

REQUEST FOR PROPOSAL REVISIONS

**TO DESIGN, CONSTRUCT
AND MAINTAIN**

**SH 99 GRAND PARKWAY
SEGMENTS H, I-1 AND I-2**

THROUGH A

DESIGN-BUILD AGREEMENT AND CAPITAL MAINTENANCE AGREEMENT



INSTRUCTIONS TO PROPOSERS

**A PROJECT OF THE
TEXAS DEPARTMENT OF TRANSPORTATION**

ISSUED April 30, 2015

ADDENDUM #6 ISSUED August 12, 2016

ADDENDUM #6A ISSUED September 1, 2016

ADDENDUM #7 ISSUED November 4, 2016

ADDENDUM #8 ISSUED December 19, 2016

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

CERTAIN KEY DATES

<u>EVENT</u>	<u>DATE</u>
Proposal Due Date	January 24, 2017 12:00 p.m.
Conditional Award (anticipated)	March 30, 2017
Execution and Delivery (anticipated)	June 2017

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EXHIBITS

- Exhibit A Definitions and Acronyms
- Exhibit B Technical Proposal Revision Instructions
- Exhibit C-1 Financial Proposal Revision Instructions
- Exhibit C-2 Price Proposal Revision Instructions
- Exhibit D Required Forms

Form BAFO A	Proposal Letter
Form BAFO B-1	Identification of Proposer and Equity Members
Form BAFO B-2	Information About Proposer Organization
Form BAFO B-3	Information About Major Participants, Major Professional Services Firms and Identified Subcontractors
Form BAFO C	Responsible Proposer Questionnaire
Form BAFO D	[Reserved]
Form BAFO E	Personnel Work Assignment Form
Form BAFO F	Non-Collusion Affidavit
Form BAFO G	Key Personnel Resume and References
Form BAFO H	DBE Certification
Form BAFO I	Child Support Statement for State Grants, Loans and Contracts
Form BAFO J	Conflict of Interest Disclosure Statement
Form BAFO K	Proposal Security
Form BAFO K-1	Rider to Proposal Bond Extending Effective Period
Form BAFO L	Opinion of Counsel
Form BAFO M-1	Base Scope 1 Design-Build Price
Form BAFO M-1.1	Base Scope 1 Design-Build Price Breakdown
Form BAFO M-1.2	Base Scope 1 ATC Adjustments
Form BAFO M-1.3	Design-Build Contractor Draws/Cash Flow Tables (Base Scope 1 Design-Build Price)
Form BAFO M-2	Option Design-Build Price
Form BAFO M-2.1	Option Design-Build Price Breakdown
Form BAFO M-2.2	Option ATC Adjustments
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Form BAFO M-3	Limited NTP2 Prices
Form BAFO M-3.1	Segment H Price Breakdown
Form BAFO M-3.2	Segment I-1 Price Breakdown
Form BAFO M-3.3	Segment I-2 Price
Form BAFO N-1	Base Scope 1 Maintenance Price
Form BAFO N-1.1	Base Scope 1 Routine Maintenance Costs
Form BAFO N-1.2	Base Scope 1 Renewal Work Costs
Form BAFO N-2	Option Maintenance Price

Form BAFO N-2.1	Option Routine Maintenance Costs
Form BAFO N-2.2	Option Renewal Work Costs
Form BAFO O	Substantial Completion Deadline
Form BAFO P	Equal Employment Opportunity Certification
Form BAFO Q	Key Subcontractors
Form BAFO R	Certification Regarding Use of Contract Funds for Lobbying
Form BAFO S	Certification Regarding Ineligible Contractors
Form BAFO T	Guarantor Commitment Letter
Form BAFO U	Buy America Certification

Exhibit E	Summary and Order of Proposal Revision Contents
Exhibit F	Right of Entry Process
	Exhibit F-1 Right of Entry Process for Non-State-Owned Property
	Exhibit F-2 Right of Entry Process for State-Owned ROW
Exhibit G	Minute Order
Exhibit H	Form of Payment for Work Product Agreement
Exhibit I	Form of ATC Proposal
Exhibit J	Certificate of Interested Parties
	Appendix A Texas Ethics Commission Adopted Rule

INSTRUCTIONS TO PROPOSERS

(Request for Proposal Revisions: SH 99 Grand Parkway Segments H, I-1 and I-2)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“RFP”), as amended and issued as a Request for Proposal Revisions, 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 comprised of a Design-Build Agreement (“DBA”) and Capital Maintenance Agreement (“CMA”). The design-build contract shall provide that the entity identified in the successful Proposal (“Design-Build Contractor” or “DB Contractor”) shall develop, design, construct, and provide capital maintenance for portions of SH 99 Grand Parkway Segments H, I-1 and I-2 (the “Project”), as further described below. The entity’s development, design and construction rights and obligations will be set forth in the DBA; whereas, the entity’s capital maintenance rights and obligations will be set forth in the CMA.

Any reference to the Project throughout the RFP shall mean the Project as modified by Addendum #8.

All references to the “Original Proposal” contained in the RFP shall be deemed to refer to the original proposal submitted by each Proposer on October 27, 2015. All references to the “Proposal Revision” contained in the RFP shall be deemed to refer to the response to be submitted by each Proposer in response to Addendum Number 6, as amended by Addenda #6A, 7 and 8, Request for Proposal Revisions (the “Request for Proposal Revisions”). All references to the “Proposal” contained in the RFP shall be deemed to refer to the Proposal as modified by the Proposal Revision, and all references to the “Proposal Due Date” shall be deemed to refer to the Proposal Revision due date identified in Section 1.5.

Although TxDOT is issuing this RFP, it is anticipated that a transportation corporation, created in accordance with the Texas Transportation Corporation Act at Transportation Code, Chapter 431 for purposes of financing the Project, will be the ultimate owner of the Project. See Section 1.7.2 for further details.

TxDOT is issuing the RFP to those Proposers shortlisted for the design-build project delivery method based on TxDOT’s evaluation of qualification statements (“QS”) delivered to TxDOT on September 30, 2014, in response to the Request for Qualifications for the Project issued on July 31, 2014 (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 DBA 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 DBA Documents;
- (c) The CMA Documents; and
- (d) The Reference Information Documents (“RIDs”).

Refer to Section 1.2.1 of the DBA for a list of the Contract Documents, and Section 1.2.2 of the CMA for a list of the CMA Documents, and their respective order of precedence, and Exhibit 19 to the DBA for a list of the RIDs.

The RIDs are included in the RFP for the purpose of providing information to Proposers that is in TxDOT’s possession. TxDOT has not determined whether the RIDs are accurate, complete or pertinent, or of any value to Proposers. The RIDs will not form a part of the contract between TxDOT and the DB Contractor. Except as may be provided otherwise in the DBA Documents or the CMA Documents, 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.

1.2.2 Definitions and Acronyms

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used herein, and refer to Exhibit 1 to the DBA 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 to this ITP.

1.3 Project Goals

TxDOT’s goals for the Project are as follows:

- (a) Secure the highest quality of design and construction in order to optimize the operational life cycle performance of the Project;
- (b) Expedite delivery of Project improvements;
- (c) Improve overall mobility and accessibility within the Project area by providing for additional transportation routes and increased capacity to meet current and future travel demands;
- (d) Maintain a safe environment at all times throughout construction and maintenance for the public and Project personnel, including the provision of alternative escape routes (hurricanes, flooding);
- (e) Obtain high quality maintenance meeting or exceeding TxDOT requirements and expectations;
- (f) Expand and sustain economic opportunities in the region by improving the mobility of persons and goods, thereby minimizing barriers between business, consumers and transportation infrastructure and providing infrastructure for regional growth;
- (g) Contribute to air quality attainment goals in the region;
- (h) Design, construct and maintain the Project in an environmentally responsible manner and in conformance with the requirements and commitments in the Record of Decision (“ROD”), Final Environmental Impact Statement (“FEIS”) and any subsequent environmental evaluations prepared for this Project; and
- (i) Efficiently utilize available funding to maximize Project scope.

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

1.4.1 General Project Description

State Highway 99, also known as Grand Parkway, is a proposed 180-mile circumferential highway traversing seven counties in the Greater Houston Area. As described herein, TxDOT has been authorized to oversee the development and operation of the Segments H and I of the Project, which is the portion of the Grand Parkway that is the subject of this RFP. As shown in the Concept Plans, Segments H and I-1 of the Project shall be constructed as a two-lane section with intermittent passing zones. Segment I-2A includes the construction of a grade separation at Fisher Road and the conversion of existing pavement at that location to entrance and exit ramps to northbound and southbound SH99, as well as conduit banks and connection for Intelligent Transportation Systems (“ITS”) and tolling conduit. Segment I-2B shall be constructed as a four-lane section. The Project may include the construction of the

western portion of Segment H as a four-lane section if TxDOT, in its sole discretion, exercises the H-West Option pursuant to the DBA.

1.4.2 Scope of the DB Contractor's Obligations

The DB Contractor's scope of Work under the DBA and CMA includes (1) the design and construction of tolled mainlanes, frontage roads and utility adjustments for Segments H, I-1, and I-2B; (2) the design and construction of ITS and toll system duct-banks and the installation of fiber optic cables for ITS and tolling in Segment I-2A, an existing four-lane toll facility; and (3) the long-term capital maintenance of the Project. The DB Contractor's scope of Work will also include Right of Way ("ROW") acquisition and permitting (other than TxDOT-Provided Approvals).

Work under the DBA will proceed as authorized by notices to proceed ("NTPs") issued by TxDOT. An initial notice to proceed ("NTP1") will authorize the DB Contractor to perform certain Work related to the Project Management Plan approved by TxDOT, and to engage in certain ROW acquisition and other activities. A second notice to proceed ("NTP2") will authorize the DB Contractor to proceed with the remaining Work.

The limits of work for the individual Segments H, I-1, and I-2 are as shown in the Concept Plans. Descriptions of the major work elements for each segment are listed in Section 1 of the Technical Provisions.

1.4.3 Project Environmental Status

A description of the current status of approvals pursuant to the National Environmental Policy Act of 1969, as amended, ("NEPA") for each of the Project Segments is provided below. Approved environmental documents are included in the RIDs unless stated otherwise.

