



**REQUEST FOR PROPOSALS
TO DESIGN and BUILD
PROJECT NEON – DB PHASE
VOLUME I
INSTRUCTIONS TO PROPOSERS
A PROJECT OF THE
NEVADA DEPARTMENT OF TRANSPORTATION**

ISSUED: March 9, 2015

**Nevada Department of Transportation
1263 South Stewart Street, Room 101
Carson City, NV 89712**

CERTAIN KEY DATES:

<u>EVENT</u>	<u>DATE</u>
Issue Final Request for Proposals	March 9, 2015
Proposal Date	July 31, 2015
Anticipated Notification of Preferred Proposer	September 2015
Execution of Contract and Other Execution Documents (unless extended pursuant to <u>Section 1.7.1</u>)	Fall 2015

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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 and Order of Proposal Contents

FORMS

Form A	Proposal Letter
Form B-1	Identification of Proposer and Principal Participants
Form B-2	Information About Proposer Organization
Form B-3	Information About Major Participants and Identified Subcontractors
Form C	Responsible Proposer and Major Participant Questionnaire
Form D	Industrial Safety Record for Principal Participants and Major Participants
Form E	Personnel Work Assignment Form and Commitment of Availability
Form F	Non-Collusion Affidavit
Form G	Buy America Certification
Form H	DBE Certification
Form I	Conflict of Interest Disclosure Statement
Form J	Proposal Bond
Form K	Escrow Agreement
Form L	Opinion of Counsel
Form M	Pricing Forms
Form N	Completion Deadlines
Form O	[Not Used]
Form P	Form of Stipend Agreement
Form Q	Equal Employment Opportunity Certification
Form R	Use of Contract Funds for Lobbying Certificate
Form S	Debarment and Suspension Certification
Form T	RFP Comment Form

INSTRUCTIONS TO PROPOSERS (Request for Proposals: The Project)

SECTION 1 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“RFP”) is issued by the Nevada Department of Transportation (“Department”) to seek competitive proposals (individually, a “Proposal” and collectively, “Proposals”) to design and build Project Neon DB Phase to be evidenced by a Design-Build (“DB”) Contract (the “Contract”) as more fully described in this RFP and the Contract Documents attached hereto.

The Contract will provide that the successful Design-Builder shall design and build certain capital improvements in the City of Las Vegas, Nevada, along Interstate 15 (“I 15”) and major street connections from south of the Sahara Avenue/I-15 interchange to the I-15/U.S. Route 95 (“US 95”)/Interstate 515 (“I-515”) interchange, otherwise known as the Project Neon – DB Phase (the “Project”). A general map of the Project can be found at the following website: <http://ndotprojectneon.com/documents.html> (“Website”). The form of Contract, with the other Contract Documents, is included in Volume II of this RFP.

The Department is issuing this RFP to those Proposers shortlisted on December 15, 2014, based on the Department’s evaluation of Statements of Qualification (“SOQs”) delivered to the Department on November 20, 2014 in response to the Request for Qualifications for the Project issued on September 23, 2014 (as amended, the “RFQ”).

Proposers must comply with these Instructions to Proposers (“ITP”) during the procurement and in their Proposals. Through the Proposal submittal requirements, Proposers shall consider and address in their Proposals the Project goals identified in Section 1.2 below, which have been considered in developing the evaluation criteria set forth in this ITP.

All forms identified in this ITP are found in Exhibit D unless otherwise noted. All times in this ITP are Pacific Standard Time (“PST”) or Pacific Daylight Savings Time (“PDT”), as applicable.

1.2 Department Goals

The Department’s goals for the Project are as follows (in no particular order of importance):

- (a) Obtain the best value for the costs required to design and build the Project through a competitive procurement;
- (b) Achieve substantial completion and open the Project to traffic by no later than summer of 2019;

(c) Improve mobility and safety for the public travelling within the I-15 and US 95 corridors as defined by the project limits;

(d) Minimize disturbances to the traveling public within the I-15 corridor by implementing Permitted Construction Closures no earlier than the Tuesday following the NASCAR Special Event and achieving the Interim Milestone Traffic Opening for that corridor no later than November 15th of the same year;

(e) Seek innovation and efficiencies and encourage design solutions that respond to environmental concerns, permits, and commitments in the Project's environmental documents;

(f) Provide a safe project for workers and the traveling public;

(g) Provide a high-quality, aesthetic, durable, and maintainable facility;

(h) Minimize disruptions to existing traffic, local businesses, and communities;

(i) Provide proactive public relations, satisfy stakeholders, and maintain public trust and integrity; and

(j) Meet disadvantaged business enterprise ("DBE") goals and provide equal employment opportunities and on-the-job training in connection with the Project.

1.3 Procuring Agency and Stakeholders

The Department will be the procuring agency for the Project. As the entity responsible for the planning and development of the transportation system in the State, the Department will administer the procurement of the Project and oversee the work of Design-Builder in the design and construction of the Project (the "Work").

The Project runs through the City of Las Vegas ("City"), who is a key stakeholder in the Project. The Work includes certain defined elements on the local street network which are to be constructed on behalf of the Department for the City. The City will not be a party to the Contract.

1.4 General Description of and Scope of Design-Builder's Obligations for the Project

1.4.1 Overview

The Project has an estimated construction value of \$525 to \$550 million (excluding right-of-way and utility relocations). Design-Builder will design and build the Project as more particularly described herein. The Contract Documents will provide additional details concerning Design-Builder's obligations under the Contract.

1.4.2 Project Elements

The major elements of the Project are generally categorized into (a) the HOV system; (b) the Charleston Interchange reconstruction; (c) the I-15 Freeway reconstruction; (d) the US 95 reconstruction; (e) local street connections, including

Grand Central Industrial Connector; and (f) ancillary improvements. A summary description of each element is provided below and additional information and details regarding the Project are included in the Technical Provisions.

1.4.2.1 HOV System

The I-15/US 95 HOV system improvements will widen the freeway to provide for new HOV lanes in the medians of I-15 and US 95. The HOV lanes will be connected by an HOV direct-connector, elevated structure that will provide directional travel for northbound I-15 to westbound US 95, and eastbound US 95 to southbound I-15. The I-15 extension will add approximately 3 miles of new HOV lanes beginning south of Sahara Avenue/I-15 Interchange and continuing northerly to near Symphony Parkway joining the new bridge.

The new bridge will span from near Symphony Parkway in the I-15 corridor, through the I-15 and US 95/I-515 system interchange, and will touch down near Rancho Road in the US 95 corridor. To facilitate erection and minimize disruption to existing freeway traffic, the new bridge is currently envisioned as a nearly 1-mile long, 22-span, composite steel-plate I-girder structure. The width of bridge is envisioned to be 62-feet-wide with a barrier median to accommodate future lanes.

The new HOV system will provide a new interchange to a local street connection (Neon Gateway), allowing direct access to and from the northbound and southbound I-15 HOV system to Western Avenue, between Oakey Boulevard and Charleston Boulevard. In addition to these HOV system improvements, the Project will reconfigure the existing northbound and southbound I-15 express lanes to accommodate one HOV lane and one additional I-15 mainline travel lane beginning at the I-215/I-15 Interchange and continuing northerly to south of the Sahara Avenue/I-15 Interchange, including pavement delineation and signing. The Project will also reconfigure the existing northbound and southbound I-15 express lane into an HOV lane from the Silverado Ranch Boulevard/I-15 Interchange to the I-215/I-15 Interchange, including pavement rehabilitation, delineation, and signing.

1.4.2.2 Charleston Boulevard Interchange Reconstruction

The Charleston Boulevard Interchange reconstruction will accommodate the I-15 Freeway and HOV system improvements, freeway access, and the Project's traffic operational requirements. Access to and from northbound and southbound I-15 will be provided by four new ramps connecting directly to Charleston Boulevard. Interim slip ramps will provide northbound access from the northbound I-15 ramp intersection to Alta Drive and Grand Central Parkway. The reconstruction will also entail the widening of Charleston Boulevard to accommodate the Project's requirements.

1.4.2.3 I-15 Freeway Reconstruction

The I-15 Freeway will be improved to accommodate the Project's traffic operational specifications and other Project requirements, including the necessary widening and rehabilitation beginning south of the Sahara Avenue/I-15 Interchange. The northbound and southbound freeway lanes will be realigned north of the Sahara Avenue/I-15 Interchange to accommodate the new HOV system and the I-15 Freeway

system improvements. The I-15 Freeway improvements will extend to north of the US 95/I-515 overcrossing. The freeway system improvements include, but are not limited to, mainline general purpose lanes, auxiliary lanes, access locations (entrance and exit ramps), and collector-distributor roadways to provide overall functionality of the system. In addition, access for eastbound US 95 and local streets to I-15 southbound, Charleston Boulevard, and Sahara Avenue will be accommodated by a new southbound collector-distributor system that grade-separates various roadway accesses.

1.4.2.4 US 95/I-515 Reconstruction

The US 95 Freeway will be improved to accommodate the new HOV system and the Project requirements, including new construction, reconstruction, and rehabilitation. Accommodating the freeway improvements will require extensive drainage, signing, striping, and lighting reconstruction. The freeway ramps connecting Martin Luther King (“MLK”) Boulevard to eastbound I-515 and eastbound US 95 to northbound I-15 will also be reconstructed to maintain ramp operations during reconstruction of the I-15/US 95 HOV Connector. The freeway improvements on the US 95/I-515 Freeway are envisioned to extend from Valley View Boulevard to just west of Bridge H-946 over City Parkway.

1.4.2.5 Local Street Connections

Several local street connections are being created to maintain access and circulation in downtown Las Vegas. Martin Luther King Boulevard will be realigned to the west between Alta Drive and Oakey Boulevard and grade separated over Charleston Boulevard. Western Avenue will be connected to Grand Central Parkway at an at-grade intersection with Charleston Boulevard. Industrial Road will be connected to Grand Central Parkway with a grade separation crossing over the Union Pacific Railroad right-of-way. A new street connecting the HOV ramps to Western Avenue will be constructed and named Neon Gateway. In addition, miscellaneous local streets will be reconstructed to accommodate the major elements of the Project. These local streets will include portions of Oakey Boulevard, Silver Avenue, Charmast Lane, Richard Court, Ellis Avenue, Wall Street, Hastings Avenue, Bearden Drive, Pinto Lane, Desert Lane, Iron Horse Loop, Grand Central Parkway, Alta Drive, and Bonneville Avenue.

1.4.2.6 Ancillary Improvements

Several substantial ancillary facilities will be constructed as part of the Project. Approximately 1 mile of a triple-cell 12 foot by 10 foot flood control facility will be reconstructed between Sahara Avenue and Charleston Boulevard. Within the same reach, sound walls will be reconstructed on the west side of the I-15 Freeway. In coordination with the automated traffic advisory system known as Freeway and Arterial System of Transportation (“FAST”), the existing intelligent transportation system (“ITS”) network will be reconstructed, beginning approximately at Warm Springs Road and continuing northerly through the Project limits.

The Project will add an ATM System that includes the following: gantries servicing both directions of travel on I-15 from Warm Springs Road to the US 95/I-515

undercrossing bridge; gantries servicing both directions of travel on US 95/I-515, from 1,000 feet west of the Rancho Drive undercrossing to 300 feet east of the US 95/I-515 interchange; three additional gantries servicing southbound I-15 north of US 95/I-515 undercrossing bridge; three additional gantries servicing eastbound US 95, west of the Rancho Drive undercrossing; and three additional gantries servicing westbound I-515, east of US 95/I-515 interchange. Four existing bridges (Bridges I-937, I-938, I-945, and G-941) will be replaced, and necessary, related infrastructure improvements to the bridge approaches and roadway and railroad track crossings will be constructed. Various types of rehabilitation work will be performed for fifteen (15) bridges. Landscape and aesthetic treatments will be incorporated into all facets of the Project in coordination with conceptual treatments of the Department and the City of Las Vegas.

1.4.3 Environmental

The Federal Highway Administration (“FHWA”) issued a Record of Decision (“ROD”) for the Project in October 2010, which identified the “preferred alternative” in the Project’s Final Environmental Impact Statement (“FEIS”) as the selected alternative for the Project. The ROD also provided certain mitigation measures associated with the selected alternative and responses to comments on the FEIS received from federal, state, and local agencies and interest groups as part of the public record. In August 2012, FHWA approved a reevaluation to the FEIS, which included replacing the MLK/Industrial Connector, an overpass connecting MLK Boulevard west of I-15 to Industrial Road east of I-15, with local road improvements east and west of I-15. The reevaluation concluded that the changes in the selected alternative did not result in any additional significant impacts not evaluated in the FEIS. In June 2014, the Department prepared the second reevaluation for its proposal to replace the grade-separated crossing of Charleston Boulevard east of I-15 connecting Western Avenue and Grand Central Parkway, described in the FEIS, with an at-grade intersection at Charleston Boulevard, an eastbound Charleston Boulevard connection to the MLK extension, and other local road improvements south of Charleston Boulevard. The reevaluation has not yet been approved by FHWA. The anticipated time frame for approval is April 2015. The Project’s environmental documents are included in the Reference Information Documents.

1.4.4 Scope of Design-Builder’s Obligations

Design-Builder will design and build the Project in return for monthly payments, as described in the Contract Documents.

The Contract will require Design-Builder to design and construct the elements of the Project within a period of time defined in the Contract Documents. Design-Builder will be subject to liquidated damages in the event it fails to meet the schedule requirements set forth in the Contract Documents.

A specific description of the Project and Design-Builder’s scope of work is contained in the Technical Provisions (Volume II of the Contract Documents). Design-Builder’s authorization to commence and pursue the Work shall be pursuant to the issuance of one or more Notices to Proceed as described and defined in the Contract Documents.

1.4.5 Maintenance During Construction; Warranties

Design-Builder will be responsible for performing maintenance during construction as described in the Contract Documents. Design-Builder's maintenance responsibilities will begin upon issuance of NTP2 and continue through Final Acceptance. Design-Builder shall be required to provide a warranty of the Work for the Project (including those portions that will be turned over to, and operated and maintained by, the City of Las Vegas) and for the Construction ATM System that will be turned over to, and operated and maintained by the Freeway and Arterial System of Transportation ("FAST") for a period specified in the Contract Documents. Bonds will be required to support Design-Builder's obligations with respect to such Work and warranties.

