead and signed by the Department's primary point of contact identified in Section 1.11; and
- F. The Department will not be responsible for any oral communication or any other information or contact that occurs outside the official authorized communication process specified herein.

### **1.12 Pre-Contractual Expenses and Stipend**

Design-Build Teams are solely responsible for all of their own costs and expenses of any nature associated with responding to this RFQ, including attending briefing(s) and providing supplemental information.

The Department will establish a stipend for the Project during the RFP phase of the procurement process. Specific details regarding the maximum stipend amount to be paid out by the Department, a Design-Build Team's eligibility to receive a stipend, the timing of stipend release to eligible Design-Build Teams, and the terms of stipend acceptance will be described in the forthcoming RFP documentation.

### 1.13 Conflict of Interest

The Department has established a Conflict of Interest policy for all design-build projects. This policy specifies that no Design-Build Team member that has previously provided services or that is currently providing services to the Department with respect to the Project may participate as an equity owner, team member, consultant, or subconsultant of or to a Design-Build Team for the Project, or have a financial interest in any of the foregoing entities with respect to the Project (see [Section 2.3](#) for a list of consultants affected by this prohibition).

Design-Build Team members participating in the Project shall arrange their affairs so as to prevent Conflicts of Interest from arising. Any Design-Build Team member having an actual, potential or perceived Conflict of Interest shall disclose the matter to the Department in writing. A private entity's failure to comply with this requirement may result in potential liability to the Department and to the private entity's preclusion from participation in the Project.

### 1.14 Design-Build Team Requirements

**Completion Capability:** Only prospective Design-Build Teams that have demonstrated the capability to complete this Project in its entirety will be eligible for short-list determination.

**Organizational and Personnel Changes:** Design-Build Teams are advised that, in order for a Design-Build Team to remain qualified to submit a Proposal after they have been short-listed, their organization, including all Major Participants, specialty subcontractors, and Key Personnel identified in the SOQ, must remain intact for the duration of the procurement process and thereafter throughout the term of the Contract. A Design-Build Team may propose substitutions for participants after the SOQ submittal; however, such changes will require prior written approval by the Department, which may be granted or withheld at the Department's sole discretion. Requests for changes must be made in writing no later than 30 days prior to the due date for submittal of Proposals. The Design-Build Team should carefully consider the make-up of its team prior to submittal of the SOQ. Unapproved changes to the Design-Build Team's organization will be justification for the Department to revoke a previous determination of a short-listed Design-Build Team.

**Minimum Requirements:** In order to be short-listed, the Design-Build Team must meet all SOQ requirements as set forth in [Section 4.3.1](#), meet the minimum passing criteria for legal, financial, and safety requirements as set forth in [Section 4.3.2](#) for non-scored elements of the SOQ, and obtain a passing score on each of the scored elements of the SOQ as set forth in [Section 4.3.3](#).

**Non-Disclosure Requirement:** The Design-Build Team may be given access to records, which are confidential under State laws, solely for the purpose of performing the required services under the Contract. The Design-Build Team shall be required to sign a non-disclosure statement prior to its receipt of such documents obligating each employee, agent, or subcontractor of the Design-Build Team not to make inappropriate use of or improperly disclose any of the contents of such documents.

### 1.15 Equal Employment Opportunity

In connection with this RFQ and the Contract, Design-Build Teams shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, sexual orientation, or being physically challenged. Design-Build Teams shall take affirmative action to ensure that all applicants are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being physically challenged. Such action shall include, but not be limited to, the following: layoff or

termination; rates of pay or other forms of compensation; employment; job assignment; upgrading; demotion; transfer recruitment/recruitment advertising; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training. Davis-Bacon wage rates are required.

## 1.16 DBE Goal

**Policy:** The Department shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of 49 CFR Part 26. For Federal-aid contracts, projects are subject to U.S. DOT DBE Design-Build provisions as set forth under Title 49 CFR Part 26 and subsequent publication of the Federal Register dated June 16, 2003 (Volume 68, Number 115). The Design-Build Teams shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this Project.

As a part of the SOQ submission, Design-Build Teams responding to this RFQ must include with their submission a signed affidavit acknowledging the Firm's commitment to comply fully with U.S. DOT DBE Design-Build provisions as set forth under Title 49 CFR Part 26 and subsequent publication of the Federal Register dated June 16, 2003 (Volume 68, Number 115) and the Overall Project DBE Goal requirements as further defined in the RFP, when issued. Design-Build Teams shall complete and return Appendix C, Form T as part of the SOQ.

**DBE Participation Goal:** The "Provisional" Overall Project DBE Goal has been established at [INSERT]%. The Department is currently in the process of securing required approvals of the proposed Overall Project DBE goal from U.S. Department of Transportation (U.S. DOT).

## 1.17 Labor Policies

**Prevailing Wages:** State prevailing wages will apply to this contract. For Federal-aid contracts, Federal prevailing wages will also apply. The applicable prevailing wages will be specified in the RFP.

**On the Job Training (OJT) Policy:** For Federal-aid contracts, projects are subject to Federal OJT participation provisions as set forth under the FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts. Firms responding to this RFQ acknowledge such requirements and commit to fully comply with the Design-Build program provisions and Federal OJT trainee participation goal.

**OJT Participation Goal:** The Federal OJT participation goal for this Design-Build project is [INSERT QUANTITY] Trainees.

**Labor Compliance Program:** The Department has a labor compliance program. The Design-Builder will need to comply with applicable requirements of the program. Further information regarding the labor compliance program will be included in the RFP.

## 1.18 Insurance, Bonds, and Guarantees

**Bond Requirements:** It is currently anticipated that the selected Design-Build Team will be required to submit payment and performance bonds upon execution of the Contract, each in the amount of \_\_\_\_ million. Design-Build Teams will be required to demonstrate their capacity to obtain the required bonds.

Design-Build Teams shall attach a notarized statement from an admitted surety insurer authorized to issue bonds in the State of Nebraska that states:

- Design-Build Team’s current bonding capacity is sufficient for the Project and referenced payment and performance bonds; and
- Design-Build Team’s current available bonding capacity.

**Insurance Requirements:** Design-Build Teams shall provide evidence of capability to obtain insurance as provided in Section 3.3 (D). In addition, the selected Design-Builder will be required to indemnify the Department, the Department’s Consultants and others with respect to claims arising out of the Contract or Work.

**Guarantees:** Design-Build Teams are advised that if any Major Participant of the selected Design-Build Team does not have audited financial statements as described in Section 3.3, or if the Design-Build Team is a newly formed entity or a limited liability entity, or if it fails to meet the minimum financial requirements stated in this RFQ and/or the RFP, the Department may require the Design-Build Team to provide a guarantee from a separate entity acceptable to the Department, to cover the Team’s performance and financial obligations with regard to the Project. Design-Build Teams shall also note that the Department may, in its discretion and based upon its review of the information provided under Section 3.3, also specify that an acceptable guarantor is required as a condition of a determination of short-listing. Requirements for additional financial security will be included in the RFP.

## 2 Background Information

### 2.1 Project Description

The Project is located in \_\_\_\_\_, Nebraska. A general description of the Project is contained in Appendix A.

The estimated cost of this Design-Build project (in 2016 U.S. dollars) is \_\_\_\_\_.

### 2.2 Procurement Schedule

The Department anticipates the following dates as Project milestones leading to Contract award. This schedule is subject to revision, at the sole discretion of the Department, by the RFP and/or Addenda.

Event	Date
Issue RFQ	[INSERT DATE]
Final Date for Receipt of Design-Build Teams’ Questions	
SOQ Due Date	
Anticipated Shortlist Determination	
Anticipated Issuance of Draft RFP	
Anticipated Issuance of Final RFP	

Anticipated Proposal Due Date	
Anticipated Notice of Selection	
Anticipated Award & Notice to Proceed	

### 2.3 The Department Advisors/Consultant Support

The Department has engaged advisors/consultants to assist and participate in the Project development stages, as well as assist the Department during the procurement process for the Project. Any advisory team member is prohibited from participating in any of the Design-Build Team organizations relating to this Project; providing technical, legal, or financial advice to Design-Build Teams; or directly discussing any aspect of the RFQ or RFP with any Design-Build Team.

The advisory team consists of the following:

- \_\_\_\_\_ Company
- \_\_\_\_\_ Company
- \_\_\_\_\_ Company

## 3 Content of Statement of Qualifications

This section describes specific information that must be included in the SOQ. SOQs must follow the outline of Section 5. Design-Build Teams shall provide brief, concise information that addresses the requirements of the Project consistent with the evaluation criteria described in this RFQ.

### 3.1 Design-Build Team’s Transmittal Letter

The Design-Build Team shall complete Appendix C, Form A. A duly authorized representative of the Design-Build Team’s organization shall sign the letter. For Design-Build Teams that are joint ventures, partnerships, limited liability companies, or other associations, authorized representatives of all equity members of the Design-Build Team shall sign the letter.

The Design-Build Team shall complete Appendix C, Form U (Design-Build Team SOQ Certification), verifying the accuracy of the information submitted as part of the SOQ. For Design-Build Teams that are joint ventures, partnerships, limited liability companies, or other associations, authorized representatives of all equity members and major participants of the Design-Build Team shall sign the Design-Build Team SOQ Certification.

### 3.2 Legal Structure

**Objective:** To select Design-Build Teams whose organization, legal structure, team members, and history demonstrate the Design-Build Teams’ ability to remain stable and viable for the duration of the Project, so to be able to fulfill their contractual obligations to the Department.

**Submittal Requirements:** Design-Build Teams shall address the following and submit it under Section 1 of the SOQ:



- A. Legal structure of the Design-Build Team and its organization. If the Design-Build Team organization has already been formed, provide complete copies of the organizational documents. If the Design-Build Team organization has not yet been formed, provide a brief description of the proposed legal structure or draft copies of the underlying agreements. In the event that agreements between Major Participants have not been finalized at the time of the SOQ submittal, Major Participants shall submit letters of agreement signed by an authorized officer of each Major Participant noting the type of relationship to be entered into prior to the Proposal (i.e., joint venture, subcontract), and the commitment of the parties to finalize the organizational documents prior to the Proposal submittal. If Design-Build Team is a partnership, joint venture, or other association, the SOQ must identify the percentage equity interest of each member;
- B. If the Design-Build Team is a partnership, limited partnership, joint venture, or other association, all members of the Design-Build Team must agree to be fully liable for the performance under the design-build Contract by executing the transmittal letter appearing in Appendix C, Form A;
- C. Name and describe all Major Participants as defined in this RFQ;
- D. A statement from the Design-Build Team identifying any actual and/or potential conflicts of interests the equity members and major participants may have with other clients they represent (refer to Section 1.13);
- E. In cases where Major Participants on different Design-Build Team organizations belong to the same parent company, each Design-Build Team must describe how conflicts of interest would be avoided by the participants through the qualification and proposal phases of the Project. The Department may disqualify a Design-Build Team if any of its Major Participants belong to more than one Design-Build Team organization;
- F. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team shall complete Forms L-1 and L-2 found in Appendix C; and
- G. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team shall complete Form T found in Appendix C.

### **3.2.1 Minimum Requirement for Legal Structure**

A Design-Build Team must demonstrate the following:

- A. The Design-Build Team has the legal capability to conduct business in the State of Nebraska and to carry out the Project responsibilities potentially allocated to it, as demonstrated by the materials provided in Section 1 of the SOQ;
- B. Each of the equity members of the Design-Build Team have agreed to be jointly and severally liable for performance under the Contract, as reflected in the executed Transmittal Letter, Appendix C, Form A;
- C. The Design-Build Team has agreed to adhere to the Project's DBE requirements as provided in Appendix C, Form T; and
- D. The information disclosed in the SOQ (including Forms L-1, and L-2) does not materially adversely affect the Design-Build Team's ability to carry out the Project responsibilities potentially allocated to it.

### 3.3 Financial Capacity

**Objective:** To select Design-Build Teams whose team members possess the financial capacity to successfully complete the Project.

**Submittal Requirements:** Design-Build Team shall address the following and submit it under Section 2 of the SOQ:

- A. Provide a letter or other written documentation from a surety or insurance company stating that the Design-Build Team is capable of obtaining a Performance Bond and a Payment Bond (refer to Section 1.18 for bond amounts) covering the Project and any warranty periods. Letters indicating “unlimited” bonding capability are not acceptable;
- B. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team shall complete Form B (Backlog and Financial Information) found in Appendix C;
- C. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team shall complete Form R (Past Revenue) found in Appendix C; and
- D. Design-Build Teams shall provide insurance certifications, either a certificate of insurance evidencing current policies of, or written evidence from an insurance company or broker indicating that the Design-Build Team is capable of obtaining the following types of insurance: Commercial General Liability, Professional Liability / Errors and Omissions, Auto Liability, Workers’ Compensation/Employers Liability, and Pollution Liability. Policy limit requirements will be specified in the RFP.

#### 3.3.1 Minimum Requirement for Financial Capacity

A Design-Build Team must demonstrate its financial capacity to carry out the Project responsibilities potentially allocated to it, as demonstrated by the materials provided in Section 2 of the SOQ, including but not limited to the following:

- A. The surety or insurance company shall be admitted to do business in the State of Nebraska;
- B. The surety or insurance company must be rated in the top two categories by two nationally recognized rating agencies, or have a “Best’s Credit Rating” of at least “A minus” and “Class VIII” or better by A.M. Best Company;
- C. Design-Build Team shall demonstrate its ability to comply with the Project’s bonding requirements, as identified in Section 1.18; and
- D. Design-Build Team’s Major Participants shall provide evidence of capability to obtain insurance as identified in Section 3.3 (D).

### 3.4 Safety Program

**Objective:** To identify those Design-Build Teams that currently maintain an acceptable safety record and can demonstrate the ability to develop and implement an effective safety program for the Project.

**Submittal Requirements:** Design-Build Team shall address the following and submit it under Section 3 of the SOQ:

- A. Complete Form S found in Appendix C for each Major Participant.

### 3.4.1 Minimum Requirement for Safety Program

- A. Satisfactory safety record. Design-Build Team's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standard for its business category.
- B. Design-Build Team demonstrates an understanding of an effective safety program appropriate to the Project.

### 3.5 Firm Experience and Past Performance

**Objective:** To identify design and construction firms with demonstrated experience, expertise, competence, capability, and record of producing quality work on projects similar to [Project Name] specifically, and on projects of any type using design-build project delivery.

**Requirements and Information:** The following shall be submitted under Section 4 of the SOQ:

- A. Provide a brief narrative summary of the expertise and capability of each Major Participant and the design firm. Summaries shall be a maximum of two pages for each firm; the format is at the discretion of the Design-Build Team;
- B. Design-Build Team shall use and complete Forms PP-1 and PP-2 found in Appendix C for each Major Participant, based on experience over the past 5 years.
- C. Description of how, if any, the Principal/Major Participants have worked together in the past and the experience such Principal/Major Participants have in conventional design-bid-build and design-build projects of comparable size.
- D. Firm Experience: Using Appendix C, Form E-1 (Project Description), show the firm's experience by providing no more than four project descriptions for each Major Participant. Highlight experience in the past 15 years on completed projects having a scope comparable to that anticipated for the Project. The Designer is considered a key part of the Design-Builder's organization, and the Designer's experience must be identified in the SOQ. If Designer is a joint venture or partnership, each member or partner shall submit an independent Form E-1. For the projects in which several of the proposed Major Participants were involved, Design-Build Teams may provide a single project description. Descriptions of design-build projects should highlight experience relevant to this Project that Major Participants have gained in the last 15 years. Describe design-build projects with levels of scope comparable to that anticipated for this Project. Describe the experiences gained in project experience cited, that Major Participants could apply to this Project. In particular, demonstrate design-build experience in any of the following areas:
  - INSERT/INCLUDE BULLET POINTS RELEVANT TO THE PARTICULAR PROJECT; SEE EXAMPLES BELOW.]
  - Transportation facilities;
  - Highways;
  - Bridge structures;
  - Urban reconstruction;
  - Construction/reconstruction using innovative designs, methods, and materials;

- Construction in environmentally sensitive areas;
- Warranties;
- Design and construction activity interaction or integration; and
- Community relations (including website development and maintenance).

Each project description must include the following information as appropriate:

- Name of the project and the owner's contract number;
- Owner's name, address, contact person, email address, and current telephone and fax numbers;
- Dates of design, construction, management, and/or warranty periods;
- Description of the work or services provided and percentage of the overall project actually performed by (each of) the Principal/Major Participant(s);
- Initial construction bid price and final construction contract price for the project, including the quantity and dollar value of contract modifications and claims, and an explanation of the causes for construction contract change(s), whether upward or downward; and
- Record of cost and schedule growth or reduction, including experience with techniques to achieve goals of avoiding delays and minimizing claims.

E. Penalties, Claims/Litigation, and Termination: Design-Build Team shall use and complete Form PP-1 found in Appendix C for each Major Participant to address the following issues as appropriate for the past 5 years.

- Describe any project that resulted in assessment of liquidated damages against any Major Participant within the last five years. Describe the delays and the amounts assessed.
- Describe any outstanding damage claims for projects in which any of the Major Participants were involved within the last five years.
- Describe the conditions surrounding any contract (or portion thereof) entered into by any Major Participant within the last five years that has been terminated for cause or that required completion by another party. Describe the reasons for termination and the amounts involved.
- For each instance of litigation, liquidated damages, or termination for cause, identify the project owner's representative and his or her current phone number.

### **3.5.1 Firm Experience and Past Performance Evaluation Criteria**

Successful Design-Build Teams will have demonstrated design-build experience in the following:

- A. Experience in successfully managing, designing, and constructing projects of the size and complexity of this Project;
- B. A record of completing contracts on time and within the fixed price;
- C. Experience in successfully constructing major structures in sensitive environmental areas and community areas, managing the maintenance of traffic, roadway design and

construction, movable bridge design and construction, marine and environmental permitting, and implementing community relations and outreach programs of projects of the size and complexity of this Project;

- D. A record of managing contracts to minimize delays, claims, dispute proceedings, litigation, and arbitration;
- E. The technical and management experience and expertise to plan, organize, and execute the design and construction of, and assure the quality and safety of the Project;
- F. The ability to effectively manage all aspects of the Contract in a quality, timely, and effective manner and integrate the different parts of its organization with the Department in a cohesive and seamless manner.

### 3.6 Design-Build Team Organization and Key Personnel

**Objectives:** To identify the qualified personnel to serve in key positions and having demonstrated experience and expertise and a record of producing quality work on projects similar in nature to this Project. The key positions for the purposes of this RFQ are identified in Section 3.6.1.

**Requirements and Information:** The following information shall be submitted under Section 5 of the SOQ:

- A. **Organization Chart(s):** Provide an organization chart(s) showing the “chain of command,” with lines identifying participants who are responsible for major functions to be performed, and their reporting relationships, in managing, designing, and building the Project. The chart(s) must show the functional structure of the organization down to the design discipline leader or construction superintendent level and must identify Key Personnel by name. Key Personnel will be committed to the Project. Identify all Major Participants in the chart(s). Identify the critical support elements and relationships of Project management, Project administration, construction management, quality control, safety, environmental compliance, and subcontractor administration. For each organization chart, provide a brief, written description of significant functional relationships among participants and how the proposed organization will function as an integrated design-build team. Changes to the Design-Build Team’s SOQ organization chart shall abide by the requirements identified in Sections 1.14 and 3.6.2;
- B. **Key Personnel:** Using Appendix C, Form E-3 (Proposed Key Personnel Information), list appropriate information on each Key Personnel position described in Section 3.6.1;
- C. **Required Resumes:** Resumes of Key Personnel, limited to two pages each will not be counted towards the overall SOQ page limit. The listing below describes the minimum Key Personnel for the Project. Personnel to staff these key functions, listed below in Section 3.6.1, shall be identified in the required Organization Chart;
- D. **Required Licenses:** Evidence that the Design-Build Team and all Major Participants have, or at the time of Contract award will have, all licenses, registration, and credentials required to design and construct the Project. Such information shall include any information on the revocation or suspension of any license, credential, or registration. At the time the Contract is awarded, the Design-Builder shall be properly licensed in accordance with the laws of this State. Failure of the Design-Build Team to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the Contract and shall result in the forfeiture of the security of the Design-Build Team; and

- E. **Subcontractor Information:** Using Appendix C, Form E-2 (Subcontractor Information), identify subcontractors, except for the designated Designer (which is included on Appendix C, Forms L-1 and L-2), that the Design-Build Team plans to use, including Major Participants, specialty subcontractors, and subconsultants. Indicate what portion of the Work each subcontractor is anticipated to undertake. Submit maximum one-page summaries of experience for each listed subcontractor and subconsultant.

