REQUEST FOR PROPOSALS

TO DESIGN, CONSTRUCT
AND POTENTIALLY MAINTAIN

THE I-635 LBJ EAST PROJECT

THROUGH A

DESIGN-BUILD CONTRACT AND A CAPITAL MAINTENANCE AGREEMENT

INSTRUCTIONS TO PROPOSERS

A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION

ORIGINALLY ISSUED NOVEMBER 9, 2018
ADDENDUM #1 ISSUED JANUARY 18, 2019

Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701

CERTAIN KEY DATES

EVENT	DATE
Last date for Questions from Proposers on Addendum #1	January 25, 2019
Technical Proposal Due Date	March 14, 2019
Financial Proposal Due Date	April 3, 2019
Anticipated Conditional Award by Texas Transportation Commission ("Commission")	May 2019
Anticipated execution of DBC and CMA	August 2019

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- Form A-1 Technical Proposal Letter
- Form A-2 Financial Proposal Letter
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- Form B-2 Information About Proposer Organization
- Form C Responsible Proposer Questionnaire
- Form D Personnel Work Assignment Form
- Form E Buy America Certification
- Form F Non-Collusion Affidavit
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INSTRUCTIONS TO PROPOSERS

(Request for Proposals: I-635 LBJ East Project)

SECTION 1 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals, as may be amended from time to time ("RFP"), is issued by the Texas Department of Transportation ("TxDOT"), an agency of the State of Texas, to seek competitive detailed proposals (individually, a "Proposal" and collectively, "Proposals") for a Design-Build Contract ("DBC"), comprised of a Design-Build Agreement ("DBA") and Design-Build Agreement General Conditions ("DBA General Conditions"), and an associated Capital Maintenance Agreement ("CMA"). The DBC shall provide that the entity identified in the successful Proposal ("DB Contractor") shall develop, design, construct and, at TxDOT's sole option, provide capital maintenance for an approximately 11-mile section of Interstate Highway ("I") 635 from east of U.S. Highway ("US") 75 to I-30, including the I-30 Interchange with transitional work on I-635 extending south of the interchange, approximately 1.2 miles in length, and an approximately 1.5-mile section of I-30 from west of Gus Thomasson Road to east of N Galloway Avenue in Dallas County, Texas (the "Project"), as further described below. The DB Contractor's development, design, construction and warranty rights and obligations will be set forth in the DBC; whereas, the DB Contractor's capital maintenance rights and obligations will be set forth in the CMA.

TxDOT is issuing the RFP to those Proposers shortlisted based on TxDOT's evaluation of qualification statements ("QS") delivered to TxDOT on July 6, 2018, in response to the Request for Qualifications for the Project issued on June 8, 2018, as amended (the "RFQ").

Proposers must comply with these Instructions to Proposers ("ITP") during the procurement and in their responses to the RFP. Proposers shall also take the Project goals identified in Section 1.3 below into consideration in drafting their Proposals.

The RFP requires each Proposer to be prepared to act as the DB Contractor for the Project if the Proposer is selected to enter into the DBC and CMA.

All forms identified in this ITP are found in Exhibit D unless otherwise noted.

1.2 Request for Proposals

1.2.1 Documents in the Request for Proposals

The RFP consists of the following documents, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented:

(a) this ITP (including exhibits and forms);

(b) the DBC Documents;

(c) the CMA Documents; and

(d) the Reference Information Documents ("RIDs").

Refer to Section 1.3 of the DBA for a list of the DBC Documents, and Section 1.2 of the CMA for a list of the CMA Documents, and their respective order of precedence.

As described in Section 2.2, the RIDs may be found on the secure file transfer and sharing site for the Project, which may be updated during the procurement if additional information becomes publicly available. The RIDs are included in the RFP for the purpose of providing information that is in TxDOT's possession to Proposers. TxDOT has not determined whether the RIDs are accurate, complete or pertinent, or of any value to Proposers; however, the DB Contractor may rely on certain signed and sealed RIDs and other RIDs as described in Appendix 2 to Exhibit 3 of the DBA. Except to the extent expressly set forth in Appendix 2 to Exhibit 3 of the DBA, the RIDs will not form a part of the contract between TxDOT and the DB Contractor. Furthermore, TxDOT makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of the RIDs, and, in addition, shall not be responsible for any conclusions drawn therefrom, except as provided in Appendix 2 to Exhibit 3 of the DBA.

1.2.2 Construction and Interpretation of this ITP

1.2.2.1 Definitions and Acronyms

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used herein, and refer to Item 1 of the DBA General Conditions or Exhibit 1 to the CMA, as applicable, for the meaning of capitalized terms and acronyms used but not defined herein or in Exhibit A of this ITP.

1.2.2.2 References to this ITP

The words "herein", "hereby", "hereof", "hereto" and "hereunder" and words of similar import refer to this ITP as a whole and not to any particular portion of it, provided that such references in a form or Exhibit to the ITP are references to that specific form or Exhibit. Section references that are underlined are to either the body of the ITP or Exhibit in which they appear. Section references that are not underlined are to the portion of the RFP that is indicated in the reference. A reference to a subsection or clause "above" or "below" refers to the denoted subsection or clause within the section in which the reference appears.

1.2.2.3 Meaning of Including

In this ITP, the word "including" (or "include" or "includes") means "including without limitation" and shall not be considered to set forth an exhaustive list.

1.2.2.4 Meaning of Discretion

In this ITP, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person.

1.2.2.5 Notice, Approval, Etc., in Writing

Whenever the RFP Documents require or provide for any notice, approval, consent, acceptance, determination, decision, certificate, order, waiver, explanation, policy, information or the like, the same and any request therefore must be in writing (unless otherwise waived in writing by the other Party).

1.2.2.6 Times

All times in this RFP are for local Central Time in Austin, Texas.

1.3 Project Objectives

The following objectives have been developed for the Project in order of priority:

- Complete the Project on schedule, on budget and to the highest degree of quality possible.
- Minimize delays to the traveling public and inconvenience to the surrounding communities while maximizing safety in the corridor during construction.
- Facilitate participation by DBEs, historically underutilized businesses, women-owned business enterprises and minority business enterprises.
- Ensure consistent communication and maintain commitments to the public and stakeholders throughout Project delivery.

1.4 General Project Description and Scope of the DB Contractor's Obligations

1.4.1 General Project Description

The I-635 LBJ East Project consists of the design, construction, and potential maintenance of an approximately 11-mile section of I-635 from east of US 75 to I-30, including the I-30 Interchange with transitional work on I-635 extending south of the interchange, approximately 1.2 miles in length, and an approximately 1.5-mile section of I-30 from west of Gus Thomasson Road to east of N Galloway Avenue in Dallas County, Texas.

The Project components include the design and construction of the improvements, which are briefly summarized below:

- full reconstruction and widening of the existing eight general purpose lanes to ten general purpose lanes, with auxiliary lane(s) between entrance ramps and exit ramps;
- full reconstruction of the existing two toll managed lanes with access ramps to and from the toll managed lanes;
- full reconstruction of existing two lane discontinuous frontage road to two lane continuous frontage roads with auxiliary lanes in each direction;
- full reconstruction of undercrossings/overcrossings and associated entrance and exit ramps, including Skillman/Audelia Interchange;
- construction of sound walls;
- construction of two railroad underpasses;

- reconstruction of cross streets;
- incidental improvements on cross streets to accommodate the reconstruction of the frontage roads and undercrossings/overcrossings, and addition of the new continuous frontage roads;
- full reconstruction of the I-635/I-30 interchange and the associated transitional work on I-635 extending south of the interchange and the transitional work on I-30 extending east and west of the interchange; and
- full reconstruction of the existing eight general purpose lanes and auxiliary lanes to accommodate the new interchange.

The CMA sets forth DB Contractor's maintenance obligations. Under the CMA, TxDOT will hold three five-year options, exercisable by TxDOT in its discretion, to require that the DB Contractor perform capital maintenance on the Project. The exercise of one option shall not require TxDOT to exercise any further option.

1.4.2 Scope of the DB Contractor's Obligations

The DB Contractor's obligations generally will include all efforts required to develop, design and construct the Project and provide a warranty in accordance with the requirements of the DBC Documents and, at TxDOT's option, in its discretion, provide capital maintenance for the Project in accordance with the requirements of the CMA Documents.

A description of the Project scope is listed in Exhibit 1 to the DBA.

1.4.3 Project Environmental Status

The original I-635 Environmental Assessment ("EA") received environmental clearance through a Federal Highway Administration ("FHWA") Finding of No Significant Impact ("FONSI") issued on January 30, 2003. A reevaluation was subsequently completed for the updated schematic and was approved on April 24, 2017 for the tolled managed lanes from east of US 75 to Royal Lane/Miller Road and the non-tolled express lanes from Royal Lane/Miller Road to I-30 Interchange. The Categorical Exclusion of the Skillman/Audelia Interchange was separately approved on June 23, 2015.

The environmental review, consultation and other actions required by applicable Federal environmental laws for this Project have been carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 16, 2014 between FHWA and TxDOT.

1.4.4 Status of Required ROW Acquisition

TxDOT is advancing right of way (ROW) acquisition prior to the Effective Date of the DBC. It is anticipated that certain parcels within the Schematic ROW will be acquired prior to contract execution. At the appropriate time, or as dictated by the terms of the DBC, these parcels will be handed over to DB Contractor for completion of right of way acquisition including relocation assistance and demolition of improvements. ROW status is contained in the RIDs.

DB Contractor's responsibilities will include right of way acquisition activities for remaining Project ROW as of NTP1. With respect to any ROW to be acquired after execution of the DBC, TxDOT will be responsible for the cost to purchase any Schematic ROW and the DB Contractor will be responsible for providing and paying for ROW acquisition services in connection with the acquisition of such parcels, all in accordance with the DBC.

1.4.5 Status of Required Utility Work

TxDOT has conducted Subsurface Utility Engineering ("SUE") investigation on the Project at a Quality Level B-D and Level A at isolated locations. SUE information is available in the RIDs. TxDOT will update the RIDs as additional SUE information becomes available. The DBC provides further details regarding the DB Contractor's obligations related to utility relocations/adjustments.

TxDOT has begun coordination with Oncor, Brazos Electrical Power and Texas Municipal Power Agency to relocate the transmission lines that are in potential conflict with the Schematic Design. TxDOT intends to advance and complete the relocation of the transmission lines before Project construction begins. The location and status of the relocation will be set forth in the RFP.

The DB Contractor will be responsible for performing or causing necessary Utility Adjustments to be performed in accordance with applicable standards and for the costs associated with all Utility Adjustments, except to the extent the utilities are legally responsible for such costs.

1.4.6 Status of Required Railroad Services

To the extent the Project crosses a railroad right-of-way owned by an operating railroad, the DB Contractor will be required to coordinate the railroad-related work for the Project with the operating railroad for the Project design and to enter into preliminary engineering agreement and construction right of entry agreement with KCS and DART.

To assist in advancing railroad related activities, TxDOT intends to enter into license agreements with DART and KCS (as applicable) for each railroad crossing within the Project limits. Except to the extent set forth in the DBC with respect to such executed railroad license agreements, DB Contractor shall be responsible for obtaining the required approvals, permits, and agreements for the railroad-related work. In addition, the DB Contractor shall be responsible for meeting railroad design criteria for the railroad crossings and shall coordinate the design and installation of all railroad warning devices and traffic signals with the appropriate governmental entities and operating railroads.

Railroad crossings within the Project limits are identified below in Table 1.

Table 1
Summary of Railroad Crossings

I-635 LBJ East Project Station	Owner	Proposed Facilities Crossing RR	Location
482+00	Dallas Area Rapid Transit	Access ramp to and from the managed lane above railroad	TI Boulevard
623+00	Dallas Area Rapid Transit	Reconstruction of I-635 and the frontage roads crossing below one underpass	Between Skillman Street and Royal Lane/Miller Road
635+00	Kansas City Southern	Reconstruction of cross street below underpass	Royal Lane/Miller Road
683+00	Kansas City Southern	Reconstruction of cross street below underpass	Plano Road
730+00	Kansas City Southern	Reconstruction of at grade crossing	Walnut Hill Lane/Kingsley Road
750+00	Kansas City Southern	Reconstruction of at grade crossing	Jupiter Road
781+00	Kansas City Southern	Construction of I-635, eastbound entrance ramp to general purpose lanes and frontage roads overpass	West of Garland Avenue
804+00	Kansas City Southern	Construction of I-635	East of Garland Avenue
804+00	Kansas City Southern	Construction of underpasses	Above proposed eastbound and westbound frontage roads located east of Garland Avenue
781+00	Kansas City Southern	Removal of at grade crossing	McCree Road

1.5 Procurement Schedule

A two-step Proposal submission process will be followed for this Project. Technical Proposals, including required certifications, a Proposal Bond and other information, shall be submitted on or before the Technical Proposal Due Date. The Financial Proposal and Price Proposal shall be submitted on or before the Financial Proposal Due Date.

The following represents the current schedule for the procurement.

EVENT	**DATE and TIME**
One-on-one meetings with Proposers	January 31, 2019
Last date for Questions from Proposers on RFP	January 25, 2019, 12:00 Noon
One-on-one meetings with Proposers	February 2019
Last date for Proposers to submit ATCs	February 6, 2019, 12:00 Noon
Last date for Proposers to submit requests for changes in Proposer Organization and Key Personnel	February 13, 2019, 12:00 Noon
Last date for TxDOT to respond to ATCs	February 20, 2019
Last date for TxDOT to respond to Proposer Organization and Key Personnel change requests	March 6, 2019
Technical Proposal Due Date	**March 14, 2019, 12:00 Noon**
Financial Proposal Due Date	**April 3, 2019, 12:00 Noon**
Anticipated Conditional Award by Texas Transportation Commission	May 2019

EVENT	DATE and TIME
Anticipated execution of DBC and CMA	August 2019

Where the RFP provides a deadline or due date for submission of documents, correspondence or other materials to TxDOT, the submission will only be considered timely if TxDOT receives the submission by the date and, if applicable, the time identified. All dates set forth above and elsewhere in the RFP are subject to change, in TxDOT's discretion, by notice to Proposers.

1.6 General Provisions Regarding Proposals

1.6.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including (a) Technical Proposal, (b) Financial Proposal and (c) Price Proposal. The instructions and requirements for the Technical Proposal, the Financial Proposal and Price Proposal are set forth in Exhibits B, C-1 and C-2, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms (Exhibit D) in the format specified or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in TxDOT's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No changes shall be made in the Proposal forms, except for the inclusion of required information.

1.6.2 Inclusion of Proposal in DBC Documents and CMA Documents

Portions of the successful Proposal, including Proposal commitments that exceed the minimum requirements of the DBC Documents and CMA Documents, will become part of the DBC Documents and CMA Documents, as specified in the DBC and the CMA. All other information is for evaluation purposes only and will not become part of the DBC Documents or CMA Documents.

1.6.3 Commitments in the Proposal

The verbiage used in each Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment.

1.6.4 Ownership of Proposal and Applicability of Public Information Act

Subject to Section 6.3 and the exceptions specified herein, in the Rules (defined below in Section 2.1) and in the Texas Transportation Code ("Code"), all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to TxDOT during this procurement process, whether included in the Proposal or otherwise submitted, become

the property of the State of Texas upon delivery to TxDOT, and will not be returned to the submitting parties.

1.7 Project Costs and Funding

TxDOT's current total design-build cost estimate for the Project as described in Section 1.4.1 is approximately $1,600,000,000. This estimate does not include TxDOT costs for ROW acquisition or TxDOT administrative costs, but are inclusive of all other costs to design and construct the Project. This estimated cost reflects the currently developed schematic and environmentally studied project components at current estimated construction prices.

TxDOT contemplates using a combination of federal and State funds to fund the design and construction of the Project. Payments will be made in accordance with the DBC Documents.

1.8 Federal Requirements

1.8.1 General Obligations

In order to preserve the ability of TxDOT to use federal funding for the Project, the procurement process, the DBC Documents and the CMA Documents must comply with applicable federal Laws and regulations.

1.8.2 DBE Requirements

TxDOT has determined that Disadvantaged Business Enterprise (DBE) requirements apply to the design and construction of the Project, and has adopted a DBE program to provide DBEs opportunities to participate in the business activities of TxDOT as service providers, vendors, contractors, subcontractors, advisors, and consultants. TxDOT has adopted the definition of DBE set forth in 49 CFR § 26.5. Proposer's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including 49 CFR Part 26, as well as applicable requirements set forth in the DBC Documents, CMA Documents and TxDOT's DBE program document.

The DBE participation goal for the Project under the DBC shall be 8% of the Design-Build Price. TxDOT's DBE requirements applicable to the DBC are set forth in Sections 2.6 and 2.7 of the DBA, the DBE Special Provisions attached as Attachment 3-2 to the DBA General Conditions and TxDOT's DBE program adopted pursuant to 49 CFR Part 26. TxDOT's DBE requirements applicable to the CMA are set forth in Section 6.1 of the CMA. As set forth in Section 3.2.8 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal. Failure to provide the required DBE certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.

Following Conditional Award of the DBC and the CMA, the selected Proposer 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 Project, including the Proposer's exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in TxDOT's DBE Special Provisions, Attachment 3-2 to the DBA General Conditions. 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 DBC and the CMA.

The selected Proposer will also be required to provide DBE commitments in the form required by TxDOT as DBE subcontractors are identified, in accordance with the DBE Special Provisions, the approved DBE Performance Plan, and TxDOT's DBE program.

The DB Contractor shall not cancel or terminate any subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of subcontracts with DBE firms set forth in TxDOT's DBE Special Provisions.

1.8.3 E-Verify

The DB Contractor will be required to certify use of the United States Department of Homeland Security's E-Verify system during the term of the DBC and CMA, respectively. The E-Verify system shall be used to determine the eligibility of:

(a) all persons hired by the DB Contractor during the Term and Warranty Term of the DBC to perform duties within the State of Texas;

(b) all persons, including subcontractors, hired during the Term and Warranty Term of the DBC and assigned by the DB Contractor during the Term and Warranty Term of the DBC to perform work pursuant to the DBC;

(c) all persons hired by the DB Contractor during the Maintenance Period of the CMA to perform duties within the State of Texas; and

(d) all persons, including subcontractors, hired during the Maintenance Period of the CMA and assigned by the DB Contractor during the Maintenance Period of the CMA to perform work pursuant to the CMA.

1.8.4 Nondiscrimination

TxDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and implementing regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

1.9 Qualification to Do Business

As of the Effective Date, DB Contractor and Major Participants (excluding the Equity Members) must be qualified to do business in the State.

SECTION 2 PROCUREMENT PROCESS

2.1 Procurement Method

The RFP is issued pursuant to Chapter 223, Subchapter F of the Code, Sections 9.150-9.155 of Title 43 Texas Administrative Code (the "Rules") and other applicable provisions of Texas and federal Law.

The procurement process will include issuance of a draft RFP for review and comment by Proposers prior to issuance of the final RFP that is approved by FHWA. TxDOT may also issue addenda to the draft RFP or final RFP.

If an award is made, TxDOT will award the DBC and CMA to the responsible Proposer offering a Proposal meeting the high standards set by TxDOT and which is determined by TxDOT to provide the best value to TxDOT and to be in the best interest of the State of Texas. TxDOT will accept Proposals for the Project only from the Proposers that TxDOT has shortlisted for the procurement based on their responses to the RFQ.

TxDOT will not review or consider alternative proposals.

2.2 Receipt of the RFP Documents, Communications, and Other Information

The documents that were made available to Proposers with the RFQ will remain available to Proposers and the public at https://www.txdot.gov/inside-txdot/division/debt/strategic-projects/alternative-delivery/lbj-east/rfq.html (the "Project Webpage"). Information relating to the RFP, including Reference Information Documents, will be posted only to the secure file transfer and sharing site for the Project (the "RFP Website"). The RFP Website is distinct from the Project Webpage which is viewable by the public. Access to the RFP Website will be granted only to shortlisted Proposers.

TxDOT shall separately provide to each shortlisted Proposer the address of the RFP Website, as well as a username and password. Each shortlisted Proposer will be required to treat the username and password as confidential information and to check the RFP Website regularly for Addenda to this RFP, additional Reference Information Documents, and other procurement-related information.

The RFP and any Addenda will be published on the Project Webpage. Other information related to the procurement may, at TxDOT's discretion, be made available to the public on the Project Webpage.

2.2.1 TxDOT's Authorized Representatives

TxDOT has designated the following individuals to be its authorized representatives for the procurement ("TxDOT's Authorized Representatives"):

Duane Milligan, P.E.
Ceason Clemens, P.E.
Mo Bur, P.E.
Marcus Coronado, P.E.
Texas Department of Transportation
7600 Chevy Chase Drive, Building 2, Suite 400

Austin, Texas 78752
Email: TxDOT-DAL-ALTD-LBJEast@txdot.gov

From time to time during the procurement process or during the term of the DBC or, if applicable, the CMA, TxDOT may designate other TxDOT's Authorized Representatives to carry out some or all of TxDOT's obligations pertaining to the Project.

2.2.2 Identification of the Proposer's Official Representative

The Proposer's "Official Representative" shall initially be the person designated in Form B-1 of its QS as the single point of contact for the Proposer. If a Proposer changes its Official Representative at any time, including subsequent to its submission of its Proposal, the Proposer shall provide TxDOT's Authorized Representatives with the name, address and email address of such new Official Representative. Failure to identify an Official Representative in writing may result in a Proposer failing to receive important communications from TxDOT. TxDOT is not responsible for any such failure.

2.2.3 Rules of Contact

From the date of issuance of the RFQ (June 8, 2018) until August 10, 2018, the date the draft RFP was issued, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on August 10, 2018 and ending on the earliest of (i) Final Award, (ii) rejection of all Proposals by TxDOT or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), social media, instant messages, texts, or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer or any of its team members may communicate with another Proposer or any of its team members with regard to the Project, the RFP or any team's Proposal, except that this prohibition does not apply to public discussions regarding the RFP at any TxDOT sponsored informational meetings.

(b) Each Proposer shall designate one Official Representative in accordance with Section 2.2.2 who shall be responsible for all communications between the Proposer and TxDOT, and such Official Representative shall correspond with TxDOT regarding the RFP only through TxDOT's Authorized Representatives at the address or email address set forth in Section 2.2.1 (except communications with TxDOT's ombudsman as provided in Section 2.3.2 below).

(c) No Proposer, nor any of its representatives, shall have any communications regarding the Project, the RFP or the procurement described herein with any member of the Commission or with any TxDOT staff, advisors, contractors or consultants involved with the procurement or the Project. In addition, no Proposer, nor any of its representatives shall have any communications regarding the Project, the RFP or the procurement described herein with any elected or appointed officials, employees, representatives and members from City of Dallas, City of Garland, City of Mesquite, North Central Texas Council of Governments, Center of Transportation Research – University of Texas at Austin, and the Federal Highway Administration, except as specifically approved by TxDOT in writing. The foregoing prohibition does not preclude (i) communications with TxDOT consultants who have completed their services for the Project and

been released by TxDOT, (ii) communications expressly permitted by the RFP, (iii) communications approved in advance by one of TxDOT's Authorized Representatives or the Director of the Project Finance, Debt and Strategic Contracts Division, in his/her discretion, or (iv) participation in public meetings of the Commission or public hearings related to the RFP or the Project.

(d) Proposers are permitted to contact Stakeholders regarding the Project, including employees, representatives, members and consultants of Stakeholders, solely to the extent set forth in this Section 2.2.3(d):

(i) Proposers may contact private landowners and lessees along the Project corridor for the purpose of performing due diligence and discussing aspects of the Proposal, including temporary construction easements, staging areas and borrow; provided that, (A) Proposer shall not discuss other Proposers or their Proposals, negotiate exclusive arrangements to the detriment of other Proposers or otherwise seek an unfair competitive advantage, and (B) Proposer shall not attempt to obtain from such landowners rights of entry during the procurement, which are governed by Section 2.8.2.

(ii) Proposers may contact Utility Owners (excluding Dallas Water Utilities, Garland Power and Light, and Garland Water Utilities) (except as set forth in Section 2.2.3(c) and Section 2.2.3(d)(viii)) to discuss issues relating to the Project so long as the Proposer provides a written notice to TxDOT no later than three Business Days in advance of each such meeting. The written notice shall include (A) the proposed date, time and location of the meeting; (B) a list of anticipated attendees; (C) a proposed agenda; and (D) a list of the specific questions to be addressed by the Utility Owner.

(iii) Proposers may contact other Stakeholders, including Dallas Water Utilities, Garland Power and Light, and Garland Water Utilities (except as set forth in Section 2.2.3(c) and Section 2.2.3(d)(viii)) to discuss issues relating to the Project only after receiving prior written approval from TxDOT. Requests for such contact shall be submitted in writing, and include: (A) the proposed date (which date may not be earlier than five Business Days after submission of such request), time and location of the meeting; (B) a list of anticipated attendees; (C) a proposed agenda; and (D) a list of the specific questions to be addressed by the Stakeholder at such meeting.

(iv) Proposers shall not discuss other Proposers or their Proposals, negotiate exclusive arrangements to the detriment of other Proposers, or otherwise seek an unfair competitive advantage, during meetings with any of the Stakeholders.

(v) Proposers understand TxDOT has the right to attend any Stakeholder meetings.

(vi) Proposers shall submit a proposed agenda and list of specific questions for the Stakeholder with each written request for (or notice of) a meeting with any Stakeholder. Any new or unidentified questions or topics not included in these pre-submitted materials will not be addressed during the Stakeholder meeting.

(vii) A Proposer's written request for (or notice of) a meeting with any Stakeholder, including the proposed agenda and list of specific questions to be addressed by the

Stakeholder at the Stakeholder meeting, will remain confidential until a decision is made to select a Proposer or cancel the procurement, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Act, applicable Law, and Section 2.6.

(viii) Proposers may not contact DART or KCS directly. TxDOT will coordinate one meeting for all interested parties at a future date, which will be notified to Proposers by TxDOT. Proposers shall be required to submit all questions in advance of any such meetings.

(e) Any communications determined by TxDOT, in its discretion, to be improper may result in disqualification or the imposition of another sanction under Chapter 10 of Title 43 of the Texas Administrative Code.

(f) Any official information regarding the Project will be in writing, on TxDOT letterhead, and signed by one of TxDOT's Authorized Representatives.

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

The Proposer shall note that no correspondence or information from TxDOT or anyone representing TxDOT regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.3(f).

2.2.4 Language Requirement

All correspondence regarding the RFP, ATCs, Proposals, DBC Documents and CMA Documents shall be in the English language and U.S. customary units. If any original documents required for the Proposal are in any other language, the Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Responses Process and Addenda

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by TxDOT prior to the Financial Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision that Proposer fails to understand. Except as otherwise expressly provided in the DBC, failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by TxDOT. Proposers shall submit, and TxDOT will respond to, requests for written clarification in accordance with this Section 2.3.1. To the extent responses are provided, they will not be considered part of the DBC Documents or CMA Documents, nor will they be relevant in interpreting the DBC Documents or CMA Documents, except as expressly set forth in the DBC Documents and CMA Documents, as applicable.

TxDOT will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to TxDOT's Authorized Representatives or TxDOT's designated ombudsman, by electronic transmission in the format prescribed herein.

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.5 or such later date as may be specified in any Addendum. Proposers shall submit questions in .doc or .docx format using Exhibit J, and such questions shall: (i) be sequentially numbered; (ii) identify the relevant document (i.e., the DBA, the DBA General Conditions, etc.); (iii) identify the relevant section number (e.g., DBA Section XX) or, if it is a general question, so indicate; (iv) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information, and (v) indicate whether the question is a Category 1, 2, 3 or 4 question.

