

**TEXAS DEPARTMENT OF TRANSPORTATION
US 77 UPGRADE FROM KINGSVILLE TO DRISCOLL PROJECT
INSTRUCTIONS TO PROPOSERS—Form **BAFO A****

PROPOSAL LETTER

PROPOSER: _____

Proposal Date: _____, 2013

Texas Department of Transportation
7600 Chevy Chase Drive, Building II Suite 400
Austin, Texas 78752
Attn: Mr. Frank Holzmann, P.E.

The undersigned (“Proposer”) submits this ~~proposal—(this—“Proposal”)—in response~~Proposal Revision and Best and Final Offer (this “BAFO”) in response to the Request for Proposal Revisions and Best and Final Offers (“Request for BAFOs”) set forth in Addendum 7 to that certain Request for Proposals (the “RFP”) issued by the Texas Department of Transportation (“TxDOT”), an agency of the State of Texas, dated August 31, 2012, to design, construct and provide capital maintenance services for at least five years for the US 77 Upgrade from Kingsville to Driscoll Project (the “Project”), as more specifically described herein and in the documents provided with the RFP (the “RFP Documents”). The term “Proposal” as used herein shall mean the original proposal submitted on December 14, 2012 in response to the RFP, as supplemented and amended by this BAFO. 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 ~~Proposal~~BAFO 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 and insurance) for the due performance of the Design-Build Agreement (“DBA”) and the Capital Maintenance Agreement (“CMA”), as stipulated in the DBA Documents, the CMA Documents and the RFP.

If selected by TxDOT as the best value Proposer, Proposer agrees to do the following or, if not the Design-Build Contractor (“DB Contractor”), 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 DBA Documents and the CMA Documents, in accordance with the requirements of the RFP; (b) enter into the DBA 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 DBA Documents and the CMA Documents; and (c) perform its obligations as set forth in the Instructions to Proposers, as amended (“ITP”), the DBA Documents and the CMA Documents, including compliance with all commitments contained in this Proposal.

The following individual is designated as the Proposer designated 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 and DB Contractor in connection with this RFP, the Project, the DBA and the CMA: _____

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

- Revised Executive Summary
- Technical Proposal Revision, including Proposer Information, Certifications and Documents; 1 Proposal Security and required Appendices
- Financial Proposal Revision

Information originally provided on the following forms has changed since the original Proposal Due Date and new forms providing currently correct, accurate and valid information, statements of authority and certificates are now included with this BAFO: [Specify Forms B-1, B-2, B-3, C, D, E, F, I, J, P, Q, R or S, as applicable.]

Information originally provided on the following forms has NOT changed since the original Proposal Due Date, and Proposer certifies that the information provided on the forms submitted with the original proposal on December 14, 2012 constitute correct, accurate and valid information, statements of authority and certificates as of the BAFO Due Date: [Specify Forms B-1, B-2, B-3, C, D, E, F, I, J, P, Q, R or S, as applicable.]

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

*[List all Addenda by number and date issued, including Addendum 7. For example, “Addenda 1 issued November 5, 2012.”]
[list other addenda] _____*

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

Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions or conditions. Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the secure file transfer site for the Project, the Addenda (if any) and TxDOT's responses to questions (as and when posed), and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the 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 which 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 represents that all statements made in the QS previously delivered to TxDOT [(as amended and resubmitted)] and in the original proposal submitted on December 14, 2012 are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed ProposalBAFO and the revised Proposal forms submitted herewith. Proposer agrees that such QS and original proposal submitted on December 14, 2012, except as modified by the enclosed ProposalBAFO and revised Proposal forms, isare incorporated as if fully set forth herein and shall remain binding on Proposer for the entirety of the procurement process that is the subject of the RFP.

