

# Arkansas Department of Transportation

## Request for Proposals

### 30 Crossing



**From: I-530/I-440 Interchange**

**To: I-40/Hwy 67 Interchange**

**CAP Project No: CA0602**

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## EXHIBITS

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## INSTRUCTIONS TO PROPOSERS

### (Request for Proposals: 30 Crossing Project )

#### 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 design-build contract that will consist of a Design-Build Agreement and related documents (the “Design-Build Agreement”). The Design-Build Agreement shall provide that the successful Proposer (“Design-Builder”) shall design and construct the CA0602 I-530-Hwy. 67 (Widening & Reconst.) (I-30 & I-40) (F) project which is generally described as I-30 from Interstate 530 (I-530) to Interstate 40 (I-40) and I-40 from Pike Avenue to Highway 67/167 (the “Project” or the “30 Crossing Project”). The form of Design-Build Agreement is included in Volume II of the RFP. The Arkansas State Highway Commission has authorized the Department to procure the Project (and enter into the Design-Build Agreement) on its behalf.

The Department is issuing the RFP to those Proposers shortlisted based on the Department’s evaluation of Statements of Qualifications (“SOQs”) delivered to the Department on June 30, 2017 in response to the Request for Qualifications for the Project issued on May 8, 2017, as amended (the “RFQ”).

Proposers must comply with these Instructions to Proposers (“ITP”) during the procurement and in their responses to the RFP. Proposers shall also take into consideration the Project goals identified in Section 1.2 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 J 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 of this ITP or Exhibit A of the Design-Build Agreement, as applicable.

##### 1.2 Project Goals

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

- Maximize mobility and safety improvements in the corridor
- Minimize inconvenience to travelers during Project construction

- Deliver the Project on schedule, which the Department anticipates will be within 4 years of the First Notice to Proceed (NTP1)
- Uphold the Department’s stakeholder and public trust in delivering the Project
- Deliver the Project within the Available Public Funds Amount

### **1.3 Project Description and Scope of Design-Builder’s Obligations**

#### **1.3.1 Project Description**

The Department is proposing to improve Interstate 30 (I-30) from Interstate 530 (I-530) to Interstate 40 (I-40) and I-40 from Pike Avenue to Highway 67/167. The “30 Crossing Project” (Project) is approximately 7.3 miles and includes the junctions of multiple interstates in North Little Rock and Little Rock that form a crucial part of the nation’s interstate highway system. The Department has concluded that harnessing private-sector creativity through a design-build approach is the best way to ensure cost-effective and expedited delivery of this Project and provide needed safety improvements, congestion relief and other benefits to the public.

#### **1.3.2 Scope of Design-Builder’s Obligations**

Design-Builder’s obligations will generally include all efforts required to develop, design and construct the Project in accordance with the requirements of the Design-Build Agreement. Immediately following execution of the Design-Build Agreement, the Department and the Design-Builder shall engage in Optimization and Refinement. To the extent that such Optimization and Refinement is not successful in achieving an agreed Project scope or Project Configuration consistent with Environmental Approvals and at a Contract Price equal to or less than the Available Public Funds Amount, the Department will have the right to terminate the Design-Build Agreement, as more fully set forth in the Design-Build Agreement. After the OR Period, Work under the Design-Build Agreement will proceed as authorized by notices to proceed (“NTPs”) issued by the Department. NTP1 and NTP2 will authorize Design-Builder to perform certain Work as described in the Design-Build Agreement. Please refer to the Design-Build Agreement for further and more detailed information regarding the scope of the Design-Builder’s obligations.

#### **1.3.3 Project Environmental Status**

The Department has submitted the Draft Environmental Assessment to the FHWA for review and is preparing the documentation necessary for all other required Environmental Approvals. Once FHWA approval of the Draft Environmental Assessment is obtained, the Public Hearing will be scheduled and advertised. The Draft Environmental Assessment will then be available to the public for comment. The Public Hearing occurred on July 11, 2018. FHWA’s environmental determination will be forthcoming. Additional information will be released to Proposers as and when such information is made publicly available. For purposes of developing Proposals,



Proposers should assume that Environmental Approvals to be obtained by the Department will be acquired during or prior to the OR Period.

The Design-Build Agreement, particularly with respect to the Optimization and Refinement to occur during the OR Period, 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. 636.109, the Design-Build Agreement incorporates (i) provisions ensuring that all environmental and mitigation measures identified in connection with required Environmental Approvals will be implemented, (ii) provisions ensuring that no commitments are made to any alternative being evaluated in connection with required Environmental Approvals, and (iii) 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.

#### **1.3.4 Status of Required Right of Way Acquisition**

The Department will identify certain Right of Way (ROW) necessary to construct the permanent improvements included in the Conceptual Design (the "ROW Drawings"). The Department will provide access to the ROW identified on the ROW Drawings in accordance with the ROW Schedule. Any additional ROW acquisition required by the Design-Builder to implement its design will be the sole responsibility of the Design-Builder, both in terms of cost and any schedule impacts, subject to applicable Relief Events. Further details regarding the Design-Builder's rights and obligations in respect of ROW are set forth in the Design-Build Agreement. For purposes of developing Proposals, Proposers should assume that all ROW to be obtained by the Department will be acquired not later than NTP2.

#### **1.3.5 Status of Required Utility Work**

The Department will provide an initial Utility Map showing all known utilities in the Project Right of Way. With the exception of a large CAW waterline on the existing Arkansas River bridge, the Design-Builder will be responsible for designing the Project to reduce impacts to existing utilities. If unable to avoid impacting a Utility, the Department will be responsible for arranging for the Utility to be relocated. The work with respect to the CAW waterline is currently the only Utility work that is known to be included as part of the Project Configuration. Further details regarding the Design-Builder's rights and obligations in respect of utilities are set forth in the Design-Build Agreement.

### 1.3.6 Status of Conceptual Design

A Conceptual Design is being developed by the Department to identify Project environmental and regulatory issues, identify baseline project limits, and identify ROW required to implement such design. The Conceptual Design will be provided as part of the Reference Information Documents.

