REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, FINANCE, OPERATE AND MAINTAIN

THE EAST END CROSSING
(LOUISVILLE-SOUTHERN INDIANA OHIO RIVER BRIDGES PROJECT)

THROUGH A PUBLIC-PRIVATE AGREEMENT

VOLUME I
INSTRUCTIONS TO PROPOSERS

A PROJECT OF THE

INDIANA FINANCE AUTHORITY

ISSUED JULY 31, 2012

ADDENDA ISSUED:

AUGUST 17, 2012 (ADDENDUM #1)
AUGUST 27, 2012 (ADDENDUM #2)
SEPTEMBER 10, 2012 (ADDENDUM #3)
SEPTEMBER 21, 2012 (ADDENDUM #4)
OCTOBER 5, 2012 (ADDENDUM #5)
OCTOBER 16, 2012 (ADDENDUM #6)
OCTOBER 19, 2012 (ADDENDUM #7)

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204

CERTAIN KEY DATES

EVENT	DATE
Issue Final Request for Proposals	July 31, 2012
Proposal Due Date	October 26, 2012

EVENT	**DATE**
Anticipated Notification of Preferred Proposer	On or before November 20, 2012
Execution of Agreement and Other Execution Documents (unless extended pursuant to Section 1.7.3)	On or after 15 days after the date of publication of the notice of the designation of the Preferred Provider required under IC 8-15.5-4-11(b). (execution date anticipated to be December 20, 2012)
Commercial Close (unless extended pursuant to Section 1.7.3)	7 days after date of execution of Agreement and Other Execution Documents (anticipated to be December 27, 2012)

TABLE OF CONTENTS

Page

Section 1.0 INTRODUCTION AND GENERAL PROVISIONS 1

1.1 Introduction 1
1.2 IFA Goals 1
1.3 Ohio River Bridges Project and Stakeholders 3
1.4 General Description and Scope of Developer's Obligations in respect of the East End Crossing 6
1.5 Documents in the Request for Proposals 9
1.6 Definitions and Acronyms 10
1.7 Procurement Schedule, Address for Proposal Delivery and Financial Close Deadline 10
1.8 General Provisions Regarding Proposals 13
1.9 Federal Requirements and Funding 15
1.10 Insurance Requirements 19
1.11 Qualification To Do Business 19

Section 2.0 PROCUREMENT PROCESS 20

2.1 Procurement Method 20
2.2 Receipt of the Request for Proposal Documents, Communications and Other Information 20
2.3 Questions and Responses Regarding the RFP and Addenda 23
2.4 Pre-Proposal Submittals 25
2.5 Pre-Proposal Meetings 26
2.6 Confidentiality 28
2.7 Status Updates 29
2.8 Examination of RFP and Site Access 32
2.9 Errors 33
2.10 Improper Conduct 33
2.11 Changes in Proposer's Organization and Key Personnel 35
2.12 Non-Exclusive Relationship with Monoline Insurers and Rating Agencies 37
2.13 Release of Exclusive Relationship with Core Lender(s) and Lead Underwriter 37
2.14 Non-Exclusive Relationship with Bond Counsel and Multiple Lead Underwriter(s) 37

Section 3.0 ALTERNATIVE TECHNICAL CONCEPT REVIEWS 39

3.1 Alternative Technical Concepts 39
3.2 Pre-Proposal Submission of ATCs 40
3.3 IFA Review of Pre-Proposal Submission of ATCs 42
3.4 Incorporation of ATCs into the PPA Documents 43
3.5 Confidentiality of ATCs 44

Section 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY IFA 45

4.1 General Submittal Requirements 45
4.2 Requirement to Submit Compliant Proposal 45
4.3 Format 46
4.4 Additional Requirements for Proposal Delivery 47
4.5 Currency 49
4.6 Modifications, Withdrawals and Late Submittals 49
4.7 Forfeiture of Proposal Security; Relief from Obligation to Close By Specified Deadline 50
4.8 Acceptance of Delivery by IFA 51

Section 5.0 EVALUATION AND POST-SELECTION PROCESS 52

5.1 Organization of the IFA Evaluation Committees 52
5.2 Best Value Determination 52
5.3 Pass/Fail and Responsiveness Evaluation 54
5.4 Evaluation of Technical Proposal and Schedule By TPEC 58
5.5 Evaluation of Financial Proposal by FPEC 61
5.6 Total Proposal Score 61
5.7 Requests for Clarification 62
5.8 Requests for Proposal Revisions 62
5.9 Identification of the Preferred Proposer 62
5.10 Finalization of the Agreement; Extension of Deadlines for Commercial Close 63
5.11 IFA Review of Post-Selection Deliverables 66

Section 6.0 AWARD AND EXECUTION; POST-EXECUTION ACTIONS 68

6.1 Final Award, Execution and Delivery of PPA Documents 68
6.2 Debriefings 72
6.3 Stipend Payment to Unsuccessful Proposers 73
6.4 Disposition of Escrowed Materials Following Conclusion of Procurement Process 75
6.5 Costs Not Reimbursable 75

6.6 Financial Close Security and Return of Proposal Security 76

Section 7.0 PROTESTS 77

7.1 Applicability 77
7.2 Required Early Communication for Certain Protests 77
7.3 Deadlines for Protests 77
7.4 Content of Protest 77
7.5 Filing of Protest 78
7.6 Comments from other Proposers 78
7.7 Burden of Proof 78
7.8 Decision on Protest 78
7.9 Protestant's Payment of Costs 78
7.10 Rights and Obligations of Proposers 78

Section 8.0 IFA RIGHTS AND DISCLAIMERS 80

8.1 IFA Rights 80
8.2 IFA Disclaimers 81

EXHIBITS

Exhibit A	Definitions and Acronyms
Exhibit B	Technical Proposal Instructions
Exhibit C	Financial Proposal Instructions
Exhibit D	Required Forms
Exhibit E	Summary and Order of Proposal Contents

FORMS

Form A	Proposal Letter
Form B-1	Identification of Proposer and Equity Members
Form B-2	Information About Proposer Organization
Form B-3	Information About Major Participants and Identified Contractors
Form C	Responsible Proposer and Major Participant Questionnaire
Form D	Industrial Safety Record for Equity Members and Major Participants
Form E	Personnel Work Assignment Form and Commitment of Availability
Form F	Non-Collusion Affidavit
Form G	Buy America Certification
Form H	DBE Certification
Form I	Conflict of Interest Disclosure Statement
Form J	MAP Proposal Form
Form K-1	Proposal Bond
Form K-2	Proposal Letter of Credit
Form L	Escrow Agreement
Form M	Opinion of Counsel
Form N	Completion Deadlines
Form O	Summary Cost Table Form
Form P	Financial Plan Summary
Form Q	Equal Employment Opportunity Certification
Form R	Use of Contract Funds for Lobbying Certificate
Form S	Debarment and Suspension Certification
Form T	Form of Waiver and Release Re: Stipend
Form U-1	Financial Close Bond
Form U-2	Financial Close Security Letter of Credit
Form V	Termination for Convenience Calculation Method
Form W	RFP Comment Form
Form X	Form of Stipend Agreement
Form Y	Forms of Legal Opinions
Form Z	Independent Insurance Broker/Consultant Letter

INSTRUCTIONS TO PROPOSERS

(Request for Proposals: The East End Crossing-- Ohio River Bridges Project)

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals ("RFP") is issued by the Indiana Finance Authority ("IFA"), a body corporate and politic, not a state agency but an independent instrumentality exercising essential public functions, to seek competitive proposals (individually, a "Proposal" and collectively, "Proposals") for an availability payment concession public-private partnership to be evidenced by a Public-Private Agreement ("Agreement") as more fully described in this RFP and the PPA Documents. This RFP is issued in cooperation with the Indiana Department of Transportation ("the Department" or "Department") and in coordination with Kentucky Transportation Cabinet ("KYTC"), Kentucky Regional Development and Planning Agency ("KIPDA"), Kentucky Public Transportation Infrastructure Authority ("KPTIA"), and the Louisville and Southern Indiana Bridges Authority ("LASIBA").

The Agreement shall provide that the successful Proposer (the "Developer") shall develop, design, construct, finance, operate and maintain a tolled bridge facility and associated roadway and facilities across the Ohio River; connecting Clark County, Indiana and Jefferson County, Kentucky (the "East End Crossing"). The form of Agreement, with the other PPA Documents, is included in Volume II of the RFP.

IFA is issuing this RFP to those Proposers shortlisted on April 23, 2012, based on IFA's evaluation of Statements of Qualification ("SOQs") delivered to IFA on April 9, 2012 in response to the Request for Qualifications for the East End Crossing issued on March 9, 2012 (as amended, the "RFQ").

Proposers must comply with these Instructions to Proposers ("ITP") during the procurement and in their Proposals. Proposals shall also take the East End Crossing goals identified in Section 1.2 below into consideration.

The RFP permits a Proposer to identify an entity other than the Proposer to act as Developer, thus allowing unsuccessful Proposers to avoid unnecessary costs associated with formation of such entity. However, if the entity identified as Developer in the successful Proposal is not formed as contemplated herein, or fails to comply with the requirements set forth herein, the entity(ies) that signed the Proposal shall have the obligation either to enter into the Agreement itself or to provide a substitute Developer acceptable to IFA, in its sole discretion.

1.2 IFA Goals

IFA's goals for the East End Crossing are as follows (in no particular order of importance):

(A) Provide innovative design, construction, and permitting solutions for the East End Crossing, which result in delivery of a high-quality, durable, maintainable, sustainable and aesthetic facility;

(B) Use public-private partnerships where acceptance of an offer from the private sector is in the public interest;

(C) Optimize life-cycle costs and efficiencies for the East End Crossing through obtaining cost-effective financing and leveraging available state and federal funds to maximize funding for the East End Crossing, as well as private sector efficiencies in design, construction and operations and maintenance;

(D) Minimize the cost and funds required to develop, design, construct, finance, operate and maintain the East End Crossing;

(E) Open the East End Crossing to revenue-generating traffic by mid-2017 or sooner;

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

(G) Provide proactive public relations, satisfy Stakeholders and maintain public trust and integrity;

(H) Provide a comprehensive plan for promoting, managing and monitoring opportunities for disadvantaged, minority and women owned business enterprises, to meet the Disadvantaged Business Enterprise (DBE) goals and provide workforce diversity and small business program opportunities;

(I) Provide excellent customer service for the traveling public, including in connection with the public's use of the East End Crossing;

(J) Expedite delivery of East End Crossing improvements, and timely facility management to maintain adequate service levels;

(K) Provide a safe construction area for all East End Crossing personnel; provide a safe project for workers and the traveling public;

(L) Provide high quality operation and maintenance, meeting or exceeding IFA's technical requirements and asset condition requirements upon termination of the Agreement;

(M) Cooperate and coordinate with Stakeholders in development, design, construction, operation and maintenance of the East End Crossing;

(N) Maintain mobility through the East End Crossing area during construction of the East End Crossing while minimizing impacts to the public, businesses, communities and adjacent property owners through effective communication, cooperation and coordination;

(O) Seek private sector innovation and efficiencies and encourage design solutions that respond to environmental concerns, permits, and commitments in the ROD;

(P) Minimize environmental impacts; and

(Q) Minimize impact on navigable traffic on the Ohio River.

1.3 Ohio River Bridges Project and Stakeholders

1.3.1 The Ohio River Bridges Project

The East End Crossing is part of the broader Ohio River Bridges Project. The Ohio River Bridges Project is a construction, reconstruction and rehabilitation project that is vital to address cross-river transportation needs in the greater Louisville-Southern Indiana region. The Ohio River Bridges Project will provide two new bridges across the Ohio River, the East End Bridge and the Downtown Bridge, and connecting roadways. It involves three major components: (1) the construction of a new Ohio River bridge (carrying I-65), called the Downtown Bridge, immediately upstream of the existing Kennedy Bridge (also carrying I-65) as well as improved and expanded approach roadways in Kentucky and Indiana; (2) the modernization of the Kennedy Interchange in Kentucky; and (3) a new Ohio River bridge, called the East End Bridge, in the eastern portion of the Louisville Metropolitan Planning Area (LMPA), connecting I-265/KY 841 (Gene Snyder Freeway) in Kentucky with S.R. 265 (Lee Hamilton Highway) in Indiana, including approach roadways in Kentucky and Indiana. The Ohio River Bridges Project will also involve tolling the I-65 bridges (existing Kennedy Bridge and new Downtown Bridge) and the new East End Bridge.

Due to the bi-state nature of the Ohio River Bridges Projects, IFA, the Department, KYTC and others are working closely in the development of the Ohio River Bridges Project and associated infrastructure.

1.3.2 The Downtown Crossing

KYTC is the procuring agency for the Downtown Crossing (which includes Project Sections 1-3 of the Ohio River Bridges Project), as part of the Ohio River Bridges Project.

- Kennedy Interchange – The Kennedy Interchange is the convergence of Interstates 64, 65, and 71 in downtown Louisville, known as “Spaghetti Junction.” The Downtown Crossing will reconfigure and rebuild the Kennedy Interchange in its existing location, which will eliminate the tight weave patterns between the merge and diverge points of the interchange ramps and will reconstruct all of the existing bridges within the interchange.

- Second Downtown Bridge – The Downtown Crossing will add a second span that will carry northbound traffic on I-65 and will span the Ohio River immediately upstream, or east, of the existing Kennedy Bridge. The existing Kennedy Bridge will be renovated to serve as a six-lane southbound bridge for I-65.