### 3.6.1 Preferred Qualifications of Key Personnel

The following provides a brief job descriptions and duties of the Key Personnel assigned to the Project. All Key Personnel will be required to be on-site during activities that involve their areas of responsibility or as indicated below. The Design-Build Team shall provide three references for each of the Key Personnel positions identified in this RFQ. The number of years of experience listed for each Key Personnel represents a target goal for evaluation purpose and should not be considered as a mandatory minimum requirement for that position.

A. Project Manager:

- The Project Manager shall be the individual responsible for the overall design, construction, quality, and contract administration for the Project. The Project Manager shall be assigned to the Project full time and will be required to be on-site during critical design and construction activities for the duration of the Project.
- **[INSERT QUANTITY]** years of experience managing complex infrastructure projects.
- **[INSERT QUANTITY]** of major design-build project management of infrastructure projects with a value in excess of \$\_\_\_\_\_.

B. Construction Manager:

- **[INSERT QUANTITY]** years of experience managing complex infrastructure projects. The Construction Manager will be assigned to the Project full time and will be required to be on-site during critical construction activities for the duration of the Project.

C. Design Manager:

- The Design Manager will be assigned full time and will work directly for the Design-Builder under the direct supervision of the Project Manager. The Design Manager will be the individual responsible for coordinating the design of the individual design disciplines and will be responsible for ensuring that the overall Project design is completed and design criteria requirements are met. The Design Manager will be assigned full time until the design is 100% complete and as required during the construction phase of the Project. The Design Manager will be responsible for design quality management. The Design Manager is the Engineer of Record who will have primary responsibility for design work under the contract.
- **[INSERT QUANTITY]** years of experience managing design projects comparable in scale and complexity to the Project.
- Must be a registered professional engineer in the State of Nebraska now or by the time the initial notice to proceed is issued.

D. Quality Control Administrator:

- Must be a registered professional engineer in the State of Nebraska now or by the time the initial notice to proceed is issued.
- [INSERT QUANTITY] years of experience managing complex transportation/infrastructure projects.
- [INSERT QUANTITY] years of major design-build construction management of transportation projects.
- The Quality Control Administrator will work directly for the Design-Builder under the direct supervision of the Project Manager. The Quality Control Administrator will be available to the Project full time for the duration of the Project.
- The Quality Control Administrator shall be responsible for overall management of the Quality Control System as established in the Quality System Manual.
- The Quality Control Administrator must not be assigned any other duties or responsibilities on this Project or any other projects unless approved by the Department.
- The Quality Control Administrator shall have the authority to stop any and all work, including construction that does not meet the standards, specifications, or criteria established for the Project.

E. Design Quality Control Manager:

- Must be an engineer with a Bachelor of Science degree in Civil Engineering and have a minimum of [INSERT QUANTITY] years of experience in [INSERT HIGHWAY AND/OR BRIDGE] design.
- The Design Quality Control Manager shall report directly to the Quality Control Administrator.
- The Design Quality Control Manager shall be responsible for implementation of all design Quality Control procedures and activities as established in the Quality System Manual.

F. Construction Quality Control Manager:

- Must be an engineer with a Bachelor of Science degree in Civil Engineering and shall be certified as a NETTCP QA Technologist now or by the time the initial notice to proceed is issued and have a minimum of [INSERT QUANTITY] years of experience in [INSERT HIGHWAY AND/OR BRIDGE] design.
- The Construction Quality Control Manager shall report directly to the Quality Control Administrator.
- The Construction Quality Control Manager shall be responsible for implementation of all construction Quality Control procedures and activities as established in the Quality System Manual.

G. Environmental Compliance Manager:

- The Environmental Compliance Manager will work directly for the Design-Builder under the direct supervision of the Project Manager. The Environmental

Compliance Manager will be available to the Project full time and will be required to be on-site during critical activities for the duration of the Project.

- [INSERT QUANTITY – DEFAULT VALUE IS 10] years of experience implementing environmental programs on complex transportation/infrastructure projects.
- [INSERT QUANTITY – DEFAULT VALUE IS 5] years of experience is securing environmental permits.
- The Environmental Compliance Manager must not be assigned any other duties or responsibilities on this Project unless approved by the Department.

#### H. Safety Manager:

- Work directly for the Design-Builder and report directly to the Project Manager. The Safety Manager will be available to the Project full time and will be required to be on-site during critical construction activities of the Project.
- [INSERT QUANTITY – DEFAULT VALUE IS 15] years of experience managing complex transportation/infrastructure projects.
- [INSERT QUANTITY – DEFAULT VALUE IS 5] years of major design-build construction management of transportation projects.
- The Safety Manager must be familiar with FHWA work zone safety regulations and must have at least [INSERT QUANTITY – DEFAULT VALUE IS 10] years of experience working in roadway work zone safety and OSHA Regulations.

### 3.6.2 Changes in Design-Build Team Organization and Key Personnel

The NDOT wants to ensure that Design-Build Teams are able to develop and attract the greatest range and depth of expertise as may be necessary to participate in the procurement, design, and construction of the Project in an innovative, effective, and efficient manner. Accordingly, the Department shall permit Design-Build Teams to add team members and reorganize the Design-Build Team entity through the procurement process until submittal of the Proposals as described herein, except in the event of potential organizational conflicts of interest and/or deficiencies in qualifications and experience for the proposed role. Notwithstanding the foregoing, and subject to Section 1.14, following submittal of the SOQs, the following actions may not be undertaken without the Department's prior written consent, in its sole discretion:

- Deletion or substitution of a Design-Build team member identified in its SOQ (i.e., Major Participants, Designer);
- Deletion or substitution of Key Personnel identified in Section 3.6.1 of this RFQ and Appendix C, Form E-3 of its SOQ;
- Deletion or substitution of an equity owner of Design-Build Team or Major Participant, or any other entity that will bear financial responsibility or liability for the performance of the Design-Build Team; and
- Other changes in the equity ownership or team membership of a Design-Build Team.

Should a Design-Build Team wish to make such a change, they shall notify and request the Department's consent in writing and shall provide, for any new or substitute entity, the same information required under this RFQ for such entity had it been part of the Design-Build Team



as of the SOQ submission (including, without limitation, legal, financial, qualifications/experience, and other). If a Design-Build Team wishes to delete an entity, they shall provide the Department with information establishing that the Design-Build Team remains qualified as contemplated under this RFQ. Failure to secure the consent of the Department may, at the Department's sole discretion, result in the Design-Build Team being disqualified from the short-listing process.

### 3.7 Project Understanding and Approach

**Objective:** To identify those Design-Build Teams that demonstrate the following: (i) an understanding of and approach to the management, technical aspects, and maintenance of traffic issues and risks associated with the Project; (ii) an understanding of and approach to how the design-build process and the Design-Build Team's organization will contribute to the success of the Project and meet the Project goals; and (iii) an understanding of the risk sharing and the teaming relationship between the Design-Builder and the Department.

**Submittal Requirements:** Requirements and information to be submitted under Section 6 of the SOQ include:

- A. Narrative description of the Design-Builder's management and organizational approach for accomplishing the design-build Project. The narrative should describe the methodology for integrating the design-build entity and the different areas of expertise within the team into an efficient and effective organization. The management approach must reflect an understanding of the use of the design-build project delivery methodology for transportation infrastructure projects. The narrative shall also provide a brief description of the significant functional relationships among participants outlined in the organization chart as described in Section 3.6 and how the proposed organization will function as an integrated design-build entity and how it will work effectively with the Department; and
- B. Brief description of how the Design-Build Team will use its organization and the design-build process to ensure a successful Project, considering the Project goals listed in Section 1.3.

### 3.8 Quality Assurance Program

**Objective:** To identify those Design-Build Teams that can demonstrate the best approach in implementing a Quality Assurance Program under a design-build project in which the Department will manage and perform the Design Acceptance and Construction Acceptance functions, while the Design-Build Team is responsible for implementing a Quality Control System that addresses Design Quality Control and Construction Quality Control.

**Submittal Requirements:** The Department has established overall Quality Assurance (QA) requirements for Design-Build projects. This includes a Design QA Program to address quality in the design process and a Construction QA Project to ensure the quality of construction. Requirements and information to be submitted under Section 7 of the SOQ include a written approach with respect to Quality Assurance. The Design-Build Team's approach should demonstrate an understanding of the following attributes:

- A. Design Quality Control;
- B. Construction Quality Control;
- C. Coordination between the Department and the Design-Builder organization; and

D. Coordination with other agencies.

A preliminary Quality System Manual (QSM) is not required under the RFQ submittal process but will be a requirement of the short-listed Design-Build Teams during the RFP phase.

## 4 Evaluation Process

Section 4 outlines the evaluation factors for the RFQ phase of the procurement. This information is intended to assist Design-Build Teams in organizing their teams and preparing their SOQs.

### 4.1 SOQ Evaluation

**Evaluation Process:** The Department will evaluate the SOQs based on the rating and scoring information outlined in this Section 4. SOQs that are responsive and that meet the minimum or “pass – fail” criteria identified in Section 4.3 will be scored in accordance with the criteria described in Section 4.4, and the [INSERT QUANTITY] highest ranked Design-Build Teams will be “short listed”. Only those Design-Build Teams that are short-listed will be allowed to participate in the RFP ‘best-value’ procurement process.

**Interviews:** The Department reserves the right to conduct oral interviews with all potential Design-Build Teams prior to its short-listing determination. The Technical Review Committee (TRC) as part of its evaluation may complete these interviews during the overall SOQ submittal process and scoring. If the Department elects to conduct oral interviews following receipt of the SOQs, the TRC chairperson will determine the exact schedule for oral interviews.

### 4.2 Evaluation Objective

The objective of the RFQ step of the procurement is to pre-qualify Design-Build Teams having the legal, technical, financial, and management capability, capacity, and experience necessary to successfully undertake and complete the Work. The Design-Builder will have primary responsibility to plan, design, manage, and control the Project and to complete the Project on or ahead of schedule. The Department have set high responsibility standards for the Design-Builder, which is reflected in the evaluation factors of this RFQ and will be reflected in the RFP and the Contract.

### 4.3 SOQ Evaluation Factors

The information submitted in accordance with Section 3 will be evaluated by the TRC in accordance with the initial responsiveness review as defined in Section 4.3.1, the non-scored categories listed in Section 4.3.2, and the scored categories as set forth in Section 4.3.3.

#### 4.3.1 Initial Responsiveness Review

Each SOQ will initially be reviewed on a pass/fail basis for: (i) minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the SOQ; (ii) the Proposal's conformance to the RFQ instructions regarding organization and format; and (iii) the responsiveness of the Design-Build Team to the requirements set forth in the RFQ.

The Department may allow certain deficiencies in the SOQs relating to the above factors to be corrected through clarifications, but shall have no obligation to do so. Design-Build Teams shall correct the deficiencies in the timeframe set forth by the Department or risk being excluded from

further consideration. The Department may also exclude from consideration any SOQ that contains a material misrepresentation.

#### **4.3.2 Non-Scored SOQ Categories**

Each non-scored category of a responsive SOQ will be evaluated on a non-scored pass/fail basis. For an SOQ to achieve a passing rating, each of the following categories shall meet the minimum requirements as set forth below:

- A. Legal: The SOQ complies with and meets or exceeds the minimum requirements listed in Section 3.2.1.
- B. Financial: The SOQ complies with and meets or exceeds the minimum requirements listed in Section 3.3.1.
- C. Safety: The SOQ complies with and meets or exceeds the minimum requirements listed in Section 3.4.1.

#### **4.3.3 Scored SOQ Categories**

Each scored category of a responsive SOQ will be evaluated and scored by the TRC according to the following, using the scoring form provided in Attachment 1:

- A. *Design-Build Team Organization and Key Personnel and Firm Experience and Past Performance*. The SOQ will be evaluated and a single score will be established for this category by combining the following elements:
  - *Firm Experience and Past Performance*: The SOQ will be evaluated against the criteria established under Section 3.5.1.
  - *Design-Build Team Organization and Key Personnel*: The SOQ will be evaluated against the criteria established under Section 3.6.1.
- B. *Project Understanding and Approach and Quality Management Program*. The SOQ will be evaluated and a single score will be established for this category by combining the following elements:
  - *Project Understanding and Approach*: As defined under Section 3.7, the SOQ demonstrates sound understanding and approach.
  - *Quality Management Program*: As defined under Section 3.8, the SOQ demonstrates a sound approach to implementing a Quality Management Program.

### **4.4 Evaluation and Scoring Process**

The TRC will evaluate the non-scored SOQ categories as defined under Section 4.3.2. The TRC will evaluate the scored categories as defined under Section 4.3.3 based on the scoring outline in Attachment 1.

To short-list, a Design-Build Team will be required to meet the following standards:

- A. For each of the non-scored SOQ categories, meets or exceeds the minimum passing requirements as set forth under Section 4.3.2; and
- B. For each of the scored SOQ categories, obtains a passing grade based on the following minimum scoring criteria:

- For the *Design-Build Team Organization and Key Personnel and Firm Experience and Past Performance* categories, achieves a passing score of [SET MINIMUM POSSIBLE POINTS] or greater. The maximum score under this category is [SET MAXIMUM POSSIBLE POINTS].
- For the *Project Understanding and Approach and Quality Management Program* categories, achieves a passing score of [SET MINIMUM POSSIBLE POINTS] or greater. The maximum score under this category is [SET MAXIMUM POSSIBLE POINTS].

Once scoring of all SOQs has concluded, the TRC rank the SOQs from highest to lowest scores. The Department intends to short-list between [IDENTIFY QUANTITY] Design-Build Teams for continuation in the RFP 'best-value' procurement process. If only one Design-Build Team responds to the RFQ or attains short-list status, the Department may re-advertise or cancel the Project as it deems necessary.

#### 4.5 Notification of Short Listing

Upon completion of the SOQ evaluation and scoring process, the Department will notify each Design-Build Team in writing whether or not it has obtained short-list status. The Department will also publish the list of Design-Build Teams attaining short-list status on its website: <http://www.transportation.nebraska.gov/>.

Announcement of short-listing may be expected not later than the date specified in Section 2.2.

## 5 SOQ Submittal Requirements

The following sections describe requirements that all Design-Build Teams must satisfy in submitting SOQs. Failure of a Design-Build Team to submit its SOQ as required in this RFQ may, at the Department's sole discretion; result in rejection of its SOQ. All rejected SOQs will be returned to the contact person identified in the SOQ.

### 5.1 General Requirements

Required forms for the SOQ are contained in Appendix C. Any material modification to the forms may result in the SOQ being declared non-responsive.

Design-Build Teams shall provide brief, concise information that addresses the objectives and the requirements of the Project consistent with the evaluation factors described in Section 4.3. Lengthy narratives containing extraneous information are discouraged.

If the Design-Build Team submits information in its SOQ that it believes to be protected records under the Nebraska Public Records Law (Nebraska Revised Statutes 84-712) and that it wishes to protect from disclosure, the Design-Build Team shall mark such information as provided in Section 6.2.

### 5.2 Due Date, Time, and Location

All SOQs must be received by 3:00 pm Central Standard Time on the day specified in Section 2.2 and delivered to the following:

SOQs delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Nebraska Department of Transportation  
1500 Highway 2  
Lincoln, NE 68502**

**Attention: [NDOT Project Manager's Name], [NDOT Project Manager's Title]**

SOQs delivered using the U.S. Postal Service shall be addressed as follows:

**Nebraska Department of Transportation  
P. O. Box 94759  
Lincoln, NE 68509-4759**

**Attention: [NDOT Project Manager's Name], [NDOT Project Manager's Title]**

Any SOQ that fails to meet the deadline will be rejected without opening, consideration, or evaluation and will be returned, unopened, to the sender.

### **5.3 Format Requirements**

A Design-Build Team's SOQ format must adhere to the requirements outlined in Appendix B.

The front cover of each SOQ must be labeled with "[Project Name]," "Statement of Qualifications," and the date of submittal.

### **5.4 Quantities**

Each Design-Build Team must provide the Department with one original and the number of SOQ copies as identified below. Each copy must be identified on its front cover, in the upper right-hand corner, as "Copy \_\_\_ Of \_\_\_ Copies."

All **[INSERT QUANTITY]** binders (original and \_\_\_ copies) must be packed together in one sealed package. The outside of the sealed package must be clearly identified, labeled, and addressed as follows:

- A. Return address: Design-Build Team's name, contact person's name, mailing address;
- B. Date of submittal; and
- C. Contents labeled with the Project name and "Statement of Qualifications."

### **5.5 Challenges**

The decision of the Department as to the Design-Build Team short-list and subsequent award of the Contract shall be final and shall not be appealable, reviewable, or reopened in any way, except as provided in Section 6. Parties participating in the RFQ phase of this procurement shall be deemed to have accepted this condition and all other requirements of this RFQ.

## **6 Protest Procedures and Public Records Act**

### **6.1 RFQ Protest**

Section 6.1 sets forth the exclusive protest remedies available with respect to this RFQ. Each Design-Build Team, by submitting its SOQ, 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 RFQ expressly as consideration for such waiver and agreement by the Design-Build Teams. If a Design-Build Team disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFQ, it shall indemnify, defend, and hold harmless the Department, its directors, officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of said Design-Build Team's actions. The submission of an SOQ by a Design-Build Team shall be deemed the Design-Build Team's irrevocable and unconditional agreement with such indemnification obligation.

### **6.1.1 Written Protest Only**

All protests must be in writing. Protests shall be submitted to:

Deputy Director – Engineering  
Nebraska Department of Transportation  
P.O. Box 94759  
Mail: Lincoln, NE 68509-4759  
Fax: 402.479.4325  
E-mail:

Any protest not set forth in writing within the time limits specified in these procedures is null and void and shall not be considered.

The protestor shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest, but the Department designee, whose decision shall be final and conclusive, shall decide it, on the basis of the written submissions. The Department designee shall issue a written decision regarding any protest to each Design-Build Team.

### **6.1.2 Protest Contents**

- A. All protests must include the following:
- The name and address of the Design-Build Team;
  - The Project name and Project number;
  - A detailed statement of the nature of the protest and the grounds on which the protest is made; and
  - All factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements must be provided under penalty of perjury.
- A. The protestor must demonstrate or establish a clear violation of a specific law or regulation.
- B. The Department will not be obligated to postpone the SOQ due date specified in Section 2.2 or short-list announcement in order to allow a protestor an opportunity to correct a deficient protest or appeal, unless otherwise required by law or regulation.
- C. If the protest is denied, the protestor shall be liable for the Department'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 the

Department as a consequence of the protest. If the protest is granted, the Department shall not be liable for payment of the protestor's costs.

### **6.1.3 Protest Regarding RFQ or Procurement Process**

- A. All protests regarding this RFQ or the related procurement process shall be filed with the Department not less than seven calendar days prior to the SOQ due date specified in Section 2.2.
- B. The Department will promptly make a determination in writing regarding the validity of the protest and whether or not the RFQ process should be delayed beyond the scheduled SOQ due date specified in Section 2.2.
- C. If the Department determines that the scheduled SOQ due date specified in Section 2.2 should be delayed, all Design-Build Teams will be notified by written addendum of the delay and the reason thereof.
- D. If all or any portion of the protest is determined to be valid, the Department designee will respond in writing to each material issue determined to be valid raised in the protest in a timely manner prior to the Department proceeding further with the RFQ.
- E. The failure of a Design-Build Team to file a basis for a protest regarding this RFQ shall preclude consideration of that ground in any protest regarding the short-list determination, unless such ground was not and could not have been known to the Design-Build Team in time to protest prior to the final date for such protests.

### **6.1.4 Protest Regarding Pre-Qualification Decision**

- A. If the short-list decision is being protested, a protestor shall protest in writing to the Department designee as soon as practical, but not later than seven calendar days after the protestor knew or should have known it had not attained short-list status. If the protest has been filed in a timely manner, the Department designee will promptly make a determination in writing regarding the validity of the protest and whether or not the procurement should be delayed, or the short-list status should be considered for revision.
- B. If the procurement is delayed, all Design-Build Teams will be notified of the delay. The Department designee will respond in writing to each material issue raised in the protest in a timely manner prior to proceeding further with the procurement.
- C. Should a protestor wish to appeal the decision of the Department designee concerning short-listing decision, a protestor shall follow the procedures in Section 6.1.5.