### 1.4 Documents in the Request for Proposals

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);
- (b) Volume II – the Design-Build Agreement; and
- (c) Volume III – Technical Provisions and Appendices

Reference Information Documents (RIDs) will be made available and distributed to Proposers as such RIDs become publicly available.

The RIDs have been provided for the purpose of delivering information to Proposers that is in the Department's possession. The Department has not determined whether the RIDs are accurate, complete or pertinent, or of any value to the Proposers. The RIDs will not form a part of the Contract Documents between the Department and Design-Builder. Except as may be provided otherwise in the Design-Build Agreement, the Department makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of the RIDs, and, in addition, shall not be responsible for any conclusions drawn therefrom.

An index to the RIDs and documents will be uploaded to the Project's e-Builder® page. Proposers may obtain access to e-Builder® as described in [Section 2.2.1](#) below.

### 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.

<b><u>EVENT</u></b>	<b><u>DATE and TIME</u></b>
Full Draft RFP	May 4, 2018
Revised Draft RFP Release	July 27, 2018
1 on 1 Meeting No. 6 RFC Deadline	August 3, 2018

Further Revised Draft RFP Release	August 6, 2018
1 on 1 Meeting No. 6 (Technical Focus)	August 9-10, 2018
Further Revised Draft RFP Release/RFC Responses	August 24, 2018
1 on 1 Meeting No. 7 RFC Deadline	September 5, 2018
1 on 1 Meeting No. 7	September 12-13, 2018
Final RFP	September 28, 2018
Begin Open RFC Period	October 5, 2018
1 on 1 Meeting No. 8 (Technical Focus)	October 16, 2018
ATC Deadline	October 19, 2018
Last Date for Proposer Submission of Changes in Organization or Changes to Key Personnel	October 19, 2018
Final RFP Addendum #1	October 24, 2018
Department Response to ATCs Deadline	November 02, 2018
Department Response to Changes in Organization or Changes to Key Personnel Deadline	November 02, 2018
End Open RFC Period	November 02, 2018
Department Addendum Deadline	November 09, 2018
Deadline for Department RFC Response	November 09, 2018
Final RFP Addendum #2	November 09, 2018
Proposal Due Date	2:00 p.m. Central, December 7, 2018
Final Award	January 2019

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 via e-Builder® pursuant to the submission instructions found in Exhibit H.

## **1.6 General Provisions Regarding Proposals**

### **1.6.1 Proposal Contents**

The instructions and requirements for the Technical Proposal, the Financial Proposal and the Optimization and Refinement Proposal are set forth in Exhibits B, C and D, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Any failure to provide all the information and all completed forms (Exhibit J) 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.

### **1.6.2 Inclusion of Proposal in Design-Build Agreement**

Portions of the successful Proposal that can reasonably be interpreted as commitments of such Proposer will become part of the Design-Build Agreement, as specified in the Design-Build Agreement. All other information is for evaluation purposes only and will not become part of the Design-Build Agreement.

### **1.6.3 Ownership of Proposal**

Subject to Section 6.3 and the exceptions specified herein, 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.

## **1.7 Project Funding**

Although subject to change, the Department has established the "Available Public Funds Amount" for the Project equal to \$535 million. The Department's plan of finance contemplates that the Department, using a combination of federal and State funds, will fund the design and construction of the Project. Payments will be made in accordance with the Design-Build Agreement.

The cost of the aesthetic enhancements for the Cities of Little Rock and North Little Rock are not included in the Available Public Funds. However, such costs shall be included as part of the proposed Contract Price in Form I and will be considered in evaluation of the Financial Proposal. Available funding for the identified aesthetic enhancements will be determined by the cities prior to award. If available funding is not identified by the cities, this enhancement aesthetic work, in the sole discretion of the

Department, may be removed from the Work.

## **1.8 Federal Requirements**

### **1.8.1 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.

### **1.8.2 DBE Requirements**

The Department has determined that Disadvantaged Business Enterprise (“DBE”) requirements apply to the design and construction of the Project, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of the Department as service providers, vendors, contractors, subcontractors, advisors, and consultants. The Department has adopted the definition of DBE set forth in 49 CFR § 26.5. Proposer’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 shall be 8.5% of the Contract Price. The Department’s DBE requirements applicable to the Design-Build Agreement are set forth in Section 7.2 of the Design-Build Agreement. Each Proposer shall submit a certification concerning DBE requirements with its Proposal. Failure to provide the required DBE certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.

Following the execution of the Design-Build Agreement and prior to issuance of NTP1, the selected Proposer 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 Proposer’s exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in the Design-Build Agreement.

The selected Proposer 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.

## **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.

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

The Department will accept Proposals for the Project only from those Proposers that the Department has shortlisted for the procurement based on their responses to the RFQ.

## **2.2 Communications and Other Information**

### **2.2.1 Authorized Representative**

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

Benjamin Browning, P.E.  
Alternative Project Delivery Director  
Arkansas Department of Transportation  
10324 Interstate 30  
Little Rock, AR 72209  
E-mail: 30crossing@ahtd.ar.gov

The Department intends to communicate with Proposers through e-Builder®. The Department has established one, password-protected e-Builder® account for each Proposer. The account provides access to all Proposers to the project’s e-Builder® page containing documents relative to the RFP. The account also provides access to other information available only to the individual Proposers. Each Proposer will be responsible for maintaining the security of its password-protected account and for sharing such account information with those members of its team requiring access.

### **2.2.2 Rules of Contact**

From the date of issuance of the RFQ (May 8, 2017) until October 16, 2017, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on October 16, 2017, the date the Partial Draft RFP was issued, and ending on the earliest of (i) execution of the Design-Build Agreement, (ii) rejection of all Proposals by the Department or (iii) cancellation of the RFP, the rules of contact set forth below shall apply. These rules are designed to promote a fair and an unbiased Procurement Process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), social media, instant messages, texts, or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer nor any of its team members may communicate with another Proposer or its team members with regard to the Project, the RFP, or either team’s

Proposal, except that (i) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any Department-sponsored informational meeting.

