

Guidelines for

# Accelerated

# Project Delivery



**NEBRASKA**  
DEPARTMENT OF ROADS



# Preface

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## General Introduction

The Design/Build (D/B) and Construction Manager/General Contractor (CM/GC) project delivery methods are two new tools that NDOR is authorized to use in meeting the needs of the state's transportation program. These methods may not be appropriate for all projects, but when the right projects are selected, D/B or CM/GC may offer significant benefits for NDOR and the public.

The information presented in these Guidelines provides a framework for using the D/B or CM/GC project delivery method. The procedures presented do not have to be followed to the letter, but illustrate approaches that have been proven successful and can be adapted as appropriate for each specific project. Commonly asked questions are presented and answered in the context of NDOR's traditional Design/Bid/Build (D/B/B) project delivery method versus D/B or CM/GC project delivery methods.

These Guidelines are written comprehensively to provide anyone interested in D/B or CM/GC contracting in NDOR with an understanding of the general policies and recommended procedures for their use. However, the recommendations will need to be tailored to project decision-makers, who must correctly identify, assess, fund, and develop projects, balancing the benefits and risks of D/B or CM/GC contracting. It may be useful to project team members who will be involved in the final processes.

These Guidelines are the product of an accumulation of experience and understanding of public contracting using the D/B and CM/GC project delivery methods and the multitude of issues surrounding each method. The process described in these Guidelines substantially accomplishes the objectives of NDOR, but continuous improvements are expected.

The decision to use the D/B or CM/GC project delivery method is not made instantaneously, but rather through a series of key decisions weighing risks and benefits. These Guidelines provide insight to those risks and the decisions that must be made to be successful in developing a project scope and contract documents using the D/B or CM/GC project delivery methods.



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# Acronyms

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Unless otherwise specified, wherever the acronyms listed below are used in this Guideline, they shall have the meaning set forth below.

<b>APDM</b>	Accelerated Project Delivery Method
<b>ATC</b>	Alternative Technical Concept
<b>CM/GC</b>	Construction Manager / General Contractor
<b>CPM</b>	Critical Path Method Schedule
<b>D/B</b>	Design/Build
<b>D/B/B</b>	Design/Bid/Build
<b>DBE</b>	Disadvantaged Business Enterprise
<b>EMR</b>	Experience Modifier Rate
<b>ERC</b>	Evaluation and Recommendation Committee
<b>FA</b>	Financial Advisors
<b>FC</b>	Financial Committee
<b>FHWA</b>	Federal Highway Administration
<b>GMP</b>	Guaranteed Maximum Price
<b>GPs</b>	General Provisions
<b>ICE</b>	Independent Cost Estimator
<b>IR</b>	Industry Review
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>NDOR</b>	Nebraska Department of Roads
<b>NEPA</b>	National Environmental Policy Act
<b>OPCC</b>	Opinion of Probable Construction Cost
<b>OVT</b>	Owner Verification Testing

<b>PAGs</b>	Procurement Advisory Groups
<b>QA/QC</b>	Quality Assurance and Quality Control
<b>RFP</b>	Request for Proposal
<b>RFQ</b>	Request for Qualification
<b>RIDs</b>	Reference Information Documents
<b>ROW</b>	right-of-way
<b>SC</b>	Selection Committee
<b>SOQ</b>	Statement of Qualifications
<b>SPs</b>	Special Provisions
<b>TA</b>	Technical Advisors
<b>TC</b>	Technical Committee
<b>TMP</b>	Target Maximum Price
<b>TPs</b>	Technical Provisions
<b>USACE</b>	U.S. Army Corps of Engineers
<b>VAP</b>	Value Added Proposal

# Definitions

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Unless otherwise specified, wherever the following capitalized terms listed are used in these Guidelines, they shall have the following meanings.

<b>Accelerated Project Delivery Method (APDM)</b>	Alternative Project Delivery Methods available for use by NDOR consisting of D/B and CM/GC methods.
<b>Addendum or Addenda</b>	Supplemental additions, deletions, and modifications to the provisions of the RFQ or RFP after the release date of the RFQ or RFP.
<b>Descriptive Rating</b>	A descriptive term with which specific qualitative characteristics are associated for use by NDOR during the evaluation of an SOQ or proposal. Prior to the evaluation process, NDOR will assign numerical scores or score ranges to correspond with each Descriptive Rating.
<b>Affiliate</b>	Includes parent companies, subsidiary companies, and partners of the proposing entity and other potentially financially liable parties for that entity.
<b>Alternative Technical Concept (ATC)</b>	Suggested changes, submitted by proposing teams, to the contracting agency's supplied basic configurations, project scope, design, or construction criteria. These proposed changes must provide a solution that is equal to or better than the requirements in the RFP. If the ATC is acceptable to the contracting agency, the concept may be incorporated as part of the proposing team's technical and price submittal. ATCs provide flexibility to the proposers to enable them to enhance innovation and achieve greater efficiency.
<b>Base Configuration</b>	Provides for a constraint on the Design/Builder's ability to deviate from a particular design and also establishes a design benchmark for payment to be made to the Design/Builder if the owner's assumed configuration that was the basis for its price estimate proves to be impossible to build. D/B proposers have the right to assume that the Base Configuration and the design contained in the contract drawings are feasible and represent a reasonable engineering approach to the project.
<b>Best Value</b>	The selection method for award of a contract based on the combination of qualitative non-price elements and quantitative cost/price elements.

<b>Conflict of Interest Policy</b>	NDOR policy governing organizational conflicts of interest. The existing NDOR Conflict of Interest Policy does not address personal conflicts of interest.
<b>Contract Documents</b>	All documents that, when combined, form the basis of the contract, including all pre-tender, tender, and contractual documentation.
<b>Contract Terms and Conditions (Agreement)</b>	The rights and obligations of the contracting parties, once a contract is executed. These include general conditions that are common to a variety of NDOR contracts, as well as special conditions that are specific to an individual contract. (Examples of special conditions include contract change conditions, payment conditions, price variation clauses, and penalties.)
<b>Department</b>	The Nebraska Department of Roads (NDOR).
<b>Design/Bid/Build (D/B/B)</b>	The traditional method of project delivery in which the agency or owner contracts with separate entities for the design and the construction of a project.
<b>Design/Build (D/B)</b>	A project delivery method in which the design and construction services are contracted by a single entity known as the Design/Builder or D/B contractor.
<b>Design/Builder</b>	The entity with which the agency or owner has contracted to perform the D/B work effort for a project.
<b>Estimated Contract Value</b>	The estimated total price of a D/B contract that includes both design and construction as well as other items for which the D/B contractor may be responsible such as utility relocation or ROW.
<b>Evaluation and Recommendation Committee (ERC)</b>	The selected NDOR staff that will serve as the official scoring body to evaluate and rank SOQ and proposal submittals.
<b>General Conditions</b>	The conditions included in the contract that establish the minimum performance requirements for the proposer.
<b>Guidelines</b>	The information contained in this NDOR manual that establishes the framework for either D/B or CM/GC procurement. Guidelines are recommended, except for those identified in this manual as required.
<b>Industry Review (IR)</b>	A review period of the procurement documents during which the draft documents are provided to the shortlisted firms for their review and comment. This process allows NDOR to make any necessary changes to the draft documents without using the Addendum process before the final procurement documents are released for bidding purposes.

<b>Instructions to Proposers (ITP)</b>	The documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the proposers in response to the RFP.
<b>Key Individuals or Key Personnel</b>	Those personnel categories designated by NDOR, for which individuals identified by proposers in an SOQ or proposal may not be changed without NDOR approval. The credentials of these personnel will be evaluated and considered in the selection process.
<b>Liquidated Damages</b>	An amount determined by the owner during the formation of a contract, to compensate the owner for a specific breach of the contract (for example, late performance). Liquidated Damages are based on estimates of potential actual damages and are not punitive.
<b>NDOR Director</b>	The NDOR staff member that serves as the head of NDOR.
<b>NDOR Agreements Engineer</b>	The NDOR staff member that serves as the lead procurement officer on the specific project under procurement.
<b>Oral Presentations</b>	An in-person formal meeting between the proposer and Owner, at which the proposer may provide clarifying information and/or respond to specific questions formulated by NDOR, to assist NDOR in its final scoring and ranking of SOQs or proposals.
<b>Owner</b>	The Nebraska Department of Roads.
<b>Policy</b>	The definite course or method of action selected by NDOR to guide and/or constrain decisions regarding the state's use of APDMs.
<b>Potential Conflict of Interest Disclosure Statement</b>	A form provided by NDOR to be used by proposers and prospective proposers to identify any known or perceived conflict of interest, and the course of action proposed to mitigate the conflict.
<b>Price Proposal</b>	The financial or cost proposal submitted by a proposer in response to the request as identified in the ITPs in the RFPs.
<b>Procurement Advisory Groups (PAGs)</b>	A select group of personnel identified by the SC, consisting of either in-house NDOR staff or consultants, that will be available to assist the ERC during the entire procurement evaluation process. Members of this group will perform duties as identified in the SOQ Evaluation Manual and RFP Evaluation Manual <u>but are not authorized</u> to perform any scoring of SOQs or proposals.

<b>Project Manager</b>	The Design/Builder's designated individual responsible for the overall design, construction, quality, and contract administration for the project. Also could refer to NDOR's employee with responsibility for administering the D/B contract.
<b>Proposal</b>	The documents submitted by a proposer in response to the RFP.
<b>Proposer</b>	The entity submitting a proposal for the project in response to the RFP.
<b>Reference Information Documents (RIDs)</b>	The set of documents assembled by NDOR and included in the RFPs to provide definition and insight into the project. These documents may include: 1) environmental reports, 2) geotechnical information and data, 3) ROW information, 4) utility information, and 5) any other information NDOR considers to be relevant to project definition. These documents are provided to the proposer for reference purposes only and may not be relied upon. Selected procurement documents must notify proposers that using these documents for the preparation of a proposal is solely at their risk.
<b>Request for Proposals (RFP)</b>	The set of documents identifying the project and the work effort to be performed and materials to be furnished, in response to which a proposal may be submitted by a proposer. The RFP includes the ITP, Contract Documents, Technical Provisions, and RIDs. The RFP is issued only to proposers that have been shortlisted following SOQ review and evaluation process.
<b>Request for Qualifications (RFQ)</b>	The solicitation by NDOR as part of a procurement, of SOQs, which will be evaluated for the purpose of identifying a consultant or contractor in a qualification-based selection or a predetermined number of highest ranked firms or teams to be subsequently provided with a RFP. The identified highest ranked firms or teams are collectively referred to as being shortlisted or on the shortlist.
<b>Right-of-Way (ROW)</b>	The parcels of land necessary to construct and operate the planned facility.
<b>Selection Committee (SC)</b>	The NDOR staff members that will oversee and facilitate the evaluation process for the procurement.
<b>Statement of Qualifications (SOQ)</b>	The submission made by a proposer in response to an RFQ, including all clarifications thereto submitted in response to requests by NDOR.
<b>SOQ Evaluation Manual</b>	The NDOR manual that establishes the methodology and criteria for the evaluation of the proposer's submittal to NDOR in response to the RFQ.

<b>Special Terms and Conditions or Special Provisions (SPs)</b>	The detailed standard rules that will apply to the proposer that enters into a contract with NDOR, forming an integral part of the final agreement or contract.
<b>Standard Specification</b>	The current NDOR standards for construction.
<b>State</b>	The State of Nebraska.
<b>Stipend</b>	A payment made to an unsuccessful proposer in exchange for ownership of the work product included in their proposal and all intellectual property rights associated therewith. These payments are only made to shortlisted proposers who submit responsive proposals.
<b>Technical Proposal</b>	The submittal prepared by a proposer that outlines their concepts, ideas, processes, and approaches to deliver a specific project.
<b>Technical Provisions (TPs)</b>	The technical requirements and criteria developed by NDOR for a specific project, which will serve as the bases for the final design and construction.
<b>Transmittal Letter</b>	The formal letter, prepared by the proposer, which transmits the SOQ or proposal to NDOR for consideration and evaluation.
<b>Value Added Proposal (VAP)</b>	The proposer's concept or idea that is not included in the scope of work, and that will enhance the performance of the selected element without changing the technical requirements or adding additional cost (for example, improved life cycle features).
<b>Work Product Agreement Form</b>	A written agreement between the proposer and NDOR that gives NDOR ownership of said proposer's proposal and any concepts or ideas contained in the proposal, in exchange for the Stipend.





# Section 1 Conflict of Interest Policy for Design/Build and Construction Manager/General Contractor

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## 1.1 Introduction

The Nebraska Department of Roads (NDOR or the Department) strives to maintain the highest ethical standards, and requires strict adherence to the Conflict of Interest Policy regarding organizational conflict of interest when employing Design/Build (D/B) and Construction Manager/General Contractor (CM/GC) project delivery methods. This Policy applies to firms that may seek to enter into D/B or CM/GC contracts with the Department (prospective proposers and proposers).

This Policy does not address personal conflicts of interest on the part of NDOR selection team members; state laws and procedures governing improper business practices and personal conflicts of interest apply to NDOR selection team members. This includes the Nebraska Disclosure Statute at Sections 49.1499.02 and .03. However, this policy does include a Potential Conflict of Interest Disclosure Statement for NDOR selection team members (Attachment 1-1), which must be completed by participating NDOR employees and NDOR's consultants and advisors with regard to a particular project, and which must be approved by NDOR's Procurement Manager before such NDOR employees, consultants, and/or advisors may participate in the procurement process for an NDOR D/B or CM/GC procurement.

Title 23 Code of Federal Regulations (CFR) Part 636.103 defines an organizational conflict of interest as follows:

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

As used in this excerpt, person means a natural person (i.e., a human being) or an artificial person (i.e., a legal entity treated as having the same legal rights as a human being, including the rights to own property, enter into contracts, and sue and be sued, including for example, corporations, partnerships, and associations.)

The goals of the NDOR Conflict of Interest Policy are:

- Protect the integrity and fairness of all aspects of a D/B or CM/GC project, including development, planning, procurement, design, and construction;
- Avoid circumstances where a consultant or proposer obtains, or appears to obtain, an unfair competitive advantage as a result of other work performed, and thereby prevent circumstances that might invite protests in response to NDOR's selection process; and,
- Provide guidance to consultants and proposers, and prospective consultants and proposers, so they may make informed business decisions concerning opportunities to provide support services to NDOR regarding a potential D/B and/or CM/GC project versus opportunities to propose in response to the subsequent D/B or CM/GC Request for Proposal (RFP) after the final NDOR decision is made regarding project delivery method.

## 1.2 Statutory Authority

Requests for Qualifications (RFQs) and RFPs for services related to potential D/B and CM/GC projects must clearly communicate the requirement for proposers to comply with all applicable state laws related to procurement and ethics, including the Nebraska Disclosure Statute at Sections 49-1499.02 and .03, and including Nebraska Legislative Bill 960, which states in Section 10:

The department may hire an engineering or architectural consultant to assist the department with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the department to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired, and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Nebraska Legislative Bill 960 also states in Section 13(2) that:

A person or organization hired by the Department under section 10 of this act shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

Solicitations for consultants and/or advisors to support the Department during a D/B or CM/GC procurement process should clearly and conspicuously indicate that firms selected to provide such support services will be precluded from: proposing to provide design or construction services for the resultant D/B or CM/CG project; participating as a subcontractor proposing in pursuit of that resultant project; providing technical, legal, or financial advice to prospective proposers or proposers; or directly discussing any aspect of the D/B or CM/GC RFQ or RFP with any prospective proposer or proposer.

For federal-aid projects and in certain other circumstances, NDOR must comply with the Federal Highway Administration's (FHWA's) organizational conflict of interest rules found in 23 CFR Part 636, Subpart A, including 23 CFR Part 636.116.

## 1.3 Prohibited Proposers and Participants on Proposer Teams

Entities to which any of the following conditions A through G apply may not be permitted to participate as a proposer or as a member of a proposer team and may not assist nor advise, neither any proposer nor proposer team member in connection with the relevant project. Entities to which any of the following conditions are known by NDOR to apply for a particular project must be identified in the Statement of Qualifications (SOQ) and repeated or updated in the RFP. It is not NDOR's intent to unduly restrict firms' ability to pursue competitive opportunities with the Department, and while the applicability of any of the listed conditions to a firm with regard to a specific project will preclude that firm from pursuit of that specific project, it will not preclude their pursuit of other NDOR projects. Further, the Department views these prohibitions as being only applicable to first tier consultants and advisors, typically prime contractors, that are privy to NDOR deliberations and discussions that affect the procurement process, and not necessarily applicable to second tier or lower tier consultants and advisors, typically subcontractors, that prepare and provide materials for NDOR use and consideration in the procurement process. Lastly, NDOR reserves the right, in its sole discretion, to make the

Section 1: Conflict of Interest Policy for Design/Build and Construction Manager/General Contractor

final determination regarding whether a particular circumstance precludes a firm from pursuit of a particular D/B or CM/GC project.

- A. Serving as a consultant or advisor to NDOR with regard to the Department's planning, development, or management of a procurement for a specific D/B or CM/GC project. (Note that subconsultants to such consultants or advisors, depending on work performed, would typically not be prohibited.)
- B. Assisting the sponsors in the management of a specific D/B or CM/GC project, including the preparation of RFQ language, RFP language, or RFQ or RFP evaluation criteria.
- C. Conducting preliminary design services for a specific project such as geometric layouts, bridge-type selection, or preliminary bridge design.
- D. Performing design work related to a specific project for other stakeholders.
- E. Performing environmental studies related to the National Environmental Policy Act (NEPA) and other federal permits.
- F. Performing work on a previous contract that specifically excludes them from participating as a proposer or a participant in a proposer team.
- G. Serving under contract with any other entity or stakeholder to perform oversight on a specific project.
- H. Obtaining information that is not publicly available related to a specific project or its procurement from, or having a material discussion regarding a specific project or its procurement with, any person or entity with an organizational conflict of interest including but not limited to the consultants and advisors who have provided technical support regarding the specific project for any such person or entity.

Prospective proposers and proposers must undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, potential, or perceived conflicts of interest arise. Due diligence should extend to investigation of past relationships with other entities and, if applicable, to officers or directors thereof. If a prospective proposer or proposer becomes aware of an actual, potential, or perceived conflict of interest at any time during its participation in a project, it must promptly disclose the matter to NDOR.

## **1.4 Requirements for Respondents that Have Identified Potential Conflict of Interest**

Entities who may have potential conflicts of interest in relation to a specific project and who wish to participate as a proposer or join a proposer team pursuing that specific project must:

- A. Conform to applicable federal and state conflict of interest rules and regulations.
- B. Disclose all relevant facts relating to past, present, or planned interest(s) of the proposer team (including the proposer and its subconsultants and/or subcontractors) which may result in, or could be viewed as, an organizational conflict of interest in connection with the specific project including present or planned contractual or employment relationships with any current employee of the Department.
- C. Disclose all of the work performed in relation to the specific project, and if so directed by NDOR, provide all records of such work performed so that all information can be

Section 1: Conflict of Interest Policy for Design/Build and Construction Manager/General Contractor

evaluated and, if necessary, made available to all potential proposers for the specific project.

- D. Ensure that the entity's contract with any related entity to perform services related to the specific project has expired or has been terminated.
- E. In cases where the potential member of a proposer team is affiliated with an entity with an organizational conflict of interest, describe how the entities in question would avoid conflicts of interest during the procurement process.

On review of the information provided as previously described, the Department will determine, in its sole discretion, if an unfair competitive advantage exists that would preclude the entity from participating on a proposer team.

## 1.5 Other Potential Conflicts of Interest

Because other conflicts of interest may exist in addition to those identified herein, each prospective proposer or proposer must require its team members to identify potential conflicts of interest or any real or perceived competitive advantage relative to the specific project (for example, an employee changing companies, mergers or acquisitions of firms, property ownership, business arrangements, or financial interests). If an organizational conflict of interest is discovered, the prospective proposer or proposer must make an immediate and full written disclosure to the Department that includes descriptions of the conflict or advantage, and the actions the prospective proposer or proposer has taken or intends to take to avoid or mitigate such conflict or advantage. Such disclosures must be received by the Department on or before the deadlines identified in the relevant RFQ and/or RFP. In response to such disclosures, the Department will render determinations regarding the eligibility of the potentially conflicted firm(s) to participate in the proposer's team.

If a conflict of interest applies to an individual, the conflict of interest and prohibition with respect to the individual will not apply to the individual's new place of employment, unless the new employer is an affiliate of the employee's previous employer. If the new employer is not an affiliate of the previous employer and is otherwise eligible to perform services for NDOR pursuant to these guidelines and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigation measures may be required of the new employer with respect to the employee.

## 1.6 Failure to Comply with Policy

If an entity fails to comply with NDOR's rules, including failure to comply with any mitigation measures imposed under the guidelines, or otherwise fails to disclose an actual, potential, or perceived conflict of interest, NDOR may, in its sole discretion:

- Preclude and/or disqualify the entity and its affiliates, including any member of the team which an NDOR D/B or CM/GC project is being pursued, from participation in the planning, procurement, design, construction, and/or development of the particular project, including any competitive process associated therewith;
- Require the entity and its affiliates, including any other entity with which an NDOR D/B or CM/GC project is being pursued, to implement mitigation measures;
- Terminate the entity and its affiliates from any contract with NDOR for the planning, procurement, design, construction, and/or development of a particular project; and/or,

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- Pursue any and all other rights and remedies available at law, in equity or set forth in any relevant RFQs or RFPs, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the entity's failure to comply with this policy, including, but not limited to, costs resulting from third-party challenges to the procurement or NDOR's re-procurement of the affected project.

If, at any time during the procurement process, the Department discovers a conflict of interest or potential advantage, other than those identified herein and not previously identified by the affected proposer, the Department may, at its sole discretion, disqualify the affected proposer or cancel the procurement, or if said discovery occurs after the conclusion of the procurement process, terminate the D/B or CM/GC contract.

The Department recognizes that prospective proposers and proposers must maintain business relationships with other public and private sector entities to continue as viable businesses. The Department will consider this while evaluating the appropriateness of proposed measures to mitigate potential conflicts. The Department would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated.

## 1.7 Potential Conflict of Interest Disclosure Statement – Proposers

Proposers and members of the proposer team must complete the Disclosure of Potential Conflict of Interest Statement provided as Attachment 1-2 (*Potential Conflict of Interest Disclosure Statement – Proposer*) and submit it along with an associated SOQ and proposal. If a proposer determines a potential conflict of interest exists, it must disclose the conflict to the Department; however, such a disclosure will not necessarily preclude a proposer for further consideration with regard to the relevant project. To be considered further, proposers that have determined a potential conflict of interest exists must propose measures to avoid, neutralize, or mitigate all potential conflicts. To avoid any unfair taint of the selection process, the Potential Conflict of Interest Disclosure Statement must be submitted in a separate envelope or package from the corresponding SOQ or proposal, and it will not be provided to the Selection Committee (SC) members. The Department will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer is eligible to participate in the procurement notwithstanding the potential conflict. Resolution of the conflict of interest is ultimately at the sole discretion of the Department. The Department reserves the right to void a proposer's having been shortlisted or cancel the procurement if said proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is false or misleading.

## 1.8 Continuing Obligations Regarding Conflict of Interest

Prospective proposers and proposers pursuing a particular D/B or CM/GC project shall arrange their affairs so as to prevent conflicts of interest from arising. Conflict of interest guidelines and policies shall continue to be monitored and enforced throughout the procurement process and during the term of the resultant D/B or CM/GC contract. If an organizational conflict of interest is discovered at any time during the procurement process, the proposer will make an immediate and full written disclosure to the Department that includes a description of the action that the proposer has taken or intends to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and the proposer was aware of an organizational conflict of interest prior to submitting a Potential Conflict of Interest Disclosure Statement and did not disclose the conflict, the Department may remove the proposer from further participation

Section 1: Conflict of Interest Policy for Design/Build and Construction Manager/General Contractor

in the procurement. Continuing obligations regarding organizational conflicts of interest must be identified to prospective proposers and proposers in RFQs and RFPs.

**Attachment 1-1**

**Potential Conflict Of Interest Disclosure Statement –Selection Team Participant**

I, \_\_\_\_\_ as a participant in the preparation of the Request for Qualifications (RFQ) and/or Request for Proposal (RFP), and/or development of associated evaluation criteria, and/or in agreeing to participate in the selection process by reviewing and evaluating Statements of Qualifications and/or proposals (the Procurement Process), for the design and construction or design support and potential subsequent construction of the

\_\_\_\_\_ (the Project),  
make the following representations:

- A. Except as set forth in this Disclosure Statement, neither I nor any member of my immediate family has a direct or indirect financial interest in any entity participating in any proposal with regard to the Project;
- B. Except as set forth in this Disclosure Statement, no business or organization with which I am associated has a direct or indirect financial interest in any entity participating in any proposal with regard to the Project;
- C. Except as set forth in this Disclosure Statement, no member of my immediate family or other person, business, or organization with which I am associated is negotiating or has an arrangement concerning prospective employment relating to any entity participating in any proposal with regard to the Project;
- D. Except as set forth in this Disclosure Statement, neither I nor any member of my immediate family is involved in discussions with any business participating in any proposal with regard to the Project;
- E. I will not solicit or accept, directly or indirectly, any gratuities, unwarranted privileges or exemptions, favors or anything of value from any firm under consideration for the D/B or CM/GC contract associated with the Project, and I recognize that doing so may be contrary to statutes, ordinances, and rules governing or applicable to NDOR or may otherwise be a violation of law; and,
- F. In the event that the circumstances under which I made this Disclosure Statement change such that a revised response pertaining to items A through E must be provided, I will promptly contact the NDOR Planning and Project Development Engineer and prepare a revised Disclosure Statement.

Further, I hereby affirm that I have disclosed any potential conflicts of interest where indicated below on this Conflict of Interest Disclosure Statement, or alternately, I hereby certify that to the best of my knowledge, I do not have a conflict of interest, either real or apparent, as a result of a direct or indirect financial interest on my part or that of any member of my immediate family, nor of my employer, partner(s), or joint venture members, in any firm under consideration for the D/B or CM/GC contract associated with the Project.

Further, I acknowledge that NDOR may require revisions to the management plan described in Section II below of this disclosure statement prior to approving it and that NDOR has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential conflicts of interest described in Section I below of this disclosure statement.

Section 1: Conflict of Interest Policy for Design/Build and Construction Manager/General Contractor

This Agreement is subject to the laws of the State of Nebraska and applicable rules and regulations.

No Conflict of Interest to Disclose

Conflict of Interest and Mitigation Identified (Attach additional pages as necessary)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Printed or Typed Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_



Section 1: Conflict of Interest Policy for Design/Build and Construction Manager/General Contractor

**Section I – Description of Potential Conflicts of Interest**

**Section II – Plan for Mitigating or Managing Potential Conflicts of Interest**

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**Approved by the Nebraska Department of Roads**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_

Name and Title: \_\_\_\_\_



**Attachment 1-2**

**Potential Conflict of Interest Disclosure Statement – Proposer**

I, \_\_\_\_\_, as an authorized representative of the proposer or prospective proposer, or as a member of the proposer's or prospective proposer's team, identified below, pursuing the

\_\_\_\_\_ Design/Build (D/B) or Construction Manager/General Contractor (CM/GC) contract (the Project), hereby affirm that I have disclosed any potential organizational conflicts of interest where indicated below on this Conflict of Interest Disclosure Statement, or alternately, I hereby certify that to the best of my knowledge, that the proposer or prospective proposer identified below does not have a conflict of interest, either real or apparent, as a result of any contractual relationships, work performed previously or currently being performed, or any personal relationships.

This Agreement is subject to the laws of the State of Nebraska and applicable rules and regulations.

No Conflict of Interest to Disclose

Conflict of Interest and Mitigation Identified (Attach additional pages as necessary)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Printed or Typed Name and Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Section 1: Conflict of Interest Policy for Design/Build and Construction Manager/General Contractor

Proposer Team Name: \_\_\_\_\_

Description of Potential Conflicts of Interest

Plan for Mitigating or Managing Potential Conflicts of Interest

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**Approved by the Nebraska Department of Roads**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_

Name and Title: \_\_\_\_\_

## Section 2 Design/Build and Construction Manager/General Contractor Project Selection Guidelines

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### 2.1 Introduction

The decision to use an Accelerated Project Delivery Method (APDM) such as D/B or CM/GC, depends on the simultaneous consideration of multiple, project-specific characteristics. There are no absolute tests that drive the decision one way or another and different project characteristics can affect the decision-making process in greater or lesser measures depending on circumstances of the project. These Project Selection Guidelines (Guidelines) are to be used to help NDOR staff in their decision-making processes; the Guidelines are not strict rules.

These Guidelines are organized by project characteristics. Attachment 2-1 (Project Selection Guidelines) that corresponds to the Guidelines is provided at the end of this Section. In the matrix, the applicability of Design/Bid/Build (D/B/B), CM/GC, and D/B is evaluated for individual project characteristics; reinforcing the need for holistically considering the applicability of different project delivery methods rather than looking to a few characteristics as tests to absolutely drive the decision.

### 2.2 Primary Project Delivery Objective

After the scope is defined and a preliminary risk assessment is performed, the fundamental project characteristics need to be examined. These include NDOR control of detailed design, completion schedule, early cost and schedule certainty, overall cost, reduced NDOR staff involvement, and technical innovation. Each of these is described in the following paragraphs. (See Section 7 for details regarding Risk Assessment.)

**NDOR Control of Detailed Design** – To the extent that, for a particular project, NDOR considers it necessary, or would prefer to maintain a high degree of control during final design, D/B/B or CM/GC will be considered; D/B is not a suitable method under such circumstances. An example might be rehabilitation of a bridge originally designed by NDOR. In that case, NDOR might want control over specific elements to be replaced and/or upgraded.

**Completion Schedule** – The overall project delivery schedule is typically the primary reason for using D/B or CM/GC project delivery. D/B and CM/GC methods may accelerate project delivery relative to D/B/B, due to the partial overlap of design and construction with D/B and to the avoidance of the procurement process for a construction contractor with CM/GC. The degree to which a particular project would be feasible to implement with more concurrent activities may affect the potential magnitude of schedule acceleration with D/B or CM/GC. Note that while overall project duration may decrease, construction duration may remain essentially unchanged. In addition to schedule compression because of concurrent activities, construction duration may be shortened by efficiencies that result from the designer and construction contractor working together in the D/B and CM/GC methods.

If acceleration of project completion is the reason to select D/B project delivery, there are outside constraints that could affect project delivery (such as, environmental permits, extensive right-of-way (ROW) acquisition,, and complex third party agreements). It is possible that delays in the D/B addressing these constraints could eliminate any potential schedule advantage from

the D/B method. In such cases, consider one or more separate contracts to address these issues outside of the D/B contract and preserve the schedule compression potential of the D/B method; if this is not possible, the project is most likely not an appropriate candidate for D/B project delivery.

Questions to ask related to whether D/B project delivery can save time relative to D/B/B include:

- Must the work begin or end by a specific date?
- Is the available time unusually short?
- Are work windows a significant issue?
- Are certain seasons or dates critical?
- Are traffic detour and/or closure periods limited?

If the answer to these questions is yes, the project is most likely an appropriate candidate for D/B.

**Early Cost and Schedule Certainty** – If it is necessary and/or desirable to have cost or schedule certainty early in the project, D/B project delivery would be the most advantageous method. Conversely, both D/B/B and CM/GC do not provide cost or schedule certainty until after completion of final design or later.

**Overall Cost** – There is no universally accepted cost advantage associated with project delivery using D/B/B versus CM/GC or D/B. Lowest cost might be attained with any one of these methods, depending on specifics of the project and the quality of project management.

**Reduced NDOR Staff Involvement** – For reasons such as a large volume of project activity placing extraordinary workload demands on existing staff, inability to bring aboard additional staff due to a hiring freeze, or limited available staff resources with a particular skill set, NDOR may prefer to reduce the level of staff involvement in a particular project. Regardless of the reason, D/B project delivery allows NDOR to reduce the level of staff involvement, relative to both D/B/B and CM/GC.

For D/B project delivery, be aware that scope definition and proposer selection require a greater Owner effort up front and have a greater affect on project success than in D/B/B or CM/GC project delivery. To offset any NDOR staff concerns, a consultant can be used to supplement NDOR staff throughout the delivery of the project. It is important to note that the decision to use D/B project delivery will not rest solely on availability of NDOR staff.

**Technical Innovation** – Technical innovation is typically constrained by the prescriptive nature of D/B/B project delivery and stimulated by the flexible nature of D/B project delivery. CM/GC project delivery may foster technical innovation depending on the engagement level and cooperation level between the design team and the construction team, and the prime/sub relationship in the CM/GC team of the construction contractor and the technology provider.

## 2.3 Status of Funding

Another fundamental consideration in selecting the most advantageous project delivery method is the status of project funding.

**Project is Programmed and Funding is Committed** – Having all project funding in place does not favor any of the three project delivery methods available to NDOR. However, it is essential for using D/B because the NDOR funding obligation is part of the D/B contract.

**Project is Programmed but Funding is Not Fully Committed** – Partial funding, while unsuitable for D/B project delivery, is sufficient for initiating D/B/B or possibly CM/GC project delivery.

**Project is Not Programmed** – In the absence of construction funding, there may still be funding available to complete design, and if NDOR has a high level of confidence in the project ultimately proceeding, it may be desirable to pursue a design contract, following a D/B/B project delivery strategy.

## 2.4 Project Size

The size or estimated cost of a project will be considered when determining the most advantageous project delivery method. The following size-related factors should be gauged to determine the best project delivery method.

- Projects with large estimated costs usually offer the greatest overall potential benefits from D/B and CM/GC due to the potential of innovative design or construction alternatives. However, larger projects may present a greater risk. At the same time, larger projects may limit the number of potential proposers because of the resources required to deliver such projects.
- D/B may be the only project delivery method available on large projects due to availability of NDOR staff.
- Smaller projects may present opportunities for specific benefits from D/B, such as specialty work or Intelligent Transportation System (ITS) projects. The use of D/B or CM/GC contracting on smaller projects with lower risks may still achieve the benefits of compressed project schedule and lower contracting costs. Additionally, smaller firms can compete and gain experience with the D/B and CM/GC project delivery methods.

## 2.5 Project Complexity

Projects that are complicated present more coordination challenges and potential for design and/or construction innovation, and therefore more potential benefits from a D/B or CM/GC approach. A Best Value solution is often a direct function of the compatibility between the contractor's capabilities and the features of the design. Projects for which the answer to the following questions is yes may be best addressed through D/B or CM/GC contracting, where unique solutions, based on the specific characteristics, can be proposed.

- Will construction phasing be a major issue? (D/B and CM/GC)
- Does the site present unique or unusual conditions? (D/B/B and CM/GC)
- Are specialty skills needed for design or construction? (D/B)
- Does the project include emerging technology? (D/B)
- Will extensive temporary facilities be required? (D/B and CM/GC)

## 2.6 Project Permitting Status

Securing of permits and approvals is a critical step in preparing to employ D/B project delivery, but it can be performed after initiating design when using D/B/B or CM/GC methods. Due to the time required to obtain environmental permits or U.S. Army Corps of Engineers (USACE)

approval, neither D/B nor CM/GC should be considered if the environmental or USACE permit processes have not been started. If these processes are nearing completion, D/B and CM/GC are most likely viable project delivery methods for the given project.

## 2.7 Public Endorsement

A project that is well received by the public may be delivered using any of the three project delivery methods available to NDOR. The greater the controversy surrounding a project, the less suitable APDM would be for that project.

## 2.8 Project Types and Other Characteristics

When evaluating potential projects for D/B or CM/GC contracting, NDOR will consider the following example project characteristics to help identify likely candidates.

- Projects for which changes are anticipated during construction such as urban projects with high potential for unforeseen utility issues (these projects may be better suited for CM/GC).
- Projects that require minimum ROW acquisition and utility relocation; to avoid potential associated delays (these projects may be better suited for D/B).
- Projects that would have a well-defined scope for all parties (design and construction); this applies only to D/B and is required by the nature of the D/B project delivery process.
- Projects that have room for innovation in the design and/or construction effort are able to take advantage of the flexibility offered by D/B project delivery.
- Projects with low risk of unforeseen conditions that might offset or eliminate potential D/B or CM/GC schedule acceleration.
- Projects with low possibility for significant change during all phases of the work; CM/GC, and to a lesser extent D/B/B, are better able to deal with changes than D/B (these projects may be better suited for CM/GC than D/B). The level of possibility can be evaluated during the risk assessment which is done during the procurement phase.

Examples of projects that may be good D/B contracting candidates include the following:

- Major bridge projects (although these are good D/B/B and CM/GC candidates as well).
- ITS projects.
- Interchange improvements with innovative design such as diverging diamond or system interchanges.
- Buildings, including office buildings, rest areas, welcome stations, and pedestrian overpasses (although these are good D/B/B and CM/GC candidates as well).
- Interstate widening projects (although these are good D/B/B and CM/GC candidates as well).

Examples of projects that may be good CM/GC contracting candidates (while also being good D/B/B candidates) may include projects that meet the following criteria:

- Major roadway or bridge rehabilitation or repair.



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- Urban construction or reconstruction with major utilities, ROW, or other major unknown factors.

## 2.9 Summary: Why Consider Design/Build?

The objective of D/B contracting is to deliver projects better, faster, and with fewer Department resources than required by the conventional D/B/B method. This objective is likely to be achieved however, only if certain characteristics are considered in the project selection process. The primary questions to ask are:

- Can significant time savings be realized through concurrent design and construction activities?
- Will higher quality products be realized from designs tailored to contractor capability?
- Do constraints of availability of NDOR staff affect the candidate project's schedule?
- Will there be less affect on the public with the use of expedited construction processes?

If the answer to these questions is yes, the project is most likely a good D/B candidate.

## 2.10 Summary: Why Consider Construction Manager/General Contractor?

The objective of CM/GC is to deliver projects better and faster than the conventional D/B/B method. Achievement of these objectives depends on careful consideration of the project scope in the project delivery selection process. Helpful questions to ask include:




- Does the scope suggest that construction phasing issues might be reduced by integrating constructability considerations provided by the CM into the design process?
- Is the scope complex or does it include new technology; the construction and implementation of which would benefit from the early participation of the CM in the design process?











































If the answer to these questions is yes, the project is most likely a good CM/GC candidate.

Weigh the project goals, potential benefits, and probable risks carefully, and use all of the information provided in these Guidelines to determine if D/B or CM/GC APDMs offer the best approach to successfully delivering a particular project. In this process, examine candidate projects for unusual or unique requirements that could be better addressed by using D/B or CM/GC project delivery; examples include severe ROW limitations, extensive traffic handling, narrow construction windows, and time sensitive staging.



**Attachment 2-1**  
**Project Selection Guidelines**

Delivery Method is Compatible with the Characteristic	
Delivery Method May Be Compatible with the Characteristic	
Delivery Method is Not Compatible with the Characteristic	

Project Characteristics	Likely Candidate for Delivery as		
	D/B/B	CM/GC	D/B
Primary project delivery objective			
NDOR control of detailed design			
Completion schedule			
Cost			
Early cost and schedule certainty			
Reduced NDOR staff involvement			
Technical innovation			
Funding			
Programmed and funding committed			
Programmed but full funding not committed			
Not programmed			
Project size			
Greater than \$50 million			
\$10 million to \$49 million			
Less than \$10 million			
ITS projects			
Project complexity			
Numerous primary features (road, bridges, ITS)			

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Project Characteristics	Likely Candidate for Delivery as		
	D/B/B	CM/GC	D/B
Closely interrelated features			
Constrained construction phasing			
Unique or unusual site conditions			
Specialized skills need for design or construction			
Emerging technology included			
Extensive temporary features required			
Project permitting status			
All approvals received or no impacts			
Nearing completion of NEPA/USACE approvals			
Environmental/USACE permits not started			
Public endorsement of project			
Supported			
Controversial			
Other project characteristics			
Minimum ROW or utility relocation			
Well defined scope			
Projects with changes expected during construction			
Project types			
Major bridge projects			
ITS Projects			
Interchange improvements			
Interstate widening			
Buildings, rest areas, pedestrian overpasses			

Section 2: Design/Build and Construction Manager/General Contractor Project Selection Guidelines

Project Characteristics	Likely Candidate for Delivery as		
	D/B/B	CM/GC	D/B
Roadway/bridge rehab or repair			
Urban construction with major utilities/ROW needs			
Mill and resurfacing			

Notes:

D/B/B = Design/Bid/Build, CM/GC = Construction Manager/General Contractor, D/B = Design/Build, NDOR = Nebraska Department of Roads, ITS = Intelligent Transportation System, NEPA = National Environmental Policy Act, USACE = U.S. Army Corps of Engineers, ROW = right-of-way



## Section 3 Design/Build Procedures

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### 3.1 Procurement Methodology

Employing D/B project delivery is significantly different from traditional D/B/B project delivery in several ways; the two most important differences are the method of proposer selection and the degree of owner involvement after proposer selection. Unlike the separate, sequential contracts for design and construction found in D/B/B, a Design/Builder is selected based on a combination of qualifications and price, commonly referred to as Best Value, to perform both the design and construction roles. Also, unlike D/B/B in which the owner actively participates in the design process and reviews and approves a series of increasingly detailed levels of design, the owner does not actively participate in the design process in D/B project delivery. Both of these differences underscore the criticality of the owner having a clear understanding from the outset of its project goals and preparing procurement documents that will serve those goals, such as schedule acceleration, technology innovation, minimizing traffic impacts during construction, or minimizing impacts on environmentally sensitive sites.

Procedures for CM/GC procurement are included in [Section 8 \(CM/GC Procedures\)](#).

Nebraska Revised Statutes 39-2808 to 39-2823 govern NDOR with regard to application of APDM to NDOR projects.<sup>1</sup>

The following general policies are the basis of the NDOR D/B procedures:

- NDOR will establish project specific goals early in the project development process. D/B procurement will not proceed without consensus and formal acceptance of shared project goals among key NDOR staff responsible for project success.
- NDOR will follow a two-step procurement process that combines an RFQ and an RFP. [Attachment 3-1 \(Design/Build Procurement Flowchart\)](#) provides a general overview of the RFQ process followed by the RFP process culminating in a contract award.
- Prospective D/B proposers will be qualified through the RFQ process.
- NDOR will shortlist at least two, but typically no more than three, firms or teams that are the most qualified based on their SOQs. Pursuant to Nebraska Revised Statutes 39-2813(4), if only one SOQ is received, NDOR may continue or cancel the procurement. Only shortlisted firms or teams will be provided with an RFP and invited to propose. NDOR will not review or consider alternative proposals or proposals with options, except as provided in the RFP Alternative Technical Concept (ATC) and Value Added Proposal (VAP) processes.
- NDOR will select the Design/Builder through a competitive, sealed, two-envelope proposal method using Best Value selection criteria. One envelope shall contain the Design/Builder's Price Proposal and the other their Technical Proposal.
- Barring extenuating circumstances, NDOR would award the D/B contract to the responsive and responsible proposer offering a proposal that meets the criteria established by NDOR and that is determined by NDOR to provide the Best Value through evaluation based upon the criteria set forth in the RFP.

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<sup>1</sup> <http://nebraskalegislature.gov/laws/statutes.php?statute=39-2808>

## 3.2 Formulation of Request for Qualifications

The objective of the RFQ process is to determine the qualifications of the proposer teams so that only the best qualified proposers are shortlisted to receive an RFP and to submit detailed proposals. NDOR's standard pre-qualification process will not apply to D/B contractors; NDOR will rely solely on the RFQ process to identify the most qualified proposers. The RFQ will focus primarily on the capabilities, experience, and past performance of the proposer team and Key Personnel regarding specific issues pertinent to the particular D/B project, as well as team organization, Quality Assurance and Quality Control (QA/QC) approach, current safety record, and financial capacity. The RFQ will include, at a minimum, the following eight sections:

- Introduction: Outline of general information pertaining to the project, including but not limited to, goals and objectives of the project, and roles and responsibilities.
- Background Information: General overview of the project including the proposed procurement schedule.
- Required Content for SOQs: Minimum requirements of the proposer, Key Personnel, and project approach.
- Evaluation Process: Evaluation process and procedures, scoring elements and weights, and notification process.
- SOQ Submittal Requirements: Standard submittal information and formatting requirements.
- Protest Procedures and Public Records Act: Information regarding applicable protest procedures.
- Debriefing Meetings: General information regarding debriefing process.
- NDOR Reserved Rights: List of rights being retained by NDOR concerning the procurement.

The information requested in the RFQ considers the proposer's SOQ preparation costs and is limited to the information necessary to shortlist the proposers. The RFQ will not generally request a proposer's project approach and understanding; this information is included in the RFP after shortlisting.

The RFQ will not request more experience on the part of Key Personnel than is necessary. Doing so is unlikely to result in a better SOQ and may meaningfully reduce the number of individuals available for the project. Note that Key Individuals identified in an SOQ may not be changed after selection without written approval by NDOR. Therefore, required proposal team experience requested in the RFQ should be tied to the Key Personnel rather than corporate history. The RFQ will identify the ideal type of experience needed to obtain a maximum score in the evaluation.

A detailed description of the individual sub-sections contained under each section listed above can be found in Appendix A (*Typical Example of RFQ Document*).

In response to the RFQ, all proposers may submit an SOQ; providing required information identified in the RFQ to NDOR for evaluation and scoring as outlined in Section 4 (*Design/Build Statement of Qualifications Evaluation Guidelines*).



### 3.3 Formulation of Request for Proposals

Formulation of the RFP Package is a significant effort for a D/B procurement. The RFP Package defines the desired project outcome and ensures that the required information is incorporated. This section describes special staff needs, necessary document reviews, and NDOR's anticipated approach for developing the major components.

On completion of the shortlisting process by NDOR, an RFP will be provided to only the shortlisted proposers. The RFP will be divided into four main parts:

- Part 1: Instructions to Proposers (ITP)
- Part 2: Contract Terms and Conditions (Agreement)
- Part 3: Technical Provisions (TPs)
- Part 4: Reference Information Documents (RIDs)

#### 3.3.1 Instructions to Proposers

The ITP provides a significant amount of detail on the project and NDOR's expected outcomes. The ITP includes a project statement that contains information about the scope and nature of the project, as well as the NDOR budget for the project. The primary purpose of the ITP is to outline the expected outcomes and specific requirements for the project, as well as specific requirements for the proposers' final proposals regarding their technical approach to executing the project and their proposed cost to do so. The ITP will request information regarding specific design and construction actions, intended final products, construction staging, traffic control, and project management. In addition, NDOR may request descriptions or design development of specific project elements to a specified level, to demonstrate the intent of the proposers. The ITP will call for other items, such as safety plans and public information plans, to be outlined in the proposal and submitted after contract award.

A detailed example of what may be included in an ITP can be found in [Appendix B \(Typical Example of RFP ITP Document\)](#).

##### 3.3.1.1 Questions and Responses Regarding the Request for Proposal

The ITP will contain specific guidelines and directions to proposers that address the following:

- Proposers shall be responsible for reviewing the RFP and any Addenda issued by NDOR 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 that proposer does not understand.
- Comments or questions regarding the RFP, including requests for clarification and requests to correct errors, shall be submitted by hard copy, facsimile, or other electronic transmission; no telephone or oral requests will be considered.
- Responses to comments or questions will be in writing and will be delivered to all proposers, with the exception of those questions identified by a proposer, and agreed by NDOR, as containing confidential or proprietary information relating to proposer's proposal and/or ATCs.
- NDOR may convene pre-proposal meetings with proposers.

