

REQUEST FOR COMPETING PROPOSALS

FOR LEASE OF TxDOT-OWNED RIGHT-OF-WAY TO IMPLEMENT LOW-EMISSION FREIGHT TRANSPORTATION FACILITIES

TEXAS DEPARTMENT OF TRANSPORTATION

ISSUED APRIL 8th, 2011

Texas Department of Transportation
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Austin, Texas 78701

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1. INTRODUCTION

1.1. Objective

In accordance with applicable rules governing the leasing of highway assets for transportation facilities (Texas Administrative Code, Title 43, Chapter 21, Subchapter J), the Texas Department of Transportation (TxDOT or Department) is seeking proposals from public and private sector entities to lease existing TxDOT-owned right of way (ROW) from the Department on which the entity would implement a Low Emission Freight Transportation Facility (or Facilities) (LEFTF) without financial support of the Department, however proposers should note that federal funding, if available, is not precluded.

1.2. RFP Non-binding

Neither the issuance of this Request for Proposals (RFP), nor any action by the Department prior to the final execution of a lease agreement will bind or commit the Department to proceed with a lease agreement whatsoever. The Department may abandon the RFP process at any time prior to final execution of a lease agreement.

1.3. Background

Traffic forecasting and demand modeling predictions for Texas indicate that freight traffic in the State will expand significantly in the future. State population is forecasted to almost double over the next forty years. Texas ports are expanding their capabilities to handle greater numbers of containers. The expansion and reconstruction of the Panama Canal will likely bring even more freight traffic to the state's seaports. While the existing highway and rail systems in rural areas have the capacity to absorb some of this anticipated growth, there are concerns that they will not adequately accommodate all future traffic.

In urban areas, truck traffic contributes significantly to highway congestion, leading to lost time for drivers, increased energy consumption, and increased fuel emissions. Also, increased truck traffic requires ever-more costly repairs of the highway system. At the same time, there is growing concern over the impact of car and truck emissions on the environment. Similarly, congestion of rail terminals, yards and junctions impedes the movement of increased freight by increasing the costs and thus reducing the commercial viability of shorter distance moves.

The Department is considering ways to develop viable and sustainable alternative solutions to manage the expected increase in freight movement across the state. However, proposers should not assume that the Department will do anything to discourage freight movements by trucks.

1.4. Concept

1.4.1. General

In anticipation of future demand for freight services, the Department is interested in receiving viable and sustainable proposals for short, mid and/or long-haul freight movements as environmentally sensitive alternatives to adding more trucks on the roadways and railroad cars on limited tracks in urban areas. In accordance with Texas Administrative Code, Title 43, §21.301(b), the Department will not accept as a responsive proposal any proposal for the lease of ROW for the purposes of a pipeline, electric transmission line, or other utility facility, or for rail lines that are part of the general system of rail transportation and require a certificate from the United States Surface Transportation Board under 49 U.S.C. §10901.

1.4.2. Low Emissions

As part of the proposals requested, the Department will require evidence that any proposed LEFTF would result in lower net air emissions (including regulated pollutants and carbon dioxide) than those generated by current modes of freight transportation. For example, electric-powered facilities connected to low-emission or renewable energy sources might be able to demonstrate benefits in this area. The Department's evaluation of the proposals may also take into account any reduction in emissions from existing truck traffic resulting from replacement by the new LEFTF and any associated air quality benefits resulting from improvements in traffic flow, emissions from the LEFTF itself and any demonstrated net improvements in local or statewide air quality.

1.4.3. Relevant Law

The Department is soliciting the lease of TxDOT-owned ROW in accordance with the provisions of Texas Transportation Code §202.052, "Lease Authority" and §202.053, "Lease of Highway Assets: Terms;" and Texas Administrative Code, Title 43, Chapter 21, Subchapter J, "Leasing of Highway Assets for Transportation Facility."

1.4.4. Right Of Way Corridor

The Department has not identified within this RFP any specific ROW corridor or facility to develop. It is at the proposer's discretion to propose the location, width, length, height and nature of the required ROW, subject to TxDOT standards and concurrence. Proposers may either propose a single corridor or a wider network, but all portions must be the focus of near term (Specific Facility) implementation.

Proposers should assume that they will be responsible for any private property rights or licenses required for their proposals.

1.4.5. Lease Agreement

Exhibit B identifies an outline and description of possible key terms of the anticipated project lease agreement. The following provides a general description.

The successful proposer(s) will earn the right to attempt to negotiate a lease agreement with TxDOT. The term of the lease shall be as determined by proposal and negotiations, but in no circumstance shall be no longer than fifty (50) years.

The Department expects the lease payment (per acre of ROW per year of proposed lease term), in addition to the value of any cash, services, tangible or intangible property offered in consideration, to cover fair market value as well as the Department's administrative and other costs associated with the lease, unless the Department grants an exception as provided by Texas Transportation Code §202.052(d). Unless such an exception is granted, any proposal for which the proposed lease payment, in addition to the value of any cash, services, tangible or intangible property offered in consideration, is less than the fair market value of the ROW as determined by the Department may not be accepted as a responsive proposal.

Under the lease agreement, the lessee will be legally and financially responsible for all aspects of the design, construction, operation and maintenance of the LEFTF, including, at a minimum, the following:

- Maintenance of the leased ROW
- Acquisition of any additional real property needed to accommodate the LEFTF
- Relocation of utilities necessitated by the LEFTF's design
- Appointment of an independent engineer, subject to TxDOT's approval, to review the design and construction of the LEFTF
- Compliance with applicable environmental regulations and requirements,
- Any required modification or realignment of the existing highway and other infrastructure necessitated by the LEFTF's design in accordance with TxDOT's design standards, subject to TxDOT's review and approval
- Submittal of an annual report on volume of freight transported and associated calculated net emissions reductions

The lease agreement will provide that, unless TxDOT approves in writing some other use, the lessee shall only use the leased ROW for the following purposes:

- Surveys to identify and record ROW levels, limits and boundaries
- Investigations, including ground/geotechnical investigation, to enable detailed design of the LEFTF
- Surveys to identify existing utilities
- Relocation of utilities necessitated by the LEFTF's design
- Construction, operation and maintenance of the LEFTF subject to all approvals and permits
- Any required modification or realignment of the existing highway and other infrastructure necessitated by the LEFTF's design in accordance with TxDOT's design standards, subject to TxDOT's review and approval

Outdoor advertising will not be permitted.

The lease agreement will contain the terms and provisions specified at Texas Administrative Code Title 43, §21.307 and other terms to be negotiated following selection of the preferred proposer(s), and will provide that it may be terminated as provided in Texas Administrative Code Title 43, §21.308. Proposers should take note of Texas Administrative Code Title 43, §21.307(d)(1), stating that, upon termination of the agreement for any reason, the Department may require the selected proposer to: (1) dismantle and remove the freight transportation facility and to restore the ROW at no cost to the Department; or (2) hand back the facility to the Department in a condition complying with minimum specified criteria and standards.

1.5 Incorporation by Reference of Applicable Rules

TxDOT's rules governing the leasing of highway assets for a transportation facility, codified at Texas Administrative Code, Title 43, Chapter 21, Subchapter J, are hereby incorporated by reference into this RFP. To the extent any aspect of this RFP conflicts with any applicable rule provision, the applicable rule provision supersedes and controls.

1.6 Defined Terms

In this RFP, the term, "Business Day," shall mean a working day excluding weekends and State holidays.

"Equity Owner" shall mean (a) each entity that has a direct equity interest in the proposer (whether as a member, partner, joint venturer or otherwise); (b)

each entity proposed to have a direct equity interest in the proposer; and (c) each entity that will hold a 10% or greater indirect equity interest in the proposer. Notwithstanding the foregoing, if the proposer is a publicly traded company, shareholders with less than 10% interest in the proposer shall not be considered Equity Owners.

“Major Participant” shall mean each entity on the proposer’s team: (a) having primary responsibility for providing or arranging project or facility financing; (b) that is an Equity Owner; (c) having primary responsibility for planning; (d) having primary responsibility for design; and/or (e) having primary responsibility for construction.

2. FORMAT AND CONTENT OF THE RFP

Section 1 of this RFP describes the background and the Department's objectives and the concept envisioned.

Section 3 describes the anticipated schedule and stages in the procurement process, which are also illustrated in **Figure 3.1**. **Figure 3.2** illustrates the evaluation and selection process.

Section 4 sets out the general conditions for compliance.

Section 5 sets out the procedure for protests.

Section 6 describes TxDOT's rights and disclaimers.

Section 7 describes the minimum information proposers are required to include in their proposal and specifies the general submittal requirements for a responsive proposal.

Section 8 describes the evaluation criteria and procedures that the Department will apply in evaluating the proposals.

Section 9 describes the post-submittal procedures to be applied following selection of the preferred proposer(s), including negotiation and execution of a lease agreement.

Exhibit A includes all forms, certifications and additional information requested which should be completed and included as an Appendix to the proposal.

Exhibit B is a table summarizing the lease terms identified to-date by TxDOT

3. THE RFP PROCESS

3.1. RFP Schedule

Table 3.1 below sets out the schedule and key milestone dates for this RFP:

Table 3.1: RFP Schedule

Ref.	Milestone / Activity	Date(s) / Duration
1	Publish Notice /Issue RFP	<i>April 8th, 2011</i>
2	Cut-off date for interested entities to confirm intention (in writing) to respond to RFP	<i>April 29th, 2011, 3 pm CST</i>
3	Joint informational meeting with interested entities	<i>During week beginning: May 2nd, 2011</i>
4	Individual outreach meetings with confirmed proposers	<i>During week beginning: May 30th, 2011</i>
5	Cut-off date for submittal of questions / clarifications by proposers	<i>September 16th, 2011, 3 pm CST</i>
6	Proposal due date	<i>October 3rd, 2011, 3 pm CST</i>
7	Evaluation and selection	<i>October 2011</i>
8	Issue offer(s) to negotiate	<i>October 21st, 2011</i>
9	Begin negotiations	<i>November 2011</i>
10	Execute lease agreement or termination of process	<i>January 2012</i>

3.2. Meetings with proposers

3.2.1. Confirmed proposers

Entities interested in responding to this RFP are required to formally confirm their intention to respond in writing to the Department no later than 16 Business Days after the date of issue of the RFP. The proposer's authorized representative contact details (mailing address, email and telephone number) shall be included in the response. Any response received after the date specified in Table 3.1 shall not be considered. The responsive entities will thereafter be identified as confirmed proposers. Unless otherwise stated, all references to 'proposers' in the remainder of this RFP shall mean a reference to the entities who have confirmed their interest and intention to submit proposals in accordance with this Section 3.2.1. During the proposal period, communications between TxDOT and proposers will be in writing and/or through formal meetings to be held in accordance with this RFP or where otherwise considered necessary by TxDOT in order to address questions and clarifications pertaining to the RFP.

3.2.2. Informational Joint Meeting

The Department intends to hold a joint informational meeting with all proposers during the period indicated in Table 3.1 on a date designated by TxDOT. The informational meeting may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will be structured to permit interactive communication between all proposers and TxDOT. Written notice of the informational meeting will be sent to all proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform the interested entities of the manner of the meeting. Each participating entity is expected to attend with appropriate members of its proposed key management personnel.

3.2.3. Feedback

TxDOT will collate and assess the feedback received from the informational meeting and may update and revise the RFP as it considers necessary at its sole discretion. Any revision to the RFP would be issued as an Addendum as described Section 3.3.

3.2.4. Individual Outreach Meetings

After completion of the joint informational meeting process and the subsequent incorporation of feedback information into the RFP via an Addendum, if any, TxDOT anticipates and intends to conduct individual outreach meetings with each proposer. The meetings are scheduled for the period set out in Table 3.1 and will be held on such dates designated by TxDOT in writing to the proposers, to discuss issues and clarifications regarding the RFP and each proposer's proposal. TxDOT reserves the right to disclose to all proposers any issues raised during the individual outreach meetings, except to the extent that TxDOT determines, in its sole discretion, such disclosure would impair the confidentiality of an idea or would reveal a proposer's confidential business strategies.