(b) Each Proposer shall designate one representative responsible for all communications between the Proposer and the Department (initially, the person identified in the SOQ as the Procurement Point of Contact (“PPC”)), and such designated representative shall correspond with the Department regarding the RFP only through the Department’s Authorized Representative as described in this RFP. The Department Authorized Representative may, from time to time, designate other persons to communicate with the Proposers on behalf of the Department. Nevertheless, all Department communications with a Proposer will be distributed via e-Builder®.

(c) No Proposer or representative thereof shall have any communications regarding the RFP or the procurement described herein with any member of the Arkansas State Highway Commission (“Commission”), Stakeholder or with any Department staff, advisors, contractors or consultants involved with the procurement or the Project, except for communications with Department consultants who have completed their services for the Project and been released by the Department, communications expressly permitted by the RFP or except as approved in advance by the sole discretion of the Authorized Representative. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Commission or any public or Proposer workshop related to the RFP.

(d) Proposers shall not contact any of the Stakeholders regarding the Project, including employees, representatives, members and consultants of the Stakeholders, except as specifically approved in advance by the Department in writing or as set forth in this Section 2.2.2(d). Notwithstanding the foregoing, each Proposer may contact the persons identified on Exhibit G for each of the identified utility providers near the Project as shown on Exhibit G, for the sole purpose of discussing utility issues in connection with the Project; provided that the Proposer shall provide written notice to the Department of the date, time and location of any arranged meetings no later than three business days in advance of such meeting; and provided, however, that the Proposer shall not discuss other Proposers or their Proposals, negotiate exclusive arrangements to the detriment of other Proposers or otherwise seek an unfair competitive advantage.

(e) Any communications determined by the Department, in its sole discretion, to be improper may result in disqualification.

(f) Any official information regarding the Project will be disseminated from the Department from the Department’s Authorized Representative or designee using e-Builder®.

(g) The Department will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

## **2.3 Questions and Response Process, and Addenda**

### **2.3.1 Questions and Responses Regarding the RFP**

Proposers shall be responsible for reviewing the RFP and any Addenda issued by the Department prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived mistake, discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which Proposer fails to understand. Proposers shall submit requests for written clarification in accordance with this Section 2.3.1. The Department will consider these clarification requests in drafting Addenda, if any, to the RFP and/or Design-Build Agreement. The Department also may elect, at its discretion, to respond to such clarification requests through written responses. Any written responses given by the Department will be for the information of the Proposers only, and will not become part of the Design-Build Agreement. In its discretion, the Department may incorporate the substance of a response in the RFP, and as appropriate, may incorporate the substance of a response in the Contract Documents, by means of an Addendum to the RFP.

The Department will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer through the Project's e-Builder® page. Submissions may only be made by the Proposer's PPC and as further described below.

Such comments or questions shall be submitted prior to the date specified in Section 1.5 as an "RFC Deadline" (and the dates that will be specified in future iterations of the procurement schedule) and shall identify the document (e.g., the Design-Build Agreement, the Technical Provisions, etc.) including the relevant page and section number for reference, and indicating whether the Proposer believes the question to contain confidential or proprietary information relating to Proposer's Proposal or ATCs. With respect to each RFC Deadline specified in Section 1.5, Proposers should submit all questions at one time and in one submission. The Department reserves the right to disagree with Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, the Department will inform the Proposer and may allow it to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if the Department determines that it is appropriate to provide a general response, the Department will modify the question to remove information that the Department determines is confidential.

Proposers shall prioritize and label their questions utilizing the following rubric:

**Category 1 – fundamental issue that may affect the ability or desire of a Proposer to submit a responsive Proposal**



Category 2 – an important legal, technical or business matter that may have an affect on the Proposer’s Proposal

Category 3 – other less critical legal, technical or business matters, including perceived errors and typographical mistakes

Category 4 – Requests for minor modifications or deviations from the applicable design and technical requirements for the Project, as further described below.

With respect to Category 4 questions, Proposers may submit comments and questions, utilizing the process set forth in this Section 2.3.1, to request minor modifications to or deviations from the applicable design and technical requirements for the Project or to request the application of an alternative applicable standard for any such requirements. In connection with any such question/comment, the Proposer should provide the Department with sufficient detail to evaluate and consider the request. As needed, the Department may seek additional information from the Proposer regarding such questions/comments. The Department does not anticipate approving any such requests for modifications to the extent that the proposed Category 4 questions would result in higher costs or lower quality for the Project. Subject to the terms of this Section 2.3.1, Proposers should not expect that Category 4 questions will be treated on a confidential basis.

Please see Exhibit H regarding instructions for using e-Builder® to submit questions in connection with the Project.

If any question is determined to be confidential in accordance with this Section 2.3.1, the response will be transmitted exclusively to the applicable Proposer.

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.

### **2.3.2 Addenda**

The Department reserves the right, in its sole discretion, to revise, modify or change the RFP and/or Procurement Process at any time before the Proposal Due Date shown in Section 1.5 (or, if Proposal Revisions are requested pursuant to Section 5.6, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP.

## **2.4 Pre-Proposal Meetings**

### **2.4.1 Informational Meetings**

The Department may at its option hold joint informational meetings with all Proposers at any time prior to the Proposal Due Date following notice to all Proposers.

## **2.4.2 One-on-One Meetings**

The Department intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.5, and on such other dates designated by the Department in writing to the Proposers, to discuss issues and clarifications regarding the RFP and Proposer's ATCs. The Department reserves the right to 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 impair the confidentiality of an ATC or would reveal a Proposer's confidential business strategies. Participation at such meetings by the Proposers shall be mandatory. The Federal Highway Administration ("FHWA"), other Stakeholders and consultants to the Department may also participate in all one-on-one meetings. All participants in such one-on-one meetings (other than FHWA personnel) will be required to sign the Department's standard confidentiality agreement.

## **2.4.3 Questions and Responses During One-on-One Meetings**

During one-on-one meetings, Proposers may ask questions and the Department may provide responses for informational purposes. However, any responses provided by the Department during one-on-one meetings may not be relied upon. The Department may, in its discretion, and subject to Section 2.3.1 above, respond in writing to those questions; the Department may also incorporate the substance of its responses into the Contract Documents by Addenda, as applicable.