- NDOR reserves the right, in its sole discretion, to revise, modify, or change the RFP and/or procurement process at any time before the proposal due date through the issuance of Addendums. If necessary the amendment may extend the due date.
- NDOR D/B related procedures will be available to proposers, in hard copy and/or electronically, in one or more publically accessible locations.

### 3.3.1.2 Stipend

Due to the substantial amount of design work that is required, the development of a D/B proposal is substantially more costly than the development of separate design proposals and construction bids under the D/B/B project delivery method. To encourage the development of well-prepared D/B proposals, NDOR may partially compensate D/B proposers for their proposal materials, by paying proposers for their proposal work product (these payments are referred to as Stipends). Firms or teams that are issued an RFP and that submit a responsive proposal (as defined in the ITP) but are ultimately not selected would be eligible to be partially compensated by means of the Stipend. The Best Value selected proposer, known at that point as the Design/Builder, would not receive any Stipend.

Stipend payments for work product contained in the proposal secure ownership of the intellectual property rights associated with the design materials in the proposal. This allows NDOR to use these design materials as it sees fit, including sharing them with the selected Design/Builder for potential incorporation into their plans. A proposer may elect to decline to accept the payment for work product, and thereby retain ownership of the intellectual property rights associated with their proposal materials; such action is typically intended to protect information that the unsuccessful proposer considers proprietary.

The RFP must state the amount of the Stipend and must include a copy of the Work Product Agreement Form. The amount of the Stipend will be commensurate with the value of the work and the number of shortlisted firms or teams. The amount of the Stipend will be proportional to the estimated price of the D/B contract for the project and generally consistent with the following guidelines:

**Table 3.3-1. Stipend Guidelines**

Estimated Contract Value (ECV)	Payment for Work Product (Stipend)
\$5 million to \$50 million	$0.0025 \times \text{ECV}$
Over \$50 million	$\$125,000 + 0.001 \times (\text{ECV} - \$50 \text{ million})$

The amount of the Stipend may be increased for very complex projects that may require more upfront design work to prepare a competitively priced proposal. Payment of the Stipend will be made within 30 days of NDOR's receipt an invoice following the award of the contract or a decision not to award. Proposers will have an option to not request payment for their work product. In this case, the information contained in the proposal or discussed with NDOR remains proprietary.

Should NDOR cancel the procurement after issuance of the RFP but prior to receipt of proposals, NDOR may pay a reduced Stipend to all proposers. The amount of the reduced Stipend to be paid will be determined by NDOR.

Should NDOR cancel the procurement after proposals are received but prior to selection, all responsive proposers may receive the payment for work product as defined in the RFP.

Under no circumstances will the State of Nebraska, NDOR, or any official or employee of the State or NDOR be liable for or reimburse any costs incurred by a proposer, successful or unsuccessful, in developing a proposal unless otherwise noted in the RFP. In the event the D/B procurement process is terminated for any reason prior to issuance of the RFP, neither the State of Nebraska, NDOR, nor any official or employee of the State or NDOR shall be responsible for any stipend, partial or in full, or for any costs incurred by proposers in developing their proposals.

### *3.3.1.3 Proposer's Innovation*

In the D/B process, proposer's innovation is a key element for consideration by NDOR. Innovation can be achieved under two concepts:

- ATCs
- VAPs

ATCs are ideas or concepts that relate directly to the scope of work provided in the RFP. An example of a potential ATC can be seen in the following: NDOR provides proposer's with the concept alignment, this concept alignment shows the use of retaining wall along the approach to the overhead structure; however, the proposer determines that embankment can be used thereby saving the cost of the retaining structures while maintaining the proposed ROW—this would be considered a proposer's ATC.

VAPs are ideas that are not required by the scope of work provided in the RFP and that add value without increasing cost. An example of a potential VAP can be seen in the following: NDOR informs proposer's that a 2-year warranty is required on all lighting components; however, the proposer determines that by selecting a certain LED element for the lights an extended 5-year warranty can be secured—this extended warranty would be considered a proposer's VAP.

### *3.3.1.4 Alternative Technical Concepts*

ATCs are proposer's ideas or concepts by which an element of the scope of work identified in the RFP might be accomplished to reduce cost, accelerate delivery, and/or improve quality of the competed project. ATCs provide flexibility to the proposers to enhance innovation and achieve efficiency. ATCs are confidential elements of the proposal process. ATCs are scored and are intended to be an additional means by which proposers may differentiate themselves from their competitors in the selection process.

The use of ATCs is encouraged under the current FHWA D/B rules and NDOR will typically use the ATC provision in all its D/B project procurements. The use of ATCs on D/B federal-aid projects is allowed under 23 CFR 636.209(b).

ATCs may consist of suggested changes to NDOR's supplied basic configurations, project scope, design, or construction criteria. These proposed changes provide a solution that is equal to or better than the requirements in the RFP. If the ATC is acceptable to NDOR and NDOR has communicated its approval in writing, the concept may be incorporated as part of the proposing team's technical and price submittal.

ATCs have been shown to be cost effective on large D/B projects with significant scope and where the contracting agency believes that the Best Value selection may depend on the degree of innovation in the technical solutions offered by the proposers.

#### **3.3.1.4.1 Value Added Proposals**

VAPs are proposer's enhancements to the project, which are not included in the scope of work identified in the RFP that would add value through improved durability or other quality metric without additional cost to NDOR. VAPs are confidential elements of the proposal process. VAPs are scored and are intended to be an additional means by which proposers may differentiate themselves from their competitors in the selection process.

An NDOR D/B RFP may include a provision for project VAPs, with a specified number of years of additional service life and/or other details as to what is to be covered. As a general rule, routine maintenance is not intended to be covered by a VAP. Standard value added clauses may need to be modified to fit specific project needs.

### **3.3.2 Contract Terms and Conditions**

The RFP must include a copy of the proposed D/B Agreement, including any contract terms and conditions that are subject to further negotiation. The proposed Agreement must include general provisions, special provisions, and a description of risk transfer associated with the project.

#### **3.3.2.1 General Provisions and Special Provisions**

General Provisions (GPs), sometimes referred to as General Conditions, are the contract terms and conditions that are used in multiple contracts, either as generic terms and conditions that apply to all contracts of a given type for a given owner, or to all contracts of a large, multi-contract project or program. Special Provisions (SPs), sometimes referred to as Special Terms and Conditions, are those contract provisions that are not universally applicable and that refer solely to the individual project. For purposes of NDOR D/B contracts, GPs and SPs will be adopted based on NDOR's current D/B/B contract GPs. Many of these provisions will come directly from NDOR's standard specifications. The RFP will define which sections of the standard specification will be included in the GPs that apply to the D/B contract

#### **3.3.2.2 Risk Responsibility Allocation Chart**

For each D/B project, NDOR will determine how far to carry the preliminary design. The development of a risk allocation matrix is a crucial part of making this determination.

Early in the project development process, the NDOR project team will identify potential risks associated with the project. These risks will then be assigned to NDOR or the Design/Builder. The risk allocation matrix will be used throughout the development and implementation of the project. The matrix will not only govern which party is responsible for a given risk but will help the project team determine how far to advance each technical element within the preliminary design during development of the RFP. The risk allocation matrix should be revisited and updated throughout the life of the procurement process as additional information becomes available.

The risk allocation matrix will vary from project to project to address the unique characteristics of each. See [Section 7](#) (*Risk Management Guidelines for Design/Build and Construction Manager/General Contractor*) for more information on developing the risk allocation matrix for a project.

### *3.3.2.3 Design/Builder Progress Payments*

NDOR projects delivered using D/B will employ a progress-based payment methodology, similar to that employed on D/B/B projects. Following execution of the contract or agreement and prior to work being performed on the project, the Design/Builder will submit a cost-loaded Critical Path Method (CPM) schedule to NDOR for review and approval. If NDOR included a Cash Flow Schedule in the RFP, the Design/Builder shall ensure that their cost-loaded CPM schedule conforms to the cash flow schedule. Once the CPM schedule is approved, it will serve as the basis for making monthly progress payments. A schedule of pay items will be developed from the cost-loaded CPM schedule that will serve as support for the monthly invoicing. Each month the Design/Builder will estimate the percent complete for each CPM schedule activity and multiply that percentage by the amount for that activity in the cost-loaded CPM schedule to determine the extended costs. The Design/Builder will assign those extended costs to the pay items in the schedule of pay items and produce an invoice for NDOR to process. The invoice will be submitted to NDOR's District representative. In the event the cash loaded CPM schedule changes in excess of 2 weeks, the Design/Builder will submit a revised cost-loaded CPM schedule with the invoice. The invoice will be reviewed and must be approved by NDOR staff prior to payment. Every effort will be made to pay the invoice within 30 days, up to the maximum amount allowed under the NDOR's Cash Flow Schedule.

### *3.3.2.4 Incentives*

Contract incentives can be used to motivate attainment of project goals, such as schedule acceleration. Projects that are suitable candidates for schedule acceleration incentives are those with critical completion dates, significant road user delay costs, and/or local community or local business impacts. Projects that are not suitable candidates for schedule acceleration incentives are ones with open-to-traffic constraints, such as weekends to accommodate seasonal traffic or special events, and projects with third-party coordination concerns, such as for utility relocations.

Incentives are paid if they are included in the contract and the Design/Builder meets the completion and/or open-to-traffic dates specified in the contract. The amount of the incentives, both per day and total amount available, must be specified in the contract. The amount of incentives per day will be based on road user delay costs with the total incentive amount limited to a maximum of 5 percent of the estimated construction costs. For these incentives, estimated construction cost only is used as the basis to determine a fixed amount to be included in the contract because incentives should be related to cost of construction only, not design or other costs that may be included in the Estimated Contract Value. Liquidated damages may apply if the Design/Builder fails to meet required schedule dates, regardless of the use of incentives.

## **3.3.3 Technical Provisions**

For the Technical Provisions (TPs), it is NDOR's goal that a performance approach be used whenever practicable. Use of prescriptive requirements, although allowed, will be minimized as the prescriptive nature of the terms may reduce the proposers' potential for innovation in their proposals.

### *3.3.3.1 Performance versus Prescriptive Requirements*

In addition to schedule acceleration and technological innovation, an additional benefit of D/B project delivery is the flexibility afforded to the Design/Builder. This flexibility must be considered reasonable and responsible by the owner. Such flexibility is maximized by using

performance-driven requirements wherever possible and limiting the use of prescriptive requirements to those project elements for which a prescriptive requirement is demonstrably essential. Examples of requirements that are justifiably prescriptive include dimensional requirements such as lane widths, number of lanes, overhead bridge minimum clearances, and technological interfaces, such as for existing ITS variable message signs, wayside cameras, and traffic detection circuits.

### 3.3.3.2 Base Configuration

The Base Configuration consists of the mandatory design requirements or technical requirements for the project, consistent with the information presented in the environmental documentation. These include the project endpoints, alignment centerline (with permissible deviation defined), number of lanes, intersecting roadways with which interchanges are to be built, overcrossings and undercrossings, and dimensional requirements as previously mentioned, such as lane widths, shoulder widths, and minimum overhead clearances. Where appropriate, standards may be referenced rather than calling out individual dimensional requirements.

### 3.3.4 Reference Information Documents

RIDs may include environmental documents and decisions, old contract plans or as-built plans, reports, condition surveys, utilities plans, agreements, other contracts, photographs, old boring logs, correspondence, and meeting minutes. RIDs will be used to provide information that may be useful or of interest to the proposers in preparing their proposals and in implementing the contract. The RFP and contract will clearly state that RIDs are provided to the proposers for use at their own risk and come without NDOR warranties, except as specifically provided for in the contract documents. The proposers will need to verify the accuracy of any information contained in the RID. RIDs are not to be confused with RFP technical requirements.

### 3.3.5 Request for Proposal Evaluation Process

In response to the RFP, all shortlisted proposers will be invited to submit a Technical Proposal and a Price Proposal, providing required information identified in the RFP ITP to NDOR for evaluation and scoring as outlined in [Section 5](#) (*Design/Build Proposal Evaluation Guidelines*). In accordance with Nebraska Revised Statutes 39-2814(8), the RFP must include the criteria for evaluation of proposals and the relative weight of each criterion. The criteria must include, but are not limited to, price, construction experience, design experience, and financial, personnel, and equipment resources available to implement the project. The relative weight applied to any criterion will be based on the characteristics of each individual project, except that price must receive a relative weight of at least 50 percent.

## 3.4 Industry Review Period

When possible, NDOR's procurement process will allow for an Industry Review (IR) period. The IR period occurs prior to release of the final RFP documents to the shortlisted proposers. NDOR will distribute draft RFP documents to the shortlisted proposers, seeking feedback and comments on the planned transfer and assignment of contractual and technical risk being proposed on the project. Further discussion on risk and risk transfer can be found in [Section 7](#) (*Risk Management Guidelines for Design/Build and Construction Manager/General Contractor*).



The greatest advantage of using an IR period in the D/B procurement process can be seen when changes to the RFP documents are needed. Because the final RFP has yet to be issued, only a draft version of the RFP is provided to the proposers; therefore changes to the RFP can be performed without the need of Addendums. However, for any changes to the RFP that are needed after its final release, procurement rules dictate that those changes and/or modifications will need to be implemented by use of the Addendum process.

### 3.4.1 Industry Review Process

The following highlights the steps and timelines of the IR process:

- **Step 1:** NDOR issues a draft version of the D/B Agreement; this can be in the form of the actual agreement or a Term Sheet describing the risk transfer associated with the project. In addition to the contractual risk transfer, NDOR may include a draft version of the TPs that describe the risk transfer of technical elements planned for the project.
- **Step 2:** NDOR will provide a period of time, generally 10 to 14 days, for the proposers to review the draft materials and formulate opinions regarding the risk associated with the upcoming procurement.
- **Step 3:** The proposers will then prepare written questions and submit them to NDOR for consideration. NDOR will limit the number of questions depending on project size. This limitation will focus the proposers to identify those questions of greatest concern. These questions will set the agenda for the upcoming meetings that will occur in the next step.
- **Step 4:** NDOR may hold individual meetings with each proposer to discuss their questions and reasons behind the questions. The discussion that occurs during the IR individual meetings will be considered non-binding, allowing for open discussion. Questions and responses will be documented and shared with all shortlisted proposers, without identifying the proposer that raised the concern or question.
- **Step 5:** After all IR period individual meetings have been conducted, NDOR will consider the feedback from the proposers and determine if the risk allocation needs adjustment or modification. Because each proposer may have a different opinion regarding the risk transfer, this is a critical step in the formulation of the RFP document.
- **Step 6:** At the conclusion of Step 5, NDOR will revise the RFP documents as appropriate and issue their modified documents in the form of redline mark-ups to proposers for further consideration. Proposers will be allowed 10 days for review and comment.

The following guidelines will be used when determining the number of IR period individual meetings:

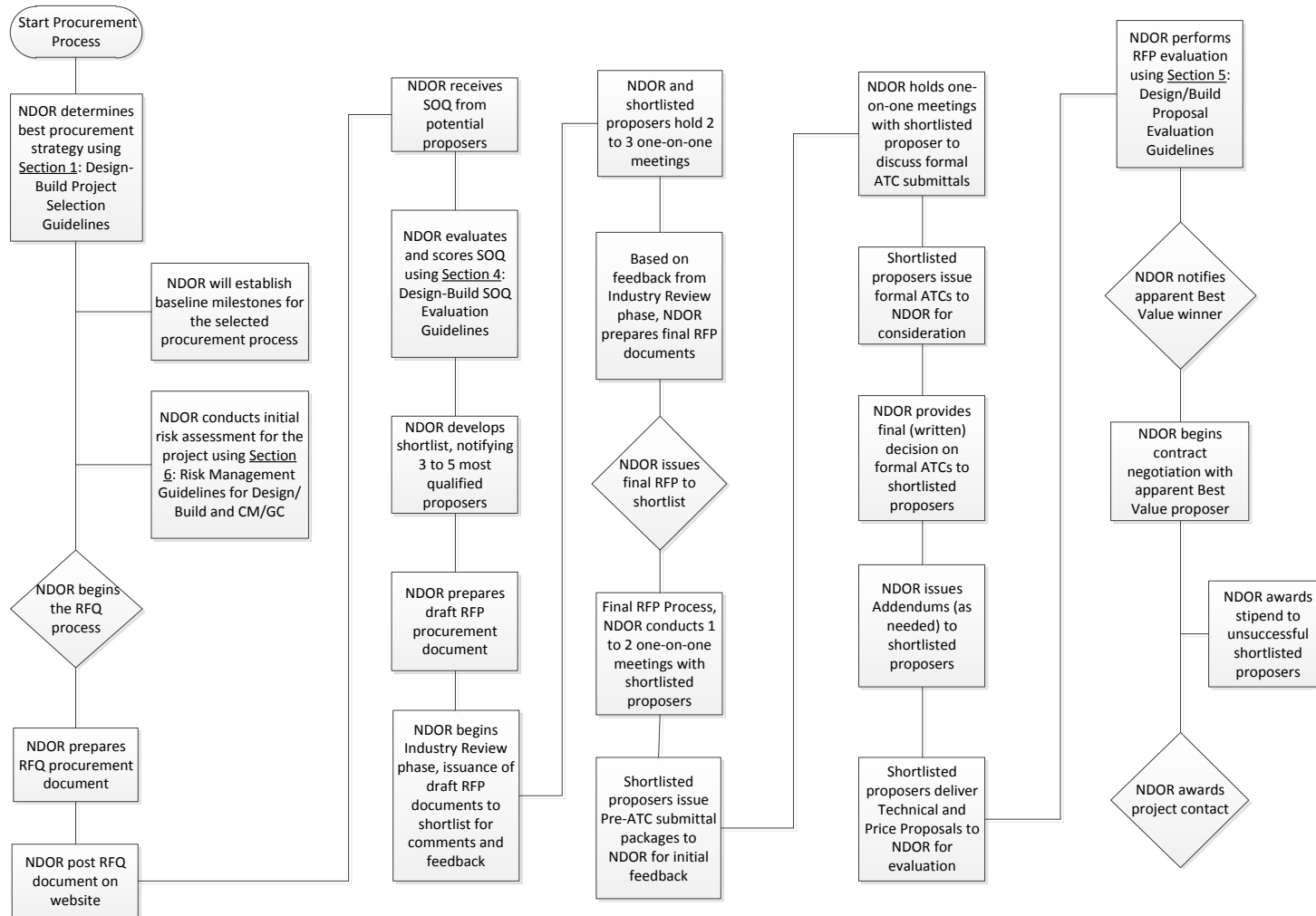
- For D/B projects, with a construction value below \$50 million—one to two rounds of IR period individual meetings.
- For D/B projects, with a construction value of more than \$50 million—two to three rounds of IR period individual meetings.

### **3.4.2 Evaluation Processes**

For procedures for evaluating SOQs see Section 4 (*Design/Build Statement of Qualifications Evaluation Guidelines*). For procedures for evaluating proposals see Section 5 (*Design/Build Proposal Evaluation Guidelines*).



**Attachment 3-1**  
**Design/Build Procurement Process Flowchart**





Section 4

## Design/Build Statement of Qualifications Evaluation Guidelines

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### 4.1 Pre-Statement of Qualifications Submittal Meeting

A public pre-SOQ submittal meeting may be held to discuss issues related to the procurement process, to discuss the goals of the D/B contract, and to provide details of the project. These meetings typically are not mandatory. If a pre-SOQ submittal meeting is held, the notice must clearly state whether or not attendance is mandatory.

During the pre-SOQ submittal meeting, NDOR will discuss the overall procurement and selection process, provide a general explanation of the proposed contract terms and expected outcomes, and describe project specific elements, both administrative and technical. This will provide potential proposers with a better understanding of the project and NDOR's expectations.

The pre-SOQ submittal meeting would typically be held no sooner than 10 days after advertisement of the D/B project RFQ and no later than 10 days prior to the SOQ submittal date. NDOR should keep in mind the complexity of project when setting the actual pre-SOQ submittal meeting date, providing proposers with adequate time to prepare for the pre-SOQ submittal meeting or sufficient time after the pre-SOQ submittal meeting to prepare their SOQ submittals.

### 4.2 Statement of Qualifications Evaluation Introduction

The D/B SOQ evaluation process described in these Guidelines is intended to ensure consistency and fairness in NDOR's evaluation of the SOQs and shortlisting of the proposers eligible to receive an RFP.

The D/B SOQ evaluation process is intended to ensure SOQs are evaluated according to the responsiveness requirements, pass/fail criteria, and qualitative evaluation factors set forth in the RFQ (collectively, the Evaluation Criteria), and to facilitate NDOR's selection of shortlisted proposers so that the procurement of the project proceeds on schedule.

See [Attachment 4-1](#) for the *Statement of Qualifications Evaluation Flowchart*.

### 4.3 Evaluation Organization

Security will be of utmost importance in protecting the confidentiality of the SOQs and the evaluation process. The following information applies to a typical D/B selection process.

Depending on the size and complexity of the project, NDOR's organizational structure for the SOQ evaluation process may consist of up to three tiers:

- SC;
- Evaluation and Recommendation Committee (ERC); and,
- Procurement Advisory Groups (PAGs).

The SOQ evaluation process is led by NDOR's SC. The SC will consist of one or both Deputy Directors, the Roadway Design Division head, the Construction Division head, and the Materials

and Research Division head. The SC will make the final shortlisting determination based, in part, on input from the ERC.

The ERC is made up of NDOR staff members, which may be the same personnel who will subsequently participate in the Technical Committee and Financial Committee for evaluation of Proposals. The ERC members will evaluate and perform the official scoring of the SOQs against the pre-set evaluation criteria and furnish to the SC their recommendations with respect to the SOQs. The ERC may include other agency stakeholders at the discretion of NDOR.

The PAGs are made up of non-scoring NDOR staff members (not assigned to the ERC) and outside consultants, as NDOR determines appropriate, with technical and legal expertise. These individuals will perform advisory and support roles only, performing research and answering technical and legal questions for the ERC and SC, and will not make recommendations with respect to the SOQs' performance against the evaluation criteria, Descriptive Ratings, or shortlisting determinations.

Outside of the three groups previously described, there could be a number of other participants in the SOQ evaluation process who would support the overall process (for example, NDOR Agreements Engineer and/or staff, staff from FHWA, and other public agency stakeholders).

Detailed descriptions of the roles and responsibilities of the participants in the SOQ evaluation process are provided in the following sections.

#### **4.3.1 Role of the Selection Committee**

The SC's responsibilities include the following:

- Ensure timely progress of and compliance with the SOQ evaluation process.
- In consultation with the legal staff, provide direction if participants in the SOQ evaluation process have questions or encounter issues relating to the evaluation of SOQs or the SOQ evaluation process in general.
- Coordinate with the NDOR Agreements Engineer to transmit clarification letters and other NDOR correspondence to proposers.
- Establish the maximum points the SOQs may achieve for each qualitative evaluation factor, the relative weightings for the qualitative evaluation sub-factors, and the relative weighting of each Descriptive Rating, in accordance with guidelines provided in this Section 4.
- Refer matters regarding actual, potential, or perceived conflicts of interest to the individual or unit in NDOR responsible for resolution of conflicts of interest.
- Make final determinations with respect to each SOQ's responsiveness to the RFQ requirements and performance against the pass/fail criteria.
- Make the final shortlisting decision.
- Ensure written documentation of the SOQ evaluation process is properly maintained, and destroy documents that are not required to be maintained.
- If the SC determines it appropriate, the SC may elect to deviate from any procedure prescribed in these Guidelines, provided the deviation does not otherwise constitute a violation of applicable law. The SC shall consult with the legal staff as to whether any

proposed deviation constitutes such violation. Any change or modification should be documented in the SC's documentation regarding the final shortlisting determination.

#### **4.3.2 Role of the Evaluation and Recommendation Committee**

The responsibilities of the ERC members include the following:

- Review the RFQ and a SOQ Evaluation Manual prior to reviewing any SOQ.
- If a PAG is used, review the PAG's summary of findings based on the PAG's responsiveness and pass/fail review of SOQs.
- Prepare for and participate in the meeting, where the PAG presents to the ERC the PAG's summary of findings from the responsiveness and pass/fail review of SOQs.
- Based on the PAG's presentation, draft a memorandum documenting the ERC's recommendations as to the responsiveness and pass/fail status of the SOQ for each proposer. The ERC should consult each SOQ to the extent necessary to complete this memorandum.
- Individually review each proposer's SOQ against the qualitative evaluation factors using a separate qualitative evaluation worksheet, and meet as a committee to draft clarification questions for each proposer, if needed.
- Prepare for and participate in the ERC consensus meeting, and draft consensus (or majority) comments using a qualitative rating form for each qualitative evaluation factor and for each SOQ.
- Based on the ERC's consensus (or majority) comments, use a qualitative evaluation score sheet to calculate the final score for each proposer and identify the proposers that the ERC recommends for shortlisting based on the final scores.
- Prepare documentation regarding the ERC's shortlisting recommendation.
- Participate in any oral presentations if held and if requested by the SC.

If deemed necessary to complete its responsibilities set forth in the Guidelines, at the discretion of the SC or ERC chair, the ERC may be sequestered at a location that promotes confidentiality while maintaining collaboration within the ERC. The SC or ERC chair, as applicable, will select the location.

##### *4.3.2.1 Evaluation and Recommendation Committee Evaluation and Scoring Materials*

To create a consistent evaluation and documentation of the ERC activities, several documents may need to be developed. These manuals and worksheets would serve as a permanent record of the evaluation process and outcome of the evaluation and shortlisting process. The following manuals and worksheets, if used, will need to be formulated prior to the proposer's submittal of the SOQ to NDOR for consideration. After development of these documents for NDOR's first D/B procurement, they may be used as standard templates for subsequent procurements, and modified if necessary for specific, individual procurements.

- The SOQ Evaluation Manual: The manual should include: 1) The SOQ organization including ERC members by name and department or agency; 2) copies of the confidentiality and disclosure agreement that must be executed by all members of the ERC and PAG; 3) the specific roles and duties of the ERC and PAG members; 4) an evaluation schedule including location and time of ERC consensus meeting; and 5) the

Descriptive Rating structure including examples of factors to consider for each Descriptive Rating.

- Responsiveness and Pass/Fail Worksheet: This worksheet should include both legal and technical criteria, as defined in the ITP, which must be included in the proposer's SOQ. Failure of a proposer to include the required information may be grounds to consider their SOQ non-responsive.
- Project and Key Personnel Reference Interview Questionnaires: Prior to evaluating the SOQs, NDOR may develop a script to be used when conducting phone interviews to check and verify the information contained in the SOQ by the proposers on the project and Key Personnel. Having a pre-set script will ensure that during each reference check, the questions are consistent and contain the same type of information.
- Qualitative Evaluation Worksheet: To record individual assessments of the proposer's SOQ, each member of the ERC should use a qualitative evaluation worksheet to record their assessment of the proposer's SOQ strengths and weaknesses. These worksheets will then be used by the ERC member during consensus meeting.
- Qualitative Rating Form: To record the outcome of the ERC consensus meeting, the qualitative rating form will be used to record the agreed upon ERC assessment of the proposer's strengths and weaknesses; this will also provide justification for the consensus Descriptive Rating being assigned to each evaluation criteria.

### 4.3.3 Role of the Procurement Advisory Group

For procurements where a PAG is used, the responsibilities of members of the PAGs would include the following:

- Each member of the PAG will review the RFQ and a SOQ Evaluation Manual prior to reviewing the SOQs.
- Selected members of the PAG will log and assign tracking numbers to the SOQs.
- The PAG will perform the responsiveness and pass/fail review of each SOQ.
- The PAG will perform the project, personnel, and legal reference checks and complete the corresponding summary of findings.
- The PAG will assist the ERC with the qualitative evaluation of each proposer's SOQ by presenting the summary of findings that highlight the strengths and weaknesses of each SOQ against the qualitative evaluation factors.
- The PAG should have a chair who will: 1) ensure the timely progress of its team members' evaluations of the SOQs; 2) coordinate any meeting or re-evaluations within the time frames set forth in the Guidelines or as directed by the chair of the ERC or the SC; and 3) deliver to the ERC all written materials developed by their PAG as part of the SOQ evaluation process.
- The PAG chair should report the progress of its evaluation to the chair of the ERC at the end of each day that its PAG meets or at such other time or frequency as may be requested by the chair of the ERC.
- The PAG chair plus members of the ERC may participate in oral presentations, if held and if requested by the SC.

If deemed necessary to complete their responsibilities set forth in these Guidelines, at the discretion of the SC, the PAG may be separately sequestered at a location that promotes confidentiality while maintaining collaboration within the PAGs. The SC will select the location.

#### 4.4 Statement of Qualifications Ratings

The ERC will evaluate each proposer's SOQ against the qualitative evaluation factors described in the RFQ and set forth in a qualitative evaluation worksheet. Based on these evaluations, the ERC will document on a separate Qualitative Rating Form for each qualitative evaluation factor, and for each proposer, the ERC's consensus (or majority) comments. The comments will include the respective proposer's strengths and weaknesses and one of four ERC-recommended ratings listed below.

The four ratings are intended to measure how well the proposers' qualifications meet or exceed the various qualitative evaluation factors, as follows:

- **Excellent (E)**: The SOQ exceeds in a significant manner the stated requirements and objectives in a beneficial way, providing advantages, benefits, or added value to the project and provides a consistently outstanding level of quality and qualifications. There are essentially no weaknesses.
- **Good (G)**: The SOQ comfortably meets the stated requirements and objectives, provides some advantages, benefits, or added value to the project and provides a generally better-than-acceptable level of quality and qualifications. There may be minor, but essentially insignificant weaknesses.
- **Acceptable (A)**: The SOQ demonstrates an approach that meets the stated requirements and objectives, and provides an acceptable level of quality and qualifications. An Acceptable rating corresponds to a proposer merely meeting the minimum SOQ standards.
- **Poor (P)**: The SOQ fails to meet the stated requirements and objectives, lacks essential information, or contains conflicting and/or unsupported information; the SOQ contains significant weaknesses or deficiencies and provides a poor level of quality and qualifications. Weaknesses or deficiencies are so major and/or extensive that they are not correctable or would require major revision of the SOQ.

To provide a common basis for selecting ratings, the qualitative evaluation worksheet should include examples of factors to consider for each rating.

In assigning ratings, the ERC may assign "+" or "-" (such as, Excellent -, Good +, and Acceptable +) to better differentiate within each rating. However, the ERC may not assign ratings of Poor - or Excellent +. Accordingly, there are 10 qualitative rating options available to the ERC and each has a numerical translation, set by the SC before the SOQs are received.

#### 4.5 Statement of Qualifications Evaluation Criteria

The objective of the RFQ and SOQ step of the procurement is to shortlist proposers with the best legal, technical, financial, and management capability, capacity, and experience necessary to successfully undertake and complete the project. SOQs will be evaluated in three parts: 1) determination of responsiveness; 2) pass/fail evaluation, and 3) scored evaluation. The pass/fail criteria and scored criteria set by NDOR will be identified in the ITP of the RFQ.



#### 4.5.1 Determination of Responsiveness

At a minimum, the following items may be required to be completed and included in an SOQ for it to be considered responsive:

- Transmittal Letter signed by a duly authorized official or representative of the proposer;
- Proposer information including the proposing entity, lead designer, lead construction contractor, and other major subcontractors; and,
- Certification of the accuracy of the information submitted in the SOQ signed by a duly authorized official or representative of the proposer.

#### 4.5.2 Pass/Fail Evaluation Criteria

The pass/fail evaluation criteria will be tailored for the specific project, but should generally fall within the following categories. For an SOQ to achieve a passing rating, information provided in each of the following categories will need to meet or exceed the minimum requirements, as determined by NDOR for the project and as listed in the ITP of the RFQ.

- Legal: The objective will be to select proposers whose organization, legal structure, team members, and history demonstrates the proposer's ability to remain stable and viable for the duration of the project and be contractually bound to NDOR. Certifications regarding debarment, suspension, and other legal requirements must be provided using forms included in the ITP of the RFQ.
- Financial: The objective will be to select proposers whose team members possess the financial capacity to enter into a contract with NDOR and the resources to successfully complete the project. The proposer must provide its current balance sheet and recent annual operating statements and evidence of the lead construction contractor's ability to obtain bonding as specified in the ITP of the RFQ.
- Safety: The objective will be to identify those proposers that can demonstrate an acceptable safety record and safety program. The lead construction contractor must provide safety record information using the forms provided in the ITP of the RFQ.

#### 4.5.3 Scored Evaluation Criteria

Once the pass/fail criteria have been evaluated, NDOR will enter into the evaluation process where proposers' SOQs will be scored using the ratings previously described. The scored evaluation criteria will be tailored for the specific project, but fall within the following guidelines. At a minimum, NDOR will include the following criteria:

- Relevance, breadth, and depth of firm/team experience: The objective will be to identify design and construction firms that demonstrate successful project experiences that are directly relevant to the project being procured, in terms of their scope, size, and complexity. Project experience that is more recent would be considered more favorably than comparable experience that is less recent.

To achieve this measure, NDOR will identify relevant characteristics of the specific project being procured. These may include but are not limited to experience with:  
1) specific types of transportation facilities; 2) highway and highway structures; 3) urban freeway or rural highway construction or reconstruction; 4) construction/reconstruction using innovative design, methods and/or materials; 5) construction in environmentally



sensitive areas; 6) community relations; and 7) ITS systems procurement, installation, and ITS systems.

- Relevance, breadth, and depth of Key Personnel experience: The objective will be to determine the extent to which the identified Key Personnel have demonstrated successful experience at a comparable level of responsibility and authority to that proposed for the project being procured, on one or more project(s) of scope, size, and complexity similar to the project being procured. Relevance of project experience for Key Personnel will be evaluated using the same project characteristics identified for proposer's team experience.

To achieve this measure, NDOR will establish preferred requirements for each Key Personnel role identified by NDOR in the ITP of the RFQ. These preferred requirements may include but are not limited to: 1) overall number of years of experience; and 2) number of projects that the Key Personnel held a similar role on past projects. These preferred requirements will serve as target goals for evaluation purpose but should not be considered to be mandatory minimum requirements for a given position.

- In addition to the preferred requirements, proposers will be required to provide, at a minimum, three references for each of the Key Personnel identified in the SOQ.

NDOR may decide, based on the complexity and size of the project, to expand the criteria and include some evaluation criteria that demonstrate the proposer's understanding of the D/B process. It should be mentioned that during the RFQ phase, detailed descriptions of the following approaches will not be project specific but more general in nature, showing an understanding of the D/B process. To evaluate this understanding, the following criteria may be included:

- General management approach to D/B: The objective will be to identify those proposers that are able to demonstrate: 1) an understanding of and approach to how the D/B process works and how the proposer's organization will contribute to the success of the project and meet NDOR's project goals; and 2) an understanding of the risk sharing and the partnering relationship between the Design/Builder and NDOR.
- General approach to D/B quality: The objective will be to identify those proposers that are able to demonstrate an understanding of how to implement a quality management program for a D/B project. The general description of the proposer's quality approach should include: 1) QA/QC during design; 2) QA/QC during construction; 3) coordination between NDOR and the Design/Builder organization; and 4) coordination with other agencies.
- Experience working together on other projects: Describe whether, and if so how, the lead designer and lead construction contractor have worked together in the past, emphasizing D/B projects. Proposer should identify the projects along with a description of the project scope and size.

## 4.6 Optional Oral Presentations

NDOR may schedule interviews (Oral Presentations) with proposers, at the SC's sole discretion, to clarify information provided in the SOQs. If scheduled, the Oral Presentations will be part of the final evaluation process and occur prior to the ERC consensus meeting. The applicable guidelines for conducting Oral Presentations are:

- The SC will determine which participants in the SOQ evaluation process will participate in Oral Presentations, and the NDOR Agreements Engineer will notify those individuals accordingly.
- Proposer attendees should be limited: 1) on large and complex projects, no more than eight representatives per proposer team and 2) on small to medium projects, no more than five representatives per proposer team. These suggested limitations are presented as a general guideline; final determination of limitation should be determined by NDOR based on individual project scope, complexity, and size.
- Oral Presentations will be scheduled to last 30 to 60 minutes depending on the needs of the project.
- Formal presentations may or may not be required. At a minimum, Oral Presentations would consist of proposer responses to NDOR-developed questions seeking to clarify issues in the SOQs. Except for their SOQs, proposers will bring no exhibits, displays, or other documentation to the Oral Presentation except as specifically allowed by NDOR.
- If Oral Presentations are held, the SC may develop and transmit to the proposers prior to the Oral Presentations additional procedures for such Oral Presentations.
- Oral Presentations may be recorded by videotape or other means at NDOR's discretion.

#### **4.7 Release of Information Regarding the Statement of Qualifications**

Information regarding the contents of SOQs or the SOQ evaluation process may be released to parties outside of the SOQ evaluation process only if authorized by the SC.

All written materials generated by the participants in and as part of the SOQ evaluation process will be delivered to the NDOR Agreements Engineer before or immediately after the SC's shortlisting decision. On receiving the written materials, the NDOR Agreements Engineer will determine, for each document, whether it may be destroyed or must be retained for the final record of the SOQ evaluation process, in accordance with state law governing public records.

#### **4.8 Notification and Debriefing**

The NDOR Procurement Manager will notify proposers of the final shortlisting determination. Proposers that are not shortlisted will be notified in writing concurrently with or promptly after shortlisted proposers are notified.

After the shortlist is publicly announced, and at NDOR's discretion, the SC may coordinate with the NDOR Agreements Engineer to contact non-shortlisted proposers and offer them an opportunity to request a debriefing; the debriefing would be conducted by the SC and the ERC. The SC will establish the dates, times, durations, and locations for debriefings.

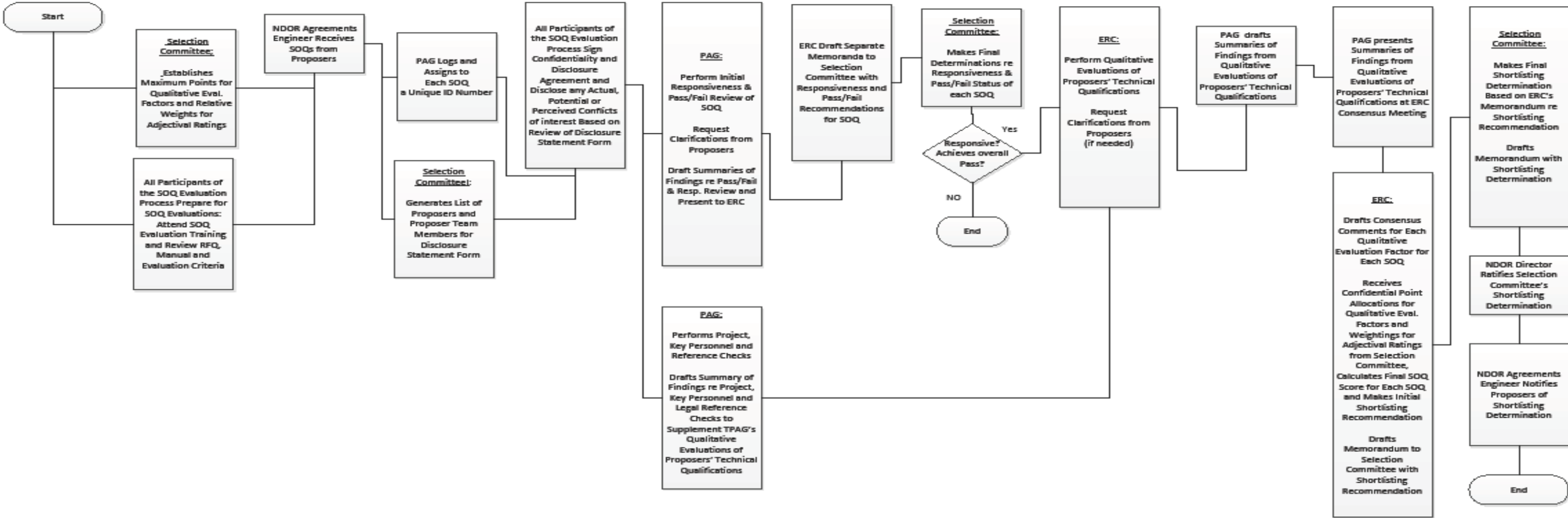
Debriefings will:

- Be limited to discussion of the unsuccessful proposer's SOQ and may not include discussion of any competing SOQ;
- Be factual and consistent with the evaluation of the unsuccessful proposer's SOQ; and

- Provide information on areas in which the unsuccessful proposer's SOQ had weaknesses or deficiencies, so as to benefit the unsuccessful proposer's future NDOR procurement efforts.



**Attachment 4-1**  
**Statement of Qualifications Evaluation Flowchart**





## Section 5 Design/Build Proposal Evaluation Guidelines

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### 5.1 Overview of the Proposal Evaluation Process

At the conclusion of the SOQ evaluation and shortlisting process, up to three proposers will have been provided with RFPs and invited to submit proposals. Between the times the RFPs are released and proposals are due, a series of meetings will be held with all proposers to confirm all participants' understanding of the proposal process. These meetings will include a group meeting with all proposers to confirm proposers' understanding of the RFP and proposal process, and individual sessions between NDOR and each of the proposers to discuss ATCs and specific issues in the RFP. Both types of meetings are discussed further in [Section 3 \(Design/Build Procedures\)](#). SOQ evaluation results are not carried forward into the D/B proposal evaluation process and each shortlisted proposer starts the proposal process on equal footing.

Each proposal consists of two parts: a Technical Proposal and a Price Proposal. These two proposals are submitted to NDOR in separate, sealed envelopes. The Price Proposal envelope contains any updated financial information since the SOQ plus another sealed envelope that contains the proposer's Price Proposal or "bid", which will remain sealed until the evaluations of all of the Technical and Price Proposals have been completed.

The proposal evaluation process essentially consists of four steps:

1. Proposals are first screened for responsiveness and acceptability relative to pass/fail criteria. If a proposal is deemed non-responsive or does not meet pass/fail criteria, the reviewers may request – through formal communication protocols – additional information and/or clarification necessary to address and potentially correct the determination of non-responsiveness and/or evaluation relative to pass/fail criteria.
2. Technical Proposals that are deemed responsive and that meet the pass/fail criteria are then evaluated relative to scored criteria identified in the ITP; this is essential to process transparency. Scoring makes use of qualitative ratings and corresponding numerical scores determined beforehand by NDOR; note that proposals are evaluated relative to the criteria and are not compared to each other. As with the responsiveness and pass/fail screenings, reviewers may request additional information and/or clarification necessary to fairly evaluate the proposals. At the conclusion of the evaluation of the scored criteria, each proposal will have been assigned a Technical Score.
3. After the Technical Scores have been established, the Price Proposal envelopes are opened and the Price Proposals are evaluated. (Note that the Price Proposal includes a sealed envelope containing the Price Proposal.) Financial Scores are then calculated.
4. Once the Technical Scores and Financial Scores are established for all proposals, the Price Proposal envelopes are opened, and the combined Proposal Scores are calculated for all proposals and the Apparent Best Value proposer determined.

### 5.2 Proposal Evaluation Participants

The following information represents a potential framework for the organization of the Technical Committee (TC), Technical Advisors (TA), Financial Committee (FC), Financial Advisors (FA)

and other NDOR staff; the extent to which some or all of these groups are used is a function of the size and complexity of the individual project. An overview of the proposed organizational structure to be used during the RFP evaluation process is presented in Attachment 5-1 (*Proposal Evaluation Organization*).

- Participants assigned to the proposal evaluation process will be responsible to completely review the submitted proposals.
- The TA will support and assist the members of the TC in connection with their review and evaluation of the proposals and will provide comments on the strengths and weaknesses of the proposals with respect to the Evaluation Criteria.
- If a TC member or Technical Advisor has questions regarding the Evaluation Criteria, a clarification must be requested through the NDOR Agreements Engineer.
- During the evaluation process the Committee or Advisors are allowed to ask proposers for additional information and clarifications to enable them to gain a better understanding of the proposals; including obtaining information necessary to determine whether the proposal is responsive and meets the pass/fail evaluation criteria, and/or information needed to clarify ambiguities or inconsistencies in the proposals.
- Requests for information or clarifications must be made in writing, which will then be forwarded to the appropriate proposer by the NDOR Agreements Engineer.
- Each request for additional information or clarification, whether related to responsiveness, pass/fail criteria or otherwise, must specify a page limit and time period for delivery of such information, as determined by the requesting Committee.

### **5.2.1 NDOR Director**

The NDOR Director's responsibility relative to D/B procurements consists of:

- Approve the SC membership for each Design/Build procurement. The NDOR Director may add members or replace members for an individual procurement.

### **5.2.2 Selection Committee**

The SC is a standing entity, at any given time and at the discretion of the NDOR Director, comprised of one or both Deputy Directors, the Roadway Design Division head, the Construction Division head, and the Materials and Research Division head. The Agreements Engineer serves as a non-voting member of the SC and is responsible to assure adherence to the required procurement process. The responsibilities of the SC include:

- Designate the Chairpersons to lead the TC and FC.
- Approve the ratings and point recommendations of the TC, or request the TC reconsider its evaluations.
- Select the Apparent Best Value proposer based on the evaluation and scoring of the TC, through application of the formula set forth in the ITP, and direct staff to proceed with final contract negotiations.
- Notify those proposers that have not been selected as the Apparent Best Value proposer and coordinate with the Chairpersons of the TC and FC to schedule debriefing meetings, if desired



### 5.2.3 Project Manager

The Project Manager's responsibilities are outlined below.

- Prior to receipt of proposals the Project Manager, with the assistance of selected Advisors (as may be needed), will determine how qualitative scoring will be translated to numerical values for each individual Technical Proposal evaluation criterion. Documentation of such decisions will be finalized prior to commencement of the evaluation of the proposals and will be placed in a sealed, date-stamped envelope and retained by the Project Manager throughout the evaluation process. Only the Project Manager and selected Advisors (as may be needed), know the weightings and qualitative/numerical translation values. No other individuals will be authorized to access such information.
- Direct the NDOR Agreements Engineer to distribute each proposer's Technical Proposal and Price Proposal to the Technical Committee and Financial Committee, respectively.
- Direct the NDOR Agreements Engineer to collect Confidentiality and Disclosure Agreements and, if necessary, Disclosure Statement Forms from each participant.
- Upon receipt from the TC of the initial responsiveness and pass/fail assessments for all proposals, the Project Manager will issue requests for clarification and/or additional information, if necessary and as requested by the TC Chairperson.
- Upon receipt from the TC of the initial responsiveness and pass/fail assessments for all proposals, and if any proposal is found to be nonresponsive or to have earned a failed pass/fail score, the Project Manager will prepare a formal recommendation to the Agreements Engineer and SC, to disqualify such proposals.
- Upon receipt of the scoring worksheets for all proposals from the TC, present these findings with a recommendation to the SC for review and approval.
- After acceptance by the SC of the TC qualitative rating recommendations for all proposals, the Project Manager will apply the previously defined numerical values to the Technical qualitative ratings to determine each proposal's Technical Score.
- After The Technical Scores have been transmitted to the SC, open the Price Proposals and calculate Price Scores.

### 5.2.4 Technical Committee Chairperson

Responsibilities of the Chairperson of the TC are outlined below:

- Serve as a point of contact in the event a Committee Member or Advisor has questions or encounters issues relative to the evaluations, and forward such questions or issues to the Agreements Engineer or SC, as appropriate.
- Coordinate with the chairperson of the Technical Advisors and facilitate the participation of Advisors as necessary during the course of the evaluation and selection process.
- Be responsible for ensuring the timely progress of the evaluation, coordinating any consensus meeting(s) or re-evaluation(s) and ensuring that appropriate records of the evaluation are maintained.

