

Arkansas Department of Transportation

Request for Proposals

Hwy. 77 Interchange Improvements at Interstate 40/55

Progressive Design-Build Project

Project No. 110651

Final RFP issued January 20, 2021

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INSTRUCTIONS TO PROPOSERS

(Request for Proposals: Hwy. 77 Interchange Improvements at I-40/55)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“**RFP**”), as may be amended, is issued by the Arkansas Department of Transportation (the “**Department**”) to seek competitive proposals (individually, a “**Proposal**” and collectively, “**Proposals**”) for a progressive design-build contract that will consist of a Progressive Design-Build Agreement and related documents (the “**Design-Build Agreement**” or “**PDBA**”). The Design-Build Agreement will provide that the successful Proposer (“**Design-Builder**”) shall develop, design, and potentially construct the Highway 77 Interchange Improvements at Interstate 40/55 in the West Memphis-Marion Area (the “**Project**”). The form of Design-Build Agreement is included in Volume II of the RFP. The Department is procuring the Project, and will enter into the Design-Build Agreement, on behalf of the Arkansas State Highway Commission. All firms or assemblies of firms desiring to enter into the Design-Build Agreement (individually, a “**Proposer**” and collectively, “**Proposers**”) are invited to submit Proposals. Proposers must comply with these Instructions to Proposers (“**ITP**”) during the procurement and in their responses to the RFP. Proposers shall also take into consideration the Project goals identified in Section 1.3 below in drafting their Proposals.

The RFP requires each Proposer to be prepared to act as the Design-Builder for the Project if the Proposer is selected.

All forms identified in this ITP are found in Exhibit F unless otherwise noted. All times in this ITP are Central Standard Time (CST) or Central Daylight Savings Time (CDT), as applicable. Capitalized terms and acronyms not otherwise defined herein are defined in Exhibit A hereto or Exhibit A of the Design-Build Agreement, as applicable.

1.2 RFP Documents

1.2.1 Documents Comprising the RFP

The RFP consists of the following volumes, 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); and
- (b) Volume II – the Design-Build Agreement.

1.2.2 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 shown in Section 1.5 (or, if Proposal Revisions are requested pursuant to Section 5.10, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP.

1.2.3 Errors

If any mistake, discrepancy, deficiency, ambiguity, error, or omission is identified by a Proposer 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.

1.3 Project Goals

The Department's goals for the Project are identified below:

- Reduce both peak hour and railroad crossing related congestion and resulting impediments to emergency services in the Project area;
- Realize the benefits of progressive design-build project delivery, such as risk mitigation through early contractor involvement, collaborative project development; and reducing the overall schedule for delivery of the Project;
- Uphold the trust of Stakeholders and the public in delivering the Project; and
- Deliver the Project within the Department's budget.

1.4 Project Description and Status

The Department is proposing to obtain environmental clearance for and to design and construct interchange improvements where Highway 77 crosses Interstate 40/55 and the Union Pacific Railroad in the West Memphis-Marion Area. The improvements may include grade separations at the railroad. The Department has concluded that harnessing private-sector creativity through a progressive design-build approach is the best way to ensure cost-effective and expedited delivery of this Project and provide needed congestion relief and other benefits to the public.

The Department intends to begin document preparation under the National Environmental Policy Act (NEPA) in early 2021. The Department intends to benefit from the use of the progressive design-build delivery method through early contractor involvement in the project development process. However, federal regulations prohibit private entities from preparing a NEPA document or having any decision-making responsibility in the environmental review process. Therefore, the Department will retain those responsibilities, and the input of the Design-Builder during this initial Planning Phase will be limited to producing studies, providing information related to the environmental process, or, more generally, providing viewpoints of key project-related issues.

The Department anticipates a Finding of No Significant Impact (FONSI) for the Project would be obtained in the fourth quarter of 2022. Upon issuance of the FONSI, the Department may authorize the Design-Builder under the Design-Build Agreement to proceed to the Preconstruction Phase, through issuance of an Amendment/NTP establishing the compensation, schedule, and deliverables for this phase. During the Preconstruction Phase, the Design-Builder will work collaboratively with the Department to produce final designs and provide preconstruction services, including bidding and cost proposal development for the Construction Phase.

At the end of the Preconstruction Phase, the Design-Builder will be given an opportunity to submit a Guaranteed Maximum Price (GMP) proposal for construction of the Project. Provided that the Department and the Design-Builder are able to reach agreement on the GMP proposal, the Department and the Design-Builder will enter into one or more Amendments/NTPs authorizing the Design-Builder to proceed with Construction Work on the Project, which work may be authorized through individual Work Packages based on a collaboratively developed phasing approach.

The Department has retained an independent cost estimator for this Project (the “ICE”) from the Department’s ICE Services On-Call list. The ICE will develop independent cost estimates for the Project at the same milestones as the Design-Builder, as described in more detail in the form of Design-Build Agreement (including Exhibit E thereto). The purpose of the ICE’s involvement in the Project will be to validate the cost proposals submitted by the Design-Builder at each pricing milestone. The Design-Builder will coordinate with the ICE throughout the Project.

Refer to Exhibit B for additional Project information and the scope of Work for the Design Builder and Exhibit C for information regarding the environmental process for the Project, including the planning study, a preliminary schedule of activities, and a preliminary matrix outlining the responsibilities of various parties with respect to the NEPA process.

1.5 Procurement Schedule

The following represents the current anticipated schedule for the procurement. Further key dates, including dates otherwise referenced in this RFP, will be provided in subsequent iterations of the procurement schedule.

<u>EVENT</u>	<u>DATE and TIME</u>
Issue draft RFP	December 28, 2020
Proposer RFC Deadline for draft RFP	January 14, 2021, 2:00 p.m.
Issue RFP	January 20, 2021
Last date for Proposer team registration	January 22, 2021, 2:00 p.m.
Proposer RFC Deadline on RFP	January 29, 2021, 2:00 p.m.
Virtual one-on-one meetings with Proposers	February 4-5, 2021
Last date for issuance of Addenda and Department responses to Proposer RFCs	February 12, 2021
Proposal Due Date	February 22, 2021, 2:00 p.m.
Date of anticipated award of PDBA	March 17, 2021

Where the RFP provides a deadline or due date for submission of documents, correspondence or other materials to the Department, the submission will only be considered timely if the Department receives the submission by the date and, if applicable, the time identified. Except as otherwise noted, all submissions to the Department required or permitted by this RFP must be made by email to the Department’s Authorized Representative, using the appropriate forms, if applicable, provided in this RFP.

1.6 Funding Sources

The Department’s plan of finance for the Project contemplates that the Department will fund the design and construction of the Project using a combination of federal and State funds. Payments will be made by the Department in accordance with the Design-Build Agreement.

1.7 Federal Requirements

1.7.1 General Obligations

In order to preserve the ability of the Department to use federal funding for the Project, the Procurement Process and the Design-Build Agreement must comply with applicable federal Laws.

1.7.2 DBE Requirements

The Department has determined that Disadvantaged Business Enterprise (“**DBE**”) requirements will 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 DBE set forth in 49 CFR § 26.5. Proposers’ and the Design-Builder’s DBE compliance obligations shall be governed by all applicable federal DBE regulations, including 49 CFR Part 26, as well as applicable requirements set forth in the Design-Build Agreement.

The DBE participation goal for the Project will be established by the Department after execution of the Design-Build Agreement, based on more fully developed plans for the Project, but prior to commencement of the Construction Phase. Prior to the Construction Phase Amendment/NTP, the Design-Builder will be required to submit a detailed DBE Performance Plan describing the methods to be employed for achieving the Department’s DBE participation goals for the Project, including Design-Builder’s exercise of good faith efforts. The Design-Builder will be required to comply with its DBE Performance Plan and other applicable requirements in preparing and submitting its GMP proposal for the Construction Work. The Design-Builder will also be required to provide DBE commitments in the form required by the Department as DBE subcontractors are identified, in accordance with the Design-Build Agreement and the approved DBE Performance Plan. Requirements for the DBE Performance Plan and DBE compliance are set forth in the Design-Build Agreement.

Each Proposer shall submit a certification concerning DBE requirements (Form G) 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.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

The Procurement Process intended to be used by the Department is described below; *provided* that the Department reserves the right, in its sole discretion, to modify the Procurement Process to comply with applicable Law and/or to address the best interests of the Department and the State of Arkansas, including canceling the procurement.

The Department may issue one or more draft versions of this RFP. After any such draft RFP releases, and receipt of Proposers’ questions and comments with respect thereto, the Department plans to issue a final RFP. The final RFP will include the Department’s methodology for selection of the Design-Builder, as well as the form of Design-Build Agreement that the Department intends to enter into with the selected Proposer. Following receipt and evaluation of Proposals, the Department intends to shortlist Proposers for interviews. Following evaluation of the Proposers and Proposals following the interviews, the Department may select a Proposer for conditional award based on the Department’s determination of apparent best value, to finalize a DBA for award and execution. If the Department and the apparent best value Proposer

do not execute a DBA, the Department may award the Project to the next highest rated Proposer. Alternatively, the Department may modify and re-issue the RFP, or terminate the procurement.

If an award is made, the Department will execute a Design-Build Agreement with the responsible Proposer offering a Proposal that meets the standards set by the Department and that is determined by the Department to provide the best value to the Department and to be in the best interest of the State of Arkansas.

2.2 Authorized Representatives and Proposer Registration

The Department has designated the following individual to be its authorized representative for the procurement (the “**Authorized Representative**”):

Keli Wylie
Alternative Project Delivery Administrator
Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209
E-mail: alternativedelivery@ardot.gov

All official Project communications will be provided from the Department’s Authorized Representative.

Each Proposer team shall timely register with the Department by submitting Form P by email to the Department’s Authorized Representative. Proposers are strongly encouraged to register prior to the deadline established in the procurement schedule set forth in Section 1.5 above. Any change in a Proposer team’s organization after its registration is subject to Section 3.5. The Department reserves the right to reject any Proposal submitted by a Proposer or Proposer team that did not timely register pursuant to this Section 2.2 or that failed to timely seek approval of any post-registration change in its organization pursuant to Section 3.5.

As part of Form P, each Proposer will identify a point of contact (“**Procurement Point of Contact**” or “**PPC**”). The PPC will be responsible for initiating or receiving all communication with the Department and must be delegated the full authority of the Proposer to communicate with the Department throughout the Procurement Process. Following registration, all Proposer submissions and communications with the Department should be made through the PPC.

The Department will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified in this ITP.

2.3 Rules of Contact

The rules of contact described herein apply from release of the draft RFP until selection of the best-value Proposer or until the formal cancellation of the procurement by the Department. Proposers. Each associated Component Firm must comply with all applicable Laws and refrain from lobbying any Governmental Authority in connection with the Procurement Process. During the Procurement Process, no employee, member, agent, advisor, or consultant of any Proposer or a Component Firm may undertake any ex-parte communications, directly or indirectly, regarding this procurement with any representative of the State, Department, or FHWA, including their staff, advisors, contractors, or consultants, except for communications expressly permitted by this RFP.

After a Proposer’s submission of its Form P, neither the Proposer nor any Component Firm thereof may communicate with another Proposer or Component Firm associated with another Proposer with regard to the Project, the Proposal, or any other Proposer’s Proposal, except that a Proposer may communicate with

an individual or Component Firm that is included in more than one Proposer organizations, so long as those Proposers have an established, documented protocol to ensure that such individual person or firm will not act as a conduit of information between the respective Proposer organizations.

2.4 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 mistake, discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision which Proposer fails to understand. Proposers shall submit written requests for clarification, including questions and comments regarding the ITP and form of Design-Build Agreement and requests to correct errors, (“RFCs”) in accordance with this Section 2.4. The Department will consider RFCs in issuing the final RFP and in drafting Addenda, if any, to the RFP. The Department also may elect, at its discretion, to respond to RFCs through written responses. Any written responses to RFCs given by the Department will be for the information of the Proposers only and will not become part of the Design-Build Agreement, except to the extent that the Department, in its discretion, may incorporate the substance of a response into, as appropriate, the ITP documents and/or the form of Design-Build Agreement, whether in the final RFP issuance or by means of an Addendum to the RFP.

The Department will only consider RFCs if submitted by a registered Proposer through its PPC by email to the Department’s Authorized Representative in accordance with the requirements described below.

RFCs shall be submitted prior to the dates specified in Section 1.5 as “**RFC Deadlines**” using Form Q. In completing Form Q, Proposers shall identify and provide contact information for their PPC and, if applicable, shall specify the relevant document (e.g., the ITP Exhibit, form of Design-Build Agreement, etc.), including the relevant page and section number, for reference. With respect to each RFC Deadline specified in Section 1.5, Proposers should submit all questions at one time and in one submission.

No RFCs will be considered confidential unless the Department, in its discretion, determines otherwise. If any question is determined by the Department to be confidential, the response will be transmitted exclusively to the applicable Proposer; *provided, however*, that if the Department determines that it is appropriate to provide a general response, the Department will modify the question to remove any information that the Department determines is confidential before issuing the general response.

Except during one-on-one meetings, 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.

2.5 Pre-Proposal One-on-One Meetings

The Department intends to offer each registered Proposer the opportunity for an optional virtual one-on-one meeting with the Department prior to the Proposal Due Date to discuss issues and clarifications regarding the RFP. One-on-one meetings will be held on the dates set forth in Section 1.5 (and/or on any such other dates that may be designated by the Department in writing to Proposers). The Federal Highway Administration (FHWA), other Stakeholders, and consultants to the Department may also participate in one-on-one meetings.

During one-on-one meetings, Proposers may ask questions and the Department may provide responses for informational purposes. Any responses provided by the Department during one-on-one meetings may not be relied upon; *provided, however*, that the Department may, in its discretion, and subject to Section 2.4 above, respond in writing to questions or comments raised in one-on-one meetings and/or incorporate the substance of its responses into the RFP by Addenda. The Department reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that the Department

determines, in its sole discretion, such disclosure would reveal a Proposer’s confidential business strategies, intellectual property, or technical solutions. The Department shall maintain the confidentiality of information related to Proposers and their Proposals as required to comply with this Section 2.5 and applicable Law.