### **6.1.5 Right of Appeal**

- A. In the event that a protestor receives an unfavorable decision from the Department designee to its protest, the protestor shall have the right to appeal the decision of the Department designee by submitting a written appeal to the Department's Deputy Director – Engineering or his/her designee within seven calendar days after receipt of the decision of the Department designee.
- B. The Deputy Director – Engineering or his/her designee will notify the protestor in writing in a prompt manner of its decision regarding the protest and the appeal. The decision of the Deputy Director – Engineering or his/her designee shall be final and not appealable.

## 6.2 Public Records Act

All written correspondence, exhibits, photographs, reports, printed material, tapes, electronic discs, and other graphic and visual aids submitted to the Department during this procurement short-listing process, including as part of the response to this RFQ, are, upon their receipt by the Department, the property of the Department and are subject to the Nebraska Public Records Law. None of the aforementioned materials will be returned to the submitting parties. Design-Build Teams should familiarize themselves with the provisions of the Nebraska Public Records Law. In no event shall the Department, or any of its agents, representatives, consultants, directors, officers, or employees be liable to a Design-Build Team for the disclosure of all or a portion of an SOQ submitted under this RFQ.

If a Design-Build Team has special concerns about information that it desires to make available to the Department but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such Design-Build Team should specifically and conspicuously designate that information as "TRADE SECRET" or "CONFIDENTIAL" in its filed response to this RFQ. Blanket, all-inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets, or confidential commercial or financial information shall not be permitted and shall be deemed invalid. The specific proprietary information, trade secrets, or confidential commercial and financial information must be clearly identified as such. The Department will endeavor to advise the Design-Build Team of any request pursuant to the Nebraska Public Records Law and any other applicable laws for the disclosure of any material properly labeled as proprietary, trade secret, or confidential so as to allow the Design-Build Team the opportunity to seek a court order to protect such materials from disclosure. Under no circumstances, however, will the Department be responsible or liable to the Design-Build Team or any other party for the disclosure of any such labeled 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 the Department or its officers, employees, contractors, or consultants.

The Department will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Nebraska Public Records Law or other applicable laws, as to the interpretation of the Nebraska Public Records Law or as to the definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the Nebraska Public Records Law and other applicable laws and their application to the submitting party's own circumstances.

In the event of litigation concerning the disclosure of any material submitted by the submitting party, the Department's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk. The submitting party shall reimburse the Department for any expenses it incurs in connection with any such litigation.

## 7 Debriefing Meetings

Once the Department awards the Contract to a Design-Builder, the Department will arrange meetings with each of the Design-Build Team organizations, if requested by said one or more of said organizations.



## 8 The Department's Reserved Rights

The Department may investigate the qualifications of any Design-Build Team under consideration, may require confirmation of information furnished by a Design-Build Team, and may require additional evidence of qualifications to perform the Work described in this RFQ. The Department reserves the right, in its sole and absolute discretion, to:

- A. Accept or reject any and all submittals, responses and proposals, or any parts thereof, received at any time.
- B. Waive any informalities, irregularities, and omissions in the information contained in the SOQs, or permit corrections to data submitted with any response to this RFQ until such time as the Department declares in writing that a particular stage or phase of its review of the responses to this RFQ has been completed and closed.
- C. Modify all dates set or projected in this RFQ.
- D. Terminate evaluations of responses received at any time.
- E. Withdraw or cancel this RFQ or the subsequent RFP in whole or in part at any time prior to the execution by the Department of a design-build contract, without incurring any cost obligations or liabilities.
- F. Permit submittal of addenda and supplements to data previously provided with any response to this RFQ until such time as the Department declares in writing that a particular stage or phase of its review of the responses to this RFQ has been completed and closed.
- G. Adjust, increase, limit, suspend, or rescind any short-list determination based on subsequently learned information.
- H. Permit Design-Build Teams to add or delete firms and/or key personnel until such time as the Department declares in writing that a particular stage or phase of its review has been completed and closed.
- I. Add or delete Design-Builder responsibilities from the information contained in this RFQ or the subsequent RFP.
- J. Waive deficiencies in an SOQ, accept and review a non-conforming SOQ, or seek clarifications or supplements to an SOQ.
- K. Disqualify any Design-Builder that changes its submittal without Department approval.
- L. Add or modify its reserved rights in the subsequent RFP.
- M. Make all final determinations.
- N. Appoint a selection committee and evaluation teams to review SOQs and seek the assistance of outside technical experts in the SOQ evaluation.
- O. Disallow the use of particular subcontractors and/or substitutions and/or changes in SOQs.
- P. Hold meetings and conduct discussions and correspondence with one or more of the Design-Builders responding to this RFQ to seek an improved understanding and evaluation of the responses to this RFQ.
- Q. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQ.

The RFQ does not commit the Department to enter into a Contract, nor does it obligate the Department to pay for any costs incurred in preparation and submission of the SOQs or in anticipation of a Contract. By submitting an SOQ, a Design-Build Team disclaims any right to be paid for such costs.

The execution and performance of a Contract pursuant to this RFQ and any subsequent RFP is contingent on sufficient appropriations and authorizations being made by the Legislature of Nebraska, or the Congress of the United States, for performance of a Contract between the successful Design-Build Team and the Department.

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

#### The Department Disclaimers

In issuing this RFQ and undertaking the procurement process contemplated hereby, the Department specifically disclaims the following:

- A. Any obligation to award or execute a Contract pursuant to this RFQ or the RFP or to issue an RFP; and
- B. Subject to Section 1.13, any obligation to reimburse a Design-Build Team for any costs it incurs under this procurement.

In submitting an SOQ in response to this RFQ, the Design-Build Team is specifically acknowledging these disclaimers.

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**APPENDIX A:**  
**PROJECT DESCRIPTION, DESIGN-BUILDER**  
**RESPONSIBILITIES, AND PROJECT STATUS**

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## **Appendix A – Table of Contents**

- 1 Project Description**
- 2 Design and Construction Requirements**
- 3 Design-Builder Responsibilities**
- 4 Project Status [TAILOR FOR SPECIFIC PROJECT]**
- 5 Additional Project Documentation**

## 1 Project Description

## 2 Design and Construction Requirements

**Design:** [SPECIFIC TO PROJECT]

**Construction:** [SPECIFIC TO PROJECT]

Further requirements and details will be provided within the RFP.

## 3 Design-Builder Responsibilities

The successful Design-Builder will be responsible for furnishing all labor, material, plant, equipment, services, and support facilities for the following project elements. Specific Design-Builder responsibilities will be described in more detail during the RFP procurement process, general description of responsibilities may include but is not limited to:

- A. Design and construction of all Project components;
- B. Management of the project, design, and construction;
- C. Support the Department Project-related public involvement activities;
- D. Coordination with Project stakeholders, and utility owners;
- E. Design Quality Control;
- F. Construction Quality Control;
- G. Environmental mitigation and compliance monitoring;
- H. Securing certain environmental and construction permits;
- I. Perform additional environmental investigations, monitoring, and investigation associated with or resulting from Design-Builder's activities;
- J. Maintenance and protection of traffic, including both temporary and permanent access to properties;
- K. Project safety and security;
- L. Perform preliminary engineering, such as surveys and geotechnical investigations, to supplement data provided by the Department during the RFP process;
- M. Remediation of harmful and hazardous materials caused by the Design-Builder during design and construction;
- N. Installation of drainage and erosion control;
- O. Construction waste disposal and handling;
- P. Required clearances, licenses, construction easements, and permits for Design-Builder Work, Work sites, storage areas, etc., both on- and off-site;
- Q. Ancillary works, such as temporary fencing, relocation of drainage, Work sites, and temporary works;
- R. Material location and storage, acquisition, permits, and transportation;
- S. Utility coordination and (as required) relocation, and protection of existing utilities;
- T. Site clearance; and
- U. Maintenance of the Project during the Contract period.

#### 4 Project Status [TAILOR FOR SPECIFIC PROJECT]

The status of the Work being completed for the Project by the Department is summarized as follows.

**Survey:** A preliminary topographic survey of the Project site has been performed by the Department. The RFP will include survey information collected by the Department in an electronic format. Additional miscellaneous survey information may also be provided in the RFP.

**Preliminary Engineering:** The Department is currently preparing preliminary engineering documentation for the Project. The RFP will include these preliminary engineering documents for Design-Build Teams' information.

**Utilities:** A preliminary Subsurface Utilities Engineering (SUE) analysis has been completed by the Department under a separate contract. The RFP will include copies of SUE information collected by the Department, along with established constraints and responsibilities for impacted utilities.

**Funding:** Full funding of the project is being pursued.

**National Environmental Policy Act (NEPA):** Possible descriptions of the status of a project are shown below. The Project is currently undergoing NEPA environmental review by the NDOT. It is important for Design-Build Teams to note, at this time, that the proposed Project remains in the environmental process and that NEPA approval has not been obtained. Additional alternatives, including a no-build alternative, are being considered in the environmental process, and it is possible that the Project scope may be modified through the environmental process or that a no-build alternative may be adopted. Nothing contained in this RFQ is intended to modify, limit, or otherwise constrain the environmental process or commit the Department or any other entity to undertake any action with respect to the Project, including any procurement or the final design and construction of the proposed Project.

A Categorical Exclusion (CE) is currently being prepared by the Department to satisfy the requirements of NEPA. The CE includes an evaluation and mitigation measures for the following resources:

A Categorical Exclusion (CE) is currently being prepared by the Department to satisfy the requirements of NEPA. The CE includes an evaluation and mitigation measures for the following resources:

- Aesthetics and Visual
- Air Quality
- Community Impacts / Environmental Justice
- Cultural Resources
- Hazardous Waste / Contaminated materials
- Wetlands, Water Quality
- Essential Fish Habitat
- Floodplains
- Land Use / Planning / Tax Base / Business Impacts
- Noise
- Public Services

- Construction Impacts
- Recreation / Public Lands
- Transportation Patterns / Safety / Community Services
- Utilities
- Growth Inducement/Cumulative Impacts

The CE is expected to be approved by the Federal Highway Administration in \_\_\_\_\_.

**Plans:** As-built plans for the existing highway facility are available for review by the Design-Build Teams. Copies will be made available to Design-Build Teams during the RFP procurement process.

**Geotechnical:** Soil boring information collected by the Department will be provided during the RFP procurement process.

**Permitting:** The Project will require several environmental, utility, and local permits/approvals. The NDOT is responsible for obtaining the environmental permits described in the table below (unless noted otherwise). Utility permits and/or local permits will be the responsibility of the Design-Build team. Though the NDOT may not have received final environmental permits when the RFP is issued, they expect to have permit conditions reasonably well defined by that time. The NDOT expect to have the NEPA process completed and to have acquired all of the necessary environmental permits before the commencement of construction. However, anticipated permit issuance dates may change depending on design and other factors. The Design-Builder may be required to support the preparation of any remaining permits as needed, as final design proceeds, and the Department will submit the permit applications. If the Design-Builder varies from the conceptual plans to a degree that would necessitate additional permits or permit amendments, any delay and associated costs caused by procuring the permits, will be the responsibility of the Design-Builder. Additional permits or permit amendments may affect the Project design and schedule. The following table summarizes the anticipated required permits/approvals to be acquired by the NDOT and their associated status:

**Anticipated Permits and Approvals Needed**  
**[TAILOR FOR SPECIFIC PROJECT]**

Agency	Permit/Approval	Status
<b>Federal Agencies</b>		
Federal Highway Administration	Categorical Exclusion	An Environmental Study (Categorical Exclusion) will be prepared and submitted in April 2011. Approval by FHWA is anticipated to be received in May 2011.
Environmental Protection Agency	NPDES	NPDES construction site permit is the responsibility of the contractor
U.S. Army Corps of Engineers	Section 404 permit	The Section 404 permit for NE is anticipated to be issued under the NE Programmatic General Permit and will be concurrent with issuance of the NE Dredge and Fill Wetland Permit. Section 404 permitting requirements for Nebraska are anticipated to fall under the Nebraska General Permit and will be issued concurrently with the Nebraska permit. Endangered Species will

Agency	Permit/Approval	Status
<b>Federal Agencies</b>		
		be reviewed under the ACOE general permit. Special Conditions and in-water work timing restrictions may apply.

The responsibility for obtaining each of the permits/approvals will be detailed in the RFP.

## 5 Additional Project Documentation

To provide additional information pertaining to Project development by the Department, the following documents are being made available to potential Design-Build Teams. These documents can be found on the Department's design-build website:

<http://www.transportation.nebraska.gov/>

[INSERT LIST OF SPECIFIC DOCUMENTATION FOR PROJECT]



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**APPENDIX B:**  
**FORMAT AND ORGANIZATION OF**  
**STATEMENT OF QUALIFICATIONS**

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## **Appendix B – Table of Contents**

- 1 Organization**
- 2 Pages and Binders**
- 3 Page Format**
- 4 Clarity and Conciseness**
- 5 Reproducibility**
- 6 Submittal**

## 1 Organization

The SOQ shall be organized as follows and as depicted in Table B-1 below:

- A. Transmittal Letter and Form U
- B. Seven text sections:
  - 1. Section 1 – Legal Structure;
  - 2. Section 2 – Financial Capacity;
  - 3. Section 3 – Safety Program;
  - 4. Section 4 – Firm Experience and Past Performance;
  - 5. Section 5 – Design-Build Team Organization and Key Personnel;
  - 6. Section 6 – Project Understanding and Approach; and
  - 7. Section 7 – Quality Assurance Program.
- A. Two Appendices:
  - 1. Appendix A Resumes; and
  - 2. Appendix B Legal Documents.

## 2 Pages and Binders

The sections and appendix shall consist of loose-leaf pages that are 8 ½" by 11" and white, except for charts, exhibits, and other illustrative and graphical information, which may be submitted on 11" by 17" paper and folded to 8 ½" by 11". 11" by 17" pages will count as one page. There is a limit of **20 pages** total for Sections 6 and 7 of the Design-Build Team's SOQ package. Specific page limitations pertaining to Sections 1 through 5 and Appendices A and B of the Design-Build Team's SOQ package are defined in Table B-1 of this appendix. The cover letter and each section shall be combined in one three-ring binder, and the complete appendices shall be placed together in a separate three-ring binder. The sections (and, optionally, subsections) shall be separated with lettered or numbered dividers. Color photographs, renderings, and brochures, if any, shall be adequately bound and suitably protected for handling and circulation during review and evaluation.

## 3 Page Format

Text shall be in a standard font that is a minimum of ten points in size, single-spaced, and printed single-sided. Each page shall be numbered consecutively within each section (i.e., 1-1, 1-2...; 2-1, 2-2...; 3-1, 3-2..., etc.), and the page numbers shall be centered at the bottom of each page.

## 4 Clarity and Conciseness

Design-Build Teams should make every effort to present information clearly and concisely. Documentation that is difficult to read may be rejected and may lead to disqualification.

## 5 Reproducibility

All SOQ pages shall be easily reproducible in black and white by standard photocopying machines.

## 6 Submittal

One original and [INSERT QUANTITY – DEFAULT VALUE IS 10] copies of the SOQs and appendices shall be provided.

**Table B-1: Specifications for SOQs**

SOQ Section	Section Title and Required Information	RFQ Reference
	<p><b>Transmittal Letter and Design-Build Team SOQ Certification</b> (<i>no overall page limitation for this section</i>):</p> <ul style="list-style-type: none"> <li>• Form A, Transmittal Letter (to be signed by duly authorized representatives of all equity members of the Design-Build Team’s team); and</li> <li>• Form U, Design-Build Team SOQ Certification (to be provided by all equity members of Design-Build Team).</li> </ul>	3.1
Section 1	<p><b>Legal Structure</b> (<i>no overall page limitation for this section</i>):</p> <ul style="list-style-type: none"> <li>• Legal structure and supporting documents or description of proposed legal structure;</li> <li>• Identification of Major Participants;</li> <li>• Conflict of Interest Statement;</li> <li>• Response to <u>Section 3.2 (E)</u> if required;</li> <li>• Form L-1, Design-Build Team’s Organization Information;</li> <li>• Form L-2, Major Participant and Designer Certification; and</li> <li>• Form T, Design-Build Team’s Provisional Overall DBE Project Goal Declaration Affidavit.</li> </ul>	3.2
Section 2	<p><b>Financial Capacity</b> (<i>no overall page limitation for this section</i>):</p> <ul style="list-style-type: none"> <li>• Verification of Design-Build Team’s ability to secure Performance Bond and Payment Bond;</li> <li>• Form B, Backlog Information;</li> <li>• Form R, Past Revenue; and</li> <li>• Verification of Design-Build Team’s ability to secure insurance.</li> </ul>	3.3
Section 3	<p><b>Safety Program</b> (<i>no overall page limitation for this sections</i>):</p> <ul style="list-style-type: none"> <li>• Form S, Safety Questionnaire.</li> </ul>	3.4

SOQ Section	Section Title and Required Information	RFQ Reference
<b>Section 4</b>	<p><b>Firm Experience and Past Performance</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• A brief narrative summary of each firm's capability and capacity, a maximum of two pages for each firm is permitted;</li> <li>• Form E-1, Project Description (maximum four Form E-1s per each Major Participant are permitted), each Form E-1 shall not exceed 3 pages in length;</li> <li>• Form PP-1, Past Performance (maximum of 3 pages), with information regarding: <ul style="list-style-type: none"> <li>○ Awards, citations, and/or commendations,</li> <li>○ Litigation, claims, dispute proceedings, and arbitration,</li> <li>○ Liquidated damages during the last five years,</li> <li>○ Termination for cause,</li> <li>○ Disciplinary actions, and</li> <li>○ Contacts (for the above <u>Form PP-1</u>); and</li> </ul> </li> <li>• Form PP-2, Environmental Past Performance.</li> </ul>	<b>3.5</b>
<b>Section 5</b>	<p><b>Design-Build Team Organization and Key Personnel</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Brief narrative of significant functional relationships among participants and how the proposed organization will function as an integrated design-build team, a maximum of four pages will be permitted;</li> <li>• Organization Chart(s) (11" by 17");</li> <li>• Evidence of Design-Build Team's ability to meet license requirements;</li> <li>• Form E-2, Subcontractor Information and a maximum one-page summary of subcontractor experience for each subcontractor listed, including consultants is permitted; and</li> <li>• Form E-3, Proposed Key Personnel Information.</li> </ul>	<b>3.6</b>
<b>Section 6</b>	<p><b>Project Understanding and Approach</b> <i>(a maximum of 20 pages total for Section 6 &amp; 7 are permitted):</i></p> <ul style="list-style-type: none"> <li>• Proposed management approach and project understanding; and</li> <li>• Keys to ensuring a successful project.</li> </ul>	<b>3.7</b>

<b>SOQ Section</b>	<b>Section Title and Required Information</b>	<b>RFQ Reference</b>
<b>Section 7</b>	<p><b>Quality Assurance Program</b> <i>(a maximum of 20 pages total for Section 6 &amp; 7 are permitted):</i></p> <ul style="list-style-type: none"> <li>• Proposed approach for Design Quality Control by the Design-Builder;</li> <li>• Proposed approach for Construction Quality Control by the Design-Builder;</li> <li>• Proposed approach for coordination between the Department and the Design-Builder's organization; and</li> <li>• Proposed approach for coordination with other agencies.</li> </ul>	<b>3.8</b>
<b>App. A</b>	<p><b>Resumes</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Key Personnel Resumes, a limit of two pages for each resume will be permitted.</li> </ul>	<b>3.6 (C), 3.6.1</b>
<b>App. B</b>	<p><b>Legal Documents</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Powers of attorney; and</li> <li>• Organization documents, letters of agreement, and other documents identified in RFQ <u>Section 3.2</u> or addressed in Section 1 of the Design-Build Team's SOQ.</li> </ul>	<b>3.2</b>

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# **APPENDIX C:**

# **FORMS**

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## **Appendix C – List of Forms**

Form A	Transmittal Letter
Form B	Backlog and Financial Information
Form E-1	Project Description
Form E-2	Subcontractor Information
Form E-3	Proposed Key Personnel Information
Form L-1	Design-Build Team's Organization Information
Form L-2	Principal Participant and Designer Certification
Form PP-1	Past Performance
Form PP-2	Environmental Past Performance
Form R	Past Revenue
Form RFQ-C	Design-Build Team's Clarification Request
Form S	Safety Questionnaire
Form T Affidavit	Design-Build Team's Provisional Overall DBE Project Goal Declaration
Form U	Design-Build Team SOQ Certification



**FORM A**  
**TRANSMITTAL LETTER**

**DESIGN-BUILD TEAM:** \_\_\_\_\_

SOQ Date: [Insert Date]

Nebraska Department of Transportation  
P.O. Box 94759  
Lincoln, Nebraska 68509-4759

Attn: [NDOT Project Manager's Name], [NDOT Project Manager's Title]

The undersigned ("Design-Build Team") submits this proposal and statement of qualification submittal (this "SOQ") in response to that certain Request for Qualifications dated as of \_\_\_\_\_ (as amended, the "RFQ"), issued by the Nebraska Department of Transportation ("Department") to design and construct the Project, as described in the RFQ.