- Take appropriate steps to arrange for substitution and/or supplementation of evaluation personnel if a Technical Committee Member or Advisor is unable to complete their responsibilities to the extent the TC Chairperson deems necessary or if additional Technical Committee Members or Advisors are necessary to properly evaluate the proposals.
- The TC Chairperson, with the assistance of selected TC Members and Advisors (as needed), will set out examples of information that would earn each of the defined qualitative ratings, otherwise known as “anchors”, to help establish a common baseline to be used in evaluating the Technical Proposal.
- Verify that each TC Member individually reviews and assesses each Technical Proposal using the Evaluation Criteria established for the project.

### **5.2.5 Technical Committee Members**

Technical Committee Members’ responsibilities are outlined below:

- Review and adhere to the Evaluation Criteria and evaluation procedures set forth in the RFP and these Guidelines prior to evaluating the proposals.
- The TC will be made up of 5 or less NDOR staff members. If the SC determines that, due to Project size and complexity, 5 members are excessive, the number of members can be reduced as long as the total number of members on the Technical Committee remains an odd number.
- If a Technical Committee Member has any questions regarding the Evaluation Criteria, they may request clarification from their Committee Chairperson.
- In a sequestered and confidential environment, the TC will evaluate the Technical Proposals based on the 1) responsiveness requirements and pass/fail criteria and 2) Scored Evaluation Criteria applicable to the Technical Proposals.
- The TC will only evaluate and assign Descriptive Ratings to Technical Evaluation Criteria for each proposal; the TC will not assign numerical scores for any Technical Evaluation Criteria.

### **5.2.6 Financial Committee Chairperson**

Responsibilities of the Chairperson of the FC are outlined below:

- Serve as a point of contact in the event a Committee Member or Advisor has questions or encounters issues relative to the evaluations, and forward such questions or issues to the Agreements Engineer or SC, as appropriate.
- Coordinate with the chairperson of the Financial Advisors and facilitate the participation of Advisors as necessary during the course of the evaluation and selection process.
- Be responsible for ensuring the timely progress of the evaluation, coordinating any consensus meeting(s) or re-evaluation(s) and ensuring that appropriate records of the evaluation are maintained.
- Take appropriate steps to arrange for substitution and/or supplementation of evaluation personnel if a Financial Committee Member or Advisor is unable to complete their responsibilities to the extent the FC Chairperson deems necessary or if additional

Financial Committee Members or Advisors are necessary to properly evaluate the proposals.

- The FC Chairperson, with the assistance of selected FC Members and Advisors (as needed), will set out examples of information that would correspond with each of the defined qualitative ratings, otherwise known as “anchors”, to help establish a common baseline to be used in evaluating the Price Proposal.
- Verify that each FC Member individually reviews and assesses each Price Proposal using the Evaluation Criteria established for the project.

## 5.2.7 Financial Committee Members

Financial Committee Members’ responsibilities are outlined below:

- Prior to evaluating the proposals, review the Evaluation Criteria and evaluation procedures set forth in the RFP and these Guidelines, and adhere to them during the evaluation process.
- The Committee will normally be made up of either 2 or 3 NDOR staff members.
- If a Committee Member has questions regarding the Evaluation Criteria, they may request clarification from the FC Chairperson.
- The FC will evaluate the Price Proposals in a sequestered and confidential environment based on the 1) responsiveness requirements and pass/fail criteria and 2) financial criteria applicable to the Price Proposal.
- After the Technical Scores have been transmitted by the TC to the SC, the FC Chairperson will open the Price Proposal envelopes, and apply the previously identified methodology to calculate the Price Score for each proposal.

## 5.2.8 Advisors

Depending upon the size and complexity of an individual project, or if otherwise deemed necessary by the SC, Agreements Engineer or Project Manager, Technical, Financial and/or Legal Advisors may be made available to assist the Technical Committee, Financial Committee and other NDOR staff during the evaluation process. When more than one advisor in a given discipline is participating in a given evaluation process, the Advisors may elect a chairperson to serve as their point of contact. The responsibilities of the Advisors while supporting the evaluation process are outlined below.

### 5.2.8.1 Technical Advisors

Technical Advisors may be available to assist the TC during the evaluation process. The TA may include consultant and/or agency personnel with expertise in specific fields relevant to the proposal, and will be available to TC on an as needed basis to support the evaluation of Technical Proposals. The responsibilities of the TA are described below.

If used, the TA will assess the responsiveness of each Technical Proposal, including the pass/fail criteria set forth in the RFP, and submit its findings and report recommended outcomes to the TC. If the TA collectively concludes that a proposal is nonresponsive to any of proposal requirements or does not meet the Pass/Fail Evaluation Criteria, the TA, through their Chairperson if applicable, shall promptly report that information to the Chairperson of the

Technical Committee. In addition, Advisors shall send any clarification requests or requests for additional information needed to perform their analysis of the proposals to the Chairperson of TA who will coordinate with the NDOR Agreements Engineer to send the request(s) for clarification or additional information to the affected proposer(s).

#### **5.2.8.2 Financial Advisors**

FAs may be available to assist the FCs during the evaluation process. The FA may include consultant and/or agency personnel with expertise in specific fields relevant to the proposal, and will be available to FC on an as-needed basis to support the evaluation of Price Proposals. The responsibilities of the FA while supporting the FC are described below.

If used the FA will assess the responsiveness of each Price Proposal, including the pass/fail criteria set forth in the RFP, and submit its findings and report recommended outcomes to the FC. If the FA concludes that a proposal is nonresponsive to any of proposal requirements or does not meet the Pass/Fail Evaluation Criteria, the FA or its Chairperson, if applicable, shall promptly report that information to the Chairperson of the Financial Committee. In addition, Advisors shall send any clarification requests or requests for additional information needed to perform their analysis of the proposals to the Chairperson of FA, if applicable, or to the Chairperson of the FC who will coordinate with the NDOR Agreements Engineer to send the requests for clarification or additional information to proposers.

#### **5.2.8.3 Legal Advisors**

Legal Advisors may be assembled to support NDOR in-house counsel and the TC, FC, TA, FA, and other NDOR staff as appropriate and necessary to address issues or questions concerning the procedures set forth in the RFP or the evaluation process. Such Legal Advisors would be selected and made available at the discretion of the SC and in-house legal counsel.

### **5.3 Responsiveness and Pass/Fail Evaluation**

If used for the procurement, Advisors will perform a responsiveness review of each Technical Proposal and Price Proposal by comparing each proposal to the requirements identified in the RFP. If Advisors are not used for the procurement, the Agreements Engineer may direct that the TC or FC perform the responsiveness review.

Responsiveness requirements include all administrative and format requirements identified in the RFP, such as timely delivery to NDOR, inclusion of all required forms and certifications, and application of wet signatures where required. NDOR, at its sole discretion and at the direction of the NDOR Director, may waive minor nonresponsive aspects of a proposal, such as the omission of a required signature.

Pass/Fail requirements include minimum experience, capabilities or capacity, such as years of experience of one or more proposed Key Personnel or bonding capacity commensurate with the size of the project. Failed Pass/Fail scores for some proposal elements may be reconsidered by allowing a proposer to revise their proposal to receive a passing score; the decision to allow a proposer to revise their submittal to receive a passing score is at NDOR's sole discretion and at the direction of the SC.

Once a Technical Proposal is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFP. Once a Technical Proposal receives a "Pass" score, the TA will pass their review findings to the TC for consideration. If the TC members agree with the

review findings of the TA, the Technical Proposals will then be eligible for TC to perform evaluation scoring.

Once a Price Proposal is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFP. Once a Price Proposal receives a “Pass” score the FA will pass their review findings to the FC for consideration. If the FC members agree with the review findings of the FA, the FC will then open the Price Proposal containing the proposer’s bid, which is submitted in a separate sealed envelope within the Price Proposal. Opening of the proposer’s Price Proposal will not occur until all Technical and Price Proposals have been evaluated and scored by the TC and FC, respectively.

## 5.4 Technical Proposal Evaluation

The Technical Proposal Evaluation Process is as follows:

- TC Members will perform individual reviews of the Technical Proposals to identify strengths and weaknesses, and then meet as a group to develop a consensus qualitative technical score and recommendation.
- During the review of the Technical Proposals the TC members and TAs may capture their individual thoughts and evaluations of strengths and weaknesses of individual proposals using unofficial copies of the Evaluation Form.
- The official Evaluation Form must be completed by the TC Chairperson during one or more meetings of the TC to establish consensus regarding scoring of all proposals. The basis of the assessment of the TC, including the significant advantages, disadvantages and risks supporting the assigned qualitative ratings, must be documented. Reasoning for determinations of uncertain results or comments should also be documented. Evaluation statements should be as specific as practicable and not contain generalizations.
- To assist the TC in their evaluation of the Technical Proposals, qualitative score examples or “anchors” may have been developed by the TC Chairperson for each evaluation criteria. A Qualitative Evaluation Form should be completed for each individual evaluation criterion for each proposer. At the request of the TC and for their consideration, the TA may present their opinions of each proposal’s strengths and weaknesses. The TC may consider the TA’s opinions during the consensus meeting when assigning qualitative rankings.
- When the TC evaluation and consensus scoring of the Technical Proposals is complete, the TC qualitative scoring and recommendations will be presented to the SC through the Project Manager. The SC may accept the recommendation or request the TC to reconsider the recommendation.
- While the Technical Proposals are being evaluated, no Member or Advisor serving on or in support of the TC, TA or Legal Advisors will have access to the Price Proposals.

### 5.4.1 Technical Proposal Evaluation Progression

The following process outlines the steps needed to perform the Technical Proposal Evaluation:

- A Pass/Fail review of each Technical Proposal for responsiveness will be conducted by the TA. Results of the Pass/Fail review will then be provided to TC by means of a “Summary of Findings”.

- At the completion of the Pass/Fail review the TC will begin their independent scored review of the Technical Proposals.
- Once TC members complete their independent review of the Technical Proposals, the TC shall score each Technical Proposal, indicating on the Qualitative Evaluation Form the basis for each of its qualitative ratings.
- TC Members will perform individual reviews of the Technical Proposals to identify strengths and weaknesses, and then meet as a group to develop consensus qualitative scores and a recommendation. The members of the TA, if requested by the TC, may be available for consultation during the TC consensus meeting discussions.
- The completed Technical Proposal Evaluation Worksheets used by the TC will be presented by the Project Manager to the SC for consideration.
- After acceptance of the TC ratings by the SC, the Project Manager will place all TC Technical Proposal Evaluation Worksheets in a sealed, time stamped envelope and hold for safekeeping until such time as the evaluation of the Price Proposals has been completed. No one with access to the contents of the Technical Proposal Evaluation Worksheets shall disclose their contents without the permission of the Project Manager and the TC Chairperson.

#### 5.4.2 Qualitative Ratings

Each proposal will be evaluated in the context of the identified criteria in the RFP ITP. Sub-criteria may be developed by NDOR prior to receipt of proposals and incorporated into the evaluation process. For each proposal, Qualitative Ratings will be applied by the TC to each technical criterion, and sub-criterion if applicable, and by the FC to each financial criterion, and sub-criterion if applicable. The four Qualitative Ratings are defined as follows:

**Excellent (E):** The proposal exceeds in a significant manner stated requirements/objectives in a beneficial way providing advantages, benefits or added value to the Project, and provides a consistently outstanding level of quality. There are essentially no weaknesses.

**Good (G):** The proposal comfortably meets the stated requirements/objectives, providing some advantages, benefits or added value to the Project, and offers a generally better than acceptable quality.

**Acceptable (A):** The proposal has demonstrated an approach that is considered to meet stated requirements/objectives and has an acceptable level of quality. An Acceptable rating corresponds to a proposer merely meeting the minimum proposal standards.

**Poor (P):** The proposal contains significant weaknesses or deficiencies and/or unacceptable quality. The proposal fails to meet the stated objectives and/or requirements, and/or lacks essential information, and/or contains information that is conflicting and/or unsupported. Weaknesses or deficiencies are so major and/or extensive that a major revision to the proposal would be necessary and/or are not correctable.

The terms weakness and deficiency as used herein, means a flaw in the proposal that increases the risk of unsuccessful contract performance.

The following [Table 5.4-1](#) is provided as an example to illustrate a potential distribution of weights for the different qualitative ratings:



**Table 5.4-1. Qualitative Ratings: Example of Weighting**

Qualitative Rating	Weight Conversion Factor
E	100%
E-	90%
G+	85%
G	80%
G-	75%
A+	70%
A	65%
A-	60%
P+	55%
P	50%

Note: Qualitative conversion factors are determined by the Project Manager

Once qualitative ratings are assigned to each criterion by the TC, the TC Chairperson will convert the ratings to a numbered point value for the purpose of arriving at an overall score rating for the Technical Proposal (the Technical Score). Point values associated with the qualitative ratings are established by NDOR for the specific project before proposals are submitted. These are held in confidence by the Members and may not be disclosed by anyone that has knowledge of such point values. A Technical Proposal Evaluation Scoring Worksheet will be used to document the Technical Score for each proposal.

### 5.4.3 Technical Score

The Technical Score will be calculated by the TC based on the TC evaluation of the Technical Proposal. 100 points will typically be used for the total Technical Proposal.

Final determination of the major evaluation categories will be driven by specific project needs as well as NDOR goals and objectives of the project. The major evaluation categories for the Technical Proposal should include the following at a minimum:

- A. Technical Approach;
- B. Project Delivery Approach; and
- C. Quality Management Approach.

Within each major evaluation category subfactors may need to be determined and identified in the ITP. Normal practice and accepted industry standard is to not indicate any points or weights for the evaluation subfactor, but only indicate that each subfactor contained in the major category is listed in order of importance. When totaled under a major category, all subfactors shall not exceed the total points allowed for that individual major category.

The following [Table 5.4-2](#) is provided as an example of how the Technical Proposal scoring may be determined.

**Table 5.4-2. Technical Scoring Example**

Evaluation Criteria	Scoring Pts		Proposer A		Proposer B		Proposer C	
			TC*	Pts*	TC*	Pts*	TC*	Pts*
Technical Approach	45							
Sub Criterion 1		20	E	20.00	G	16.00	E	20.00
Sub Criterion 2		15	G	12.00	E-	13.50	G	12.00
Sub Criterion 3		10	G	8.00	E	10.00	A	6.50
Project Delivery Approach	35							
Sub Criterion 1		15	G	12.00	E	15.00	G	12.00
Sub Criterion 2		15	E-	13.50	G	12.00	G+	12.75
Sub Criterion 3		5	A	3.25	G+	4.25	G	4.00
Quality Management Approach	20							
Sub Criterion 1		10	E	10.00	G	8.00	G	8.00
Sub Criterion 2		6	E	6.00	E-	5.40	G	4.80
Sub Criterion 3		4	G	3.20	G	3.20	G-	3.00
Total Technical Score	100	100	87.95		87.35		83.05	
Ranking			1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>	

Notes:

- 1) Scoring Points are assigned to each Technical evaluation criteria prior to TC evaluation and ranking by the Project Manager
- 2) TC\* qualitative rating assigned during the consensus meeting
- 3) Pts\* are determined by multiplying the rating weight by the total points assigned to the sub criteria

#### 5.4.4 Price Proposal Evaluation and Scoring

Price Proposals will be evaluated using qualitative scoring, to be performed by the Financial Committee in the same way described for Technical Proposals in Section 4.3.



### 5.4.5 Price Score

Individual Price Scores are determined at time the sealed Price Proposal is opened, after completion of the Technical Proposal evaluation and scoring process, and the Price Proposal evaluation and scoring process have been completed. Price scores are calculated by determining the ratio of the lowest price to each other price, and applying that ratio to the previously determined points available for price to the lowest price. The points available for price must be at least 50% of the total points available.

## 5.5 Apparent Best Value Determination Process

Using a Best Value Compilation Form the Project Manager will determine the Total Proposal Score for each Proposal by combining each Proposal's Technical Score and Price Score in accordance with the predetermined relative weights established for the project.

The Proposal with the highest Total Proposal Score is considered the Apparent Best Value Proposal.

Once the Project Manager has determined each Total Proposal Score and assigned rankings to the Proposals based on such Total Proposal Scores, the Project Manager will present the Apparent Best Value recommendation to the SC. The NDOR SC may:

1. Accept the Project Manager's recommendation,
2. Request the TC present an explanation of the evaluation process and potentially revisit portions of the evaluation, or
3. Reject the recommendations and cancel the procurement.

Upon acceptance of the evaluation results, the SC will issue, or will authorize the Agreements Engineer to issue, a Notice of Intent to Award to the Apparent Best Value proposer and commence finalization of the Contract Documents.

The following [Table 5.5-1](#) illustrates how an Apparent Best Value proposer may be calculated and determined.

**Table 5.5-1. Example Apparent Best Value Calculation and Ranking**

	Total Technical Score	Bid Price Value	Technical Score	Price Score	Total Proposal Score	Apparent Best Value Ranking
Proposer A	87.95	\$50.0 million	30.000	67.200	97.200	3rd
Proposer B	87.35	\$49.5 million	29.795	67.879	97.674	2nd
Proposer C	83.05	\$48.0 million	28.329	70.000	98.329	1st

Note:

- 1) For the example, we used 30% of the points for Technical and 70% for Price
- 2) Technical Score will be determined by – proposer's Tech Score / Highest Tech Score x 30
- 3) Price Score will be determined by – Lowest Bid Price / proposer's Bid Price x 70

## 5.6 Information Release

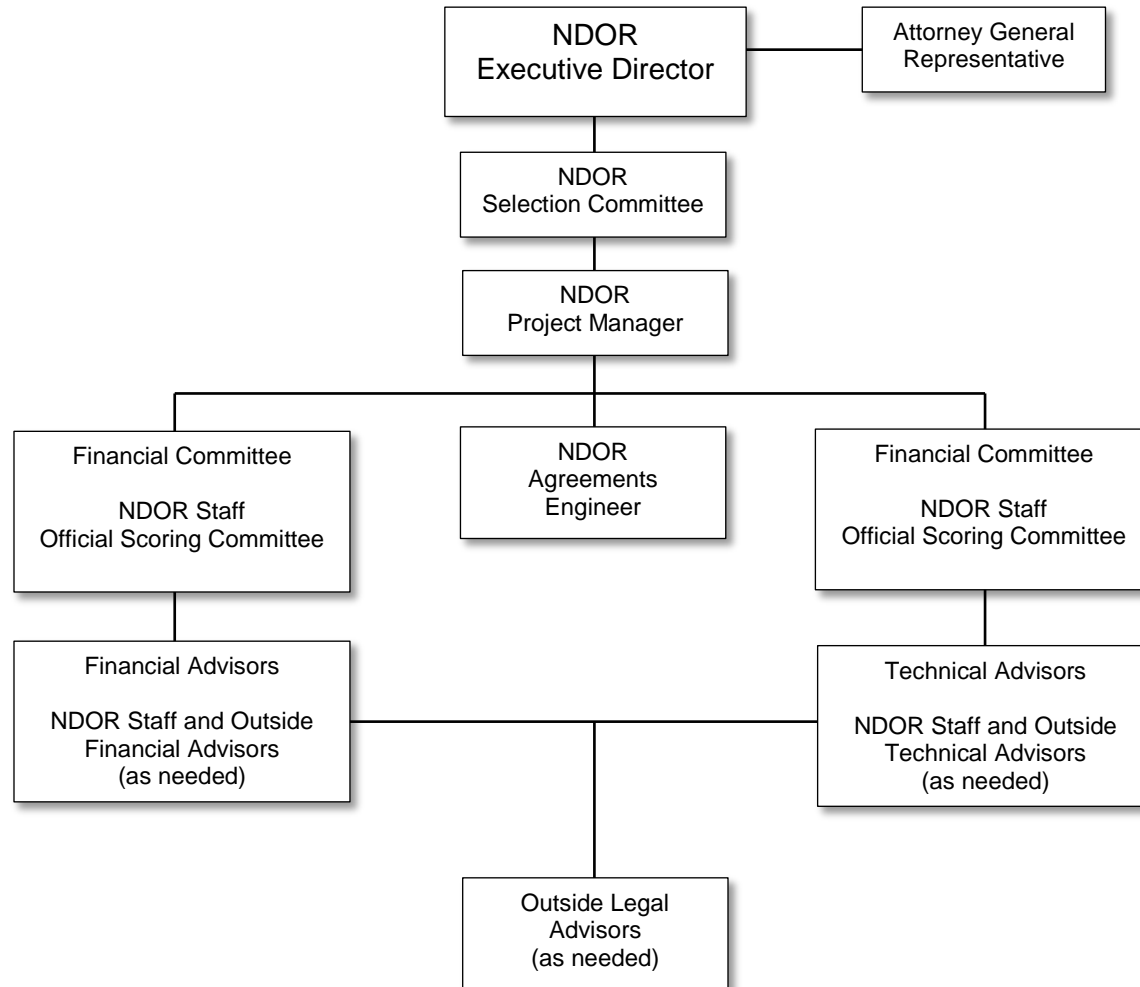
Information regarding the contents of proposals, the input of Advisors, the reviews/deliberations of the Technical Committees, recommendations to the SC, or other information relating to the evaluation process will be 1) released only to authorized persons and 2) made available only with the authorization of the Agreements Engineer or their designated representative.

## 5.7 Notification and Debriefing

All proposers submitting proposals will be notified in writing of the results of the evaluation process.

Those proposers that are not selected as the Best Value proposer will be contacted by the Project Manager, or their designee, and given the opportunity to request a debriefing, which may be conducted by a designee of the Project Manager at the discretion of NDOR. The Project Manager or their designee will coordinate with the Chairperson of the Technical Committee and/or Financial Committee to schedule such debriefings. Debriefing participants may include the Technical Committee Chairperson, legal counsel and/or any other person designated by the Project Manager. Only information pertaining to the proposal submitted by the proposer attending a debriefing will be shared with that proposer. Proposals submitted by other proposers will not be discussed.

**Attachment 5-1**  
**Proposal Evaluation Organization for Large Projects**





## Section 6 Design/Build Quality Assurance and Quality Control Policy

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### 6.1 Goals of the Quality Assurance and Quality Control Plan

The Design/Builder shall develop and implement a QA/QC Plan that:

- Establishes comprehensive quality management procedures;
- Integrates the quality goals of both the design and construction elements of the project;
- Defines the minimum standards and procedures for quality management; and
- Assigns the responsibilities for specific quality management functions.

The description of the quality management program in this Section 6 is not intended to be all encompassing, but to give the Design/Builder and NDOR flexibility and a general framework, within which to design a program that best fits the needs of the project and both parties.

### 6.2 Quality Assurance and Quality Control Responsibilities

*Design/Builder Responsibility.* The Design/Builder shall be responsible for the design and construction quality of the project and for fully complying with the project's quality management program as defined in the QA/QC Plan. Maximizing project quality will require the daily attention and continued efforts of every worker who is involved with the design and construction of the project, from Notice to Proceed to Final Acceptance.

*NDOR Responsibility.* NDOR will perform Independent Quality Assurance activities in support of the Design/Builder's quality management program, performing quality management oversight and Owner Verification Testing activities on the project. NDOR reserves the right to conduct or hire an independent consultant to conduct the QA portion of the Design/Builder's Construction QA plan.

### 6.3 Quality Assurance and Quality Control Program

NDOR will set the requirements to which the Design/Builder must adhere in developing its QA/QC Program. These requirements include defining the quality control procedures for both design and construction of the project.

The Design/Builder would then use these requirements to develop QA/QC Plans for the project. The QA/QC Program must include two separate and distinct plans:

- a Design QA/QC Plan, and
- a Construction QA/QC Plan.

Each plan should separately identify QC activities and QA activities.

NDOR may approve or partially approve the QA/QC Plan and may request modifications to the QA/QC Plan as it deems necessary. The Design/Builder will not be allowed to start any design and/or construction until NDOR has approved the Design/Builder's QA/QC Plans for design and construction.

### **6.3.1 Quality Assurance and Quality Control Documentation**

The Design/Builder will need to maintain a record of internal QA and QC activities for the project. The QA/QC Plan will address, at a minimum, the following:

- How the Design/Builder would provide QA and QC for both the design and construction elements of the Project, including but not limited to, design standards and checking procedures, sampling, testing, inspection, management control, change management, document control, communication requirements, and non-compliant work corrective action plans to ensure that the work conforms to the contract requirements;
- How the Design/Builder's QA/QC program—for both the design and construction elements—would be performed by a subcontractor, supplier, vendor, agent, or other entity with contractual obligations to complete design or construction elements of the Project;
- How the Design/Builder's design and construction QA/QC organizations function, including the expected minimum number of full-time equivalent employees with specific QA or QC responsibilities; and,
- The relationship and interface between and among the QA and QC organizations and the design and construction organizations to ensure that the decisions made by QA/QC personnel are not based upon the impact such decisions may have on the project's schedule, contractor's performance or project profitability.

QA/QC will be an integral part of each Work Package. As part of each application for payment that includes completed Work Packages, the Design/Builder's designated Quality Assurance Manager must certify that each Work Package has been completed in accordance with the D/B Contract, and that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to the respective Work Package have been resolved. The Design/Builder must submit with each application for payment verifiable evidence from the D/B Design Manager of the QA/QC reviews, including any checklists, summary data, high-level/outline calculations or design checks, and evaluations of the work and the qualifications of the responsible personnel that completed the work, that the relevant QA or QC reviewer relied on to make his/her determination the work is complete and conforms to the requirements of the D/B Contract.

### **6.3.2 Design/Builder's Design Quality Assurance and Quality Control Plan**

The objective of the Design QA/QC Plan is to place the responsibility for conducting Design QC reviews and performance of Design QA duties solely with the Design/Builder, yet allow the NDOR to fulfill its responsibilities of exercising due diligence in overseeing the design process and design products.

The Design QA/QC Plan will direct and assure that all investigations, reports, calculations, plans, and specifications are prepared in accordance with accepted design and engineering practices in the State of Nebraska and the Contract Documents.

The Design QA/QC Plan will outline:

- The Design/Builder's internal QC procedures to be followed by the Design QC personnel during project design; and

- The Design/Builder's internal QA procedures to be followed by the Design QA personnel during development and subsequent review of the design program.

The Design/Builder will need to submit the final Design QA/QC Plan to NDOR for review and approval, either independently or as an integral part of the Design/Builder's QA/QC Plan. NDOR will instruct the Design/Builder that beginning design before receiving approval of the Design QA/QC Plan from the NDOR will be at the Design/Builder's sole risk, and that NDOR reserves the right to withhold payment for work performed prior to NDOR's approval of the Design QA/QC Plan will be accepted. If the proposed Design QA/QC Plan is unacceptable to NDOR, the Design/Builder shall modify and resubmit the Plan as necessary to make it acceptable to NDOR. Once the QA/QC Plans are approved by NDOR, the Design/Builder shall not revise any portion without the prior written approval of NDOR.

#### 6.3.2.1 Design Quality Assurance and Quality Control Plan Contents

The Design QA/QC Plan shall describe and include at least the following:

1. *Responsibilities.* Clear definition of the specific responsibilities of the design firm's internal Design QC functions and the internal Design QA duties.
2. *Design QC/Design QA Procedures.* The Design QC and Design QA procedures for the design plans; specifications; reports; calculations, and other construction documents, organized by engineering disciplines (such as structural, civil, and utilities). These procedures shall specify measures to ensure that appropriate quality requirements are specified and included in design documents and to control deviations from such requirements. The Design/Builder shall not deviate from such procedures unless the deviations have been previously approved by NDOR in writing.
3. *Independent Plan Checking.* The Design QC and Design QA procedures for ensuring independent checking of the preparation, verification, and back-checking of all plans, specifications, calculations, reports, and other submitted items. All critical structural design elements subject to failure shall include a set of independent calculations for checking purposes. Such checking shall be in accordance with accepted engineering practices of NDOR and the requirements of the Contract Documents. The checking engineers shall meet the qualification requirements indicated in RFP, and have equal or more relevant experience than the engineer(s) whose work is being checked.
4. *Procedures for Early Construction.* Specific Design QC and Design QA procedures for items planned for early construction, including specific procedures for verifying the final design and identification of any computer programs used for design.
5. *Identification of Design Personnel.* Clear identification of the designer and checker on the face of all final design documents. Plans, specifications, calculations, reports, and other documents shall be certified, signed, and dated by the engineer in responsible charge for that item or element of the project.
6. *Adequacy of Design.* Description of the level, frequency, and methods of checking the adequacy of the project design for all Design Documents.
7. *Coordination.* Procedures for coordinating the various design activities that are performed by different individuals or firms for related tasks. The coordination procedures shall include the review, approval, release, distribution, and revision of documents involving such parties. These procedures shall ensure that conflicts, omissions, or misalignments do not occur between drawings or between the drawings and the specifications.

8. **Personnel Qualifications.** Procedures to:
  - Ensure that the Design/Builder personnel are familiar with all the provisions of the Contract Documents concerning their respective responsibilities; and,
  - Verify the required education, training and certification (as appropriate) of personnel performing activities affecting or assessing the quality of the project design to ensure that such personnel achieve and maintain reasonable proficiency.
9. **Standards.** Procedures to ensure that the project design is performed according to the Design QA/QC Plan, generally accepted engineering practices of NDOR, and the Contract Documents.
10. **Documentation.** The specific responsibilities of personnel responsible for satisfying documentation requirements and procedures for meeting documentation requirements; for filing and retaining design criteria, reports, notes, calculations, plans, specifications, schematic drawings, and supporting materials needed during the final design; and for developing as-built records. The Design/Builder shall maintain, organize, and index all design documents using Project Wise and On Base for document management, and make copies available to NDOR upon request.
11. **Audits.** Procedures and schedules for the Design Quality Manager to audit the design firm's QC procedures.

#### 6.3.2.2 Design Quality Personnel

The D/B Design Quality personnel positions shall be identified by the Design/Builder in the Design QA/QC Plan.

1. **D/B Quality Manager.** The Design/Builder shall designate a Quality Manager who will:
  - Be responsible for management and certifying that the Design Quality Assurance and Control program has been met;
  - Have no involvement with project scheduling or production activities; and
  - Reports to the Design/Builder's Project Manager.

The Design/Builder shall not replace the Quality Manager without prior written approval by NDOR. Any request to replace the Quality Manager shall name a proposed replacement manager, include his/her qualifications, and include a statement that he/she will be available full-time within twenty working days of receipt of the NDOR's written approval of the replacement.

2. **D/B Design QA Staff.** The Design QA staff shall include senior experienced engineers to perform audits and quality assurance functions as defined by the Design/Builder's Design QA/QC Plan. An engineer shall be considered a Design QA engineer if he/she is a Registered Professional Engineer in Nebraska and has adequate relevant experience as detailed in the RFP.
3. **D/B Design QC Staff.** The Design QC staff shall include experienced engineers to perform detailed checks of all design calculations and review of construction plans as defined by the Design/Builder's Design QA/QC Plan. An engineer shall be considered a Design QC engineer if he/she is a Registered Professional Engineer in Nebraska and has adequate relevant experience as detailed in the RFP.



### 6.3.2.3 Design/Builder's Design Quality Control

The Design/Builder's Design Quality Control as outlined in the Design QA/QC Plan shall require:

- The preparation of all design elements under the direct supervision of a Nebraska Registered Professional Engineer;
- Performance of a complete check of all calculations and review of all drawings prepared by the D/B designer. The Design/Builder's designer may not perform the design QC activities for his or her own work, but may be designated as the design QC for the portion of the work that he/she was not directly been involved with; and
- Review of the D/B designer's approach when performing the project design, including processes, procedures, and documentation that were used.

*Design QC Certification.* The Design QC reviewer shall certify that the check of all calculations and review of all drawings has been performed and meets the requirements of the Design QA/QC Plan.

### 6.3.2.4 Design/Builder's Design Quality Assurance

The Design/Builder's Design Quality Assurance as outlined in the Design QA/QC Plan shall require:

- Performance of periodic checks of the Design QC process. The Design QA check shall include a general review of all plans, reports, calculations, specifications, and supporting materials incorporated into the Design Documents;
- Review of QC documentation to ensure that all QC checks were performed by engineers not directly involved with the design; and
- Performance of record, documentation, procedures, and process audits, verifying that all design work complies with the approved Design QA/QC Plan.

*Design QA Certification.* The D/B Quality Manager shall certify, prior to any design submittal to NDOR that the design has been through the Design QC and Design QA process and meets the Design QA/QC Plan standards.

## 6.3.3 NDOR Design Review Process

As part of the Design QA/QC Plan, NDOR will reserve the right to review as many design packages on the project as it deems necessary. After NDOR has performed a design package review, the Design/Builder shall address all comments and concerns raised by NDOR by revising the design and/or plans to demonstrate to NDOR's satisfaction that the revised design and/or plans complies with the D/B Contract requirements.

The D/B Design Manager shall oversee the performance of all the design and hold oversight review meetings. NDOR may participate in these oversight reviews. Under this procedure, the D/B Design Manager will provide NDOR with draft design plans for review and comment to confirm that the design work complies with the requirements of the D/B Contract.

Any review comments made by NDOR should be provided, in writing, to the Design/Builder. NDOR should provide timely reviews per the D/B Contract and (if and to the extent required) approvals of interim design submissions, drawings, specifications, and other design submittals consistent with the turnaround times set forth in Design/Builder's schedule, provided that NDOR has a set number of days after receipt of such submissions to act upon them.

In addition to contractual reviews, NDOR may conduct regular monthly progress meetings in which quality issues are reviewed, discussed, and addressed.

A typical flowchart showing the review process for Design/Builder's design process is provided as [Attachment 6-1](#) (*Typical Design Review Process*).

#### 6.3.3.1 *Over-the-Shoulder Reviews*

Over-the-shoulder reviews are informal examinations by NDOR of Design Documents during the project design process. Over-the-shoulder reviews will mainly assess whether the requirements and design criteria of the Contract Documents are being followed and whether the Design/Builder's Design QA and Design QC activities are being undertaken in accordance with the approved Design QA/QC Plan. The reviews may, at NDOR's discretion, include review of design drawings, electronic files, calculations, reports, specifications, geotechnical data, progress prints, computer images, draft documents, draft specifications and reports, other design documents, and any other relevant design information as requested by NDOR.

The intent of these reviews will be to check for concept, level of detail, design criteria, and fatal flaws. These reviews will not routinely include detailed calculation or drawing reviews, although NDOR will retain the right to perform detailed reviews of any item at any time. If mutually agreed upon between the parties, for specific review items, the over-the-shoulder review may consist of an exchange of electronic files between the Design/Builder's designer and NDOR.

#### 6.3.3.2 *Formal Design Reviews*

Throughout the design process, the Design/Builder or NDOR may request formal design reviews/workshops to discuss and verify design progress and to assist the Design/Builder and/or its designer(s) in resolving design questions and issues.

Formal design reviews/workshops shall be conducted prior to each of the following mandatory submittals:

- *Preliminary Bridge Submittal* - The Design/Builder shall prepare and submit for NDOR review Preliminary Bridge submittal(s) in accordance with the requirements in the technical provisions of the RFP.
- *Preliminary (30%) Design Submittal* - The purpose of the Preliminary (30%) Design submittal is to obtain acceptance by the Design QC Manager of the Design/Builder's horizontal and vertical geometric design, bridge clearances, and limits of the project. NDOR will review for compliance.
- *Intermediate (65%) Design Submittal* - The purpose of the Intermediate (65%) Design submittal is to ensure that the design is progressing in accordance with the requirements of the Contract Documents, applicable law, and the governmental approvals. The Intermediate (65%) Design submittal shall also ensure that: 1) existing field conditions have been properly identified and addressed and 2) various design disciplines and elements of the project are being properly coordinated between the Design/Builder and persons responsible for adjacent work, appropriate landowners, utility owners, developers, railroads, and governmental agencies. The submittal shall consist of detailed construction drawings and specifications, including traffic control and sequencing plans, a completed drainage design, and supporting reports and calculations consistent with the Contract Documents. The Intermediate (65%) Design submittal shall fully address all comments made by the design quality reviewers and NDOR on the Preliminary (30%) Design submittal.

- *Final (100%) Design Submittal* - The Design/Builder shall submit the Final (100%) Design submittal to NDOR for review and comment. Construction packages for individual work elements can be organized such that the final document package can be assembled into a construction document that could be used to construct the entire work and/or could be used with minor revisions for as-built plans. When the Design/Builder has completed the Final Design of an item or element and wishes to obtain NDOR's approval to proceed with construction thereof, the D/B Quality Manager shall certify that: 1) the design meets all applicable requirements of the Contract Documents, applicable law, and the governmental approvals; 2) the design has been checked in accordance with the Design/Builder's approved Design QA/QC Plan; 3) the item or element is ready for construction; and 4) all required ROW has been secured, along with any and all approvals from governmental agencies, utility owners, and railroads (as needed). After certifying the above items 1 through 4, the Design/Builder may elect to go directly to the construction phase of any item or element at its own risk pending NDOR's review. The Design Quality Manager will conduct a formal review with NDOR of the Final (100%) Design submittal for said item or element. The Final (100%) Design submittal shall consist of complete Design Documents, fully addressing all of the Intermediate (65%) Design submittal review comments. All relevant documentation must be available for review, including the comments of the Design QA and Design QC staff reviewers, Design Quality Manager written certifications, copies NDOR's approval of deviations from design standards, and/or Design Exceptions (when necessary). In the event the Design/Builder has opted to move forward with construction, and the NDOR review reveals that design changes are needed, the Design/Builder shall accomplish such changes without further consideration for time or compensation.

NDOR's concurrence with the Design Quality Manager's acceptance statement will not constitute approval of the design or subsequent construction, nor relieve the Design/Builder of its responsibility to meet the requirements hereof. Irrespective of whether NDOR provides the Design/Builder with the authority to begin construction on elements of the project prior to completion of the entire design, the Design/Builder shall bear the responsibility to ensure that construction meets the requirements of the Contract Documents, applicable law, and the governmental approvals.

If NDOR determines that the Final Design Package does not meet the requirements of the Contract Documents, applicable law, and applicable governmental approvals, NDOR will notify the Design/Builder in writing of any specific deficiencies in the Final Design Package. Upon receipt of NDOR's comments, the Design/Builder shall correct such deficiencies and modify the Final Design Package and (if necessary) the construction.

The Design/Builder must maintain a written record of all formal design reviews, including at a minimum the following:

- A list of the participants in attendance;
- Description of the items covered and discussed;
- Identification of discrepancies and comments, and a report on corrective actions (both those taken and those planned); and,
- Identification of follow-up action items, due dates, the parties responsible for action items requiring resolution, and deadlines for resolution.

### **6.3.3.3 Release-for-Construction Plans**

Release-for-Construction plans shall aid and facilitate design review by NDOR, and provide adequate information for safe, efficient, and high-quality construction. Release-for-Construction plans are intended to allow construction to begin on segments or elements of the project as the design progresses and before final design is complete. Release-for-Construction plans and submittals shall be submitted for NDOR review prior to starting construction of depicted segments or elements.

The Design/Builder may proceed with construction of certain elements or portions of the project in accordance with Release-for-Construction plan before the design of the entire project has been completed. NDOR will notify the Design/Builder in writing of its acceptance or rejection of the Release-for-Construction plan.

The Design/Builder will need to acknowledge and agree that it may not issue any Release-for-Construction plan until the Design Quality Manager has obtained approval of them from NDOR and applicable governmental entities, utilities, and railroads. Construction of any item, element, or phase covered by the Design Quality Manager's statement approving construction shall progress only to the extent covered by the Design Documents included in that approval, except as noted above in Section 3.3.2. Before progressing further with construction, the Design/Builder shall complete the next phase of design or complete the final design, and obtain NDOR's concurrence. Any subsequent phases of design to be released for construction shall be checked and approved by the Design Quality Manager in the same manner as indicated above for Formal Design submittal reviews.

NDOR's concurrence with the Design Quality Manager's acceptance statement will not constitute approval of the design or subsequent construction, nor relieve the Design/Builder of its responsibility to meet the requirements hereof. Irrespective of whether NDOR provides the Design/Builder with the authority to begin construction on elements of the project prior to completion of the entire design, the Design/Builder shall bear the responsibility to ensure that construction meets the requirements of the Contract Documents, applicable law, and the governmental approvals.

If NDOR determines that the Release-for-Construction plan does not meet the requirements of the Contract Documents, applicable law, and the governmental approvals, NDOR will notify the Design/Builder in writing of any specific deficiencies in the Release-for-Construction plan. Upon receipt of NDOR's comments, the Design/Builder shall correct such deficiencies and modify the Release-for-Construction plan and (if necessary) the construction.

### **6.3.3.4 Oversight Visits**

Throughout the design process, NDOR may make oversight visits to discuss and verify design progress and ascertain the overall progress of the project with respect to the Design/Builder's Design QA/QC Plan. If, in the sole opinion of NDOR, the Design/Builder is not meeting the goals and objectives of the Design QA/QC Plan, the Design/Builder shall suspend all project work and NDOR will withhold payment until work elements are brought back into compliance with the Design QA/QC Plan.

## **6.3.4 Design/Builder's Construction Quality Assurance and Quality Control Plan**

The objective of the Construction QA/QC Plan is to place the responsibility for conducting Construction QC inspection and testing and performance of Construction QA duties solely with

the Design/Builder, including coordination of NDOR's Construction Quality Assurance oversight and Owner's Verification Testing processes.

#### 6.3.4.1 Construction Quality Assurance and Quality Control Plan Contents

The Design/Builder's Construction QA/QC Plan shall describe and include at least the following:

1. *Authority.* Clear definition of the authority and responsibility for administering the Design/Builder's Construction QA/QC program.
2. *Work Force Participation.* Methods and procedures to obtain active participation of the Design/Builder's work force in Construction QC activities to achieve a quality project.
3. *Reporting Forms.* Reporting forms to be used by the responsible Construction QC personnel.
4. *Staffing Plan.* A Construction QC organization and staffing plan that includes the period of time that each QC staff member will be on-site.
5. *Staffing Qualifications.* Resumes of the key staff members, and the experience, knowledge, and skill levels of the Construction QC staff.
6. *Procedures.* Procedures for inspecting, checking, and documenting the work completed and for the inspection, examinations, and measurements for each operation (such as demolition, clearing, drainage, grading, surfacing, and paving).
7. *Controlled Conditions.* Procedures to ensure that all activities affecting the quality of the project are accomplished under controlled conditions, using appropriate equipment for the task being performed.
8. *Personnel Standards.* Procedures to ensure that the personnel performing Construction QC activities meet or exceed all applicable standards of education, training, and certification.
9. *Critical Elements.* Procedures to ensure that critical elements of the project as identified by the contract, are not started or continued without on-site inspection and testing by Construction QC personnel and the appropriate NDOR staff.
10. *Conformance and Performance.* Specific procedures to ensure that all work conforms to the requirements of the Contract Documents, governmental approvals, applicable law, and the design documents, and that all materials, equipment, and elements of the project will perform satisfactorily for the purpose(s) intended.
11. *Compliance Criteria.* A requirement that all activities undertaken by or on behalf of the Design/Builder affecting the quality of the project shall be prescribed and accomplished by documented instructions, procedures, and appropriate drawings, all of which shall include quantitative and qualitative criteria to be used to determine compliance.
12. *Purchase Compliance.* Measures consistent with NDOR standards that ensure that purchased materials, equipment, and services conform to the Contract Documents, governmental approvals, applicable laws, rules, regulations, and the design documents (including measures for source evaluation and selection, provision of objective evidence of quality furnished by subcontractors and suppliers, inspection at the manufacture or vendor source, and examination of products upon delivery).
13. *Requests for Information (RFI) Procedures.* Procedures for processing RFIs to resolve discrepancies and/or questions in the Released-for-Construction plans so that all



changes are documented and approved by Design/Builder's design engineers and, as applicable, NDOR.

14. *Coordination.* A program for coordination of all inspections and testing with the inspections and tests of governmental entities, railroad(s), and utility owners.
15. *Adverse Conditions.* Procedures to ensure that conditions adverse to quality (such as failures, malfunctions, deficiencies, defective material and equipment, deviations, and other Nonconforming Work) are promptly identified and corrected; to ensure that the cause of the condition is determined and prompt corrective action taken to preclude repetition; and to document and report the identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken, to NDOR in writing and to appropriate levels of Design/Builder's management.
16. *Instrumentation.* Procedures and personnel to be used to assure that specified instrumentation is installed and monitored in accordance with applicable specifications.
17. *Certificates of Compliance.* The form and distribution of certificates of compliance.
18. *Construction Staking.* Procedures for checking and verifying the accuracy and adequacy of construction stakes, lines, and grades established by the Design/Builder.

#### 6.3.4.2 Construction Quality Personnel

The D/B Construction Quality personnel positions shall be identified by the Design/Builder in the Construction QA/QC Plan.

1. *D/B Quality Manager.* The Design/Builder shall designate a Quality Manager who will:
  - o Be responsible for management and certifying that Construction Quality Assurance and Control program has been met;
  - o Have no involvement with project scheduling or production activities; and
  - o Reports to the Design/Builder's Project Manager.

The Design/Builder shall not replace the Quality Manager without prior written approval by NDOR. Any request to replace the Quality Manager shall name a proposed replacement manager, include his/her qualifications, and include a statement that he/she will be available full-time within twenty working days of receipt of the NDOR's written approval of the replacement.

2. *D/B Construction QC Staff:* Each person on the Design/Builder's and subcontractors' construction work force is considered to be a member of the Design/Builder's QC staff, as each and every one is responsible for the quality of the project. Personnel responsible for performing the quality control inspection shall be knowledgeable and receive training to perform their quality control duties. Personnel performing quality control inspection shall be knowledgeable and certified in the inspection methods and procedures.
3. *D/B Construction QA Staff:* The Design/Builder shall assign Construction QA personnel to perform material sampling/testing of all construction activities performed and materials incorporated into the project by any member of the Design/Builder's group. Personnel performing quality assurance sampling and testing shall be knowledgeable and certified in the testing and sampling methods and procedures.

#### 6.3.4.3 *Design/Builder's Construction Quality Control*

The Design/Builder's Construction Quality Control as outlined in its Construction QA/QC Plan shall:

- Review the preparation of all Portland cement concrete and hot-mix asphaltic concrete mix designs by a Nebraska Registered Professional Engineer;
- Observe and perform daily field inspections of all project construction work and materials, and prepare a daily Construction QC report to document the inspections;
- Review sampling and testing of all materials during the crushing, screening, or manufacturing processes to ensure materials meet the specifications of the project; and,
- Review the D/B approach when performing the project construction including any processes, procedures, and documentation that were used.

*Construction QC Documentation.* The Design/Builder QC staff shall maintain construction workmanship and materials quality records of all inspections and tests performed per the approved Construction QA/QC Plan, and report results to allow timely and accurate decisions on workmanship and material quality issues.

#### 6.3.4.4 *Design/Builder's Construction Quality Assurance*

Design/Builder's Construction Quality Assurance as outlined in the Construction QA/QC Plan shall:

- Have the authority to stop portions of project if the Construction QA/QC Plan is not being implemented correctly;
- Perform material sampling and testing on the project;
- Audit the Design/Builder's records, documentation, procedures, and processes to verify compliance with the approved Construction QA/QC Plan;
- Review and certify all Portland cement concrete and hot-mix asphaltic concrete mix designs;
- Perform spot checks on construction alignment and grades; and,
- Retain authority to order a cessation of portions of or the entire project when unsafe conditions occur.

*Construction QA Certification.* The D/B Quality Manager shall certify, that the construction has been through the Construction QC and Construction QA process and meets the Construction QA/QC Plan standards.

