



## **INDIANA DEPARTMENT OF TRANSPORTATION**

### **REQUEST FOR PROPOSALS**

**To Design and Build the  
Safer Drive 65 Project  
Through a Fixed-Price Best Design  
Public Private Agreement  
(Design-Build Delivery)**

### **VOLUME I INSTRUCTIONS TO PROPOSERS**

**ISSUED**

**July 19, 2024**

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## **FORMS**

Form A	Proposal Letter
Form B	Proposer Organization Information Recertification
Form C	Questionnaire
Form D	Industrial Safety Record for Proposer, Equity Members and Major Participants
Form E	Personnel Work Assignment Form and Commitment of Availability
Form F	Non-Collusion Affidavit
Form G	DBE Certification
Form H	Conflict of Interest Disclosure Statement
Form I	Fixed Price Proposal Form
Form I-1	Summary Cost Table Form
Form I-2	Included Additional Project Elements
Form J	Proposal Bond
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# INSTRUCTIONS TO PROPOSERS

## Request for Proposals: Safer Drive 65 Project

### SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

#### 1.1 Introduction

This Request for Proposals (**RFP**) is issued by the Indiana Department of Transportation (**INDOT**) to seek competitive proposals (individually, a **Proposal** and collectively, **Proposals**) under a fixed-price best design procurement methodology described in the RFP.

Pursuant to the Public-Private Agreement (**DBA**), the successful Proposer (**Design-Build Contractor**) shall design and construct the Safer Drive 65 Project (**Project**). The Project involves construction of added travel lanes and pavement rehabilitation along I-65 in Clark and Scott Counties. The interstate construction limits of the Project are generally from 0.5 mile north of the Blue Lick Road interchange in Indiana to the SR 56 interchange near Scottsburg, a total length of approximately thirteen miles. A general map of the Project can be found on the <https://www.saferdrive65.com> (**Procurement Website**).

The form of DBA is included as Volume II of this RFP.

Proposers must comply with these Instructions to Proposers (**ITP**) during the procurement and in their respective Proposals. Refer to Exhibit A hereto for the meaning of various capitalized terms and initialisms used but not defined herein. Refer to Exhibit 1 of the DBA for the meaning of capitalized terms and initialisms used but not defined in the ITP.

#### 1.2 Project Goals

INDOT's goals for the Project are as follows (in no particular order of importance):

- a. Maximize the length of added travel lanes that can be constructed along I-65 for the fixed price;
- b. Improve the safety of the traveling public and the workers;
- c. Preserve and extend life of pavement within the project limits north of the proposed added travel lanes;
- d. Minimize the length of queue and travel delay during construction; and
- e. Realize the benefits of Alternative Technical Concepts (ATCs) presented by Proposers.

### 1.3 General Description of and Scope of Design-Build Contractor's Obligations for the Project

#### 1.3.1 Overview

The Project includes added travel lanes and pavement reconstruction or pavement rehabilitation of I-65 from 0.5 mile north of the Blue Lick Road Interchange (RP 16+27) in Clark County to SR 56 (RP 29+10) in Scott County.

The Project scope is variable depending on the Apparent Best Value Proposer's design but shall include, at a minimum, four miles of freeway reconstruction and added travel lanes in each direction along I-65, drainage structure improvements, bridge superstructure replacements with widening, bridge deck overlay work, and preventative maintenance pavement rehabilitation work on I-65 and on ramps in areas where added travel lanes are not constructed, as described in greater detail below. Additional work may include additional reconstruction and added travel lanes, and additional structure rehabilitation work.

#### 1.3.2 Project Design Features

The Project limits will vary depending on the extent of construction activities that the Apparent Best Value Proposer includes in its proposed Project scope of Work (**Scope Proposal**).

Each of the individual improvements listed under the headings Base Bid Project Elements and Potential Additional Project Elements, below, is referred to herein as a "Project Element". Station limits listed represent the limits of full width pavement construction. Transition from the additional lane to existing will be effectuated with pavement markings only and be contained within the limits shown.

- **Base Bid Project Elements** – Each Proposer shall be responsible for the following Project Elements (**Base Bid Project Elements**). (see also DBA Exhibit 19)
  - Added Travel Lanes with Total Pavement Reconstruction (RP 16+27, Sta 391+10.00 "Q" to RP 20+27, Sta. 600+00.00 "PR-Q").
  - NBI: 034850 – I-65 over Blue Lick Creek NB – Superstructure replacement and widening for Added Travel Lane (Des. 1600744, Bridge No I65-016-04220)
  - NBI: 034860 – I-65 over Blue Lick Creek SB – Superstructure replacement and widening for Added Travel Lane (Des. 1600750, Bridge No I65-016-04220)
  - NBI: 034880 – I-65 over Caney Fork NB – Superstructure replacement and widening for Added Travel Lane (Des. 1600729, Bridge No I65-016-04222)

- NBI: 034890 – I-65 over Caney Fork SB – Superstructure replacement and widening for Added Travel Lane (Des. 1600733, Bridge No I65-016-04222)
  - CV I65-010-18.35 – Small structure replacement of existing 66” CMP (Des. 2001599, Sta. 501+27 “PR-Q”).
  - CV I65-010-19.90 – Small structure replacement of existing 102” CMP (Des. 2001598, Sta. 582+14 “PR-Q”).
  - CV I65-010-22.77 – Replacement of existing small structure end sections, unless rendered unnecessary by structure replacement work in subsequent segments (Sta. 732+56 “Q”)
  - NBI: 034940 – I-65 over Pigeon Roost Creek NB – Bridge Deck Overlay w/ semi-integral end bents, reinforced concrete bridge approach replacements, and minor fiber wrapping of beams near abutments (Des. 2001604, Bridge No. I65-024-04229)
  - NBI: 034950 – I-65 over Pigeon Roost Creek SB – Bridge Deck Overlay w/ semi-integral end bents, reinforced concrete bridge approach replacements, and minor fiber wrapping of beams near abutments (Des. 2001605, Bridge No. I65-024-04229)
  - Roadway Rehabilitation, 2-inch Mill and Asphalt Overlay (from Terminus of Added Travel Lanes Reconstruction to RP 29+10, Sta. 1105+77 “Q”)
  - Roadway Rehabilitation, 1-inch Mill and 1.5-inch Asphalt Overlay (all ramps at interchange of I-65 and SR 160, RP 19+26, Sta. 546+00 “PR-Q”)
  - Noise Barrier Wall Construction – I-65 NB (Sta. 504+45 “PR-Q to 518+49 “PR-Q”)
  - Intelligent Transportation System Construction – I-65 NB/SB, RP 19+80
- **Potential Additional Project Elements** – Work listed below includes additional Project Elements (**Additional Project Elements**) that each Proposer may include in its Scope Proposal. Additional Project Elements shall be included in order from south to north and shall be contiguous to the prior included elements. Each Proposer shall include in its Scope Proposal as many Additional Project Elements as it will agree to provide for the lump sum fixed-price.
    - Added Travel Lanes with Total Pavement Reconstruction (Variable from RP 20+27, Sta 600+00.00 "PR-Q" to RP 21+25, Sta. 653+25.00 “PR-Q”).
    - NBI: 034911 – I-65 over Brownstown Road NB – Bridge widening for Added Travel Lane RP 21+26 (Des. 2001601, Bridge No. I65-021-09939)
    - Added Travel Lanes with Total Pavement Reconstruction (Variable from RP 21+25, Sta. 653+25.00 “PR-Q” to RP 22+00, Sta. 693+00.00 “Q”).
    - Added Travel Lanes with Total Pavement Reconstruction (Variable from RP 22+00, Sta. 693+00.00 “Q” to RP 22+60, Sta. 725+00.00 “Q”).
    - CV I65-010-22.65 – Small structure replacement of existing 72” CMP RP 22+61 (Des. 2001597, Sta. 725+67 “Q”).

- Added Travel Lanes with Total Pavement Reconstruction (Variable from RP 22+60, Sta. 725+00.00 “Q” to RP 22+75, Sta. 732+50.00 “Q”).
- CV I65-010-22.77 – Small structure replacement of existing 72” CMP RP 22+75 (Des. 2001595, Sta. 732+56 “Q”).
- Added Travel Lanes with Total Pavement Reconstruction (Variable from RP 22+75, Sta. 732+50.00 “Q” to RP 23+68, Sta. 832+00.00 “Q”).
- Bridge Rehabilitation at County Line Road over I-65 - NBI: 034930 – County Line Road over I-65 NB/SB – Patch and fiber wrap piers #2 and #4 RP 23+68 (Des. 2001603, Bridge No. I65-023-04227)
- Rehabilitation at SR 56, Exit 29 - Roadway Rehabilitation, 1-inch Mill and 1.5-inch Asphalt Overlay (all ramps at interchange of I-65 and SR 56, RP 29+34, Sta. 1129+30 “Q”, Des. TBD)

### 1.3.3 Environmental

The required National Environmental Policy Act (NEPA) environmental review for the Project was processed as a Categorical Exclusion Level 4 (CE-4). The CE-4 was approved on January 17, 2023. A supplemental Note to File was included with the NEPA documentation on May 26, 2023. An additional supplemental Note to File is in preparation for scope of work changes identified within the Base Bid Project Elements. A Programmatic Categorical Exclusion Document for Des 2400664 is in process for potential ramp rehabilitation work at I-65 and SR 56.

The CE assumes that all work will be performed within the existing right-of-way (**ROW**) limits. Permanent and temporary ROW beyond the existing limits were not evaluated in the CE. Except as set forth in Section 2.5.3, no permanent or temporary ROW beyond the existing limits will be required to complete the improvements.

It is important to note that the environmental process completed to date may require an amendment due to modifications of the scope of work from the Apparent Best Value Proposer’s design. Nothing contained in this RFP, including any description of the Project, is intended to modify, limit, or otherwise constrain the environmental process or commit INDOT or any other entity to undertake any action with respect to the Project, including any procurement for the final design and construction of the Project.

Design-Build Contractor’s responsibility will include compliance with all INDOT commitments as set forth in the NEPA approval. INDOT will support Design-Build Contractor in coordination with environmental regulatory and permitting agencies.

### 1.3.4 Scope of Design-Build Contractor’s Permitting Obligations

As part of the NEPA process, a Waters of the United States (**WOTUS**) report has been prepared for water resources within the existing ROW. A field review was conducted in July 2019 to affirm the findings of the WOTUS report.



All Governmental Approvals for which INDOT will be responsible to obtain are set forth in Technical Provision 14, Table 14-1.

INDOT obtained the USACE Section 404 Permit (**NWP**) (expires March 14, 2026), a IDEM Section 401 Water Quality Certification (**WQC**) (**IP**) (expires June 28, 2026), and a IDEM Isolated Wetland Permit (expires June 28, 2026), commensurate with the state of the Project development. Currently, INDOT is reviewing the IDEM Section 401 WQC application and anticipates that this permit will be extended to June 28, 2028. INDOT has coordinated the need and method of mitigation with the USACE and IDEM. Based on that coordination, INDOT purchased mitigation credits for the mitigation required by the USACE Section 404 Permit and IDEM Section 401 WQC.

Upon award, Design-Build Contractor will be responsible for obtaining all sediment and erosion control approvals required under the IDEM Construction Stormwater General Permit, any required modifications to the Section 404 Permit, Section 401 Water Quality Certification, and any additional permits necessary based on Design-Build Contractor's design.

### **1.3.5 Right-of Way Acquisition**

No additional ROW is required for the Project. Design-Build Contractor shall be responsible for temporary easements and real property interests that it desires to use for construction or construction access.

### **1.3.6 Fixed-Price (Lump Sum); Scope and NTP**

Design-Build Contractor will design and construct the Project in return for a fixed-price (lump sum) by a certain completion date identified by Proposer in Form L (Completion Deadlines). Work shall be sequenced such that the added travel lanes shall be constructed prior to the rehabilitation only portion of the Project.

Additional information regarding the duties and responsibilities of the Design-Build Contractor is contained in the Technical Provisions and DBA, including a yet to be finalized DBA Exhibit 19. These documents may be modified consistent with the Proposer's Scope Proposal, including any approved and included ATCs prior to Commercial Close. Design-Build Contractor's authorization to commence and pursue the Work shall be pursuant to the issuance of a notice to proceed, as described and defined in the DBA Documents.

### **1.3.7 Maintenance During Construction**

Design-Build Contractor will be responsible for performing any maintenance during construction of the Project that is required by the DBA Documents, including the Technical Provisions. Design-Build Contractor will be required to repair any potholes that are pre-existing or that develop in the existing pavement during construction and will be compensated for such work. Potholes that develop in the work product of the Design-

Build Contractor must be repaired but such repair work shall be considered incidental to the Work.

#### **1.4 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 or supplemented:

Volume I - this ITP (including exhibits and forms)

Volume II - the DBA Documents

Except as may be expressly provided otherwise in the DBA Documents, (a) the Reference Information Documents (**RID**) are not contractual and will not form a part of the DBA Documents, (b) a Proposer may rely on the geotechnical data report included in the Technical Provisions and the survey information provided the Design-Build Contractor verifies the survey control in accordance with the requirements of the Technical Provisions, and (c) Proposers are not entitled to rely on any other information provided in the RID.

INDOT does not represent or warrant that the information, opinions and recommendations contained in the RID 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. Although the RID may include interpretations, extrapolations, analyses and recommendations concerning data, design solutions, technical issues and solutions and constructions 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 INDOT or any other Governmental Entity or represent any statement of approval or acceptance thereof by INDOT 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 DBA Documents, a Proposer shall use or not use the RID at its sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating to roadway and pavement patching (including the sites, locations and sizes thereof), site conditions, geotechnical conditions, Utilities, structures and bridge design, (y) the preparation of its Proposal, and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the RID.

Except as may be expressly provided otherwise in the DBA, INDOT 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 (and Proposers shall have no right to compensation, time extension or other claim in connection with participation in this procurement), by reason of (a) any use, in connection with participation in this procurement, of information, opinions or recommendations contained in the RID, or (b) any action or forbearance in reliance on the RID.

## 1.5 Procurement Schedule, Proposal Submission, and DBA Execution Deadline

### 1.5.1 Procurement Schedule

The following represents the current schedule for the procurement.

**Table 1: Procurement Schedule**

Activity	Anticipated Date
Issue Draft RFP	July 19, 2024
Deadline to submit questions on Draft RFP	July 31, 2024, (12:00 pm ET)
Responses to Questions	August 16, 2024
One-on-One Meeting #1 agendas due Concept level ATCs due	August 21, 2024, (12:00 pm ET)
One-on-One Meeting #1 (RFP and ATCs)	August 27, 2024
Issue Final RFP	September 12, 2024
Deadline to Submit preliminary ATCs	September 13, 2024
Deadline to Submit Questions on Final RFP	September 18, 2024, (12:00 pm ET)
Issue Answers to Questions on Final RFP	September 26, 2024
Provide initial response to ATCs	September 27, 2024
One-on-One Meeting #2 Agendas Due (ATC focus)	October 2, 2024, (12:00 pm ET)
One-on-One Meeting #2 (ATC focus)	October 8, 2024
Issue RFP Amendment #1	October 24, 2024
Deadline to Submit Questions on Amendment #1	October 28, 2024
Issue Answers to Questions on Amendment #1	November 1, 2024
Issue RFP Amendment #2 (if required)	November 6, 2024

Activity	Anticipated Date
Final ATC Submittals Due	November 11, 2024
Pre-Proposal Submittals Due	November 11, 2024
Issue ATC Responses / Clarification Requests	November 26, 2024
Last Date for INDOT Notices on ATC/Pre-Proposals	December 12, 2024
Proposal Due Date	January 10, 2025, (12:00 pm ET)
Apparent Best Value Proposer Announced	February 3, 2025
Project Award (Governor Acceptance)	March 3, 2025
Commercial Close	March 27, 2025

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

### 1.5.2 Proposal Delivery

Each Proposer shall upload its Proposal and all supporting information to the INDOT Autodesk Construction Cloud (**ACC**) site before 12:00 PM (noon) ET on the Proposal Due Date. Proposals shall be uploaded under the Proposer-specific subfolder for the Proposal.

Once the Proposal has been uploaded, the Proposer shall submit a notice via email to saferdrive65@indot.in.gov, ATTN: Kyanna Wheeler, informing INDOT that a Proposal has been uploaded to ACC. The notice shall list all materials that have been uploaded.

Acknowledgment of receipt of Proposals will be evidenced by the issuance of a receipt by INDOT.

### 1.5.3 Deadline for DBA Execution

The Apparent Best Value Proposer selected shall deliver to INDOT executed copies of the DBA and the documents required under Section 6.1.2 on or before the date of Commercial Close.

INDOT may extend the deadline for DBA execution by written notice to the Apparent Best Value Proposer but may not extend such date beyond the 150-day Proposal validity period without agreement of the Apparent Best Value Proposer.

## **1.6 General Provisions Regarding Proposals**

### **1.6.1 Proposal Contents**

As used in this procurement, the term "**Proposal**" means a Proposer's complete response to this RFP including properly completed Proposal forms. In addition, while not part of the Proposal, certain Escrowed Proposal Documents shall be delivered by the Apparent Best Value Proposer into escrow as required by this ITP.

Requirements for the Proposal are in Exhibits B and C, together with a checklist in Exhibit E, showing the required contents of the entire Proposal. The Proposal shall be organized in the order listed in Exhibit E and clearly indexed. Proposers shall submit a compliant and responsive Proposal that includes the elements and documents required by this RFP, and any omission or error in Exhibit E shall not be deemed a waiver of any required element or document.

Each Proposal component shall be clearly titled and submitted without reservations, qualifications, conditions, or assumptions. Any failure to provide all information and completed forms in the format specified by this ITP, or submittal of a Proposal subject to any reservations, qualifications, conditions, or assumptions, may result in INDOT'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 fill the forms out), no substantive change or alteration shall be made in or to the Proposal forms by the Proposer.

### **1.6.2 Inclusion of Proposal in DBA Documents**

Portions of the Apparent Best Value Proposer's Proposal will become part of the DBA through inclusion of DBA Exhibit 7 and modification to DBA Exhibit 19. All other information contained in the Proposal that does not become part of the DBA is for evaluation purposes only.

### **1.6.3 Commitments in the Proposal**

Each Proposal will be interpreted and evaluated based on the commitments provided by the Proposer. Tentative commitments will not be given consideration and should not be included in the Proposal. 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 commitment (such as when phrases such as "we will" or "we shall" are used).