The individual outreach meetings shall be subject to the following:

- (i) The meetings are intended to provide proposers with a better understanding of TxDOT's objectives and requirements in the RFP.
- (ii) TxDOT will not discuss with any proposer any proposal or idea other than the proposer's own.
- (iii) Proposers shall not seek to obtain commitments from TxDOT in the meetings or otherwise seek to obtain an unfair competitive advantage over any other proposer.

- (iv) If TxDOT becomes aware that a proposer is considering a proposal for a facility along a corridor that, to the best of TxDOT's knowledge, does not have the necessary ROW available for leasing, then TxDOT shall notify the specific proposer of the non-viability of that particular corridor and issue a general addendum to the RFP to notify all potential proposers of the unavailability of that corridor. TxDOT is not obliged to provide reasons for the corridor unavailability when issuing such notification.
- (v) No aspect of these meetings is intended to provide any proposer with access to information that is not similarly available to other proposers, and no part of the evaluation of proposals will be based on the conduct or discussions that occur during these meetings. Persons attending the pre-proposal individual outreach meetings will be required to sign an acknowledgment of the foregoing rules and to identify all participants from the proposer team whether attending in person or by phone.

3.2.5. Status of Dialogue during the Individual Outreach Meetings

During the individual outreach meetings, proposers may ask questions and TxDOT will endeavor to provide responses. However, any responses provided by TxDOT during the individual outreach meetings may not be relied upon by the proposers unless the questions were submitted in writing and TxDOT provided written responses in accordance with Section 3.4. Written copies of proposers' questions and TxDOT's responses will be provided in writing to all other proposers, except to the extent where such questions are deemed by TxDOT to contain confidential or proprietary information relating to a particular proposer's proposal or ideas.

3.2.6. Statements at Meetings

Nothing stated at any meeting or included in a written record or summary of a meeting will modify the RFP or any part of the RFP unless it is incorporated in an addendum to the RFP issued pursuant to Section 3.3 below.

3.3. Addenda

TxDOT reserves the right, in its sole discretion, to revise, modify or change the RFP and/or the process described herein at any time before the proposal due date specified in Table 3.1. Any such revisions will be implemented through issuance of addenda to the RFP.

Proposers will be notified of the issuance of such addenda and will be provided access to the website at which such addenda may be accessed. If any addendum significantly impacts the RFP, as determined in TxDOT's sole discretion, TxDOT may change the proposal due date specified in Section 3.1. The announcement of such new date will be included in the addendum. In addition, if the last date for proposer to submit questions regarding the RFP has occurred or has changed, the addendum will indicate the latest date for submittal of any clarification requests concerning the addendum.

Proposers shall acknowledge in their cover letter to their proposal receipt of all addenda to the RFP as well as question and answer responses. Failure to acknowledge such receipt may cause the proposal to be deemed non-responsive and be rejected. TxDOT reserves the right to hold informational meetings with proposers and/or pre-proposal individual outreach meetings with each proposer to discuss any addenda to the RFP or response to requests for clarifications. TxDOT does not anticipate issuing any addenda to the RFP later than five (5) Business Days prior to the proposal due date specified in Table 3.1. However, if the need arises, TxDOT reserves the right to issue addenda to the RFP after such date. If TxDOT finds it necessary to issue an addendum to the RFP after such date, then any relevant processes or response times necessitated by the addendum will be set forth in a cover letter to that specific addendum.

3.4. Questions and clarifications before proposal due date

During the proposal period proposers shall be responsible for reviewing the RFP and any addenda issued by TxDOT prior to the proposal due date specified in Table 3.1, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which any proposer fails to understand. Failure of any proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by TxDOT. Proposers shall submit, and TxDOT will respond to, requests for written clarification in accordance with this Section.

TxDOT will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a proposer to the authorized representative named in Section 7.4(g), by hard copy, facsimile or other electronic transmission in the prescribed format. Such comments or questions may be submitted at any time up to ten (10) Business Days prior to the proposal due date specified in Table 3.1 specified in this RFP or such later date as may be specified in any addendum to this RFP.

Questions and comments, including requests for clarification or interpretation, shall:

- (i) be sequentially numbered;
- (ii) specifically reference the relevant RFP section, Exhibit and page number, unless such request is of general application (in which case the request for clarification shall so note);
- (iii) if possible, not identify or contain in the body of the question the proposer's identity or any proprietary or confidential information.

Proposers will be limited to 50 questions per RFP version issued, or to such other number of questions as specified in an Addendum. If a question has more than one subpart, each subpart will be considered a separate question. Questions received after the 50th question will not be considered or responded to. Identification of need for corrections of typographical errors, incorrect cross references or internal inconsistencies within or among the RFP documents should be provided, but will be excluded from the above-referenced question limitation.

No telephone or oral requests will be considered, and e-mail requests must be followed up by a facsimile or other hard copy delivery. 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 this RFP. No requests for additional information or clarification to any person other than TxDOT's authorized representative named in Section 7.4(g) or, subject to compliance with this Section 3.4, will be considered.

Questions should be submitted in writing but only by the proposer's authorized representative, and must include the requestor's name, address, telephone and facsimile numbers, as well as the name of the proposer.

TxDOT's responses will be in writing and will be delivered to all other proposers unless the question(s) are identified by a proposer or deemed by TxDOT as containing confidential or proprietary information relating to proposer's proposal, in which case TxDOT will respond to the individual proposer only.

TxDOT reserves the right to disagree with a proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable law. Under such circumstances, TxDOT will inform the proposer and may allow the proposer to withdraw the question, rephrase the question, or have the question answered non-confidentially to all proposers or, if TxDOT determines that it is appropriate to provide a general response TxDOT will modify the question to remove information that TxDOT determines is confidential. TxDOT may rephrase questions as it deems appropriate and may consolidate similar questions.

TxDOT contemplates issuing multiple sets of responses at different times during the RFP process. TxDOT will respond to questions no later than three (5) Business Days after receipt. A consolidated, final set of questions and answers will be compiled and distributed five (5) Business Days prior to the proposal due date specified in Table 3.1.

3.5. Department queries after submittal of proposals

TxDOT will review and evaluate all responsive proposals that are submitted on time. An initial review of proposals may, where considered necessary, be followed by interviews to clarify elements of the proposals. TxDOT may require specific proposer personnel to attend such interview. Further information on the post-submittal process is described in Sections 8 and 9.

3.6. Selection; Further Proposal Development; Negotiation and Execution of Lease

TxDOT will evaluate the proposals in accordance with the evaluation criteria specified in Section 8. Following the final evaluation, TxDOT may select one or more proposers for further negotiation and execution of the lease agreement. During the negotiation stage, the selected proposer(s) may be subjected to a more rigorous review and required to provide more elaborate information or analyses on their proposed technologies and other aspects of their proposal.

The negotiations shall be conducted in accordance with the requirements specified in Section 9. Proposers' attention is drawn to Section 9.1 pertaining to development of their proposal during the negotiation stage and the limitations on permitted modifications.

A table summarizing the lease terms identified to-date by TxDOT is provided as Exhibit B to this RFP.

Figure 3.1: Illustration of Stages in the RFP Process

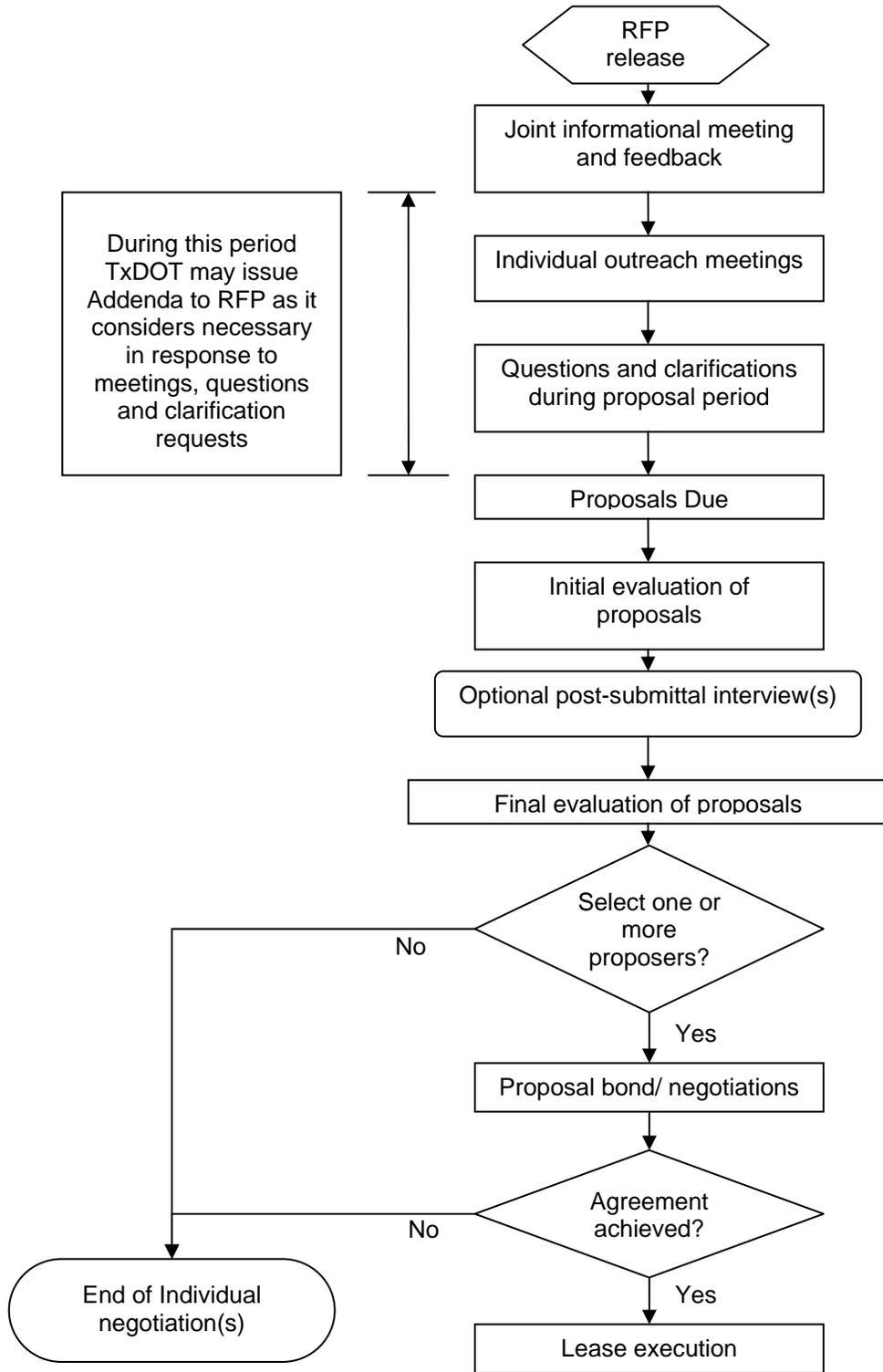
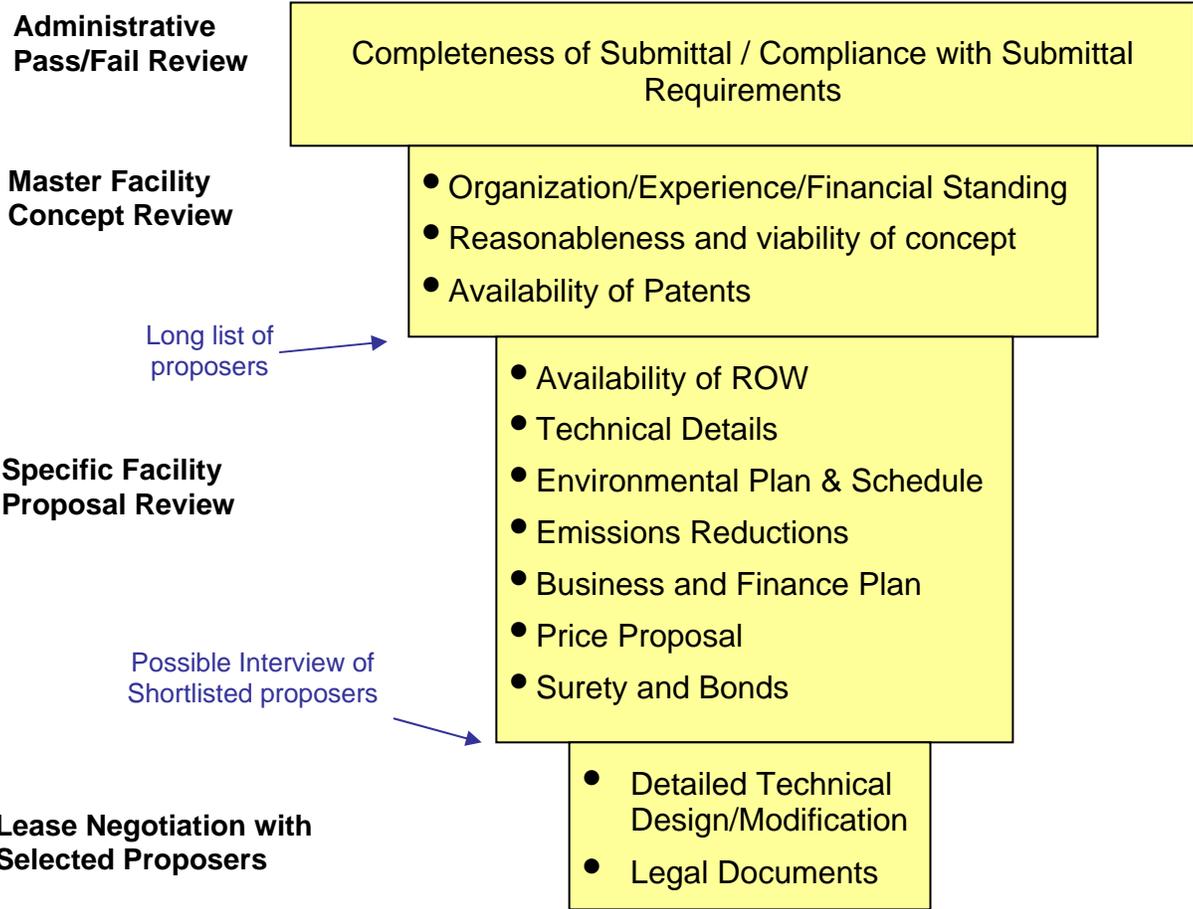