(a) FEIS/ROD

- Segments H and I-1 (approved) – FHWA signed a FEIS and issued a ROD on June 24, 2014. The limits covered in the FEIS begin in Montgomery County at US 59/I-69 and extend approximately 37.4 miles to I-10 in Chambers County. These documents can be found at <http://www.grandpky.com/segments/h/>.
- Segment I-2 (approved) – FHWA signed a FEIS and issued a ROD on August 13, 1998. The limits covered in the FEIS are from SH 225 to I-10(E). The FEIS was completed to accommodate a four-lane at-grade arterial and included preservation of a 300- to 400-foot wide ROW corridor to accommodate a future six-lane freeway.

(b) Re-Evaluations

- Segment I-1 (approved) – A re-evaluation was approved on March 24,

2016, to address a 3.6 mile proposed alignment shift in the vicinity of Mont Belvieu near SH 146. The proposed alignment shift was initiated at the request of property owners in this area and to reduce impacts to existing utilities.

- Segments H and I-1 (approved) – A re-evaluation was approved on January 25, 2016, which proposed alignment shifts in the vicinity of the Luce Bayou crossing, near the US 90 crossing, near the ExxonMobil Plant in Mont Belvieu, and along the existing canal near SH 146 and FM 565.
- Segment I-2 (approved) – A re-evaluation was approved in 2002 which addressed a nine-mile section from I-10(E) to Business State Highway (“BS”) 146 at SH 99 (formerly Spur 55) and includes redesign of the U-turn at Cedar Bayou and alteration of drainage Channel B.
- Segment I-2 (approved) – A re-evaluation was approved in 2007 for the proposed tolling from I-10(E) to Fisher Road.
- Segment I-2 (approved) – A re-evaluation was approved in 2012 for the inclusion of two-lane frontage roads and a four-lane tollway from SH 146 to Fisher Road with overpasses at major intersections.
- Segment I-2 (approved) – A re-evaluation was approved in 2012 to address design modifications.

(c) Categorical Exclusions

- Segment I-2 (approved) - A categorical exclusion was approved in 2006 for a design change (proposed bridge) at FM 565.
- Segment I-2 (approved) - A categorical exclusion was approved in 2008 for a design change to include a bridge replacement at BS 146 westbound at Goose Lake crossing.

(d) Permits

- Segments H and I-1 (pending) - TxDOT is currently preparing US Army Corps of Engineers (“USACE”) Individual Permits (“IPs”) for each of Segments H and I-1. TxDOT anticipates issuance of the Section 404 IPs in Fall-2016.
- Segment I-2 (received) – TxDOT received a USACE Nationwide Permit 14 Pre-construction Notification (“PCN”) on December 1, 2014. The Section 404 PCN covers the limits from SH 225 to north of Fisher Road.

- Segment I-2 (received) – TxDOT received a United States Coast Guard (“USCG”) permit application covering from SH 146 approximately one mile northeast of the intersection of SH 99 and Fisher Road on August 10, 2015.

(e) Mitigation

- Segments H and I-1 (pending) – TxDOT anticipates mitigating wetlands impacts within the TxDOT Beaumont District by withdrawing credits at the TxDOT Blue Elbow Mitigation Bank. TxDOT will mitigate the remaining wetlands impacts within the TxDOT Houston District through the purchase of mitigation credits at the Gin City Mitigation Bank. Mitigation will be finalized upon approval of the Section 404 IPs, anticipated in Fall-2016.
- Segments H and I-1 (pending) - Stream mitigation is proposed in the Section 404 IPs. TxDOT will be responsible for the construction of stream mitigation upon issuance of the approval anticipated in Fall-2016.
- Segment I-2 (Permit 14 PCN) – Due to the low acreage of impacts to the jurisdictional wetlands, TxDOT proposed, and USACE determined in its PCN, that no compensatory mitigation would be required for Segment I-2. If a determination is made by the USACE that mitigation is required, the impacts will be mitigated through TxDOT’s Coastal Bottomlands Mitigation Bank.

1.4.4 The DB Contractor’s Scope for Toll Systems

TxDOT has entered into an agreement (the “Toll System Integrator Agreement”) with TransCore (“Systems Integrator”). Under the Toll System Integrator Agreement, the Systems Integrator has responsibility to design, construct, install, and maintain open-road toll collection systems on projects designated by TxDOT pursuant to the terms thereof. TxDOT has chosen to negotiate a “Project Segment Supplement” with the Systems Integrator under the Toll System Integrator Agreement with respect to the Project; accordingly, the Toll System Integrator Agreement will apply to this Project. The responsibilities of the DB Contractor and the Systems Integrator with respect to the design and construction of the civil components of the toll collection systems are more particularly described in Section 21 of the Technical Provisions.

The DB Contractor shall coordinate the Work with TxDOT, TxDOT’s tolling design consultant and Systems Integrator, as more particularly set forth in the DBA.

1.4.5 Status of Required ROW Acquisition

TxDOT is currently preparing ROW maps for portions of Segments H, I-1, and I-2. TxDOT provides these in the RIDs as soon as the maps are approved and made available.

TxDOT is advancing ROW acquisition prior to the Effective Date of the DBA. TxDOT has identified strategic parcels and is currently advancing ROW activities for their early acquisition. At the appropriate time, or as dictated by the terms of the DBA, these parcels will be handed over to the DB Contractor for completion of ROW acquisition including relocation assistance and demolition of improvements. Updates regarding ROW acquisition are provided in the RIDs on an approximately monthly basis.

The DB Contractor's responsibilities will include ROW acquisition activities for parcels that have not been acquired by TxDOT as of the Effective Date of the DBA. TxDOT will be responsible for eminent domain activities with the DB Contractor's support and for the purchase price of ROW within the Preliminary ROW. The DBA provides further details regarding the ROW acquisition process and the responsibilities of the DB Contractor in this process.

1.4.6 Status of Required Utility Work

TxDOT is currently performing a Subsurface Utility Engineering ("SUE") investigation on Segments H, I-1, and I-2 of the Project. TxDOT will provide updates as the SUE information is made available.

1.4.7 Status of Required Railroad Services

TxDOT is currently coordinating with affected railroads regarding work at railroad crossings. Plan sheets detailing work to be performed on railroad ROW (Exhibits A to various railroad agreements) are being prepared for each railroad crossing, and a letter of authority is being drafted for each crossing/railroad company. Letters of Authority have been received and posted to the RIDs for the following four locations (asterisked in Table 1-1):

- Station 2257+39.09;
- Station 2007+81.96;
- Station 2715+03.33; and
- Station 1082+44.83.

TxDOT anticipates the DBA will require the DB Contractor to take over coordination efforts and design all railroad crossings in accordance with the requirements of the corresponding railroad. Railroad crossings within the Project limits are identified below in Table 1-1.

**Table 1-1
Summary of Railroad Crossings**

Segment	SH 99 Station	Owner	Proposed Facilities Crossing RR	Location
H	1082+44.83	Union Pacific Railroad	Overpass	Lufkin Subdivision*
	2007+81.96	Union Pacific Railroad	Overpass	Beaumont Subdivision*
	2257+39.09	Union Pacific Railroad	Overpass	Lafayette Subdivision*
I-1	2698+50 North of Mont Belvieu	Private Spur and Yard	Overpass	North of Liberty-Chambers County Line
	2715+03.33	Union Pacific Railroad	Overpass	Baytown Subdivision and adjacent private rail yards*
I-2	179+10	Union Pacific Railroad	Overpass or Underpass	US Steel Spur (out of service)
	418+30	Econorail	Overpass	Baytown

1.4.8 Market Valuation Waiver Agreement

TxDOT and the counties in which the Grand Parkway is situated entered into a Market Valuation Waiver Agreement (“MVW Agreement”) on March 25, 2009. The MVW Agreement includes certain terms, conditions and guidelines for development, construction and operation of the Grand Parkway. The Grand Parkway components proposed to be included in the scope this Project are subject to the MVW Agreement and the terms and conditions therein. The MVW Agreement establishes a minimum scope for the segments of the Grand Parkway, as well as a scope for the full build-out of the entire 180-mile Grand Parkway through the seven county region. As detailed in the

MVW Agreement between the counties and TxDOT, revenues generated from the Grand Parkway must be used on the Grand Parkway project until the full build-out has been completed.

1.5 Procurement Schedule

A one-step Proposal submission process will be followed for this Project. Technical, Financial, and Price Proposal Revisions, including required certifications and other information, shall be submitted on or before the Proposal Revision due date identified in this Section 1.5.

The following represents the current schedule for the procurement.

<u>EVENT</u>	<u>DATE and TIME</u>
Last date for Proposers to submit questions regarding the RFP	June 29, 2016 3:00 p.m.
Last Date for Proposers to Submit Requests for Changes to Key Personnel and/or Proposer's Organization	July 21, 2016
TxDOT Response to Requests for Changes to Key Personnel and/or Proposer's Organization	August 11, 2016
Issue Addendum #6	August 12, 2016
Issue Addendum #7	November 4, 2016
Issue Addendum #8	December 19, 2016
Proposal Due Date (deadline for submission of Proposal Revisions)	January 24, 2017 12:00 p.m.
Anticipated conditional award by Texas Transportation Commission ("Commission")	March 30, 2017

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

1.6 General Provisions Regarding Proposals

1.6.1 Proposal Revision Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including a (a) Technical Proposal, (b) Financial Proposal and (c) Price Proposal, as revised by the Proposer's Proposal Revision, including a (i)

Technical Proposal Revision, (ii) Financial Proposal Revision and (iii) Price Proposal Revision. The instructions and requirements for the Technical Proposal Revision, the Financial Proposal Revision and Price Proposal Revision are set forth in Exhibits B, C-1 and C-2, respectively, and a checklist showing the required contents of the entire Proposal Revision is found in Exhibit E. The Proposal Revision shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal Revision 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 Revision subject to any reservations, qualifications, conditions or assumptions may result in TxDOT's rejection of the Proposal Revision or giving it a lower rating. All blank spaces in the Proposal Revision forms must be filled in as appropriate. No substantive change shall be made in the Proposal Revision forms.

1.6.2 Inclusion of Proposal Revision in DBA Documents and CMA Documents

Portions of the successful Proposal Revision will become part of the DBA Documents and CMA Documents, as specified in the DBA and the CMA. All other information is for evaluation purposes only and will not become part of the DBA Documents or CMA Documents.