Proposer understands that TxDOT is not bound to accept the Proposal offering 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 consents to TxDOT's disclosure of its Proposal pursuant the Texas Transportation Code and other applicable provisions of law pertaining to design-build contracts (see Chapter 223, Subchapter F, of the Code and Sections 9.150-9.155 of Title 43, Texas Administrative Code (the "Rules")), to any Persons in TxDOT's sole discretion after conditional award of the DBA and CMA by TxDOT. Proposer acknowledges and agrees to the disclosure terms described in ITP Section 2.6. Proposer expressly waives any right to contest such disclosures as may exist under Subchapter F of the Texas Transportation Code or the Rules.

Proposer agrees that TxDOT will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Proposal.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Texas.

Proposer's business address:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

*[insert appropriate signature block from following pages; note: signatures should be in **blue ink.**]*

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

[Insert the proposer's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the proposer's name]

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

By: _____

Print Name: _____

Title: _____

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

3. Sample signature block for attorney in fact:

[Insert the proposer's name]

By: _____

Print Name: _____

Attorney in Fact

ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:

- A. Describe in detail the legal structure of the Proposer/DB Contractor and Equity Members.
1. If the Proposer/DB Contractor/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/DB Contractor/Equity Member and each corporation, in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 2. If the Proposer/DB Contractor/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/DB Contractor/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), in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 3. If the Proposer/DB Contractor/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/DB Contractor/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), in each case certified by an appropriate individual with each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
 4. If the Proposer/DB Contractor/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/DB Contractor/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), in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that this information will be provided prior to award.

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

- B. With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate and authorized officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate and authorized officer of each general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and, if required by its operating agreement, a manager/managing member(s) resolution providing such authorization, certified by an appropriate and authorized officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate and authorized officer of such joint venture member. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.
- C. The DB Contractor'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 DB Contractor is not yet formed, provide draft organizational documents and indicate where the provision is found.

IDENTIFICATION OF PROPOSER AND EQUITY MEMBERS—Form B-1

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

The above information is true, correct and accurate.

[Insert the Proposer's name]

By: _____

Name: _____

Title: _____

INFORMATION ABOUT PROPOSER ORGANIZATION—Form B-2

1.0 Name of Proposer: _____

Name of DB Contractor _____

2.0 Type of entity: Proposer: _____

DB Contractor: _____

3.0 Proposer's address: _____

Telephone

Facsimile

4.0 How many years has the Proposer, DB Contractor 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, DB Contractor and Equity Members operated?

Proposer: _____

_____ :

6.0 The Proposer shall review its 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, DB Contractor 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 8 of the DBA and Section 7 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 Company, Inc.), and the name(s), address(es) and phone number(s) of the designated agent(s).

- (b) Whether or not each listed Surety has defaulted on any obligation within the past 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) is/are the _____ of _____, the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this ___ day of _____, 2012.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____

requirements with respect to Subcontractors. Proposer further declares that it has carefully examined the RFP Documents, including TxDOT's DBE participation goal for the Project (set forth in Section 1.9.2 of the ITP) and acknowledges that a 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 portions of the Work performed under the DBA, 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: _____, 2012.

(Signature)

(Name printed)

(Title)

(Proposer)

STATE OF _____)
)
COUNTY OF _____)

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

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this ___ day of _____, 2012.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____.

RESPONSIBLE PROPOSER QUESTIONNAIRE—Form C

PROPOSER'S NAME: _____

NAME OF ENTITY ON WHOSE BEHALF FORM IS PROVIDED: _____

1. Questions

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

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

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

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

Yes ____ No ____

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

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

Yes ____ No ____

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

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

Yes ___ No ___

- d) Had filed against it, him or her, any civil complaint (including but not limited to a cross-complaint) or other claim arising out of a public works contract, alleging fraud, bribery, collusion, conspiracy or any act in violation of state or federal antitrust law in connection with the bidding or proposing upon, award of or performance of any public works contract with any public entity?

Yes ___ No ___

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

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

Yes ___ No ___

- f) Been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Texas Department of Labor (or its equivalent), federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

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

Yes ___ No ___

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

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

Yes ___ No ___

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

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

Yes ___ No ___

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

2. Verification / Declaration

I declare under penalty of perjury under the laws of the State of Texas that the foregoing declaration is true, correct and accurate to the best of my knowledge following due inquiry. Executed _____, 2012.