## **2.5 Confidentiality/Public Information Act Disclosure Requests**

### **2.5.1 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"). To the extent consistent with FOIA, all records related to this Procurement Process including, but not limited to, SOQs, 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 SOQs and the Proposals, such as the name and Component Firms of each Respondent or the Proposer.

All records pertaining to this Procurement Process will become public information after execution of the Design-Build Agreement, unless such records are determined to qualify for an exemption under FOIA, including but not limited to, the following:

1. state income tax records;
2. documents protected from disclosure by an order of a court;
3. documents that, if disclosed, would "give advantage to competitors or

bidders”; or

4. personnel records to the extent that disclosure would constitute clearly unwarranted invasion of personal privacy.

Proposers are advised that the information contained in Form J (Conflict of Interest Disclosure Statement) and the Executive Summary (described in Exhibit B, Section 3.1) 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, except the non-public financial statements of privately held entities. However, the non-public financial statements of privately held entities shall be subject to disclosure as may be required by any applicable Law relating to the confidentiality or disclosure of information.

Subject to Section 6.3 of the ITP and the Payment for Work Product Agreement, any records marked as “confidential” by a Proposer in its Proposal in accordance with the RFP and protected under FOIA will be returned to the unsuccessful Proposer after the Design-Build Agreement with the Design-Builder has been executed. The Proposer will be responsible for all costs resulting from any challenge based on the records exempted. 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.

### **2.5.2 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.

### **2.6 Department Studies and Investigations**

To the extent the Department undertakes any investigative activities, the information obtained by the Department from such activities may be made available to Proposers in the RIDs. All information provided by the Department will be subject to the same limitations applicable to similar information furnished in the RIDs, unless otherwise noted. Specifically, the Department makes no representation or warranty as to the accuracy, completeness or suitability of the RID.

### **2.7 Site Access**

Subject to the Proposer obtaining any required administrative or Governmental Approvals, Proposers will be allowed access, through the Proposal Due Date, to those portions of the Project under the Department ownership that are not currently under construction, subject to the conditions specified in this Section 2.7, for purposes of

inspecting in-place assets and determining Site conditions through non-destructive investigations. This Work may include surveys and site investigations such as geotechnical borings, Hazardous Substances and Utilities investigations.

The Proposer shall submit a plan for approval to the Authorized Representative before beginning any surveys or site investigations that may affect traffic or involve removal or disturbance of the roadway. This plan shall indicate the extent of removal or disturbance of any in place sub-grade or in place roadway material. The plan will describe surface location and depth of testing as well as specific test description to be performed. The Proposer shall also submit the proposed method to refill and replace any removed roadway material to ensure the safe function of the in-place pavement. Finally, the Proposer shall submit the proposed traffic control plan needed to complete any and all testing for approval.

Upon approval of the proposed survey or site investigation, the Proposer may proceed with the approved plans, upon a 5-day notice to the Authorized Representative. Each applicable Proposer shall be liable for any damage resulting from any survey or site investigation, and each Proposer shall be obligated to comply with all requirements of the Department as set forth in the approval for the survey or site investigation. The failure to comply with the conditions set forth in this Section 2.7 may subject a Proposer to disqualification under this RFP.

Each Proposer, solely at its own expense, is responsible for conducting a reasonable non-destructive investigation of the condition of existing facilities and site conditions, including hazardous substances and materials, sub-surface conditions, wetlands, temporary and permanent utility facilities, area populations and demographics, land use, development and development-related infrastructure, and traffic patterns. Failure of a Proposer to so examine and inform itself shall be at its sole risk, and the Department will provide no relief for any error or omission. The submission of a Proposal shall be considered prima facie evidence that the Proposer has made the above-described examination and is aware of the conditions to be encountered in performing the Work under, and as to the requirements of, the Contract Documents.

After award has been made, the selected Proposer will be allowed access to the Project Right of Way that the Department owns to conduct surveys and site investigations, including geotechnical, Hazardous Substances and Utilities investigations, and to engage in the other activities referenced in the Design-Build Agreement that are allowed prior to NTP2.

## **2.8 Errors**

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

## **2.9 Improper Conduct**

### **2.9.1 Non-Collusion**

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

### **2.9.2 Organizational Conflicts of Interest**

The regulations contained in 23 CFR Section 636, Subpart A and, in particular, to 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: Garver LLC; HNTB Corporation; Mayer Brown LLP; Ernst & Young Infrastructure Advisors LLC; High Street Consulting Group, Inc.; Stephens, Inc.; CH2M Hill, Inc.; Terracon Consultants LLC; NTB Associates, Inc.; Flat Earth Archeology LLC; Harbor Environmental, Inc.; J. Kelly Referrals and Information Services, Inc.; and Jacobs Engineering Group, Inc.

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.

## **2.10 Changes in Proposer's Organization**

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the Short-List, unless otherwise approved in writing by the Department, Proposer's organization as identified in the SOQ must remain the same for the duration of the Procurement Process. If a Proposer wishes to make changes in the team members identified in its SOQ, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, Proposer shall submit to the Department a written request for approval of the change from the Department as soon as possible but in no event later than the applicable last date set forth in Section 1.5. Any such request shall be submitted to the Department via e-Builder®, accompanied by the information specified for such entities in the RFQ. If a request is made to allow deletion or role change of any Principal Participant or Major Participant identified in its SOQ, Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and

RFP criteria (pass/fail and technical). The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the Design-Build Agreement, a Proposer may not make any changes in the team members identified in its SOQ after the applicable last date set forth in Section 1.5. Between the applicable date set forth in Section 1.5 and execution of the Design-Build Agreement, the Department, in its sole discretion, will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposers' control.