Figure 3.2: Proposed Proposal Evaluation Process



4. GENERAL CONDITIONS

4.1. Confidentiality /Public Information Act

All written correspondence, exhibits, photographs, reports, other printed material, tapes, electronic disks, and other graphic and visual aids submitted to TxDOT in response to this RFP are, upon their receipt by TxDOT, the property of the State of Texas, may not be returned to the submitting parties, and are subject to the Public Information Act, Chapter 522, Texas Government Code (the "Act"). The Act allows the public to have access to information in the possession of a governmental body through an open records request, unless the information falls under any of the Act's exceptions. Proposers shall clearly identify in their proposals any confidential or proprietary information by marking each page containing such information with a bold-font, large type label of "CONFIDENTIAL" in the header. Proprietary information identified by the proposer will be kept confidential by TxDOT to the extent permitted by law. TxDOT merely raises the exception on behalf of the proposer. TxDOT takes no legal position on disclosure. TxDOT will use best efforts to give the proposer an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information. In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a respondent for the disclosure of all or a portion of the information submitted in response to this RFP. TxDOT, at its discretion may publish for public examination any or all submittal material, other than that properly identified as proprietary by the proposer.

4.2. State and Federal Requirements; DBE Requirements

In anticipation of potential use of federal funding for the planning, development or construction of the LEFTF, the selected proposer(s) will be subject to all applicable State and Federal laws, rules and regulations. In particular, proposers should be aware of special regulations governing interstates and the need to include FHWA form 1273.

Additionally proposers will be subject to requirements governing the use of disadvantaged business enterprises ("DBEs"), including Title 49 CFR Part 26. Proposers should assume that the DBE participation goal for the planning, development and construction of the LEFTF would be 12.20%, subject to future revision by TxDOT based on the identified federal funding source. In order to preserve the ability of the proposer to use federal funding for the planning, development and construction of the LEFTF, proposers shall, in accordance with Texas Administrative Code, Title 43, §9.53, include in their proposals a Certification of DBE Goal Attainment (Form E) stating that the proposer will meet the DBE goal or document good faith efforts. Failure to provide the required DBE certification shall be

considered a breach of the proposal requirements and may render a proposal non-responsive.

Following conditional award of the lease agreement, the selected proposer(s) will be required to submit a detailed DBE performance plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the proposed LEFTF, including proposer's exercise of good faith efforts. The DBE performance plan will be subject to review, comment and approval by TxDOT prior to and as a condition of final award of the lease agreement. The selected proposer(s) will also be required to provide DBE commitments in the form required by TxDOT as DBE subcontractors are identified, in accordance with the approved DBE performance plan, and TxDOT's DBE program.

4.3. Environmental Approvals, NEPA and Other Federal Requirements

If federal funding is used for the planning, development or construction of the LEFTF, or if the LEFTF is constructed on the ROW of an interstate highway, then the National Environmental Protection Act ("NEPA") and other federal requirements shall apply. If no federal action is required then state environmental laws, rules and regulations shall apply. The selected proposer(s) shall be responsible for preparing any required environmental analysis and documentation, complying with all other applicable federal requirements, and obtaining any required federal approvals.

4.4. Language Requirement

All correspondence regarding the RFP, proposal, and possible lease agreement are to be in the English language.

4.5. Non-Collusion

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

4.6. Conflicts of Interest

No employee, consultant, principal or other person retained by or affiliated with a proposer shall offer, give, or agree to give a gift or benefit to a member of the Texas Transportation Commission or to any TxDOT employee. Notwithstanding this prohibition, such a person may pay for an ordinary business lunch or offer, give, or agree to give a token item that does not exceed an estimated value of \$25, where the item is distributed generally as a normal means of advertising.

No consultant providing consultant services to TxDOT with respect to this RFP may be a proposer or participate as an equity owner, team member,

consultant, or subconsultant of or to a proposer, or have a financial interest in any of the foregoing entities with respect to the subject of this RFP.

The provisions of this section do not address every situation that may give rise to a conflict of interest concerning this RFP. TxDOT retains the ultimate and sole discretion to determine on a case-by-case basis whether a conflict of interest exists and what actions may be appropriate to avoid, neutralize, or mitigate any actual or potential conflict, including disqualification of proposer. In determining whether a conflict of interest exists, TxDOT will consider the prohibitions established by rule for its Comprehensive Development Agreement program at Texas Administrative Code, Title 43, §27.8.

By submitting its proposal, each proposer agrees that, if an organizational conflict of interest is thereafter discovered, proposer must make an immediate and full written disclosure to TxDOT that includes a description of the action that proposer has taken or proposes to take to avoid or mitigate such conflicts. If proposer was aware of an organizational conflict of interest prior to the award of the lease and did not disclose the conflict to TxDOT, TxDOT may pursue remedies under the lease agreement, including termination of the award or, if applicable, the lease, for default.

4.7. Equitable Treatment of Proposers

During the process described herein (including the process for evaluation of ideas and proposals), TxDOT will make every reasonable effort to treat proposers equitably.

4.8. Intellectual Property Rights

Neither TxDOT nor the selected proposer(s) shall acquire any right, title or interest in any of the other's intellectual property rights, except that, in the event that TxDOT takes ownership of the LEFTF in accordance with Texas Administrative Code Title 43, §21.308(d), the selected proposer(s) shall, at that time, transfer to TxDOT any intellectual property rights needed for operation and ownership of the LEFTF.

All intellectual property rights in any guidance, specifications, instructions, toolkits, plans, drawings, databases, patents, patterns, models, designs or any other materials furnished to or made available to a proposer by or on behalf of TxDOT shall remain the property of TxDOT.

No proposer shall, without prior approval, use or disclose any TxDOT-owned intellectual property rights to any third party. Each proposer shall, at the time of proposal, hold all intellectual property rights needed for implementation of its proposed LEFTF, and the selected proposer(s) shall not infringe on any intellectual property rights of any third

party in developing, constructing or operating the LEFTF. Further, the selected proposer(s) shall agree to, during and after the term of the lease, indemnify and keep indemnified and hold TxDOT harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which TxDOT may suffer or incur as a result of the proposer's activities under the lease except where any such claim arises from:

- Items or materials based upon designs supplied by TxDOT
- The use of data supplied by TxDOT which is not required to be verified by the proposer(s) under any provision of the lease

TxDOT shall notify the selected proposer(s) in writing of any claim or demand brought against TxDOT for infringement or alleged infringement of any third party intellectual property rights related to the lease. The selected proposer(s) shall, at its own expense, conduct all negotiations and any litigation arising in connection with any claim for breach of intellectual property rights provided always that the proposer:

- Shall consult TxDOT on all substantive issues which arise during the conduct of such litigation and negotiations;
- Shall take due and proper account of the interests of TxDOT; and
- Shall not settle or compromise any claim without TxDOT's prior written consent (not to be unreasonably withheld)

5. PROTEST PROCEDURES

5.1. Applicability

This Section 5 sets forth the exclusive protest remedies available with respect to the RFP and prescribes exclusive procedures for protests regarding:

- a) allegations that the terms of the RFP are wholly ambiguous, contrary to applicable legal requirements, or exceed TxDOT's authority;
- b) a determination as to whether a proposal is responsive to the requirements of the RFP, as applicable;
- c) award of the right to attempt to negotiate a lease with TxDOT; and
- d) any other aspect of the RFP or the resulting selection of proposers and negotiation of a lease.

5.2. Required Early Communication for Certain Protests

Protests concerning the issues described in Section 5.1(a) may be filed only after the protester has informally discussed the nature and basis of the protest with TxDOT, following the rules of communication prescribed in the RFP.

5.3. Deadlines for Protests

Protests concerning the issues described in Section 5.1(a) must be filed as soon as the basis for the protest is known, but no later than twenty (20) Business Days prior to the proposal due date specified in Table 3.1, unless the protest relates to an addendum to the RFP, in which case the protest must be filed no later than five (5) Business Days after the addendum is issued (but in any event, prior to the proposal due date specified in Table 3.1).

Protests concerning the issues described in Section 5.1(b) must be filed no later than five (5) Business Days after receipt of the notification of non-responsiveness.

Protests concerning the issues described in Section 5.1(c) must be filed no later than ten (10) Business Days after the earliest of the notification of intent to award, and the public announcement of the selection of a proposer(s).

All other protests must be filed as soon as the basis for the protest is known.

5.4. Content of Protest

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. All statements shall be sworn and notarized.

5.5. Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to the address specified in Section 7.4(g), with a copy to the Office of General Counsel, Texas Department of Transportation, 125 E. 11th Street, Suite 702, Austin, TX 78701-2483, as soon as the basis for protest is known. The proposer filing the protest shall concurrently submit a copy of the protest to the other proposers whose addresses may be obtained from the proposal FTP site.

5.6. Comments from Other Proposers

Other proposers may file statements in support of or in opposition to the protest within seven (7) Business Days of the filing of the protest. TxDOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn.

5.7. Burden of Proof

The protestant shall have the burden of proving its protest. TxDOT may, in its sole discretion, discuss the protest with the protestant and other proposers. No hearing will be held. The protest shall be decided on the basis of written submissions.

5.8. Decision on Protest

The Assistant Executive Director for Engineering Operations or his designee shall issue a written decision regarding the protest within thirty (30) Business Days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, TxDOT may, in its sole discretion, make appropriate revisions to the RFP by issuing addenda.

5.9. Protestant's Payment of Costs

If a protest is denied, the proposer filing the protest shall be liable for TxDOT's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by TxDOT as a consequence of the protest.

5.10. Rights and Obligations of Proposers

Each proposer, by submitting its proposal, expressly recognizes the limitation on its rights to protest provided in this Section 5, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. IF A PROPOSER DISREGARDS, DISPUTES, OR DOES NOT FOLLOW THE EXCLUSIVE PROTEST REMEDIES PROVIDED IN THIS SECTION, IT SHALL INDEMNIFY AND HOLD TXDOT AND ITS OFFICERS, EMPLOYEES, AGENTS, AND CONSULTANTS HARMLESS FROM AND AGAINST ALL LIABILITIES, FEES AND COSTS, INCLUDING LEGAL AND CONSULTANT FEES AND COSTS, AND DAMAGES INCURRED OR SUFFERED AS A RESULT OF SUCH PROPOSER'S ACTIONS. EACH PROPOSER, BY SUBMITTING A PROPOSAL, SHALL BE DEEMED TO HAVE IRREVOCABLY AND UNCONDITIONALLY AGREED TO THIS INDEMNITY OBLIGATION.