### **1.6.4 Ownership of Proposal**

Except for Escrowed Proposal Documents, all documents submitted by the Proposer in response to this RFP shall become the property of INDOT and will not be returned to the Proposer. Additionally, if Proposer accepts the stipend payment offered by INDOT, as specified herein (Section 6.3), the concepts, ideas and other information contained in its

Proposal shall become the exclusive property of INDOT free of all intellectual property rights and claims, without further action on the part of INDOT.

Subject to the exceptions specified herein and Proposer's acceptance of the stipend payment, all written and electronic correspondence, exhibits, photographs, reports, printed and electronic material, designs, and other graphic and visual aids submitted to INDOT during this procurement process, whether included in the Proposal or otherwise submitted, become the property of INDOT upon delivery and will not be returned to the submitting parties. The foregoing does not apply to Escrowed Proposal Documents required to be delivered to INDOT.

### **1.6.5 Applicability of Public Records Law; Confidentiality**

Proposers shall familiarize themselves with the provisions of the Public Records Act. All materials submitted by Proposers, including the Proposals and the SOQs, shall be subject to the Public Records Act and any other Governmental Rules applicable to the disclosure of documents submitted under this RFP.

Following the preliminary selection of the Apparent Best Value Proposer as Design-Build Contractor by INDOT under IC 8-15.7-4-6(c), the Apparent Best Value Proposer's Proposal shall be made publicly available for inspection and copying (except for portions that may be treated confidentially in accordance with IC 5-14-3). Furthermore, in connection with a request under the Public Records Act, INDOT will disclose the contents of Proposals, except for those portions that INDOT determines shall be treated as confidential in accordance with the Public Records Act, when either: (a) the RFP process is terminated, or (b) the DBA has been executed.

In furtherance thereof, Proposers (other than the Apparent Best Value Proposer) will be required to submit a redacted copy of their respective Proposals and SOQs to INDOT no later than 15 days after DBA execution, with redactions limited to only those portions of the Proposal and SOQ that INDOT determined fall under a specific exemption of the Public Records Act. Proposers shall be required to submit, for INDOT's review and approval, documentation identifying the specific exemption asserted and such other information requested by INDOT in order for INDOT to assess the eligibility of such portions of the Proposal and the SOQ for exemption from publication.

Notwithstanding any proposed redactions or claims of exemption asserted by Proposer, INDOT shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder. Failure of a Proposer to submit a redacted form of its Proposal and SOQ, containing only those redactions consistent with INDOT's determination as to the content that may be redacted, to INDOT by 15 days after DBA execution shall constitute consent by Proposer to, and a waiver of any right to contest, disclosure by INDOT of the Proposer's Proposal and SOQ in their entirety, without redaction, in response to a request submitted under the Public Records Act. As between a Proposer and a third party requesting disclosure under the Public Records Act (as opposed to as between a

Proposer and INDOT exercising its sole discretion rights pursuant to this ITP), this Section 1.6.45 shall not constitute a waiver of the Proposer's rights under the Public Records Act.

If a Proposer has special concerns about information which it desires to make available to INDOT, but which it believes constitutes a trade secret or is otherwise exempt from disclosure under the Public Records Act, such responding Proposer team shall specifically and conspicuously designate that information by placing "CONFIDENTIAL" in the header or footer of each such page affected. Any such designation of trade secret or other basis for exemption shall be accompanied by a concise statement of reasons supporting the claim including the specific law that authorizes the exemption from disclosure under the Public Records Act. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for INDOT to treat the entire Proposal as public information. INDOT will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable Governmental Rules, as to the interpretation of such Governmental Rules, or as to the definition of a trade secret.

Subject to the provisions of this Section 1.6.5 and the other terms and conditions of the ITP with respect to permitting Proposer or INDOT to assert claims of confidentiality and to defend against requests for disclosure, each Proposer, by submitting a Proposal to INDOT in response to this RFP, consents to such disclosure and the provisions of this Section 1.6.5, and expressly waives any right to contest such disclosure under the Public Records Act. Under no circumstances will INDOT, or its officers, employees, contractors or consultants be responsible or liable to a Proposer or any other party as a result of disclosing any such materials, including materials marked "CONFIDENTIAL," whether the disclosure is deemed required by applicable Governmental Rules or in the good faith discretion of the INDOT General Counsel or occurs through inadvertence, mistake or negligence on the part of INDOT, or its officers, employees, contractors or consultants.

In the event of any proceeding or litigation concerning the disclosure of any Proposal or portion thereof, the Proposer shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk; provided, however, that INDOT 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 INDOT in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by the Proposer whose Proposal is the subject thereof.

Nothing contained in this provision shall modify or amend requirements and obligations imposed on INDOT by the Public Records Act or other applicable Governmental Rules. The provisions of the Public Records Act or other laws shall control in the event of a conflict between the procedures described above and the applicable Governmental Rules.

Proposers are also advised that FHWA and USDOT personnel are subject to the terms of the Freedom of Information Act.

Submission of a Proposal constitutes the Proposer's agreement to the provisions of this Section 1.6.45.

## **1.7 Federal 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, it will conform to requirements of applicable federal Governmental Rules and Federal Highway Administration (**FHWA**) regulations, including those set forth in DBA Exhibit 11 and Buy America requirements, and Title VI of the Civil Rights Act of 1964, and the DBE Requirements referenced in Section 1.7.1.

It is INDOT's intent that the RFP, 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. INDOT views State Governmental Rules, specifications, regulations, and policies that are relevant to this procurement and to the Project as not contrary to applicable federal Governmental Rules (including specifically FHWA regulations), but, in the abundance of caution, if INDOT determines that any provisions of State Governmental Rules, specifications, or policies operate in any manner contrary to federal requirements, including those mentioned specifically in the second sentence of this Section 1.7, 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.

### **1.7.1 EEO and DBE Requirements**

#### **1.7.1.1 EEO**

INDOT is an Equal Employment Opportunity (**EEO**) employer.

#### **1.7.1.2 DBE Requirements**

INDOT is required to apply the DBE program requirements to all projects receiving federal dollars, including the Project. Where opportunities exist, INDOT is required to make opportunities available to minority and women-owned firms, including certified DBE firms. Opportunities may include consultants and construction subcontracts as well as other service providers.

INDOT must apply the program on federal-aid projects as set forth in 49 CFR Parts 23 and 26 as well as the federal contractual requirements set forth in FHWA Form 1273. The DBE goal for the Project is as shown on Form G (DBE Certification) for design services, construction or supplies, in the aggregate, all pursuant to and subject to the procedures, rules and regulations outlined in Title 49 CFR Parts 23 and 26.



## **1.8 Insurance Requirements**

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

## **1.9 Qualification To Do Business**

On or before 30 days prior to the Proposal Due Date and continuing through the date of DBA execution, Proposer (if an existing entity) and Major Participants (excluding the Equity Members) must be qualified to transact business in Indiana. As of 15 days prior to DBA execution, Design-Build Contractor must be qualified to transact business in the State.

## **1.10 Prequalification**

Design-Build Contractor and its Subcontractors must have and maintain certain INDOT Certificates of Qualification and INDOT Prequalification Work Type Certifications as set forth in the RFQ.

## **1.11 Interpretation**

This ITP (and the other RFP Documents) will be interpreted as set out in DBA Section 1.4 as if references to “the DBA” were to “the ITP” (or “the RFP Documents”), and references to “Design-Build Contractor” were to “Proposer”.

## SECTION 2.0 PROCUREMENT PROCESS

### 2.1 Procurement Method

This RFP is issued pursuant to Indiana Code 8-15.7 *et seq.*, as amended, and other applicable provisions of State and federal Governmental Rules. INDOT will award the Project to the responsive Proposer offering a Proposal meeting the standards set by INDOT and which is determined by INDOT, through evaluation based upon the criteria set forth in the applicable governmental rules and this RFP, to provide the best value to INDOT and to be in the best interest of the State.

INDOT will accept Proposals for the Project only from Short-Listed Proposers.

Except for pre-approved Alternative Technical Concepts as described herein, INDOT will not review or consider alternative proposals or Proposals with options.

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

General communication including submission of questions and responses will be posted on ACC. Amendments to the RFP will be made available on INDOT's Procurement Website.

#### 2.2.1 INDOT's Authorized Representative

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

Kyanna Wheeler  
Major Projects Senior Project Manager  
Indiana Department of Transportation  
100 North Senate Avenue, IGCN 758-MPD  
Indianapolis, Indiana 47274  
Email: [safedrive65@indot.in.gov](mailto:safedrive65@indot.in.gov)

From time to time during the procurement process or during the term of the DBA, INDOT may modify INDOT's Authorized Representative or appoint additional authorized representatives to carry out some or all of INDOT's obligations pertaining to the Project.

#### 2.2.2 Changes in Proposer Point of Contact

Proposer shall notify INDOT of any changes to its Point of Contact by providing INDOT's Authorized Representative with the name, email address, office address, phone number, and title of the replacement Point of Contact. Failure to update the Point of Contact information may result in the Proposer failing to receive important communications from INDOT. INDOT is not responsible for any such failure.

### 2.2.3 Rules of Contact

From and after the date of issuance of the RFQ (May 8, 2024) and ending on the earliest of (i) the execution and delivery of the DBA, (ii) rejection of all Proposals by INDOT, or (iii) cancellation of the RFP, the following rules of contact shall continue to apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), social media, other electronic means or formal written communication. Any communications determined to be prohibited or improper, at the sole discretion of INDOT, will result in Proposer's disqualification.

The specific rules of contact are as follows:

- (a) No Proposer or any of its team members may communicate with another Proposer or its team members with regard to the SOQs, the RFP, or either team's Proposal; provided, however, that subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish reasonable protocols to ensure that the Proposer team and subcontractor will not act as a conduit of information between the teams.
- (b) INDOT will endeavor to send all Project notices including those related to availability of documents posted on ACC to the Proposer's Point of Contact.
- (c) INDOT's Authorized Representative shall be the sole contact for purposes of this procurement, including this RFP. Proposers shall correspond regarding this RFP only through the Proposer's Point of Contact.
- (d) Commencing with the issuance of the RFQ and continuing for the time listed above, no Proposer or representative thereof shall have any ex parte communications regarding the RFQ, the SOQs, and this RFP or the procurement described herein with:
  - (i) Any member of INDOT; and
  - (ii) Any INDOT staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFQ or this RFP. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFQ, the SOQs, this RFP, or the procurement, or limit participation in public meetings or any public or Proposer workshop related to the RFQ or this RFP. Any Proposer engaging in such prohibited communications may be disqualified at any time in the sole discretion of INDOT.
- (e) Proposers shall not contact the following identified stakeholders regarding the Project, including employees, representatives, members, consultants and advisors of the entities listed below. INDOT will provide any necessary

coordination during the procurement, including the evaluation stage, with such entities in order that, among other things, the procurement be implemented in a fair, competitive, and transparent manner and with uniform information:

- (i) FHWA
- (ii) Scott County, IN
- (iii) Clark County, IN
- (iv) City of Scottsburg, IN
- (v) City of Henryville, IN
- (vi) Environmental, regulatory and permitting agencies, including:
- (vii) Indiana DNR Division of Historic Preservation and Archaeology (State Historic Preservation Officer)
- (viii) U.S. Army Corps of Engineers
- (ix) Indiana Department of Environmental Management
- (x) Indiana Department of Natural Resources
- (xi) Impacted Utility Owners

Information requests concerning these entities shall be sent to INDOT's Authorized Representative.

- (f) Any official information, communications or correspondence regarding the Project will be disseminated from INDOT in writing signed by the INDOT Authorized Representative.
- (g) INDOT will not be responsible for, and Proposers may not rely on, any oral or written exchange or any other information or exchange that occurs outside the official process specified herein.

Correspondence and information regarding the RFP or the procurement shall not have any effect unless it is in compliance with this section.

## **2.3 Questions and Responses Regarding the RFP and Amendments**

### **2.3.1 Questions and Responses Regarding the RFP**

Proposers are responsible for reviewing the RFP and all Amendments. Proposers shall request written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein. Failure of the Proposer to request such clarification or interpretation 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.

To facilitate receipt, processing, and response, Proposers must upload all questions using Form O (Proposer Questions), kept in MS Excel format, to the individual Proposer subfolder under the “Proposer Questions” folder on ACC before the deadline. Once the questions have been uploaded, submit a notice via email to INDOT’s Authorized Representative. 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.

All questions shall be placed on Form O and:

- be sequentially numbered;
- address a single issue per question;
- specifically reference the relevant RFP section;
- not identify Proposer’s identity in the body of the question;
- be self-standing and comprehensible independent of other questions (i.e., not reference prior questions);
- not be identified as confidential;
- indicate the category of question, 1, 2, or 3; and
- include any suggested edits to RFP language in redline.

No telephone or oral requests will be considered. No requests for additional information or clarification to any person other than INDOT’s Authorized Representative will be considered.

The questions and INDOT’s responses will be in writing and will be posted to all Proposers. INDOT may rephrase questions as it deems appropriate and may consolidate similar questions. INDOT will respond to the questions on the date set forth in the ITP.

To the extent responses are provided, they will not be considered part of the DBA Documents, nor will they be relevant in interpreting the DBA Documents, except as expressly set forth in any revisions to the DBA.

### **2.3.2 Amendments**

Revisions to the RFP will be made through issuance of an Amendment. Amendments will be posted to the INDOT procurement site. If any Amendment significantly impacts this RFP, as determined by INDOT, INDOT may change the Proposal Due Date. The announcement of such new date will be included in the Amendment.

Each Proposer shall acknowledge in its Form A (Proposal Letter) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause a Proposal to be deemed non-responsive and rejected. INDOT reserves the right to hold group meetings with Proposers and one-on-one meetings with each Proposer to discuss any Amendment or response to requests for clarifications. INDOT does not anticipate

issuing any Amendment later than five Business Days prior to the Proposal Due Date. However, if the need arises, INDOT reserves the right to do so. If INDOT finds it necessary to issue an Amendment after such date, then any relevant processes or response times necessitated by the Amendment will be clearly communicated in a cover letter to that specific Amendment, including any extension to the Proposal Due Date determined necessary by INDOT.

## **2.4 Pre-Proposal Submission Meetings**

### **2.4.1 One-on-One Meetings**

INDOT intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.5.1 herein to discuss issues and clarifications regarding the Project and Project-related documents or communications provided by INDOT or the Proposers (including the RFP), and Proposer's ATCs.

Participation at such meetings by the Proposers shall be mandatory. Representatives of FHWA, INDOT, and consultants of INDOT may attend and participate in one-on-one meetings.

The meetings are intended to provide clarification to Proposers to assure full understanding of and responsiveness to the RFP, and to provide Proposers with a better understanding of the Project and Project-related documents and communications provided by INDOT. Except as otherwise expressly provided in this RFP, the one-on-one meetings are subject to the following rules:

- Proposer shall provide an agenda in advance of the meeting on the agenda due date.
- Proposer shall include a list of Proposer invitees, which shall include, at a minimum, the Proposers Project Manager. Each Proposer may bring up to 10 individuals to the one-on-one meetings.
- One-on-one meetings shall be in person.
- INDOT will not discuss with any Proposer any information submitted as part of this procurement other than its own.
- Proposers shall not seek to obtain commitments from INDOT 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, except as provided in this ITP, INDOT shall reasonably attempt to provide material information about the Project or procurement that INDOT reveals or discusses in response to questions raised in a one-on-one meeting 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.

#### **2.4.2 Questions and Responses During One-on-One Meetings**

During one-on-one meetings, Proposers may ask questions, and INDOT may provide responses. However, any responses provided by INDOT during one-on-one meetings may not be relied upon.

INDOT reserves the right to disclose to all Proposers any issues raised during any of the one-on-one meetings; provided, however, that INDOT will not disclose such issues if INDOT determines that disclosure (i) would impair the confidentiality of information submitted as part of this procurement, such as a Concept ATC or ATC (unless otherwise provided in Section 3 below), or would 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 Act. 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 Amendment.

### **2.5 Status Updates**

INDOT intends to provide periodic informal updates to the Proposers regarding changes in the status of the matters addressed in this Section **Error! Reference source not found.**

#### **2.5.1 Site Studies, Conditions and Investigations; Historic Information; Aesthetics**

INDOT has already performed certain geotechnical investigation work for the Project. Such work also includes activities conducted on environmental resources such as wetlands. INDOT has made such available historical and new information available to Proposers through the RID. INDOT will also make the previously performed geotechnical borings and cores available to Proposers for inspection, under the supervision of INDOT.

To the extent that any Proposer desires additional geotechnical investigation prior to submittal of its Proposal, then such Proposer will need to coordinate with INDOT prior to conducting any investigation. A Proposer may, at its sole cost and risk, undertake corings, borings and other investigations within the right of way currently owned by the State subject to obtaining all required approvals and permits from INDOT, as applicable, and complying with all requirements relating thereto. The responsibility for timely seeking any desired access, permits and approvals to undertake such corings, borings and other

investigations shall be the sole responsibility of the Proposers, and INDOT shall not have any responsibility or liability with respect to any delay, denial or failure in obtaining such access. See [Section 2.6.2](#) for contact information for access.

The Project is being processed under Section 106 requirements in Indiana under INDOT's Minor Project Programmatic Agreement (MDBA). Deviations from alternatives considered during the development of the CE could result in additional Section 106 review. The final CE includes all pertinent Section 106 process documentation findings, including mitigation commitments. These coordination processes and measures will be included in the environmental requirements of the RFP.

### **2.5.2 Hazardous Materials**

Design-Build Contractor is responsible for determining any impacts as a result of its design, construction, and construction staging areas. See the Red Flag Investigation report in the RID for information regarding sites identified as containing hazardous materials or regulated substances. The Design-Build Contractor shall be required to coordinate with the permit owner for proper handling, transport, and disposal of waste.

Design-Build Contractor shall be required to prepare a Hazardous Materials Management Plan based upon Indiana rules and regulations for addressing Hazardous Materials, which shall include handling, storage, management, transportation and disposal of these materials. Design-Build Contractor will be responsible for appropriate worker safety with regards to Hazardous Materials and petroleum contaminated waste. Design-Build Contractor will be responsible for obtaining all the necessary pre-qualifications and Governmental Approvals from the Governmental Entities where the work is performed.

### **2.5.3 Right of Way**

The project ROW limits shall be the existing INDOT ROW. No additional ROW is planned for the Project. Any temporary easements or real property interests to be used for construction purposes or construction access will be the responsibility of Design-Build Contractor, who will be responsible for following the applicable Governmental Rules in acquiring such interests.