#### 6.3.4.5 *NDOR Quality Assurance Acceptance*

NDOR may hire an independent consultant to verify that the Design/Builder is following the project's QA/QC plan. The Design/Builder shall furnish, upon request by the NDOR's consultant, all documentation related to inspection and materials testing. The NDOR's consultant will perform an independent verification sampling and testing to verify the results of the QA/QC testing. If the results of the verification testing do not confirm the Design/Builder's QA/QC testing results, the Design/Builder will provide documentation to explain reasons for the difference. If NDOR determines that the supporting documents does not satisfactorily explain

the difference, the verification test results will govern. In the event the difference cannot be explained, the Design/Builder and NDOR will perform Independent Assurance (side-by-side) testing to determine the cause of the difference. At each point in performance of the project at which specific inspection or approval by NDOR is required by the Contract Documents, governmental approvals, or applicable law, the Design/Builder shall not proceed further until NDOR has completed such inspection or approval or waived (in writing) its right to inspect or approve. If NDOR is not given adequate notice of and/or the opportunity for prior inspection of any work done or materials used, then NDOR may order that such work or materials be uncovered, removed, or restored at Design/Builder's expense, and the Design/Builder shall not be entitled to a time extension, even if the work proves to conform with the requirements of the Contract Documents, the governmental approvals, and applicable law after uncovering.

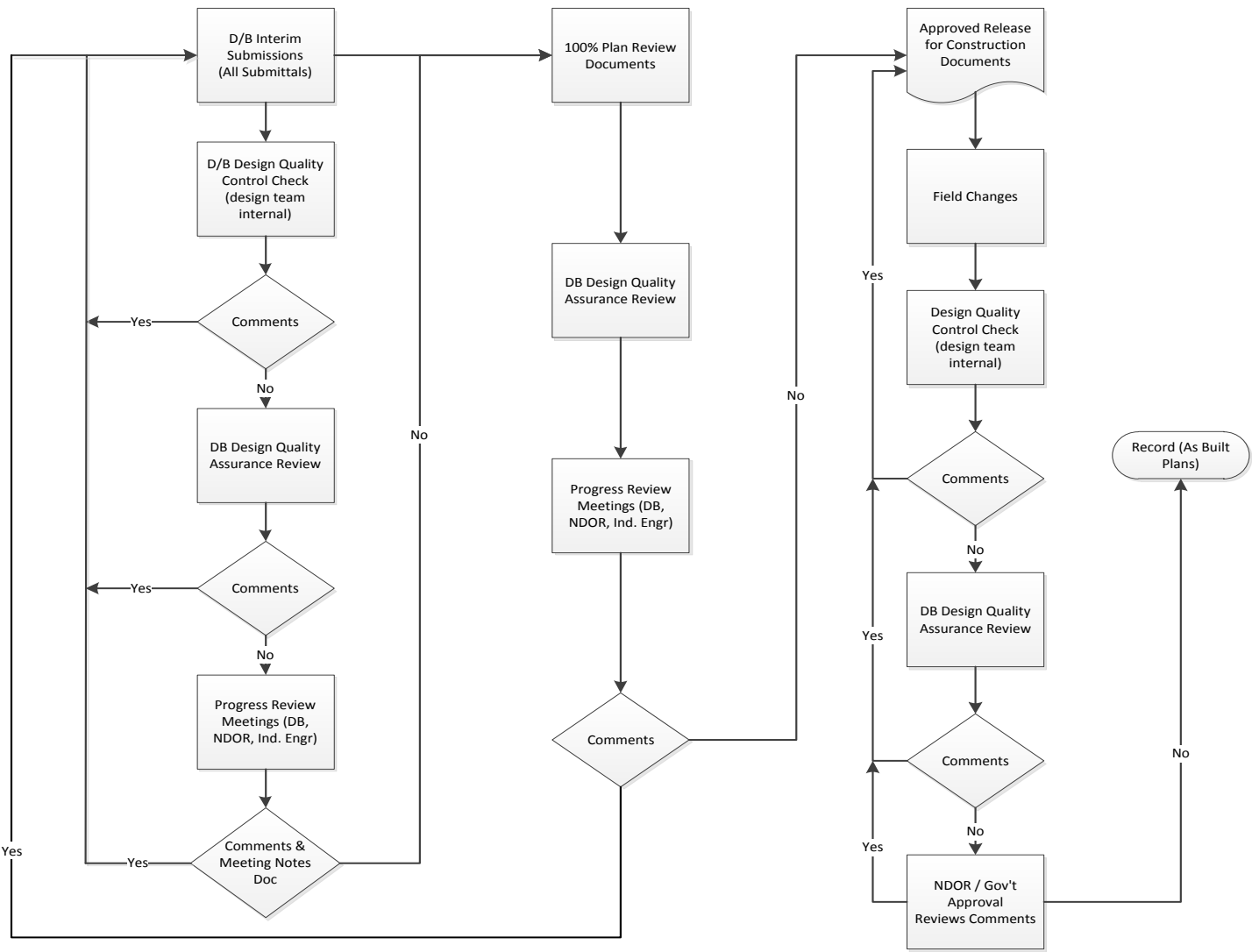
## 6.4 Typical Design/Build Quality Organization

The Design/Builder's QA/QC Plan must include a description of its quality control and quality assurance organization, including the number of full-time equivalent employees with specific Quality Control and/or Quality Assurance responsibilities, and include an organization chart showing lines of authority and reporting responsibilities. The persons and organizations performing Quality Control and/or Quality Assurance functions shall have sufficient authority and organizational autonomy to identify quality problems and to recommend, initiate and verify implementation of solutions. Persons performing Quality Control and/or Quality Assurance functions shall be at an organizational level that ensures that they are not influenced by the impact of implementation of Quality Control and/or Quality Assurance measures on the project schedule or cost. To ensure the organizational independence, at the very least, the QA/QC will be established as a separate entity from the design and production organization and not reporting to the Project Manager. All Key Personnel performing Quality Control and/or Quality Assurance functions must be exclusively designated to such and cannot be assigned to perform conflicting duties.

Attachment 6-2 illustrates a typical Design/Builder's QA/QC organization.

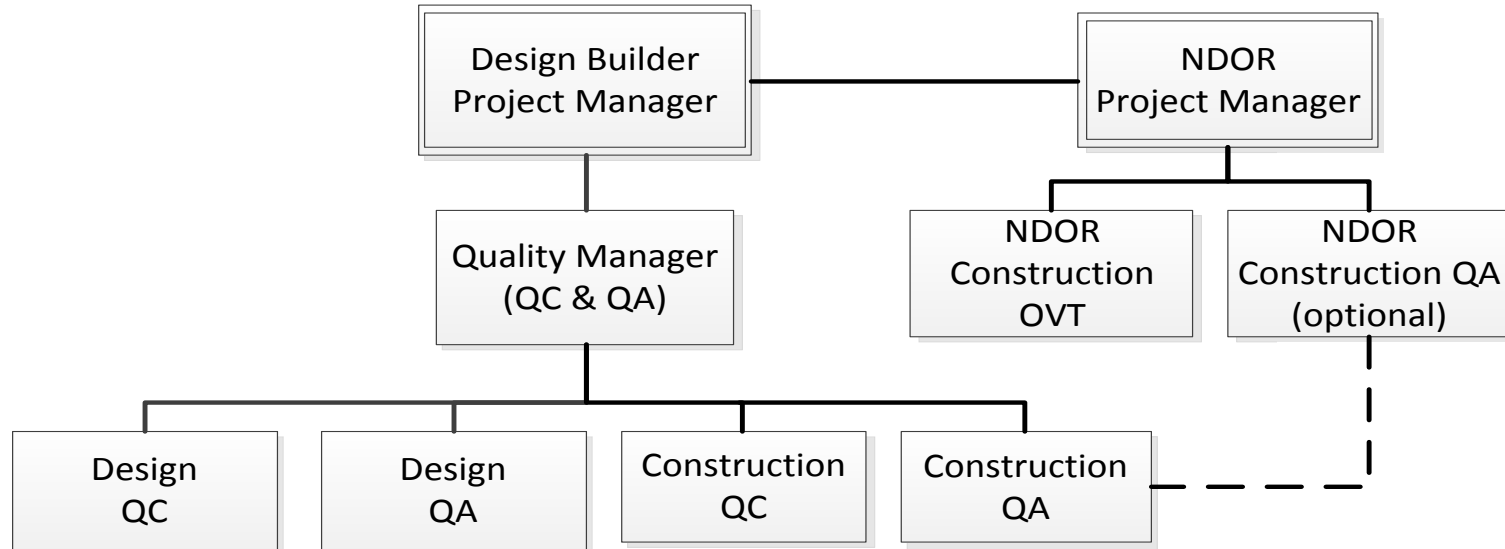


**Attachment 6-1**  
**Typical Design Review Process**





**Attachment 6-2**  
**Typical Design/Builder's Quality Assurance/Quality Control (QA/QC) Organization**



All Key Personnel performing QA or QC functions should be exclusively assigned to such functions and should not be assigned to perform conflicting duties or production work.



## **Section 7 Risk Management Guidelines for Design/Build and Construction Manager/General Contractor**

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### **7.1 Introduction to Project Risk Management**

This document provides information to project managers, project teams, and staff involved directly or indirectly with project risk management. It provides:

- Uniformity in project risk management activities.
- Techniques and tools for project risk management.
- Data requirements for risk analysis input and output.
- The project risk management role in overall project management.
- Guidance on how to proactively respond to risks.

Understanding project risks enables project teams to more effectively fulfill public service expectations. Assessing project risk and uncertainty informs decision-making in our project development and delivery mission. These decisions contribute to public safety and clarify project expectations. Informed project risk management adds value on many levels to every project we deliver.

Estimating the cost of transportation projects is a fundamental responsibility of NDOR and is directly affected by the risk management process. In recognition of the fundamental and strategic importance of cost estimating, these guidelines provide consistent practices across the agency to enhance methods for meeting this responsibility. Estimators must be shielded from pressures to prepare estimates that match any preconceived notions of what a project should cost. Estimators need to prepare estimates based on the scope of the project, the schedule of the project, and the bidding conditions that are anticipated.

Although risk management is an important part of all NDOR projects including those delivered using APDM, and all project risk management begins with internal NDOR meetings or workshops regardless of the project delivery method, the risk management process differs significantly between D/B and CM/GC. These different processes are described in Sections 2 and 3 of these procedures, respectively.

### **7.2 Design/Build Project Risk Management Process**

Risk management, as an integral part of project management, occurs on a daily basis. With proactive risk management, we look at projects in a comprehensive manner, and assess and document risks and uncertainty. The essential steps for D/B risk management are provided below.

#### **7.2.1 Risk Management Planning**

Risk management planning is the systematic process of deciding how to approach, plan and execute risk management activities throughout the life of a project. It is intended to maximize

the beneficial outcome of opportunities and minimize or eliminate the consequences of adverse risk events.

Prior to preparing the procurement documents for a project, the NDOR project team may conduct an internal project risk analysis meeting, to develop the initial Risk Assessment and Allocation Matrix to be used in making the initial or conceptual level risk recommendation. This meeting may take the form of an all-day workshop but may be accomplished more informally by NDOR staff depending upon the size and complexity of the given project scope. After shortlisting of D/B teams, and during review of the draft RFP by the shortlisted teams, the initial risk allocation matrix may be updated based on feedback obtained from proposers through group and/or one-on-one meetings, or through a risk workshop. For each element of risk, the proposers would indicate whether they can accept the risk, require the allocation to be modified (typically by providing suggested contract language), or cannot accept the risk.

## 7.2.2 Assignment of Project Risk

Risk identification involves determining which risks might affect the project and documenting their characteristics in terms of magnitude of impacts and probability of occurring. Risk assignment involves identifying which party of parties will be responsible for each risk. Both types of information are included in the Risk Assessment and Allocation Matrix.

The following recommended practices are not intended to be rigid requirements; these are flexible guidelines to be modified to meet the specific needs associated with each project.

*Environmental Clearances:* NDOR is typically responsible for complying with State and Federal requirements and will be the signatory on many documents, such as records of decision and permit applications. Although a Design/Builder may provide information to support a permit application, they cannot control the actions or timing of third party regulatory agencies. For most projects, NDOR will provide allowances for the required application time as the associated delay risks could be significant and could result in higher proposal prices.

Other permits required for construction trades or for temporary construction impacts of convenience are assigned to the Design/Builder.

*Public Information:* As the project owner, NDOR is typically responsible for the risk of project public endorsement. This assignment of risk is based on NDOR having more directly relevant experience and greater expertise than a contractor in this area. Once the public has accepted a project, the Design/Builder should be tasked with the responsibility of developing and implementing a public participation program that provides ongoing information sharing and open communications.

*Preliminary Plan:* NDOR will develop a D/B project to only the minimum level necessary. Environmental requirements and risk definition may require NDOR to progress some portions of the design further than others. If the project is developed in too much detail, the opportunity to innovate and/or save time and possibly money may be reduced significantly or lost entirely.

*Geotechnical:* NDOR is ultimately responsible for risks associated with Changed and Differing Site Conditions. Accordingly, NDOR must establish a baseline for Design/Builders to use to develop their technical and price proposals. Preliminary geotechnical investigations will be conducted by NDOR and data provided to proposers. The requirements for geotechnical investigation to be performed by the Design/Builder may be defined by NDOR and included in the RFP technical requirements. If deemed appropriate by NDOR for a particular project, proposers may have an opportunity to request supplemental information during preparation of

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their proposals. If no supplemental geotechnical information is offered by NDOR, each proposer will need to obtain any additional data required.

ROW: For small to mid-sized projects, ROW acquisitions required for the project should be complete, or imminent, prior to award of a D/B contract; this prevents the need for proposers to price the risk of delay and the risk of increased acquisition costs in their proposals. Separate from the required ROW identified as part of Preliminary Design, the Design/Builder may identify additional beneficial or necessary ROW needs. In response, NDOR would assess the value or need of obtaining additional ROW prior to proceeding with the acquisition process. Adjustments to the contract would be made depending upon whether the additional ROW is necessary and/or beneficial to complete the project. On larger contracts, it can be advantageous to defer purchase of ROW until the Best Value D/B proposal has been selected.

Inter-Agency Agreements: Agreements between and among NDOR and other government agencies, which are necessary for the completion of a project, will typically be obtained by NDOR prior to award of the D/B contract to ensure that all commitments and requirements of these agencies are known when the proposers prepare their proposals. It is important to be aware that there may be projects for which it is advantageous to make such agreements part of the Design/Builder's scope of work.

Utility/Railroads: For most projects, agreements with utility companies or railroads for relocation of their facilities will be obtained by NDOR prior to advertisement. However, there may be some instances in which it is advantageous to make such agreements part of the Design/Builder's scope of work. The arrangements for the actual construction work associated with such relocations will be coordinated by the Design/Builder to match their intended work program. When the construction work/coordination is allocated to the Design/Builder, it is imperative that the control of the work also lie with the Design/Builder.

Other Issues: For design-build contracting, NDOR will review and consider the risk associated with the following items early in the project development process:

- Permit requirements
- Utility relocations
- Funding
- QA/QC responsibilities
- Labor disputes
- Weather conditions
- Inflation
- Hazardous materials
- Third party involvement
- Third party claims
- Site conditions/Differing site conditions
- Contract changes
- Liquidated damages
- Performance schedule
- Contract terms
- Payment methodology
- Incentives/disincentives
- Bonding requirements
- Errors and Omissions Insurance
- Force majeure

- Schedule
- Liability for design
- Incremental acceptance of work
- Performance guarantees/warranties

Allocation of the risks inherent in highway projects will also define ownership and responsibility for each task of the project delivery process. On a standard D/B/B project, NDOR acts as both the owner and engineer. This owner/engineer role requires that NDOR own most of the risk for the success of the design. In D/B, the guiding principle should be one of assigning risk to the party (owner or Design/Builder) that can best manage the risk. One key question to be asked in risk allocation is, “How much is NDOR willing to pay a Design/Builder to assume risk that NDOR typically owns?” This question should be asked for each individual task to tailor the design-build contracting approach to each specific project. Project risk must be considered in all decisions related to developing the contract provisions.

### 7.2.3 Project Risk Allocation Matrix

On each D/B project, the NDOR project team must determine how far to advance the preliminary design. Based on the experiences of multiple public agencies with D/B projects and published viewpoints from the design-build industry, contractors and design consultants, there appears to be a national consensus that development of a risk allocation matrix is the key to making this determination.

Early in the project, the design team must begin to identify potential risks associated with the project and assign responsibility for each of these risks either to NDOR or to the Design/Builder. The project team must periodically revisit the risk assignments as more information becomes available about the project, and make modifications accordingly. NDOR staff must utilize the risk allocation matrix throughout development and implementation of the project. This matrix will not only document which party has been assigned responsibility for a given risk, but it will also help the project team determine how far to advance each technical element within the preliminary design during development of the RFP.

For reference, an example Design/Build risk allocation matrix is shown in [Attachment 7-1 \(Design/Build Risk Allocation Matrix\)](#). Such a matrix will need to be tailored to each individual project. The allocation of risk on this example matrix was determined based on general expectations of the construction and consulting industry. This example risk allocation matrix is not intended to be all-inclusive. The project team will have to carefully review all elements that could impact the specific project and tailor the matrix to fit the project. The matrix should be available for review throughout the entire RFP development process.

Note that a sample risk allocation matrix for CM/GC is not provided; this is because risk allocation in CM/GC is very much like that in D/B/B, whereby the owner carries most of the risks. One notable exception is regarding price risk after the maximum construction price has been negotiated and agreed, at which time such risk is assumed almost entirely by the CM/GC as opposed to being shared by the contractor and owner as in D/B/B project delivery.

## 7.3 Construction Manager/General Contractor Project Risk Management Process

CM/GC is an APDM in which the owner enters in to simultaneous contracts for both the design consultant and the contractor. Due to nature of CM/GC contracting, the risk management under CM/GC is substantially different from that with D/B. Under D/B, the risk assessment and



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allocation is done during the RFP phase, allowing proposers to reflect the assignment of specific risk responsibilities in their proposals. Under a CM/GC procurement, the final risk allocation and transfer will be performed jointly during the design process, with the contractor working with the designer to:

- Reduce risk;
- Continuously update cost; and,
- Achieve a guaranteed maximum price at the end of design.

Because the CM/GC process reduces risk, the Guarantee Maximum Price (GMP) for construction is expected to be less than for conventional D/B/B projects.

### **7.3.1 Construction Manager/General Contractor Risk Analysis Workshops**

During the design phase of the project, NDOR, the designer and the CM/GC will hold one or more Risk Workshops to discuss various elements of risk. The outcome of each risk analysis workshop will be the allocations of risks that will apply during the remaining design effort and during the construction services phase of the CM/GC Contract. The NDOR project team should plan for a limited number of half-day meetings to be held, during which risk philosophy, issues and allocation will be discussed by NDOR, the designer, the CM/GC and possibly other relevant stakeholders.

The risk workshops conducted during the CM/GC and D/B processes are similar, with both addressing as nearly a comprehensive a list of risk elements as possible, consistent with the specific project scope, project delivery method, and the extent to which design has been advanced at the time.

Input from the designer will be similar to that discussed with regard to the D/B process. However, with the CM/GC workshops, having the input from the contractor will provide an additional viewpoint regarding the impact of individual risks on the project. A process diagram that illustrates the potential timing of multiple Risk Workshops while using the CM/GC delivery method is provided in Attachment 7-2 (CM/GC Risk Workshop Flowchart).



**Attachment 7-1**  
**Design/Build Risk Allocation Matrix**

Risk Element	Design/Bid/Build Process			Change	Design/Build Process	
	Owner	Shared	Contractor		Owner	Design/Builder
Design Issues						
Definition of Scope	X				X	
Project Definition	X				X	
Establishing Performance Requirement	X				X	
Preliminary survey/base map	X				X	
Geotech Investigation - Initial Borings based on Preliminary Design	X				X	
Geotech Investigation - Initial Borings based on proposal	X			→		X
Establish/Define initial subsurface conditions	X				X	
Initial project Geotechnical Analysis/Report based on Preliminary Design	X				X	
Proposal specific Geotechnical Analysis/Report	X			→		X
Plan conformance with regulations/RFP	X			→		X
Plan accuracy	X			→		X
Design Criteria	X				X	
Conformance to Design Criteria	X			→		X

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Design Review Process	X			→		X
Design QC	X			→		X
Design QA	X			→		X
Owner Review Time	X				X	
Changes in Scope	X				X	
Constructability of Design	X			→		X
Contaminated Materials	X				X	

Risk Element	Design/Bid/Build Process			Change	Design/Build Process	
	Owner	Shared	Contractor		Owner	Design/Builder
Local Agency, Utility, Railroad Issues						
Identification of initial local agency impacts	X				X	
Obtaining Initial local agency permits	X				X	
Establishing initial local agency requirements	X				X	
Establishing final/actual local agency impacts	X			→		X
Modifications to existing local agency permits	X			→		X
Identification of initial utility impacts from Preliminary Design	X				X	
Establish initial Utility Locations / Conditions	X				X	
Defining required utility relocations from Preliminary Design	X				X	

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Relocation of utilities prior to contract	X				X	
Relocation of utilities under agreement during contract			X			X
Modified agreement with private utility based on Final Design	X			→		X
Modified agreement with public utility based on Final Design	X			→		X
Damage to Utilities under Construction			X			X
Verification of Utility Locations/Conditions	X			→		X
Coordination with Utility Relocation Efforts during contract		X		→		X
Unforeseen delays - Utility/Third Party	X				X	
Utility/Third Party Delays resulting from proposal/mod design	X			→		X
Identification of RR impacts based on preliminary design	X				X	
Obtaining initial RR agreement based on preliminary design	X				X	
Coordinating with RR under agreement	X			→		X
Other work/Coordination		X		→		X
Third Party Agreements (Fed, Local, Private, etc.)	X				X	
Coordinating with Third Parties under agreement		X		→		X
Coordination/collection for third party betterments		X		→		X
Coordination with Other Projects		X		→		X
Coordination with Adjacent Property Owners		X		→		X

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Risk Element	Design/Bid/Build Process			Change	Design/Build Process	
	Owner	Shared	Contractor		Owner	Design/Builder
Construction			X		X	
DBE compliance			X		X	
Safety / Safety QA			X		X	
Construction Quality/Workmanship			X		X	
Schedule			X		X	
Materials Quality			X		X	
Materials documentation			X		X	
Material availability			X		X	
Initial performance requirements of QA Plan	X			X		
Final Construction/Materials QA/QC Plan	X			→	X	
Construction/Materials QA	X			→	X	
Construction QC			X		X	
Construction QA Procedural compliance auditing	X			X		
Construction IA testing/inspection	X			X		
Construction Staking		X		→	X	
Erosion Control		X		→	X	

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Spill Prevention	X		→		X
Accidents within work zone / liability		X			X
Third Party Damages		X			X
Operations and Maintenance During Construction		X			X
Maintenance under Construction - new features		X			X
Maintenance under Construction - exist. features		X			X
Maintenance of Traffic	X		→		X
Quantity/Cost of callbacks	X		→		X
Availability of callbacks	X			X	
Damage to Utilities under Construction		X			X
Falsework		X			X

Risk Element	Design/Bid/Build Process			Change	Design/Build Process	
Construction	Owner	Shared	Contractor		Owner	Design/Builder
Shop Drawing			X		X	
Equipment failure/breakdown			X		X	
Work Methods			X		X	
Early Construction / At Risk Construction		X		→	X	

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Community Relations	X				X	
Performance of defined mitigation measures	X			→		X
Warranty	X			→		X

Force Majeure / Acts of God

Strikes/Labor Disputes - on site labor	X			→		X
Tornado/Earthquake	X				X	
Epidemic, terrorism, rebellion, war, riot, sabotage	X				X	
Archaeological, paleontological discovery **	X				X	
Suspension of any environmental approval **	X				X	
Changes in Law	X				X	
Lawsuit against project	X				X	
Storm/Flooding	X				X	
Fire or other physical damage	X				X	

Differing Site Conditions/Changed Conditions

Changed Conditions	X				X	
Differing Site Conditions	X				X	



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Completion and Warranty

Establishment/definition of any risk pool

Long term ownership / Final Responsibility

Insurance

X		
X		
		X

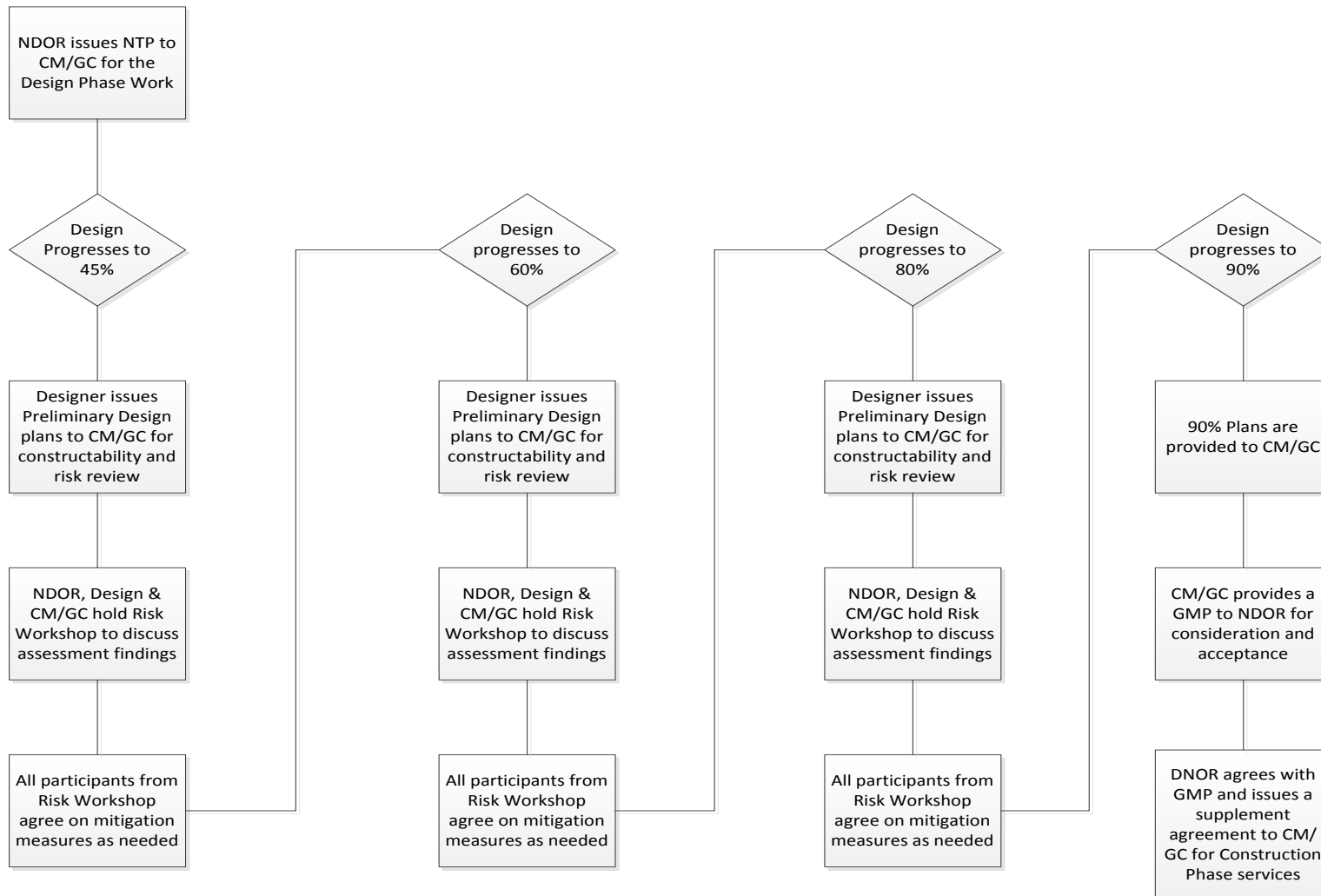
X	
X	
	X

Note: \*\* Will ultimately roll over to Environmental



**Attachment 7-2**

**Construction Manager/General Contractor Design Process and Risk Workshops Flowchart**





## Section 8 Construction Manager/General Contractor Procedures

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### 8.1 Introduction

The CM/GC project delivery method is an integrated team approach to the planning, design, and construction of a project. The CM/GC method has been developed as a result of public owner demands to enhance quality of the design product, decrease cost, compress the delivery period and better plan for and manage risks. Primary characteristics of this delivery method include:

- Early participation of a contractor to provide input to the design team regarding construction phase considerations, such as constructability, cost implications of design decisions, construction phasing and materials issues.
- Compressed overall project delivery schedule due to elimination of the construction contract procurement cycle and enhanced contractor understanding of the design.
- A GMP or Target Maximum Price (TMP) for construction is negotiated between the CM/GC and NDOR at the conclusion of the design phase, providing NDOR with a high level of price certainty.

The CM/GC project delivery method consists of two phases, a design phase and a construction phase. During the design phase, the contractor acts as a consultant working with the Designer to offer constructability and pricing feedback on design options and can identify risks based on the contractor's established means and methods. This process also allows the owner to be an active participant during the design process and make informed decisions on design options based on the contractor's expertise.

When the design is nearing 90% complete, the construction manager then has an opportunity to negotiate on the project based on the design and schedule. If NDOR, based on feedback from Designer and Independent Cost Estimator (ICE), agree that the contractor has submitted a fair price, NDOR issues a construction contract and the CM/GC then becomes the general contractor.

### 8.2 Construction Manager/General Contractor Process

NDOR procurements using CM/GC project delivery, will include:

- Selecting a CM/GC through a 2-step process. The initial stage will be to issue an RFQ, evaluate SOQs submitted in response, and shortlist the most qualified firms based on team experience. The most qualified teams will be shortlisted and advance to the second step of the procurement process, the proposal. The proposal step may also include an interview. This procurement process is a competitive and qualifications-based procurement, complies with Nebraska statutes, and is intended to provide NDOR with the best qualified CM/GC contractor to provide construction expertise and contract management input during the design phase, and to be contractually responsible for price, schedule and quality during construction phase.

- Concurrent with the procurement of the CM/GC, NDOR will select a Design Consultant (the Designer) through a separate, competitive, qualifications-based procurement to prepare the final design/construction documents.
- NDOR may also procure an ICE through a separate, competitive, qualifications-based procurement to perform an independent, bottom-up, construction cost estimate to validate the price eventually negotiated with the CM/GC.

The CM/GC provides preconstruction advice to NDOR and the Designer throughout the design process concerning constructability, pricing, scheduling, staging, methods, efficiency, material procurement strategies, risk identification/management, and other areas related to the construction of the project. The CM/GC is not allowed to proceed into construction unless and until NDOR agrees that the price provided, as part of a guarantee to complete the project, or a portion of the project, (and independently evaluated) is fair, reasonable and defensible. The CM/GC will engage in detailed discussions over key constructability issues, including phasing of the work, prevention of scope creep, access to the infrastructure, and traffic management, before the design is finalized, thereby reducing the risk of claims during construction.

The CM/GC construction contract will be similar to traditional D/B/B construction contracts. NDOR will establish either:

- A GMP that establishes the contract not-to-exceed amount, or
- A TMP that establishes a unit price contract.

The final GMP or TMP usually are based on design documents that are not less than ninety percent developed. Agreement on the final GMP or TMP initiates the second phase of the CM/GC contract. The work to start physical construction will be initiated once a final price is agreed by NDOR and the CM/GC.

### **8.3 Role of NDOR**

NDOR remains primarily responsible for the success of a CM/GC project by selecting a project for CM/GC delivery, preparing the RFQs for the Designer and the ICE, preparing the RFQ and RFP for the CM/GC, defining the scope of the Preconstruction Services Contract to be executed by the CM/GC, and performing other project development work.

NDOR's role in the Preconstruction Phase is very similar to the NDOR's role in the traditional departmental development process, with the exception of contractor involvement. NDOR will be engaged in the negotiation of the GMP or TMP with the selected CM/GC as well as the contract allowances and assumptions.

NDOR will provide guidance to the team during both the Pre-Construction Phase and the Construction Phase. This can entail documenting background information on how the GMP or TMP was developed, the types of allowances, allowable mark-ups on supplemental agreements and pay item documentation.

NDOR's responsibilities will include:

- Provide leadership;
- Hold the Designer and CM/GC accountable;
- Review all potential Supplemental Agreements or Contract Modification Request forms; and

- Facilitate knowledge transfer of the process.

A typical CM/GC project organization chart is provided as [Attachment 8-1 \(CM/GC Organization Chart\)](#).

## 8.4 Role of the Construction Manager/General Contractor

The CM/GC's main objective is to interface with NDOR and the Designer during the Preconstruction Phase of the project. The CM/GC will be part of the team that reviews the plans for constructability and provides input on the sequence of construction. The CM/GC's technical experience, resources and approach (means and methods) will identify potential risks that can affect cost and schedule.

The CM/GC's candid discussions early in the design process allows the development of a clear, concise scope and validates NDOR's budget through compilation of a Cost Model that is frequently updated throughout the Preconstruction Phase until a GMP or TMP agreement is reached. The CM/GC will participate in value engineering type studies to abbreviate project schedule and reduce costs, without adversely affecting quality. The CM/GC's responsibility is to reconcile project quantities and develop a GMP or TMP for construction.

Other responsibilities may include, but are not limited to:

- Conducting a site investigation;
- Preparing construction estimates at various levels of design completion;
- Preparing a Construction Management Plan;
- Preparing a CPM project schedule for design and construction;
- Procuring long-lead time items (subject to NDOR approval);
- Permitting, subcontract preparation and packaging;
- Verifying design quantities; and
- Participating in risk analysis and risk mitigation sessions.

## 8.5 Role of the Designer

The project Designer or Design Consultant, hired and under contract to NDOR, works collaboratively with the CM/GC. For the Designer, there are many similarities between CM/GC and Design/Bid/Build project delivery methods. The same deliverables are required, with the exception that the Contractor is now engaged and is part of the process.

When NDOR accepts the GMP or TMP and a Notice of Award is issued for the construction phase, there is no change to the Design Consultant's contract. The Designer must complete and submit all deliverables in the final design scope of work. The Designer has the potential to be working on both design and post design tasks (i.e., construction phase support) for different elements of the project. Issues dealing with schedule slip during design are primarily the responsibility of the Designer, who must develop a plan to get the design process back on track.

The Designer also prepares a CPM schedule for design that the CM/GC incorporates into the Preconstruction Services schedule. The Designer, in consultation with the CM/GC, will provide a bottom-up style construction estimate, including risk assessment, to NDOR at various levels of

design completion. The following provides a minimum list of design completion targets that should be used in determining when construction estimates should be provided to NDOR:

- 30% design completion;
- 60% design completion;
- 75% design completion; and
- 90% design completion.

Per NDOR's Conflict of Interest Policy, the CM/GC shall not subcontract any portion of the contract to an entity that is, or has been, employed by the Designer in the design of the project.

## **8.6 Role of the Independent Cost Estimator**

If utilized for the project, an ICE, hired and under contract to NDOR, would work independently of the Designer and CM/GC, to develop bottom up construction estimates for the project. The ICE estimates would be used by NDOR to compare and verify the construction estimates prepared by the Designer and CM/GC at various times during the design phase of the project.

## **8.7 Construction Manager/General Contractor Submittal Process**

### **8.8 Construction Manager/General Contractor Request for Qualifications**

NDOR will use a standard procurement process to select the CM/GC; the process will include the issuance of an RFQ. Each prospective proposer will submit an SOQ that will be evaluated against a predetermined set of evaluation criteria.

#### *8.8.1.1 Request for Qualifications Technical Elements*

CM/GC proposers will be required to provide detailed information to address specific project elements. The following outline provides a typical format for the RFQ, but NDOR is not limited to only these submittal requirements, and may tailor the RFQ based on the specific project requirements.

- Team Experience
- Project Experience
- Key Personnel
- Education and Experience
- Licensing and Certifications
- Safety Record
- Bonding Capacity

See Appendix C for a typical example of an RFQ for a CM/GC.

### **8.8.2 Construction Manager/General Contractor Request for Proposals**

After the SOQs have been evaluated and the shortlisted contractors identified, NDOR will provide them with an RFP. Proposals received in response to the RFP will be evaluated against



a predetermined set of evaluation criteria. A draft example of a CM/GC RFP is provided in [Appendix D \(Example of CM/GC RFP\)](#).

#### **8.8.2.1 Request for Proposal Technical Elements**

CM/GC proposers will be required to provide detailed information to address specific project elements. The following outline provides a representative format for the RFP, but NDOR is not limited to only these submittal requirements, and may tailor the RFP based on the specific project requirements.

- General Management
- Management Approach
- Quality Control
- Project Controls
- Equal Employment Opportunity
- Subcontracting Plan
- Responsibilities of Subcontractors - Selection Plan
- DBE Utilization Plan
- Pre-Construction Phase
- Preconstruction Approach
- Approach for working with the Designer
- Risk Management
- Construction Phase
- Project Understanding
- Overall Construction Approach including Phasing
- Uninterrupted transportation services
- Innovative Approach
- Construction Safety Plan

See Appendix D for a typical example of a RFP for a CM/GC.

### **8.9 Construction Manager/General Contractor Preconstruction Scope of Work**

An example of a CM/GC preconstruction scope of work is provided in [Attachment 8-2 \(CM/GC Preconstruction Scope of Work Example\)](#).

### **8.10 Construction Manager/General Contractor Selection Process**

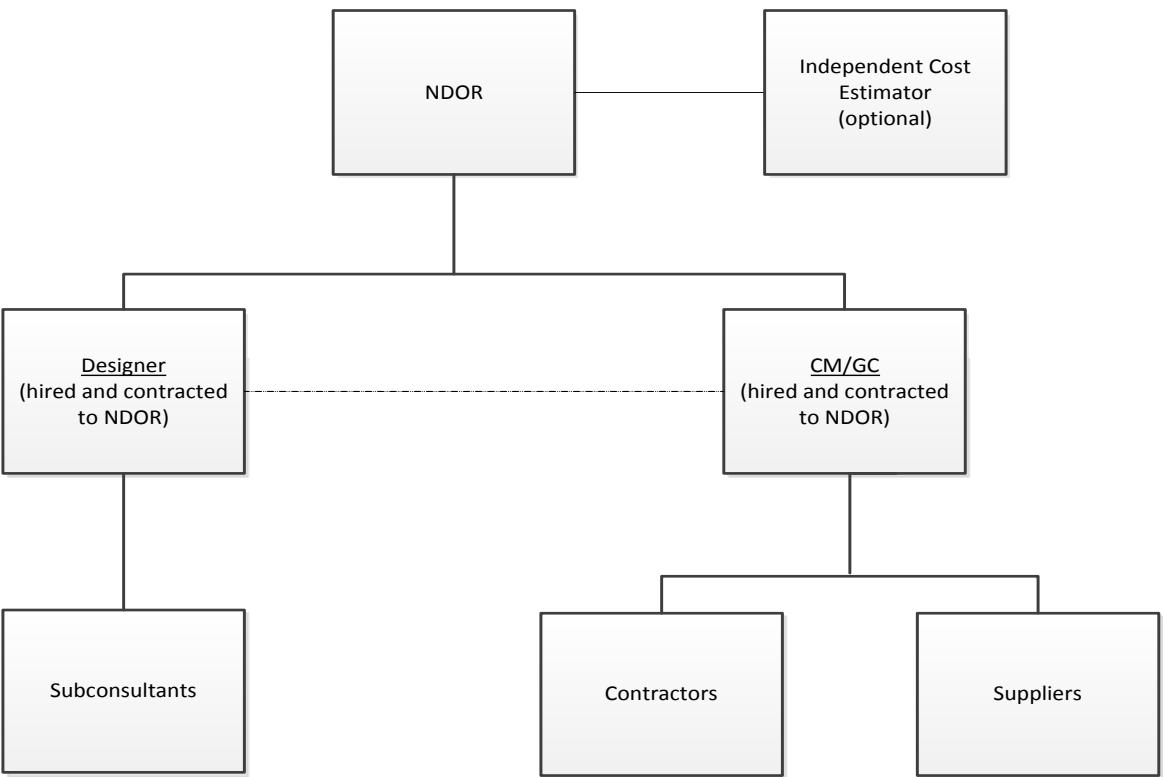
The CM/GC is selected based on qualifications, as defined in Section 2 above. This involves the submission of SOQs from contractors (joint ventures are permitted). The SOQs from the contractors are evaluated, scored and ranked thereby creating a shortlisting of qualified

contractors. Only the shortlisted contractors will be provided with an RFP and invited to submit proposals and possibly participate in oral interviews.

After completion of the SOQ evaluations, shortlisting, proposal evaluations, and interviews, NDOR will evaluate and rank the contractors, NDOR will negotiate with the highest ranked contractor from the SOQ submittals. If NDOR is unable to successfully negotiate a contract with the highest ranked contractor, then NDOR will negotiate with the next highest ranked contractor.

The CM/GC is selected based on demonstrated competency and qualifications. Section 9 of these guidelines describes each of the key steps in the selection process.

**Attachment 8-1**  
**Construction Manager/General Contractor Organization Chart**





**Attachment 8-2**

**Example Construction Manager/General Contractor (CM/GC) Pre-construction Scope of Work**

**Note to Reader**

**The following example documents should be used only as a guideline, illustrating the typical information that should be contained in a CM/GC contract.**

**The official RFP will need to be tailored for the project specifics.**



## Example of a Typical Pre-construction Scope of Work

The CM/GC Contractor is being selected to join the Project Team for this Project. The CM/GC Contractor will be expected to provide the Project Team with construction expertise and technical experience, to assist in Project decision-making and ensure the technical, social and economic challenges are addressed, and provide input on items affecting construction schedule and costs.

### Scope of Work (Pre-Construction Services)

The CM/GC Contractor shall consult with the Project Team during the design phase in order to develop, implement and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all.

As part of the design team, the CM/GC Contractor will provide input on schedule, phasing, constructability, materials availability, cost, etc. throughout the design phase of the Project. The CM/GC Contractor tasks during the design phase include:

1. Provide a Project Manager and associated staff to consult with, advise, assist, and provide recommendations to NDOR and the design team on all aspects of the planning, design, and proposed construction, as requested by NDOR. This may require the CM/GC staff to be integrated at the designer's co-located facility.
2. Attend an initial Project workshop that includes the following agenda items:
  - a. Introduction to the Project Team
  - b. Introduction of the Project Stakeholders
  - c. Project status, goals, objectives, funding, etc.
  - d. Presentation of Project elements.
  - e. Identify Project risks and provide input that will be used to develop a risk management plan.
  - f. Question and answer session.
3. Participate in Project Team meetings with NDOR and the Design Consultant. It is anticipated that project team meetings will be held each week in \_\_\_\_\_.
4. Participate in formal milestone reviews meetings, which are anticipated to occur during at the 30%, 60%, and 90% design submissions. For each milestone review meeting, provide the following services:
  - a. Participate in formal constructability, material, equipment and labor availability reviews. These formal reviews will focus on identifying revisions to improve clarity for bidding, identifying potential design revisions that would reduce construction costs, and identifying elements to improve the time performance of the Project.
  - b. Participate in formal risk analysis workshops with NDOR and NDOR's Design Consultant. The focus of the risk analysis workshops will be to identify potential risks and to assign cost and schedule impacts to each risk in order to better define pricing and contingency.

- c. Assist NDOR and the Design Consultant with the selection process of design elements that assists in meeting Project goals
  - d. Provide progressively refined Opinion of Probable Construction Cost estimates (OPCC) and participate in pricing reconciliation meetings for each work package.
  - e. Prepare and submit a CPM schedule that supports each OPCC and bid.
  - f. Provide written reports and recommendations of the conceptual drawings being prepared by NDOR and the Design Consultant, including conflicts and/or deficiencies noted.
5. Continually provide informal oversight and constructability reviews with the NDOR team on various specific elements of the Project and provide recommendations, including providing input on staging, sequencing, equipment storage, detour routes, traffic control, storm water management, accelerated bridge construction techniques, evaluation of bridge types, and materials that may be cost-effectively recycled during construction.
  6. Identify any long lead items that may cause schedule impacts.
  7. Develop and formulate a Subcontracting Plan to integrate subcontractors as needed to accomplish all construction work. Identify the proposed plan to meet Disadvantaged Business Enterprise (DBE) and veteran-owned small business contract goals for each separate and severable work package.
  8. Help ensure that environmental commitments are implemented during construction including those from permits as applicable through review of design and permit applications. The Department will provide the CM/GC Contractor with anticipated timelines required to obtain the necessary environmental clearances and permits on this Project. Provide input on temporary construction or staging activities that may require additional environmental permits based on the proposed construction operations. Clearly reflect in the Baseline CPM Schedule the times required to obtain these clearances and permits. Identify time and cost impacts associated with schedule slippage and propose mitigation measures to minimize these impacts. Provide constructability feedback on mitigation measures proposed in the design plans.
  9. Assist NDOR and Design Consultant in preparing the draft and final submissions of a Storm Water Pollution Prevention Plan as applicable to local jurisdictional requirements.
  10. Develop, propose, and track innovations for Project construction. Document and track cost savings and schedule impacts associated with innovations in a written report to the NDOR.
  11. Coordinate with Project stakeholders in conjunction with NDOR and the Design Consultant.

### **Scope of Work (Bid Validation Process)**

When NDOR and the CM/GC Contractor agree that the Project has been designed to a sufficient level of detail to allow for a constructible and biddable Project or work package, the CM/GC Contractor will be given an opportunity to provide a bid to construct the Project. It is anticipated that the bid required on this project will be a unit price bid based on bid schedule as is used by NDOR in D/B/B contracting. However, NDOR's Project Manager and the CM/GC Contractor may also elect to utilize other contract payment provisions, including Lump Sum bids or a Guaranteed Maximum Price bid. When preparing to submit a bid for the work, perform the following tasks:



1. Participate in pre-bid plan workshop in order to review and provide final input on the Issue for Bid plans and specifications prepared by the Design Consultant.
2. Participate in the final risk workshop for the project or work package. Provide final input to NDOR regarding project risks and clarify risk assumptions and assignments in preparation for submitting a bid for the work.
3. Prepare and submit a Construction Service Cost proposal or bid (utilizing NDOR's bidding software) to NDOR for the project or work package, including a cost model narrative in accordance with the process outlined in the CM/GC Bid Validation Process document on NDOR's CM/GC website.
  - a. Include with the bid a detailed baseline cost and resource loaded CPM Schedule to serve as the Project Baseline Schedule, which identifies all activities during construction. Schedule shall clearly identify milestones, showing the proposed start and finish dates and include a narrative that clearly describes the assumptions that were used to derive item prices (e.g., crew sizes, production rates, and other requirements outlined in Standard Specification \_\_\_\_\_).
  - b. Include a narrative description about how the CM/GC Contractor will meet the Disadvantaged Business Enterprise (DBE) goal for the particular work package or the entire project. DBE participation goal will be established as early in the design process as possible.
  - c. Include a narrative description of all other inclusions to, or exclusions from the bid, including all assumptions and clarifications that support the bid prices.
4. NDOR will review the CM/GC Contractor's bid using the process outlined in these CM/GC Procedures.
  - a. Participate in the pricing reconciliation process, if needed, to reconcile differences.
  - b. If NDOR successfully validates the CM/GC Contractor's bid, NDOR will accept the CM/GC Contractor's bid and NDOR will prepare a construction Contract based on the CM/GC Contractor's bid. The Contract amount will include funding for any provisional contingency items included in the contract. However, the CM/GC Contractor will not be entitled to payment for any provisional contingency items without justification and authorization from NDOR.
  - c. If the prices are not acceptable, NDOR will enter into a process of risk identification that identifies price differences between the CM/GC Contractor and the ICE and/or EE. Following the resolution of these risk issues, the CM/GC Contractor will have the option to re-bid the project. NDOR has the option to accept the revised price or terminate the CM/GC professional/technical services contract without penalty or payment (except payment for pre-construction services) and procure the construction of the Project by some other method or re-advertise the CM/GC Contract. If there are multiple work packages on a project, the CM/GC contractor will be allowed to continue to perform construction services for previously awarded work packages, but NDOR will procure the construction of future work packages by another procurement method or by re-advertising the CM/GC Contract.
5. The CM/GC Contractor's bid will not be exceeded except as allowed for quantity overruns or changed conditions as defined in the NDOR Standard Specifications. However,

when considering additional compensation for changed conditions, NDOR will consider the fact that the CM/GC Contractor participated in the design effort during the Preconstruction phase and therefore has a more thorough understanding of the assumptions and risks which should have been reflected in the bid or in the provisional contingency items.