6. TXDOT RIGHTS AND DISCLAIMERS

6.1. TxDOT Rights

TxDOT may:

- a) investigate the proposal of any proposer under consideration,
- b) require confirmation of information furnished by a proposer; and
- c) require additional evidence.

TxDOT reserves the right, in its sole discretion, to, at any time:

- a) Reject any or all of the proposals;
- c) Modify any dates set or projected in the RFP;
- d) Cancel, modify or withdraw the RFP in whole or in part;
- e) Conduct an investigation of any proposer's technical and other qualifications by contacting references or accessing public information.
- f) Terminate this RFP and commence a new RFP for part, or all, of this opportunity to attempt to negotiate a lease agreement;
- g) Terminate evaluations of proposals received at any time;
- h) Suspend or terminate negotiations at any time, elect not to commence negotiations with any responding proposer and/or engage in negotiations with the next highest ranked proposer;
- i) Modify the RFP process (with appropriate notice to proposers);
- j) Waive or permit corrections to data submitted with any response to the RFP until such time as TxDOT declares in writing that a particular stage or phase of its review of the responses to the RFP has been completed and closed;
- k) Permit submittal of addenda and supplements to data previously provided in a proposal pursuant to a request for clarification issued by TxDOT until such time as TxDOT declares that a particular stage or phase of its review of the responses to the RFP has been completed and closed;

- l) Appoint evaluation committees to review proposals, make recommendations and seek the assistance of outside technical experts and consultants in proposal evaluation;
- m) Disclose information contained in a proposal to the public as described herein;
- n) Waive deficiencies, informalities and irregularities in proposals; accept and review a non-conforming proposal or seek clarifications or modifications to a proposal;
- o) Not issue a notice to proceed after execution of the lease agreement;
- p) Disqualify any proposer that violates the terms of the RFP; and
- q) Exercise any other right reserved or afforded to TxDOT under the RFP and applicable law.

6.2. TxDOT Disclaimers

The RFP does not commit TxDOT to enter into any agreement. TxDOT and the State of Texas assume no obligations, responsibilities, liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by entities considering a response to and/or responding to the RFP. All of such costs shall be borne solely by each proposer. In no event shall TxDOT be bound by, or liable for, any obligations with respect to any proposed LEFTF until such time (if at all) as a lease agreement, in form and substance satisfactory to TxDOT, has been authorized and executed by TxDOT and, then, only to the extent set forth therein. In submitting a proposal in response to the RFP, proposer is specifically acknowledging these disclaimers.

7. SUBMITTAL REQUIREMENTS

Each proposal shall contain concise written material including plans and/or drawings enabling a clear understanding and evaluation of the capabilities of proposer and the characteristics and benefits of the proposal.

7.1. Proposal Components

Each proposal must consist of the following components, subject to the following page limits:

Component	Page Limit
Cover Sheet	1
Executive Summary	5
Table of Contents	2
Proposer Organization, Experience and Financial Standing	10
Master Facility Concept	20
Specific Facility Proposal	40
Business and Finance Plan for the Proposed LEFTF	20
Price Proposal	2
Surety and Bonds	3
Appendix of Completed Forms, Certifications and Supporting Documents	N/A

While there is no page limit for the Appendix of Completed Forms, Certifications and Supporting Documents, TxDOT does not commit to review such information other than that required to be provided, and the proposal evaluation process will focus on the body of the proposal and required information.

7.2. Proposal Content

An explanation of the information required in each component of the proposal is provided in the subsections below.

7.2.1. Cover Sheet

The cover sheet must contain the proposer's name, address and phone number.

7.2.2. Executive Summary

In the executive summary, the proposer is encouraged to concisely explain the key details of its proposal.

7.2.3. Table of Contents

Each proposal must contain a table of contents.

7.2.4. Proposer Organization, Experience and Financial Standing

- (i) Information About Proposer, Major Participants, and Other Subcontractors

Each proposal must contain the following information about the proposer:

- Organizational chart
- Partnering companies, subcontractors
- Work locations
- Manufacturing facilities (including locations)
- Qualifications and demonstrated technical competence related to the proposed LEFTF
- Previous relevant experience in design or manufacture
- Insurance coverages
- Statement of DBE commitment/Certification

The proposal must include in the Appendix a completed Form A-1. The proposer shall attach to Form A-1 the documents and information described in Form A-1 and shall identify its authorized representative(s) for all purposes relating to the proposal, the proposer's rights and obligations under the RFP, negotiations of the lease and receipt of any documents returned to the proposer.

The proposer shall list on Form A-1 the names, addresses, licensing information, and contact information for the proposer, each Major Participant, each Equity Owner and each subcontractor other than a Major Participant that has been identified. The proposal shall include Form A-2 regarding information about the proposer and Equity Owners. Form A-3 shall be provided for each Major Participant not providing Form A-2 and any other subcontractors identified. The proposal shall include copies of any Texas licenses held by the proposer and Major Participants, in accordance with Forms A-1 and A-2. As a condition to award of the right to attempt to negotiate a lease, the successful proposer must provide evidence that it and its Major Participants hold all necessary licenses.

The proposal shall include in the appendix copies of organizational documentation for proposer, Major Participant(s),

and Equity Owners, as well as other documentation required by Form A-2. If any such entity has not yet been legally formed or if modification to the organizational documents for such entity is contemplated prior to execution of the lease agreement, provide a brief description of the proposed legal structure and draft copies of the underlying documents. If a joint venture, limited liability company or partnership agreement has not been executed or will require amendment, the proposal shall include a subscription agreement, memorandum of agreement or other teaming agreement.

(ii) Responsible proposer questionnaire

The proposal shall include in the appendix Form B regarding the responsibility of the proposer and the Major Participants.

(iii) Industrial Safety Record

The proposal shall include on Form C an industrial safety record in the United States if available, otherwise worldwide, covering operations by the proposer, its Equity Owners and all other Major Participants that the proposer anticipates will perform construction work. If the proposer or an Equity Owner is a newly formed entity, Form C is not required for such proposer or Equity Owner but is required from its other Equity Owners.

(iv) Key Personnel Resumes

The proposal shall include in the Appendix brief resumes to identify the roles and responsibilities for Key Personnel where possible.

(v) Non-Collusion Affidavit

The proposal shall include in the appendix Form D certifying that the proposal is not the result of and has not been influenced by collusion.

(vi) DBE Forms

The proposal shall include in the appendix a certification concerning DBE requirements in the form of Form E.

(vii) Financial Statements

Financial statements for Equity Owner(s) shall be provided in the appendix for Fiscal Years 2008, 2009 and 2010.

Financial statements must be provided in U.S. dollars. If financial statements submitted are prepared in accordance with accounting standards other than U.S. Generally Accepted Accounting Principles (U.S. GAAP), the proposer shall include a letter from the entity's chief financial officer, treasurer, or certified public accountant discussing the areas of the financial statements that would be materially affected by a conversion to U.S. GAAP. The proposer shall also provide a letter that describes the changes required to recalculate the proposer's financial statements in accordance with U.S. GAAP. Specifically, this letter shall address the extent to which conversion to U.S. GAAP materially affects major line items in the income statement, balance sheet and cash flow statement of its financial statements, and the financial responsibility requirements in Section 7.2.4(viii). Proposers shall provide the most recent audited financial statements required hereunder as a separate volume to the proposal.

If audited financials are not available for an Equity Owner, the proposal shall include unaudited financials for such member, certified as true, correct and accurate by the chief financial officer or treasurer of the entity. Proposers are advised that if any Equity Owner of the selected proposer's team does not have audited financials, TxDOT reserves the right to require a guarantee of the lease to be provided by a separate entity acceptable to TxDOT.

(viii) Financial Responsibility and Surety or Financial Institution Letter

A. Proposer shall have the adequate financial capacity, strength, and ability to maintain a reasonable financial position in order to carry out the obligations of the lease.

B. The proposal shall include in the Appendix a letter from a surety or financial institution indicating that the proposer is able to obtain a letter of credit, line of credit, or bonding capacity in an amount proportional to the size of the proposed LEFTF but, in any event, not less than \$5 million per mile of corridor leased. The purpose of this letter is to demonstrate that the proposer has financial strength to develop the proposed LEFTF. This letter is not intended to be a project performance or completion bond.

a. The letter must be obtained from a lending or financial institution that has at least an A rating or higher by two or more credit rating agencies or the substantial equivalent thereof (e.g. at least BBB- by

A.M. Best). Evidence regarding bonding or credit capacity should take the form of a letter from a lending, financial, or insurance company indicating that such capacity exists for the proposer. Letters indicating "unlimited" bonding or credit capacity are not acceptable. The letter must specifically state that the surety/insurance company has read this RFP and evaluated the proposer's backlog and work-in-progress in determining its bonding capacity; and

- b. In instances where the proposal contains descriptions of proposed or anticipated changes in the financial condition of the proposer or any other entity for which financial information is submitted as required hereby for the next reporting period, a certification that the surety's analysis specifically incorporates a review of the factors surrounding such changes and identifying any special conditions which may be imposed before issuance of a surety bond or letter of credit.

(ix) Additional Financial Information

The proposal shall include the following information for the proposer, or if the proposer is a partnership, joint venture, limited liability company or similar association, then any Equity Owners with at least a twenty percent (20%) interest in the proposer (whether direct or through one or more newly formed intermediaries), and any guarantors:

- A. Credit rating and related information from a major U.S. based credit rating agency during the most recent twelve (12) month period, if available.
- B. The most recent Securities and Exchange Commission 10-K and 10-Q reports and any 8-Ks filed (if publicly held)
- C. The following list identifies certain items that TxDOT would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of TxDOT, any failure to disclose a prior or pending material change may result in disqualification from further participation in the RFP process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the proposed LEFTF, and the projected full

extent of the changes likely to be experienced in the periods ahead. It is recommended that, when appropriate, the affected entity provide a discussion of measures that would be undertaken to insulate the proposed LEFTF from any recent material changes, and those currently in progress or reasonably anticipated in the future:

- a. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;
- b. A downward change of twenty percent (20%) in the value of the shareholder equity;
- c. A sale, merger or acquisition exceeding ten percent (10%) of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;
- d. A downward change in credit rating, if available, for the affected entity, a related business unit, or parent corporation of the affected entity;
- e. Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit, or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
- f. The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity has either (1) incurred a net operating loss; (2) sustained charges exceeding five percent (5%) in the value of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; (3) implemented a restructuring or reduction of ten percent (10%) of total salaried personnel; or (4) disposed assets exceeding ten percent (10%) of the then shareholder equity since the submission of the proposal; and
- g. Other events known to the affected entity, a related business unit, or parent corporation of the affected

entity which represents a material change in financial condition since submission of the proposal or may be pending in the next financial reporting period.

- D. Provide a letter from the chief financial officer, treasurer, or certified public accountant for each entity for which financial information is submitted that identifies all off-balance sheet liabilities.

Using the audited financial statements for Fiscal Year 2009 (and more recent financial statements, if any), the financial strength of each Equity Owner within the proposer will be evaluated on a pass/fail basis as set forth in Section 8.1. If a material change has occurred in proposer's financial position, TxDOT may, in its sole discretion, calculate financial ratios and perform such other tests which it deems appropriate to determine proposer's financial strength, pursuant to the additional information that may be required by proposer under this Section.

The information required under this Section should be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in the proposer's organization.

- (x) Organizational Conflict of Interest Disclosure

The proposal shall include on Form F a certification 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.

- (xi) Certification Regarding Equal Employment Opportunity
In order to preserve the opportunity for federal funding, the proposal shall include Form G, regarding participation in contracts or subcontracts subjects to the equal opportunity clause and the filing of required reports.