1.6.3 Commitments in the Proposal Revision

The verbiage used in each Proposal Revision 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 the exceptions specified herein, in the Rules (defined below in Section 2.1) and in the 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. Consequently, all such items may be subject to Texas Government Code, Chapter 552 (the "Public Information Act" or the "Act"). Proposers should familiarize themselves with the provisions of the Act requiring disclosure of public information, and exceptions thereto. In no event shall the State of Texas, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to the RFP, including the Request for Proposal Revisions. See *also* Section 2.6.

1.7 Project Costs and Funding

1.7.1 Project Costs

TxDOT's current design and construction cost estimate for the Project improvements to be developed for Base Scope 1 in Segments H, I-1, and I-2 under the DBA are approximately US \$825 million based on the improvements described in this RFP. The current design and construction cost estimate cited above includes work on Fisher Road and the intersection of Fisher Road and SH 99.

The estimated cost reflects the current Concept Plans provided in the RIDs, without the H-West Option, at current construction prices (nominal dollars). The estimate does not include ROW purchase price, environmental mitigation, or maintenance costs.

1.7.2 Transportation Corporation and Project Funding

The plan of finance for the Project contemplates that a transportation corporation will be created under the Texas Transportation Corporation Act to develop, finance and operate the Project. The transportation corporation will be responsible for issuing toll revenue bonds for Project costs. It is currently anticipated that the transportation corporation will enter into the DBA and CMA directly with the DB Contractor or the DBA and CMA will be assigned by TxDOT to the transportation corporation after execution thereof by TxDOT and the DB Contractor. Payments to the DB Contractor will be made in accordance with the DBA Documents and the CMA Documents, as appropriate.

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 DBA Documents and the CMA Documents must comply with applicable federal Laws and regulations. TxDOT reserves the right to modify the RFP, including this Request for Proposal Revisions, to address any concerns, conditions or requirements of FHWA. Proposers shall be notified by Addendum of any such modifications.

1.8.2 DBE Requirements

TxDOT has determined that 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 C.F.R. § 26.5. The Proposer's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including 49 C.F.R. Part 26, as well as applicable requirements set forth in the DBA Documents, CMA Documents and TxDOT's DBE Program document.

The DBE participation goal for the Project under the DBA shall be 10% of the Design-Build Price. TxDOT's DBE requirements applicable to the DBA are set forth in Section 7.1 of the DBA, the DBE Special Provisions attached as Exhibit 6 to the DBA and TxDOT's DBE Program adopted pursuant to 49 C.F.R. 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 3.2.7 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal Revision. Failure to provide the required DBE certification shall be considered a breach of the Proposal Revision requirements and shall render a Proposal Revision non-responsive.

Following conditional award of the DBA 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, Exhibit 6 to the DBA. 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 DBA 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 in Exhibit 6 to the DBA.

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 and Warranty Term of the DBA and during any Maintenance Period under the CMA. 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 DBA to perform duties within the State of Texas;

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

(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.

1.9 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 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

The RFP, including the Request for Proposal Revisions, 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.

TxDOT will award the DBA and CMA (if at all) to the responsible Proposer offering a Proposal Revision meeting the high standards set by TxDOT and which is determined by TxDOT, through evaluation based upon the criteria set forth in the Code, the Rules and the Request for Proposal Revisions, 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 Project Documents that were made available to Proposers with the RFQ will remain available to Proposers and the public at <http://www.txdot.gov/business/partnerships/current-cda/sh99-grand-parkway/99hi-rfq.html> (the “Project Website”). Information relating to the RFP, as amended by this Request for Proposal Revisions, including RIDs, 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 Website 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 RIDs and other procurement-related information.

Other information related to the procurement may, at TxDOT’s discretion, be made available to the public on the Project Website.

2.2.1 TxDOT's Authorized Representative

TxDOT has designated the following individual to be its authorized representative for the procurement ("TxDOT's Authorized Representative"):

Mr. Marcus Coronado, P.E.
Texas Department of Transportation
7600 Chevy Chase Drive, Bldg. 2, 4th Floor
Austin, TX 78752
E-mail: TxDOT-HOU-PPP-GrandParkway-SegH&I@txdot.gov

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

2.2.2 Identification of the Proposer's Authorized Representative

The Proposer's designated representative(s) shall initially be the person(s) identified in the QS as the single point of contact for the Proposer. If a Proposer changes its designated representative(s) to receive documents, communications or notices in connection with the procurement subsequent to its submission of its Proposal Revision, the Proposer shall provide TxDOT's Authorized Representative with the name and address of such new designated representative(s). Failure to identify a designated 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 (July 31, 2014) until November 14, 2014, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on November 14, 2014, the date the industry review package was issued, and ending on the earliest of (i) execution and delivery of the DBA and the CMA, (ii) rejection of all Proposal Revisions by TxDOT or (iii) cancellation of the RFP, including the Request for Proposal Revisions, 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), or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer nor any of its team members may communicate with another Proposer or its team members with regard to the RFP, including the Request for Proposal Revisions, or either team's Proposal, except that (i) team members that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that such team member will not act as a conduit of information between the teams, and (ii) this

prohibition does not apply to public discussions regarding the RFP, including the Request for Proposal Revisions, at any TxDOT sponsored informational meetings.

(b) Each Proposer shall designate one designated representative responsible for all communications between the Proposer and TxDOT, and such designated representative shall correspond with TxDOT regarding the RFP, including the Request for Proposal Revisions, only through TxDOT's Authorized Representative (except communications with TxDOT's ombudsman as provided in Section 2.3.2 below).

(c) No Proposer or representative thereof shall have any ex-parte communications regarding the RFP, including the Request for Proposal Revisions, or the procurement described herein with any member of the Commission, with any Stakeholder representative or with any TxDOT staff, advisors, contractors or consultants involved with the procurement or the Project, except for communications with TxDOT consultants who have completed their services for the Project and been released by TxDOT, for communications expressly permitted by the Request for Proposal Revisions or as approved in advance by TxDOT's Authorized Representative or the Director, Project Finance and Debt Management Division, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Commission or any public or Proposer workshop related to the RFP, including the Request for Proposal Revisions. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of TxDOT.

(d) Proposers shall not contact any of the Stakeholders, including Utilities and Railroads, regarding the Project, including employees, representatives, members and consultants of Stakeholders, except as specifically approved in advance by TxDOT in writing after a Proposer submits a written request to TxDOT no later than five Business Days in advance of the proposed date for such meeting that includes the proposed date, time and location of the meeting; a list of anticipated attendees; a proposed agenda; and a list of the specific questions to be addressed by the Stakeholder at such meeting. A Proposer's written request for 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. The proposed agenda and list of specific questions to the Stakeholder submitted with a Proposer's written request for a meeting with any Stakeholder shall set the agenda for the Stakeholder meeting, and new or unidentified questions or topics will not be addressed during the meeting. In addition to the preceding requirements, a representative from TxDOT, designated by TxDOT's Authorized Representative, must be in attendance at all meetings between Proposers and Utilities. Notwithstanding the foregoing, each Proposer may contact private landowners and lessees along the Project corridor for the purpose of performing due diligence and discussing aspects of the Proposal Revision, including temporary construction easements, staging areas and borrow; provided, however, (i) the Proposer

shall not discuss other Proposers or their Proposals, negotiate exclusive arrangements to the detriment of other Proposers or otherwise seek an unfair competitive advantage, and (ii) the Proposer shall provide written notice to TxDOT of the name of the private landowner, the topic of the proposed discussion and the date of the proposed discussion no later than seven days in advance of each such meeting. Furthermore, Proposers shall not attempt to obtain from such landowners rights of entry during the procurement, which are governed by Section 2.8.2.

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

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

(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, including the Request for Proposal Revisions, ATCs, Proposals, DBA Documents and the CMA Documents are to be in the English language and U.S. customary units. If any original documents required for the Proposal Revision 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 and Request for Proposal Revisions

Proposers shall be responsible for reviewing the RFP and any Addenda, including the Request for Proposal Revisions, issued by TxDOT prior to the 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 which the Proposer fails to understand. Failure of the 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 DBA Documents or CMA Documents, nor will they be relevant in interpreting the DBA Documents or CMA Documents, except as expressly set forth in the DBA Documents and CMA Documents, as applicable.

TxDOT will only consider comments or questions regarding the RFP, as amended by the Request for Proposal Revisions, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to TxDOT's Authorized Representative or TxDOT's designated ombudsman, by hard copy or 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 and shall: (i) be sequentially numbered; (ii) identify the relevant document (i.e., the DBA, the Technical Provisions, etc.); (iii) identify the relevant section number and page number (e.g., DBA Section 5.2, pages 20-21) 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, including a Proposal Revision. "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, including a Proposal Revision. "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 and 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.

Proposers will be limited to 50 questions for the final RFP and 30 questions for each Addendum thereafter, if any, unless otherwise specified; provided however, Proposers will be limited to 15 questions with respect to RFP Addendum #3 and 5 questions with respect to RFP Addendum #4, may not submit any questions with respect to RFP Addendum #5, will be limited to 30 questions for Draft RFP Addendum #6, and may not submit any questions for final RFP Addendum #6. Proposers will be limited to 15 questions for Addendum #7 that may only address the changes made since Addendum #6 (except for requests for clarification of discrepancies between the documents, internal consistencies, incorrect cross references and correction of errors, which must be received by TxDOT by noon on November 18, 2016). **Proposers may not submit any questions with respect to RFP Addendum #8.**

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 sole discretion.

Except with respect to one-on-one meetings, no telephone or oral requests will be considered, and e-mail requests must be followed up by delivery of a hard copy with an original signature either through the US mail or other delivery. Proposers are

responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification submitted to any person other than TxDOT's Authorized Representative 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 designated representative(s), and must include the requestor's name, address, telephone and facsimile numbers, 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. Except for responses to questions relating to Addenda, the last set of responses will be issued no later than the date specified in Section 1.5. A consolidated, final set of questions and answers will be compiled and distributed prior to the Proposal Due Date. As stated above, with respect to Draft RFP Addendum #6, TxDOT may respond to all, some, or none of the questions received from Proposers. Proposers should anticipate a consolidated, final set of questions and answers prior to the 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 sole discretion, that its interpretation or clarification requires a change in the RFP, including the Request for Proposal Revisions, 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 Representative as provided in Section 2.3.1, a Proposer may submit such confidential communications, comments or complaints regarding the procurement to the ombudsman, where the 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, including the Request for Proposal Revisions, that are

submitted to the ombudsman. A 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 Representative 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 the Proposer and instruct the Proposer to submit the communication directly to TxDOT's Authorized Representative 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:

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 Representative in accordance with Section 2.3.1.