1.5 Documents in the Request for Proposals

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented (collectively, the "RFP Documents"):

Volume I - this ITP (including exhibits and forms)

Volume II - the Contract Documents

Volume III - the Reference Information Documents (available at <http://ndotprojectneon.com/documents.html>).

Refer to Section 1.3 of the Contract for a list of the Contract Documents and their order of precedence, and to Volume III for the Reference Information Documents.

1.5.1 Reference Information Documents

The Reference Information Documents, which can be found at <http://ndotprojectneon.com/documents.html>, are included in the RFP for the purpose of providing information to Proposers. Except as may be expressly provided otherwise in the Contract Documents, (a) the Reference Information Documents are not mandatory or binding and (b) Proposers are not entitled to rely on the Reference Information Documents or any opinions, suggestions, directions or recommendations therein as presenting design, engineering, construction, operating or maintenance solutions or other direction, means or methods for complying with the requirements of this procurement, the Contract Documents, Governmental Approvals or applicable Governmental Rules.

Except as may be expressly provided otherwise in the Contract Documents, the Department shall not be responsible or liable in any respect for any causes of action, suits, judgments, claims, expenses, damages or losses whatsoever suffered by any Proposer by reason of (a) any use, in connection with participation in this procurement, of information, opinions or recommendations contained in the Reference Information Documents, or (b) any action or forbearance in reliance on the Reference Information Documents. Although the Reference Information Documents may include interpretations, extrapolations, analyses, and recommendations concerning data, design

solutions, technical issues and solutions, and construction means and methods, such interpretations, extrapolations, analyses, and recommendations are (i) preliminary in nature and, in many cases, are obsolete; (ii) not intended to express the views or preferences of the Department or any other Governmental Entity or represent any statement of approval or acceptance thereof by the Department or any other Governmental Entity; and (iii) not intended to form the basis of a Proposer's design solutions, technical solutions or construction means and methods. Except as may be expressly provided otherwise in the Contract Documents, Proposers shall use or not use the Reference Information Documents at their sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating to site conditions, geotechnical conditions, Utilities, structures and bridge design, (y) the preparation of their Proposals, and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Reference Information Documents.

The Department neither represents nor warrants that the information, opinions, and recommendations contained in the Reference Information Documents are complete or accurate or that such information, opinions, and recommendations are in conformity with the requirements of the RFP, Governmental Approvals or applicable Governmental Rules. Proposers shall have no right to compensation, time extension or other claim in connection with participation in this procurement based on any incompleteness or inaccuracy in the Reference Information Documents, except as otherwise expressly provided in the Contract Documents.

1.6 Definitions and Acronyms

Refer to Exhibit A hereto for the meaning of various capitalized terms and acronyms used but not defined herein, and refer to Appendix 1 to the Contract for the meaning of capitalized terms and acronyms used but not defined herein or in said Exhibit A.

1.7 Procurement Schedule and Address for Proposal Delivery

1.7.1 Procurement Schedule

The following represents the current schedule for the procurement.

<u>EVENT</u>	<u>DATE and TIME</u>
Issue Final RFP	March 9, 2015
One-on-One Meetings re: Concept ATCs	March 11-12, 2015
Deadline for Proposers' submittal of questions/comments re: RFP Documents before April 8 - 9, 2015 One-on-One Meetings	March 30, 2015 12:00 P.M. (Pacific Time)

<u>EVENT</u>	<u>DATE and TIME</u>
One-on-One Meetings re: RFP Documents and ATCs	April 8-9, 2015
One-on-One Meetings re: ATCs	May 13 - 14, 2015
Last date for submittals of ATCs	May 18, 2015 12:00 P.M. (Pacific Time)
Last date for Department responses to ATCs	June 4, 2015
One-on-One Meetings re RFP Documents (if needed)	June 10 - 11, 2015
Last date for Department to provide Addendum identifying Project Right-of-Way and Utility status per <u>Section 2.3.2</u>	June 16, 2015
Last date for Proposer submittal of questions regarding the RFP, as described in <u>Section 2.3.1</u>	June 18, 2015 12:00 P.M. (Pacific Time)
Last date to submit Pre-Proposal Submittals per <u>Section 2.4</u> (other than those separately listed in this schedule)	June 18, 2015 12:00 p.m. (Pacific Time)
Last date for Department responses to timely questions regarding the RFP (if necessary)	July 9, 2015
Last date for Department response regarding Pre-Proposal Submittals per <u>Section 2.4</u> (other than those separately listed in this schedule)	July 9, 2015
Proposal Date	July 31, 2015 12:00 P.M. (Pacific Time)
Anticipated Notification of Preferred Proposer	September 2015
Execution of Contract and Other Execution Documents (unless extended pursuant to <u>Section 1.7.1</u>)	Fall 2015

All dates set forth above and elsewhere in this RFP are subject to change, in the Department's sole discretion, by Addendum.

1.7.2 Address for Proposal Delivery

The completed Technical Proposal and Price Proposal shall be submitted and delivered within sealed, labeled containers no later than the Proposal Date and time specified in Section 1.7.1. The Price Proposal shall be contained in a separate sealed envelope, which envelope is to be clearly labeled "Price Proposal" on the outside of the envelope. The Proposals are to be delivered to Department at the following address, except those materials required to be delivered into escrow as specified in Section 4.4.4:

Nevada Department of Transportation
1263 South Stewart Street, Room 101
Carson City, NV 89712
Attention: Mr. Mark Stewart
Phone (775)888-7070 ext. 2124
Fax: (775) 888-7101
Email: agreeservices@dot.state.nv.us

1.8 General Provisions Regarding Proposals

1.8.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to this RFP, including (a) a Technical Proposal, including a Technical Project Delivery Plan and properly completed Proposal forms and (b) a Price Proposal, including properly completed Proposal forms (to be delivered directly to the Department). In addition, while not part of the Proposal, certain supporting documentation is required by this ITP to be delivered into an escrow account.

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 shall be submitted without reservations, qualifications, conditions or assumptions set forth therein. Any failure to provide all the information and all completed forms in the format specified, or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in the Department's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. Except as expressly provided in the Proposal forms (e.g., requirements to complete the forms, etc.), no substantive change shall be made in the Proposal forms by the Proposer.

1.8.2 Inclusion of Proposal in Contract Documents

The successful Proposer's Proposal will become part of the Contract Documents, as specified in the Contract.

1.8.3 Commitments in the Proposal

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 (such as when phrases such as “we will” or “we shall” are used).

1.8.4 Ownership of Proposal

Except for those documents delivered into escrow pursuant to Section 4.4.4, the Proposal and all documents submitted by the Proposer in response to the RFP, and all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to the Department during this procurement process, whether included in the Proposal or otherwise submitted, will not be returned to the Proposer, unless otherwise decided by the Department in its sole discretion. To the extent the Proposal and these documents and materials include third-party intellectual property, the Proposer, through its submission of its Proposal, grants the Department a royalty-free perpetual and non-exclusive license to use said intellectual property. To the extent the Proposal and these documents and materials contain existing intellectual property owned by the Proposer (or a Proposer team member or an Affiliate of any of the foregoing) or is new intellectual property (created for the purpose of this procurement), the Proposer, through submittal of its Proposal, grants the Department ownership of said intellectual property.

Additionally, if Proposer accepts the stipend payment offered by the Department as specified herein, the concepts, ideas, and other information contained in the Proposal shall become the exclusive property of the Department free of all intellectual property rights and claims, without further action on the Department’s part. The foregoing does not apply to materials required to be delivered into escrow, which are not part of the Proposal and which shall be delivered to the escrow agent as specified in Section 4.4.4.

1.9 Federal Requirements and Funding

Proposers are advised that the RFP has been drafted based on the assumption that the Project will remain eligible for federal-aid funds. Accordingly, the procurement documents and Contract Documents will conform to requirements of applicable federal law and FHWA regulations, including those set forth in Appendix 13 to the Contract and Buy America requirements, Title VI of the Civil Rights Act of 1964 and Title 23 Code of Federal Regulations Part 230, each as amended, regarding Equal Employment Opportunity (EEO), and Title 49 Code of Federal Regulations Part 26, as amended, regarding Disadvantaged Business Enterprises (DBEs). It is the Department’s intent that the RFP Documents, and the procurement itself, afford all Proposers nondiscriminatory bidding procedures regardless of national, state or local boundaries and without regard to race, color, religion, sex, national origin, age, or disability. The Department views State laws, specifications, regulations, and policies that are relevant to this procurement and to the Project as not contrary to applicable federal law and FHWA regulations, but, in the abundance of caution, if the Department determines that

any provisions of State laws, specifications, regulations, or policies operate in any manner contrary to federal requirements, including those mentioned specifically in the second sentence of this Section 1.9, or to prevent submission of a Proposal, or prohibit consideration of a responsive Proposal submitted by any responsible Proposer, such provisions shall not be applicable to the Project. In light of the foregoing, the Department reserves the right to modify the procurement process described herein to address any concerns, conditions or requirements of the FHWA. Proposers will be notified of any such modifications as provided in Section 2.3.2. The Project has federal funding and meets the definition of a major project requiring a major project review. As a major project, the Department shall be required to maintain a corresponding project management plan and finance plan.

1.9.1 EEO; DBE Requirements; Workforce Diversity

The Department is an Equal Employment Opportunity (EEO) employer.

The Department has determined that the DBE requirements apply to 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 § 26.5. The Proposers' DBE compliance obligations for the Project shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the Contract Documents and the Department's DBE Permanent Program Plan.

The Department's DBE requirements applicable to the Project are set forth in Section 7.1 of the Contract and the Department's DBE Special Provisions are attached as Appendix 3 to the Contract and the Department DBE Permanent Program Plan adopted pursuant to 49 CFR Part 26. The DBE Goal for the Project is three and one-half percent (3.5%) of the Contract Amount for the professional services and construction portions of the Work performed under the Contract. Compliance with 49 CFR Part 26 shall be as set forth in Appendix 3 to 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. In addition, each Proposer shall be required to submit a substantive outline of its DBE Performance Plan in accordance with Section 4.1.7 of Exhibit B. Failure to provide the required DBE certification and such outline of its DBE Performance Plan shall be considered a breach of the Proposal requirements and may render a Proposal non-responsive.

The Design Builder will also be required to provide DBE commitments, in the form required by the Department as DBE contractors are identified, in accordance with the Outline of Preferred Proposer's DBE Performance Plan in Appendix 4 to the Contract, the Department DBE Special Provisions in Appendix 3 to the Contract, and the Department's DBE Permanent Program Plan.

Following award, Design-Builder will be required to submit a detailed DBE Performance Plan describing the methods to be employed for achieving the

Department's DBE Goals for the Project, including Design-Builder's exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in Section 7.1.3 of and Appendix 3 to, the Contract. In accordance with Sections 4.1.3 and 7.1.3.1 of the Contract, the DBE Performance Plan will be subject to review, comment, and approval by the Department prior to and as a condition precedent to the Department's issuance of NTP2.

The Department's Workforce Diversity requirements applicable to the Project are set forth in Section 7.3 and Appendix 5 to the Contract. As set forth in Section 4.1.8 of Exhibit B, each Proposer shall submit a substantive outline of its Workforce Diversity Plan with its Proposal. Failure to provide the required outline of its Workforce Diversity Plan may render a Proposal non-responsive.

Following award, Design-Builder will be required to submit a detailed Workforce Diversity Plan that meets the requirements set forth in Section 7.3 of the Contract as well as the Department's Workforce Diversity Program Special Provisions (Appendix 5 to the Contract). In accordance with Sections 4.1.3 and 7.3.2 of the Contract, the Workforce Diversity Plan will be subject to review, comment, and approval by the Department prior to and as a condition precedent to the Department's issuance of NTP2.

1.9.2 Labor Compliance

Proposer is advised that Proposer must comply with all applicable requirements of the NRS 338.020 to 338.090, inclusive and with all applicable federal labor requirements, including those set forth in Appendix 13 to the Contract.

Pursuant to NRS 338.030, the general prevailing wage rates in the county in which the Work is to be done have been determined by the Labor Commissioner. These wages are set forth in the General Prevailing Wage Rates for this Project, available at the address set forth in Section 2.2.1 and also available from the Labor Commissioner's Internet web site at <http://www.laborcommissioner.com>. The State General Prevailing Wage Rates for the Project are also set forth in Appendix 22 to the Contract. The federal minimum wage rates for this Project, as predetermined by the United States ("US") Secretary of Labor, are set forth in Attachment 3 of Appendix 13 to the Contract. Addenda to modify the State and federal minimum wage rates, if necessary, will be issued to all recipients of this RFP.

1.10 Insurance Requirements

Proposers are cautioned to carefully review the minimum insurance requirements set forth in the Contract and shall take these minimum requirements into account in developing their Proposals.

1.11 Qualification To Do Business, Possession of License or Certificate

At the time of contract award, Design-Builder must be qualified to transact business in the State of Nevada and possess a Nevada state business license. In accordance with NRS 408.3877, at least one member of the design-build team must be a licensed general engineering contractor or a general building contractor pursuant to NRS chapter

624 and at least one member of design-build team must hold a certificate of registration to practice architecture pursuant to NRS chapter 623 or hold a license as a professional engineer pursuant to NRS chapter 625.

SECTION 2 PROCUREMENT PROCESS

2.1 Procurement Method

The Department is issuing this RFP in accordance with the provisions of NRS 408.3875 to 408.3887, inclusive, and other applicable provisions of Governmental Rules.

The Department will award the Contract (if at all) to the responsible Proposer offering a Proposal meeting the standards set by the Department and which is determined by the Department, through evaluation of its Proposal based upon the criteria set forth in the applicable Governmental Rules and this RFP, to provide the best value to the Department and to be in the best interest of the State of Nevada.

The Department will accept Proposals for the Project only from those Proposers that the Department has shortlisted for the procurement based on their responses to the RFQ.

Except for pre-approved ATCs as described herein, the Department will not review or consider alternative proposals.

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

The RFP, excluding the Reference Information Documents, will be issued and made available to shortlisted Proposers in electronic format on the secure file transfer site for the Project, located at the Website. The Reference Information Documents are available at the website referenced in Section 1.5.1.