As used above, "Category 1" means a potential "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal. "Category 2" means a major issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal. "Category 3" means an issue that may affect value for money, or another material issue, but is not at the level of a Category 1 or Category 2 issue. "Category 4" means an issue that is minor in nature, a clarification, or a comment concerning a conflict between documents or within a document, etc.

There is no limit on the number of questions a Proposer may submit regarding the draft RFP. Proposers will be limited to 20 questions for Addendum #1 to the RFP. For any future Addendum, Proposers will be permitted to submit questions as set forth in such Addendum. If a question has more than one subpart, each subpart will be considered a separate question. Corrections of typographical errors, incorrect cross references or internal inconsistencies within or among the RFP Documents will be excluded from the question limitations. Responses to any questions submitted will be made at TxDOT's discretion. TxDOT does not intend to prepare written responses to questions regarding the draft RFP.

Except with respect to one-on-one meetings, no telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification submitted to any person other than TxDOT's Authorized Representatives or, subject to compliance with Section 2.3.2, to TxDOT's designated ombudsman, will be considered. Questions may be submitted only by the Proposer's Official Representative, and must include the requestor's name, address, and telephone number, and the Proposer he/she represents.

The questions and TxDOT's responses will be in writing and will be delivered to all Proposers, except that TxDOT intends to respond individually to those questions identified by a Proposer or deemed by TxDOT to contain confidential or proprietary information relating to the Proposer's Proposal or ATCs. 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 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 procurement process. A final set of consolidated questions and answers will be compiled from previous sets of questions and answers

regarding the final RFP and any Addenda. Answers to questions from previous responses may be edited consistent with final disposition of responses to questions. The final set of consolidated questions and answers will be distributed prior to the (i) Technical Proposal Due Date, with respect to questions submitted prior to the Technical Proposal Due Date, and (ii) the Financial Proposal Due Date, with respect to any questions submitted pursuant to any Addenda issued before the Financial Proposal Due Date.

TxDOT may convene pre-proposal meetings with Proposers as it deems necessary (*see* Section 2.5), and Proposers must make themselves available to TxDOT for such pre-proposal meetings and to discuss any matters they submit to TxDOT under this Section 2.3.1. If TxDOT determines, in its discretion, that its interpretation or clarification requires a change in the RFP, TxDOT will prepare and issue an Addendum.

2.3.2 Ombudsman

TxDOT has designated an employee who is not involved in this procurement to act as an ombudsman for the purpose of receiving written communications submitted in accordance with this Section 2.3.2 on a confidential basis regarding the procurement process. Instead of submitting written communications to TxDOT's Authorized Representatives as provided in Section 2.3.1, Proposer may submit such confidential communications, comments or complaints regarding the procurement to the ombudsman, where Proposer believes in good faith that confidentiality is essential. Please note that the deadline set forth in Section 2.3.1 applies to comments and questions regarding the RFP that are submitted to the ombudsman. Proposer must submit such confidential communications in a separate document that does not include any information identifying the Proposer. After receiving such confidential communications, the ombudsman shall forward only the separate document containing the confidential communication to TxDOT's Authorized Representatives as identified in Section 2.2.1. If the ombudsman determines that the submitted material is not of a confidential nature, or has been submitted past the applicable deadline set forth in Section 2.3.1, the ombudsman shall return the submission to Proposer and instruct Proposer to submit the communication directly to TxDOT's Authorized Representatives in accordance with Section 2.3.1. TxDOT has designated the following individual who is not involved in the procurement to be the ombudsman for the procurement:

Ms. Rebecca Blewett, Esq.
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701
E-mail: Becky.Blewett@txdot.gov

All other questions and requests for clarification should be submitted to TxDOT's Authorized Representatives in accordance with Section 2.3.1.

2.3.3 Addenda

TxDOT reserves the right, in its discretion, to revise, modify or change the RFP or procurement process at any time (a) before the Technical Proposal Due Date, with respect to requirements of the Technical Proposal, or before the Financial Proposal Due Date, with respect to requirements of the Financial Proposal, or (b) if Proposal Revisions are requested pursuant to Section 5.8, prior to the due date for Proposal Revisions. Any such revisions will be implemented through issuance of Addenda to the RFP.

Addenda will be posted on the RFP Website, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts the RFP, as determined in TxDOT's discretion, TxDOT may change the Technical Proposal Due Date or the Financial Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for Proposers to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests permitted concerning the Addendum.

The Proposer shall acknowledge in its Proposal Letters (*see* Forms A-1 and A-2) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected.

2.4 Pre-Proposal Submittals

Proposers must submit pre-Proposal submittals as provided in Section 2.11.1 (regarding changes in a Proposer's organization) and Section 2.11.2 (regarding changes in Key Personnel). In addition, any Proposer that wishes to submit an ATC pursuant to Section 3.2 must make a pre-Proposal submittal as described therein.

2.5 Pre-Proposal Meetings

2.5.1 Informational Meetings

TxDOT may hold joint informational meetings with all Proposers at any time prior to the Financial Proposal Due Date following notice to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

If any informational meeting is held, each Proposer shall attend with appropriate members of its proposed key management personnel, and if required by TxDOT, senior representatives of proposed team members identified by TxDOT.

2.5.2 One-on-One Meetings

TxDOT intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.5, and on such other dates designated by TxDOT, to discuss issues and clarifications regarding the RFP and the Proposer's ATCs. TxDOT reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that TxDOT determines, in its discretion, such disclosure would impair the confidentiality of an ATC or would reveal a Proposer's confidential business strategies. Participation at such meetings by the Proposers shall be mandatory. FHWA and local governmental entities may also participate in all one-on-one meetings.

The one-on-one meetings are subject to the following:

- The meetings are intended to provide Proposers with a better understanding of the RFP.
- TxDOT will not discuss with any Proposer any Proposal or ATC other than its own.
- 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.

- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules and to identify all participants from the Proposer whether attending in person or by phone. Each Proposer shall provide TxDOT with an agenda five Business Days in advance, or within the timeframe specified by TxDOT in notice to Proposer, regarding the topics it wishes to discuss during its respective one-on-one meeting. Written questions and responses will be permitted in connection with one-on-one meetings only to the extent permitted in the notice of meeting from TxDOT. Proposers shall not use one-on-one meeting agendas to submit written questions or requests for clarification or interpretation of the RFP Documents in excess of the question limitations set forth in Section 2.3.1. Proposers shall be responsible for providing any audio visual equipment that Proposers intend to utilize during the one-on-one meetings.

2.5.3 Questions and Responses during One-on-One Meetings

During one-on-one meetings, Proposers may ask questions and TxDOT may provide responses. However, any responses provided by TxDOT during one-on-one meetings may not be relied upon. The questions and TxDOT's responses will be provided in writing to all Proposers, except to the extent such questions are deemed by TxDOT to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs.

2.5.4 Statements at Meetings

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.3.

2.6 Confidentiality/Public Information Act Disclosure Requests

2.6.1 Disclosure Waiver

Each Proposer, by submitting a Proposal to TxDOT in response to the RFP, consents to the disclosures described in this ITP, including the disclosures in this Section 2.6 and all other disclosures required by law, and expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure, under the Public Information Act, the Code, the Rules or any other law relating to the confidentiality or disclosure of information. Under no circumstances will TxDOT be responsible or liable to a Proposer or any other party as a result of disclosing any such materials.

2.6.2 Observers during Evaluation

Proposers are advised that observers from federal or other agencies may observe the Proposal evaluation process and will have the opportunity to review the Technical Proposals after the Technical Proposal Due Date and the Financial Proposals after the Financial Proposal Due Date. TxDOT has agreed to allow FHWA officials and its outside advisors to oversee the procurement process, which includes access to the

Financial Proposals. Outside observers (other than FHWA officials) will be required to sign TxDOT's standard confidentiality agreement.

2.6.3 Public Disclosure of Proposal Documents

Proposers are advised that the information contained in Form J (Conflict of Interest Disclosure Statement) and the Executive Summary (described in Exhibit B, Section 3.1) of each Proposal may be publicly disclosed by TxDOT at any time, in TxDOT's discretion.

Proposers are advised that upon recommendation to the Commission of the selection of an apparent best value Proposer and in TxDOT's discretion, TxDOT may publicly release (a) each Proposal with the exception of the Price Proposal and the non-public financial statements of privately held entities, and (b) the selected apparent best value Proposer's Price Proposal, or any of the information contained therein. In the event TxDOT is unable to reach agreement on the DBC and CMA with the selected apparent best value Proposer and TxDOT, in accordance with applicable law, chooses to enter into negotiations with the next highest ranking Proposer, then the Price Proposal submitted by the next such highest ranking Proposer and any information contained therein may be disclosed as described in the previous sentence for the selected apparent best value Proposer.

Prior to recommendation to the Commission of the selection of an apparent best value Proposer, any Price Proposal submitted by Proposers and the information contained therein shall be subject to disclosure as described in Section 2.6.4.

After recommendation to the Commission of the selection of an apparent best value Proposer, but prior to execution of the DBC and CMA, any Price Proposal submitted by Proposers and the information contained therein, other than that of the apparent best value Proposer (or that of the next highest ranking Proposer, if such Proposer is in DBC and CMA negotiations with TxDOT) shall be subject to disclosure as described in Section 2.6.4.

After Final Award, or in the event that the procurement is cancelled by TxDOT, TxDOT shall have the right to publicly disclose any and all portions of all the Proposals, except the non-public financial statements of privately held entities. However, the non-public financial statements of privately held entities shall be subject to disclosure as described in Section 2.6.4.

2.6.4 Disclosure Process for Requests under the Act

If a request is made under the Act for disclosure of the Proposals or information contained therein, other than information which may be otherwise disclosed pursuant to the Proposer's express consent given in accordance with Section 2.6.1, TxDOT will submit a request for an opinion from the Office of the Attorney General prior to disclosing any such documents. The Proposer shall then have the opportunity to assert its basis for non-disclosure of such documents and claimed exception under the Act or other applicable Law to the Office of the Attorney General within the time period specified in the notice issued by TxDOT and allowed under the Act. However, it is the responsibility of the Proposer to monitor such proceedings and make timely filings. TxDOT may, but is not obligated to, make filings of its own concerning possible disclosure; however, TxDOT is under no obligation to support the positions of the Proposer.

By submitting a Proposal to TxDOT in response to the RFP, the Proposer consents to, and expressly waives any right to contest, the provision by TxDOT to the Office of the Attorney General of all, or representative samples of, the Proposal, including any non-public financial statements of privately held entities and other confidential or proprietary information, in accordance with the Act and each Proposer consents to the release of all such information to the Office of the Attorney General for purposes of the Attorney General making a determination in response to a disclosure request under the Act. Under no circumstances will TxDOT be responsible or liable to a Proposer or any other party as a result of disclosing any materials, whether the disclosure is deemed required by Law or by an order of court or occurs through inadvertence, mistake or negligence on the part of TxDOT or its officers, employees, contractors or consultants.

All Proposers should obtain and thoroughly familiarize themselves with the Act, Code, and any Rules applicable to the issue of confidentiality and public information. TxDOT will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under the Code, the Act or other Texas Laws, as to the interpretation of such Laws, or as to the definition of trade secret. The Proposer shall be solely responsible for all determinations made by it under applicable Laws. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to that Proposer's own circumstances.

In the event of any proceeding or litigation concerning the disclosure of any Proposal or portion thereof, including any non-public financial statements of privately held entities and other confidential or proprietary information submitted by the Proposer, the Proposer shall be responsible for prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that TxDOT reserves the right, in its discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by TxDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by the Proposer whose Proposal is the subject thereof.

2.7 TxDOT Studies and Investigations

TxDOT has conducted Site investigations. To the extent TxDOT undertakes any additional investigative activities, the information obtained by TxDOT from such activities may be made available to Proposers in the RIDs. All information provided by TxDOT will be subject to the same limitations applicable to similar information furnished in the RIDs. See Section 1.2.1 regarding representations or warranty as to the accuracy, completeness or suitability of the additional information.

2.8 Examination of RFP and Site Access

2.8.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including the RIDs and any Addenda, and all material posted on the RFP Website, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal, or the performance of the DB Contractor's obligations under the DBC and the CMA with TxDOT, as appropriate. Each Proposer is also responsible for monitoring the Project Webpage for information concerning the RFP and the procurement. The Proposal Letters (Forms A-1 and A-2) includes an acknowledgment that the

Proposer has received and reviewed all materials posted thereon. Failure of the Proposer to so examine and inform itself shall be at its sole risk, and TxDOT will provide no relief for any error or omission.

Each Proposer is responsible for conducting such investigations as it deems appropriate in connection with its Proposal, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, geotechnical investigations, and permanent and temporary Utility appurtenances, keeping in mind the provisions in the DBC and the CMA regarding assumption of liability by the Proposer. The Proposer's receipt of TxDOT-furnished information does not relieve the Proposer of such responsibility.

The submission of a Proposal shall be considered prima facie evidence that the Proposer has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and Maintenance Services, and as to the requirements of the DBC Documents and CMA Documents.

2.8.2 Site Access

An expedited process for obtaining rights of entry to access portions of the Project is attached hereto as Exhibit F. Exhibit F-1 sets forth the process for obtaining rights of entry to property that is not owned by the State, and Exhibit F-2 sets forth the process for obtaining a right of entry for State-owned ROW. Pursuant to the terms of Exhibit F-1 or F-2, as applicable, and subject to the Proposer obtaining any required administrative or governmental approvals, Proposers may be allowed access to portions of the Project for purposes of inspecting in-place elements of existing facilities and determining Site conditions through non-destructive investigations, until the Financial Proposal Due Date, provided that the conditions specified in Exhibits F-1 and F-2, as applicable, are met. This work may include surveys and site investigations, such as geotechnical, Hazardous Materials and Utilities investigations.

After Conditional Award has been made, the selected Proposer will be allowed access to the Project ROW that TxDOT owns, in accordance with the process described in this Section 2.8.2, in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, and to engage in the other activities referenced in the DBC Documents that are allowed prior to NTP2.

2.9 Errors

If any mistake, error, or ambiguity is identified by the Proposer at any time during the procurement process in any of the documents supplied by TxDOT, the Proposer shall notify TxDOT of the recommended correction in writing in accordance with Section 2.3.1.

2.10 Improper Conduct

2.10.1 Non-Collusion

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

2.10.2 Organizational Conflicts of Interest

Section 9.155 of Title 43 of the Rules regarding organizational conflicts of interest and 23 C.F.R. § 636.116 apply to this Project. Proposers are advised that these rules may preclude certain firms and their subsidiaries and affiliates from participating on a Proposer team.

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest (as defined in the Rules) is thereafter discovered, the Proposer must make an immediate and full written disclosure to TxDOT that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, TxDOT may, at its discretion, cancel the procurement, disqualify any Proposer with a conflict or take other action as necessary to mitigate the conflict. If the Proposer was aware of an organizational conflict of interest prior to the award of the DBC and the CMA and did not disclose the conflict to TxDOT, TxDOT may pursue remedies under the DBC and CMA, including termination of the DBC or, if applicable, CMA, for default.

2.10.3 Equitable Treatment of Proposers

During the procurement process (including the process for evaluation of ATCs and Proposals), TxDOT will make every reasonable effort to treat Proposers equitably.

2.11 Changes in a Proposer's Organization; Changes in Key Personnel

2.11.1 Changes in Proposer's Organization

Proposers are advised that, in order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved by TxDOT, the Proposer's organization as identified in the QS must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the team members identified in its QS, including additions or deletions of team members (including additional subcontractors), or reorganizations, changes in equity ownership interests or role changes in or of any of the foregoing, the Proposer shall submit to TxDOT a request for approval of the change as soon as possible but in no event later than the applicable last date set forth in Section 1.5. Any such request shall be addressed to TxDOT at the address set forth in Section 2.2.1, accompanied by the information specified for such entities in the RFQ, including Form B-1, Form B-2, Form C, Form F, and Form G (if applicable).

TxDOT discourages changes in a Proposer's organization from that listed in the QS other than the addition of new team members. If a request is made to allow deletion or role change of any Major Participant identified in its QS, the Proposer shall submit such information as may be required by TxDOT to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail, technical and financial, as applicable). The Proposer shall submit an original and five copies of each request package. TxDOT is under no obligation to approve such requests and may approve or disapprove a portion of the request or the entire request at its discretion. Except as provided herein, in the DBC Documents and, as applicable, the CMA Documents, a Proposer may not make any changes in the team members identified in its QS after the applicable last date set forth in Section 1.5. Between the applicable date set forth in Section 1.5 and execution of the DBC and CMA, TxDOT, in its discretion, will consider requests by a Proposer to make changes in that Proposer's organization based only on unusual circumstances beyond the Proposer's control.

2.11.2 Changes in Key Personnel

Proposers are advised that TxDOT discourages changes in Key Personnel from the individuals listed in the QS. Any proposed changes in Key Personnel from those identified in the QS are subject to TxDOT

approval in its discretion prior to the submission of the Proposal. Section 8.3.1 of the DBA General Conditions describes the circumstances under which changes to Key Personnel may be permissible.

Each Proposer requesting a change in Key Personnel, shall submit a package that includes an original and five copies of the information specified in this Section 2.11.2 to TxDOT, by the date and time for submittal of changes in Key Personnel to be specified in Section 1.5 for review and written approval by TxDOT, in its discretion. The package shall be delivered to the address set forth in Section 2.2.1, and shall include a list of any proposed changes in Key Personnel from those identified in the QS, along with copies of a completed Form G for each such person. In addition, Proposer shall include in the package a statement certifying that said individual will be available to assume its designated role on the Project if Proposer is the successful Proposer. Refer to the DBC Documents and CMA Documents, as applicable, for information regarding time commitment requirements for Key Personnel and TxDOT's rights if it determines that any such personnel are not devoting sufficient time to the prosecution and performance of the work required for the Project.

TxDOT is under no obligation to approve requested changes in Key Personnel and may disapprove such requests at its discretion. If TxDOT, in its discretion, disapproves a proposed Key Personnel, Proposer shall submit the information required above for its proposed substitute for review and approval by TxDOT in accordance with the foregoing process at least ten Business Days prior to the Technical Proposal Due Date. The Proposal may not include any Key Personnel previously disapproved by TxDOT in writing for such Key Personnel position. Prior to execution of the DBC and CMA, a Proposer may not make any changes in its Key Personnel as specified in this Section 2.11 except under unusual circumstances beyond the Proposer's control.

2.12 Changes to Companies or Entities Filling Key Project Roles

Each Proposer must identify in its Proposal the companies that will fill the roles of Key Subcontractors. Furthermore, any Proposer selected as DB Contractor for the Project may not make changes to the Key Subcontractors so identified unless the original company or entity: (a) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the Proposer or DB Contractor (as applicable); (b) voluntarily removes itself from the team; (c) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or (d) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the Project. If the Proposer makes team changes in violation of these requirements, any cost savings resulting from the change accrue to the State and not to the Proposer. Proposer shall identify all Key Subcontractors on Form B-1. All subcontracts for Key Subcontractors must be executed and provided to TxDOT prior to execution of the DBC and CMA. Notwithstanding the foregoing, teaming agreements may be provided in lieu of executed subcontracts for Key Subcontractors that will not perform Work prior to NTP2 and with whom subcontracts have not been executed. It is a condition to issuance of NTP2 that executed subcontracts be provided for all Key Subcontractors performing Work after NTP2.

2.13 Sales Tax

Proposers should assume that the Project is exempt from sales tax for certain Expendable Materials as more particularly described in the DBC Documents and the CMA Documents. The selected Proposer will

be required to submit a “Texas Sales and Use Tax Exemption Certification” to a seller for exempt items. The referenced form is available online to the public through the Texas Comptroller’s website.

SECTION 3 ALTERNATIVE TECHNICAL CONCEPTS

3.1 Alternative Technical Concepts

"Alternative Technical Concepts" or "ATCs" are concepts that conflict with or deviate from the requirements for design, construction or capital maintenance of the Project or otherwise require a modification of the technical requirements of the DBC Documents or CMA Documents but that may nevertheless be proposed in accordance with the terms and conditions set forth in this ITP. Sections 3.1 through 3.5 set forth a process for review of pre-Proposal ATC submissions. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing TxDOT to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferral of reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the requirements of the as-issued DBC Documents or CMA Documents that result in performance and quality of the end product that is equal to or better than the performance and quality of the end product absent the deviation, as determined by TxDOT in its discretion. A concept is not eligible for consideration as an ATC if, in TxDOT's discretion, it is premised upon or would require (i) a reduction in Project scope, performance or reliability; (ii) an increase in the life-cycle cost; or (iii) an increase in the amount of time required for Substantial Completion. In addition to the foregoing, TxDOT will not consider proposed ATCs that:

(a) require any deviation from:

(1) CRCP design input values in the TxCRCP-ME design procedure;

(2) Potential Vertical Rise (PVR) requirements for Rigid and Flexible Pavements;

(3) the aesthetic intent of the Skillman/Audelia bridge;

(4) Skillman/Audelia bridge aesthetic lighting intent and light fixtures;

(b) require a reduction in Project scope, including reductions to number of lanes, shoulder widths, total bridge width;

(c) eliminate the requirement to/for:

(1) Single Span Skillman/Audelia Tie Arch bridge, or

(2) the treated subgrade and base;

(d) increase the spacing of the CCTV;

(e) decrease the number of toll rate DMS and DMS placements;

(f) eliminate the managed lanes cross sectional width; or

(g) use:

(1) flexible pavement instead of rigid pavement;

(2) existing pavements, except as otherwise stated in Item 16;

(3) existing structures including bridges and bridge class culverts;

(4) existing drainage facilities within the Project ROW;

(5) high density polyethylene storm drainage pipe instead of reinforced concrete pipe;

(6) open drains on bridge structures over roadways or waterways;

(7) a buffer separation between managed lanes and general purpose lanes instead of traffic barrier;

(8) metal beam guard face or cable barrier between managed lanes and general purpose lanes instead of concrete traffic barrier;

(9) temporary barrier in a permanent configuration;

(10) three girder system on bridges; or

(11) non-epoxy coated rebar on structural items requiring epoxy. (Note that other corrosion protections may be submitted as an ATC, but complete elimination of the corrosion protection will be considered a reduction in scope and inappropriate as an ATC.)

ATCs that, if implemented, would require further environmental evaluation or reevaluation of the Project, may be allowed, provided that the DB Contractor bears the schedule and cost risk associated with such additional environmental evaluation. If the DB Contractor is not able to obtain all approvals necessary to implement the ATC, the DB Contractor will be obligated to develop the Project in accordance with existing approvals without additional cost or extension of time.

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by TxDOT, TxDOT recommends that the Proposer submit such concept for review as an ATC. Proposers are encouraged to begin discussing ATCs with TxDOT as early as practical, including during the draft RFP stage and during early one-on-one meetings.

3.2 Pre-Proposal Submission of ATCs

3.2.1 Using the form attached hereto at Exhibit I (Form of ATC Proposal), a Proposer may submit up to 25 total ATCs (excluding ATCs related to the Skillman/Audelia Bridge) for review to TxDOT's Authorized Representatives specified in Section 2.2.1, until the last applicable date and time for submittal of ATCs identified in Section 1.5. All ATCs shall be submitted in writing, with a cover sheet identifying the Proposer and stating "I-635 LBJ East Project – Confidential ATCs," and following the instructions on Exhibit I. If the Proposer does not use Exhibit I, the submission may not be treated as an ATC by TxDOT. ATC submittals shall include five hard copies of the completed Exhibit I form for each ATC. If the Proposer

submits electronic files (e.g., AVI, MP4, etc.) on a USB flash drive with the ATC submission that are not included in the hard copies, then the Proposer shall submit two USB flash drives. TxDOT will not consider any additional ATCs submitted by a Proposer in excess of the first 25 ATC proposals submitted by such Proposer. For the avoidance of doubt, the ATC limitation shall not apply to those ATCs addressing the Skillman/Audelia Bridge.

3.2.2 A Proposer shall not make any public announcement or disclosure to third parties concerning any ATC until after approval (including conditional approval) has been obtained. Following approval (including conditional approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify TxDOT of its intent to take such action, including details as to date and participants, and obtain TxDOT's prior consent, in its discretion, to do so.

3.2.3 If implementation of an ATC will require approval by a third party (e.g., a governmental authority), a Proposer shall have full responsibility for, and bear the full risk of, obtaining any such approvals after award of the DBC and the CMA; provided, however, that TxDOT shall retain its role as liaison with any governmental authorities as more particularly described in the DBC Documents and CMA Documents, as applicable. If any required third-party approval is not subsequently granted with the result that the Proposer must comply with the requirements of the original RFP, the Proposer will not be entitled to a Change Order for additional compensation or time under the DBC or CMA, as applicable.

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

3.3 TxDOT Review of Pre-Proposal Submission of ATCs

TxDOT may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC, provided that TxDOT has received all required and requested information regarding such ATC.

TxDOT's responses will be limited to one of the following statements:

(a) the ATC is acceptable for inclusion in the Proposal;

(b) the ATC is not acceptable for inclusion in the Proposal;

(c) the ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in TxDOT's discretion, of certain identified conditions which must be met or clarifications or modifications that must be made;

(d) the submittal is not eligible as an ATC but may be included in the Proposer's Proposal because it appears to be within the requirements of the RFP; or

(e) the submittal is not eligible as an ATC and may not be included in the Proposer's Proposal.

In addition, if TxDOT determines that implementation of the ATC will decrease overall project costs but will result in an increase in TxDOT's costs, TxDOT will provide in the ATC approval letter the amount of such

increased TxDOT's costs as estimated by TxDOT. Such amount shall be the ATC cost adjustment and shall be added to the Design-Build Price only for evaluation purposes in accordance with Section 5.5.2.

TxDOT will determine whether to accept and approve an ATC for submission. Approval of an ATC will constitute a change in the specific requirements of the DBC Documents or CMA Documents, as applicable, associated with the approved ATC for that specific Proposer. Proposers will be responsible for ensuring that the ATCs submitted with the Proposal comply with the requirements of the RFP. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to TxDOT's determinations regarding acceptability of ATCs and any ATC cost adjustments made in accordance with this Section 3.3 and Section 5.5.2.

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

TxDOT anticipates that comments provided to a Proposer will be sufficient to enable that Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, that Proposer may provide a request for clarifications under Section 2.3.1.

3.4 Incorporation of ATCs in the DBC Documents and CMA Documents

Following Conditional Award of the DBC and the CMA, the ATCs that were pre-approved by TxDOT and incorporated in the Proposal by the successful Proposer shall be included in the DBC Documents or the CMA Documents, as applicable. If TxDOT responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the DBC Documents and CMA Documents, as applicable. The DBC Documents and CMA Documents will be conformed after Conditional Award, but prior to execution of the DBC and CMA, to reflect the ATCs, including any TxDOT conditions thereto. Notwithstanding anything to the contrary herein, if the DB Contractor does not comply with one or more TxDOT conditions of pre-approval for an ATC or the DB Contractor fails to obtain a required permit or third party approval for an ATC, the DB Contractor will be required to comply with the original requirements of the RFP without additional compensation or extension of time as set forth in the DBC or CMA, as applicable.