- Changes to the I-65 approaches in Indiana will include realignment and widening of I-65 to connect with the new northbound Downtown Bridge and the reconfigured Kennedy Bridge for southbound I-65. Improvements will include a new connection to the Clark Memorial Bridge (US 31), and improvements at the Court Avenue, 10th Street and Stansifer Avenue interchanges.

KYTC is responsible for overseeing the development and maintenance of a safe, efficient multi-modal transportation system throughout the Commonwealth. On March 1, 2012, KYTC initiated a design-build procurement for the design and construction of the Downtown Crossing. While the Downtown Crossing is not part of this procurement, KYTC's procurement plan for the Downtown Crossing is in parallel with the procurement of the East End Crossing, and it is likely that design and construction activities will overlap in time. While the geographic boundaries of the two elements of the Ohio River Bridges Project are separated by a distance of 8-miles, there are certain aspects of either element that may require coordination between the Developer and KYTC's design-builder. Developer's obligations in connection with such coordination are set forth in the PPA Documents. Furthermore, the environmental approvals and certain elements of the financing of the East End Crossing also have a relationship to the Downtown Crossing and the Ohio River Bridges Project as a whole.

1.3.3 The East End Crossing

The East End Crossing portion of the Ohio River Bridges Project, which is the subject of this RFP and procurement, is generally described in Section 1.4 below.

1.3.4 Certain Stakeholders for the Ohio River Bridges Project

1.3.4.1 Primary Indiana Stakeholders

IFA is the procuring entity for the East End Crossing, as part of the Ohio River Bridges Project. IFA's primary mission is to oversee State-related debt issuance and provide efficient, effective financing solutions to facilitate state, local government and business investments in Indiana. IFA will be the contracting party for the Agreement.

As the entity responsible for the planning and development of the transportation system in the State, the Department will work closely with IFA to assist with the procurement of the East End Crossing and oversee the work of the Developer in the design, construction, operation and maintenance of the East End Crossing. The Department's procurement role includes supporting the evaluation of the Proposals.

It is anticipated that a memorandum of understanding and use agreement being developed between IFA and the Department will further define the cooperative relationship between IFA and the Department.

1.3.4.2 Primary Indiana Stakeholders

Since the Ohio River Bridges Project links Indiana and Kentucky, it requires the cooperation and partnership of both states and the cities of Louisville and Jeffersonville. LASIBA is product of a collaborative effort between the states whose purpose is to assist with financing,

construction and management of the Ohio River Bridges Project. LASIBA is comprised of Indiana and Kentucky citizens from various professional backgrounds who have demonstrated leadership and community service. There are 14 members: seven appointed by the Indiana Governor, three appointed by the Kentucky Governor and four appointed by the Louisville Mayor.

The Ohio River Bridges Project is presently being supported by a Bi-State Management Team of agency officials from Indiana and Kentucky. FHWA is a non-voting member on the Bi-State Management Team. Developer's interaction and coordination responsibilities with the Bi-State Management Team are set forth in the Technical Provisions. Beyond the collaboration of the two states and the cities of Louisville and Jeffersonville, there are many other project stakeholders, community organizations and business entities working towards the successful development of the Ohio River Bridges Project.

1.3.5 Bi-State Development Agreement for the Ohio River Bridges Project

IFA and KPTIA are in the process of negotiating the terms of a bi-state development agreement ("Bi-State Development Agreement") that will address the relationship of the State of Indiana, the Commonwealth of Kentucky, IFA and KYTC with respect to the Ohio River Bridges Project. The Bi-State Development Agreement will be generally consistent with the terms of a Memorandum of Understanding executed by Indiana Governor Mitch Daniels and Kentucky Governor Steve Beshear on March 5, 2012.

IFA anticipates that the Bi-State Development Agreement will address, among other things:

- Each party's responsibility for procurement of the East End Crossing and the Downtown Crossing;
- The sharing of tolling revenues and other user fees generated by the Ohio River Bridges Project;
- Tolling policy for the Ohio River Bridges Project;
- Funding of the Ohio River Bridges Project and each party's financial approach with respect to their respective elements;
- Each party's financial responsibility for the Ohio River Bridges Project
- Operations and maintenance of the Ohio River Bridges Project after completion of construction; and
- Roles and responsibilities of each of the agencies with respect to the Ohio River Bridges Project

1.4 General Description and Scope of Developer's Obligations in respect of the East End Crossing

For purposes of this RFP and the PPA Documents, the East End Crossing is comprised of three individual sections (each, a "Project Section") as described below. A general overview map of the East End Crossing can be found at http://www.in.gov/ifa/2750.htm and http://www.in.gov/ifa/2331.htm (collectively, "Website").

1.4.1 The East End Crossing

This RFP and procurement concerns the East End Crossing portion of the Ohio River Bridges Project. The East End Crossing involves the construction of the approximately 3.3 mile Gene Snyder Freeway (KY 841) approach to the East End Bridge in Eastern Jefferson County, Kentucky, including an approximately 2,000 foot long tunnel; the construction of an approximately 2,500 foot long 4-lane (two lanes each, opposing, with median) new East End Bridge (which can accommodate 6 lanes (three lanes each, opposing, with median)) located about 8 miles east of downtown Louisville and the construction of the approximately 4.1 mile Lee Hamilton Highway (SR 265) approach to the East End Bridge in Indiana. The East End Crossing will complete the I-265/KY 841/SR 265 corridor in the eastern portion of the greater Louisville metropolitan area.

Key aspects of the design and construction of the East End Crossing include the following:

- Section 4 -- The Kentucky Approach - Four-lane reconstruction and extension of KY 841 from I-71 to the new Ohio River East End Bridge, two lanes in each direction, for a distance of approximately 3.3 miles. This includes reconstruction of the two-lane section of KY 841 between I-71 and US 42 to four lanes, an approximately 2,000-foot long tunnel beneath US 42 and the historic Drumanard Estate, with two tunnel bores, each carrying two lanes with shoulders, one for northbound, one for southbound, and then continuing with four-lanes northwesterly across Harrods Creek, River Road and Transylvania Beach Road to the proposed East End Bridge.

- Section 5 -- East End Bridge - Construction of an approximately 2,500 foot long 4-lane bridge (which can accommodate 6 lanes (three lanes each, opposing, with median)) over the Ohio River with a 13-foot wide pathway on the southwesterly side of the bridge. The reference bridge design was selected by the Governors of Indiana and Kentucky in 2008 after a year-long Bridge Type Selection Process. The final design of the new bridge must be consistent with the environmental commitments set forth in the SFEIS with respect to maximum tower heights and aesthetics and other design and construction requirements, which will be further described in the RFP.

- Section 6 -- The Indiana Approach – Excluding the Advance Construction Projects, four-lane extension of SR 265 from SR 62 to the new East End Bridge, two lanes in each direction, a distance of approximately 4.1 miles. This includes reconstruction of the SR 265/SR 62/Port Road interchange and construction of a full-diamond interchange at an extension of Old Salem Road.

1.4.2 Certain Environmental Matters

The Ohio River Bridges Project received a Record of Decision ("ROD") from the Federal Highway Administration (FHWA) in 2003, and began development of final design plans in 2004. In 2011, Indiana and Kentucky determined that toll revenue would be required to help finance the Ohio River Bridges Project, and that cost savings measures were needed. A Supplemental Draft Environmental Impact Statement (SDEIS) was prepared that studied the impacts of tolling and a number of cost saving alternatives, and recommended the Modified Selected Alternative, which reduced the Ohio River Bridges Project cost by approximately $1.5 billion, reducing the approximately $4.1 billion overall project cost estimate to approximately $2.6 billion. The SFEIS was published in April 2012. The Ohio River Bridges Project received an Amended ROD from the FHWA on June 20, 2012.

Nothing contained in this RFP is intended to modify, limit, or otherwise constrain the environmental process or commit IFA or any other entity to undertake any action with respect to the East End Crossing, including any procurement or the final design and construction of the proposed East End Crossing.

In addition, Proposers should be aware that a lawsuit challenging the 2003 ROD was filed in the U.S. district court in Louisville, Kentucky, in September 2009, and remains pending. (National Trust for Historic Preservation v. Federal Highway Administration, Case 3:10-cv-00007-JGH-DW). Proceedings in that lawsuit had been stayed pending the outcome of the ongoing SFEIS process. It also is possible that new or additional claims will be filed with completion of the SFEIS. By law, any new claims challenging the SFEIS would have to be filed within 180 days after FHWA publishes a notice in the Federal Register announcing the issuance of the new ROD approving the SFEIS.

1.4.3 Scope of Developer's Obligations

IFA and the Department are currently advancing many of the key preconstruction environmental permits commensurate with the state of design development during the period leading to selection of and award to Developer.

Excluding the Advance Construction Projects, Developer will develop, design, construct and finance the East End Crossing and operate and maintain a portion of the East End Crossing, in return for periodic availability payments. Developer will also be entitled to receive milestone and completion payments as described in this RFP.

The Agreement will require Developer to design and construct the elements of the East End Crossing within a period of time defined in the Agreement.

Developer will be responsible for operations and maintenance of KY 841 in Kentucky from the northerly abutment of the Harrods Creek Bridge (approximately Sta. 149+7.99 northbound and Sta. 149+37.99 southbound of the RID) then continuing northwesterly on SR 265 to the end of construction west of the SR 62 and Port Road interchange in Indiana. This includes the shared-use path connecting to River Road in Kentucky and Old Salem Road in Indiana, the Emergency Access Road in Kentucky, and the stormwater system in Kentucky for stormwater collected on the East End Bridge to its outfall in Harrods Creek.

The East End Crossing and Developer's scope of work will not include the design, installation, operations, and maintenance of the toll collection system for the East End Crossing, but it will include design and installation of certain defined elements of the toll collection civil infrastructure as described in the Technical Provisions (Volume II, PPA Documents).

Developer's scope of work shall also exclude the following Advance Construction Projects:

1. IR-34937 – Old Salem Road - design and construction of the Old Salem Road realignment or the new bridge carrying Old Salem Road over proposed SR 265. IR-34937 is a design-build contract that was separately let by the Department in July 2012, was awarded in August 2012 and will be completed by the end of June 2013. Developer will be required to coordinate with the IR-34937 design-build contractor during the IR-34937 construction period.

2. IR-35204 - Kentucky Building Demolition and Tree Clearing Contract. This is a separate design-build contract that the Department advertised in September 2012, with an anticipated October 2012 letting and award, to demolish certain existing structures within the ROW and to remove standing trees within certain planned limits of work in Kentucky, based on the Reference Design, and will be completed by the end of June 2013. Developer will be required to coordinate with the IR-35204 design-build contractor during the IR-35204 construction period.

3. IR-35205 – Indiana Building Demolition and Tree Clearing Contract. This is a separate design-build contract that the Department advertised in September 2012, with an anticipated October 2012 letting and award, to demolish certain existing structures within the ROW and to remove standing trees in Indiana, within certain planned limits of work based on the Reference Design, and will be completed by the end of June 2013. Developer will be required to coordinate with the IR-35205 design-build contractor during the IR-35205 construction period.

A specific description of the Project Sections and Developer's scope of work is contained in the Technical Provisions (Volume II, PPA Documents). Developer's authorization to commence and pursue the Work shall be pursuant to the issuance of two notices to proceed, NTP1 and NTP2, each as described and defined in the PPA Documents. Each of the notices to proceed includes schedule requirements and limitations concerning the implementation of the Work.

The East End Crossing will necessitate coordination with governmental agencies and other key stakeholders within both Kentucky and Indiana that may include, but not be limited to, KYTC, KIPDA, KPTIA, LASIBA, the City of Louisville, KY, the City of Jeffersonville, IN, the City of Prospect, KY, the Town of Utica, IN, Clark County, IN, FHWA and the U.S. Coast Guard. It is anticipated that Developer will play an active role in coordinating with all relevant government agencies and stakeholders, with IFA and the Department providing assistance and cooperation in such efforts. The PPA Documents set forth the parties' respective obligations for coordination with other governmental agencies and stakeholders.

1.5 Documents in the Request for Proposals

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

Volume I - this ITP (including exhibits and forms)

Volume II - the PPA Documents

Volume III - the Reference Information Documents

Refer to Section 1.2 of the Agreement for a list of the PPA Documents and their order of precedence, and to Volume III for the Reference Information Documents.

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

Except as may be expressly provided otherwise in the PPA Documents, IFA shall not be responsible or liable in any respect for any causes of action, suits, judgments, claims, expenses, damages or losses whatsoever suffered by any Proposer by reason of (a) any use, in connection with participation in this procurement, of information, opinions or recommendations contained in the Reference Information Documents, or (b) any action or forbearance in reliance on the Reference Information Documents. Although the Reference Information Documents may include interpretations, extrapolations, analyses and recommendations concerning data, design solutions, technical issues and solutions and 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 IFA or any other Governmental Entity or represent any statement of approval or acceptance thereof by IFA 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. Proposers shall use or not use the Reference Information Documents at their sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the East End Crossing, including those relating to site conditions, geotechnical conditions, Utilities, structures and bridge design, (y) the preparation of their Proposals, and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Reference Information Documents.

IFA does not represent or warrant that the information, opinions and recommendations contained in the Reference Information Documents are complete or accurate or that such information, opinions and recommendations are in conformity with the requirements of the RFP, Governmental Approvals or applicable Laws. Proposers shall have no right to

compensation, time extension or other claim in connection with participation in this procurement based on any incompleteness or inaccuracy in the Reference Information Documents, except as otherwise expressly provided in the PPA Documents.

Nothing contained in this Section 1.5 is intended to diminish to derogate from the rights of the Developer for compensation or time relief in connection with Relief Events or pursuant to Section 16 of the Agreement.