### **2.5.4 Utilities**

INDOT has certain historical utility information for the Project and INDOT will make such information available to Short-Listed Proposers as part of the RID. INDOT does not anticipate that Proposers will need to conduct any utility investigations in order to respond to this RFP. Short-Listed Proposers may, during the RFP process, be asked to provide input on what, if any, additional utility investigation information may need to be collected. INDOT may decide to perform additional utility investigation based on the input received from Short-Listed Proposers during the RFP process.

INDOT has conducted utility coordination activities with the pertinent utilities and anticipates no Type 1 or Type 2 utility relocations will be required for completion of the



Work. The Design-Build Contractor shall be responsible for further coordination with utility owners, obtaining utility agreements, and for performing or causing certain necessary utility relocations/adjustments to be performed in accordance with applicable standards and laws and for the costs associated with utility relocations/adjustments, except to the extent the utilities are legally responsible for such costs or INDOT expressly retains such responsibilities in accordance with the DBA.

### **2.5.5 Governmental Approvals**

Prior to the Proposal Due Date, INDOT intends to advance several Governmental Approvals commensurate with the state of Project development. See Technical Provision Table 14-1 for a list of such Governmental Approvals. Technical Provision Table 14-2 lists other major Governmental Approvals that INDOT anticipates shall be required for the Project and for which Design-Build Contractor will be responsible for obtaining and maintaining. Table 14-1 and Table 14-2 of the Technical Provisions are not exhaustive lists of all Governmental Approvals required for the Project, and Proposers are not entitled to rely upon such list as such.

Except for INDOT-Provided Approvals, Design-Build Contractor will generally be responsible after DBA execution for continuing to advance, obtain and maintain (including preparation of Governmental Approval applications) all pending Governmental Approvals and obtain and maintain all other necessary Governmental Approvals (including any Governmental Approval modifications) to design and construct the Project and otherwise to perform the Work.

Design-Build Contractor's responsibility will include compliance with all NEPA commitments for mitigation and monitoring as set forth in the NEPA Documents and all conditions included in any Governmental Approval. Except for INDOT-Provided Approvals, Design-Build Contractor will finalize all Governmental Approval applications based on its proposed design and obtain final Governmental Approvals from the permitting Governmental Entities, including taking responsibility for any changes in permits and permit conditions arising out of Design-Build Contractor's design or otherwise. INDOT will reasonably support Design-Build Contractor in coordination with applicable Governmental Entities. Except as otherwise required by Governmental Rules or as set forth in the DBA Documents, it is anticipated that INDOT will be the permittee on all Governmental Approvals.

### **2.5.6 Railroad Companies**

There are no railroads anticipated to be impacted by the Project.

### **2.5.7 Governmental Entities, Stakeholders Coordination**

Design-Build Contractor will play an active role following award in coordinating with the Stakeholders and other Governmental Entities.

### **2.5.8 Major INDOT Projects**

There are potential or planned INDOT construction projects during the anticipated construction period in the area immediately adjacent to the Project or in the impacted MOT areas. These projects may include:

- INDOT Project Des. 1902858 is anticipated to be active within the project limits during the term of the DBA. Work by others includes the modernization of rest areas on I-65 near RP 22+36. Construction is anticipated to start in 2026 and be substantially complete in 2028.
- INDOT Contract T-41282-A was active within the project limits subsequent to the completion of RID including topographical survey. Work by others included the installation of ITS traffic management systems on I-65 at various locations (including within the project limits). Construction is anticipated to be substantially complete by October 2024.
- INDOT Contract R-45445-A is anticipated to be active and substantially complete within the project limits in 2024. Work by others includes partial depth asphalt pavement patching repairs throughout the Project limits and asphalt milling and resurfacing of pavement from RP 16+00 to RP 20+00.

Design-Build Contractor shall be obligated under the DBA Documents to coordinate its Work with the work of the contractors engaged under the foregoing contracts and any other local or regional projects that may impact the Project. Information about some of these projects is included in the RID.

### **2.5.9 Noise Analysis/Abatement**

INDOT has completed a noise analysis for the Project. Noise abatement measures in the form of feasible and reasonable noise barriers were recommended for implementation to mitigate noise impacts. The required measure is a noise abatement wall approximately 1,400 feet along the east of the northbound I-65 lanes, approximately 0.5 miles south of SR 160. Design-Build Contractor shall be obligated to construct the required noise abatement measure as set out in this RFP.

### **2.5.10 Hydrology**

INDOT has certain hydrologic information for the Project and has made that information available to Proposers as RID. INDOT does not anticipate that Proposers will need to conduct any hydrologic investigations in order to respond to this RFP.

### **2.5.11 Information Provided**

Except as otherwise set forth in the DBA, all information provided by INDOT will be subject to the same limitations applicable to similar information furnished in the RID. Specifically, INDOT make no representation or warranty as to the accuracy, completeness or suitability of the additional information.

## **2.6 Examination of RFP and Site Access**

### **2.6.1 Examination of RFP**

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including RID, all Amendments, and materials posted on ACC 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-Build Contractor's obligations under the DBA Documents and for monitoring ACC and INDOT's website for information concerning this RFP and procurement. Form A (Proposal Letter) 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 INDOT will provide no relief for any error or omission. The ability of Proposers to rely on the RID is limited to the extent expressly set forth in the DBA.

Each Proposer is responsible for conducting a Reasonable Investigation in connection with its Proposal, regarding the condition of existing facilities and Site conditions, Hazardous Materials, permanent and temporary Utility appurtenances, area population and demographics, land use and development (including development-related infrastructure), any preliminary or advanced design furnished, and traffic patterns and driver preferences. Proposer's receipt of information furnished by INDOT (including the RID) does not relieve 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 DBA Documents.

### **2.6.2 Access**

Proposers may be allowed access, through the Proposal Due Date, to the Project ROW, subject to the terms and conditions of any INDOT regular disturbance, access or equivalent permit, for purposes of inspection of in-place assets and determining site conditions. Except as set forth in Section 2.5.1, Proposers' access, if any, will be for purposes of surveys and inspections only. Except as set forth in Section 2.5.1, no construction equipment or drilling equipment will be permitted on any portion of the Project ROW during the procurement period and no intrusive site investigations (e.g. borings, potholing, etc.) by Proposers will be permitted unless approved by INDOT, in its sole discretion. For access to the Project ROW, please contact the designated site manager below to schedule, copying INDOT's Authorized Representative in writing contemporaneously:

For access within INDOT Seymour District:

Mr. Trenton Jewell  
INDOT Seymour District  
812-524-3954  
[tjewell@indot.in.gov](mailto:tjewell@indot.in.gov)

INDOT will exercise reasonable efforts to provide access to Proposers that timely and properly comply with the permitting and procedures for access of INDOT, as applicable, but cannot guarantee that access will be provided as, when or to the extent requested.

## **2.7 Errors**

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

## **2.8 Improper Conduct**

### **2.8.1 Non-Collusion**

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

### **2.8.2 Organizational Conflicts of Interest**

It is INDOT's policy that any Person under contract, or previously under contract with either of INDOT, 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 or Design-Build Contractor team as further defined in the INDOT P3 Guidelines available at [https://www.in.gov/indot/files/P3\\_Implementation\\_Guidelines.pdf](https://www.in.gov/indot/files/P3_Implementation_Guidelines.pdf). It is INDOT's policy that any Person under contract with either of INDOT to perform "Procurement Services" as defined in the INDOT P3 Guidelines will not be allowed to participate in any capacity on a Proposer or Design-Build Contractor team. Exceptions to this policy may be granted by INDOT, in its sole discretion, upon written request from such Person, if it is determined that the person's or firm's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit a written request as soon as possible (optimally within 30 days after the issuance date of the final RFP) because INDOT shall not extend the Proposal Due Date or be responsible for any inability or failure to respond prior to the Proposal Due 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 from or discussing any aspect relating to the Work or the Project or the procurement of the Work of the Project with any Person with an organizational conflict of interest, including:

- American Structurepoint, Inc.
- Ballard Spahr LLP
- Egis Group (formerly Beam, Longest & Neff, LLC)
- CDM Smith Inc.
- The Etica Group Inc.
- Garver, Inc.
- Lochmueller Group
- Michael Baker International, Inc.
- VS Engineering, Inc.
- WSP, Inc.
- Affiliates of any of the above

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

By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is discovered after Proposal submission, the Proposer shall make an immediate and full written disclosure to INDOT that includes a description of the conflict and the action that the Proposer has taken or proposes to take to avoid or mitigate such conflict. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, INDOT may disqualify the Proposer at any time. If an organizational conflict of interest that Proposer knew, or should have known about, but failed to disclose exists and Proposer has entered into the DBA as Design-Build Contractor, INDOT may terminate the DBA at any time for breach and without liability to Design-Build Contractor. In either case, INDOT reserves all legal rights and remedies. Proposers should not view the foregoing list as an exhaustive list of firms that have or may have conflicts of interest.

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

### **2.8.3 Fair and Equitable Treatment of Proposers**

Proposers are assured that, during the procurement process (including the process for evaluation of Proposals) INDOT will make reasonable efforts to treat Proposers fairly and equitably.

### **2.8.4 Participation on More than One Team**

To ensure a fair procurement process, Equity Members, Major Participants, Guarantors and legal advisors of Proposer teams shall not participate in any capacity on more than one Proposer team during the course of the Project procurement. Individuals serving Key Personnel roles on one Proposer team may not serve Key Personnel roles on another Proposer team. In addition, entities that are under direct or indirect common ownership or have the same upstream parents may not participate on separate Proposer teams as Proposer, Equity Members, Major Participants, or Guarantors. INDOT may disqualify any Proposer that fails to comply with these prohibitions.

## **2.9 Pre-Proposal Submittals; Changes in Proposer’s Organization and Key Personnel**

### **2.9.1 Pre-Proposal Submittals**

“Pre-Proposal Submittals” include, and are required for:

- (a) Requested changes in a Proposer’s organization including Key Personnel (as described in Section 2.9.2); and
- (b) Any Alternative Technical Concepts that a Proposer wishes to be considered (as described in Section 3.0).

### **2.9.2 Changes in Proposer’s Organization, Major Participants and Key Personnel**

In order for a Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by INDOT, Proposer’s organization, as identified in the SOQ, must remain intact for the duration of the procurement (i.e., until execution of the DBA Documents). If a Proposer wishes to make changes in the ownership of the Proposer or any Equity Members, Major Participants, or Key Personnel identified in its SOQ, including additions, deletions, reorganizations, changes in equity ownership interests or role changes in or of any of the foregoing, Proposer shall submit to INDOT a written request for its approval of the change as soon as possible but in no event later than the date and time in Section 1.5.1 for submission of Pre-Proposal Submittals accompanied by the information specified for such Persons in the RFQ.

If a request is made to allow deletion of, or role change by, any Equity Member, Major Participant or Key Personnel identified in its RFP, Proposer shall submit such information as may be required by INDOT to demonstrate that the changed team continues to meet the RFQ and RFP criteria (pass-fail and technical). INDOT 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 in this RFP and in the DBA, a Proposer may not make any changes in the ownership of Proposer or in any Equity Members, Major Participants, or Key Personnel identified in its SOQ after the deadline in Section 1.5.1 for submission of Pre-Proposal Submittals. Between the deadline in Section 1.5.1 for submission of Pre-Proposal Submittals and execution of the DBA, INDOT, in its sole discretion, will consider requests by Proposers to make changes in Proposers' organization or Key Personnel based only on unusual circumstances beyond Proposer's control.

## **2.10 Guarantors**

A guaranty of Design-Build Contractor's obligations under the DBA will be required by a Guarantor under the following circumstances: (i) Proposer was advised by INDOT, in its sole discretion, that a guaranty would be required as a condition to the shortlisting of Proposer, (ii) Design-Build Contractor's organization is a newly-formed or shell corporation or a limited liability entity, (iii) Proposer (or an Equity Member if Proposer is a partnership, joint venture or limited liability company) is not the ultimate parent entity in its organizational/corporate structure; (iv) the form of organization of Proposer changes after shortlisting and INDOT determines, in its sole discretion, to require a Guarantor as a condition to approving such change; (v) if financial statements of a Financially Responsible Party are provided to demonstrate financial capability of the Proposer or an Equity Member; or (vi) Proposer's financial capability adversely changes between its SOQ submission and the Proposal Due Date, as determined by INDOT, in its sole discretion.

## **2.11 Land Acquisition within the Project Right-of-Way**

Prior to award of the DBA, no Proposer, including team members or Affiliates, may (i) negotiate, secure, acquire title to or close on an acquisition of real property (including an easement or temporary use) included within the Project ROW ("Restricted Property"), (ii) enter into an option to acquire or an acquisition contract relating to any Restricted Property; or (iii) engage in any predatory land or property acquisition practice.

## SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPT REVIEWS

### 3.1 Alternative Technical Concepts

INDOT invites each Proposer to prepare and submit Alternative Technical Concepts (ATCs) for review and comment. ATCs are concepts conflicting with the requirements for design and construction of the Project including proposed modification of the Technical Provisions. Alternative design solutions that comply with the Technical Provisions are encouraged, however, these are not considered ATCs, and do not require INDOT approval to be included in the Proposal.

ATCs eligible for consideration hereunder are limited to those deviations from the requirements of the DBA (including modification of the Technical Provisions) 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 or concept, as determined by INDOT, in its sole discretion.

A concept is not eligible for consideration as an ATC if, in INDOT's 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 Documents, such as something that would require an environmental impact statement, supplemental environmental impact statement, or environmental assessment; or (d) the addition of a separate INDOT project to the DBA (such as expansion of the scope of the Project to include additional roadways).

ATCs that, if implemented, would require further environmental evaluation of the Project, such as a re-evaluation of the environmental documents or modification of Governmental Approvals, may be considered; provided that Design-Build Contractor bears the schedule and cost risk associated with such additional environmental evaluation or modification of Governmental Approvals and the changes are not major, as determined in INDOT's sole discretion. If the Governmental Approvals necessary to implement the ATC are not able to be obtained, Design-Build Contractor will be obligated to develop the Project in accordance with existing Governmental Approvals without additional cost to INDOT or extension of time.

Any ATC that has been pre-approved pursuant to Section 3.4 may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by INDOT, INDOT recommends that the Proposer submit such concept for review as an ATC.

ATCs are Pre-Proposal Submittals (see Section 2.9.1(b)). Once an ATC is submitted and INDOT responds thereto pursuant to Section 3.4, such ATC may not be resubmitted, in whole or in part, by a Proposer to INDOT unless otherwise approved by INDOT.



## **3.2 Concept ATC Requirements**

By no later than the deadline in Section 1.5.1, each Proposer may deliver, via ACC, confidential Concept ATCs for early consideration and review prior to formal ATC submission as defined in Section 3.3 below. For each Concept ATC, include the following:

- (a) A unique number and a title clearly identifying the ATC as a Concept ATC;
- (b) A general (less than two page) description of the proposed Concept ATC, how the proposed Concept ATC will be used on the Project, proposed location of the Concept ATC and any other pertinent information that would provide a clear understanding of the proposed Concept ATC; and
- (c) Any conceptual drawings of the configuration of the Concept ATC or other appropriate descriptive information that provided an understanding of the proposed Concept ATC.

Concept ATCs will be discussed during one-on-one meetings with Proposers.

Concept ATC submittals shall not constitute ATC submittals pursuant to Section 3.3.1, and a Proposer that wishes to utilize an ATC must make a formal ATC Submittal. Proposers may submit an ATC even if the concept was not previously submitted as a Concept ATC and Proposers may submit an ATC before completion of the Concept ATC process.

## **3.3 Submission of ATCs**

Proposers may submit ATCs for review using ACC, until the last date and time for submittals of ATCs. Proposers are encouraged to submit ATCs at any time prior to the stated deadline, and INDOT will endeavor to respond to the ATC submissions within 14 days of the Friday in the week in which the ATC submissions were submitted. INDOT reserves the right to respond to ATC submissions in whatever order it chooses.

### **3.3.1 ATC Submittal Requirements**

ATC submissions shall include:

- (a) Include a cover sheet identifying the Proposer and stating “Safer Drive 65 Project – Confidential ATC.”
- (b) 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 and ATCs submitted as Concept ATCs shall keep the previous number used);
- (c) a narrative description of the ATC and technical information and include any necessary conceptual drawings of the configuration of the ATC or other

- appropriate descriptive information, including necessary design exceptions and a traffic operational analysis, if applicable;
- (d) the locations where, and an explanation of how, the ATC will be used on the Project;
  - (e) any changes in roadway or operations requirements associated with the ATC, including ease of operations;
  - (f) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;
  - (g) any changes in the anticipated life of the items comprising or affected by the ATC;
  - (h) any reduction in the time period to reach Substantial Completion resulting from implementing the ATC, including, as appropriate, a description of method and commitments;
  - (i) references to requirements of the RFP which are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;
  - (j) the analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;
  - (k) a preliminary analysis of potential impacts on vehicular traffic (both during and after construction), environmental permitting, community impact, safety, and life-cycle and infrastructure costs, including impacts on the cost of repair, maintenance and operation;
  - (l) a preliminary analysis of potential impacts on environmental permitting (including impacts to the NEPA Documents) and other applicable Governmental Approvals and an analysis of whether the Proposer believes an updated or supplemental environmental determination or any additional mitigation would or would not be required and why);
  - (m) any additional right-of-way required to implement the ATC;
  - (n) a description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such assessments;
  - (o) a description of added risks to INDOT or third parties (e.g., risks of delays in ROW acquisition, discovery of Hazardous Materials risk, new technologies or construction methodologies, etc.) associated with implementing the ATC;

- (p) an estimate of the adjustment to the Project schedule, should the ATC be accepted and implemented;
- (q) a proposed technical specification for the ATC (including identification of any governmental entity that used the same and where); and
- (r) an analysis of how the ATC is equal or better in quality, utility and performance than the requirements of the RFP.

### **3.3.2 ATC Disclosures**

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

### **3.3.3 Responsibility for Third Party Approvals for ATCs**

If implementation of an ATC will require approval by a third party (e.g., Governmental Entity), INDOT may condition any approval of the ATC with a requirement that Proposer will have full responsibility for, and bear the full cost and schedule risk of, obtaining any such approvals after award; provided, however, that, in such event, INDOT shall retain its role as liaison with any Governmental Entities. If any such condition is imposed and the required third-party approval is not subsequently granted with the result that Proposer must comply with the requirements of the original RFP and DBA Documents (without regard to the ATC), Proposer will not be entitled to a Change Order.

### **3.3.4 ATC Disclaimers**

Proposers are advised that INDOT may condition any approval of such ATC with a requirement that Proposer shall (i) be solely responsible for the acquisition of any such right-of-way, subject to the terms of the DBA Documents, including the cost thereof, and obtaining any necessary Governmental Approvals, including Environmental Approvals; (ii) not be entitled to any Change Order 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 as a result of any delay, impact, inability or cost associated with the acquisition of such right-of-way.