**Awarding Contracts for Severable Work Packages:** If NDOR elects to progress this project using severable work packages, NDOR may require the CM/GC Contractor to submit a **GMP** or **TMP** prior to awarding a contract for a severable work package. A GMP or TMP is a good-faith estimate of construction costs that are covered in a subsequent OPCC(s) required to complete all work packages on a project. It is used by NDOR to confirm that the overall construction scope can be completed within the available project budget. A GMP or TMP is based on the assumptions and risks that are known at the time the estimated costs are submitted to NDOR. The CM/GC Contractor's GMP or TMP is supported by an estimating/cost model and narrative similar to OPCC estimates. When the CM/GC Contractor submits a GMP or TMP, NDOR assumes that the CM/GC Contractor intends to construct the overall project at or below the GMP or TMP, subject to documentable changes in bidding assumptions or scope that affects pricing. Exact timing for requesting a GMP or TMP from the CM/GC Contractor is evaluated on a project-by-project basis based on design progression and project risks.

### **Scope of Work (Construction Services)**

If NDOR is able to successfully validate the CM/GC Contractor's bid and the CM/GC Contractor complies with DBE requirements and all other conditions of award, the CM/GC Contractor shall:

- Execute a contract with NDOR.
- Construct and manage all construction related contracts while meeting all Project requirements and Federal Contract requirements, as per NDOR Standard Specifications and the prepared bid package.
- Substantially complete the construction no later than specified in the contract.

## Section 9 Construction Manager/General Contractor Selection Process Guidelines

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### 9.1 Introduction

In accordance with Nebraska Revised Statutes 39-2817 through 39-2819, selection of a CM/GC contractor is a two-step process, by which SOQs will be accepted in response to an RFQ, and the most qualified construction manager – general contractors (contractors) will be shortlisted and invited to submit proposals in response to an RFP. Proposals will focus on the contractors' project understanding, approach to the Construction Manager role for the specific project, and approach to the construction of the specific project. Proposals may also include pricing information, such as labor rates and overhead rates applicable to the design phase, or unit costs for selected project materials during the construction phase. Proposal scores will be combined with SOQ and Evaluation Interview scores, to establish the final ranking for selection.

### 9.2 Confidentiality and Conflict of Interest

SOQs and proposals will be confidentially evaluated by an evaluation panel comprised of NDOR staff members. The evaluation panel members, and any other NDOR personnel present for any panel meetings and/or deliberations, must sign a Confidentiality Statement. Evaluation panel members must commit to maintain strict confidentiality and security regarding the contents of proposals and proceedings of the evaluation panel meetings before, during and after the evaluation process.

It is essential that the integrity and transparency of the evaluation and selection process be maintained to:

- Ensure that NDOR is selecting the most qualified CM/GC proposer;
- Avoid Contractor or public perception of favoritism or partiality in contract awards; and,
- Ensure that all submittals are given fair and equal consideration.

It is also essential that evaluation panel members must not participate in any evaluation process if they have an actual, potential or perceived conflict of interest, as described in [Section 1](#) (*Conflict of Interest Policy for Design/Build and CM/GC*). Evaluation panel members who believe there is any actual, potential or perceived conflict of interest when serving on a panel shall notify the NDOR Agreements Engineer immediately and they will be excused from the panel.

### 9.3 Construction Manager/General Contractor Selection Process

The CM/GC selection process will follow the process identified below.

#### 9.3.1 Request for Qualifications

The public aspect of a CM/GC procurement begins with the advertisement of an RFQ at least 30 days prior to the due date for SOQs. The RFQ must provide sufficient information about the project to enable construction managers to respond, and must identify the maximum number of construction managers the Department will shortlist as qualified and therefore eligible to receive

an RFP. Information sought through the CM/GC RFQ focuses primarily on past experience of the construction manager and their Key Personnel, their safety record, their bonding capacity, and other relevant historical and current information. See Appendix C for a typical example of a RFQ for a CM/GC.

### **9.3.2 Statement of Qualifications Evaluation and Scoring**

The evaluation panel will have a process kickoff meeting with the NDOR Agreements Engineer. At this meeting, the NDOR Agreements Engineer would review the evaluation and selection procedures and schedule with the evaluation panel, and provide the panel members with instructions, documents for comments and scoring SOQ submittals, and a set of all solicitation documents. The NDOR Project Manager and/or key project members may meet with the evaluation panel at this time and provide a project overview.

Each evaluation panel member shall conduct an independent assessment of each contractor's SOQ and shall not discuss that evaluation with other selection panel members or persons outside the panel. While evaluation panel members will have different individual areas of expertise, each member is expected to independently score each SOQ in terms of how it addresses the requirements outlined in the RFQ.

After each member has reviewed and scored all of the SOQs, the scores and comments are submitted to the NDOR Agreements Engineer. The NDOR Agreements Engineer then compiles the scores for review at a meeting of the evaluation panel. At that meeting, the evaluation panel will discuss each SOQ. Any evaluation panel member may elect to amend any of their scores based on the discussion.

Scores are then recompiled and the standard deviation is calculated. If an evaluation panel member's SOQ score is more than 1.65 standard deviations from the mean score for a CM/GC SOQ, it is considered an outlier and the evaluation panel member's score for that contractor is excluded. The standard deviation will not be calculated and applied until discussion of all contractors has concluded and all panel members' SOQ scores are final.

### **9.3.3 Shortlisting**

Based on the final SOQ scores, the SC will identify a shortlist of the most qualified contractors to receive RFPs and be invited to submit proposals. (See sample Scoring Matrix in [Attachment 9-1](#).) The number of contractors to be shortlisted will have been identified in the RFQ. At least two contractors will be shortlisted, except that if only one contractor has responded to the RFQ, the SC may proceed or cancel the procurement.

### **9.3.4 Request for Proposals**

Shortlisted construction managers will be provided with copies of the RFP. The RFP must include:

- A copy of the NDOR APDM Guidelines, or a publically accessible location at which they may be obtained, either in hard copy or electronic form;
- A copy of the proposed CM/GC Contract;
- Identification of bonding required by law or by the Department;

- A description of the scope of the project, the project site, the schedule and the estimated budget;
- The criteria that will be used for evaluation of proposals, and the relative weight of each criterion;
- A statement that the construction manager shall not be allowed to subcontract, assign, or otherwise dispose of any portion of the contract without the consent of the Department, and that in no case shall the construction manager be allowed to subcontract more than seventy percent of the work, excluding specialty items; and,
- Other information or requirements deemed appropriate by NDOR.

See Appendix D for a typical example of a RFP for a CM/GC.

### **9.3.5 Proposal Evaluation and Scoring**

The evaluation panel will have a process kickoff meeting with the NDOR Agreements Engineer. At this meeting, the NDOR Agreements Engineer will review the evaluation and selection procedures and schedule with the evaluation panel, and provide the panel members with instructions, documents for comments and scoring proposals, and a set of all solicitation documents.

Each evaluation panel member shall conduct an independent assessment of each contractor's proposal and shall not discuss their evaluation with other selection panel members or persons outside the panel. While evaluation panel members will have different individual areas of expertise, each member is expected to independently score each proposal in terms of how it addresses the requirements outlined in the RFP.

After each member has reviewed and scored all of the proposals, the scores and comments are submitted to the NDOR Agreements Engineer. The NDOR Agreements Engineer then compiles the scores for a meeting of the evaluation panel. At this meeting, the evaluation panel will meet to discuss each proposal. Any evaluation panel member may elect to amend any of their scores based on the discussion.

Scores are then recompiled and the standard deviation is calculated. If an evaluation panel member's proposal score is more than 1.65 standard deviations from the mean score for a CM/GC proposal, it is considered an outlier and the evaluation panel member's score for that contractor is excluded. The standard deviation will not be calculated and applied until discussion of all contractors has concluded and all panel members' proposal scores are final.

### **9.3.6 Evaluation Interview**

Oral Interviews may be conducted as part of the proposal evaluation process, at the discretion of the SC and if identified in the RFP. The duration and location of the interviews, number of contractors to be interviewed, and format of the interviews will have been detailed in the RFP.

If Evaluation Interviews are to be conducted, all shortlisted contractors that have submitted responsive proposals must be notified by letter of the date, time, location and format of the interview. Interviews should be conducted by the same evaluation panel members who conducted the proposal evaluations. Interviews will be conducted in random order at a NDOR office or facility. Each participating contractor will be given the opportunity to inspect the interview room ahead of time.

The evaluation panel will develop a list of questions about the project for the interview. The participating contractors will be asked a series of questions – some that apply to the specific project and that will be asked of all firms and some that apply only to a particular contractor's proposal. The NDOR Agreements Engineer will compile the questions developed for the interview. Time may be reserved at the end for the panel members to ask follow-up questions, if needed.

After oral interviews, the evaluation panel members will submit interview scores and comments to the NDOR Project Manager. The NDOR Project Manager and the evaluation panel members will then meet to discuss each interview and their interview scores. Any panel member may amend their initial interview score based on the discussion. After concluding the discussion, the panel member scores are provided to the NDOR Agreements Engineer for input into the scoring matrix. If an evaluation panel member's interview score is more than 1.65 standard deviations from the mean score for a contractor, it is considered an outlier and the member's interview score for that contractor is excluded.

After the SOQ, proposal, and Evaluation Interview scores have been finalized, the Agreements Engineer will compile the SOQ, proposal, and Evaluation Interview scores to establish a final combined score for each contractor. The final combined scores will establish the ranking of the contractors, which will be certified by the SC. After certification, the Agreements Engineer may attempt to negotiate a contract for preconstruction services, in accordance with Nebraska Revised Statutes 39-2819(5) and (6).

## **9.4 Execution of the Preconstruction Services Contract**

Following selection, the selected CM/GC will prepare a budget for preconstruction services with hours, direct labor rates and burdens, overhead, profit and expenses anticipated. The NDOR Project Manager will verify the CM/GC's Preconstruction Phase scope of work and the Procurement Manager will review the budget and negotiate any changes required with the CM/GC. If NDOR and the CM/GC are unable to reach agreement on scope and budget, NDOR may terminate negotiations with the highest ranked firm and begin negotiations with the firm with the second highest ranked qualifications. Once agreement is reached on a budget for services to be provided during the Preconstruction Phase, the NDOR Agreements Engineer will assemble the final contract. The CM/GC contract will be reviewed by the NDOR Project Manager for accuracy and completeness. The NDOR Agreements Engineer will transmit the final contract to the CM/GC for execution. Once the contract is executed by the CM/GC and NDOR, the contract becomes effective. A copy of the executed contract, along with a Notice to Proceed letter, will be mailed and/or electronically transmitted to the CM/GC and distributed to appropriate NDOR personnel.

## **9.5 Construction Manager/General Contractor Debriefings**

NDOR will provide unsuccessful prospective CM/GC contractors the opportunity for a debriefing to discuss the strengths and weaknesses of their SOQ submittal, proposal and Evaluation Interview session. Debriefings will not be scheduled to occur until after the CM/GC contract is finalized and executed.

## **9.6 Construction Manager/General Contractor Protest**

Any interested party may protest the final CM/GC selection. The protest must be in writing and personally delivered or sent by certified mail, return receipt requested, to the NDOR

Agreements Engineer. The protest is barred if it is received by the NDOR Agreements Engineer more than seven calendar days after the NDOR announcement of the final CM/GC selection.





**Attachment 9-1**

**Sample Construction Manager/General Contractor Statement of Qualifications,  
Proposal and Evaluation Interview Scoring Matrix**

Note: Attachment 9-1 is for example only and is not intended to represent any specific Construction Manager/General Contractor (CM/GC) project.

Criteria	Max Potential Score	Evaluation Team Member 1	Evaluation Team Member 2	Evaluation Team Member 3	Evaluation Team Member 4	Evaluation Team Member 5	Evaluation Team Average
Statements of Qualifications (SOQs)							
Firm Experience	35						
Experience of Key Personnel	40						
Safety Record	10						
Bonding Capacity	10						
Miscellaneous	5						
SOQ Scores	100						
Mean SOQ Score							
1.65 X Standard Deviation							
Mean Plus 1.65 Standard Deviation							
Mean Minus 1.65 Standard Deviation							
SOQ Score (Out if out of range)							
SOQ Final Scores							

Section 9: Construction Manager/General Contractor Selection Process Guidelines

Criteria	Max Potential Score	Evaluation Team Member 1	Evaluation Team Member 2	Evaluation Team Member 3	Evaluation Team Member 4	Evaluation Team Member 5	Evaluation Team Average
Proposals							
General Management Approach	15						
Subcontracting Plan	15						
Pre-Construction Phase Approach	30						
Pricing (Pre-Construction Phase) (if used)	10						
Construction Phase Approach	20						
Pricing (Construction Phase) (if used)	10						
Proposal Scores	100						
Mean Proposal Score							
1.65 X Standard Deviation							
Mean Plus 1.65 Standard Deviation							
Mean Minus 1.65 Standard Deviation							
Proposal Score (Ou" if out of range)							
Proposal Final Scores							

Section 9: Construction Manager/General Contractor Selection Process Guidelines

Criteria	Max Potential Score	Evaluation Team Member 1	Evaluation Team Member 2	Evaluation Team Member 3	Evaluation Team Member 4	Evaluation Team Member 5	Evaluation Team Average
Evaluation Interviews (if used)							
Oral Interview Scores	25						
Mean Interview Score							
1.65 X Standard Deviation							
Mean Plus 1.65 Standard Deviation							
Mean Minus 1.65 Standard Deviation							
Interview Score (Out if out of range)							
Interview Final Scores							
Overall Scores	225						



## Appendix A Typical Example of Request for Qualifications (RFQ) Document

---

### Note to Reader

**The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFQ.**

**The official RFQ will need to be tailored for the project specifics.**



**Nebraska Department of Roads**

**Request for Qualifications (RFQ)  
Design – Build Project**

**Lincoln, Nebraska**

**NE Control Number:**

**Project Number:**

**Project [INSERT PROJECT NAME]**

**Nebraska Department of Roads**

**1500 Highway 2**

**Lincoln, Nebraska 68502**

**Mailing address: P.O. Box 94759**

**Lincoln, NE 68509-4759**

**[INSERT PROJECT PICTURE]**

**Key RFQ Dates:**

Issue Request for Qualifications

Final Date for Receipt of Design-Build Teams'  
Questions

Statement of Qualifications Due Date





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APPENDIX A: PROJECT DESCRIPTION, DESIGN/BUILDER RESPONSIBILITIES, AND PROJECT STATUS

APPENDIX B: FORMAT AND ORGANIZATION OF STATEMENT OF QUALIFICATIONS

APPENDIX C: FORMS

ATTACHMENT 1:        SCORING FORM



**Subject: Notice of Request for Qualifications  
for a Design-Build Contract  
for Project A [Insert Name Of Project]**

Gentlemen/Ladies:

The Nebraska Department of Roads ("Department") invites Statements of Qualifications ("SOQs") from entities ("Design-Build Teams") wishing to submit proposals to design and construct Project A ("Project") through a design-build contract. The Department is issuing this Request for Qualifications ("RFQ") pursuant to the Nebraska Transportation Innovation Act of 2016 (LB 960). The Department plans to request proposals from short-listed firms to perform design-build services. Pre-qualification will be based on the SOQs provided by responding firms, as set forth herein, and not on the Department's traditional pre-qualification process.

Design-Build Teams are advised that the Design/Builder will be required to hold a State of Nebraska contractor's license.

**SOQs must be submitted no later than 3:00 p.m. Central Standard Time on \_\_\_\_\_.**

The Design-Build Team's SOQ will have certain page limitations. See the attached Format and Organization of Statements of Qualifications Appendix B for further details regarding submission of SOQs.

SOQs delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Nebraska Department of Roads  
1500 Highway 2  
Lincoln, NE 68502**

**Attention: Planning and Project Development Engineer**

SOQs delivered using the U.S. Postal Service shall be addressed as follows:

**Nebraska Department of Roads  
P. O. Box 94759  
Lincoln, NE 68509-4759**

**Attention: Planning and Project Development Engineer**

SOQs and amendments to SOQs received after the date and time specified above will be returned to the Design-Build Teams unopened. Faxed or electronically submitted SOQs will not be accepted.

It is the Department's intent that all firms obtain the full content of this Request for Qualifications, Attachments, Appendices, Response to Questions, and all Addenda via the Department's website located at: <http://www.transportation.nebraska.gov/>. The RFQ contains specific protocols relating to discussion and other communications regarding this RFQ. Any violation of these provisions may result in immediate disqualification of a Design-Build Team from further consideration with regard to the Project.

Prospective firms are encouraged to promptly notify the Department of any apparent inconsistencies, problems, or ambiguities in the RFQ.



# 1 Introduction and General Instructions

The Nebraska Department of Roads (“Department”) hereby requests Statements of Qualifications (“SOQs”) from entities (“Design-Build Teams”) interested in submitting proposals for the design and construction of Project A (“Project”) through a design-build contract. The Project, further defined in Appendix A, is intended to address the \_\_\_\_\_, and the Department is using the design-build procurement to reduce cost and expedite completion of the Project.

The Department is issuing this Request for Qualifications (“RFQ”) pursuant to the Nebraska Transportation Innovation Act of 2016 (LB960). The Project will consist of \_\_\_\_\_, as further defined in Appendix A, which will be funded with Federal-aid dollars, thereby requiring that the successful Design-Build Team adhere to all pertinent Federal requirements.

The purpose of this document is to solicit information, in the form of SOQs, which the Department will evaluate to short-list the [INSERT QUANTITY] most qualified Design-Build Teams.

**Only the short-listed Design-Build Teams will be eligible to submit proposals for the Design-Build services for the Project.**

## 1.1 Abbreviations

The following abbreviations are used in this document and are defined as shown below:

<b>DBE</b>	Disadvantaged Business Enterprise
<b>EEO</b>	Equal Employment Opportunity
<b>FHWA</b>	Federal Highway Administration
<b>IA</b>	Independent Assurance
<b>OJT</b>	On the Job Training
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>SOQ</b>	Statement of Qualifications
<b>TRC</b>	Technical Review Committee

## 1.2 Definitions

The following terms are used in this document and are defined as shown below:

Term	Definition
<b>Acceptance</b>	All factors used by the Department to evaluate the degree of compliance with contract requirements and to determine the corresponding value for a given product. Acceptance activities for Design include reviews of plans, specifications, and other documents prepared by the Design/Builder. Construction Acceptance activities include sampling, testing, and inspection of Design/Builder's Work
<b>Addenda/Addendum</b>	Supplemental additions, deletions, and modifications to the provisions of the RFQ issued after the advertisement date of the RFQ.
<b>Affiliate</b>	Includes parent companies, subsidiary companies and partners (in the reporting entity), and other financially liable parties for that entity.
<b>Contract</b>	The written agreement between the Department and the Design/Builder setting forth the obligations of the parties with respect to the Project, including, but not limited to, the performance of the Work, the furnishing of labor and materials, and the basis of payment.
<b>Conflict of Interest</b>	Shall mean a circumstance arising out of a Design-Build Team member's existing or past activities, including past activities as a consultant to or employee of the Department, business interests, familial relationships, contractual relationships, and/or organizational structure (i.e., Affiliates, etc.) wherein (i) the Design-Build Team member is or may be unable to render impartial assistance or advice to the Department, (ii) the Design-Build Team member's objectivity in performing the scope of work sought by the Department is or might be otherwise impaired, (iii) the Design-Build Team member has, or is perceived to have, an unfair competitive advantage; (iv) the Design-Build Team member's performance of services on behalf of the Department does or may provide an unfair competitive advantage to a third party; or (v) regardless of whether accurate, there is a perception or appearance of impropriety or unfair competitive advantage benefiting the Design-Build Team member or a third party as a result of the Design-Build Team member's participation on the Project.
<b>Design/Builder</b>	The team, if any, which is selected pursuant to the RFP by the Department to design and construct the Project.
<b>Designer</b>	The Major Participant or in-house designer of the contractor that has primary responsibility for design services for the Project. The designer is the engineering firm of record who will have primary responsibility for design work under the contract. "Firm" shall mean the firm that employs the Design Manager.
<b>Disadvantaged Business Enterprise (DBE)</b>	A for-profit small business concern as defined in 49 CFR Part 26.
<b>Final Acceptance (FA)</b>	Written confirmation by the Department that the Project has been completed in accordance with the Contract, with the exception of latent defects and warranty obligations, if any, and has been accepted.



Term	Definition
<b>Independent Assurance (IA)</b>	Activities that are an unbiased and independent evaluation of all the sampling and testing/inspection procedures used in the Quality Assurance program. Independent Assurance provides an independent verification of the reliability of the Acceptance (or Verification) data obtained by the Department and the Quality Control data obtained by the Design/Builder. The results of Independent Assurance testing or inspection are not to be used as a basis of acceptance. Independent Assurance provides information for Quality System management. The Independent Assurance for the Project will be performed by the Department or the Department's representative.
<b>Key Personnel</b>	Individuals from the Design-Build Team's organization, as identified in the Design-Build Team's SOQ, to fill the positions specified in <u>Section 3.6</u> of the RFQ. Additional key personnel positions for the Project may be identified in the RFP.
<b>Major Participant</b>	<p>Each of the following entities on the Design-Build Team's team:</p> <p>All partners or joint venture members;</p> <p>All individuals, persons, proprietorships, partnerships, limited liability partnerships, corporations, professional corporations, limited liability companies, business associations, or other legal entity however organized, holding (directly or indirectly) a 15% or greater equity interest in the Design-Build Team; and/or</p> <p>The lead engineering/design firm(s) (firms, partnerships, or joint venture members) and each engineering/design sub-consultant that will perform 20% or more of the design work.</p>
<b>Project</b>	Project A, which is the subject of this RFQ
<b>Proposal</b>	The proposal submitted by the Design-Build Team in response to the RFP, including any revisions thereto.
<b>Design-Build Team</b>	The entity comprised of an individual, person, proprietorship, firm, partnership, limited liability partnership, professional corporation, limited liability company, business association, corporation, joint venture, combination thereof, or other legal entity however organized, participating in the procurement process for the Project and that if successful, will enter into the Contract with the Department to design and construct the Project.
<b>Quality Assurance (QA)</b>	All policies and processes planned, implemented and verified, to ensure that a product or facility will perform satisfactorily in service. This includes development of specifications, integrated design to incorporate input from all relevant project participants, and the auditing and verification of quality control functions, such as through Independent Assurance and Testing, Laboratory Accreditation and Qualification, Personnel Qualification and Certification, and Dispute Resolution.
<b>Quality Program</b>	The core programmatic elements required for Design Quality Assurance implementation and Construction Quality Assurance implementation.

Term	Definition
<b>Quality Control (QC)</b>	The system used by the Design/Builder to monitor, assess and adjust their production or placement processes to ensure that the final product will meet the specified level of quality. Quality Control includes review and checking of design and construction documents, sampling, testing, inspection, evaluation, and corrective action (where required) to maintain continuous control of a production or placement process.
<b>Request for Proposals (RFP)</b>	A written solicitation issued by the Department seeking Proposals to undertake the Project to be used to identify the Design-Build Team offering the best value to the Department. The RFP will be issued only to short-listed Design-Build Teams.
<b>Request for Qualifications (RFQ)</b>	The written solicitation issued by the Department by which it may determine a limited number of the most qualified Design-Build Teams to be short-listed and therefor eligible to receive the RFP for the Project.
<b>Statement of Qualifications (SOQ)</b>	The information prepared and submitted by a Design-Build Team in response to this RFQ.
<b>Work</b>	The furnishing of labor, materials, equipment, and other incidentals necessary to, or convenient for the successful completion of, the design-build services for the Project and the carrying out of the duties and obligations imposed by the Contract.

### 1.3 Project Goals

The Department's goals for the Project are:

- A. Minimize impact on the public during Project construction by reducing the number of closure days for the traveling public;
- B. Successfully deliver the Project no later than \_\_\_\_\_;
- C. Construct a high-quality Project with improved roadway safety that accommodates traffic volumes, bicyclists, and pedestrians, as defined within the Project scope;
- D. Maintain good public relations with all stakeholders during construction through an effective public information program and efficient maintenance of traffic; and
- E. Implement an effective safety program.

### 1.4 Role of the Department

In the context of the Project, the Department is responsible for:

- A. Serving as Project sponsor and lead agency in charge of overall program administration;
- B. Preparation of the RFQ and RFP, evaluation of SOQs and Proposals, determination of short-listed Design-Build Teams, and selection of Design/Builder;
- C. Contract procurement, award, and administration;
- D. Providing due diligence information and data included in the RFP;
- E. Acquisition of rights-of-way and permanent easements identified in the RFP;

- F. Owner acceptance, inspection, and testing;
- G. Final acceptance of the Work and payment for Work performed; and
- H. Relations with media, public, and public officials.

At the Department's sole discretion, it may use its consultants in fulfilling the responsibilities noted in this Section 1.4.

## **1.5 Design/Builder Responsibilities and Project Status**

See Appendix A for general descriptions of the Project, the Design/Builder responsibilities, and current project status. These general descriptions are currently under further development by the Department and could be changed, modified, reduced, or expanded with the release of the RFP.

## **1.6 Federal Requirements**

Design-Build Teams are advised that the RFP will be drafted based on the assumption that the Project's plan of finance will remain eligible for Federal-aid funds, including Transportation Investment Generating Economic Recovery (TIGER) grants. Therefore, the procurement documents and any agreements thereunder must conform to requirements of applicable Federal law, regulations, and policies. These include Equal Employment Opportunity (Title VI of the Civil Rights Act of 1964, as amended), Disadvantaged Business Enterprises ("DBE") (Title 49 Code of Federal Regulations Part 26, as amended), Small Business requirements (United States Code sections 631 *et seq.*), Buy America requirements (49 Code of Federal Regulations Part 661), and Davis-Bacon wage rates. Details as to the extent and applicability of Federal requirements to the entire Project will be set forth in the RFP. The Department reserves the right to modify the procurement process described in this RFQ to address any concerns, conditions, or requirements of Federal agencies, including, but not limited to FHWA.

## **1.7 Overall Procurement Process**

The procurement process for the Project consists of three steps. Step one starts with issuance of this RFQ and will result in the short-listing of [INSERT QUANTITY] potential Design-Build Teams eligible to receive the RFP. The second step includes issuance of an RFP to the short-listed Design-Build Teams requesting submittal of Proposals for a design-build contract for the Project and the Department's receipt and evaluation of Proposals. The third step will commence with the Department's selection of the apparent "best value" Design-Build Team and will conclude with Department approval and award of a Contract to the Design-Build Team that submitted the best value proposal, or with termination of the procurement. The Department will score the technical portion of the proposals based on criteria established in the RFP and use this score for the calculation of "best value". The method for determining "best value" will be clearly defined in the RFP. The Department, in its sole discretion, reserves the right, among others, to suspend, modify, or terminate this procurement at any time.

## **1.8 Contract Type**

The Contract will be a fixed-price, lump-sum, design-build contract.

## 1.9 Addenda

The Department reserves the right to revise this RFQ by issuing addenda to this RFQ at any time before the SOQ due date specified in Section 2.2. The Department will post any addenda to this RFQ on the following website: <http://www.transportation.nebraska.gov/>.

Design-Build Teams are responsible for monitoring the website identified above for information concerning this procurement as teams responding to this RFQ will be required to acknowledge in the transmittal letter (Appendix C, Form A) that they have reviewed all materials posted thereon.

## 1.10 Questions and Clarifications

The Department will consider questions regarding the RFQ submitted by Design-Build Teams in writing, including requests for clarification and requests to correct errors. All such requests must be submitted in writing in the format shown on Appendix C, Form RFQ-C to the Department's Project Manager identified in Section 1.12. Only written requests will be considered. No oral requests or questions by phone will be accepted or considered. No requests for additional information or clarification to any other Department office, consultant, employee, or the FHWA or other agency will be considered.

Include an electronic copy of the questions on Appendix C, Form RFQ-C on compact disc (CD) or by electronic mail (e-mail) with the written request.

Questions must include the requestor's name, address, e-mail address, telephone and fax numbers, and the Design-Build Team he/she represents.

Design-Build Teams 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. The Department will provide responses to Design-Build Team clarification requests within a reasonable time following receipt, subject to the cut-off dates set forth in Section 2.2. The Department will post responses to those questions of general application and requests for clarifications on the following website: <http://www.transportation.nebraska.gov/>.

## 1.11 Rules of Contact

The following rules of contact shall apply during the procurement for the Project. These rules are designed to promote a fair, unbiased, legally defensible procurement process. Contact includes face-to-face, telephone, facsimile, e-mail, or formal written communication.

The Department's Project Manager will serve as the primary point of contact during the RFQ procurement phase of the Project. A core team of engineering, operations, contracts, and public relations staff members and advisors will support the Project Manager, including those groups listed in Section 2.3 below. As the Department point of contact, the Project Manager is the Department's sole contact person and addressee for receiving all communications about the Project during the RFQ procurement process, and Design-Build Teams are prohibited from contacting any Department employee or any of the groups listed in Section 2.3, regarding the Project or this RFQ. Submit any and all inquiries and comments regarding the Project by fax, e-mail, or letter as follows. Only written inquiries will be accepted:

Mr. Project Manager, P.E.  
Nebraska Department of Roads  
\_\_\_\_\_ Division  
P.O. Box 94759  
Lincoln, Nebraska 68509-4759

Mail:

Fax:

E-mail:

The NDOR Project Manager is the only individual allowed to discuss this RFQ with any interested parties, including Design-Build Teams. Any information from other sources may not be accurate, and use of such information is at the sole risk of the Design-Build Team(s).

### **1.11.1 Communication Process**

The Department is the single source of information regarding the Contract procurement. The procurement process begins on the date of issuance of this RFQ, and is anticipated to be completed with the award of the Contract. The following rules of contact are now in effect:

- A. Contact between the Design-Build Teams and the Department (questions and responses to questions) shall only be through the Department's and Design-Build Team's designated representatives. The Department's designated representative is identified in Section 1.12;
- B. The Design-Build Teams shall not contact Department employees or advisors, including members of the evaluation committee(s) and any official who will participate in evaluation of the SOQs, regarding the Project;
- C. The Design-Build Teams shall not contact those parties identified under Section 2.3 regarding the Project;
- D. Any contact determined to be improper, at the sole discretion of the Department, may result in disqualification;
- E. Any official information regarding the Project will be disseminated in writing from the Department on Department letterhead and signed by the Department's primary point of contact identified in Section 1.12; and
- F. The Department will not be responsible for any oral communication or any other information or contact that occurs outside the official authorized communication process specified herein.

### **1.12 Pre-Contractual Expenses and Stipend**

Design-Build Teams are solely responsible for all of their own costs and expenses of any nature associated with responding to this RFQ, including attending briefing(s) and providing supplemental information.

The Department will establish a stipend for the Project during the RFP phase of the procurement process. Specific details regarding the maximum stipend amount to be paid out by the Department, a Design-Build Team's eligibility to receive a stipend, the timing of stipend release to eligible Design-Build Teams, and the terms of stipend acceptance will be described in the forthcoming RFP documentation.

### 1.13 Conflict of Interest

The Department has established a Conflict of Interest policy for all Design/Build projects. This policy specifies that no Design-Build Team member that has previously provided services or that is currently providing services to the Department with respect to the Project may participate as an equity owner, team member, consultant, or subconsultant of or to a Design-Build Team for the Project, or have a financial interest in any of the foregoing entities with respect to the Project (see [Section 2.3](#) for a list of consultants affected by this prohibition).

Design-Build Team members participating in the Project shall arrange their affairs so as to prevent Conflicts of Interest from arising. Any Design-Build Team member having an actual, potential or perceived Conflict of Interest shall disclose the matter to the Department in writing. A private entity's failure to comply with this requirement may result in potential liability to the Department and to the private entity's preclusion from participation in the Project.

### 1.14 Design-Build Team Requirements

**Completion Capability:** Only prospective Design-Build Teams that have demonstrated the capability to complete this Project in its entirety will be eligible for short-list determination.

**Organizational and Personnel Changes:** Design-Build Teams are advised that, in order for a Design-Build Team to remain qualified to submit a Proposal after they have been short-listed, their organization, including all Major Participants, specialty subcontractors, and Key Personnel identified in the SOQ, must remain intact for the duration of the procurement process and thereafter throughout the term of the Contract. A Design-Build Team may propose substitutions for participants after the SOQ submittal; however, such changes will require prior written approval by the Department, which may be granted or withheld at the Department's sole discretion. Requests for changes must be made in writing no later than 30 days prior to the due date for submittal of Proposals. The Design-Build Team should carefully consider the make-up of its team prior to submittal of the SOQ. Unapproved changes to the Design-Build Team's organization will be justification for the Department to revoke a previous determination of a short-listed Design-Build Team.

**Minimum Requirements:** In order to be short-listed, the Design-Build Team must meet all SOQ requirements as set forth in [Section 4.3.1](#), meet the minimum passing criteria for legal, financial, and safety requirements as set forth in [Section 4.3.2](#) for non-scored elements of the SOQ, and obtain a passing score on each of the scored elements of the SOQ as set forth in [Section 4.3.3](#).

**Non-Disclosure Requirement:** The Design-Build Team may be given access to records, which are confidential under State laws, solely for the purpose of performing the required services under the Contract. The Design-Build Team shall be required to sign a non-disclosure statement prior to its receipt of such documents obligating each employee, agent, or subcontractor of the Design-Build Team not to make inappropriate use of or improperly disclose any of the contents of such documents.

### 1.15 Equal Employment Opportunity

In connection with this RFQ and the Contract, Design-Build Teams shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, sexual orientation, or being physically challenged. Design-Build Teams shall take affirmative action to ensure that all applicants are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being physically challenged. Such action shall include, but not be limited to, the following: layoff or

termination; rates of pay or other forms of compensation; employment; job assignment; upgrading; demotion; transfer recruitment/recruitment advertising; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training. Davis-Bacon wage rates are required.

## 1.16 DBE Goal

**Policy:** The Department shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of 49 CFR Part 26. For Federal-aid contracts, projects are subject to U.S. DOT DBE Design-Build provisions as set forth under Title 49 CFR Part 26 and subsequent publication of the Federal Register dated June 16, 2003 (Volume 68, Number 115). The Design-Build Teams shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this Project.

As a part of the SOQ submission, Design-Build Teams responding to this RFQ must include with their submission a signed affidavit acknowledging the Firm's commitment to comply fully with U.S. DOT DBE Design-Build provisions as set forth under Title 49 CFR Part 26 and subsequent publication of the Federal Register dated June 16, 2003 (Volume 68, Number 115) and the Overall Project DBE Goal requirements as further defined in the RFP, when issued. Design-Build Teams shall complete and return Appendix C, Form T as part of the SOQ.

**DBE Participation Goal:** The "Provisional" Overall Project DBE Goal has been established at [INSERT]%. The Department is currently in the process of securing required approvals of the proposed Overall Project DBE goal from U.S. Department of Transportation (U.S. DOT).

## 1.17 Labor Policies

**Prevailing Wages:** State prevailing wages will apply to this contract. For Federal-aid contracts, Federal prevailing wages will also apply. The applicable prevailing wages will be specified in the RFP.

**On the Job Training (OJT) Policy:** For Federal-aid contracts, projects are subject to Federal OJT participation provisions as set forth under the FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts. Firms responding to this RFQ acknowledge such requirements and commit to fully comply with the Design-Build program provisions and Federal OJT trainee participation goal.

**OJT Participation Goal:** The Federal OJT participation goal for this Design-Build project is [INSERT QUANTITY] Trainees.

**Labor Compliance Program:** The Department has a labor compliance program. The Design/Builder will need to comply with applicable requirements of the program. Further information regarding the labor compliance program will be included in the RFP.

## 1.18 Insurance, Bonds, and Guarantees

**Bond Requirements:** It is currently anticipated that the selected Design-Build Team will be required to submit payment and performance bonds upon execution of the Contract, each in the amount of \_\_\_\_ million. Design-Build Teams will be required to demonstrate their capacity to obtain the required bonds.

Design-Build Teams shall attach a notarized statement from an admitted surety insurer authorized to issue bonds in the State of Nebraska that states:

- Design-Build Team’s current bonding capacity is sufficient for the Project and referenced payment and performance bonds; and
- Design-Build Team’s current available bonding capacity.

**Insurance Requirements:** Design-Build Teams shall provide evidence of capability to obtain insurance as provided in Section 3.3 (D). In addition, the selected Design/Builder will be required to indemnify the Department, the Department’s Consultants and others with respect to claims arising out of the Contract or Work.

**Guarantees:** Design-Build Teams are advised that if any Major Participant of the selected Design-Build Team does not have audited financial statements as described in Section 3.3, or if the Design-Build Team is a newly formed entity or a limited liability entity, or if it fails to meet the minimum financial requirements stated in this RFQ and/or the RFP, the Department may require the Design-Build Team to provide a guarantee from a separate entity acceptable to the Department, to cover the Team’s performance and financial obligations with regard to the Project. Design-Build Teams shall also note that the Department may, in its discretion and based upon its review of the information provided under Section 3.3, also specify that an acceptable guarantor is required as a condition of a determination of short-listing. Requirements for additional financial security will be included in the RFP.

## 2 Background Information

### 2.1 Project Description

The Project is located in \_\_\_\_\_, Nebraska. A general description of the Project is contained in Appendix A.

The estimated cost of this Design-Build project (in 2016 U.S. dollars) is \_\_\_\_\_.

### 2.2 Procurement Schedule

The Department anticipates the following dates as Project milestones leading to Contract award. This schedule is subject to revision, at the sole discretion of the Department, by the RFP and/or Addenda.

Event	Date
Issue RFQ	[INSERT DATE]
Final Date for Receipt of Design-Build Teams’ Questions	
SOQ Due Date	
Anticipated Shortlist Determination	
Anticipated Issuance of Draft RFP	
Anticipated Issuance of Final RFP	



Anticipated Proposal Due Date	
Anticipated Notice of Selection	
Anticipated Award & Notice to Proceed	

### 2.3 The Department Advisors/Consultant Support

The Department has engaged advisors/consultants to assist and participate in the Project development stages, as well as assist the Department during the procurement process for the Project. Any advisory team member is prohibited from participating in any of the Design-Build Team organizations relating to this Project; providing technical, legal, or financial advice to Design-Build Teams; or directly discussing any aspect of the RFQ or RFP with any Design-Build Team.

The advisory team consists of the following:

- \_\_\_\_\_ Company
- \_\_\_\_\_ Company
- \_\_\_\_\_ Company

## 3 Content of Statement of Qualifications

This section describes specific information that must be included in the SOQ. SOQs must follow the outline of Section 5. Design-Build Teams shall provide brief, concise information that addresses the requirements of the Project consistent with the evaluation criteria described in this RFQ.

### 3.1 Design-Build Team’s Transmittal Letter

The Design-Build Team shall complete Appendix C, Form A. A duly authorized representative of the Design-Build Team’s organization shall sign the letter. For Design-Build Teams that are joint ventures, partnerships, limited liability companies, or other associations, authorized representatives of all equity members of the Design-Build Team shall sign the letter.

The Design-Build Team shall complete Appendix C, Form U (Design-Build Team SOQ Certification), verifying the accuracy of the information submitted as part of the SOQ. For Design-Build Teams that are joint ventures, partnerships, limited liability companies, or other associations, authorized representatives of all equity members and major participants of the Design-Build Team shall sign the Design-Build Team SOQ Certification.

### 3.2 Legal Structure

**Objective:** To select Design-Build Teams whose organization, legal structure, team members, and history demonstrate the Design-Build Teams’ ability to remain stable and viable for the duration of the Project, so to be able to fulfill their contractual obligations to the Department.

**Submittal Requirements:** Design-Build Teams shall address the following and submit it under Section 1 of the SOQ:

- A. Legal structure of the Design-Build Team and its organization. If the Design-Build Team organization has already been formed, provide complete copies of the organizational documents. If the Design-Build Team organization has not yet been formed, provide a brief description of the proposed legal structure or draft copies of the underlying agreements. In the event that agreements between Major Participants have not been finalized at the time of the SOQ submittal, Major Participants shall submit letters of agreement signed by an authorized officer of each Major Participant noting the type of relationship to be entered into prior to the Proposal (i.e., joint venture, subcontract), and the commitment of the parties to finalize the organizational documents prior to the Proposal submittal. If Design-Build Team is a partnership, joint venture, or other association, the SOQ must identify the percentage equity interest of each member;
- B. If the Design-Build Team is a partnership, limited partnership, joint venture, or other association, all members of the Design-Build Team must agree to be fully liable for the performance under the design-build Contract by executing the transmittal letter appearing in Appendix C, Form A;
- C. Name and describe all Major Participants as defined in this RFQ;
- D. A statement from the Design-Build Team identifying any actual and/or potential conflicts of interests the equity members and major participants may have with other clients they represent (refer to Section 1.14);
- E. In cases where Major Participants on different Design-Build Team organizations belong to the same parent company, each Design-Build Team must describe how conflicts of interest would be avoided by the participants through the qualification and proposal phases of the Project. The Department may disqualify a Design-Build Team if any of its Major Participants belong to more than one Design-Build Team organization;
- F. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team, shall complete Form D found in Appendix C;
- G. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team shall complete Forms L-1 and L-2 found in Appendix C; and
- H. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team shall complete Form T found in Appendix C.

### **3.2.1 Minimum Requirement for Legal Structure**

A Design-Build Team must demonstrate the following:

- A. The Design-Build Team has the legal capability to conduct business in the State of Nebraska and to carry out the Project responsibilities potentially allocated to it, as demonstrated by the materials provided in Section 1 of the SOQ;
- B. Each of the equity members of the Design-Build Team have agreed to be jointly and severally liable for performance under the Contract, as reflected in the executed Transmittal Letter, Appendix C, Form A;
- C. The Design-Build Team has agreed to adhere to the Project's DBE requirements as provided in Appendix C, Form T; and

- D. The information disclosed in the SOQ (including Forms D, L-1, and L-2) does not materially adversely affect the Design-Build Team's ability to carry out the Project responsibilities potentially allocated to it.

### 3.3 Financial Capacity

**Objective:** To select Design-Build Teams whose team members possess the financial capacity to successfully complete the Project.

**Submittal Requirements:** Design-Build Team shall address the following and submit it under Section 2 of the SOQ:

- A. Provide a letter or other written documentation from a surety or insurance company stating that the Design-Build Team is capable of obtaining a Performance Bond and a Payment Bond (refer to Section 1.19 for bond amounts) covering the Project and any warranty periods. Letters indicating "unlimited" bonding capability are not acceptable;
- B. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team shall complete Form B (Backlog and Financial Information) found in Appendix C;
- C. Major Participants or if Design-Build Team is a partnership, joint venture, or other association, all equity members of Design-Build Team shall complete Form R (Past Revenue) found in Appendix C; and
- D. Design-Build Teams shall provide insurance certifications, either a certificate of insurance evidencing current policies of, or written evidence from an insurance company or broker indicating that the Design-Build Team is capable of obtaining the following types of insurance: Commercial General Liability, Professional Liability / Errors and Omissions, Auto Liability, Workers' Compensation/Employers Liability, and Pollution Liability. Policy limit requirements will be specified in the RFP.

#### 3.3.1 Minimum Requirement for Financial Capacity

A Design-Build Team must demonstrate its financial capacity to carry out the Project responsibilities potentially allocated to it, as demonstrated by the materials provided in Section 2 of the SOQ, including but not limited to the following:

- A. The surety or insurance company shall be admitted to do business in the State of Nebraska;
- B. The surety or insurance company must be rated in the top two categories by two nationally recognized rating agencies, or have a "Best's Credit Rating" of at least "A minus" and "Class VIII" or better by A.M. Best Company;
- C. Design-Build Team shall demonstrate its ability to comply with the Project's bonding requirements, as identified in Section 1.19; and
- D. Design-Build Team's Major Participants shall provide evidence of capability to obtain insurance as identified in Section 3.3 (D).

### 3.4 Safety Program

**Objective:** To identify those Design-Build Teams that currently maintain an acceptable safety record and can demonstrate the ability to develop and implement an effective safety program for the Project.

**Submittal Requirements:** Design-Build Team shall address the following and submit it under Section 3 of the SOQ:

- A. Complete Form S found in Appendix C for each Major Participant.

### 3.4.1 Minimum Requirement for Safety Program

- A. Satisfactory safety record. Design-Build Team's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standard for its business category.
- B. Design-Build Team demonstrates an understanding of an effective safety program appropriate to the Project.

### 3.5 Firm Experience and Past Performance

**Objective:** To identify design and construction firms with demonstrated experience, expertise, competence, capability, and record of producing quality work on projects similar to Project A specifically, and on projects of any type using design-build project delivery.

**Requirements and Information:** The following shall be submitted under Section 4 of the SOQ:

- A. Provide a brief narrative summary of the expertise and capability of each Major Participant and the design firm. Summaries shall be a maximum of two pages for each firm; the format is at the discretion of the Design-Build Team;
- B. Design-Build Team shall use and complete Forms PP-1 and PP-2 found in Appendix C for each Major Participant, based on experience over the past 5 years.
- C. Description of how, if any, the Principal/Major Participants have worked together in the past and the experience such Principal/Major Participants have in conventional design-bid-build and design-build projects of comparable size.
- D. Firm Experience: Using Appendix C, Form E-1 (Project Description), show the firm's experience by providing no more than four project descriptions for each Major Participant. Highlight experience in the past 15 years on completed projects having a scope comparable to that anticipated for the Project. The Designer is considered a key part of the Design/Builder's organization, and the Designer's experience must be identified in the SOQ. If Designer is a joint venture or partnership, each member or partner shall submit an independent Form E-1. For the projects in which several of the proposed Major Participants were involved, Design-Build Teams may provide a single project description. Descriptions of design-build projects should highlight experience relevant to this Project that Major Participants have gained in the last 15 years. Describe design-build projects with levels of scope comparable to that anticipated for this Project. Describe the experiences gained in project experience cited, that Major Participants could apply to this Project. In particular, demonstrate design-build experience in any of the following areas:
  - INSERT/INCLUDE BULLET POINTS RELEVANT TO THE PARTICULAR PROJECT; SEE EXAMPLES BELOW.]
  - Transportation facilities;
  - Highways;

- Bridge structures;
- Urban reconstruction;
- Construction/reconstruction using innovative designs, methods, and materials;
- Construction in environmentally sensitive areas;
- Warranties;
- Design and construction activity interaction or integration; and
- Community relations (including website development and maintenance).