1.6 Definitions and Acronyms

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

1.7 Procurement Schedule, Address for Proposal Delivery and Financial Close Deadline

1.7.1 Procurement Schedule

The following represents the current schedule for the procurement.

EVENT	**DATE and TIME**
Issue Final RFP	July 31, 2012
One on One Meetings re: ATCs	August 8-9, 2012
Deadline for Proposer submittal of questions/comments on RFP Documents Before August 22-23, 2012 One on One Meetings	August 13, 2012 at 12:00 P.M. (Eastern Time)
One on One Meetings re: RFP Documents and ATCs	August 22-23, 2012
Updates regarding Project Right of Way and Utility status	Approximately every 2 weeks
Last date for IFA to provide Addendum setting forth the available Milestone Payment amounts and schedule for payment per Section 2.7.4	August 27, 2012
Last date for submittals of ATCs	September 7, 2012 at 12:00 P.M. (Eastern Time)
Last date to submit Pre-Proposal Submittals (other than those separately listed in this	September 7, 2012 at 12:00 p.m. (Eastern Time)

EVENT	**DATE and TIME**
schedule)	
Last date for IFA to provide Addendum identifying Project Right of Way status per Section 2.7.2	September 11, 2012
Last date for IFA to provide Addendum identifying Utility status per Section 2.7.3	September 11, 2012
Last date for IFA to provide Addendum regarding certain Governmental Approvals per Section 2.7.5	September 11, 2012
Last date for Proposer submittal of questions regarding the RFP, as described in Section 2.3.1	September 17, 2012 at 3:00 P.M. (Eastern Time)
Last date for IFA responses to ATCs	September 21, 2012
Last date for IFA notification regarding Pre-Proposal Submittals (other than those separately listed in this schedule)	September 26, 2012
One on One Meetings re: RFP Documents (if applicable)	September 26-27, 2012
Last date for resubmittal of Pre-Proposal Submittals (other than ATCs and those Pre-Proposal Submittals with dates separately listed in this schedule and if any such other Pre-Proposal Submittals have been disapproved or otherwise rejected)	October 2, 2012 at 3:00 P.M. (Eastern Time)
Last date for IFA responses to timely questions regarding the RFP (if necessary)	October 8, 2012
Last date for IFA notification regarding resubmittal of Pre-Proposal Submittals (other than ATCs and those Pre-Proposal Submittals with dates separately listed in this schedule and only if applicable in respect of such other Pre-Proposal Submittals)	October 9, 2012
Deadline for submittal of Credit Spreads and Benchmark Rates	October 17, 2012 at 3:00 P.M. (Eastern Time)

EVENT	**DATE and TIME**
IFA Notification regarding Credit Spreads and Benchmark Rates	October 18, 2012 at 3:00 P.M. (Eastern Time)
Proposal Due Date	October 26, 2012 at 3:00 P.M. (Eastern Time)
Anticipated Notification of Preferred Proposer	On or before November 20, 2012
Execution of Agreement and Other Execution Documents (unless extended pursuant to Section 1.7.3)	On or after 15 days after the date of publication of the notice of the designation of the Preferred Provider required under IC 8-15.5-4-11(b) (execution date anticipated to be December 20, 2012)
Commercial Close (unless extended pursuant to Section 1.7.3)	7 days after date of execution of Agreement and Other Execution Documents (anticipated to be December 27, 2012)
Financial Close (*for reference only,* as terms and conditions governing Financial Close contained in the PPA Documents)	Either (a) the date scheduled for Financial Close as set forth in the written Notice from Developer to IFA as provided in Section 13.7.2 of the Agreement, or (b) the date scheduled for Financial Close as set forth in the written Notice from IFA to Developer extending the date for Financial Close as provided in Section 13.7.2 of the Agreement, or (c) 120 days after issuance of the IPDC Commencement Notice by IFA as provided in Section 13.7.2 of the Agreement

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

1.7.2 Address for Proposal Delivery

The completed Proposal shall be submitted and delivered in sealed containers no later than the Proposal Due Date and time specified in Section 1.7.1, respectively. The Proposals are to

be delivered to IFA at the following address, except those portions of the Proposal required to be delivered into escrow as specified in Section 4.4.3:

Indiana Finance Authority
c/o Indiana Government Center South
Conference Center Room 25
402 W. Washington St.
Indianapolis, IN 46204
Attention: Silvia Perez

1.7.3 Deadline for Commercial Close and Financial Close Deadline

If Proposer is selected as the Preferred Proposer for negotiations or execution of the Agreement, Proposer shall be required to, on or before the date specified in Section 1.7.1 for Agreement execution, deliver to IFA executed copies of the Agreement and the documents required under Section 6.1.1. If notification of Preferred Proposer does not occur on or before November 20, 2012, the deadline for execution of the Agreement and Execution Document of December 20, 2012 shall be extended on a day for day basis.

Once the Agreement and Execution Documents have been executed, they will be held by IFA in escrow until the date which is 7 days after the date of execution. If no protest has been filed with respect to this procurement by such date and no action to contest the validity of the Agreement is brought within the time period permitted by IC 8-15.5-4-12 (see Section 6.1 below), commercial close will occur on such date. IFA may, in its sole discretion, extend the deadline for Agreement execution or commercial close by written notice to the Preferred Proposer, but may not extend the date of commercial close beyond the 180 day Proposal validity period without mutual agreement by the Preferred Proposer.

Developer shall be required to achieve financial close on or before the Financial Close Deadline as set forth in the Agreement.

1.8 General Provisions Regarding Proposals

1.8.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to this RFP, including (a) a Technical Proposal, including a Preliminary Project Management Plan and properly completed Proposal forms, and (b) a Financial Proposal, including a Financial Plan, Financial Model, properly completed Proposal forms (to be delivered directly to IFA), and certain supporting documentation (to be delivered into escrow).

Requirements for the Technical Proposal and the Financial Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit E. The Proposal shall be organized in the order listed in Exhibit E, and shall be clearly indexed. Each Proposal component shall be clearly titled and shall be submitted without reservations, qualifications, conditions or assumptions set forth therein. Any failure to provide all the information and all completed forms in the format specified, or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in

IFA's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms by the Proposer.

1.8.2 Inclusion of Proposal in PPA Documents

Portions of the successful Proposer's Proposal will become part of the PPA Documents, as specified in the Agreement. All other information is for evaluation purposes only and will not become part of the PPA Documents.

1.8.3 Commitments in the Proposal

Each Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment (such as when phrases such as "we will" or "we shall" are used).

1.8.4 Ownership of Proposal and Applicability of Public Records Act

Except for those documents delivered into escrow pursuant to Section 4.4.3, all documents submitted by the Proposer in response to the RFP shall become the property of IFA and will not be returned to the Proposer. Additionally, if Proposer accepts the stipend payment offered by IFA, as specified herein, the concepts, ideas and other information contained in the Proposal shall become the exclusive property of IFA free of all intellectual property rights and claims, without further action on IFA's part.

Subject to the exceptions specified herein and Proposer's acceptance of the payment for work product, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to IFA during this procurement process, whether included in the Proposal or otherwise submitted, become the property of IFA upon delivery to IFA and will not be returned to the submitting parties. The foregoing does not apply to materials required to be delivered into escrow, which shall be delivered to the escrow agent as specified in Section 4.4.3.

Proposers shall familiarize themselves with the provisions of the Indiana Public Records Act, Indiana Code 5-14-3 and relevant provisions of Indiana Code 8-15.5-4-2, 6 and 13 (collectively, the "Public Records Act"). All materials submitted by Proposers, including the Proposals, shall be subject to the Public Records Act and any other laws and regulations applicable to the disclosure of documents submitted under this RFP. In no event shall IFA or any of its agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to this RFP.

Submission of a Proposal constitutes the Proposer's agreement to the provisions of this Section 1.8.4. See also Section 2.6.

1.9 Federal Requirements and Funding

Proposers are advised that the RFP will be drafted based on the assumption that the East End Crossing and the plan of finance for the East End Crossing will remain eligible for federal-aid funds. Accordingly, the procurement documents and PPA Documents will conform to requirements of applicable federal law and FHWA regulations, including those set forth in Exhibit 23 to the Agreement and Buy America requirements, Title VI of the Civil Rights Act of 1964, as amended, regarding Equal Employment Opportunity (EEO) and Title 49 Code of Federal Regulations Part 26, as amended, regarding Disadvantaged Business Enterprises (DBEs). It is IFA's intent that the RFP Documents, and the procurement itself, afford all Proposers nondiscriminatory bidding procedures regardless of national, state or local boundaries and without regard to race, color, religion, sex, national origin, age, or handicap. IFA views State laws, specification, regulation and policies that are relevant to this procurement and the East End Crossing as not contrary to applicable federal law and FHWA regulations, but, in the abundance of caution, if IFA determines that any provisions of State laws, specifications, regulations, or policies operate in any manner contrary to federal requirements, including those mentioned specifically in the second sentence of this Section 1.9, to prevent submission of a Proposal, or prohibit consideration of a responsive Proposal submitted by any responsible Proposer, such provisions shall not be applicable to the East End Crossing. In light of the foregoing, IFA reserves the right to modify the procurement process described herein to address any concerns, conditions or requirements of FHWA. Proposers will be notified of any such modifications as provided in Section 4.6. The East End Crossing has federal funding and meets the definition of a major project requiring a major project review.

1.9.1 EEOC; DBE Requirements

IFA is an Equal Employment Opportunity (EEO) employer.

IFA has determined that the DBE requirements apply to design and construction of the East End Crossing, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of IFA as service providers, vendors, contractors, subcontractors, advisors, and consultants. IFA has adopted the definition of DBEs set forth in 49 CFR § 26.5. The Proposer's DBE compliance obligations for the East End Crossing shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the PPA Documents and the Department's DBE Program Manual.

IFA's DBE requirements applicable to the East End Crossing are set forth in Section 7.10 of the Agreement and the DBE Special Provisions attached as Exhibit 7 to the Agreement and IFA's DBE Program adopted pursuant to Title 49 CFR Part 26. The DBE Goal for the East End Crossing is 9% of the Total Project Capital Cost for the professional services and construction portions of the Work performed under the Agreement. Compliance with 49 CFR Part 26 shall be as set forth in Exhibit 7 to the Agreement. With respect to O&M Work, there is no DBE Goal, but Developer will be required to use good faith efforts to encourage DBE participation in the O&M Work.

As set forth in Section 3.2.9 of Exhibit B, each Proposer shall submit a certification concerning DBE requirements with its Proposal. In addition, each Proposer shall be required to submit a Preliminary DBE Performance Plan. Failure to provide the required DBE certification and such overview shall be considered a breach of the Proposal requirements and may render a Proposal non-responsive.

The Preferred Proposer will also be required to provide DBE commitments in the form required by IFA as DBE contractors are identified, in accordance with the DBE Special Provisions, Exhibit 7 to the Agreement, the approved DBE Performance Plan, Exhibit 2-L to the Agreement, and the Department's DBE Program Manual.

Following award, Developer will be required to submit a detailed DBE Performance Plan describing the methods to be employed for achieving IFA's DBE Goals for the East End Crossing, including Developer's exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in the DBE Special Provisions, Exhibit 7 to the Agreement. The DBE Performance Plan will be subject to review, comment and approval by IFA prior to and as a condition precedent to Developer's commencement of Design Work.

Compliance with 25 IAC 5 shall be as set forth in Exhibit 7 to the Agreement.

1.9.2 Workforce Diversity and Small Business Performance Plan Requirements

As set forth in Section 4.1.3 of Exhibit B, each Proposer shall submit a Preliminary Workforce Diversity and Small Business Performance Plan. Failure to provide the required Preliminary Workforce Diversity and Small Business may render a Proposal non-responsive.

Following award, Developer will be required to submit a detailed Workforce Diversity and Small Business Performance Plan. Requirements for the Workforce Diversity and Small Business Performance Plan are set forth in the Exhibit 7 to the Agreement. The Workforce Diversity and Small Business Performance Plan will be subject to review, comment and approval by IFA prior to and as a condition of issuance of NTP2.

1.9.3 Federal Funding, TIFIA and Private Activity Bonds

1.9.3.1 PABs Allocation

On or about September 11, 2012, USDOT reserved a conditional allocation for the issuance of a principal amount of private activity bonds ("PABs") in the amount of $775 million for the East End Crossing. The expiration of the allocation will be December 2013. Each Proposer may, but is not obligated to, use the PABs allocation in its Financial Proposal. If the Preferred Proposer's Financial Proposal includes the use of PABs, IFA will serve as the issuer of the PABs. Developer shall be responsible for all of IFA's costs associated with the issuance of the PABs, including attorneys' fees associated with obtaining bond counsel opinions; provided, however, that the $3,000 application fee, the $30,000 closing fee and the $1,000 volume cap allocation fee will not be required. For a description of IFA's charges and costs for acting as PABs issuer and related forms, please refer to the Large Bond Program link at http://www.in.gov/ifa/2340.htm (PABs will be considered "Exempt Facility Bonds" for this purpose)**.** Developer should be familiar with IFA's regulations and guidelines for acting as a

"conduit issuer" of PABs that Developer must satisfy as a condition to issuance of PABs by IFA. IFA will make this allocation available to provide for a portion of the financing for the East End Crossing, as set forth in the Preferred Proposer's Financial Proposal. A Proposer wishing to use PABs shall be solely responsible for obtaining ratings, bond counsel opinions and credit enhancement, as well as satisfying any conditions placed on the use of the allocation by USDOT or complying with any other requirements of state and federal tax laws.