## **3.4 Review of ATCs**

INDOT 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 1.5.1, provided that INDOT has received all requested information regarding such ATC.

INDOT'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 INDOT);
- (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 of certain identified conditions that must be met or clarifications or modifications that must be made through resubmittal of the ATC before the applicable last date and time for submittal of ATCs;
- (d) the submittal is not eligible to be considered as an ATC because it appears to be within the requirements of this RFP; or
- (e) the submittal does not qualify as an ATC and may not be included in the Proposal.

INDOT will make a preliminary determination on whether to accept and approve an ATC for submission. However, the Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP. Inclusion of concepts submitted as ATCs but determined to be ineligible due to reason (d) above, are still required to meet all requirements of the DBA, even if it is later determined that such concepts did not meet the requirements of the RFP and should have been rejected or evaluated as ATCs.

Approval of an ATC will constitute a change in the specific requirements of the DBA Documents associated with the approved ATC for that specific Proposer. Each Proposer will be responsible for ensuring that its Proposal complies with the RFP, as modified by approval of the ATC. Approval of an ATC is limited to deviations from the requirements of the DBA Documents that are expressly identified as deviations in the narrative of the proposed ATC and for which deviations the Proposer requested specific approval.

Approval of an ATC does not constitute approval of any design exceptions necessary to implement the ATC. Proposer must submit requests for design exceptions through the normal INDOT design exception review process. INDOT and FHWA reserve the right to review, condition or disapprove of the design exception.

In its Proposal, Proposer must specifically state whether any approved ATCs are included, with reference to the ATC identification number, 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 INDOT's determinations regarding ATCs.

INDOT's rejection of a pre-Proposal submission of an ATC does not entitle the Proposer to an extension of the Proposal Due Date or the date that the ATCs are due.

INDOT anticipates that the 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 clarification to INDOT's Authorized Representative, in each case, subject to the end dates set forth in Section 1.5.1 of this ITP.

### **3.5 Incorporation of ATCs into the DBA Documents**

Following award, ATCs that were approved by INDOT and incorporated in the Proposal of the Apparent Best Value Proposer shall be included in the DBA Documents including any conditions required for approval. The documents will be conformed after award but prior to Commercial Close.

ATCs from unsuccessful Proposers may, in INDOT's sole discretion, be presented to the Apparent Best Value Proposer for possible incorporation into the DBA Documents. In addition, following execution of the DBA and payment to the unsuccessful Proposers of a stipend under Section 6.3, ATCs from unsuccessful Proposers may, in INDOT's sole discretion, be presented to the selected Design-Build Contractor as a Change Order.

### **3.6 Confidentiality of ATCs**

Subject to the provisions of this RFP, the Public Records Act, and other applicable Governmental Rules, INDOT shall maintain the confidentiality of ATCs and all communications regarding ATCs until the earlier of (a) cancellation of the procurement, (b) DBA execution; (c) payment of the stipend to the Proposer; or (d) such other date as may be prescribed under the Public Records Act 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 Act, applicable Governmental Rules and this RFP.

## **SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY INDOT**

### **4.1 General Submittal Requirements**

Each Proposal shall include a Technical Proposal meeting the requirements set forth in Exhibit B and a Scope Proposal detailing each of the Project Elements that shall be included in the project. The completed Technical Proposal and Scope Proposal shall be submitted in two separate PDF files as described in this section.

#### **4.1.1 Proposal Due Date**

The completed Proposal shall be uploaded to ACC in the appropriate folder no later than the Proposal Due Date.

#### **4.1.2 Signatures Required**

Form A (Proposal Letter) shall be signed by all Equity Members and shall be accompanied by evidence of signatory authorization as specified in Form A (Proposal Letter).

#### **4.1.3 Consequences of Failure to Follow Requirements**

Failure to use separate files for the Scope Proposal and Technical Proposal may result in an inadvertent early review of the Scope 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 INDOT determines that the Proposer did not follow the foregoing instructions. Proposals uploaded after the time set on the Proposal Due Date shall be rejected without consideration or evaluation.

### **4.2 Requirement to Submit Responsive Proposal**

A Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in approved or conditionally approved ATCs. 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. Any Proposal that assumes or would require material changes to the DBA, as determined by INDOT, in its sole discretion, may result in INDOT's rejection of the Proposal.

Each Proposal must be submitted in the format specified in this RFP. Proposers shall each sign the Proposal submitted to INDOT on Form A (Proposal Letter). Multiple or alternate proposals or proposals with options may not be submitted.

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

- (a) If the Proposal is submitted in a form other than that specified by INDOT; if it is not properly signed; if any part of the Proposal is missing from the

Proposal package, or if it otherwise does not meet the Proposal submittal requirements;

- (b) If INDOT 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 DBA following award;
- (d) If the Proposal includes any unapproved ATCs, assumptions, qualifications, conditions, reservations, exceptions to or deviations from the requirements of the RFP, or any other item that is an attempt to shift or otherwise modify the risk allocation provisions of the DBA or this RFP;
- (e) If the Proposer attempts to limit or modify the Proposal Security, if the Proposal Security is not provided, or if requested information deemed material by INDOT is not provided;
- (f) The Proposal contains a material alteration to the ITP forms or exhibits, including any material alteration to Form J (Proposal Bond).

If a Proposal is deemed non-responsive, INDOT may disqualify the Proposal from further consideration. Such disqualification will not result in the forfeiture of the Proposer's Proposal Security.

### **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 Scope Proposal are essential. The Technical Proposal shall not exceed the page limitations set forth in Exhibit B Section 2.0. No page limit applies to appendices, dividers, exhibits and tables of contents, however, INDOT 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 8½ by 11-inch format (½ inch margins) is required for typed submissions and an 11 by 17-inch format is required for design drawings, unless otherwise noted in Exhibit B, and such design drawings shall be clearly named, be in PDF format, and uploaded to ACC. Preliminary schedule submissions shall include both PDF file and the electronic Primavera P6 file.

Submittals must have all pages sequentially numbered. Lines may be single-spaced with the type font size being no smaller than 12-point (either Times New Roman or Arial),

provided the font in organizational charts, graphics and tables may be as small as 10-point so long as the organizational charts, graphics and tables are legible. The use of 11 by 17-inch pages for tables, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch page will be considered one page. Design 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 included in an appendix. In addition, sheets for design drawings that exceed 11 by 17-inch (roll plots) are also allowed and shall be saved in a separate PDF file clearly named.

Bookmarks are encouraged as well as dividers for any 11 by 17-inch appendix volumes and will not be counted towards any applicable page counts.

#### **4.4 Additional Requirements for Proposal Delivery**

Proposals are to be uploaded to each Proposer's respective folder in ACC. Files shall be named such that it is clear as to the contents of each file. Separate Proposal into at least three distinct files, at least one for each of the three volumes.

The Technical Proposal shall be named:

[PROPOSER]\_Volume 1\_Technical Proposal

[PROPOSER]\_Volume 2\_Technical Proposal

The Scope Proposal shall be named:

[PROPOSER]\_Volume 3\_Scope Proposal

##### **4.4.1 Technical Proposal**

The Technical Proposal shall be contained in two volumes: Volume 1 - Administrative Materials and Forms and Volume 2 - Preliminary Performance Plans, with appendices in separate volumes, as more fully described in Exhibit B.

Each PDF shall be in a searchable format, with file names that correspond to the Technical Proposal.

CAD files shall be provided in the original MicroStation format and uploaded as one or more zip files to ACC.

##### **4.4.2 Proposal Security**

One original and three certified copies of the Proposal Security shall be provided in a single envelope labeled "[Proposer Name]: Proposal Security for the Safer Drive 65 Project." This shall be delivered to the attention of INDOT's Authorized Representative to:



Indiana Department of Transportation  
100 North Senate Ave  
RM N758  
Indianapolis, Indiana 46204

The amount of the Proposal Security shall be \$4 million. The original of the Proposal Security shall be stamped “original”. The Proposal Security must be either in the form of a certified check payable to INDOT or a bond in the form of Form J (Proposal Bond).

#### **4.4.3 Stipend Agreement**

Include a signed Stipend Agreement in the form of Form N (Form of Stipend Agreement).

#### **4.5 Modifications, Withdrawals and Late Submittals**

##### **4.5.1 Modifications to a Proposal**

A Proposer may modify its Proposal prior to the date and time the Proposal is due. Modified versions, if required, shall be clearly identifiable and Proposers are invited to notify INDOT’s Authorized Representative, via email, of the appropriate version to use for evaluation. The modification shall conform in all respects to the requirements for submission of a Proposal.

##### **4.5.2 Withdrawal and Validity of Proposals**

A Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by the Proposer’s Point of Contact. Such written requests shall be both uploaded to the Proposal subfolder on ACC and emailed to INDOT’s Authorized Representative. A withdrawal of a Proposal will not prejudice the right of a Proposer to deliver a new Proposal, provided that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the Proposal Due Date and any attempt to do so will result in a draw by INDOT upon the Proposal Security.

All Proposals are valid for a period of 150 days after the Proposal Due Date.

##### **4.5.3 Late Proposals**

INDOT will not consider any late Proposals. Proposals or modifications not requested by INDOT received after the time for submittal of Proposals will not be considered.

#### **4.6 Forfeiture of Proposal Security; Relief from Obligation to Close By Specified Deadline**

By submitting its Proposal, each Proposer understands and agrees that it shall forfeit its Proposal Security (i) if the Proposer withdraws, repudiates, or otherwise indicates in writing that it will not meet any commitments made in its Proposal; or (ii) if the Proposer is selected as the Apparent Best Value Proposer and any of the following occur:

- (a) The Proposer fails to negotiate in good faith as expressly defined in Section 5.11;
- (b) The Proposer fails to provide the documents required under, or satisfy the conditions set forth in Sections 5.12.1 and 6.1.2;
- (c) The Proposer fails to deliver the EPDs as set forth in Section 5.12.1 or provide access to, or participate in the review of, or both, the EPDs as set forth in Section 5.12.3;
- (d) Any other forfeiture event or condition occurs pursuant to the terms of the Proposal Security;
- (e) DBA execution does not occur by the deadline specified in Section 1.5.1, unless such failure to close is directly attributable to:
  - (i) INDOT's failure to provide timely responses to Post-Selection Deliverables in accordance with Section 5.12.2;
  - (ii) INDOT's cancellation of the procurement or decision not to close with the Proposer and end negotiations after the Proposer has engaged in good faith negotiations, including elections made under Section 5.11, without cause by the Proposer;
  - (iii) INDOT's failure to execute the DBA within five Business Days after the satisfaction of all conditions thereto and execution and delivery of the Execution Documents by the Proposer to INDOT;
  - (iv) INDOT's failure to provide any other deliverable that INDOT is required to deliver to Design-Build Contractor as a condition precedent to DBA execution, where such failure is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Apparent Best Value Proposer;
  - (v) An unresolved pending protest filed pursuant to Section **Error!** **Reference source not found.** or an unresolved action to contest the validity of the DBA;
  - (vi) INDOT's failure to comply with any other conditions required by the Act (as required by Section 6.1), where such failure is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Apparent Best Value Proposer; or
  - (vii) Issuance by a court of competent jurisdiction of an order or injunction that prohibits INDOT from executing the DBA and proceeding with DBA execution, where such order or injunction is

not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Apparent Best Value Proposer.

For purposes of this Section 4.6, Proposer's obligation to achieve DBA execution shall be satisfied when Proposer has executed and delivered to INDOT the DBA and all documents and payments required hereby, including the documents described in Section 5.12.1 and Section 6.1.2.

#### **4.7 Acceptance of Delivery by INDOT**

INDOT will provide acknowledgement of receipt for Proposals that are timely delivered to INDOT as specified herein.

## SECTION 5.0 EVALUATION AND SELECTION PROCESS

### 5.1 Overview

The Proposal evaluation process will include an initial review of each Proposal for responsiveness to the requirements of the RFP as well as to compare the Proposal against any pass-fail criteria. Proposals that are responsive and meet all pass-fail criteria will continue in the evaluation and scoring process. The steps and details in the process and evaluation criteria are described in Sections 5.3 through 5.12.

### 5.2 Organization of the Evaluation Committees

Evaluation of Proposals will be conducted by a Technical Proposal Evaluation Committee (**TPEC**) with assistance of non-voting subcommittees, which may include an administrative/legal subcommittee and a pass-fail and responsiveness subcommittee.

The TPEC will be comprised of representatives from INDOT. The non-voting subcommittees will be comprised of representatives from INDOT and may include outside consultants and other qualified individuals. The primary responsibility of the subcommittees will be to assist the TPEC in making an informed assessment of the individual strengths and weaknesses of the Proposals. In addition, observers from INDOT and other federal, State or local Governmental Entities with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and conflict of interest disclosures, or otherwise be subject to confidentiality restrictions and conflict of interest requirements.

### 5.3 Best Value Determination

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

$$\text{Total Proposal Score} = \text{Technical Proposal Score (maximum 30 points available)} + \text{Scope Proposal Score (maximum 70 points available)}$$

#### 5.3.1 Technical Proposal Score

INDOT will score the Technical Proposal Score in accordance with the following formula:

$$\text{Technical Proposal Score} = (\text{TP}/\text{TP}_{\text{High}}) * (30), \text{ where:}$$

TP = Proposer's Technical Proposal evaluation score, as determined pursuant to Section 5.5.

TP<sub>High</sub> = Highest Technical Proposal evaluation score achieved by any Proposer, as determined pursuant to Section 5.5.

For each Technical Proposal, the Technical Proposal evaluation score shall be the sum of the TPEC's scores for each of the technical evaluation factors described in Section 5.5.1.

### **5.3.2 Scope Proposal Score**

INDOT will determine the Scope Proposal score accordingly:

$$\text{Scope Proposal Score} = \frac{\text{Length of APE}}{\text{Length of APE}(\text{high})} * 70$$

Where:

Length of APE means the length of additional project elements as measured along the centerline

Length of APE(high) means the greatest length provided by an individual Proposer

## **5.4 Pass-Fail and Responsiveness Evaluation**

Upon receipt, the Technical Proposals and Scope Proposals will be reviewed by the relevant responsiveness and pass-fail subcommittee. They will be reviewed: (a) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in this RFP; and (b) based on the pass-fail criteria in this Section 5.4. Responsiveness shall be assessed on the basis of overall responsiveness, with INDOT retaining the sole discretion to disregard or waive minor informalities, irregularities, omissions, nonconformities, discrepancies and apparent clerical mistakes. Ultimate decisions and determinations of responsiveness and pass-fail criteria shall be made by the TPEC.

If a Proposal contains or omits information that may potentially result in a "nonresponsive" or "fail" determination, INDOT may request additional or clarifying information from the Proposer prior to final responsiveness and pass-fail determinations.

Those Proposals not determined to be responsive to this RFP, or that do not pass all of the pass-fail criteria, may be excluded from further consideration and may not be eligible for recommendation for award, and the Proposer will be so advised. INDOT may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. INDOT may, in its sole discretion, disregard or waive minor informalities, irregularities, nonconformities, discrepancies, omissions, and apparent clerical mistakes which, in each case, are unrelated to the substantive content of the Proposals.

### **5.4.1 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 DBA 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 DBA Documents and provides for continuation of Proposer 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;
- (c) The Proposer has provided a Preliminary DBE Performance Plan in accordance with Exhibit B and such plan is consistent with the DBE requirements and goal;
- (d) The information, certifications, signed statements and documents as listed in Exhibit B do not identify any material adverse information;
- (e) The date for Substantial Completion set forth on Form L (Completion Deadlines) is no later than July 31, 2028;
- (f) The Technical Proposal contains the required materials as listed in Exhibit B.
- (g) If Proposer anticipates execution of the DBA by a special purpose or newly formed entity, the Proposer has delivered either:
  - (i) Pro formas of the special purpose entity organizational documents (i.e., certificate of formation/charter, bylaws/partnership agreement/operating agreement); or
  - (ii) Indicative term sheets of such corporate formation documents that will be used to establish the entity, in either case, should INDOT select it as the Apparent Best Value Proposer;
- (h) The ownership of Proposer and the Equity Members and Major Participants, have not changed since the Proposer's submission of the SOQ, or Proposer has previously sought INDOT's consent to a change, INDOT has consented to such change, and the Proposal attaches a true and correct copy of INDOT's written consent;
- (i) Proposer, and each of Proposer's Equity Members, Major Participants, other Subcontractors identified in the Proposal and Financially Responsible Parties, have delivered a properly completed and executed Form H (Conflict of Interest Disclosure Statement) and no material and unresolvable conflicts, in INDOT's sole discretion, have been identified;

- (j) Proposer has delivered written satisfactory evidence from insurance provider expressly stating that it has read the DBA and that Proposer will be able to obtain and maintain the insurance types and amounts required by the DBA and can do so under the terms, and subject to the conditions, specified in Section 9 of the DBA; and
- (k) Proposer has delivered all other documents, properly completed and signed, in form and substance as specified in the RFP, and such documents do not identify any material adverse information.

#### **5.4.2 Scope Proposal**

Scope Proposals will be evaluated based on the following pass-fail criteria:

- (a) All Base Bid Project Elements are included;
- (b) Additional Project Elements (identified for inclusion on Form I-2) are contiguous included from south to north within the project limits, with the exception of the SR 56 Ramp improvements, which may be non-contiguous;
- (c) Engineering plans show all Additional Project Elements listed in Form I-2
- (d) The included Additional Project Elements are reasonable;
- (e) The Scope Proposal contains all the materials required by Exhibit C;
- (f) The Scope Proposal contains a letter from one or more Eligible Sureties with respect to the Performance Bond and Payment Bond, as described in Exhibit C;
- (g) Based on the information provided pursuant to Exhibit C, Proposer's (and each of its Equity Members') financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as provided in the SOW, such that Proposer (by and through its Equity Members) continues to have the financial capacity to design and construct a project of the nature and scope of the Project. Factors that will be considered in evaluating Proposer's financial capacity include the following:
  - (i) Profitability;
  - (ii) Capital structure;
  - (iii) Ability to service existing debt; and
  - (iv) Other commitments and contingencies.