Prior to execution of the DBC and CMA, ATCs from unsuccessful Proposers that have agreed, at their option, to execute the Payment for Work Product Agreement as described in Section 6.3, thus confirming their acceptance of the stipend, may, in TxDOT's discretion, be presented to the selected DB Contractor for possible incorporation in the DBC Documents or CMA Documents, as applicable, during negotiation of the final terms of the DBC or CMA pursuant to Section 5.11. Following execution of the DBC and CMA, ATCs from unsuccessful Proposers that have agreed, at their option, to execute the Payment for Work Product Agreement, may, in TxDOT's discretion, be presented to the selected DB Contractor as a TxDOT-Directed Change in accordance with the DBC or CMA, as applicable.

3.5 Confidentiality

Subject to the provisions of the Act and the Rules, ATCs and all communications regarding ATCs will remain confidential until a decision is made to select a Proposer or cancel the procurement, at which time

all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Act, applicable Law, and Section 2.6 of the ITP. Proposers acknowledge and agree that ATCs related to the Skillman/Audelia Bridge will be shared with the City of Dallas and a limited number of private stakeholders, as determined by TxDOT in its discretion. TxDOT will require any individuals involved with the review of such ATCs to sign confidentiality agreements. With the exception of ATCs submitted by a Proposer who chose not to include an executed Payment for Work Product Agreement with its Proposal, by submitting a Proposal, each Proposer agrees, if it is not selected, to disclosure of its work product to the successful Proposer.

SECTION 4 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY TXDOT

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal, a Financial Proposal and a Price Proposal meeting the requirements set forth in Exhibits B, C-1 and C-2, respectively. The Proposal shall be submitted in recyclable, low cost sealed containers in the format and manner set forth in Sections 4.2, 4.3 and 4.4, respectively.

4.1.1 Technical Proposal Due Date and Financial Proposal Due Date

The components of the completed Technical Proposal shall be delivered no later than the Technical Proposal Due Date and time specified in Section 1.5, and the components of the completed Financial Proposal and Price Proposal shall be submitted no later than the Financial Proposal Due Date and time specified in Section 1.5.

4.1.2 Signatures Required

The Proposal Letters (Forms A-1 and A-2) shall be signed in blue ink by all parties making up Proposer, and shall be accompanied by evidence of signatory authorization as specified in Forms A-1 and A-2.

4.1.3 Certified Copies

Where certified copies of the Proposal are required, Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark oversigned by the Proposer's Official Representative. Where certified copies of portions of the Price Proposal that include price information are required, Proposer shall only mark the sealed envelope with the words "Original and Certified True Copies" and have the mark oversigned by the Proposer's Official Representative.

4.1.4 Consequences of Failure to Follow Requirements

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

4.1.5 Requirement to Submit Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the ITP exhibits, it may be disqualified. Any Proposal that contains a material alteration, as determined by TxDOT in its discretion, to the ITP forms, will be considered non-responsive and non-compliant. Alterations that have been approved in advance by TxDOT will not be considered material.

If a Proposal is deemed non-responsive or non-compliant, TxDOT may disqualify the Proposal from further consideration, in its discretion. Such disqualification will not result in the forfeiture of a Proposer's Proposal Bond.

Each Proposal must be submitted in the official format which is specified by TxDOT in the RFP. The Proposer's Official Representative shall sign the Proposal Letters (Forms A-1 and A-2) and submit it with the original copies of the Technical Proposal, the Financial Proposal and the Price Proposal submitted to TxDOT. Multiple or alternative proposals may not be submitted.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

(a) if the Proposal is submitted in paper form only or on a disk other than that specified by TxDOT; if the Proposal Letters are not properly signed; if any part of the Proposal is missing from the Proposal package, or if it otherwise does not meet the Proposal submittal requirements;

(b) if TxDOT determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not called for in the RFP, or unauthorized additions;

(c) if multiple or alternate Proposals are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a DBC or CMA following Conditional Award;

(d) if the Proposer attempts to limit or modify the Proposal Bond, if the Proposal Bond is not provided (*see* Exhibit B, Section 3.3.2), or if requested information deemed material by TxDOT is not provided; and

(e) any other reason TxDOT determines the Proposal to be non-compliant.

4.1.6 Format

The Proposal shall contain concise written material and drawings enabling a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal, Financial Proposal, and Price Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2.0. No page limit applies to appendices and exhibits, however, TxDOT does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8 ½ by 11-inch format is required for typed submissions and an 11 by 17-inch format is required for drawings, except that (i) any support letters provided from parties outside the United States may be submitted in ISO A4 format and (ii) design drawings may be submitted on roll plots not to exceed 34 inches in width, with length to be determined based upon the Proposer's design layout (and such design drawings shall be submitted on a USB flash drive in Adobe Acrobat (PDF) format and in Bentley MicroStation format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and manipulate the schedule in Primavera format.

Submittals must be bound and, for the Technical Proposal, all pages in a binder sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than 12-point, other than in tables and figures which may be prepared using 10-point font size. The use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the Proposal. However, 11 by 17-inch foldouts may not include narrative text, except for brief captions necessary to title or describe graphics. Any other narrative text included on an 11 by 17-inch foldout may be disregarded by TxDOT. Each 11 by 17–inch foldout will be considered one page.

4.1.7 Additional Requirements for Proposal Delivery

The completed Technical Proposal shall be submitted and delivered in sealed containers no later than the Technical Proposal Due Date and time specified in Section 1.5. The completed Financial Proposal and Price Proposal shall be submitted and delivered in sealed containers no later than the Financial Proposal Due Date and time specified in Section 1.5. Each binder of the Technical Proposal, Financial Proposal, and Price Proposal shall be labeled to indicate its contents and the Proposer. The original Technical Proposal, Financial Proposal, and Price Proposal shall be clearly identified as "original"; copies of the Technical Proposals, Financial Proposals, and Price Proposals shall be sequentially numbered, labeled and bound.

The Technical Proposal, Financial Proposal, and Price Proposal are to be delivered to TxDOT at the following address:

Duane Milligan, P.E.
Texas Department of Transportation
7600 Chevy Chase Drive, Building 2, Suite 400
Austin, Texas 78752

4.2 Technical Proposal

The Proposer shall deliver two copies of the roll plot and one original and 10 certified copies, except for the Proposal Bond (*see* Section 4.2.1), of the Technical Proposal to TxDOT at the address identified in Section 4.1.7 by the Technical Proposal Due Date.

All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more USB flash drives shall be packaged in a single container, clearly addressed to TxDOT as provided herein, and labeled "[Proposer Name]: Original Technical Proposal for the I-635 LBJ East Project."

The containers that include the required certified hard copies of the Technical Proposal shall be labeled "Copies of Technical Proposal for the I-635 LBJ East Project."

The electronic copies shall be in Adobe Acrobat (PDF) format on USB flash drives; provided, however, that: (a) Proposal forms may be submitted in either Adobe Acrobat (PDF) or Word format; and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

4.2.1 Proposal Bond

One original and three certified copies of the Proposal Bond shall be provided with the Technical Proposal, and shall be in a separate envelope labeled "[Proposer Name]: Proposal Bond for the I-635 LBJ East Project."

4.3 Financial Proposal

One original and four certified copies of the Financial Proposal shall be delivered to TxDOT at the address identified in Section 4.1.7 by the Financial Proposal Due Date.

The financial statements and other financial capacity information submitted in response to Exhibit C-1, Section 2.0 shall be submitted in binders. One original and four hard copies, as well as one digital copy on a USB flash drive, of the financial capacity information shall be submitted in a container labeled "[Proposer Name]: Financial Proposal/Financial Capacity information for the I-635 LBJ East Project."

4.4 Price Proposal

One original and four certified copies of the Price Proposal (including all Forms P, Q, and R), as well as one digital copy in Adobe Acrobat (PDF) on a USB flash drive, shall be delivered with the Financial Proposal to TxDOT at the address identified in Section 4.1.7 by the Financial Proposal Due Date. The Price Proposal also shall include a completed electronic copy of the pricing forms in Microsoft Excel format.

To facilitate blinding of the Price Proposal for purposes of scoring, all parts of the Price Proposal that indicate information identifying the Proposer shall be submitted in a sealed container labeled "[Proposer Name]: Price Proposal for the I-635 LBJ East Project." All portions of the Price Proposal (including all pricing forms and the electronic copies of the Price Proposal) shall not include any information identifying the Proposer, (such as marketing information (e.g., logos, colors, inserts, etc.)) or modify the forms in any way (including headers and footers) except to input the requested information, and shall be included unbound in a separate sealed container labeled "[Proposer Name]: Price Proposal Pricing Forms for the I-635 LBJ East Project."

The Price Proposal shall include, in a sealed envelope marked "Form R," one original and four certified copies, as well as one digital copy in PDF on a USB flash drive, of information pertaining to the number of days between NTP1 and the Proposer's Proposal Commitment Date for Substantial Completion (including completed Form R).

4.5 Currency

All required pricing, financial and cost information shall be provided in United States dollars (US$) currency only.

4.6 Modifications, Withdrawals and Late Submittals

4.6.1 Modifications to a Proposal

A Proposer may modify its Technical Proposal in writing prior to the specified time on the Technical Proposal Due Date. A Proposer may modify its Financial Proposal or Price Proposal in writing prior to the

specified time on the Financial Proposal Due Date. The modification shall conform in all respects to the requirements for submission of the applicable component of the Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original components of the Proposal and shall specifically state that the modification supersedes the previous components of the 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 hardcopy and electronic forms as described in Exhibits B, C-1 and C-2. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

4.6.2 Withdrawal and Validity of Proposals

A Proposer may withdraw its Proposal at any time prior to the time due on the Financial Proposal Due Date by means of a written request signed by the Proposer's Official Representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Technical Proposal prior to the Technical Proposal Due Date and time will not prejudice the right of a Proposer to file a new Technical Proposal, provided that it is received before the time due on the Technical Proposal Due Date. A withdrawal of a Financial Proposal or Price Proposal prior to the Financial Proposal Due Date and time will not prejudice the right of a Proposer to file a new Financial Proposal or Price Proposal, provided that it is received before the time due on the Financial Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Financial Proposal Due Date and any attempt to do so will result in a draw by TxDOT upon the Proposal Bond.

Proposals shall be valid for a period of 180 days after the Financial Proposal Due Date. Except as set forth in the previous paragraph, no Proposer shall withdraw its Proposal prior to expiration of the 180-day period, unless notified by TxDOT that (i) no DBC or CMA for the Project will be awarded by TxDOT pursuant to the RFP; (ii) TxDOT has awarded the DBC and CMA to another Proposer and has received the executed DBC and CMA and other required documents; (iii) TxDOT does not intend to award the DBC and CMA to the Proposer; or (iv) such Proposer is not the apparent best value or next highest ranking Proposer. If the next best value Proposer is notified during the 180-day period that it is selected for negotiations, such Proposer shall extend the validity of its Proposal for a period of 270 days after the Financial Proposal Due Date.

Any Proposer may elect, in its discretion, to extend the validity of its Proposal beyond the time periods set forth above.

4.6.3 Late Proposals

TxDOT will not consider any late Proposals. Technical Proposals and modification or withdrawal requests received after the time for submittal on the Technical Proposal Due Date, and Financial Proposals or Price Proposals received after the time for submittal on the Financial Proposal Due Date, will be returned to Proposer without consideration or evaluation.

4.7 Forfeiture of Proposal Bond

The dollar amount of the Proposal Bond to be submitted with each Proposal shall be $25 million (*see* Exhibit B, Section 3.3.2). By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Bond if: (i) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal except as specifically permitted hereunder; (ii) it is

selected for negotiations, but fails to negotiate in good faith with TxDOT as set forth in Section 5.11; (iii) it is selected as the apparent best value Proposer, but fails to provide the documents required under Sections 6.1 and 6.1.1, unless the failure is directly attributable to TxDOT's election not to enter into the DBC Documents in the form included in the RFP, following the failure of the Parties to agree upon changes to the terms of the DBC Documents pursuant to Section 5.11; or (iv) it is selected as the apparent best value Proposer, but fails to deliver the NTP1 Performance Bond and the NTP1 Payment Bond in accordance with Section 3.4 of the DBA General Conditions.

Any Proposal that contains a material alteration, as determined by TxDOT, in its discretion, to the ITP forms, including any material alteration to the form of Proposal Bond (Form N), will be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by TxDOT will not be considered material. If TxDOT issues any addenda to this RFP that do not change a form except for noting the addendum number and date in the footer, TxDOT will accept an earlier version of the form so long as the earlier version of the form submitted with the Proposal is otherwise the most up-to-date version of the form. If a Proposal is deemed non-responsive or non-compliant, TxDOT may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of Proposer's Proposal Bond.

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

4.8 Acceptance of Delivery by TxDOT

TxDOT will provide receipts for Proposals that are timely delivered to TxDOT as specified herein.

4.9 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before Final Award and execution of the DBC and the CMA, including costs incurred for any interviews, and costs associated with Post-Selection Deliverables, shall be borne by Proposer, except for any costs paid by TxDOT in accordance with Section 6.3.

SECTION 5 EVALUATION AND POST-SELECTION PROCESS

TxDOT's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this procurement.

The Proposal evaluation process will include review of each Proposal for responsiveness and pass-fail criteria, qualitative evaluation of the Technical Proposal, quantitative evaluation of the Financial Proposal, evaluation of the Price Proposal, a ranking determination and a best value determination. The process may, at TxDOT's discretion, include a request for Proposal Revisions, and may include a limited negotiations phase with the selected Proposer. The steps in the process and evaluation criteria are set forth in Sections 5.3 through 5.10. The evaluation and selection process is subject to modification by TxDOT, in its discretion.

The evaluation process will involve the following steps:

1. TxDOT evaluation committees will:

   (a) evaluate the Proposals and determine which Proposer has offered the apparent best value Proposal, based on the specific evaluation criteria set forth herein; and

   (b) provide a recommendation to TxDOT senior management regarding the apparent best value Proposal.

2. TxDOT senior management will review and consider the recommendations from the TxDOT evaluation committees, and will provide a recommendation for Conditional Award to the Commission. The Commission will determine whether to issue notice of Conditional Award after considering the recommendations received.

The details of the evaluation and selection process are set forth more fully in this Section 5.

5.1 Organization of the TxDOT Evaluation Committee and Subcommittees

Evaluation of Proposals will be conducted by TxDOT's Evaluation and Selection Recommendation Committee ("ESRC") with assistance from four separate subcommittees – a Pass/Fail and Responsiveness Subcommittee, a Technical Proposal Evaluation Subcommittee ("TPES"), a Price Proposal Evaluation Subcommittee ("PPES") and a Selection Advisory Subcommittee.

The ESRC and the various subcommittees will be comprised of representatives from TxDOT. The ESRC and subcommittees may be assisted by advisors, including TxDOT representatives and outside consultants who will offer advice on the technical, financial and legal aspects of each Proposal. In addition, observers, including representatives from federal and other agencies and municipalities, with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators, outside consultants, advisors and observers (other than FHWA officials) are subject to confidentiality requirements, and all evaluators, outside consultants and observers will be subject to TxDOT requirements to control conflicts of interest.

5.2 Best Value Determination

5.2.1 Total Proposal Score

The best value determination will be based on an 70-30 point scale. The Price Score will represent up to 70 points of the total score, and the Technical Score will represent up to 30 points of the total score. The determination of apparent best value shall be based on the highest Total Proposal Score computed based on the following formula:

Total Proposal Score (max. 100 points) = Price Score (max. 70 points) + Technical Score (max. 30 points)

5.2.2 Price Score

The Price Score will be calculated based on pricing provided by the DB Contractor on Forms P and Q using the following formula:

Price Score = (Lowest Price Value / Price Value) * 70

Where:

Lowest Price Value = the lowest Price Value submitted by a Proposer as determined pursuant to Section 5.5

Price Value = Proposer's Price Value as determined pursuant to Section 5.5.

5.2.3 Technical Score

The Technical Score will be calculated based on the ESRC evaluation score for the Technical Proposal (maximum of 100 points) as described in Section 5.4.3. The Technical Score will be calculated using the following formula:

Technical Score = ESRC evaluation score * 0.30

5.3 Pass/Fail and Responsiveness Evaluation

The Technical Proposals will be made available for review by the relevant pass/fail and responsiveness subcommittees shortly after the Technical Proposal Due Date. The Financial Proposals and Price Proposals will be made available for review by the relevant pass/fail and responsiveness subcommittees shortly after the Financial Proposal Due Date. The components of the Proposals will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below.

5.3.1 Technical Proposals

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

(a) The business form of Proposer and any entities that will have joint and several liability (i.e., joint venture members or partners) under the DBC or CMA, as applicable, or that will provide a guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws, association agreements or equivalent documents) is consistent with the requirements of the Project and DBC Documents or CMA Documents, as applicable.

(b) Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.8.

(c) Proposer information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.

(d) The Technical Proposal as outlined in Exhibit B meets all applicable RFP requirements.

(e) Proposer has delivered Proposal Bond in the form of a complete, properly executed proposal bond that complies with the requirements of Exhibit B, Section 3.3.2.

5.3.2 Financial Proposals

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

- The Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial data submitted in the QS, such that the Proposer continues to have the financial capacity to develop, design, construct and maintain a project of the nature and scope of the Project as demonstrated by the materials provided pursuant to Exhibit C-1.

If TxDOT determines that a Proposer has insufficient financial capacity, it will offer Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to TxDOT.

5.3.3 Price Proposals

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

(a) Proposer has provided a Design-Build Price using Form P-1 that complies with the requirements of Exhibit C-2, Section 3.1.1.

(b) Proposer has provided a Design-Build Price Breakdown using Form P-2.1 that complies with the requirements of Exhibit C-2, Section 3.1.1.

(c) Proposer has provided a Skillman/Audelia Price Breakdown using Form P-2.2 that complies with the requirements of Exhibit C-2, Section 3.1.1.

(d) Proposer has provided an ATC Adjustments form (if applicable) using Form P-3 that complies with the requirements of Exhibit C-2, Section 3.1.1.

(e) Proposer has provided the DB Contractor Draws/Cash Flow Table using Form P-4 that complies with the requirements of Exhibit C-2, Section 3.1.1.

(f) Proposer has provided a Maintenance Price using Form Q that complies with the requirements of Exhibit C-2, Section 3.1.2.

(g) The Proposal includes Form R and the proposed number of days between NTP1 and Substantial Completion are less than or equal to the "TxDOT Last Allowable Date for Substantial Completion" set forth in Form R. In addition, the Preliminary Project Baseline Schedule is consistent with Form R, the Technical Solutions and the requirements listed in Exhibit B, Section 4.3.

5.3.4 TxDOT Right to Exclude Proposals from Consideration or to Waive Mistakes

Those Proposals not responsive to the RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and Proposer will be so advised. TxDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. TxDOT reserves the right to waive minor informalities, irregularities and apparent clerical mistakes that are unrelated to the substantive content of the Proposals.

5.4 Evaluation of Technical Proposals by TPES

The TPES will assign adjectival ratings to the Technical Proposal using the rating guidelines specified in Section 5.4.4.

5.4.1 Project Management

The TPES will use the ratings guidelines specified in Section 5.4.4 to evaluate the Technical Proposal, including the Project Management Value-Added Responses (Project Management VARs). The TPES will assign a single qualitative rating to this Project Management evaluation factor based on the following evaluation criterion: the extent to which the Technical Proposal provides added benefits or value to TxDOT and/or results in improvements in implementation for the Project, in each case, over and above the minimum requirements for the Project Management Plan (PMP) identified in Section 4.1 of Exhibit B and DBE good faith efforts in Section 3.8 of Exhibit B.

5.4.2 Quality Management

The TPES will use the ratings guidelines specified in Section 5.4.4 to evaluate the Technical Proposal, including the Quality Management Value-Added Responses (Quality Management VARs). The TPES will assign a single qualitative rating to this Quality Management evaluation factor based on the following evaluation criterion: the extent to which the Technical Proposal provides added benefits or value to TxDOT and/or results in improvements in the level of overall quality for the Project, in each case, over and above the minimum requirements for preparing the Quality Management Plan (QMP) identified in Section 4.2 of Exhibit B.

5.4.3 Design and Construction Plan

The TPES will evaluate component parts of the Design and Construction Plan based on the evaluation subfactors in Table 2 and the ratings guidelines specified in Section 5.4.4.

Table 2

Evaluation Subfactors	Points
Construction Staging, Sequencing and Traffic Management	20
Bridges, retaining walls, and geotechnical and earthwork plan	10
Roadway	10
Drainage	10
Preliminary Project Baseline Schedule	5
Project Feasibility	10
Maximum Points for Design and Construction Plan: 65	

5.4.4 Evaluation Guidelines

The TPES will review the Technical Proposal with reference to the evaluation factors and subfactors (if any) specified in Sections 5.4.1 through 5.4.3, in accordance with the guidelines provided in this Section 5.4.4 and assign a qualitative rating for each of the evaluation factors or subfactors (as applicable) in accordance with Table 3.

Table 3

ADJECTIVE RATING	DESCRIPTION	
	Project Management / Quality Management	**Design and Construction**
Excellent	The Project Management/Quality Management VARs provide superior benefits and value and/or result in outstanding	The D&C plan greatly exceeds the requirements of the evaluation subfactor and provides superior benefits and value, and/or

ADJECTIVE RATING	DESCRIPTION	
	Project Management / Quality Management	**Design and Construction**
	improvements in implementation or level of overall quality of the Project. There are no questions, concerns or weaknesses.	results in outstanding improvements in implementation and level of overall quality of the Project. There are no questions, concerns or weaknesses.
Very Good	The Project Management/Quality Management VARs provide significant benefits and value and/or result in meaningful improvements in implementation or level of overall quality of the Project. Questions, concerns or weaknesses are very minor.	The D&C plan exceeds the requirements of the evaluation subfactor and provides significant benefits and value, and/or results in meaningful improvements in implementation and level of overall quality for the Project. Questions, concerns or weaknesses are very minor.
Good	The Project Management/Quality Management VARs provide added benefits and value and/or result in improvements in implementation or level of overall quality of the Project. Questions, concerns or weaknesses are minor.	The D&C plan exceeds the requirements of the evaluation subfactor and provides added benefits and value, and/or results in improvements in implementation and level of overall quality for the Project. Questions, concerns or weaknesses are minor.
Meets Minimum	There are no Project Management/Quality Management VARs that provide added benefits and value or result in improvement in the implementation or quality of the Project. (The evaluation factor receives zero points.)	The D&C plan is responsive and meets the minimum requirements of the evaluation subfactor. There are no unique or innovative characteristics. There may be questions, concerns or weaknesses.

The term "weakness," as used herein, means any flaw in the Proposal that increases the risk of unsuccessful contract performance.

5.4.5 Technical Score

During the evaluation, the evaluation factors for Project Management and Quality Management and each of the subfactors for the Design and Construction Plan, as described in Sections 5.4.1 through 5.4.3 above, will be assigned a consensus rating by TxDOT, which the ESRC will convert to points. The points for each evaluation factor or subfactor will be added to determine the Proposal's score for each of the corresponding evaluation factors. The score of each of the evaluation factors will then be added to arrive at the total evaluation score for the Technical Proposal, with 100 maximum possible points. The Technical Score will be calculated using the following formula:

Technical Score = Project Management Score + Quality Management Score + Design and Construction Plan Score (maximum 100) * 0.3

Table 4

Technical Proposal	**Maximum Qualitative Rating** **(100 Points)**
Project Management	15 Points
Quality Management	20 Points
Design and Construction Plan	65 Points

5.5 Evaluation of Price Proposal by PPES

After completion of the pass/fail and responsiveness review, the Price Proposal will be evaluated by the PPES. The PPES will conduct reviews and evaluations of the "blinded" Price Proposals to determine the Price Score of the Proposal in accordance with Section 5.2.2.

The Price Value will be calculated using the following formula:

Price Value = DB Price Value + Maintenance Price Value + ATC Cost Adjustments – Road User Price

Where:

ATC Cost Adjustments = the ATC cost adjustments determined pursuant to Section 5.5.2

DB Price Value = Proposer's DB Price Value as determined pursuant to Section 5.5.1

Road User Price = Road User Price as determined pursuant to Section 5.5.4

Maintenance Price Value = Proposer's Maintenance Price Value as determined pursuant to Section 5.5.3

5.5.1 DB Price Value

The DB Price Value will be the total value set forth in Form P-1.

5.5.2 ATC Cost Adjustments

The ATC Cost Adjustments will be the costs identified by TxDOT in the ATC response letter(s) pursuant to Section 3.3 regarding the use of an ATC in a Proposal, and set forth on Form P-3.

5.5.3 Maintenance Price Value

The Proposer's Maintenance Price Value will be the present value of the Maintenance Price for the maximum term of the CMA as set forth in 2019 dollars on Form Q. The values set forth on Form Q will be inflated using a 3.0% inflation rate per annum and discounted annually at a discount rate of 5% per annum.

5.5.4 Road User Price

The total road user price will be the Road User Price as set forth on Form R.

5.6 ESRC Evaluation of Technical and Financial Proposals

Before reviewing the Price Proposal and PPES evaluation results, the ESRC will review the Technical Proposal and the ratings and points recommendations provided by the TPES with respect to each Proposer's Technical Proposal. The ESRC may accept the recommendations provided by the TPES, may request the TPES to reconsider its recommendations, or may develop its own recommendations. The ESRC may use performance evaluations prepared by TxDOT in accordance with Title 43, Texas Administrative Code, Section 27.3 or Section 9.152 of the Rules, or other performance evaluations, as deemed appropriate by TxDOT, to assist in the evaluation of the Technical Proposal to the extent such evaluations concern the performance of the Proposer or any individual Proposer team members.

After determining each Proposal's Technical Score, the ESRC will review the Price Proposal and PPES evaluation results and determine each Proposal's Price Score. The ESRC may accept the evaluation results provided by the PPES, may request the PPES to re-perform the evaluation, or may perform the evaluation itself.

Finally, the ESRC will determine the Total Proposal Score for each Proposal based on the formula set forth in Section 5.2.1 and determine the rankings and the apparent best value.

5.7 Requests for Clarification

TxDOT may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify any aspect of its Proposal. Any requests for clarification will be in writing to the Proposer's Official Representative. Proposers shall respond to any such requests within two Business Days (or as specified by TxDOT) from receipt of the request. The scope, length, and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, TxDOT.

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

5.8 Requests for Proposal Revisions

Depending on the quality of the Proposals, TxDOT may, at any time after receipt of Proposals and prior to Final Award and execution of the DBC and the CMA, determine that it is appropriate to request changes to the Proposals ("Proposal Revisions"). Before requesting any such Proposal Revisions, TxDOT will engage in separate discussions (either in writing or in person through one-on-one meetings) with each Proposer and in accordance with the procedures for proposal revisions described in 23 CFR § 636.501 et seq. The

request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP, shall mean the original Proposal, as modified by the Proposal Revision.

Upon receipt of any Proposal Revisions, the ESRC, with assistance from the appropriate subcommittees, will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.9 Identification of Apparent Best Value Proposal

Once the ESRC has determined a Total Proposal Score for each Proposal, assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions), and determined the apparent best value, the ESRC will present its recommended rankings to a Project steering committee comprised of certain TxDOT executives ("Steering Committee").

5.10 Recommendation to Commission

The Steering Committee will review the Proposals and the recommendations and supporting information provided by the ESRC, and may accept the recommendation or reject the recommendation and cancel the procurement. If the Steering Committee accepts the ESRC's recommendation, the Steering Committee will provide the recommendation to the TxDOT Executive Director or his designee regarding which Proposal provides the best overall value.