Additional information regarding the one-on-one meetings will be provided by the Department to registered Proposers.

2.6 Confidentiality/Public Information Act Disclosure Requests

2.6.1 Confidentiality Rules

The Procurement Process will be conducted in accordance with the Arkansas “**Freedom of Information Act of 1967**,” as amended through A.C.A. § 25-19-101 *et seq.* (“**FOIA**”). Proposers are encouraged to familiarize themselves with FOIA, the federal Freedom of Information Act, and any other Laws applicable to the disclosure of documents submitted in connection with this RFP and to the matter of confidentiality and public information. The Department will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under such Laws or as to the interpretation of such Laws, or as to the definitions of proprietary, privileged, or confidential trade secrets or commercial or financial information.

To the extent consistent with FOIA, all records related to this Procurement Process, including, but not limited to, Proposals and any records created during the evaluation and selection process, will remain protected records until the Design-Build Agreement has been executed by all necessary officials of the Design-Builder and the Department, except for the Department’s right to publicly disclose certain information about the Proposals, such as the name and Component Firms of each Proposer. Proposers are advised that the information contained in Form B-1 (Identification of Proposer and Principal Participants), Form E (Conflict of Interest Disclosure Statement), and the Executive Summary (described in Exhibit E, Section 1.0) of each Proposal may be publicly disclosed by the Department at any time, in the Department’s sole discretion. After execution of the Design-Build Agreement, or in the event that the procurement is cancelled by the Department, the Department shall have the right to publicly disclose any and all portions of all the Proposals as the Department determines appropriate in accordance with applicable Law. Proposal materials will not be returned to the submitting party, except as determined by the Department in accordance with applicable Laws.

Nothing contained in this RFP shall modify or change the obligations of the Department under FOIA or other applicable Law. Determinations regarding the confidentiality of Proposal information or other materials submitted as part of this Procurement Process will be made by the Department in accordance with applicable Law. 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 observers from federal or other agencies, as well as Department consultants, may observe the Proposal evaluation process and will be permitted to review the Proposals after the Proposal Due Date. The Department has agreed to allow FHWA officials and their outside advisors, access to the Proposals. Outside observers (other than FHWA officials) will be required to sign the Department’s standard confidentiality agreement.

2.7 Improper Conduct and Non-Collusion

Neither Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form D).

SECTION 3.0 PROPOSER TEAM ORGANIZATION

3.1 Organizational Conflicts of Interest

The regulations contained in 23 CFR Part 636, Subpart A, and, in particular, in Subsection 636.116, regarding organizational conflicts of interest apply to this Project and the RFP. Proposers are advised that these rules may preclude certain firms and their subsidiaries and Affiliates from participating on a Proposer team. The Department has identified the following non-exhaustive list of firms that are believed to have an organizational conflict of interest: HNTB Corporation; Mayer Brown LLP; and Innovative Contracting and Engineering, LLC.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest (as defined in the above-mentioned regulations) 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 Design-Build Agreement and did not disclose the conflict to the Department, the Department may pursue remedies under the Design-Build Agreement, including termination of the Design-Build Agreement.

3.2 Debarment or Suspension

No firm may participate in any Proposer organization as a Principal Participant or a Major Participant to the extent that such firm is currently debarred, suspended, disqualified, or removed from bidding (including having been removed from bidding by the Department on account of pending liquidated damages on other projects) or performing work for the State of Arkansas, the federal government or more than three state governments or is subject to any proposed, pending, or past debarment, suspension, or similar actions, in the past three years prior to the Proposal Due Date. Each Proposer will be required to acknowledge and certify that all Principal Participants and all Major Participants meet the requirements of this section at the time of Proposal submission.

3.3 Business Integrity

The Department considers the integrity of all firms and personnel involved in the Project to be of high importance. No Principal Participant, Major Participant, nor any owner, officer, partner, director, or financial controller of such firms, or respective employee involved in the Project, may participate as a part of a Proposer team if such firm or person cannot meet the requirements of Section 5.2.1(c).

Each Proposer will be required to acknowledge and certify in its Proposal Letter (Form A) that all Principal Participants and all Major Participants and their respective employees meet the requirements of Section 5.2.1(c) at the time of Proposal submission and to submit Form C in accordance with the requirements set forth in Exhibit D.

3.4 Department Prequalification

All Major Participants responsible for construction services on the Project must be prequalified prior to the Proposal Due Date in accordance with the Department's Standard Specifications Edition of 2014, Section 102. Information concerning Prequalification may be found on the Department website at:

http://www.arkansashighways.com/ProgCon/General/Prequalification%20Questionnaire_2015.pdf.

The Proposer should allow a minimum of two weeks for the Department to process a Prequalification application. Information on the Department Prequalification process and copies of the Prequalification questionnaire are available from the Construction Contract Procurement Section of the Department Program Management Division. The Proposer is responsible for ensuring all Major Participants responsible for construction services on the Project are prequalified with the Department prior to the Proposal Due Date. Failure by the Proposer to meet the requirements of Prequalification may result in the Proposer being disqualified from the Procurement Process.

3.5 Changes in Proposer's Organization

Except as provided in the Design-Build Agreement and in this Section 3.5, Proposer's organization as identified in its Proposer registration (Form P) and subsequently in its Proposal must remain the same for the duration of the Project unless otherwise approved in writing by the Department. If a Proposer wishes to make changes in the team members identified in its registration with the Department, including, without limitation, additions, deletions, reorganizations, and/or role changes in or of any of the foregoing, Proposer shall submit to the Department a written request for approval of the change from the Department as soon as possible, but in no event later than the last date for Addenda set forth in Section 1.5. 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.

SECTION 4.0 PROPOSAL REQUIREMENTS

4.1 General Provisions Regarding Proposals

4.1.1 Proposal Contents

The instructions and requirements for the Administrative Proposal, the Technical Proposal, and the Financial Proposal are set forth in Exhibits D, E, and F, respectively. Each component of the Proposal shall be organized in the order listed in the respective Exhibit and shall be clearly indexed. Any failure to provide all the information and all completed forms (Exhibit G) in the format specified or submittal of a Proposal subject to any reservations, qualifications, conditions, or assumptions may result in the Department's rejection of the Proposal or giving it a lower rating.

4.2 General Submittal Requirements

Each Proposal shall include an Administrative Proposal, a Technical Proposal, and a Financial Proposal meeting the requirements set forth in Exhibits D, E, and F, respectively. The Proposal shall be submitted in recyclable, low-cost, sealed containers in the format and manner set forth in Section 4.3. Proposals shall be written in the English language and U.S. Customary units.

4.2.1 Proposal Due Date

The completed Proposal shall be delivered no later than the Proposal Due Date and time specified in Section 1.5 to the address specified in Section 4.2.5 below.

4.2.2 Signatures Required

The Proposal Letter (Form A) shall be executed by all Principal Participants, and shall be accompanied by evidence of signatory authorization as specified in Form A. Signatures on documents included in the original Technical and Financial Proposals may be original (handwritten) or electronic (digital) signatures, except that the signatures on the Proposal Security must be original. Electronic signatures must be applied by an authorized representative using Adobe Sign or DocuSign and be accompanied by a written statement acknowledging the intent of the signatory, and that of the party on whose behalf the signatory is signing, that the signature be binding.

4.2.3 Requirement to Submit Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to, or deviations from, the requirements of the RFP. If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the ITP Exhibits, or contains an alteration or deviation or is non-compliant in any manner, the Department may disqualify the Proposal from further consideration, in its sole discretion. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

4.2.4 Format

Hardcopy submittals must be bound in one or more binders or, in the case of the Financial Proposal, envelopes, each of which shall be labeled to indicate the binder's or envelope's contents and the name of the Proposer. Electronic copy submittals shall be submitted on a single USB flash drive including searchable PDFs (preferably with an electronic table of contents) with a file size no greater than 100 MB, with separate PDFs for each of the Administrative Proposal, Technical Proposal, and Financial Proposal (or components thereof, if necessary to meet file size requirements or as expressly permitted in this Section 4).

Printed lines may be single-spaced with the type font size being no smaller than 12-point, other than in organizational charts, tables, and figures, which may be prepared using 10-point font size type. The use of 11 by 17-inch foldouts for tables and organizational charts is acceptable in the main body of the Technical Proposal. Each 11 by 17-inch foldout will be considered one page. Double-sided printed paper is encouraged for hardcopy submittals.

4.2.5 Additional Requirements for Proposal Delivery

The completed Proposal shall be submitted and delivered in a sealed box or other container no later than the Proposal Due Date and time specified in Section 1.5. The Proposal is to be delivered to the Department at the following address:

Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209
Attn: Ms. Keli Wylie, Alternative Project Delivery Administrator.

The required hardcopy originals and duplicates of the Administrative Proposal, Technical Proposal, Financial Proposal, and the USB drive containing the requisite electronic copies of each, shall be submitted in a single box or container labeled "[Proposer's Name]: Proposal for the Hwy. 77 Interchange Improvements PDB Project." The original hardcopy Administrative, Technical, and Financial Proposals shall be clearly identified as "original."

4.3 Proposal Contents and Organization

4.3.1 Administrative Proposal

The binder containing the original Administrative Proposal (as described in Exhibit D) shall be clearly labeled “[Proposer Name]: Original Administrative Proposal for the Hwy. 77 Interchange Improvements PDB Project.” Proposer shall also provide one duplicate hardcopy of the Administrative Proposal, labeled “[Proposer Name]: Copy of Administrative Proposal for the Hwy. 77 Interchange Improvements PDB Project.” Both the original and duplicate hardcopies of the Administrative Proposal should exclude hardcopies of the Proposal Security (which must be submitted according to the requirements set forth in Section 4.5 below).

Proposer shall also provide one electronic copy of the complete Administrative Proposal (including the Proposal Security) in PDF format on the USB flash drive. The Proposal Security and the corporate / partnership / joint venture / limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements, and/or limited liability company operating agreements) may be submitted in separate PDF(s) with appropriate file names to distinguish them from the PDF of the rest of the Administrative Proposal.

No page limits apply to the Administrative Proposal.

4.3.2 Technical Proposal

The binder containing the original Technical Proposal (as described in Exhibit E) shall be clearly labeled “[Proposer Name]: Original Technical Proposal for the Hwy. 77 Interchange Improvements PDB Project.” Proposer shall also provide one duplicate hardcopy of the Technical Proposal, labeled “[Proposer Name]: Copy of Technical Proposal for the Hwy. 77 Interchange Improvements PDB Project.”

Proposer shall also provide one electronic copy of the Technical Proposal in PDF format on the USB flash drive.

All pages of the Technical Proposal (both hardcopies and electronic copies) shall be sequentially numbered. Components of the Technical Proposal shall comply with applicable page limits specified in Exhibit E. No page limits apply to Technical Proposal appendices and exhibits. Note, however, that the Department does not commit to review any information in appendices and exhibits other than those required to be provided, and the technical evaluation process will focus on the body of the Technical Proposal and any required appendices and exhibits.

4.3.3 Financial Proposal

The Financial Proposal shall be submitted in two separate parts, enclosed in separate envelopes: (1) the Price Proposal, including Form Q; and (2) the Surety letter.

The envelope containing the Price Proposal shall be clearly labeled “[Proposer Name]: Financial Proposal/Price Proposal for the Hwy. 77 Interchange Improvements PDB Project.” One original hardcopy (stamped or otherwise labeled “original”) and one duplicate hardcopy shall be included in the Price Proposal envelope.

The Financial Proposal shall also contain a letter from a surety company that satisfies the requirements of Exhibit F, Section 2.0. One original hardcopy and one duplicate hardcopy of the Surety letter shall be included in an envelope labeled “[Proposer Name]: Financial Proposal/Surety Letter for the Hwy. 77 Interchange Improvements PDB Project.”

Proposer shall also provide one electronic copy of each of the Price Proposal and the Surety letter in separate PDFs on the USB flash drive.

4.4 Proposal Validity

Proposals shall be valid for a period of 60 days after the Proposal Due Date. No Proposer may withdraw its Proposal within the 60-day period, unless notified by the Department that (a) no Design-Build Agreement for the Project will be awarded by the Department pursuant to the RFP; (b) the Department has awarded the Design-Build Agreement to another Proposer and has received the executed Design-Build Agreement and other required documents; (c) the Department does not intend to award the Design-Build Agreement to the Proposer; or (d) such Proposer is not the apparent best-value or next highest ranking Proposer.

If the next best Proposer is notified during the 60-day period that it is selected for negotiations, such Proposer shall be automatically deemed to have extended the validity of its Proposal for the period until 120 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 Proposal Security and Forfeiture

The Proposer shall provide one original and one duplicate hardcopy of the Proposal Security with the Administrative Proposal in a separate envelope labeled “[Proposer Name]: Proposal Security for the Hwy. 77 Interchange Improvements PDB Project.” An electronic copy of the Proposal Security shall be provided on the USB flash drive as described in [Section 4.3.1](#).

The dollar amount of the Proposal Security to be submitted with each Proposal shall be \$50,000. By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (a) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal except as specifically permitted hereunder; (b) it is selected for negotiations, but fails to negotiate in good faith with the Department as set forth in [Section 6.2](#); or (c) it is selected as the preferred Proposer, but fails to provide the documents required under [Section 6.2](#).

4.6 Withdrawals and Late Submittals

Proposer may withdraw its Proposal at any time prior to the time due on the applicable Proposal Due Date by means of a written request signed by the Proposer’s PPC. Such written request shall be submitted to the Department by email to the Department’s Authorized Representative. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that such new Proposal is received before the time due on the Proposal Due Date.

Proposals received after the time due on the Proposal Due Date may be rejected without consideration or evaluation. It is a Proposer’s sole responsibility to see that its Proposal is received as required by this RFP.

4.7 Ownership of Proposal

All written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, 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 Proposer.