Each project description must include the following information as appropriate:

- Name of the project and the owner's contract number;
- Owner's name, address, contact person, email address, and current telephone and fax numbers;
- Dates of design, construction, management, and/or warranty periods;
- Description of the work or services provided and percentage of the overall project actually performed by (each of) the Principal/Major Participant(s);
- Initial construction bid price and final construction contract price for the project, including the quantity and dollar value of contract modifications and claims, and an explanation of the causes for construction contract change(s), whether upward or downward; and
- Record of cost and schedule growth or reduction, including experience with techniques to achieve goals of avoiding delays and minimizing claims.

E. Penalties, Claims/Litigation, and Termination: Design-Build Team shall use and complete Form PP-1 found in Appendix C for each Major Participant to address the following issues as appropriate for the past 5 years.

- Describe any project that resulted in assessment of liquidated damages against any Major Participant within the last five years. Describe the delays and the amounts assessed.
- Describe any outstanding damage claims for projects in which any of the Major Participants were involved within the last five years.
- Describe the conditions surrounding any contract (or portion thereof) entered into by any Major Participant within the last five years that has been terminated for cause or that required completion by another party. Describe the reasons for termination and the amounts involved.
- For each instance of litigation, liquidated damages, or termination for cause, identify the project owner's representative and his or her current phone number.

### **3.5.1 Firm Experience and Past Performance Evaluation Criteria**

Successful Design-Build Teams will have demonstrated design-build experience in the following:

- A. Experience in successfully managing, designing, and constructing projects of the size and complexity of this Project;
- B. A record of completing contracts on time and within the fixed price;
- C. Experience in successfully constructing major structures in sensitive environmental areas and community areas, managing the maintenance of traffic, roadway design and construction, movable bridge design and construction, marine and environmental permitting, and implementing community relations and outreach programs of projects of the size and complexity of this Project;
- D. A record of managing contracts to minimize delays, claims, dispute proceedings, litigation, and arbitration;
- E. The technical and management experience and expertise to plan, organize, and execute the design and construction of, and assure the quality and safety of the Project;
- F. The ability to effectively manage all aspects of the Contract in a quality, timely, and effective manner and integrate the different parts of its organization with the Department in a cohesive and seamless manner.

### 3.6 Design-Build Team Organization and Key Personnel

**Objectives:** To identify the qualified personnel to serve in key positions and having demonstrated experience and expertise and a record of producing quality work on projects similar in nature to this Project. The key positions for the purposes of this RFQ are identified in Section 3.6.1.

**Requirements and Information:** The following information shall be submitted under Section 5 of the SOQ:

- A. **Organization Chart(s):** Provide an organization chart(s) showing the “chain of command,” with lines identifying participants who are responsible for major functions to be performed, and their reporting relationships, in managing, designing, and building the Project. The chart(s) must show the functional structure of the organization down to the design discipline leader or construction superintendent level and must identify Key Personnel by name. Key Personnel will be committed to the Project. Identify all Major Participants in the chart(s). Identify the critical support elements and relationships of Project management, Project administration, construction management, quality control, safety, environmental compliance, and subcontractor administration. For each organization chart, provide a brief, written description of significant functional relationships among participants and how the proposed organization will function as an integrated design-build team. Changes to the Design-Build Team’s SOQ organization chart shall abide by the requirements identified in Sections 1.15 and 3.6.2;
- B. **Key Personnel:** Using Appendix C, Form E-3 (Proposed Key Personnel Information), list appropriate information on each Key Personnel position described in Section 3.6.1;
- C. **Required Resumes:** Resumes of Key Personnel, limited to two pages each will not be counted towards the overall SOQ page limit. The listing below describes the minimum Key Personnel for the Project. Personnel to staff these key functions, listed below in Section 3.6.1, shall be identified in the required Organization Chart;
- D. **Required Licenses:** Evidence that the Design-Build Team and all Major Participants have, or at the time of Contract award will have, all licenses, registration, and credentials required to design and construct the Project. Such information shall include any

information on the revocation or suspension of any license, credential, or registration. At the time the Contract is awarded, the Design/Builder shall be properly licensed in accordance with the laws of this State. Failure of the Design-Build Team to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the Contract and shall result in the forfeiture of the security of the Design-Build Team; and

- E. **Subcontractor Information:** Using Appendix C, Form E-2 (Subcontractor Information), identify subcontractors, except for the designated Designer (which is included on Appendix C, Forms L-1 and L-2), that the Design-Build Team plans to use, including Major Participants, specialty subcontractors, and subconsultants. Indicate what portion of the Work each subcontractor is anticipated to undertake. Submit maximum one-page summaries of experience for each listed subcontractor and subconsultant.

### 3.6.1 Preferred Qualifications of Key Personnel

The following provides a brief job descriptions and duties of the Key Personnel assigned to the Project. All Key Personnel will be required to be on-site during activities that involve their areas of responsibility or as indicated below. The Design-Build Team shall provide three references for each of the Key Personnel positions identified in this RFQ. The number of years of experience listed for each Key Personnel represents a target goal for evaluation purpose and should not be considered as a mandatory minimum requirement for that position.

A. Project Manager:

- The Project Manager shall be the individual responsible for the overall design, construction, quality, and contract administration for the Project. The Project Manager shall be assigned to the Project full time and will be required to be on-site during critical design and construction activities for the duration of the Project.
- **[INSERT QUANTITY]** years of experience managing complex infrastructure projects.
- **[INSERT QUANTITY]** of major design-build project management of infrastructure projects with a value in excess of \$\_\_\_\_\_.

B. Construction Manager:

- **[INSERT QUANTITY]** years of experience managing complex infrastructure projects. The Construction Manager will be assigned to the Project full time and will be required to be on-site during critical construction activities for the duration of the Project.

C. Design Manager:

- The Design Manager will be assigned full time and will work directly for the Design/Builder under the direct supervision of the Project Manager. The Design Manager will be the individual responsible for coordinating the design of the individual design disciplines and will be responsible for ensuring that the overall Project design is completed and design criteria requirements are met. The Design Manager will be assigned full time until the design is 100% complete and as required during the construction phase of the Project. The Design Manager will be responsible for design quality management. The Design Manager is the

Engineer of Record who will have primary responsibility for design work under the contract.

- [INSERT QUANTITY] years of experience managing design projects comparable in scale and complexity to the Project.
- Must be a registered professional engineer in the State of Nebraska now or by the time the initial notice to proceed is issued.

D. Quality Control Administrator:

- Must be a registered professional engineer in the State of Nebraska now or by the time the initial notice to proceed is issued.
- [INSERT QUANTITY] years of experience managing complex transportation/infrastructure projects.
- [INSERT QUANTITY] years of major design-build construction management of transportation projects.
- The Quality Control Administrator will work directly for the Design/Builder under the direct supervision of the Project Manager. The Quality Control Administrator will be available to the Project full time for the duration of the Project.
- The Quality Control Administrator shall be responsible for overall management of the Quality Control System as established in the Quality System Manual.
- The Quality Control Administrator must not be assigned any other duties or responsibilities on this Project or any other projects unless approved by the Department.
- The Quality Control Administrator shall have the authority to stop any and all work, including construction that does not meet the standards, specifications, or criteria established for the Project.

E. Design Quality Control Manager:

- Must be an engineer with a Bachelor of Science degree in Civil Engineering and have a minimum of [INSERT QUANTITY] years of experience in [INSERT HIGHWAY AND/OR BRIDGE] design.
- The Design Quality Control Manager shall report directly to the Quality Control Administrator.
- The Design Quality Control Manager shall be responsible for implementation of all design Quality Control procedures and activities as established in the Quality System Manual.

F. Construction Quality Control Manager:

- Must be an engineer with a Bachelor of Science degree in Civil Engineering and shall be certified as a NETTCP QA Technologist now or by the time the initial notice to proceed is issued and have a minimum of [INSERT QUANTITY] years of experience in [INSERT HIGHWAY AND/OR BRIDGE] design.
- The Construction Quality Control Manager shall report directly to the Quality Control Administrator.



- The Construction Quality Control Manager shall be responsible for implementation of all construction Quality Control procedures and activities as established in the Quality System Manual.

G. Environmental Compliance Manager:

- The Environmental Compliance Manager will work directly for the Design/Builder under the direct supervision of the Project Manager. The Environmental Compliance Manager will be available to the Project full time and will be required to be on-site during critical activities for the duration of the Project.
- [INSERT QUANTITY – DEFAULT VALUE IS 10] years of experience implementing environmental programs on complex transportation/infrastructure projects.
- [INSERT QUANTITY – DEFAULT VALUE IS 5] years of experience is securing environmental permits.
- The Environmental Compliance Manager must not be assigned any other duties or responsibilities on this Project unless approved by the Department.

H. Safety Manager:

- Work directly for the Design/Builder and report directly to the Project Manager. The Safety Manager will be available to the Project full time and will be required to be on-site during critical construction activities of the Project.
- [INSERT QUANTITY – DEFAULT VALUE IS 15] years of experience managing complex transportation/infrastructure projects.
- [INSERT QUANTITY – DEFAULT VALUE IS 5] years of major design-build construction management of transportation projects.
- The Safety Manager must be familiar with FHWA work zone safety regulations and must have at least [INSERT QUANTITY – DEFAULT VALUE IS 10] years of experience working in roadway work zone safety and OSHA Regulations.

### 3.6.2 Changes in Design-Build Team Organization and Key Personnel

The NDOR wants to ensure that Design-Build Teams are able to develop and attract the greatest range and depth of expertise as may be necessary to participate in the procurement, design, and construction of the Project in an innovative, effective, and efficient manner. Accordingly, the Department shall permit Design-Build Teams to add team members and reorganize the Design-Build Team entity through the procurement process until submittal of the Proposals as described herein, except in the event of potential organizational conflicts of interest and/or deficiencies in qualifications and experience for the proposed role. Notwithstanding the foregoing, and subject to Section 1.15, following submittal of the SOQs, the following actions may not be undertaken without the Department's prior written consent, in its sole discretion:

- Deletion or substitution of a Design-Build team member identified in its SOQ (i.e., Major Participants, Designer);
- Deletion or substitution of Key Personnel identified in Section 3.6.1 of this RFQ and Appendix C, Form E-3 of its SOQ;

- Deletion or substitution of an equity owner of Design-Build Team or Major Participant, or any other entity that will bear financial responsibility or liability for the performance of the Design-Build Team; and
- Other changes in the equity ownership or team membership of a Design-Build Team.

Should a Design-Build Team wish to make such a change, they shall notify and request the Department's consent in writing and shall provide, for any new or substitute entity, the same information required under this RFQ for such entity had it been part of the Design-Build Team as of the SOQ submission (including, without limitation, legal, financial, qualifications/experience, and other). If a Design-Build Team wishes to delete an entity, they shall provide the Department with information establishing that the Design-Build Team remains qualified as contemplated under this RFQ. Failure to secure the consent of the Department may, at the Department's sole discretion, result in the Design-Build Team being disqualified from the short-listing process.

### 3.7 Project Understanding and Approach

**Objective:** To identify those Design-Build Teams that demonstrate the following: (i) an understanding of and approach to the management, technical aspects, and maintenance of traffic issues and risks associated with the Project; (ii) an understanding of and approach to how the design-build process and the Design-Build Team's organization will contribute to the success of the Project and meet the Project goals; and (iii) an understanding of the risk sharing and the teaming relationship between the Design/Builder and the Department.

**Submittal Requirements:** Requirements and information to be submitted under Section 6 of the SOQ include:

- A. Narrative description of the Design/Builder's management and organizational approach for accomplishing the design-build Project. The narrative should describe the methodology for integrating the design-build entity and the different areas of expertise within the team into an efficient and effective organization. The management approach must reflect an understanding of the use of the design-build project delivery methodology for transportation infrastructure projects. The narrative shall also provide a brief description of the significant functional relationships among participants outlined in the organization chart as described in Section 3.6 and how the proposed organization will function as an integrated design-build entity and how it will work effectively with the Department; and
- B. Brief description of how the Design-Build Team will use its organization and the design-build process to ensure a successful Project, considering the Project goals listed in Section 1.3.

### 3.8 Quality Assurance Program

**Objective:** To identify those Design-Build Teams that can demonstrate the best approach in implementing a Quality Assurance Program under a design-build project in which the Department will manage and perform the Design Acceptance and Construction Acceptance functions, while the Design-Build Team is responsible for implementing a Quality Control System that addresses Design Quality Control and Construction Quality Control.

**Submittal Requirements:** The Department has established overall Quality Assurance (QA) requirements for Design-Build projects. This includes a Design QA Program to address quality in the design process and a Construction QA Project to ensure the quality of construction.

Requirements and information to be submitted under Section 7 of the SOQ include a written approach with respect to Quality Assurance. The Design-Build Team's approach should demonstrate an understanding of the following attributes:

- A. Design Quality Control;
- B. Construction Quality Control;
- C. Coordination between the Department and the Design/Builder organization; and
- D. Coordination with other agencies.

A preliminary Quality System Manual (QSM) is not required under the RFQ submittal process but will be a requirement of the short-listed Design-Build Teams during the RFP phase.

## 4 Evaluation Process

Section 4 outlines the evaluation factors for the RFQ phase of the procurement. This information is intended to assist Design-Build Teams in organizing their teams and preparing their SOQs.

### 4.1 SOQ Evaluation

**Evaluation Process:** The Department will evaluate the SOQs based on the rating and scoring information outlined in this Section 4. SOQs that are responsive and that meet the minimum or "pass – fail" criteria identified in Section 4.3 will be scored in accordance with the criteria described in Section 4.4, and the [INSERT QUANTITY] highest ranked Design-Build Teams will be "short listed". Only those Design-Build Teams that are short-listed will be allowed to participate in the RFP 'best-value' procurement process.

**Interviews:** The Department reserves the right to conduct oral interviews with all potential Design-Build Teams prior to its short-listing determination. The Technical Review Committee (TRC) as part of its evaluation may complete these interviews during the overall SOQ submittal process and scoring. If the Department elects to conduct oral interviews following receipt of the SOQs, the TRC chairperson will determine the exact schedule for oral interviews.

### 4.2 Evaluation Objective

The objective of the RFQ step of the procurement is to pre-qualify Design-Build Teams having the legal, technical, financial, and management capability, capacity, and experience necessary to successfully undertake and complete the Work. The Design/Builder will have primary responsibility to plan, design, manage, and control the Project and to complete the Project on or ahead of schedule. The Department and Nebraska DOR have set high responsibility standards for the Design/Builder, which is reflected in the evaluation factors of this RFQ and will be reflected in the RFP and the Contract.

### 4.3 SOQ Evaluation Factors

The information submitted in accordance with Section 3 will be evaluated by the Technical Review Committee (TRC) in accordance with the initial responsiveness review as defined in Section 4.3.1, the non-scored categories listed in Section 4.3.2, and the scored categories as set forth in Section 4.3.3.

#### **4.3.1 Initial Responsiveness Review**

Each SOQ will initially be reviewed on a pass/fail basis for: (i) minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the SOQ; (ii) the Proposal's conformance to the RFQ instructions regarding organization and format; and (iii) the responsiveness of the Design-Build Team to the requirements set forth in the RFQ.

The Department may allow certain deficiencies in the SOQs relating to the above factors to be corrected through clarifications, but shall have no obligation to do so. Design-Build Teams shall correct the deficiencies in the timeframe set forth by the Department or risk being excluded from further consideration. The Department may also exclude from consideration any SOQ that contains a material misrepresentation.

#### **4.3.2 Non-Scored SOQ Categories**

Each non-scored category of a responsive SOQ will be evaluated on a non-scored pass/fail basis. For an SOQ to achieve a passing rating, each of the following categories shall meet the minimum requirements as set forth below:

- A. Legal: The SOQ complies with and meets or exceeds the minimum requirements listed in Section 3.2.1.
- B. Financial: The SOQ complies with and meets or exceeds the minimum requirements listed in Section 3.3.1.
- C. Safety: The SOQ complies with and meets or exceeds the minimum requirements listed in Section 3.4.1.

#### **4.3.3 Scored SOQ Categories**

Each scored category of a responsive SOQ will be evaluated and scored by the TRC according to the following, using the scoring form provided in Attachment 1:

- A. *Design-Build Team Organization and Key Personnel and Firm Experience and Past Performance*. The SOQ will be evaluated and a single score will be established for this category by combining the following elements:
  - *Firm Experience and Past Performance*: The SOQ will be evaluated against the criteria established under Section 3.5.1.
  - *Design-Build Team Organization and Key Personnel*: The SOQ will be evaluated against the criteria established under Section 3.6.1.
- B. *Project Understanding and Approach and Quality Management Program*. The SOQ will be evaluated and a single score will be established for this category by combining the following elements:
  - *Project Understanding and Approach*: As defined under Section 3.7, the SOQ demonstrates sound understanding and approach.
  - *Quality Management Program*: As defined under Section 3.8, the SOQ demonstrates a sound approach to implementing a Quality Management Program.

## 4.4 Evaluation and Scoring Process

The TRC will evaluate the non-scored SOQ categories as defined under Section 4.3.2. The TRC will evaluate the scored categories as defined under Section 4.3.3 based on the scoring outline in Attachment 1.

To short-list, a Design-Build Team will be required to meet the following standards:

- A. For each of the non-scored SOQ categories, meets or exceeds the minimum passing requirements as set forth under Section 4.3.2; and
- B. For each of the scored SOQ categories, obtains a passing grade based on the following minimum scoring criteria:
  - For the *Design-Build Team Organization and Key Personnel and Firm Experience and Past Performance* categories, achieves a passing score of [SET MINIMUM POSSIBLE POINTS] or greater. The maximum score under this category is [SET MAXIMUM POSSIBLE POINTS].
  - For the *Project Understanding and Approach and Quality Management Program* categories, achieves a passing score of [SET MINIMUM POSSIBLE POINTS] or greater. The maximum score under this category is [SET MAXIMUM POSSIBLE POINTS].

Once scoring of all SOQs has concluded, the TRC rank the SOQs from highest to lowest scores. The Department intends to short-list between [IDENTIFY QUANTITY] Design-Build Teams for continuation in the RFP 'best-value' procurement process. If only one Design-Build Team responds to the RFQ or attains short-list status, the Department may re-advertise or cancel the Project as it deems necessary.

## 4.5 Notification of Short Listing

Upon completion of the SOQ evaluation and scoring process, the Department will notify each Design-Build Team in writing whether or not it has obtained short-list status. The Department will also publish the list of Design-Build Teams attaining short-list status on its website: <http://www.transportation.nebraska.gov/>.

Announcement of short-listing may be expected not later than the date specified in Section 2.2.

# 5 SOQ Submittal Requirements

The following sections describe requirements that all Design-Build Teams must satisfy in submitting SOQs. Failure of a Design-Build Team to submit its SOQ as required in this RFQ may, at the Department's sole discretion; result in rejection of its SOQ. All rejected SOQs will be returned to the contact person identified in the SOQ.

## 5.1 General Requirements

Required forms for the SOQ are contained in Appendix C. Any material modification to the forms may result in the SOQ being declared non-responsive.

Design-Build Teams shall provide brief, concise information that addresses the objectives and the requirements of the Project consistent with the evaluation factors described in Section 4.3. Lengthy narratives containing extraneous information are discouraged.

If the Design-Build Team submits information in its SOQ that it believes to be protected records under the Nebraska Public Records Law (Nebraska Revised Statutes 84-712) and that it wishes to protect from disclosure, the Design-Build Team shall mark such information as provided in Section 6.2.

## 5.2 Due Date, Time, and Location

All SOQs must be received by 3:00 pm Eastern Standard Time on the day specified in [Section 2.2](#) and delivered to the following:

SOQs delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Nebraska Department of Roads  
1500 Highway 2  
Lincoln, NE 68502**

**Attention: Planning and Project Development Engineer**

SOQs delivered using the U.S. Postal Service shall be addressed as follows:

**Nebraska Department of Roads  
P. O. Box 94759  
Lincoln, NE 68509-4759**

**Attention: Planning and Project Development Engineer**

Any SOQ that fails to meet the deadline will be rejected without opening, consideration, or evaluation and will be returned, unopened, to the sender.

## 5.3 Format Requirements

A Design-Build Team's SOQ format must adhere to the requirements outlined in [Appendix B](#).

The front cover of each SOQ must be labeled with "Project A," "Statement of Qualifications," and the date of submittal.

## 5.4 Quantities

Each Design-Build Team must provide the Department with one original and the number of SOQ copies as identified below. Each copy must be identified on its front cover, in the upper right-hand corner, as "Copy \_\_\_ Of \_\_\_ Copies."

All **[INSERT QUANTITY]** binders (original and \_\_\_ copies) must be packed together in one sealed package. The outside of the sealed package must be clearly identified, labeled, and addressed as follows:

- A. Return address: Design-Build Team's name, contact person's name, mailing address;
- B. Date of submittal; and
- C. Contents labeled with the Project name and "Statement of Qualifications."

## 5.5 Challenges

The decision of the Department as to the Design-Build Team short-list and subsequent award of the Contract shall be final and shall not be appealable, reviewable, or reopened in any way,

except as provided in Section 6. Parties participating in the RFQ phase of this procurement shall be deemed to have accepted this condition and all other requirements of this RFQ.

## **6 Protest Procedures and Public Records Act**

### **6.1 RFQ Protest**

Section 6.1 sets forth the exclusive protest remedies available with respect to this RFQ. Each Design-Build Team, by submitting its SOQ, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive unless wholly arbitrary. These provisions are included in this RFQ expressly as consideration for such waiver and agreement by the Design-Build Teams. If a Design-Build Team disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFQ, it shall indemnify, defend, and hold harmless the Department, its directors, officers, officials, employees, agents, representatives, and consultants from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of said Design-Build Team's actions. The submission of an SOQ by a Design-Build Team shall be deemed the Design-Build Team's irrevocable and unconditional agreement with such indemnification obligation.

#### **6.1.1 Written Protest Only**

All protests must be in writing. Protests shall be submitted to:

Deputy Director – Engineering  
Nebraska Department of Roads  
P.O. Box 94759  
Mail: Lincoln, NE 68509-4759

Fax: 402.479.4325

E-mail:

Any protest not set forth in writing within the time limits specified in these procedures is null and void and shall not be considered.

The protestor shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest, but the Department designee, whose decision shall be final and conclusive, shall decide it, on the basis of the written submissions. The Department designee shall issue a written decision regarding any protest to each Design-Build Team.

#### **6.1.2 Protest Contents**

A. All protests must include the following:

- The name and address of the Design-Build Team;
- The Project name and Project number;
- A detailed statement of the nature of the protest and the grounds on which the protest is made; and



- All factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements must be provided under penalty of perjury.
- A. The protestor must demonstrate or establish a clear violation of a specific law or regulation.
  - B. The Department will not be obligated to postpone the SOQ due date specified in Section 2.2 or short-list announcement in order to allow a protestor an opportunity to correct a deficient protest or appeal, unless otherwise required by law or regulation.
  - C. If the protest is denied, the protestor shall be liable for the Department's costs reasonably incurred in any action to defend against or resolve the protest, including legal and consultant fees and costs and any unavoidable damages sustained by the Department as a consequence of the protest. If the protest is granted, the Department shall not be liable for payment of the protestor's costs.

### **6.1.3 Protest Regarding RFQ or Procurement Process**

- A. All protests regarding this RFQ or the related procurement process shall be filed with the Department not less than seven calendar days prior to the SOQ due date specified in Section 2.2.
- B. The Department will promptly make a determination in writing regarding the validity of the protest and whether or not the RFQ process should be delayed beyond the scheduled SOQ due date specified in Section 2.2.
- C. If the Department determines that the scheduled SOQ due date specified in Section 2.2 should be delayed, all Design-Build Teams will be notified by written addendum of the delay and the reason thereof.
- D. If all or any portion of the protest is determined to be valid, the Department designee will respond in writing to each material issue determined to be valid raised in the protest in a timely manner prior to the Department proceeding further with the RFQ.
- E. The failure of a Design-Build Team to file a basis for a protest regarding this RFQ shall preclude consideration of that ground in any protest regarding the short-list determination, unless such ground was not and could not have been known to the Design-Build Team in time to protest prior to the final date for such protests.

### **6.1.4 Protest Regarding Pre-Qualification Decision**

- A. If the short-list decision is being protested, a protestor shall protest in writing to the Department designee as soon as practical, but not later than seven calendar days after the protestor knew or should have known it had not attained short-list status. If the protest has been filed in a timely manner, the Department designee will promptly make a determination in writing regarding the validity of the protest and whether or not the procurement should be delayed, or the short-list status should be considered for revision.
- B. If the procurement is delayed, all Design-Build Teams will be notified of the delay. The Department designee will respond in writing to each material issue raised in the protest in a timely manner prior to proceeding further with the procurement.
- C. Should a protestor wish to appeal the decision of the Department designee concerning short-listing decision, a protestor shall follow the procedures in Section 6.1.5.



### **6.1.5 Right of Appeal**

- A. In the event that a protestor receives an unfavorable decision from the Department designee to its protest, the protestor shall have the right to appeal the decision of the Department designee by submitting a written appeal to the Department's Deputy Director – Engineering or his/her designee within seven calendar days after receipt of the decision of the Department designee.
- B. The Deputy Director – Engineering or his/her designee will notify the protestor in writing in a prompt manner of its decision regarding the protest and the appeal. The decision of the Deputy Director – Engineering or his/her designee shall be final and not appealable.

## **6.2 Public Records Act**

All written correspondence, exhibits, photographs, reports, printed material, tapes, electronic discs, and other graphic and visual aids submitted to the Department during this procurement short-listing process, including as part of the response to this RFQ, are, upon their receipt by the Department, the property of the Department and are subject to the Nebraska Public Records Law. None of the aforementioned materials will be returned to the submitting parties. Design-Build Teams should familiarize themselves with the provisions of the Nebraska Public Records Law. In no event shall the Department, or any of its agents, representatives, consultants, directors, officers, or employees be liable to a Design-Build Team for the disclosure of all or a portion of an SOQ submitted under this RFQ.

If a Design-Build Team has special concerns about information that it desires to make available to the Department but which it believes constitutes a trade secret, proprietary information, or other information excepted from disclosure, such Design-Build Team should specifically and conspicuously designate that information as "TRADE SECRET" or "CONFIDENTIAL" in its filed response to this RFQ. Blanket, all-inclusive identifications by designation of whole pages or sections as containing proprietary information, trade secrets, or confidential commercial or financial information shall not be permitted and shall be deemed invalid. The specific proprietary information, trade secrets, or confidential commercial and financial information must be clearly identified as such. The Department will endeavor to advise the Design-Build Team of any request pursuant to the Nebraska Public Records Law and any other applicable laws for the disclosure of any material properly labeled as proprietary, trade secret, or confidential so as to allow the Design-Build Team the opportunity to seek a court order to protect such materials from disclosure. Under no circumstances, however, will the Department be responsible or liable to the Design-Build Team or any other party for the disclosure of any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of the Department or its officers, employees, contractors, or consultants.

The Department will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Nebraska Public Records Law or other applicable laws, as to the interpretation of the Nebraska Public Records Law or as to the definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the Nebraska Public Records Law and other applicable laws and their application to the submitting party's own circumstances.

In the event of litigation concerning the disclosure of any material submitted by the submitting party, the Department's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court, and the submitting party shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk. The submitting party shall reimburse the Department for any expenses it incurs in connection with any such litigation.

## **7 Debriefing Meetings**

Once the Department awards the Contract to a Design/Builder, the Department will arrange meetings with each of the Design-Build Team organizations, if requested by said one or more of said organizations.

## **8 The Department's Reserved Rights**

The Department may investigate the qualifications of any Design-Build Team under consideration, may require confirmation of information furnished by a Design-Build Team, and may require additional evidence of qualifications to perform the Work described in this RFQ. The Department reserves the right, in its sole and absolute discretion, to:

- A. Accept or reject any and all submittals, responses and proposals, or any parts thereof, received at any time.
- B. Waive any informalities, irregularities, and omissions in the information contained in the SOQs, or permit corrections to data submitted with any response to this RFQ until such time as the Department declares in writing that a particular stage or phase of its review of the responses to this RFQ has been completed and closed.
- C. Modify all dates set or projected in this RFQ.
- D. Terminate evaluations of responses received at any time.
- E. Withdraw or cancel this RFQ or the subsequent RFP in whole or in part at any time prior to the execution by the Department of a design-build contract, without incurring any cost obligations or liabilities.
- F. Permit submittal of addenda and supplements to data previously provided with any response to this RFQ until such time as the Department declares in writing that a particular stage or phase of its review of the responses to this RFQ has been completed and closed.
- G. Adjust, increase, limit, suspend, or rescind any short-list determination based on subsequently learned information.
- H. Permit Design-Build Teams to add or delete firms and/or key personnel until such time as the Department declares in writing that a particular stage or phase of its review has been completed and closed.
- I. Add or delete Design/Builder responsibilities from the information contained in this RFQ or the subsequent RFP.
- J. Waive deficiencies in an SOQ, accept and review a non-conforming SOQ, or seek clarifications or supplements to an SOQ.
- K. Disqualify any Design/Builder that changes its submittal without Department approval.

- L. Add or modify its reserved rights in the subsequent RFP.
- M. Make all final determinations.
- N. Appoint a selection committee and evaluation teams to review SOQs and seek the assistance of outside technical experts in the SOQ evaluation.
- O. Disallow the use of particular subcontractors and/or substitutions and/or changes in SOQs.
- P. Hold meetings and conduct discussions and correspondence with one or more of the Design/Builders responding to this RFQ to seek an improved understanding and evaluation of the responses to this RFQ.
- Q. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQ.

The RFQ does not commit the Department to enter into a Contract, nor does it obligate the Department to pay for any costs incurred in preparation and submission of the SOQs or in anticipation of a Contract. By submitting an SOQ, a Design-Build Team disclaims any right to be paid for such costs.

The execution and performance of a Contract pursuant to this RFQ and any subsequent RFP is contingent on sufficient appropriations and authorizations being made by the Legislature of Nebraska, or the Congress of the United States, for performance of a Contract between the successful Design-Build Team and the Department.

In no event shall the Department be bound by, or liable for, any obligations with respect to the Work or the Project until such time (if at all) as the Contract, in form and substance satisfactory to the Department, has been executed and authorized by the Department and approved by all required parties, and then only to the extent set forth therein.

#### The Department Disclaimers

In issuing this RFQ and undertaking the procurement process contemplated hereby, the Department specifically disclaims the following:

- A. Any obligation to award or execute a Contract pursuant to this RFQ or the RFP or to issue an RFP; and
- B. Subject to Section 1.13, any obligation to reimburse a Design-Build Team for any costs it incurs under this procurement.

In submitting an SOQ in response to this RFQ, the Design-Build Team is specifically acknowledging these disclaimers.



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**APPENDIX A:**  
**PROJECT DESCRIPTION, DESIGN/BUILDER**  
**RESPONSIBILITIES, AND PROJECT STATUS**

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## **Appendix A – Table of Contents**

- 1 Project Description**
- 2 Design and Construction Requirements**
- 3 Design/Builder Responsibilities**
- 4 Project Status [TAILOR FOR SPECIFIC PROJECT]**
- 5 Additional Project Documentation**

- 1 Project Description
- 2 Design and Construction Requirements

**Design:** [SPECIFIC TO PROJECT]

**Construction:** [SPECIFIC TO PROJECT]

Further requirements and details will be provided within the RFP.

### 3 Design/Builder Responsibilities

The successful Design/Builder will be responsible for furnishing all labor, material, plant, equipment, services, and support facilities for the following project elements. Specific Design/Builder responsibilities will be described in more detail during the RFP procurement process, general description of responsibilities may include but is not limited to:

- A. Design and construction of all Project components;
- B. Management of the project, design, and construction;
- C. Support the Department Project-related public involvement activities;
- D. Coordination with Project stakeholders, and utility owners;
- E. Design Quality Control;
- F. Construction Quality Control;
- G. Environmental mitigation and compliance monitoring;
- H. Securing certain environmental and construction permits;
- I. Perform additional environmental investigations, monitoring, and investigation associated with or resulting from Design/Builder's activities;
- J. Maintenance and protection of traffic, including both temporary and permanent access to properties;
- K. Project safety and security;
- L. Perform preliminary engineering, such as surveys and geotechnical investigations, to supplement data provided by the Department during the RFP process;
- M. Remediation of harmful and hazardous materials caused by the Design/Builder during design and construction;
- N. Installation of drainage and erosion control;
- O. Construction waste disposal and handling;
- P. Required clearances, licenses, construction easements, and permits for Design/Builder Work, Work sites, storage areas, etc., both on- and off-site;
- Q. Ancillary works, such as temporary fencing, relocation of drainage, Work sites, and temporary works;
- R. Material location and storage, acquisition, permits, and transportation;
- S. Utility coordination and (as required) relocation, and protection of existing utilities;
- T. Site clearance; and
- U. Maintenance of the Project during the Contract period.

#### 4 Project Status [TAILOR FOR SPECIFIC PROJECT]

The status of the Work being completed for the Project by the Department is summarized as follows.

**Survey:** A preliminary topographic survey of the Project site has been performed by the Department. The RFP will include survey information collected by the Department in an electronic format. Additional miscellaneous survey information may also be provided in the RFP.

**Preliminary Engineering:** The Department is currently preparing preliminary engineering documentation for the Project. The RFP will include these preliminary engineering documents for Design-Build Teams' information.

**Utilities:** A preliminary Subsurface Utilities Engineering (SUE) analysis has been completed by the Department under a separate contract. The RFP will include copies of SUE information collected by the Department, along with established constraints and responsibilities for impacted utilities.

**Funding:** Full funding of the project is being pursued.

**National Environmental Policy Act (NEPA):** Possible descriptions of the status of a project are shown below. The Project is currently undergoing NEPA environmental review by the NDOR. It is important for Design-Build Teams to note, at this time, that the proposed Project remains in the environmental process and that NEPA approval has not been obtained. Additional alternatives, including a no-build alternative, are being considered in the environmental process, and it is possible that the Project scope may be modified through the environmental process or that a no-build alternative may be adopted. Nothing contained in this RFQ is intended to modify, limit, or otherwise constrain the environmental process or commit the Department or any other entity to undertake any action with respect to the Project, including any procurement or the final design and construction of the proposed Project.

A Categorical Exclusion (CE) is currently being prepared by the Department and Nebraska DOR to satisfy the requirements of NEPA. The CE includes an evaluation and mitigation measures for the following resources:

A Categorical Exclusion (CE) is currently being prepared by the Department and Nebraska DOR to satisfy the requirements of NEPA. The CE includes an evaluation and mitigation measures for the following resources:

- Aesthetics and Visual
- Air Quality
- Community Impacts / Environmental Justice
- Cultural Resources
- Hazardous Waste / Contaminated materials
- Wetlands, Water Quality
- Essential Fish Habitat
- Floodplains
- Land Use / Planning / Tax Base / Business Impacts
- Noise
- Public Services



- Construction Impacts
- Recreation / Public Lands
- Transportation Patterns / Safety / Community Services
- Utilities
- Growth Inducement/Cumulative Impacts

The CE is expected to be approved by the Federal Highway Administration in \_\_\_\_\_.

**Plans:** As-built plans for the existing highway facility are available for review by the Design-Build Teams. Copies will be made available to Design-Build Teams during the RFP procurement process.

**Geotechnical:** Soil boring information collected by the Department will be provided during the RFP procurement process.

**Permitting:** The Project will require several environmental, utility, and local permits/approvals. The NDOR is responsible for obtaining the environmental permits described in the table below (unless noted otherwise). Utility permits and/or local permits will be the responsibility of the Design-Build team. Though the NDOR may not have received final environmental permits when the RFP is issued, they expect to have permit conditions reasonably well defined by that time. The NDOR expect to have the NEPA process completed and to have acquired all of the necessary environmental permits before the commencement of construction. However, anticipated permit issuance dates may change depending on design and other factors. The Design/Builder may be required to support the preparation of any remaining permits as needed, as final design proceeds, and Nebraska DOR will submit the permit applications. If the Design/Builder varies from the conceptual plans to a degree that would necessitate additional permits or permit amendments, any delay and associated costs caused by procuring the permits, will be the responsibility of the Design/Builder. Additional permits or permit amendments may affect the Project design and schedule. The following table summarizes the anticipated required permits/approvals to be acquired by the NDOR and their associated status:

**Anticipated Permits and Approvals Needed**  
**[TAILOR FOR SPECIFIC PROJECT]**

Agency	Permit/Approval	Status
<b>Federal Agencies</b>		
Federal Highway Administration	Categorical Exclusion	An Environmental Study (Categorical Exclusion) will be prepared and submitted in April 2011. Approval by FHWA is anticipated to be received in May 2011.
Environmental Protection Agency	NPDES	NPDES construction site permit is the responsibility of the contractor
U.S. Army Corps of Engineers	Section 404 permit	The Section 404 permit for NE is anticipated to be issued under the NE Programmatic General Permit and will be concurrent with issuance of the NE Dredge and Fill Wetland Permit. Section 404 permitting requirements for Nebraska are anticipated to fall under the Nebraska General Permit and will be issued concurrently with the Nebraska permit.

Agency	Permit/Approval	Status
Federal Agencies		
		Endangered Species will be reviewed under the ACOE general permit. Special Conditions and in-water work timing restrictions may apply.

The responsibility for obtaining each of the permits/approvals will be detailed in the RFP.

**5 Additional Project Documentation**

To provide additional information pertaining to Project development by the Department, the following documents are being made available to potential Design-Build Teams. These documents can be found on the Department’s design-build website:

<http://www.transportation.nebraska.gov/>

[INSERT LIST OF SPECIFIC DOCUMENTATION FOR PROJECT]

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**APPENDIX B:**  
**FORMAT AND ORGANIZATION OF**  
**STATEMENT OF QUALIFICATIONS**

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## **Appendix B – Table of Contents**

- 1 Organization**
- 2 Pages and Binders**
- 3 Page Format**
- 4 Clarity and Conciseness**
- 5 Reproducibility**
- 6 Submittal**

## 1 Organization

The SOQ shall be organized as follows and as depicted in Table B-1 below:

- A. Transmittal Letter and Form U
- B. Seven text sections:
  - 1. Section 1 – Legal Structure;
  - 2. Section 2 – Financial Capacity;
  - 3. Section 3 – Safety Program;
  - 4. Section 4 – Firm Experience and Past Performance;
  - 5. Section 5 – Design-Build Team Organization and Key Personnel;
  - 6. Section 6 – Project Understanding and Approach; and
  - 7. Section 7 – Quality Assurance Program.
- A. Two Appendices:
  - 1. Appendix A Resumes; and
  - 2. Appendix B Legal Documents.

## 2 Pages and Binders

The sections and appendix shall consist of loose-leaf pages that are 8 ½" by 11" and white, except for charts, exhibits, and other illustrative and graphical information, which may be submitted on 11" by 17" paper and folded to 8 ½" by 11". 11" by 17" pages will count as one page. There is a limit of **20 pages** total for Sections 6 and 7 of the Design-Build Team's SOQ package. Specific page limitations pertaining to Sections 1 through 5 and Appendices A and B of the Design-Build Team's SOQ package are defined in Table B-1 of this appendix. The cover letter and each section shall be combined in one three-ring binder, and the complete appendices shall be placed together in a separate three-ring binder. The sections (and, optionally, subsections) shall be separated with lettered or numbered dividers. Color photographs, renderings, and brochures, if any, shall be adequately bound and suitably protected for handling and circulation during review and evaluation.

## 3 Page Format

Text shall be in a standard font that is a minimum of ten points in size, single-spaced, and printed single-sided. Each page shall be numbered consecutively within each section (i.e., 1-1, 1-2...; 2-1, 2-2...; 3-1, 3-2..., etc.), and the page numbers shall be centered at the bottom of each page.

## 4 Clarity and Conciseness

Design-Build Teams should make every effort to present information clearly and concisely. Documentation that is difficult to read may be rejected and may lead to disqualification.

## 5 Reproducibility

All SOQ pages shall be easily reproducible in black and white by standard photocopying machines.

## 6 Submittal

One original and [INSERT QUANTITY – DEFAULT VALUE IS 10] copies of the SOQs and appendices shall be provided.

**Table B-1: Specifications for SOQs**

SOQ Section	Section Title and Required Information	RFQ Reference
	<p><b>Transmittal Letter and Design-Build Team SOQ Certification</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Form A, Transmittal Letter (to be signed by duly authorized representatives of all equity members of the Design-Build Team’s team); and</li> <li>• Form U, Design-Build Team SOQ Certification (to be provided by all equity members of Design-Build Team).</li> </ul>	<b>3.1</b>
<b>Section 1</b>	<p><b>Legal Structure</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Legal structure and supporting documents or description of proposed legal structure;</li> <li>• Identification of Major Participants;</li> <li>• Conflict of Interest Statement;</li> <li>• Response to Section 3.2 (E) if required;</li> <li>• Form D, Disclosure for Design-Build Team</li> <li>• Form L-1, Design-Build Team’s Organization Information;</li> <li>• Form L-2, Major Participant and Designer Certification; and</li> <li>• Form T, Design-Build Team’s Provisional Overall DBE Project Goal Declaration Affidavit.</li> </ul>	<b>3.2</b>
<b>Section 2</b>	<p><b>Financial Capacity</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Verification of Design-Build Team’s ability to secure Performance Bond and Payment Bond;</li> <li>• Form B, Backlog Information;</li> <li>• Form R, Past Revenue; and</li> <li>• Verification of Design-Build Team’s ability to secure insurance.</li> </ul>	<b>3.3</b>
<b>Section 3</b>	<p><b>Safety Program</b> <i>(no overall page limitation for this sections):</i></p> <ul style="list-style-type: none"> <li>• Form S, Safety Questionnaire.</li> </ul>	<b>3.4</b>

<b>SOQ Section</b>	<b>Section Title and Required Information</b>	<b>RFQ Reference</b>
<b>Section 4</b>	<p><b>Firm Experience and Past Performance</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• A brief narrative summary of each firm’s capability and capacity, a maximum of two pages for each firm is permitted;</li> <li>• Form E-1, Project Description (maximum four Form E-1s per each Major Participant are permitted), each Form E-1 shall not exceed 3 pages in length;</li> <li>• Form PP-1, Past Performance (maximum of 3 pages), with information regarding: <ul style="list-style-type: none"> <li>○ Awards, citations, and/or commendations,</li> <li>○ Litigation, claims, dispute proceedings, and arbitration,</li> <li>○ Liquidated damages during the last five years,</li> <li>○ Termination for cause,</li> <li>○ Disciplinary actions, and</li> <li>○ Contacts (for the above <u>Form PP-1</u>); and</li> </ul> </li> <li>• Form PP-2, Environmental Past Performance.</li> </ul>	<b>3.5</b>
<b>Section 5</b>	<p><b>Design-Build Team Organization and Key Personnel</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Brief narrative of significant functional relationships among participants and how the proposed organization will function as an integrated design-build team, a maximum of four pages will be permitted;</li> <li>• Organization Chart(s) (11” by 17”);</li> <li>• Evidence of Design-Build Team’s ability to meet license requirements;</li> <li>• Form E-2, Subcontractor Information and a maximum one-page summary of subcontractor experience for each subcontractor listed, including consultants is permitted; and</li> <li>• Form E-3, Proposed Key Personnel Information.</li> </ul>	<b>3.6</b>
<b>Section 6</b>	<p><b>Project Understanding and Approach</b> <i>(a maximum of 20 pages total for Section 6 &amp; 7 are permitted):</i></p> <ul style="list-style-type: none"> <li>• Proposed management approach and project understanding; and</li> <li>• Keys to ensuring a successful project.</li> </ul>	<b>3.7</b>

SOQ Section	Section Title and Required Information	RFQ Reference
Section 7	<p><b>Quality Assurance Program</b> <i>(a maximum of 20 pages total for Section 6 &amp; 7 are permitted):</i></p> <ul style="list-style-type: none"> <li>• Proposed approach for Design Quality Control by the Design/Builder;</li> <li>• Proposed approach for Construction Quality Control by the Design/Builder;</li> <li>• Proposed approach for coordination between the Department and the Design/Builder's organization; and</li> <li>• Proposed approach for coordination with other agencies.</li> </ul>	3.8
App. A	<p><b>Resumes</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Key Personnel Resumes, a limit of two pages for each resume will be permitted.</li> </ul>	3.6 (C), 3.6.1
App. B	<p><b>Legal Documents</b> <i>(no overall page limitation for this section):</i></p> <ul style="list-style-type: none"> <li>• Powers of attorney; and</li> <li>• Organization documents, letters of agreement, and other documents identified in RFQ <u>Section 3.2</u> or addressed in Section 1 of the Design-Build Team's SOQ.</li> </ul>	3.2



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# **APPENDIX C: FORMS**

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## **Appendix C – List of Forms**

Form A	Transmittal Letter
Form B	Backlog and Financial Information
Form E-1	Project Description
Form E-2	Subcontractor Information
Form E-3	Proposed Key Personnel Information
Form L-1	Design-Build Team's Organization Information
Form L-2	Principal Participant and Designer Certification
Form PP-1	Past Performance
Form PP-2	Environmental Past Performance
Form R	Past Revenue
Form RFQ-C	Design-Build Team's Clarification Request
Form S	Safety Questionnaire
Form T Affidavit	Design-Build Team's Provisional Overall DBE Project Goal Declaration
Form U	Design-Build Team SOQ Certification

**FORM A**  
**TRANSMITTAL LETTER**

**DESIGN-BUILD TEAM:** \_\_\_\_\_

SOQ Date: [Insert Date]

Nebraska Department of Roads  
P.O. Box 94759  
Lincoln, Nebraska 68509-4759

Attn: Deputy Director – Engineering

The undersigned (“Design-Build Team”) submits this proposal and statement of qualification submittal (this “SOQ”) in response to that certain Request for Qualifications dated as of \_\_\_\_\_ (as amended, the “RFQ”), issued by the Nebraska Department of Roads (“Department”) to design and construct the Project, as described in the RFQ.

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

- Transmittal Letter (this Form A)
- Form U, Design-Build Team’s SOQ Certification
- Section 1: Legal Structure
- Section 2: Financial Capacity
- Section 3: Safety Program
- Section 4: Firm Experience and Past Performance
- Section 5: Design-Build Team Organization and Key Personnel
- Section 6: Project Understanding and Approach
- Section 7: Quality Assurance Program
- Appendices A & B (Resumes and Legal Documents)

Design-Build Team acknowledges receipt, understanding, and full consideration of all materials posted on the Department's website (\_\_\_\_\_) as set forth in Section 1.8, and the following addenda and sets of questions and answers to the RFQ:

**[Design-Build Team to list any addenda to this RFQ and sets of questions and answers by dates and numbers prior to executing Form A.]**

Design-Build Team represents and warrants that it has read the RFQ and agrees to abide by the contents and terms of the RFQ and the SOQ.

If the Design-Build Team consists of more than one entity, all members of the Design-Build Team entity agree to accept joint and several liabilities for performance under the Contract.

Design-Build Team understands that the Department is not bound to pre-qualify any Design-Build Team and may reject each SOQ the Department may receive.

Design-Build Team further understands that all costs and expenses incurred by it in preparing this SOQ and participating in the Project procurement process will be borne solely by the Design-Build Team, except, to the extent of any payment made by the Department following short-list determination, as described in Section 1.13 of the RFQ.

Design-Build Team agrees that the Department will not be responsible for any errors, omissions, inaccuracies, or incomplete statements in this SOQ.