Upon receipt of recommendations from the Steering Committee, the TxDOT Executive Director or his designee will review the recommendations and may accept the recommendation or reject the recommendation and cancel the procurement. If the Executive Director accepts the Steering Committee's recommendation, the Executive Director, or designee, will make a recommendation to the Commission regarding the rankings of Proposers and designation of the best value Proposer. The Commission will evaluate the recommendations and will determine whether to proceed with award of a DBC and CMA to the apparent best value Proposer or take any other action. The Commission's decision on Conditional Award of the DBC and CMA to the apparent best value Proposer will be made in a public meeting and will be considered a public announcement of intent to award the DBC and CMA by the Commission.

The Commission's decision regarding award of the DBC and CMA shall be final.

5.11 Finalization of the DBC Documents and CMA Documents; Post-Selection Process

If authorized by the Commission, TxDOT will proceed with the apparent best value Proposer to finalize the DBC Documents and CMA Documents. TxDOT may agree to limited negotiations with the apparent best value Proposer to clarify any remaining issues regarding scope, schedule, financing or any other information provided by that Proposer. In addition, limited negotiations may be conducted as necessary to incorporate into the DBC Documents or CMA Documents the ideas and concepts of unsuccessful Proposers' work product. Any decision to commence limited negotiations is at TxDOT's discretion. By submitting a Proposal, each Proposer commits to enter into the form of DBC and CMA included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of DBA and CMA indicates is required from the Proposal.

If a DBC and CMA satisfactory to TxDOT cannot be negotiated with the apparent best value Proposer, TxDOT will formally end negotiations with that Proposer and take action consistent with the direction provided by the Commission. Such action may include (a) requiring the apparent best value Proposer to enter into the DBC and CMA in the forms included in the RFP, without variation except to fill in blanks and include information that the forms of the DBC and CMA indicate is required from the Proposal, (b) rejection of all Proposals, (c) issuance of a request for Proposal Revisions to Proposers, but only if the ATCs of one or more Proposers have not been revealed to the original apparent best value Proposer, or (d) proceeding to the next most highly ranked Proposal to attempt to negotiate a DBC and CMA with that Proposer in accordance with this Section 5.11. If option (d) is selected, the Proposer that submitted the next most highly ranked Proposal will be considered the apparent best value Proposer.

In the event TxDOT elects to commence negotiations with a Proposer, such Proposer will be deemed to have failed to engage in good faith negotiations with TxDOT if the Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with TxDOT or insists upon terms or conditions for any documents to be negotiated or provided by the DB Contractor hereunder that are inconsistent with the DBC Documents or CMA Documents, as applicable. Failure of the Proposer to engage in good faith negotiations shall result in forfeiture of its Proposal Bond as set forth in Section 4.7. The Proposer is strongly encouraged to ensure all Key Personnel are present at the initial kick-off meeting following Conditional Award by the Commission of the DBC and CMA.

5.12 Post-Selection Deliverables

5.12.1 Documents to Be Submitted Following Conditional Award

As a condition precedent to Final Award of the DBC and CMA, the successful Proposer shall deliver the following to TxDOT within ten days after notification of Conditional Award:

(a) Evidence of authority to transact business in the State of Texas for all members of Proposer's team that will transact business in the State, dated no earlier than 30 days prior to the Technical Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a certificate of status from the Texas Secretary of State along with a Certificate of Good Standing from the state of organization of the member; (ii) a certificate of account status from the Texas Comptroller establishing that the Proposer is current with its franchise tax payments; or (iii) other evidence acceptable to TxDOT.

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

(c) If security for Proposer's obligations under the DBC and CMA is required by TxDOT pursuant to Exhibit B, Section 3.2.4, the form of the proposed guarantees from Guarantors acceptable to TxDOT, in its discretion, in the form of Exhibit 13 to the DBA and Exhibit 9 to the CMA, as appropriate.

(d) Escrowed proposal documents ("EPDs") as required by Section 5.12.3.

(e) A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond and Payment Bond, each in the full amount specified and in the forms attached as Exhibit 12 to the DBA. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the DBC and issuance of NTP1; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the DBC Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments.

During the negotiation period, as a condition to Final Award, the Proposer shall deliver drafts of the deliverables identified in Sections 6.1 and 6.1.1, for pre-approval by TxDOT.

5.12.2 TxDOT Comments on Post-Selection Deliverables

Except for the DBE Performance Plan and Job Training Plan, TxDOT shall provide comments on any Post-Selection Deliverables required to be delivered to TxDOT hereunder within 21 days of the date of TxDOT's receipt of such deliverable, as such timeframe may be extended by the Parties. Except for the DBE Performance Plan and Job Training Plan, TxDOT shall have 14 days to review and respond to subsequent submittals of the deliverable.

5.12.3 Escrowed Proposal Documents

(a) Within the timeframe stated in Section 5.12.2, the DB Contractor shall deliver to TxDOT EPDs containing information regarding the Proposer's assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 5.13.1 of the DBA General Conditions and Section 17.1 of the CMA. The EPDs shall include detailed information from all subcontractors identified in the Proposal and any other potential subcontractors who provided data upon which the Proposal is based. DB Contractor shall also organize the EPDs, numbering and labeling each page so that it is obvious that each page is a part of the EPDs, and to enable a person reviewing the page out-of-context to determine where it can be found within the EPDs. The EPDs shall include an index that lists each document included in the EPDs, and briefly describes the document and its location in the EPDs. The documents shall be in sealed containers labeled "[Proposer Name]: Escrowed Proposal Materials for the I-635 LBJ East Project." TxDOT shall have the right to review the EPDs for completeness and consistency with the Proposal.

(b) Representatives of TxDOT (or its consultants) and the successful Proposer shall review the EPDs prior to execution of the DBC and CMA to determine whether they are complete and meet the requirements of Section 5.13.1 of the DBA General Conditions and Section 17.1 of the CMA. Such representatives shall also review the EPDs against the index to confirm the index meets the requirements of Section 5.12.3(a). TxDOT will have the right to retain a copy of the index. After the joint review, the EPDs shall be kept in a locked cabinet at TxDOT's offices.

(c) If, following the initial review and organization, TxDOT determines that the EPDs are incomplete, TxDOT may, as a condition to Final Award, require the selected Proposer to supply data to make the EPDs complete.

(d) Following execution of the DBC and CMA, the EPDs will be available for joint review only as specified in DBA General Conditions Section 5.13.1 and CMA Section 17.1.

SECTION 6 FINAL AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of DBC and CMA

The following are conditions precedent to Final Award of the DBC and CMA: (a) successful completion of negotiations (if held); (b) concurrence in award by FHWA (if needed); (c) receipt by TxDOT of all of the documents required to be provided prior to execution of the DBC and CMA under Section 6.1.1; (d) execution of the DBC and CMA by the Executive Director of TxDOT or his designee; and (e) any other conditions required by the Commission.

Upon satisfaction of the conditions set forth in Section 6.1 (a), (b), (c), and (e), TxDOT will deliver execution copies of the DBC Documents and CMA Documents to the selected Proposer, along with a number of sets of execution copies as reasonably requested by Proposer. The selected Proposer shall obtain all required signatures and deliver all of the execution sets to TxDOT within five days of receipt, together with the required documents described in Section 6.1.1 below. If the DB Contractor is a joint venture or a partnership, the DBC and CMA must be executed by all joint venture members or general partners, as applicable. Within 21 days of TxDOT's receipt of all required and compliant documents from Proposer, TxDOT will execute the agreements, retain TxDOT's sets of the agreements and deliver the other executed sets to Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to Proposer.

6.1.1 Documents to Be Delivered by Proposer with Executed DBC and CMA

The Proposer shall deliver the documents listed below to TxDOT concurrently with the executed DBC and CMA as a condition to execution of the DBC and CMA by TxDOT. On or before the date that TxDOT delivers the execution sets of the DBC and CMA to the Proposer, TxDOT shall notify the Proposer regarding the number of originals and copies required to be delivered.

(a) Evidence of authority to transact business in the State of Texas for the Proposer, its general partners and joint venture members, and each other Major Participant, dated no earlier than 30 days prior to the Effective Date of the DBC Documents and CMA Documents. Depending on the form of organization, such evidence may be in the form of (i) a certificate of status from the Texas Secretary of State along with a Certificate of Good Standing from the state of organization of the member; (ii) a certificate of account status from the Texas Comptroller establishing that the Proposer is current with its franchise tax payments; or (iii) other evidence acceptable to TxDOT. If such documents are not available due to the form of organization of the entity, the Proposer shall provide appropriate documents evidencing its ability to transact business in the State of Texas;

(b) For entities formed after submission of the Proposal, a copy of the entity's final organizational documents. The final form of the organizational documents shall not differ materially from the draft organizational documents included with the Proposal;

(c) If security for the Proposer's obligations under the DBC is required by TxDOT pursuant to Exhibit B, Section 3.2.4, the Proposer shall submit one or more guarantees from Guarantors acceptable to TxDOT, in its discretion, in the form of Exhibit 13 to the DBA and Exhibit 9 to the CMA, as appropriate;

(d) Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the DBC and CMA by the DB Contractor and, if the DB Contractor is a joint venture, by its

joint venture members. Such evidence shall be in a form and substance satisfactory to TxDOT. If the DB Contractor is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the DB Contractor is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If the DB Contractor is a limited liability company, such evidence shall be in the form of: (i) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, (ii) a managing members resolution, certified by an appropriate officer of the managing members, or (iii) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If the DB Contractor is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member;

(e) A written opinion from counsel for the DB Contractor, which counsel shall be approved by TxDOT (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the formation/organization of the entity for which the opinion is rendered (i.e., DB Contractor, joint venture member, etc.) and the qualification to do business in Texas and the enforceability opinion shall be provided by an attorney licensed in the State of Texas), in substantially the form attached hereto as Exhibit K (with such changes as agreed to by TxDOT in its discretion); provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware;

(f) Evidence of insurance required to be provided by the DB Contractor under the DBC Documents and CMA Documents, as applicable;

(g) Evidence that the DB Contractor and its Major Participants hold all licenses required for performance of the work under the DBC Documents and CMA Documents;

(h) A TxDOT approved DBE Performance Plan in accordance with the requirements of Section 1.8.2;

(i) A TxDOT approved Job Training Plan as described in Section 8.2.6 of the DBA General Conditions;

(j) Executed subcontracts for all Key Subcontractors that will perform Work prior to the issuance of NTP2;

(k) Executed teaming agreements for all Key Subcontractors not performing Work prior to issuance of NTP2 with whom DB Contractor has not yet executed a subcontract;

(l) Any other requirements identified by TxDOT during pre-award negotiations; and

(m) A signed and notarized Form 1295, Certificate of Interested Parties, as required by the Texas Ethics Commission pursuant to Government Code Sec. 2252.908 and Tex. Admin. Code Sections 46.1-46.5, as described in Section 4.6.5.5 of the DBA General Conditions and Section 10.4.7 of the CMA. Please visit the Texas Ethics Commission website for additional information at:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

6.2 Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided at the earliest feasible time after execution of the DBC and CMA. The debriefing shall be conducted by a TxDOT procurement official familiar with the rationale for the selection decision and DBC and CMA award.

Debriefings shall:

(a) be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;

(b) be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and

(c) provide information on areas in which the unsuccessful Proposer's Technical Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the ESRC, but may include a summary of the rationale for the selection decision and DBC and CMA award.

6.3 Payment to Unsuccessful Proposers

Each Proposer that submits a responsive, but unsuccessful, Proposal and that elects, at its option, to deliver to TxDOT with its Proposal a Payment for Work Product Agreement in the form attached hereto as Exhibit H-1 and a Form 1295 in the form attached hereto as Exhibit H-2, shall be entitled to receive payment from TxDOT for work product that is not returned to Proposer, on the terms and conditions described herein and in the Minute Order issued by the Commission, a copy of which is attached hereto as Exhibit G. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3.

In the event the DBC is executed, the stipulated payment for work product per Proposer for this procurement will be 0.25% of the successful Proposer's DB Price, except that the amount of the payment may not exceed the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions. **Work product that can be used by TxDOT in the performance of its functions is work product that can be incorporated into the scope of work for, or otherwise used in the development, design, construction or operation of, the Project or other TxDOT projects. In the event the procurement is terminated before execution of the DBC, TxDOT will pay each Proposer a partial amount of $1,900,000, except that the amount of the partial payment also may not exceed the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions, and is subject to the provisions of this paragraph.** Payment is subject to Proposer's compliance with this Section 6.3.

In submitting an executed Payment for Work Product Agreement (Exhibit H-1), each Proposer agrees that it will accept the stipulated payment for work product. Each Proposer further agrees that TxDOT shall be entitled to use all work product that is not returned to Proposer (including ATCs, concepts, ideas,

technology, techniques, methods, processes, drawings, reports, plans and specifications) contained in its Proposal or generated by or on behalf of Proposer for the purpose of developing its Proposal. In consideration, TxDOT agrees to make the stipulated payment for work product as provided herein (including Exhibit H-1). Proposer agrees it is not entitled to any further compensation or consideration.

Each Proposer that timely executes and delivers to TxDOT a Payment for Work Product Agreement in the form attached hereto as Exhibit H-1 acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after award of the DBC, and that the DBC Documents may incorporate the above-described work product or concepts based thereon. Upon Proposer's receipt of payment hereunder, this right shall extend to allow TxDOT to use such work product in the performance of its functions. As provided in Section 223.249(a) of the Code, the use of any of the work product by TxDOT is at the sole risk and discretion of TxDOT, and shall in no way be deemed to confer liability on the unsuccessful Proposer.

In no event shall any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 or fails to timely execute and deliver the Payment for Work Product Agreement (Exhibit H-1) and accompanying Form 1295 (Exhibit H-2), be entitled to receive a payment for work product under this Section 6.3.

All Proposers eligible to receive a payment for work product or a partial payment shall be required to submit an invoice to TxDOT in a form acceptable to TxDOT in order to receive such payment. Proposers are also responsible for filing the completed Form 1295 with the Texas Ethics Committee. The invoice for payments under this Section 6.3 may be submitted no earlier than 15 days after notice of Final Award, including execution of the DBC and CMA, is posted on the Project Webpage, or, if Final Award is not made, not earlier than 30 days after cancellation of the procurement or expiration of the time period for award stated in the RFP (as such time period may be extended by mutual agreement of the apparent best value Proposer and TxDOT), as applicable. Payments will be made within 30 days of receipt of an invoice therefor. The invoice must specify the legal name, direct deposit information and Texas Comptroller's Taxpayer Number of the entity entitled to receive payment on behalf of the Proposer as reflected in the executed Payment for Work Product Agreement.

SECTION 7 PROTESTS

7.1 Applicability

This Section 7 and Section 27.6 of Title 43 of the Rules set forth the exclusive protest remedies available with respect to the RFP and prescribe exclusive procedures for protests regarding:

(a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed TxDOT's authority;

(b) a determination as to whether a Proposal is responsive to the requirements of the RFP, as applicable; and

(c) award of the DBC and CMA.

7.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 7.1(a) may be filed only after the Proposer has informally discussed the nature and basis of the protest with TxDOT, following the procedures for those discussions prescribed in the RFP.

7.3 Deadlines for Protests

7.3.1 Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than 20 days prior to the Technical Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five Business Days after the Addendum is issued (but in any event, prior to the Technical Proposal Due Date).

7.3.2 Protests concerning the issues described in Section 7.1(b) must be filed no later than five Business Days after receipt of the notification of non-responsiveness.

7.3.3 Protests concerning the issues described in Section 7.1(c) must be filed no later than 10 Business Days after the earliest of the notification of intent to award, and the public announcement of the apparent best value Proposer.

7.4 Content of Protest

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

7.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to TxDOT's Authorized Representatives with a copy to the General Counsel Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701, as soon as the basis for protest is known to the Proposer. The Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained from the Project Webpage.

7.6 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within seven days of the filing of the protest. TxDOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

7.7 Burden of Proof

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

7.8 Decision on Protest

The Executive Director or Deputy Executive Director (or designee) shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, TxDOT may, in its discretion, make appropriate revisions to the RFP by issuing Addenda.

7.9 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.

7.10 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest provided in this Section 7, and expressly waives all other rights and remedies and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 7, it shall indemnify 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.

SECTION 8 TXDOT RIGHTS AND DISCLAIMERS

8.1 TxDOT Rights

TxDOT may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform the DB Contractor's obligations under the DBC Documents and CMA Documents, as applicable. TxDOT reserves the right, in its discretion, to:

(a) develop the Project in any manner that it, in its discretion, deems necessary;

(b) reject any or all of the Proposals;

(c) modify any dates set or projected in the RFP;

(d) cancel, modify or withdraw the RFP in whole or in part;

(e) terminate this procurement and commence a new procurement for part or the entire Project;

(f) terminate evaluations of Proposals received at any time;

(g) suspend, discontinue or terminate negotiations at any time, elect not to commence negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer;

(h) modify the procurement process (with appropriate notice to Proposers);

(i) 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;

(j) 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;

(k) appoint evaluation committees to review Proposals, make recommendations and seek the assistance of outside technical advisors and consultants in Proposal evaluation;

(l) disclose information contained in a Proposal to the public as described herein;

(m) approve or disapprove changes in the Key Personnel identified in the QS;

(n) approve or disapprove changes in Proposer's organization;

(o) accept a Proposal that does not offer the lowest price;

(p) waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;

(q) not issue a notice to proceed after execution of the DBC Documents and CMA Documents;

(r) disqualify any Proposer that violates the terms of the RFP;

(s) request or obtain additional information about any Proposal from any source; and

(t) exercise any other right reserved or afforded to TxDOT under the RFP and applicable Law.

8.2 TxDOT Disclaimers

The RFP does not commit TxDOT to enter into any contract. Except as expressly set forth in Section 6.3, TxDOT and the State of Texas assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to or responding to the RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall TxDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the DBC Documents and CMA Documents, in form and substance satisfactory to TxDOT, have 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.

Exhibit A

DEFINITIONS AND ACRONYMS

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

"**Capital Maintenance Agreement**" or "**CMA**" means the agreement to provide capital maintenance services for the Project for up to 15 years unless terminated as provided therein.

"**CMA Documents**" means the documents identified in Section 1.2 of the CMA.

"**Conditional Award**" means the Commission's selection of an apparent best value Proposer during a Commission meeting.

"**DB Contractor**" has the meaning set forth in ITP Section 1.1.

"**DBC Documents**" means the documents identified as "Contract Documents" in DBA Section 1.3.

"**Design-Build Agreement**" or "**DBA**" means the agreement to develop, design and construct the Project.

"**Design-Build Contract**" or "**DBC**" means the Design-Build Agreement and the DBA General Conditions.

"**Design-Build Price**" or "**DB Price**" means the price for the Work required under the DBC.

"**Evaluation and Selection Recommendation Committee**" or "**ESRC**" means the committee that will review and evaluate the Proposals and make a recommendation to the Project Steering Committee as set forth in ITP Section 5.1.

"**FHWA**" means the Federal Highway Administration.

"**Final Award**" means the award to and execution of the DBC and CMA with a Proposer and shall be deemed to occur on the date on which all conditions set forth in ITP Section 6.1(a) through (e) are satisfied and upon delivery of the fully executed sets to Proposer.

"**Financial Proposal**" means the financial information included in a Proposal submitted by a Proposer providing the information requested in Exhibit C-1 of the ITP.

"**Financial Proposal Due Date**" means the deadline for submission of Financial Proposals and Price Proposals identified in ITP Section 1.5.

"**Instructions to Proposers**" or "**ITP**" means the documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

"**Key Subcontractor**" means any subcontractor that will (a) fill any of the following key project roles: project management, lead design firm, quality control management and quality assurance management or (b)

serve as a key task leader for geotechnical, hydraulics and hydrology, structural, environmental, utility, right of way, or roadway issues. *See* Form B-1.

"**Maintenance Price**" has the meaning set forth in Section 3.1.2 of Exhibit C-2 to the ITP.

"**Major Participant**" means each Equity Member and each member of the Proposer's organization: (a) with primary responsibility for design; (b) with primary responsibility for construction; or (c) with a proposed subcontract with a value greater than or equal to 5% of the contract price or $20 million, whichever is greater.

"**Major Professional Services Firm**" has the meaning set forth in Section 3.2.2 of Exhibit B to the ITP.

"**Official Representative**" has the meaning set forth in ITP Section 2.2.2.

"**Payment for Work Product Agreement**" means the agreement between a Proposer and TxDOT set forth as ITP Exhibit H-1 that governs the payment for work product and use of the Proposer's work product, if unsuccessful, in accordance with ITP Section 6.3.

"**Post-Selection Deliverables**" means the documents to be submitted by Proposer after Conditional Award as described in Section 5.12.

"**Preliminary Project Baseline Schedule**" means the Project schedule required to be submitted with the Proposal and meeting the requirements set forth in Section 4.3 of Exhibit B to the ITP.

"**Price Proposal**" means the price offer included in the Proposal submitted by a Proposer as set forth on the forms requested in Exhibit C-2 of the ITP.

"**Price Proposal Evaluation Subcommittee**" or "**PPES**" means the subcommittee that performs the initial review of the Price Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.1.

"**Project**" has the meaning set forth in ITP Section 1.1.

"**Project Management Value-Added Responses (Project Management VARs)**" has the meaning set forth in Section 4.1 of Exhibit B to the ITP.

"**Project Webpage**" has the meaning set forth in ITP Section 2.2.

"**Proposal**" has the meaning set forth in ITP Section 1.1.

"**Proposal Bond**" means the bond identified in Section 3.3.2 of Exhibit B.

"**Proposal Revisions**" has the meaning set forth in ITP Section 5.8.

"**Qualifications Statement**" or "**QS**" means the submission made by a Proposer in response to the RFQ, including all clarifications thereto submitted in response to requests by TxDOT.

"**Quality Management Value-Added Responses (Quality Management VARs)**" has the meaning set forth in Section 4.2 of Exhibit B to the ITP.

"**Request for Proposals**" or "**RFP**" has the meaning set forth in ITP Section 1.1.

"**RFP Website**" has the meaning set forth in ITP Section 2.2.

"**Right of Way**" or "**ROW**" means any real property (which term is inclusive of all estates and interests in real property), improvements, and fixtures within the lines delineating the outside boundaries of the Project set forth in the ROW Maps included in the Reference Information Documents, as such boundaries may be adjusted from time to time in accordance with the DBC Documents. The term specifically includes all air space, surface rights, and subsurface rights within the boundaries of the ROW.

"**Stakeholder**" means all parties that may have a stake in the Project by virtue of their location or funding, including the City of Dallas, City of Garland, City of Mesquite, Dallas County, Utility Owners, USDOT, and FHWA and their officers, directors, and employees, and the following: North Central Texas Council of Governments, Center for Transportation Research, the University of Texas at Austin, Kansas City Southern Railroad and Dallas Area Rapid Transit. For purposes of ITP Sections 2.2.3(d) and 2.2.3(e), the Texas Department of Public Safety and any other public law enforcement agency with jurisdiction to provide traffic patrol, traffic law enforcement and other police and public safety services in accordance with applicable Laws and agreements with State and local agencies will not be considered Stakeholders.

"**Steering Committee**" has the meaning set forth in ITP Section 5.9.

"**Subsurface Utility Engineering**" or "**SUE**" means an engineering process for accurately identifying the quality of subsurface utility information needed for highway plans and for acquiring and managing that level of information during the development of a highway project, as more particularly described by the American Society of Civil Engineers ("ASCE") standard, ASCE C-I 38-02, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data."

"**Technical Proposal**" means all of the documents, certifications and information required to be submitted pursuant to Exhibit B to the ITP.

"**Technical Proposal Due Date**" means the deadline for submission of Technical Proposals identified in ITP Section 1.5.

"**Technical Proposal Evaluation Subcommittee**" or "**TPES**" means the subcommittee that performs the initial review of the Technical Proposal and provides evaluation recommendations to the ESRC as set forth in ITP Section 5.1.

"**Technical Solutions**" means the portion of the Technical Proposal providing the information requested in Section 4 of Exhibit B to the ITP.

"**TxDOT's Authorized Representatives**" has the meaning set forth in ITP Section 2.2.1.

"**USDOT**" means the United States Department of Transportation.

For definitions of other initially capitalized terms, see the DBC and CMA.

Exhibit B

TECHNICAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit B describes the submission format for Technical Proposals and outlines the required information that will comprise a Technical Proposal for the Design-Build Contract and Capital Maintenance Agreement.

Proposer shall submit the information required by this Exhibit B in the organization and format specified herein. The Technical Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Technical Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D, unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms on behalf of each Major Participant. Item B of the section entitled "Additional Information to be Provided with Technical Proposal Letter" of Form A-1 identifies requirements regarding evidence of signature authorization for the Technical Proposal Letter. Similar authorization shall be provided for all other signatories for Major Participants.

No dollar amounts may be included in the Technical Proposal.

2.0 Format

The Technical Proposal shall be limited to an aggregate of 10 pages (if double-sided, 5 sheets), plus the executive summary, resumes, appendices and exhibits containing required forms, graphs, matrices, schedule, drawings and other pertinent data.

3.0 Contents of the Technical Proposal

The required contents and organization of the Technical Proposal are presented in this Exhibit B and summarized in the Proposal checklist provided in Exhibit E. Proposers are to provide all the information set out in this Exhibit B. A copy of the checklist for the Technical Proposal shall be included in the Technical Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

The Technical Proposal shall consist of the following major elements:

(a) Executive Summary;

(b) Proposer Information, Certifications and Documents (including required Forms A through F and Forms H through O);

(c) Technical Solutions; and

(d) Appendices.

3.1 Executive Summary

The Executive Summary shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with Proposer's Technical Proposal and Proposer's ability to satisfy the financial and technical requirements of the Project. The Executive Summary shall not exceed 1 single-sided page. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

(a) An explanation of the organization and contents of the Technical Proposal.

(b) A summary of any changes to Proposer's QS.

(c) A summary of any changes in Proposer's organization, Equity Members, other Major Participants and Key Personnel since submission of the QS.

(d) A summary of the proposed management, decision making, and day-to-day operation structure of Proposer, and a statement that each Major Participant has committed to provide the specified people.

(e) A summary of the Technical Solutions including:

– A summary of Project Management,

– A summary of Quality Management, and

– A summary of the Design and Construction Plan.

(f) A summary of the Proposer's approach to satisfying the DBE requirements.

3.2 Proposer Information, Certifications and Documents

3.2.1 Technical Proposal Letter

The Technical Proposal shall include the Technical Proposal Letter (Form A-1). Proposer shall attach to the Technical Proposal Letter the documents and information described in the Form A-1 section entitled "Additional Information to be Provided with Technical Proposal Letter" of Form A-1; provided, however, Proposer may attach to the original Form A-1 an envelope including four certified copies of the required organizational documents in lieu of providing organizational documents with each of the copies of the Technical Proposal.

3.2.2 Information About Proposer, Major Participants and Other Subcontractors

The Technical Proposal shall include a completed chart on Form B-1, including the names, contact information, role in the organization, licensing information, and description of work (if applicable) for Proposer, Equity Members, Guarantors, Major Participants, each firm that will provide engineering, architectural, surveying, planning, quality assurance or other professional services for development of the Project valued at $2 million or more ("Major Professional Services Firm"), Key Subcontractors and all other Subcontractors identified by Proposer as of the Technical Proposal Due Date. Proposer is advised that all

Major Professional Services Firms must be identified at the time of the Technical Proposal, and that, as a condition to Final Award and execution of the DBC and CMA, the successful Proposer must provide evidence that it and its Major Participants hold all necessary licenses and professional registrations.

The Technical Proposal shall include completed Form B-2 providing information about Proposer and its organization as specified therein.