4.8 Proposal Costs Not Reimbursable

The Department will not provide any Proposer with reimbursement for any costs incurred in connection with this procurement, and the Proposer is solely responsible for all costs and expenses, of any nature, associated with responding to this RFP and submitting a Proposal, including attending one-on-one meetings, submitting RFCs regarding the RFP Documents, and providing any other pre-Proposal submittals, supplemental information, or Proposal revisions to the Department.

SECTION 5.0 EVALUATION PROCESS

The Department's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this procurement. The Proposal evaluation process will consist of the steps outlined herein.

5.1 Evaluation Method (Best Value Trade-off Process)

The evaluation process will proceed as follows: (1) a review of each Proposal for responsiveness and pass/fail criteria; (2) a review and a qualitative evaluation of the Technical Proposals, resulting in a Technical Proposal score for each; (3) establishment of a competitive range of Proposals, based on a ranking of responsive and passing Proposals by Technical Proposal score, resulting in a shortlist of Proposers to be invited for interviews with the Department; (4) interviews with shortlisted Proposers and a qualitative evaluation of interview performance, resulting in an interview score for each shortlisted Proposal; (5) determination of the overall technical ranking of shortlisted Proposals, based on the combined Technical Proposal and interview scores; (6) review of Price Proposals for reasonableness and a tradeoff analysis (which may include both quantitative and qualitative factors) of the Price Proposals relative to the technical ranking and scores of the shortlisted Proposals; and (7) finally, ranking of the shortlisted Proposals by the value they offer to the State, based on the tradeoff analysis, resulting in a determination as to the Proposal offering the best value. The process may include requests for clarifications or Proposal Revisions in accordance with Sections 5.9 and 5.10, respectively.

5.2 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Proposals will be reviewed by the pass/fail and responsiveness subcommittee. 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.

5.2.1 Administrative Proposals

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

- (a) The Administrative Proposal includes all forms described by Exhibit D;
- (b) The Proposer has provided evidence of its legal organization, or if the Proposer is unincorporated, the Proposer has provided evidence of the legal organization of the Principal Participants;
- (c) No Principal Participant or Major Participant, nor any owner, officer, partner, director, or financial controller of such firms, nor any of their respective employees involved in the Project, has, in the past three years prior to the Proposal Due Date:
 - (1) Been convicted or included as the defendant in a criminal or civil judgment rendered against the firm or relevant individual by a court of competent jurisdiction in any matter

involving fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty;

(2) Been indicted or otherwise criminally or civilly charged by a Governmental Authority with fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; or

(3) Participated as a prime contractor or equity partner in (i) a contract that was terminated for cause or default by the State of Arkansas or the federal government or (ii) contracts that were terminated for cause or default by two or more other Governmental Authorities;

(d) The Proposal includes a Proposal Security as required pursuant to Section 4.5; and

(e) All Major Participants responsible for construction services on the Project are prequalified in accordance with Section 3.4 prior to the Proposal Due Date.

5.2.2 Technical Proposals

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

(a) The Technical Proposal includes all forms described by Exhibit E;

(b) The Technical Proposal includes all other information required pursuant to Exhibit E; and

(c) The Major Participants included in the Proposal have not changed since the Proposer's registration with the Department, except with the Department's prior written approval.

5.2.3 Financial Proposals

Financial Proposals will be evaluated on a pass/fail basis based on the Financial Proposal's inclusion of a Surety letter responsive to all of the criteria set forth in Exhibit F Section 2.0.

5.2.4 Department Right to Exclude Proposals from Consideration or to Waive Mistakes

Those Proposals that are 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 or omission. The Department reserves the right to waive minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Proposals.

5.3 Evaluation of Technical Proposals

After completion of the pass/fail and responsiveness review, each Technical Proposal will be evaluated to determine its ability to meet or exceed the Project goals, values, and requirements and will be scored in the following categories, for a total maximum Technical Proposal score of 1000 points:

(a) Organization and Experience (400 points maximum); and

(b) Project Approach (600 points maximum).

The evaluation criteria for each category are described below. Each of the evaluation criteria will be evaluated and scored as noted. The Department will add the points awarded for each evaluation factor to determine the Technical Proposal score.

5.3.1 Organization (100 points)

The Proposer team's organization will be evaluated based on the extent to which such organization:

- (a) Demonstrates an understanding of the progressive design-build delivery method;
- (b) Demonstrates an efficient structure that is capable of effective coordination and collaboration with the Department, its consultants, and Stakeholders;
- (c) Identifies sufficient personnel to perform the Work; and
- (d) Is likely to facilitate successful delivery of the Project.

5.3.2 Firm Experience (100 points)

The Proposer's experience will be evaluated on the basis of the demonstrated competency, capability, and capacity of the Proposer team to successfully deliver a project of similar size, scope, and complexity using alternative project delivery methods, particularly progressive design-build delivery. Specifically, the Department will evaluate the extent to which the Proposer's experience:

- (a) Demonstrates an understanding of the progressive design-build delivery method; and
- (b) Demonstrates relevant experience that will improve the likelihood of a successful project.

Experience on completed projects will be given more weight than projects in progress.

The information provided in the Technical Proposal regarding the Major Participants' project experience will be used as deemed appropriate by the Department for the evaluation of such firms' technical experience and capability. At its discretion, the Department may elect to use other information provided in the Proposal, including reference information and disclosures, to make inquiries about or otherwise further examine the Proposer's technical experience and capability and may take into account such inquiries and examinations in assessing the criteria above.

5.3.3 Key Personnel Experience (200 points)

The Proposer will be evaluated on the background, experience, and past performance of its required and Proposer-identified Key Personnel on projects of similar size, scope, and complexity. Key Personnel will be evaluated based on the extent to which:

- (a) The extent to which the required Key Personnel meet or exceed minimum requirements for qualifications and experience; and
- (b) The extent to which the Proposer-identified additional Key Personnel provide experience that is likely to facilitate and improve successful delivery of the Project.

The information provided in the Technical Proposal regarding the Proposer's Key Personnel, including the Forms M, will be used as deemed appropriate by the Department to assist in the evaluation of the Key Personnel qualifications and experience. At its discretion, the Department may elect to use other information provided in the Proposal, including reference information and disclosures, to make inquiries about or otherwise further examine the Proposer's technical qualifications and capability and may take into account such inquiries and examinations in assessing the criteria above.

5.3.4 Project Approach (600 points)

The Proposer's Project Approach with respect to each of the Planning Phase (200 points), the Preconstruction Phase (200 points), and the Construction Phase (200 points) will be evaluated on the extent to which each:

- (a) Demonstrates an understanding of the Project and progressive design-build delivery;
- (b) Demonstrates an understanding of the scope of work in Exhibits B and E;
- (c) Demonstrates an efficient and effective plan for coordination and collaboration with the Department, the Department's consultants, and Stakeholders in connection with the Project;
- (d) Demonstrates an approach that effectively engages project personnel;
- (e) Demonstrates a level of effort that aligns with the proposed Planning Phase NTE amount (*Planning Phase Project Approach only*);
- (f) Reflects proposed exceptions to the form of Design-Build Agreement set forth in the Administrative Proposal (*Preconstruction Phase and Construction Phase Project Approaches only, as applicable*); and
- (g) Provides a Proposer alternative that meets the Project's purpose and need and is not inconsistent with the Department's goal of cost-effective and timely delivery.

5.4 Competitive Range

The term "competitive range" means a list of the passing and responsive Proposals that are most highly ranked by the Department based on the initial Technical Proposal scores and that are judged by the Department to be reasonably susceptible of being selected for award.

5.5 Interviews

The Department will shortlist Proposers in the competitive range identified by the Department pursuant to Section 5.4 to move forward in the Procurement Process. Shortlisted Proposers will be required to attend a technical interview with the Department as described in this Section 5.5.

Each shortlisted Proposer team may bring to its interview any material that Proposer believes may assist the Department in evaluating the team's qualifications. Each team will be required to attend the interview with the following Key Personnel: Project Manager, Design Manager, Construction Manager, and Project Controls Manager.

The presentation, case study exercises, and question and answer (Q&A) period will last approximately one hour and will be qualitatively evaluated and scored by the Department out of a maximum of 1000 points. The format of the interview will be as follows:

- (a) Introductions and Presentation of Project Approach: 10 minutes (200 points)
- (b) Presentation of Proposer Alternative and Q&A: 15 minutes (300 points)
- (c) Case Study: 15 minutes (300 points):
 - (1) 10 minutes for Proposer to work as a team on the case study; and

- (2) Five minutes for Proposer to present solutions and findings to the Department interview panel.

Note: The Department's selection panel will be in the room watching the team work together and collaborate. Proposer may call on the Department selection panel for more information as needed, but this will be included in the 10 minutes allotted to team's work on the case study.

- (d) Q&A with the Department's selection panel: 15 minutes (200 points)
- (e) Closing: 5 minutes

Proposers will be evaluated on their interview performance and ability to work as a team based on the following criteria:

- (a) Team technical expertise;
- (b) Team collaboration and cohesiveness;
- (c) Ability to problem solve;
- (d) Presentation of solutions; and
- (e) Ability to utilize the skills of all team members.

5.6 Evaluation of Financial Proposals

The Financial Proposal of each shortlisted Proposal will be evaluated to determine its ability to meet or exceed the Project goals, values, and requirements.

5.6.1 Price Proposal – Reasonableness

The reasonableness of the Proposer's schedule of fully loaded hourly rates and proposed subcontract sums for the Planning Phase provided in accordance with Exhibit F, Section 3.0 will be evaluated as to the extent to which such amounts are consistent with market rates and provide value to the Department relative the services being provided.

5.6.2 Price Proposal – Proposed Planning Phase NTE Amount

The Price Proposal will be evaluated as to the extent to which Proposer's indicative cost estimate for the Planning Phase provided in accordance with Exhibit F, Section 3.0 (which estimate intended to provide the basis for the Planning Phase NTE amount under the PDBA, subject to the Department's determination as to the reasonableness of that amount) is consistent with Proposer's Planning Phase Project Approach and provides value to the Department relative to the value of the services being delivered by Proposer during the Planning Phase.

5.7 Evaluation Criteria

In evaluating the Proposals and interview performance pursuant to the criteria in Sections 5.3, 5.5, and 5.6 above, the Department will utilize a 0-5 rating system as set forth below (*provided, however, that Financial Proposals will not receive point scores but will be evaluated using a tradeoff analysis as described in Section 5.8 below*).

Rating	Criteria for Rating	
5	<p>Technical: The submitted information significantly exceeds the listed requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project) and/or is significantly superior to the information provided by other Proposers. There are multiple strengths. There are no identified weaknesses.</p> <p>Financial: The submitted information significantly exceeds the listed requirements and demonstrates exceptional value for ARDOT.</p> <p>Interview: The Proposer demonstrates an exceptional understanding of the subject and demonstrates an approach with unique, innovative, and/or well-proven methods that exceed stated requirements and objectives of the Project.</p>	90%-100% of available points.
4	<p>Technical: The submitted information exceeds the listed requirements/objectives in a beneficial way (providing advantages, benefits, or added value to the Project) and/or is superior to the information provided by other Proposers. There are some strengths and only minor/potential weaknesses that can be readily corrected.</p> <p>Financial: The submitted information exceeds the listed requirements and demonstrates good value for ARDOT.</p> <p>Interview: The Proposer demonstrates a good understanding of the subject and demonstrates an approach that meets the stated requirements and objectives of the Project.</p>	70%-89% of available points.
3	<p>Technical: The submitted information generally meets the listed requirements/objectives and/or is generally comparable to the information provided by other Proposers. The number of strengths and weaknesses is generally balanced.</p> <p>Financial: The submitted information generally meets the listed requirements and demonstrates reasonable value for ARDOT.</p> <p>Interview: The Proposer demonstrates a general understanding of the subject and demonstrates an approach containing some weaknesses/deficiencies regarding the stated requirements and objectives of this Project.</p>	50%-69% of available points
2	<p>Technical: The submitted information minimally meets the listed requirements/objectives and/or is minimally comparable/inferior to the information provided by other Proposers. The number and weaknesses exceed the number of strengths.</p> <p>Financial: The submitted information minimally meets the listed requirements and demonstrates minimal value for ARDOT.</p> <p>Interview: The Proposer demonstrates a minimal understanding of the subject and demonstrates an approach containing moderate weaknesses/deficiencies regarding the stated requirements and objectives of this Project.</p>	30%-49% of available points
1	<p>Technical: There is some question regarding whether the submitted information meets the listed requirements/objectives and/or it is generally inferior to the information provided by other Proposers. The number and weaknesses significantly exceed the number of strengths.</p>	0%-29% of available points

	<p>Financial: There is some questions regarding whether the submitted information meets the listed requirements and does not appear to demonstrate value for ARDOT.</p> <p>Interview: The Proposer demonstrates a lack of understanding of the subject and demonstrates an approach with a high likelihood of failure that does not align with the stated requirements and objectives of this Project.</p>	
0	<p>Technical: The submitted information is not responsive to the requirements/objectives and creates a substantial risk of project failure.</p> <p>Financial: The submitted information is not responsive to the requirements/objectives and creates a substantial risk of project failure.</p> <p>Interview: The Proposer demonstrates an approach that creates a substantial risk of project failure.</p>	No points

5.8 Tradeoff Analysis

When determining which Proposal provides the best value to the State, the Technical Proposal and interview scores will have a substantially higher relative importance than the Price Proposal. After the interviews, the Department will rank the shortlisted Proposals based on the combined Technical Proposal and interview scores. Following such ranking, the Department will perform a fully integrated tradeoff analysis of the shortlisted Proposals, resulting in a ranking of the shortlisted Proposals in order of overall best value to the State. In performing this tradeoff analysis, the Department will consider the facts and circumstances of the Project and Procurement Process and the evaluation factors set forth in this RFP, including the evaluation criteria set forth above and the value of the Price Proposal (including the proposed Planning Phase NTE amount and the reasonableness of the fully loaded hourly rates), and will utilize its technical judgment and discretion in considering strengths, weaknesses, and deficiencies of each Proposal. The highest ranked Proposal upon conclusion of the tradeoff analysis will be recommended for award.