Proposer's lead underwriter(s) ("Lead Underwriter(s)") must be a nationally recognized firm with experience in transportation infrastructure finance. Proposer's bond counsel must be selected from the following firms:

- Hall, Render, Killian, Heath & Lyman
- Taft Stettinius & Hollister LLP
- Benesch
- Krieg DeVault LLP
- Barnes & Thornburg LLP
- Bingham Greenebaum Doll LLP
- Bose McKinney & Evans LLP
- Faegre Baker & Daniels

The Preferred Proposer may request that IFA allow the bond counsel to also act as the Preferred Proposer's local counsel and IFA will consider allowing the same under the following circumstances:

- IFA will not sign any conflict waivers;
- If there is a dispute between Developer and IFA, the firm must resign as Developer's counsel upon IFA's request;
- IFA may hire additional Issuer's counsel, in it sole discretion, and Developer will have to pay for it; and
- The firm will not be entitled to participate on Developer's behalf in any dispute or action between IFA and Developer.

Proposer must obtain IFA's approval of its Lead Underwriter(s) prior to the Proposal Due Date in accordance with Section 2.4. The Proposer shall provide the qualifications of Proposer's underwriter in advance of the Proposal Due Date no later than the date for Pre-Proposal Submittals set forth in Section 1.7.1 for such submission. The Proposer shall provide an original and seven copies of all information necessary for IFA to assess the qualifications of

the underwriter. Proposer shall specifically provide information regarding the experience of the Lead Underwriter(s) with PABs and transportation infrastructure finance.

Proposers may have direct contact with USDOT concerning PABs provided that the Proposer provides advance notice to IFA of the meeting date and time with USDOT and a copy of the agenda of issues to be discussed. No other materials should be provided to IFA regarding the meeting.

The foregoing approach has been developed by IFA as an accommodation to the Proposers and in order to attempt to facilitate the use of PABs by Proposers. IFA makes no representation as to, nor guarantees the amount, if any, of PABs that can be issued for the East End Crossing or the use of proceeds to finance the East End Crossing as a matter of federal tax law. Proposers should seek the advice of their own tax consultants. Should a Proposer elect to include PABs in its Financial Proposal, it does so at its own risk and cost, and IFA shall have no liability with respect thereto.

1.9.3.2 TIFIA Credit Assistance

On March 19, 2012, LASIBA, IFA and KYTC submitted an application and letter of interest for a TIGER TIFIA payment grant for the Project with respect to the TIGER IV program. That application was unsuccessful. If IFA and KYTC (or IFA acting on its own) elect to submit a subsequent application and letter of interest for a subsidy under the TIFIA program or a TIGER TIFIA payment grant for the East End Crossing (or such other application or equivalent documentation in respect of a companion or successor federal government program), and if FHWA approves one or more subsequent requests for such TIFIA assistance, the successful Proposer, at its own risk, will be solely responsible for filing the formal application for TIFIA credit assistance, entering into a TIFIA credit agreement and satisfaction of USDOT requirements in connection therewith. This may include, among other things, obtaining an investment grade rating of debt senior to TIFIA and a credit opinion regarding the risks associated with the repayment of the TIFIA loan. If FHWA selects the Ohio River Bridges Project for an application for TIFIA credit assistance, IFA will issue an Addendum setting out the parameters for Proposers to use TIFIA in their Financial Proposals. If IFA does not issue such an Addendum, any Proposal containing TIFIA will be deemed non-responsive.

1.9.4 Public Funding

It is currently anticipated that the Department shall contribute to IFA an annual amount, commencing with fiscal year 2013, of approximately $54 million in funds in support of the East End Crossing for a period of 8 years. IFA continues to explore ways and means to most effectively utilize this commitment. In addition, to the extent that IFA's share of toll revenues from the Ohio River Bridges Project is not sufficient to fund the availability payments payable to the Developer, any shortfalls will be funded from use payments made by the Department to IFA under a use agreement between IFA and the Department. All of the foregoing funds from the Department are subject to legislative appropriation by the State of Indiana.

To the extent that payments under the Agreement come from State or federal funds (as opposed to Ohio River Bridges Project revenues, revenue bond proceeds, loans, etc.),

Proposers should be aware that such state and federal funds shall be subject to legislative appropriation by the State of Indiana.

1.10 Insurance Requirements

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

1.11 Qualification To Do Business

As of commercial close, the Developer and the Major Participants (excluding the Equity Members) must be qualified to do business in the State of Indiana and Commonwealth of Kentucky.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

This RFP is issued pursuant to Indiana Code 8-15.5 et seq., as amended, and other applicable provisions of Indiana and federal Law. IFA will award the Agreement (if at all) to the responsible Proposer offering a Proposal meeting the standards set by IFA and which is determined by IFA, through evaluation based upon the criteria set forth in the applicable Law and this RFP, to provide the best value to IFA and to be in the best interest of the State of Indiana.

IFA will accept Proposals for the East End Crossing only from those Proposers that IFA has shortlisted for the procurement based on their responses to the RFQ.

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

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

The RFP will be issued and made available to shortlisted Proposers in electronic format on the secure file transfer site for the East End Crossing, located at sftp.in.gov (the "FTP Site").

2.2.1 Authorized Representative

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

One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Silvia Perez
Telephone: (317) 234-7701
Fax: (317) 232-6786
Email: sperez@ifa.in.gov

From time to time during the procurement process or during the term of the Agreement, IFA may designate another Authorized Representative or Representatives to carry out some or all of IFA's obligations pertaining to the East End Crossing.

2.2.2 Identification of Proposer Authorized Representative

A Proposer shall identify in its Proposal an individual authorized to act on behalf of the Proposer relating to the procurement ("Proposer Authorized Representative"). If a Proposer changes its Proposer Authorized Representative to receive documents, communications or notices in connection with this procurement subsequent to its submission of its Proposal, the Proposer shall provide IFA's Authorized Representative with the name and address of such new Proposer Authorized Representative. Failure to identify a Proposer Authorized

Representative in writing may result in the Proposer failing to receive important communications from IFA. IFA is not responsible for any such failure.

2.2.3 Rules of Contact

From the date of issuance of the RFQ until the issuance of that certain letter agreement dated April 24, 2012, the rules of contact provisions in the RFQ were applicable to this procurement. From April 24, 2012 until issuance of the final RFP, the rules of contact provisions in the letter agreement were applicable to this procurement.

From and after the date of issuance of this RFP and ending on the earliest of (i) the execution and delivery of the Agreement, (ii) rejection of all Proposals by IFA or (iii) cancellation of the RFP, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), other electronic means or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer nor any of its team members may communicate with another Proposer or its team members through their employees, agents or representatives with regard to the RFP or either team's Proposal, except that (i) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams and (ii) this prohibition does not apply to public discussions regarding the RFP at any IFA sponsored informational meetings.

(b) Each Proposer shall designate one representative responsible for contacts with IFA, and shall correspond with IFA regarding the RFP only through IFA's Authorized Representative and Proposer's designated representative.

(c) No Proposer or representative thereof through their employees, agents or representatives shall have any ex parte communications regarding the RFP or the procurement described herein with any member of IFA or with any IFA staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative or the Public Finance Director, in her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Board or any public or Proposer workshop related to the RFP. Any Proposer engaging in such prohibited communications may be disqualified at the sole discretion of IFA.

(d) Proposers shall not directly contact the following identified stakeholders (the "Stakeholders") regarding the Project, including employees, representatives and members of the entities listed below, it being the intent of IFA that IFA provide any necessary coordination during the RFP stage with such entities in order that, among other things, the procurement be implemented in a fair, competitive and transparent manner and with uniform information:

- The Department;

- KYTC;
- KIPDA
- KPTIA
- LASIBA;
- City of Louisville, KY;
- City of Jeffersonville, IN;
- City of Prospect, KY;
- Town of Utica, IN;
- Clark County, IN;
- USDOT TIFIA Joint Program Office;
- USDOT Tolling and Pricing Team;
- USDOT Secretary's Office;
- USDOT Innovative Program Office;
- FHWA;
- Environmental, regulatory and permitting agencies; and
- Utilities (except as allowed by IFA letter dated June 27, 2012 (see RID UT-0.08)).

Information requests concerning these entities should be sent to IFA's Authorized Representative, who, in IFA's good faith discretion, may arrange for a general meeting between one or more of these entities and the Proposers. Such meetings will be open to all Proposers and will not include any confidential matters. Refer to Section 1.9.3.1 for information and requirements regarding meetings with the USDOT PAB's office.

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

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

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

Proposer shall note that no correspondence or information from IFA or anyone representing IFA regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.3(f).

2.2.4 Land Acquisition within the Project Right of Way

Prior to award of the Agreement, no Proposer, including team members or Affiliates, may (i) secure, acquire title to or close on a purchase of land included within the Project Right of Way ("Restricted Property"), (ii) enter into an option to purchase or a purchase contract relating to the Restricted Property unless (a) it gives the seller the unilateral and unconditional right to cancel without charge or penalty if the Proposer does not become the Developer and achieve financial closing; and (b) the Proposer notifies IFA in writing within 10 days after entering into such agreement; or (iii) engage in any predatory land or property acquisition practice.

2.2.5 Language Requirement

All correspondence regarding the RFP, Alternative Technical Concepts ("ATCs"), Proposal, and Agreement are to be in the English language. If any original documents required for the Proposal are in any other language, the Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Responses Regarding the RFP and Addenda

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by IFA prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision which the Proposer fails to understand. Failure of the Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by IFA. Proposers shall submit requests for written clarification in accordance with this Section 2.3.1. IFA reserves the right not to respond to any such clarification requests received after the last date for Proposer submittal of questions regarding the RFP, as set forth in Section 1.7.1. To the extent responses are provided, they will not be considered part of the PPA Documents, nor will they be relevant in interpreting the PPA Documents, except as expressly set forth in the PPA Documents.

IFA will only consider comments and questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a shortlisted Proposer to the Authorized Representative, by electronic transmission (with facsimile or hard copy delivered within 48 hours thereafter) in the prescribed format.

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

the question or contain proprietary or confidential information; and (vi) indicate whether the question is a Category 1, 2, 3 or 4 question.

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

Proposers will be limited to 100 comments/questions per RFP version issued, including any Addendum; provided, however, that the foregoing limitation shall not apply to the Technical Provisions. If a question has more than one subpart, each subpart will be considered a separate question. Questions relating to the Technical Provisions, corrections of typographical errors, incorrect cross references or inconsistencies within or among the RFP documents will be excluded from the 100-question limitation. Notwithstanding this paragraph, (i) with respect to Addendum #5 to the RFP, the 100 comment/question limitation is reduced to 50 comments/questions for all issued documents, including the Technical Provisions, and multiple subparts will be counted as multiple comments/questions; and (ii) with respect to Addendum #6 and Addendum #7, no further comments or questions may be submitted except those noting an issue of manifest error or inconsistency in the documents (and IFA shall have no obligation or responsibility to respond to such comments or questions).

No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the East End Crossing. No requests for additional information or clarification to any Person other than the Authorized Representative will be considered. Questions may be submitted only by the Proposer Authorized Representative or its designee, and must include the requestor’s name, address, telephone and facsimile numbers, and the Proposer he/she represents.

The questions and IFA’s responses will be in writing and will be delivered to all Proposers, except that IFA intends to respond individually to those questions identified by a Proposer or deemed by IFA as containing confidential or proprietary information. If a Proposer believes a question contains confidential or proprietary information (including that the question itself is confidential), it may mark such question as “confidential”. IFA reserves the right to disagree with the confidentiality of information in the interest of maintaining a fair process or complying with applicable Laws. Under such circumstances, IFA will inform the Proposer and may allow the Proposer, within a time period set by IFA, to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if IFA determines that it is appropriate to provide a general response, IFA will modify the question to remove information that IFA determines is confidential. If a Proposer fails to respond to IFA within the time frame identified by IFA, such failure shall be deemed to allow IFA to answer the question non-confidentially. IFA may rephrase questions as it deems appropriate and may consolidate similar questions. IFA may also create and answer questions independent of the Proposers. IFA contemplates

issuing multiple sets of responses at different times during the procurement process. Except for responses to questions relating to the issuance of Addenda to the RFP, the last set of responses will be issued no later than the date specified in Section 1.7.1. A consolidated, final set of questions and answers will be compiled and delivered to the successful Proposer prior to award.

Proposers may, at their option, elect to submit revised drafts, in redline, of the ITP and Agreement (but not the Technical Provisions) in connection with the submission of their comments/questions per RFP version issued. Subject to the Public Records Act, IFA will not circulate each Proposer's revised drafts submitted, nor make such revised drafts public. IFA will not respond to any such revised drafts, nor is IFA obligated to review any such revised drafts. IFA will, however, respond to the questions/comments properly submitted and delivered pursuant to this Section 2.3.1. IFA may convene pre-Proposal meetings with Proposers as it deems necessary (*see* Section 2.5), and Proposers must make themselves available to IFA for such pre-Proposal meetings and to discuss any matters they submit to IFA under this Section 2.3.1. If IFA determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, IFA will prepare and issue an Addendum.

2.3.2 Addenda

IFA reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if Proposal Revisions are requested, prior to the due date for Proposal Revisions). Any such revisions will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the FTP Site, and Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts this RFP, as determined in IFA's sole discretion, IFA may change the Proposal Due Date. The announcement of such new date will be included in the Addendum. In addition, if the last date for the Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Each Proposer shall acknowledge in its Proposal Letter (*see* Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause a Proposal to be deemed non-responsive and be rejected. IFA reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. IFA does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, IFA reserves the right to issue Addenda after either such dates. If IFA finds it necessary to issue an Addendum after either such dates, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the Proposal Due Date determined necessary by IFA, in its sole discretion.