2.2.1 Identification of Department Authorized Representative

The Department has designated the following individual to be its authorized representative for the procurement (the "Department Authorized Representative"):

Nevada Department of Transportation
1263 South Stewart Street, Room 101
Carson City, NV 89712
Attention: Mr. Mark Stewart
Phone (775)888-7070 ext. 2124
Fax: (775) 888-7101
Email: agreeservices@dot.state.nv.us

From time-to-time during the procurement process or during the term of the Contract, the Department may designate another Authorized Representative or Representatives to carry out some or all of the Department's obligations pertaining to the Project.

2.2.2 Identification of Proposer Authorized Representative

A Proposer shall identify in its Proposal an individual authorized to act on behalf of the Proposer relating to the procurement ("Proposer Authorized Representative"). If a Proposer changes its Proposer Authorized Representative to receive documents, communications or notices in connection with this procurement subsequent to its

submission of its Proposal, then within twenty-four (24) hours of making such change, the Proposer shall provide Department's Authorized Representative with the name, telephone, email address, and street address of such new Proposer Authorized Representative. Failure to identify a Proposer Authorized Representative in writing may result in the Proposer failing to receive 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 have been applicable to this procurement.

From and after the date of issuance of this RFP and ending on the earliest of (i) the 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), other electronic means 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 through their employees, agents or representatives 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 representative responsible for contacts with the Department and shall correspond with the Department regarding the RFP only through the Department's Authorized Representative via the Proposer's Designated Representative.

(c) No Proposer or representative thereof through its employees, agents or representatives shall have any ex parte communications regarding the RFP or the procurement described herein with any member of the Department, or 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 Department's Authorized Representative, in the Department's 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 Nevada Transportation Board or any public or Proposer workshop or meeting related to the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of the Department.

(d) Proposers shall not directly contact the following identified stakeholders (the "Stakeholders") regarding the Project, including employees, representatives, and members of the entities listed below, it being the intent of the Department that the

Department provide any necessary coordination during the RFP stage with such entities in order that, among other things, the procurement be implemented in a fair, competitive, and transparent manner and with uniform disclosure of information:

- Members and staff of the City of Las Vegas, NV (including the Las Vegas Metropolitan Police Department and Las Vegas Fire and Rescue);
- Members and staff of the Regional Transportation Commission of Southern Nevada;
- Members and staff of the Freeway and Arterial System of Transportation (“FAST”);
- Members and staff of Clark County (including Clark County Public Works and Clark County Regional Flood Control District);
- Members and staff of the Nevada Highway Patrol;
- Members and staff of the USDOT Secretary’s Office;
- Members and staff of the FHWA, including Office of Innovative Program Delivery;
- Members and staff of environmental, regulatory, and permitting agencies;
- Members and staff of Utility Owners, subject to the provisions immediately below; and
- Members and staff of railroads (including the Union Pacific Railroad), subject to the provisions immediately below.

The Department will allow individual meetings between a Proposer and members and staff of Utility Owners and railroads; provided, that such Proposer notifies the Department in advance and sends the Department an agenda along with the date, time, location or dial-in telephone number, and proposed list of attendees for such meeting between the Proposer and Utility Owner or railroad. In such an event, the Department reserves the right, in its sole discretion, but without obligation, to send a representative to such meeting or join by telephone. The Department’s representative will not actively answer any questions during such call or meeting.

(e) Any communications determined by the Department, in its sole discretion, to be improper may result in disqualification. “Improper” as used herein means detrimental or prejudicial to the integrity of the procurement.

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

(g) The Department will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified in this Section 2.2.3.

Proposers 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 Subsection 2.2.3(f).

2.2.4 Land Acquisition within the Project Right-of-Way

Prior to award of the Contract, no Proposer, including team members or Affiliates, may (i) secure, acquire title to, or close on a purchase of land included within the Planned ROW Limits (“Restricted Property”), (ii) enter into an option to purchase or a purchase contract relating to the Restricted Property unless (a) it gives the seller the unilateral and unconditional right to cancel without charge or penalty if the Proposer does not become the Design-Builder; and (b) the Proposer notifies the Department in writing within ten (10) calendar days after entering into such agreement; or (iii) engage in any predatory land or property acquisition practice.

2.2.5 Language Requirement

All correspondence regarding the RFP, Alternative Technical Concepts (“ATCs”), Proposals, and Contract Documents are to be in the English language. Except as may be otherwise expressly permitted in these RFP Documents, if any original documents required for the Proposal are in any other language, the Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Responses Regarding the RFP 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 Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which the Proposer fails to understand. Failure of the Proposer to request such clarification(s) or interpretations and to so examine and inform itself shall be at its sole risk, and no relief for perceived discrepancy, deficiency, ambiguity, error or omission contained therein will be provided by the Department. Proposers shall submit requests for written clarification in accordance with this Section 2.3.1. The Department reserves the right not to respond to any such clarification requests received after the last date for Proposer submittal of questions regarding the RFP, as set forth in Section 1.7.1. To the extent responses are provided, they will not be considered part of the Contract Documents, nor will they be relevant in interpreting the Contract Documents, except as expressly set forth in the Contract Documents.

The Department will only consider comments and questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a Proposer Authorized Representative to the Department’s Authorized Representative, by

electronic transmission (with facsimile or hard copy delivered within forty-eight (48) hours thereafter) in the prescribed format.

Such comments/questions may be submitted at any time prior to the applicable date specified in Section 1.7.1 or such later date as may be specified in any Addendum and shall: (i) be submitted electronically in writing in Microsoft Word format using the form set forth in Form T; (ii) be sequentially numbered; (iii) identify the document (e.g., the Contract, Technical Provisions, etc.); (iv) identify the relevant section number and page number (e.g., Technical Provisions, Section 3.2.2, page 3-9) or, if it is a general question, indicate so; (v) not identify the Proposer's identity in the body of the question or contain proprietary or confidential information; and (vi) indicate whether the question is a Category 1, 2, 3 or 4 question.

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

Proposers will be limited to 100 comments/questions for the RFP, with a new limit applying to each Addendum; provided, however, that the foregoing limitation shall not apply to the Technical Provisions. If a question has more than one subpart, each subpart will be considered a separate question. Questions relating to the Technical Provisions, corrections of typographical errors, incorrect cross references or inconsistencies within or among the RFP Documents will also be excluded from the 100-question limitation. Notwithstanding this paragraph, the Department may, in its sole discretion, change the maximum number of comments/questions for future RFP versions by Addendum.

No telephone or oral requests from Proposers 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 provided to any Person other than the Department's Authorized Representative will be considered. Questions may be submitted only by the Proposer Authorized Representative or his/her designee, and must include the requestor's name, address, telephone and facsimile numbers, and the Proposer he/she represents. The Department will only provide responses to the Proposer Authorized Representative notwithstanding any submission on Proposer's behalf by any designee.

The questions and the Department's responses will be in writing and will be delivered to all Proposers, except that the Department intends to respond individually to those questions identified by a Proposer and deemed by the Department as containing confidential or proprietary ("confidential") information. If a Proposer believes a question contains confidential or proprietary information (including that the question itself is

confidential), it may mark such question as “confidential.” The Department reserves the right to disagree with Proposer’s assessment as to the confidentiality of information in the interest of maintaining a fair process or complying with applicable Governmental Rules. Under such circumstances, the Department will inform the Proposer and may allow the Proposer, within a time period set by the Department, 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. If a Proposer fails to respond to the Department within the time period set by the Department, such failure shall be deemed to be Proposer’s consent to the Department’s answering of the question non-confidentially. 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’ questions. The Department contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to the issuance of Addenda to the RFP, the last set of responses will be issued no later than the date specified in Section 1.7.1. A consolidated, final set of questions and answers will be compiled and delivered to the successful Proposer prior to award.

The Department may convene pre-Proposal submission meetings with Proposers as it deems necessary (see Section 2.5), and Proposers must make themselves available to the Department for such pre-Proposal submission meetings 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 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 this RFP, as determined in the Department’s sole discretion, the Department may change the Proposal Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for the Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Each Proposer shall acknowledge in its Proposal Letter (Form A) its receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause a 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 (5) Business Days prior to the Proposal 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, including any extension to the Proposal Date determined to be necessary by the Department, in its sole discretion.

2.4 Pre-Proposal Submittals

The “Pre-Proposal Submittals” are as follows:

- Pursuant to Section 2.10 (regarding changes in a Proposer’s organization, and changes in Key Personnel);
- Pursuant to Section 3.3 (regarding Alternative Technical Concepts);

The applicable deadlines for submission of the Pre-Proposal Submittals, and the last date for the Department to respond, are set forth in Section 1.7.1.

Proposers are encouraged to submit Pre-Proposal Submittals at any time prior to the stated deadlines, and the Department will endeavor to respond to the Pre-Proposal Submittals within fourteen (14) calendar days of the Friday in the week in which the Pre-Proposal Submittals were submitted, provided, however, that this time period for the Department’s response may be extended in the Department’s sole discretion based on the number and complexity of the Pre-Proposal Submittals in receipt at any one time. The Department reserves the right to respond to Pre-Proposal Submittals in whatever order it chooses in order to expedite reviews.

2.5 Pre-Proposal Submission Meetings

2.5.1 Informational Meetings

The Department may hold joint informational meetings with all Proposers at any time prior to the Proposal Date. Informational meetings may be held either in-person or by telephone or other electronic means. If held other than in person, the meeting will permit interactive communication between all Proposers and the Department. The Department will provide written notice of any such informational meetings to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

Each Proposer shall attend informational meetings with appropriate members of its proposed key management personnel, and if required by the Department, senior representatives of proposed team members identified by the Department.

2.5.2 One-on-One Meetings

The Department intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.7.1 herein, and on such other dates designated by the Department in writing to the Proposers, to discuss issues and clarifications regarding the Project and Project-related documents or communications provided by the Department or the Proposers (including the RFP), and the Proposer’s ATCs. The Department reserves the right to disclose to all Proposers any issues raised during any

of the one-on-one meetings; provided, however, that the Department will not disclose such issues if the Department, in its sole discretion, determines that disclosure (i) would (x) impair the confidentiality of information submitted as part of this procurement or (y) reveal a Proposer's confidential business strategies; (ii) is not necessary in order to address an error, mistake, omission, conflict or ambiguity in the Project-related documents, (iii) is not necessary for purposes of fairness and transparency; and (iv) is not required by the Public Records Law. Except for meetings that the Department expressly indicates are optional, participation at such meetings by the Proposers shall be mandatory. Representatives of FHWA, the Department, and their consultants may attend and participate in one-on-one meetings.

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

- The meetings are intended to provide Proposers with a better understanding of the Project and Project-related documents or communications provided by the Department.
- The Department, except as provided in this ITP, will not discuss with any Proposer any information submitted as part of this procurement (including other Proposals or other Proposers' 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. Accordingly, material information about the Project or procurement that the Department reveals or discusses in response to questions raised in a one-on-one meeting will, except as provided in this ITP, be revealed to the other Proposers.
- The discussions or any statements made by either party in one-on-one meetings shall not be binding on such Person.
- No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules at each meeting.

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 such questions were submitted in writing and the Department provided written responses in accordance with Section 2.3.1 (and then, only to the extent provided in Section 2.3.1 and in the Contract Documents). Such questions and responses will be provided in writing to all Proposers, except to the

extent such questions are deemed by the Department, in its sole discretion, to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs (unless, in either case, the Department believes such disclosure is necessary in the interest of maintaining a fair procurement process or complying with applicable Governmental Rules).

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 this ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

2.5.5 Confidentiality/Applicability of Public Records Law

Proposers shall familiarize themselves with the provisions of NRS 239.001 et seq. (the "Public Records Law"), and any other Governmental Rules and regulations applicable to the disclosure of documents submitted under the RFP subject to the exclusions provided pursuant to NRS 408.215 and 408.3886(6)(c). All materials submitted by Proposers, including the Proposals and the SOQs, shall be subject to such laws.

In the event the Proposer submits any documents which the Proposer believes are not subject to disclosure pursuant to the Public Records Law, it must conspicuously mark each such document "CONFIDENTIAL" or "CONFIDENTIAL TRADE SECRETS" in the header or footer of each such page so affected. Blanket designations that do not identify the specific information to be excluded from disclosure pursuant to the Public Records Law shall not be acceptable and may be cause for the Department to treat the entire Proposal as public information.

The Department will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Public Records Law or other applicable Governmental Rules, as to the interpretation of such laws, or as to definition of trade secret. Moreover, the Department reserves the right to disagree in good faith with Proposer's assessment regarding confidentiality or proprietary nature of information in the interest of complying with the Public Records Law. Nothing contained in this provision shall modify or amend requirements and obligations imposed on the Department by the Public Records Law or other applicable law. The provisions of the Public Records Law or other Governmental Rules shall control in the event of a conflict between the procedures described above and the applicable Governmental Rules. In addition, notwithstanding any claims of exemption asserted by Proposer, the Department shall have sole discretion to determine the applicability of any exemptions under the Public Records Law and of the contents to be disclosed in response to a request thereunder.

Information submitted by Proposers may be made available to USDOT representatives. The Department intends to follow procedures established by USDOT to avoid disclosure, to the extent possible, of such information under the Freedom of Information Act.

The Department will endeavor to keep the Proposal pricing information confidential within the Department (including its committee designees, officials, observers, 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 under Nevada's Public Records Law. Each Proposer, by submission of a Proposal, agrees that it will not be grounds for protest if any member of Department's selection committee or any evaluation team member becomes aware of a Proposer's price at any time during the review process.

In the event of any proceeding or litigation concerning the disclosure of any material submitted by the submitting party, the Department will be the custodian of the submitted material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and the submitting party will be responsible for 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 such litigation, proceeding or request for disclosure shall be reimbursed and paid by the Proposer whose Proposal is the subject thereof.

In addition to the immunity provided to the Department pursuant to NRS 239.012, in no event shall the Department, or any of its board members, agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of all or a portion of a Proposal submitted under the RFP, including materials marked "CONFIDENTIAL," whether the disclosure is deemed required by Governmental Rules or by an order of court or the Attorney General's Office or occurs through inadvertence, mistake or negligence on the part of the Department, or its officers, employees, contractors or consultants.