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

Design-Build Team's business address:

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(No.)	(Street)	(Floor or Suite)
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(City)	(State or Province)	(ZIP or Postal Code)	(Country)
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State or Country of Incorporation/Formation/Organization: \_\_\_\_\_

*[insert appropriate signature block from following pages]*

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

*[Insert Design-Build Team's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. Sample signature block for partnership or joint venture:

*[Insert Design-Build Team's name]*

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

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

3. Sample signature block for attorney in fact:

*[Insert Design-Build Team's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Attorney in Fact

**FORM B**  
**BACKLOG AND FINANCIAL INFORMATION**

**Name of Design-Build Team:**

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**Instructions for Form completion:** Responses shall be addressed within the table below, should additional space be needed to adequately respond, Design-Build Teams are advised to increase the number of lines within the table as appropriate. Form B shall have no SOQ page limitation.

Design-Build Team Entities and Firm Names	Contract s in Force (Number)	Total Contract Value (US\$ millions)	Value of Work Remaining by Year (US\$ millions)		
			20__	20__	20__
<b>Major Participant(s):</b>					
<b>Designer:</b>					

**Name of Design-Build Team:**

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**Instructions for Form completion:** Responses shall be addressed within the table below, should additional space be needed to adequately respond, Design-Build Teams are advised to increase the number of lines within the table as appropriate. Form B shall have no SOQ page limitation.

Firm Name	Proposals / Bids Outstanding (Number)	Total Potential Value (US\$ millions)
<b>Major Participant(s):</b>		
<b>Designer:</b>		

**FORM E-1**  
**PROJECT DESCRIPTION**

**Name of Design-Build Team:**

---

**Instructions for Form completion:** Form E-1 is limited to a maximum of 3 pages for each completed project.

<b>Name of Firm:</b>
<b>Project Role:</b> _____
<b>Major Participant:</b> _____ <b>Designer:</b> _____
<b>Other (Describe):</b> _____
<b>Years of Experience:</b> _____
<b>Project Name, Location, Description, and Nature of Work for Which Company Was Responsible:</b>
<i>(Use additional lines within this section as necessary to response to this questions)</i>
<b>Provide Project Description and Describe Site Conditions:</b>



*(Use additional lines within this section as necessary to describe project and site conditions)*

**List Any Awards, Citations, and/or Commendations Received for the Project:**

**Name of Client** (Owner/Agency, Contractor, etc.):

Address: \_\_\_\_\_  
\_\_\_\_\_

Contact Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Owner's Project or Contract No.: \_\_\_\_\_ Fax No: \_\_\_\_\_

Contract Value (US\$): \_\_\_\_\_ Final Value (US\$):  
\_\_\_\_\_

Percent of Total Work Performed by Company: \_\_\_\_\_ Commencement Date: \_\_\_\_\_  
Planned

Completion Date: \_\_\_\_\_ Actual Completion Date: \_\_\_\_\_

Amount of Claims: \_\_\_\_\_ Any Litigation? Yes \_\_\_\_ No \_\_\_\_

**FORM E-2**  
**SUBCONTRACTOR INFORMATION**

**Name of Design-Build  
Team:**

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**Instructions for Form completion:** Responses shall be addressed within the table below, should additional space be needed to adequately respond, Design-Build Teams are advised to increase the number of lines within the table as appropriate. Form E-2 has no SOQ page limitation.

Subcontractor Name <sup>1,2</sup>	Address and Telephone Number	Work Planned for the Project

- (1) At a minimum, list specialized subcontractors except for the Designer.
- (2) Attach a maximum one-page summary of subcontractor experience for each subcontractor listed, including consultants.

**FORM E-3**  
**PROPOSED KEY PERSONNEL**  
**INFORMATION**

**Name of Design-Build Team:**

---

**Instructions for Form completion:** Responses shall be addressed within the table below, should additional space be needed to adequately respond, Design-Build Teams are advised to increase the number of lines within the table as appropriate. Form E-3 has no SOQ page limitation.

Position	Name	Years of Experience	Education and Registrations	Parent Firm Name	Reference Name and Telephone & Fax Numbers <sup>1</sup>
Project Manager					
Construction Manager					

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<sup>1</sup> Provide three references for each position identified on Form E-3.

Position	Name	Years of Experience	Education and Registrations	Parent Firm Name	Reference Name and Telephone & Fax Numbers <sup>1</sup>
Design Manager					
Quality Control Administrator					
Design Quality Control Manager					
Construction Quality Control Manager					
Environmental Compliance Manager					
Safety Manager					

**FORM L-1**  
**DESIGN-BUILD TEAMS'S ORGANIZATION INFORMATION**

**Name of Design-Build Team:**

**Instructions for Form completion:** Responses to each subject area shall be addressed within the table below, should additional space be needed, Design-Build Teams are advised to increase space following question as appropriate. Form L-1 shall have no SOQ page limitation.

<b>Design-Build Team (Individual Firm / Joint Venture / Partnership / LLC)</b>			
<b>Name of Entity:</b> _____			
Address: _____ _____			
Contact Name: _____		Title: _____	
Telephone No.: _____	Fax No.: _____	E-mail: _____	
<b>Local / Regional Contact</b>			
<b>Name:</b> _____			
Address: _____ _____			
Telephone No.: _____		Fax No.: _____ E-mail: _____	
<b>Name(s) of Design-Build Team Entity(ies)</b>			
<b>Company Name</b>	<b>Address and Telephone &amp; Fax Numbers</b>	<b>State of Incorporation:</b>	<b>Lead Participant?</b> Yes No
<b>Major Participant(s)</b>			
<b>Designer</b>			

**FORM L-2**

**PRINCIPAL PARTICIPANT AND DESIGNER CERTIFICATION**

**Name of Design-Build Team:**

---

**Firm Name:**

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**Instructions for Form completion:** Responses to each question shall be addressed within the table below, should additional space be needed, Design-Build Teams are advised to increase space following question. Form L-2 shall have no SOQ page limitation.

*Complete for each Major Participant and the Designer: Design-Build Teams are advised that responses to questions contained within Form L-2 shall be governed by past performance conducted within the United States.*

1. Has the firm<sup>2</sup> or its owners, officers, or managing employees ever failed to complete any work it agreed to perform, or had a contract terminated because it was in default? If yes, describe.

2. Has the firm<sup>1</sup> (no footnote 1 below only 2) or any officer thereof been indicted or convicted of bid or other contract-related crimes or violations or any felony or misdemeanor related to performance under a contract within the past five years? If yes, describe.

3. Has the firm<sup>1</sup> ever sought protection under any provision of any bankruptcy act or been subject to a receivership or involuntary bankruptcy proceeding? If yes, describe and provide information concerning any work completed by a surety as a result of the bankruptcy or receivership.

4. Has the firm<sup>1</sup> ever been debarred, disqualified, removed, or suspended from performing work for the Federal government or any State or local government in the last five years? If yes, describe.

---

<sup>2</sup> Note: "Firm" includes any Affiliate.

5. Has any serious or willful violation of Part 1 (commencing with section 6300 of Division 5 of the Labor Code or the Federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against the firm<sup>1</sup>? If yes, describe.

6. Has the firm<sup>1</sup>, or its owners, officers, or managing employees, submitted a bid on a public works project and found to be nonresponsive, or found by an awarding body not to be a responsible bidder in the last five years? If yes, describe.

7. Has any violation of the Contractors' State License Law, including alleged violations of Federal or State law regarding the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding or Federal Insurance Contribution Act (FICA) withholding requirements, settled against the firm<sup>1</sup>? If yes, describe.

8. Have any adverse claims, disputes, or lawsuits between the owner of a public works project and the firm<sup>1</sup>, in which the claim, settlement, or judgment exceeds \$50,000, settled during the past five years? If yes, describe. Provide any information concerning any work completed by a surety during the past five years.

9. Has the Nebraska Department of Labor found the firm<sup>1</sup> to be in willful violation of Nebraska Labor Code? If yes, describe.

10. Has the firm<sup>1</sup> been convicted of violating a State or Federal law relating to the employment of undocumented aliens in the past five years? If yes, describe.

11. Has the firm<sup>1</sup> or its agent made any contribution of more than \$250 to any employee of the Department or Highway Commissioner within the preceding 12 months? If yes, describe.

12. List up to five financial institutions with which the firm<sup>1</sup> has done the most business during the past five years and identify the individual at each institution who was in charge of the firm's<sup>1</sup> accounts. Indicate the address, telephone, and fax numbers of each individual.

13. In the last five years, has your firm been denied an award of a public works contract based on a finding by a public agency that your company was not a responsible bidder?

14. At any time in the last five years has your firm been assessed and paid liquidated damages after completion of a project under a construction contract with either a public or private owner?

15. Has a surety firm completed a contract on your behalf or paid for completion because your firm was in default or terminated by the project owner within the last five years?

*(Must be signed by an officer of the firm)*

**Firm:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Name of Design-Build Team:** \_\_\_\_\_



**FORM PP-1**  
**PAST PERFORMANCE**

**Name of Design-Build Team:**

---

**Name of Major Participant:**

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**Instructions for Form completion:** Should additional lines be needed by Design-Build Teams to address subject areas identified in the table below, Design-Build Team shall add additional lines within each subject area as appropriate. Form PP-1 has no SOQ page limitation.

**Awards, Citations, and/or Commendations:**

Name of Award, etc.	Year Received	Project and Location	Work for Which Award, etc. Was Received

**Litigation, Claims, Dispute Proceedings, and Arbitration:**

<b>Project/Issue</b>	<b>Owner/Agency That Initiated Action</b>	<b>Resolution/Outcome</b>	<b>Is Unresolved or Action Outstanding?</b>	<b>Current Owner Contact Name and Telephone &amp; Fax Numbers.</b>

**Liquidated Damages:**

<b>Project Name</b>	<b>Cause of Delay(s)</b>	<b>Amount Assessed</b>	<b>Describe Outstanding Damage Claims by Any Owner</b>	<b>Current Owner Contact Name, and Telephone &amp; Fax Nos.</b>

**Termination for Cause:**

<b>Project Name</b>	<b>Describe Reason for Termination</b>	<b>\$ Amount Involved</b>	<b>Current Owner Contact Name, Telephone &amp; Fax Nos.</b>

**Disciplinary Action:**

<b>Project Name</b>	<b>Describe Action Taken</b>	<b>Current Owner Contact Name, Telephone &amp; Fax Nos.</b>

**FORM PP-2**  
**ENVIRONMENTAL PAST  
 PERFORMANCE**

**Name of Design-Build Team:**

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**Name of Major Participant:**

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**Instructions for Form completion:** Should additional lines be needed by Design-Build Teams to address subject areas identified in the table below, Design-Build Team shall add additional lines within each subject area as appropriate. Form PP-2 has no SOQ page limitation.

**Environmental Awards and/or Commendations:**

Name of Award	Year Received	Project and Location	Work for Which Award Received

**Environmental Citations:**

<b>Name of Citations</b>	<b>Year Received</b>	<b>Project and Location</b>	<b>Work for Which Citation Received</b>

**FORM R**  
**PAST REVENUE**

Name of Design-Build Team:

---

Firm Name (Design-Build Team Entities)	Total Revenue (\$US in Millions)		
	20__	20__	20__
<b>Major Participant(s):</b>			
<b>Designer:</b>			

**FORM RFQ-C**  
**DESIGN BUILD TEAM'S CLARIFICATION REQUEST**

**Name of Major Participant:**

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<b>RFQ Section No. or Appendix</b>	<b>Question</b>	<b>Reserved for Department Response</b>

<b>RFQ Section No. or Appendix</b>	<b>Question</b>	<b>Reserved for Department Response</b>



**FORM S**  
**SAFETY QUESTIONNAIRE**

**Name of Design-Build Team:**

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**Name of Major Participant:**

---

**Instructions for Form completion:** Should additional lines or space be needed by Design-Build Teams to address subject areas identified in the tables and questions below, Design-Build Team shall add additional lines within each subject area as appropriate. Form S has no SOQ page limitation.

1. Provide the following information for the past three years:

Item	2008	2009	2010
<b>Experience Modification Rate</b>			
<b>Lost Work Rate</b>			
<b>Employee hours worked</b> (Do not include non-work time, even though paid)			
<b>Number of lost workday cases</b>			
<b>Number of restricted workday cases</b>			
<b>Number of cases with medical attention only</b>			
<b>Number of fatalities</b>			

2. Are internal accident reports and report summaries sent to management? To what levels and how often?

Position	No	Yes	Monthly	Quarterly	Annually

3. Do you hold site meetings for supervisors? Yes \_\_\_\_\_ No \_\_\_\_\_

How Often? Weekly\_\_\_ Biweekly\_\_\_ Monthly\_\_\_ Less often, as needed\_\_\_

4. Do you conduct Project Safety Inspections? Yes \_\_\_\_\_ No \_\_\_\_\_

By Whom? \_\_\_\_\_

How Often? Weekly\_\_\_ Biweekly\_\_\_ Monthly\_\_\_

5. Does the firm have a written Safety Program? Yes \_\_\_\_\_ No \_\_\_\_\_

6. Does the firm have an orientation program for new hires? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what safety items are included? \_\_\_\_\_

7. Does the firm have a program for newly hired or promoted foremen?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, does it include instruction of the following?

Topic	Yes	No
<b>Safety Work Practices</b>		
<b>Safety Supervision</b>		
<b>On-site Meetings</b>		
<b>Emergency Procedures</b>		
<b>Accident Investigation</b>		
<b>Fire Protection and Prevention</b>		
<b>New Worker Orientation</b>		

8. Does the firm hold safety meetings, which extend to the laborer level?

Yes \_\_\_\_\_ No \_\_\_\_\_

How often? Daily \_\_\_\_ Weekly \_\_\_\_ Bi-Weekly \_\_\_\_ Less often, as needed \_\_\_\_

9. (For Design-Build Team only) Indicate the safety record on the last Project to which the indicated key personnel were assigned:

Key Person	Total Hours Worked by All Employees on Project	Number of Lost Workday Cases on Project	Number of Restricted Workday Cases on Project	Number of Cases with Medical Attention Only on Project	Number of Fatalities on Project
<b>Project Manager</b>					
<b>Construction Manager</b>					

10. Has Nebraska OSHA cited and assessed penalties against your firm for any “serious,” “willful,” or “repeat” violations of its safety or health regulations in the past five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(If yes, attach a separate signed page describing the citations, including information about the dates of the citations, nature of the violation, the project on which the citation(s) was or were issued, and the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.)

11. Has the Federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(If yes, attach a separate signed page describing each citation.)

**FORM T**

**DESIGN=BUILD TEAM'S PROVISIONAL OVERALL DEBE PROJECT GOAL  
DECLARATION AFFIDAVIT**

**Name of Design-Build Team:**

---

It is understood and agreed by the Design-Build Team that it has carefully examined all documents that form this Request for Qualifications (RFQ) and acknowledges that Nebraska Department of Roads (the Department) has established a proposed Overall Project DBE goal of **4%** based on the total project value for this Design-Build Project. This affidavit further serves to confirm that (***INSERT DESIGN-BUILD TEAM NAME HERE***) will aggressively exercise good faith efforts to the satisfaction of the Department to meet the proposed Overall Project DBE goal in accordance with DBE Design-Build Program requirements defined in the Request for Proposal (RFP) documents, when issued. The proposed Overall Project DBE goal is considered "Provisional" at this time, as the Department is currently in the process of securing required approvals of the proposed Overall Project DBE goal from U.S. Department of Transportation (U.S. DOT).

It is further understood by the Design-Build Team that in the event the Design-Build Team commits to exceed the established provisional overall DBE project goal, the DBE goal of record will be that committed to by the Design-Build Team. In fulfilling the Design-Build Team's commitment to meet or exceed the established overall DBE project goal, the Design-Build Team will adhere to all DBE provisions set forth in the Authority's DBE Program, this solicitation, regulatory requirements, and any contract which results there from.

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

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

(Contact Name)

is the \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ is the \_\_\_\_\_  
(Title) (Company) (Contact Name) (Title)

of \_\_\_\_\_, which entity(ies) are the \_\_\_\_\_  
(Company) (Joint Venture/Partnership, Other)

of \_\_\_\_\_, the entity making the foregoing Proposal.  
(Joint Venture Company)

The Design-Build Team hereby affirms that it will either meet the DBE goals described in this solicitation or exercise and provide demonstrable evidence to the satisfaction of the Nebraska Department of Roads (the Department) that it has aggressively exercised Good Faith Efforts to do so in accordance with defined program requirements, including contractual and regulatory provisions set forth under Title 49, Code of Federal Regulations (CFR), Part 26 and subsequently published Design-Build DBE Federal Registrars.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

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

**Notary Public in and for said County and State**

[Seal]

**My commission expires:** \_\_\_\_\_.

*[Duplicate or modify this form as necessary so that it accurately describes the entity making the proposal and so that it is signed on behalf of all partners/members of the proposing firm.]*

**FORM U**  
**DESIGN BUILD TEAM SOQ CERTIFICATION**

A COPY OF THIS CERTIFICATION MUST BE COMPLETED AND SIGNED BY DESIGN-BUILD TEAM AND, IF A DESIGN-BUILD TEAM IS A PARTNERSHIP, LIMITED PARTNERSHIP, JOINT VENTURE OR OTHER ASSOCIATION, THEN A SEPARATE CERTIFICATION MUST BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF EACH MEMBER AND SUBMITTED WITH THE STATEMENT OF QUALIFICATIONS.

**DECLARATION**

STATE OF \_\_\_\_\_)

)SS:

COUNTY OF \_\_\_\_\_)

I, (printed name) \_\_\_\_\_, being first duly sworn, state that I am the (title) \_\_\_\_\_ of the Design-Build Team.

I certify that I have read and understood the information contained in the Request for Qualifications issued by the Nebraska Department of Roads for Project S and the attached Statement of Qualifications (SOQ), and that to the best of my knowledge and belief all information contained herein and submitted concurrently or in supplemental documents with this SOQ is complete, current, and true. I further acknowledge that any false, deceptive, or fraudulent statements in the SOQ will result in denial of short-list status.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed)

**ACKNOWLEDGMENT**

On this \_\_\_\_\_ (date) before me, \_\_\_\_\_ (name and title of officer) personally appeared, \_\_\_\_\_ (name of signer above) who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nebraska that the foregoing paragraph is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said County and State

[Seal]

My commission expires: \_\_\_\_\_.

**NOTICE TO APPLICANTS:**

A material false statement, omission, or fraudulent inducement made in connection with this Statement of Qualifications is sufficient cause for denial of the application. In addition, such false submission may subject the person or entity making the false statement to criminal charges.



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**ATTACHMENT 1:  
SCORING FORM**

**[SCORE VALUES ARE AT THE  
DISCRETION OF NDOR]**

---

**SCORING FORM**

**ORGANIZATION AND KEY MANAGER & EXPERIENCE OF THE FIRMS**

Section	Requirement	Score
3.5	<i>Firm Experience and Past Performance</i> [POINTS ARE SPECIFIC TO THE PROJECT]	
3.5.1 (A), (B) & (C)	Past Performance (maximum 7 pts.)	
3.5.1 (E), (F) & (G)	Firm Experience (maximum 6 pts.)	
3.5.1 (D)	Penalties, Claims/Litigation and Termination (maximum 5 pts.)	
3.6	<i>Design-Build Team's Organization and Key Personnel</i>	
3.6.1 (A)	Qualifications of the proposed Project Manager (maximum 10 pts.)	
3.6.1 (B)	Qualifications of the proposed Construction Manager (maximum 8 pts.)	
3.6.1 (C)	Qualifications of the proposed Design Manager (maximum 8 pts.)	
3.6.1 (D)	Qualifications of the proposed Quality Control Administrator (maximum 4 pts.)	
3.6.1 (E)	Qualifications of the proposed Design Quality Control Manager (maximum 2 pts.)	
3.6.1 (F)	Qualifications of the proposed Construction Quality Control Manager (maximum 2 pts.)	
3.6.1 (G)	Qualifications of the proposed Environmental Compliance Manager (maximum 4 pts.)	
3.6.1 (H)	Qualifications of the proposed Safety Manager (maximum 4 pts.)	
<p align="center"><b>Total Score for Design-Build Team Organization and Key Personnel &amp; Firm Experience and Past Performance</b></p> <p align="center"><i>(total score for these categories cannot exceed 60)</i></p>		

**SCORING FORM**  
**PROJECT UNDERSTAND AND APPROACH & QUALITY  
MANAGEMENT PROGRAM**

Section	Requirement	Score
3.7	<i>Project Understanding and Approach</i>	
3.7 (A)	Design/Builder's Management and Organizational Approach (maximum 10 pts.)	
3.7 (B)	Design-Build Team's organization and the design-build process to ensure a successful Project, considering the Department's Project goals listed in <u>Section 1.3</u> (maximum 10 pts.)	
3.8	<i>Quality Assurance Program</i>	
3.8 (A)	Design Quality Control by the Design/Builder (maximum 6 pts.)	
3.8 (B)	Construction Quality Control by the Design/Builder (maximum 6 pts.)	
3.8 (C)	Coordination between the Department and the Design/Builder organization (maximum 4 pts.)	
3.8 (D)	Coordination with other agencies (maximum 4 pts.)	
<b>Total Score for Project Understanding and Approach &amp; Quality Assurance Program</b> <i>(total score for these categories cannot exceed 40)</i>		



## Appendix B Typical Example of Request for Proposal (RFP) Instructions to Proposers (ITP) Document

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### Note to Reader

**The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFP.**

**The official RFP will need to be tailored for the project specifics.**



# Nebraska Department of Roads

## Request for Proposal (RFP)

### Design-Build Services For Project A

Lincoln, Nebraska  
Control Number, Project Number

### Volume I

### Instructions to Proposers

[Insert a Project Picture]

#### Nebraska Department of Roads

1500 Highway 2  
Lincoln, NE 68502  
Mailing address: P.O. Box 94759  
Lincoln, NE 68509-4759

Date

**Final RFP**





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Exhibit A – Definitions and Acronyms

Exhibit B – Technical Proposal Instructions

Exhibit C – Price Proposal Instructions

Exhibit D – Required Forms

Exhibit E – Summary of Proposal Contents

Exhibit F - Form of Stipend Agreement



# Instructions to Proposers

## 1 General Information

This Request for Proposals (as amended from time to time, the "RFP") is issued by the Nebraska Department of Roads ("Department") to seek competitive proposals (individually a "Proposal" and collectively, "Proposals") for design and construction of Project A ("Project") as more specifically described herein and in the form of the Design-Build Contract ("Contract") and the Technical Provisions ("TP") included in this RFP.

The Department is issuing the RFP to those Proposers who were shortlisted based on the Department's evaluation of Statements of Qualifications ("SOQs") delivered to the Department on \_\_\_\_\_ in response to the Request for Qualifications for the Project issued on \_\_\_\_\_ (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 1.2 below into consideration in drafting their Proposals.

All forms identified in this ITP are found in Exhibit D unless otherwise noted. All times in this ITP are Central Standard Time (CST) or Central Daylight Savings Time (CDT), as applicable.

### 1.1 Definitions

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used herein, and refer to Appendix 1 to the Contract for the meaning of capitalized terms and acronyms used, but not defined herein or in Exhibit A of this ITP.

### 1.2 Project Goals

The Department's primary goals in connection with this procurement and the Project include

- A. -----
- B. -----
- C. -----
- D. -----
- E. -----
- F. -----

### 1.3 General Project Description and Scope Of Work

#### 1.3.1 General Project Description

Project A includes the following primary elements:

- A. -----
- B. -----
- C. -----

A major goal for the design of the Project is \_\_\_\_\_.

The Proposer shall be responsible for utility coordination, civil work, drainage and all other work required to complete the Project.

### 1.3.2 Scope of Work

Design/Builder's work ("Work") generally includes all work and efforts required to design and construct the Project in accordance with the requirements of the Contract Documents. A more specific description of the scope of the Work is set forth in the Technical Provisions.

### 1.3.3 Project Environmental Status

On \_\_\_\_\_, the Nebraska State Historic Preservation Office determined, with a fully executed Memorandum of Agreement among all parties, that the Section \_\_\_ process was completed.

On \_\_\_\_\_, the Federal Highway Administration classified the Project as \_\_\_\_\_, pursuant to the National Environmental Policy Act (NEPA) of 1969 and the US Department of Transportation Act of 1966, \_\_\_\_\_, and Section \_\_\_\_\_ of the Federal-Aid Highway Act of 1968, \_\_\_\_\_ (as amended by the Federal-Aid Highway Act of 1983).

The Project will need to be permitted through the NE Department of Environmental Quality (NDEQ) and the Nebraska Department of Natural Resources (DNR). This permitting will be accomplished by the Department unless the Proposer wishes to impact additional areas not currently identified.

The project will need to comply with Section \_\_\_\_\_ of the Clean Water Act. Once construction details are known, a permit may be required from the Army Corps of Engineers.

Because the project involves \_\_\_\_\_, it will require a \_\_\_\_\_ permit. This permitting will be accomplished by the Department with assistance from the Proposer.

## 1.4 Procurement Schedule

The following represents the current procurement schedule:

Milestone	Date	Time
Issue Industry Review Package		[INSERT DATE]
Mandatory Project Workshop at the Department in Lincoln, NE		
Last date for Proposers to submit Name of Proposer Authorized Representative		
One-on-One Meetings with Proposers (1 <sup>st</sup> Round) to Discuss the Industry Review Package		
Last date for Proposers to Submit Comments to the Industry Review Package		
Issue Final Request for Proposals		



Milestone	Date	Time
One-on-one Meetings with Proposers (2 <sup>nd</sup> Round) to discuss Technical Provisions and ATCs		
Deadline for Submittal of ATCs		
Last Date for Department ATC Response		
Last Date for Submittal of Key Personnel		
One-on-one Meetings with Proposers (3 <sup>rd</sup> Round) to discuss RFP		
Last Date for Proposer Submittal of Executed Stipend Agreement		
One-on-one Meetings with Proposers (4 <sup>th</sup> Round) to discuss RFP		
Last Date for Submittal of Information Concerning Escrow Agent		
Last Date for Proposer Submittal of Final Questions Regarding the RFP		
Technical Proposal and Price Proposal Due Date		
Escrowed Proposal Documents (EPDs) Due Date		
Public Bid Opening		
Governor's Office approval (if needed)		
Execution of Contract and Issuance of NTP1 (anticipated)		

All dates set forth above and elsewhere in the RFP are subject to change, in the Department's sole discretion, by Addendum.

## 1.5 Documents Comprising the RFP

The RFP Documents consist of the volumes listed below, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented.

- A. Volume I – This ITP (including exhibits and forms);
- B. Volume II – the Contract Documents (Book 1), Technical Provisions (Book 2), and Special Provisions (Book 3);
- C. Reference Materials Department web page <http://www.ne.gov>

### **1.5.1 Reference Materials**

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

## **1.6 General Provisions Regarding Proposals**

### **1.6.1 Proposal Contents**

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including a (a) Technical Proposal, and (b) Price Proposal. Requirements for the Technical Proposal and the Price Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms in the format specified or any submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions will result in the Department's rejection of the Proposal until the Proposer completes the missing information. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

### **1.6.2 Inclusion of Proposal in Contract Documents**

All portions of the successful Proposal will become part of the Contract Documents, as specified in the Contract. All other information is for evaluation purposes only and will not become part of the Contract Documents.

### **1.6.3 Commitments in the Proposal**

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

### **1.6.4 Ownership of Proposal and Applicability of NE Public Records Act**

Subject to the exceptions specified herein, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, discs, designs, and other graphic and visual aids submitted to the Department during this procurement process, whether included in the Proposal or otherwise submitted, become the property of the Department upon delivery to the Department, and will not be returned to the submitting parties.

All material submitted by Proposers, including Proposals, are subject to the provisions of Nebraska Public Records Law (Nebraska Revised Statutes 84-712) and any other laws and

regulations applicable to the disclosure of documents submitted under this RFP. Such laws govern the Department's use and disclosure of its records.

Proposers should familiarize themselves with the provisions of the Nebraska Public Records Law requiring disclosure of public information, and exceptions thereto. In no event shall the Department or any of its 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. See also Section 2.6.

## **1.7 Project Funding and Financing**

The Department's plan of finance contemplates that the Department, using NDOR and federal funds, will fund the design and construction of the Project. Payments will be made in accordance with the Contract Documents.

## **1.8 Federal Requirements**

### **1.8.1 General Obligations**

Proposers are advised that the Project will require the use of federal funds. Accordingly, applicable federal law and Federal Highway Administration ("FHWA") regulations, including those set forth in Appendix 14 to the Contract, will govern the Project's procurement and contract documents. The Department reserves the right to modify the RFP to address any concerns, conditions or requirements of the FHWA. Proposers shall be notified by Addendum of any such modifications.

### **1.8.2 Buy America**

Proposers are advised that the Project will require the Buy America provisions. Proposers should review all components of the Project with respect to this requirement and inform the Department of any concerns associated with meeting this criterion.

### **1.8.3 DBE Requirements**

#### *1.8.3.1 Project Goal and Requirements*

The Department has determined that Disadvantaged Business Enterprises (DBEs) requirements apply to the design and construction of the Project, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of the Department as service providers, vendors, contractors, subcontractors, advisors, and consultants. The Department has adopted the definition of DBEs set forth in 49 CFR Part 26. Proposer's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including Title \_\_\_\_\_, as well as applicable requirements set forth in the Contract Documents and the Department's DBE Program.

The Department's DBE requirements applicable to the Contract are adopted pursuant to Title \_\_\_\_\_. The DBE Participation goal for this Project is \_\_\_\_\_% for professional services and construction portions of the Work performed under the Contract. As set forth in Section 3.2.9 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal. Failure to provide the required DBE certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.

### *1.8.3.2 Information Relating to DBEs*

Refer to Section 3.2.9 of Exhibit B for information regarding DBE submittal requirements. Failure to submit the required DBE information with the Proposal will be grounds for finding the Proposal non-responsive.

It is Proposer's responsibility to make enough Work available to DBEs and to select those portions of the Work or material needs consistent with the available DBEs to meet the goal for DBE participation or to provide information to establish that Proposer made adequate good faith efforts to do so. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

A DBE Proposer, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:

- A. Proposer will meet the goal by performing Work with its own forces;
- B. Proposer will meet the goal through Work performed by DBE Subcontractors, suppliers, or trucking companies;
- C. Proposer, prior to bidding, made adequate good faith efforts to meet the goal or commits to make good faith efforts over the entirety of the contract.

## **1.9 Labor Compliance**

Proposer is advised that Proposer must comply with all applicable requirements of the Nebraska Department of Labor, Labor Laws, together with all applicable regulations, Proposer Nondiscrimination, and with all applicable federal labor requirements, including those set forth in Appendix 14 to the Contract.

## **2 Procurement Process**

### **2.1 Procurement Method**

This RFP is issued pursuant to Nebraska Transportation Innovation Act, LB 960, authorizing Nebraska Department of Roads to enter into a Design-Build Contract. The Department will select the design-build contractor for the Project (the “Design/Builder”) through a competitive sealed proposal method using best value selection criteria as authorized by the Act.

The Department will award the Contract (if at all) to the responsive and responsible Proposer offering a Proposal that meets the standards established by the Department and that is determined by the Department, through evaluation based upon the criteria set forth in the Section 5, the RFP, to provide the best value to the Department.

The Department will accept Proposals only from the shortlisted Proposers. The Department will not review or consider alternative proposals or proposals with options.

Submission of the DBE Forms and Affidavit and a DBE Performance Plan, in accordance with Section 3.2.9 of Exhibit B, are required as conditions of eligibility for award of the Contract.

### **2.2 Receipt of the Request For Proposal Documents, Communications, and Other Information**

The RFP will be issued to shortlisted Proposers in electronic format on the website for the Project (<http://www.transportation.nebraska.gov>).

The Department shall provide shortlisted Proposers with the address of the website that The Department will maintain related to this procurement. The website access criteria will be provided separately to each shortlisted Proposer and each will be required to treat the address as confidential information and to check the site regularly for addenda to this RFP and for other procurement related information.

#### **2.2.1 Authorized Representative**

The Department’s Authorized Representative is as noted below:

Mr. Project Manager, PE

Chief Project Manager

Phone: 402.471.4567

Fax: 402.479.4325

E-mail:

Nebraska Department of Roads

1500 Highway 2, Lincoln, Nebraska 68502

Mailing address: P.O. Box 94759 Lincoln, Nebraska 68509-4759

Final proposal submissions in connection with this RFP should be directed to the following address:

Nebraska Department of Roads  
1500 Highway 2, Lincoln, Nebraska 68502  
Mailing address: P.O. Box 94759 Lincoln, Nebraska 68509-4759  
Attention: Planning and Project Development Engineer  
Phone: 402.471.4567  
Fax: 402.479.4325  
E-mail:

From time to time during the procurement process or during the term of the Contract, the Department may designate another Authorized Representative or authorized representatives to carry out some or all of the Department's obligations pertaining to the Project.

All correspondence shall be clearly labeled on the envelope:

**Project A**  
**“To be Opened by Department Authorized Representative Only”**

The Department will consider questions regarding the RFP submitted by Design-Build Teams in writing, including requests for clarification and requests to correct errors. All such requests must be submitted in writing via email or letter form to the Department's Authorized Representative. Only written requests will be considered. No oral requests or questions by phone will be accepted or considered. No requests for additional information or clarification to any other Department office, consultant, employee, FHWA, or other agency will be considered.

### **2.2.2 Designation of Proposer Authorized Representative**

On or before the date identified in Section 1.4, Proposer shall submit to the Department the name and address and email address of a representative authorized to receive documents, notices, and Addenda and act on behalf of Proposer relating to this procurement (“Proposer Authorized Representative”). Proposer shall further notify the Department of any changes in the representative or address for any notices or Addenda to be sent to Proposer by the Department. Failure to identify a Proposer Authorized Representative in writing may result in the Proposer failing to receive Addenda or other important communications from the Department. The Department is not responsible for any such failure.

### **2.2.3 Rules of Contact**

From the date of issuance of the RFQ, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on, the date the industry review package was issued, as identified in Section 1.4, and ending on the earliest of (i) execution and delivery of the Contract, (ii) rejection of all Proposals by the Department or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

- A. No Proposer nor any of its team members may communicate with another Proposer or its team members with regard to the RFP or either team's Proposal, except that (i)

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

- B. Each Proposer shall designate one designated representative responsible for contacts with Department, and shall correspond with the Department regarding the RFP only through the Department's Authorized Representative and the Proposer Authorized Representative.
- C. No Proposer or representative thereof shall have any *ex parte* communications regarding the RFP or the procurement described herein with any member of the Nebraska Department of Roads, FHWA, and with any Department staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative, 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 Department, or any public or Proposer workshop related to the RFP.
- D. Any communications determined by the Department, in its sole discretion, to be improper may result in disqualification.
- E. Any official information regarding the Project will be disseminated in writing, on Department letterhead, and signed by the Department's Authorized Representative or designee.
- F. The Department will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

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

## **2.2.4 Language Requirement**

All correspondence regarding the RFP, Alternative Technical Concepts (ATCs), Proposal, and the Contract Documents are to be in the English language. If any original documents required for the Proposal are in any other language, Proposer shall provide a certified English translation, which shall take precedence in the event of a conflict with the original language.

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

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

Proposers shall be responsible for reviewing the RFP and any Addenda issued by the Department prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which Proposer fails to understand. Failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the Department. Proposers shall submit, and the Department will respond to,

requests for written clarification in accordance with this Section 2.3.1. To the extent written responses are provided, they will be considered part of the Contract Documents.

The Department will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer's Authorized Representative to the Authorized Representative by hard copy, facsimile, email or other electronic transmission in the prescribed format.

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.4 or such later date as may be specified in any Addendum. Questions and comments, including requests for clarification or interpretation, shall: (i) be sequentially numbered; (ii) specifically reference the relevant RFP volume, section and page number, unless such request is of general application (in which case the request for clarification shall so note); (iii) identify the relevant section number and page number or, if it is a general question, indicate so; (iv) not identify the Proposer's identity in the body of the question.

No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any person other than the Department's Authorized Representative will be considered. Questions may be submitted only by the Proposer Authorized Representative, and must include the requestor's name, address, telephone and facsimile numbers, and Proposer he/she represents.

The questions and the Department's responses will be in writing or email and will be delivered to all Proposers, except that the Department intends to respond individually to those questions identified by a Proposer or deemed by the Department as containing confidential or proprietary information relating to Proposer's Proposal and ATCs. The Department reserves the right to disagree with Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, the Department will inform Proposers and may allow Proposer to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if the Department determines that it is appropriate to provide a general response the Department will modify the question to remove information that the Department determines is confidential. The Department may rephrase questions, as it deems appropriate and may consolidate similar questions. The Department may also create and answer questions independent of the Proposers. The Department 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 1.4. A consolidated, final set of questions and answers will be compiled and distributed prior to Final Award.

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

### **2.3.2 Addenda**

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



website, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts the RFP, as determined in the Department's sole discretion, Department 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 Proposer to submit questions regarding the RFP have occurred or have changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Proposer shall acknowledge in its Proposal Letter (see Exhibit D, Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. The Department reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. The Department does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, the Department reserves the right to issue Addenda after such date. If the Department 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 (regarding changes in a Proposer's organization) and Exhibit B, Section 3.2.5 (regarding Key Personnel). Proposers are required to designate authorized representatives in accordance with Section 2.2.2. 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**

The Department intends to hold joint informational meetings with all Proposers prior to the Proposal Due Date. Informational meetings will be held in person at the Department's Lincoln office.

During meetings, Proposers may ask questions and the Department may provide responses. However, any responses provided by the Department during meetings may not be relied upon unless questions were submitted in writing and the Department provided written responses in accordance with Section 2.3.1. The questions and the Department's responses will be provided in writing to all Proposers.

At the informational meeting, each Proposer shall attend with appropriate members of its proposed key management personnel.

### **2.5.2 One-on-One Meetings**

The Department intends to conduct one-on-one meetings with each Proposer and on such other dates designated by the Department in writing to the Proposers, to discuss issues and clarifications regarding the RFP and Proposer's ATCs. The Department reserves the right to change the contract if necessary based on information / issues raised during the one-on-one meetings. Participation at such meetings by the Proposers shall be mandatory.

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

- The meetings are intended to provide Proposers with a better understanding of the RFP.
- The Department will not discuss with any Proposer any Proposal or ATCs other than its own.
- Proposers shall not seek to obtain commitments from the Department in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules and to identify all participants from Proposer whether attending in person or by phone.

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

During one-on-one meetings, Proposers may ask questions and the Department may provide responses. However, any responses provided by the Department during one-on-one meetings may not be relied upon unless questions were submitted in writing and the Department provided written responses in accordance with Section 2.3.1. The written questions and the Department's responses will be provided in writing to all Proposers, except to the extent such questions are deemed by the Department to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs.

### **2.5.4 Statements at Meetings**

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

## **2.6 Confidentiality/Public Records Act Disclosure Requests**

### **2.6.1 Disclosure Waiver**

Each Proposer, by submitting a Proposal to the Department in response to the RFP, consents to the disclosures described in this Section 2.6 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 Nebraska Public Records Law or any other law relating to the confidentiality or disclosure of information. Under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any such materials.

### **2.6.2 Observers During Evaluation**

Proposers are advised that non-participating observers may observe the Proposal evaluation process and will have the opportunity to review the Proposals after the Proposal Due Date. The Department has agreed to allow FHWA officials and their outside advisors to observe the

procurement process, which includes access to the Price Proposals. Outside advisors to FHWA, if any, will be required to sign the Department's standard confidentiality agreement.

### **2.6.3 Confidential Materials**

The Department will accept materials clearly and prominently labeled "TRADE SECRET" or "CONFIDENTIAL" by the submitting party. In addition, each Proposal must include a cover sheet listing the pages and forms on which there is confidential information. Any such proprietary information, trade secrets or confidential commercial and Price information that a Proposer believes should be exempted from disclosure shall be specifically identified and marked as such. Blanket, all-inclusive identifications by designation of whole sections as containing proprietary information, trade secrets, or confidential commercial or Price information are discouraged and may be deemed invalid. Any specific proprietary information, trade secrets, or confidential commercial and Price information shall be clearly identified as such and shall be accompanied by a concise statement of reasons supporting the claim. The Department will endeavor to advise the submitter of any request for disclosure or release of any material properly labeled as proprietary, trade secret, or confidential so as to allow the submitter the opportunity to seek a court order to protect such materials from disclosure. Under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any such labeled materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of the Department, or their respective officers, employees, contractors, consultants, or agents.

The Department will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under Nebraska laws, as to the interpretation of such laws, or as to definition of trade secret. The submitting party shall be solely responsible for all determinations made by it under applicable laws, and for clearly and prominently marking each and every page or sheet of materials with "TRADE SECRET" or "CONFIDENTIAL" as it determines to be appropriate. Each submitting party is advised to contact its own legal counsel concerning the effect of applicable laws to the submitting party's own circumstances.

### **2.6.4 Following Award**

The Department will endeavor to keep the Proposal pricing information confidential within the Department (including its designees and consultants) until such time as a Proposer is selected for award, at which time the Department intends to disclose such information to individuals with a need to know it. Once the Contract is executed, some or all of such data may lose its protection. Each Proposer, by submission of a Proposal, agrees that it will not be grounds for protest if any member of the Department's selection committee or any evaluation team member becomes aware of a Proposer's price at any time during the review process.

### **2.6.5 Litigation**

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the submitting party, the Department will be a stakeholder retaining the material until otherwise ordered by a court or such other entity having jurisdiction with respect thereto, and the submitting party will be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that the Department 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 the Department in connection with any litigation, proceeding, or request for

disclosure shall be reimbursed and paid by Proposer objecting to disclosure. Each Proposer shall be responsible for all of its own costs in connection with any litigation, proceeding, or request for disclosure.

### **2.6.6 Exceptions**

The foregoing will not preclude the Department from using ideas contained in the Proposal in accordance with Section 2.6 and will not preclude the Department from releasing information as required in connection with any protest filed under Section 7.

## **2.7 Department Studies and Investigations**

The Department has completed its site investigations and anticipates supplementing the Geotechnical Report with additional explorations. The Department does not anticipate any other investigative activities prior to the Proposal Due Date. To the extent the Department undertakes any additional investigative activities; the information obtained by the Department from such activities may be made available to Proposers in the Reference Materials. All information provided by the Department will be subject to the same limitations applicable to similar information furnished in the Reference Materials. Specifically, the Department 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 Documents**

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP Documents, including Reference Materials and any Addenda, and material posted on the website and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal or the performance of the Work, if Proposer enters into the Contract with the Department. Each Proposer is also responsible for monitoring the website for information concerning the RFP and the procurement. The Proposal Letter (Exhibit D, Form A) includes an acknowledgment that Proposer has received and reviewed all materials posted thereon. Any failure of Proposer to so examine and inform itself shall be at Proposer's sole risk, and the Department will provide no relief for any error or omission therefor.

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

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

### **2.8.2 Site Access; ROW**

Any Proposers wishing to undertake \_\_\_\_\_ and additional exploratory investigations on certain portions of the Project right-of-way (ROW) shall advise the Department of its proposed plan and

obtain all necessary permits and approvals from Governmental Entities, the property owners and occupants.

The Department has determined that the project can be constructed within the State of Nebraska and \_\_\_\_\_ property. If the Design Build Team proposes alternate construction methods outside of the current ROW, they will be responsible for securing the rights across the private property.

## 2.9 Errors

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

## 2.10 Improper conduct

### 2.10.1 Non-Collusion

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

### 2.10.2 Organizational Conflicts of Interest

Proposers' attention is directed to Nebraska code \_\_\_\_\_ and \_\_\_\_\_ as well as the organizational conflict of interest rules found in \_\_\_\_\_, \_\_\_\_\_, including \_\_\_\_\_, which apply to this procurement. Proposers are advised that \_\_\_\_\_ may preclude certain firms and their subsidiaries and affiliates from participating on a Proposer team. Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

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

### 2.10.3 Restrictions on Participation

Proposers are advised that the following Department advisors are precluded from participating in any of the Proposer organizations relating to this Project; providing technical, legal, or Price advice to Proposers; or directly discussing any aspect of the RFP with any Proposer:

- A. \_\_\_\_\_
- B. \_\_\_\_\_; and
- C. \_\_\_\_\_

In addition, any entity that is currently suspended, debarred or voluntarily excluded under \_\_\_\_\_ or is otherwise determined to be ineligible to participate in the federal-aid highway program is precluded from participating on any of the Proposer teams.

#### **2.10.4 Participation on More than One Team**

To ensure a fair procurement process, Equity Participants, Major Participants, and Guarantors of Proposer teams are forbidden from participating, in any capacity, including as a Guarantor, on another Proposer team during the course of the Project procurement. This prohibition extends to affiliated entities of Equity Participants, Major Participants and Guarantors. The Department reserves the right to disqualify any Proposer that fails to comply with this prohibition.

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

In order for a Proposer to remain qualified to submit a Proposal after it has been shortlisted, unless otherwise approved in writing by the Department, Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement process. If a Proposer wishes to make changes in the Major Participants identified in its SOQ, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, Proposer shall submit to Department a written request for approval of the change from the Department as soon as possible but in no event later than the applicable last date set forth in Section 1.4. Any such request shall be addressed to the Department at the address set forth in Section 2.2.1, accompanied by the information specified for such entities in the RFQ. If a request is made to allow deletion or role change of any Major Participant identified in its SOQ, Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and five copies of each request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the Contract Documents, a Proposer may not make any changes in the Major Participants identified in its SOQ after the applicable last date set forth in Section 1.4. Between the applicable date set forth in Section 1.4 and execution of the Contract, the Department, in its sole discretion, will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposer's control.

## **3 Alternative Technical Concepts**

### **3.1 Alternative Technical Concepts General**

Sections 3.1 through 3.5 set forth a process for pre-Proposal review of Alternative Technical Concepts (ATCs) conflicting with the requirements for design, and construction of the Project, or otherwise requiring a modification of the Technical Provisions. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing the Department to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring 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 Contract 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 the Department in its sole discretion. A concept is not eligible for consideration as an ATC if, in the Department's sole judgment, it is premised upon or would require (a) a reduction in Project scope, performance or reliability; (b) the addition of a separate the Department project to the Contract (such as expansion of the scope of the Project to include additional roadways), or (c) an increase in the amount of time required for Substantial Completion. ATCs that, if implemented, would require further environmental evaluation of the Project, may be allowed, provided that Design/Builder will bear the schedule and cost risk associated with such additional environmental evaluation. If Design/Builder is not able to obtain the approvals necessary to implement the ATC, Design/Builder 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 the Department, the Department recommends that Proposer submit such concept for review as an ATC.

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

Proposer may submit ATCs for review to the Department at the address specified in Section 2.2.1, until the applicable last date and time for submittal of ATCs identified in Section 1.4. All ATCs shall be submitted in writing, with a cover sheet identifying Proposer and stating "Project A – Confidential ATCs." Proposer shall clearly identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by the Department. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

#### **3.2.1 Pre-Proposal ATC Submissions Shall Include**

- A. A sequential ATC number identifying Proposer and 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 operation requirements associated with the ATC, including ease of operations;
- E. Any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;
- F. Any changes in the anticipated service life of the item(s) comprising the ATC;
- G. 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;
- H. References to requirements of the RFP which 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;
- I. Analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;
- J. 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;
- K. If and what additional right of way will be required to implement the ATC (and Proposers are advised that they shall (i) be solely responsible for the costs of acquisition of any such right-of-way, and the costs for 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 right of way; 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 right-of-way);
- L. 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;
- M. A description of added risks to the Department or third parties associated with implementing the ATC;
- N. An estimate of any additional Department, Design/Builder and third-party costs associated with implementation of the ATC;
- O. An estimate of the Price adjustment, should the ATC be approved and implemented; and
- P. An analysis of how the ATC is equal to or better in quality and performance than the requirements of the Contract Documents.