## **2.11 Changes in Key Personnel**

The Department discourages changes in Key Personnel from the individuals listed in the SOQ. Any proposed changes in Key Personnel from those identified in the SOQ are subject to Department approval as specified in this Section 2.11. Each Proposer shall submit a package that includes a list of any proposed changes in Key Personnel from those identified in the SOQ, along with all material that would have had to be submitted for such person in connection with the SOQ. The package shall be submitted to the Department by the date and time for submittal of changes in Key Personnel specified in Section 1.5 for review and written approval by the Department, in its sole discretion. The package shall be delivered to the Department via e-Builder®.

The Department is under no obligation to approve requested changes in Key Personnel and may disapprove such requests at its sole discretion. If the Department, in its sole discretion, disapproves a proposed Key Personnel, Proposer shall submit the information required above for its proposed substitute for review and approval by the Department in accordance with the foregoing process at least ten Business Days prior to the Proposal Due Date. The Proposal may not include any Key Personnel previously disapproved by the Department in writing for such Key Personnel position.

## **SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPTS**

### **3.1 Alternative Technical Concepts**

“Alternative Technical Concepts” or “ATCs” are concepts that conflict with the requirements for design and construction of the Project or otherwise require a modification of the Technical Provisions but that may nevertheless be proposed in accordance with the terms and conditions set forth in this ITP. Sections 3.1 through 3.5 set forth a process for pre-Proposal review of ATCs. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing the Department to consider Proposer ATCs in making the selection decision.

An ATC that has been pre-approved by the Department, in its sole discretion, may be included in the Proposal, subject to the conditions set forth herein. If the Department does not approve the ATC, Design-Builder will be obligated to develop the Project in accordance with existing approvals without additional cost or extension of time. ATCs that, if implemented, would require further environmental evaluation of the Project, may

be allowed, provided that Design-Builder will bear the schedule and cost risk associated with such additional environmental evaluation. If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by the Department, the Department recommends that Proposer submit such concept for review as an ATC. Proposed ATCs that involve reuse or rehabilitation in lieu of replacement, including the rehabilitation of bridges, will not be approved by the Department.

## **3.2 Pre-Proposal Submission of ATCs**

- 3.2.1** Proposer may discuss one or more potential ATC concepts at any scheduled meeting with the Department. If the Proposer plans to discuss an ATC, Proposer shall include a summary of any such ATC to be discussed by providing information requested on the ATC Submittal Form, attached as Exhibit I to these Instructions to Proposers, to the extent such information is known to Proposer at the time of submitting the agenda for the scheduled meeting with the Department. The information submitted for discussion of an ATC may be preliminary in nature. The purpose of providing such information on Exhibit I is to allow the Department to be prepared to discuss the ATC and arrange for any necessary subject matter experts to be in attendance at the relevant scheduled meeting.
- 3.2.2** Proposer may submit ATCs for review and approval to the Department's Authorized Representative via e-Builder® until the applicable last date and time for submittal of ATCs identified in Section 1.5. ATCs shall be submitted in the format identified on Exhibit I in .pdf format. ATCs uploaded to e-Builder shall be named by Proposer using the following naming convention: "CA0602\_[Proposer]\_ATC\_No\_[X][X\_X]". ATCs shall be numbered sequentially. ATCs that are re-submitted to include additional information requested by the Department shall be numbered with a "X\_X", where the number following the underscore is numbered sequentially for each re-submittal of that ATC.
- 3.2.3** Proposer shall not make any public announcement or disclosure to third parties concerning an ATC until after approval (including conditional approval) has been obtained. Following approval (including conditional approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify the Department in writing of its intent to take such action, including details as to date and participants, and obtain the Department's prior written consent, in its sole discretion, to do so.
- 3.2.4** If implementation of an ATC will require approval by a third party (e.g., a governmental authority), Proposer shall have full responsibility for,

and bear the full risk of, obtaining any such approvals after award of the Design-Build Agreement and submission of data; provided, however, that the Department shall act as liaison with any Governmental Person as more particularly described in the Design-Build Agreement. If any required third-party approval is not subsequently granted with the result that Proposer must comply with the original requirements of the RFP (and any Addenda), Proposer will not be entitled to a Change Order for additional compensation or time under the Design-Build Agreement.

- 3.2.5** If the Department determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity or mistake, the Department reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC.

### **3.3 Department Review of Pre-Proposal Submission of ATCs**

The Department may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.5, provided that the Department has received all required and requested information regarding such ATC.

In its response, the Department will place the proposed ATC in one of three possible categories and provide one of three possible decisions, as applicable, all as set forth below. The three potential categories for a proposed ATC are the following:

- (a) the submittal is not eligible as an ATC but may be included in the Proposer's Proposal because such submittal appears to be within the requirements of the RFP; or
- (b) the ATC includes deviations from the requirements of the Design-Build Agreement that are equal or better to the requirements of the Design-Build Agreement before incorporation of the ATC.

A proposed ATC that is placed in category (a) as described above will be eligible for inclusion in the Proposer's Proposal and no further decision will be provided in the Department's response. To the extent that the Department places the proposed ATC in category (b) as described above, the Department's response will include one of the following three potential decisions:

- (1) the ATC is acceptable for inclusion in the Proposal;
- (2) the ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in the Department's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or



- (3) the ATC is not acceptable for inclusion in the Proposal.

Approval of an ATC will constitute a change in the specific requirements of the Design-Build Agreement associated with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to the Department's determinations regarding acceptability of ATCs made in accordance with this Section 3.3.

The Department's rejection of a pre-Proposal submission of an ATC will not entitle Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; provided, however, that the foregoing shall not limit the Department's absolute and sole right to modify the Proposal Due Date or any other date in connection with this Procurement Process.

### **3.4 Incorporation of ATCs in the Design-Build Agreement**

Following award of the Design-Build Agreement, the ATCs that were pre-approved by the Department and incorporated in the Proposal by the successful Proposer shall be included in the Design-Build Agreement. If the Department responded to an ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Design-Build Agreement. The Design-Build Agreement will be conformed after award, but prior to execution of the Design-Build Agreement, to reflect the ATCs, including any Department conditions thereto.