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required as follows:

- Pursuant to Section 1.9.3.1 (regarding Proposer's Lead Underwriter(s));
- Pursuant to Section 2.11 (regarding changes in a Proposer's organization, changes in Key Personnel and new Key Personnel);
- Pursuant to Section 3.2 (regarding Alternative Technical Concepts);
- Pursuant to Section 5.10.2 (regarding the Model Auditor);
- Pursuant to Section 5.10.3 (regarding the Benchmark Interest Rates); and
- Pursuant to Section 5.10.4 (regarding the Credit Spread).

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

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

2.5 Pre-Proposal Meetings

2.5.1 Informational Meetings

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

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

2.5.2 One-on-One Meetings

IFA intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.7.1 herein, and on such other dates designated by IFA in writing to the Proposers, to discuss issues and clarifications regarding the East End Crossing and East End Crossing-related documents or communications provided by IFA or the Proposers (including the RFP), and the Proposer's ATCs. IFA reserves the right to disclose to all Proposers any issues raised during any of the one-on-one meetings, except to the extent that IFA determines, in its sole discretion, that such disclosure would impair the confidentiality of an ATC or would reveal a

Proposer's confidential business strategies (unless IFA believes such disclosure is necessary in the interest of maintaining a fair process or complying with applicable Law). Participation at such meetings by the Proposers shall be mandatory. Representatives of FHWA, the Department, and their consultants may attend and participate in one-on-one meetings.

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

The meetings are intended to provide Proposers with a better understanding of the East End Crossing and East End Crossing-related documents or communications provided by IFA.

IFA, except as provided in this ITP, will not discuss with any Proposer any information submitted as part of this procurement (including other Proposals or other Proposers' ATCs) other than its own.

Proposers shall not seek to obtain commitments from IFA in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.

No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Accordingly, material information about the East End Crossing or procurement that IFA reveals or discusses in response to questions raised in a one-on-one meeting will, except as provided in this ITP, be revealed to the other Proposers.

The discussions or any statements made by either party in one-on-one meetings shall not be binding on such entity.

No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.

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

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions, and IFA may provide responses. However, any responses provided by IFA during one-on-one meetings may not be relied upon unless questions were submitted in writing and IFA provided written responses in accordance with Sections 2.3.1 (and then, only to the extent provided in Section 2.3.1 and in the PPA Documents). Such questions and responses will be provided in writing to all Proposers, except to the extent such questions are deemed by IFA, in its sole discretion, to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs (unless IFA believes such disclosure is necessary in the interest of maintaining a fair process or complying with applicable Law). Nothing stated at any pre-Proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

2.6 Confidentiality

Pursuant to the Public Records Act, with certain specified exceptions, the records related to this procurement, including the Proposals, Pre-Proposal Submittals, evaluation and selection procedures, and the records created during the discussion, negotiations, evaluation and selection process, will remain confidential records. Pursuant to IC 8-15.5-4-2(5), IFA may not disclose the contents of Proposals during discussions or the substance of negotiations with eligible Proposers to other eligible Proposers. Following the preliminary selection of the Preferred Proposer as the Developer by IFA under IC 8-15.5-4-8., the Preferred Proposer's Proposal shall be made publically available for inspection and copying (except for portions that may be treated confidential in accordance with IC 5-14-3).

IFA shall disclose the contents of all Proposals, except the parts of the Proposals that may be treated as confidential in accordance with IC 5-14-3, when either (1) the RFP process is terminated; or (2) commercial close and financial close has been achieved. (IC 8-15.5-4-13, IC 5-14-3). Each Proposer, by submitting a Proposal to IFA in response to this RFP, consents to such disclosure and expressly waives any right to contest such disclosure under the Public Records Act.

If a Proposer has special concerns about information which it desires to make available to IFA but which it believes constitutes a trade secret, proprietary information, or other information exempted from disclosure, such responding Proposer team shall specifically and conspicuously designate that information by placing "CONFIDENTIAL" in the header or footer of each such page affected. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for IFA to treat the entire Proposal as public information. IFA 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 laws, as to the interpretation of such laws, or as to definition of trade secret. Nothing contained in this provision shall modify or amend requirements and obligations imposed on IFA by the Public Records Act or other applicable law. 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 law.

If a request is made for disclosure of the Proposals and Pre-Proposal Submittals (other than for such disclosures required by Indiana Code 8-15.5 et seq., as amended) prior to award of the Agreement, IFA will notify the Proposer and submit a request for advice from IFA General Counsel prior to disclosing any such documents in accordance with the Public Records Act and other applicable Law. The Proposer shall then have the opportunity to either consent to the disclosure or assert its basis for non-disclosure and claimed exception under the Public Records Act or other applicable Law to IFA General Counsel within the time period specified in the notice issued by IFA (if any) and prior to the deadlines for release set forth in the Public Records Act and other applicable Law. However, it is the responsibility of the Proposer to monitor such proceedings and make timely filings. IFA may, but is not obligated to, make filings of its own concerning possible disclosure; however, IFA is under no obligation to support the positions of the Proposer. By submitting a Proposal to IFA in response to this RFP, Proposer consents to, and expressly waives any right to contest, the provision by IFA to IFA General Counsel of all, or representative samples of, the Proposal in accordance with the

Public Records Act. IFA shall have no responsibility or obligation for a failure of IFA General Counsel to respond or to respond timely to any IFA request for advice and IFA shall not be required to wait therefor if it is required to disclose or otherwise take action under the Public Records Act or other applicable Law. **Under no circumstances will IFA 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 Law or by an order of court or IFA General Counsel or occurs through inadvertence, mistake or negligence on the part of IFA or its officers, employees, contractors or consultants.**

All Proposals received in response to this RFP shall conform to and contain the detailed information required by the Public Records Act and other applicable Law. IFA will not advise a Proposer as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable Law, as to the interpretation of such Laws, or as to definition of trade secret. The Proposer shall be solely responsible for all determinations made by it under applicable Laws and for clearly and prominently marking each and every page or sheet of materials with "CONFIDENTIAL" as it determines to be appropriate. Each Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to that Proposer's own circumstances.

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

Proposers are also advised that with respect to the TIFIA and PABs processes, FHWA and USDOT personnel are subject to the terms of the Freedom of Information Act ("FOIA").

2.7 Status Updates

IFA intends to provide informal updates approximately every two weeks to the Proposers regarding changes in the status of the matters addressed in this Section 2.7.

2.7.1 Site Studies and Investigations

IFA and the Department have completed much of their respective Site investigations and continue with other certain Site investigations. In addition, IFA is conducting further studies regarding various aspects of the East End Crossing. All information provided by IFA or the Department will be subject to the same limitations applicable to similar information furnished in the Reference Information Documents. Specifically, IFA and the Department make no representation or warranty as to the accuracy, completeness or suitability of the additional information. See Section 1.5 for further limitations on Reference Information Documents.

2.7.2 Right of Way

IFA and the Department are in the process of advancing the Project Right of Way acquisition process and will continue to do so throughout the procurement process, subject to the requirements of the Uniform Act. On or before the date set forth in Section 1.7.1, IFA will issue an Addendum to the RFP which will set forth (i) the Project Right of Way that has been acquired (or access provided) which is currently available; and (ii) the Project Right of Way that has not been acquired but, with respect to which, IFA will retain responsibility to acquire following financial close within a time period specified in the PPA Documents.

2.7.3 Utilities

IFA and the Department are working with certain of the Utility Owners and attempting to negotiate agreements with the Utility Owners. IFA has discussed three types of Utility Adjustments with the affected Utility Owners as follows:

1. **Type 1 Utility Adjustments** – The Utility Owner performs design and construction of the Utility Adjustment and is reimbursed by IFA. These Utility Adjustments and schedules are identified in Attachment 18-1 to the Technical Provisions. A Developer Utility Agreement is not required for these Adjustments. Final Design Documents prepared by Developer for the East End Crossing shall accommodate Utility Adjustments performed as Type 1 Utility Adjustments.

2. **Type 2 Utility Adjustments** – IFA has entered into an IFA Utility Agreement with the Utility Owner that sets forth the allocation of responsibilities with respect to any necessary Utility Adjustments. The Utility Owner has also performed preliminary Utility Adjustment work plans. The preliminary Utility Adjustment work plan provides the Utility Owner's understanding of the required Utility Adjustment work based on the Reference Design and includes an estimated cost and schedule. The IFA Utility Agreements and preliminary Utility Adjustment work plans are included in the Reference Information Documents. Developer shall enter into a Developer Utility Agreement and perform final Utility Adjustment design itself or through a consultant, as specified by the Utility Owner in the Utility Agreements. Developer shall perform the Utility Adjustment work using a Contractor acceptable to the Utility Owner. Lists of acceptable consultants and contractors, in addition to applicable Utility Adjustment design standards and construction specification for each respective Utility Owner are included in the IFA Utility Agreement. IFA will reimburse the Utility Owner for preliminary design costs, and Developer shall be responsible for the cost of final design and Utility Adjustment construction work. IFA will acquire all Replacement Utility Property Interests or other easements identified on the ROW Maps as being interests that IFA will acquire. If Developer final design requires additional easements or other property interests, Developer shall reimburse the Utility Owner for all effort, time, and cost associated with the acquisition of the easement or the other property interest. The Developer Utility Agreement shall include specifics of the Type 2 Utility Adjustments, including design and construction requirements, Utility Adjustment Plan review and construction inspection, details of Developer's obligations to reimburse Utility Owner for costs associated with any additional easements or other property interests, and any

Betterments or Enhancements. For Betterments, the Developer shall seek reimbursement from the Utility Owner in accordance with Section 5.5 of the Agreement.

3. **Type 3 Utility Adjustments** – IFA has received from the Utility Owner a preliminary Utility Adjustment design, an estimated schedule and an estimated cost for each Type 3 Utility Adjustment. These items and an IFA Utility Agreement that addresses allocation of responsibilities with respect to any necessary Utility Adjustments are included with the Reference Information Documents. The preliminary design provides the Utility Owner's understanding of the required Utility Adjustment work based on the Reference Design. IFA will reimburse the Utility Owner for the design work associated with these preliminary efforts. Developer shall coordinate the final design with the Utility Owner and negotiate a Developer Utility Agreement. The Utility Owner will perform the final Utility Adjustment design and Utility Adjustment work in accordance with a Developer Utility Agreement negotiated by Developer. Developer shall reimburse the Utility Owner for its costs associated with the final Utility Adjustment design and construction work. IFA will acquire all Replacement Utility Property Interests or other easements or other property interests identified on the ROW Maps as being interests that IFA will acquire. If Developer's final design requires additional easements or other property interests, Developer shall reimburse the Utility Owner for all effort, time, and cost associated with the acquisition of the easement or other property interest. The Developer-Utility Agreement shall include specifics of the Type 3 Utility Adjustments, including design and construction requirements, Utility Adjustment plan review and construction inspection, details of Developer's obligations to reimburse Utility Owner for costs associated with any additional easements, and any Betterments or Enhancements. For Betterments, the Developer shall seek reimbursement from the Utility in accordance with Section 5.5 of the Agreement.

See Attachment 18-1 of the Technical Provisions for a breakdown of Utility Owners and Utility Adjustment types

On or before the date set forth in Section 1.7.1, IFA will issue an Addendum to the RFP which will set forth the status of the efforts and negotiations, and provide copies of any of the foregoing agreements which have been completed. All Utility Adjustments required for the East End Crossing are considered to be reimbursable to the Utility Owner. As such, the Developer's agreements with Utility Owners will include provisions for Developer paying directly for any design, construction or other Utility Owner expenses that would normally be reimbursable under reimbursable utility agreements with the Department.

2.7.4 Milestone Payment

IFA is in the process of determining the available Milestone Payment amounts and schedule for payment. On or before 60 days before the Proposal Due Date, IFA will issue an Addendum to the RFP which will set forth the available Milestone Payment amounts and schedule for payment.

2.7.5 Permits

IFA is in the process of preparing and submitting permit applications for certain major environmental Governmental Approvals required for the Project, and will continue efforts to obtain such Governmental Approvals throughout the procurement process. On or before the date set forth in Section 1.7.1, IFA will issue an Addendum to the RFP which will set forth (i) the Governmental Approvals that have been obtained; (ii) the Governmental Approvals that have not been acquired but, with respect to which, IFA will retain responsibility to acquire following Financial Close within a time period specified in the PPA Documents; and (iii) the Governmental Approvals that will become the responsibility of the Developer.

2.8 Examination of RFP and Site Access

2.8.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Reference Information Documents and any Addenda, and material posted on the FTP Site for the East End Crossing, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal, or the performance of Developer's obligations under the PPA Documents with IFA. Each Proposer also is responsible for monitoring the Website for information concerning this RFP and the procurement. The Proposal Letter (Form A) includes an acknowledgment that the Proposer has received and reviewed all materials posted thereon. Failure of a Proposer to so examine and inform itself of the aforementioned documents and materials shall be at its sole risk, and IFA will provide no relief for any error or omission. The ability of Proposer's to rely on the Reference Information Documents is limited and shall be as expressly set forth in the PPA.

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

2.8.2 Existing Construction Work Site Information and Access

After issuance of the RFP and through the Proposal Due Date, IFA (in consultation with the Department) may provide Proposers with East End Crossing updates concerning the status of existing construction by the Department and KYTC, including the Advance Construction Projects. These updates will be considered additions to the Reference Information Documents described in Section 1.4. In addition, IFA and the Department will use reasonable efforts to assist Proposers with access to such areas under construction in order that it may review construction progress with prior written consent by IFA and the Department through the process outlined in Section 2.8.3.