Enclosed, and by this reference incorporated herein and made a part of this SOQ, are the following:

- Transmittal Letter (this Form A)
- Form U, Design-Build Team's SOQ Certification
- Section 1: Legal Structure
- Section 2: Financial Capacity
- Section 3: Safety Program
- Section 4: Firm Experience and Past Performance
- Section 5: Design-Build Team Organization and Key Personnel
- Section 6: Project Understanding and Approach
- Section 7: Quality Assurance Program
- Appendices A & B (Resumes and Legal Documents)

Design-Build Team acknowledges receipt, understanding, and full consideration of all materials posted on the Department's website (\_\_\_\_\_) as set forth in Section 1.9, and the following addenda and sets of questions and answers to the RFQ:

[Design-Build Team to list any addenda to this RFQ and sets of questions and answers by dates and numbers prior to executing Form A.]

Design-Build Team represents and warrants that it has read the RFQ and agrees to abide by the contents and terms of the RFQ and the SOQ.

If the Design-Build Team consists of more than one entity, all members of the Design-Build Team entity agree to accept joint and several liabilities for performance under the Contract.

Design-Build Team understands that the Department is not bound to pre-qualify any Design-Build Team and may reject each SOQ the Department may receive.

Design-Build Team further understands that all costs and expenses incurred by it in preparing this SOQ and participating in the Project procurement process will be borne solely by the Design-Build Team, except, to the extent of any payment made by the Department following short-list determination, as described in Section 1.14 of the RFQ.

Design-Build Team agrees that the Department will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this SOQ.

This SOQ shall be governed by and construed in all respects according to the laws of the State of Nebraska.

Design-Build Team's business address:

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(No.)	(Street)	(Floor or Suite)
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(City)	(State or Province)	(ZIP or Postal Code)	(Country)
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State or Country of Incorporation/Formation/Organization: \_\_\_\_\_

*[insert appropriate signature block from following pages]*

1. Sample signature block for corporation or limited liability company:

*[Insert Design-Build Team's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. Sample signature block for partnership or joint venture:

*[Insert Design-Build Team's name]*

By: *[Insert general partner's or equity member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Add signatures of additional general partners or equity members as appropriate]*

3. Sample signature block for attorney in fact:

*[Insert Design-Build Team's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Attorney in Fact

**FORM B**  
**BACKLOG AND FINANCIAL INFORMATION**

**Name of Design-Build Team:**

---

**Instructions for Form completion:** Responses shall be addressed within the table below, should additional space be needed to adequately respond, Design-Build Teams are advised to increase the number of lines within the table as appropriate. Form B shall have no SOQ page limitation.

Design-Build Team Entities and Firm Names	Contract s in Force (Number)	Total Contract Value (US\$ millions)	Value of Work Remaining by Year (US\$ millions)		
			20__	20__	20__
<b>Major Participant(s):</b>					
<b>Lead Contractor:</b>					

**Name of Design-Build Team:**

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**Instructions for Form completion:** Responses shall be addressed within the table below, should additional space be needed to adequately respond, Design-Build Teams are advised to increase the number of lines within the table as appropriate. Form B shall have no SOQ page limitation.

Firm Name	Proposals / Bids Outstanding (Number)	Total Potential Value (US\$ millions)
<b>Major Participant(s):</b>		
<b>Lead Contractor:</b>		

**FORM E-1**  
**PROJECT DESCRIPTION**

**Name of Design-Build Team:**

---

**Instructions for Form completion:** Form E-1 is limited to a maximum of 3 pages for each completed project.

<b>Name of Firm:</b>
<b>Project Role:</b> _____
<b>Major Participant:</b> _____ <b>Designer:</b> _____
<b>Other (Describe):</b> _____
<b>Years of Experience:</b> _____
<b>Project Name, Location, Description, and Nature of Work for Which Company Was Responsible:</b>
<i>(Use additional lines within this section as necessary to response to this questions)</i>
<b>Provide Project Description and Describe Site Conditions:</b>

*(Use additional lines within this section as necessary to describe project and site conditions)*

**List Any Awards, Citations, and/or Commendations Received for the Project:**

**Name of Client** (Owner/Agency, Contractor, etc.):

Address:

Contact Name:

Telephone:

Owner's Project or Contract No.:

Fax No:

Contract Value (US\$):

Final Value (US\$):

Percent of Total Work Performed by Company:

Commencement Date:

Planned

Completion Date:

Actual Completion Date:

Amount of Claims:

Any Litigation? Yes \_\_\_ No \_\_\_

**FORM E-2**  
**SUBCONTRACTOR INFORMATION**

**Name of Design-Build  
Team:**

---

**Instructions for Form completion:** Responses shall be addressed within the table below, should additional space be needed to adequately respond, Design-Build Teams are advised to increase the number of lines within the table as appropriate. Form E-2 has no SOQ page limitation.

Subcontractor Name <sup>1,2</sup>	Address and Telephone Number	Work Planned for the Project

- (1) At a minimum, list specialized subcontractors except for the Designer.
- (2) Attach a maximum one-page summary of subcontractor experience for each subcontractor listed, including consultants.



**FORM E-3**  
**PROPOSED KEY PERSONNEL**  
**INFORMATION**

**Name of Design-Build Team:**

---

**Instructions for Form completion:** Responses shall be addressed within the table below, should additional space be needed to adequately respond, Design-Build Teams are advised to increase the number of lines within the table as appropriate. Form E-3 has no SOQ page limitation.

Position	Name	Years of Experience	Education and Registrations	Parent Firm Name	Reference Name and Telephone & Fax Numbers <sup>1</sup>
<b>Project Manager</b>					
<b>Construction Manager</b>					

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<sup>1</sup> Provide three references for each position identified on Form E-3.

Position	Name	Years of Experience	Education and Registrations	Parent Firm Name	Reference Name and Telephone & Fax Numbers <sup>1</sup>
Design Manager					
Quality Control Administrator					
Design Quality Control Manager					
Construction Quality Control Manager					
Environmental Compliance Manager					
Safety Manager					

**FORM L-1**  
**DESIGN-BUILD TEAMS'S ORGANIZATION INFORMATION**

**Name of Design-Build Team:**

**Instructions for Form completion:** Responses to each subject area shall be addressed within the table below, should additional space be needed, Design-Build Teams are advised to increase space following question as appropriate. Form L-1 shall have no SOQ page limitation.

Design-Build Team (Individual Firm / Joint Venture / Partnership / LLC)				
Name of Entity: _____				
Address: _____ _____				
Contact Name: _____			Title: _____	
Telephone No.: _____		Fax No.: _____		E-mail: _____
Local / Regional Contact				
Name: _____				
Address: _____ _____				
Telephone No.: _____		Fax No.: _____		E-mail: _____
Name(s) of Design-Build Team Entity(ies)				
Company Name	Address and Telephone & Fax Numbers	State of Incorporation:	Lead Participant? Yes No	
Major Participant(s)				
Designer				

**FORM L-2**

**PRINCIPAL PARTICIPANT AND DESIGNER CERTIFICATION**

**Name of Design-Build Team:**

---

**Firm Name:**

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**Instructions for Form completion:** Responses to each question shall be addressed within the table below, should additional space be needed, Design-Build Teams are advised to increase space following question. Form L-2 shall have no SOQ page limitation.

*Complete for each Major Participant and the Designer: Design-Build Teams are advised that responses to questions contained within Form L-2 shall be governed by past performance conducted within the United States.*

1. Has the firm<sup>2</sup> or its owners, officers, or managing employees ever failed to complete any work it agreed to perform, or had a contract terminated because it was in default? If yes, describe.

2. Has the firm<sup>1</sup> (no footnote 1 below only 2) or any officer thereof been indicted or convicted of bid or other contract-related crimes or violations or any felony or misdemeanor related to performance under a contract within the past five years? If yes, describe.

3. Has the firm<sup>1</sup> ever sought protection under any provision of any bankruptcy act or been subject to a receivership or involuntary bankruptcy proceeding? If yes, describe and provide information concerning any work completed by a surety as a result of the bankruptcy or receivership.

4. Has the firm<sup>1</sup> ever been debarred, disqualified, removed, or suspended from performing work for the Federal government or any State or local government in the last five years? If yes, describe.

---

<sup>2</sup> Note: "Firm" includes any Affiliate.

5. Has any serious or willful violation of Part 1 (commencing with section 6300 of Division 5 of the Labor Code or the Federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against the firm<sup>1</sup>? If yes, describe.

6. Has the firm<sup>1</sup>, or its owners, officers, or managing employees, submitted a bid on a public works project and found to be nonresponsive, or found by an awarding body not to be a responsible bidder in the last five years? If yes, describe.

7. Has any violation of the Contractors' State License Law, including alleged violations of Federal or State law regarding the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding or Federal Insurance Contribution Act (FICA) withholding requirements, settled against the firm<sup>1</sup>? If yes, describe.

8. Have any adverse claims, disputes, or lawsuits between the owner of a public works project and the firm<sup>1</sup>, in which the claim, settlement, or judgment exceeds \$50,000, settled during the past five years? If yes, describe. Provide any information concerning any work completed by a surety during the past five years.

9. Has the Nebraska Department of Labor found the firm<sup>1</sup> to be in willful violation of Nebraska Labor Code? If yes, describe.

10. Has the firm<sup>1</sup> been convicted of violating a State or Federal law relating to the employment of undocumented aliens in the past five years? If yes, describe.

11. Has the firm<sup>1</sup> or its agent made any contribution of more than \$250 to any employee of the Department or Highway Commissioner within the preceding 12 months? If yes, describe.

12. List up to five financial institutions with which the firm<sup>1</sup> has done the most business during the past five years and identify the individual at each institution who was in charge of the firm's<sup>1</sup> accounts. Indicate the address, telephone, and fax numbers of each individual.

13. In the last five years, has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

14. At any time in the last five years has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?

15. Has a surety firm completed a contract on your behalf or paid for completion because your firm was in default or terminated by the project owner within the last five years?

*(Must be signed by an officer of the firm)*

**Firm:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Name of Design-Build Team:** \_\_\_\_\_

**FORM PP-1**  
**PAST PERFORMANCE**

**Name of Design-Build Team:**

---

**Name of Major Participant:**

---

**Instructions for Form completion:** Should additional lines be needed by Design-Build Teams to address subject areas identified in the table below, Design-Build Team shall add additional lines within each subject area as appropriate. Form PP-1 has no SOQ page limitation.

**Awards, Citations, and/or Commendations:**

Name of Award, etc.	Year Received	Project and Location	Work for Which Award, etc. Was Received

**Litigation, Claims, Dispute Proceedings, and Arbitration:**

Project/Issue	Owner/Agency That Initiated Action	Resolution/Outcome	Is Unresolved or Action Outstanding?	Current Owner Contact Name and Telephone & Fax Numbers.

**Liquidated Damages:**

Project Name	Cause of Delay(s)	Amount Assessed	Describe Outstanding Damage Claims by Any Owner	Current Owner Contact Name, and Telephone & Fax Nos.

**Termination for Cause:**

Project Name	Describe Reason for Termination	\$ Amount Involved	Current Owner Contact Name, Telephone & Fax Nos.



**Disciplinary Action:**

<b>Project Name</b>	<b>Describe Action Taken</b>	<b>Current Owner Contact Name, Telephone &amp; Fax Nos.</b>

**FORM PP-2**  
**ENVIRONMENTAL PAST  
PERFORMANCE**

**Name of Design-Build Team:**

---

**Name of Major Participant:**

---

**Instructions for Form completion:** Should additional lines be needed by Design-Build Teams to address subject areas identified in the table below, Design-Build Team shall add additional lines within each subject area as appropriate. Form PP-2 has no SOQ page limitation.

**Environmental Awards and/or Commendations:**

Name of Award	Year Received	Project and Location	Work for Which Award Received

**Environmental Citations:**

<b>Name of Citations</b>	<b>Year Received</b>	<b>Project and Location</b>	<b>Work for Which Citation Received</b>

**FORM R**  
**PAST REVENUE**

**Name of Design-Build Team:**

---

Firm Name (Design-Build Team Entities)	Total Revenue (\$US in Millions)		
	20__	20__	20__
<b>Major Participant(s):</b>			
<b>Designer:</b>			

**FORM RFQ-C**  
**DESIGN BUILD TEAM'S CLARIFICATION REQUEST**

Name of Major Participant:

---

RFQ Section No. or Appendix	Question	Reserved for Department Response

<b>RFQ Section No. or Appendix</b>	<b>Question</b>	<b>Reserved for Department Response</b>

**FORM S**  
**SAFETY QUESTIONNAIRE**

**Name of Design-Build Team:**

---

**Name of Major Participant:**

---

**Instructions for Form completion:** Should additional lines or space be needed by Design-Build Teams to address subject areas identified in the tables and questions below, Design-Build Team shall add additional lines within each subject area as appropriate. Form S has no SOQ page limitation.

1. Provide the following information for the past three years:

Item	2008	2009	2010
<b>Experience Modification Rate</b>			
<b>Lost Work Rate</b>			
<b>Employee hours worked</b> (Do not include non-work time, even though paid)			
<b>Number of lost workday cases</b>			
<b>Number of restricted workday cases</b>			
<b>Number of cases with medical attention only</b>			
<b>Number of fatalities</b>			

2. Are internal accident reports and report summaries sent to management? To what levels and how often?

Position	No	Ye s	Monthly	Quarterly	Annually

3. Do you hold site meetings for supervisors? Yes \_\_\_\_\_ No \_\_\_\_\_

How Often? Weekly\_\_\_ Biweekly\_\_\_ Monthly\_\_\_ Less often, as needed\_\_\_

4. Do you conduct Project Safety Inspections? Yes \_\_\_\_\_ No \_\_\_\_\_

By Whom? \_\_\_\_\_

\_\_\_\_\_

How Often? Weekly\_\_\_ Biweekly\_\_\_ Monthly\_\_\_

5. Does the firm have a written Safety Program? Yes \_\_\_\_\_ No \_\_\_\_\_

6. Does the firm have an orientation program for new hires? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what safety items are included? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



7. Does the firm have a program for newly hired or promoted foremen?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, does it include instruction of the following?

Topic	Yes	No
<b>Safety Work Practices</b>		
<b>Safety Supervision</b>		
<b>On-site Meetings</b>		
<b>Emergency Procedures</b>		
<b>Accident Investigation</b>		
<b>Fire Protection and Prevention</b>		
<b>New Worker Orientation</b>		

8. Does the firm hold safety meetings, which extend to the laborer level?

Yes \_\_\_\_\_ No \_\_\_\_\_

How often? Daily \_\_\_\_ Weekly \_\_\_\_ Bi-Weekly \_\_\_\_ Less often, as needed \_\_\_\_

9. (For Design-Build Team only) Indicate the safety record on the last Project to which the indicated key personnel were assigned:

Key Person	Total Hours Worked by All Employees on Project	Number of Lost Workday Cases on Project	Number of Restricted Workday Cases on Project	Number of Cases with Medical Attention Only on Project	Number of Fatalities on Project
<b>Project Manager</b>					
<b>Construction Manager</b>					

10. Has Nebraska OSHA cited and assessed penalties against your firm for any "serious," "willful," or "repeat" violations of its safety or health regulations in the past five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(If yes, attach a separate signed page describing the citations, including information about the dates of the citations, nature of the violation, the project on which the citation(s) was or were issued, and the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.)

11. Has the Federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(If yes, attach a separate signed page describing each citation.)

**FORM T**

**DESIGN=BUILD TEAM'S PROVISIONAL OVERALL DEBE PROJECT GOAL  
DECLARATION AFFIDAVIT**

**Name of Design-Build Team:**

---

It is understood and agreed by the Design-Build Team that it has carefully examined all documents that form this Request for Qualifications (RFQ) and acknowledges that Nebraska Department of Transportation (the Department) has established a proposed Overall Project DBE goal of **[Insert Percentage]**% based on the total project value for this Design-Build Project. This affidavit further serves to confirm that (***INSERT DESIGN-BUILD TEAM NAME HERE***) will aggressively exercise good faith efforts to the satisfaction of the Department to meet the proposed Overall Project DBE goal in accordance with DBE Design-Build Program requirements defined in the Request for Proposal (RFP) documents, when issued. The proposed Overall Project DBE goal is considered "Provisional" at this time, as the Department is currently in the process of securing required approvals of the proposed Overall Project DBE goal from U.S. Department of Transportation (U.S. DOT).

It is further understood by the Design-Build Team that in the event the Design-Build Team commits to exceed the established provisional overall DBE project goal, the DBE goal of record will be that committed to by the Design-Build Team. In fulfilling the Design-Build Team's commitment to meet or exceed the established overall DBE project goal, the Design-Build Team will adhere to all DBE provisions set forth in the Authority's DBE Program, this solicitation, regulatory requirements, and any contract which results there from.

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

Each of the undersigned, being first duly sworn, deposes and says that \_\_\_\_\_

(Contact Name)

is the \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ is the \_\_\_\_\_  
(Title) (Company) (Contact Name) (Title)

of \_\_\_\_\_, which entity(ies) are the \_\_\_\_\_  
(Company) (Joint Venture/Partnership, Other)

of \_\_\_\_\_, the entity making the foregoing Proposal.  
(Joint Venture Company)

The Design-Build Team hereby affirms that it will either meet the DBE goals described in this solicitation or exercise and provide demonstrable evidence to the satisfaction of the Nebraska Department of Transportation (the Department) that it has aggressively exercised Good Faith Efforts to do so in accordance with defined program requirements, including contractual and regulatory provisions set forth under Title 49, Code of Federal Regulations (CFR), Part 26 and subsequently published Design-Build DBE Federal Registrars.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Notary Public in and for said County and State**

[Seal]

**My commission expires:** \_\_\_\_\_.

*[Duplicate or modify this form as necessary so that it accurately describes the entity making the proposal and so that it is signed on behalf of all partners/members of the proposing firm.]*

**FORM U**  
**DESIGN BUILD TEAM SOQ CERTIFICATION**

A COPY OF THIS CERTIFICATION MUST BE COMPLETED AND SIGNED BY DESIGN-BUILD TEAM AND, IF A DESIGN-BUILD TEAM IS A PARTNERSHIP, LIMITED PARTNERSHIP, JOINT VENTURE OR OTHER ASSOCIATION, THEN A SEPARATE CERTIFICATION MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF EACH MEMBER AND SUBMITTED WITH THE STATEMENT OF QUALIFICATIONS.

**DECLARATION**

STATE OF \_\_\_\_\_ )

)SS:

COUNTY OF \_\_\_\_\_ )

I, (printed name) \_\_\_\_\_, being first duly sworn, state that I am the (title) \_\_\_\_\_ of the Design-Build Team.

I certify that I have read and understood the information contained in the Request for Qualifications issued by the Nebraska Department of Transportation for Project S and the attached Statement of Qualifications (SOQ), and that to the best of my knowledge and belief all information contained herein and submitted concurrently or in supplemental documents with this SOQ is complete, current, and true. I further acknowledge that any false, deceptive, or fraudulent statements in the SOQ will result in denial of short-list status.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed)

**ACKNOWLEDGMENT**

On this \_\_\_\_\_ (date) before me, \_\_\_\_\_ (name and title of officer) personally appeared, \_\_\_\_\_ (name of signer above) who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nebraska that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said County and State

[Seal]

My commission expires: \_\_\_\_\_.

**NOTICE TO APPLICANTS:**

A material false statement, omission, or fraudulent inducement made in connection with this Statement of Qualifications is sufficient cause for denial of the application. In addition, such false submission may subject the person or entity making the false statement to criminal charges.