(Signature)

(Name Printed)

(Title)

(Name of Organization)

[Evidence of signature authorization for such individual attached]

**INDUSTRIAL SAFETY RECORD FOR TEAM MEMBERS
PERFORMING INSTALLATION OR CONSTRUCTION WORK—Form D**

PROPOSER'S NAME: _____

NAME OF TEAM MEMBER: _____

ROLE OF TEAM MEMBER: _____

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

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
1) Total Hours Worked (in thousands) Nationwide: Texas:					
2) Number of fatalities:* Nationwide: Texas:					
3) Number of lost workdays:* Nationwide: Texas:					
4) Number of lost workdays* cases: Nationwide: Texas:_____					

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
5) Number of injury/illness* cases: Nationwide: Texas:					
6) Number of days of* restricted work activity due to injury/illness: Nationwide: Texas:					
7) Incidence Rate** Lost Workday Cases Nationwide: Texas: Days Lost Nationwide: Texas:					
8) Worker's Compensation Experience Modifier Nationwide: Texas:					

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

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

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

_____		_____	
Name of Company (Print)		Signature	
_____		_____	
Address		Title	
_____	_____	_____	
City	State and ZIP Code	Telephone Number	

PERSONNEL WORK ASSIGNMENT FORM—Form E

Name of Proposer: _____

Key Personnel Assignment	Name of Individual Assigned
Project Manager	_____
Design Manager	_____
Construction Manager	_____
Professional Services Quality Control Manager	_____
Design Quality Assurance Manager	_____
Construction Quality Control Manager	_____
Construction Quality Acceptance Manager	_____
Environmental Compliance Manager	_____
Capital Maintenance Manager	_____

Note: The Key Personnel positions of Professional Services Quality Control Manager and Construction Quality Control Manager have been added to the list provided in the Request for Qualifications (RFQ). The RFQ Key Personnel position of Construction Quality Assurance Manager has been replaced by the Construction Quality Acceptance Manager position. Duties of this position have not substantially changed from those described in the RFQ.

Subscribed and sworn to before me this ___ day of _____, 2012.

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.]

BUY AMERICA CERTIFICATION—Form G

(To be signed by authorized signatory(ies) of 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 CFR 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 Development Price.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract be investigated, Proposer has the burden of proof to establish that it is in compliance.
- C. 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 the TxDOT.

PROPOSER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

DBE CERTIFICATION—Form H

Control _____

Project _____

Highway _____

County _____

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for participation by Disadvantaged Business Enterprises is established for professional services and Construction Work under the Design-Build Agreement (“DBA”) and for Maintenance Services performed under the Capital Maintenance Agreement (“CMA”):

DBE

6% of the Design-Build Price

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 DB Contractor will provide a good faith effort to substantiate the attempt to meet the goal; and (2) if awarded the DBA and CMA, DB Contractor will submit a DBE Performance Plan meeting the requirements set forth in the DBE Special Provisions attached as Exhibit 6 to the DBA.

Failure to submit the DBE Performance Plan will be considered a breach of the requirements of the RFP. As a result, the Proposal Bond provided by the Proposer will become property of the Department and the Proposer and Equity Members will be precluded from participating in any reprourement of the DBA and CMA 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 sole proprietor and each partner, shareholder or owner with an ownership interest of at least 25% of the 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: _____, 2012

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 CFR Part 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines “organizational conflict of interest” as follows:

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

Proposers are advised that in accordance with TxDOT’s conflicts of interest Rules (43 Texas Administrative Code § 9.155), 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 DBA program.

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

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

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

3. Certification

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

Signature

Name

Title

Company Name

_____, 2012
Date

PROPOSAL SECURITY—Form ~~K~~BAFO K-1 or Form BAFO K-2

(Separate ~~Document~~Documents)

REPLACEMENT PROPOSAL BOND—Form BAFO K-1

Bond No. _____ **[Replaces 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 _____ 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 \$3 million (the “Bonded Sum”).