2.8.3 Other Access

Proposers may be allowed access, through the Proposal Due Date, to those portions of the East End Crossing on which IFA or the Department may have rights of access, subject to the terms and conditions of a right of entry agreement satisfactory to IFA and the Department, for purposes of inspecting in-place assets and determining site conditions. Proposers' access, if any, will be for purposes of surveys and inspections only. No construction equipment or drilling equipment will be permitted on any portion of the East End Crossing right of way during the procurement period and no intrusive site investigations (e.g. borings, potholing, etc.) by Proposers will be permitted. For access to Project Sections 4 and 6, please contact the designated site manager no later than 24 hours prior to desired visit: Section 4: Juan Robinson (502-235-7851), Section 6: Angela Nichols (812-282-7493 ext. 227).

2.9 Errors

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

2.10 Improper Conduct

2.10.1 Non-Collusion

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

2.10.2 Organizational Conflicts of Interest

Any person or firm under contract with IFA, the Department, KPTIA or KYTC to prepare procurement documents for the East End Crossing or the Downtown Crossing will not be allowed to participate in any capacity on a Proposer team. Any person or firm previously under contract, with IFA, the Department or KYTC to prepare preliminary plans, planning reports or other project development products for the East End Crossing or Downtown Crossing may be able to participate on a Proposer team, if such firms first submit a written request for a determination of no conflict from IFA and receive written confirmation that they may participate, or conditionally participate on a Proposer team.

Additional exceptions to this policy may be granted by IFA, upon written request from such person, if it is determined that the person's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit such written request as soon as possible (optimally by August 31, 2012) because IFA does not intend to extend the Proposal Due Date nor will IFA 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 § 636, Subpart A, including 23 CFR § 636.116, also apply to this procurement. 23 CFR § 636.103 defines an "organizational conflict of interest" as follows:

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

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

Proposer is prohibited from teaming with, receiving any advice or discussing any aspect relating to the East End Crossing or the procurement of the East End Crossing with any person or entity with an organizational conflict of interest, including, but not limited to:

- KPMG LLP
- Nossaman LLP
- Ice Miller LLP
- Perkins Coie LLP
- Parsons Transportation Group
- Haworth, Meyer, Boleyn, Inc.
- Beam, Longest and Neff, LLC
- TKT & Associates
- Qk4
- Michael Baker Corporation
- Butler, Fairman and Seufert
- HW Lochner, Inc.
- Golder Associates
- Public Financial Management, Inc.
- CDM Smith
- Cambridge Systematics

- Stoll Keenon Ogden, PLLC
- High Street Consulting Group
- Greyling Insurance
- Michael Bosc
- Frost Brown Todd, LLP
- Affiliates (meaning includes parent companies, subsidiary companies, entities under common ownership, joint venture members and partners, and other financially liable parties for an entity) of any of the above

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

By submitting its response to this RFP, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to IFA that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, IFA may, at its discretion, disqualify the Proposer. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose exists and the Proposer has entered into the Agreement as Developer, IFA may, at its sole discretion, terminate the Agreement. In either case, IFA reserves all legal rights and remedies.

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

2.10.3 Equitable Treatment of Proposers

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

2.11 Changes in Proposer's Organization and Key Personnel

2.11.1 Changes in Proposer's Organization

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by IFA, the Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement process (i.e., until execution of the PPA Documents). If a Proposer wishes to make changes in the Major Participants

identified in its SOQ including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, the Proposer shall submit to IFA a written request for its approval of the change as soon as possible but in no event later than the date and time set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Any such request shall be addressed to IFA at the address set forth in Section 2.2.1, accompanied by the information specified for such entities or individuals in the RFQ. If a request is made to allow deletion of any Major Participant identified in its RFP, the Proposer shall submit such information as may be required by IFA to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). The Proposer shall submit an original and five copies of each such request package. IFA is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the Agreement, a Proposer may not make any changes in any Major Participants identified in its RFP after the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Between the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals and execution of the Agreement, IFA, in its sole discretion, will consider requests by Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control.

2.11.2 Changes in Key Personnel

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by IFA, the Proposer's Key Personnel as identified in the SOQ must remain intact for the duration of the procurement process (i.e., until execution of the PPA Documents). If a Proposer wishes to make changes in the Key Personnel identified in its SOQ, the Proposer shall submit to IFA a written request for its approval of the change from as soon as possible but in no event later than the date and time set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Any such request shall be addressed to IFA at the address set forth in Section 2.2.1, accompanied by the information specified for such individuals in the RFQ. If a request is made to allow deletion of any Key Personnel identified in its SOQ, the Proposer shall submit such information as may be required by IFA to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). The Proposer shall submit an original and five copies of each such request package. IFA is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the Agreement, a Proposer may not make any changes in any Key Personnel identified in its SOQ after the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Between the deadline set forth in Section 1.7.1 for submission of Pre-Proposal Submittals and execution of the Agreement, IFA, in its sole discretion, will consider requests by Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control.

2.11.3 New Key Personnel Positions Identified Following RFQ

In order for Proposers to have confidence that those individuals proposed for Key Personnel positions that were added to the RFP since submittal of the SOQs are acceptable to IFA, each Proposer shall submit to IFA a written request for its approval of such individuals in no event

later than the date and time set forth in Section 1.7.1 for submission of Pre-Proposal Submittals. Any such request shall be addressed to IFA at the address set forth in Section 2.2.1, accompanied by the information specified in the RFQ for Key Personnel positions. The Proposer shall submit an original and five copies of each such request package. IFA 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. Once approved, any changes to such individuals and Key Personnel positions shall be handled pursuant to Section 2.11.2. For clarification, the new Key Personnel positions with respect to which approval must be obtained under this Section 2.11.3 are:

- Construction QC Manager
- Financial Director;
- Public Information Coordinator;
- DBE Coordinator;
- Utility Manager;
- Construction Quality Manager;
- Design Quality Assurance Manager;
- Safety Manager; and
- Environmental Compliance Manager.

2.12 Non-Exclusive Relationship with Monoline Insurers and Rating Agencies

The market for monoline insurers and rating agencies is small enough that exclusive teaming arrangements between monoline insurers, rating agencies and Proposers would give Proposers in exclusive arrangements a distinct and unfair advantage over other Proposers. As a result, to ensure a fair procurement process, Proposers are forbidden from entering into exclusive teaming arrangements with monoline insurers and rating agencies.

2.13 Release of Exclusive Relationship with Core Lender(s) and Lead Underwriter

Each unsuccessful Proposer shall release its Core Lender(s) and Lead Underwriter of any exclusivity obligations no later than 5 days after being notified by IFA that IFA has executed the Agreement with another Proposer. Failure to satisfy the requirements of this Section 2.13 may result in forfeiture of the Proposer's Proposal Security under Section 4.7.

2.14 Non-Exclusive Relationship with Bond Counsel and Multiple Lead Underwriter(s)

The market for Indiana bond counsel with PABs experience is small enough that exclusive teaming arrangements between such entities and Proposers would give Proposers in exclusive arrangements a distinct and unfair advantage over other Proposers. As a result, to ensure a

fair procurement process, Proposers are forbidden from entering into exclusive teaming arrangements with bond counsel.

With respect to Lead Underwriters, Proposers are allowed to enter into an exclusive relationship with a single Lead Underwriter. If a Proposer wishes to engage additional underwriters, such additional underwriters must be engaged on a non-exclusive basis.

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPT REVIEWS

3.1 Alternative Technical Concepts

Sections 3.1 - 3.5 set forth a process for pre-Proposal review of concepts ("Alternative Technical Concepts" or "ATCs") conflicting with the requirements for development, design, construction, and operation and maintenance of the East End Crossing, or otherwise requiring a modification of the requirements of the Technical Provisions. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing IFA (in consultation with the Department), in IFA's sole discretion, to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring reviews of ATCs to the post-award period, and, ultimately, to obtain the best value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the requirements of the as-issued PPA Documents that result in performance, quality and utility of the end product that is equal to or better than the performance, quality and utility of the end product absent the deviation, as determined by IFA (in consultation with the Department) in IFA's sole discretion. A concept is not eligible for consideration as an ATC if, in IFA's sole judgment, it is premised upon or would require (a) a reduction in quantities without achieving equal or better performance, quality and utility; (b) a reduction in performance, quality, utility or reliability; (c) major changes to the environmental documents, including the NEPA Approvals, such as another supplemental environmental impact statement; (d) the addition of a separate IFA, Department or KYTC project to the Agreement (such as expansion of the scope of the East End Crossing to include additional roadways); (e) a Change in Law, (f) an increase in the amount of time required for Substantial Completion beyond the last date for Substantial Completion set forth in Form N, (g) a major horizontal or vertical alignment shift that would require multiple or material additional right of way parcels, or (h) a cut and cover or open trench section in lieu of a bored tunnel. ATCs that, if implemented, would require further environmental evaluation of the East End Crossing, such as a revaluation of the environmental impact statement or modification of Governmental Approvals may be considered, provided that Developer can and will bear the schedule and cost risk associated with such additional environmental evaluation or modification of Governmental Approvals and the changes are not major, in IFA's sole discretion. If Developer is not able to obtain the approvals necessary to implement the ATC, Developer will be obligated to develop the East End Crossing in accordance with existing approvals without additional IFA cost or extension of time (and IFA may be entitled to a reduction in the MAP, Milestone Payment and/or schedule as set forth in the PPA Documents).

As set forth in Section 4.2.1.1 of Exhibit B of the ITP and in the PPA Documents, Proposers shall propose any one of five (5) bridge types designated Alternative A-1, A-2, A-3, A-4 or A-5 (depicted in Reference Information Document MS-5.06 pp. 6-12), or a sixth bridge type, which is an H-tower cable-stayed bridge as described in Section 15 of the Technical Provisions. No ATCs for bridge types will be considered.

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

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

ATCs are Pre-Proposal Submittals (see Section 2.4). Once an ATC is submitted and IFA responds thereto pursuant to Section 3.3, such ATC may not be resubmitted, in whole or in part, by a Proposer to IFA unless otherwise approved by IFA, in its sole discretion.

3.2 Pre-Proposal Submission of ATCs

Proposers may submit ATCs for review to IFA at the address specified in Section 2.2.1, until the last date and time for submittals of ATCs identified in Section 1.7.1. Proposers are encouraged to submit ATCs at any time prior to the stated deadlines, and IFA (in consultation with the Department) will endeavor to respond to the ATC submissions within 14 days of the Friday in the week in which the ATC submissions were submitted, provided, however, that this time period IFA's response may be extended in IFA's sole discretion based on the number and complexity of the ATC submission and other Pre-Proposal Submittals in receipt at any one time. IFA reserves the right to respond to ATC submissions in whatever order it chooses in order to expedite reviews.

All ATCs shall be submitted in writing, with a cover sheet identifying the Proposer and stating "East End Crossing – Confidential ATCs." Proposers shall clearly identify the submittal as a request for review of an ATC under this ITP. If a Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by IFA. ATC submittals shall include five copies of a narrative description of the ATC and technical information, including drawings, as described below.

3.2.1 Pre-Proposal ATC submissions shall include:

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

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

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

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

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

(f) any changes in Handback Requirements associated with the ATC;

(g) any changes in the anticipated life of the item(s) 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), community impact, safety, and life-cycle East End Crossing and infrastructure costs, including impacts on the cost of repair, maintenance and operation;

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

(m) any additional right-of-way required to implement the ATC (and Proposers are advised that IFA may condition any approval of such ATC with a requirement that the Proposer shall (i) be solely responsible for the acquisition of any such right-of-way, subject to the terms of the Agreement, including the cost thereof and obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order for time or money as a result of Site conditions (i.e., Hazardous Materials, differing Site conditions, geotechnical issues, Utilities, etc.) on such additional right-of-way; and (iii) not be entitled to any Change Order or Relief Event as a result of any delay, impact, inability or cost associated with the acquisition of such right-of-way;

(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 statements;

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

(p) an estimate of any additional IFA, the Department, Developer and third party costs associated with implementation of the ATC;

(q) an estimate of any savings and additional toll or other revenue that would accrue to IFA and the Department should the ATC be approved and implemented;

(r) an analysis of how the ATC is equal or better in quality and performance than the requirements of the RFP; and

(s) a preliminary analysis of potential impacts on the MAP.

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

3.2.3 If implementation of an ATC will require approval by a third party (e.g., a Governmental Entity), IFA may condition any approval of the ATC with a requirement that the Proposer will have full responsibility for, and bear the full cost and schedule risk of, obtaining any such approvals after award of the Agreement and submission of data; provided, however, that, in such event, IFA shall retain its role as liaison with any governmental authorities as more particularly described in the PPA Documents. If any such condition imposed and the required third-party approval is not subsequently granted with the result that the Proposer must comply with the requirements of the original RFP and PPA Documents (without regard to the ATC), the Proposer will not be entitled to a Change Order or other Relief Event under the Agreement.

3.2.4 If IFA (in consultation with the Department) determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity or mistake, IFA reserves the right to modify the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC (including that such ATC no longer qualifies or is eligible for consideration as an ATC).

3.3 IFA Review of Pre-Proposal Submission of ATCs

IFA may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the date set forth in Section 1.7.1, provided that IFA has received all requested information regarding such ATC.