2.3.3 Addenda

TxDOT reserves the right, in its sole discretion, to revise, modify or change the RFP, including the Request for Proposal Revisions, and/or procurement process at any time before the Proposal Due Date. 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, including the Request for Proposal Revisions, as determined in TxDOT's sole discretion, TxDOT may change the 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, including the Request for Proposal Revisions, 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 Letter (see Form BAFO A) receipt of all Addenda and question and answer documents. Failure to acknowledge such receipt may cause the Proposal Revision to be deemed non-responsive and be rejected. TxDOT reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addendum or response to requests for clarifications. TxDOT does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, TxDOT reserves the right to issue Addenda after such date. If TxDOT finds it necessary to issue an

Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum.

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required as provided in Section 2.11.1 (regarding changes in a Proposer's organization), Section 2.11.2 (regarding designation of a Lead Maintenance Firm) and Section 2.11.3 of this ITP and Section 3.2.4 of Exhibit B (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 Proposal Due Date. Informational meetings may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication between all Proposers and TxDOT. Written notice of any informational meetings will be sent 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 in writing to the Proposers, to discuss issues and clarifications regarding the RFP, including the Request for Proposal Revisions, 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 sole discretion, such disclosure would impair the confidentiality of an ATC or would reveal a Proposer's confidential business strategies. Participation at such meetings by the Proposers shall be mandatory. FHWA 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 Proposal Revisions 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 regarding the topics it wishes to discuss during its respective one-on-one meeting. While questions and responses are permitted during one-on-one meetings as specified in Section 2.5.3 below, 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.

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 unless questions were submitted in writing and TxDOT provided written responses in accordance with Section 2.3.1. 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, including the Request for Proposal Revisions, 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. The Proposer further agrees to assist TxDOT in complying with these disclosure requirements if it is the selected apparent best value Proposer.

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 Proposals and Proposal Revisions. TxDOT has agreed to allow FHWA officials and their outside advisors to oversee the procurement process, which includes access to the Financial Proposals and Financial Proposal Revisions. 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 BAFO 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 sole discretion.

Proposers are advised that upon recommendation to the Commission of the selection of an apparent best value Proposer and in TxDOT's sole discretion, TxDOT may publicly release (a) each Proposal with the exception of the Price Proposal and Price Proposal Revision, and (b) the selected apparent best value Proposer's Price Proposal Revision, or any of the information contained therein. In the event TxDOT is unable to reach agreement on the DBA 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 Revision 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 Revision 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 DBA and CMA, any Price Proposal Revision 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 DBA 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, including the Request for Proposal Revisions, 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 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 sole 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 completed substantial 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. Specifically, TxDOT makes no representation 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 Requests for Proposal Revisions, 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 Revision, or the performance of the DB Contractor's obligations under the DBA and the CMA with TxDOT, as appropriate. Each Proposer is also responsible for monitoring the Project Website for information concerning the RFP, including the Request for Proposal Revisions, and the procurement. The Proposal Letter (Form BAFO A) 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 Revision, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, and permanent and temporary Utility appurtenances, keeping in mind the provisions in the DBA 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 Revision 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 DBA 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 is the process for obtaining rights of entry to property that is not owned by the State, and Exhibit F-2 is 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 Preliminary ROW for purposes of inspecting in-place assets and determining Site conditions through non-destructive investigations, until the 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 DBA 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 BAFO F).

2.10.2 Organizational Conflicts of Interest

Section 9.155 of Title 43 of the Rules regarding organizational conflicts of interest apply to all design-build contract projects, including 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 sole 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 DBA and the CMA and did not disclose the conflict to TxDOT, TxDOT may pursue remedies under the DBA and CMA, including termination of the DBA 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; Lead Maintenance Firm; 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 in writing 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, without limitation, additions or deletions of team members (including additional subcontractors), or reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, the Proposer shall submit to TxDOT a written request for approval of the change from TxDOT 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.

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, including the Request for Proposal Revision, criteria (pass/fail and technical). 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 in writing a portion of the request or the entire request at its sole discretion. Except as provided herein, in the DBA Documents and, as applicable, the CMA Documents, a Proposer may not make any changes in the team members identified in its QS, or in the case of a Proposal Revision, changes to the team members identified in its QS and/or Original Proposal, 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 DBA and CMA, TxDOT, in its sole 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 Designation of Lead Maintenance Firm

Each Proposer 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 requests for changes to Proposer organization specified in Section 1.5 for review and written approval by TxDOT, in its sole discretion. The package shall be delivered to the address set forth in Section 2.2.1, and shall include (i) identification of a Lead Maintenance Firm, (ii) information regarding the Lead Maintenance Firm's safety record

and qualifications as evidenced on RFQ Form F – Safety Questionnaire included in the RIDs, and (iii) information regarding a designated Maintenance Manager submitted on Form BAFO G. The Maintenance Manager must have a minimum of five years of experience managing maintenance activities on projects of similar scope and complexity. In addition, the Proposer shall submit information demonstrating that the Lead Maintenance Firm meets the following minimum requirements:

- (a) Roadway maintenance experience on projects of similar scope and complexity;
- (b) Experience in managing maintenance interfaces with operators of adjacent roadways/facilities;
- (c) Experience with life cycle analysis in a long term contracting environment; and
- (d) Experience in incident management.

If TxDOT, in its sole discretion, disapproves a proposed Lead Maintenance Firm or (if applicable) its proposed alternate, 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 Proposal Due Date.

2.11.3 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 as specified in this Section 2.11. Each Proposer shall submit a package that includes a list of any proposed changes in Key Personnel from those identified in the QS, including any new Key Personnel positions identified in this RFP, including the Request for Proposal Revisions, along with copies of a completed Form BAFO G for each such person. In addition, if any individual to be included in the Proposal Revision is also proposed as a Key Personnel or for another position on any other TxDOT procurement, Proposer shall include in the package either: (1) a statement certifying that said individual will be available to assume its designated role on the Grand Parkway Project if Proposer is the successful Proposer or (2) Form BAFO G for a qualified alternate. Each such package shall include an original and five copies of the information specified above. The package shall be submitted to TxDOT by the date and time for submittal of changes in Key Personnel specified in Section 1.5 for review and written approval by TxDOT, in its sole discretion. The package shall be delivered to the address set forth in Section 2.2.1.

TxDOT is under no obligation to approve requested changes in Key Personnel or designations of new Key Personnel and may disapprove such requests at its sole discretion. If TxDOT, in its sole discretion, disapproves a proposed Key Personnel or (if applicable) its proposed alternate, 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 Proposal Due Date. The Proposal Revision may not include any Key Personnel previously disapproved by

TxDOT in writing for such Key Personnel position. A Proposer may not make any changes in its Key Personnel after receipt of TxDOT approval as specified in this Section 2.11, unless such a change is necessitated by the issuance of the Request for Proposal Revision.

2.12 Changes to Companies or Entities Filling Key Project Roles

A private entity responding to this RFP (i.e., a Proposer) must identify the companies that will fill the roles of Key Subcontractors. Furthermore, any private entity selected 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 private entity; (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 BAFO Q. Note that all teaming agreements and subcontracts for Key Subcontractors must be executed and provided to TxDOT before the execution of the DBA and CMA.

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 DBA 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 3.0 ALTERNATIVE TECHNICAL CONCEPTS

The ATC process has concluded, and no additional ATCs will be considered. For purposes of the Request for Proposal Revisions, if clarification of any Proposer ATC is necessary, Proposers shall identify such questions as containing confidential or proprietary information relating to the Proposer's ATCs, and TxDOT shall respond, in accordance with Section 2.3.1. TxDOT may issue updated responses to ATCs, as necessary, based on the issuance of the Request for Proposal Revisions.

3.1 Alternative Technical Concepts

"Alternative Technical Concepts" or "ATCs" are concepts that conflict with the requirements for design, construction and capital maintenance of the Project or otherwise require a modification of the Technical Provisions but that may nevertheless be proposed in accordance with the terms and conditions set forth in this ITP. Sections 3.1 through 3.5 set forth a process for 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 DBA 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 sole discretion. A concept is not eligible for consideration as an ATC if, in TxDOT's sole judgment, it is premised upon or would require (a) a change in the aesthetic or landscaping provisions set forth in the Technical Provisions, (b) a reduction in Project scope, performance or reliability; or (c) an increase in the amount of time required for Substantial Completion of the Work under the DBA. ATCs that, if implemented, would require further environmental evaluation or reevaluation of the Project, may be allowed, provided that the DB Contractor will bear the schedule and cost risk associated with such additional environmental evaluation. If the DB Contractor is not able to obtain the 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.

As stated above, no additional ATCs will be considered during a Request for Proposal Revisions process.

3.2 Pre-Proposal Submission of ATCs

Using the form attached hereto at Exhibit I (Form of ATC Proposal), a Proposer may submit ATCs for review to TxDOT's Authorized Representative specified in Section 2.2.1, until the last applicable date and time for submittal of ATCs identified in Section 1.5. As stated above, however, no ATCs will be considered during a Request for Proposal Revisions process.

Proposers may submit ATCs for Base Scope 1. All ATCs shall be submitted in writing, with a cover sheet identifying the Proposer and stating "SH 99 Grand Parkway Segments H, I-1 and I-2 – 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 copies of Exhibit I.