5.9 Requests for Clarification

The Department may (but is not obligated to) 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 any aspect of its Proposal. Any requests for clarification will be made by the Department by email to the Proposer’s PPC and will be delivered to the Department by email to the Department’s Authorized Representative unless otherwise directed by the Department. 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.

5.10 Requests for Proposal Revisions

The Department may, at any time after receipt of Proposals and prior to execution of the Design-Build Agreement, determine that it is appropriate to request changes to the Proposals (“**Proposal Revisions**”). Before requesting any such Proposal Revisions, the Department will engage in separate discussions (either in writing or in person through one-on-one meetings) with each Proposer and in accordance with

the procedures for proposal revisions described in 23 CFR Part 636.501 *et seq.* The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. Any such Proposal Revisions will be required to be delivered by the PPC to the Department by email to the Department's Authorized Representative unless otherwise directed by the Department.

Upon receipt of Proposal Revisions, the Department will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.11 Recommendation to Commission

The Department will make a recommendation to the Commission regarding the rankings of the Proposals and identification of the best value Proposal and the preferred Proposer. The Commission will evaluate the recommendations and will determine whether to proceed with award of a Design-Build Agreement to the preferred Proposer or to take any other action. The Commission's decision to award the Design-Build Agreement to the preferred Proposer, as well as the rankings, will be made in a public hearing and will be considered a public announcement of intent to award the Design-Build Agreement by the Commission. The Commission's decision regarding award of the Design-Build Agreement shall be final.

SECTION 6.0 POST-EVALUATION PROCESS AND EXECUTION

6.1 Incorporation of Proposal and Finalization of the Design-Build Agreement

If authorized by the Commission, the Department will proceed with the best value Proposer, based on the selection criteria outlined in Article 5, to finalize the Design-Build Agreement. By submitting its Proposal, each Proposer commits to enter into the form of Design-Build Agreement included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of Design-Build Agreement indicates is required from the Proposal, and subject to negotiation of any exceptions that the Proposer expressly identified in its Administrative Proposal. The Department may agree, in its sole discretion, to limited negotiations with the best value Proposer to clarify any remaining issues regarding scope, schedule, or any other information provided by that Proposer. Any decision to commence limited negotiations is at the Department's sole discretion.

If a Design-Build Agreement satisfactory to the Department cannot be negotiated with the best value Proposer, the Department will, formally and in writing, end negotiations with that Proposer and take action consistent with the direction provided by the Commission. Such action may include: (a) requiring the next best value Proposer to enter into the Design-Build Agreement in the form included in the RFP, without variation except to fill in blanks and include information that the form of the Design-Build Agreement indicate is required from the Proposal, and subject to negotiation of any exceptions that the Proposer expressly identified in its Administrative Proposal; (b) rejection of all Proposals; (c) issuance of a request for Proposal Revisions to Proposers; or (d) proceeding to the next best value Proposer to attempt to negotiate a Design-Build Agreement with that Proposer in accordance with this Section 6.1. If option (d) is selected, the Proposer that submitted the next best value Proposal will be considered the best value Proposer for purposes of this section.

In the event the Department elects to commence negotiations with a Proposer, such Proposer will be deemed to have failed to engage in good faith negotiations with the Department and shall forfeit its Proposal Security as set forth in Section 4.5 if Proposer (x) fails to attend and actively participate in reasonably scheduled negotiation meetings with the Department or (y) insists upon terms or conditions for any documents to be negotiated or provided by Design-Builder hereunder that are inconsistent with form of Design-Build Agreement and any exceptions expressly identified by Proposer in its Administrative Proposal.

6.2 Post-Selection Deliverables

As a condition precedent to execution of the Design-Build Agreement, the successful Proposer shall deliver the following to the Department within five Business Days after notification of award:

(a) Evidence of authority to transact business in the State of Arkansas for all members of Proposer's team that will transact business in the State, dated no earlier than 30 days prior to the Proposal Due Date.

(b) If not previously submitted, a copy of the final organizational documents for Design-Builder and, if Design-Builder is a limited liability company, partnership or joint venture, for each member or partner of Design-Builder. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal. If Design-Builder is a joint venture, attach a letter from each joint venturer stating that the joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligations of Design-Builder under the Proposal and under any contract arising therefrom.

(c) Certificates of insurance accompanied by one or more committed letters from insurance brokers confirming that coverage will be placed in accordance with the project documents.

During the negotiation period, as a condition to execution of the Design-Build Agreement, the Proposer shall deliver drafts of the deliverables identified in Section 6.3 for pre-approval by the Department.

6.3 Execution and Delivery of Design-Build Agreement

The following are conditions precedent to execution of the Design-Build Agreement: (1) successful completion of negotiations (if any), (2) receipt by the Department of all of the documents required to be provided prior to execution of the Design-Build Agreement under this Section 6.3, (3) execution of the Design-Build Agreement by the Department, and (4) any other conditions required by the Commission.

Proposer shall deliver the documents listed below to the Department concurrently with the executed Design-Build Agreement as a condition to execution of the Design-Build Agreement by the Department. On or before the date that the Department delivers the execution sets of the Design-Build Agreement to Proposer, the Department shall notify Proposer regarding the number of originals and copies required to be delivered.

(a) 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.

(b) Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the Design-Build Agreement by Design-Builder and, if Design-Builder is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to the Department.

(c) A written opinion of counsel for Design-Builder, which counsel shall be approved by the Department (which may be in-house or outside counsel), in a form satisfactory to the Department, in its sole discretion.

(d) Evidence that Design-Builder and its Major Participants hold all licenses required for performance of the work under the Design-Build Agreement.

(e) 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 of \$40 million and in the forms attached to the Design-Build Agreement, and a Retainage Bond in the form attached to the Design-Build Agreement. 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 Design-Build Agreement and issuance of the Construction Phase Amendment/NTP; *provided, however*, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Design-Build Agreement or form thereof set forth in the RFP, but excluding any changes or information reflected in the Proposal.

(f) Any other requirements identified by the Department during pre-award negotiations.

6.4 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 at the earliest feasible time after execution of the Design-Build Agreement. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and Design-Build Agreement award.

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 any evaluation committee, but may include a summary of the rationale for the selection decision and Design-Build Agreement award.

SECTION 7.0 PROTESTS

This section sets forth the exclusive protest remedies available with respect to the RFP (a "**Protest**"). By the submission of a Proposal, the Proposer expressly recognizes the limitation on its rights to file a Protest to only those rights and provisions contained herein. The Proposer expressly waives all other rights, remedies, and agrees that this Section 7 sets forth all rights and remedies of the Proposer regarding Protests. This provisions included in the RFP are provided in consideration of such waiver and agreement by the Proposer. If a Proposer disputes, or does not follow the exclusive protest remedies set forth in the

RFP, the Proposer must 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 such Proposer action. The submission of a Proposal by a Proposer is deemed to include the Proposer's irrevocable and unconditional agreement with respect to such indemnification obligation.

7.1 Written Protests Only

A Protest from a Proposer must be submitted to the Department in writing and contain all information described below in Section 7.2. The written Protest must be mailed to the following person (the "**Protest Official**") at the following address:

Arkansas Department of Transportation
10324 Interstate 30
Attn: Mr. Kevin Thornton, Assistant Chief of Administration
Little Rock, AR 72209

Any Protest not received in writing by the Protest Official within seven days of the action on which the Protest is based will be considered null and void and will not be considered for investigation or resolution. In addition, any Protest may be filed only after the respective Proposer has first discussed the nature and basis of the Protest with the Department's Authorized Representative in an effort to resolve the matter through discussion.

The Protest Official may, in his discretion, discuss the written Protest with the respective Proposer prior to issuance of the Protest Official's written decision. The Proposer shall possess, and maintain throughout the Protest process, the burden of proof regarding the Protest by clear and convincing evidence. No hearing will be assembled on the Protest and the Protest Official will resolve the Protest in a written decision issued to the protesting Proposer. The Proposer may appeal the decision of the Protest Official by filing a written appeal as described in Section 7.4.

It is the Proposer's sole responsibility to deliver the Protest to the Protest Official at the location noted and for obtaining a written receipt appropriate to the means of delivery at the time of delivery. The Department bears no liability, and accepts no responsibility, for a Proposer not meeting the appropriate deadline(s) for any such Protest or appeal.

7.2 Protest Contents

A Protest must include the following:

1. The name and address of the Proposer;
2. The Project name and number (No. 110651);
3. A detailed statement of the nature of the Protest;
4. All factual and legal documentation in sufficient detail to establish the merits of the Protest. Any Protest information and documentation provided under oath could result in a penalty of perjury, should the information be proven to be inaccurate, whether intentional or unintentional.

The Proposer must demonstrate or establish a clear violation of a specific Law or regulation, or impropriety within the Procurement Process. The Protest Official will not be obligated to postpone the

public announcement of award or execution of the Design-Build Agreement in order to allow the respective Proposer an opportunity to file or correct a Protest or appeal, unless otherwise required by Law.

7.3 Protest Process

Upon receipt, the Protest Official will promptly make a determination, in writing, regarding the validity of the Protest and whether or not the Procurement Process should be delayed or the Department should reconsider the selection of the preferred Proposer. If the Department determines that a delay in the Procurement Process is appropriate, all Proposers will be notified of the delay.

The Proposer agrees that if an appeal of the Protest Official's decision is not submitted within seven days of the Protest Official's written decision, the decision of the Protest Official will be deemed to be final action and non-appealable. Any appeal within seven days will be handled as described in Section 7.4 below.

7.4 Rights of Appeal

If the Proposer disagrees with the written decision of the Protest Official, the Proposer may appeal the decision by submitting a written appeal to the Department Deputy Director & Chief Operating Officer within seven calendar days after receipt of the decision of the Protest Official. The written Appeal must be mailed to the following address:

Arkansas Department of Transportation
10324 Interstate 30
Attn: Randy Ort, Deputy Director & Chief Operating Officer
Little Rock, AR 72209

The Deputy Director & Chief Operating Officer will provide a final decision on the Protest, either concurring with the decision of the Protest Official or amending the decision and will notify the respective Proposer in writing in a prompt manner of its decision.

If the Protest is not resolved after the appeal to the Deputy Director & Chief Operating Officer, the Proposer may continue the Protest only by appeal of the final decision in the same manner as provided in A.C.A. §25-15-207 for declaratory judgment regarding the validity or applicability of a rule. The Department's decision after review of the appeal by the Deputy Director & Chief Operating Officer will constitute final action by the Department. If the Proposer appeals the final action by the Department, the Department may, in its sole discretion, proceed with the Procurement Process, unless otherwise directed or ordered by a judicial authority.

SECTION 8.0 DEPARTMENT RIGHTS AND DISCLAIMERS

In addition to the reserved rights articulated throughout the RFP, the Department reserves the right, in its sole and absolute discretion, to do the following: (a) reject any or all Proposals; (b) issue a new RFP; (c) cancel, modify, or withdraw the RFP; (d) appoint an evaluation team to review Proposals and seek the assistance of outside technical experts in the Proposal evaluation; (e) revise and modify, at any time before the Proposal Due Date, the RFP; (f) extend the Proposal Due Date; (g) seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposal on one or all the Proposers; and (h) refuse to receive or open a Proposal, once submitted, or reject a Proposal if such refusal or rejection is based on, but not limited to, any of the following: (1) failure on the part of a Principal Participant or Major Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing

contracts; (2) violation of the terms of the RFP on the part of a Principal Participant or Major Participant; (3) issuance of a notice of debarment or suspension to a Principal Participant or Major Participant; (4) submittal by the Proposer of more than one Proposal under the Proposer's own name or under a different name; and (5) existence of a conflict of interest or evidence of collusion in the preparation of a proposal, proposal, or bid for any design or construction project by a Principal Participant or Major Participant.

The issuance of the RFP is not a commitment by the Department to enter into the Design-Build Agreement, nor does it obligate the Department to pay for any costs incurred in preparation and submission of the Proposal or in anticipation of the Design-Build Agreement. By submitting a Proposal, a Proposer disclaims any right to seek compensation for such costs from the Department. By submission of a Proposal in response to the RFP, the Proposer thereby specifically acknowledges acceptance of the above rights and disclaimers.

EXHIBIT A
DEFINITIONS AND ACRONYMS

“Addenda/Addendum” means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

“Administrative Proposal” means the proposal materials submitted by a Proposer providing the information requested in ITP Exhibit D.

“Affiliate” means (i) any person, organization or firm that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Proposer or any Principal Participant; or (ii) any organization or firm for which 10 percent or more of the interest in such organization or firm is held directly or indirectly, beneficially or of record, by (a) the Proposer; (b) any Principal Participant; or (c) any Affiliate under part (1) of this definition.

“Authorized Representative” has the meaning set forth in ITP Section 2.2.

“Business Day” means days on which the Department is officially open for business.

“Certificate of Authorization” means the certificate issued by the State Board that firms practicing or offering engineering services in the State are required to obtain under A.C.A. § 17-30-303.

“Commission” means the Arkansas State Highway Commission.

“Component Firm” means any firm associated with a Proposer that is contemplated by the Proposer to perform Work on the Project, including the Proposer, Principal Participants, Major Participants, Designers, and subcontractors that perform design or construction activities.

“Construction Manager (CM)” means the individual employed by the Proposer or a Principal Participant, who is designated as having the lead responsibility for managing the construction on the Project.

“Day” or **“day”** shall mean calendar days unless otherwise expressly specified.

“Design-Build Agreement” means the design-build agreement for the design and construction of the Project, as further set forth in Volume II of the RFP, together with associated documents, including any technical provisions attached thereto.

“Department” means the Arkansas Department of Transportation.

“Design-Builder” has the meaning set forth in ITP Section 1.1.

“Design Manager” means the individual employed by a Lead Designer, and satisfying the requirements of such position, designated as having with the lead responsibility for managing the design on the Project.

“Designers” means a professional engineering firm who has obtained a current valid Certificate of Authorization from the State Board and provides professional engineering services for the Design-Builder on the Project up to and including providing signed-sealed final design plans and specifications for the Project.