IFA'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 IFA);

(B) the ATC is not acceptable for inclusion in the Proposal;

(C) the ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in IFA's sole discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or

(D) the submittal appears to be within the requirements of the RFP and does not qualify as an ATC (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, IFA reserves the right to require compliance with the requirements of the RFP and PPA Documents (without regard to the

submittal), in which event the Proposer will not be entitled to modify its Proposal or obtain a Change Order for additional compensation or a time extension under the Agreement).

(E) the submittal does not qualify as an ATC and may not be included in the Proposer's Proposal.

IFA (in consultation with the Department) will make a preliminary determination on whether to accept and approve an ATC for submission. However, Proposer will be responsible for ensuring that the final submittal complies with the requirements of the RFP.

Approval of an ATC will constitute a change in the specific requirements of the PPA Documents associated with the approved ATC for that specific Proposer. Each Proposer will be responsible for ensuring that its Proposal complies with the RFP requirements, as modified by approval of the ATC. In its Proposal, Proposer must specifically state whether any approved ATCs are included, with reference to the ATC identification number assigned by IFA, and shall describe how the ATC is used and provide cross-references to 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 IFA's determinations regarding acceptability of ATCs.

IFA's rejection of a pre-Proposal submission of an ATC will not entitle the Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; provided, however, that the foregoing shall not limit IFA's absolute and sole right to modify the Proposal Due Date or any other date in connection with this procurement.

IFA anticipates that its (and, in IFA's sole discretion, the Department's) comments regarding an ATC provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a written request for clarifications under Section 2.3.1.

3.4 Incorporation of ATCs into the PPA Documents

Following notification of the Preferred Proposer, the ATCs that were pre-approved by IFA and incorporated in the Proposal by the Preferred Proposer shall be included in the PPA Documents. If IFA responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the PPA Documents. The PPA Documents will be conformed after notification of the Preferred Proposer, but prior to execution of the Agreement, to reflect the ATCs, including any IFA conditions thereto. Notwithstanding anything to the contrary herein, if Developer does not comply with one or more IFA conditions of pre-approval for an ATC or Developer fails to obtain a required third party approval for an ATC, Developer will be required to comply with the original requirements of the RFP and the PPA Documents without regard to the ATC and without being entitled to a Change Order or other Relief Event (and IFA may be entitled to a reduction in the MAP, Milestone Payment and/or schedule as set forth in the PPA Documents).

In accordance with Section 3.5 below, ATCs from unsuccessful Proposers may, in IFA's sole discretion, be presented to the Preferred Proposer for possible incorporation in the Agreement. In addition, following execution of the Agreement and payment to the unsuccessful Proposers of a stipend under Section 6.3, ATCs from unsuccessful Proposers may, in IFA's sole discretion, be presented to the selected Developer as an IFA Change in accordance with the Agreement.

Notwithstanding the foregoing, in the event IFA establishes a competitive range, IFA will not disclose the ATC of a Proposer in the competitive range to any other Proposer in the competitive range.

3.5 Confidentiality of ATCs

Subject to the provisions of the RFP, the Act and other applicable Law, IFA shall maintain the confidentiality of ATCs and all communications regarding ATCs until the earlier of (a) cancellation of the procurement without selection of a Preferred Proposer, (b) commercial close with the Preferred Proposer; (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 Law, 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 Law and Section 2.6 of this ITP. By submitting a Proposal and agreeing to accept payment for work product, Proposer agrees, if it is not selected as the Preferred Proposer or to be in the competitive range, to disclosure of its work product (including regarding ATCs and its Technical Proposal) to the Preferred Proposer. The foregoing shall not preclude IFA from exercising any of its rights with respect to ATCs, as set forth in Section 3.0, including the right to modify the RFP following submission of an ATC to address issues raised by or arising out of an ATC, which modification(s) may render such ATC moot or no longer applicable.

SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY IFA

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal and a Financial Proposal meeting the requirements set forth in Exhibits B and C.

4.1.1 Proposal Due Date

The completed Proposal shall be delivered in sealed containers no later than the Proposal Due Date.

4.1.2 Signatures Required

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

4.1.3 Certified Copies

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

4.1.4 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if IFA determines that the Proposer did not follow the foregoing instructions. It is the Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the time due shall be rejected without consideration or evaluation.

4.2 Requirement to Submit Compliant Proposal

A Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval). If a Proposal does not fully comply with the instructions and rules contained in this ITP, including the exhibits, it may be considered non-responsive.

Each Proposal must be submitted in the official format specified by IFA in this RFP. Proposers shall sign the original copy of their Proposal submitted to IFA. Multiple or alternate proposals or proposals with options may not be submitted.

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

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

(B) If IFA 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 an Agreement following award;

(D) If the Proposer attempts to limit or modify the Proposal Security (*see* Exhibit B, Section 3.3), if the Proposal Security is not provided, and/or if requested information deemed material by IFA is not provided;

(E) The Proposal contains a material alteration, as determined by IFA, in its sole discretion, to the ITP forms or exhibits, including any material alteration to the form of Proposal Security (Form K).

If a Proposal is deemed non-responsive or non-compliant, IFA 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 Financial Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2.0. No page limit applies to appendices, dividers, exhibits and tables of contents, however, IFA does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8 ½ by 11-inch format (½ inch margins) is required for typed submissions and an 11 by 17-inch format is required for drawings, except that design drawings may be submitted in roll format not to exceed 36 by maximum 120 inches (and such design drawings shall be submitted on CD or flashdrive in Adobe (.pdf) format and in MicroStation format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and analyze the schedule in Primavera P6.

Submittals must be bound with all pages in binders sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than twelve-point (either Times New Roman or Arial). The use of 11 by 17-inch foldouts for tables, graphics and maps is

acceptable in the main body of the Proposal. Each 11 by 17–inch foldout will be considered one page. Technical drawings and schedules in 11 by 17-inch format that comprise large continuous portions of the Proposal (i.e., more than 10 continuous pages) shall be bound in an appendix such that the 11 by 17-inch sheets are not folded. In addition, sheets for technical drawings that exceed 11 by 17-inch size shall be submitted in roll form and need not be placed within the bound document.

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

4.4 Additional Requirements for Proposal Delivery

Proposals are to be delivered to IFA at the address set forth in Section 1.7.2, except for the Escrowed Materials, which shall be delivered to the escrow as specified in Section 4.4.3.

Each binder of the Proposal shall be labeled to indicate its contents. The original Technical and Financial Proposals shall be clearly identified as "original"; copies of the Proposals shall be sequentially numbered, labeled and bound.

4.4.1 Technical Proposal

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

All of the binders comprising the original Technical Proposal, (including roll form documents) together with an electronic copy of the entire Technical Proposal (including roll form documents) on one or more CDs or flash drives and the envelopes described in Section 4.4.2, shall be packaged in a single container, clearly addressed to IFA as provided herein, and labeled "[Proposer Name]: Original Technical Proposal for the East End Crossing." Proposers shall provide one original, 20 certified copies of bound Technical Proposal (except (i) (A) for the Proposal Security, (B) the Escrow Agreement and (C) two (2) original certified copies of all roll form technical drawings that are referenced in the Technical Proposal' and (ii) that only 10 copies of the executed contracts, term sheets or heads of terms described in Section 3.2.2 of Exhibit B to this ITP are required) . The containers that include the required hard copies of the Technical Proposal shall be labeled "Copies of Technical Proposal for the East End Crossing." "Hard copy" roll form documents shall be included in the containers in a fashion that Proposer deems most prudent to deliver such roll form documents.

The electronic copy shall be in a searchable Adobe (.pdf) format on CD(s) or flash drives; provided, however, that (a) Proposal forms may be submitted in either Adobe or Word format, and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) may be submitted in hard copy and need not be submitted electronically.

4.4.2 Proposal Security and Escrow Agreement

One original and three certified copies of the Proposal Security shall be provided with the Technical Proposal, and shall be in one separate envelope labeled "[Proposer Name]: Proposal Security for the East End Crossing." The original of the Proposal Security shall be stamped "original" in the single envelope with the three certified copies. A copy of the Escrow Agreement shall be provided with the Technical Proposal, in a separate envelope labeled "[Proposer Name]: Escrow Agreement for the East End Crossing."

4.4.3 Financial Proposal

The following components of the Financial Proposal shall be delivered to IFA as specified below:

(a) One original and 15 certified copies of the Financial Proposal (excluding the components identified in Section 4.4.3(b)), together with one electronic copy on a CD-ROM or flash drive of the financial capacity information and Financial Plan in either Adobe or Word format. The documents shall be included in a sealed container labeled "[Proposer Name]: Financial Proposal for the East End Crossing."

(b) One or more sealed containers labeled: "[Proposer Name]: Financial Proposal for the East End Crossing – Financial Model" containing the following (see Exhibit C, Section 5.0):

(i) One original and 15 certified copies of the Financial Model output sheets and the Assumptions Book and Instructions Guide;

(ii) One original and 15 certified copies of the MAP Proposal (Form J);

(iii) One electronic copy of the Financial Model on a CD-ROM or flash drive, including a summary document (as a clearly labeled document in either Adobe or Word format) identifying the names of all the workbooks and identifying their respective functions;

(iv) One electronic copy of the Assumptions Book and Instructions Guide in either Adobe or Word format on a CD-ROM or flash drive; and

(v) One electronic copy of the MAP Proposal (Form J) in either Adobe or Word format on a CD-ROM or flash drive.

In addition, one or more sealed containers labeled: "[Proposer Name]: Financial Proposal for the East End Crossing – Cost and Pricing Data," containing one set of the Cost and Pricing Data (see Exhibit C, Section 6.0) shall be delivered into escrow not later than 72 hours after the Proposal Due Date. The Cost and Pricing Data of the Preferred Proposer shall be subject to the review of IFA in connection with any award of the Agreement.

4.5 Currency

All required pricing, revenue and cost information shall be provided in US$ currency only. Where pricing is to be provided in 2012 dollars, such pricing shall be as of the Proposal Due Date.

4.6 Modifications, Withdrawals and Late Submittals

4.6.1 Modifications to a Proposal

A Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so IFA can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

4.6.2 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 its Proposer Authorized Representative. Such written request shall be delivered to the address in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by IFA upon the Proposal Security. Proposals shall initially be valid for a period of 180 days after the Proposal Due Date. No Proposer shall withdraw its Proposal within the initial 180-day period, unless notified by IFA that (i) no Agreement for the East End Crossing will be awarded by IFA pursuant to the RFP, (ii) IFA has awarded the Agreement to another Proposer and has received the executed Agreement and other required documents, (iii) IFA does not intend to award the Agreement to the Proposer; or (iv) such Proposer is not notified during the 180-day period that IFA has selected the Proposer as the Preferred Proposer to enter into negotiations of the Agreement. Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

Notwithstanding the foregoing, if a Proposer's commitment for a Bank Financing expires on or after 120 days after the Proposal Due Date but before commercial close, then (i) Proposer shall conduct negotiations with the Core Lender(s) and any other members of the lending group from whom Proposer has obtained commitments to renew or extend their commitments to a date no earlier than 180 days after the Proposal Due Date; and (ii) Proposer shall be entitled to the risk sharing and relief set forth in Section 13.7.8.3 of the Agreement for the period commencing on the date that is 120 days after the Proposal Due Date through and until the earlier of (x) commercial close; or (y) 180 days after the Proposal Due Date. If commercial

close is achieved, the provisions of the Agreement, including Section 13.7, shall apply (but there shall be no duplication of relief or adjustments provided to the Proposer/Developer pursuant to application of the terms of this Section 4.6.2 and the terms of the Agreement).

4.6.3 Late Proposals

IFA will not consider any late Proposals. Proposals and/or modifications not requested by IFA received after the time for submittal of Proposals will be returned to the Proposer without consideration or evaluation.

4.7 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; (ii) if the Proposer does not release its Core Lender(s) and Lead Underwriter from exclusivity pursuant to Section 2.13 or (iii) if the Proposer is selected as the Preferred Proposer and any of the following occur:

(a) Following notification from IFA that it is the Preferred Proposer, the Preferred Proposer fails to negotiate in good faith as expressly defined in Section 5.10.1;

(b) Following notification from IFA that it is the Preferred Proposer, the Preferred Proposer fails to provide the documents required under, or satisfy the conditions set forth in Sections 5.11.1 and 6.1.1;

(c) Following notification from IFA that it is the Preferred Proposer, the Preferred Proposer fails to provide access to, or participate in the review of, or both, the Escrowed Materials as set forth in Section 5.11.3;

(d) Following notification from IFA of the Preferred Proposer, commercial close does not occur by the deadline specified in Section 1.7.1, unless such failure to close is directly attributable to:

(i) IFA's failure to provide timely responses to Post-Selection Deliverables in accordance with Section 5.11.2;

(ii) IFA's cancellation of the procurement or decision not to close with the Preferred Proposer and end negotiations after the Preferred Proposer has engaged in good faith negotiations, including elections made under Section 5.10.1, without cause by the Preferred Proposer;

(iii) IFA's failure to execute the Agreement within 3 Business Days after the Preferred Proposer's satisfaction of all conditions thereto and execution and delivery of the Execution Documents by the Preferred Proposer to IFA;

(iv) IFA's failure to provide any other deliverable IFA is required to deliver to Developer as a condition precedent to commercial close, where such failure is not caused in

whole or in part by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Preferred Proposer;

(v) Absence of concurrence in the award by FHWA (as required by Section 6.1(b)), where such absence is not caused in whole or in part by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Preferred Proposer;

(vi) An unresolved pending protest filed pursuant to Section 7.1(c) or an unresolved action to contest the validity of the Agreement brought pursuant to IC 8-15.5-4-12 (unless, in either case, IFA has elected, in its sole discretion, to undertake commercial close irrespective of such protest or action, in which case, this clause (vi) shall not apply); or

(vii) IFA's failure to comply with any other conditions required by the Act (as required by Section 6.1(e)), where such failure is not caused in whole or in part by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Preferred Proposer.