The Technical Proposal shall include copies of organizational documentation described in the section entitled "Additional Information to be Provided with Technical Proposal Letter" of Form A-1 for Proposer and Equity Members, as well as other documentation required by Form B-2. If any modification to the organizational documents for such entity is contemplated prior to award, Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in the section entitled "Additional Information to be Provided with Technical Proposal Letter" of Form A-1) for such proposed entity.

3.2.3 Responsible Proposer Questionnaire

The Technical Proposal shall include Form C, the "Responsible Proposer Questionnaire", signed by Proposer, each Equity Member, each Major Participant and each Guarantor. Form C may be provided by Proposer on its own behalf and on behalf of the Equity Members, or it may be provided by Proposer on its own behalf and the individual Equity Members on their own behalf. The form executed by Proposer shall be signed by the same individuals who sign the Proposal Letters. The forms signed by Equity Members, Major Participants and Guarantors shall be signed by an authorized representative of such entity and the Technical Proposal shall include evidence of signature authorization for such individual.

3.2.4 Key Personnel

The Technical Proposal shall identify the pre-approved Key Personnel and shall include Form D identifying personnel work assignments.

The individuals with direct responsibility for each of the following categories of work are considered Key Personnel:

- Overall management of the Project (Project Manager);
- Construction, coordination of subcontractors, design coordination / constructability, and scheduling (Construction Manager);
- Design of the Project (Design Manager, as defined in the DBA General Conditions);
- Completion of Maintenance of Traffic (MOT) Plans and compliance with design criteria for such plans (Lead MOT Design Engineer); and
- Control of quality assurance, and the implementation and operation of the Project's quality systems (Independent Quality Firm Manager and Professional Services Quality Assurance Manager as described in the DBA General Conditions).

3.2.5 Letters Approving Key Personnel and Changes in Proposer's Organization

The Technical Proposal shall include a copy of the approval letters issued by TxDOT pursuant to ITP Section 2.11.2 approving the Key Personnel. If Proposer's organization has changed since submission of the QS, Proposer shall specifically describe such changes and, if applicable, include a copy of TxDOT's approval letter provided under ITP Section 2.11.1.

3.2.6 Certification Regarding Buy America

The Technical Proposal shall include Form E, regarding Buy America requirements.

3.2.7 Non-Collusion Affidavit

The Technical Proposal shall include Form F, executed by the Proposer, certifying that the Proposal is not the result of and has not been influenced by collusion. If the DB Contractor is a joint venture or yet to be formed entity, Form F shall be executed by the Equity Members.

3.2.8 DBE Requirements

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

3.2.9 Child Support Statement for State Grants, Loans and Contracts

The Technical Proposal shall include Form I regarding child support obligations from Proposer.

3.2.10 Organizational Conflict of Interest Disclosure

Attention is directed to TxDOT's rules on conflicts of interest, which are set forth at 43 Texas Administrative Code § 27.8. The Technical Proposal shall include a certification on Form J 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.

3.2.11 Certification Regarding Equal Employment Opportunity

The Technical Proposal shall include Form K, regarding participation in contracts or subcontracts subject to the equal employment opportunity clause and the filing of required reports.

3.2.12 Certification Regarding Use of Contract Funds for Lobbying

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

3.2.13 Certification Regarding Ineligible Contractors

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

3.2.14 Surety Information

The Technical Proposal shall include the following information regarding the Surety for the bonds to be provided in accordance with Section 3.4 of the DBA General Conditions and Section 7.4 of the CMA:

(a) Name of bonding company (must be rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company) and the name and address of the agent.

(b) Whether or not the listed bonding company defaulted on any obligation within the past ten years, and the details in the event of such default.

3.3 Proposal Bond

The Technical Proposal shall include a Proposal Bond as specified below.

3.3.1 Forfeiture of Proposal Bond

Forfeiture of Proposal Bond in accordance with ITP Section 4.7 will constitute liquidated damages. By submitting its Proposal, Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate TxDOT for damages it will incur as a result of Proposer's failure to satisfy the obligations under the Request for Proposals to which Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of TxDOT's transportation improvement program, including the design-build program, with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Proposal, Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that TxDOT would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Proposal, Proposer agrees to such liquidated damages in order to fix and limit Proposer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Proposer.

3.3.2 Form of Proposal Bond

A proposal bond in the amount of $25 million and in the form of Form N (Proposal Bond) shall be provided by a Surety rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company. The proposal bond shall be subject to

forfeiture in accordance with ITP Section 4.7. Each proposal bond will be retained until the DBC Documents and CMA Documents have been fully executed, after which the proposal bond for each unsuccessful Proposer, except those proposal bonds that have been forfeited, will be returned to the respective Proposers. The Proposal Bond for the successful Proposer shall be returned at such time as Proposer has satisfied all conditions of execution and award set forth in ITP Section 6.1 and delivered the NTP1 Performance Bond and the NTP1 Payment Bond in accordance with Section 3.4 of the DBA General Conditions. If the next best value Proposer is notified during the 180-day period that it is selected for negotiations, such Proposer shall obtain an extension of the Proposal Bond for the period until 270 days after the Financial Proposal Due Date.

3.4 Guarantor Commitment Letter

The Technical Proposal shall include, (if a guaranty is required): (a) an irrevocable letter signed by the Guarantor in the form of Form O committing to provide a guaranty in the form of Exhibit 13 of the DBA and a guaranty in the form of Exhibit 9 of the CMA, concurrently with execution and delivery of the DBC Documents and CMA Documents by Proposer; (b) evidence of authorization of the signatory to that letter; (c) Form B-1 for the Guarantor; (d) financial information described in Section 2.0 of Exhibit C-1; and (e) such other information concerning the Guarantor as TxDOT may request. A guaranty of DB Contractor's obligations under the DBC and the CMA is required under the following circumstances: (i) Proposer identified a Guarantor in its QS or was advised by TxDOT that a guaranty would be required as a condition to the shortlisting of Proposer; (ii) DB Contractor's organization is a newly formed corporation or a limited liability entity (in which case each Equity Member will be required to provide guaranties of DB Contractor's obligations under the DBC and the CMA); (iii) the combined Tangible Net Worth of DB Contractor, or if DB Contractor is a joint venture or partnership, its Equity Members is less than $400,000,000; or (iv) the form of organization of Proposer or the financially responsible parties comprising Proposer changes and TxDOT determines, in its discretion, to require a Guarantor as a condition to approving such change under ITP Section 2.11.

If a Guarantor is included, (a) the Tangible Net Worth of the DB Contractor described in Section 3.4(iii) above shall be determined using the Tangible Net Worth of the Guarantor in place of the Equity Member that is an affiliate of the Guarantor and (b) additional Guarantor(s) will be required until the Tangible Net Worth threshold is met. Tangible Net Worth shall be determined based on audited financial statements for the fiscal year most recently ended. Tangible Net Worth shall be determined based on audited financial statements for the fiscal year most recently ended.

3.5 Payment for Work Product Agreement

Proposer, at its option, may submit with the Technical Proposal an executed copy of the Payment for Work Product Agreement in the form of Exhibit H-1. If Proposer elects to submit the Payment for Work Product Agreement, Proposer shall also submit a completed Form 1295 in the form of Exhibit H-2. TxDOT will provide each Proposer with a unique contract identification number for purposes of completing Form 1295. Although submission of an executed Payment for Work Product Agreement is at the Proposer's election, submission of an executed Payment for Work Product Agreement and an executed and notarized Form 1295 with the Technical Proposal shall be a condition to eligibility for the payment for work product as provided under Section 6.3 of the ITP. Any failure to submit an executed Payment for Work Product Agreement and an executed and notarized Form 1295 with the Technical Proposal will constitute a

rejection of the payment for work product pursuant to Section 6.3 of the ITP and render the Proposer ineligible for such payment.

4.0 Technical Solutions

Proposer shall submit Technical Solutions, which shall consist of the following three components:

– Project Management (Section 4.1) (one page),

– Quality Management (Section 4.2) (four pages), and

– Design and Construction Plan (Section 4.3) (five pages).

The Project Management and Quality Management sections of the Technical Solutions shall comprise Value-Added Responses (VARs).

4.1 Project Management

The successful Proposer will be required to prepare and submit for TxDOT's approval a Project Management Plan ("PMP") meeting the requirements of Section 4.2 of the DBA General Conditions. In addition, the successful Proposer will be required, as a condition of Final Award, to prepare and submit for TxDOT's approval a DBE Performance Plan. The Project Management Plan requirements and DBE Good Faith Efforts requirements are:

(a) Project Administration (Section 4.2.1 of the DBA General Conditions)

(b) Public Information and Communications Plan (Section 4.2.2 of the DBA General Conditions)

(c) Safety and Health Plan (Section 4.2.3 of the DBA General Conditions)

(d) Comprehensive Environmental Protection Plan (Section 4.2.4 of the DBA General Conditions)

(e) TxDOT – DB Contractor Communications Plan (Section 4.2.5 of the DBA General Conditions

(f) Other Affected Third Parties Plan (Section 4.2.6 of the DBA General Conditions)

(g) Risk Management Plan (Section 4.2.7 of the DBA General Conditions)

(h) Utility Management Plan (Section 4.2.8 of the DBA General Conditions)

(i) Right of Way Acquisition Management Plan (Section 4.2.9 of the DBA General Conditions)

(j) Traffic Management Plan (Section 4.2.10 of the DBA General Conditions)

(k) Maintenance Management Plan (Section 4.2.11 of the DBA General Conditions)

(l) DBE Good Faith Efforts (Section 3.2 of the DBA General Conditions)

Proposer shall submit in its Technical Proposal for review and evaluation by the TPES any Project Management Value-Added Responses (VARs), which are Proposal commitments that exceed the requirements for the above-described individual PMP component plans identified in Sections 4.2.1 through 4.2.11 of the DBA General Conditions, and that provide added benefit and value to TxDOT and the public, and improvement in implementation of the project, including by:

- Establishing and maintaining the Proposer's organization over the term of the contract
- Implementing enhanced project management processes and procedures
- Improving communication and coordination with TxDOT, the public, and within the Proposer's design-build and maintenance teams
- Identifying, managing and mitigating project risks to control increases in project cost and delays to the project schedule/completion
- Bringing best practices, lessons-learned, and/or unique project management solutions for/from similar projects

Each Project Management VAR will reference the applicable PMP component and will include a description, with specific examples, of the reason(s) the Project Management VAR provides added benefit and value to TxDOT and the public and/or results in improvement in implementation of the project.

4.2 Quality Management Plan

The successful Proposer will be required to prepare and submit for TxDOT's approval a Quality Management Plan ("QMP") meeting the requirements of Section 4.3 of the DBA General Conditions. These requirements are:

(a) General Requirements (Section 4.3.1 of the DBA General Conditions)

(b) DB Contractor's Senior Management Reviews (Section 4.3.2 of the DBA General Conditions)

(c) Professional Services Quality Management Plan (Section 4.3.3 of the DBA General Conditions)

(d) Construction Quality Management Plan (Section 4.3.4 of the DBA General Conditions)

Proposer shall submit in its Technical Proposal for review and evaluation by the TPES any Quality Management Value-Added Responses (VARs), which are Proposal commitments that exceed the requirements for the above-described individual QMP component plans identified in Sections 4.3.1 through 4.3.4 of the DBA General Conditions, and that provide added benefit and value to TxDOT and the public, and improvement in the overall quality of the project, including by:

- Developing, implementing, and maintaining quality assurance and quality control over the term of the contact
- Establishing a common quality management system for document control, process auditing, and corrective and preventive action
- Implementing quality processes and procedures for professional services and construction
- Bringing best practices, lessons-learned and/or unique quality management solutions for/from similar projects

Each Quality Management VAR will reference the applicable QMP component and will include a description, with specific examples, of the reason(s) the Quality Management VAR provides added benefit and value to TxDOT and the public and/or results in improvement in the overall quality of the project.

4.3 Design and Construction Plan

The Proposer will prepare the component parts of the Design and Construction (D&C) Plan based on the submittal requirements described below in Table B-1.

Table B-1

Design and Construction Plan Components **Evaluation Subfactors**	**Submittal Requirements**
Construction Staging, Sequencing and Traffic Management	The overall approach to traffic management, traffic control, and sequencing. Provide concept drawings (which may be provided via an appendix) and description of the proposed construction staging, including those at major interchanges and steps that will be taken to minimize disruptions to the traveling public and impacts on the Stakeholders and communities. Describe how the Proposer intends to maintain the right-of-way, adjacent and intersecting roadways, and business and residential access throughout the Project corridor during the construction. Describe the intended measures to mitigate and minimize noise, vibration, light, dust, erosion, storm water run-off, and local road damage.
Bridges, retaining walls, and geotechnical and earthwork plan	Provide concept plans (which may be provided via an appendix) for bridges with sufficient detail to indicate bridge type, foundation types, width, controlling clearances, and span arrangement. Lane configurations and clear zones of crossing roadways and railroads shall be clearly indicated

Design and Construction Plan Components Evaluation Subfactors	Submittal Requirements
	as applicable. Provide concept plans (which may be provided via an appendix) for retaining and noise walls. Concept plans shall indicate wall types (including a typical section for each type), proposed locations, and limits. Describe the proposed plan for geotechnical investigations, identifying the objectives, scope of the work, and the information to be obtained, and the manner in which Proposer will address property owners' concerns and minimize intrusiveness of investigations.
Roadway	Provide conceptual plan and profile schematic sheets (which may be provided via an appendix) showing mainlanes, frontage roads, interchanges, and adjacent and intersecting roadways including proposed refinements in the horizontal and vertical geometric configurations. Describe disposition of all existing roadways and structures identified to be closed, demolished, left as is, or incorporated into the Project. Include Proposer's proposed pavement designs for the Project.
Drainage	Describe the disposition of all existing drainage structures. Describe the drainage system including identification of contributing drainage areas, major crossings, mitigation of discharges and detention requirements. Provide a concept plan drawing(s) (which may be provided via an appendix) showing the preliminary overall surface water collection system along with a general layout of the identified major drainage trunk lines and cross drainage structures, including outfall locations. A description of the Proposer's concept plan for providing temporary drainage or construction sequencing of portions of the drainage network prior to completion of entire drainage system.
Preliminary Project Baseline Schedule	Include a Preliminary Project Baseline Schedule containing all major work activities or milestones to Work Breakdown Structure Level 4 for the design and construction period, as well as for the warranty and CMA periods. The Preliminary Project Baseline Schedule shall be included in an appendix in Section D of the Technical Proposal. The Preliminary Project Baseline Schedule shall be consistent with the schedule commitment made in Form R.

Design and Construction Plan Components Evaluation Subfactors	Submittal Requirements
	Describe the approach used for preparing, controlling and updating the Preliminary Project Baseline Schedule, for calculating progress performance, and preparing Draw Requests on a monthly basis. Provide a narrative which describes the proposed execution of the work for the term of the DBC. Describe the approach to managing resources and activities, both its own and subcontractors, and if necessary to recover schedule slippage.
Project Feasibility	Include a narrative assessing the feasibility of developing the project as proposed, including identification of anticipated problems and the proposed solutions to anticipated problems.

Exhibit C-1

FINANCIAL PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit C-1 describes the submission format for Financial Proposals and outlines the required information that will comprise the Financial Proposal for the Design-Build Contract and Capital Maintenance Agreement.

Proposer shall submit the information required by this Exhibit C-1 in the organization and format specified herein. The Financial Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each component of the Financial Proposal shall be clearly titled and identified.

1.1 Format of Financial Proposal

All financial information provided in the Financial Proposal shall be in U.S. dollar currency only.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between individual line amounts and totals, the individual line amounts will prevail.

1.2 Contents of Financial Proposal

The Financial Proposal shall include the Financial Proposal Letter (Form A-2). Proposer shall attach to the Financial Proposal Letter the documents and information described in the section entitled "Additional Information to be Provided with Financial Proposal Letter" of Form A-2.

A copy of the checklist for the Financial Proposal set forth in Exhibit E shall be included in the Financial Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

Proposers shall include with the Financial Proposal a copy of Forms B-1 and B-2 submitted with the Technical Proposal, as described in Exhibit B, Section 3.2.2.

2.0 Financial Capacity Information

Proposers shall clearly identify any differences between the financial capacity information submitted in the Proposal and the information submitted in the QS.

2.1 Financial Statements and Credit Ratings

The Financial Proposal shall include the following information for Proposer, the Major Participants with primary responsibility for construction of the Project, Equity Members and any Guarantors:

- Audited financial statements (fiscal year end and quarterly) for all periods subsequent to those included in the QS.

- Interim unaudited financial statements for the period since the most recent completed fiscal year or quarter.

The financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must meet the following requirements:

2.1.1 Financial statement information must include:

(a) Opinion Letter (Auditor's Report)

(b) Balance Sheet

(c) Income Statement

(d) Statement of Changes in Cash Flow

(e) Footnotes

2.1.2 Financial statements must meet the following requirements:

(a) **GAAP/IFRS** – Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP") or International Financial Reporting Standards ("IFRS"). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS.

(b) **U.S. Dollars** – Financial statements must be provided in U.S. dollars. If financial statements are not available in U.S. dollars, the Proposer, Major Participant with primary responsibility for construction of the Project, Equity Member, or Guarantor must include summaries of the Income Statements and Balance Sheets for the applicable time periods converted to U.S. dollars by a certified public accountant.

(c) **Audited** – Financial statements must be audited by an independent party qualified to render audit opinions (e.g., a certified public accountant). If audited financials are not available for the Proposer, Major Participants with primary responsibility for construction of the Project, Equity Member or any Guarantors, the Financial Proposal shall include unaudited financial statements for such entity, certified as true, correct and accurate by the chief financial officer ("CFO"), treasurer or equivalent officer of the entity.

(d) **English** – Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information must be provided with the original financial statement information.

2.1.3 Other information and requirements:

(a) **Newly Formed Entity/Not Yet Formed Entity/Joint Venture** – If Proposer or any of the Major Participants with primary responsibility for construction of the Project is a newly formed entity, or has not yet formed a legal entity, or is a joint venture and does not have independent financial statements,

financial statements for the Equity Members and for each member of or partner in any of the Major Participants with primary responsibility for construction of the Project (as applicable), and any Guarantors shall be provided (and Proposer shall expressly state that such entity is a newly formed entity, or not yet formed entity, or joint venture (as applicable) and does not have independent financial statements).

(b) **Guarantor Commitment Letter** – One or more guaranties regarding DB Contractor's obligations under the CMA and one or more guaranties regarding DB Contractor's obligations under the DBC may be required by ITP Exhibit B, Section 3.4. The letter from the Guarantor must be in the form of Form O and confirm unequivocally that it will guarantee all the obligations of DB Contractor with respect to the CMA and DBC. Proposers are advised that TxDOT may, in its discretion based upon the review of the information provided, specify that an acceptable Guarantor is required as a condition to eligibility for award.

(c) **SEC Filings** – If the team or any other entity for which financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed Form 10K. Instead of providing hard copies of such forms, Proposers may submit digital copies of such information in a read-only format on a USB drive with each submission.

(d) **Credit Ratings** – Appropriate credit ratings must be supplied for the Proposer, Major Participant with primary responsibility for construction of the Project, Equity Members, and Guarantor to the extent such entities have credit ratings. If no credit ratings exist, include a statement specifying that no credit ratings exist for that entity.

2.2 Material Changes in Financial Condition

A letter from the CFO, treasurer or equivalent officer must be provided, providing information on any material changes in financial condition since submission of the QS and those that are pending. If no material change has occurred and none is pending, the Proposer, Equity Member, the Major Participants with primary responsibility for construction of the Project (including any joint venture member or equity owner, as applicable), or Guarantor, as applicable, shall provide a letter from its CFO, treasurer or equivalent officer so certifying. The letter must be dated not earlier than seven days prior to the Financial Proposal Due Date. Additionally, Proposers shall be required to provide updated information following the Financial Proposal Due Date as long as the dissemination of such information is permitted by law.

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 selection 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 Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each material change as certified by the CFO, treasurer or equivalent officer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes.

Where a material change will have a negative impact, the affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the QS and the most recent completed periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

List of Representative Material Changes

- 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;
- A downward change in tangible net worth of 10% of shareholder equity;
- A sale, merger or acquisition exceeding 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;
- A downward change in credit rating for the affected entity, a related business unit, or parent corporation of the affected entity;
- 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;
- The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 200 positions or involving the disposition of assets exceeding 10% of the then shareholder equity; and
- 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 QS or may be pending for the next reporting period.

2.3 Off-Balance Sheet Liabilities

A letter from the CFO, treasurer or equivalent officer of the entity or the certified public accountant for each entity for which financial information is submitted, identifying as applicable, each off-balance sheet liability exceeding $10 million and its associated dollar amount and providing explanation for off-balance sheet treatment.

The information required under this Section 2.0 (for Proposer, the Major Participants with primary responsibility for construction of the Project, all Equity Members and any Guarantors) shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role in Proposer's organization.

Exhibit C-2

PRICE PROPOSAL INSTRUCTIONS

1.0 General Instructions

This Exhibit C-2 describes the submission format for Price Proposals and outlines the required information that will comprise the Price Proposal for the Design-Build Contract and Capital Maintenance Agreement.

Proposer shall submit the information required by this Exhibit C-2 in the organization and format specified herein. Each component of the Price Proposal shall be clearly titled and identified.

All forms named herein are found in Exhibit D, unless otherwise noted. Pricing forms are provided in Microsoft Word and Microsoft Excel formats. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

2.0 Format of Price Proposal

All price and cost information provided in the Price Proposal shall be in U.S. dollar currency only and all amounts, except the amounts on Forms Q shall be stated as nominal dollars. Forms Q shall be stated as 2019 dollars as of the Financial Proposal Due Date.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Price Proposal, the hard copy version will prevail. If there are any differences between individual line amounts and totals, the individual line amounts will prevail.

3.0 Contents of the Price Proposal

All parts of the Proposal that indicate price are to be included in the Price Proposal.

A copy of the checklist for the Price Proposal shall be included in the Price Proposal. Proposer shall not amend the order or change the contents of the checklist.

The Price Proposal shall consist of the price and schedule information set forth in Sections 3.1 through 3.2 below.

3.1 Price Information

3.1.1 Design-Build Price and Cash Flow Adjustment Table/Maximum Payment Schedule

The Price Proposal shall include the following with respect to the DB Price:

- A Design-Build Price using Form P-1.
- A breakdown of the Design-Build Price using Form P-2.1.
- A breakdown of the Skillman/Audelia Interchange Price using Form P-2.2.

- Any ATC adjustment costs identified by TxDOT in its ATC approval letters for ATCs that are incorporated into the Proposal using Form P-3.

- The cash flow corresponding to the anticipated draw requests under the DBC (i.e., the Maximum Payment Schedule) using Form P-4.

The draw requests shall be established by anticipated percentage complete on a monthly basis, and shall be limited to the anticipated cash flow. The maximum payment to DB Contractor prior to NTP2 shall not exceed $40 million. For purposes of developing the forms described in this Section 3.1.1, NTP2 is assumed to be 90 days after NTP1.

3.1.2 Maintenance Price

The Price Proposal shall include the following with respect to the Maintenance Price:

- Form Q setting forth the annual price in year 2019 dollars (as of the Financial Proposal Due Date), for Maintenance Services during the Term of the CMA, as well as a breakdown of such price into the categories included on Form Q. (Note that Year 1 begins on the Initial Maintenance Term Commencement Date.)

The services required for each of the major categories on the forms are more particularly described in the CMA, including the Maintenance Specifications. The CMA provides for the adjustment procedures and index for annual adjustments in the price for Maintenance Services.

In developing the Maintenance Price, the Proposers shall consider the limitations on private use under Section 141 of the Internal Revenue Code of 1986, as amended, and the management contract rules under Section 1.141 3(b)(4) of the Regulations of the Treasury Department.

3.2 Schedule Information and Road User Price

The Price Proposal shall include Form R. Proposer shall indicate on Form R the number of days between NTP1 and its Proposal Commitment Date for Substantial Completion, which must conform to the proposed Preliminary Project Baseline Schedule and meet or beat TxDOT's last allowable date for Substantial Completion set forth on Form R.

Proposer shall also submit a Road User Price using Form R setting forth the total road user price for Substantial Completion within 1,825 days after NTP1.

Exhibit D

REQUIRED FORMS

(see attached)

TEXAS DEPARTMENT OF TRANSPORTATION
I-635 LBJ EAST PROJECT
INSTRUCTIONS TO PROPOSERS

TECHNICAL PROPOSAL LETTER − Form A-1

PROPOSER: _____

Technical Proposal Due Date: March 14, 2019

Texas Department of Transportation
7600 Chevy Chase Drive, Bldg. 2, Suite 400
Austin, Texas 78752
Attn: Duane Milligan

The undersigned ("Proposer") submits the enclosed Technical 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 November 9, 2018 for the development, design, construction, and, at TxDOT's sole option, provision of capital maintenance for an approximately 11-mile section of Interstate Highway ("I") 635 from east of U.S. Highway 75 to I-30, including the I-30 Interchange with transitional work on I-635 extending south of the interchange, approximately 1.2 miles in length, and an approximately 1.5-mile section of I-30 from west of Gus Thomasson Road to east of N Galloway Avenue in Dallas County, Texas (the "Project"). TxDOT currently anticipates that the contract for the Project will include a Design-Build Contract ("DBC") for right of way ("ROW") acquisition and the design, permitting and construction for the Project, and a Capital Maintenance Agreement ("CMA") for the maintenance of the completed construction Work, as more specifically described herein and in the documents provided with the RFP (the "RFP Documents"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

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

a) to keep this Proposal open for acceptance initially for 180 days after the Financial Proposal Due Date, and if the undersigned is notified within such 180-day period that it is the next best value Proposer, for an additional 90 days, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of TxDOT, in TxDOT's sole discretion; and

b) if this Proposal is accepted, to provide security (including bonds, insurance and guaranties) for the due performance of the DBC and the CMA, as stipulated in the DBC Documents, the CMA Documents and the RFP.

If selected by TxDOT as the best value Proposer, Proposer agrees [to do the following or to cause DB Contractor] 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 DBC Documents and the CMA Documents, in

accordance with the requirements of the RFP; (b) enter into the DBC Documents and the CMA Documents without varying or amending their terms (except if requested to by TxDOT in its sole discretion) and satisfy all other conditions to award of the DBC Documents and the CMA Documents; and (c) perform its obligations as set forth in the ITP, the DBC Documents and the CMA Documents, including compliance with all commitments contained in this Proposal.

The following individual is designated as the Proposer's Official Representative in accordance with Section 2.2.2 of the ITP:

_____

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, the DBC and the CMA:

_____

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

- Executive Summary; and
- Technical Proposal, including Proposer Information, Certifications and Documents, Technical Solutions, Appendices, and Proposal Bond.

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

[List all Addenda by number and date issued. For example, "Addenda 1 issued December 1, 2018."]
[list other addenda] _____

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

Proposer certifies that this Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with the site and all of the provisions of all of the RFP Documents, has reviewed all materials posted on the RFP Website and the Project Website, the Addenda and TxDOT's responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the DB Contractor and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted such other field investigations and additional design development that are prudent and reasonable in preparing this Proposal; and that it has notified TxDOT of any deficiencies in or omissions from any RFP Documents or other documents provided by TxDOT and of any unusual site conditions observed prior to the date hereof. Proposer proposes to design, construct, and maintain this Project in accordance with the DBC Documents and CMA Documents and certifies to furnish and deliver all the materials and to do all work and labor required for the design, construction, and maintenance and other identified activities for the Project.