Prior to execution of the Design-Build Agreement, ATCs from unsuccessful Proposers that have agreed, at their option, to execute the Payment for Work Product Agreement as described at Section 6.3, thus confirming their acceptance of the Payment for Work Product, may, in the Department's sole discretion, be presented to the selected Design-Builder for possible incorporation in the Design-Build Agreement during negotiation of the final terms of the Design-Build Agreement pursuant to Section 5.9.1. In addition, following execution of the Design-Build Agreement, ATCs from unsuccessful Proposers may, in the Department's sole discretion, be presented to the selected Design-Builder as a Department Change Order in accordance with the Design-Build Agreement.

### **3.5 Confidentiality**

ATCs and all communications regarding ATCs will remain confidential until a decision is made to select a Proposer or cancel the procurement, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under applicable Law. The foregoing shall not preclude the Department from modifying the documents as described in Section 3.3(f) above, as necessary to comply with applicable Law or to account for information obtained by the Department outside of the ATC process. By submitting a Proposal, Proposer agrees, if it is not selected, to disclosure of its work product to the successful Proposer.

## **SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY THE DEPARTMENT**

### **4.1 General Submittal Requirements**

Each Proposal shall include a Technical Proposal, a Financial Proposal and a Optimization and Refinement Proposal meeting the requirements set forth in Exhibits B, C and D, respectively. The Proposal shall be submitted in recyclable, low-cost, sealed containers in the format and manner set forth in Sections 4.2, 4.3 and 4.4. Proposals shall be written in the English language and U.S. Customary units.

#### **4.1.1 Proposal Due Date**

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

#### **4.1.2 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.

#### **4.1.3 Requirement to Submit Compliant Proposal**

Except as permitted in accordance with Section 3.0, 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.

#### **4.1.4 Format**

An 8 ½ by 11-inch format is required for typed submissions and an 11 by 17-inch format is required for drawings, except that design drawings may be submitted on roll plots as described in Exhibit B (and such design drawings shall be submitted via e-Builder® in PDF format and in Bentley Microstation format). Preliminary schedule submissions shall include both a hard copy and the electronic files in Primavera and PDF formats.

Submittals must be bound with all pages numbered in a binder. Printed lines may be single-spaced with the type font size being no smaller than 12-point, other than in maps, 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, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch foldout will be considered one page. No page limit applies to appendices and exhibits; however, the Department does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of

the Proposal and any required appendices and exhibits.

#### **4.1.5 Additional Requirements for Proposal Delivery**

The completed Proposal shall be submitted and delivered in sealed boxes or other containers 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: Mr. Benjamin Browning, P.E., Alternative Project Delivery Director.

Each binder of the Proposal shall be labeled to indicate its contents and the Proposer. The original Technical and Financial Proposals shall be clearly identified as “original”; copies of the Proposals shall be sequentially numbered, labeled and bound.

### **4.2 Technical Proposal**

#### **4.2.1 General**

All of the binders comprising the original Technical Proposal shall be packaged in a single container, clearly addressed to the Department as provided herein, and labeled “[Proposer Name]: Original Technical Proposal for the 30 Crossing Project.” In addition, Proposer shall provide 1 additional copy of the Technical Proposal, excluding the Proposal Security (which must be submitted according to the requirements set forth below). The containers that include the required hard copy of the Technical Proposal shall be labeled “Copies of Technical Proposal for the 30 Crossing Project.”

The Proposer shall also provide one electronic copy of the Technical Proposal in PDF format by uploading it to e-Builder®; provided, however, that: (a) all PDF files should be kept at file sizes of 100 MBs or less; and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

#### **4.2.2 Proposal Security**

The Proposer shall provide one original and one copy of the Proposal Security with the Technical Proposal in a separate envelope labeled “[Proposer Name]: Proposal Security for the 30 Crossing Project.”

### **4.3 Financial Proposal**

The Financial Proposal shall be delivered to the Department at the address identified in Section 4.1.5 by the Proposal Due Date and shall be submitted in two separate parts: (1) the pricing information set forth in Form I; and (2) the financial capacity information.

The pricing information reflected on Form I shall be included in a separate, sealed container labeled “[Proposer Name]: Financial Proposal/Pricing Information for the 30 Crossing Project.” One original and one certified copy shall be included. The pricing information shall not be included in the electronic copy of the Financial Proposal.

The Financial Proposal shall contain the financial capacity information submitted in response to Exhibit C, Section 2.0. One original and one certified copy of the financial capacity information shall be submitted in a container labeled “[Proposer Name]: Financial Proposal/Financial Capacity Information for the 30 Crossing Project.” One electronic copy of the financial capacity information shall be in PDF format and uploaded to e-Builder®; provided, however, that all PDF files should be kept at file sizes of 50 MBs or less.

#### **4.4 Optimization and Refinement Proposal**

The Optimization and Refinement Proposal shall be delivered to the Department at the address identified in Section 4.1.5 by the Proposal Due Date. The Optimization and Refinement Proposal shall contain the material responsive to the requirements set forth in Exhibit D. One original and one certified copy of the Optimization and Refinement Proposal shall be submitted in a container labeled “[Proposer Name]: Optimization and Refinement Proposal for the 30 Crossing Project.” One electronic copy shall be in PDF format and uploaded to e-Builder®; provided, however, that all PDF files should be kept at file sizes of 50 MBs or less.

#### **4.5 Withdrawal and Validity of Proposals**

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 designated representative. Such written request shall be submitted to the Department via e-Builder®. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that it is received before the time due on the Proposal Due Date. Proposals shall be valid for a period of 180 days after the Proposal Due Date. No Proposer may withdraw its Proposal within the 180-day period, unless notified by the Department that (i) no Design-Build Agreement for the Project will be awarded by the Department pursuant to the RFP; (ii) the Department has awarded the Design-Build Agreement to another Proposer and has received the executed Design-Build Agreement and other required documents; (iii) the Department does not intend to award the Design-Build Agreement to the Proposer; or (iv) such Proposer is not the apparent best-value or next highest ranking Proposer.

If the next best Proposer is notified during the 180-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 270 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.