The foregoing will not preclude the Department from using ideas contained in the Proposal in accordance with Section 6.3 and will not preclude the Department from releasing information as required in connection with any protest filed under Section 7.

Submission of a Proposal constitutes a Proposer's agreement to the provisions of this Section 2.5.5. Each Proposer, by submitting a Proposal, consents to the disclosures described in this Section 2.5.5 and expressly waives any right to contest, impede, prevent, or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing, or delaying such disclosure, under the Public Records Act 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 Department Investigations and Activities

2.6.1 Site Studies and Investigations

The Department has performed certain geotechnical investigation work for the Project and certain historical geotechnical investigation work exists for the Project

corridor. Additional geotechnical investigation work by the Department, including seven (7) pavement borings and six (6) structural borings, is currently under way and is anticipated to be complete by April 2015. The Department will make such historical and new information available to Proposers. Such studies and investigations are or will be included as part of the Reference Information Documents.

The Department has conducted studies and investigations related to historical/archaeological resources, noise levels, environmental justice issues, waters of the U.S., and air quality. Such studies and investigations are included as part of the Reference Information Documents.

Except as otherwise expressly set forth in the Contract Documents, all information provided by the Department will be subject to the same limitations applicable to similar information furnished in the Reference Information Documents. Specifically, the Department makes no representation or warranty as to the accuracy, completeness or suitability of the additional information. See Section 1.5.1 for further limitations on Reference Information Documents.

2.6.2 Hazardous Materials

The Department has certain hazardous materials information for the Project and it is available to Proposers through the Reference Information Documents.

2.6.3 Right-of-Way (ROW)

The Department will be responsible for the expense of acquiring the Planned ROW Limits and Department-Provided Property, based upon the Reference Design indicated in the Reference Information Documents. The Planned ROW Limits and Department-Provided Property include property interests that have been or will be acquired by both the Department and the City of Las Vegas. The Department has commenced ROW acquisition and has already acquired 89 parcels of the 178 parcels it estimates the Department will need to acquire. In addition, the City of Las Vegas will be acquiring 18 parcels for the Grand Central Industrial Connector. On or before the date set forth in Section 1.7.1, the Department will issue an Addendum to the RFP which will set forth the status of the ROW acquisition efforts and negotiations.

To the extent any ROW has not been acquired prior to the award of the Contract, the Department anticipates that the Contract will include a schedule that will set forth when each of the remaining parcels will be available to Design-Builder. As described in Section 6.1.3 of the Contract, Design-Builder will generally be responsible for all cost and risk associated with acquisition of any right-of-way other than the Department-Provided Property.

The Project's existing ROW Plans, based on the Project's current Reference Design, is included in the Reference Information Documents.

2.6.4 Utilities

The Department has certain historical utility information for the Project and will make such information available to Proposers through the Reference Information Documents.

The Department is working with the Utility Owners and attempting to negotiate utility agreements for certain preliminary engineering work. Design-Builder, however, will be responsible for both negotiating and entering into its own utility agreements with Utility Owners, unless otherwise provided in the Contract Documents, and complying with all such utility agreements during the term of the Contract. Design-Builder will be responsible for performing or causing certain necessary utility relocations/adjustments to be performed in accordance with applicable standards and Governmental Rules, and for the costs associated with utility relocations/adjustments, except to the extent the Utility Owners are legally responsible for such costs or the Department expressly retains such responsibilities in accordance with the Contract. For those Utility Owners able to establish a prior right in accordance with state and federal Governmental Rules, the Utility Adjustments required for the Project will be considered to be reimbursable to the Utility Owner. As such, Design-Builder's agreements with Utility Owners will include provisions for Design-Builder paying directly for any design, construction or other Utility Owner expenses that would normally be reimbursable under reimbursable utility agreements with the Department.

Please refer to the Utility Impact Matrix provided in the Reference Information Documents for a breakdown of Utility Owners and to the Preliminary Utility Work Packages for a determination of prior rights and Cost Liability.

2.6.5 Governmental Approvals

Among the Governmental Approvals that are anticipated to be needed for the Project are a Section 401 (Water Quality Certification), a Section 402 (National Pollutant Discharge Elimination System Construction Permit), a Section 404 (Discharge of Dredged or Fill Materials), and a Temporary Permit for Working in Waterways. This is not an exhaustive list of all Governmental Approvals required for the Project, and Proposers are not entitled to rely upon this list.

With respect to the Section 404 Permit, the Department prepared and submitted to the U.S. Army Corps of Engineers a Preliminary Jurisdictional Determination Report presenting the results of a September 26, 2013, field survey with a U.S. Army Corps of Engineers' representative and preliminary findings regarding the jurisdictional status of an above-ground drainage feature that may be affected by the Project. On March 3, 2014, the U.S. Army Corps of Engineers sent a letter to the Department concurring with the amount and location of wetlands/other water bodies in the Project area as depicted in the Preliminary Jurisdictional Report. The report identified a 2,169-foot-long drainage feature on the west side of I-15 between South Rancho Drive and I-15 and south of Sahara Drive. On March 6, 2014, the Department signed a copy of the Preliminary Jurisdictional Determination Form accepting the U.S. Army Corps of Engineers' determination. The signed form allows the U.S. Army Corps of Engineers to accept and

process a preconstruction notification or permit application from Design-Builder for the Project.

Upon award of the Contract, Design-Builder shall be responsible for obtaining and maintaining (including preparing applications for) all necessary regulatory, environmental, building, and other permits and Governmental Approvals (including any Governmental Approval modifications but excluding acquisition of any Department-Provided Approvals) to design and build the Project. Design-Builder's responsibility will include compliance with all NEPA commitments for mitigation and monitoring as set forth in the NEPA documents, except for mitigation associated with the Project's displacements, and all Governmental Approval conditions included in Governmental Approvals. Design-Builder will prepare all permit applications based on its proposed design and obtain final Governmental Approvals from the permitting agencies, including taking responsibility for any changes in permits and permit conditions arising out of Design-Builder's design. The Department will support Design-Builder in coordination with environmental regulatory and permitting agencies.

2.6.6 Railroad Companies

The Union Pacific Railroad Company (Railroad) has rail lines and facilities that may be impacted by the Project. There are two Railroad crossing locations within the Project ROW. The first is an existing structure that is part of the Department's Project Infrastructure with a specific NDOT name and number (G941). The second is a new crossing located south of Charleston Boulevard connecting Industrial Road to Grand Central Parkway with a grade separation crossing over the Railroad right-of-way. Design-Builder will be responsible for coordination with the Railroad, in accordance with the relevant requirements of the Project Standards, Railroad Guidelines, Construction and Maintenance Agreements, Railroad Right-of-Entry Agreements, and Public Utility Commission authorization. Design-Builder and the Railroad will enter into the Railroad Right-of-Entry Agreements, as applicable, to perform the Work for each crossing. Design-Builder will be responsible for causing the necessary railroad work or protection to be performed in accordance with applicable standards and Governmental Rules and for the costs associated with the railroad work or protection, except to the extent the railroad is legally responsible for such costs. The Department will support Design-Builder in coordination with the Railroad.

2.6.7 Governmental Agencies, Key Stakeholders Coordination

The Project will require coordination with Governmental Entities and other key stakeholders that may include, but not be limited to:

- U.S. Army Corps of Engineers;
- FHWA;
- Nevada Division of Environmental Protection ("NDEP");
- Nevada State Historic Preservation Office ("SHPO");

- the City of Las Vegas (including the Las Vegas Metropolitan Police Department and Las Vegas Fire and Rescue);
- the Regional Transportation Commission of Southern Nevada;
- the Freeway and Arterial System of Transportation (“FAST”);
- Clark County (including Clark County Public Works and Clark County Regional Flood Control District); and
- the Nevada Highway Patrol.

It is anticipated that Design-Builder will play an active role in coordinating with all relevant government agencies and stakeholders, with the Department providing assistance and cooperation in such efforts.

2.6.8 Certain Third-Party Agreements

The Department has executed, or will execute as of the Effective Date, certain material agreements with third parties that will affect the Project, Planned ROW Limits, or performance of the Work. Copies of such third party agreements are included in the Reference Information Documents and the relevant responsibilities and obligations of Design-Builder with respect to such third party agreements have been included in the Contract and Technical Provisions, as applicable.

2.7 Examination of RFP and Site Access

2.7.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Reference Information Documents, all Addenda, materials posted on the Website with respect to any and all conditions that may in any way affect the amount or nature of its Proposal or the performance of Design-Builder’s obligations under the Contract Documents, and for monitoring the Website for information concerning this RFP and the procurement. The Proposal Letter (Form A) includes an acknowledgment that the Proposer has received and reviewed all such materials. Failure of a Proposer to so examine and inform itself of the aforementioned documents and materials shall be at its sole risk, and the Department will provide no relief for any error or omission. The ability of Proposers to rely on the Reference Information Documents is limited and is expressly set forth in Section 1.5.1 and the Contract.

Each Proposer is responsible for conducting a Reasonable Investigation in connection with its Proposal, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, permanent and temporary Utility appurtenances, area population and demographics, land use and development (including development-related infrastructure), and traffic patterns and driver preferences. The Proposer’s receipt of Department-furnished information (including specifically the Reference Information Documents) does not relieve the Proposer of this responsibility.

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

2.7.2 Site Access

Proposers may be allowed access, through the Proposal Date, to those portions of the Project on which the Department may have rights of access, subject to the terms and conditions of an encroachment or right-of-entry agreement satisfactory to the Department, for purposes of inspecting in-place assets and determining site conditions. Proposers' access, if any, will be for purposes of surveys and inspections only. No construction equipment or drilling equipment will be permitted on any portion of the Planned ROW Limits during the procurement period and no intrusive site investigations (e.g., borings, potholing, etc.) by Proposers will be permitted. To request access to the Project, please contact Michael Yates at MYates@dot.state.nv.us (telephone: (702) 385-6535) or John Ryan at JRyan@dot.state.nv.us (telephone: (702) 671-6650), and send a copy of the request to the Department's Authorized Representative at the address set forth in Section 2.2.1.

2.8 Errors

If any mistake, error, or ambiguity is identified by the Proposer at any time during the procurement process in any of the documents supplied by the Department, the Proposer shall have a duty to notify the Department of such mistake, error, or ambiguity and provide its recommended correction in writing in accordance with Section 2.3.1.

2.9 Improper Conduct

2.9.1 Non-Collusion

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

2.9.2 Organizational Conflicts of Interest

It is the Department's policy that any Person under contract or previously under contract with the Department to prepare procurement documents, preliminary plans, planning reports, or other project development products for the Project will not be allowed to participate in any capacity on a Proposer team. Exceptions to this policy may be granted by the Department, upon written request from such Person, if it is determined that the Person's involvement is in the best interest of the public and does not constitute an unfair competitive advantage to any Proposer. Proposer teams seeking such exception shall submit such written request as soon as possible (optimally by March 9, 2015) because the Department shall not extend the Proposal Date due to, or be responsible for any inability or failure to respond prior to the Proposal Date to any such request.

In addition to the foregoing, the organizational conflict of interest rules found in 23 CFR Part 636, Subpart A, including 23 CFR § 636.116, also apply to this

procurement. 23 CFR § 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.”

Proposer shall provide information concerning organizational conflicts of interest and disclose all relevant facts concerning any past, present or currently planned interests which may present an organizational conflict of interest. Proposer shall state how its interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or key personnel thereof, may result in, or could be viewed as, an organizational conflict of interest.

Proposer is prohibited from teaming with, receiving any advice or discussing any aspect of the Project or the procurement of the Project with any Person with an organizational conflict of interest, including, but not limited to:

- CH2MHill;
- Ernst & Young Infrastructure Advisors, LLC;
- Kimley-Horn & Associates;
- Nossaman LLP;
- O.R. Colan Associates;
- Overland Pacific & Cutler, Inc. (OPC);
- Golder Associates;
- Laura Fitzsimmons Law Office
- Sherman & Howard LLC;
- Bickmore Risk Services; or
- Affiliates (meaning includes parent companies, subsidiary companies, Persons under common ownership, joint venture members and partners, and other financially liable parties for a Person) of any of the above,

Such persons and entities are also prohibited from participating on a Proposer team as a contractor, subcontractor, consultant or subconsultant.

By submitting its response to this RFP, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and

full written disclosure to the Department that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest about which the Proposer knew, or should have known, but failed to disclose is determined to exist during the procurement process, the Department may, in its sole discretion, disqualify the Proposer. If an organizational conflict of interest about which the Proposer knew, or should have known, but failed to disclose exists and the Proposer has entered into the Contract as the Design-Builder, the Department may, at its sole discretion, terminate the Contract. In either case, the Department reserves all rights and remedies.

Proposers are also advised that the Department's guidelines in this RFP are intended to augment applicable federal and State law, including federal organizational conflict of interest laws and rules and the laws and rules relating to NEPA. Such applicable Governmental Rules will also apply to Proposer teams and teaming and may preclude certain Persons from participating on a Proposer team.

2.9.3 Equitable Treatment of Proposers

Proposers are assured that, during the procurement process (including the process for evaluation of ATCs and Proposals), the Department will make every reasonable effort to treat Proposers equitably.

2.9.4 Participation on More than One Team

To ensure a fair procurement process, Major Participants, and any required 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 Major Participants, and Guarantors. The Department reserves the right to disqualify any Proposer that fails to comply with this prohibition.

2.10 Changes in Proposer's Organization and Key Personnel

2.10.1 Changes in Proposer's Organization

In order for a Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by the Department, the Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement (i.e., until execution of the Contract Documents). If a Proposer wishes to make changes in the Principal Participants or other Persons 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, the Proposer shall submit to the Department a written request for its approval of the change as soon as possible but in no event later than the date and time set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. 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 Persons in the RFQ. If a request is made to allow deletion of any Principal Participant or other Person identified in its SOQ, the 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). The Proposer shall submit an electronic copy, as well as an

original and five (5) copies of each such change 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, a Proposer may not make any changes in any Principal Participants or other Persons identified in its SOQ after the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Between the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals and execution of the Contract, the Department, in its sole discretion, will consider requests by Proposers to make changes in the Proposers' organization, including changes in Major Participants identified in the Proposal based only on unusual circumstances beyond the Proposer's control.