---

**ATTACHMENT 1:  
SCORING FORM**  
**[SCORE VALUES ARE AT THE  
DISCRETION OF NDOT]**

---

## SCORING FORM

### **ORGANIZATION AND KEY MANAGER & EXPERIENCE OF THE FIRMS**

Section	Requirement	Score
3.5	<i>Firm Experience and Past Performance</i> [POINTS ARE SPECIFIC TO THE PROJECT]	
3.5.1 (A), (B) & (C)	Past Performance (maximum 7 pts.)	
3.5.1 (E), (F) & (G)	Firm Experience (maximum 6 pts.)	
3.5.1 (D)	Penalties, Claims/Litigation and Termination (maximum 5 pts.)	
3.6	<i>Design-Build Team's Organization and Key Personnel</i>	
3.6.1 (A)	Qualifications of the proposed Project Manager (maximum 10 pts.)	
3.6.1 (B)	Qualifications of the proposed Construction Manager (maximum 8 pts.)	
3.6.1 (C)	Qualifications of the proposed Design Manager (maximum 8 pts.)	
3.6.1 (D)	Qualifications of the proposed Quality Control Administrator (maximum 4 pts.)	
3.6.1 (E)	Qualifications of the proposed Design Quality Control Manager (maximum 2 pts.)	
3.6.1 (F)	Qualifications of the proposed Construction Quality Control Manager (maximum 2 pts.)	
3.6.1 (G)	Qualifications of the proposed Environmental Compliance Manager (maximum 4 pts.)	
3.6.1 (H)	Qualifications of the proposed Safety Manager (maximum 4 pts.)	
<b>Total Score for Design-Build Team Organization and Key Personnel &amp; Firm Experience and Past Performance</b> <i>(total score for these categories cannot exceed 60)</i>		



**SCORING FORM**  
**PROJECT UNDERSTAND AND APPROACH & QUALITY  
MANAGEMENT PROGRAM**

Section	Requirement	Score
3.7	<i><u>Project Understanding and Approach</u></i>	
3.7 (A)	Design-Builder's Management and Organizational Approach (maximum 10 pts.)	
3.7 (B)	Design-Build Team's organization and the design-build process to ensure a successful Project, considering the Department's Project goals listed in <u>Section 1.3</u> (maximum 10 pts.)	
3.8	<i><u>Quality Assurance Program</u></i>	
3.8 (A)	Design Quality Control by the Design-Builder (maximum 6 pts.)	
3.8 (B)	Construction Quality Control by the Design-Builder (maximum 6 pts.)	
3.8 (C)	Coordination between the Department and the Design-Builder organization (maximum 4 pts.)	
3.8 (D)	Coordination with other agencies (maximum 4 pts.)	
<b>Total Score for Project Understanding and Approach &amp; Quality Assurance Program</b> <i>(total score for these categories cannot exceed 40)</i>		

Appendix G  
**Design-Build ITP Example**



### Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official ITP.

The official ITP will need to be tailored for the project specifics.

# Nebraska Department of Transportation

## Request for Proposal (RFP)

Design-Build Services For  
[Project Name]

Lincoln, Nebraska  
Control Number, Project Number

### Volume I

### Instructions to Proposers

[Insert a Project Picture]

Nebraska Department of Transportation

1500 Highway 2  
Lincoln, NE 68502  
Mailing address: P.O. Box 94759  
Lincoln, NE 68509-4759

Date

**Final RFP**

# Table of Contents

<b>1</b>	<b>General Information</b>	<b>1</b>
1.1	Definitions	1
1.2	Project Goals	1
1.3	General Project Description and Scope Of Work	1
1.3.1	General Project Description	1
1.3.2	Scope of Work	2
1.3.3	Project Environmental Status	2
1.4	Procurement Schedule	2
1.5	Documents Comprising the RFP	3
1.5.1	Reference Materials	4
1.6	General Provisions Regarding Proposals	4
1.6.1	Proposal Contents	4
1.6.2	Inclusion of Proposal in Contract Documents	4
1.6.3	Commitments in the Proposal	4
1.6.4	Ownership of Proposal and Applicability of NE Public Records Act	4
1.7	Project Funding and Financing	5
1.8	Federal Requirements	5
1.8.1	General Obligations	5
1.8.2	Buy America	5
1.8.3	DBE Requirements	5
1.9	Labor Compliance	6
<b>2</b>	<b>Procurement Process</b>	<b>7</b>
2.1	Procurement Method	7
2.2	Receipt of the Request For Proposal Documents, Communications, and Other Information	7
2.2.1	Authorized Representative	7
2.2.2	Designation of Proposer Authorized Representative	8
2.2.3	Rules of Contact	8
2.2.4	Language Requirement	9
2.3	Question and Response Process, and Addenda	9
2.3.1	Questions and Responses Regarding the RFP	9

2.3.2	Addenda .....	10
2.4	Pre-Proposal Submittals .....	11
2.5	Pre-Proposal Meetings .....	11
2.5.1	Informational Meetings .....	11
2.5.2	One-on-One Meetings .....	11
2.5.3	Questions and Responses During One-on-One Meetings .....	12
2.5.4	Statements at Meetings .....	12
2.6	Confidentiality/Public Records Act Disclosure Requests .....	12
2.6.1	Disclosure Waiver .....	12
2.6.2	Observers During Evaluation .....	12
2.6.3	Confidential Materials .....	13
2.6.4	Following Award .....	13
2.6.5	Litigation .....	13
2.6.6	Exceptions .....	14
2.7	Department Studies and Investigations .....	14
2.8	Examination of RFP and Site Access .....	14
2.8.1	Examination of RFP Documents .....	14
2.8.2	Site Access; ROW .....	14
2.9	Errors .....	15
2.10	Improper conduct .....	15
2.10.1	Non-Collusion .....	15
2.10.2	Organizational Conflicts of Interest .....	15
2.10.3	Restrictions on Participation .....	15
2.10.4	Participation on More than One Team .....	16
2.11	Changes in Proposer's Organization .....	16
<b>3</b>	<b>Alternative Technical Concepts .....</b>	<b>17</b>
3.1	Alternative Technical Concepts General .....	17
3.2	Pre-Proposal Submission of ATCs .....	17
3.2.1	Pre-Proposal ATC Submissions Shall Include .....	17
3.3	Department Review of Pre-Proposal Submission of ATCs .....	19
3.4	Incorporation of ATCs in the Contract Documents .....	20
3.5	Confidentiality .....	20

<b>4</b>	<b>Requirements for Submittal of Proposals and Acceptance of Delivery by Department</b>	<b>21</b>
4.1	General Submittal Requirements.....	21
4.1.1	Proposal Due Date .....	21
4.1.2	Signatures Required.....	21
4.1.3	Certified Copies .....	21
4.1.4	Consequences of Failure to Follow Requirements.....	21
4.1.5	Requirement to Submit a Compliant Proposal .....	21
4.1.6	Format .....	22
4.1.7	Additional Requirements for Proposal Delivery .....	23
4.2	Technical Proposal Submittal .....	23
4.2.1	General.....	23
4.2.2	Escrow Agreement .....	23
4.3	Price Proposal Submittal .....	23
4.3.1	Portions of Price Proposal Submitted Directly to Department.....	23
4.3.2	Portions of Price Proposal Submitted to Escrow .....	24
4.3.3	Proposal Security .....	24
4.4	Currency .....	24
4.5	Modifications, Withdrawals and Late Submittals .....	25
4.5.1	Modifications to a Proposal .....	25
4.5.2	Withdrawal and Validity of Proposals .....	25
4.5.3	Late Proposals.....	25
4.6	Forfeiture of Proposal Security .....	25
4.7	Acceptance of Delivery by Department .....	26
4.8	Costs Not Reimbursable.....	26
<b>5</b>	<b>Evaluation and Post-Selection Process .....</b>	<b>27</b>
5.1	Organization of the Department Evaluation Committees and Subcommittees.....	27
5.2	Best Value Determination .....	27
5.3	Pass/Fail and Responsiveness Evaluation.....	28
5.3.1	Technical Proposal .....	28
5.3.2	Price Proposals .....	29
5.3.3	Department Right to Exclude Proposals from Consideration or Waive Mistakes.....	30
5.4	Evaluation of Technical Proposal by TPEC .....	30

5.4.1	Technical Proposal Evaluation Factors .....	30
5.4.2	Evaluation Guidelines.....	31
5.4.3	Technical Score.....	32
5.5	Requests for Clarification.....	32
5.6	Evaluation of Price Proposal by PPEC.....	33
5.6.1	Price Proposal Opening.....	33
5.6.2	Schedule Adjustment.....	33
5.6.3	Price Proposal Responsiveness.....	33
5.7	Determination of the apparent Successful Proposer .....	34
5.8	Blank.....	34
5.9	Award of Contract.....	34
5.10	Finalization of Contract Documents; Post-Selection Process.....	34
5.11	Post-Selection Deliverables.....	35
5.11.1	Project Management Plan .....	35
5.11.2	Documents to be Submitted Following Intent to Award.....	35
5.11.3	Department Comments on Post-Selection Deliverables .....	35
<b>6</b>	<b>Contract Execution; Post-Execution Actions .....</b>	<b>36</b>
6.1	Execution and Delivery of Contract .....	36
6.1.1	Contract Documents.....	36
6.1.2	Documents to Be Delivered By Proposer With Executed Contract .....	36
6.2	Debriefings.....	38
6.3	Payment to Unsuccessful Proposers.....	38
6.4	Disposition of Escrowed Materials Following Conclusion of Procurement Process .....	39
<b>7</b>	<b>Protests .....</b>	<b>40</b>
7.1	Applicability.....	40
7.2	Required Early Communication for Certain Protests .....	40
7.3	Deadlines for Protests .....	40
7.3.1	RFP Terms .....	40
7.3.2	Responsiveness or Pass/Fail Determinations .....	40
7.3.3	Contract Award.....	40
7.4	Content of Protest.....	40
7.5	Filing of Protest.....	41



7.6	Comments from Other Proposers.....	41
7.7	Burden of Proof.....	41
7.8	Decision on Protest.....	41
7.9	Protestant’s Payment of Costs .....	41
7.10	Rights and Obligations of Proposers .....	41
<b>8</b>	<b>Department’s Rights and Disclaimers.....</b>	<b>42</b>
8.1	Department Rights.....	42
8.2	Department Disclaimers .....	43

Exhibit A – Definitions and Acronyms

Exhibit B – Technical Proposal Instructions

Exhibit C – Financial Proposal Instructions

Exhibit D – Required Forms

Exhibit E – Summary of Proposal Contents

Exhibit F - Form of Stipend Agreement



# Instructions to Proposers

## 1 General Information

This Request for Proposals (as amended from time to time, the "RFP") is issued by the Nebraska Department of Transportation ("Department") to seek competitive proposals (individually a "Proposal" and collectively, "Proposals") for design and construction of [Project Name] ("Project") as more specifically described herein and in the form of the Design-Build Contract ("Contract") and the Technical Provisions ("TP") included in this RFP.

The Department is issuing the RFP to those Proposers who were shortlisted based on the Department's evaluation of Statements of Qualifications ("SOQs") delivered to the Department on \_\_\_\_\_ in response to the Request for Qualifications for the Project issued on \_\_\_\_\_ (as amended, the "RFQ").

Proposers must comply with these Instructions to Proposers ("ITP") during the procurement and in their responses to the RFP. Proposers shall also take the Project goals identified in Section 1.2 below into consideration in drafting their Proposals.

All forms identified in this ITP are found in Exhibit D unless otherwise noted. All times in this ITP are Central Standard Time (CST) or Central Daylight Savings Time (CDT), as applicable.

### 1.1 Definitions

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used herein, and refer to Appendix 1 to the Contract for the meaning of capitalized terms and acronyms used, but not defined herein or in Exhibit A of this ITP.

### 1.2 Project Goals

The Department's primary goals in connection with this procurement and the Project include

- A. -----
- B. -----
- C. -----
- D. -----
- E. -----
- F. -----

### 1.3 General Project Description and Scope Of Work

#### 1.3.1 General Project Description

[Project Name] includes the following primary elements:

- A. -----
- B. -----
- C. -----

A major goal for the design of the Project is \_\_\_\_\_.

The Proposer shall be responsible for utility coordination, civil work, drainage and all other work required to complete the Project.

### 1.3.2 Scope of Work

~~Design/Builder~~Design-Builder's work ("Work") generally includes all work and efforts required to design and construct the Project in accordance with the requirements of the Contract Documents. A more specific description of the scope of the Work is set forth in the Technical Provisions.

### 1.3.3 Project Environmental Status

On \_\_\_\_\_, the Nebraska State Historic Preservation Office determined, with a fully executed Memorandum of Agreement among all parties, that the Section \_\_\_\_ process was completed.

On \_\_\_\_\_, the Federal Highway Administration classified the Project as \_\_\_\_\_, pursuant to the National Environmental Policy Act (NEPA) of 1969 and the US Department of Transportation Act of 1966, \_\_\_\_\_, and Section \_\_\_\_\_ of the Federal-Aid Highway Act of 1968, \_\_\_\_\_ (as amended by the Federal-Aid Highway Act of 1983).

The Project will need to be permitted through the NE Department of Environmental Quality (NDEQ) and the Nebraska Department of Natural Resources (DNR). This permitting will be accomplished by the Department unless the Proposer wishes to impact additional areas not currently identified.

The project will need to comply with Section \_\_\_\_\_ of the Clean Water Act. Once construction details are known, a permit may be required from the Army Corps of Engineers.

Because the project involves \_\_\_\_\_, it will require a \_\_\_\_\_ permit. This permitting will be accomplished by the Department with assistance from the Proposer.

## 1.4 Procurement Schedule

The following represents the current procurement schedule:

Milestone	Date	Time
Issue Industry Review Package		[INSERT DATE]
Mandatory Project Workshop at the Department in Lincoln, NE		
Last date for Proposers to submit Name of Proposer Authorized Representative		
One-on-One Meetings with Proposers (1 <sup>st</sup> Round) to Discuss the Industry Review Package		
Last date for Proposers to Submit Comments to the Industry Review Package		
Issue Final Request for Proposals		

Milestone	Date	Time
One-on-one Meetings with Proposers (2 <sup>nd</sup> Round) to discuss Technical Provisions and ATCs		
Deadline for Submittal of ATCs		
Last Date for Department ATC Response		
Last Date for Submittal of Key Personnel		
One-on-one Meetings with Proposers (3 <sup>rd</sup> Round) to discuss RFP		
Last Date for Proposer Submittal of Executed Stipend Agreement		
One-on-one Meetings with Proposers (4 <sup>th</sup> Round) to discuss RFP		
Last Date for Submittal of Information Concerning Escrow Agent		
Last Date for Proposer Submittal of Final Questions Regarding the RFP		
Technical Proposal and Financial Proposal Due Date		
Escrowed Proposal Documents (EPDs) Due Date		
Public Bid Opening		
Governor's Office approval (if needed)		
Execution of Contract and Issuance of NTP1 (anticipated)		

All dates set forth above and elsewhere in the RFP are subject to change, in the Department's sole discretion, by Addendum.

## 1.5 Documents Comprising the RFP

The RFP Documents consist of the volumes listed below, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented.

- A. Volume I – This ITP (including exhibits and forms);
- B. Volume II – the Contract Documents (Book 1), Technical Provisions (Book 2), and Special Provisions (Book 3);
- C. Reference Materials Department web page <http://www.ne.gov>

### **1.5.1 Reference Materials**

The Reference Materials are included in the RFP for the purpose of providing certain information to Proposers that is in the Department's possession. The Department has not determined whether the Reference Materials are accurate, complete or pertinent, or of any value to Proposers. The Reference Materials will not form a part of the Contract between the Department and the ~~Design/Builder~~Design-Builder. Except as may be provided otherwise in the Contract Documents, the Department makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of the Reference Materials, and, in addition, shall not be responsible for any conclusions drawn therefrom.

## **1.6 General Provisions Regarding Proposals**

### **1.6.1 Proposal Contents**

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including a (a) Technical Proposal, and (b) Financial Proposal. Requirements for the Technical Proposal and the Financial Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms in the format specified or any submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions will result in the Department's rejection of the Proposal until the Proposer completes the missing information. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

### **1.6.2 Inclusion of Proposal in Contract Documents**

All portions of the successful Proposal will become part of the Contract Documents, as specified in the Contract. All other information is for evaluation purposes only and will not become part of the Contract Documents.

### **1.6.3 Commitments in the Proposal**

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.

### **1.6.4 Ownership of Proposal and Applicability of NE Public Records Act**

Subject to the exceptions specified herein, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, discs, designs, and other graphic and visual aids submitted to the Department during this procurement process, whether included in the Proposal or otherwise submitted, become the property of the Department upon delivery to the Department, and will not be returned to the submitting parties.

All material submitted by Proposers, including Proposals, are subject to the provisions of Nebraska Public Records Law (Nebraska Revised Statutes 84-712) and any other laws and

regulations applicable to the disclosure of documents submitted under this RFP. Such laws govern the Department's use and disclosure of its records.

Proposers should familiarize themselves with the provisions of the Nebraska Public Records Law requiring disclosure of public information, and exceptions thereto. In no event shall the Department or any of its agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to the RFP. See also Section 2.6.

## **1.7 Project Funding and Financing**

The Department's plan of finance contemplates that the Department, using NDOT and federal funds, will fund the design and construction of the Project. Payments will be made in accordance with the Contract Documents.

## **1.8 Federal Requirements**

### **1.8.1 General Obligations**

Proposers are advised that the Project will require the use of federal funds. Accordingly, applicable federal law and Federal Highway Administration ("FHWA") regulations, including those set forth in Appendix 14 to the Contract, will govern the Project's procurement and contract documents. The Department reserves the right to modify the RFP to address any concerns, conditions or requirements of the FHWA. Proposers shall be notified by Addendum of any such modifications.

### **1.8.2 Buy America**

Proposers are advised that the Project will require the Buy America provisions. Proposers should review all components of the Project with respect to this requirement and inform the Department of any concerns associated with meeting this criterion.

### **1.8.3 DBE Requirements**

#### *1.8.3.1 Project Goal and Requirements*

The Department has determined that Disadvantaged Business Enterprises (DBEs) requirements apply to the design and construction of the Project, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of the Department as service providers, vendors, contractors, subcontractors, advisors, and consultants. The Department has adopted the definition of DBEs set forth in 49 CFR Part 26. Proposer's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including Title \_\_\_\_\_, as well as applicable requirements set forth in the Contract Documents and the Department's DBE Program.

The Department's DBE requirements applicable to the Contract are adopted pursuant to Title \_\_\_\_\_. The DBE Participation goal for this Project is \_\_\_\_\_% for professional services and construction portions of the Work performed under the Contract. As set forth in Section 3.2.9 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal. Failure to provide the required DBE certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.

### *1.8.3.2 Information Relating to DBEs*

Refer to Section 3.2.9 of Exhibit B for information regarding DBE submittal requirements. Failure to submit the required DBE information with the Proposal will be grounds for finding the Proposal non-responsive.

It is Proposer's responsibility to make enough Work available to DBEs and to select those portions of the Work or material needs consistent with the available DBEs to meet the goal for DBE participation or to provide information to establish that Proposer made adequate good faith efforts to do so. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

A DBE Proposer, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:

- A. Proposer will meet the goal by performing Work with its own forces;
- B. Proposer will meet the goal through Work performed by DBE Subcontractors, suppliers, or trucking companies;
- C. Proposer, prior to bidding, made adequate good faith efforts to meet the goal or commits to make good faith efforts over the entirety of the contract.

## **1.9 Labor Compliance**

Proposer is advised that Proposer must comply with all applicable requirements of the Nebraska Department of Labor, Labor Laws, together with all applicable regulations, Proposer Nondiscrimination, and with all applicable federal labor requirements, including those set forth in Appendix 14 to the Contract.



## 2 Procurement Process

### 2.1 Procurement Method

This RFP is issued pursuant to Nebraska Transportation Innovation Act (Nebraska Revised Statute 39-2801 *et seq.*), authorizing Nebraska Department of Transportation to enter into a Design-Build Contract. The Department will select the design-build contractor for the Project (the “~~Design/Builder~~Design-Builder”) through a competitive sealed proposal method using best value selection criteria as authorized by the Act.

The Department will award the Contract (if at all) to the responsive and responsible Proposer offering a Proposal that meets the standards established by the Department and that is determined by the Department, through evaluation based upon the criteria set forth in the Section 5, the RFP, to provide the best value to the Department.

The Department will accept Proposals only from the shortlisted Proposers. The Department will not review or consider alternative proposals or proposals with options.

Submission of the DBE Forms and Affidavit and a DBE Performance Plan, in accordance with Section 3.2.9 of Exhibit B, are required as conditions of eligibility for award of the Contract.

### 2.2 Receipt of the Request For Proposal Documents, Communications, and Other Information

The RFP will be issued to shortlisted Proposers in electronic format on the website for the Project (<http://www.transportation.nebraska.gov/>).

The Department shall provide shortlisted Proposers with the address of the website that The Department will maintain related to this procurement. The website access criteria will be provided separately to each shortlisted Proposer and each will be required to treat the address as confidential information and to check the site regularly for addenda to this RFP and for other procurement related information.