## **4.6 Forfeiture of Proposal Security**

The dollar amount of the Proposal Security to be submitted with each Proposal shall be \$10,000,000. By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (i) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal except as specifically permitted hereunder; (ii) it is selected for negotiations, but fails to negotiate in good faith with the Department as set forth in Section 5.9; or (iii) it is selected as the apparent best value Proposer, but fails to provide the documents required under Sections 6.1 and 6.1.1.

## **SECTION 5.0 EVALUATION AND POST-SELECTION 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 Best Value Determination**

The best value determination will be based on receiving the highest number of 2,000 allocated points, as described below. The Technical Proposal Score has been allocated 450 point of the total score. The Financial Proposal Score has been allocated 1,400 points of the total score. The Optimization and Refinement Proposal Score has been allocated 150 points of the total score. The total Proposal Score will be computed based on the following formula:

Proposal Score = Technical Proposal Score (allocated 450 points) + Financial Proposal Score (allocated 1,400 points) + Optimization and Refinement Proposal Score (allocated 150 points).

### **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 Technical Proposals**

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

(a) The Technical Proposal incorporates all elements of the Basic Configuration as described in the Technical Provisions.

(b) The Proposal Schedule demonstrates the achievement of Substantial Completion no later than five years following NTP1.

(c) The Technical Proposal incorporates the Project Configuration, including the number of lanes, lane and shoulder widths, access and ROW requirements, drainage considerations, and general understanding of the needs of the Project.

(d) The Technical Proposal includes required aesthetic elements for the City of Little Rock and the City of North Little Rock.

**5.2.2 Financial Proposals**

The pass/fail criterion for the Financial Proposals is that the Proposer’s financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities at the time of submission of the SOQ, as evidenced by the financial data submitted for its SOQ, such that the Proposer continues to have the financial capacity to develop, design and construct a project of the nature and scope of the Project. Proposer has provided the financial capacity information in accordance with the requirements of Exhibit C, Section 2.0.

**5.2.3 Optimization and Refinement Proposals**

The pass/fail criterion for the Optimization and Refinement Proposals is that the Optimization and Refinement Proposal includes the requirements of the Optimization and Refinement Plan as described in Exhibit D, in all material respects.

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

Those Proposals not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and Proposer will be so advised. The Department may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation 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 Proposal**

After completion of the pass/fail and responsiveness review, the Technical Proposal will be evaluated to determine its ability to meet or exceed the Project goals, values and requirements, taking into consideration any increased risks associated with ATCs or other design deviations. The Department will evaluate the Proposal based upon quantitative and qualitative benefits, in relation to the following evaluation criteria, point allocations and relative priorities:

Design Factors 200 points	Extent to which the Technical Proposal:	Priority
	Addresses structural design and elements such as	High

	bridge type, approach to seismic requirements, horizontal and vertical clearance requirements, geotechnical considerations, aesthetic considerations, constructability, and maintainability.	
	Meets or exceeds minimum safety and operation standards including but not limited to, increased clear zone, increased ramp spacing, increased sight distance, and increased horizontal and vertical clearances.	High
	Incorporates design features that reduce future maintenance costs and mitigate noise impacts under structures in the Cities of Little Rock and North Little Rock.	Medium
	Demonstrates an understanding and appropriate application of design standards	Medium
	Minimizes additional work, required rework, and impacts to traffic that will occur in the Department's completion of future corridor improvements related to but not included in the Project Configuration	Low
Construction Factors 200 points	Extent to which the Technical Proposal:	
	Minimizes duration of lane closures (This will be evaluated through ITP Form L)	High
	Demonstrates an MOT approach that minimizes the impact to the traveling public to the extent possible within the requirements of the Technical Requirements and minimizes accessibility impacts to businesses and residences during construction	High
	Includes a design/construction schedule that demonstrates a clear understanding of the scope of work, considers review and approval requirements and Third Party coordination, has appropriate schedule logic, and utilizes realistic activity durations	High
	Identifies a Substantial Completion date that falls within the contract requirements and is supported by the design/construction schedule	Medium
	Includes a Maintenance During Construction Approach that meets Technical Requirements and adequately addresses maintenance needs	Low
	Demonstrates a well-developed strategy to	Low

	coordinate the proposed Closures and clear approach to communicating construction impacts to the public	
Third-Party Factors 50 points	Extent to which the Technical Proposal:	
	Identifies an effective plan for coordinating with Utilities, and other Third Parties.	High
	Considers the impacts to the rail facilities of Rock Region metro and UPRR in the Project's design / construction phasing and thoroughly analyzes the effects of the demolition of the existing bridges and construction of the new bridges over the rail facilities on the project construction schedule.	High

#### 5.4 Evaluation of Financial Proposal

After completion of the pass/fail and responsiveness review, the contract price shown on Form I of the Financial Proposal will be scored by dividing the Available Public Funds Amount by the Proposer's Contract Price and multiplying that percentage by the Financial Proposal Score points shown in Section 5.1, rounding to one decimal point. Proposers should note that to the extent that a Proposer's Contract Price is lower than the Available Public Funds Amount, such Proposer would receive more than 1,400 points in respect of the Financial Proposal Score.

#### 5.5 Evaluation of Optimization and Refinement Proposal

After completion of the pass/fail and responsiveness review, the Optimization and Refinement Proposal will be evaluated based upon quantitative and qualitative benefits, in relation to the following evaluation criteria and relative priorities:

150 points <sup>1</sup>	Extent to which the Optimization and Refinement Proposal:	Priority
	Identifies a level of effort that is sufficient, when considering the difference between the Proposed Contract Price and the Available Public Funds Amount, to achieve needed optimization and refinement and reduce the Contract Price to at or below the Available Public Funds Amount prior to expiration of the OR Period	High

<sup>1</sup> Proposers should note that a Proposal submitted with a Contract Price at or below the Available Public Funds Amount will receive full points for the Optimization and Refinement Plan.



	Identifies optimization and refinement concepts that increase the likelihood of delivering the Project at or below the Available Public Funds.	High
	Identifies optimization and refinement concepts that minimize impact on quality or performance of the end product	High
	Identifies an effective plan for obtaining any necessary modifications of Government Approvals	Medium
	Establishes a process of communication and collaboration which will lead to an effective optimization and refinement of the project scope and cost	Medium

## 5.6 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 delivered to the Department via e-Builder® 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.