WHEREAS, the Principal is herewith submitting its Proposal to design, construct and potentially maintain the US 77 Upgrade from Kingsville to Driscoll Project in Kleberg County and Nueces County through a Design-Build Agreement (“DBA”) 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 August 31, 2012 (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 DBA or CMA for the Project will be awarded by TxDOT pursuant to the RFP, or (ii) TxDOT has awarded a DBA and CMA for the Project, has received the executed DBA, 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 DBA 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 **Proposal BAFO** Due Date.

2. The Principal agrees 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 DBA and CMA under the ITP, as such time may be extended pursuant to ITP Section 4.5.2, without TxDOT's consent; or
- (b) Principal is selected for negotiations and fails to engage in good faith negotiations with TxDOT as set forth in ITP Section 5.11.1;
- (c) Principal is the apparent best value Proposer and fails to provide the documents required under ITP Sections 6.1 and 6.1.1.

Principal and each Surety 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, including the DBA 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 DBA and the CMA that Principal may grant in accordance with the DBA 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(es):

SIGNED and SEALED this _____ day of _____, ~~2012~~2013

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

RIDER TO PROPOSAL BOND EXTENDING EFFECTIVE PERIOD—FORM BAFO K-2

RIDER

Revising Paragraph 1(b) to reference BAFO Due Date

To be attached to and form a part of:

Bond No. _

Type of
Bond: **Proposal Bond**

dated
effective
(MONTH-DAY-YEAR)
[Proposer]

, as Principal,

(PRINCIPAL)

and by

, as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

In consideration of the mutual agreements herein contained, the Principal and the Surety hereby consent to the following:

To replace Paragraph 1 in its entirety with the following language:

"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 DBA or CMA for the Project will be awarded by TxDOT pursuant to the RFP, or (ii) TxDOT has awarded a DBA and CMA for the Project, has received the executed DBA, 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 DBA 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 BAFO Due Date.”

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This Rider is effective the _____ day of _____, 2013.

SIGNED and SEALED this _____ day of _____, 2013

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]

OPINION OF COUNSEL—Form L

[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
Strategic Projects Division
125 East 11th Street
Austin, TX 78701

Re: Design-Build Agreement (“DBA”) and Capital Maintenance Agreement (“CMA”) (collectively, “the Agreements”) for the US 77 Upgrade from Kingsville to Driscoll Project dated as of _____, 2012, by and between Texas Department of Transportation, and _____ (the “DB Contractor”)

Gentlemen:

[Describe relationship to 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 _____, 2012, 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 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 DB Contractor and that 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 DBA Documents] [if 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 DB Contractor] [if 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 DB Contractor] [if 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 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. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of the Proposal and the Agreements; and that neither the Proposal nor the Agreements conflicts with any agreements to which DB Contractor is a party [if 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 DB Contractor is bound [if 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 DB Contractor under the Proposal and the Agreements do not conflict with, and are authorized by, the articles of incorporation and bylaws of DB Contractor [if DB Contractor

is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if DB Contractor is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if 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]

DESIGN-BUILD PRICE—Form [BAFO M-1](#)

US 77 Upgrade DBA	Amount
Design-Build Price	From Form BAFO M-2

Proposer is requesting the above total amount from TxDOT in nominal dollars for the design and construction phase of the Project under the DBA.

An itemized breakdown of the Amount is shown on Form [BAFO M-1.1](#).

Timing of payments are as shown on Form [BAFO M-2](#).