If INDOT determines that a Proposer does not appear to have the financial capability to fulfill its obligations under the DBA, INDOT may offer the Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to INDOT;

- (h) If a guaranty is required by INDOT pursuant to Section 2.10, the financial condition and capabilities of the Proposer's Guarantor demonstrate Guarantor's financial capacity and ability to guarantee the obligations of the Proposer pursuant to the form of guaranty. 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; and
  - (iv) Other commitments and contingencies; and
- (i) Proposer has delivered Proposal Security in the form of a certified check in the amount of \$4 million payable to INDOT or a complete, properly executed Proposal Bond that complies with the requirements of the ITP.

## **5.5 Evaluation of Technical Proposal by TPEC**

After completion of, or concurrently with, the pass/fail and responsiveness review, the TPEC will evaluate the Proposer's Technical Proposal based on the Technical Proposal evaluation factors in Section 5.5.1 to determine whether the Technical Proposal meets, and also whether it includes any improvements over, and brings additional benefits or value to INDOT, the Project and the public in addition to, the requirements of the DBA Documents. In evaluating the Technical Proposal, the TPEC may consider other information provided with the Technical Proposal. Technical Proposal Scores will be determined as described in Section 5.3.1.

### **5.5.1 Technical Proposal Evaluation Factors**

The Technical Proposal evaluation factors and their respective maximum-available points are as follows:

- (a) Preliminary Project Management Plan (maximum 10 Technical Proposal Score points available);
- (b) Preliminary Design-Build Plan (maximum 20 Technical Proposal Score points available); and
- (c) Substantial Completion Date (not independently scored but considered under evaluation of Preliminary Project Management Plan).



Subfactors for clauses (a) and (b) are listed in Section 5.5.1.1 through **Error! Reference source not found.** Consecutive factors or subfactors are set forth in descending order of importance, provided, however, except as otherwise noted, consecutive factors or subfactors may be of equal value to each other.

### **5.5.1.1 Preliminary Project Management Plan**

**Objective:** An organization that is designed with clear lines of responsibility, appropriate personnel and well-defined roles that respond to the requirements of the DBA Documents for all phases of the Work. A well-defined and logical approach to the project schedule methodology, and schedule and cost information in detail sufficient for assessing the project schedule/cost balance.

The Preliminary Project Management Plan evaluation subfactors include:

- (a) Project Management Approach;
- (b) Preliminary Project Baseline Schedule;
- (c) Preliminary Quality Management Plan;
- (d) Safety and Environmental Management; and
- (e) Public Information Plan.

The Preliminary Project Management Plan subfactors listed above will reflect the solutions and approaches as set forth in Exhibit B Section 4.1.

### **5.5.1.2 Preliminary Design-Build Plan**

**Objective:** Incorporation of technical solutions with innovative features that achieve the requirements of the DBA Documents and a design-build management organization with clear lines of responsibility, and which presents a well-defined and executable approach for design and construction.

The Preliminary Design-Build Plan evaluation subfactors include:

- (a) Preliminary Transportation Management Plan;
- (b) Approach to Roadway and Hydraulic Design; and
- (c) Approach to Bridge and Culvert Design.

The Preliminary Design-Build Plan subfactors listed above will reflect the solutions and approaches as set forth in Exhibit B Section 4.2.

### **5.5.1.3 Completion Date**

Objective: Provide INDOT schedule certainty by committing to a realistic Substantial Completion Date using (Form L) Completion Deadlines.

This item will not be scored independently but will be a consideration while scoring the Preliminary Project Management Plan.

## **5.6 Evaluation of Scope Proposal**

The Scope Proposal will be evaluated pursuant to Sections 5.3.2 and 5.4.2.

## **5.7 Total Proposal Score**

The Total Proposal Score will be calculated by summing the Scope Proposal Score and the Technical Proposal Score.

## **5.8 Requests for Clarification**

INDOT may, at any time, issue requests for clarification to the individual Proposers or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within the timeframe identified in the request. The scope, length, and topics to be addressed in clarifications shall be prescribed by INDOT.

## **5.9 Requests for Proposal Revisions**

INDOT may, at any time after receipt of Proposals and prior to award, determine that it is appropriate to request changes to the Proposals (Proposal Revisions). Only Proposers that submit responsive Proposals that passed all pass-fail criteria will be permitted to submit Proposal Revisions. If Proposal Revisions are requested, INDOT will follow the procedures for revised proposals described in 23 CFR Part 636. INDOT may request Proposal Revisions with or without discussions as described in this RFP. 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.

## **5.10 Identification of Apparent Best Value Proposer**

Once INDOT has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores then the Proposer with the highest Total Proposal Score will become the Apparent Best Value Proposer and be preliminarily selected as Design-Build Contractor under the DBA Documents. The Apparent Best Value Proposer will then be invited to commence finalization of the DBA Documents (which may include negotiations) pursuant to Section 5.11. If INDOT does not believe that the negotiations with the Apparent Best Value Proposer will be successful, INDOT may suspend or cease negotiations with the Apparent Best Value Proposer and commence negotiations with the Proposer who had the next highest Total Proposal Score or terminate the procurement process.

## 5.11 Negotiation and Finalization of the DBA

INDOT will proceed with the Apparent Best Value Proposer to finalize the DBA. INDOT may elect to negotiate various aspects of the DBA including aspects of the Proposal that will be incorporated into the DBA and incorporation of unsuccessful Proposers' work product; however, any decision to commence negotiations regarding the terms of the DBA and the extent and nature of such negotiations is at INDOT's sole discretion.

By submitting its Proposal, each Proposer commits to (i) discuss the terms of the DBA with INDOT in good faith and in accordance with the requirements of this RFP; (ii) enter into the DBA and satisfy all other conditions to award of the DBA; and (iii) perform its obligations under the DBA.

Negotiations will include the negotiation (solely as and to the extent set forth in this Section 5.11) of (i) Attachment 1 to Exhibit 7 of the DBA concerning Proposal Commitments; (ii) clarifications and any conforming changes to address the status of INDOT-Provided Approvals relating to the Project, specifically all INDOT-Provided Approvals listed on Exhibit 2 to the DBA; and (iii) the Preliminary Project Baseline Schedule. INDOT will prepare the initial draft of Attachment 1 to Exhibit 7 of the DBA, which is intended to reflect (a) clarification of ambiguities within Proposer's Technical Proposal, (b) elements of the Proposal that were relevant, in INDOT's sole judgment, to evaluation of the Proposal, (c) areas of the Proposal that exceed the requirements of the DBA Documents, including the Technical Provisions, and (d) such other items identified in the Proposal by INDOT, in its sole discretion.

If INDOT elects to negotiate various aspects of the DBA Documents with the Apparent Best Value Proposer and a DBA satisfactory to INDOT cannot be negotiated, INDOT may formally suspend or end negotiations and take other action. Such action may include (a) requiring the Apparent Best Value Proposer to enter into the form of DBA included in the RFP, without further negotiation or variation except to fill in blanks and include information that the form of DBA indicates is required from the Proposal (e.g., ATCs and the Scope Proposal); (b) rejection of all Proposals; or (c) proceeding to the next most highly ranked Proposal to finalize or attempt to negotiate a DBA with that Proposer in accordance with this Section 5.11.

If INDOT elects to commence negotiations with a Proposer, then such Proposer will be deemed to have failed to engage in good faith negotiations with INDOT and shall forfeit its Proposal Security as described in Section 4.6 if the Proposer fails to attend or actively participate in reasonably scheduled negotiation meetings with INDOT, fails to negotiate in a manner consistent with the requirements of this RFP, fails to timely submit deliverables as required by this RFP or INDOT in the course of negotiations, or insists upon terms or conditions for any documents to be negotiated or provided by Proposer hereunder that are inconsistent with its Proposal or the DBA Documents as issued in the RFP (including inclusion of assumptions, qualifications, conditions, Scope Proposal, or exceptions in the DBA beyond those that expressly exist in the RFP as of the last Amendment to this RFP). Failure by a Proposer to agree to inclusion of (i) ATCs from unsuccessful Proposers, or (ii) material terms initiated by INDOT that are materially

inconsistent with the Proposal or the DBA Documents as issued in the RFP, shall not be deemed a failure to engage in good faith negotiations that will entitle INDOT to draw upon the Proposal Security.

## **5.12 Review of Post-Selection Deliverables**

### **5.12.1 Documents to be Submitted Following Notification of Apparent Best Value Proposer**

As a condition precedent to award of the DBA, the Apparent Best Value Proposer shall deliver the following (Post-Selection Deliverables) to INDOT within seven days after notification pursuant to Section 5.10 that it is the Apparent Best Value Proposer, unless otherwise noted (resubmittals, as necessary, shall be required within five days after receipt of INDOT comments or notification, as applicable):

- (a) Within 48 hours after notification that it is the Apparent Best Value Proposer, one or more sealed containers labeled: “[Proposer Name]: Safer Drive 65 Project – Escrowed Proposal Documents,” containing one set of the Cost and Pricing Data (“Escrowed Proposal Documents” or “EPDs”) shall be delivered in a jointly keyed and locked fireproof cabinet supplied by Proposer, to a location identified by INDOT. The Apparent Best Value Proposer shall submit its EPDs in hard copy and whenever possible shall also provide electronic copies. The Apparent Best Value Proposer shall submit the EPDs in such format as is used by the Proposer and its Subcontractors in connection with the Proposal. The EPDs provided shall be personally examined by the Proposer’s Point of Contact prior to delivery who shall ensure that they meet the requirements of this Section 5.12.1(a).
- (b) Evidence of the Apparent Best Value Proposer and each Major Participants’ (excluding Equity Members) authorization to transact business in the State, dated no earlier than 30 days prior to the anticipated date of execution of the DBA. Depending on the form of organization, such evidence may be in the form of (i) a certificate of authority to do business in the State along with a “certificate of good standing” (or equivalent) from the state of organization of the Person; (ii) a Certificate of Existence from the Indiana Secretary of State; or (iii) other evidence acceptable to INDOT, in its sole discretion. Each such Person shall also provide a valid State business license.
- (c) Evidence that the Proposer and its Subcontractors that are Major Participants hold all licenses required to perform the Work under the DBA.
- (d) Drafts of the deliverables identified in Section 6.1.2 for approval by INDOT.
- (e) No later than 48 hours after notification that it is the Apparent Best Value Proposer, a redacted copy of its Proposal and SOQ to INDOT, with redactions limited to only those portions of the Proposal and SOQ that fall under a specific exemption of the Public Records Act (and the Apparent Best Value Proposer shall be required to submit, for INDOT’s review and

approval, documentation identifying the specific exemption asserted and such other information requested by INDOT in order for INDOT to assess the eligibility of such portions of the Proposal and SOQ for exemption from publication). Notwithstanding any proposed redactions or claims of exemption asserted, (i) INDOT shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder; and (ii) any part of the Proposal that is part of the DBA, including any exhibit to the DBA, or forms the basis of any portion of the DBA, may not be redacted. Failure to submit a redacted form of Proposal and SOQ constitutes consent to and a waiver of any right to contest disclosure by INDOT of the Apparent Best Value Proposer's Proposal and SOQ in their entirety, without redaction. As between the Apparent Best Value Proposer and a third party requesting disclosure under the Public Records Act, this Section 5.12.1 shall not constitute a waiver of the Proposer's rights under the Public Records Act.

### **5.12.2 Comments on Post-Selection Deliverables**

INDOT shall provide comments on any Post-Selection Deliverable within seven Business Days after the date of INDOT's receipt of such deliverable. INDOT shall have five Business Days to review and respond to any resubmittals of the Post-Selection Deliverables.

### **5.12.3 Review of Escrowed Proposal Documents**

INDOT (including its advisors) shall be entitled to access and review the EPDs following the notification. Such review will be jointly undertaken with the Apparent Best Value Proposer. INDOT's review shall assess the completeness and accuracy of the EPDs, and INDOT and the Proposer shall jointly develop and countersign a detailed index and catalogue of the contents of the EPDs. If, following the initial review and organization, INDOT determines that the EPDs are incomplete, INDOT may, as a condition to award, require the Proposer to supply data to make the EPDs complete. Completion of such review and indexation of the EPDs shall be a condition to award and execution of the DBA.

### **5.12.4 Project Management Plan**

During the period between completion of negotiations and final award of the Agreement, the Apparent Best Value Proposer may, but is not required to, submit all or portions of the Project Management Plan for review and comment. INDOT encourages such early submittal, and, as an accommodation, will reasonably attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the DBA Documents. Any such review prior to execution of the DBA shall in no event limit or modify any rights of review, comment or approval set forth in the DBA Documents.

## **SECTION 6.0 AWARD AND EXECUTION; POST-EXECUTION ACTIONS**

### **6.1 Final Award, Execution and Delivery of DBA Documents**

#### **6.1.1 Conditions Precedent to Final Award of the DBA**

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

- (a) successful negotiation of the DBA;
- (b) concurrence in award by FHWA;
- (c) receipt of all of the documents required to be provided prior to execution of the DBA;
- (d) review and indexation of the EPDs;
- (e) execution and delivery to INDOT of the Execution Documents by the Apparent Best Value Proposer, as Design-Build Contractor; and
- (f) any other conditions to award set forth in this ITP or required by the Act.

In addition to the foregoing, following the public hearing on the preliminary selection of the Apparent Best Value Proposer and the terms of the DBA, INDOT shall make a determination (i) whether or not the Apparent Best Value Proposer should be designated as Design-Build Contractor under the DBA and, if not, to suspend or cease negotiations and commence negotiations with the Proposer who had the next highest Total Proposal Score, or (ii) to terminate the procurement process. If INDOT determines to select the Apparent Best Value Proposer as Design-Build Contractor under the DBA, then such determination shall be submitted to the Governor of the State pursuant to IC 8-15.7-4-3. The Governor may accept or reject the determination of INDOT. If the Governor accepts the determination of INDOT, the Governor shall designate the Apparent Best Value Proposer as Design-Build Contractor under the DBA. Following the designation by the Governor of the Apparent Best Value Proposer as Design-Build Contractor under the DBA, INDOT shall publish notice of such designation in accordance with the Act and may execute and deliver the DBA following such publication.

Upon satisfaction of the foregoing conditions, INDOT may deliver four sets of execution copies of the DBA and other documents to be executed in connection therewith (Execution Documents) to the Apparent Best Value Proposer. The Apparent Best Value Proposer shall obtain all required signatures and deliver all of the execution sets of the Execution Documents to INDOT within two Business Days after receipt, together with the required documents described in Section 6.1.2. If Design-Build Contractor is a joint venture or a partnership, the DBA must be executed by all joint venture members or general partners, as applicable.

Upon INDOT's receipt of all such documents and satisfaction of all conditions precedent, INDOT may, in its discretion, execute the Execution Documents. Unless extended pursuant to Section 1.5.3, final award and DBA execution shall be deemed to have occurred as of the date of execution of the DBA and the other Execution Documents.

In the event of a procurement protest or an action to contest the validity of the DBA is pending, then INDOT, at its sole option and within the exercise of its sole discretion, may elect to move forward with DBA execution, may delay DBA 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 into. In no event may INDOT delay DBA execution beyond the 150-day Proposal validity period without the mutual agreement.

### **6.1.2 Documents To Be Delivered By Proposer With Executed DBA**

The Apparent Best Value Proposer shall deliver to INDOT the documents listed below with the executed sets of the Execution Documents as a condition to execution of the DBA by INDOT.

- (a) If the documents provided under Section 5.12.1(b) (as evidence of the authorization to transact business in the State) are older than 30 days, updated versions of the same documents;
- (b) If not previously submitted, a copy of the executed organizational documents for Design-Build Contractor and, if Design-Build Contractor 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 Design-Build Contractor. The executed form of the organizational documents for Design-Build Contractor may not differ substantially or materially from the draft organizational documents or indicative term sheets included with the Proposal;
- (c) Evidence of approval of the final form of the DBA, and of due authorization, execution, delivery and performance of the DBA, by Design-Build Contractor. Such evidence shall be in form and substance reasonably satisfactory to INDOT. If Design-Build Contractor is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Design-Build Contractor is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Design-Build Contractor 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 resolution, certified by an appropriate officer of the managing member, or (3) if there is no managing member, a resolution from each member, certified by an appropriate officer of such

member. If Design-Build Contractor is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member;

- (d) One or more letters from an Eligible **Surety**, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond as described in Section 8.1.1 of the DBA and in form compliant with the requirements of this Section 6.1.2(d) and otherwise reasonably acceptable to INDOT, in an amount equal to 100% of the Contract Price. If multiple letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the DBA and issuance of the NTP thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the DBA Documents following the date of the letter, but excluding any change orders or information reflected in the Proposal, such as ATCs, the Preliminary Project Baseline Schedule and Proposal commitments;
- (e) One or more letters from an Eligible Surety, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Payment Bond as described in Section 8.1.2 of the DBA and in form compliant with the requirements of this Section 6.1.2(e) and otherwise reasonably acceptable to INDOT, in an amount equal to 100% of the Contract Price. If multiple letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the DBA and issuance of NTP1 thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the DBA Documents following the date of the letter, but excluding any changes or information reflected in the Proposal, such as ATCs, the Preliminary Project Baseline Schedule and Proposal Commitments;
- (f) The insurance policies, certificates of insurance, riders to its existing policies evidencing proof of insurance coverages as required by the DBA, or other written evidence from an insurance company, broker, or agent that such company, broker, or agent will place all such insurance coverages for the Proposer (should it become Design-Build Contractor). For the on-site project-specific coverages, the signatories must indicate expressly that they have read the DBA and insurance requirements under the DBA and that the entities required to obtain insurance under the DBA have the capability of obtaining such insurance in the coverages and under the conditions listed in the DBA;



- (g) If Guarantor for the Proposer's obligations under the DBA is required by INDOT pursuant to Section 2.10, guarantees from Guarantor in the form of Exhibit 14 of the DBA with such modifications approved by INDOT, in its sole discretion;
- (h) 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;
- (i) Evidence that Design-Build Contractor and its Major Participants hold all licenses required to perform the work under the Contract; and
- (j) Any other requirements reasonably determined by INDOT during pre-award negotiations.

### **6.1.3 Documents To Be Delivered By INDOT to Proposer With Executed DBA**

INDOT shall deliver to the escrow held by INDOT the executed DBA and any other executed documents.

## **6.2 Debriefings**

All Proposers submitting Proposals will be notified in writing of the results of the evaluation process. Unsuccessful Proposers may request a debriefing within 10 days of notification of the best value determination. Debriefings shall be provided at the earliest feasible time after written notification of the best value determination. The debriefing shall be conducted at the **Seymour District Offices** by a procurement official familiar with the rationale for the best value determination.

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;
- (c) Provide information on areas in which the unsuccessful Proposer's Proposal had weaknesses or deficiencies; and
- (d) Not include discussion or dissemination of the thoughts, notes, or rankings of individual evaluators.