7.2.5. Master Facility Concept

The proposer is required to submit its proposed Master Facility Concept for the LEFTF in general (i.e. not necessarily associated with a specific area or location), which should describe the general technology contemplated, including information on patents. This information should be provided in a binder clearly titled "[proposer Name]: Master Facility

Concept.” The proposer should specifically cover the following subjects:

(i) Facility / System configurations and specifications

- General description of system, including proposed technologies and expansion potential
- Information from test facilities or operational facilities
- Schematics and drawings depicting the configuration of the proposed transportation facility including, if appropriate, vehicles and guideway details
- Description of power source and power distribution system description
- Provisions for system failure, recovery, emergencies and accidents
- Vertical and horizontal clearances needed/desired
- Provisions for operation and maintenance, including vehicle storage
- Provisions for at-grade or separated crossings with other modes.
- Proposed disabled vehicle recovery operations
- Patent details, i.e. status of any patents already held on proposed technology as well as patents pending

(ii) Performance

- Energy consumption, at maximum acceleration with gross weight and at design cruise speed (level grade) (KW)
- Air emissions (lbs per freight ton-mile)

(iii) Freight

- Type of freight, market, demand and revenue potentials
- Terminus requirements and operations

7.2.6. Specific Facility Proposal (SFP)

The proposer is required to submit details of its proposed LEFTF in the specific ROW corridor(s) of the proposer's choice. Proposers shall present a detailed description of their approach to designing,

developing and obtaining all required environmental documents and permits, private property rights or licenses, financing, constructing, operating and maintaining their proposed LEFTF. For each SFP, key elements of the proposed LEFTF, including but not limited to crossings of other transportation facilities, areas with ROW constraints, as well as ROW entrance and exit points, proposers should include engineering drawings to an appropriate level of detail necessary to explain their proposed design and demonstrate that highway operations and safety concerns have been adequately addressed.

This information should be provided in a binder clearly titled “[proposer Name]: Specific Facility Proposal.” The proposer should specifically cover the following subjects:

(i) ROW and Layout for SFP

- Location, ROW / Land area needs, including any ROW requirements for operation and maintenance of the facility
- Description of the property that is proposed to be leased
- Layout plans showing existing highway, ROW required, facility layout, terminal layout, details at points of conflict and other relevant details, including operation and maintenance facilities [level of design up to 30%]
- Schematic designs and architectural designs sufficient to show the extent and nature of the proposed LEFTF
- Identify intermodal connectivity at transfer facilities, details at terminals as they affect ROW requirements and potential impacts on adjacent lands
- Potential effects on the highway facility, including changes in access, clear-zones, lines of sight, signage, drainage, vegetation and safety

(ii) Technical Details

- Proposed unique standards and specifications
- Estimated capital, operations and maintenance costs
- Schedule for implementation
- Equipment required for construction, operation, and maintenance
- Proposal for operating and maintaining the facility

- Proposal for dismantling and removal at expiration of lease term
- Proposals for traffic safety and management
- Plan for coordination with highway maintenance and operations
- Estimated air emissions, including regulated pollutants and carbon dioxide, of the proposed transportation facility and a comparison to the estimated emissions from equivalent truck transportation, and impacts on existing air quality conditions in the area of the proposed facility and, if applicable, other areas of Texas (support with documentation in the Appendix)
- Plan for environmental clearances and permits

7.2.7. Business and Finance Plan for the Proposed LEFTF

Proposers shall submit a detailed financial plan and cash flow model, including cost methodology, for the proposed LEFTF. The submittal should include all assumptions regarding the division of labor at any transfer facility. Proposers are required to demonstrate understanding of costs, regulations, and constraints associated with current and future intermodal operations. In particular, the financial analysis should demonstrate an understanding of any drayage costs (including assumed rates) that might be associated with the proposed operations at origin and destination points. The total financial feasibility assessment should lead to an estimate of cargo volumes necessary to make the proposed system financially independent and viable.

Proposers are required to submit a binder comprising this element of the proposal clearly titled “[proposer Name]: Business and Finance Plan for the TxDOT Low Emission Freight Transportation Initiative.” Proposers must include a baseline financial model for the term of the lease in the Appendix, including an electronic copy of the spreadsheet used to develop this information. The proposer should specifically cover the following subjects:

(i) Basic Concept

- Type of Cargo /Clients
- Length of Movement (typical or range)
- General Description of Service
 - (Urban to Urban, Port to remote terminal, etc.)

(ii) System Costs

- Terminal Loading and Unloading
 - Capital
 - Leasehold
 - Operations and Maintenance
- Vehicle Costs
 - Capital
 - Operations and Maintenance
- Guideway Costs
 - Capital
 - Operations and Maintenance
- Other facilities costs
 - Capital
 - Operation and Maintenance
- Additional Patent Rights (describe and quantify costs)

(iii) System Financing

- Proposed method for financing the proposed LEFTF

(iv) Potential Revenues

- Anticipated Fees (In Unit Costs of per mile, per ton mile, or per TEU)

(v) Demand Forecasts

- Tons per year
- Vehicles per year

(vi) Economic Development Potential

- Describe impacts on Texas
 - Manufacturing system (jobs and income)
 - Impact of Transporting Goods (reduced costs/additional jobs)

(vii) Technology advantages

- Brief description of what advantages this system has over existing freight services already employed in Texas.

7.2.8. Price Proposal

The proposers shall submit a Price Proposal for the proposed LEFTF, which shall comprise a firm and binding stream of annual payments in year-of-expenditure dollars per acre of ROW to be payable to TxDOT for the duration of the lease agreement, and any cash, services, tangible or intangible property offered in consideration. The Price Proposal shall be compatible with the financial model and should explain both the amount to be paid under the lease and the payment schedule.

7.2.9. Surety and Bonds

The Department requires proposers to include information about how the proposer would accommodate the requirements for a performance bond, payment bond and removal bond as required by Texas Administrative Code, Title 43, §21.307(d)(4)&(5).

Proposers will also be required to obtain a written commitment from an appropriate financial institution(s) for a proposal bond for an amount not less than \$250,000. Proposers are required to provide a proposal bond as a pre-condition to commencement of the post submittal negotiations, but not prior to selection for negotiations.

7.3. Submittal Format

An 8 ½ by 11-inch format is required for typed submissions and no more than an 11 by 17-inch format is required for drawings. Submittals must be bound with all pages in a binder sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than 12-point. The use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the proposal. Each 11 by 17-inch foldout will be considered one page. Proposer shall provide 1 (one) original and 10 (ten) certified copies of the proposal in cardboard containers. The containers that include the required hard copies of the proposal shall be labeled “[proposer Name]: Copies of Proposal for the TxDOT Low Emission Freight Transportation Facilities Initiative.”

The proposal shall be clearly indexed. Each proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or undocumented assumptions. Any failure to

provide all the information and all completed forms in the format specified, or the submittal of a proposal subject to any reservations, qualifications, conditions or assumptions may result in rejection of the proposal as not being a responsive proposal.

Additionally, an electronic copy shall be included in the cardboard container with the original proposal. The electronic copy shall be in Adobe Acrobat (.pdf) format on CD(s); provided, however, that:

- (i) Proposal forms may be submitted in either Adobe Acrobat (.pdf) or Word format; and
- (ii) 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.

Economy and relevance of presentation is strongly encouraged, with promotional materials, brochures, and custom-made binders discouraged in the submittals.

7.4. Communications Rules

The rules of communications provisions in the RFP shall apply starting on the date the RFP is issued, and ending on the earliest of (i) execution and delivery of a lease agreement, (ii) rejection of all proposals by TxDOT (iii) cancellation of the RFP or (iv) cancellation or termination of negotiations with selected proposer(s). These rules are designed to promote a fair and unbiased process. Contact includes face-to-face, telephone, facsimile, electronic mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

- a) No proposer nor any of its team members may communicate with another proposer or its team members with regard to the RFP or either team's proposal, except that
 - (i) subcontractors that are shared between two or more proposer teams may communicate with their respective team members so long as those proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams, and
 - (ii) this prohibition does not apply to public discussions regarding the RFP at any TxDOT sponsored informational meetings.

- b) Each proposer shall designate one representative responsible for contacts with TxDOT, and shall correspond with TxDOT regarding the RFP only through TxDOT's authorized representative named in Section 7.4(g) and proposer's authorized representative.
- c) No proposer or representative thereof shall have any ex-parte communications regarding the RFP or the opportunity for lease of TxDOT ROW described herein with any member of the Texas Transportation Commission, or with any TxDOT staff, advisors, contractors or consultants involved with this RFP, except for communications expressly permitted by the RFP or except as approved in advance by the TxDOT authorized representative named in Section 7.4(g) or the TxDOT Executive Director, in his/her sole discretion. Proposer requests to contact TxDOT personnel or consultants shall be submitted in writing and shall identify (1) the person(s) the proposer intends to contact; and (2) the specific purpose and subject matter of the proposed contact. 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) Any communications determined by TxDOT, in its sole discretion, to be improper may result in disqualification.
- e) Any official information regarding this RFP will be in writing, on TxDOT letterhead, and signed by TxDOT's authorized representative named in Section 7.4(g) or his designee.
- f) TxDOT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein and in Section 3. Proposers shall note that no correspondence or information from TxDOT or anyone representing TxDOT regarding the RFP or the RFP process in general shall have any effect unless it is in compliance with this Section 7.4 and Section 3.
- g) TxDOT's authorized representative for purposes of this RFP is Mark Tomlinson, P.E., Director Texas Turnpike Authority Division. All communications with TxDOT shall be emailed to Mr. Tomlinson as follows:

Mark E. Tomlinson, P.E.
Director, Texas Turnpike Authority Division
7600 Chevy Chase Drive, Building Two, Suite 400
Austin, TX 78752

[Tel: 512-936-0980;
Fax: 512-904-1601;
email:mark.tomlinson@txdot.gov]

cc to Roger Beall at Roger.Beall@txdot.gov; and
Rich O'Connell at Rich.OConnell@txdot.gov

7.5. Modifications, Withdrawals and Late Submittals

7.5.1. Modifications to a Proposal

A proposer may modify its proposal in writing prior to the specified time of the proposal due date specified in Table 3.1. The modification shall conform in all respects to the requirements for submission of a proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original proposal and shall specifically state that the modification supersedes the previous proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so TxDOT can accurately identify the final proposal. The modification must contain complete proposal sections, complete pages or complete forms as described in Section 7.1 and 7.2. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

7.5.2. Withdrawal; Validity of Proposals

A proposer may withdraw its proposal at any time prior to the proposal due date specified in Table 3.1 by means of a written request signed by the proposer's authorized representative. Such written request shall be delivered to the address in Section 7.4(g). 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 specified in Table 3.1.

No proposal may be withdrawn on or after the proposal due date specified in Table 3.1. Proposals shall initially be valid for a period of 180 days (Proposal Validity Period) after the proposal due date specified in Table 3.1. TxDOT shall have the right to extend the Proposal Validity Period for up to an additional 90 days if negotiations have not begun within 180 days after the proposal due date specified in Table 3.1.

A proposer shall not withdraw its proposal during the Proposal Validity Period, which shall be extended by an additional 90 days, if notified by TxDOT that it is selected for negotiations of a lease agreement.

Any proposer may elect, in its sole discretion, to extend the validity of its proposal beyond the time periods set forth above.

7.5.3. Late Submittals

TxDOT will not consider any proposals received after the proposal due date specified in Table 3.1. Modification or withdrawal requests received after the proposal due date specified in Table 3.1 will be returned to proposer without consideration or evaluation.

7.5.4. Proposal Cost

A proposer's cost of preparing the proposal and any costs incurred during negotiations shall be borne by the proposer.

7.5.5. Proposal Due Date

The deadline to submit responses to this RFP is specified in Table 3.1 (the proposal due date) Proposals that arrive after the proposal due date will not be reviewed.

Proposals should be delivered by hand delivery, U.S. mail or overnight delivery service on or before the proposal due date to the following address:

Mark E. Tomlinson, P.E.
Director, Texas Turnpike Authority Division
7600 Chevy Chase Drive, Building Two, Suite 400
Austin, TX 78752.

8. EVALUATION CRITERIA

All Responsive proposals received on or before the proposal due date specified in Table 3.1 will be evaluated and ranked in accordance with Texas Administrative Code, Title 43, §21.305, and as further described in the following sections:

8.1. Pass-Fail Evaluation

The initial evaluation of proposals will be based on a pass-fail test of the information submitted using the following criteria:

- Administrative Compliance with RFP
 - All elements required by this RFP are included
 - Commitment letters from a surety or financial institution meeting the requirements of Section 7.2.4(viii).B
 - Evidence of ability to provide a Proposal Bond

Each proposer, by submitting a proposal, acknowledges that provision of surety or financial institution commitment letters will not, in and of itself, qualify the proposer financially, and that the factors to be considered by TxDOT in reviewing financials include the ability to manage cash flow and the fact that the finance community may rely on the proposer's financials in evaluating and rating any revenue bonds to be issued to finance the Specific Facility.