“Disadvantaged Business Enterprise” or **“DBE”** has the meaning set forth in 49 CFR Part 26.

“FHWA” means the Federal Highway Administration.

“Financial Proposal” means the financial proposal submitted by a Proposer providing the information requested in ITP Exhibit F.

“Governmental Authority” means any (a) Federal, State, or local government, and any political subdivision of any of them, and (b) any interstate, governmental, quasi-governmental, judicial, public, regulatory, statutory instrumentality, administrative agency, authority, body, or entity of, or formed by, any such government or subdivision thereof; in each case other than the Department.

“ICE” has the meaning set forth in ITP Section 1.4.

“Instructions to Proposers” or **“ITP”** means 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.

“Key Personnel” means the individuals designated by a Proposer pursuant to ITP Ex. E, Section 4.0.

“Lead Designer” means the Component Firm(s) designated on Form B to bear primary and lead responsibility for design services on the Project. The Lead Designer must be the Proposer, a Principal Participant, or Major Participant, and perform a minimum of 15% of the design services on the Project. If multiple Lead Designers are designated by the Proposer, the areas of primary responsibility must be clearly defined on Form B and in the executive summary of the Proposal.

“Major Participant” means any Component Firm for a Proposer that is contemplated to be responsible for performing more than 15% of the design or more than 20% of the construction of the Project.

“Post-Selection Deliverables” has the meaning set forth in ITP Section 6.2.

“Principal Participant” means, with respect to a Proposer, any of the following entities: (i) any joint venture, partner, or firm holding an interest in the Proposer if the Proposer is a joint venture, partnership or other form of unincorporated legal entity; and/or (ii) any person or firm holding (directly or indirectly) a 15% or greater interest in the Proposer if the Proposer is a corporation, limited liability company or other form of incorporated legal entity; or (iii) parent company or Affiliate of the Proposer or another Principal Participant that will provide financial support to such firm (guarantor) to meet the financial obligations of the Design-Build Agreement.

“Procurement Point of Contact” or **“PPC”** means the authorized representative of the Proposer identified as the sole representative for communication with the Department.

“Procurement Process” means the entire process by which the Department offers to outside parties an opportunity to undertake the Project, including the RFP, beginning with the release of the RFP and ending with the selection of the Design-Builder to design and construct the Project.

“Professional Engineer” means individual licensed by the State Board to practice engineering in the State.

“Project” has the meaning set forth in ITP Section 1.1.

“Project Controls Manager (PCM)” means the individual employed by the Proposer, a Principal Participant, or Major Participant satisfying the requirements of such position, designated as having the lead responsibility for managing scheduling controls for the Project and responsible for planning, scheduling, cost controls, contract change management, and monitoring/managing project controls and scheduling personnel.

“Project Manager (PM)” means the individual employed by the Proposer, or a Principal Participant, who is designated as having the lead responsibility for managing the Proposer (and Design-Builder) organization including authority to provide full direction and control for the Project.

“Proposal” means a Proposer’s complete response to the RFP, including (a) a Technical Proposal and (b) a Financial Proposal.

“Proposal Due Date” means the deadline (date and time) for submission of Proposals identified in ITP Section 1.5.

“Proposal Revisions” have the meaning set forth in ITP Section 5.10.

“Proposal Security” means the proposal bond as described in ITP Section 4.5 and ITP Ex. D, Section 1.3.

“Proposer” means the entity submitting a Proposal for the Project in response to the RFP.

“Protest” has the meaning set forth in ITP Section 7.0.

“Protest Official” has the meaning set forth in ITP Section 7.1.

“Request for Proposals” or **“RFP”** means the set of documents identifying the Project and the work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer/Design-Builder. The RFP includes the ITP and form of Design-Build Agreement.

“RFC” means Proposer written requests for clarification as described in ITP Section 2.4.

“RFC Deadline” has the meaning set forth in ITP Section 2.4.

“Stakeholder” means parties that may have a stake in the Project by virtue of their location or funding, including utility providers affected by the Project, adjacent landowners, the City of West Memphis, Arkansas and the West Memphis-Marion Area Transportation Study, the United States Department of Transportation/FHWA, and their respective officers, directors, and employees.

“State” means the State of Arkansas.

“State Board” means the Arkansas Board of Licensure for Professional Engineers that has the responsibility to regulate, license, and monitor the practices of Professional Engineers in the State.

“Surety” means the individual or entity committing to provide any of the bonds identified in the RFP.

“Technical Proposal” means the technical proposal submitted by a Proposer providing the information requested in ITP Exhibit E.

“USDOT” means the United States Department of Transportation.

For definitions of other initially capitalized terms, please refer to the Design-Build Agreement.

EXHIBIT B

PROJECT DESCRIPTION AND SCOPE OF WORK

1.0 Project Description

The Department is proposing to obtain environmental clearance for, design, and construct interchange improvements where Highway 77 crosses Interstate 40/55 and the Union Pacific Railroad in the West Memphis-Marion Area. The improvements may include grade separations at the railroad.

The Department has prepared a preliminary scoping review of the Project for planning purposes in preparation for the environmental clearance process. The review identified three potential build alternatives in addition to the no-build alternative. *See* the planning study attached to the RFP as ITP Exhibit C-1. These alternatives or others yet to be identified may be carried into the process for further analysis. An alternative proposed by the Design-Builder, whether prepared in response to this RFP as described in ITP Exhibit E or developed during the Planning Phase, may be among those considered.

The scoping review found that due to the confluence of Highway 77, the railroad, and the interstate frontage roads at this location and development in the project area, substantial recurring delays occur during peak hours within the Project area. These conditions are expected to worsen in the future.

When trains cross the Project area, traffic in all directions must stop, resulting in long unexpected delays. Furthermore, no arterial grade separations exist in West Memphis, so emergency response services are occasionally disrupted. Field railroad counts in early 2019 indicated that an average of five trains use this crossing per day. Average blockage times are about five minutes, and additional time is required for a return to normal conditions. Most of the trains cross during daylight hours. The field data shows that non-recurring delays occur due to trains.

Implementation of the Project is expected to reduce congestion delays and disruptions to emergency services through improvements to the interchange that will enhance traffic flow and reduce the effects of railroad operations.

The Department intends to procure a progressive Design-Builder under a single Design-Build Agreement with three separately authorized phases as follows and as more fully described in Section 2.0 below:

1. Planning Phase
2. Preconstruction Phase
3. Construction Phase

The Planning Phase is anticipated to commence in the first quarter of 2021 and conclude by the fourth quarter of 2022. The Preconstruction Phase and Construction Phases, if authorized, would follow based on schedules to be developed during the course of the project. Although the phases are generally consecutive, the Department may authorize certain elements of the Work to proceed early in order to optimize the overall schedule.

2.0 Scope of Design-Builder's Work

Design-Builder's obligations will generally include all efforts, except for those responsibilities retained by the Department, required to develop, design, and construct the Project as authorized by the Department in accordance with the requirements of the Design-Build Agreement. Work under the Design-Build Agreement will proceed as authorized by amendments and notices to proceed ("**Amendments/NTPs**") issued by the Department as described in the Design-Build Agreement.

Immediately following execution of the Design-Build Agreement and issuance of an initial notice to proceed, the Design-Builder shall commence work for the Planning Phase.

The Department may decline to issue an Amendment/NTP for any phase of the Work. Please refer to the Design-Build Agreement for further and more detailed information regarding the terms of the Design-Builder's obligations.

2.1 Planning Phase

The Design-Build Agreement, particularly with respect to the Planning Phase, is designed to ensure that there is an objective NEPA process, that public officials and citizens have the necessary environmental impact information for federally funded actions before actions are taken, and that Design-Builder does not assume an unnecessary amount of risk in the event the NEPA process results in a significant change in the Project, and that the amount payable by the Department to the Design-Builder does not include significant contingency as the result of risk placed on the Design-Builder associated with significant changes in the Project arising out of the NEPA process. Consistent with 23 C.F.R. Section 636.109, the Design-Build Agreement incorporates (a) provisions ensuring that all environmental and mitigation measures identified in connection with required Environmental Approvals will be implemented, (b) provisions ensuring that no commitments are made to any alternative being evaluated in connection with required Environmental Approvals, and (c) provisions providing for the right to terminate the Design-Build Agreement (with equitable compensation) in the event of Project revisions deriving from the required Environmental Approvals, including in the case that the no-build alternative is selected in connection therewith.

The Department intends to begin environmental document preparation in early 2021. In accordance with Federal requirements, the work of the Design-Builder during this phase will be limited to specific activities in the scope of work and conducted under communication protocols necessary to keep the functions separated. See the preliminary matrix of responsibilities and roles of various participants during the NEPA process set forth in ITP Exhibit C-3.

The Design-Builder scope of work for the Planning Phase is expected to include the following:

- Preliminary design / preliminary engineering, as requested by the Department to develop additional alternatives
 - Scope excludes preparation of NEPA documents
- Site investigations, subsurface utility investigations, geotechnical studies
- Third-party coordination for Right of Way, railroad, and utilities (anticipated to be led by the Design-Builder under Department oversight)
- Preliminary constructability analysis
- Cost and schedule estimates related to preliminary engineering
- Project management plan development
 - Management plan for Preconstruction Phase
 - Design standards
 - Preliminary construction management plan
 - QA/QC plan
 - Subcontracting plan
 - Estimating plan for GMP
- DBE outreach
- Development of Preconstruction Phase Amendment/NTP

A preliminary schedule for the NEPA process is set forth in ITP Exhibit C-2.

The Design-Builder's compensation for the Planning Phase will be at fully loaded hourly rates based on those submitted with Proposal, but subject to a reasonableness evaluation by the Department, plus reasonable and documented reimbursable expenses. The total compensation for this phase will be capped at a not-to-exceed (NTE) amount set by the Department, subject to adjustment in accordance with the Design-Build Agreement. The fully loaded hourly rates and NTE amount will be documented in the Design-Build Agreement at execution.

2.2 Preconstruction Phase

As more fully set forth in the Design-Build Agreement, following completion of the NEPA process, the Department will either negotiate an Amendment/NTP to authorize the Design-Builder to proceed with work for the Preconstruction Phase, with agreed scope, schedule, and compensation terms, or will terminate the Design-Build Agreement.

The Design-Builder scope of work for the Preconstruction Phase is expected to include the following:

- Final Design Services
 - Design to 60-75% for purposes of GMP development
 - Development of Work Package breakdown
 - Final design and development of Construction Documents (drawings and specifications)
 - Design of utility adjustments and relocations
 - Right of Way acquisition support services, if required by the Department
 - Any remaining site investigations and surveys
 - Address NEPA commitments
- Pre-construction Services
 - Subcontractor bidding and selection
 - Cost estimation
 - Permitting
 - Construction schedule development
 - Third-party coordination for Right of Way, railroad, and utilities (anticipated to be led by the Design-Builder under Department oversight)
 - Constructability reviews
 - Procurement of long-lead items, as authorized by the Department
 - Development of overall Guaranteed Maximum Price
 - Development of Work Order(s) for individual Work Packages
 - Risk register and mitigation plans

Compensation for this phase is expected to be at the fully loaded hourly rates established for the Planning Phase, subject to adjustment as agreed by the Department in the Preconstruction Phase Amendment/NTP, plus reasonable and documented reimbursable expenses. In the Department's discretion, a lump sum for preconstruction phase services may be established in lieu of hourly rates. The total compensation for this phase will be capped at an NTE amount set by the Department, subject to adjustment in accordance with the Design-Build Agreement. The fully loaded hourly rates, NTE amount, and any lump sums will be documented in the Preconstruction Phase Amendment/NTP.

2.3 Construction Phase

Authorization to proceed with any Construction Work will also require an Amendment/NTP in accordance with the Design-Build Agreement, which will be contingent on the Department and Design-Builder agreeing to a Guaranteed Maximum Price (GMP) and schedule for such Work

The Design-Builder will perform construction of the Project subject to an agreed plan/breakdown that may include the following elements:

- Early Work: Work Package authorizations issued prior to establishment of overall GMP will be limited to work that has independent value to the Department (such as utility adjustments or relocations) and will be developed on a case-by-case basis where schedule considerations dictate.
- Individual Work Packages broken down by schedule and procurement considerations and in sum equal in value to the overall GMP.
- All packages to include Construction Phase design support.