## 6.3 Stipend Payment to Unsuccessful Proposers

### 6.3.1 Stipends Generally

Except as set forth in the **Stipend Agreement** and this Section 6.3, each Proposer shall be entitled to receive a stipend payment from INDOT if the Proposer submits a timely and responsive Proposal by the Proposal Due Date in accordance with the terms and conditions of this RFP, but either: (a) the Proposer is unsuccessful, (b) INDOT cancels the procurement without award after the Proposal Due Date; (c) INDOT does not execute the DBA prior to expiration of the Proposal validity period, as extended; or (d) INDOT fails to execute the DBA following Apparent Best Value Proposer's timely satisfaction of all conditions to DBA award and execution set forth in the ITP. No Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in the Stipend Agreement and this Section 6.3. The total amount available for a stipulated stipend payment for each Proposer for this procurement is \$500,000. Proposers are not required to accept a stipend payment and may elect to reject the payment thereof.

If Section 6.3.1(a) applies, each eligible Proposer may submit an invoice in the form of Exhibit 1 to the Stipend Agreement no earlier than 30 days after INDOT issues notice of designation of the Apparent Best Value Proposer and no later than 30 days after DBA execution. The total amount available for a stipend shall be due and payable by the later of (a) 60 days after the date the Proposer submits to INDOT the invoice and waiver and release; or (b) 45 days after the date of DBA execution.

If Section 6.3.1(b) applies, each eligible Proposer may submit an invoice in the form of Exhibit 1 to the Stipend Agreement no earlier than the date of the notice of cancellation and no later than 90 days after that date. The total amount available for a stipend shall be due and payable 60 days after the date the Proposer submits to INDOT the invoice and waiver and release.

If Section 6.3.1(c) applies, each eligible Proposer may submit an invoice in the form of Exhibit 1 to the Stipend Agreement no earlier than the date of the expiration of the Proposal validity period, as extended, and no later than 60 days after that date. The total amount available for a stipend shall be due and payable 60 days after the date the Proposer submits to INDOT the invoice and waiver and release.

If Section 6.3.1(d) applies, the Apparent Best Value Proposer may submit an invoice in the form of Exhibit 1 to the Stipend Agreement no earlier than 60 days after the date the Apparent Best Value Proposer satisfies all conditions to DBA execution in Section 6.1 and no later than 90 days after that date. The total amount available for a stipend shall be due and payable 60 days after the date the Proposer to INDOT the invoice and waiver and release.

In all cases, the invoice shall be in a form reasonably acceptable to INDOT , and must be accompanied by an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against INDOT, in the form attached as Form M (Form of Waiver and Release Re: Stipend). INDOT may also accelerate payment of the stipend

ahead of the dates set forth in this Section 6.3.1 if in the interests of the Project, INDOT or the State, as determined by INDOT, in its sole discretion.

### **6.3.2 Eligibility for Stipend**

No stipend shall be payable to a Proposer in the following circumstances:

- (a) If the Proposer fails to submit a timely and responsive Proposal by the Proposal Due Date;
- (b) If such Proposer has not executed and delivered the Stipend Agreement to INDOT with its Proposal;
- (c) If such Proposer withdraws from the procurement;
- (d) If such Proposer has not complied with the terms and conditions of the RFP Documents;
- (e) If such Proposer fails to satisfy the terms and conditions set forth in the Stipend Agreement or this Section 6.3, including delivering an invoice, all forms required by the State for payment of vendors within the time periods specified in this RFP and the waiver and release as described in this RFP;
- (f) If such Proposer has filed a protest of, or otherwise challenges, the procurement process, award or cancellation of the procurement process and such protest or challenge is dismissed or otherwise is unsuccessful; or
- (g) If such Proposer was the Apparent Best Value Proposer and it fails to proceed with execution and award of the DBA for any reason other than (1) the failure of one or more closing contingencies in the RFP, the failure of which do not arise out of or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or Governmental Rule or willful misconduct of the Proposer; or (2) INDOT's election to cancel the procurement after the Proposal Due Date, which election does not arise out of or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or Governmental Rule or willful misconduct of the Proposer.

Any ideas and work product contained in such Proposer's Proposal and any work product that is not required to be returned to the Proposer under this RFP (such as ATCs, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer) received prior to the cancellation of the procurement or contained in its Proposal will be the property of INDOT without any requirement to make payment therefor.

### **6.3.3 Work Product; Ownership**

Each Proposer agrees that INDOT shall own and be entitled to use all ideas and work product in its Proposal and all work product that is not required to be returned to the Proposer under this RFP (such as ATCs, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer) received by INDOT prior to the cancellation of the procurement or contained in its Proposal, in consideration for INDOT's agreement to make the stipend payment as provided in this RFP and in the Stipend Agreement, without any further compensation or consideration to Proposer.

INDOT will have the right to inform the Apparent Best Value Proposer regarding the contents of the other Proposals and the DBA may incorporate the work product, ideas or concepts based thereon. Upon the Proposer's receipt of the stipend payment hereunder, this right shall extend to allow INDOT to use such work product, ideas and concepts in the performance of its functions. Payment of the stipend to a Proposer shall operate as a release and waiver by Proposer of any and all claims challenging the procurement process, award, and cancellation of the procurement process.

### **6.3.4 Stipend Agreement**

Execution and delivery of the Stipend Agreement with the Proposal shall constitute the irrevocable election by Proposer to accept the stipend described under the Stipend Agreement and this Section 6.3. The Stipend Agreement shall be delivered with the Proposal as described in Exhibit B.

### **6.4 Costs Not Reimbursable**

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

### **6.5 Return of Proposal Security**

Except for any Proposal Security which has been forfeited, the Proposal Security as to each unsuccessful Proposer will be returned to the respective Proposers upon the earliest of (i) expiration of the Proposal validity period, as extended, (ii) 10 Business Days following execution of the DBA and (iii) 10 Business Days following cancellation of the procurement by INDOT. The Proposal Security for the Apparent Best Value Proposer shall be returned at such time as (i) the Proposer has satisfied all conditions of execution and award, including the conditions set forth in Section 6.1, (ii) the Proposal validity period, as extended, has expired, or (iii) INDOT cancels the procurement.

## **6.6 Technical Proposal Following Award**

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

## SECTION 7.0 PROTESTS

### 7.1 Applicability

This Section 7.0 sets forth the sole and exclusive protest remedies available with respect to this RFP. Protests are limited to:

- (a) 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 in this RFP, as applicable; and
- (b) Award of the DBA.

### 7.2 Deadlines for Protests

- (a) Protests concerning the issues described in Section **Error! Reference source not found.** must be filed no later than five Business Days after receipt of the notification of non-responsiveness.
- (b) Protests concerning the issues described in Section **Error! Reference source not found.** must be filed no later than 15 days after publication of the notice of Apparent Best Value Proposer.

### 7.3 Content of Protest

Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest and shall include all factual and legal documentation (including any necessary supporting documents) in sufficient detail to establish the merits of the protest. The protest shall also include the name and address of the protestor and the RFP or contract number. Statements shall be sworn and submitted under penalty of perjury.

### 7.4 Filing of Protest

Protests shall be filed by hand delivery or express mail courier, with a concurrent email transmittal, on or before the applicable deadline to INDOT's Authorized Representative at:

Indiana Department of Transportation  
100 North Senate Ave  
RM N758  
Indianapolis, Indiana 46204

### 7.5 Burden of Proof

The protestor has the burden of proving its protest by clear and convincing evidence. Any Proposer submitting a protest shall respond to reasonable information requests from INDOT relating to the protest and applicable subject matter. The protest shall be

decided on the basis of written submissions and no Proposer shall have any right to a hearing or oral presentation regarding the applicable protest.

## **7.6 Decision on the Protest**

TINDOT's Major Projects Delivery Director or his/her designee shall issue a written decision regarding the protest within 30 days after the filing of the complaint, responsive, detailed statement of protest, which decision shall be final and non-appealable. If necessary to address the issues raised in a protest, INDOT may make appropriate revisions to the RFP by issuing an Amendment.

## **7.7 Protestor's Payment of Costs**

If a protest is denied or otherwise unsuccessful, the Proposer filing the protest shall be liable for, and shall indemnify, defend and hold INDOT harmless from and against, all costs reasonably incurred to defend against or resolve the protest, including attorneys' fees and other legal and consultant fees and costs, and any unavoidable damages sustained by INDOT as a consequence of the protest.

## **7.8 Forfeiture of Stipend**

In accordance with Section 6.3.2(f), any Proposer that files a protest under this Section 7.0, or otherwise challenges the procurement process, award, or cancellation of the procurement process, shall be ineligible for a stipend payment if such protest or challenge is dismissed or otherwise unsuccessful. Notwithstanding the foregoing, INDOT may, in its sole discretion, elect to deduct the costs set forth in Sections 7.7 and 7.9 from any stipend INDOT may elect to pay the protesting Proposer.

## **7.9 Additional Terms of Protest**

- (a) Each Proposer, by submitting its Proposal and in consideration of INDOT's review and consideration thereof, expressly recognizes and agrees to the limitation on its opportunity to protest provided in this Section 7.0, and expressly waives all other rights and remedies that may be available to the Proposer under applicable Governmental Rules, in equity, or otherwise.
- (b) If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 7.0, it shall indemnify, defend, and hold INDOT and their respective 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.

- (c) Notwithstanding the existence of a protest, INDOT may, in its sole discretion, continue the procurement consistent with the terms of the RFP.

#### **7.10 Involvement of Other Proposers**

The Proposer filing the protest shall, at the direction of INDOT, send such other information, including a copy of the protest itself, to the other Proposers implicated in, or that are, in INDOT's sole discretion, necessary parties to, the filing Proposer's protest.



## SECTION 8.0 RESERVED RIGHTS AND DISCLAIMERS

### 8.1 Reserved Rights

INDOT may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer, may require additional information from a Proposer concerning its Proposal, and may require additional evidence of qualifications to perform Design-Build Contractor's obligations under the DBA Documents. INDOT reserve the right to:

- (a) Design and/or build the Project in any manner that it, in its sole discretion, deems appropriate, necessary or warranted;
- (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 this RFP in whole or in part at any time and for any reason prior to the execution by INDOT of a DBA, without incurring any cost obligations or liabilities, except for any obligations to pay a stipend under the terms of this RFP and the Stipend Agreement;
- (e) Terminate this procurement and commence a new procurement for part or all of the Project at any time and for any reason;
- (f) Terminate evaluations of Proposals received at any time and for any reason;
- (g) Suspend or terminate negotiations at any time and for any reason, recommence negotiations with the Apparent Best Value Proposer after negotiations have been suspended, elect not to commence DBA negotiations with any responding Proposer, or engage in negotiations with other than the highest ranked Proposer;
- (h) Modify the procurement process described in this RFP (including as a result of concerns or requirements of FHWA) at any time and for any reason;
- (i) Waive or permit corrections to data submitted with any response to this RFP until such time as INDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (j) Issue Addenda and supplements to data and information previously provided in a Proposal pursuant to a request for clarification issued by INDOT until such time as INDOT 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, subcommittees, 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 in this RFP;
- (m) Approve or disapprove Key Personnel or changes in the Key Personnel identified in the SOQ or proposed under this RFP;
- (n) Approve or disapprove changes in the Proposer's organization;
- (o) Waive deficiencies, informalities and irregularities in Proposals;
- (p) Accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;
- (q) 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;
- (r) Request Proposal Revisions as specified in this RFP;
- (s) Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the DBA by a third party;
- (t) Not issue any notice to proceed after execution of the DBA Documents;
- (u) Not pursue financing for the Project;
- (v) Develop some or all of the Project itself;
- (w) Disqualify any Proposer that violates the terms of the RFP;
- (x) Determine a competitive range and conduct discussions with Proposers in the competitive range;
- (y) Perform a price reasonableness assessment; and
- (z) Exercise any other right reserved or afforded to INDOT under this RFP and applicable Governmental Rule.

## 8.2 Disclaimers

This RFP does not commit INDOT to enter into any DBA. Except as expressly described in the Stipend Agreement and Section 6.3 above, INDOT assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

Except to the extent of the obligations regarding the procurement process specifically set out in this ITP, INDOT shall not be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the DBA Documents, in form and substance satisfactory to INDOT, has been authorized and executed by INDOT.

In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

## EXHIBIT A

### DEFINITIONS AND INITIALISMS

**Affiliate** means with respect to any referenced Person:

- (a) another Person, at any tier, that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with (to include by way of joint venture or partnership) the referenced Person (or any of its members, partners or shareholders holding a 10% or greater interest in such Person); and
- (b) any Person for which 10% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by
  - (i) the referenced Person,
  - (ii) any of the referenced Person's members, partners or 10% or greater shareholders, or
  - (iii) any Affiliate of such referenced Person.

For purposes of this definition the term "control" means a Controlling Interest.

**Amendment** means supplemental additions, deletions, and modifications to the provisions of the RFP after the release date of the RFP.

**Alternative Technical Concept** or **ATC** has the meaning set forth in ITP Section 3.1.

**Apparent Best Value Proposer** means the Proposer having the highest scoring Proposer based on the best value determination pursuant to ITP Section 5.10.

**Base Bid Project Elements** means those Project Elements set forth in ITP Section 1.3.2.

**Concept ATC** means a conceptual ATC which meets the requirements of ITP Section 3.2.

**Design-Build Contractor** means the successful Proposer that enters into the DBA with INDOT pursuant to this RFP. See also ITP Section 1.1.

**Equity Member** means (i) each member of a joint venture; (ii) each general partner of a limited or general partnership; (iii) each managing member of a limited liability company; (iv) each entity holding an equity interest in the Proposer entity if the Proposer entity was formed less than one year prior to the Proposal Due Date; (v) each entity proposed to hold an equity interest in the Proposer entity if the Proposer entity is not yet formed as of the Proposal Due Date; and (vi) each other entity with a controlling interest in Proposer

(whether as a member, manager, partner, shareholder, joint venture member or otherwise). Notwithstanding the foregoing, if the applicable entity is a publicly traded company, shareholders with less than a 10% interest in the entity shall not be considered Equity Members, unless the shareholders have a Controlling Interest.

**Execution Documents** shall have the meaning set forth in ITP Section 6.1.1.

**Financially Responsible Party** means the parent company, Affiliate, or other entity whose financial statements that Proposer provides to demonstrate the financial capacity of Proposer or an Equity Member.

**Guarantor** means the ultimate parent of Proposer (or its Equity Members) or another entity(ies) acceptable to INDOT that will guarantee all the obligations of a Proposer or an Equity Member under the DBA Documents.

**Indiana Design Manual** means the “Indiana Design Manual”, as in effect as of the Setting Date.

**INDOT** means the Indiana Department of Transportation.

**INDOT’s Authorized Representative** has the meaning set forth in ITP Section 2.2.1

**Instructions to Proposers** or **ITP** means the documents, including exhibits and forms in Exhibit D, included in this Volume I of this RFP containing directions for the preparation and submittal of information by Proposers in response to this RFP. See also ITP Section 1.1.

**Key Personnel** means those named personnel requested in the RFQ and identified in the Proposer’s SOQ and listed on Proposal Form E (Personnel Work Assignment Form and Commitment of Availability).

**Lead Design Firm** shall mean the entity with primary responsibility for design of the Project (which entity may be a consortium, partnership or any other form of joint venture).

**Major Participant** means each Equity Member as well as the following team members: (a) the lead construction firm (if not Proposer); (b) the Lead Engineering Firm (if not Proposer); (c) each Subcontractor that will perform work valued at 10% or more of the construction work; (d) each subconsultant that will perform 30% or more of the design work; and (e) any team member that is required for Proposer team to satisfy the prequalification requirements.

**Non-Collusion Affidavit** means the affidavit, executed by or on behalf of Proposer, its Equity Members and any Major Participant that is on more than one Proposer team, delivered with its Proposal and conforming to Form E (Non-Collusion Affidavit).

**Post-Selection Deliverables** has the meaning set forth in ITP Section 5.12.1.

**Preliminary Design-Build Plan** means the plan submitted pursuant to Section 4.2 of Exhibit B to the ITP.

**Preliminary DBE Project Plan** means the plan submitted pursuant to Section 3.1.17 of Exhibit B to the ITP.

**Preliminary Performance Plans** means the Preliminary Project Management Plan and the Preliminary Design-Build Plan.

**Preliminary Project Baseline Schedule** means the Project schedule for design and construction required to be submitted with the Proposal and meeting the requirements set forth in Section 4.1.2 of Exhibit B to the ITP.

**Preliminary Project Management Plan** means the plan submitted pursuant to Section 4.1 of Exhibit B to the ITP.

**Preliminary Quality Management Plan** means the plan submitted pursuant to Section 4.1.3 of Exhibit B to the ITP.

**Preliminary Transportation Management Plan** means the plan submitted pursuant to Section 4.2.1 of Exhibit B to the ITP.

**Pre-Proposal Submittals** has the meaning set forth in ITP Section 2.9.1.

**Project** has the meaning set forth in ITP Section 1.1, as more fully defined in the DBA Documents.

**Proposal** is the written offer of the Proposer in response to the RFP.

**Proposal Bond** shall have the meaning set forth in Section 4.4.2 of the ITP.

**Proposal Due Date** means the deadline for submission of Proposals.

**Project Elements** means has the meaning set forth in ITP Section 1.3.2, separated into Base Bid Project Elements and Potential Additional Project Elements.

**Proposal Letter** means the letter, executed by or on behalf of the Proposer, delivered with its Proposal and conforming to Form A to the ITP.

**Proposal Revision** has the meaning set forth in ITP Section 5.9.

**Proposal Security** means a certified check payable to INDOT or the Proposal Bond as described in Section 3 of Exhibit C to the ITP in the amount of \$4 million.

**Proposer** means the entity submitting a Proposal for the Project in response to this RFP.

**Proposer Point of Contact** has the meaning set forth in ITP Section 2.2.2.

**Public Information Plan** means the plan required under Section 4.1.5 of Exhibit B to the ITP.

**Reference Information Documents** or **RID** has the meaning set for in ITP Section 1.4.

**Request for Qualifications** or **RFQ** means INDOT'S Request for Qualifications issued on May 8, 2024 as amended.

**Request for Proposals** or **RFP** means the set of documents identifying the Work to be performed and materials to be furnished to which a Proposer may be submit a Proposal in response. The RFP includes the ITP, DBA Documents, and Reference Information Documents, including all addenda thereto, and all attachments thereto, as amended. The RFP is issued only to Short-Listed Proposers.

**RFP Documents** means the documents that make up the RFP including the ITP, DBA, including exhibits and attachments, TP including exhibits and attachments, and RID documents.