2.10.2 Changes in Key Personnel

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by the Department, the Proposer's Key Personnel as identified in the SOQ must remain intact for the duration of the procurement (i.e., until execution of the Contract Documents). If a Proposer wishes to make changes in the Key Personnel identified in its SOQ, the Proposer shall submit to the Department a written request for its approval of the change as soon as possible but in no event later than the date and time set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. 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 individuals in the RFQ. If a request is made to allow deletion of any Key Personnel identified in its SOQ, the 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). The Proposer shall submit an electronic copy, as well as an original and five (5) copies of each such change 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, a Proposer may not make any changes in any Key Personnel identified in its SOQ after the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Between the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals and execution of the Contract, the Department, in its sole discretion, will consider requests by Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control.

SECTION 3 ALTERNATIVE TECHNICAL CONCEPT REVIEWS

3.1 Alternative Technical Concepts

Sections 3.1 - 3.6 set forth a process for pre-Proposal review of concepts conflicting with the requirements for design and construction of the Project, or otherwise requiring a modification of the requirements of the Technical Provisions (“Alternative Technical Concepts” or “ATCs”). This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing the Department, in the Department’s sole discretion, to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

3.1.1 ATCs eligible for consideration hereunder are limited to those deviations from the requirements of the as-issued Contract Documents that result in performance, quality, and utility of the Project that is equal to or better than the performance, quality, and utility of the Project absent the deviation, as determined by the Department in the Department’s 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 or result in: (a) a reduction in quantities without achieving equal or better performance, quality, and utility; (b) a reduction in performance, quality, utility or reliability; (c) major changes to the environmental documents, including the NEPA Approvals, such as another supplemental environmental impact statement; (d) the addition of a separate Department project to the Contract Documents (such as expansion of the scope of the Project to include additional roadways); (e) a Change in Law; (f) an increase in the amount of time required for Substantial Completion beyond the last date for Substantial Completion set forth in Form N; or (g) multiple or material additional right-of-way parcels in addition to those shown in the ROW Plans provided in the Reference Information Documents.

3.1.2 Subject to clause (c) in Section 3.1.1, ATCs that, if implemented, would require further environmental evaluation of the Project, such as a reevaluation of the environmental impact statement, or would require new or modified Governmental Approvals, may be considered; provided, however, that, unless expressly agreed to in writing by the Department, Design-Builder bears all schedule and cost risks associated with such additional environmental evaluation or new or modified Governmental Approvals and the changes are not major, as determined in the Department’s sole discretion. If Design-Builder is not able to obtain the new or modified Governmental Approvals necessary to implement the ATC, (a) Design-Builder will be obligated to develop the Project in accordance with existing Governmental Approvals, without additional Department cost or extension of time and/or schedule and (b) the Department may also under certain circumstances, including when Design-Builder has not used all reasonable efforts to obtain the new or modified Governmental Approval, be entitled to (i) a reduction in the Contract Price and (ii) a reduction in the time allowed to achieve Substantial Completion, all as set forth in the Contract Documents.

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

3.1.4 If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or is unsure whether that concept would be considered an ATC by the Department, the Department recommends that the Proposer submit such concept for review as a Concept ATC in accordance with Section 3.2.

3.1.5 ATCs are Pre-Proposal Submittals (see Section 2.4). Once an ATC is submitted and the Department responds thereto pursuant to Section 3.4, such ATC may not be resubmitted, in whole or in part, by a Proposer to the Department unless the Department expressly requests or allows resubmittal or resubmittal is otherwise approved in advance by the Department, in its sole discretion.

3.2 Concept ATCs

As set forth in Section 1.7.1, on March 11, 2015 and March 12, 2015, the Department will hold one-on-one meetings with Proposers to discuss their respective Concept ATCs that were submitted prior to the issuance of this RFP.

At these meetings, the Department intends to discuss the Concept ATCs and provide general feedback as to whether the Concept ATC would be considered by the Department should the Proposer elect to submit such Concept ATC as a formal ATC. The Department may also provide feedback as to whether the ATC takes advantage of any ambiguity, conflict, error or omission in the Technical Provisions or other documents incorporated into the Technical Provisions by reference, in which case the proposed ATC will not be considered and the RFP will be revised to correct the ambiguity, conflict, error or omission. Feedback from the Department may occur at the meetings or shortly thereafter. The meetings will be limited to a discussion of Concept ATCs and shall not be used to discuss issues associated with the RFP Documents (except for the Technical Provisions insofar as they impact Concept ATCs).

The Department in no way warrants that a favorable response to a Concept ATC will translate into a favorable response to an ATC submittal. Likewise, a favorable response to a Concept ATC submittal is not sufficient to include the ATC in a Technical Proposal.

Submittal of a Concept ATC is not a prerequisite to submitting an ATC submittal under the RFP.

3.3 Pre-Proposal Submission of ATCs

Proposers may submit ATCs to the Department for review at the address specified in Section 2.2.1, until the last date and time for submittals of ATCs identified in Section 1.7.1. Proposers are encouraged to submit ATCs at any time prior to the stated deadlines, and the Department will endeavor to respond to the ATC submissions within fourteen (14) calendar days of the Friday in the week in which the ATC submissions were submitted, provided, however, that this time period for the Department's response may be extended in the Department's sole discretion based on the number and complexity of the ATC submissions and other Pre-Proposal Submittals in receipt at any one time. The Department reserves the right to respond to ATC submissions in whatever order it chooses in order to expedite reviews, but does not intend to use this reservation to discriminate in favor of any one Proposer over any other Proposer. Proposers may also indicate in their ATC submissions their preferred prioritization of

their submitted ATCs for Department review, but the Department shall not be bound by such prioritization.

All ATCs shall be submitted in writing, with a cover sheet identifying the Proposer and stating "Project Neon DB Phase – Confidential ATC(s)." Proposers shall clearly identify the submittal as a request for review of an ATC under this ITP. If a 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 (i) five (5) copies of a narrative description of the ATC and technical information, including drawings, as described below; and (ii) two (2) additional copies of the items described in clause (i) of Section 3.3.1, but which include no identifying information about the Proposer or Proposer team or any references to the Proposer team or any team members.

3.3.1 Pre-Proposal ATC submissions shall include:

(a) a sequential ATC number identifying the 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 necessary design exceptions and a traffic operational analysis, if applicable;

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

(d) any changes in roadway or operations 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 life of the item(s) comprising or affected by the ATC;

(g) any reduction in the time period to reach Substantial Completion 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 specific deviations from said requirements, and a request for approval of such identified deviations;

(i) the analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP and the Contract Documents should be allowed and how the ATC is equal or better than the performance, quality, and utility of the Project absent the ATC;

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

(k) a preliminary analysis of potential impacts on environmental permitting (including comparison to the NEPA Approvals and other applicable Governmental Approvals and an analysis of whether the Proposer believes an updated or supplemental EIS would or would not be required and why);

(l) any additional right-of-way required to implement the ATC (and Proposers are advised that the Department may condition approval of any such ATC with a requirement that the Proposer shall (i) be solely responsible for the acquisition of any such right-of-way, subject to the terms of the Contract Documents, including the cost thereof and obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order for time or money as a result of Site conditions (e.g., 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 additional time or money as a result of any delay, impact, inability or cost associated with the acquisition of such right-of-way;

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

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

(o) an estimate of any additional Department, Design-Builder, and third-party costs, if any, associated with implementation of the ATC;

(p) an estimate of any savings that would accrue to the Department should the ATC be approved and implemented;

(q) if the ATC includes a technique, application, method, means or material that has not been used by the Department in the past or for which there is no Department specification, provide a technical specification addressing the technique, application, method, means or material, as applicable;

(r) a preliminary analysis of potential impacts on design, construction, operations, maintenance, and lifecycle costs as well as the timing of when such costs are incurred, and (ii) the Proposer's price; and

(s) If the ATC relates to traffic patterns as a result of proposed modifications to network configuration, laning, interchange or intersection design, or signal timing, as set forth in the Technical Provisions, the ATC submittal must include proposed modifications to the traffic demand inputs included in the Reference Information Documents, supported by schematic drawings of the proposed revisions to the AM and PM peak period volumes and the rationale for those revisions.

3.3.2 Proposers 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.

3.3.3 If implementation of an ATC will require approval by a third party (e.g., a Governmental Entity), the Department may condition any approval of the ATC with a requirement that the Proposer will have full responsibility for, and bear the full cost and schedule risk of, obtaining any such approvals after award of the Contract and submission of data; provided, however, that, in such event, the Department shall retain its role as liaison with any Governmental Entities as more particularly described in the Contract Documents. If any such condition is imposed and the required third-party approval is not subsequently granted with the result that the Proposer must comply with the requirements of the original RFP and Contract Documents (without regard to the ATC), Design-Builder will be required to develop the Project in accordance with the conditions identified in Section 3.1.2, all as set forth in the Contract Documents.

3.3.4 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 (including that such ATC no longer qualifies or is eligible for consideration as an ATC). The correction of an error, ambiguity or mistake in the RFP shall not be considered a breach by the Department of its obligation to maintain the confidentiality of ATCs as set forth in Section 3.6. In addition, if an ATC includes concepts that have been previously considered and evaluated by the Department, the Department reserves the right to modify the RFP to include such concepts.

3.4 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 date set forth in Section 1.7.1, provided that the Department has received from the Proposer all 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 (with such conditions, modifications or requirements as identified by the Department);

(b) the ATC, although eligible for consideration as an 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 that must be met or clarifications or modifications that must be made;

(d) the submittal is not eligible to be considered as an ATC because it appears to be within the requirements of the RFP (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, the Department reserves the right to require compliance with the requirements of the RFP and Contract Documents (without regard to the Department's response to the submittal), in which event the Proposer will not be entitled to modify its Proposal or, under the Contract Documents, entitle Design-Builder to a Change Order for additional compensation or a time extension under the Contract); or

(e) the submittal is not eligible for consideration as an ATC for one or more reasons set forth in Section 3.1.1(a) - (g) and may not be included in the Proposal.

The Department will make a preliminary determination on whether to approve an ATC such that it may be included in the Proposal. However, Proposer will be responsible for ensuring that the Proposal 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 will be responsible for ensuring that its Proposal complies with the RFP requirements, as modified by approval of the ATC. Approval of an ATC is limited to approval of only those deviations from the requirements of the Contract Documents that are expressly identified as deviations in the narrative of the proposed ATC and for which deviations the Proposer requested specific approval and as indicated below, shall not serve as approval of any design exceptions. All other requirements of the Contract Documents not otherwise expressly identified as deviations in the ATC and expressly approved by the Department in its approval letter remain in full force and effect and all conditions relating to such ATCs reflected in the Contract Documents must be satisfied by the Proposer.

Approval of an ATC does not constitute approval of any design exceptions necessary to implement the ATC. Proposer must submit requests for design exceptions pursuant to the Contract Documents through the design exception review process described in Section 3.1.3 of the Technical Provisions and subject to Section 2.1.2.4 of the Contract. The Department reserves the right to review, condition, or disapprove the design exception.

In its Proposal, Proposer must specifically state whether any approved ATCs are included, with reference to the ATC identification number assigned by the Department, and Proposer shall describe how the ATC is used, cross-referencing other elements of the Proposal that are affected by the ATC.

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 ATC process as well as the Department's determinations regarding ATCs.

The Department's rejection of a pre-Proposal submission of an ATC does not entitle the Proposer to an extension of the Proposal 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 Date or any other date in connection with this procurement.

The Department anticipates that its comments regarding an ATC provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a written request for clarifications under Section 2.3.1, in each case, subject to the end dates set forth in Section 1.7.1 of this ITP.

3.5 Incorporation of ATCs into the Contract Documents

Following notification of the Preferred Proposer, the ATCs that were pre-approved by the Department and incorporated in the Proposal of the Preferred 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 notification of the Preferred Proposer, 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 and the Contract Documents without regard to the ATC and without additional cost or extension of time as set forth in the Contract Documents (and Department may be entitled to a reduction in the Contract Price, and/or schedule as set forth in the Contract Documents).

In accordance with Section 3.6 below, ATCs from unsuccessful Proposers may, in the Department's sole discretion, be presented to the Preferred Proposer for possible incorporation into the Contract Documents. In addition, following execution of the Contract and payment to the unsuccessful Proposers of a stipend under Section 6.3, ATCs from unsuccessful Proposers may, in the Department's sole discretion, be presented to Design-Builder as a Department Change in accordance with the Contract Documents.

Notwithstanding the foregoing, in the event the Department establishes a competitive range of the most highly ranked Proposals based on initial scoring, the Department will not disclose the ATC of a Proposer in the competitive range to any other Proposer in the competitive range.

3.6 Confidentiality of ATCs

Subject to the provisions of the RFP, the Public Records Law, and other applicable Governmental Rules, the Department shall maintain the confidentiality of ATCs and all communications regarding ATCs until the earlier of (a) cancellation of the procurement without selection of a Preferred Proposer, (b) Contract execution; (c) payment of the stipend to the Proposer; or (d) such other date as may be prescribed under the Public Records Law or other applicable Governmental Rules, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Public Records Law, applicable Governmental Rules, and Section 2.5.5 of this ITP. By submitting a Proposal and agreeing to accept the stipend payment, Proposer agrees, if it is not selected as the Preferred Proposer or to be in the competitive range, to disclosure of its work product (including its ATCs and its Technical Proposal) to the

Preferred Proposer. The foregoing shall not preclude the Department from exercising any of its rights with respect to ATCs, as set forth in Section 3, including the right to modify the RFP following submission of an ATC to address issues raised by or arising out of an ATC, which modification(s) may render such ATC moot or no longer applicable.

Receipt by the Department of an ATC that includes a concept concurrently or previously considered and evaluated by the Department (such as an alternative design solution or a value engineering proposition considered and evaluated by the Department separately from this RFP), shall not be considered a confidential concept and the fact that such concept is received by the Department as an ATC shall not prohibit the Department from amending the RFP to allow such concept to be included by all Proposers.

SECTION 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, respectively. The completed Technical Proposal and Price Proposal shall be submitted separately in sealed containers in the format and manner set forth in Sections 4.2 and 4.3.