#### 2.2.1 Authorized Representative

The Department’s Authorized Representative is as noted below:

Mr. [NDOT Project Manager’s Name], PE

[NDOT Project Manager’s Title]

Phone:

Fax:

E-mail:

Nebraska Department of Transportation

1500 Highway 2, Lincoln, Nebraska 68502

Mailing address: P.O. Box 94759 Lincoln, Nebraska 68509-4759

Final proposal submissions in connection with this RFP should be directed to the following address:

Nebraska Department of Transportation  
1500 Highway 2, Lincoln, Nebraska 68502  
Mailing address: P.O. Box 94759 Lincoln, Nebraska 68509-4759  
Attention: [NDOT Project Manager's Name], [NDOT Project Manager's Title]  
Phone:  
Fax:  
E-mail:

From time to time during the procurement process or during the term of the Contract, the Department may designate another Authorized Representative or authorized representatives to carry out some or all of the Department's obligations pertaining to the Project.

All correspondence shall be clearly labeled on the envelope:

**[Project Name]**  
**“To be Opened by Department Authorized Representative Only”**

The Department will consider questions regarding the RFP submitted by Design-Build Teams in writing, including requests for clarification and requests to correct errors. All such requests must be submitted in writing via email or letter form to the Department's Authorized Representative. Only written requests will be considered. No oral requests or questions by phone will be accepted or considered. No requests for additional information or clarification to any other Department office, consultant, employee, FHWA, or other agency will be considered.

## **2.2.2 Designation of Proposer Authorized Representative**

On or before the date identified in Section 1.4, Proposer shall submit to the Department the name and address and email address of a representative authorized to receive documents, notices, and Addenda and act on behalf of Proposer relating to this procurement (“Proposer Authorized Representative”). Proposer shall further notify the Department of any changes in the representative or address for any notices or Addenda to be sent to Proposer by the Department. Failure to identify a Proposer Authorized Representative in writing may result in the Proposer failing to receive Addenda or other important communications from the Department. The Department is not responsible for any such failure.

## **2.2.3 Rules of Contact**

From the date of issuance of the RFQ, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on, the date the industry review package was issued, as identified in Section 1.4, and ending on the earliest of (i) execution and delivery of the Contract, (ii) rejection of all Proposals by the Department or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

- A. No Proposer nor any of its team members may communicate with another Proposer or its team members with regard to the RFP or either team's Proposal, except that (i)

subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any Department sponsored informational meetings.

- B. Each Proposer shall designate one designated representative responsible for contacts with Department, and shall correspond with the Department regarding the RFP only through the Department's Authorized Representative and the Proposer Authorized Representative.
- C. No Proposer or representative thereof shall have any ex-parte communications regarding the RFP or the procurement described herein with any member of the Nebraska Department of Transportation, FHWA, and with any Department staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Department, or any public or Proposer workshop related to the RFP.
- D. Any communications determined by the Department, in its sole discretion, to be improper may result in disqualification.
- E. Any official information regarding the Project will be disseminated in writing, on Department letterhead, and signed by the Department's Authorized Representative or designee.
- F. The Department will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

Proposer shall note that no correspondence or information from the Department or anyone representing the Department regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with [Section 2.2.3](#).

## **2.2.4 Language Requirement**

All correspondence regarding the RFP, Alternative Technical Concepts (ATCs), Proposal, and the Contract Documents are to be in the English language. If any original documents required for the Proposal are in any other language, Proposer shall provide a certified English translation, which shall take precedence in the event of a conflict with the original language.

## **2.3 Question and Response Process, and Addenda**

### **2.3.1 Questions and Responses Regarding the RFP**

Proposers shall be responsible for reviewing the RFP and any Addenda issued by the Department prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which Proposer fails to understand. Failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the Department. Proposers shall submit, and the Department will respond to,

requests for written clarification in accordance with this Section 2.3.1. To the extent written responses are provided, they will be considered part of the Contract Documents.

The Department will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer's Authorized Representative to the Authorized Representative by hard copy, facsimile, email or other electronic transmission in the prescribed format.

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.4 or such later date as may be specified in any Addendum. Questions and comments, including requests for clarification or interpretation, shall: (i) be sequentially numbered; (ii) specifically reference the relevant RFP volume, section and page number, unless such request is of general application (in which case the request for clarification shall so note); (iii) identify the relevant section number and page number or, if it is a general question, indicate so; (iv) not identify the Proposer's identity in the body of the question.

No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any person other than the Department's Authorized Representative will be considered. Questions may be submitted only by the Proposer Authorized Representative, and must include the requestor's name, address, telephone and facsimile numbers, and Proposer he/she represents.

The questions and the Department's responses will be in writing or email and will be delivered to all Proposers, except that the Department intends to respond individually to those questions identified by a Proposer or deemed by the Department as containing confidential or proprietary information relating to Proposer's Proposal and ATCs. The Department reserves the right to disagree with Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, the Department will inform Proposers and may allow Proposer to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if the Department determines that it is appropriate to provide a general response the Department will modify the question to remove information that the Department determines is confidential. The Department may rephrase questions, as it deems appropriate and may consolidate similar questions. The Department may also create and answer questions independent of the Proposers. The Department contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to Addenda, the last set of responses will be issued no later than the date specified in Section 1.4. A consolidated, final set of questions and answers will be compiled and distributed prior to Final Award.

The Department may convene pre-proposal meetings with Proposers as it deems necessary (see Section 2.5), and Proposers must make themselves available to the Department for such pre-Proposal meetings and to discuss any matters they submit to the Department under this Section 2.3.1. If the Department determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, the Department will prepare and issue an Addendum.

### **2.3.2 Addenda**

The Department reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the

website, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts the RFP, as determined in the Department's sole discretion, Department may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for Proposer to submit questions regarding the RFP have occurred or have changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Proposer shall acknowledge in its Proposal Letter (see Exhibit D, Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. The Department reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. The Department does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, the Department reserves the right to issue Addenda after such date. If the Department finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum.

## **2.4 Pre-Proposal Submittals**

Pre-Proposal Submittals are required as provided in Section 2.11 (regarding changes in a Proposer's organization) and Exhibit B, Section 3.2.5 (regarding Key Personnel). Proposers are required to designate authorized representatives in accordance with Section 2.2.2. In addition, any Proposer that wishes to submit an ATC pursuant to Section 3.2 must make a Pre-Proposal Submittal as described therein.

## **2.5 Pre-Proposal Meetings**

### **2.5.1 Informational Meetings**

The Department intends to hold joint informational meetings with all Proposers prior to the Proposal Due Date. Informational meetings will be held in person at the Department's Lincoln office.

During meetings, Proposers may ask questions and the Department may provide responses. However, any responses provided by the Department during meetings may not be relied upon unless questions were submitted in writing and the Department provided written responses in accordance with Section 2.3.1. The questions and the Department's responses will be provided in writing to all Proposers.

At the informational meeting, each Proposer shall attend with appropriate members of its proposed key management personnel.

### **2.5.2 One-on-One Meetings**

The Department intends to conduct one-on-one meetings with each Proposer and on such other dates designated by the Department in writing to the Proposers, to discuss issues and clarifications regarding the RFP and Proposer's ATCs. The Department reserves the right to change the contract if necessary based on information / issues raised during the one-on-one meetings. Participation at such meetings by the Proposers shall be mandatory.

The one-on-one meetings are subject to the following:

- The meetings are intended to provide Proposers with a better understanding of the RFP.
- The Department will not discuss with any Proposer any Proposal or ATCs other than its own.
- Proposers shall not seek to obtain commitments from the Department in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- 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.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules and to identify all participants from Proposer whether attending in person or by phone.

### **2.5.3 Questions and Responses During One-on-One Meetings**

During one-on-one meetings, Proposers may ask questions and the Department may provide responses. However, any responses provided by the Department during one-on-one meetings may not be relied upon unless questions were submitted in writing and the Department provided written responses in accordance with Section 2.3.1. The written questions and the Department's responses will be provided in writing to all Proposers, except to the extent such questions are deemed by the Department to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs.

### **2.5.4 Statements at Meetings**

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

## **2.6 Confidentiality/Public Records Act Disclosure Requests**

### **2.6.1 Disclosure Waiver**

Each Proposer, by submitting a Proposal to the Department in response to the RFP, consents to the disclosures described in this Section 2.6 and expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, under the Nebraska Public Records Law or any other law relating to the confidentiality or disclosure of information. Under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any such materials.

### **2.6.2 Observers During Evaluation**

Proposers are advised that non-participating observers may observe the Proposal evaluation process and will have the opportunity to review the Proposals after the Proposal Due Date. The Department has agreed to allow FHWA officials and their outside advisors to observe the

procurement process, which includes access to the Financial Proposals. Outside advisors to FHWA, if any, will be required to sign the Department's standard confidentiality agreement.

### **2.6.3 Confidential Materials**

The Department will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" by the submitting party. In addition, each Proposal must include a cover sheet listing the pages and forms on which there is confidential information. Any such proprietary information, trade secrets or confidential commercial and Price information that a Proposer believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket, all-inclusive identifications by designation of whole sections as containing proprietary information, trade secrets, or confidential commercial or Price information are discouraged and may be deemed invalid. Any specific proprietary information, trade secrets, or confidential commercial and Price information shall be clearly identified as such and shall be accompanied by a concise statement of reasons supporting the claim. The Department will endeavor to advise the submitter of any request for disclosure or release of any material properly labeled as proprietary, trade secret, or confidential so as to allow the submitter the opportunity to seek a court order to protect such materials from disclosure. Under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any such labeled 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 the Department, or their respective officers, employees, contractors, consultants, or agents.

The Department will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under Nebraska laws, as to the interpretation of such laws, or as to definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws, and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the effect of applicable laws to the submitting party's own circumstances.

### **2.6.4 Following Award**

The Department will endeavor to keep the Proposal pricing information confidential within the Department (including its designees and consultants) until such time as a Proposer is selected for award, at which time the Department intends to disclose such information to individuals with a need to know it. Once the Contract is executed, some or all of such data may lose its protection. Each Proposer, by submission of a Proposal, agrees that it will not be grounds for protest if any member of the Department's selection committee or any evaluation team member becomes aware of a Proposer's price at any time during the review process.

### **2.6.5 Litigation**

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the submitting party, the Department will be a stakeholder retaining the material until otherwise ordered by a court or such other entity having jurisdiction with respect thereto, and the submitting party will be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that the Department reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by the Department in connection with any litigation, proceeding, or request for

disclosure shall be reimbursed and paid by Proposer objecting to disclosure. Each Proposer shall be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

## **2.6.6 Exceptions**

The foregoing will not preclude the Department from using ideas contained in the Proposal in accordance with Section 2.6 and will not preclude the Department from releasing information as required in connection with any protest filed under Section 7.

## **2.7 Department Studies and Investigations**

The Department has completed its site investigations and anticipates supplementing the Geotechnical Report with additional explorations. The Department does not anticipate any other investigative activities prior to the Proposal Due Date. To the extent the Department undertakes any additional investigative activities; the information obtained by the Department from such activities may be made available to Proposers in the Reference Materials. All information provided by the Department will be subject to the same limitations applicable to similar information furnished in the Reference Materials. Specifically, the Department makes no representation or warranty as to the accuracy, completeness or suitability of the additional information.

## **2.8 Examination of RFP and Site Access**

### **2.8.1 Examination of RFP Documents**

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP Documents, including Reference Materials and any Addenda, and material posted on the website and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal or the performance of the Work, if Proposer enters into the Contract with the Department. Each Proposer is also responsible for monitoring the website for information concerning the RFP and the procurement. The Proposal Letter (Exhibit D, Form A) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Any failure of Proposer to so examine and inform itself shall be at Proposer's sole risk, and the Department will provide no relief for any error or omission therefor.

Each Proposer is responsible for conducting such investigations as it deems appropriate in connection with its Proposal, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, and permanent and temporary Utility appurtenances, keeping in mind the provisions in the Contract Documents regarding assumption of liability by Proposer. Proposer's receipt of the Department-furnished information does not relieve Proposer of such responsibility.

The submission of a Proposal shall be considered prima facie evidence that Proposer has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work, and as to the requirements of the Contract Documents.

### **2.8.2 Site Access; ROW**

Any Proposers wishing to undertake \_\_\_\_\_ and additional exploratory investigations on certain portions of the Project right-of-way (ROW) shall advise the Department of its proposed plan and



obtain all necessary permits and approvals from Governmental Entities, the property owners and occupants.

The Department has determined that the project can be constructed within the State of Nebraska and \_\_\_\_\_ property. If the Design Build Team proposes alternate construction methods outside of the current ROW, they will be responsible for securing the rights across the private property.

## 2.9 Errors

If Proposer identifies any mistake, error, or ambiguity at any time during the procurement process in any of the documents supplied by the Department, Proposer shall notify the Department of the recommended correction in writing in accordance with Section 2.3.1.

## 2.10 Improper conduct

### 2.10.1 Non-Collusion

Neither Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Exhibit D, Form F).

### 2.10.2 Organizational Conflicts of Interest

Proposers' attention is directed to Nebraska code \_\_\_\_\_ and \_\_\_\_\_ as well as the organizational conflict of interest rules found in \_\_\_\_\_, \_\_\_\_\_, including \_\_\_\_\_, which apply to this procurement. Proposers are advised that \_\_\_\_\_ may preclude certain firms and their subsidiaries and affiliates from participating on a Proposer team. 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, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, Proposer must make an immediate and full written disclosure to the Department that includes a description of the action that Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Department may, at its sole discretion, cancel the procurement, disqualify Proposer with a conflict, or take other action as necessary to mitigate the conflict. 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 Department, the Department may pursue remedies under the Contract Documents, at Law and/or in equity, including termination of the Contract, for default.

### 2.10.3 Restrictions on Participation

Proposers are advised that the following Department advisors are precluded from participating in any of the Proposer organizations relating to this Project; providing technical, legal, or Price advice to Proposers; or directly discussing any aspect of the RFP with any Proposer:

- A. \_\_\_\_\_
- B. \_\_\_\_\_; and
- C. \_\_\_\_\_

In addition, any entity that is currently suspended, debarred or voluntarily excluded under \_\_\_\_\_ or is otherwise determined to be ineligible to participate in the federal-aid highway program is precluded from participating on any of the Proposer teams.

#### **2.10.4 Participation on More than One Team**

To ensure a fair procurement process, Equity Participants, Major Participants, and Guarantors of Proposer teams are forbidden from participating, in any capacity, including as a Guarantor, on another Proposer team during the course of the Project procurement. This prohibition extends to affiliated entities of Equity Participants, Major Participants and Guarantors. The Department reserves the right to disqualify any Proposer that fails to comply with this prohibition.

#### **2.11 Changes in Proposer's Organization**

In order for a Proposer to remain qualified to submit a Proposal after it has been shortlisted, unless otherwise approved in writing by the Department, Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the Major Participants identified in its SOQ, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, Proposer shall submit to Department a written request for approval of the change from the Department as soon as possible but in no event later than the applicable last date set forth in Section 1.4. Any such request shall be addressed to the Department at the address set forth in Section 2.2.1, accompanied by the information specified for such entities in the RFQ. If a request is made to allow deletion or role change of any Major Participant identified in its SOQ, Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and five copies of each request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the Contract Documents, a Proposer may not make any changes in the Major Participants identified in its SOQ after the applicable last date set forth in Section 1.4. Between the applicable date set forth in Section 1.4 and execution of the Contract, the Department, in its sole discretion, will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposer's control.

## 3 Alternative Technical Concepts

### 3.1 Alternative Technical Concepts General

Sections 3.1 through 3.5 set forth a process for pre-Proposal review of Alternative Technical Concepts (ATCs) conflicting with the requirements for design, and construction of the Project, or otherwise requiring a modification of the Technical Provisions. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing the Department to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the requirements of the as-issued Contract Documents that result in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation, as determined by the Department in its sole discretion. A concept is not eligible for consideration as an ATC if, in the Department's sole judgment, it is premised upon or would require (a) a reduction in Project scope, performance or reliability; (b) the addition of a separate the Department project to the Contract (such as expansion of the scope of the Project to include additional roadways), or (c) an increase in the amount of time required for Substantial Completion. ATCs that, if implemented, would require further environmental evaluation of the Project, may be allowed, provided that ~~Design/Builder~~Design-Builder will bear the schedule and cost risk associated with such additional environmental evaluation. If ~~Design/Builder~~Design-Builder is not able to obtain the approvals necessary to implement the ATC, ~~Design/Builder~~Design-Builder will be obligated to develop the Project in accordance with existing approvals without additional cost or extension of time.

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by the Department, the Department recommends that Proposer submit such concept for review as an ATC.

### 3.2 Pre-Proposal Submission of ATCs

Proposer may submit ATCs for review to the Department at the address specified in Section 2.2.1, until the applicable last date and time for submittal of ATCs identified in Section 1.4. All ATCs shall be submitted in writing, with a cover sheet identifying Proposer and stating "[Project Name] – Confidential ATCs." Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by the Department. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

#### 3.2.1 Pre-Proposal ATC Submissions Shall Include

- A. A sequential ATC number identifying Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);

- B. A description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information, including a traffic operational analysis, if appropriate;
- C. The locations where, and an explanation of how, the ATC will be used on the Project;
- D. Any changes in roadway operation requirements associated with the ATC, including ease of operations;
- E. Any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;
- F. Any changes in the anticipated service life of the item(s) comprising the ATC;
- G. Any reduction in the time period necessary to design and construct the Project resulting from implementing the ATC, including, as appropriate, a description of method and commitments;
- H. References to requirements of the RFP which are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;
- I. Analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;
- J. A preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction), environmental permitting, community impact, safety, and life-cycle Project and infrastructure costs, including impacts on the cost of repair, maintenance and operation;
- K. If and what additional right of way will be required to implement the ATC (and Proposers are advised that they shall (i) be solely responsible for the costs of acquisition of any such right-of-way, and the costs for obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order for time or money as a result of Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional right of way; and (iii) not be entitled to any Change Order for time or money as a result of any delay, inability or cost associated with the acquisition of such right-of-way);
- L. A description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such statements;
- M. A description of added risks to the Department or third parties associated with implementing the ATC;
- N. An estimate of any additional Department, Design/Builder~~Design-Builder~~ and third-party costs associated with implementation of the ATC;
- O. An estimate of the Price adjustment, should the ATC be approved and implemented; and
- P. An analysis of how the ATC is equal to or better in quality and performance than the requirements of the Contract Documents.

Proposer shall not make any public announcement or disclosure to third parties concerning any ATC until after pre-approval (including conditional pre-approval) has been obtained. Following pre-approval (including conditional pre-approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify the Department in writing of its intent to take such action, including details as to date and participants, and obtain the Department's prior written consent, in its sole discretion, to do so.

If implementation of an ATC will require approval by a third party (e.g., a governmental authority), Proposer will have full responsibility for, and bear the full risk of, obtaining any such approvals after award of the Contract and submission of data; provided, however, that the Department shall retain its role as liaison with any governmental authorities as more particularly described in the Contract Documents. If any required third-party approval is not subsequently granted with the result that Proposer must comply with the requirements of the original RFP, Proposer will not be entitled to a Change Order for additional compensation or time under the Contract.

If the Department determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity or mistake, the Department reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC.

### 3.3 Department Review of Pre-Proposal Submission of ATCs

The Department may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.4, provided that the Department has received all required and requested information regarding such ATC.

The Department's responses will be limited to one of the following statements:

- A. The ATC is acceptable for inclusion in the Proposal;
- B. The ATC is not acceptable for inclusion in the Proposal;
- C. The ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in the Department's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or
- D. The submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to be within the requirements of the RFP (the Department may not reject such submittal in the Proposal for the reason that it appears to be an ATC; provided, however, that should it turn out that such submittal is not within the requirements of the RFP, the Department reserves the right to require compliance with the requirements of the RFP. Proposer will be entitled to modify its Proposal, but will not be entitled to obtain a Change Order for additional compensation or time under the Contract).

The Department will make a preliminary determination on whether to accept and approve an ATC for submission. However, Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP.

Approval of an ATC will constitute a change in the specific requirements of the Contract Documents associated with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to the Department's determinations regarding acceptability of ATCs.

The Department's rejection of a pre-Proposal submission of an ATC will not entitle Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; provided, however, that the foregoing shall not limit the Department's absolute and sole right to modify the Proposal Due Date or any other date in connection with this procurement.

The Department anticipates that its comments provided to a Proposer will be sufficient to enable Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes

additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.3.1.