3.2.1 Pre-Proposal ATC submissions shall include:

(a) a sequential ATC number identifying Proposer, the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);

(b) a description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information, including a traffic operational analysis, if appropriate;

(c) the locations where, and an explanation of how, the ATC will be used on the Project;

(d) any changes in roadway requirements associated with the ATC, including ease of operations;

(e) any changes in capital maintenance requirements associated with the ATC, including ease of maintenance;

(f) any changes in the capital maintenance transition requirements associated with the ATC;

(g) any changes in the anticipated life of the item(s) comprising the ATC;

(h) any reduction in the time period necessary to design and construct the Project resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

(i) references to requirements of the RFP that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;

(j) the analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;

(k) a preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction), environmental permitting, community impact, safety, and life-cycle Project and infrastructure costs, including impacts on the cost of repair, maintenance and operation;

(l) if and what additional ROW will be required to implement the ATC (and Proposers are advised that they shall (i) be solely responsible for the acquisition of any such ROW, including the cost thereof and obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order for time or money as a result of Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, Utilities, etc.) on such additional ROW; and (iii) not be entitled to any Change Order for time or money as a result of any delay, inability or cost associated with the acquisition of such ROW);

(m) a description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such statements;

(n) a description of added risks to TxDOT or third parties associated with implementing the ATC;

(o) a detailed estimate of any additional TxDOT, DB Contractor and third-party costs associated with implementation of the ATC;

(p) a detailed estimate of the Base Scope 1 Design-Build Price and/or Base Scope 1 Maintenance Price adjustment should the ATC be approved and implemented;

(q) an analysis of how the ATC is equal or better in quality and performance than the requirements of the Contract Documents, as applicable;

(r) if applicable, a detailed estimate of the Option Price and/or Option Maintenance Price adjustment should the ATC be approved and implemented; and

(s) a description (including parcel numbers) of any not yet acquired Preliminary ROW parcels that would not be required to be acquired if the ATC were implemented. Any such avoided properties must be complete parcels and must not be parcels that will be donated to TxDOT.

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 in writing of its intent to take such action, including details as to date and participants, and obtain TxDOT's prior written consent, in its sole 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 DBA and the CMA and submission of data; provided, however, that TxDOT shall retain its role as liaison with any governmental authorities as more particularly described in the DBA 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, as amended, the Proposer will not be entitled to a Change Order for additional compensation or time under the DBA or CMA, as applicable.

3.2.4 If TxDOT approves an ATC that identifies any not yet acquired Preliminary ROW that would not be required to be acquired if the ATC were implemented, Proposer shall pay for and be responsible for, and bear the full risk of, meeting any conditions attached to the ATC approval, including obtaining third party approvals, and for completing the Final Design such that the identified Preliminary ROW is not required to be acquired. If the Proposer does not meet the conditions or does not complete the Final Design to avoid the identified parcels, Proposer shall be responsible for obtaining those parcels at its own cost and its own risk, up to the amount of the ATC adjustment identified in the letter described in Section 3.3 in accordance with the provisions regarding DB Contractor Designated ROW. In such case the Proposer shall not be entitled to any additional time or compensation.

3.2.5 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 on or before the last applicable date set forth in Section 1.5, 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 sole 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 Base Scope 1 Design-Build Price for evaluation purposes only in accordance with Section 5.5.1.

TxDOT will make a preliminary determination on whether to accept and approve an ATC for submission. Proposers may not re-submit an ATC once a preliminary decision regarding such ATC has been made. TxDOT will provide each Proposer with an opportunity to request a one-hour ATC presentation meeting to discuss the ATCs that were preliminarily given conditional approval or were rejected. If a Proposer chooses to request a meeting, the Proposer shall provide TxDOT with an agenda regarding the ATCs it wishes to discuss. If at the ATC presentation meeting an ATC which was preliminarily determined to be unacceptable for inclusion in the Proposal is determined to be acceptable, or the conditions included with an ATC which has been preliminarily accepted with conditions are modified or removed, the revised determination shall be communicated in an ATC Post-Presentation Meeting Letter. Preliminary decisions for the ATCs not included on the Proposer agenda, or shown on the Proposer agenda but not discussed by the Proposer in the ATC presentation meeting, will be deemed final. Proposers will be responsible for ensuring that the ATCs submitted with the Proposal comply with the requirements of the RFP.

Approval of an ATC will constitute a change in the specific requirements of the DBA Documents or CMA Documents, as applicable, associated with the approved ATC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to 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 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 Proposal Due Date or any other date in connection with this procurement.

TxDOT anticipates that its 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 written request for clarifications under Section 2.3.1.

3.4 Incorporation of ATCs in the DBA Documents and CMA Documents

Following conditional award of the DBA 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 DBA 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 DBA Documents and CMA Documents, as applicable. The DBA Documents and CMA Documents will be conformed after conditional award, but prior to execution of the DBA 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 third party approval for an ATC, the DB Contractor will be required to comply with the original requirements of the RFP, as amended, without additional cost or extension of time as set forth in the DBA or CMA, as applicable.

Prior to execution of the DBA 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 sole discretion, be presented to the selected DB Contractor for possible incorporation in the DBA Documents or CMA Documents, as applicable, during negotiation of the final terms of the DBA or CMA pursuant to Section 5.11.1. In addition, following execution of the DBA and CMA, ATCs from unsuccessful Proposers may, in TxDOT's sole discretion, be presented to the selected DB Contractor as a TxDOT Change Order in accordance with the DBA 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. By submitting a Proposal, each Proposer agrees, if it is not selected, to disclosure of its work product to the successful Proposer.

SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSAL REVISIONS AND ACCEPTANCE OF DELIVERY BY TXDOT

4.1 General Submittal Requirements

Each Proposal Revision shall include a Technical Proposal Revision, a Financial Proposal Revision and a Price Proposal Revision meeting the requirements set forth in Exhibits B, C-1 and C-2, respectively. The Proposal Revision 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.

Proposal Revisions shall be delivered to TxDOT in sealed boxes, each of which shall be clearly labeled so that it is apparent it is part of the Proposal Revision responding to this Request for Proposal Revisions. The Proposal Revisions shall be accompanied by a transmittal letter listing the number of boxes submitted and identifying the contents of each box.

4.1.1 Proposal Due Date

The components of the completed Proposal Revision shall be delivered no later than the Proposal Due Date.

4.1.2 Signatures Required

The Proposal Letter (Form BAFO A) shall be signed in blue ink by all parties making up Proposer, and shall be accompanied by evidence of signatory authorization as specified in Form BAFO A.

4.1.3 Certified Copies

Where certified copies of the Proposal Revision are required, Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark oversigned by the Proposer's designated representative(s). Where certified copies of portions of the Price Proposal Revision 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 designated representative(s).

4.1.4 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal Revision may result in an inadvertent early opening of the Proposal Revision and may result in disqualification of the Proposal Revision. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal Revision, which result from any inadvertent opening if TxDOT determines that the Proposer did not follow the foregoing instructions. It is the Proposer's sole responsibility to see that its Proposal

Revision is received as required. Proposal Revisions received after the date and time due will be rejected without consideration or evaluation.

4.1.5 Requirement to Submit Compliant Proposal Revisions

The Proposal Revision may not include any qualifications, conditions, exceptions to or deviations from the requirements of the Request for Proposal Revisions, 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 Revision does not fully comply with the instructions and rules contained in this ITP, including the ITP exhibits, it may be disqualified. Any Proposal Revision that contains a material alteration, as determined by TxDOT in its sole discretion, to the ITP forms, 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 a Proposal Revision is deemed non-responsive or non-compliant, TxDOT may disqualify the Proposal Revision from further consideration, in its sole discretion. Such disqualification will not result in the forfeiture of a Proposer's Proposal Security.

Each Proposal Revision must be submitted in the official format which is specified by TxDOT in the Request for Proposal Revisions. The Proposer shall sign the Proposal Letter (Form BAFO A) and submit it with the original copy of the Proposal Revision submitted to TxDOT.

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

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

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

(c) If multiple or alternate Proposal Revisions are submitted or if the Proposal Revision includes any conditions or provisions reserving the right to accept or reject an award or to enter into a DBA or CMA following award;

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

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

4.1.6 Format

The Proposal Revision 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 Revision. Legibility, clarity, and completeness of the Technical Proposal Revision and Financial Proposal Revision are essential. The Technical Proposal Revision 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 Revision 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 scroll mats not to exceed 34 inches in width (and such design drawings shall be submitted on CD, DVD or 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.

Submittals must be bound and, for the Technical Proposal Revision, 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 ten-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 Revision. 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 Revision Delivery

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

The Proposal Revision is to be delivered to TxDOT at the following address:

Mr. Marcus Coranado, P.E.
Texas Department of Transportation
7600 Chevy Chase Drive, Bldg. 2, 4th Floor
Austin, TX 78752
E-mail: TxDOT-HOU-PPP-GrandParkway-SegH&I@txdot.gov

4.2 Technical Proposal Revision

The Proposer shall deliver one original and 15 certified copies, except for the Proposal Security (see Section 4.2.1) and any scroll mats (see Section 4.2.2), of the Technical Proposal Revision to TxDOT at the address identified in Section 4.1.7 by the Proposal Due Date.

All of the binders comprising the original Technical Proposal Revision, together with an electronic copy on one or more CDs or USB flash drives shall be packaged in a single container, clearly addressed to TxDOT as provided herein, and labeled “[Proposer Name]: Original Technical Proposal Revision for SH 99 Grand Parkway Segments H, I-1 and I-2.”

The containers that include the required certified hard copies of the Technical Proposal Revision shall be labeled “Copies of Technical Proposal Revision for SH 99 Grand Parkway Segments H, I-1 and I-2.”

The electronic copies shall be in Adobe Acrobat (.pdf) format on CD(s) or USB flash drive(s); provided, however, that: (a) Proposal Revision 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.

The Technical Proposal Revision shall be labeled with “Proposal Revision” in the footer, so that it can easily be distinguished from the Original Proposal.

4.2.1 Proposal Security

One original and three certified copies of the Proposal Security shall be provided with the Technical Proposal Revision, and shall be in a separate envelope labeled “[Proposer Name]: Revised Proposal Security for SH 99 Grand Parkway Segments H, I-1 and I-2.”

The Proposal Security shall be labeled with “Proposal Revision” in the footer, so that it can easily be distinguished from the Proposal Security included in the Original Proposal.

4.2.2 Scroll Mats

If Proposer opts to submit design drawings on scroll mats in accordance with Section 4.1.6(ii), one original and six certified copies of the scroll mats shall be provided with the Technical Proposal Revision.

4.3 Financial Proposal Revision

One original and six certified copies of the Financial Proposal Revision shall be delivered to TxDOT at the address identified in Section 4.1.7 by the Proposal Due Date identified in Section 1.5.

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 six hard copies, as well as one digital copy on CD or USB flash drive, of the financial capacity information shall be submitted in a container labeled “[Proposer Name]: Financial Proposal Revision /Revised Financial Capacity information for SH 99 Grand Parkway Segments H, I-1 and I-2.”