4.1.1 Proposal Date

The completed Technical Proposal and Price Proposal shall be delivered to the Department in sealed containers no later than the Proposal Date.

4.1.2 Signatures Required

The Proposal Letter (Form A) shall be signed in blue ink by all Principal Participants and shall be accompanied by evidence of signatory authorization as specified in Form A.

4.1.3 Certified Copies

Where certified copies of the Proposal are required, the Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark over-signed by the Proposer Authorized Representative. The over-signature can be undertaken by graphic reproduction.

4.1.4 Conflict Between Electronic and Paper Copies of Proposal

If there is a conflict between paper and electronic copies of the Proposal, the Department, in its sole discretion, shall determine which version shall control and take precedence.

4.1.5 Consequences of Failure to Follow Requirements

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

4.2 Requirement to Submit Responsive, Compliant Proposal

A 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 a Proposal does not fully comply with the instructions and rules contained

in this ITP, including the exhibits, it may be considered non-responsive and/or non-compliant.

Each Proposal must be submitted in the official format specified by the Department in this RFP. Proposers shall sign the original copies of their Technical Proposal and their Price Proposal that are submitted to the Department. Multiple or alternate proposals or proposals with options may not be submitted.

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

(a) If the Proposal is submitted in a paper or electronic form other than that specified by 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 due to illegible text, omissions, erasures, alterations, items not called for in the RFP, or unauthorized additions;

(c) If multiple or alternate Proposals or Proposals with options 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 the Proposer attempts to limit or modify the Proposal Bond (see Exhibit C, Section 4), if the Proposal Bond is not provided, and/or if requested information deemed material by the Department is not provided; or

(e) The Proposal contains a material alteration, as determined by the Department, in its sole discretion, to the ITP forms or exhibits, including any material alteration to the form of Proposal Bond (Form J).

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 the Proposer's Proposal Bond.

4.3 Format

Each Proposal shall contain concise written material and drawings enabling a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Price Proposal are essential. The Technical Proposal shall not exceed the page limitations identified in Exhibit B, Section 2.0. No page limit applies to appendices, dividers, exhibits and tables of contents; 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 ½ by 11-inch format (½ inch margins) is required for typed submissions. Drawings, however, shall be submitted in the format set forth in Section 4.4.1, except that electronic files containing such drawings shall also be provided on a CD or a flash drive in Adobe (.pdf) format and in MicroStation (.dgn) format. Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and analyze the schedule in Primavera P6.

Submittals must be bound with all pages in binders sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than twelve-point (either Times New Roman or Arial), provided the font size in the organizational charts, graphics, and tables may be ten-point so long as the organizational charts, graphics, and tables are legible, as determined by the Department in its sole discretion. The use of 11 by 17-inch foldouts for tables, graphics, and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch foldout will be considered one page. Technical drawings and schedules in 11 by 17-inch format that comprise large continuous portions of the Proposal (i.e., more than 10 continuous pages) shall be bound in an appendix such that the 11 by 17-inch sheets are not folded. In addition, sheets for technical drawings that exceed 11 by 17-inch size shall be submitted in roll form and need not be placed within the bound document.

Dividers may be used within bound volumes and for any 11 by 17-inch appendix volumes and will not be counted towards any applicable page counts.

4.4 Additional Requirements for Proposal and Escrowed Materials Delivery

Proposals are to be delivered to the Department in sealed containers no later than the Proposal Date and time specified in Section 1.7.1 at the address set forth in Section 1.7.2. The Escrowed Materials shall be delivered to the escrow as specified in Section 4.4.4.

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 (e.g., Copy x of 10), labeled, and bound.

4.4.1 Technical Proposal

The Technical Proposal shall be contained in two volumes: Volume 1 - Executive Summary, Administrative Materials, and Forms and Volume 2 – Technical Project Delivery Plan, as more fully described in Exhibit B.

All of the binders comprising the original Technical Proposal, (including drawings) together with an electronic copy of the entire Technical Proposal (including drawings) shall be uploaded to one or more CDs or flash drives (and clearly labeled as such) , shall be packaged in a single container, clearly addressed to Department as provided herein, and labeled “[Proposer Name]: Original Technical Proposal for Project Neon – DB Phase.” Proposers shall provide one (1) original plus ten (10) certified copies of the bound Technical Proposal). The containers that include the required hard copies of the Technical Proposal shall be labeled “Copies of Technical Proposal for Project Neon – DB Phase.” “Hard copy” drawings shall be provided in a format greater than or equal to

11" by 17" and not greater than 24" by 36" per sheet, and shall be included in the containers in a fashion that Proposer deems most prudent to deliver such drawings.

The electronic copy shall be in a searchable Adobe (.pdf) format (except that original executed letters need not be searchable) on CD(s) or flash drives, with file names that correspond to the Technical Proposal (or portions thereof); provided, however, that (a) Proposal forms may be submitted in either Adobe (.pdf) or Microsoft Word (.doc or .docx only) format, and (b) corporate, partnership, joint venture, and limited liability company documents (i.e., articles of incorporation, bylaws, partnership agreements, joint venture agreements, and limited liability company operating agreements) are to be submitted in hard copy and need not be submitted electronically.

4.4.2 Price Proposal

The Price Proposal (including the Proposal Bond and the Escrow Agreement, which shall be submitted as directed in Section 4.4.3) shall be delivered to the Department in one (1) original and four (4) certified copies, together with electronic copies on one (1) CD or flash drive using searchable Adobe (.pdf) or Microsoft Excel (.xls or .xlsx only) format. The documents shall be included in a sealed container labeled "[Proposer Name]: Price Proposal for Project Neon - DB Phase."

4.4.3 Proposal Bond and Escrow Agreement

One (1) original and four (4) certified copies of the Proposal Bond shall be provided with the Price Proposal and shall be in one separate envelope labeled "[Proposer Name]: Proposal Bond for Project Neon – DB Phase." The original of the Proposal Bond shall be stamped "original" in the single envelope with the four (4) certified copies. One certified copy of the Escrow Agreement shall be provided with the Price Proposal, in a separate envelope labeled "[Proposer Name]: Escrow Agreement for Project Neon – DB Phase."

4.4.4 Escrowed Materials

In addition, one (1) or more sealed container(s) labeled: "[Proposer Name]: Escrowed Materials for Project Neon DB Phase – Cost and Pricing Data," containing one (1) set of the Cost and Pricing Data (see Exhibit C, Section 3.2) shall be delivered into escrow not later than seventy-two (72) hours after the Proposal Date. The Cost and Pricing Data of the Preferred Proposer shall be subject to the review of the Department in connection with any award of the Contract. See Exhibit C, Section 3.1 for additional information regarding additional requirements with respect to the Escrow Agreement.

4.5 Currency

All required pricing, revenue, and cost information shall be provided in US\$ currency only. Where pricing is to be provided in 2015 dollars, such pricing shall be as of the Proposal Date.

4.6 Modifications, Withdrawals, and Late Submittals

4.6.1 Modifications to a Proposal

A Proposer may modify its Technical Proposal or Price Proposal in writing prior to the specified time on the Proposal Date. Any 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. Proposer shall deliver any such modification(s) in the types and manner described in this Section 4; no facsimile or other electronically transmitted modifications will be permitted.

4.6.2 Withdrawal and Validity of Proposals

A Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Date by means of a written request signed by its 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 deliver a new Proposal provided that the new Proposal is received before the specified time on the Proposal Date. No Proposal may be withdrawn on or after the time due on the Proposal Date and any attempt to do so will result in a draw by Department upon the Proposal Bond. A withdrawal of a Proposal in accordance with this Section 4.6.2 prior to the time due on the Proposal Date will not result in the forfeiture of the Proposal Bond.

All Proposals are valid for a period of 180 calendar days after the Proposal Date. No Proposer shall withdraw its Proposal within this 180-calendar day period, unless notified by Department that (i) no Contract for the Project will be awarded by the Department pursuant to the RFP, (ii) the Department has awarded the Contract to another Proposer, and the Department has received the executed Contract and all other required documents from Design-Builder, or (iii) the Department does not intend to award the Contract to the Proposer. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the 180-calendar day period set forth above.

4.6.3 Late Proposals

The Department will not consider any late Proposals. Proposals and/or modifications not requested by the Department received after the corresponding time specified in Section 1.7.1 for submittal of Proposals will be returned to the Proposer without consideration or evaluation.

4.7 Forfeiture of Proposal Bond

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Bond if (i) it withdraws, repudiates, or otherwise indicates in writing that it will not meet all or any part of its commitments made in its Proposal; (ii) it is selected as the

Preferred Proposer, but fails to negotiate with the Department as set forth in Section 5.9.1; (iii) it is selected as the Preferred Proposer, but fails to satisfy the conditions to the execution of the Contract that are the responsibility of the Preferred Proposer to satisfy, including, without limitation, failure to provide the documents required under, or satisfy the conditions set forth in, Sections 5.10.1 and 6.1 by the deadlines set forth in the ITP; (iv) it is selected as the Preferred Proposer and fails to provide access to, or participate in the review of the Escrowed Materials, or both, as set forth in Section 5.10.3; (v) it is awarded the Contract but fails to satisfy all of the conditions to issuance of NTP1 as set forth in Section 4.1.2 of the Contract; or (vi) any other forfeiture event or condition occurs pursuant to the terms of the Proposal Bond.

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

4.8 Acceptance of Delivery by Department; Delivery into Escrow

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. Proposer shall deliver to the Department no later than three (3) Business Days after such delivery a certified copy of such delivery receipt evidencing the time and date of delivery in conformance with the requirements hereunder.

4.9 Costs not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before final award and execution of the Contract, including costs incurred for any interviews, payments owing to the 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.

SECTION 5 EVALUATION AND POST-SELECTION PROCESS

The Department's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable Governmental Rules governing this procurement.

The Proposal evaluation process will include an initial review of each Proposal for responsiveness to the requirements of the RFP Documents and as against the pass-fail criteria, a qualitative evaluation of the Technical Project Delivery Plan, an evaluation of the Price Proposal, and a best value determination. The process may include a request for Proposal Revisions, the establishment of a "competitive range" (see 23 CFR § 636.405), and a negotiations phase with the Preferred Proposer. The steps in the process and evaluation criteria are set forth in Sections 5.2 through 5.10. The evaluation and selection process is subject to modification by the Department, in its sole discretion.

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

Evaluation of the Proposals will be conducted by the Proposal Section Committee ("PSC"), with assistance from various advisory and evaluation committees, including Technical Evaluation Committees ("TECs"), a Price Proposal Committee ("PPC") and proposal advisory teams for both the Technical Proposal ("TPAT") and Price Proposal ("PPAT"). The PSC will be comprised of representatives from the Department and other stakeholders. The TEC, PPC and advisory teams will be comprised of representatives from the Department, advisors (including outside consultants) and other qualified individuals. In addition, observers from federal, State or other agencies with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process.

The primary responsibility of the PSC will be to make an educated and informed assessment of the individual strengths and weaknesses of the Proposals. The primary responsibility of the TEC, PPC and advisory teams and advisors will be to assist the PSC in making that assessment.

Evaluation of the Technical Proposals will initially be conducted by TECs, who will be established based on the technical disciplines to be evaluated. Advisors may assist the TECs. The TECs will present the PSC with their recommendations and findings with respect to the Technical Proposals.

Evaluation of the Price Proposals will be conducted by a Price Proposal Committee ("PPC"). Advisors may assist the PPC. After the PSC receives the recommendations of the TECs and finalizes its own evaluation of the Technical Proposal, the PPC will present to the PSC its recommendations and findings with respect to the Price Proposals. The PSC will then determine the Proposal Score and rankings of each Proposer. The PSC will then take its recommendation on the ranking and selection of the Preferred Proposer to the Selection Official who will either accept the PSC's recommendation, reject the PSC's recommendation, or ask the PSC to re-evaluate its

determinations with specific direction as to the matters to be considered in its re-evaluation.

All evaluators and outside consultants and observers will be required to sign confidentiality statements and conflict of interest disclosures, or otherwise be subject to the Department's confidentiality restrictions and conflict of interest control requirements.

5.2 Best Value Determination

The best value determination will be based on a 100-point scale. The determination of the highest ranked Proposal shall be based on the highest Total Proposal Score computed as follows:

$$\text{Total Proposal Score (max. 100 points)} = \text{Price Proposal Score (max. 60 points)} + \text{Technical Proposal Score (max. 40 points)}$$

5.2.1 Price Proposal Score

The Price Proposal will be scored using the following formula:

$$\text{Lowest Proposal Price submitted by any Proposer} \div \text{Proposal Price of the Proposal being evaluated} \times 60 = \text{Price Score}$$

Price Proposals shall provide for balanced pricing. If the Department does not believe, in the Department's sole discretion, that the Price Proposal for the Preferred Proposer is balanced, the allocation of payments included in Proposer's projected progress payments (Form M-2) and NTP1 Itemized Proposal Price Breakdown (Form M-1.1) shall be subject to negotiation pursuant to Section 5.9.1. In addition, Proposers are advised that the Design-Builder's cost-loaded Project Baseline Schedule is subject to Department approval as a condition of the Department's issuance of NTP2.

5.2.2 Technical Proposal Score

The Technical Proposal Score (maximum of 40 points) will be calculated based on the PSC's evaluation score for each of the technical evaluation factors as described in Section 5.4.1. The PSC technical evaluation score is the sum of the scoring of each of the technical evaluation factors. The Technical Proposal Score will be calculated using the following formula:

$$\text{PSC technical evaluation score} = \text{Technical Proposal Score}$$

5.3 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals will be reviewed by the TPAT and the Price Proposals will be reviewed by the PPAT. Proposals will be reviewed: (a) for conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP, and (b) against the pass/fail criteria set forth below in Sections 5.3.1 and 5.3.2, respectively. Any Proposal that fails to satisfy any of the pass/fail requirements of the evaluation may not be eligible for further evaluation and recommendation for award and may be considered unresponsive. Responsiveness shall be assessed on the basis of overall

responsiveness to the requirements of the RFP, with the Department retaining sole discretion to disregard or waive minor irregularities, omissions, nonconformities, and discrepancies.