### **3.4 Incorporation of ATCs in the Contract Documents**

Following award of the Contract, the ATCs that were pre-approved by the Department and incorporated in the Proposal by the successful Proposer shall be included in the Contract Documents. If the Department responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Contract Documents. The Contract Documents will be conformed after award, but prior to execution of the Contract, to reflect the ATCs, including any Department conditions thereto. Notwithstanding anything to the contrary herein, if Design/BuilderDesign-Builder does not comply with one or more Department conditions of pre-approval for an ATC, or Design/BuilderDesign-Builder fails to obtain a required third party approval for an ATC, Design/BuilderDesign-Builder will be required to comply with the original requirements of the RFP without additional cost or extension of time as set forth in the Contract.

Following execution of the Contract, ATCs from unsuccessful Proposers may, in the Department's sole discretion, be presented to the selected Design/BuilderDesign-Builder as a Department Change Order in accordance with the Contract.

### **3.5 Confidentiality**

Subject to the provisions of the Code, ATCs and all communications regarding ATCs will remain confidential until a decision is made to select a Proposer or cancel the procurement, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Nebraska Public Records Law, applicable Law, and Section 2.6 of the ITP.

## **4 Requirements for Submittal of Proposals and Acceptance of Delivery by Department**

### **4.1 General Submittal Requirements**

Each Proposal shall include a Technical Proposal and a Financial Proposal meeting the requirements set forth in Exhibits B and C. The Proposal shall be submitted in sealed containers in the format and manner set forth in Sections 4.2 and 4.3.

#### **4.1.1 Proposal Due Date**

The completed Technical Proposal and Financial Proposal shall be delivered at the location identified in Section 2.2.1 in sealed containers no later than the Proposal Due Date as set forth in Section 1.4.

The Escrowed Proposal Documents shall be submitted as outlined in Section 4.3.2 in sealed containers no later than the Escrowed Proposal Due Date as set forth in Section 1.4.

#### **4.1.2 Signatures Required**

The Proposal Letter (Exhibit D, Form A) shall be signed in blue ink by all parties making up Proposer, and shall be accompanied by evidence of signatory authorization as specified in Exhibit D, Form A.

#### **4.1.3 Certified Copies**

Where certified copies of the Proposal are required, Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark oversigned by the Proposer Authorized Representative.

#### **4.1.4 Consequences of Failure to Follow Requirements**

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

#### **4.1.5 Requirement to Submit a Compliant Proposal**

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits, it may be disqualified.

Each Proposal must be submitted in the official format, which is specified by the Department in the RFP. Proposer shall sign the original copy of the Proposal submitted to the Department. Multiple or alternate proposals may not be submitted.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

- A. If the Proposal is submitted in paper form or on disc other than that specified by the Department; if it is not properly signed; if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;
- B. If the Department determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not called for in the RFP, or unauthorized additions;
- C. If multiple or alternate Proposals are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a Contract following award;
- D. If Proposer attempts to limit or modify the Proposal Security, if the Proposal Security is not provided (see Exhibit B, Section 3.3), and/or if requested information deemed material by the Department is not provided; and
- E. Any other reason the Department determines the Proposal to be non-compliant.

#### **4.1.6 Format**

The Proposal shall contain concise written material and drawings that enable a clear understanding and evaluation of both the capabilities of Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Financial Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2. No page limit applies to appendices and exhibits; however, the Department 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.

An 8.5-inch by 11-inch format is required for typed submissions and an 11-inch by 17-inch format is required for drawings, except that design drawings may be submitted on scroll mats not to exceed 34 inches in width (and such design drawings may be submitted on CD or DVD in Adobe Acrobat (.pdf) format and in Bentley Microstation format). Preliminary schedule submissions shall include both a hard copy and the electronic files in pdf format.

Submittals must be bound with all pages in a binder sequentially numbered. Each section, including appendices, exhibits, and forms, must be separately and clearly tabbed. Printed lines may be single-spaced with the type font size being no smaller than 12 point (except that tables, figures, and schedules may use 10-point font). Pages may be printed double-sided. The use of 11-inch 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 one page. The use of section summaries is encouraged. Proposals shall be written in the English language using English units and measurements in accordance with Department standards.

#### **4.1.7 Additional Requirements for Proposal Delivery**

The completed Proposal and Escrowed Proposal Documents shall be submitted and delivered in sealed containers no later than the Proposal and Escrowed Proposal Documents Due Dates and times specified in Section 1.4. The Proposal is to be delivered to the Department at the



address set forth in Section 2.2.1, except for the Escrowed Materials, which shall be delivered to the Escrow Agent as specified in Section 4.3.2:

Each binder of the Proposal shall be labeled to indicate its contents. The original Technical and Financial Proposals shall be clearly identified as “original”; copies of the Proposals shall be sequentially numbered, labeled and bound.

## **4.2 Technical Proposal Submittal**

### **4.2.1 General**

All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more CDs and the envelopes described in Section 4.2.2, shall be packaged in a single container, clearly addressed to the Department as provided herein, and labeled “[Proposer Name]: Original Technical Proposal for the Department [Project Name].” Proposer shall provide **twelve (12)** certified copies of the Technical Proposal (except for the Proposal Security and Escrow Agreement). The containers that include the required hard copies of the Technical Proposal shall be labeled “Copies of Technical Proposal for the Department [Project Name].”

The electronic copy shall be in Adobe Acrobat (.pdf) format on CD(s); provided, however, that: (a) Proposal forms may be submitted in either Adobe Acrobat (.pdf) or Word format; and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

### **4.2.2 Escrow Agreement**

A copy of the Escrow Agreement shall be provided with the Technical Proposal, in a separate envelope labeled “[Proposer Name]: Escrow Agreement for the Department [Project Name].”

## **4.3 Financial Proposal Submittal**

Portions of the Financial Proposal shall be submitted directly to the Department and portions of the Financial Proposal shall be submitted to escrow as set forth in Sections 4.3.1 and 4.3.2 below by the Proposal Due Date and Escrowed Proposal Document Due Date set for forth in Section 1.4, respectively.

### **4.3.1 Portions of Financial Proposal Submitted Directly to Department**

**One (1)** original and **two (2)** certified copies of the Financial Proposal (excluding the components identified in Section 4.3.2) shall be delivered to the Department at the address identified in Section 2.2.1. The documents shall be included in a sealed container labeled “[Proposer Name]: Financial Proposal for the Department [Project Name].” The documents includes updated financial information since the submission of the SOQ and the Price Proposal (Contract Price (Form N-1) and the Cash Flow Adjustment Curve/Payment Curve (Form N-2)), and the Proposal Security (Form K-1 or K-2). All parts of the Proposal that indicate pricing information shall be included in the sealed Price Proposal envelope.

### **4.3.2 Portions of Financial Proposal Submitted to Escrow**

Proposer shall assemble and deliver in accordance with this Section 4.3.2 certain escrowed proposal documents (“EPDs”) containing information regarding Proposer’s assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 21.1 of the Contract. Proposer shall submit its EPDs in hard copy and electronic copies in Adobe Acrobat (.pdf) 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.

Proposer shall provide the Department with the name, address and contact information of Proposer’s selected Escrow Agent by the applicable last date set forth in Section 1.4. Proposer shall submit one set of EPDs (“Escrowed Materials”) to the Escrow Agent chosen by Proposer, along with three completed original Escrow Agreements executed by Proposer in substantially the form attached as Exhibit D, Form L by the date set forth in Section 1.4. The documents shall be in separately sealed containers labeled “[Proposer Name]: Escrowed Materials for the Department [Project Name]” and delivered to the Escrow Agent at the address identified in the Escrow Agreement, which shall be located in Nebraska. The Escrow Agent chosen by Proposer must be unaffiliated with Proposer and otherwise must be free of any conflict of interest. A copy of the executed Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.2.2.

### **4.3.3 Proposal Security**

**One (1)** original and **two (2)** certified copies of the Proposal Security shall be provided with the Financial Proposal, and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the Department [Project Name].”

A Proposal will not be considered unless accompanied by a guaranty of the character and amount indicated in the Proposal and made payable to the “Treasurer, State of Nebraska.” If the Proposer uses a bid bond, it shall be prepared as follows:

- A. The bond shall be completed in a form acceptable to the Department, and
- B. The bonding company issuing the bond shall be licensed to transact business in the State of Nebraska, and
- C. The bonding company shall be listed on the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies”, as published by the United States Department of the Treasury, Fiscal Service, Circular 570.
- D. In the event that any irregularities are contained in the bid guaranty, the Proposer will have seven (7) calendar days from the time the bids are opened to correct the irregularities. If such irregularities are not corrected to the satisfaction of the Department, the Proposal will be rejected.

## **4.4 Currency**

All required pricing and cost information shall be provided in US\$ currency only.

## **4.5 Modifications, Withdrawals and Late Submittals**

### **4.5.1 Modifications to a Proposal**

A Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date set forth in Section 1.4. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so the Department can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

### **4.5.2 Withdrawal and Validity of Proposals**

Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by the Proposer Authorized Representative. Such written request shall be delivered to the address in Section 2.2.1. 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 Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by the Department upon the Proposal Security. Proposals shall initially be valid for a period of 180 days after the Proposal Due Date. The Department shall have the right to extend this period for up to an additional 12 months, provided that the Contract Price will be subject to adjustment in accordance with Section 12.1.4 of the Contract if NTP2 does not occur within 180 days after the Proposal Due Date. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

### **4.5.3 Late Proposals**

The Department will not consider any late Proposals. Proposals and/or modification or withdrawal requests received after the time for submittal of Proposals will be returned to Proposer unopened, without consideration or evaluation.

## **4.6 Forfeiture of Proposal Security**

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (i) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal; (ii) it is selected for negotiations, but fails to provide Department documents required as set forth in Section 5.11; or (iii) it is selected as the apparent best value Proposer, but fails to provide the documents required under Sections 6.1.

Any Proposal that contains a material alteration, as determined by the Department, in its sole discretion, to the ITP Forms, including any material alteration to the form of Proposal Security (Exhibit D, Forms K-1 and K-2), will be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by the Department will not be considered material. If a Proposal is deemed non-responsive or non-compliant, the Department

may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

#### **4.7 Acceptance of Delivery by Department**

The Department will provide a receipt for Proposals that are timely delivered to the Department as specified herein. Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements.

A Department representative will coordinate with Proposer to visit the Escrow Agent's office on or shortly after the Proposal Due Date to jointly examine the Escrowed Materials and obtain a fully executed copy of the Escrow Agreement.

#### **4.8 Costs Not Reimbursable**

The cost of preparing the Proposal and any costs incurred at any time before final award and execution of the Contract, including costs incurred for any interviews, payments owing to Proposer's Escrow Agent and costs associated with Post-Selection Deliverables, shall be borne by Proposer, except for any costs paid in accordance with Section 6.3.

## 5 Evaluation and Post-Selection Process

The Department intends to select the Proposer that offers the best value to the Department, considering price, technical, and other factors described in this Section 5. The intent of the Department in this evaluation process is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all legal requirements governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness and pass-fail criteria, followed by a subsequent responsiveness and qualitative evaluation of the Technical Proposal, a subsequent responsiveness evaluation of the Financial Proposal, and a best value determination. The process may include a request for Proposal Revisions. The steps in the process and evaluation criteria are set forth in Sections 5.3 through 5.11. The evaluation and selection process is subject to modification by the Department, in its sole discretion.

The evaluation process will involve the following steps:

1. The Department evaluation committee will:
  - a) Evaluate the Proposals and determine which Proposer has offered the apparent best value Proposal based on the specific evaluation criteria set forth herein; and
  - b) Provide a recommendation to the Department Director to award the Contract to the apparent best-value Proposer.
2. The Department Director will issue Letter of Intent to Award the Contract to the Apparent Successful Proposer, pending the Governor's office approval if needed.

The details of the evaluation and selection process are set forth more fully in this Section 5.

### 5.1 Organization of the Department Evaluation Committees and Subcommittees

The Department's Technical Proposal Evaluation Committee ("TPEC") will conduct evaluation of Proposals and Financial Proposal Evaluation Subcommittee ("FPEC"), with assistance from advisory groups as necessary. The evaluation committees will be comprised of representatives from the Department and certain Stakeholders and will be chaired by individuals designated by the Department's Director. In addition to the Department and Stakeholder voting members, the advisory groups may also be assisted by advisors, including the Department representatives and outside consultants who will offer advice on the technical, financial, and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the TPEC and the FPEC advisory subcommittees in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals.

### 5.2 Best Value Determination

The best value determination will be based on a **0-100** point scale. The Price Score will represent a minimum of 50 points and up to **XX** points of the total score, and the Technical Score will represent up to **XX** points of the total score. The determination of apparent best value shall be based on the highest Total Proposal Score computed based on the following formula:

Total Proposal Score (max. 100 points) = Price Score (max. **XX** points) + Technical Score (max. **XX** points)

The Price Score will be determined based on the following formula:

$$\text{Price Score} = (\text{Lowest PV/PV}) * \text{XX}$$

Lowest PV = Lowest Price Value submitted by a Proposer as determined pursuant to Section 5.6.

PV = Proposer's Price Value (Exhibit D, Form N-1) as determined pursuant to Section 5.6 of the Proposer being evaluated.

The Technical Score will be calculated based on the TPEC evaluation score for the Technical Proposal (maximum of 100 points) as described in Section 5.4. The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = \text{TPEC evaluation score} * 0.\text{XX}$$

### **5.3 Pass/Fail and Responsiveness Evaluation**

Upon receipt, the relevant committee will make the Technical Proposals and Financial Proposals (excluding the Price Proposals) available for review. They will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. Any Proposer that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award.

The Price Proposal will be opened in accordance with Section 5.6.1, after which the Price Proposal will be reviewed for responsiveness in accordance with Section 5.3.3.

#### **5.3.1 Technical Proposal**

The Technical Proposal Responsiveness Committee will determine whether or not Technical Proposals are responsive and communicate said determination to the Contract Representative.

Proposals considered responsive pursuant to this Section may still be rejected as non-responsive at a later date if the Proposer fails to satisfy such additional responsiveness requirements as are specified elsewhere in this Section. The Department's determination of responsiveness in no way relieves the Proposer from meeting all contract requirements listed as part of this contract.

##### *5.3.1.1 Non-curable Technical Proposal Defects*

The Department will reject Proposals as non-responsive if any one of the following occurs:

- A. The Technical Proposal is not properly delivered.
- B. The Department has substantial evidence of collusion by the Proposers.
- C. The Proposer adds any provision reserving the right to accept or reject an Award or a Contract.
- D. The Proposer fails to provide a completed and signed Form A.
- E. The Proposer fails to cure the Technical Proposal Responsiveness Requirements as set forth in the Project Requirements.

### 5.3.1.2 Curable Technical Proposal Defects

Proposers must cure, to the satisfaction of the Department, all Curable Technical Proposal Defects identified in the Notice of Technical Proposal Responsiveness within the timeframe allotted in such Notice. Failure to so cure all such Curable Technical Proposal Defects will result in forfeiture of Proposer's Proposal Guaranty and forfeiture of any claim to the Stipend. Curable Technical Proposal Defects include, but are not limited to, the following:

1. The Proposer fails to provide all the requested forms, excluding Form A;
2. The Proposer fails to meet all of the Technical Proposal Responsiveness Requirements as outlined in the RFP;
  - a) The business form of Proposer and any entities that will have joint and several liability under the Contract, or will provide a guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws or equivalent documents) is consistent with the requirements of the Project and Contract Documents, as applicable.
  - b) Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.9.
  - c) Proposer information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.
  - d) Proposer has delivered Proposal Security in the form of a complete, properly executed proposal bond that complies with the requirements of Exhibit B, Section 3.3.1.
  - e) The Proposal provides for Substantial Completion on \_\_\_\_\_ assuming NTP1 no later than \_\_\_\_\_.
  - f) Technical Proposal meets all applicable RFP requirements.
3. The Technical Proposal is not in substantial compliance with the requirements of the Project Requirements, the General Conditions, or, in the Department's sole discretion, the intent of the Standards; and/or
4. The Proposer fails to indicate the Proposer's choice where the RFP clearly require a choice.

### 5.3.2 Financial Proposals

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

- A. 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 SOQ, such that Proposer continues to have the financial capacity to develop, design, and construct a project of the nature and scope of the Project. Factors that will be considered in evaluating Proposer's financial capacity include the following:
  1. Assets, liabilities and profitability;
  2. Capital structure;
  3. Liquidity position;
  4. Income and changes in cash flow statements; and

5. Other commitments and contingencies.
- B. If a Guaranty is necessary in order to satisfy the tangible net worth requirements in Section [XXXX] of the as-issued Contract, then (i) the Proposal includes one or more Guarantor commitment letters in the form of Form [XX], and (ii) the financial condition and capabilities of Proposer's Guarantor(s) demonstrate financial capacity and ability of the proposed Guarantor(s) to satisfy such tangible net worth requirements and to guarantee performance of the ~~Design/Builder~~Design-Builder's obligations under the Contract Documents pursuant to the forms of Guaranty attached as Exhibits [XX] and [XX] to the Contract. Factors that will be considered in evaluating the financial capacity of the proposed Guarantor(s) include those listed in clause A above.

### **5.3.3 Price Proposals**

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

If the Department determines that a Proposer is undercapitalized, it will offer Proposer the opportunity to meet the financial requirement through one or more guarantors acceptable to the Department.

- A. Proposer has provided a Price using Exhibit D, Form N-1 that complies with the requirements of Exhibit C.
- B. Proposer has provided a Cash Flow Adjustment Table/Payment Curve using Exhibit D, Form N-2 that complies with the requirements of Exhibit C.
- C. Proposer has provided a properly executed Proposal Security (Exhibit D, Form K) that complies with the requirements of Exhibit C.

### **5.3.4 Department Right to Exclude Proposals from Consideration or Waive Mistakes**

Those Proposals not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and Proposer will be so advised. The Department may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. The Department reserves the right to waive minor informalities, irregularities and apparent clerical mistakes, which are unrelated to the substantive content of the Proposals.

## **5.4 Evaluation of Technical Proposal by TPEC**

After completion of the pass/fail and responsiveness review, the Technical Proposal will be evaluated by the TPEC based on the factors set forth below to determine whether it includes any improvements over the requirements of the Contract Documents and brings additional benefits and/or value to the Department and the public.

Each responsive Technical 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.

### **5.4.1 Technical Proposal Evaluation Factors**

The evaluation factors for the Technical Proposal are as follows:



Subfactors and their relative weighting are listed in Sections 5.4.1.1 through 5.4.1.5.

Evaluation Criteria	Maximum Points
Schedule Solutions	XX
_____ Operation	XX
Technical Solutions	XX
Project Management Plan	XX
Quality Management Plan	XX
<b>Total =</b>	100

The evaluation factors will be evaluated and rated using the rating guidelines specified in Section 5.4.2.

*5.4.1.1 Schedule Solutions (XX points)*

- Preliminary Project Baseline Schedule
- Construction Staging, Sequencing and Traffic Management

*5.4.1.2 \_\_\_\_\_ Operation (XX points)*

- Operating Cost reduction
- Life Cycle Cost for at least fifteen years and Sustainability Practices
- Ease of Operation and Maintenance

*5.4.1.3 Technical Solutions (XX points)*

The Technical Solutions evaluation subfactors are as follows:

- Structures
- Environmental Permitting, Mitigation and Impacts
- Aesthetic Design
- Roadway
- Utilities
- Drainage

*5.4.1.4 Project Management Plan (XX points)*

The Project Management Plan evaluation subfactors are as follows:

- General Project Management
- Coordination with Stakeholders
- Risk Management
- Schedule and Cost Control Management

- Public Information and Communications
- Environmental Management
- Design Management

*5.4.1.5 Quality Management Plan (XX points)*

The Quality Management Plan (QMP) evaluation subfactors are as follows:

- General Quality Management
- Quality Control Organization
- Document Management Procedures
- Design Quality Control Procedures
- Construction Quality Control Procedures

The subfactors are listed in descending order of importance; provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it.

See Exhibit B for details regarding the specific information concerning this factor to be submitted as part of the Technical Proposal.