EXHIBIT C
ENVIRONMENTAL/PLANNING INFORMATION

- Exhibit C-1** Planning Study
- Exhibit C-2** Preliminary NEPA Process Schedule
- Exhibit C-3** Preliminary NEPA Responsibility Matrix

**EXHIBIT C-1
PLANNING STUDY**

[See separate document]

**EXHIBIT C-2
PRELIMINARY NEPA PROCESS SCHEDULE**

[See separate document]

**EXHIBIT C-3
PRELIMINARY NEPA RESPONSIBILITY MATRIX**

JOB 110651
I-40/I-55/HWY. 77 INTCHNG. IMPVTS. (F)
NEPA APPROACH FOR PDB

Progressive Design-Builder	ARDOT	FHWA	Environmental Consultant	Independent Cost Estimator
Procurement of Progressive Design-Builder	Review schedule		Develop schedule	
	Review public involvement plan	Review public involvement plan	Prepare public involvement plan	
			Review of previous data and field reconnaissance	
	Establish design criteria			
	Review constraints map	Review constraints map	Develop constraints map	
			Update draft purpose and need (based on ARDOT <i>Job 110651 – Planning Recommendations</i>)	
	Review traffic operations and safety analysis methodology	Review traffic operations and safety analysis methodology	Develop traffic operations and safety analysis methodology	
Develop additional alternatives	Review additional alternatives	Review additional alternatives	Review additional alternatives	
			Conduct initial traffic analysis	
			Conduct initial safety analysis	
	Review draft purpose and need	Review draft purpose and need	Update draft purpose and need based on traffic and safety analyses	
	Review alternatives	Review alternatives	Prepare alternatives	

Progressive Design-Builder	ARDOT	FHWA	Environmental Consultant	Independent Cost Estimator
	analysis methodology memo	analysis methodology memo	analysis methodology memo	
Support refinement of alternatives	Review/approve alternatives refinement	Review/approve alternatives refinement	Refine alternatives	
		Determine Level of Environmental Documentation		
			Establish Conservative ROW Footprint	
Support railroad coordination	Railroad Coordination		Support railroad coordination	
Develop 30 percent schematic	Review 30 percent schematic		Support 30 percent schematic	
Review detailed traffic analysis	Review detailed traffic analysis		Conduct detailed traffic analysis	
Conduct drainage/hydraulic analysis	Review drainage/hydraulic analysis		Review drainage/hydraulic analysis	
Preliminary ROW and Utilities	Review ROW and Utilities		Review ROW and Utilities	
Support preparation of public meeting materials	Review public meeting materials	Review public meeting materials	Prepare public meeting materials	
Attend/support public meeting	Attend/support public meeting	Attend/support public meeting	Attend public meeting	
Develop 60 percent schematic	Review 60 percent schematic		Support 60 percent schematic	
Constructability and cost review of alternatives	Review constructability and cost review of alternatives	Review constructability and cost review of alternatives	Support/review constructability and cost review of alternatives	Independent constructability and cost review of alternatives
Develop 90 percent schematic	Review 90 percent schematic		Support 90 percent schematic	

Progressive Design-Builder	ARDOT	FHWA	Environmental Consultant	Independent Cost Estimator
Develop 100 percent schematic	Review 100 percent schematic		Support 100 percent schematic	
Develop Final schematic	Review Final schematic		Support Final schematic	
Review and confirm discussion of design elements in environmental technical reports	Review and comment on environmental technical reports	Review and comment on environmental technical reports	Prepare environmental technical reports	
Review and confirm discussion of design elements in draft environmental assessment	Review and comment on draft environmental assessment	Review and comment on draft environmental assessment. FHWA approval of draft environmental assessment	Prepare draft environmental assessment	
	Public Review Period and Statewide Clearinghouse Review			
Support design public hearing materials preparation	Review design public hearing materials	Review design public hearing materials	Prepare design public hearing materials	
Attend/support design public hearing	Attend/support design public hearing	Attend/support design public hearing	Prepare for and attend design public hearing	
Review final environmental assessment/FONSI	Review and comment on final environmental assessment/FONSI	Review and comment on final environmental assessment/FONSI	Prepare final environmental assessment/FONSI	
	Review Notice of Availability	Review Notice of Availability	Issue Notice of Availability	
	Receive FONSI	Issue FONSI		
Support noise workshop if needed	Support noise workshop if needed		Prepare for and attend noise workshop if needed	

EXHIBIT D
ADMINISTRATIVE PROPOSAL INSTRUCTIONS

1.0 Transmittal Package

1.1 Proposal Letter (Form A)

The Administrative Proposal shall include the Proposal Letter (Form A). Proposer shall attach to the Proposal Letter the documents and information described in the Section entitled “Additional Information To Be Provided With Proposal Letter” of Form A; *provided, however*, that Proposer may attach to the original Form A an envelope including two certified copies of the required organizational documents in lieu of providing organizational documents with each of the copies of the Administrative Proposal.

1.2 Informational Forms (Forms B) and Legal Information

The Administrative Proposal shall include a signed statement by the Proposer attesting that all Major Participants responsible for construction services on the Project are currently prequalified with the Department.

The Administrative Proposal shall include a completed chart on Form B-1, including the names, contact information, role in the organization, licensing information, and description of Work (if applicable) for Proposer and Principal Participants.

The Administrative Proposal shall include a completed Form B-2 providing information about Proposer and its team as specified therein.

The Administrative Proposal shall include a completed Form B-3 providing information regarding (i) each Major Participant (excluding Principal Participants); (ii) each firm that will provide engineering, architectural, surveying, planning, quality assurance, and/or other professional services valued at \$500,000 or more for development of the Project; and (iii) all other subcontractors identified by Proposer as of the Proposal Due Date.

The Administrative Proposal shall include copies of organizational documentation described in the section entitled “Additional Information to Be Provided with Proposal Letter” of Form A for Proposer, Design-Builder and Principal Participants, as well as other documentation required by Form B-2. If any modification to the organizational documents for such entity is contemplated prior to award or if Proposer intends to form an affiliated entity to be the Design-Builder, Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in the section entitled “Additional Information To Be Provided With Proposal Letter” of Form A) for such proposed entity.

1.2.1 Responsible Proposer Questionnaire (Form C)

Each Proposer will be required to acknowledge and certify in Form A that all Principal Participants and all Major Participants and their respective employees meet the requirements of ITP Section 5.2.1(c) as of the time of Proposal submission and include in the Administrative Proposal Form C, the “Responsible Proposer Questionnaire,” with respect to the Proposer, each Major Participant, and each Principal Participant. As noted on the form, it may be provided by Proposer on its own behalf and on behalf of each Major Participant and Principal Participant, or it may be provided by Proposer on its own behalf and the individual Major Participants and Principal Participants on their own behalf. The form executed by Proposer shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by

Major Participants and Principal Participants shall be signed by an authorized representative of such Major Participant and Principal Participant and the Administrative Proposal shall include evidence of signature authorization for each such individual.

1.2.2 Non-Collusion Affidavit (Form D)

The Administrative Proposal shall include Form D, certifying that the Proposal is not the result of and has not been influenced by collusion.

1.2.3 Organizational Conflict of Interest Disclosure (Form E)

The Administrative Proposal shall include a certification on Form E describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest.

1.2.4 Debarment and Suspension Certificate (Form F)

The Administrative Proposal shall include a certification on Form F with respect to the Principal Participants and Major Participants.

1.2.5 DBE Requirements (Form G)

The Administrative Proposal shall include a Certification of DBE Goal Attainment or Good Faith Efforts (Form G) confirming that Proposer will obtain DBE commitments equal to or exceeding the DBE participation goal or will exercise good faith efforts to substantiate its attempts to meet the goal.

1.2.6 Certification Regarding Equal Employment Opportunity (Form H)

The Administrative Proposal shall include Form H, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports. A Form H in respect of the Proposer, each Major Participant and all known subcontractors shall be provided, whether in a single Form H executed by the Proposer or in multiple forms executed by the respective entities.

1.2.7 Certification Regarding Buy America (Form I)

The Administrative Proposal shall include Form I, regarding Buy America requirements.

1.2.8 Certification Regarding Use of Contract Funds For Lobbying (Form J)

The Administrative Proposal shall include Form J, executed by Proposer, all members or joint venture members of Proposer, and all of the other Major Participants, including Principal Participants, certifying that no federal appropriated funds have been or will be paid for lobbying activities, and no other funds have been paid or will be paid to influence governmental decisions regarding this Project.

1.2.9 Certification Regarding Ineligible Contractors (Form K)

The Administrative Proposal shall include Form K, certifying that Proposer and its subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended, or ineligible from doing transactions with the Federal Government or any of its agencies and making other certifications as described on Form K.

1.2.10 Certification Regarding Restriction of Boycott of Israel (Form L)

The Administrative Proposal shall include Form L executed by Proposer and each Major Participant, certifying that, in accordance with Arkansas Code Annotated § 25-1-503, Proposer and each such Major Participant do not and will not boycott Israel during the term of the Design-Build Agreement.

1.3 Proposal Security (Form O)

The Proposer shall provide one original and one copy of the Proposal Security, in the form of Form O and meeting the requirements set forth in ITP Section 4.5, in a separate envelope labeled “[Proposer Name]: Proposal Security for the Hwy. 77 Interchange Improvements PDB Project.”

1.4 Exceptions to Form of Design-Build Agreement

The Administrative Proposal shall contain an outline of all exceptions that Proposer proposes to take to the form of the Design-Build Agreement, which may take the form of (a) a concise issues list identifying specific provisions of the PDBA Documents that Proposer wishes to negotiate and Proposer’s proposed approach to such provisions or (b) a redline mark-up of the PDBA Documents. In each case, Proposer shall identify any exceptions or conditions on which its Proposal is contingent. The Department will not be required to consider any such exceptions or conditions and may accept or reject them in its discretion, subject to applicable law and requirements for a competitive Procurement Process. The Department may reject any Proposal to the extent that it is contingent on conditions and exceptions not acceptable to the Department.

EXHIBIT E
TECHNICAL PROPOSAL INSTRUCTIONS

1.0 Executive Summary

Provide an executive summary (not more than three pages), written as a narrative, in a non-technical style, containing supplemental information for evaluators addressing the Proposer’s experience, qualifications, and approach to the Project.

2.0 Organization

The Technical Proposal shall include an organizational chart (not more than two 11” x 17” pages), and a narrative description of such organizational chart (not more than one page), showing Proposer’s organization and reflecting relationship structure among Proposer and the Component Firms. The chart and narrative shall identify all Principal and Major Participants and subcontractors responsible for all major Project functions to be performed and describe the functional structure of the organization. The chart shall also include the names, roles, and reporting structure of the Key Personnel and list any other personnel that Proposer proposes for the Project.

3.0 Firm Experience

The Technical Proposal shall include, with respect to the Proposer and each Principal Participant and Major Participant (including the Lead Designer) that is proposed for the Project, evidence, in a narrative form (not more than three pages), of each such firm’s competency, capability, and capacity to deliver a transportation project of similar size, scope, and complexity under a progressive design-build delivery method. Describe how the experience of each such firm is relevant to the success of this Project. Describe any experience the firms have in identifying and incorporating innovative concepts into projects. Do not include a narrative description for any firm that is not designated as a Principal Participant, Major Participant, or other lead firm.

4.0 Key Personnel

4.1 Required Key Personnel

The Technical Proposal shall include a completed Form M-1 with respect to each of the required Key Personnel described in the table below.

In or appended to Form M-1, provide information for at least three references for the proposed Project Manager and at least two references for all other Key Personnel, indicating the name, position, agency, reference project(s) by name and date, current phone number, and current email address for each reference. References must be owners or clients for whom the relevant Key Personnel performed relevant work in the 10 years prior to the Proposal Due Date and must not be current employers of the relevant Key Personnel. Proposers are prohibited from identifying a reference that is a current Department employee.

Each individual proposed for a required Key Personnel position must have the minimum qualifications and experience and satisfy the requirements identified in the following chart:

Key Personnel Position	Minimum Qualifications and Experience
Project Manager	The Project Manager (“PM”) must possess a minimum of 15 years’ experience, including a minimum of five years’ design-build experience, in construction and management of design and construction on highway projects that included work of a

	similar scope, nature, and complexity as required for the Project. The PM is designated as the Department’s point of contact throughout the Project and must be delegated with the authority to make decisions affecting any aspect of the Project. Professional Engineer preferred.
Design Manager	Must be a Professional Engineer as of Proposal submission. The Design Manager (“DM”) must be a direct, full-time employee of the Lead Designer and must possess a minimum of 10 years’ experience in managing design for multidisciplinary highway projects with similar scope, nature, and complexity as required for the Project. The DM experience should include an emphasis on design experience in the design-build context and experience with interstate highways, interstate bridges, bridge widening, and projects of similar scope, nature, and complexity as the Project.
Construction Manager	The Construction Manager (“CM”) must be a direct, full-time employee of a Principal Participant and must possess a minimum of 15 years’ experience in construction and management of construction on highway projects with similar scope, nature, and complexity as required for the Project. The CM experience should include experience with interstate highways, interstate bridges, bridge widening, and projects of similar scope, nature, and complexity as the Project.
Project Controls Manager	The Project Controls Manager (“PCM”) must be a direct, full-time employee of a Principal Participant or Major Participant and must possess a minimum of eight years’ experience in project controls and scheduling of transportation projects using Primavera software, on projects of a similar scope, nature, and complexity as the Project.

4.2 Suggested Additional Key Personnel

In the discretion of Proposer, the Technical Proposal may include a completed Form M-2 for each individual that Proposer suggests participate in the Project as additional Key Personnel. As more specifically prescribed on Form M-2, provide a brief explanation as to why the suggested additional Key Personnel position is important to the Project.

5.0 Project Approach

5.1. General

For each of the Planning Phase, Preconstruction Phase, and the Construction Phase, describe the Proposer’s approach to deliver the Work described in Exhibit B and the PDBA Documents. The Technical Proposal shall, as applicable, in the required Project Approach narrative for each phase, describe:

- (a) Proposer’s understanding of the Project goals set forth in Section 1.3 and the approach to help the Department achieve the Project goals;
- (b) Proposer’s approach to coordination with the Department and the Department’s advisors in connection with the Project;
- (c) How Proposer will engage Key Personnel and other resources;
- (d) Proposer’s approach to support the Department in working with Stakeholders such as regulatory agencies and third parties; and
- (e) Proposer’s approach to scheduling all phases of the Work.

5.2 Planning Phase Approach

In addition to the requirements set forth in Section 5.1, the narrative for the Planning Phase Project Approach (not more than five pages, including the information required pursuant to Section 5.1) shall include:

(a) A description of Proposer’s plan for coordination and collaboration with the Department and the Department’s environmental consultant; and

(b) A sketch or concept level plan developed by Proposer depicting an alternative for the Project that will address the needs and goals discussed in ITP Section 1.3 and ITP Ex. B, Section 1.0 (which plan is referred to in the ITP documents as the “Proposer’s alternative”). The alternative plan shall describe how the proposed improvements would address the issues currently being experienced in the Project area and describe the benefits and advantages of the alternative, including cost, efficiency, constructability, risk management, etc. Three drawings that fit on 11” x 17” pages may be included in addition to the five pages allowed for this portion of the Technical Proposal.

Proposers are advised that the Department may or may not carry any alternative into the NEPA process for further evaluation. By submitting a Proposal, each Proposer agrees that the Department shall be entitled to use the alternative plan and all related work product contained in its Proposal. Subject to the NEPA process, the Department may present such material to the Design-Builder for possible incorporation into the Project design.