Based on their pass/fail and responsiveness reviews of the Proposals, the TPAT and PPAT will provide recommendations to the Selection Official, as to each Proposal's pass/fail and responsiveness status. As to the pass/fail and responsiveness recommendations provided by the TPAT and PPAT, the Selection Official may: (i) accept the recommendations provided; or (ii) request that the TPAT or PPAT, as applicable, reconsider its recommendations with instructions as to the elements to be reconsidered.

Those Proposals considered nonresponsive to this RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and the corresponding 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 in its sole discretion to disregard or waive minor informalities, irregularities, nonconformities, discrepancies, omissions, and clerical mistakes which, in each case, are unrelated to the substantive content of the Proposals.

In the event that a Proposal contains or omits information that may potentially result in a "fail" determination, the TPAT or PPAT, as applicable, may request additional or clarifying information from a Proposer prior to a final pass/fail determination.

5.3.1 Technical Proposals

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

(a) The business form of the Proposer and any Persons that will have joint and several liability under the Contract or that will provide a performance 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 and provides for continuation of Proposer (and Design-Builder) in the event of bankruptcy or withdrawal of any of its members;

(b) The Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.9;

(c) The Proposer has provided an outline of its DBE Performance Plan in accordance with Section 1.9.1 and Exhibit B, Section 4.1.7;

(d) The Proposer has provided an outline of its Workforce Diversity Plan in accordance with Section 1.9.1 and Exhibit B, Section 4.1.8;

(e) The Proposer information, certifications, signed statements, and documents as listed in Exhibit B, Section 3.2 do not identify any material adverse information;

(f) The date for Baseline Substantial Completion set forth on Form N is not later than the Department's Last Allowable Duration for Baseline Substantial Completion Date, as set forth on Form N;

(g) The Technical Proposal contains the required materials as listed in Exhibit B, Sections 3 and 4;

(h) The Principal Participants and Key Personnel listed in the Proposer's SOQ, have not changed since the Proposer's submission of the SOQ, or the Proposer has previously sought the Department's consent to a change, the Department has consented to such change, and the Proposal attaches a true and correct copy of the Department's written consent thereto;

(i) Proposer has delivered written evidence, satisfactory to the Department, in its sole discretion, from an insurance company(ies), broker(s), agent(s), or advisors(s) expressly indicating that Proposer (and Design-Builder) will be able to obtain and maintain the insurance types and amounts required by the Contract Documents and can do so under the terms, and subject to the conditions, specified in Section 9 of the Contract. The Department shall be satisfied if such insurance company(ies)', broker(s)', agent(s)', or advisor(s)' signatories to such written evidence explicitly state that it/they have read the Contract Documents and insurance requirements set forth therein and that the Persons required to obtain insurance under the Contract have the capability of obtaining such insurance in the coverages and under the conditions listed in the Contract; and

(j) Proposer has delivered all other documents, properly completed and signed (if required), in form and substance as specified under the RFP Documents, and such documents do not identify any material adverse information.

5.3.2 Price Proposals

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

(a) Proposer has provided a Contract Price using Form M-1 that complies with the requirements of Exhibit C.

(b) If a Guaranty is required by the Department pursuant to Section 3.2.18 of Exhibit B, the financial condition and capabilities of Proposer's guarantor(s) demonstrate Guarantor's financial capacity and ability to guarantee the obligations of Proposer pursuant to the form of Guaranty attached as Appendix 14 to the Contract. Factors that will be considered in evaluating the proposed Guarantor's financial capacity include the following: (i) profitability, (ii) capital structure, (iii) ability to service existing debt, (iv) other commitments and contingencies;

(c) The Proposer has delivered a Proposal Bond in the form of a complete, properly executed bond that complies with the requirements of Section 4.0 of Exhibit C; and

(d) The Price Proposal contains the required materials as listed in Exhibit C, Sections 2, 3, and 4.

5.3.3 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 that are unrelated to the substantive content of the Proposals.

5.4 Evaluation of Technical Proposal by TEC and PSC

After completion of, or concurrently with, the pass/fail and responsiveness review of the Technical Proposal, the Technical Proposal will be evaluated by the TECs and PSC based on the factors set forth below to determine whether the Technical Proposal meets, and also whether it includes any improvements over, and brings additional benefits and/or value to the Department and to the public in addition to, the requirements of the Contract Documents. In evaluating the Technical Proposal, the TECs and PSC may consider other information provided with the Technical Proposal. The Proposer's Technical Proposal Score will be determined as set forth in Section 5.2.2.

5.4.1 Technical Proposal Evaluation Factors

The evaluation factors for the Technical Proposal and respective maximum points available for each factor are as follows:

- (a) Project Management Approach (maximum of 6 points);
- (b) Design Approach (maximum of 6 points);
- (c) Traffic Operations (maximum of 2 points);
- (d) Construction Approach (maximum of 10 points);
- (e) Transportation Management Plan (maximum of 8 points);
- (f) Durations for Substantial Completion Deadline and I-15 Interim Milestone Completion (maximum of 6 points as set forth below); and
- (g) Public Involvement Approach (maximum of 2 points).

The points for the "Durations for Substantial Completion Deadline and I-15 Interim Milestone Completion" evaluation factor will be calculated as follows, based on the Completion Deadlines provided in Form N for the Substantial Completion Deadline Duration and the Interim Milestone Completion Duration for the I-15 Department Project Infrastructure:

Evaluation Point Allocation for Durations Proposed for Substantial Completion Deadline

	Proposal Commitment Duration for Substantial Completion Deadline	(Form N) Calendar Days	Points
Proposer A	Lowest Number of Proposed Calendar Days		4
Proposer B	Second Lowest Number of Proposed Calendar Days		2
Proposer C	Highest Number of Calendar Days		0

If one or more of the Proposals contains the same number of calendar days on Form N for the Substantial Completion Deadline Duration, then the following point system will be applied, as applicable:

	Proposal Commitment Duration for Substantial Completion Deadline	(Form N) Calendar Days	Points
Proposer A	Lowest Number of Proposed Calendar Days		4
Proposer B	Lowest Number of Proposed Calendar Days		4
Proposer C	Highest Number of Proposed Calendar Days		0

	Proposal Commitment Duration for Substantial Completion Deadline	(Form N) Calendar Days	Points
Proposer A	Lowest Number of Proposed Calendar Days		4
Proposer B	Lowest Number of Proposed Calendar Days		4
Proposer C	Lowest Number of Proposed Calendar Days		4

	Proposal Commitment Duration for Substantial Completion Deadline	(Form N) Calendar Days	Points
Proposer A	Lowest Number of Proposed Calendar Days		4
Proposer B	Second Lowest Number of Proposed Calendar Days		2
Proposer C	Second Lowest Number of Proposed Calendar Days		2

Evaluation Point Allocation for Durations Proposed for I-15 Interim Milestone Completion

	Proposal Commitment Duration for Interim Milestone Completion for I-15 Department Project Infrastructure	(Form N) Calendar Days	Points
Proposer A	Lowest Number of Proposed Calendar Days		2
Proposer B	Second Lowest Number of Proposed Calendar Days		1
Proposer C	Highest Number of Calendar Days		0

If one or more of the Proposals contains the same number of calendar days on Form N for the Interim Milestone Completion Duration for the I-15 Department Project Infrastructure, then the following point system will be applied, as applicable:

	Proposal Commitment Duration for Interim Milestone Completion for I-15 Department Project Infrastructure	(Form N) Calendar Days	Points
Proposer A	Lowest Number of Proposed Calendar Days		2
Proposer B	Lowest Number of Proposed Calendar Days		2
Proposer C	Highest Number of Proposed Calendar Days		0

	Proposal Commitment Duration for Interim Milestone Completion for I-15 Department Project Infrastructure	(Form N) Calendar Days	Points
Proposer A	Lowest Number of Proposed Calendar Days		2
Proposer B	Lowest Number of Proposed Calendar Days		2
Proposer C	Lowest Number of Proposed Calendar Days		2

	Proposal Commitment Duration for Interim Milestone Completion for I-15 Department Project Infrastructure	(Form N) Calendar Days	Points
Proposer A	Lowest Number of Proposed Calendar Days		2
Proposer B	Second Lowest Number of Proposed Calendar Days		1
Proposer C	Second Lowest Number of Proposed Calendar Days		1

All other evaluation factors for the Technical Proposal will be qualitatively evaluated, using the information provided in the Technical Proposal.

5.4.2 Price Proposal Evaluation

After completion of the pass/fail and responsiveness review of the Price Proposal by the PPAT, the PPC will evaluate the Price Proposal to provide its calculation of the Price Score.

The evaluation of the Price Proposal and calculation of the Price Proposal Score will be independent of any consideration of the Proposer's Technical Proposal or schedule.

The Proposer's Price Proposal Score will be determined as set forth in Section 5.2.1.

5.5 Total Proposal Score

After completion of the evaluation of the Technical Proposal and the Price Proposal, the PSC will determine the Total Proposal Score for each Proposal by adding the Proposal's Technical Proposal Score and Price Proposal Score as set forth in Section 5.2.

5.6 Requests for Clarification

The Department may, at any time, issue 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 within such other earlier or later time as is specified by the Department in its soliciting correspondence requesting clarification or additional information) from receipt of the request. The scope, length, and topics to be addressed in clarifications shall be prescribed by, and subject to the sole 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.

5.7 Requests for Proposal Revisions

The Department may, at any time after receipt of Proposals and prior to award and execution of the Contract, determine that it is appropriate to request changes to the Proposals (“Proposal Revisions” or “BAFOs”). Only Proposers that submitted responsive Proposals will be permitted to submit Proposal Revisions. If Proposal Revisions are requested, the Department will follow the procedures for revised proposals described in 23 CFR Part 636, including use of a “competitive range,” if the Department deems doing so to be appropriate. The Department may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, then the term “Proposal,” as used in the RFP Documents, shall mean the original Proposal, as modified by the Proposal Revision.

A Proposer may, but is not required to, respond to a request for a Proposal Revision. In the event a Proposer elects not to respond to a request for a Proposal Revision, such Proposer shall not be eligible for award of the Contract, but (a) such Proposer shall remain eligible for the stipend (provided it has satisfied all other conditions thereto and eligibility requirements set forth in this ITP and the Stipend Agreement) and (b) provided that all other conditions for return of the Proposal Bond have been satisfied, the Proposal Bond shall not be subject to forfeiture and will be returned to such Proposer.

Upon receipt of Proposal Revisions, the TEC, PSC, and PPC, as appropriate, will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.8 Identification of the Preferred Proposer

Once the PSC has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions), the PSC may recommend to the Department Director, or his designee, (in his or her capacity as “Selection Official” for this procurement) that the Proposer with the highest Total Proposal Score be the Preferred Proposer and that the Preferred Proposer be preliminarily selected as Design-Builder under the Contract Documents. If the Selection Official accepts the recommendation of the PSC, the Department’s Authorized Representative shall notify the Preferred Proposer and commence finalization of the Contract Documents (which may include

negotiations) with such Proposer pursuant to Section 5.9. Alternatively, the Selection Official may reject the recommendation and cancel the procurement or request reconsideration of the recommendation with instructions on the issues to be re-evaluated. Upon the PSC's reconsideration of its recommendation, it will make its recommendation to the Selection Official. If the Selection Official accepts the recommendation of the PSC, the Department's Authorized Representative shall notify the Preferred Proposer and commence finalization of the Contract Documents (which may include negotiations) with such Proposer pursuant to Section 5.9. Alternatively, the Selection Official may reject the recommendation and cancel the procurement or direct that the Department request changes to the Proposals ("Proposal Revisions" or "BAFOs").

5.9 Finalization of the Contract; Extension of Deadlines

5.9.1 Negotiation of Contract Documents

After preliminary selection by the Department, Department staff will proceed with meetings with the Preferred Proposer to finalize the Contract Documents. The Department may elect to negotiate various aspects of the Contract Documents with the Preferred Proposer, including aspects of the Proposal that will be incorporated into the Contract Documents and incorporation of unsuccessful Proposers' work product; however, any decision to commence negotiations regarding the terms of the Contract Documents is at the Department's sole discretion.

By submitting its Proposal, each Proposer commits to enter into the form of Contract included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of Contract indicates is required from the Proposal (e.g., ATCs).

If the Department elects to negotiate various aspects of the Contract Documents with the Preferred Proposer and a Contract satisfactory to the Department, in its sole discretion, cannot be negotiated with the Preferred Proposer, the Department may formally suspend or end negotiations with that Preferred Proposer and take action consistent with the direction provided by the Department Director, or his designee. Such action may include (a) requiring the Preferred Proposer to enter into the form of Contract Documents included in the RFP, without further negotiation or variation except to fill in blanks and include information that the form of Contract indicates is required from the Proposal (e.g., ATCs); (b) rejection of all Proposals; or (c) proceeding to the next most highly ranked Proposal to finalize or attempt to negotiate a Contract with that Proposer in accordance with this Section 5.9 and so on until the Department successfully negotiates a Contract or elects, in its sole discretion, to terminate this procurement.

In the event the Department elects to commence negotiations with a Preferred Proposer, then such Preferred Proposer will be deemed to have failed to engage in good faith negotiations with the Department and shall forfeit its Proposal Bond as set forth in Section 4.7 if the Preferred Proposer fails to attend or actively participate in reasonably-scheduled negotiation meetings with the Department or insists upon terms or conditions for any documents to be negotiated or provided by the Preferred Proposer

hereunder that are inconsistent with the Contract Documents as issued in the RFP Documents. Failure by a Preferred Proposer to agree to inclusion of ATCs from unsuccessful Proposers shall not be deemed a failure to engage in good faith negotiations that will entitle the Department to draw upon the Proposal Bond.

5.10 Department Review of Post-Selection Deliverables

5.10.1 Documents to be Submitted Following Notification of Preferred Proposer

As a condition precedent to award of the Contract, the Preferred Proposer shall deliver the following (collectively, the “Post Selection Deliverables”) to the Department within ten (10) calendar days after notification that it is the Preferred Proposer, unless otherwise noted:

(a) Evidence that Design-Builder, each member of Design-Builder’s team and each member of other Major Participants that will transact business in the State are authorized to do so. Such evidence shall be dated no earlier than thirty (30) calendar days prior to the Proposal Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in Nevada along with a “certificate of good standing” (or equivalent) from the state of organization of the Person; (ii) a Certificate of Existence from the Nevada Secretary of State; or (iii) other evidence acceptable to Department. Each such Person shall also provide a valid Nevada State business license.