The Financial Proposal Revision shall be labeled with “Proposal Revision” in the footer, so that it can easily be distinguished from the Original Proposal.

4.4 Price Proposal Revision

The Price Proposal Revision shall include one original and six certified copies of the following, delivered to TxDOT at the address identified in Section 4.1.7 by the Proposal Due Date.

- (a) All price information pertaining to Base Scope 1 for the Base Scope 1 Design-Build Price Value and Base Scope 1 Maintenance Price Vaue (including Forms BAFO M-1, BAFO M-1.1, BAFO M-1.2, BAFO M-1.3, BAFO N-1, BAFO N-1.1, and BAFO N-1.2);
- (b) All price information pertaining to the H-West Option (including Forms BAFO M-2, BAFO M-2.1, BAFO M-2.2, BAFO M-2.3, BAFO N-2, BAFO N-2.1, and BAFO N-2.2);
- (c) All price information pertaining to the breakdown of the Price under the Design-Build Agreement on a Segment basis, including Work that may be authorized by a Limited NTP2 (including Forms BAFO M-3, BAFO M-3.1, BAFO M-3.2, and BAFO M-3.3); and
- (d) Information pertaining to the number of days between NTP1 and the Proposer’s proposed Substantial Completion Date (including Form BAFO O).

The originals and each copy of the pricing forms described in clauses (a) – (c) above shall be included in separate sealed envelopes marked “Pricing Forms” and including the Proposer’s name. The envelope with the original pricing forms shall be marked as the original and shall also include one digital copy in Excel and one digital copy in .pdf on a CD or USB flash drive. The original and each copy of the schedule information described in clause (d) above shall be included in separate sealed envelopes marked “Form BAFO O” and including the Proposer’s name. The envelope with the original

Form BAFO O shall be marked as the original and shall also include one digital copy in .pdf on a CD or USB flash drive.

All portions of the Price Proposal Revision, if any, that include information identifying the Proposer shall not include pricing information and shall be submitted in a sealed container labeled “[Proposer Name]: Price Proposal Revision for SH 99 Grand Parkway Segments H, I-1 and I-2.” All portions of the Proposal Revision containing pricing information (other than the container label and each individual sealed envelope) shall not include any information identifying the Proposer and shall be included in a separate sealed container labeled “[Proposer Name]: Price Proposal Revision Pricing Forms for SH 99 Grand Parkway Segments H, I-1 and I-2.”

4.5 Base Scope 1 and H-West Option

Proposer shall include the Base Scope 1 work in its Proposal Revision. The Proposer is required to address the Base Scope 1 work in its Technical Proposal Revision as set forth in Section 4 of Exhibit B and shall submit price information for the Base Scope 1 work as part of its Price Proposal Revision as described in Section 4.4 and Exhibit C-2.

TxDOT has defined one Option (the “H-West Option”), which Proposer must include in the Proposal Revision. The Option is further described in Section 1.1.3 of the Technical Provisions.

The Proposer is required to address the Option in the Technical Proposal Revision as required under Exhibit B and submit price information for the Option as part of its Price Proposal Revision as described in Exhibit C-2. TxDOT shall have the option to include the Option in the Work by issuance of written notice in accordance with Section 4.1.6 of the DBA.

4.6 Currency

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

4.7 Modifications, Withdrawals and Late Submittals

4.7.1 Modifications to a Proposal Revision

A Proposer may modify its Technical, Financial, and Price Proposal Revisions in writing prior to the specified time on the Proposal Due Date identified in Section 1.5. The modification shall conform in all respects to the requirements for submission of the applicable component of the Proposal Revision. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original components of the Proposal Revision and shall specifically state that the modification supersedes the previous components of the Proposal Revision and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so TxDOT can accurately identify the final Proposal Revision. The

modification must contain complete Proposal Revision sections, complete pages or complete 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.

4.7.2 Withdrawal and Validity of Proposal Revisions

A Proposer may withdraw its Proposal Revision at any time prior to the time due on the Proposal Due Date identified in Section 1.5 by means of a written request signed by the Proposer's designated representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Proposal Revision prior to the Proposal Due Date and time identified in Section 1.5 will not prejudice the right of a Proposer to file a new Proposal Revision, provided that it is received before the time due on the Proposal Due Date identified in Section 1.5. No Proposal Revision may be withdrawn on or after the time due on the Proposal Due Date identified in Section 1.5 and any attempt to do so will result in a draw by TxDOT upon the Proposal Security.

Proposal Revisions, shall be valid for a period of 180 days after the Proposal Due Date identified in Section 1.5. Except as set forth in the previous paragraph, no Proposer shall withdraw its Proposal Revision prior to expiration of the 180-day period, unless notified by TxDOT that (i) no DBA or CMA for the Project will be awarded by TxDOT pursuant to the RFP, including the Request for Proposal Revisions; (ii) TxDOT has awarded the DBA and CMA to another Proposer and has received the executed DBA and CMA and other required documents; (iii) TxDOT does not intend to award the DBA 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 Revision for a period of 270 days after the Proposal Due Date identified in Section 1.5.

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

4.7.3 Late Proposal Revisions

TxDOT will not consider any late Proposal Revisions. Proposal Revisions and/or modification requests received after the date and time for submittal on the Proposal Due Date identified in Section 1.5 will be returned to Proposer without consideration or evaluation.

4.8 Forfeiture of Proposal Security

The dollar amount of the Proposal Security to be submitted with each Technical Proposal Revision shall be \$25 million (see Exhibit B, Section 3.3.2). By submitting its Proposal Revision, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (i) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal Revision 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 5.11.1; or (iii) it is selected as the apparent best value Proposer, but fails to provide the documents required under Sections 6.1 and 6.1.1, unless the failure is directly attributable to TxDOT's election not to enter into the Contract Documents in the form included in the Request for Proposal Revisions, following the failure of the Parties to agree upon changes to the terms of the Contract Documents pursuant to Section 5.11.1.

Any Proposal Revision that contains a material alteration, as determined by TxDOT, in its sole discretion, to the ITP forms, including any material alteration to the form of Proposal Security (Form BAFO K or Form BAFO K-1, as appropriate), 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 a Proposal Revision is deemed non-responsive or non-compliant, TxDOT may disqualify the Proposal Revision from further consideration. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

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

4.9 Acceptance of Delivery by TxDOT

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

4.10 Costs Not Reimbursable

The cost of preparing the Proposal, including the Original Proposal and Proposal Revision, and any costs incurred at any time before final award and execution of the DBA 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 5.0 EVALUATION AND POST-SELECTION PROCESS

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

The Proposal Revision evaluation process will include review of each Proposal Revision for responsiveness and pass-fail criteria, qualitative evaluation of the Project Development Plan, quantitative evaluation of the Financial Proposal Revision, evaluation of the Price Proposal Revision, a ranking determination and a best value determination. The process may, at TxDOT's sole discretion, include a limited negotiations phase with the selected Proposer(s). 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 sole discretion.

The evaluation process will involve the following steps:

1. TxDOT evaluation committees will:
 - (a) evaluate the Proposal Revisions and determine which Proposer has offered the apparent best value Proposal Revision with specific analysis of the overall value of money to TxDOT, based on the specific evaluation criteria set forth herein; and
 - (b) provide a recommendation to TxDOT senior management regarding the apparent best value.
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 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 Proposal Revisions 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 Development Plan Evaluation Subcommittee ("DPES"), a Price Proposal Evaluation Subcommittee ("PPES") and a Selection Advisory Subcommittee.

The ESRC and the various subcommittees will be comprised of representatives from TxDOT. In addition to TxDOT voting members, the ESRC and subcommittees may also be assisted by advisors, including TxDOT representatives and outside consultants who will offer advice on the technical, financial and legal aspects of each Proposal Revision.

The primary responsibility of these advisors will be to assist the ESRC and subcommittees in making the educated and informed assessment of the individual strengths and weaknesses of the Proposal Revisions. 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 and observers (other than FHWA officials) will be required to sign confidentiality statements, and all evaluators, outside consultants and observers will be subject to TxDOT conflict of interest control requirements.

5.2 Best Value Determination

5.2.1 Total Proposal Score

The best value determination will be based on an 80-20 point scale. The Price Score will represent up to 80 points of the total score and the Technical Score will represent up to 20 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:

$$\text{Total Proposal Score (max. 100 points)} = \text{Price Score (max. 80 points)} + \text{Technical Score (max. 20 points)}$$

5.2.2 Price Score

The Price Score will be based on the Base Scope 1 Design-Build Price Score, Base Scope 1 Design-Build + Maintenance Price Score and Option Price Score (as determined pursuant to [Section 5.5](#)) using the following formula:

$$\text{Price Score} = (25 \times A) + (50 \times B) + (5 \times C)$$

A = Base Scope 1 Design-Build Price Score

B = Base Scope 1 Design-Build + Maintenance Price Score

C = Option Price Score

Where:

Base Scope 1 Design-Build Price Score = $\text{Lowest Proposal (Base Scope 1 Design-Build Price Value)} / \text{Proposal (Base Scope 1 Design-Build Price Value)}$

Base Scope 1 Design-Build + Maintenance Price Score = $\text{Lowest Proposal (Base Scope 1 Design-Build Value + Base Scope 1 Maintenance Price Value}^1) / \text{Proposal (Base Scope 1 Design-Build Price Value + Base Scope 1 Maintenance Price Value}^1)$

Option Price Score = $\text{Lowest Proposal (Base Scope 1 Design-Build Price Value + Base Scope 1 Maintenance Price Value}^1 + \text{Option Design-Build Price Value} +$

Option Maintenance Price Value) / Proposal (Base Scope 1 Design-Build Price Value+ Base Scope 1 Maintenance Price Value¹ + Option Design-Build Price Value + Option Maintenance Price Value)

¹ Present value of CMA costs for years six through 15.

5.2.3 Technical Score

The Technical Score will be calculated based on the ESRC evaluation score for the Project Development Plan (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 * 0.20

5.3 Pass/Fail and Responsiveness Evaluation

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

5.3.1 Technical Proposal Revisions

Technical Proposal Revisions 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 DBA 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 DBA Documents or CMA Documents, as applicable.

(b) Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.7.