**Scope Proposal** means that part of the Proposal described in Exhibit C of the ITP.

**Scope Proposal Score** means the score for evaluation of the Scope Proposal as determined pursuant to ITP Section 5.3.2.

**Setting Date** shall be September 30, 2024

**Short-Listed Proposer** means a Proposer shortlisted by INDOT based on INDOT's evaluation of SOQ's in response to the RFQ.

**Stakeholder** means any of the entities listed in ITP Section 2.2.3(e).

**Stipend Agreement** means the agreement entered into between INDOT and Proposer and in the form of Form N to the ITP.

**Substantial Completion Date** means the date the Project will be substantially complete as further defined in the DBA and proposed on Form L (Completion Deadlines).

**Surety** means each properly licensed surety company, insurance company or other Person approved by INDOT and authorized to do business in the State, committing to provide any of the bonds identified in this RFP.

**Technical Proposal** means that part of the Proposal described in Exhibit B of the ITP.

**Technical Proposal Evaluation Committee** or **TPEC** means the committee that performs the review and evaluation of the Technical Proposal as set forth in ITP Section 5.2.

**Technical Proposal Score** means the score for evaluation of the Technical Proposal as determined pursuant to ITP Section 5.3.1.

**Total Proposal Score** means the score for evaluation of the Proposal as determined pursuant to ITP Section 5.3.

For definitions of other initially capitalized terms, see Exhibit 1 of the DBA.



## EXHIBIT B

### TECHNICAL PROPOSAL INSTRUCTIONS

#### 1. General Instructions

Proposers shall submit the information required by this Exhibit B in the organization and format specified herein. The Technical Proposal shall be organized in the order listed in Exhibit E (except for appendices that may be included in the appropriate volume) and shall be clearly indexed. Each component of the Technical Proposal shall be clearly titled and identified.

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

Evidence of signature authority shall be provided for all individuals signing forms. Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other signatories. Place all authorizations in a single, tabbed section in an appendix.

#### 2. Format

The Technical Proposal shall be limited to an aggregate of 40 pages. The materials required by Section **Error! Reference source not found.** and Section 3.2 of this Exhibit B and in any required appendix do not count toward the page limit).

The Technical Proposal shall be contained in two volumes: Volume 1 - Administrative Materials and Forms and Volume 2 - Preliminary Performance Plans. Appendices, as applicable, may be included in the volumes or included separately.

#### 3. Contents of the Technical Proposal

The required contents and organization of the Technical Proposal are summarized in the Proposal checklist provided in Exhibit E. A copy of the checklist for the Technical Proposal shall be included in each volume of the Technical Proposal. Proposers shall not amend the order or change the contents of the checklist except to provide the required cross reference to the Proposal. The Technical Proposal shall not contain any information relating to the Scope Proposal.

The Technical Proposal shall consist of the following major elements:

- (a) Proposer Information, Certifications, and Documents (in Volume 1, unless otherwise noted);
- (b) Preliminary Performance Plans (in Volume 2, unless otherwise noted).

### **3.1 Proposer Information, Certifications and Documents**

Materials shall be contained in Volume 1 unless otherwise noted.

If a form required hereunder calls for execution or information concerning a Major Participant and that Major Participant is a consortium, partnership or joint venture, the form must be provided for both the consortium, partnership or joint venture entity, as well as the individual members of the consortium partnership or joint venture; provided, however, that execution of the form, if required, on behalf of the consortium partnership or joint venture need only be by an authorized signatory of the consortium partnership or joint venture.

#### **3.1.1 Proposal Letter**

The Proposal shall include the Proposal Letter (Form A). Proposer shall attach to the Proposal Letter evidence of authorization to execute and deliver the Proposal, the DBA, and all other documents required to be executed by Proposer or Design-Build Contractor in connection with the DBA and shall identify its authorized representatives. If Proposer is a consortium, partnership, or any other form of joint venture, then the Equity Members of Proposer may each execute a single document authorizing a nominated and identified representative to execute documents on their behalf in respect of Proposer.

#### **3.1.2 Information About Proposer Organization**

Proposer shall reaffirm accuracy of information related to its organization included in its previously submitted SOQ by completing Form B. Any changes to the organization, including names, contact information, roles, teaming arrangements, relevant experience, and key personal shall be provided to INDOT prior to the Proposal Due Date for approval.

If the Design-Build Contractor is to be a consortium, partnership (other than a limited partnership) or any other form of a joint venture, or an association that is not a legal entity, the Proposal shall contain a letter signed by each Equity Member and any other member who will make up the Design-Build Contractor indicating they will accept joint and several liability for the Design-Build Contractor's obligations under the DBA. If the Design-Build Contractor is to be a limited partnership, the Proposal shall contain a letter signed by each general partner indicating they will accept joint and several liability for the Design-Build Contractor's obligations under the DBA. If the Design-Build Contractor is not a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, such a letter shall not be required.

The Proposal shall contain executed contracts, or if a contract has not been executed, signed term sheets between Proposer and Lead Design Firm.

If a term sheet is provided, it shall include the respective parties' agreed positions on the following: scope of work, completion deadlines, warranties, payment provisions, liquidated damages, limitations on or exclusions from the Subcontractor's liability, bonds, bank and corporate guarantees, security package, and insurance.

### **3.1.3 Responsible Proposer and Major Participant Questionnaire**

The Technical Proposal shall include a Form C, a (Proposer, Equity Member, Major Participant and Financially Responsible Party Questionnaire), which is substantially the same form as the Form C provided in Proposer's SOQ.

Form C shall be completed by the Proposer and each of the Equity Members, Financially Responsible Parties, and other Major Participants

All forms shall be signed by an authorized representative of such Equity Member, other Major Participants, or Financially Responsible Parties as applicable, and the Technical Proposal shall include evidence of signature authorization for such individuals.

### **3.1.4 Industrial Safety Record**

The Proposal shall include an industrial safety record on Form D for Proposer, each Equity Member, and each Major Participant that will perform or supervise installation or construction on the Project. If any such entity does not have an industrial safety history or does not have industrial safety history for the duration indicated in Form D, complete the form for the applicable years and include a statement explaining why all years on the form are not included. Should any of these parties have been a member of a joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D.

### **3.1.5 Key Personnel**

The Technical Proposal shall identify the Key Personnel and shall include Form E (Personnel Work Assignment Form and Commitment of Availability) identifying personnel work assignments, as well as a statement signed by Proposer and the employer of each designated individual, committing to maintain such individual's availability for and active involvement in the Project.

Form E shall be signed by Proposer and the employer of each of the Key Personnel.

A Proposer may not make any changes in its Key Personnel identified in its SOQ without requesting and receiving INDOT approval prior to submitting its Proposal. Failure to request and receive approval for Key Personnel changes may result in rejection of Proposal.

### **3.1.6 Letter Regarding Pre-Proposal Submittals**

The Proposal shall include the following:

- (a) If a Proposer's organization, Equity Member, Major Participant, or Key Personnel has changed since submission of the SOQ, Proposer shall specifically describe such changes and include a copy of INDOT's approval letter; and

- (b) INDOT's documented approval regarding any ATCs used by Proposer in its Proposal and copies of those ATCs and any associated revisions or clarifications that were requested with the approval or conditional approval thereof.

### **3.1.7 Non-Collusion Affidavit**

The Proposal shall include Form F, certifying that the Proposal is not the result of and has not been influenced by collusion. A separate Form F shall be included for the Proposer and each Major Participant and Equity Member.

### **3.1.8 DBE Certification**

The Proposal shall include Form G (DBE Certification) confirming that Proposer will obtain DBE commitments equal to or exceeding the DBE participation goal or will exercise good faith efforts to meet the goal and shall substantiate and document its good faith efforts.

### **3.1.9 Conflict of Interest Disclosure**

Each Proposer, on behalf of itself and all entities on Proposer's team, shall voluntarily disclose to INDOT, in writing, any fact that may provide it with an unfair competitive advantage and potential or actual conflict of interest. The Proposal shall include a certification on Form H by Proposer, on behalf of itself and all entities on Proposer's team, describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest. Each Proposer, on behalf of itself and all entities on Proposer's team, shall complete and deliver a certification on Form H even if Proposer, on behalf of itself and all entities on Proposer's team, has nothing to disclose, in which case, Proposer shall so indicate on Form H.

INDOT may preclude or disqualify a Proposer from participation in the procurement and subsequent DBA if Proposer is deemed to have an unfair competitive advantage or a conflict of interest under applicable state.

### **3.1.10 Certification Regarding Buy America Build America**

The Technical Proposal shall include Form Q, regarding Buy America requirements of 23 USC Section 313 and implementing regulations, as well as INDOT's Buy America Requirements set forth in the Standard Specifications, signed by an authorized representative of Proposer.

### **3.1.11 Certification Regarding Equal Employment Opportunity**

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

A separate Form R shall be provided by Proposer, each Equity Member, Major Participants and each proposed Subcontractor identified in Proposer's Proposal.

### **3.1.12 Use of Contract Funds for Lobbying Certification**

The Technical Proposal shall include executed copies of Form S, regarding use of contract funds for lobbying. Form S must be modified and duplicated as needed and must be executed by each of the following: Proposer; each Equity Member; each Major Participant; and all proposed Subcontractors identified as part of the Proposer team.

### **3.1.13 Debarment and Suspension Certification**

The Technical Proposal shall include an executed copy of Form K, regarding debarment and suspension of contractors.

### **3.1.14 Guarantor Commitment Letter**

If a Guaranty is required by INDOT, the Proposal shall include the following: (a) an irrevocable letter signed by the Guarantor in the form of Form P committing to provide a Guaranty in the form of DBA Exhibit 14 concurrently with the execution and delivery of the DBA by Proposer; (b) evidence of authorization of the signatory to that letter; (c) financial capability information for the Guarantor; and (d) such other information concerning the Guarantor as INDOT may request.

### **3.1.15 Insurance**

The Proposal shall contain written evidence from an insurance company, broker, agent or advisor expressly stating that it has read the DBA (including the insurance requirements) and that Proposer will be able to obtain and maintain the insurance types and amounts required and can do so under the terms, and subject to the conditions, specified in DBA Section 9. Evidence from multiple entities is acceptable if Proposer intends to secure the required coverage through multiple insurance companies, brokers or agents.

### **3.1.16 Confidential Contents Index**

A page executed by Proposer that sets forth the specific items (and the section and page numbers within the Proposal at which such items are located) that Proposer deems to be a trade secret or other confidential information protected from disclosure by an exception in the Public Records Act. If a Proposer does not believe anything in the Technical Proposal is confidential, an executed statement by the Proposer so stating should be submitted. Notwithstanding the foregoing, the list required under this Section 3.1.16 of this Exhibit B is intended to provide input to INDOT as to the confidential nature of a Proposer's Proposal, but in no event shall such list be binding on INDOT, determinative of any issue relating to confidentiality or a request under the Public Records Act or override or modify the provisions of the Public Records Act or the responsibilities of INDOT thereunder.

### **3.1.17 Preliminary DBE Performance Plan**

The Proposal shall include Proposer's Preliminary DBE Performance Plan which shall describe the general approach of Proposer to meeting the DBE goals for the Project and complying with the DBE requirements. The Preliminary DBE Performance Plan shall include the following elements:

- (a) A comprehensive approach to achieving the DBE goals;
- (b) Approach to encourage participation of DBE firms;
- (c) Approach to outreach and assistance for potential DBE firms who may be eligible to become certified and participate as a DBE; and
- (d) A description of how Proposer shall expand technical, management, and business capabilities of participating DBE firms for firms wishing to expand their capabilities.

If Proposer is selected as the Apparent Best Value Proposer, Proposer's Preliminary DBE Performance Plan shall not limit, modify, or alter INDOT's right to review and approve the DBE Performance Plan after award of the DBA.

### **3.1.18 Prequalification Information**

The Technical Proposal shall include a completed Form T, identifying the names of each team member that is required for the Proposer team, as of the Proposal Due Date, to satisfy the INDOT prequalification requirements set forth in ITP.

## **3.2 Stipend Agreement**

The Proposal shall include either (i) an executed Form N (Stipend Agreement) if Proposer wants to be eligible to receive payment of the stipend; or (ii) if Proposer does not wish to accept the stipend, an express written statement, dated and executed by Proposer, that Proposer irrevocably rejects the payment of a stipend.

## **4. Preliminary Performance Plans**

The Technical Proposal shall contain the following preliminary performance plans and materials:

- (a) Preliminary Project Management Plan
- (b) Preliminary Design-Build Plan
- (c) Project Substantial Completion Date

The Preliminary Performance Plans shall describe the project management philosophy, the plan, and schedule for executing the Project and any related DBA administration, and how Proposer plans to achieve and satisfy the Project requirements.

#### **4.1 Preliminary Project Management Plan**

Proposer shall present a Preliminary Project Management Plan, which shall consist of several management plans and components that describes the Design-Build Contractor's managerial approach. The Preliminary Project Management Plan shall describe the project management philosophy, the plan, and schedule for executing the Project and any related DBA administration, and how Proposer plans to achieve and satisfy the requirements of the DBA Documents.

##### **4.1.1 Project Management Approach**

The Preliminary Project Management Plan shall provide a description of the proposed approaches to managing all Project design, construction, and maintenance (during construction) activities throughout the term of the DBA. A responsive expression of the proposed management approaches shall include an overview of the management sections included in the Preliminary Design-Build Plan.

- (a) Management Structure and Personnel - Describe the proposed overall project management organization for design, construction, and maintenance (during construction), identifying participating firms/organizations and individuals. It shall include:
  - (i) An organization chart outlining the structure of Proposer's project management organization for design, construction, and maintenance (during construction), including quality sub-organizations and a description of the roles allocated, responsibilities, interrelation and Work to be accomplished by each member of the management team and each sub-organization, including identified subcontractors and suppliers (at all tiers);
  - (ii) Information describing how each of the Key Personnel involved with design, construction, and maintenance (during construction) will fit into the organization, including a description of each Key Personnel's function and responsibility relative to the Project, and indicating the percent of time that he/she will devote to the Project;
  - (iii) Qualification and experience required for task managers in each sub-organization reporting to the Key Personnel involved with design, construction, and maintenance (during construction);
  - (iv) Information regarding the current and projected workload and backlog of Proposer team (including all Major Participants), and a description of Proposer's plan and overall ability to provide the

- experienced personnel, materials, equipment, and facilities required to successfully complete all aspects of the Project on a timely basis and within any applicable time frames set forth in the DBA Documents; and
- (v) Information describing Proposer's approach to management and coordination of utilities, including a description of roles assigned to utility coordination personnel and a description of Proposer's overall ability to successfully complete coordination on a timely basis; and
- (b) Internal Organization Systems - Describe the organizational systems to be used by Proposer, which shall include:
- (i) A description of Proposer's team decision-making process, how internal disputes between team members will be resolved, and how Proposer will avoid adverse impacts to the Project (cost, schedule, or quality) in the event of such disputes;
  - (ii) A description of the methods to be used to establish lines of communication and documentation within Proposer's team, including communication among the sub-organizations and management personnel;
  - (iii) A description of how Proposer intends to interface with INDOT, its consultants, applicable third parties, and relevant federal, state, and local agencies, including the Stakeholders; and local police and fire departments, on all matters including planned transportation and utility infrastructure in the Project area; and
  - (iv) A description of the qualifications and experience of proposed staff members who will be engaged for purposes of public information and community outreach; and
  - (v) A description of Proposer's approach to store and retain Project-related documents and information, including (i) in what medium (digital or otherwise) the documents will be maintained; (ii) If electronic, what format will be used; and (iii) Proposer's approach for security and backup of the project documentation.

#### **4.1.2 Schedule Submissions**

##### Preliminary Project Baseline Schedule

The Proposal shall include a summary level "Preliminary Project Baseline Schedule" and narrative for design, construction, and maintenance during construction. It shall include key activities, milestones, and constraints (including the Completion Deadlines). The



narrative shall be included within the body of the Technical Proposal and shall count towards the maximum page count, but the actual Preliminary Project Baseline Schedule shall be submitted in an appendix to the Technical Proposal and shall not count towards the page count. The Preliminary Project Baseline Schedule shall use a high level critical path method and shall represent Proposer's plan for completing the Work between issuance of NTP and Substantial Completion. Selection of a Proposer shall not be deemed to be acceptance or approval of Proposer's Preliminary Project Baseline Schedule.

The Preliminary Project Baseline Schedule shall be in the form described in Technical Provision Section 1.3 and DBA Section 4; provided, however, that the Preliminary Project Baseline Schedule submitted with the Proposal (a) does not need to be cost loaded, and (b) activity duration will not be limited to 20 days. The Preliminary Project Baseline Schedule shall include at least the following:

- A narrative not to exceed four pages which describes: 1) the proposed execution of the Work through Substantial Completion, 2) plan to mobilize Key Personnel, equipment, materials, and supplies, 3) a description of system to be in place to prepare and update the Project Baseline Schedule, 4) description of Proposer's plan to integrate design and Subcontractor activities into Proposer's scheduling and reporting system, 5) interfaces with INDOT, and 6) summary of major risks to the schedule, with an explanation of planned contingencies and an approach to address the risks, should they arise; and
- Schedule activities or milestones representing major design and maintenance during construction necessary to achieve Substantial Completion, at least developed to a level of detail that defines the Critical Path taking into account all constraints, including review times by INDOT.

For purposes of clarity, if Proposer is selected as the Apparent Best Value Proposer, the Preliminary Project Baseline Schedule shall not limit, modify, or alter INDOT's right to review and approve the Post Award Baseline Schedule or any Project Schedule after award of the DBA, including the Project Baseline Schedule.

Proposers are advised that approval of the Preliminary Baseline Schedule shall be a condition to award of the DBA and the approved schedule shall be DBA Exhibit 15.

#### **4.1.3 Preliminary Quality Management Plan**

The Preliminary Project Management Plan shall describe Proposer's quality approach to design and construction for the Project, including at least the following:

- (a) For the design quality component of the Preliminary Quality Management Plan, a description of the design deliverable process, a description of the internal process for design reviews, a description of quality assurance and quality control functions. The design quality component shall also present Proposer's approach to reporting relationships and responsibilities,

including INDOT oversight procedures to be implemented; conformance with federal oversight requirements as described in various places within the Technical Provisions; how design quality management will be documented; and how changes will be made to correct design deficiencies; and

- (b) For the construction quality component of the Preliminary Quality Management Plan, include a description of the approach for integrating with design, documenting the control of materials, testing, inspection, and monitoring of construction activities for which the Technical Provisions require Design-Build Contractor QA/QC including reporting procedures, methodologies, and corrective actions. Include an explanation of how INDOT will be involved, and how construction will be documented and corrected.