**5.4.2 Evaluation Guidelines**

The TPEC will review the Technical Proposal with reference to the evaluation factors specified in Section 5.4.1, in accordance with the guidelines provided in this Section 5.4.2. The major categories of the Technical Proposal will be qualitatively evaluated and assigned a rating as follows:

Adjective Rating	Description
Excellent	The Proposal greatly exceeds the stated requirements/objectives, offering material benefits and/or added value, and providing assurance that a consistently outstanding level of quality will be achieved. There is very little or no risk that Proposer would fail to satisfy the requirements of the Contract Documents. Weaknesses, if any, are very minor and can be readily corrected. Significant unique and/or innovative characteristics are present.
Good	The Proposal materially exceeds the stated requirements/objectives and provides assurance that the level of quality will meet or exceed minimum requirements. There may be a slight probability of risk that Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses, if any, are minor and can be readily corrected. Little or minimal unique and/or innovative characteristics are present.
Fair	The Proposal marginally exceeds stated requirements/objectives and provides satisfactory assurance that the level of quality will meet or marginally exceed minimum requirements. There may be questions about the likelihood of success and there is risk that Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses are correctable or acceptable per minimum standards.

Adjective Rating	Description
Meets Minimum	The Proposal meets stated requirements/objectives and provides satisfactory assurance that the minimum level of quality will be achieved. There may be questions about the likelihood of success and there is some risk that Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses are correctable or acceptable per minimum standards.

In assigning ratings the Department may assign “+” or “-” (such as, “Excellent -”, “Good +”, and “Fair +”) to the ratings to better differentiate within a rating in order to more clearly differentiate between the technical evaluation factors and the overall Technical Proposals. However, the Department will not assign ratings of “Meets Minimum –” or “Excellent +.”

The term “weakness,” as used herein, means any flaw in the Proposal that increases the risk of unsuccessful contract performance.

### 5.4.3 Technical Score

During the evaluation, each subfactor as described above will be assigned a rating by the TPEC, which will be converted to points. The points for each subfactor will be summed to determine the Proposal’s score for each of the corresponding evaluation factors. The score of each of the evaluation factors will then be summed to arrive at the Technical Score for the Technical Proposal, with 100 maximum possible points. The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = \text{TPEC evaluation score (maximum 100)} * 0.XX$$

## 5.5 Requests for Clarification

The Department may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by the Department) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, the Department.

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 Evaluation of Financial Proposal by FPEC

After completion of the Technical Proposal evaluation, the FPEC will evaluate the Financial Proposal.

### 5.6.1 Price Proposal Opening

Unless changed by Amendments, the Price Proposals will be opened and the Department will read the Lump Sum Price publicly, at the location, time, and date specified in the Project Requirements. Proposers, their authorized agents, and other interested parties are invited to attend.

The public reading of the price and computation of overall Best-Value ratings at the opening does not constitute a final determination by the Department of whether the Price Proposal is

responsive. The Department may refuse to read Price Proposals that are obviously non-responsive.

## **5.6.2 Schedule Adjustment**

The Department will factor into the evaluation particular costs to Department that require adjustment to the Price based on a review of the Proposals. In such event, Department will consider only the following adjustment factors in its evaluation, as valued by the Department in its sole discretion, of the cost of a Proposal to the Department. \_\_\_\_\_ Closure days by a Proposer relative to the other Proposals submitted will be considered an advantage worth \_\_\_\_\_ per day. All Proposers will receive an adjustment to its Proposal Value of by the number of closure days x \_\_\_\_\_ per day.

The Project schedules (without cost information) will be provided with the Technical Proposals, evaluated for reasonableness by the TPES, and the corresponding difference in calendar days forwarded to the Department Appointee, who will forward the information in blind fashion to the FPEC. The FPEC will compare the Project schedule information to the duration proposed in Exhibit D, Form P submitted with the Financial Proposal.

## **5.6.3 Price Proposal Responsiveness**

### *5.6.3.1 Non-Curable Price Proposal Defects*

The Department will reject Price Proposals as non-responsive for any of the following reasons:

- A. The Proposer failed to properly deliver the Price Proposal;
- B. The Proposer failed to provide a completed and signed Exhibit D, Form N-1;
- C. The Proposer failed to provide Exhibit D, Form N-2.
- D. The Proposer failed to submit a Proposal Guaranty conforming to the Proposal Requirements;
- E. The Price Proposal contains any provision reserving the right to accept or reject an Award or a Contract or otherwise contains any unauthorized, conditional, or alternate bidding language; or
- F. The Proposer fails to comply with any other provision in the Project Requirements that the RFP expressly indicates will cause Price Proposal rejection.

### *5.6.3.2 Curable Price Proposal Defects*

The Proposer must cure, to the satisfaction of the Department, all Curable Price Proposal Defects within twenty-four (24) hours of the discovery and notification by the Department. Failure to cure all Curable Price Proposal Defects within said twenty-four (24) hour time period will result in forfeiture of Proposer's Proposal Guaranty and any claim to the Stipend. Curable Price Proposal Defects include, but are not limited to, the following:

- A. Failure to provide properly completed DBE Price Proposal Form(s) or failure of the information in such form(s) to correspond precisely with the information in the "Technical Proposal DBE Compliance Review Form(s)" submitted with the Proposer's Technical Proposal; and
- B. Failure to submit prices or signatures in ink or other non-erasable substance.

## **5.7 Determination of the apparent Successful Proposer**

At the Price Proposal Opening, the Department will publicly announce the score of each Proposer's Technical Proposal. The Department will publicly determine the Total Proposal Score of each Proposer based on the formula for calculating the Total Proposal Score is set forth in Section 5.2:

The Proposal with the highest overall Total Proposal Score will be the Apparent Successful Proposal and its Proposer the Apparent Best Value Proposer, contingent on the Department's determination that the Price Proposal meets the conditions for Award.

## **5.8 Blank**

## **5.9 Award of Contract**

The Director will receive the Proposals and the recommendations and supporting information provided by the Department, and may accept the recommendation or reject the recommendation and cancel the procurement. Within \_\_\_\_\_ days of opening the Price Proposals, the Department will mail or fax (with confirmation receipt) a Letter of Intent to Award the Contract to the Apparent Best Value Proposer, pending Governor's Office approval if needed, and letters indicating such intent to all other Proposers. The Intent to Award shall also indicate that the Department will award the Contract to the Apparent Successful Proposer if said Proposer fulfills the conditions of award stated in the letter.

Award of the Contract will be conditioned upon (a) concurrence in award by NDOT and FHWA, (b) receipt by the Department of all of the documents required to be provided prior to execution of the Contract under Section 6.1, (c) execution of the Contract by the Director of the Department or a designee.

The Director's decision regarding Intent to Award the Contract shall be final.

## **5.10 Finalization of Contract Documents; Post-Selection Process**

The Department will proceed with the apparent best value Proposer to finalize the Contract Documents concurrent with seeking Governor's Office approval if needed. By submitting its Proposal, each Proposer commits to enter into the form of Contract included in the RFP, except to fill in blanks and include information that the form of Contract indicates is required from the Proposal.

## **5.11 Post-Selection Deliverables**

### **5.11.1 Project Management Plan**

During the post-selection period between the Intent to Award and Final Award of the Contract, the selected Proposer may, but is not required to, submit all or portions of the Project Management Plan for review, comment and possible pre-approval. The Department encourages such early submittal(s), and will attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the Contract, but cannot guarantee that it will in fact undertake such review or provide comments or approval.

### 5.11.2 Documents to be Submitted Following Intent to Award

As a condition precedent to final award of the Contract, the successful Proposer shall deliver the following to the Department within ten days after notification of conditional award:

- A. Evidence that Proposer, each member of Proposer's team, and each member of other Major Participants that will transact business in the State are authorized to do so no earlier than \_\_\_\_\_ days prior to the Proposal Due Date. Such evidence may be in the form of (i) a certificate of good standing from the state of its organization, if such Proposer or Proposer team member is not organized or formed in the State of Nebraska; (ii) a Certificate of Status from the Nebraska Secretary of State; or (iii) other evidence acceptable to the Department.
- B. If not previously submitted, a copy of the final organizational documents for ~~Design/Builder~~Design-Builder and, if ~~Design/Builder~~Design-Builder is a limited liability company, partnership or joint venture, for each member or partner of ~~Design/Builder~~Design-Builder. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.
- C. If security for Proposer's obligations under the Contract is required by the Department pursuant to Exhibit C, the form of the proposed guarantees, which shall be in form and substance acceptable to the Department, in its sole discretion.

During the post-selection period, as a condition to final award, Proposer shall deliver drafts of the deliverables identified in Section 5.11.2, for pre-approval by the Department.

### 5.11.3 Department Comments on Post-Selection Deliverables

The Department shall provide comments on any Post-Selection Deliverables required to be delivered to the Department hereunder within \_\_\_\_\_ days of the date of the Department's receipt of such deliverable. The Department shall have five Business Days to review and respond to subsequent submittals of the deliverable.

## 6 Contract Execution; Post-Execution Actions

### 6.1 Execution and Delivery of Contract

#### 6.1.1 Contract Documents

Upon the successful finalization of the Contract Documents, and satisfaction of all conditions to award specified in this ITP other than this Section 6.1, the Department will deliver **five (5)** sets of execution copies of the Contract Documents to the selected Proposer, along with a number of sets of execution copies as reasonably requested by Proposer. The selected Proposer shall obtain all required signatures and deliver all of the execution sets to the Department within seven Business Days of receipt, together with the required documents described in Section 6.1.2. If Design/BuilderDesign-Builder is a joint venture or a partnership, all joint venture members or general partners, as applicable, must execute the Contract. Within \_\_\_\_\_ Business Days of the Department's receipt of all required and compliant documents from Proposer, the Department will execute the agreements, retain four sets of the agreements and deliver the other executed sets to Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to Proposer.

#### 6.1.2 Documents to Be Delivered By Proposer With Executed Contract

Proposer shall deliver the documents listed below to the Department concurrently with the executed Contract as a condition to execution of the Contract by the Department. On or before the date that the Department delivers the execution sets of the Contract to Proposer, the Department shall notify Proposer regarding the number of originals and copies required to be delivered:

- A. For each Proposer, its general partners and its joint venture members and each member of other [Major Participants], (i) a certificate of good standing from the state of its organization, if such Proposer or Proposer team member is not organized or formed in the State of Nebraska; and (ii) a Certificate of Status from the Nebraska Secretary of State, in each case dated no earlier than \_\_\_\_\_ days prior to the Proposal Due Date and in form and substance acceptable to Department. If such documents are not available due to the form of organization of the entity, Proposer shall provide appropriate documents in form acceptable to the Department evidencing that it is qualified to do business in the State of its organization and the State of Nebraska.
- B. For entities formed after submission of the Proposal, a copy of the entity's final organizational documents. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.
- C. If security for Proposer's obligations under the Contract is required by the Department pursuant to Exhibit C, Section 2, Proposer shall submit one or more guarantees from guarantor(s) acceptable to the Department, in its sole discretion, together with appropriate evidence of authorization thereof.
- D. Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the Contract by Design/BuilderDesign-Builder and, if Design/BuilderDesign-Builder is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to the Department. If Design/BuilderDesign-Builder is a corporation, an appropriate officer of the corporation shall in the form of a resolution of its governing body certify such evidence. If

Design/BuilderDesign-Builder is a partnership, such evidence shall be in the form of a resolution (or resolutions) signed by each of the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of each general partner. If Design/BuilderDesign-Builder is a limited liability company, such evidence shall be in the form of: (i) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, (ii) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (iii) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Design/BuilderDesign-Builder is a joint venture, such evidence shall be in the form of a resolution of each joint venture member (in the manner described above), certified by an appropriate officer of such joint venture member.

- E. A written opinion from counsel for Design/BuilderDesign-Builder, which counsel shall be approved by the Department (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 formation/organization of the entity for which the opinion is rendered (i.e., Design/BuilderDesign-Builder, joint venture member, etc.) and the qualification to do business in Nebraska and the enforceability opinion shall be provided by an attorney licensed in the State of Nebraska), in substantially the form attached hereto as Exhibit D, Form M (with such changes as agreed to by the Department in its sole discretion); provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Nebraska may be issued by an in-house or outside counsel not licensed in Nebraska.
- F. Evidence of insurance required to be provided by Design/BuilderDesign-Builder under the Contract Documents;
- G. Evidence that Design/BuilderDesign-Builder and its Major Participants hold all licenses required for performance of the work under the Contract Documents;
- H. Department approved DBE Performance Plan in accordance with the requirements of Section 1.8.3;
- I. A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond and Payment Bond, each in the amount specified and in the forms attached as Appendix 8 to the Contract. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Contract and issuance of NTP1 and NTP2; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Contract Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments;
- J. The insurance policies, endorsements, and/or certificates required under Section 9 of the Contract;
- K. A letter signed by Proposer, Major Participant, and each Subcontractor listed in the Proposal indicating the commitment to work on the Project and the commitment of



Proposer to retain the specified services of the designated Major Participant or Subcontractor; and

- L. Any other requirements identified by the Department during pre-award negotiations.

Proposers are advised that the ~~Design/Builder~~Design-Builder will be required to hold a general contractor's license.

## 6.2 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. Debriefings shall be provided in the Department's sole discretion at the earliest feasible time after execution of the Contract. If conducted, a Department representative familiar with the rationale for the selection decision and Contract award shall conduct the debriefing.

Debriefings shall:

- A. Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;
- B. Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and
- C. Provide information on areas in which the unsuccessful Proposer's Technical Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the, TPEC, or FPEC, but may include a summary of the rationale for the selection decision and Contract award.

## 6.3 Payment to Unsuccessful Proposers

Each unsuccessful Proposer submitting a responsive Proposal will be entitled to receive a stipend from the Department, provided that such Proposer has timely executed and delivered the Stipend Agreement (Exhibit F) to the Department. If no Contract is awarded, an additional stipend will be awarded to the highest ranked Proposer, provided that such Proposer has timely executed and delivered the Stipend Agreement. The successful Proposer shall not otherwise be entitled to a stipend under this Section 6.3 and shall only be entitled to such compensation as is set forth in the Contract. No unsuccessful Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in this Section 6.3.

The total available stipend amount per Proposer is \_\_\_\_\_. Refer to the Stipend Agreement for terms of payment.

In consideration for the Department's agreement to make payment pursuant to the Stipend Agreement, each Proposer receiving a stipend agrees that the Department will be entitled to use any and all concepts, ideas and information contained in its Proposal (including proposed ATCs, techniques, methods, processes, drawings, reports, plans and specifications), without any further compensation or consideration to Proposer.

Each Proposer has the option of waiving the stipend by submitting a Waiver with its Financial Proposal. If an unsuccessful Proposer elects to waive the stipend, the Department shall not use the Proposer's ideas or designs in connection with this Project procurement.

Each Proposer acknowledges that the Department will have the right to inform the successful Proposer, after award, regarding the contents of all Proposals for which stipends have been (or

will be) paid, for the purpose of allowing concepts to be reviewed by the selected Proposer and incorporated into the Contract as deemed advisable. Furthermore, upon Proposer's receipt of payment hereunder, the right to use such Work product will extend to other projects undertaken by the Department, as the Department deems appropriate. However, the Department acknowledges that the use of any of the work product by the Department or ~~Design/Builder~~Design-Builder is at the sole risk and discretion of the Department and ~~Design/Builder~~Design-Builder, and it will in no way be deemed to confer liability on the unsuccessful Proposer.

As a condition to collection of the stipend, the Proposer must submit a request to the Department affirmatively and clearly stating, in a manner acceptable to the Department, in its sole discretion, that the Proposer will not contest the Department's award of the Contract and including an express and irrevocable waiver therefor. Such request shall be submitted within \_\_\_\_\_ days after notice of award is posted. Any Proposer that contests the award will not be eligible to receive a stipend.

In no event will any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 be entitled to receive the foregoing payment or any other reimbursement or payment for Work product under this Section 6.3. Any ideas contained in such Proposer's Proposal will be the property of the Department without any requirement to make payment therefor.

#### **6.4 Disposition of Escrowed Materials Following Conclusion of Procurement Process**

Following execution of the Contract, the Escrowed Materials of the successful Proposer will be available for review as specified in the Contract Documents.

In accordance with the procedures set forth in the Escrow Agreement (Exhibit D, Form L), each unsuccessful Proposer shall have the right to retrieve its Escrowed Materials after the Contract Documents have been executed and delivered, after the Department rejects all of the Proposals or after the Department terminates this procurement.

## 7 Protests

### 7.1 Applicability

This Section 7 set forth the exclusive protest remedies available with respect to the RFP and prescribes exclusive procedures for protests regarding:

- A. Allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed the Department's authority;
- B. A determination as to whether the Proposal filed by the Protestant is responsive to the requirements of the RFP and/or passes all pass/fail criteria, as applicable. (Proposers may only protest responsiveness and pass/fail decisions made by NDOT on their Proposal, not those of other Proposers); and
- C. Award of the Contract.

### 7.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 7.1(a) may be filed only after Proposer has informally discussed the nature and basis of the protest with the Department, following the procedures for those discussions prescribed in the RFP.

### 7.3 Deadlines for Protests

#### 7.3.1 RFP Terms

Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than \_\_\_\_\_ days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than \_\_\_\_\_ business days after the Addendum is issued (but in any event, prior to the Proposal Due Date).

#### 7.3.2 Responsiveness or Pass/Fail Determinations

Protests concerning the issues described in Section 7.1(b) must be filed no later than \_\_\_\_\_ business days after receipt of the notification of non-responsiveness or failure to pass all pass/fail criteria.

#### 7.3.3 Contract Award

Protests concerning the issues described in Section 7.1(c) must be filed no later than \_\_\_\_\_ days after the earliest of the notification of intent to award, and the public announcement of the apparent best value Proposer.

### 7.4 Content of Protest

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

## **7.5 Filing of Protest**

Protests shall be filed by hand delivery on or before the applicable deadline to the address specified in Section 2.2.1, with a copy to the Nebraska Attorney General Office, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained from the website.

## **7.6 Comments from Other Proposers**

Other Proposers may file statements in support of or in opposition to the protest within \_\_\_\_\_ days of receipt of the protest. The time limit in which such statements must be filed may be extended by NDOT in its sole discretion. The Department shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

## **7.7 Burden of Proof**

The protestant shall have the burden of proving its protest. The Department may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

## **7.8 Decision on Protest**

The Director or designee shall issue a written decision regarding the protest within \_\_\_\_\_ days after the filing of the detailed statement of protest. NDOT may, in its sole discretion, extend that time limit up to an additional \_\_\_\_\_ days in which case NDOT shall notify the Protestant and other Proposers of that extension. If necessary to address the issues raised in a protest, the Department may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda.

## **7.9 Protestant's Payment of Costs**

If a protest is denied, Proposer filing the protest shall be liable for the Department's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by the Department as a consequence of the protest.

## **7.10 Rights and Obligations of Proposers**

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section 7, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 7, it shall indemnify, defend and hold the Department and its commission members, officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

## 8 Department's Rights and Disclaimers

### 8.1 Department Rights

The Department may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer, may require additional information from a Proposer concerning its Proposal, and may require additional evidence of qualifications to perform ~~Design/Builder~~Design-Builder's obligations under the Contract Documents. The Department further reserves the right, in its sole discretion, at no additional cost to the Proposer, to:

- A. Develop the Project in any manner that it, in its sole discretion, deems necessary;
- B. Reject any or all of the Proposals;
- C. Modify any dates set or projected in the RFP;
- D. Cancel, modify or withdraw the RFP in whole or in part;
- E. Terminate this procurement and commence a new procurement for part or all of the Project;
- F. Terminate evaluations of Proposals received at any time;
- G. Modify the procurement process and terms of the RFP (with appropriate notice to Proposers)
- H. Waive or permit corrections to data submitted with any response to the RFP until such time as the Department declares in writing that a particular state or phase of its review of the responses to the RFP has been completed and closed;
- I. Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by the Department until such times as the Department declares that a particular stage or phase of its review of the responses to the RFP has been completed and closed;
- J. Appoint evaluation committees to review Proposals, make recommendations, and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- K. Disclose information contained in a Proposal to the public as described herein;
- L. Approve or disapprove Proposer's Key Personnel;
- M. Approve or disapprove changes in Proposer's organization;
- N. Accept a Proposal other than that which requests the lowest public funds from the Department;
- O. Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;
- P. Not issue a notice to proceed after execution of the Contract Documents;
- Q. Disqualify any Proposer that violates the terms of the RFP;
- R. Request Proposal Revisions as specified herein.
- S. Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the Contract by a third party; and

- T. Exercise any other right reserved or afforded to the Department under the RFP and applicable law.

## 8.2 Department Disclaimers

The RFP does not commit the Department to enter into any contract. Except as expressly set forth in Section 6.3, the Department assumes 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 the RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

**In no event shall the Department be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Contract Documents, in form and substance satisfactory to Department, has been authorized and executed by the Department and, then, only to the extent set forth therein. In submitting a Proposal in response to the RFP, Proposer is specifically acknowledging these disclaimers.**