8.2. Detailed Evaluation

8.2.1. Proposer Organization, Experience and Financial Standing

Proposer Organization

- Comprehensiveness of proposer team including but not limited to reasonable assessment of capability to design, manufacture, construction, finance and operate the proposed LEFTF.
- Legal standing of proposer team.
- Clear definition of responsibilities among team members.

Experience

- The experience and qualifications of key individual members of the proposer's project organization will be considered for relevance and competence. The relevance of business and technology experience and background of the proposer organization will be evaluated.

Financial Standing

- The business structure of the proposer's organization will be evaluated for relevance, robustness, financial strength, ownership.
- Details of proposed investors and funding sources.
- An indication of the proposer's asset value and capacity to finance the system development efforts will be taken into account.

8.2.2. Master Facility Concept

Reasonableness and Viability of Concept / System

- The proposal will be evaluated for reasonableness and technical viability or feasibility, i.e. the extent to which there is a reasonable probability of technical feasibility of the proposed technology
- General methodology for implementation will be reviewed, including evidence of viability from test facilities or operational facilities.
- The viability and sustainability of concept will be evaluated with regard to existing and potential market.

Availability of Patents

- Description of any patents already controlled by proposer for this technology would be taken into consideration together with description of patents currently held by others that the proposer would need to secure rights to, in order to implement the concept.

8.2.3. Specific Facility Proposal (SFP)

Proposers should note that if they have submitted more than one SFP for near term development, each will be evaluated as a separate near term proposal against all responsive proposals.

Availability of ROW

- The SFP will be evaluated to verify if there is adequate width of TxDOT-owned ROW available in the selected corridor for the proposed operation without impacting existing or planned highway operations or safety.
- The SFP will be evaluated for its proposed engineering treatment at particular conflict points.

- The SFP will be evaluated to check the extent of additional ROW likely to be required for the existing highway facility in the future and how this would be achieved in concert with the proposed LEFTF.

Technical Details

- Design details including viability and reasonableness of system cost estimates for construction, operation, and maintenance.
- Reasonable and likelihood of achieving project goals within commercially realistic budgets.
- Proposed operations and maintenance plan, including a clear division of responsibilities between standard TxDOT operations throughout the corridor and the proposer's activities in support of its Specific Facility.

Environmental Clearance / Plan

- Proposer's plan and methodology for obtaining any necessary environmental clearances will be evaluated. The extent to which the Proposal (a) is feasible taking into account the process and procedures required; (b) protects TxDOT's risks under a future lease agreement

Schedule

- The schedule for the SFP will be evaluated, including details of key milestones and activities for implementation. . Aspects to be evaluated will include (a) feasibility; (b) ability to implement early; (c) demonstration of understanding of key constraints.

Level of Reduction in Emissions

- Methodology for calculating and degree of net reduction in emissions (including the reduction in emissions from existing truck traffic resulting from replacement by the new LEFTF and any associated air quality benefits resulting from resulting improvements in traffic flow; emissions from the LEFTF itself, including any emissions from equipment supplying the LEFTF's energy source) and associated improvement in local or statewide air quality.

8.2.4. Business & Financial Plan

Financial Model / Plan

- Reasonableness of assumptions in the financial model, including revenue forecasts, total development, design and construction as well as implementation costs and operational and maintenance costs

Economic Development Potential

- Significance of market need and economic development potential, size of market and analysis of commercial advantage offered to freight carriers and / or shippers.
- Size of Texas-based economic development potential for manufacture and operation of system.
- The probability that implementation will result in significant advances, leading to additional extramural funding (from industry) and/or technology transfer.

8.2.5. Price Proposal

Payment Schedule / Annual Lease Payment

- The present value of annual lease payments and other consideration offered will be evaluated

8.2.6. Surety and Bonds

Performance Bond

- The capability to provide a performance bond will be evaluated; and
- The methodology for calculating value of performance bond or security

Proposal Bond

- Capability to provide a proposal bond will be evaluated

Removal Bond or Removal Reserve Account

- The proposal will be evaluated for methodology for calculating and value of removal costs and the amount of removal bond or proposal for a removal reserve account

8.3. Clarification Interviews

TxDOT reserves the right to shortlist and invite shortlisted proposers for interviews to clarify their proposals and to provide any further supplementary information that TxDOT considers necessary to enable final evaluation of the proposal. Alternatively, TxDOT may proceed directly from the shortlist to Final Evaluation.

8.4. Final Evaluation

TxDOT will evaluate and rank the shortlisted proposals in accordance with the criteria set out in Table 8.1 below:

Table 8.1: Evaluation Criteria

Criteria
<u>PROPOSER ORGANIZATION, EXPERIENCE AND FINANCIAL STANDING</u>
<ul style="list-style-type: none"> • Proposer Organization • Experience • Financial Standing
<u>MASTER FACILITY CONCEPT</u>
1. Reasonableness and Viability of Concept / System
2. Availability of Patents
<u>SPECIFIC FACILITY PROPOSAL</u>
3. Availability of ROW
4. Technical details
5. Environmental Clearance / Plan
6. Schedule
7. Level of Reduction in Emissions
<u>BUSINESS & FINANCE PLAN</u>
8. Financial Model / Plan
9. Economic development Potential

Criteria
<u>PRICE PROPOSAL</u>
10. Payment Schedule (Present Value Calculation)
<u>SURETY AND BONDS</u>
11. Capability to provide performance bond/security
12. Capability to provide proposal bond
13. Methodology for calculating removal costs and proposal for removal bond and/or reserve account

Proposers should note that the above criteria are not listed in any particular order of importance or weighting. However, when evaluating the proposals the Evaluation committee may assign more weighting to certain aspects than others.

The Evaluation Committee will meet at the beginning of the proposal review process to establish the weightings as per TxDOT standard procedures. It is anticipated that the heaviest emphasis will be placed on Price Proposal, Specific Facility Proposal, and Master Facility Concept in that general order.

8.5. Invitation to Negotiation

Following the final evaluation TxDOT will shortlist proposals and rank them in accordance with the above evaluation criteria. TxDOT may select the highest ranked proposer(s) for initial negotiation and execution of the lease.

TxDOT will notify the remaining proposers of its decision on the preferred proposer(s).

TxDOT may elect to enter into initial negotiations with next ranked proposer or proposers at the same time subject to availability of staff and resources.

9. NEGOTIATION / PROPOSAL DEVELOPMENT AND LEASE EXECUTION

9.1. Proposal Development

Proposers are advised that the negotiation stage will involve preparation of a term sheet, development and elaboration of necessary technical details as may be required by TxDOT, and formalization of the proposal for the execution of a lease agreement.

If, during the development of the technical details, specific conflicts with TxDOT policy or design factors are identified or become apparent, which dictate a need for design modifications to the proposer's design of the proposed LEFTF, TxDOT will not unreasonably reject such design modifications provided a detailed justification report is submitted and there is no change to other aspects of the SFP .

9.2. Proposal Bond

TxDOT will require the proposal Bond to be in place / executed as a pre-condition to starting the negotiation stage. TxDOT will have the right to exercise the proposal bond to cover their expenses if termination occurs because the proposer does not negotiate in good faith.

9.3. Lease Agreement

Key terms of the proposed lease agreement anticipated by the Department are summarized in Section 1.4.5 and listed with further explanation and description in the draft term sheet included in Exhibit B. Proposers are advised that Exhibit B is included only as a guide to potential items anticipated to be included in the lease agreement. It is not intended to be a comprehensive list of all possible terms to be included in agreement. The Department expects that other terms not identified in Section 1.4.5 or Exhibit B may also be considered by either party during negotiations.

Following the payment / execution of the proposal bond, TxDOT and proposer will attempt to negotiate and execute a lease agreement within three (3) months from commencement of the negotiation period.

Proposers should note that TxDOT will only execute the lease agreement subject to approval of the Federal Highway Administration (or other federal agency, as appropriate) if any federal funding is involved, and any other necessary governmental approvals and permits being obtained.

9.4. Cancellation

TxDOT reserves the right to cancel and terminate negotiations at any time at its sole discretion for any reason.

9.5. Environmental Clearance, Governmental Approvals and Permits

The proposer will be required to submit its final plan for securing the necessary environmental approvals within ten (10) business days of conclusion of project scope. Schedule changes from the original proposal will only be entertained to the extent that they can be demonstrated to be necessary to accommodate design modifications made necessary following the full design review during the early stages of the negotiation phase.

9.6. Technical Details

The proposer will be required to develop (at its own expense) and provide further information on, at a minimum, the following technical aspects for the LEFTF for inclusion in the lease agreement:

- Right of Way plans
- Design and Construction Standards and Specifications including TxDOT oversight
- Specific Facility design details up to at least 30% completion for typical sections.
- Similar 30% details at points of conflict with existing highway and other key features
- Schedule for implementation
- Plan and schedule for environmental approvals
- Reporting requirements – Technical, Operational and Financial
- Handback Requirements
- Operational and Maintenance Requirements including TxDOT oversight

Exhibit A: Forms, Certificates and Supporting Documents

Description	Title / Reference
Proposal Letter	Form A-1
Information about Proposer Organization	Form A-2
Information about Major Participants, Equity Owners and Subcontractors	Form A-3
Responsible Proposer Questionnaire	Form B
Industrial Safety Record	Form C
Non-Collusion Affidavit	Form D
DBE Certification	Form E
Organizational Conflict of Interest	Form F
Certification regarding Equal Employment Opportunity	Form G
Key Personnel - Resumes	
Other Information Requested / Supporting Documents	

Form A-1

TEXAS DEPARTMENT OF TRANSPORTATION
REQUEST FOR COMPETING PROPOSALS
FOR LEASE OF TxDOT-OWNED RIGHT-OF-WAY
TO IMPLEMENT LOW-EMISSION FREIGHT TRANSPORTATION FACILITIES

PROPOSAL LETTER

Proposer: _____

Proposal Date: _____

Roger Beall, P.E., Advanced Project Development Director,
Texas Turnpike Authority Division, Texas Department of Transportation,
7600 Chevy Chase Drive, Building 2, Suite 400,
Austin, Texas 78752

The undersigned (“Proposer”) submits this detailed proposal (this “Proposal”) in response to that certain Request for Proposals (the “RFP”) issued by the Texas Department of Transportation (“TxDOT”), an agency of the State of Texas, dated April 8th, 2011 as amended, to plan, develop, design, construct, finance, maintain, and operate a Low Emission Freight Transportation Facility wholly or partially within TxDOT-owned right-of-way, as more specifically described herein (the “Project”). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

In consideration for TxDOT 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 leave in the brackets; otherwise delete the entire phrase.]:**

- A. to keep this Proposal open for acceptance for 180 days after the proposal due date specified in Section 3.1 of the RFP 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 TxDOT, in TxDOT’s sole discretion; and
- B. if this Proposal is accepted, to provide security (including bonds, insurance and letters of credit) for the negotiation period and subsequent lease agreement as stipulated in the RFP.

If selected by TxDOT, proposer agrees to do the following or, to cause the proposer to do the following: (a) if requested by TxDOT in its sole discretion, enter into good faith negotiations with TxDOT regarding the terms of the lease, in accordance with the requirements of the RFP; (b) enter into the negotiated lease and satisfy all other conditions on award of the lease; and (c) perform its obligations as set forth in the negotiated lease, including compliance with all commitments contained in this Proposal.

The following individual(s) is/are authorized to enter into negotiations with TxDOT on behalf of the Proposer in connection with this RFP, the Project, and the lease:

Name: _____ Title: _____

Name: _____ Title: _____

Name: _____ Title: _____

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

- Executive Summary
- Table of Contents
- Proposer Organization, Experience and Financial Standing
- Master Facility Concept
- Specific Facility Proposal
- Business and Finance Plan for the Proposed LEFTF
- Price Proposal
- Surety and Bonds
- Appendix of Completed Forms, Certifications and Supporting Documents

Proposer acknowledges receipt of the following addenda to the RFP and sets of questions and responses:

[List addenda, if applicable, and the sets of questions and responses.]