Proposer represents that all statements made in the Qualifications Statement ("QS") previously delivered to TxDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as

otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such QS, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer commits that the Key Personnel designated in the Proposal for the positions described in the Proposal will be available to serve the role so identified in connection with the Project. Proposers has only identified and proposed personnel it believes, in good faith, will be available for, and intends to assign to, work on the Project for the positions identified.

Proposer understands that TxDOT is not bound to accept the Proposal whose corresponding Price Proposal offers the lowest price to TxDOT or any Proposal TxDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any payment for work product that may be paid in accordance with the RFP.

Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.6.

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]

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

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the proposer's name]

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

By: _____

Print Name: _____

Title: _____

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

3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____
Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH TECHNICAL PROPOSAL LETTER:

A. Describe in detail the legal structure of the Proposer and Equity Members.

1. If the Proposer/Equity Member is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for Proposer/Equity Member and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.

2. If the Proposer/Equity Member 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 Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.

3. If the Proposer/Equity Member 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 Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.

4. If the Proposer/Equity Member 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 Member (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 this information will be provided prior to award.

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

B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate 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 no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate 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. If the Proposer is an entity that is not yet formed, such evidence shall be in the form of a resolution of each Equity Member, certified by an appropriate officer of such member.

C. The Proposer's 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. If the Proposer is an entity that is not yet formed, provide draft organizational documents and indicate where the provision is found.

TEXAS DEPARTMENT OF TRANSPORTATION
I-635 LBJ EAST PROJECT
INSTRUCTIONS TO PROPOSERS

FINANCIAL PROPOSAL LETTER − Form A-2

PROPOSER: _____

Financial Proposal Due Date: April 3, 2019

Texas Department of Transportation
7600 Chevy Chase Drive, Bldg. 2, Suite 400
Austin, Texas 78752
Attn: Duane Milligan

The undersigned ("Proposer") submits the enclosed Financial Proposal and Price Proposal (collectively, 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 November 9, 2018 for the development, design, construction, and, at TxDOT's sole option, provision of capital maintenance for an approximately 11-mile section of Interstate Highway ("I") 635 from east of U.S. Highway 75 to I-30, including the I-30 Interchange with transitional work on I-635 extending south of the interchange, approximately 1.2 miles in length, and an approximately 1.5-mile section of I-30 from west of Gus Thomasson Road to east of N Galloway Avenue in Dallas County, Texas (the "Project"). TxDOT currently anticipates that the contract for the Project will include a Design-Build Contract ("DBC") for right of way ("ROW") acquisition and the design, permitting and construction for the Project, and a Capital Maintenance Agreement ("CMA") for the maintenance of the completed construction Work, as more specifically described herein and in the documents provided with the RFP (the "RFP Documents"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

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

a) to keep this Proposal open for acceptance initially for 180 days after the Financial Proposal Due Date, and if the undersigned is notified within such 180-day period that it is the next best value Proposer, for an additional 90 days, without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of TxDOT, in TxDOT's sole discretion; and

b) if this Proposal is accepted, to provide security (including bonds, insurance and guaranties) for the due performance of the DBC and the CMA, as stipulated in the DBC Documents, the CMA Documents and the RFP.

If selected by TxDOT as the best value Proposer, Proposer agrees [to do the following or to cause DB Contractor] 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 DBC Documents and the CMA Documents, in

accordance with the requirements of the RFP; (b) enter into the DBC Documents and the CMA Documents without varying or amending their terms (except if requested to by TxDOT in its sole discretion) and satisfy all other conditions to award of the DBC Documents and the CMA Documents; and (c) perform its obligations as set forth in the ITP, the DBC Documents and the CMA Documents, including compliance with all commitments contained in this Proposal.

Proposer incorporated into this Proposal, by reference, the Technical Proposal submitted by Proposer on the Technical Proposal Due Date. In addition, enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following:

* Updated Financial Information; and
* Price Proposal.

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

[List all Addenda by number and date issued. For example, "Addenda 1 issued December 1, 2018."]
[list other addenda] _____

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

Proposer certifies that this Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with the site and all of the provisions of all of the RFP Documents, has reviewed all materials posted on the RFP Website and the Project Website, the Addenda and TxDOT's responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the DB Contractor and do not contain internal inconsistencies; that it has carefully checked all the words, figures and statements in this Proposal; that it has conducted such other field investigations and additional design development that are prudent and reasonable in preparing this Proposal; and that it has notified TxDOT of any deficiencies in or omissions from any RFP Documents or other documents provided by TxDOT and of any unusual site conditions observed prior to the date hereof. Proposer proposes to design, construct, and maintain this Project in accordance with the DBC Documents and CMA Documents and certifies to furnish and deliver all the materials and to do all work and labor required for the design, construction, and maintenance and other identified activities for the Project, at the prices stated in the pricing forms (Forms M through N).

Proposer represents that all statements made in the Qualifications Statement ("QS") previously delivered to TxDOT (as amended and resubmitted) are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such QS, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer further represents that all statements made in the Technical Proposal previously delivered by Proposer to TxDOT, including all completed forms submitted therein are true, correct and accurate as of the date hereof, except as otherwise specified in this Proposal. Proposer agrees that such information provided in the Technical Proposal, including all completed forms submitted therein, except as modified by this Proposal, are incorporated as if fully set therein.

Proposer commits that the Key Personnel designated in the Proposal for the positions described in the Proposal will be available to serve the role so identified in connection with the Project. Proposers has only identified and proposed personnel it believes, in good faith, will be available for, and intends to assign to, work on the Project for the positions identified.

Proposer understands that TxDOT is not bound to accept the Proposal whose corresponding Price Proposal offers the lowest price to TxDOT or any Proposal TxDOT may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any payment for work product that may be paid in accordance with the RFP.

Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.6.

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]

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

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the proposer's name]

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

By: _____

Print Name: _____

Title: _____

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

3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____
Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH FINANCIAL PROPOSAL LETTER:

Attach evidence to the Financial Proposal and the Price Proposal that the person(s) signing has/have authority to do so. If such evidence of authority was provided with the Technical Proposal, provide evidence that such authority has not been revoked.

IDENTIFICATION OF PROPOSER AND TEAM MEMBERS – Form B-1

NAME OF ENTITY AND CONTACT INFORMATION[1] (representative, address, phone, fax, email)	ROLE IN ORGANIZATION		DESCRIPTION OF WORK/SERVICES TO BE PERFORMED BY ENTITY
PROPOSER			
	Proposer		
GUARANTORS			
	Guarantor		
	Guarantor		
	Guarantor		
EQUITY MEMBERS		**Percent ownership**	

[1] If an entity fits within more than one category of team members (e.g., it is both a Major Participant and a Key Subcontractor), it should be listed under each category for each respective role.

NAME OF ENTITY AND CONTACT INFORMATION[1] (representative, address, phone, fax, email)	ROLE IN ORGANIZATION	DESCRIPTION OF WORK/SERVICES TO BE PERFORMED BY ENTITY
MAJOR PARTICIPANTS[2]		
MAJOR PROFESSIONAL SERVICES FIRMS[3]		

[2] "Major Participant" means each Equity Member and each member of the Proposer's organization: (a) with primary responsibility for design; (b) with primary responsibility for construction; or (c) with a proposed subcontract with a value greater than or equal to 5% of the contract price or $20 million, whichever is greater. The role of each Major Participant should be identified as either having primary responsibility for design, primary responsibility for construction, or having a proposed subcontract with a value greater than or equal to 5% of the contract price or $20 million, whichever is greater.

[3] "Major Professional Services Firm" means a firm that will provide engineering, architectural, surveying, planning, quality assurance or other professional services for development of the Project valued at $2 million or more.

NAME OF ENTITY AND CONTACT INFORMATION[1] (representative, address, phone, fax, email)	ROLE IN ORGANIZATION	DESCRIPTION OF WORK/SERVICES TO BE PERFORMED BY ENTITY
KEY SUBCONTRACTORS[4]		
	Project Management	
	Lead Design Firm	
	Quality Control Management	
	Quality Assurance Management	
	Key Task Leader--Geotechnical	
	Key Task Leader--Hydraulics and Hydrology	
	Key Task Leader--Structural	
	Key Task Leader--Environmental	
	Key Task Leader--Utility	
	Key Task Leader--Right-of-Way	
	Key Task Leader--Roadway	

[4] "Key Subcontractor" means any Subcontractor that will (a) fill any of the following key project roles: project management, lead design firm, quality control management and quality assurance management or (b) serve as a key task leader for geotechnical, hydraulics and hydrology, structural, environmental, utility, right-of-way, or roadway issues.

NAME OF ENTITY AND CONTACT INFORMATION[1] (representative, address, phone, fax, email)	ROLE IN ORGANIZATION	DESCRIPTION OF WORK/SERVICES TO BE PERFORMED BY ENTITY
OTHER TEAM MEMBERS NOT IDENTIFIED ABOVE		

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Participants or Major Professional Services Firms resulting in an agreement to enter into any Subcontracts with respect to the Project, except for those listed above. The Proposer agrees that it will follow applicable Design-Build Contract ("DBC") and Capital Maintenance Agreement ("CMA") requirements with respect to Subcontractors. Proposer further declares that it has carefully examined the Request for Proposals Documents, including TxDOT's Disadvantaged Business Enterprise ("DBE") participation goal for the Project (set forth in ITP, Section 1.8.2), and acknowledges that Proposer's efforts to obtain participation by Subcontractors could reasonably be expected to accomplish TxDOT's DBE participation goal for the Project with respect to the professional services and Construction Work performed under the DBC, as well as the Maintenance Services performed under the CMA.

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

Executed: _____, 2019

_____
(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 _____, 2019.

_____

_____

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

INFORMATION ABOUT PROPOSER ORGANIZATION – Form B-2

1.0 Name of Proposer: _____

2.0 Type of entity: _____

3.0 Proposer's address: _____

_____

_____

_____

Telephone _____

Facsimile _____

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

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

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

Proposer: _____

_____

Equity Members: _____

_____

6.0 The Proposer shall review its Qualifications Statement ("QS") previously submitted to TxDOT and list below any Key Personnel and other key staff members and their relevant experience that have been approved by TxDOT since the submission of the QS. Except as updated by the following information, the Proposer's QS is hereby incorporated as if set forth in full and the Proposer represents and warrants to TxDOT that the information set forth in the QS, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information. Attach separate sheets if necessary.

_____

_____

_____

_____

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

8.0 The Proposal shall include the following information regarding the Surety(ies) committing to provide the bonds in accordance with Section 3.4 of the DBA General Conditions and Section 7.4 of the CMA:

(a) Name(s), address(es) and phone numbers of the Surety(ies) that will provide the above-referenced bonds (must be rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company), and the name(s), address(es) and phone number(s) of the designated agent(s).

_____
_____
_____
_____

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

_____
_____
_____
_____

STATE OF _____)
)
COUNTY OF _____)

Each of the undersigned, being first duly sworn, deposes and says that _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) 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 , 2019.

_____
Notary Public in and for
said County and State

[Seal]

My commission expires: _____

CERTIFICATION AND LEGAL QUALIFICATIONS – Form C

Proposer: _____

Name of Firm: _____

Entity (check one box for entity completing this Form C as applicable):

☐ Proposer; ☐ Equity Member; ☐ Major Participant; or ☐ Guarantor

The entity completing this form (the "Responding Party") 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 Responding Party 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 lead to rejection. With respect to the firm, the term "Affiliates" means companies that have performed work in connection with a transportation project (including highway, rail, transit, airport, port and multi model facilities), as applicable, that are (i) parent companies of the firm, (ii) subsidiary companies of the firm, or (iii) joint ventures or partnerships in which the firm has more than a 15% financial interest. The term "U.S. Affiliates" means Affiliates that are formed or have operations in the United States.

Within the past ten years, has the Responding Party, any Affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate:

1. Been charged with, sued for or convicted of (in a civil or criminal action) fraud, bribery, collusion, conspiracy or any act in violation of local, state or federal law or foreign law or antitrust law, in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity, or any other felony?

   Yes ☐ No ☐

   If yes, please explain:

2. Sought protection under any provision of any bankruptcy act in the United States?

   Yes ☐ No ☐

   If yes, please explain:

3. Been disqualified, removed, debarred or suspended from performing work or otherwise prevented from bidding or proposing on or completing work for the United States government, or any state or local government in the United States?

   Yes ☐ No ☐

   If yes, please explain:

Within the past five years, has the Responding Party, any Affiliate, or any officer, director, responsible managing officer or responsible managing employee of such entity or affiliate:

4. Failed to comply with safety rules, regulations or requirements in effect within the United States multiple times or in repeated fashion in the performance of any construction project performed or managed by the firm, or, to the knowledge of the undersigned, any affiliate involved?

   Yes ☐ No ☐

   If yes, please identify the team members and the projects, provide an explanation of the circumstances and provide owner contact information including telephone numbers.

5. Been found, adjudicated or determined by any United States 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 2000 *et seq*.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Texas law?

   Yes ☐ No ☐

   If yes, please explain:

6. 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?

   Yes ☐ No ☐

   If yes, please explain:

7. Been assessed liquidated or other damages in excess of $10,000 for one instance or in the aggregate for failure to complete any contract on time in connection with a transportation project in the United States?

   Yes ☐ No ☐

   If yes, please explain:

8. With respect to each of Questions 1-7 above, if not previously answered or included in a prior response on this form, is any proceeding, claim, matter, suit, indictment, etc. currently pending against the Responding Entity that alleges any of the charges described therein?

   Yes ☐ No ☐

   If yes, please explain and provide the information requested as to such similar items set forth in Questions 1-6 above.

9. Provide a list and a brief description of all instances during the last ten years involving transportation projects in which the Responding Party or any U.S. Affiliate was (i) determined, pursuant to a final determination in a court of law, arbitration proceeding or other dispute resolution proceeding, to be liable for a material breach of contract, or (ii) terminated for cause. For each instance, identify an owner's representative with a current phone and email address.

10. Provide a list and a brief description (including the resolution) of each arbitration, litigation, dispute review board and other dispute resolution proceeding occurring during the last ten years between a public owner and Responding Party or any U.S. Affiliate and involving an amount in excess of $300,000 related to performance in capital transportation projects with a contract value in excess of $10 million.

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the firm's Official Representative:

By: _____

Print Name: _____

Title: _____

Date: _____

Subscribed and sworn to before me this _____ day of _____, 20 _____ .

_____

Notary Public in and for

said County and State

[Seal]

My commission expires:

PERSONNEL WORK ASSIGNMENT FORM – Form D

Name of Proposer: _____

_____

Key Personnel Assignment[1]	Name of Individual Assigned
Project Manager	_____
Construction Manager	_____
Design Manager	_____
Lead Maintenance of Traffic (MOT) Design Engineer	_____
Independent Quality Firm Manager[2]	_____
Professional Services Quality Assurance Manager[3]	_____

Notes:

1. Except as otherwise set forth in this Form D, Key Personnel must be employed by either: (a) an Equity Member, Lead Engineering Firm, Lead Contractor, Lead Independent Quality Firm or Lead Maintenance Firm; (b) a controlled subsidiary of such Equity Member, Lead Engineering Firm, Lead Contractor, Lead Independent Quality Firm or Lead Maintenance Firm; (c) if the Lead Engineering Firm, Lead Contractor, Lead Independent Quality Firm or Lead Maintenance Firm is a joint venture, a member of such joint venture that will perform at least thirty percent (30%) of the relevant work or a controlled subsidiary of such joint venture member; or (d) a parent company of an Equity Member, if such parent company serves as a Guarantor.
2. Must be employed by the Independent Quality Firm.
3. Must be employed by an independent Professional Services Quality Assurance Firm.

BUY AMERICA CERTIFICATION − Form E

(To be signed by authorized signatory(ies) of the DB Contractor)

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

A. Proposer shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 C.F.R. § 635.410, which permits FHWA participation in the contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Design-Build Price.

B. For Utility Adjustments, De Minimus non-domestic iron and steel materials may be used provided the cost of such materials does not exceed one-tenth of one percent (0.1 %) of the individual Utility Agreement amount or $2,500.00, whichever is greater, per 23 CFR 635.410 (b)(4). The De Minimus equation is calculated by the following formula: combined cost of only those materials that are subject to Buy America and are non-compliant (limited to the individual Utility Agreement) divided by the total Utility Adjustment cost (cited in the individual Utility Agreement).

C. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should the contract be investigated, Proposer has the burden of proof to establish that it is in compliance.

D. At Proposer's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

PROPOSER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

NON-COLLUSION AFFIDAVIT − Form F

STATE OF _____)
)
COUNTY OF _____)

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

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

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

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

_____	_____
(Signature)	(Signature)
_____	_____
(Name Printed)	(Name Printed)
_____	_____
(Title)	(Title)

Subscribed and sworn to before me this _____day of _____, 2019.

_____

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.]

KEY PERSONNEL RESUME AND REFERENCES – Form G

Name:		**Position:** *(Select one.)* ☐ Project Manager ☐ Construction Manager ☐ Design Manager ☐ Lead Maintenance of Traffic (MOT) Design Engineer ☐ Independent Quality Firm Manager ☐ Professional Services Quality Assurance Manager
Firm:		
Degree: ☐ Associate ☐ Undergraduate ☐ Graduate ☐ Doctoral	**Field/Program:** ☐ Engineering ☐ Construction Management ☐ Architecture ☐ Other: _____	
College/University *(Name and Location)*:		_____
Years of Experience *(Relative to selected position)***:**		_____
Licenses/Certifications: *(Select all that apply. Provide the license/certification number and expiration date. Attach applications for Texas P.E. License, if applicable.)*		
☐ Professional Engineer (Date Since: ___) State: _____ LIC. No. _____ ☐ Texas P.E. License Application attached, if applicable ☐ ASQ – American Society of Quality ☐ CQI ☐ CQE ☐ CQM LIC. No. _____ Exp. _____ ☐ OSHA – Occupational Safety and Health Administration (30 hours) LIC. No. _____ Exp. _____		☐ CPR and First Aid LIC. No. _____ Exp. _____ ☐ CHST – Construction Health and Safety Technician by the Board of Certified Safety Professionals LIC. No. _____ Exp. _____ ☐ CSHO – Certified Safety and Health Official LIC. No. _____ Exp. _____ ☐ Other(s): _____
Additional Relevant Information:		

Project Description/Role		Project Value
Project Name:		☐ Below $100M ☐ $100M - $500M ☐ Above $500M
Project Location:		
Project Start Date:		
Project End Date:		
Project Description:		
Project Owner/Manager		**Project Type**
Name:		☐ Availability Payment ☐ Design-Build ☐ Design-Build-Maintain ☐ Design-Bid-Build ☐ Concession ☐ Other: _____
Title:		
Agency:		
Telephone:		
Email:		

Describe role and services provided relevant to this Project, including the start and end dates that you served in each role:

Project Description/Role		Project Value
Project Name:		☐ Below $100M ☐ $100M - $500M ☐ Above $500M
Project Location:		
Project Start Date:		
Project End Date:		
Project Description:		
Project Owner/Manager		**Project Type**
Name:		☐ Availability Payment ☐ Design-Build ☐ Design-Build-Maintain ☐ Design-Bid-Build ☐ Concession ☐ Other: _____
Title:		
Agency:		
Telephone:		
Email:		

Describe role and services provided relevant to this Project, including the start and end dates that you served in each role:

Project Description/Role		Project Value
Project Name:		☐ Below $100M ☐ $100M - $500M ☐ Above $500M
Project Location:		
Project Start Date:		
Project End Date:		
Project Description:		
Project Owner/Manager		**Project Type**
Name:		☐ Availability Payment ☐ Design-Build ☐ Design-Build-Maintain ☐ Design-Bid-Build ☐ Concession ☐ Other: _____
Title:		
Agency:		
Telephone:		
Email:		

Describe role and services provided relevant to this Project, including the start and end dates that you served in each role:

DBE CERTIFICATION − Form H

Control _____

Project _____

Highway _____

County _____

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for participation by Disadvantaged Business Enterprises ("DBEs") is established for professional services and Construction Work under the Design-Build Contract ("DBC"):

DBE

8% of Price

DBE Certification

By signing the Proposal, the Proposer certifies that (1) the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the DB Contractor will provide a good faith effort to substantiate the attempt to meet the goal; and (2) if conditionally awarded the DBC, the DB Contractor will submit a DBE Performance Plan meeting the requirements set forth in the DBE Special Provisions attached as Exhibit 6 to the DBC.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the Request for Proposals. As a result, the Proposal Bond provided by the Proposer will become property of the Texas Department of Transportation and the Proposer and Equity Members will be precluded from participating in any reprocurement of the DBC for the Project.

_____
[name]

_____
[title]

CHILD SUPPORT STATEMENT FOR
STATE GRANTS, LOANS AND CONTRACTS − Form I

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is eligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

Proposer Name: _____

List below the name and social security number of the individual or, if a business entity, the sole proprietor, or each individual who is a partner, shareholder or owner with an ownership interest of at least 25% of the business entity identified below.

_____

Section 231.006, Family Code, specifies that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

A child support obligor or business entity ineligible to receive payments described above remains ineligible until all arrearage have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Parts A and D of Title IV of the federal Social Security Act (42 U.S.C. Section 601-617 and 651-669).

Date: _____, 2019

Company Name:_____

_____
Signature

_____
Title

[*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 Proposer and each Major Participant.*]

CONFLICT OF INTEREST DISCLOSURE STATEMENT − Form J

Proposer's attention is directed to 23 C.F.R. 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 Rules (43 Texas Administrative Code § 27.8), 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 and the CDA program.

1. Disclosure Pursuant to Section 636.116(2)(v) and Rule 27.8

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 Request for Proposals ("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.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

2. Explanation

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

3. Certification

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

_____
Signature

_____
Name

_____
Title

_____
Company Name

_____, 2019
Date

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION – Form K

To be executed by the Proposer, Major Participants and proposed known Subcontractors.

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

(check one of the following boxes)

☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).

☐ It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

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

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

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING − Form L

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

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

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

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

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

Date: _____, 2019

_____
Signature

_____
Title

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

CERTIFICATION REGARDING INELIGIBLE CONTRACTORS – Form M

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

FINANCED IN PART BY THE U.S. GOVERNMENT

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

_____
(Name of DB Contractor)

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency or from participation in the Project;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and

4. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

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

Name of DB Contractor _____

Street Address of DB Contractor _____

City, State, Zip _____

Telephone Number of DB Contractor _____

Signature of Certifying Officer _____

Date _____

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

PROPOSAL BOND − Form N

(Separate Document)

PROPOSAL BOND − Form N

Bond No. _____

KNOW ALL PERSONS BY THESE PRESENTS, that the _____ ***[NOTE: insert name of Proposer as the Principal and delete this bracketed text]***, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Texas, are hereby jointly and severally held and firmly bound unto the Texas Department of Transportation ("TxDOT"), in the sum of $25,000,000 (the "Bonded Sum").

WHEREAS, the Principal is herewith submitting its Proposal to design, construct and potentially maintain a portion of the I-635 LBJ East project in Dallas County through a Design-Build Contract ("DBC") and a Capital Maintenance Agreement ("CMA"), which Proposal is incorporated herein by this reference and has been submitted pursuant to TxDOT's Request for Proposals dated as of November 9, 2018 (as amended or supplemented, the "RFP") in accordance with the Instructions to Proposers, as amended ("ITP") included in the RFP;

NOW, THEREFORE,

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

(a) Principal's receipt of written notice from TxDOT that either (i) no DBC or CMA for the Project will be awarded by TxDOT pursuant to the RFP, or (ii) TxDOT has awarded a DBC and CMA for the Project, has received the executed DBC, CMA and other required documents, and does not intend to award the contract to the Principal; or

(b) If TxDOT has not previously delivered notice of forfeiture hereunder, failure of TxDOT to conditionally award the DBC and the CMA to Principal within 180 days (or 270 days if TxDOT has extended the 180-day period to 270 days pursuant to the terms of the ITP) after the Financial Proposal Due Date.

2. The Principal and the Surety or Co-Sureties hereby agree to pay to TxDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any of the following events:

(a) Principal withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal prior to the time allowed for execution of the DBC and CMA under the ITP, as such time may be extended pursuant to ITP Section 4.6.2, without TxDOT's consent;

(b) Principal is selected for negotiations and fails to engage in good faith negotiations with TxDOT as set forth in ITP Section 5.11;

(c) Principal is the apparent best value Proposer and fails to provide the documents required under ITP Sections 6.1 and 6.1.1; or

(d) Principal is the apparent best value Proposer and fails to deliver the NTP1 Performance Bond and the NTP1 Payment Bond in accordance with Section 3.4 of the DBA General Conditions.

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

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

(a) This Proposal Bond shall not be subject to forfeiture in the event that TxDOT disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.

(b) If suit is brought on this Proposal Bond by TxDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by TxDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.

(c) Any extension(s) of the time for award of the DBC and the CMA that Principal may grant in accordance with the DBC and CMA or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.

d) Correspondence or claims relating to this Proposal Bond should be sent to Surety at the following address:

_____
_____
_____

SIGNED and SEALED this _____ day of _____, 2019

_____
Principal

By: _____

_____
Co-Surety

By: _____
Attorney in Fact

By: _____

_____
Co-Surety

By: _____
Attorney in Fact

By: _____

_____
Co-Surety

By: _____
Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME	SURETY ADDRESS	INCORPORATED IN

GUARANTOR COMMITMENT LETTER − Form O

[DATE]

Duane Milligan
Texas Department of Transportation
7600 Chevy Chase Drive, Bldg. 2, Suite 400
Austin, Texas 78752

RE: Guarantor Commitment to Provide Parent Guaranty for the I-635 LBJ East Project

Dear Mr. Milligan:

[*Insert name of entity providing the guaranty*], hereinafter "Guarantor," is [*describe relationship to Proposer*]. This commitment letter is provided on behalf of [*insert name of Proposer*] in connection with its proposal for the Design-Build Contract ("DBC") and Capital Maintenance Agreement ("CMA") for the I-635 LBJ East Project ("Project"). Guarantor hereby irrevocably agrees to provide a guaranty, guaranteeing all the obligations of [*insert name of Proposer*] with respect to the DBC and CMA in the form of Exhibit 13 to the DBA and Exhibit 9 of the CMA. This commitment is subject only to award of the DBC and CMA to [*insert name of Proposer*], execution of the DBC and CMA by TxDOT and [*insert name of Proposer*] and the issuance of NTP1.

Sincerely,

_____
[Title]

[*Attach evidence of authorization of the signatory to the letter, which may include a Power of Attorney signed by an authorized individual of the entity or other authority, as evidenced by the partnership agreement, joint venture agreement, corporate charter, bylaws or resolution.*]

DB PRICE FOR I-635 LBJ EAST − Form P-1

	Amount
DB Price	
Skillman/Audelia Interchange	
Total	

Proposer is requesting the above total amount from TxDOT for the design and construction phase of the Project under the Design-Build Contract

An itemized breakdown of the DB Price is shown on Form P-2.1. An itemized breakdown of the Skillman/Audelia Interchange Price is shown on Form P-2.2.

Timing of payments is shown on Form P-4.

Note: Proposer shall include amounts in nominal dollars.