DESIGN-BUILD PRICE BREAKDOWN—Form BAFO M-1.1

ITEM / LINE NO.	DESCRIPTION	ITEM TOTAL (US Dollars)
A	Professional Services	
1	Professional Services Development Management & Community Outreach	
2	Development Design, Design Survey, & Landscape Design	
3	Environmental Permitting Activities	
4	Utility Locates, Utility Survey, and Utility Adjustment Design	
5	Design Quality Assurance Firm, Construction Quality Acceptance Firm, and Environmental Compliance Team	
6	Miscellaneous Professional Services not covered by Lines 1-5	
7	Subtotal Professional Services (Sum Lines 1 through 6) Subtotal	\$0.00
B	Construction	
8	Construction Development Management	
9	Mobilization	
10	Traffic Control	
11	Removals	
12	Prep ROW	
13	Earthwork	
14	Subbase and Base Course	
15	Pavement	
16	Permanent Structures	
17	Temporary Structures	
18	Drainage	
19	Lighting	
20	Traffic Signals	
21	Signing	
22	Pavement Markings	
23	Aesthetics	
24	Landscaping Allowance	\$100,000
25	Environmental Mitigation	
26	Utility Adjustments	
27	Electronic Communications	
28	Bond Premiums	
29	Insurance Premiums	
30	Subtotal Construction (Sum Lines 8 through 29) Subtotal	\$0.00
31	Total Price (Line 7 + Line 30) TOTAL	

DB CONTRACTOR DRAWS/CASH FLOW TABLE—Form BAFO M-2

**US 77 Upgrade from Kingsville to Driscoll Project
CASH FLOW ADJUSTMENT TABLE/PAYMENT CURVE**

See attached Excel document

MAINTENANCE PRICE—Form BAFO N

DETAILED COSTING FORM – FORM <u>BAFO N</u>				
US 77 Upgrade from Kingsville to Driscoll Project Operation and Maintenance Full Facility				
Item	Expenditure per Year			Total cost (5×A)+(5×B)+(5×C)
	Years 1-5 (A)	Years 6-10 (B)	Years 11- 15 (C)	
Roadway				
Structures				
Lighting				
Fences, walls and sound abatement				
Administrative, bonds, insurance and other costs not listed above				
Earthworks, Embankments and Cuttings				
Total Annual Cost				

Notes:

- (1) Annual expenditures are presented as of ~~Proposal~~BAFO Due Date.
- (2) Years in the table refers to the number of years after Substantial Completion.

COMPLETION ~~SCHEDULE~~DEADLINE—Form BAFO O

Description	Substantial Completion Date
Proposal Commitment Date for Substantial Completion- (D)	NTP1 plus _____ calendar days*

* Note: Must be less than or equal to NTP1 plus 1092 calendar days

Schedule Adjustment credit:

$$SA = (910 - D) * \$5,000$$

$$SA = \$ \underline{\hspace{2cm}}$$

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION—Form P

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.

KEY SUBCONTRACTORS—Form Q

List of Key Subcontractors by discipline or role:

- 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 – Utilities:

**CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING—
Form R**

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: _____, 2012

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

CERTIFICATION REGARDING INELIGIBLE CONTRACTORS—FORM S

**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 Developer)

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 Developer _____

Street Address of Developer _____

City, State, Zip _____

Telephone Number of Developer

Signature of Certifying Officer

Date

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

GUARANTOR COMMITMENT LETTER—Form T

[DATE]

Frank Holzmann, P.E.
Texas Department of Transportation
7600 Chevy Chase Drive, Building II Suite 400
Austin, TX 78752

RE: Guarantor Commitment to Provide Parent Guaranty for the US 77 Upgrade from Kingsville to Driscoll Project

Dear Mr. Holzmann:

_____ [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 Agreement (“DBA”) and Capital Maintenance Agreement (“CMA”) for the US 77 Upgrade from Kingsville to Driscoll Project (“Project”). Guarantor hereby irrevocably agrees to provide a guaranty, guaranteeing all the obligations of [Design-Build Contractor and/or Maintenance Contractor] with respect to the [insert CMA and/or DBA or both, as appropriate] in the form of [insert Exhibit 13 to the DBA and/or Exhibit 9 of the CMA, as applicable]. This commitment is subject only to award and execution of the DBA 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.]