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



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

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

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

The Department may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.4, provided that the Department has received all required and requested information regarding such ATC.

The Department'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 the Department's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or
- D. The submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to be within the requirements of the RFP (the Department may not reject such submittal in the Proposal for the reason that it appears to be an ATC; provided, however, that should it turn out that such submittal is not within the requirements of the RFP, the Department reserves the right to require compliance with the requirements of the RFP. Proposer will be entitled to modify its Proposal, but will not be entitled to obtain a Change Order for additional compensation or time under the Contract).

The Department will make a preliminary determination on whether to accept and approve an ATC for submission. However, Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP.

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

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

The Department anticipates that its comments provided to a Proposer will be sufficient to enable Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes

additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.3.1.

### **3.4 Incorporation of ATCs in the Contract Documents**

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

Following execution of the Contract, ATCs from unsuccessful Proposers may, in the Department's sole discretion, be presented to the selected Design/Builder as a Department Change Order in accordance with the Contract.

### **3.5 Confidentiality**

Subject to the provisions of the Code, 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 Nebraska Public Records Law, applicable Law, and Section 2.6 of the ITP.

## **4 Requirements for Submittal of Proposals and Acceptance of Delivery by Department**

### **4.1 General Submittal Requirements**

Each Proposal shall include a Technical Proposal and a Price Proposal meeting the requirements set forth in Exhibits B and C. The Proposal shall be submitted in sealed containers in the format and manner set forth in Sections 4.2 and 4.3.

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

The completed Technical Proposal and Price Proposal shall be delivered at the location identified in Section 2.2.1 in sealed containers no later than the Proposal Due Date as set forth in Section 1.4.

The Escrowed Proposal Documents shall be submitted as outlined in Section 4.3.2 in sealed containers no later than the Escrowed Proposal Due Date as set forth in Section 1.4.

#### **4.1.2 Signatures Required**

The Proposal Letter (Exhibit D, Form 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 Exhibit D, Form A.

#### **4.1.3 Certified Copies**

Where certified copies of the Proposal are required, Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark oversigned by the Proposer Authorized Representative.

#### **4.1.4 Consequences of Failure to Follow Requirements**

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

#### **4.1.5 Requirement to Submit a Compliant Proposal**

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If the Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits, it may be disqualified.

Each Proposal must be submitted in the official format, which is specified by the Department in the RFP. Proposer shall sign the original copy of the Proposal submitted to the Department. Multiple or alternate proposals may not be submitted.

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

- A. If the Proposal is submitted in paper form or on disc other than that specified by the Department; if it is not properly signed; if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;
- B. If the Department determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, or items not called for in the RFP, or unauthorized additions;
- C. If multiple or alternate Proposals are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a Contract following award;
- D. If Proposer attempts to limit or modify the Proposal Security, if the Proposal Security is not provided (see Exhibit B, Section 3.3), and/or if requested information deemed material by the Department is not provided; and
- E. Any other reason the Department determines the Proposal to be non-compliant.

#### **4.1.6 Format**

The Proposal shall contain concise written material and drawings that enable a clear understanding and evaluation of both the capabilities of Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Price Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2. No page limit applies to appendices and exhibits, however, the Department does not commit to review any information in appendices and exhibits other than those required to be provided; and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8.5-inch by 11-inch format is required for typed submissions and an 11-inch by 17-inch format is required for drawings, except that design drawings may be submitted on scroll mats not to exceed 34 inches in width (and such design drawings may be submitted on CD or DVD in Adobe Acrobat (.pdf) format and in Bentley Microstation format). Preliminary schedule submissions shall include both a hard copy and the electronic files in pdf format.

Submittals must be bound with all pages in a binder sequentially numbered. Each section, including appendices, exhibits, and forms, must be separately and clearly tabbed. Printed lines may be single-spaced with the type font size being no smaller than 12 point (except that tables, figures, and schedules may use 10-point font). Pages may be printed double-sided. The use of 11-inch by 17-inch foldouts for tables, graphics, and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch foldout will be considered one page. The use of section summaries is encouraged. Proposals shall be written in the English language using English units and measurements in accordance with Department standards.

#### **4.1.7 Additional Requirements for Proposal Delivery**

The completed Proposal and Escrowed Proposal Documents shall be submitted and delivered in sealed containers no later than the Proposal and Escrowed Proposal Documents Due Dates and times specified in Section 1.4. The Proposal is to be delivered to the Department at the address set forth in Section 2.2.1, except for the Escrowed Materials, which shall be delivered to the Escrow Agent as specified in Section 4.3.2:

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

### **4.2 Technical Proposal Submittal**

#### **4.2.1 General**

All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more CDs and the envelopes described in Section 4.2.2, shall be packaged in a single container, clearly addressed to the Department as provided herein, and labeled “[Proposer Name]: Original Technical Proposal for the Department Project A.” Proposer shall provide **twelve (12)** certified copies of the Technical Proposal (except for the Proposal Security and Escrow Agreement). The containers that include the required hard copies of the Technical Proposal shall be labeled “Copies of Technical Proposal for the Department Project A.”

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

#### **4.2.2 Escrow Agreement**

A copy of the Escrow Agreement shall be provided with the Technical Proposal, in a separate envelope labeled “[Proposer Name]: Escrow Agreement for the Department Project A.”

### **4.3 Price Proposal Submittal**

Portions of the Price Proposal shall be submitted directly to the Department and portions of the Price Proposal shall be submitted to escrow as set forth in Sections 4.3.1 and 4.3.2 below by the Proposal Due Date and Escrowed Proposal Document Due Date set for forth in Section 1.4, respectively.

#### **4.3.1 Portions of Price Proposal Submitted Directly to Department**

**One (1)** original and **two (2)** certified copies of the Price Proposal (excluding the components identified in Section 4.3.2) shall be delivered to the Department at the address identified in Section 2.2.1. The documents shall be included in a sealed container labeled “[Proposer Name]: Price Proposal for the Department Project A.” The documents include the proposed Contract Price (Form N-1), the Cash Flow Adjustment Curve/Payment Curve (Form N-2), and

the Proposal Security (Form K-1 or K-2). All parts of the Proposal that indicate pricing information shall be included in the sealed Price Proposal container.

#### **4.3.2 Portions of Price Proposal Submitted to Escrow**

Proposer shall assemble and deliver in accordance with this Section 4.3.2 certain escrowed proposal documents (“EPDs”) containing information regarding Proposer’s assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 21.1 of the Contract. Proposer shall submit its EPDs in hard copy and electronic copies in Adobe Acrobat (.pdf) format. The EPDs shall include detailed information from all subcontractors identified in the Proposal and any other potential subcontractors who provided data upon which the Proposal is based.

Proposer shall provide the Department with the name, address and contact information of Proposer’s selected Escrow Agent by the applicable last date set forth in Section 1.4. Proposer shall submit one set of EPDs (“Escrowed Materials”) to the Escrow Agent chosen by Proposer, along with three completed original Escrow Agreements executed by Proposer in substantially the form attached as Exhibit D, Form L by the date set forth in Section 1.4. The documents shall be in separately sealed containers labeled “[Proposer Name]: Escrowed Materials for the Department Project A” and delivered to the Escrow Agent at the address identified in the Escrow Agreement, which shall be located in Nebraska. The Escrow Agent chosen by Proposer must be unaffiliated with Proposer and otherwise must be free of any conflict of interest. A copy of the executed Escrow Agreement shall be included in the Technical Proposal as specified in Section 4.2.2.

#### **4.3.3 Proposal Security**

**One (1)** original and **two (2)** certified copies of the Proposal Security shall be provided with the Price Proposal, and shall be in a separate envelope labeled “[Proposer Name]: Proposal Security for the Department Project A.”

A Proposal will not be considered unless accompanied by a guaranty of the character and amount indicated in the proposal and made payable to the “Treasurer, State of Nebraska.” If the Proposer uses a bid bond, it shall be prepared as follows:

- A. The bond shall be completed in a form acceptable to the Department, and
- B. The bonding company issuing the bond shall be licensed to transact business in the State of Nebraska, and
- C. The bonding company shall be listed on the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies”, as published by the United States Department of the Treasury, Fiscal Service, Circular 570.
- D. In the event that any irregularities are contained in the bid guaranty, the Proposer will have seven (7) calendar days from the time the bids are opened to correct the irregularities. If such irregularities are not corrected to the satisfaction of the Department, the Proposal will be rejected.

#### **4.4 Currency**

All required pricing and cost information shall be provided in US\$ currency only.

## **4.5 Modifications, Withdrawals and Late Submittals**

### **4.5.1 Modifications to a Proposal**

A Proposer may modify its Price Proposal in writing prior to the specified time on the Proposal Due Date set forth in Section 1.4. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so the Department can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

### **4.5.2 Withdrawal and Validity of Proposals**

Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by the Proposer Authorized Representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal, provided that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by the Department upon the Proposal Security. Proposals shall initially be valid for a period of 180 days after the Proposal Due Date. The Department shall have the right to extend this period for up to an additional 12 months, provided that the Contract Price will be subject to adjustment in accordance with Section 12.1.4 of the Contract if NTP2 does not occur within 180 days after the Proposal Due Date. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

### **4.5.3 Late Proposals**

The Department will not consider any late Proposals. Proposals and/or modification or withdrawal requests received after the time for submittal of Proposals will be returned to Proposer unopened, without consideration or evaluation.

## **4.6 Forfeiture of Proposal Security**

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security if: (i) it withdraws, repudiates or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal; (ii) it is selected for negotiations, but fails to provide Department documents required as set forth in Section 5.11; or (iii) it is selected as the apparent best value Proposer, but fails to provide the documents required under Sections 6.1.

Any Proposal that contains a material alteration, as determined by the Department, in its sole discretion, to the ITP Forms, including any material alteration to the form of Proposal Security (Exhibit D, Forms K-1 and K-2), will be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by the Department will not be considered material. If a Proposal is deemed non-responsive or non-compliant, the Department

may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

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

#### **4.7 Acceptance of Delivery by Department**

The Department will provide a receipt for Proposals that are timely delivered to the Department as specified herein. Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements.

A Department representative will coordinate with Proposer to visit the Escrow Agent's office on or shortly after the Proposal Due Date to jointly examine the Escrowed Materials and obtain a fully executed copy of the Escrow Agreement.

#### **4.8 Costs Not Reimbursable**

The cost of preparing the Proposal and any costs incurred at any time before final award and execution of the Contract, including costs incurred for any interviews, payments owing to Proposer's Escrow Agent and costs associated with Post-Selection Deliverables, shall be borne by Proposer, except for any costs paid in accordance with Section 6.3.



## 5 Evaluation and Post-Selection Process

The Department intends to select the Proposer that offers the best value to the Department, considering price, technical, and other factors described in this [Section 5](#). The intent of the Department in this evaluation process is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all legal requirements governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness and pass-fail criteria, followed by a subsequent responsiveness and qualitative evaluation of the Technical Proposal, a subsequent responsiveness and quantitative evaluation of the Price Proposal and a best value determination. The process may include a request for Proposal Revisions. The steps in the process and evaluation criteria are set forth in [Sections 5.3 through 5.11](#). The evaluation and selection process is subject to modification by the Department, in its sole discretion.

The evaluation process will involve the following steps:

1. The Department evaluation committee will:
  - a) Evaluate the Proposals and determine which Proposer has offered the apparent best value Proposal based on the specific evaluation criteria set forth herein; and
  - b) Provide a recommendation to the Department Director to award the Contract to the apparent best-value Proposer.
2. The Department Director will issue Letter of Intent to Award the Contract to the Apparent Successful Proposer, pending the Governor's office approval if needed.

The details of the evaluation and selection process are set forth more fully in this [Section 5](#).

### 5.1 Organization of the Department Evaluation Committees and Subcommittees

The Department's Technical Proposal Evaluation Committee ("TPEC") will conduct evaluation of Proposals and Price Proposal Evaluation Subcommittee (PPEC), with assistance from advisory groups as necessary. The evaluation committees will be comprised of representatives from the Department, Nebraska DOR and certain Stakeholders and will be chaired by individuals designated by the Department's Director. In addition to the Department and Stakeholder voting members, the advisory groups may also be assisted by advisors, including the Department representatives and outside consultants who will offer advice on the technical, Price, and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the TPEC and the PPEC advisory subcommittees in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals.

### 5.2 Best Value Determination

The best value determination will be based on a **0-100** point scale. The Price Score will represent a minimum of 50 points and up to **XX** points of the total score, and the Technical Score will represent up to **XX** points of the total score. The determination of apparent best value shall be based on the highest Total Proposal Score computed based on the following formula:

Total Proposal Score (max. 100 points) = Price Score (max. **XX** points) + Technical Score (max. **XX** points)

The Price Score will be determined based on the following formula:

$$\text{Price Score} = (\text{Lowest PV/PV}) * \text{XX}$$

Lowest PV = Lowest Price Value submitted by a Proposer as determined pursuant to Section 5.6.

PV = Proposer's Price Value (Exhibit D, Form N-1) as determined pursuant to Section 5.6 of the Proposer being evaluated.

The Technical Score will be calculated based on the TPEC evaluation score for the Technical Proposal (maximum of 100 points) as described in Section 5.4. The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = \text{TPEC evaluation score} * 0.\text{XX}$$

### **5.3 Pass/Fail and Responsiveness Evaluation**

Upon receipt, the relevant committee will make the Technical Proposals available for review. It will be reviewed (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (b) based on the pass/fail criteria set forth below. Any Proposer that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award.

The Price Proposal will be opened in accordance with Section 5.6.1, after which the Price Proposal will be reviewed for responsiveness in accordance with Section 5.3.2.

#### **5.3.1 Technical Proposal**

The Technical Proposal Responsiveness Committee will determine whether or not Technical Proposals are responsive and communicate said determination to the Contract Representative.

Proposals considered responsive pursuant to this Section may still be rejected as non-responsive at a later date if the Proposer fails to satisfy such additional responsiveness requirements as are specified elsewhere in this Section. The Department's determination of responsiveness in no way relieves the Proposer from meeting all contract requirements listed as part of this contract.

##### *5.3.1.1 Non-curable Technical Proposal Defects*

The Department will reject Proposals as non-responsive if any one of the following occurs:

- A. The Technical Proposal is not properly delivered.
- B. The Department has substantial evidence of collusion by the Proposers.
- C. The Proposer adds any provision reserving the right to accept or reject an Award or a Contract.
- D. The Proposer fails to provide a completed and signed Form A.
- E. The Proposer fails to cure the Technical Proposal Responsiveness Requirements as set forth in the Project Requirements.

### 5.3.1.2 Curable Technical Proposal Defects

Proposers must cure, to the satisfaction of the Department, all Curable Technical Proposal Defects identified in the Notice of Technical Proposal Responsiveness within the timeframe allotted in such Notice. Failure to so cure all such Curable Technical Proposal Defects will result in forfeiture of Proposer's Proposal Guaranty and forfeiture of any claim to the Stipend. Curable Technical Proposal Defects include, but are not limited to, the following:

1. The Proposer fails to provide all the requested forms, excluding Form A;
2. The Proposer fails to meet all of the Technical Proposal Responsiveness Requirements as outlined in the RFP;
  - a) The business form of Proposer and any entities that will have joint and several liability under the Contract, or will provide a guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws or equivalent documents) is consistent with the requirements of the Project and Contract Documents, as applicable.
  - b) Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.9.
  - c) Proposer information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.
  - d) Proposer has delivered Proposal Security in the form of a complete, properly executed proposal bond that complies with the requirements of Exhibit B, Section 3.3.1.
  - e) The Proposal provides for Substantial Completion on \_\_\_\_\_ assuming NTP1 no later than \_\_\_\_\_.
  - f) Technical Proposal meets all applicable RFP requirements.
3. The Technical Proposal is not in substantial compliance with the requirements of the Project Requirements, the General Conditions, or, in the Department's sole discretion, the intent of the Standards; and/or
4. The Proposer fails to indicate the Proposer's choice where the RFP clearly require a choice.

### 5.3.2 Price Proposals

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

If the Department determines that a Proposer is undercapitalized, it will offer Proposer the opportunity to meet the financial requirement through one or more guarantors acceptable to the Department.

- A. Proposer has provided a Price using Exhibit D, Form N-1 that complies with the requirements of Exhibit C.
- B. Proposer has provided a Cash Flow Adjustment Table/Payment Curve using Exhibit D, Form N-2 that complies with the requirements of Exhibit C.
- C. Proposer has provided a properly executed Proposal Security (Exhibit D, Form K) that complies with the requirements of Exhibit C.

### 5.3.3 Department Right to Exclude Proposals from Consideration or Waive Mistakes

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

## 5.4 Evaluation of Technical Proposal by TPEC

After completion of the pass/fail and responsiveness review, the Technical Proposal will be evaluated by the TPEC based on the factors set forth below to determine whether it includes any improvements over the requirements of the Contract Documents and brings additional benefits and/or value to the Department and the public.

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

### 5.4.1 Technical Proposal Evaluation Factors

The evaluation factors for the Technical Proposal are as follows:

Subfactors and their relative weighting are listed in Sections 5.4.1.1 through 5.4.1.5.

Evaluation Criteria	Maximum Points
Schedule Solutions	XX
_____ Operation	XX
Technical Solutions	XX
Project Management Plan	XX
Quality Management Plan	XX
<b>Total =</b>	100

The evaluation factors will be evaluated and rated using the rating guidelines specified in Section 5.4.2.

#### 5.4.1.1 Schedule Solutions (XX points)

- Preliminary Project Baseline Schedule
- Construction Staging, Sequencing and Traffic Management

#### 5.4.1.2 \_\_\_\_\_ Operation (XX points)

- Operating Cost reduction
- Life Cycle Cost for at least fifteen years and Sustainability Practices

- Ease of Operation and Maintenance

#### 5.4.1.3 *Technical Solutions (XX points)*

The Technical Solutions evaluation subfactors are as follows:

- Structures
- Environmental Permitting, Mitigation and Impacts
- Aesthetic Design
- Roadway
- Utilities
- Drainage

#### 5.4.1.4 *Project Management Plan (XX points)*

The Project Management Plan evaluation subfactors are as follows:

- General Project Management
- Coordination with Stakeholders
- Risk Management
- Schedule and Cost Control Management
- Public Information and Communications
- Environmental Management
- Design Management

#### 5.4.1.5 *Quality Management Plan (XX points)*

The Quality Management Plan (QMP) evaluation subfactors are as follows:

- General Quality Management
- Quality Control Organization
- Document Management Procedures
- Design Quality Control Procedures
- Construction Quality Control Procedures

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 Technical Proposal.

### **5.4.2 Evaluation Guidelines**

The TPEC will review the Technical Proposal with reference to the evaluation factors specified in [Section 5.4.1](#), in accordance with the guidelines provided in this [Section 5.4.2](#). The major categories of the Technical Proposal will be qualitatively evaluated and assigned a rating as follows:

Adjective Rating	Description
Excellent	The Proposal 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 Proposer would fail to satisfy the requirements of the Contract Documents. Weaknesses, if any, are very minor and can be readily corrected. Significant unique and/or innovative characteristics are present.
Good	The Proposal 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 Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses, if any, are minor and can be readily corrected. Little or minimal unique and/or innovative characteristics are present.
Fair	The Proposal 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 risk that Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses are correctable or acceptable per minimum standards.
Meets Minimum	The Proposal 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 Proposer may fail to satisfy the requirements of the Contract Documents. Weaknesses are correctable or acceptable per minimum standards.

In assigning ratings the Department may assign “+” or “-” (such as, “Excellent -”, “Good +”, and “Fair +”) to the ratings to better differentiate within a rating in order to more clearly differentiate between the technical evaluation factors and the overall Technical Proposals. However, the Department will not assign ratings of “Meets Minimum –” or “Excellent +.”

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

### 5.4.3 Technical Score

During the evaluation, each subfactor as described above will be assigned a rating by the TPEC, which will be converted to points. The points for each subfactor will be summed to determine the Proposal’s score for each of the corresponding evaluation factors. The score of each of the evaluation factors will then be summed to arrive at the Technical Score for the Technical Proposal, with 100 maximum possible points. The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = \text{TPEC evaluation score (maximum 100)} * 0.XX$$

## 5.5 Requests for Clarification

The Department 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 certain aspects of its Proposal. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by the Department) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, the Department.

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

## **5.6 Evaluation of Price Proposal by PPEC**

After completion of the Technical Proposal evaluation, the Price Proposal Evaluation Subcommittee (PPEC) will evaluate the Price Proposal.

### **5.6.1 Price Proposal Opening**

Unless changed by Amendments, the Price Proposals will be opened and the Department will read the Lump Sum Price publicly, at the location time, and date specified in the Project Requirements. Proposers, their authorized agents, and other interested parties are invited to attend.

The public reading of the price and computation of overall Best-Value ratings at the opening does not constitute a final determination by the Department of whether the Price Proposal is responsive. The Department may refuse to read Price Proposals that are obviously non-responsive.

### **5.6.2 Schedule Adjustment**

The Department will factor into the evaluation particular costs to Department that require adjustment to the Price based on a review of the Proposals. In such event, Department will consider only the following adjustment factors in its evaluation, as valued by the Department in its sole discretion, of the cost of a Proposal to the Department. \_\_\_\_\_ Closure days by a Proposer relative to the other Proposals submitted will be considered an advantage worth \_\_\_\_\_ per day. All Proposers will receive an adjustment to its Proposal Value of by the number of closure days x \_\_\_\_\_ per day.

The Project schedules (without cost information) will be provided with the Technical Proposals, evaluated for reasonableness by the TPES, and the corresponding difference in calendar days forwarded to the Department Appointee, who will forward the information in blind fashion to the PPEC. The PPEC will compare the Project schedule information to the duration proposed in Exhibit D, Form P submitted with the Price Proposal.

### **5.6.3 Price Proposal Responsiveness**

#### *5.6.3.1 Non-Curable Price Proposal Defects*

The Department will reject Price Proposals as non-responsive for any of the following reasons:

- A. The Proposer failed to properly deliver the Price Proposal;
- B. The Proposer failed to provide a completed and signed Exhibit D, Form N-1;
- C. The Proposer failed to provide Exhibit D, Form N-2.
- D. The Proposer failed to submit a Proposal Guaranty conforming to the Proposal Requirements;
- E. The Price Proposal contains any provision reserving the right to accept or reject an Award or a Contract or otherwise contains any unauthorized, conditional, or alternate bidding language; or

- F. The Proposer fails to comply with any other provision in the Project Requirements that the RFP expressly indicates will cause Price Proposal rejection.

#### *5.6.3.2 Curable Price Proposal Defects*

The Proposer must cure, to the satisfaction of the Department, all Curable Price Proposal Defects within twenty-four (24) hours of the discovery and notification by the Department. Failure to cure all Curable Price Proposal Defects within said twenty-four (24) hour time period will result in forfeiture of Proposer's Proposal Guaranty and any claim to the Stipend. Curable Price Proposal Defects include, but are not limited to, the following:

- A. Failure to provide properly completed DBE Price Proposal Form(s) or failure of the information in such form(s) to correspond precisely with the information in the "Technical Proposal DBE Compliance Review Form(s)" submitted with the Proposer's Technical Proposal; and
- B. Failure to submit prices or signatures in ink or other non-erasable substance.

### **5.7 Determination of the apparent Successful Proposer**

At the Price Proposal Opening, the Department will publicly announce the score of each Proposer's Technical Proposal. The Department will publicly determine the Total Proposal Score of each Proposer based on the formula for calculating the Total Proposal Score is set forth in Section 5.2:

The Proposal with the highest overall Total Proposal Score will be the Apparent Successful Proposal and its Proposer the Apparent Successful Proposer, contingent on the Department's determination that the Price Proposal meets the conditions for Award.

### **5.8 Blank**

### **5.9 Award of Contract**

The Director will receive the Proposals and the recommendations and supporting information provided by the Department, and may accept the recommendation or reject the recommendation and cancel the procurement. Within \_\_\_\_\_ days of opening the price proposals, the Department will mail or fax (with confirmation receipt) a Letter of Intent to Award the Contract to the Apparent Successful Proposer, pending Governor's Office approval if needed, and letters indicating such intent to all other Proposers. The Intent to Award shall also indicate that the Department will award the Contract to the Apparent Successful Proposer if said Proposer fulfills the conditions of award stated in the letter.

Award of the Contract will be conditioned upon (a) concurrence in award by NDOR and FHWA, (b) receipt by the Department of all of the documents required to be provided prior to execution of the Contract under Section 6.1, (c) execution of the Contract by the Director of the Department or a designee.

The Director's decision regarding Intent to Award the Contract shall be final.

### **5.10 Finalization of Contract Documents; Post-Selection Process**

The Department will proceed with the apparent best value Proposer to finalize the Contract Documents concurrent with seeking Governor's Office approval if needed. By submitting its Proposal, each Proposer commits to enter into the form of Contract included in the RFP, except



to fill in blanks and include information that the form of Contract indicates is required from the Proposal.

## **5.11 Post-Selection Deliverables**

### **5.11.1 Project Management Plan**

During the post-selection period between the Intent to Award and Final Award of the Contract, the selected Proposer may, but is not required to, submit all or portions of the Project Management Plan for review, comment and possible pre-approval. The Department encourages such early submittal(s), and will attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the Contract, but cannot guarantee that it will in fact undertake such review or provide comments or approval.

### **5.11.2 Documents to be Submitted Following Intent to Award**

As a condition precedent to final award of the Contract, the successful Proposer shall deliver the following to the Department within ten days after notification of conditional award:

- A. Evidence that Proposer, each member of Proposer's team, and each member of other Major Participants that will transact business in the State are authorized to do so no earlier than \_\_\_\_\_ days prior to the Proposal Due Date. Such evidence may be in the form of (i) a certificate of good standing from the state of its organization, if such Proposer or Proposer team member is not organized or formed in the State of Nebraska; (ii) a Certificate of Status from the Nebraska Secretary of State; or (iii) other evidence acceptable to the Department.
- B. If not previously submitted, a copy of the final organizational documents for Design/Builder and, if Design/Builder is a limited liability company, partnership or joint venture, for each member or partner of Design/Builder. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.
- C. If security for Proposer's obligations under the Contract is required by the Department pursuant to Exhibit C, the form of the proposed guarantees, which shall be in form and substance acceptable to the Department, in its sole discretion.

During the post-selection period, as a condition to final award, Proposer shall deliver drafts of the deliverables identified in Section 5.11.2, for pre-approval by the Department.

### **5.11.3 Department Comments on Post-Selection Deliverables**

The Department shall provide comments on any Post-Selection Deliverables required to be delivered to the Department hereunder within \_\_\_\_\_ days of the date of the Department's receipt of such deliverable. The Department shall have five Business Days to review and respond to subsequent submittals of the deliverable.

## 6 Contract Execution; Post-Execution Actions

### 6.1 Execution and Delivery of Contract

#### 6.1.1 Contract Documents

Upon the successful finalization of the Contract Documents, and satisfaction of all conditions to award specified in this ITP other than this Section 6.1, the Department will deliver **five (5)** sets of execution copies of the Contract 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 the Department within seven Business Days of receipt, together with the required documents described in Section 6.1.2. If Design/Builder is a joint venture or a partnership, all joint venture members or general partners, as applicable, must execute the Contract. Within \_\_\_\_\_ Business Days of the Department's receipt of all required and compliant documents from Proposer, the Department will execute the agreements, retain four 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.

#### 6.1.2 Documents to Be Delivered By Proposer With Executed Contract

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

- A. For each Proposer, its general partners and its joint venture members and each member of other [Major Participants], (i) a certificate of good standing from the state of its organization, if such Proposer or Proposer team member is not organized or formed in the State of Nebraska; and (ii) a Certificate of Status from the Nebraska Secretary of State, in each case dated no earlier than \_\_\_\_\_ days prior to the Proposal Due Date and in form and substance acceptable to Department. If such documents are not available due to the form of organization of the entity, Proposer shall provide appropriate documents in form acceptable to the Department evidencing that it is qualified to do business in the State of its organization and the State of Nebraska.
- B. For entities formed after submission of the Proposal, a copy of the entity's final organizational documents. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal.
- C. If security for Proposer's obligations under the Contract is required by the Department pursuant to Exhibit C, Section 2, Proposer shall submit one or more guarantees from guarantor(s) acceptable to the Department, in its sole discretion, together with appropriate evidence of authorization thereof.
- D. Evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the Contract by Design/Builder and, if Design/Builder is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to the Department. If Design/Builder is a corporation, an appropriate officer of the corporation shall in the form of a resolution of its governing body certify such

evidence. If Design/Builder is a partnership, such evidence shall be in the form of a resolution (or resolutions) signed by each of the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of each general partner. If Design/Builder 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 Design/Builder is a joint venture, such evidence shall be in the form of a resolution of each joint venture member (in the manner described above), certified by an appropriate officer of such joint venture member.

- E. A written opinion from counsel for Design/Builder, which counsel shall be approved by the Department (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., Design/Builder, joint venture member, etc.) and the qualification to do business in Nebraska and the enforceability opinion shall be provided by an attorney licensed in the State of Nebraska), in substantially the form attached hereto as Exhibit D, Form M (with such changes as agreed to by the Department 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 Nebraska may be issued by an in-house or outside counsel not licensed in Nebraska.
- F. Evidence of insurance required to be provided by Design/Builder under the Contract Documents;
- G. Evidence that Design/Builder and its Major Participants hold all licenses required for performance of the work under the Contract Documents;
- H. Department approved DBE Performance Plan in accordance with the requirements of Section 1.8.3;
- 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 Appendix 8 to the Contract. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Contract and issuance of NTP1 and NTP2; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Contract Documents, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments;
- J. The insurance policies, endorsements, and/or certificates required under Section 9 of the Contract;
- K. A letter signed by Proposer, Major Participant, and each Subcontractor listed in the Proposal indicating the commitment to work on the Project and the commitment of

Proposer to retain the specified services of the designated Major Participant or Subcontractor; and

- L. Any other requirements identified by the Department during pre-award negotiations.

Proposers are advised that the Design/Builder will be required to hold a general contractor's license.

## 6.2 Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided in the Department's sole discretion at the earliest feasible time after execution of the Contract. If conducted, a Department representative familiar with the rationale for the selection decision and Contract award shall conduct the debriefing.

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, TPEC, or PPEC, but may include a summary of the rationale for the selection decision and Contract award.

## 6.3 Payment to Unsuccessful Proposers

Each unsuccessful Proposer submitting a responsive Proposal will be entitled to receive a stipend from the Department, provided that such Proposer has timely executed and delivered the Stipend Agreement (Exhibit F) to the Department. If no Contract is awarded, an additional stipend will be awarded to the highest ranked Proposer, provided that such Proposer has timely executed and delivered the Stipend Agreement. The successful Proposer shall not otherwise be entitled to a stipend under this Section 6.3 and shall only be entitled to such compensation as is set forth in the Contract. No unsuccessful Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in this Section 6.3.

The total available stipend amount per Proposer is \_\_\_\_\_. Refer to the Stipend Agreement for terms of payment.

In consideration for the Department's agreement to make payment pursuant to the Stipend Agreement, each Proposer receiving a stipend agrees that the Department will be entitled to use any and all concepts, ideas and information contained in its Proposal (including proposed ATCs, techniques, methods, processes, drawings, reports, plans and specifications), without any further compensation or consideration to Proposer.

Each Proposer has the option of waiving the stipend by submitting a Waiver with its Financial Proposal. If an unsuccessful Proposer elects to waive the stipend, the Department shall not use the Proposer's ideas or designs in connection with this Project procurement.

Each Proposer acknowledges that the Department will have the right to inform the successful Proposer, after award, regarding the contents of all Proposals for which stipends have been (or

will be) paid, for the purpose of allowing concepts to be reviewed by the selected Proposer and incorporated into the Contract as deemed advisable. Furthermore, upon Proposer's receipt of payment hereunder, the right to use such Work product will extend to other projects undertaken by the Department, as the Department deems appropriate. However, the Department acknowledges that the use of any of the work product by the Department or Design/Builder is at the sole risk and discretion of the Department and Design/Builder, and it will in no way be deemed to confer liability on the unsuccessful Proposer.

As a condition to collection of the stipend, the Proposer must submit a request to the Department affirmatively and clearly stating, in a manner acceptable to the Department, in its sole discretion, that the Proposer will not contest the Department's award of the Contract and including an express and irrevocable waiver therefor. Such request shall be submitted within \_\_\_\_\_ days after notice of award is posted. Any Proposer that contests the award will not be eligible to receive a stipend.

In no event will any Proposer that is selected for award but fails to satisfy the award conditions set forth in Section 6.1 be entitled to receive the foregoing payment or any other reimbursement or payment for Work product under this Section 6.3. Any ideas contained in such Proposer's Proposal will be the property of the Department without any requirement to make payment therefor.

#### **6.4 Disposition of Escrowed Materials Following Conclusion of Procurement Process**

Following execution of the Contract, the Escrowed Materials of the successful Proposer will be available for review as specified in the Contract Documents.

In accordance with the procedures set forth in the Escrow Agreement (Exhibit D, Form L), each unsuccessful Proposer shall have the right to retrieve its Escrowed Materials after the Contract Documents have been executed and delivered, after the Department rejects all of the Proposals or after the Department terminates this procurement.

## **7 Protests**

### **7.1 Applicability**

This Section 7 set forth the exclusive protest remedies available with respect to the RFP and prescribes exclusive procedures for protests regarding:

- A. Allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed the Department's authority;
- B. A determination as to whether a Proposal is responsive to the requirements of the RFP and/or passes all pass/fail criteria, as applicable; and
- C. Award of the Contract.

### **7.2 Required Early Communication for Certain Protests**

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

### **7.3 Deadlines for Protests**

#### **7.3.1 RFP Terms**

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 \_\_\_\_\_ 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 \_\_\_\_\_ business days after the Addendum is issued (but in any event, prior to the Proposal Due Date).

#### **7.3.2 Responsiveness or Pass/Fail Determinations**

Protests concerning the issues described in Section 7.1(b) must be filed no later than \_\_\_\_\_ business days after receipt of the notification of non-responsiveness or failure to pass all pass/fail criteria.

#### **7.3.3 Contract Award**

Protests concerning the issues described in Section 7.1(c) must be filed no later than \_\_\_\_\_ 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 the address specified in Section 2.2.1, with a copy to the Nebraska Attorney General Office, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained from the website.

## **7.6 Comments from Other Proposers**

Other Proposers may file statements in support of or in opposition to the protest within \_\_\_\_\_ days of the filing of the protest. The Department 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. The Department 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 Director or designee shall issue a written decision regarding the protest within \_\_\_\_\_ days after the filing of the detailed statement of protest. If necessary to address the issues raised in a protest, the Department 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, Proposer filing the protest shall be liable for the Department's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by the Department 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, defend and hold the Department and its commission members, 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.

## 8 Department's Rights and Disclaimers

### 8.1 Department Rights

The Department may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer, may require additional information from a Proposer concerning its Proposal, and may require additional evidence of qualifications to perform Design/Builder's obligations under the Contract Documents. The Department further reserves the right, in its sole discretion (following consultation with Nebraska DOR as appropriate), at no additional cost to the Proposer, 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. Modify the procurement process and terms of the RFP (with appropriate notice to Proposers)
- H. Waive or permit corrections to data submitted with any response to the RFP until such time as the Department declares in writing that a particular state or phase of its review of the responses to the RFP has been completed and closed;
- I. Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by the Department until such times as the Department declares that a particular stage or phase of its review of the responses to the RFP has been completed and closed;
- J. Appoint evaluation committees to review Proposals, make recommendations, and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- K. Disclose information contained in a Proposal to the public as described herein;
- L. Approve or disapprove Proposer's Key Personnel;
- M. Approve or disapprove changes in Proposer's organization;
- N. Accept a Proposal other than that which requests the lowest public funds from the Department;
- O. Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;
- P. Not issue a notice to proceed after execution of the Contract Documents;
- Q. Disqualify any Proposer that violates the terms of the RFP;
- R. Request Proposal Revisions as specified herein.
- S. Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the Contract by a third party; and



- T. Exercise any other right reserved or afforded to the Department under the RFP and applicable law.

## 8.2 Department Disclaimers

The RFP does not commit the Department to enter into any contract. Except as expressly set forth in Section 6.3, the Department assumes 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 the Department be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the Contract Documents, in form and substance satisfactory to Department, has been authorized and executed by the Department and, then, only to the extent set forth therein. In submitting a Proposal in response to the RFP, Proposer is specifically acknowledging these disclaimers.**



## Appendix C Typical Example of a Construction Manager/General Contractor (CM/GC) Request for Qualifications (RFQ) Document

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### Note to Reader

**The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFQ.**

**The official RFQ will need to be tailored for the project specifics.**



## Statement of Qualifications Format for Construction Manager/General Contractor Project

Provided for your use is the format for submission of a Statement of Qualifications (SOQ).

1. One original and seven copies of the SOQ shall be submitted to NDOR.
2. There is a total page limit of 20 pages. The proposal may include clear report covers, covers, dividers, table of contents, tables, figures, maps, etc., but these will be counted in the 20 page limit. A page shall be 8 1/2 X 11 inches, blank or printed on one side only. Fold out pages are not allowable. Other documents are also required that are not included in the page count, as detailed below.
3. The SOQ shall have the following format:
  - o Front Cover (optional, but if included will count as a page)
  - o Introductory Letter (included in page count)
  - o Proposal Form (not included in page count)
  - o Required Information (included in page count)

### Maximum Points

1. Firm experience	35
2. Experience of Key Personnel/resumes of Key Personnel (not included in page count)	40
3. Safety record	10
4. Bonding capacity	10
5. Miscellaneous	5

Back cover (optional, but if included will count as a page)	<b><u>SOQ points</u></b>	<b><u>Total pages</u></b>
	100	20

\*OSHA Form 300A and Insurance EMR certification are not included in the page count.

4. Submissions failing to follow the instructions outlined above will be rejected and the contractor notified in writing of the reason for rejection.

**Introductory Letter** (included in page count)

The introductory letter shall be addressed to:

Nebraska Department of Roads  
1500 Highway 2  
Lincoln, NE 68502

Attention: Planning and Project Development Engineer

The introductory letter shall contain the following items:

- An expression of the firm's interest in being selected for the project.
- A statement confirming that the firm is prequalified with NDOR. Individual contractors, as well as joint ventures and limited liability partnerships or corporations, shall be prequalified.
- A statement confirming the commitment of the Key Personnel identified in the submittal to the extent necessary to meet NDOR's quality and schedule expectations.
- A statement detailing the legal structure of the proposer and its project team.

Include the mailing and email address and phone number of the primary contact person for your firm.

No evaluation points are assigned to the introductory letter.

**Proposal Form** (not included in page count)

Complete the form, which is provided in the Proposal Package for Prequalified Firms.

**Required Information**

The information that shall be included in the SOQ is outlined as follows:

**Firm Experience**

(35 Points) (included in page count)

- a) Identify at least three comparable projects in which the firm served as a CM/GC, an Agency Construction Manager during design and/or construction, or a General Contractor.

For each project identified, provide the following:

- 1) Description of the project. (If an NDOR project, include the Project number.)
- 2) Role of the firm. (Specify whether CM/GC, Agency Construction Manager or General Contractor. If CM/GC or General Contractor, identify the percent of work self-performed. Also specify services provided during design.)
- 3) Initial construction cost and final construction cost; briefly explain any variance.
- 4) Original contract construction duration and actual duration; briefly explain any variance.
- 5) Project owner, contact name, telephone number and address
- 6) Design Consultant firm and contact name, telephone number and address if the project was a CM/GC project
- 7) Reference information (two current names with telephone numbers per project)

- b) Describe in detail your firm's method for allocating management, supervision, labor, material and equipment resources to projects. Are your firm's resource allocation methods different on CM/GC projects (as compared to D/B/B), and if so, how?
- c) Identify project stakeholders and describe how your firm will interface with them on this project.
- d) Describe your firm's past experience working with the project stakeholders. If your firm does not have experience with the identified stakeholders, how will you develop working relationships with these entities? Provide examples of how your firm has established and developed similar relationships.
- e) Describe the methods your firm has in place for addressing project issues, contract modifications, and schedule recovery to maintain the completion date.
- f) Briefly describe examples of Constructability Reviews and Value Engineering your firm has provided on recent projects. How will you integrate these experiences into the CM/GC process?

**Experience of Key Personnel to be assigned to this Project**

*(40 Points) (included in page count)*

- a) List all Key Personnel to be assigned to this project and how, if ever, the Key Personnel have previously worked together as a team. List at least two comparable projects in which the Key Personnel have played a primary role. If a project is selected to demonstrate the experience of a key person and that same project is selected to show the work history of the firm for Question 1, then provide just the project name and the role of the key person. For other projects provide the following:
  - 1) Description of project. (If a NDOR project, include the Project number.)
  - 2) Role of the person
  - 3) Initial construction cost and final construction cost; briefly explain any variance.
  - 4) Original contract construction duration and actual duration; briefly explain any variance.
  - 5) Project owner, contact name, telephone number and address
  - 6) Design Consultant contact name, telephone number and address if the project was a CM/GC project
  - 7) Reference information (two current names with telephone numbers per project).
- b) Explain why the proposed team was assembled and how the team will handle the major issues, components and challenges of this project.
- c) What value does the proposed team bring to the Preconstruction Phase of the project?
- d) Submit individual resumes for each key person. The resumes will not be included in the page count.
- e) Describe in detail what steps your firm will take to ensure that Key Personnel remain assigned to the project for its duration.

**Safety Record**

*(10 Points)*

- a) Describe the firm's overall approach to safety. *(Included in page count)*

- b) Clearly list your firm's Experience Modifier Rate (EMR) for each of the past five years, (if a joint venture, provide EMRs for each firm). List the type of work included in the EMR. *(Included in page count)*
- c) Provide documentation for your firm's safety record on all construction projects for each of the past five years. Documentation should include a copy of your firm's OSHA Form 300A Summary of Work Related Injuries and Illnesses along with your insurance Worker's Compensation EMR certification. *(Form 300A and the EMR certification will not be included in the page count)*

An EMR greater than 1.0 will result in zero points for question 6b.

### **Bonding Capacity**

(10 Points) (included in page count)

- a) The CM/GC must provide evidence of its capability of obtaining (a) a payment bond or bonds; and (b) either (i) a performance bond or bonds, or, in the alternative, (ii) a letter of credit. Evidence of capability may be in the form of a letter from a surety authorized to issue bonds in the State of Nebraska; the minimum rating of the surety and the bond amounts must be specified in the RFQ. As an alternative to the performance bond component of the required surety letter, the CM/GC may submit a letter from a bank indicating a willingness to issue an irrevocable, standby letter of credit; the minimum senior long-term, unsecured debt ratings and the amount of the letter of credit must be specified in the RFQ.

### **Miscellaneous**

(5 Points) (included in page count)

- a) Identify any contracts or subcontracts held by the firm or officers of the firm, within the last ten years, which has been terminated. Identify any claims or issues arising from contracts, within the last ten years, which resulted in litigation, or arbitration, or could not be resolved through the owner's escalation level/issue resolution ladder or process. Briefly describe the circumstances and the outcomes.
- b) List all projects, within the last ten years, where Liquidated Damages were assessed for failure to complete the contract within the specified contract time, and explain why they were assessed. If a NDOR project, include the Project number.



## Appendix D Typical Example of a Construction Manager/General Contractor (CM/GC) Request for Proposal (RFP) Document

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### Note to Reader

**The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFP.**

**The official RFP will need to be tailored for the project specifics.**



# Proposal Format for Construction Manager/General Contractor Project

Provided for your use is the format for submission of a CM/GC proposal.

1. One original and seven copies of the proposal shall be submitted to NDOR.
2. There is a total page limit of 20 pages. The proposal may include clear report covers, covers, dividers, table of contents, tables, figures, maps, etc., but these will be counted in the 20 page limit. A page shall be 8 1/2 X 11 inches, blank or printed on one side only. Fold out pages are not allowable. Other documents are also required that are not included in the page count, as detailed below.
3. The proposal shall have the following format:
  - o Front Cover (optional, but if included will count as a page)
  - o Introductory Letter (included in page count)
  - o Proposal Form (not included in page count)
  - o Required Information (included in page count)

### Maximum Points

1. General management approach	15	
2. Subcontracting plan	15	
3. Pre-construction phase approach	30	
4. Construction phase approach	20	
5. Pricing (pre-construction phase) (if used)	10	
6. Pricing (construction phase) (if used)	10	
Back cover (optional, but if included will count as a page)	<b><u>Proposal Points</u></b>	<b><u>Total pages</u></b>
	100	20
	<b><u>Interview points</u></b>	
Oral interviews	25	
	<b><u>Total points</u></b>	
	125	

4. Submissions failing to follow the instructions outlined above will be rejected and the contractor notified in writing of the reason for rejection.

**Introductory Letter** (included in page count)

The introductory letter shall be addressed to:

Nebraska Department of Roads  
1500 Highway 2  
Lincoln, NE 68502

Attention: Planning and Project Development Engineer

The introductory letter shall contain the following items:

- An expression of the firm's interest in being selected for the project.
- A statement confirming that the firm is prequalified with NDOR. Individual contractors, as well as joint ventures and limited liability partnerships or corporations, shall be prequalified.
- A statement confirming the commitment of the Key Personnel identified in the submittal to the extent necessary to meet NDOR's quality and schedule expectations.
- A statement detailing the legal structure of the proposer and its project team.

Include the mailing and email address and phone number of the primary contact person for your firm.

No evaluation points are assigned to the introductory letter.

**Proposal Form** (not included in page count)

Complete the form, which is provided in the Proposal Package for Prequalified Firms.

**Required Information**

The information that shall be included in the SOQ is outlined as follows:

**Project Understanding**

(25 Points) (included in page count)

- a) Discuss the major components, issues and challenges your team has identified on this project and how it intends to address them.
- b) What risks have you identified on this project? How do you intend to manage these risks?
- c) Discuss your understanding of the construction sequencing and traffic control required for this project. Discuss how they will impact the traveling public, local businesses and residents and describe how you will minimize those impacts and traffic delays.

**CM/GC Approach to Performing the Required Services**

(20 Points) (included in page count)

- a) Describe your firm's project management approach and team organization both during design and construction phases. Describe processes, methods and systems used for planning, scheduling, estimating, and managing construction.
- b) Describe your team's approach to coordinating with NDOR, the Designer, subcontractors and suppliers during design and construction.
- c) Describe your firm's approach to conformance with the Clean Water Act and the Clean Air Act. Discuss the means and methods the team will use to maintain compliance with the Clean Water Act and the Clean Air Act on this project.

- d) Explain how you will manage construction quality control and subcontractors during the Construction Phase of the contract.

**Involvement of Subcontractors**

(10 Points) (Included in page count)

- a) Describe the role subcontractors will play on your team and what benefits will they provide to your team, NDOR and the project.
- b) Discuss the firm's utilization of Disadvantaged Business Enterprise (DBE) subcontractors.

**Miscellaneous**

(5 Points) (Included in page count)

- a) Identify any contracts or subcontracts held by the firm or officers of the firm, within the last ten years, which has been terminated. Identify any claims or issues arising from contracts, within the last ten years, which resulted in litigation, or arbitration, or could not be resolved through the owner's escalation level/issue resolution ladder or process. Briefly describe the circumstances and the outcomes.
- b) List all projects, within the last ten years, where Liquidated Damages were assessed for failure to complete the contract within the specified contract time, and explain why they were assessed. If a NDOR project, include the Project number.