## 5.7 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 shall be in writing to the Proposer’s PPC. Proposers shall respond to any such requests within two (2) 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.

## **5.8 Recommendation to Commission**

The Department will make a recommendation to the Commission regarding the rankings of the Proposals and identification of the apparent best value proposal. The Commission will evaluate the recommendations and will determine whether to proceed with award of a Design-Build Agreement to the apparent best value Proposer or take any other action. The Commission's decision of award of the Design-Build Agreement to the apparent best value 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.

## **5.9 Finalization of the Design-Build Agreement; Post-Selection Process**

### **5.9.1 Negotiation of Design-Build Agreement**

If authorized by the Commission, the Department will proceed with the apparent best value Proposer to finalize the Design-Build Agreement. The Department may agree, in its sole discretion, to limited negotiations with the apparent best value Proposer to clarify any remaining issues regarding scope, schedule or any other information provided by that Proposer. In addition, limited negotiations may be conducted as necessary to incorporate into the Design-Build Agreement the ideas and concepts of an unsuccessful Proposer's work product if the unsuccessful Proposer has elected, at its option, to execute the Payment for Work Product Agreement as described in Section 6.3. Any decision to commence limited negotiations is at the Department's sole discretion. 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.

If a Design-Build Agreement satisfactory to the Department cannot be negotiated with the apparent 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 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, (b) rejection of all Proposals, (c) issuance of a request for Proposal Revisions to Proposers, but only if the ATCs of one or more Proposers have not been revealed to the original successful Proposer, or (d) proceeding to the next most highly ranked Proposal to attempt to negotiate a Design-Build Agreement with that Proposer in accordance with this Section 5.9. If option (d) is selected, the Proposer that submitted the next most highly ranked Proposal will be considered the apparent best value Proposer.

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 4.6 if Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with the Department or insists upon terms or conditions for any documents to be negotiated or provided by Design-Builder hereunder that are inconsistent with the Design-Build Agreement.

## **5.10 Post-Selection Deliverables**

### **5.10.1 Documents To Be Submitted Following Award**

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 6.1.1, for pre-approval by the Department.

## **SECTION 6.0 EXECUTION; POST-EXECUTION ACTIONS**

### **6.1 Execution and Delivery of Design-Build Agreement**

The following are conditions precedent to execution of the Design-Build Agreement: (a) successful completion of negotiations (if any), (b) receipt by the Department of all of the documents required to be provided prior to execution of the Design-Build Agreement under this Section 6.1, (c) execution of the Design-Build Agreement by the Department and (d) any other conditions required by the Commission.

### **6.1.1 Documents To Be Delivered By Proposer With Executed Design-Build Agreement**

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 specified and in the forms attached to the Design-Build Agreement, and a Retainage Bond in the form attached to the Design-Build Agreement. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the Lead Surety. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Design-Build Agreement and issuance of NTP1; 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, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments.

(f) A Job Training Plan as described in Section 7.1.1 of the Design-Build Agreement.

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

### **6.2 Debriefings**

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

### **6.3 Payment to Unsuccessful Proposers**

Each Proposer that submits a responsive, but unsuccessful, Proposal and that elects, at its option, to deliver to the Department with its Proposal a Payment for Work Product Agreement in the form attached hereto as Exhibit F, shall be entitled to receive payment from the Department for work product that is not returned to Proposer, on the terms and conditions described herein. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3.

The stipulated payment for work product per Proposer for this procurement will be \$1,000,000, except that the amount of the payment may not exceed the value of the work product provided in the Proposal that can, as determined by the Department, be used by the Department in the performance of its functions (or, in the event of a cancellation before a Proposal is submitted, the value of the work product created by the Proposer in anticipation of submitting a Proposal that can be used by the Department in the performance of its functions). The invoice may be submitted no earlier than 45 days after notice of execution of the Design-Build Agreement is posted publicly by the Department, or, if award is not made, not earlier than 30 days after cancellation of the procurement or expiration of the time period for award stated in the RFP (as such time period may be extended by mutual agreement of the apparent best value Proposer and the Department), as applicable. All Proposers eligible to receive a payment for work product shall be required to submit an invoice to the Department in a form acceptable to the Department in order to receive such payment. Payments will be made within 30 days of receipt of an invoice therefor.

In submitting an executed Payment for Work Product Agreement, each Proposer agrees

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

Each Proposer that timely executes and delivers to the Department a Payment for Work Product Agreement in the form attached hereto as Exhibit F acknowledges that the Department will have the right to inform the successful Proposer regarding the contents of the other Proposals after award of the Design-Build Agreement, and that the Design-Build Agreement may incorporate the above-described work product or concepts based thereon. Upon Proposer's receipt of payment hereunder, this right shall extend to allow the Department to use such work product in the performance of its functions.

In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 or that fails to timely execute and deliver the Payment for Work Product Agreement be entitled to receive a payment for work product under this Section 6.3.

## **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. The 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. Randy Ort, Assistant Chief of Administration  
Little Rock, AR 72209

Any Protest not received in writing by the Protest Official within seven (7) 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 Contract number (CA0602);
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 apparent best value 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 (7) 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 (7) 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 (7) 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: Ms. Lorie Tudor, P.E., 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: (i) reject any or all Proposals; (ii) issue a new RFP; (iii) cancel, modify, or withdraw the RFP; (iv) appoint an evaluation team to review Proposals and seek the assistance of outside technical experts in the Proposal evaluation; (v) revise and modify, at any time before the Proposal Due Date, the RFP; (vi) extend the Proposal Due Date; (vii) 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 (viii) 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: (A) 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; (B) violation of the terms of the RFP on the part of a Principal Participant or Major Participant; (C) issuance of a notice of debarment or suspension to a Principal Participant or Major Participant; (D) submittal by the Proposer of more than one Proposal under the Proposer's own name or under a different name; and (E) existence of a conflict of interest or evidence of collusion in the preparation of a statement of qualifications, 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.