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

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

(e) Proposer has delivered Proposal Security 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 Schedule Evaluations

The Preliminary Baseline Schedule and Form BAFO O will be evaluated on a pass/fail basis based on the Proposer's commitment to meet or beat the "TxDOT Last Allowable Date for Substantial Completion" for all segments of the Project, as set forth in Form BAFO O. In addition, the Preliminary Project Baseline Schedule will be evaluated for consistency with the Technical Solutions provided and for compliance with the requirements listed in Exhibit B, Section 4.3.2.

5.3.3 Financial Proposal Revisions

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

(a) 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 and since submission of its Original Proposal on October 27, 2015, 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. Factors that will be considered in evaluating the Proposer's financial capacity include the following:

- (i) Profitability;
- (ii) Capital structure;
- (iii) Ability to service existing debt; and
- (iv) Other commitments and contingencies.

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.

5.3.4 Price Proposal Revisions

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

(a) Proposer has proposed cumulative Routine and Renewal Work Maintenance Prices for each of years 1 through 5 in column D of Form BAFO N-1 that are less than or equal to the amounts for the corresponding years set forth in the CMA Cumulative Maximum Payment Curve in column E of Form BAFO N-1.

(b) Proposer has provided a Base Scope 1 Design-Build Price and Option Design-Build Price using Forms BAFO M-1 and BAFO M-2, respectively, which comply with the requirements of Exhibit C-2, Section 3.1.1.

(c) Proposer has provided the DB Contractor Draws/Cash Flow Tables for Base Scope 1 and the H-West Option using Forms BAFO M-1.3 and BAFO M-2.3, respectively, which comply with the requirements of Exhibit C-2, Section 3.1.1.

(d) Proposer has provided a Base Scope 1 Maintenance Price and Option Maintenance Price using Forms BAFO N-1 and BAFO N-2, respectively, which comply with the requirements of Exhibit C-2, Section 3.1.2.

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

Those Proposal Revisions 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 Revision contains a material misrepresentation. TxDOT reserves the right to waive minor informalities, irregularities and apparent clerical mistakes which are unrelated to the substantive content of the Proposal Revisions.

5.4 Evaluation of Project Development Plan by DPES

Upon receipt of the Technical Proposal Revisions, the Project Development Plan will be evaluated by the DPES based on the evaluation factors set forth below. In addition, in evaluating the Project Development Plan against the evaluation factors, the DPES will consider the extent to which the Proposal Revision meets the objectives stated below and includes any improvements over the requirements of the DBA Documents and CMA Documents, such as additional benefits and/or value to TxDOT and the public.

Value-added concepts as described in Exhibit B, Section 4.3(b) shall be reviewed and evaluated based on the Proposer's creativity and innovativeness to create a quality facility that meets or exceeds the requirements and objectives of TxDOT.

5.4.1 Project Development Plan Evaluation Factors

The evaluation factors for the Project Development Plan are as follows:

- (a) Project Management Plan;
- (b) Quality Management Plan; and
- (c) Technical Solutions.

Note that these evaluation factors are also the components of the Project Development Plan, the submittal requirements for which are described in Exhibit B. The assigned weights for the Project Development Plan evaluation factors identified in clauses (a) through (c) above are set forth in Table 5.2. Subfactors and their relative weighting are listed in Sections 5.4.1.1 through 5.4.1.3.

The evaluation factors will be evaluated and rated using the rating guidelines specified in Section 5.4.2, with special attention given to the objectives presented in Sections 5.4.1.1 through 5.4.1.3, which describe the expectations of TxDOT with regard to the work to be performed and the related information to be submitted in the Project Development Plan. Along with the Project goals identified in Section 1.3, these objectives will guide TxDOT's assessment of the evaluation factors and subfactors.

5.4.1.1 Project Management Plan

Objective: An organization that is designed with clear lines of responsibility, quality Key Personnel and well-defined roles that respond to the requirements and objectives of the Project and TxDOT that includes the following:

- empowerment at all levels of the organization to make decisions in coordination with their TxDOT counterparts;
- a disciplined strategy for design, safety, risk management, and securing of third-party approvals;
- a comprehensive strategy for construction management, DBEs, and other job training; and
- an approach to operations and maintenance that provides (i) a well-maintained Project in compliance with all Technical Provisions and the CMA; (ii) efficient and safe responses to the maintenance needs of the Project, the adjacent communities and the traveling public; (iii) effective interfacing, communication and coordination with separate contractors, Stakeholders and other third parties; and (iv) a disciplined strategy for public involvement.

The Project Management Plan evaluation subfactors are as follows:

- (a) General Project Management;
- (b) Risk Management;

- (c) Schedule and Cost Control Management;
- (d) Environmental Management;
- (e) Mentoring and Job Training;
- (f) Tolling Facility Infrastructure Coordination; and
- (g) Maintenance Management Plan.

The subfactors are listed in descending order of importance; provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it. TxDOT 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 criteria set forth in Section 5.4.1.1 to the extent such evaluations concern the performance of the Proposer or any individual Proposer team members.

See Exhibit B for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.1.2 Quality Management Plan

Objective: A Quality Management Plan that is ISO and TxDOT Quality Assurance Program compliant, that integrates TxDOT into the quality management system and enables TxDOT to monitor, audit, and measure the DB Contractor's performance in the management of design, construction and capital maintenance of the Project.

The Quality Management Plan evaluation subfactors are as follows:

- (a) Quality control and quality acceptance procedures; and
- (b) Organizational structure.

The subfactors are listed in descending order of importance; provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it.

See Exhibit B for details regarding the specific information concerning this factor to be submitted as part of the Project Development Plan.

5.4.1.3 Technical Solutions

Objective: Innovative design, construction and capital maintenance solutions that effectively respond to and address the Project's requirements, including the following:

- the requirement to plan and coordinate the design, construction and maintenance activities with other projects and Stakeholders;

- the efficient and coordinated design and relocation of Utilities; and
- the environmental and community sensitivities and commitments.

The Technical Solutions evaluation subfactors are as follows:

- (a) Construction Staging, Sequencing and Traffic Management;
- (b) ROW Acquisition Plan;
- (c) Utilities;
- (d) Drainage; and
- (e) Roadway.

The subfactors are listed in descending order of importance; provided, however, that a subfactor may have equal importance with the subfactors listed immediately above it.

See Exhibit B for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Project Development Plan.

5.4.2 Evaluation Guidelines

The DPES will review the Project Development Plan with reference to the evaluation factors specified in Section 5.4.1, in accordance with the guidelines provided in this Section 5.4.2 and assign a qualitative rating for each of the evaluation subfactors in accordance with Table 5.1.

Table 5.1

ADJECTIVE RATING	DESCRIPTION
Excellent	The Proposal Revision greatly exceeds the stated requirements/objectives, offering material benefits and/or added value, and providing assurance that a consistently outstanding level of quality will be achieved. There is very little or no risk that the Proposer would fail to satisfy the requirements of the DBA Documents or CMA Documents, as applicable. Weaknesses, if any, are very minor and can be readily corrected. Significant unique and/or innovative characteristics are present.

ADJECTIVE RATING	DESCRIPTION
Very Good	The Proposal Revision significantly exceeds the stated requirements/objectives, offering advantages, benefits and/or added value, and providing assurance that a level of quality will be achieved that is materially better than acceptable. There is little risk that the Proposer would fail to satisfy the requirements of the DBA Documents or CMA Documents, as applicable. Weaknesses, if any, are very minor and can be readily corrected. Some unique and/or innovative characteristics are present.
Good	The Proposal Revision materially exceeds the stated requirements/objectives and provides assurance that the level of quality will meet or exceed minimum requirements. There may be a slight probability of risk that the Proposer may fail to satisfy the requirements of the DBA Documents or CMA Documents, as applicable. Weaknesses, if any, are minor and can be readily corrected. Little or minimal unique and/or innovative characteristics are present.
Fair	The Proposal Revision marginally exceeds stated requirements/objectives and provides satisfactory assurance that the level of quality will meet or marginally exceed minimum requirements. There may be questions about the likelihood of success and there is a little risk that the Proposer may fail to satisfy the requirements of the DBA Documents or CMA Documents, as applicable. Weaknesses are correctable or acceptable per minimum standards.
Meets Minimum	The Proposal Revision meets stated requirements/objectives and provides satisfactory assurance that the minimum level of quality will be achieved. There may be questions about the likelihood of success and there is some risk that the Proposer may fail to satisfy the requirements of the DBA Documents or CMA Documents, as applicable. Weaknesses are correctable or acceptable per minimum standards.

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

5.4.3 Technical Score

During the evaluation, each subfactor as described in Section 5.4.1 above will be assigned a consensus rating by TxDOT, which will be converted to points. The points for each subfactor will be added to determine the Proposal Revision’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 Project Development Plan, with 100 maximum possible points. The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = \text{total evaluation score (maximum 100)} * (0.20)$$

Table 5.2

Project Development Plan	Maximum Qualitative Rating (100 Points)
Project Management Plan	60 Points
Quality Management Plan	20 Points
Technical Solutions	20 Points

5.5 Evaluation of Price Proposal by PPES

The Price Proposal Revision will be evaluated by the Price Proposal Evaluation Subcommittee (“PPES”). The PPES will conduct “blind” reviews and evaluations of the Price Proposal Revisions to determine the Price Score of the Proposal in accordance with Section 5.2.1.

The PPES shall proceed by first determining if the price information contained in the Price Proposal Revision for the Base Scope 1 Design-Build Price is responsive to the RFP and passes all pass/fail evaluation criteria. If the Base Scope 1 Design-Build Price from at least one Proposal Revision is responsive and advantageous to TxDOT, the PPES shall determine the Price Score based on the formula in Section 5.2.2.

5.5.1 Base Scope 1 Design-Build Price Value

The Base Scope 1 Design-Build Price Value will be determined by adding the following amounts: (a) the Base Scope 1 Design-Build Price set forth in Form BAFO M-1 plus (b) the ATC cost adjustment for Base Scope 1 (determined in accordance with Section 5.5.2).

5.5.2 Value of ATC Cost Adjustments

The ATC cost adjustment 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 Revision. The ATC cost adjustments relating to each of Base Scope 1 and the H-West Option will also be set forth on Forms BAFO M-1.2 and BAFO M-2.2, respectively.

5.5.3 Base Scope 1 Maintenance Price Value

The Base Scope 1 Maintenance Price Value will be the present value of the Maintenance Price for years 6 through 10 of the CMA in 2016 dollars (as of the Proposal Due Date) as set forth in the last column on Form BAFO N-1.