(b) Drafts of the deliverables identified in Section 6.1.2 for pre-approval by Department.

(c) If not previously submitted in a manner acceptable to the Department, 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.

5.10.2 Department Comment on Post-Selection Deliverables

The Department shall provide comments on any Post-Selection Deliverable required to be delivered to the Department for review and approval hereunder, within ten (10) Business Days after the date of the Department’s receipt of such deliverable. The Department shall have five (5) Business Days to review and respond to subsequent submittals of the deliverable.

5.10.3 Review of Escrowed Materials

The Department (which shall include its advisors) shall be entitled to access and review the Escrowed Materials of the Preferred Proposer following the notification of the Preferred Proposer, such review to be jointly undertaken with the Preferred Proposer in accordance with the Escrow Agreement (Form K). The Department’s review shall assess the completeness and accuracy of the Escrowed Materials, and the Department and the Preferred Proposer shall jointly develop and countersign a detailed index and

catalogue of the contents of the Escrowed Materials. Completion of such review and indexation – and incorporation of an amended exhibit to the Escrow Agreement listing the Escrowed Materials, as indexed – shall be a condition to award and execution of the Contract.

SECTION 6 AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution, and Delivery of Contract Documents

The following are conditions precedent to final award of the Contract:

- (a) successful negotiation of the Contract;
- (b) concurrence in award by FHWA;
- (c) receipt by the Department of all of the documents required to be provided prior to execution of the Contract under Sections 6.1.1 and 6.1.2;
- (d) review and indexation of the Escrowed Materials in accordance with Section 5.10.3;
- (e) execution of the Execution Documents by Design-Builder;
- (f) approval of the award and Contract by the Nevada Transportation Board and execution of the Contract by the Chairman of the Board; and
- (g) any other conditions to award set forth in this ITP or required by NRS 408.3875 to 408.3887, inclusive.

6.1.1 Contract Documents

Upon satisfaction of the conditions set forth in clauses (a)-(d) and clause (g), the Department may deliver four (4) sets of execution copies of the Contract and other documents to be executed in connection therewith (“Execution Documents”) to the Preferred Proposer along with the number of sets of execution copies of the Execution Documents reasonably requested by the Preferred Proposer. The Preferred Proposer shall obtain all required signatures and deliver all of the execution sets of the Execution Documents to the Department within five (5) Business Days after receipt, together with the required documents described in Section 6.1.2. If Design-Builder is a joint venture or a partnership, the Contract must be executed by all joint venture members or general partners, as applicable.

Upon Department’s receipt of all such documents and satisfaction of all conditions precedent, the Department may, in its discretion, execute the Execution Documents.

In the event of a procurement protest is brought under Section 7.1(c) within the period set forth in Section 7.3.3, then the Department, at its sole option and within the exercise of its sole discretion, may elect to move forward with execution of the Contract, may delay its execution or may terminate the procurement at no cost or penalty except, in such event, the Proposer shall be entitled to payment of a stipend upon satisfaction of the other conditions thereto as set forth in this ITP and the Stipend Agreement, if entered. In no event may the Department delay Contract execution beyond the 180 calendar day Proposal validity period without the mutual agreement by the Preferred Proposer.

6.1.2 Documents To Be Delivered By Proposer With Executed Contract

The Preferred Proposer shall deliver to the Department the documents listed below concurrently with the executed sets of the Execution Documents, as a condition to execution of the Contract by Department.

(a) If not previously submitted, a copy of the executed organizational documents for the Preferred Proposer and, if the Preferred Proposer is a limited liability company, partnership or joint venture, the articles of incorporation/certificate of formation/charter/partnership agreement or registration for each member or partner of the Preferred Proposer. The executed form of the organizational documents for the Preferred Proposer may not differ substantially or materially from the draft organizational documents or indicative term sheets included with its Proposal.

(b) If a Guaranty is required by the Department, Proposer shall submit one or more guarantees in the form of Appendix 14 to the Contract from a guarantor(s) acceptable to the Department, in its sole discretion, together with appropriate evidence of authorization thereof.

(c) Evidence of approval of the final form of the Contract Documents, and of due authorization, execution, delivery, and performance of the Contract Documents, by the Design-Builder and if Design-Builder is a joint venture, by its joint venture members. Such evidence shall be in form and substance satisfactory to the Department. If Design-Builder is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Design-Builder is a partnership, such evidence shall be in the form of a resolution signed by all of the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Design-Builder is a limited liability company, such evidence shall be in the form of (1) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, or (2) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (3) 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, certified by an appropriate officer of such joint venture member.

(d) 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 the Performance Bond and the Payment Bond, each in in the amount specified and in the forms attached as Appendix 8 to the Contract, in a form compliant with the requirements of this Section 6.1.2(d) and otherwise reasonably acceptable to the Department. 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 the Notice to Proceed thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Contract or the Technical

Provisions following the date of the letter, but excluding any change orders and any changes or information reflected in the Proposal, such as ATCs and Proposer commitments.

(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 Nevada, and the delivery and enforceability opinion shall be provided by an attorney licensed in the State of Nevada), in the form attached hereto as Form L (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 Delaware may be issued by an in-house or outside counsel not licensed in Delaware.

(f) Evidence that Design-Builder and its Major Participants hold all licenses required for performance of the Work under the Contract Documents.

(g) A letter signed by Proposer, each Major Participant, and each Subcontractor identified 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.

(h) Any other requirements reasonably determined by the Department during pre-award negotiations.

6.2 Debriefings

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Proposers not selected for award may request a debriefing. Debriefings shall be provided at the earliest feasible time after execution of the Contract Documents, as determined by the Department, in its sole discretion. The debriefing shall be conducted by a procurement official familiar with the rationale for the selection decision and Contract award.

Debriefings shall:

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

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

(c) Provide information on areas in which the unsuccessful Proposer's Proposal had strengths and/or weaknesses.

Debriefing shall not include discussion or dissemination of the thoughts, notes, or rankings, as applicable, of individual members of the PSC, TEC or PPC or other

individuals involved in the Proposal evaluation process but may include a summary of the rationale for the selection decision and Contract award.

6.3 Stipend Payment to Unsuccessful Proposers

If it executed the Stipend Agreement prior to issuance of this RFP, as set forth in the Stipend Agreement, Proposer irrevocably elected to accept payment of a stipend as compensation and payment for Proposer's participation in this procurement, preparation of a responsive and compliant Proposal, and for the work product set forth therein. As set forth therein, the Stipend Agreement is expressly conditioned on and was subject to issuance by the Department of this RFP. A copy of the form of the Stipend Agreement is included as Form P in Exhibit D to this ITP.

6.3.1 Compensation and Payment

In accordance with Section 3(a) of the Stipend Agreement, no Proposer shall be entitled to reimbursement for any of its costs in connection with participating in this procurement or responding to this RFP, except as specified in the Stipend Agreement and this ITP. The applicable terms and conditions for compensation and payment of the stipend to eligible Proposers are set forth in Section 3 of the Stipend Agreement.

6.3.2 Eligibility

Compensation and payment of the stipend to Proposer are subject to eligibility requirements set forth in Section 4 of the Stipend Agreement.

6.3.3 Work Product

Section 1 of the Stipend Agreement addresses the Department's rights to all work product generated or developed by or on behalf of Proposer during this procurement in connection with the Project, including those items submitted by or on behalf of Proposer to the Department in connection with Proposer's Proposal. In addition to such rights, in accordance with Section 3.6 of this ITP, the Department will have the right to inform the Preferred Proposer regarding the contents of the other Proposals after notification of the Preferred Proposer, and that the Contract may incorporate the above-described work product, ideas or concepts based thereon. Upon the Proposer's receipt of payment hereunder, this right shall also extend to allow the Department to use such work product, ideas, and concepts in the performance of its functions. Payment of the stipend to Proposer shall operate as a release and waiver by Proposer of any and all claims challenging the procurement process, award and/or cancellation of the procurement process.

6.4 Disposition of Escrowed Materials Following Conclusion of Procurement Process

In accordance with the procedures set forth in the Escrow Agreement (Form K), 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 Department terminates this procurement. The escrowed materials of Design-Builder that were delivered into escrow under the Escrow

Agreement (Form K) in connection with the Proposal Date shall be retained in escrow or otherwise handled as set forth in the Escrow Agreement (Form K).

6.5 Costs Not Reimbursable

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

6.6 Plans and Schedules Included in Technical Proposal Following Award

Proposer's preliminary plans and schedule submission shall not limit, modify or alter Department's ability to review and approve such plans, schedules, and their constituent parts, under the Contract Documents and the Technical Provisions (where such approvals are indicated or required). Selection of a Preferred Proposer and award of the Contract shall not be deemed to be acceptance or approval of Proposer's preliminary plans and schedule, or any portion thereof. Proposer shall be required to prepare and submit all such plans, schedules, designs, materials, reports, and documents as required under the Contract Documents and Technical Provisions. Department may comment on, and require modifications to, the preliminary plans, schedules and such other plans, designs, materials, reports, and documents in accordance with the Contract Documents and/or Technical Provisions, and Department may disapprove such items, or any portion thereof, if submitted for approval under the Contract Documents and/or the Technical Provisions.

SECTION 7 PROTESTS

7.1 Applicability

This Section 7 sets forth the exclusive protest remedies available with respect to the RFP. These provisions prescribe the exclusive procedures for protests regarding:

(a) 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 this RFP or as to whether a Proposal passes the pass/fail criteria set forth in the RFP, as applicable; and

(c) award of the Contract and any other protest not addressed in clauses (a) and (b).

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 this Section 7.2. Informal discussions shall be initiated by a written request for a one-on-one meeting delivered to Department's Authorized Representative. The written request shall include an agenda for the proposed one-on-one meeting. The Department will meet with the Proposer as soon as practicable to discuss the nature of the allegations. If necessary to address the issues raised in a protest, the Department may, in its sole discretion, make appropriate revisions to the RFP Documents by issuing addenda.

7.3 Deadlines for Protests

7.3.1 Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no earlier than the one-on-one meeting held pursuant to Section 7.2, and no later than twenty (20) calendar days prior to the Proposal Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five (5) Business Days after the Addendum is issued (but in any event, prior to the Proposal Date).

7.3.2 Protests concerning the issues described in Section 7.1(b) must be filed no later than five (5) Business Days after receipt of the notification of non-responsiveness or failure to pass all pass/fail criteria set forth in this RFP, as applicable.

7.3.3 Protests concerning the issues described in Section 7.1(c) must be filed no later than ten (10) calendar days after notification of the selection of a Preferred Proposer.

7.4 Content of Protest

Protests filed in accordance with Section 7.3 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 Office of the Attorney General, Transportation Division, at Nevada Department of Transportation, 1263 South Stewart Street, Room 315, Carson City, NV 89712, as soon as the basis for protest is known to Proposer. For any protests filed after the Proposal Date, Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained by contacting Department's Authorized Representative.

7.6 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within five (5) calendar 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 by clear and convincing evidence. 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 Department Director, or his designee, shall issue a written decision regarding the protest within thirty (30) calendar days after the filing of the detailed statement of protest under Section 7.5. The decision by the Department Director, or his designee, shall be final. 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.

The written decision of the Department Director, or his designee, shall be final, binding, and not subject to appeal.

7.9 Protestant's Payment of Costs

If a protest is denied, the 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 and agrees to the limitation on its rights to protest provided in this Section 7, and expressly waives all other rights and remedies that may be available to the Proposer under Governmental

Rules. These provisions are included in the RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 7, it shall indemnify and hold the Department and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 8 DEPARTMENT RIGHTS AND DISCLAIMERS

8.1 Department Rights

The Department may investigate the qualifications and references of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Preferred Proposer's obligations under the Contract Documents. The Department reserves the right, in its sole discretion, to:

- (a) Develop the Project in any manner that it, in its sole discretion, deems necessary;
- (b) Reject any or all of the Proposals;
- (c) Modify any dates set or projected in this RFP and extend any deadlines;
- (d) Cancel, modify or withdraw the RFP in whole or in part at any time prior to the execution by Department of a Contract, without incurring any cost obligations or liabilities, except as otherwise provided in Section 6.3 of this ITP;
- (e) Terminate this procurement and commence a new procurement for part or all of the Project;
- (f) Terminate evaluations of Proposals received at any time;
- (g) Suspend or terminate negotiations at any time, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence Contract negotiations with any responding Proposer, engage in negotiations with other than the highest ranked Proposer;
- (h) Modify the procurement process (with appropriate notice to Proposers);
- (i) Waive or permit corrections to data submitted with any response to this RFP until such time as Department declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (j) Permit submittal of addenda and supplements to data and information previously provided in a Proposal pursuant to a request for clarification issued by Department until such time as Department declares that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (k) Appoint evaluation committees or teams to review Proposals, make recommendations and seek the assistance of outside technical experts, advisors, and consultants in Proposal evaluation;
- (l) Disclose information contained in a Proposal to the public as described herein;
- (m) Approve or disapprove changes in the Key Personnel identified in the SOQ;

- (n) Approve or disapprove changes in the Proposer's organization;
- (o) Waive deficiencies, informalities, and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;
- (p) Consider information relating to a Proposer or Proposal based on information outside of the Proposal available to the evaluators, including the evaluators' personal experiences or knowledge;
- (q) Request Proposal Revisions as specified herein;
- (r) 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;
- (s) Not issue a notice to proceed after execution of the Contract Documents;
- (t) Disqualify any Proposer that violates the terms of the RFP;
- (u) Determine a competitive range and conduct discussions with Proposers in that competitive range; and
- (v) Exercise any other right reserved or afforded to Department under this RFP and applicable Governmental Rules.

8.2 Department Disclaimers

This RFP does not commit the Department to enter into any contract. Except as expressly set forth in the Stipend Agreement and Section 6.3 above, and the return of the Proposal Bond to Proposer in accordance with the terms of this ITP, 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 this 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 the Department, has been authorized and executed by the Department and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of the Department to the Proposers during the procurement process, which obligations are expressly set forth in these RFP Documents. In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.