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions, or conditions. Proposer further certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP, has reviewed all materials posted on any electronic file transfer site created by TxDOT in connection with the RFP,

any addenda to the RFP, and TxDOT's written responses to any questions posed by potential proposers during the pre-proposal stage, and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed by Proposer and does not contain internal inconsistencies. Proposer further certifies 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 TxDOT of any deficiencies in or omissions from the RFP or other documents provided by TxDOT and of any unusual site conditions observed prior to the date hereof.

Proposer represents that all statements made in this Proposal delivered to TxDOT are true, correct and accurate as of the date hereof.

Proposer understands that TxDOT is not bound to award the lease to the best value proposer.

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 TxDOT's disclosure of its Proposal pursuant to Section 223.204(a), Texas Transportation Code, to any persons in TxDOT's sole discretion in accordance with the terms set forth in the RFP. Proposer expressly waives any right to contest such disclosures under Section 223.204(a), Texas Transportation Code.

Proposer agrees that TxDOT 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 Texas.

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]

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

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture Proposer:

[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, and any Equity Owners.

1. If the Proposer/Equity Owner is a corporation or includes a corporation as a joint venture member, partner, or member, provide articles of incorporation

and bylaws for the Proposer/Equity Owner and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that the Proposer/Equity Owner will provide the documents required for such entity prior to award.

2. If the Proposer/Equity Owner 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/ Equity Owner (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that the Proposer/ Equity Owner will provide the documents required for such entity prior to award.
 3. If the Proposer/ Equity Owner 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/ Equity Owner (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that the Proposer/ Equity Owner will provide the documents required for such entity prior to award.
 4. If the Proposer/ Equity Owner 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/ Equity Owner (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) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that the Proposer/ Equity Owner will provide this information 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 officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate

officer of the managing member(s). If there is a 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 each joint venture member, certified by an appropriate 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. Any partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to TxDOT, 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 TxDOT and identify on a cover page where in the agreement the provision can be found.

IDENTIFICATION OF PROPOSER AND MAJOR PARTICIPANTS

Name of Entity and Contact Information (address, representative, phone, fax, e-mail)	Role in Organization (e.g., Proposer, Equity Owner in Proposer, Major Participant or Subcontractor)	Texas 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 the Proposer's name]

By: _____

Name: _____

Title: _____

FORM A-2

INFORMATION ABOUT PROPOSER ORGANIZATION

1.0 Name of Proposer: _____

2.0 Type of entity: Proposer: _____
: _____

3.0 Proposer's address: _____

Telephone Facsimile

4.0 How many years has the Proposer and any Equity Owner been in its current line of business and how many years has each entity been in business under its present name?

Name of Proposer/Equity Owner	No. of years in business	No. of years under present name

5.0 Under what other or former names have the Proposer and any Equity Owners operated?

Current Name	Former Name(s)

6.0 List all Texas licenses held by the Proposer and any Equity Owner. Attach copies of all Texas licenses. Attach a separate sheet if necessary.

A representative of the Proposer and Equity Owner must execute the following affidavit:

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 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 _____, 2008.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

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 requirements with respect to subcontractors. Proposer further declares that it has carefully examined the RFP and acknowledges that TxDOT has determined that a Proposer's efforts to obtain participation by subcontractors could reasonably be expected to produce 12.2% DBE participation for the professional services and construction portions of the work.

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

Executed: _____, 2011.

(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 _____, 2008.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

FORM B

RESPONSIBLE PROPOSER QUESTIONNAIRE

PROPOSER'S NAME: _____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

1. Questions

The Proposer/Equity Owner 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/Equity Owner 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. If this form is provided only for the Proposer, the term "**affiliate**" shall mean any Equity Owner or any entity which owns a substantial interest in or is owned in common with the Proposer or any Equity Owner, or any such entity in which the Proposer or any Equity Owner owns a substantial interest. If this form is provided by the Proposer and the individual Equity Owners, 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 ten 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 Texas 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 Texas 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, including, but not limited to, the Texas Department of Labor (or its equivalent), 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 Texas that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry. Executed _____, 2011.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

FORM C

INDUSTRIAL SAFETY RECORD FOR PROPOSER ORGANIZATION

Proposer's Name: _____

Name of Team Member: _____

Role of Team Member: _____

This form shall be filled out separately and provided for each member of the Proposer's team that will perform or supervise installation or construction work for this Project, and including information for any entity in which such team member holds a substantial interest. Information must be provided with regard to all installation and construction work undertaken in the United States (including the State of Texas) by the entity, with separate statistics relative to the State of Texas. For team members that are members of joint ventures, information shall be provided as though 100% of the results were for the listed participant. The Proposer may be requested to submit additional information or explanation of data which TxDOT may require for evaluating the safety record.

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
1) Total Hours Worked (in thousands) Nationwide: Texas:					
2) Number of fatalities:* Nationwide: Texas:					
3) Number of lost workdays:* Nationwide: Texas:					
4) Number of lost workdays* cases: Nationwide: Texas:_____					
5) Number of injury/illness* cases: Nationwide: Texas:					
6) Number of days of* restricted work activity due to injury/illness: Nationwide: Texas:					
7) Incidence Rate** Lost Workday Cases Nationwide: Texas: Days Lost Nationwide: Texas:					

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
8) Worker's Compensation Experience Modifier Nationwide: Texas:					

* The information required for these items is the same as required for columns 3 to 6, Code 10, Log and Summary of Occupational Injuries and Illnesses, OSHA Form 200.

** Incidence Rate = No. Injuries (Cases) x 200,000/Total Hours Worked

The above information was compiled from the records that are available to me at this time and I declare under penalty of perjury under the laws of the State of Texas that the information is true and accurate within the limitation of those records.

_____		_____	
Name of Company (Print)		Signature	
_____		_____	
Address		Title	
_____	_____	_____	
City	State and ZIP Code (or international address, if applicable)	Telephone Number	

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this ____ day of _____, 2008.

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.]

FORM E
DBE CERTIFICATION

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for participation by Disadvantaged Business Enterprises is established for professional services and construction work under this lease:

DBE

12.2%

DBE Certification

By signing the Proposal, the Proposer certifies that the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Proposer will provide a good faith effort to substantiate the attempt to meet the goal.

Failure to provide commitments to meet the stated goal or provide a satisfactory good faith effort will be considered a breach of the requirements of the Proposal.

[name]

[title]

FORM F

CONFLICT OF INTEREST DISCLOSURE STATEMENT

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 in accordance with TxDOT's Conflicts of Interest Policy, certain firms will not be allowed to participate on any Proposer's team for the Project because of their work with TxDOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to Section 636.116(2)(v)

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, 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 TxDOT, (b) any past, present, or planned contractual or employment relationships with any TxDOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any TxDOT member, 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.

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

_____, 2011
Date

FORM G

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

THE FOLLOWING CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS SHALL BE EXECUTED BY THE PROPOSER, MAJOR PARTICIPANTS AND EACH NON-EXEMPT SUBCONTRACTOR.

The undersigned Proposer _____, Major Participant _____, proposed subcontractor _____ hereby certifies that it has _____ has not _____ participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114 or 11246, and that, 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.

(Company)

By: _____

(Title)

Date: _____

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 bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts 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.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract 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.

Exhibit B: DRAFT TERMS for the Form of Lease Agreement

Notes for Proposers:

- 1. This Exhibit B to the RFP sets out a summary of key terms and conditions that TxDOT anticipates and expects to be included in the agreement for the lease of existing TxDOT Right of Way to design, finance, construct and operate a Low Emission LEFTF between Texas Department of Transportation (TxDOT) and the successful Lessee for the Low Emission Freight Transportation Facility (LEFTF).*
- 2. The terms and provisions in this Exhibit are intended to be a guide that presents TxDOT's objectives and requirements for the lease agreement that may be used to form the basis of negotiations with the selected proposer. The list of terms is not intended to be comprehensive. TxDOT anticipates that during negotiations for the lease terms for a Specific Facility there may be changes or other potential terms that either party may wish to consider for inclusion in the agreement.*
- 3. The Exhibits to the lease agreement are to be completed during the negotiation stage prior to lease execution.*

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Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
1. General Lease Terms	
1.1 Definitions	Definitions to be included in Exhibit A
1.2 General recitals and scope – Freight Transportation Facility	Details of parties to the agreement, description of the scope of the lease and general description of the Master Facility Concept and the specific Freight Transportation Facility (LEFTF) to be constructed in the ROW corridor including associated improvements to the ROW.
1.3 Lease Term	The term of the Lease will be from Date of Commencement to the date established through negotiations.
1.4 Lease Commencement Date	Lease Commencement Date shall be the date of execution of this Agreement
1.5 Lease Expiration Date	The Lease Expiration Date is [subject to submitted proposal]
Lease Extension	An extension of the lease agreement may be considered as part of the agreement. Conditions for the extension such as length of additional term are to be determined.
1.6 Schedule and Milestones	Agreed Schedule (as submitted with Proposal) to be included in Exhibit C. The key Milestones are: <ul style="list-style-type: none"> • Environmental Approval • Commencement of Construction (subject to environmental approval) • Start of Operations • Termination (Lease Expiration Date) • Handback
1.7 Assigning / Subletting	<ul style="list-style-type: none"> • Lessee shall not assign or sublet or sub-lease any of its rights or interests without written agreement from Department • If sub-lessee is utility provider it must comply with the requirements of the Department's utility accommodation policy
1.7 Freedom from Lien	Lessee shall not use the lease as lien or security other than as authorized under statute
2. Right of Way	
2.1 Right of Way to be	The state-owned right of way to be leased [Leased ROW] is

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
leased [Leased ROW]	<p>located between [brief description of ROW location and terminal points] and is further described and shown on plans in Exhibit E.</p> <p>Lessee shall be responsible for maintenance of the Leased ROW. The usage of the Leased ROW by Lessee is subject to the terms and conditions of this Agreement.</p> <p>Highway corridor at commencement, within which the facility is to be constructed and operated, including definitions of limits</p>
2.2 Existing Highway and ROW operated maintained by Department [Retained ROW]	Brief description and location of the existing highway and ROW boundaries [Retained ROW] as further described and shown on the plans in Exhibit E is to be operated and maintained by Department.
2.3 Existing ROW and Existing Highway	The Leased ROW and Retained ROW together make up the Existing ROW. Existing Highway is the highway within the Retained ROW.
2.4 Additional Right of Way	The Lessee is responsible for the cost and schedule impact of acquiring any Additional Right of Way that it deems necessary to accommodate the LEFTF. Lessee may seek Department's assistance in acquisition of Additional ROW subject to agreement to reimburse Department for all costs associated with such assistance.
2.5 Additional ROW Title	Title of Additional ROW acquired by Lessee shall be transferred to Department at termination. Lessee may acquire the ROW in name of Department.
2.6 Limitations on Use of Leased ROW (Authorized Usage)	<p>Lessee shall not use the Leased ROW for purposes other than :</p> <ul style="list-style-type: none"> • Surveys to identify and record ROW levels, limits and boundaries • Investigations, including ground / geotechnical investigations, to enable detailed design of LEFTF • Surveys to identify existing Utilities • Relocation of Utilities necessitated by LEFTF design • Construction of LEFTF subject to all approvals and permits • Maintenance of LEFTF • ROW shall not be leased for the purposes of a pipeline, electric transmission line or other utility facility

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
	<ul style="list-style-type: none"> Outdoor advertising will not be permitted
3. Department's Requirements	
3.1 Lessee Activities	<p>Lessee shall comply with Department's Requirements in relation to the Existing Highway and Retained ROW:</p> <ul style="list-style-type: none"> All Lessee Activities that may have an impact on Retained Highway shall be subject to submittal of proposals to Department for approval prior to commencement of those Activities Lessee Activities [to be defined but shall include all surveys, investigations, construction, operations, maintenance and removal work undertaken by Lessee during the term of the Agreement]
3.2 Right of Access	Department's employees, representatives and / or agents shall have right of access to Leased ROW, Additional ROW, and LEFTF at any time subject to prior notice.
3.3 Indemnity	Lessee to indemnify Department against third party claims related to [full details to be discussed]
3.4 Traffic Safety and Management	Lessee shall submit details of traffic safety and management proposals for Department review and approval prior to undertaking any activities that may impact the safety of general public on the Existing Highway and Department employees and staff.
3.5 Department's Design and Maintenance Standards	Lessee shall ensure that the design of the LEFTF does not affect the Existing Highway in any way and to ensure that the Existing Highway design and alignment remains in compliance with Department's Design Standards.
3.6 Safety of Public and Department Staff on Retained ROW	Lessee shall develop, maintain and comply with the Safety Management Manual approved by Department. Manual to include Emergency and Incidence Response Plan
3.7 Department Oversight and Administration	<p>Lessee acknowledges that Department is entitled to undertake the following:</p> <ul style="list-style-type: none"> Review of LEFTF design to identify potential impact on Retained ROW and safety implications on Existing Highway Ensuring Leased ROW is only used for permitted activities Monitoring Lessee Activities to ensure there is no impact on Retained ROW and safety implications on Existing Highway [other]