DB PRICE BREAKDOWN – Form P-2.1

ITEM / LINE NO.	DESCRIPTION		
	Professional Services		**Total**
1	Professional Services Management		
2	Design Services		
3	Environmental Management & Permitting Activities		
4	Right-of-Way Acquisition Services & ROW Survey/Mapping		
5	Professional Services Quality Assurance		
6	Independent Quality (Construction)		
7	Public Information and Coordination & Community Outreach		
8	Utility Locates, Utility Survey, and Utility Adjustment Design		
9	Miscellaneous Professional Services not covered by Lines 1- 8		
10	**Subtotal Professional Services (Sum Lines 1 through 9)**	**Subtotal**	$0.00

	Construction		**Total**
11	Construction Management		
12	Mobilization		
13	Prep ROW		
14	[Removals]		
15	Traffic Control		
16	Earthwork		
17	Subbase and Base Course		
18	Rigid Pavement		
19	Drainage		
20	Structures- Retaining Walls		
21	Structures- Bridges		
22	Intentionally Deleted		
23	Signing		
24	Pavement Markings		
25	Traffic Signals		
26	Lighting		
27	ITS		
28	Aesthetics		
29	Intentionally Deleted		
30	Environmental Mitigation		
31	Utility Adjustments (except for City of Dallas, City of Garland and City of Mesquite Reimbursable Utility Adjustments)		
32	Utility Adjustments for City of Dallas Reimbursable Utility Adjustments		
33	Utility Adjustments for City of Garland Reimbursable Utility Adjustments		
34	Utility Adjustments for City of Mesquite Reimbursable Utility Adjustments		
35	DB Contractor Designated ROW/Construction Easements		
36	Tolling Components, including Gantry, Toll Rate Dynamic Message Signs and		

	other tolling relating items		
37	Lane Rental Charges in excess of the Lane Rental Bank Amount		
38	Bond Premiums		
39	Insurance Premiums		
40	Miscellaneous Construction Items not covered by Lines 11-39		
41	**Subtotal Construction (Sum Lines 11 through 40)**		

42	**Total DB Price (Line 10 + Line 41)**	**TOTAL**	**$0.00**

Note: Proposer shall provide amounts in nominal dollars.

SKILLMAN/AUDELIA INTERCHANGE PRICE BREAKDOWN – Form P-2.2

ITEM / LINE NO.	DESCRIPTION		
	Professional Services		**Total**
1	Professional Services Management		
2	Design Services		
3	Environmental Management & Permitting Activities		
4	Professional Services Quality Assurance		
5	Independent Quality (Construction)		
6	Utility Locates, Utility Survey, and Utility Adjustment Design		
7	Miscellaneous Professional Services not covered by Lines 1- 6		
8	**Subtotal Professional Services (Sum Lines 1 through 7)**	**Subtotal**	$0.00
	Construction		**Total**
9	Traffic Control		
10	Earthwork		
11	Subbase and Base Course		
12	Rigid Pavement		
13	Drainage		
14	Structures- Bridges		
15	Traffic Signals		
16	Lighting (include continuous streets/pedestrian illumination and bridge illumination)		
17	Not Used		
18	DB Contractor Designated ROW/Construction Easements		
19	Hardscape		
20	Miscellaneous Construction Items not covered by Lines 9-19		
21	**Subtotal Construction (Sum Lines 9 through 20)**	**Subtotal**	
22	**Total DB Price (Line 8 + Line 21)**	**TOTAL**	**$0.00**

Note: Proposer shall provide amounts in nominal dollars.
Note: This Form P-2.2 should not include costs for Utility Adjustments.

ATC ADJUSTMENTS − Form P-3

ATC Adjustment for Additional Impact to TxDOT Associated with Approved ATCs

Approved ATC #	DESCRIPTION of APPROVED ATC	Costs to TxDOT
	TOTAL	**$0.00**

Note: Cost refers to the additional cost associated with the ATC as determined by TxDOT and set forth in the ATC approval letter.

Note: Proposer shall include amounts in nominal dollars.

DB CONTRACTOR DRAWS/CASH FLOW TABLES
(DB PRICE) – Form P-4
(all figures are in U.S. dollars, nominal)

Months after NTP 1	(A) Anticipated Draw	(B) Cumulative Draw	Anticipated Draw as a % of Total (A/Total A)	Cumulative Draw as a % of Total (B/Total A)	Not-to-Exceed Payment Curve
1		$0			8.00%
2		$0			10.24%
3		$0			12.49%
4		$0			14.73%
5		$0			16.98%
6		$0			19.22%
7		$0			21.46%
8		$0			23.71%
9		$0			25.95%
10		$0			28.20%
11		$0			30.44%
12		$0			32.68%
13		$0			34.93%
14		$0			37.17%
15		$0			39.41%
16		$0			41.66%
17		$0			43.90%
18		$0			46.15%
19		$0			48.39%
20		$0			50.63%
21		$0			52.88%
22		$0			55.12%
23		$0			57.37%
24		$0			59.61%
25		$0			61.85%
26		$0			64.10%
27		$0			66.34%
28		$0			68.59%
29		$0			70.83%
30		$0			73.07%
31		$0			75.32%
32		$0			77.56%
33		$0			79.80%
34		$0			82.05%
35		$0			84.29%
36		$0			86.54%

37		$0			88.78%
38		$0			91.02%
39		$0			93.27%
40		$0			95.51%
41		$0			97.76%
42		$0			100.00%
43		$0			100.00%
44		$0			100.00%
45		$0			100.00%
46		$0			100.00%
47		$0			100.00%
48		$0			100.00%
49		$0			100.00%
50		$0			100.00%
51		$0			100.00%
52		$0			100.00%
53		$0			100.00%
54		$0			100.00%
55		$0			100.00%
56		$0			100.00%
57		$0			100.00%
58		$0			100.00%
59		$0			100.00%
60		$0			100.00%
TOTAL A (MAXIMUM PAYMENT)	**$0**				

Nominal DB Payments
DB Price To Form P-1

Notes:

1. "Maximum Payment" refers to the total nominal amount within Column (A) Anticipated Draw.
2. The "Cumulative Draw as a % of Total" may not exceed in any month the corresponding percentage in the Not-to-Exceed Payment Curve.

MAINTENANCE PRICE – Form Q

Maintenance Term	Year	Roadway (2019 $)	Drainage Facilities (2019 $)	Structures (2019 $)	Earthworks, Embankments and Cuttings (2019 $)	Administrative bonds, insurance and other costs not listed above (2019 $)	TOTAL (2019 $)	Discount Factor	Present Value of the Maintenance Price
		(A)	(B)	(C)	(D)	(E)	(F)=(A)+(B)+(C)+(D)+(E)	(G)	(H)=(F)x(G)
Initial Maintenance Term	1						$0	0.891	$0
	2						$0	0.874	$0
	3						$0	0.857	$0
	4						$0	0.841	$0
	5						$0	0.825	$0
	5-Year Subtotal	$0	$0	$0	$0	$0	$0		$0
Second Maintenance Term	6						$0	0.809	$0
	7						$0	0.794	$0
	8						$0	0.779	$0
	9						$0	0.764	$0
	10						$0	0.749	$0
	5-Year Subtotal	$0	$0	$0	$0	$0	$0		$0
Third Maintenance Term	11						$0	0.735	$0
	12						$0	0.721	$0
	13						$0	0.707	$0
	14						$0	0.694	$0
	15						$0	0.681	$0
	5-Year Subtotal	$0	$0	$0	$0	$0	$0		$0
15-Year Subtotal		$0	$0	$0	$0	$0	**$0**		**$0**
Total Maintenance Cost for Maintenance Period				**$0**					

Notes:
(1) Annual expenditures are presented in 2019 dollars as of Financial Proposal Due Date.
(2) Years in the table refer to the years during the Maintenance Period.
(3) The sum of Column H is the present value of the Maintenance Price, which is used in the calculation of the Price Value in Section 5.5 of the ITP.
(4) Discount rate is the product of 3% escalation from 2019 and a 5% discount rate to 2019.

COMPLETION DEADLINES AND COMMITMENTS AND ROAD USER PRICE – Form R

Inputs for Substantial Completion Deadline and Road User Price	
TxDOT Last Allowable Date for Substantial Completion ("A")	NTP1 plus 1,825 days
Proposal Commitment Date for Substantial Completion ("B")	NTP1 plus _____ days
Road User Days (A-B)	____days (if calculated to be greater than 365 days, use 365 days)

Road User Days	Value of Time	Road User Price
_____ Days (calculated as (A-B) above, no more than 365 Days)	x $55,000	= $_____

Note that the "Road User Price ($)" is for Proposal evaluation purposes only and will not become part of the DBC.

The "Proposal Commitment Date for Substantial Completion" set forth above will become the Substantial Completion Deadline under the DBC.

Exhibit E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Proposal Component	Form (if any)	ITP Section Cross-Reference	Signatory/Responsible Parties
TECHNICAL PROPOSAL			
Proposers shall follow the order of this checklist in their submissions. A referenced copy of this document shall be submitted with the Technical Proposal.			
A. Executive Summary			
Executive Summary ***(Exclude price information)***	No forms are provided	Exhibit B, Section 3.1	Proposer
B. Proposer Information, Certifications & Documents			
Technical Proposal Letter	Form A-1	Exhibit B, Section 3.2.1	Proposer
Authorization Documents	No forms are provided	Exhibit B, Section 3.2.1	Proposer and Equity Members
Identification of Proposer and Team Members	Form B-1	Exhibit B, Section 3.2.2	Proposer
Information About Proposer Organization	Form B-2	Exhibit B, Section 3.2.2	Proposer and Equity Members
Responsible Proposer Questionnaire	Form C	Exhibit B, Section 3.2.3	Proposer, Equity Members, Major Participants and Guarantor(s)
Personnel Work Assignment Form	Form D	Exhibit B, Section 3.2.4	Proposer
Letter(s) Approving Key Personnel	No forms are provided	Exhibit B, Section 3.2.5	Proposer
Letter(s) Approving Changes in Proposer's Organization	No forms are provided	Exhibit B, Section 3.2.5	Proposer

Proposal Component	Form (if any)	ITP Section Cross-Reference	Signatory/Responsible Parties
Buy America Certification	Form E	Exhibit B, Section 3.2.6	Proposer
Non-Collusion Affidavit	Form F	Exhibit B, Section 3.2.7	Proposer or Equity Members
DBE Certification	Form H	Exhibit B, Section 3.2.8	Proposer
Child Support Statement for State Grants, Loans and Contracts	Form I	Exhibit B, Section 3.2.9	Proposer
Conflict of Interest Disclosure Statement	Form J	Exhibit B, Section 3.2.10	Proposer
Equal Employment Opportunity Certification	Form K	Exhibit B, Section 3.2.11	Proposer, Major Participants and Subcontractors
Certification Regarding Use of Contract Funds for Lobbying	Form L	Exhibit B, Section 3.2.12	Proposer, Equity Members, and Major Participants
Certification Regarding Ineligible Contractors	Form M	Exhibit B, Section 3.2.13	Proposer
Surety Information	No forms are provided.	Exhibit B, Section 3.2.14	Proposer and Surety
Proposal Bond	Form N	Exhibit B, Section 3.3.2	Surety
Guarantor Commitment Letter (if required)	Form O, Form B-1 and other information is also required for any Guarantors.	Exhibit B, Section 3.4; Exhibit C-1, Section 2.1.3(b)	Guarantor(s)
Form of Payment for Work Product Agreement (Optional)	Exhibit H-1	Exhibit B, Section 3.5	Proposer
Form 1295 (if Payment for Work Product Agreement is submitted)	Exhibit H-2	Exhibit B, Section 3.5	Proposer
C. Technical Solutions			
Project Management	No forms are provided	Exhibit B, Section 4.1	Proposer

Proposal Component	Form (if any)	ITP Section Cross-Reference	Signatory/Responsible Parties
Quality Management	No forms are provided	Exhibit B, Section 4.2	Proposer
Design and Construction Plan	No forms are provided	Exhibit B, Section 4.3	Proposer
D. Appendices			
Preliminary Project Baseline Schedule	No forms are provided	Exhibit B, Section 4.3	Proposer

Proposal Component	Form (if any)	ITP Section Cross-Reference	Signatory/Responsible Parties
FINANCIAL PROPOSAL			
Proposers shall follow the order of this checklist in their submissions. A referenced copy of this document shall be submitted with the Financial Proposal.			
Financial Proposal Letter	Form A-2	Exhibit C-1, Section 1.2	Proposer
Identification of Proposer and Team Members (copy)	Form B-1	Exhibit C-1, Section 1.2	Proposer
Information About Proposer Organization (copy)	Form B-2	Exhibit C-1, Section 1.2	Proposer
Updated Financial Information			
Audited fiscal financial statements for all periods subsequent to those in the QS and unaudited interim financial statements	No forms are provided	Exhibit C-1, Section 2.1	(Non-publicly traded) Proposer, Equity Members, Major Participants with primary responsibility for construction of the Project, and Guarantor(s)
Audited fiscal financial statements (if Proposer or any of the Major Participants with primary responsibility for construction of the Project is a newly formed entity, or has not yet formed a legal entity, or is a joint venture and does not have independent financial statements)	No forms are provided	Exhibit C-1, Section 2.1.3(a)	Equity Members, Major Participants with primary responsibility for construction of the Project, and Guarantor(s)
Guarantor Commitment Letter (if required)	Form O	Exhibit C-1, Section 2.1.3(b)	Guarantor(s)

Proposal Component	Form (if any)	ITP Section Cross-Reference	Signatory/Responsible Parties
Most recent SEC Form 10-K and any Forms 10-Q and 8-K filed since the last filed Form 10-K	No forms are provided	Exhibit C-1, Section 2.1.3(c)	(Publicly traded) Proposer, Equity Members, Major Participants with primary responsibility for construction of the Project, and Guarantor(s)
Credit ratings	No forms are provided	Exhibit C-1, Section 2.1.3(d)	Proposer, Equity Members, Major Participants with primary responsibility for construction of the Project and Guarantor(s)
Letter regarding material change in financial condition since submission of the QS and those that are pending	No forms are provided	Exhibit C-1, Section 2.2	Proposer, Equity Members, Major Participants with primary responsibility for construction of the Project and Guarantor(s)
Letter disclosing all material off-balance sheet liabilities	No forms are provided	Exhibit C-1, Section 2.3	Proposer, Equity Members, Major Participants with primary responsibility for construction of the Project and Guarantor(s)

Proposal Component	Form (if any)	ITP Section Cross-Reference	Signatory/Responsible Parties
PRICE PROPOSAL			
Proposers shall follow the order of this checklist in their submissions. A referenced copy of this document shall be submitted with the Price Proposal.			
A. **Base Price**			
Design-Build Price	Form P-1	Exhibit C-2, Section 3.1.1	Proposer
Design-Build Price Breakdown	Form P-2.1	Exhibit C-2, Section 3.1.1	Proposer
Skillman/Audelia Interchange Price Breakdown	Form P-2.2	Exhibit C-2, Section 3.1.1	Proposer
ATC Adjustments	Form P-3	Exhibit C-2, Section 3.1.1	Proposer
Design-Build Draws/Cash Flow Tables	Form P-4	Exhibit C-2, Section 3.1.1	Proposer
Maintenance Price	Form Q	Exhibit C-2, Section 3.1.2	Proposer
B. **Schedule Information**			
Completion Deadlines and Commitments and Road User Price	Form R	Exhibit C-2, Section 3.2	Proposer

Exhibit F

RIGHT OF ENTRY PROCESS

[ATTACHED]

Exhibit F-1

RIGHT OF ENTRY PROCESS FOR NON-STATE-OWNED PROPERTY

Proposers desiring to obtain access during the procurement to property that is not owned by the State along the I-635 LBJ East Project shall submit a request to TxDOT that includes the parcel numbers and reasons for access. TxDOT shall be responsible for contacting the relevant property owner(s) and negotiating a right of entry for use by all Proposers.

Proposers are advised that the process of obtaining rights of entry from property owners other than TxDOT may take a minimum of 2-4 weeks. Proposers shall be responsible for providing timely requests to TxDOT.

Proposers shall comply with any requirements, conditions and restrictions of the property owner. The form of Right of Entry Agreement to be signed by the respective property owner is attached as Appendix A.

Appendix A to Exhibit F-1

I-635 LBJ East Project

Right of Entry

Parcel ID No. _____ Tax ID No. _____

Land Referencing Address: _____

CSJ No. _____

The owner ("Owner"), or authorized representative known to be _____, hereby grants a Right of Entry to TxDOT, its contractors, consultants, agents, and all others TxDOT deems necessary, including prospective design-builders, to perform work necessary for the completion of the design, surveying, geotechnical evaluation, sounding, environmental studies, utility investigation, and other examination required to be performed in anticipation of the final design of the project and/or prior to the acquisition of property necessary for the Project.

- The Owners reserve all rights, title, and interest in and to the property, and this Right of Entry shall in no way prejudice Owner's right to contest the acquisition of the property or to receive full and just compensation as allowed by law for any interest in and to the property that may be needed by the State of Texas, and damages, if any, to the remainder of the Owner's interest to and in the property.

- This Right of Entry shall not prejudice Owner's rights to any relocation benefits for which the Owner would be eligible.

- The Owner, or authorized representative, grants TxDOT, its contractors, consultants, agents, and all others necessary to perform work required, at its own risk and expense, the right of ingress and egress over and across the property for the purpose of accessing the proposed Right of Way ("ROW").

- TxDOT and all others sharing in the Right of Entry granted hereunder will attempt to utilize only non-destructive testing methods but, if necessary, will restore the property to prior condition for any damage or make reimbursement to the Owner for any damage to the property.

- The Right of Entry shall be effective the date this document is executed and shall remain in effect until the sooner of (1) the date that this Right of Entry is revoked in writing by Owner, or (2) the date that the proposed ROW is acquired in the name of the State of Texas.

- The Owner, or authorized representative, shall have the right to accompany any or all operations being performed as a result of the use of this document.

- If there are any tenants or lessees on the property who must be contacted, the Owner, or authorized representative, agrees to contact them or to provide TxDOT, and upon request, any party sharing in this Right of Entry, the names and contact numbers so that TxDOT and others sharing in this Right of Entry may give them proper notice prior to entering the property.

- The Right of Entry, unless revoked or terminated, shall extend to and bind the parties, their heirs, executors, administrators, legal representatives, successors, and assigns, including the contractors, consultants, agents and all others TxDOT has deemed necessary to share in this Right of Entry.

- If Owner is other than an individual, the undersigned representative of the Owner warrants and represents that he or she is duly authorized and empowered to enter into and to execute this Right of Entry on behalf of the Owner.

The I-635 LBJ East Project is progressing to the next level. TxDOT appreciates previous Rights of Entry but now requires additional access for highway design activities. If there are any questions, please contact Lacey Rodgers at Lacey.Rodgers@txdot.gov.

This Right of Entry is in addition to any prior right of entry granted to TxDOT by the Owner in respect of the parcel identified at the top of page one, is for specific purposes described in the introductory paragraph for the benefit of the persons identified in that paragraph and is subject to the terms of the Owner's grant of this Right of Entry. Should the Owner have any concerns or questions regarding the activities of any person sharing or claiming to share in this Right of Entry, the Owner shall be entitled to enlist the assistance of TxDOT through Lacey Rodgers at Lacey.Rodgers@txdot.gov.

[Signature Page Follows]

IN WITNESS WHEREFORE, this instrument is executed on and shall be effective as of this _____ day of

_____, 201_.

_____	_____
OWNER	Telephone Number
_____	_____
PRINT NAME	Cell Number

Exhibit F-2

RIGHT OF ENTRY PROCESS FOR STATE-OWNED ROW

Proposers must comply with the following steps in order to obtain a right of entry from TxDOT to the I-635 LBJ East Project Right of Way ("ROW") at various locations prior to execution of the Design-Build Contract ("DBC").

1. The Proposer shall complete the Agreement for Engineering Investigations on State Highway ROW and forward a signed original agreement and Exhibit B, TxDOT Form 1560, Certificate of Insurance (also available at https://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/contractors.html), to Duane Milligan.

2. Exhibit A, DBC Site Investigation on Highway ROW in the Dallas District, shall be completed by the Proposer for each request for right of entry upon State highway ROW. One Exhibit A can cover a request for multiple days of access. Exhibit A may be turned in with the signed original Agreement for Engineering Investigations on State Highway ROW and Exhibit B, or may be turned in subsequent to the Proposer's receipt of the fully executed copy of the agreement.

3. Dependent upon the location of the ROW for which the Proposer seeks entry, the Proposer shall submit Exhibit A to Duane Milligan.

4. Prior to a Proposer's entry onto State Highway ROW, the Proposer must receive approval from the appropriate area office.

5. The Proposer may perform investigations in areas only as requested in each Exhibit A.

*** Note: Exhibit A may be e-mailed or submitted in hard copy. Approval of Exhibit A shall occur in written format which may include e-mail.

*** Exhibit A preparation:

In addition to location and general description of investigations to be performed, if the investigations require closure of a lane(s) of traffic for any reason, the Proposer shall submit a traffic control plan for TxDOT review and approval with the appropriate Exhibit A.

AGREEMENT FOR

ENGINEERING INVESTIGATIONS

ON STATE HIGHWAY RIGHT OF WAY

STATE OF TEXAS §

COUNTY OF DALLAS §

THIS AGREEMENT made this _____day of _____ by the State of Texas, acting by and through the Texas Department of Transportation, referred to as "TxDOT," party of the first part, and _____, hereinafter referred to as the "Requestor," party of the second part.

WITNESSETH

WHEREAS, TxDOT owns and operates a system of highways for public use and benefit, including the I-635 LBJ East Project, in Dallas County; and

WHEREAS, the Requestor has requested permission from TxDOT to use I-635 LBJ East Project Right of Way ("ROW") at various locations to be determined based on submittal of Exhibit A for each instance of access requested. Exhibit A is attached hereto and made a part of this Agreement, for the purpose of asset assessment, engineering studies and site investigations; and

WHEREAS, in accordance with Tex. Adm. Code, § 27, TxDOT seeks to enter into a Design-Build Contract with a private sector partner and desires the private sector partner to have access to the proposed Project limits for performance of due diligence work in preparation of its Proposal; and

WHEREAS, this Agreement is intended to encourage and facilitate access to TxDOT highway facilities and their adjacent ROW for the promotion of that goal while protecting the safety of the traveling public and the integrity of state highway facilities and ROW.

AGREEMENT

1. The Requestor's description of the activities, including the placement of people and equipment on TxDOT highway ROW, will be submitted in writing as outlined in Exhibit A and shall be made part of this Agreement upon approval of TxDOT.

2. It is expressly understood that TxDOT does not purport hereby to grant any right, claim, title, or easement in or upon its ROW. Furthermore, approval of this Agreement by TxDOT does not constitute approval by any other Texas State agency.

3. The Requestor agrees to accept full responsibility for coordinating and making arrangements with the local law enforcement personnel to provide adequate and safe traffic control during the above referenced activity. If, during the activity, the local law enforcement personnel determine that the above referenced use of the ROW is creating a traffic hazard, the ROW will be opened to traffic and the activity will be rescheduled to a time agreeable to TxDOT, the Requestor, and the local law enforcement personnel.

4. The Requestor shall provide necessary safeguards to protect the public during the above referenced activity, including adequate insurance for payment of any damages which might result from activities during occupation of the ROW, and shall save TxDOT and the State of Texas harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so.

5. The Requestor agrees to indemnify and save harmless TxDOT and the State of Texas and its officers, agents, contractors, and employees from all suits, actions, or claims and from all liability and damages for any and all injuries or damages sustained by any person or property as a consequence of any neglect in the performance of the above referenced activity and any related activity by the Requestor and from any claims or amounts arising or recovered under the "Workers' Compensation Laws"; V.T.C.S., Civil Practice & Remedies Code 101.021, 101.051; or any other laws.

6. The Requestor shall further indemnify TxDOT and the State of Texas and accept responsibility for all damages or injury to property of any character occurring during the prosecution of the activity resulting from any act, omission, neglect or misconduct on the part of the Requestor in the manner or method of executing the activity. The Requestor assumes all costs associated with the inspections, investigations and assessments.

7. TxDOT, having the legal right to occupy TxDOT highway ROW, will not be responsible or liable for damages to the Requestor's property or operations. The Requestor's attention is directed to the fact that utility installations owned by others exist in the ROW. The Requestor shall save harmless TxDOT and the State of Texas from any and all suits or claims resulting from damage to any utility installation due to the above referenced activity.

8. The Requestor shall restore the ROW to its original condition, free of any damage to the roadway and drainage structures, signs, and pavement and, to the extent practicable, restore the natural environment, including landscape features. The Requestor will avoid or minimize damage outside the ROW and will, at its own expense, restore or repair damage outside the ROW. The Requestor's performance shall be in compliance with all federal, State and local laws, ordinances, and regulations including:

   (a) the Endangered Species Act of 1973, 16 USC § 1531 et seq. and the regulations there under as amended;

(b) TxDOT's erosion and sedimentation control standards and TxDOT's Vegetation Management Standards, which may in any way regulate or control the activity; and
(c) all State and federal environmental laws and any conditions required by TxDOT to protect the environment.

Any costs incurred by TxDOT for repairs to highway facilities, for the removal of debris, or for any other necessary restoration work performed by TxDOT as a result of the activity will be billed to the Requestor at cost. The Requestor shall make full and complete payment to TxDOT within thirty (30) days from receipt of TxDOT's written notification.

9. Any action by the Requestor that indicates a commencing of the activity in the ROW will signify that the Requestor agrees to abide by the above requirements.

10. Any changes in the time frame, character, or responsibilities of the parties as outlined on the appropriate previously approved Exhibit A shall be enacted by a written approval by TxDOT.

11. It is mutually agreed and understood that if the above referenced section of paved ROW is to be partially or totally temporarily closed, it will be closed in accordance with a "Traffic Control Plan" provided as part of the appropriate Exhibit A and subject to approval by TxDOT. The Requestor hereby agrees to immediately reopen any partially or totally closed section of ROW to emergency vehicles, law enforcement personnel, or others in case of emergency. The traffic control shall be provided by the Requestor through cooperation with the appropriate law enforcement personnel at no cost to TxDOT. Each Traffic Control Plan shall be provided by the Requestor, at no cost to TxDOT, and approved by TxDOT, and shall be in accordance with the Texas Manual on Uniform Traffic Control Devices, latest edition. The Requestor hereby agrees to accept full responsibility for the complete planning, design and implementation of each Traffic Control Plan. Each Traffic Control Plan shall include a traffic enforcement plan, including a letter by mail or facsimile from the law enforcement agency that will be providing the traffic control for the event or a contact name and telephone number of the responsible law enforcement agency. Law enforcement will be present at all times during a closure unless stated otherwise in the Traffic Control Plan.

12. The Requestor has provided TxDOT with Exhibit B, covering the below listed insurance limits for the duration of the activity. Exhibit B is attached hereto and made a part of this Agreement.

A. Worker's Compensation Insurance – Amount: Statutory Endorsed with a Waiver of Subrogation in favor of TxDOT and the State of Texas.

B. Comprehensive General Liability Insurance – Amounts:

Bodily Injury	$500,000 each occurrence
Property Damage	$100,000 each occurrence

OR

Commercial General Liability Insurance – Amount:

$600,000 combined single limit each occurrence and in the aggregate which includes Contractual Coverage; and, endorsed with a Waiver of Subrogation in favor of those parties named in paragraph A above, and endorsed with TxDOT and the State of Texas as an additional insured.

C. Comprehensive Automobile Liability – Amounts:

Bodily Injury	$250,000 each person; $500,000 each occurrence
Property Damage	$100,000 each occurrence

Endorsed with a Waiver of Subrogation in favor of those parties named in paragraph A above, and endorsed with TxDOT and the State of Texas as an additional insured.

13. This Agreement shall terminate upon execution of a Design-Build Contract, unless terminated by:

(a) Mutual agreement and written consent of both parties,
(b) TxDOT upon written notice to the Requestor as consequence of the Requestor's failure to perform the responsibilities set forth herein (TxDOT may grant allowances for circumstances beyond the control of the Requestor),
(c) TxDOT for reasons of its own and not subject to mutual consent of the Requestor upon not less that fifteen (15) days written notice to the Requestor, or
(d) By satisfactory completion of the Requestor's temporary use of the highway ROW.