5.3 Preconstruction Phase Approach

In addition to the requirements set forth in Section 5.1, the narrative for the Preconstruction Phase Project Approach (not more than ten pages, including the information required pursuant to Section 5.1) shall describe:

(a) Proposer’s approach to ensure that the Department receives a fair price for construction, including a description of the major cost components (i.e., cost drivers) for the Project and Proposer’s approach to obtaining a fair price for these major cost drivers;

(b) The scope of work Proposer intends to self-perform to meet self-performance requirements;

(c) (i) The scopes of work that Proposer intends to subcontract, (ii) a description of Proposer’s approach to competitively soliciting subcontractor quotes and how subcontracting packages will be developed and advertised to the subcontracting community, and (iii) Proposer’s approach to openness and transparency in the subcontracting solicitation and selection process;

(d) Proposer’s approach to enhancing DBE participation and Equal Employment Opportunities (EEO);

(e) Proposer’s approach to risk identification and mitigation during the Preconstruction Phase of the Project, identifying at least two key risks for this Project and proposing at least one mitigation strategy for each identified risk to eliminate or minimize the impact of the risk to the Project; and

(f) Any Proposer innovations and the potential impacts of the innovations on risk.

5.4 Construction Phase Approach

In addition to the requirements set forth in Section 5.1, the narrative for the Construction Phase Project Approach (not more than five pages, including the information required pursuant to Section 5.1) shall describe:

(a) The scope of work Proposer intends to self-perform to meet self-performance requirements.

(b) (i) The scopes of work that Proposer intends to subcontract, (ii) a description of Proposer's approach to competitively soliciting subcontractor quotes and how subcontracting packages will be developed and advertised to the subcontracting community, and (iii) Proposer's approach to openness and transparency in the subcontracting solicitation and selection process;

(c) Proposer's approach to enhancing DBE participation and Equal Employment Opportunities (EEO);

(d) Proposer's approach to risk identification and mitigation during the Construction Phase of the Project, identifying at least two risks for this Project and proposing at least one mitigation strategy for each identified risk to eliminate or minimize the impact of the risk to the Project; and

(e) Any Proposer innovations and the potential impacts of the innovations on risk mitigation, time, safety, costs, and quality.

EXHIBIT F
FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit E describes the submission format for Financial Proposals and outlines the required information that will comprise the Financial Proposal for the Design-Build Agreement.

Proposer shall submit the information required by this Exhibit F in the organization and format specified herein. Each component of the Financial Proposal shall be clearly titled and identified.

Form N referenced herein is found in Exhibit F, unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

2.0 Surety Letter

The Financial Proposal shall include a letter from a surety company that meets the following requirements:

(a) The letter includes a statement that the Proposer is capable of obtaining a performance bond and payment bond for a minimum amount of \$40 million each, and may not state that the Proposer has “unlimited” bonding/security capability;

(b) Such surety company is listed in the current United States Secretary of the Treasury, Fiscal Service, Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies;

(c) Such surety company is rated in the top two categories by two nationally recognized rating agencies or has at least an A minus (A-) or better and Financial Size Category of Class VIII or better rating by A.M. Best and Company, and evidence of the surety company’s rating must be attached to the letter; and

(d) The letter must include a statement that the surety company has read the RFP and has evaluated the backlog and work-in-progress of the Proposer and relevant Component Firms in determining its bonding capacity.

3.0 Price Proposal (Form N and Hourly Rates)

The Proposal shall include a copy of the Price Proposal (Form N) setting forth Proposer’s proposed NTE amount for the Planning Phase Work, including Form N Attachment 1 providing Proposer’s justification for the NTE amount in accordance with the notes therein.

For purposes of the Price Proposal, Proposers are to assume that 2,000 total hours will be required for the Planning Phase. Those 2,000 hours may be distributed among categories of tasks and personnel as Proposer deems appropriate, consistent with Proposer’s approach to the Planning Phase. Proposers are advised that this 2,000-hour total is provided only for purposes of Proposal evaluation and does not reflect the Department’s assessment of how many hours may reasonably be required of the Design-Builder in the Planning Phase. Accordingly, the NTE amount established under the Design-Build Agreement for the Planning Phase may differ from the NTE amount proposed by the preferred Proposer.

Hourly rates shall be provided for all required Key Personnel, any additional Key Personnel proposed by Proposer, and other personnel that may be necessary or appropriate for Planning and Preconstruction

Phase Work. Hourly rates shall be fully loaded, *i.e.*, fully inclusive of all administrative and overhead costs (whether directly attributable labor or otherwise) and profit. (Note, however, that reasonable and documented reimbursable expenses will be payable by the Department separately from hourly rates.) Subject to the Department's reasonableness evaluation, hourly rates submitted by Proposer will be used to establish the hourly labor rates under the Design-Build Agreement and will not be adjusted or escalated over the course of the Project except as agreed by the Department thereunder.

**EXHIBIT G
REQUIRED FORMS**

**ARKANSAS DEPARTMENT OF TRANSPORTATION
HWY 77 INTERCHANGE IMPROVEMENTS AT I-40/55 PDB PROJECT
INSTRUCTIONS TO PROPOSERS—Form A**

PROPOSAL LETTER

PROPOSER: _____

Proposal Date: _____, 2021

Arkansas Department of Transportation
10324 Interstate 30
Little Rock, AR 72209
Attn: Ms. Keli Wylie, Alternative Project Delivery Administrator

The undersigned (“**Proposer**”) submits this proposal (this “**Proposal**”) in response to that certain Request for Proposals (**RFP**) issued by the Arkansas Department of Transportation (the Department), dated January 20, 2021, as amended, to develop, design, and potentially construct the Highway 77 Interchange Improvements at Interstate 40/55 in the West Memphis-Marion Area (the Project), as more specifically described in the RFP Documents. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

In consideration for the Department supplying us, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] *[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally” and delete the brackets; otherwise delete the entire phrase]:*

(1) To keep this Proposal open for acceptance initially for 60 days after the Proposal Due Date, and if the undersigned is notified within such 60-day period that it is the next best value Proposer, for an additional 60 days, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of the Department, in the Department’s sole discretion; and

(2) If this Proposal is accepted, to provide security (including bonds and insurance) for the due performance of the Design-Build Agreement, as stipulated in the RFP.

If selected by the Department as the best value Proposer, Proposer agrees to do the following or, if not the Design-Builder, to cause Design-Builder to do the following: (a) if requested by the Department in its sole discretion, enter into good faith negotiations with the Department regarding the terms of the Design-Build Agreement, in accordance with the requirements of the RFP; (b) enter into the Design-Build Agreement without varying or amending its terms, except if requested by the Department, in its sole discretion, or as agreed by the Department, in its discretion, in connection with negotiation of any exceptions that Proposer has expressly identified in its Administrative Proposal; (c) satisfy all other conditions to award of the Design-Build Agreement; and (d) perform its obligations as set forth in the Instructions to Proposers (ITP), as amended, and the form of Design-Build Agreement, including compliance with all commitments contained in this Proposal.

The following individual is designated as the Proposer Point of Contact in accordance with Section 2.2 of the ITP: _____

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

- Administrative Proposal, including Proposal Security;
- Technical Proposal; and
- Financial Proposal.

Proposer acknowledges receipt of the following Addenda and sets of questions and responses:

[List all Addenda by number and date issued.

Responses issued [list dates on which the Department responded to Proposers' questions regarding the RFP Documents or this procurement.]

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions, or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, the Addenda (if any), and Department responses to questions (as and when posed), and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the Design-Builder and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted such other field investigations and additional design development which are prudent and reasonable in preparing this Proposal; and that it has notified the Department of any deficiencies in or omissions from any RFP Documents or other documents provided by the Department and of any unusual site conditions observed prior to the date hereof.

Proposer acknowledges the requirements of ITP Section 5.2.1(c) and hereby certifies that all Principal Participants and all Major Participants and their respective employees meet such requirements as of the date of this Proposal.

Proposer represents that all statements made in the Proposal are true, correct, and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms.

Proposer understands that the Department is not bound to accept any Proposal that the Department may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer.

Proposer consents to the Department's disclosure of its Proposal pursuant the applicable provisions of law to any Persons in the Department's sole discretion after award of the Design-Build Agreement by the Department. Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.7. Proposer expressly waives any right to contest such disclosures as may exist under applicable law.

Proposer agrees that the Department 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 Arkansas.

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; note: signatures should be in **blue** ink.]*

1. Sample signature block for corporation or limited liability company:

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the proposer's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____

Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

- A. Describe in detail the legal structure of the Proposer/ Design-Builder and Principal Participants.
1. If the Proposer/Design-Builder/Principal Participant is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for Proposer/Design-Builder/Principal Participant and each corporation, in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 2. If the Proposer/Design-Builder/Principal Participant is a partnership or includes a partnership as a joint venture member, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/Design-Builder/Principal Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture), in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 3. If the Proposer/Design-Builder/Principal Participant is a joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/Design-Builder/Principal Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture), in each case certified by an appropriate individual with each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 4. If the Proposer/Design-Builder/Principal Participant is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/Design-Builder/Principal Participant (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture), in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that this information will be provided prior to award.

Attach evidence to the Proposal and to each letter that the person signing has authority to do so.

- B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate and authorized officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate and authorized officer of each general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and, if required by its operating agreement, a manager/managing member(s) resolution providing such

authorization, certified by an appropriate and authorized officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate and authorized officer of such joint venture member. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.

- C. The Design-Builder partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to the Department, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners or members, as applicable, no joint venture member, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to the Department and identify on a cover page where in the agreement the provision can be found. If the Design-Builder is not yet formed, provide draft organizational documents and indicate where the provision is found.

IDENTIFICATION OF PROPOSER AND PRINCIPAL PARTICIPANTS—Form B-1

NAME OF ENTITY AND CONTACT INFORMATION (address, representative, phone, fax, e-mail)	ROLE IN ORGANIZATION	Arkansas Contractor License and License Limit (if applicable)	Description of Work/Services To Be Performed By Entity (if applicable)

The above information is true, correct, and accurate.

[Insert Proposer's name]

By: _____

Name: _____

Title: _____

INFORMATION ABOUT PROPOSER ORGANIZATION—Form B-2

- 1.0 Name of Proposer: _____
- 2.0 Type of entity: _____
- 3.0 Proposer’s address: _____

Telephone

Email

- 4.0 How many years has the Proposer and each Principal Participant been in its current line of business, and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

- 5.0 Under what other or former names have the Proposer and Principal Participants operated?

Proposer: _____

_____:

_____:

_____:

_____:

- 6.0 List all Arkansas professional licenses held by the Proposer and any Principal Participants. Attach copies of all Arkansas licenses. Attach a separate sheet if necessary.

7.0 The Proposal shall include the following information regarding the Surety(ies) committing to provide the bonds in accordance with the Design-Build Agreement:

(a) Name(s), address(es) and phone numbers of the Surety(ies) that will provide the above-referenced bonds (must be 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 Company, Inc.), and the name(s), address(es) and phone number(s) of the designated agent(s).

(b) Whether or not each listed Surety has defaulted on any obligation within the past 10 years, and, if so, a description of the circumstances and the outcome of such default.

STATE OF _____)
)
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) is/are the _____ of _____, the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this _____ day of _____, 202_.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____

INFORMATION ABOUT MAJOR PARTICIPANTS—Form B-3

[This form will be used to provide information about any Major Participants (excluding Principal Participants) that have been identified as of the Proposal Due Date.]

Proposer Name _____

Entity Name / Contact	Address of Head Office	Telephone / Fax	Specialty / Assignment

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above. The Proposer agrees that it will follow applicable Design-Build Agreement requirements with respect to Subcontractors. Proposer further declares that it has carefully examined the RFP Documents, including the DBE requirements for the Project, acknowledges the requirements thereof, and agrees that Proposer’s efforts to obtain participation by Subcontractors can reasonably be expected to accomplish DBE participation goals for the Project once identified in accordance with the Design-Build Agreement.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing declaration is true and correct.

Executed: _____, 2021.

(Signature)

(Name printed)

(Title)

(Proposer)

STATE OF _____)
)
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the Proposer identified in the foregoing questionnaire, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this _____ day of _____, 202_.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____

RESPONSIBLE PROPOSER QUESTIONNAIRE—Form C

PROPOSER NAME: _____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

1. Questions

The Proposer/Major Participant shall respond either “yes” or “no” to each of the following questions. If the response is “yes” to any question(s), a detailed explanation of the circumstances shall be provided in the space following the questions. The Proposer/Major Participant/team member shall attach additional documentation as necessary to fully explain said circumstances. Failure to either respond to the questions or provide adequate explanations may preclude consideration of the proposal and require its rejection. For the Proposer, the term “**affiliate**” shall mean Design-Builder, any Principal Participant, or any entity which owns a substantial interest in or is owned in common ownership with the Proposer, Design-Builder or any Principal Participant, or any such entity in which the Proposer, Design-Builder or any Principal Participant owns a substantial interest. For all other entities providing this form, the term “**affiliate**” shall mean the entity signing the form, any entity which owns a substantial interest in or is owned in common with the entity signing the form, or any entity in which the entity signing the form owns a substantial interest.

Within the past 10 years, has the identified entity, any affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate who has a proprietary interest in such entity:

- a) Been disqualified, debarred, removed, or otherwise prevented from bidding or proposing on or completing a federal, state, or local contract anywhere in the United States or any other country because of a violation of law or safety regulation?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- b) Been convicted by a court of competent jurisdiction of any criminal charge of fraud, bribery, collusion, conspiracy or any act in violation of state, federal or foreign antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- c) Had filed against it, him or her, any criminal complaint, indictment, or information alleging fraud, bribery, collusion, conspiracy or any action in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery,

collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes _____ No _____

- e) Been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Arkansas governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Arkansas law.

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- f) Been found, adjudicated, or determined by any state court, state administrative agency, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state 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?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- g) Been convicted of violating a state or federal law respecting the employment of undocumented aliens?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

- h) Been assessed liquidated or other damages for failure to complete any contract on time?

If yes, please explain the circumstances. If no, so state.