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
3.8 Independent Engineer	<p>Lessee shall appoint an Independent Engineer at its cost for the review of design and construction of LEFTF. The Independent Engineer appointment shall be subject to Department approval, which shall not be withheld unreasonably.</p> <p>Department will want to be satisfied that the facility is designed and constructed to required standards and specifications. Independent Engineer required only for design and construction stage.</p>
3.9 Progress Reporting	<p>Lessee shall prepare and submit [periodic] Progress Reports, including Financial data, to Department as follows:</p> <ul style="list-style-type: none"> (i) Pre-Construction phase (up to environmental approval) – Monthly Reports (ii) Construction Phase (up to completion and commissioning) – Monthly Reports (iii) Operational Phase (up to Expiration Date) – Bi Annual <p>Lessee to agree format of the reports with Department within [time period to be agreed] of Lease Commencement Date.</p>
4. Federal Requirements / Governmental Approvals	
4.1 Federal Requirements	Lessee to comply with applicable federal regulations (if relevant)
4.2 Permits and Approvals	Lessee shall be responsible for complying with relevant environmental regulations and requirements. Lessee shall be responsible for all costs associated with the environmental clearance and approval process.
4.3 Environmental documentation	To be included in Exhibit D
4.4 Costs for environmental approval	Lessee shall be responsible for all costs associated with the environmental clearance and approval process.
4.5 Department role in environmental process	Lessee may seek Department's assistance in the environmental process in obtaining environmental approvals subject to agreement to reimburse Department for all costs associated with such assistance above and beyond reasonable oversight.
5. LEFTF Design and Construction	

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
5.1 LEFTF Design	<p>Lessee shall be responsible for the Design and Construction of the LEFTF. Lessee shall design LEFTF in compliance with the following:</p> <ul style="list-style-type: none"> • Design and construction details to be included in Exhibit F • Any modification or realignment of Existing Highway necessitated by LEFTF design shall comply with Department's Design Standards and subject to Department Review and Approval • LEFTF layout shall be within the limits of Leased ROW and /or Additional ROW • LEFTF shall be designed in accordance with the agreed Master Facility Concept, Technology Design, Specification and Standards as included in Exhibit F • Lessee shall submit LEFTF design to Independent Engineer for review and approval and copy to Department. • Lessee shall submit traffic management and public safety proposals to Department for review and approval with copy to Independent Engineer
5.2 Monitoring of Emissions	<ul style="list-style-type: none"> • Lessee to report on emissions from freight / truck traffic and compare emissions from LEFTF for equivalent freight to demonstrate net reduction in emissions • Submittal of Annual reporting • Agreement to include / describe method to measure emissions reductions in operations phase.
5.3 Site Conditions	Lessee shall be responsible for carrying out site and geotechnical investigations at its own cost as necessary to develop LEFTF design and construction.
5.4 Utilities	Lessee shall be responsible for liaising with Utilities and, if applicable, identifying and locating existing utilities and for the cost of protection, relocation or adjustment work to existing utilities impacted by the LEFTF design.
5.5 Implementation of Utility Work	Lessee shall not implement any utility work until or unless the environmental approval is in place for the construction and operation of LEFTF
LEFTF Construction	

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
5.6 Construction Commencement	LEFTF Construction work commencement is subject to the following conditions: <ul style="list-style-type: none"> • Environmental Approvals in place • All relevant permits are in place • Traffic management and safety plans have been approved by Department • Performance Bond and / or Security to be in place • Project specific insurances in place
5.7 Hazardous Materials	Lessee responsible for dealing (disposal / removal / treatment) with hazardous materials on site in compliance with State and Federal regulations
5.8 Environmental Mitigation	Lessee shall implement environmental mitigation work in accordance with requirements of environmental document. Completion of environmental mitigation work to be certified by Independent Engineer
6. LEFTF Operations and Maintenance	
6.1 Operation and Maintenance Period	Unless otherwise stated in this Agreement the Lessee shall be responsible for operating and maintaining LEFTF for the full duration of the lease term
6.2 Operations	LEFTF Operations shall be as described in Exhibit G
6.3 Maintenance Requirements	Lessee shall maintain LEFTF, Leased ROW and (if applicable) Additional ROW in accordance with the requirements stated in Exhibit E
6.4 Emergency and Incident Management	Lessee shall develop, maintain and implement an Emergency and Incident Management Plan, such plan to be submitted to Department for review and approval.
7. Handback Requirements	
7.1 Department's Options	At least [5] five years before expiration of the lease Department shall notify [notice period to be specified] Lessee that it intends to either: <ul style="list-style-type: none"> (i) Take over LEFTF on expiration; or (ii) Require Lessee to remove LEFTF and restore Leases ROW (and including Additional ROW, if applicable)
7.2 Handback Inspections	Subject to notice given by Department, Department and Lessee shall inspect Leased ROW, Additional ROW (if applicable) and LEFTF [not less than 3 years] before expiration of the lease to

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
	assess and record the condition of the LEFTF to verify compliance with the minimum condition criteria specified in Exhibit H
7.3 Lessee to carry out LEFTF Remediation and Rehabilitation	If the Handback Inspections indicate that the condition of LEFTF does not meet the requirements of Exhibit H then the Department shall notify Lessee of the need to carry out remedial work to LEFTF as identified in the notice and state a date by which the work must be completed by Lessee at its cost. Such notice by Department shall also include requirement for restoration of Lease ROW (if appropriate)
7.4 Failure to meet LEFTF remediation date	In the event the Lessee fails to carry out LEFTF remedial work and ROW restoration by the specified date, the Department shall have the right to arrange for such work to be carried out [by others] and draw on the Handback Reserve account to pay for the work. Should the Handback Reserve amount be insufficient to cover the total costs Department shall charge Lessee to pay the balance of costs.
7.5 Removal of Facility	Subject to notice given by Department, Lessee shall remove LEFTF by the specified date and restore Leased ROW (and Additional ROW, if applicable)
7.6 Failure to remove LEFTF by specified date	In the event the Lessee fails to remove LEFTF work and restore Leased ROW by the specified date, the Department shall have the right to arrange for removal of LEFTF to be carried out [by others] and draw on the Removal Security to pay for the work.
7.7 Handback Reserve Account	<p>From [not less than 5 years before Expiration Date] onwards, Lessee shall deposit and an amount not less than [to be determined and proportional to facility removal cost] annually in the Handback Reserve Account until or otherwise agreed in writing between the parties.</p> <p>In the event that Department does not need to access the Handback Reserve sums for remedial work the funds therein shall be transferred to the Lessee within [time period to be agreed] after expiration date.</p> <p>In the event that Department draws funds from the Handback Reserve in accordance with article [9] of the agreement and following which some funds still remain in the account then such funds shall be transferred to the Lessee within [time period to be agreed] after expiration date.</p>
7.8 Lessee responsible for	Lessee shall be responsible for all additional costs over and

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
Additional Costs	above the Handback Reserve that are necessarily incurred as a result of complying with the Handback Requirements
8. Change	
8.1 Lessee Proposed Change(s)	Any Change(s) proposed by Lessee to the agreed scope of the LEFTF or Master Facility Concept shall be subject to Department approval. Lessee shall be responsible for all cost and schedule impact of any approved changes.
8.2 Department Change(s)	Agreement to include a mechanism for Department to instruct and implement changes.
9. Payment	
9.1 Lease Payment	Lessee shall make Lease Payments to the Department as consideration for use of Leased ROW for the construction and operation of LEFTF. The Lease Payment shall comprise of the following components: (i) Lease Rental – as stated in Exhibit B which shall be not less than Fair Market Value of Leased ROW (ii) Reimbursement of Department’s costs in connection with the oversight, administration and management of the lease (iii) Payment schedule to be included in Exhibit B
9.2 Escalation / Periodic Adjustments	The Lease Rental shall be subject to escalation [escalation factor to be agreed] and reviewed annually
9.3 Reimbursement of Department Costs	Department shall submit details (invoice) of all costs incurred in the administration and oversight of the lease agreement for each payment period [to be determined]
10. Financing	
10.1 Financial Model	Financial Model and Financing Plan included in Exhibit B
10.2 Lessee responsible for all financing	Lessee shall be responsible for the design, construction, operation and maintenance of the LEFTF.
10.3 Finance Plan	Lessee Financial Plan is included in Exhibit B
11. Default and Relief	

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
Events	
11.1 Lessee Default	<p>Lessee Defaults:</p> <ul style="list-style-type: none"> • Failure to construct LEFTF in accordance with agreed specification (Independent Engineer refuses to certify) • Failure to make payments on time • Failure to maintain LEFTF and Leased ROW • Failure to comply with Department's safety requirements • Failure to undertake remedial work in accordance with Handback requirements • Failure to remove LEFTF in accordance with Handback requirements • Failure to maintain or comply with Emergency and Incident Response Plan • Use of Leased ROW for purposes other than those permitted • Abandonment of LEFTF • [other]
11.2 Remedies for Lessee Default	Remedies for Lessee Default to be developed during negotiation stage
11.3 Department Default	<p>Department Defaults:</p> <ul style="list-style-type: none"> • Delay in making available Leased ROW as agreed • Delay in responding to Lessee on reviews • Delay in providing access for surveys and investigations • [other]
11.4 Remedies for Department Default	Remedies for Department Default to be developed during negotiation stage
11.5 Relief Events	<p>Relief Events:</p> <ul style="list-style-type: none"> • Delay by federal and / or government authorities on approvals and permits • Fire, Accident or Spillage • Change in Law • Competing Facility • Force Majeure • [other]
12. Termination	
12.1 Expiration Date	The lease shall be terminated on Expiration Date, unless [details of events leading to termination other than at expiration Date to be agreed]
12.2 No Environmental	Agreement shall be terminated if environmental approval has

Item	General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement
Approval	not been obtained by the date specified unless an extension is agreed by the parties. No compensation shall be due to Lessee for termination under this article
12.3 Termination for Convenience	<ul style="list-style-type: none"> • Department has the right to terminate the lease before the Expiration Date at any time upon giving a written notice to Lessee [to be agreed] days before the effective termination date • Either Party may Terminate with or without cause
12.4 Termination for Lessee Default	Department shall serve notice to terminate the lease due to Lessee Default: <ul style="list-style-type: none"> • During construction phase • During operational phase
12.5 Termination for Department Default	To be discussed
13. Compensation Events	
13.1 Lessee Compensation for Termination for Convenience	Lessee to be compensated if Department gives notice to terminate agreement for convenience
14. Insurance and Security	
14.1 Insurance	Lessee is required to have adequate insurances in place: <ul style="list-style-type: none"> • Professional liability • General Liability • Employers Liability • [Insurance for high risk freight]
14.2 Removal Bond	Maximum amount to be cost of removal of fully completed facility or [%] of construction cost subject to milestone reductions
14.3 Security	Lessee shall provide security (in form acceptable to Department)for the operational phase to cover cost of removal of LEFTF and restoration of ROW at termination:
15. Dispute Resolution	
15.1	Dispute Resolution Procedure [to be agreed]
EXHIBITS to the Lease Agreement	

<i>Item</i>	<i>General intent / description of Terms, Conditions, Obligations to be included in the Lease Agreement</i>
Exhibit A: Definitions	
Exhibit B: Financial Plan and Lease Payments	
Exhibit C: Schedule	
Exhibit D: Environmental Documentation	
Exhibit E: ROW Corridor	
Exhibit F: Design and Construction Requirements	
Exhibit G: Operation and Maintenance Requirements	
Exhibit H: Handback Requirements	