The termination of this agreement and payment of any amount in settlement as prescribed herein shall extinguish all rights, duties, and obligations of TxDOT and the Requestor. Upon termination of this Agreement, the Requestor shall vacate the highway ROW and restore it to the original condition in a manner described herein within two days from the termination date of this Agreement.

14. Should disputes arise between the parties regarding the obligations and responsibilities established herein, TxDOT's decision shall be final and binding.

15. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16. This Agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings and/or written or oral agreements between TxDOT and the Requestor respecting the within subject matter.

17. The undersigned for the Requestor represents and warrants that he or she is an officer of the Requestor for which he or she has executed this Agreement and that he or she has the full and complete authority to enter into this Agreement on behalf of the Requestor.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed on the dates shown below stated.

REQUESTOR NAME:

_____

By: _____
(Signature)

Name: _____
(Typed)

_____
(Title)

Date: _____

Address: _____
_____
_____
_____

Phone: _____

THE STATE OF TEXAS

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission

By: _____
District Engineer
Dallas District

Date: _____

LIST OF ATTACHED EXHIBITS

Exhibit	Description
A	Design-Build Contract Site Investigation on Highway Right of Way in the Dallas District
B	TxDOT Form 1560, Certificate of Insurance

Exhibit A

DESIGN-BUILD CONTRACT SITE INVESTIGATION ON

HIGHWAY RIGHT OF WAY

IN THE DALLAS DISTRICT

_____ is giving written notice of proposed Work to take place within the Right of Way ("ROW") of the I-635 LBJ East Project in Dallas County, TX as follows:

(Give general written description of location and work to take place- Do not write "See Attached")

The Work listed above **is not to include** the following: The destructive testing of any in place pavement or structure, or other work that may be considered harmful to assets already in place. This Work is limited to Site investigations and Engineering Studies for the purposes of preparing a Proposal for the I-635 LBJ East Project Design-Build Contract ("DBC") and Capital Maintenance Agreement ("CMA"). This may include reviewing in place Work along the Project ROW, gathering pavement condition score information, subsurface soils investigations and other investigations as required in preparation of a Proposal in response to the TxDOT issued Request for Proposals ("RFP").

At no time shall any Work activity that involves digging take place any closer than three feet from the edge of pavement or back of curb.

The Requestor will use best management practices to minimize erosion and sedimentation resulting from the proposed Work, and will revegetate the Work area as indicated under "Revegetation Special Provisions."

The Requestor will ensure that traffic control measures complying with applicable portions of the *Texas Manual on Uniform Traffic Control Devices* will be installed and maintained for the duration of this Work. (Approval of traffic control plans is required by area/maintenance office.) Refer to attached location map and drawing for a more specific location and a description of the Work activity. The undersigned agrees to comply with the terms and conditions set forth in this notice.

The proposed Work will begin on the _____ day of _____, 20 ____ .

Requestor Party _____

By (Print) _____

Signature _____

Address _____

_____

Phone _____

Texas Department of Transportation

_____

Duane Milligan, Director of Construction Dallas District

Signature:_____

_____

Date

COPY OF THIS DOCUMENT MUST BE KEPT ON JOBSITE. If approved via e-mail, retain printed copy of e-mail approval on jobsite as well.

EXHIBIT B

Texas Department of Transportation

CERTIFICATE OF INSURANCE

Form 1560
(Rev. 8/18)
Previous editions of this form may not be used.
Page 1 of 2

Agents should complete this form by providing all requested information, then either email, fax, or mail this form as noted at the bottom of page two. Copies of endorsements listed below are not required as attachments to this certificate.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not confer any rights or obligations other than the rights and obligations conveyed by the policies referenced on this certificate. The terms of the policies referenced in this certificate control over the terms of the certificate.

Insured: _____

Street/Mailing Address: _____

City/State/Zip: _____

Phone Number: ( ) -

WORKERS' COMPENSATION INSURANCE COVERAGE:
Endorsed with a Waiver of Subrogation in favor of TxDOT.

Carrier Name:			**Carrier Phone #:** ( ) -	
Address:			**City, State, Zip:**	
Type of Insurance	**Policy Number**	**Effective Date**	**Expiration Date**	**Limits of Liability:**
Workers' Compensation				Not Less Than: Statutory - Texas

COMMERCIAL GENERAL LIABILITY INSURANCE:

Carrier Name:			**Carrier Phone #:** ( ) -	
Address:			**City, State, Zip:**	
Type of Insurance:	**Policy Number:**	**Effective Date:**	**Expiration Date:**	**Limits of Liability:**
Commercial General Liability Insurance				Not Less Than: $ 600,000 each occurrence

BUSINESS AUTOMOBILE POLICY:

Carrier Name:			**Carrier Phone #:** ( ) -	
Address:			**City, State, Zip:**	
Type of Insurance:	**Policy Number:**	**Effective Date:**	**Expiration Date:**	**Limits of Liability:**
Business Automobile Policy				Not Less Than: $ 600,000 combined single limit

UMBRELLA POLICY (if applicable):

Carrier Name:			**Carrier Phone #:** ( ) -	
Address:			**City, State, Zip:**	
Type of Insurance:	**Policy Number:**	**Effective Date:**	**Expiration Date:**	**Limits of Liability:**
Umbrella Policy				

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

THIS IS TO CERTIFY to the Texas Department of Transportation acting on behalf of the State of Texas that the insurance policies named are in full force and effect. *If this form is sent by facsimile machine (fax), the sender adopts the document received by TxDOT as a duplicate original and adopts the signature produced by the receiving fax machine as the sender's original signature.*

Agency Name **Address** **City, State, Zip Code**

_____

( ) -
Authorized Agent's Phone Number **Authorized Agent Original Signature** **Date**

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

NOTES TO AGENTS:

Agents must provide all requested information then either email, fax, or mail this form as noted below.

Pre-printed limits are the minimum required; if higher limits are provided by the policy, enter the higher limit amount on an Acord Form.

To avoid work suspension, an updated insurance form must reach the address listed below **one business day prior** to the expiration date. **Insurance must be in force in order to perform any work.**

Binder numbers are not acceptable for policy numbers.

The certificate of insurance, once on file with the department, is adequate for subsequent department contracts provided adequate coverage is still in effect. Do not refer to specific projects/contracts on this form.

List the contractor's legal company name, including the DBA (doing business as) name as the insured. If a staff leasing service is providing insurance to the contractor/client company, list the staff leasing service as the insured and show the contractor/client company in parenthesis.

The Texas Department of Insurance (TDI) approved forms are the only acceptable proof of insurance for department contracts. The preferred Certificate of Insurance (COI) is on a 1560 or Acord form.

Over-stamping and/or over-typing entries on the certificate of insurance are not acceptable if such entries change the provisions of the certificate in any manner.

DO NOT COMPLETE THIS FORM UNLESS THE WORKERS' COMPENSATION POLICY IS ENDORSED WITH A WAIVER OF SUBROGATION IN FAVOR OF TXDOT.

The SIGNATURE of the agent is required.

CERTIFICATE OF INSURANCE REQUIREMENTS:

WORKERS' COMPENSATION INSURANCE:

The contractor is required to have Workers' Compensation Insurance if the contractor has any employees including relatives.

The word STATUTORY, under limits of liability, means that the insurer would pay benefits allowed under the Texas Workers' Compensation Law.

GROUP HEALTH or ACCIDENT INSURANCE is not an acceptable substitute for Workers' Compensation.

COMMERCIAL GENERAL LIABILITY INSURANCE:

MANUFACTURERS' or CONTRACTOR LIABILITY INSURANCE is not an acceptable substitute for Comprehensive General Liability Insurance or Commercial General Liability Insurance.

BUSINESS AUTOMOBILE POLICY:

If coverages are specified separately, they must be at least these amounts:

Bodily Injury	$500,000 each occurrence
	$100,000 each occurrence
Property Damage	$100,000 for aggregate

PRIVATE AUTOMOBILE LIABILITY INSURANCE is not an acceptable substitute for a Business Automobile Policy.

Completed forms may be submitted by any of the following methods:

Email: CST_Insurance@txdot.gov
Fax: (512) 416-2536
Mail: Texas Department of Transportation
CST – Contract Processing
125 E. 11th Street
Austin, TX 78701-2483

Exhibit G

MINUTE ORDER

[*ATTACHED*]

Exhibit H-1

FORM OF PAYMENT FOR WORK PRODUCT AGREEMENT

PAYMENT FOR WORK PRODUCT AGREEMENT

(I-635 LBJ East Project)

THIS PAYMENT FOR WORK PRODUCT AGREEMENT is made and entered into as of this _____ day of 201_, by and between the Texas Department of Transportation ("TxDOT") and _____, a _____ duly authorized to conduct business in the State of Texas ("Proposer"), with reference to the following facts:

A. Proposer is one of the shortlisted proposers eligible to submit Proposals for the I-635 LBJ East Project (the "Project"), and has submitted a Proposal in response to the Request for Proposals for the Project issued by TxDOT on [*DATE*], as amended (the "RFP"). Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

B. The RFP requires each shortlisted proposer who elects to receive a stipend to execute and deliver a Payment for Work Product Agreement to TxDOT with the Technical Proposal by the date specified in the RFP, as a condition to the proposer's eligibility to receive a payment for work product in accordance with Section 6.3 of the Instructions to Proposers ("ITP").

NOW, THEREFORE, the Proposer hereby agrees as follows:

SECTION 1 SERVICES AND PERFORMANCE

(a) The Proposer has prepared a responsive Proposal in response to the RFP. A "responsive" Proposal means a Proposal submitted by a shortlisted proposer which conforms in all material respects to the requirements of the RFP, as determined by TxDOT, in its discretion, and is timely received by TxDOT.

(b) Subject to the provisions of the RFP regarding ownership of Escrowed Proposal Documents ("EPDs"), all work performed by Proposer and its team members pursuant to this Payment for Work Product Agreement and in connection with the Proposal shall be considered work for hire, and the products of such work shall become the property of TxDOT without restriction or limitation on their use. Neither Proposer nor any of its team members shall copyright any of the material developed under this Payment for Work Product Agreement.

SECTION 2 TERM

Unless otherwise provided herein, the provisions of this Payment for Work Product Agreement shall remain in full force and effect until the earlier to occur of (a) eighteen (18) months from the date of the execution of

this Payment for Work Product Agreement or (b) the date payment is delivered hereunder. The work product is due no later than the Technical Proposal Due Date.

SECTION 3 COMPENSATION AND PAYMENT

(a) If, following receipt of Proposals as requested by the RFP, the Design-Build Contract ("DBC") is awarded by TxDOT to a proposer other than Proposer or the procurement is cancelled, then, subject to the terms of Section 6.3 of the ITP and this Payment for Work Product Agreement (including, without limitation, Proposer's full compliance therewith), TxDOT agrees to pay Proposer for the herein described services a lump sum in an amount equal to the lesser of (i) the value of the work product provided in the Proposal that can, as determined by TxDOT, be used by TxDOT in the performance of its functions and (ii) 0.25% of the successful proposer's DB Price, provided, however, that in the event the procurement is terminated before execution of the DBC, TxDOT shall pay Proposers a partial lump sum in the amount of $1,900,000. Proposer will not be compensated if the Proposal, including, without limitation, the Financial Proposal, is determined by TxDOT to be non-responsive, or fails to achieve a passing score on any of the pass/fail criteria in Section 5.3 of the ITP, or if TxDOT withdraws the RFP prior to the due date for Proposals.

(b) In no event shall any proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 of the ITP be entitled to receive compensation hereunder, including, without limitation, payments under Section 3(a) above. In addition, if TxDOT awards the DBC to Proposer, Proposer will not be entitled to compensation hereunder, including, without limitation, payments under Section 3(a).

(c) Payment will be made within 30 days after receipt of a proper invoice submitted to TxDOT under this Section 3(c). The invoice may be submitted no earlier than 15 days after notice of Final Award, including execution of the DBC, is posted on TxDOT's website, or, if Final Award is not made, not earlier than 30 days after cancellation of the procurement or expiration of the time period for award stated in the RFP (as such time period may be extended by mutual agreement of the apparent best value Proposer and TxDOT), as applicable. All proposers eligible to receive a payment for work product shall be required to submit an invoice to TxDOT in a form acceptable to TxDOT in order to receive such payment. The invoice must specify the legal name and Texas Comptroller's Taxpayer Number of the entity entitled to receive payment on behalf of the Proposer. The name and Texas Comptroller's Taxpayer Number of the entity that is entitled to receive the payment for work product on behalf of Proposer is _____. [*INSERT LEGAL NAME OF ENTITY AND TEXAS COMPTROLLER'S TAXPAYER NUMBER THEN DELETE THIS BRACKETED LANGUAGE*]

(d) To be eligible for a payment for work product, Proposer must submit with the Proposal along with this Payment for Work Product Agreement a signed and notarized Form 1295, Certificate of Interested Parties, in the form of Exhibit H-2, as required by the Texas Ethics Commission pursuant to Government Code Sec. 2252.908 and Tex. Admin. Code Sections 46.1-46.5, and as described in Section 4.6.5.5 of the DBA General Conditions and Section 10.4.7 of the CMA, (please visit the Texas Ethics Commission website for additional information at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

(e) This Payment for Work Product Agreement involves the submission of a Proposal by Proposer that must be received by the due date(s) set forth in the RFP and determined responsive by TxDOT as a condition of Proposer's eligibility for the payment set forth in Section 3(a).

SECTION 4 INDEMNITIES AND SURETYSHIP

(a) Proposer agrees that it will indemnify, defend, and hold harmless TxDOT and all of TxDOT's commission members, officers, agents, representatives, and employees from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including attorneys' fees and costs) arising out of any acts, actions, neglect, omissions, fault, willful misconduct, violation of law or breach by Proposer, its agents, employees, or Subcontractors during the performance of this Payment for Work Product Agreement, whether direct or indirect, and whether to any person or property to which TxDOT or said parties may be subject, except that neither Proposer nor any of its Subcontractors will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of TxDOT or any of its commission members, officers, agents, or employees.

(b) Proposer's obligation to indemnify, defend, and pay for the defense or, at TxDOT's option, to participate and associate with TxDOT in defense of any claim and any related settlement negotiations, shall be triggered by TxDOT's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding TxDOT solely negligent shall excuse performance of this provision. Proposer shall pay all costs and fees related to this obligation and its enforcement by TxDOT. TxDOT's failure to notify Proposer of a claim shall not release Proposer of the above duty to defend.

SECTION 5 COMPLIANCE WITH LAWS

(a) Proposer acknowledges that all written correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to TxDOT during this procurement process, excluding only the EPDs, are, upon their receipt by TxDOT, the property of TxDOT and are subject to the Public Information Act (Texas Government Code Section 552.001 et seq.).

(b) Proposer shall comply with all federal, state, and local laws; ordinances; rules; and regulations applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Payment for Work Product Agreement.

(c) Proposer covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable laws, ordinances, rules, and regulations as they relate to work performed under this Payment for Work Product Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Payment for Work Product Agreement.

SECTION 6 EARLY TERMINATION

This Payment for Work Product Agreement may be terminated by TxDOT, in its sole discretion, in whole or in part, at any time. In the event of such termination, TxDOT will owe no payment except as provided in Section 3(a), above.

SECTION 7 ASSIGNMENT

Proposer shall not assign, transfer, pledge, sell, or otherwise convey this Payment for Work Product Agreement without TxDOT's prior written consent, in its sole discretion. Any assignment of this Payment for Work Product Agreement without such consent shall be null and void and may, in TxDOT's sole discretion, disqualify Proposer from further consideration for the procurement and Project.

SECTION 8 MISCELLANEOUS

(a) Proposer and TxDOT agree that Proposer, its equity owners, team members, and their respective employees are not agents or representatives of TxDOT as a result of this Payment for Work Product Agreement.

(b) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

(c) This Payment for Work Product Agreement, together with the RFP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Payment for Work Product Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

(d) It is understood and agreed by the parties hereto that if any part, term, or provision of this Payment for Work Product Agreement is by the courts held to be illegal or in conflict with any law of the State of Texas, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Payment for Work Product Agreement did not contain the particular part, term, or provisions determined to be invalid.

(e) This Payment for Work Product Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue for any proceeding relating to this Payment for Work Product Agreement shall be the courts in Travis County, Texas.

(f) This instrument may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Payment for Work Product Agreement has been executed and delivered as of the day and year first above written.

TEXAS DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

[*PROPOSER'S NAME*]

By: _____
Name: _____
Title: _____

Exhibit H-2

FORM 1295

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20_____.
(month) (year)

_____
Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 12/22/2017

Must file online at www.ethics.state.tx.us/File

Exhibit I

FORM OF ATC PROPOSAL

ATC Proposal No. _____

[*PROPOSER'S NAME*] **I-635 LBJ East Project**

Part A: *Sequentially number each Alternative Technical Concept Proposal (ATC). Multi-part or multi-option ATCs must be submitted as separate, individual ATCs with unique sequential numbers. Complete Part A of this Exhibit I and attach it to the front cover of the ATC. Each ATC must provide more detailed information requested in Part B of this Exhibit I. Provide the required number of copies of the ATC as stated in the RFP.*

1. **This ATC impacts (*check all that apply*):**
   - ☐ Development (Design/Construction)
   - ☐ Maintenance

2. **How will this ATC be applied to the Project?**

   - ☐ Location Specific

   - ☐ Project Wide

3. **Please provide a brief written description of the proposed ATC (*if location specific, please provide the location*).**

4. **Proposer is requesting a change affecting the following technical requirements of the Request for Proposals (*check all that apply*):**

   - ☐ TxDOT Schematic Design ☐ Pavement Design
   - ☐ Design-Build Specifications #_____
   - ☐ Design-Build Special Specifications #_____
   - ☐ Design-Build Special Provisions #_____

5. **Please complete the following table:**

	Decrease	**Increase**
Potential Price Impact (nominal $)		
DB Price	($)	$
Maintenance Price	($)	$

Totals	($)	$
	Net Total Price Impact	**$**
Potential Schedule Impact (Days)		

6. Potential DB Price decrease is due to (*check all that apply*):

- ☐ Design modification(s)
- ☐ Reduction of overall quantities
- ☐ Materials fabrication/sourcing
- ☐ Improved constructability
- ☐ Construction sequencing
- ☐ Reduced construction time
- ☐ Other (Describe)*:*

_____

7. Potential DB Price increase is due to (*check all that apply*):

- ☐ Improved safety
- ☐ Improved operational capacity
- ☐ Reduced lifecycle costs
- ☐ Greater compatibility with future improvements
- ☐ Other (Describe)*:*

_____

8. Potential Maintenance Price decrease is due to (*check all that apply*):

- ☐ Design modification(s)
- ☐ Reduction of overall quantities
- ☐ Materials fabrication/sourcing
- ☐ Improved constructability
- ☐ Construction sequencing
- ☐ Reduced construction time
- ☐ Other (Describe)*:*

_____

9. Potential Maintenance Price increase is due to (*check all that apply*):

- ☐ Improved safety
- ☐ Improved operational capacity
- ☐ Reduced Development costs
- ☐ Greater compatibility with future improvements
- ☐ Other (Describe)*:*

_____

10. Potential schedule decrease is due to *(check all that apply)*:

- ☐ Design modification(s)
- ☐ Reduction of overall quantities
- ☐ Materials fabrication/sourcing
- ☐ Improved constructability
- ☐ Construction sequencing
- ☐ Other (Describe):

_____

11. Potential schedule increase is due to *(check all that apply):*

- ☐ Improved safety
- ☐ Improved operational capacity
- ☐ Reduced lifecycle costs
- ☐ Greater compatibility with future improvements
- ☐ Other (Describe)*:*

_____

Part B: *For each ATC, provide the information requested below as part of your ATC analysis and attach it to the corresponding Part A of this Exhibit I. Include conceptual drawings of the configuration and a traffic operational analysis, if appropriate. Proposer's analysis must use the numbering below and address the following:*

1. **Purpose**. Describe the proposed ATC in detail, including its purpose; and where and how it would be used on the Project.

2. **Required Deviation(s).** Specify which requirements of the RFP are inconsistent with the proposed ATC. Explain the nature of the inconsistencies, and why a deviation from the RFP provisions is required and should be granted. **Explain how the ATC provides both quality and performance that is equal to or better than currently provided for by the DBC Documents or CMA Documents, as applicable, absent such ATC.**

3. **Overall Analysis.** Provide an analysis of the proposed ATC. How would this ATC change the operation and maintenance of the Project? Include the table below, mark the box as appropriate and include a quantitative discussion of potential changes to the following items:

Assessment of Potential Changes Related to Proposed ATC

Roadway requirements (including ease of operations)	☐ No change	☐ Change
Environmental and Other Permitting	☐ No change	☐ Change
Community Impacts	☐ No change	☐ Change
Vehicular Traffic and Safety (during and after construction)	☐ No change	☐ Change
Life-cycle of item/project (including impacts on cost of repair, maintenance and operation)	☐ No change	☐ Change
Routine maintenance	☐ No change	☐ Change
Capital maintenance (including ease of maintenance)	☐ No change	☐ Change
Capital maintenance transition requirements	☐ No change	☐ Change

4. **Cost Differences.** Provide a detailed statement of the cost differences associated with the ATC implementation. Include an itemized list of impacted bid items and quantities supporting the cost differences for the ATC. Delineate the costs to TxDOT, the DB Contractor and third parties (including utility owners), if any.

5. **Schedule Impact**. Discuss the impact on the Project completion time including design, construction, right of way, utility relocation, Access Justification Report and/or permitting issues. Describe proposed methods and commitments to minimize or eliminate any related impacts.

6. **Utilities.** Discuss the utility (public and private) impacts.

7. **Inspections.** Describe and discuss any additional testing and construction inspection requirements.

8. **Risks**. Describe and discuss any added risks to TxDOT and other parties associated with implementing the ATC.

9. **Right of way.** Describe any additional right-of-way (temporary or permanent) required and discuss intended acquisition method and schedule. *(Proposers shall (i) be solely responsible for the acquisition of any such right of way and necessary Environmental Approvals, including related costs; (ii) not be entitled to any Change Order for time or money as a result of related Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional right-of-way; and (iii) not be entitled to any Change Order for time or money as a result of any delays, inabilities or costs associated with the proposed right of way acquisition.)*

10. **Other benefits**. Besides any potential cost and time savings, what other benefits does this ATC provide? Describe and substantiate how the ATC provides both quality and performance that is equal to or better than currently provided by the DBC Documents and CMA Documents, as applicable, absent such ATC.

11. **Previous Application(s).** Provide, in the format shown below, a detailed description of any previous use of the proposed ATC or similar technical concept and the degree of success or failure of such usage. Include relevant site conditions, basis for and results of its use, schedule and cost impacts, if any, and relative conditions contributing to the success or challenges and limitations of its implementation. Also provide the project name and contact information (name, title, phone number and email) for project owners that can confirm ATC implementation.

Project Name:		**ATC Implementation Year:**
Project Owner:		**Location:**
Contact Name and Title:	**Phone:**	**E-mail Address:**

Description:

Exhibit J

COMMENT FORM

No.	Document (i.e. ITP, DBA Exhibit 3, DBA General Conditions Section 3.4, RIDs)	Reference* (i.e. Section 1.2(a), RIDs filename)	Cat. (1–4)	Question/Comment	TxDOT Response

Additional rows may be added as needed.

Exhibit K

OPINION OF COUNSEL

[LETTERHEAD OF INDEPENDENT LAW FIRM OR IN-HOUSE COUNSEL – SEE SECTION 6.1.1(e) OF THE ITP FOR LEGAL COUNSEL REQUIREMENTS]

Texas Department of Transportation
125 East 11th Street
Austin, TX 78701

Re: Design-Build Contract and Capital Maintenance Agreement (collectively, the "Agreements") for the I-635 East Project dated as of _____, 2019, by and between Texas Department of Transportation, and _____ (the "DB Contractor")

Gentlemen:

[Describe relationship to the DB Contractor and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery of the Proposal and execution of the Agreements.] This letter is provided to you pursuant to Section 6.1.1(e) of the Instructions to Proposers of that certain Request for Proposals issued by the Texas Department of Transportation ("TxDOT") on [Date] as amended.

In giving this opinion, we have examined _____. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable. [If certificate used/obtained from the DB Contractor or Guarantor, such certificate should also run in favor of TxDOT and should be attached to opinion.]

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine.

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of the DB Contractor and that the DB Contractor has corporate power to own its properties and assets, carry on its business, make the Proposal, enter into the Agreements and to perform its obligations under the Agreements] [if the DB Contractor is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners].

2. [opinion regarding good standing and qualification to do business in State of Texas for the DB Contractor] [if the DB Contractor is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners].

3. [opinion regarding organization/formation and existence of Guarantor and that Guarantor has corporate power to own its properties and assets, to carry on its business, to enter into the Guaranty and to perform its obligations under the Guaranty] [if Guarantor is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners] [if there is no Guaranty, this opinion may be omitted].

4. [opinion that Proposal and the Agreements have been duly authorized by all necessary corporate action on the part of the DB Contractor and the Proposal and Agreements have been duly executed and delivered by the Design-Build Contractor] [if the DB Contractor is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "DB Contractor"].

5. [opinion that Guaranty has been duly authorized by all necessary corporate action on the part of Guarantor and the Guaranty has been duly executed and delivered by Guarantor] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the first and second "Guarantor"] [if there is no Guaranty, this opinion may be omitted].

6. [opinion that the Agreements constitute a legal, valid and binding obligation of the DB Contractor enforceable against the DB Contractor in accordance with its terms] [if the DB Contractor is a partnership/joint venture, add: and its joint venture members/general partners after the second "DB Contractor"].

7. [opinion that the Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms] [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners after the second "Guarantor"] [if there is no Guaranty, this opinion may be omitted].

8. DB Contractor is a party [if the DB Contractor is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which the DB Contractor is bound [if the DB Contractor is a partnership/joint venture, add: and its joint venture members/general partners are bound].

9. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Guaranty; and that the Guaranty does not conflict with any agreements to which Guarantor is a party [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which Guarantor is bound [if Guarantor is a partnership/joint venture, add: and its joint venture members/general partners are bound]] [if there is no Guaranty, this opinion may be omitted].

10. [opinion that execution, delivery and performance of all obligations by the DB Contractor under the Proposal and the Agreements do not conflict with, and are authorized by, the articles of incorporation and bylaws of the DB Contractor] [if the DB Contractor is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership; if the DB Contractor is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if the DB Contractor is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation].

11. [opinion that execution, delivery and performance of all obligations by Guarantor under the Guaranty does not conflict with, and is authorized by, the articles of incorporation and bylaws of Guarantor] [if Guarantor is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership; if Guarantor is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if Guarantor is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation] [if there is no Guaranty, this opinion may be omitted].

12. [opinion that execution and delivery by the DB Contractor of the Proposal and the Agreements do not, and the DB Contractor's performance of its obligations under the Proposal and the Agreements will not, violate any current statute, rule or regulation applicable to the DB Contractor or to transactions of the type contemplated by the Proposal or the Agreements].

13. [opinion that execution and delivery by the Guarantor of the Guaranty do not, and the Guarantor's performance of its obligations under the Guaranty will not, violate any current statute, rule or regulation applicable to the Guarantor or to transactions of the type contemplated by the Guaranty] [if there is no Guaranty, this opinion may be omitted]