5.5.4 Option Design-Build Price

The Option Design-Build Price Value for the H-West Option will be determined by adding the following amounts: (a) the Option Design-Build Price set forth in Form BAFO M-2 plus (b) the ATC cost adjustment for the H-West Option determined in accordance with Section 5.5.2.

5.5.5 Option Maintenance Price Value

The Option Maintenance Price Value will be the present value of the sum of the Annual Option Maintenance Prices as set forth in Form BAFO N-2.

5.6 ESRC Evaluation of Proposals

Before reviewing the Price Proposal Revisions and PPES evaluation results, the ESRC will review the Project Development Plans and the ratings and points recommendations provided by the DPES with respect to each Project Development Plan. The ESRC may accept the recommendations provided by the DPES, may request the DPES to reconsider its recommendations, or may develop its own recommendations.

After determining each Proposal's Technical Score, the ESRC will review the Price Proposal Revision and PPES evaluation results and determine each Proposal Revision'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 Revision 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 Revision. Any requests for clarification shall be in writing to the Proposer's designated representative. Proposers shall respond to any such requests within two business days (or such other time as is 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 Proposal Revisions 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 DBA 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 C.F.R. § 636.501 *et seq.* TxDOT may request Proposal Revisions with or without discussions as described therein. 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. The Proposal Revisions shall be in writing.

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. TxDOT intends to make award, if any, based on the Proposals, including the Proposal Revisions received by the Proposal Due Date, without any further proposal revisions.

5.9 Identification of Apparent Best Value Proposal

Once the ESRC has determined a Total Proposal Score for each Proposal Revision, assigned rankings to the Proposal Revisions based on the Total Proposal Scores, and determined the apparent best value, the ESRC will present its recommended rankings to a steering committee comprised of the Chief Financial Officer, Chief Engineer, and the Beaumont and Houston District Engineers (“Steering Committee”).

5.10 Recommendation to Commission

The Steering Committee will review the Proposal Revisions 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 Revision provides the best overall value. In completing its review, TxDOT will compare the Proposal Revisions with a reference case based on TxDOT’s internal cost estimate for the Project.

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 will make a recommendation to the Commission regarding the rankings of Proposers and designation of the best value. The Commission will evaluate the recommendations and will determine whether to proceed with award of a DBA and CMA to the apparent best value Proposer or take any other action. The Commission's decision of conditional award of the DBA and CMA to the apparent best value Proposer will be made in a public hearing and will be considered a public announcement of intent to award the DBA and CMA by the Commission.

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

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

5.11.1 Negotiation of DBA Documents and CMA Documents

If authorized by the Commission, TxDOT will proceed with the apparent best value Proposer to finalize the DBA 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 DBA Documents or CMA Documents the ideas and concepts of unsuccessful Proposers' work product. Any decision to commence limited negotiations is at TxDOT's sole discretion. By submitting its Proposal Revision, each Proposer commits to enter into the form of DBA 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 Revision.

If a DBA or 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 best value Proposer to enter into the DBA and CMA in the forms included in the RFP, without variation except to fill in blanks and include information that the forms of the DBA and CMA indicate is required from the Proposal Revision, (b) rejection of all Proposal Revisions, (c) issuance of a Request for Proposal Revisions to Proposers, but only if the ATCs of one or more Proposers have not been revealed to the original successful Proposer, or (d) proceeding to the next most highly ranked Proposal Revision to attempt to negotiate a DBA 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

DBA Documents or CMA Documents, as applicable. Failure of the Proposer to engage in good faith negotiations shall result in forfeiture of its Proposal Security as set forth in Section 4.8.

5.12 Post-Selection Deliverables

5.12.1 Documents to Be Submitted Following Conditional Award

As a condition precedent to final award of the DBA and CMA, the successful Proposer shall deliver the following to TxDOT within seven 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 Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a certificate of authority to transact business in Texas along with a certificate of good standing from the state of organization of the member; (ii) a certificate of good standing from the Texas Comptroller; 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 Revision. 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 Revision and under any contract arising therefrom.

(c) If security for Proposer's obligations under the DBA is required by TxDOT pursuant to Exhibit C-1, Section 2.0(3)(b), the form of the proposed guarantees, which shall be in form and substance acceptable to TxDOT, in its sole discretion.

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

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

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. TxDOT shall have 10 Business Days to review and respond to subsequent submittals of the deliverable.

5.12.3 Escrowed Proposal Documents

(a) Within the timeframe stated in Section 5.12.1, 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 Revision prices and meeting all requirements of Section 21.1 of the DBA 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 Revision is based. The documents shall be in sealed containers labeled "[Proposer Name]: Escrowed Proposal Materials for SH 99 Grand Parkway Segments H, I-1 and I-2." TxDOT shall have the right to review the EPDs for completeness and consistency with the Proposal Revision.

(b) Representatives of TxDOT (and/or its consultants) and the successful Proposer shall review the EPDs prior to execution of the DBA and CMA to determine whether they are complete. Such representatives shall also organize the EPDs, 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. Such representatives shall compile an index that lists each document included in the EPDs, and briefly describes the document and its location in the EPDs. 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 DBA and CMA, the EPDs will be available for joint review only as specified in DBA Section 21.1.1 and CMA Section 17.1.1.

SECTION 6.0 FINAL AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of DBA and CMA

The following are conditions precedent to final award of the DBA and CMA: (a) successful completion of negotiations (if held); (b) concurrence in award by FHWA; (c) receipt by TxDOT of all of the documents required to be provided prior to execution of the DBA and CMA under Section 6.1.1; (d) execution of the DBA 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 DBA 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 seven Business 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 DBA and CMA must be executed by all joint venture members or general partners, as applicable. Within 15 Business 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 DBA and CMA

The Proposer shall deliver the documents listed below to TxDOT concurrently with the executed DBA and CMA as a condition to execution of the DBA and CMA by TxDOT. On or before the date that TxDOT delivers the execution sets of the DBA 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 Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Registration with the Texas Secretary of State along with a Certificate of Good Standing from the state of organization of the member; (ii) evidence 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 Revision, 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 Revision;

(c) If security for the Proposer's obligations under the DBA is required by TxDOT pursuant to Exhibit C-1, Section 2.0(3)(b), the Proposer shall submit one or more guarantees from guarantor(s) acceptable to TxDOT, in its sole discretion, in the form of Exhibit 13 to the DBA and/or 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 DBA 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 member(s) resolution, certified by an appropriate officer of the managing member(s), 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 Form BAFO L (with such changes as agreed to by TxDOT in its sole 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 DBA 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 DBA Documents and CMA Documents;

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

(i) A letter from a licensed Surety, rated in the top two categories by two nationally recognized rating agencies or at least A minus (A-) or better and Class VIII or better by A.M. Best and Company, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond and Payment Bond, each in the amount specified and in the forms attached as Exhibits 9 and 10 to the DBA, respectively, and a Retainage Bond in the form attached as Exhibit 11 to the DBA. If multiple Surety letters are provided, the Proposal Revision shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the DBA 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 DBA Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments;

(j) If required by TxDOT pursuant to Exhibit B, Section 3.2.11, a guaranty in the form of Exhibit 13 to the DBA and/or Exhibit 9 to the CMA, as applicable;

(k) A Job Training and Small Business Mentoring Plan as described in Section 7.9 of the DBA and Section 6.4 of the CMA;

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

(m) After filing an electronic application through the Texas Ethics Commission's website (https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) to file a Certificate of Interested Parties (Form 1295) (the form of which is attached hereto as Exhibit J), a printed copy of the filed Form 1295, along with a separate certificate of filing from the Texas Ethics Commission containing a unique certification number. An authorized agent of the Proposer shall sign the printed copy of Form 1295 and have it notarized. The Proposer shall complete the form in accordance with the Texas Ethics Commission's Adopted Rules, which are set forth in Appendix A to Exhibit J.

6.2 Debriefings

All Proposers submitting Proposal Revisions 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 DBA and CMA. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and DBA 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 DBA and CMA award.

6.3 Payment to Unsuccessful Proposers

Each Proposer that submits a responsive, but unsuccessful, Proposal Revision and that elects, at its option, to deliver to TxDOT with its Proposal Revision a Payment for Work Product Agreement in the form attached hereto as Exhibit H, 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. The Payment for Work Product Agreement attached hereto as Exhibit H will provide payment for work product received by TxDOT in either the Proposal or Proposal Revision that is not returned to Proposer. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3.

The stipulated payment for work product per Proposer for this procurement will be 0.25% of the successful Proposer's 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. In the event the procurement is terminated before execution of the DBA, TxDOT will pay each Proposer that submits a responsive Proposal Revision a partial amount of \$747,000, subject to the Proposer's compliance with this Section 6.3. The invoice may be submitted no earlier than 45 days after notice of final award, including execution of the DBA, is posted on TxDOT's public 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. Payments will be made within 30 days of receipt of an invoice therefor.

In submitting an executed Payment for Work Product Agreement, each Proposer agrees that it will accept the stipulated payment for work product and that 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 for TxDOT's agreement to make payment as provided herein (including Exhibit H), without any further compensation or consideration to Proposer.

Each Proposer that timely executes and delivers to TxDOT a Payment for Work Product Agreement in the form attached hereto as Exhibit H acknowledges that TxDOT will have the right to inform the successful Proposer regarding the contents of the other Proposals after award of the DBA, and that the DBA 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 that fails to timely execute and deliver the Payment for Work Product Agreement (Exhibit H) be entitled to receive a payment for work product under this Section 6.3.

SECTION 7.0 PROTESTS

7.1 Applicability

This Section 7.0 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 or Request for Proposal Revisions, as appropriate, 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 DBA 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 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 Original Proposal due date or Proposal Revision due date, as applicable).

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 Mr. Marcos Coronado, P.E., Texas Department of Transportation, 7600 Chevy Chase Drive, Building 2, 4th Floor, Austin, Texas 78752 with a copy to the Office of General Counsel, 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 Website.

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 sole 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 one of their designees) 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 sole 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 8.0 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 DBA Documents and CMA Documents, as applicable. TxDOT reserves the right, in its sole discretion, to:

- (a) Develop the Project in any manner that it, in its sole 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 all of the 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 experts 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 DBA 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 and/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 DBA 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.