#### **4.1.4 Safety and Environmental Management**

- (a) Safety Plan - Include a description of the Proposer's approach to safety; and
- (b) Environmental Management - Describe the management approach to environmental compliance and permitting.

#### **4.1.5 Public Information Plan**

The Public Information Plan shall describe the approach to support INDOT with its Public Involvement Plan (PIP).

### **4.2 Preliminary Design-Build Plan**

The Preliminary Design-Build Plan shall include:

#### **4.2.1 Preliminary Transportation Management Plan**

- (a) A description of the construction staging and traffic control and sequencing proposed to accommodate traffic during the construction. The traffic control information shall include the following:
  - (i) The overall traffic management and control and sequencing approach, including a summary table and schedule of the proposed lane restrictions and closures;
  - (ii) Conceptual construction staging diagrams including initial and ultimate proposed treatment of the bridges, mainline and ramps of the Project, temporary ramp widening, and any staging of structures;

- (iii) A narrative description of how Proposer intends to schedule and sequence the construction to minimize impacts on the environment, communities, third parties and traveling public; and
- (iv) A description of the intended laydown, recycling, staging, disposal and maintenance locations to be used;
- (b) A description of best management practices planned to be used during MOT phases, including incident management, emergency vehicle access, temporary ITS elements, advance notifications, messaging, and signing to increase safety and add value to the traveling public;
- (c) A preliminary plan showing the roadway, construction sequencing and maintenance of traffic concept and technical solutions. Proposer's plans shall be presented in on 11" x 17" plan sheets or roll plots and shall clearly identify the Work to be completed. Roadway and Preliminary Maintenance of Traffic plans shall conform to INDOT plan preparation guidelines for preliminary field check plans under Indiana Design Manual, except as noted, and shall include the following:
  - (i) Road plans shall include the following:
    - Title sheet;
    - Index sheet;
    - Typical sections;
    - Maintenance of traffic layout (including typical sections, phasing layout, advance signing); and
    - Plan sheets (roll plots at same scale will be allowed in lieu of INDOT plan and profile sheets).
  - (ii) Traffic control devices for each phase/stage of construction;
  - (iii) Locations of positive protection;
  - (iv) Locations of crossovers (if applicable);
  - (v) Critical typical sections depicting construction phase lines, number of lanes, lane widths, shoulder widths, pavement markings, barriers, construction clear zone, cut/fill slopes, cross slopes and pavement section; and
  - (vi) Plan and profiles of any crossovers, temporary ramps or roads

#### **4.2.2 Approach to Roadway and Hydraulics Design**

- (a) A description of the roadway elements for the Project that shall include the following:

- (i) A description of Proposer's approach to the selection of materials, including information regarding borrow for earthwork including subgrade treatment, that will meet the requirements of the DBA Documents;
  - (ii) A description of quality, longevity and service life of all roadway elements, including HMA overlays and temporary widening;
  - (iii) The approach to addressing geotechnical related issues for temporary maintenance of traffic for the Project;
- (b) Conceptual Signing, Lighting, ITS, and Signal Plans (as each are defined in the IDM) shall be provided to locate sign structures, lighting structures, ITS structures, and signal structures.
- (c) Approach to drainage design, including drainage during each phase of construction, that shall include the following:
- (i) Identification of maximum spread widths for median inlet structures if a concrete median barrier is used or identification of minimum serviceability to I-65 travel lanes for median ditch inlets if guardrail median barrier is used.
  - (ii) Identification of maximum spread widths for inlets used during construction.
  - (iii) Conceptual detention design and location of anticipated detention facilities with existing and proposed Project outlets identified.
  - (iv) Identification of emergency overflow routes for all detention facilities.
  - (v) Identification of proposed ditch grades.

#### **4.2.3 Approach to Bridge and Culvert Design**

- (a) The Preliminary Design-Build Plan shall include a description of the bridge deck overlays and deck replacement and shall include the following for all bridge structures:
- (i) A description of Proposer's approach to the bridge deck design, factors for consideration in redecking, and selection of materials that will meet the requirements of the DBA Documents and a description of quality, longevity and service life of all bridge deck elements;
  - (ii) A description of Proposer's approach to ensuring stability of the structure throughout all phases of construction for each of the

structures on the project. Description shall include innovative construction techniques, materials, or equipment, along with placement and or stockpiling of materials;

- (iii) A description of Proposer's approach to the integration of bridge deck overlay and deck replacement activities within the phasing and sequencing of work;
  - (iv) A description of Proposer's approach to construction activities including the protection of traffic during the deck removal and replacement activities adjacent to or overtop of traffic. Proposer's approach to redecking shall demonstrate compliance with the allowable lane restrictions and closures; and
  - (v) Bridge plans, which shall conform to INDOT plan preparation guidelines for preliminary plans in the Indiana Design Manual, except as noted, and shall include the following requirements in addition to Section 4.2.2 of this Exhibit B:
    - Typical section of the bridge decks
    - Bridge Deck Removal and Replacement Plan (as applicable); and
    - Conceptual drawings, including description/approach/details showing innovative construction techniques, material or equipment.
- (b) The Preliminary Design-Build Plan shall include a description of each proposed structure type for culverts identified to be replaced and shall include the following for each culvert:
- (i) A description of Proposer's approach to installing the replacement structures;
  - (ii) A description of Proposer's approach to the integration of culvert replacement activities within the phasing and sequencing of work. Proposer's approach to culvert installation shall demonstrate compliance with the allowable lane restrictions and closures; and
  - (iii) A description of Proposer's approach to any pump around activities.

### **4.3 Total Project Duration**

Provide a completed Form L that includes Proposer's proposed Substantial Completion Date.

## EXHIBIT C

### SCOPE PROPOSAL INSTRUCTIONS

#### 1. General Instructions

This Exhibit C describes the submission format for the Scope Proposal.

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

All forms named herein are found in Exhibit D unless otherwise noted. All blank spaces in the Proposal forms must be filled in as appropriate. Except as expressly provided in the Proposal forms (e.g., requirements to fill the forms out, etc. and changing or removing header/footer information), no substantive change shall be made in the Proposal forms.

Evidence of signature authority shall be provided for all individuals signing forms. Form A identifies requirements regarding evidence of signature authorization for the Proposal Letter. Similar authorization shall be provided for all other signatories. Place all authorizations in a single, tabbed section in the Appendix.

##### 1.1 Fixed Price

The lump sum fixed price for this Project shall be that prepopulated on Form I.

##### 1.2 Contents of Scope Proposal

**A copy of the checklist for the Scope Proposal shall be included in the Scope Proposal**, indicating Proposer's use of such checklist to ensure all contents are provided. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Proposal.

#### 2. Financial Capacity Information

##### 2.1 Financial Statements

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

##### 2.2 Material Changes in Financial Condition

A letter from the chief executive officer, chief financial officer or treasurer for each of Proposer, Equity Members, any Guarantor and any Financially Responsible Party, either: (a) providing information on any material changes in financial condition (e.g., a rating downgrade by a nationally recognized rating agency), corporate form (e.g., significant mergers, acquisitions, or reorganizations), or market capitalization since submittal of the

SOQ and those that are pending or (b) certifying that no such material changes have occurred or (c) if the foregoing entities are Securities and Exchange Commission (or public companies in foreign entities) registered companies and have made such disclosures in public filings then the letter must indicate specific references to such filings, documents, and page references. Additionally, Proposers shall be required to provide updated information following the Proposal Due Date about such entities as such information becomes public.

At the discretion of INDOT, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the DBA, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses, and the change in equity shall be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material adverse changes and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the SOQ and most recent completed fiscal periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

#### List of Representative Material Changes

- (a) An event of default or bankruptcy involving the affected entity, or the parent corporation of the affected entity;
- (b) A change in tangible net worth of 10% of shareholder equity;
- (c) A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity or parent corporation of the affected entity;
- (d) A downgrade in credit rating for the affected entity or parent corporation of the affected entity;
- (e) Non-payment of any debt service;
- (f) Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;

- (g) In the current and three most recently completed fiscal years or in the aggregate over the three most recently completed fiscal years, the affected entity or the parent corporation of the affected entity either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity; or
- (h) Other events known to the affected entity which represents a material change in financial condition over the past three fiscal years, or may be pending for the next reporting period.

### **3. Proposal Bond and Surety Information**

The Proposal shall include Proposal Security in the form of a certified check in the amount of \$4 million payable to INDOT or a Proposal Bond, as specified below. A combination of certified check and Proposal Bond is not permitted. The Proposal Security is intended to secure the obligations of Proposer under the RFP with respect to the Technical Proposal and the Scope Proposal.

If a proposal bond is provided, it shall be in the amount of \$4 million and in the form of Form J (Proposal Bond) and shall be issued by an Eligible Surety. The Proposal Bond shall be subject to forfeiture in accordance with ITP Section 4.6.

Forfeiture of Proposal Security in accordance with ITP Section 4.6 will constitute liquidated damages. By submitting its Proposal, Proposer agrees and acknowledges that such liquidated damages:

- (a) are reasonable in order to compensate INDOT for damages it will incur as a result of Proposer's failure to satisfy the obligations under this RFP to which Proposer agreed when submitting its Proposal;
- (b) would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts;
- (c) represent good faith estimates and evaluations as to the actual potential damages that INDOT would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal, and do not constitute a penalty; and
- (d) are agreed by Proposer in order to fix and limit Proposer's costs and to avoid later disputes over what amounts of damages are properly chargeable to Proposer.



### 3.1 Proposal Bond

If a Proposal Bond is provided, it shall be in the amount listed above and in the form of Form J (Proposal Bond) and shall be issued by an Eligible Surety. The Proposal Bond or Proposal Bonds, as applicable, shall be subject to forfeiture in accordance with ITP Section 4.6.

### 3.2 Surety Information

The Proposal shall provide a letter from an Eligible Surety setting forth the following information regarding the Performance Bond and Payment Bond to be provided in accordance with Section 8 in the DBA:

- (a) the name of the Eligible Surety and the name and address of the agent;
- (b) the letter must state that the Eligible Surety has reviewed the DBA, including DBA Section 8, and is prepared to issue the Performance Bond and Payment Bond in the form and amount required by the DBA;
- (c) the Eligible Surety has read the RFP and any Amendments, and has evaluated the backlog and work in progress for the entity for which it will provide the bonds in determining its willingness to issue the Performance Bond and Payment Bond;
- (d) the letter includes no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the DBA; provided, however, that the Eligible Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the DBA following the date of the letter, but excluding any Change Orders and any changes or information reflected in the Proposal, such as Proposal Commitments;
- (e) the letter must state whether the Eligible Surety has defaulted, or been found to have been in default by a judicial or arbitration tribunal, on any obligation within the past 10 years (measured from the date of issuance of the RFQ), and the details in the event of such default; and
- (f) if more than one letter is provided, each letter shall set forth the portion of the bond amount or the particular bond that the Eligible Surety will be issuing and either identify itself as the “lead surety” or assent to another’s identification as the “lead surety” for purposes of communications by INDOT to the Sureties, it being understood that a communication to such “lead surety” is a communication to all Sureties, and the “lead surety,” among other things, is obligated to communicate INDOT’s message to other issuing Sureties

#### **4. Confidential Contents Index**

A page executed by Proposer that sets forth the specific items (and the section and page numbers within the Scope Proposal at which such items are located) that Proposer deems to be a trade secret or other confidential information protected from disclosure by an exception in the Public Records Act. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for INDOT to treat the entire Scope Proposal as public information. If a Proposer does not believe anything in the Scope Proposal is confidential, an executed statement by the Proposer so stating should be submitted. Notwithstanding the foregoing, the list required under this Section 4.0, is intended to provide input to INDOT as to the confidential nature of a Scope Proposal, but in no event shall such list be binding on INDOT, determinative of any issue relating to confidentiality or a request under the Public Records Act or override or modify the provisions of the Public Records Act or the responsibilities of INDOT thereunder.

#### **5. Scope Proposal Information**

##### **5.1 Fixed Price**

Proposer shall acknowledge the fixed price by submitting Form I. The fixed price on the form shall not be changed which sets forth the total price for the work required under the DBA Documents. Proposer shall submit a Summary Cost Table using Form I-1, summarizing the elements of the total price for the work required under the DBA Documents. Form I-1 includes several non-negotiable allowances the use of which are explained in the DBA.

##### **5.2 Scope Narrative**

Proposer shall complete Form I-2 listing the Additional Project Elements or portions thereof that it intends to deliver for the fixed price. Additional Project Elements can't be included unless all preceding Additional Project Elements are included in the table starting at the top and continuing to the bottom of the table. The included Additional Project Elements shall be added to and modify DBA Exhibit 19 (Design and Construction Scope).

#### **6. Verification**

Each Proposer shall satisfy itself as to the revenues, payments, costs and tax consequences of entering into the DBA and becoming the Design-Build Contractor. INDOT make no representations or warranties, express or implied, and assume no liability whatsoever, with respect to revenues, payments, costs or the consequences of federal, state, local or other income tax treatment of Design-Build Contractor under the DBA.

**EXHIBIT D**

**REQUIRED FORMS**

(provided in separate files)

## EXHIBIT E

### SUMMARY AND ORDER OF PROPOSAL CONTENTS

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
<b>Volume 1 – no page limit</b>		
<b>A. Administrative Materials and Forms</b>		
Proposal Letter	<u>Form A</u>	<u>Exhibit B, Section 3.1.1</u>
Authorization Documents	No form provided	<u>Exhibit B, Section 3.1.1</u>
Proposer Organization Information Recertification	<u>Form B</u>	<u>Exhibit B, Section 3.1.2</u>
Letter accepting joint and several liability, if applicable	<u>No form provided</u>	<u>Exhibit B, Section 3.1.2</u>
Responsible Proposer and Major Participant Questionnaire	<u>Form C</u>	<u>Exhibit B, Section 3.1.3</u>
Industrial Safety Record for Proposer, Equity Members and Major Participants	<u>Form D</u>	<u>Exhibit B, Section 3.1.4</u>
Personnel Work Assignment Form and Commitment of Availability	<u>Form E</u>	<u>Exhibit B, Section 3.1.5</u>
Letter(s) Regarding Pre-Proposal Submittals	No form provided	<u>Exhibit B, Section 3.1.6</u>
Non-Collusion Affidavit	<u>Form F</u>	<u>Exhibit B, Section 3.1.7</u>
DBE Certification	<u>Form G</u>	<u>Exhibit B, Section 3.1.8</u>
Conflict of Interest Disclosure	<u>Form H</u>	<u>Exhibit B, Section 3.1.9</u>
Build America Buy America and Buy America Certification	<u>Form Q</u>	<u>Exhibit B, Section 3.1.10</u>
Certification regarding Equal Employment Opportunity	<u>Form R</u>	<u>Exhibit B, Section 3.1.11</u>
Use of Contract Funds for Lobbying Certification	<u>Form S</u>	<u>Exhibit B, Section 3.1.12</u>
Debarment and Suspension Certification	<u>Form K</u>	<u>Exhibit B, Section 3.1.13</u>
Guarantor Commitment Letter	<u>Form P</u>	<u>Exhibit B, Section 3.1.14</u>
Insurance	No form provided	<u>Exhibit B, Section 3.1.15</u>
Confidential Contents Index	No form provided	<u>Exhibit B, Section 3.1.16</u>
Preliminary DBE Project Plan	No form provided	<u>Exhibit B, Section 3.1.17</u>
Prequalification Information	<u>Form T</u>	<u>Exhibit B, Section 3.1.18</u>

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
<b>B. Proposal</b>		
Stipend Agreement	<u>Form N</u>	<u>Exhibit B, Section 3.2</u>
<b>Volume 2 – 40 pages maximum</b>		
<b>C. Preliminary Performance Plans</b>		
Preliminary Project Management Plan	No form provided	<u>Exhibit B, Section 4.1</u>
Project Management Approach	No form provided	<u>Exhibit B, Section 4.1.1</u>
Preliminary Project Baseline Schedule Narrative	No form provided	<u>Exhibit B, Section 4.1.2</u>
Preliminary Quality Management Plan	No form provided	<u>Exhibit B, Section 4.1.3</u>
Safety and Environmental Management	No form provided	<u>Exhibit B, Section 4.1.4</u>
Public Information Plan	No form provided	<u>Exhibit B, Section 4.1.5</u>
Preliminary Design-Build Plan	No form provided	<u>Exhibit B, Section 4.2</u>
Preliminary Transportation Management Plan	No form provided	<u>Exhibit B, Section 4.2.1</u>
Substantial Completion Date	<u>Form L</u>	<u>Exhibit B, Section 4.3</u>
<b>D. Volume 1 Appendices</b>		
Copies of Organizational Documents	No form provided	<u>Exhibit B, Section 3.1.2</u>
Proposer Teaming Agreement or Key Terms	No form provided	<u>Exhibit B, Section 3.1.2</u>
Executed Contracts or Term Sheets	No form provided	<u>Exhibit B, Section 3.1.2</u>
<b>E. Volume 2 Appendices</b>		
Technical/Design Drawings, Graphs and Data	No form provided	<u>Exhibit B, Section 4.2.1</u>
Preliminary Project Baseline Schedule	No form provided	<u>Exhibit B, Section 4.3</u>
Approved or Conditionally Approved ATCs to be Included		<u>Exhibit B, Section 3.1.6</u>

**Scope Proposal – Volume 3**

Proposers shall follow the order of the Scope Proposal Checklist in their submissions. A referenced copy of this document shall be submitted with the Scope Proposal.

Scope Proposal Component	Form (if any)	ITP Section Cross-Reference
<b>Volume 3 – no page limit</b>		
<b>A. Financial Capacity Information</b>		
Material Changes in Financial Condition	No form provided	<u>Exhibit C, Section 2.2</u>
<b>B. Proposal Security and Surety Information</b>		
Proposal Security	<u>Form J</u> (if a bond)	<u>Exhibit C, Section 3.1</u>
Surety Information	No form provided	<u>Exhibit C, Section 3.2</u>
<b>C. Confidential Contents Index</b>		
Confidential Contents Index	No form provided	<u>Exhibit C, Section 4</u>
<b>D. Price Proposal Information</b>		
Proposal Price Form	<u>Form I</u>	<u>Exhibit C, Section 5.1</u>
Summary Cost Table Form	<u>Form I-1</u>	<u>Exhibit C, Section 5.1</u>
Additional Project Elements	<u>Form I-2</u>	<u>Exhibit C, Section 5.2</u>
Plans	No form provided	<u>to be added</u>