Yes _____ No _____

Explain the circumstances underlying any “yes” answers for the aforementioned questions on separate sheets attached hereto.

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry. Executed _____, 2021.

(Signature)

(Name printed)

(Title)

(Name of Organization)

[Evidence of signature authorization for such individual attached]

NON-COLLUSION AFFIDAVIT—Form D

STATE OF _____)

) ss:

COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that:

- A. _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal.

- B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or a sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against the Department or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and further the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

- C. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Design-Build Agreement or rejection of all Proposals and cancellation of the RFP.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this _____ day of _____, 2021.

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 the entity(ies) making the Proposal.]

CONFLICT OF INTEREST DISCLOSURE STATEMENT—Form E

Proposer’s attention is directed to 23 CFR Part 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines “organizational conflict of interest” as follows:

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

Proposers are advised that certain firms will not be allowed to participate on any Proposer’s team for the Project because of their work with the Department in connection with the Project procurement and document preparation and the Design-Build Agreement.

1. Disclosure Pursuant to Section 636.116(2)(v) and Rule 9.155

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer’s team (including the Proposer, Design-Builder, the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

Proposer should disclose (a) any current contractual relationships with the Department, (b) any past, present, or planned contractual or employment relationships with any Department officer or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any Department officer or employee if Proposer is awarded the contract. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer should also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer’s team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

_____, 2021
Date

DEBARMENT/SUSPENSION CERTIFICATION – Form F

Name of Proposer: _____

Name of Firm: _____

Complete one copy of form to cover all Principal Participants and Major Participants as identified on Form B.¹

1. None of the Proposer, the Principal Participants and the Major Participants¹ are currently debarred, suspended, disqualified, or is currently removed from bidding or performing work, voluntarily or involuntarily, for the State of Arkansas, the federal government or more than three state governments.
2. None of the Proposer, the Principal Participants and the Major Participants¹ have been debarred suspended, disqualified, or removed from bidding or performing work, voluntarily or involuntarily, the State of Arkansas, the federal government or more than three state governments during the past three years.²
3. None of the Proposer, the Principal Participants, and the Major Participants¹ is subject to any proposed or pending debarment, suspension, or similar actions.

Proposer Certification:

I hereby certify that, to the best of my knowledge, the three above statements are valid, true, and represent a complete and accurate understanding of the condition of the firms represented and identified on **Form B** as a Principal Participant or Major Participant¹. It is understood and agreed upon that any false acknowledgement, misrepresentation, or inaccuracy may be cause for disqualification of the Proposer from the Procurement Process whether discovered during the Procurement Process or after the Design-Builder selection has been completed.

Proposer’s Authorized Representative:

(Printed Name)

(Signature)

Date: _____

(Title)

¹ Note: Firm includes any Affiliate.

² Note: Prior to the Proposal Due Date listed in the Procurement Schedule.

DBE CERTIFICATION—Form G

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

Certification

By signing the Proposal, the Proposer certifies that (1) the DBE goal for the Project, once established in accordance with the Design-Build Agreement, will be met by the Design-Builder obtaining commitments equal to or exceeding the DBE percentage or providing a good faith effort to substantiate the attempt to meet the goal; and (2) if awarded the Design-Build Agreement, Design-Builder will submit a DBE Performance Plan meeting the requirements set forth in the Design-Build Agreement.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Security provided by the Proposer will become property of the Department and the Proposer and Principal Participant will be precluded from participating in any re-procurement of the Design-Build Agreement for the Project.

[Name]

[Title]

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION—Form H

The undersigned certifies on behalf of _____ that:
(Name of entity making certification)

(Check one of the following boxes)

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

(Check one of the following boxes)

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President’s Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Major Participants, and proposed subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

BUY AMERICA CERTIFICATION—Form I

(To be signed by authorized signatory(ies) of Design-Builder)

The undersigned certifies on behalf of itself and all proposed subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. Proposer shall comply with the Federal Highway Administration (“**FHWA**”) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Design-Build Agreement only if domestic steel and iron will be used on the Project, and which also applies to utility work on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the price under the Design-Build Agreement.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Design-Build Agreement be investigated, Proposer has the burden of proof to establish that it is in compliance.
- C. At Proposer’s request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department.

PROPOSER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING—Form J

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “**Disclosure Form to Report Lobbying**,” in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Date: _____, 2021

Signature

Title

Name of Entity

[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, or joint venturers of the Proposer and all other Major Participants]

CERTIFICATION REGARDING INELIGIBLE CONTRACTORS—Form K

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS**

FINANCED IN PART BY THE U.S. GOVERNMENT

I, _____ hereby certify that
(Name and title of Certifying Officer)

(Name of Proposer)

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency or from participation in the Project;
2. Have not within a three-year period preceding this proposal 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;
3. Are not 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 2 of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If any Major Participant is unable to certify to any of the statements in this certification, such prospective Major Participant shall attach an explanation to this certification.

I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 United States Code (U.S.C.) §3801 *et seq.* (Administrative Remedies for False Claims and Statements) are applicable hereto.

Name of Proposer _____

Street Address of Proposer _____

City, State, Zip _____

Telephone Number of Proposer _____

Signature of Certifying Officer _____

Date _____

Note: The above certification merely certifies that a Proposer and its subcontractors are not declared by the Federal Government or have not voluntarily declared themselves debarred, suspended, or declared ineligible from doing transactions with the Federal Government or any of its agencies.

CERTIFICATION REGARDING RESTRICTION OF BOYCOTT OF ISRAEL—Form L

RESTRICTION OF BOYCOTT OF ISRAEL CERTIFICATION

Pursuant to Arkansas Code Annotated § 25-1-503, a public entity **shall not** enter into a contract valued at \$1,000 or greater with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of Israel.

By signing below, the Contractor agrees and certifies that they do not boycott Israel and will not boycott Israel during the remaining aggregate term of the contract.

If a company does boycott Israel, see Arkansas Code Annotated § 25-1-503.

Name of Project	Hwy. 77 Interchange Improvements at I-40/55 (Project No: 110651)
Role on Project	
Contractor name	

Contractor Signature: _____ Date: _____

REQUIRED KEY PERSONNEL EXPERIENCE FORM – Form M-1

Name of Proposer: _____

Note: Provide a separate Form M-1 for each required Key Personnel.

Key Personnel Position	<i>[Insert title here]</i>	<i>[Insert individual's name here]</i>
Project Experience #1	Project Name	
	Project Description	
	Position Title	
	Number of years serving in this position	
	Detailed description of project responsibilities for this position title	
	Explanation regarding the relevance of this experience to the minimum qualifications for the Key Personnel position	
	Reference name, if applicable	
Project Experience #2	Project Name	
	Project Description`	
	Position Title	
	Number of years serving in this position	
	Detailed description of project responsibilities for this position title	
	Explanation regarding the relevance of this experience to the minimum qualifications for the Key Personnel position	
	Reference name, if applicable	

	<i>[Copy and paste as needed to demonstrate additional project experience]</i>	
Summary of Experience	Total number of years' experience in a position relevant to experience required for the Key Personnel Position	<i>[Insert cumulative total years of experience as demonstrated by the above experience that are applicable to the Key Personnel position.]</i>

Reference Information		
Name	Information	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Copy and paste as needed]</i>		

Note: Provide three references for the Project Manager and two references for all Key Personnel. References corresponding to the Project experience set forth above are preferred.

SUGGESTED ADDITIONAL KEY PERSONNEL EXPERIENCE FORM – Form M-2

Name of Proposer: _____

Note: Provide a separate Form M-2 for each proposed Key Personnel position.

Suggested Additional Key Personnel Position	<i>[Insert title here]</i>	<i>[Insert individual's name here]</i>
Explanation regarding the importance of this position with respect to the Project		
Project Experience #1	Project Name	
	Project Description	
	Position Title	
	Number of years serving in this position	
	Detailed description of project responsibilities for this position title	
	Reference name, if applicable	
	<i>[Copy and paste as needed to demonstrate additional project experience]</i>	
Summary of Experience	Total number of years' experience in a position relevant to experience required for the Key Personnel Position	<i>[Insert cumulative total years of experience as demonstrated by the above experience that are applicable to the Key Personnel position.]</i>

Reference Information		
Name	Information	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Reference Name]</i>	Position/Agency	
	Project(s)	
	Phone	
	Email	
<i>[Copy and paste as needed]</i>		

Note: References for suggested additional Key Personnel are encouraged but not required. References corresponding to the Project experience set forth above are preferred.

PRICE PROPOSAL – PLANNING PHASE NTE AMOUNT – FORM N

Name of Proposer: _____

Proposed Planning Phase NTE Amount: \$ _____

Notes:

1. The proposed Planning Phase NTE amount shall be based on an assumed total of 2,000 labor hours required for the Planning Phase.
2. The proposed Planning Phase NTE amount shall be calculated in accordance with the instructions set forth in ITP Ex. F, Section 3.0 and in Attachment 1 hereto.
3. Proposers shall include fully-loaded hourly rates for all appropriate personnel in Form N, Attachment 1. To the extent that such personnel are not anticipated to be engaged in the Planning Phase, such rates may be provided in the “Post-Planning Hourly Rates” table of Attachment 1 (with additional lines inserted as needed).

PROPOSAL SECURITY – FORM O

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the *[insert name of Proposer as the Principal and delete this bracketed text]*, as Principal and *[insert name of Surety/Co-Sureties and delete this bracketed text]*, as Surety or as Co-Sureties, each a *[insert organization type]* duly organized under the laws of the state indicated on the attached page, having its principal place of business at the address listed on the attached page, in the state indicated on the attached page, and authorized as a surety in the State of Arkansas, are hereby jointly and severally held and firmly bound unto the Arkansas State Highway Commission (the “**Commission**”) in the sum of \$[●] (the “**Bonded Sum**”).

WHEREAS, the Principal is herewith submitting its Proposal to design and potentially construct the Hwy. 77 Interchange Improvements PDB Project through a Design-Build Agreement, which Proposal is incorporated herein by this reference and has been submitted pursuant to the Request for Proposals dated as of January 20, 2021 (as amended or supplemented, the “**RFP**”) issued by the Arkansas Department of Transportation (the “**Department**”), pursuant to authorization provided to the Department by the Commission, in accordance with the Instructions to Proposers, as amended (“**ITP**”) included in the RFP;

NOW, THEREFORE,

1. The condition of this Proposal Bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to the Commission as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the “**Co-Sureties**”) of notice of such forfeiture from the Commission:

- (a) Principal’s receipt of written notice from the Commission that either (i) no Design-Build Agreement for the Project will be awarded by the Department pursuant to the RFP, or (ii) the Department has awarded a Design-Build Agreement for the Project, has received the executed Design-Build Agreement and other required documents, and does not intend to award the contract to the Principal; or
- (b) If the Commission has not previously delivered notice of forfeiture hereunder, failure of the Department to award the Design-Build Agreement to Principal within 60 days (or 120 days if the Department has extended the 60 day period to 120 days pursuant to the terms of the ITP) after the Proposal Due Date.

2. The Principal agrees to pay to the Commission the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within 10 days after occurrence of any of the following events:

- (a) Principal withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the Design-Build Agreement under the ITP, as such time may be extended pursuant to ITP Section 4.6, without the Department’s consent; or
- (b) Principal is selected for negotiations and fails to engage in good faith negotiations with the Department as set forth in ITP Section 6.1;

- (c) Principal is the preferred Proposer and fails to provide the documents required under ITP Section 6.3.

Principal and each Surety agrees and acknowledges that such liquidated damages are reasonable in order to compensate the Commission for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Commission's transportation improvement program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that the Commission would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this Proposal Bond:

- (a) This Proposal Bond shall not be subject to forfeiture in the event that the Department disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.
- (b) If suit is brought on this Proposal Bond by the Commission and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by the Commission in bringing such suit, including, without limitation, reasonable attorneys' fees, and costs as determined by the court.
- (c) Any extension(s) of the time for award of the Design-Build Agreement that Principal may grant in accordance with the Design-Build Agreement or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.
- (d) Correspondence or claims relating to this Proposal Bond should be sent to Surety at the following address(es):

SIGNED and SEALED this _____ day of _____, 2021.

Principal

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

By: _____

Co-Surety

By: _____

Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

PROPOSER REGISTRATION – FORM P

INSTRUCTIONS:

1. Submit one PDF copy of Form P on behalf of the Proposer team in accordance with ITP Section 2.2 by email to the Department’s Authorized Representative.
2. All Principal Participants and Major Participants that will be Component Firms of Proposer in the Proposal must be listed on this Form P and their respective roles (e.g., Principal Participant, Lead Designer, etc.) identified.
3. An authorized representative of the Proposer must sign this Form P.
4. This Form P must be submitted prior to the last date for Proposer registration set forth in ITP Section 1.5.

Name of Proposer: _____

Date: _____

Component Firms of Proposer:

Firm Name	Role	Contact Information

The following individual is identified as the Proposer’s Procurement Point of Contact (PPC), authorized to submit this Form P on behalf of the Proposer and Component Firms:

Name: _____

Title: _____

Firm: _____

Telephone: _____

Email Address: _____

Mailing Address: _____

As Proposer’s PPC, I certify that the above information is true, correct, and accurate.

By: _____

Name: _____

RFC FORM – FORM Q

PROPOSER NAME: _____

DATE: _____

PROPOSER PROCUREMENT POINT OF CONTACT:

Name: _____

Telephone: _____

Email: _____

Comments Submitted: [#] – [#]

No. ¹	Document ²	Section ²	Page No. ²	Comment/Question ³
1				
2				
3				

INSTRUCTIONS:

1. Sequentially number comments/questions across the Forms Q submitted by Proposer. To the extent possible, group RFCs in order of relative importance, then by document (e.g., all high priority comments to the ITP first, then high priority comments to the form of Design-Build Agreement, then lower priority ITP comments, etc.). Add additional lines as needed.
2. Identify the relevant RFP Document and section and page number(s) or indicate that the comment/question is general in nature.
3. Do not identify the Proposer in the body of the comment/question.