For purposes of this Section 4.7, Proposer's obligation to achieve commercial close shall be satisfied when Proposer has executed and delivered to IFA the Agreement and all documents and payments required hereby, including the documents described in Section 5.11 and Section 6.1.

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

4.8 Acceptance of Delivery by IFA

IFA will provide a receipt for Proposals that are timely delivered to IFA as specified herein. Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements.

SECTION 5.0 EVALUATION AND POST-SELECTION PROCESS.

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

The Proposal evaluation process will include an initial review of each Proposal for responsiveness and pass-fail criteria, a qualitative evaluation of the Preliminary Project Management Plans, an evaluation of the Financial Proposal and a best value determination. The process may include a request for Proposal Revisions, the establishment of a competitive range, and negotiations phase with the Preferred Proposer. The steps in the process and evaluation criteria are set forth in Sections 5.2 through 5.10. The evaluation and selection process is subject to modification by IFA, in its sole discretion.

The details of the evaluation and selection process are set forth more fully in this Section 5.

5.1 Organization of the IFA Evaluation Committees

Evaluation of Proposals will be conducted by a Technical Proposal Evaluation Committee ("TPEC"), and a Financial Proposal Evaluation Committee ("FPEC") with assistance from subcommittees, including an Administrative/Legal subcommittee, a Technical Proposal pass/fail and responsiveness subcommittee, and a Financial Proposal pass/fail and responsiveness subcommittee. The Public Finance Director may serve on either the FPEC or the TPEC**.**

The TPEC and FPEC will be comprised of representatives from IFA and the Department, at the sole discretion of the Public Finance Director. The subcommittees will be comprised of representatives from IFA, the Department and, at the sole discretion of the Public Finance Director, advisors (including outside consultants) and other qualified individuals. The primary responsibility of these advisors will be to assist the TPEC and FPEC in making an educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, observers from federal, state or other agencies with specific interests and responsibilities associated with the East End Crossing 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 IFA confidentiality restrictions and conflict of interest control requirements.

5.2 Best Value Determination

The best value determination will be based on the following 100 point scale. The Financial Score will represent up to 75 points of the total score and the Technical Score will represent up to 25 points of the total score. A Proposer achieving 100% of the points available for the Financial Score will score 75 points and a Proposer achieving 100% of the points available for the Technical Score will score 25 points. The determination of apparent highest ranked Proposal shall be based on the highest Total Proposal Score computed as follows:

> Total Proposal Score (max. 100 points) = Financial Score (max. 75 points) + Technical Score (max. 25 points)

5.2.1 Financial Score

The Financial Score (maximum of 75 points) will be comprised of the sum of the MAP Score and the Financial Proposal Feasibility Score.

The MAP Score (maximum of 72.5 points) will be based on the value of Base MAP (determined pursuant to Section 5.5), normalized to the Proposal containing the lowest value of Base MAP, calculated as follows:

$$\text{MAP Score} = \frac{\text{Lowest Value of Base MAP}}{\text{Proposer's Value of Base MAP}} \times 72.5 \text{ points}$$

The Financial Proposal Feasibility Score shall be a maximum of 2.5 points.

Financial Score = MAP Score + Financial Proposal Feasibility Score

5.2.2 Technical Score

The Technical Score (maximum of 25 points) will be comprised of the sum of the Technical Proposal Score (maximum of 22.5 points) and the Schedule Score (maximum of 2.5 points).

The Technical Proposal Score will be calculated based on the TPEC evaluation score for the Preliminary Performance Plans (maximum 100 points) as described in Section 5.4.1. The Preliminary Performance Plans for technical scoring purposes will be divided into three parts; the Preliminary Project Management Plan elements as further described in Section 5.4.1.1, the Preliminary Design-Build Plan elements as further described in Section 5.4.1.2 and the Preliminary Operations and Maintenance Plan elements as further described in Section 5.4.1.3. The TPEC evaluation score is the sum of the values of the three parts described in the preceding sentence. The Technical Proposal Score will be calculated using the following formula:

Technical Proposal Score = TPEC evaluation score X 0.225.

The Schedule Score (maximum of 2.5 points) will be based on the Proposer's schedule for Substantial Completion as compared to the Base MAP Date, normalized to the Proposal containing the greatest schedule acceleration to Substantial Completion from the Base MAP Date, calculated as follows:

$$\text{Schedule Score} = \frac{\text{Difference (in calendar days) between (i) Proposer's scheduled date to achieve Substantial Completion and (ii) the Base MAP Date}}{\text{Difference (in calendar days) between (i) the earliest scheduled date to achieve Substantial Completion shown in any conforming Proposal, and (ii) the Base MAP Date}} \times 2.5 \text{ points}$$

By way of an example only:

Proposer A proposes Substantial Completion at the Base MAP Date. Proposer B proposes Substantial Completion 180 days earlier than the Base MAP Date. Proposer C proposes Substantial Completion 360 days earlier than the Base MAP Date.

<u>Proposer A</u>

Schedule Score = 0/360 = 0 x 2.5 points = 0 points

<u>Proposer B</u>

Schedule Score = 180/360 = .50 x 2.5 points = 1.25 points

<u>Proposer C</u>

Schedule Score = 360/360 = 1.0 x 2.5 points = 2.5 points

5.3 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals and the Financial Proposals will be made available for review by the relevant pass/fail and responsiveness subcommittee(s). 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 the RFP and (b) based on the pass/fail criteria set forth below. Any Proposal that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award and will be considered unresponsive. Responsiveness shall be assessed on the basis of overall responsiveness, with IFA retaining the sole discretion to disregard or waive minor irregularities, omissions, nonconformities and discrepancies.

Regarding the recommendations of the pass/fail and responsiveness subcommittees, the TPEC and FPEC, respectively, may accept the recommendations provided by the subcommittees, may request the subcommittees to reconsider their recommendations, or may develop its own recommendations.

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

Those Proposals not responsive to this RFP, or that do not pass the pass/fail criteria, may be excluded from further consideration, and the Proposer will be so advised. IFA may also exclude from consideration any Proposer whose Proposal contains a material misrepresentation. IFA reserves the right to waive minor informalities, irregularities, discrepancies, omissions and apparent clerical mistakes which are unrelated to the substantive content of the Proposals.

5.3.1 Technical Proposals

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

(a) The business form of the Proposer, the proposed Developer, and any entities that will have joint and several liability under the Agreement 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 East End Crossing and PPA 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, Section 3.2.9;

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

(d) The Proposer has delivered Proposal Security in the form of a complete, properly executed bond that complies with the requirements of Exhibit B, Section 3.3.1 or letter of credit that complies with the requirements of Exhibit B, Section 3.3.2;

(e) The Proposal provides for completion of the East End Crossing and Substantial Completion no later than the milestone dates specified in Form N;

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

(g) If Proposer anticipates execution of the Agreement by a special purpose entity, Proposer has delivered either (i) pro formas of the special purpose entity organizational formation documents (i.e., certificate of formation/charter, bylaws/partnership agreement/operating agreement) or (ii) indicative term sheets of such corporate formation documents, in either case, that will be used to establish the entity should IFA select it as the Preferred Proposer;

(h) Intentionally Omitted

(i) Proposer has delivered (1) executed contracts, or if a contract has not been executed, detailed, signed term sheets or heads of terms outlining the key commercial and required Key Contract terms between (A) Proposer and Design-Build Contractor and (B) Proposer and Lead O&M Contractor and (2) detailed, signed term sheets or heads of terms

outlining the key commercial and required Key Contract terms between Proposer or Design-Build Contractor and Lead Engineering Firm, provided, however, if the Developer shall, and commits in the Proposal to, self-perform the operations and maintenance work under the PPA Documents in an amount no less than 30% of the operations and maintenance work (excluding Rehabilitation Work and Handback Requirements Work), the foregoing items relating to the Key Contract between the Developer and the Lead O&M Contractor shall not be required:

(j) The Major Participants, including Equity Members, and key personnel listed in the Proposer's SOQ have not changed since the Proposer's submission of the SOQ, or the Proposer has previously advised IFA of a change, IFA has consented to such change, and the Proposal attaches a true and correct copy of IFA's written consent thereto;

(k) Proposer has delivered a properly completed and executed Conflict of Interest Disclosure Statement (Form I);

(l) Proposer has delivered either certificates of insurance policies evidencing proof of insurance coverages required by the Agreement, or written evidence from an insurance company(ies), broker(s) or agent(s) indicating the signatories have read the Agreement and insurance requirements set for the therein and that the entities required to obtain insurance under the Agreement have the capability of obtaining such insurance in the coverages and under the conditions listed in the Agreement;

(m) Proposer has delivered all other specified forms and documents, properly completed and signed (if required), and such forms and documents do not identify any material adverse information;

(n) The Proposer's Technical Proposal received at least an "Acceptable" in the evaluation of each evaluation criterion as set forth in Section 5.4.1. As used herein, "Acceptable" means the relevant portion of the Proposal has demonstrated an approach which is considered to meet stated requirements/objectives and has an acceptable level of quality. An Acceptable rating corresponds to a Proposer merely meeting the minimum RFP standards;

(o) The date for Base Substantial Completion set forth on Form N is not later than the IFA Last Allowable Date for Base Substantial Completion, as set forth on Form N.;

(p) The Proposer's bridge type is consistent with the bridge aesthetic requirements in Section 15.4.1 of the Technical Provisions; and

(q) The Proposer's Workforce Diversity and Small Business Performance Plan in its Technical Proposal includes a statement committing to participate in the Department's Equal Employment Opportunity Trainee Program as set forth in Section 4.1.3 of Exhibit B to the ITP.

5.3.2 Financial Proposals

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

(a) Based on the information provided pursuant to Section 2.0 of Exhibit C, the Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the SOQ, such that the Proposer continues to have the financial capacity to develop, design, construct, operate, and maintain a project of the nature and scope of the East End Crossing. Factors that will be considered in evaluating the Proposer's financial capacity include the following:

i. Profitability;

ii. Capital structure;

iii. Ability to service existing debt;

iv. Ability to invest equity; and

v. Other commitments and contingencies.

If IFA determines that a Proposer does not appear to have the financial capability to fulfill its obligations under the PPA Documents, it may offer the Proposer the opportunity to meet the financial requirement through one or more Guarantors acceptable to IFA.

(b) The Proposer's Financial Proposal demonstrates the following:

i. that it identifies sufficient financing for the East End Crossing, including all design, construction, operation, maintenance and Rehabilitation Work;

ii. that it is sufficiently developed and (1) has attracted sufficient commitment and commitment letters from the Core Lender(s) and Lead Underwriter(s), as applicable; (2) that the Core Lender(s) and Lead Underwriter(s), as applicable, have completed final due diligence and (3) has attracted sufficient support and commitments from equity investors, in each case, to satisfy IFA that there is no material risk on financial grounds of any performance failure, including failure to perform any of the following:

A. Execution and delivery of the Agreement;

B. Achievement of Financial Close;

C. Completion of design and construction of the East End Crossing by the Substantial Completion Deadline set forth in the Agreement and in accordance with Agreement requirements; and

D. Operation and maintenance of the portions of the East End Crossing to be operated and maintained by Developer throughout the Term in accordance with the requirements of the PPA Documents, including the Handback Requirements.

iii. that it contains key milestones that are consistent with the Preliminary Performance Plans in Exhibit B, Section 4.

iv. that Proposer has received IFA's approval of the Lead Underwriter(s) (if bonds are used by the Proposer as part of its Financial Proposal); and

v. that Proposer has delivered a letter(s) of support from a qualified surety or bank/financial institution as described in Section 3.2.10 of Exhibit B.

(c) The Proposer's Financial Proposal is likely to result in Financial Close and meets a minimum level of feasibility;

(d) Proposer has provided the required commitment letters evidencing the willingness of the Core Lender(s) and Lead Underwriter(s), as applicable, to provide funding pursuant to Section 3.4 of Exhibit C.

(e) Proposer has provided assurance that private equity will be in place in at least the minimum amounts required under the PPA Documents, including the required letters from Proposer's Equity Members and Financially Responsible Parties (if applicable) evidencing their commitment to provide equity funding pursuant to Section 3.5 of Exhibit C.

(f) The Financial Proposal contains all the materials required by Exhibit C;

(g) Proposer has provided a letter from its independent insurance consultant or broker in accordance with the requirements of Section 7.0 of Exhibit C and substantially in the form of Form Z (with such modifications as shall be acceptable to IFA, in its good faith discretion); and

(h) Proposer has placed the Escrowed Materials into escrow.

If PABs are included as part of a Financial Proposal, approval of the issuance by IFA, in its role as conduit issuer, shall not be required as of the Proposal Due Date in order for the Financial Proposal to be considered committed financing.

5.4 Evaluation of Technical Proposal and Schedule By TPEC

After completion of, or concurrently with, the pass/fail and responsiveness review, the Preliminary Performance Plans will be evaluated by the TPEC based on the factors set forth below to determine whether it includes any improvements over the requirements of the PPA Documents and brings additional benefits and/or value to IFA, the Department and the public. In evaluating the Technical Proposal, the TPEC may consider other information provided with the Technical Proposal.

5.4.1 Technical Proposal Score - Preliminary Performance Plan Evaluation Factors

The evaluation factors for the Preliminary Performance Plan component of the Technical Proposal are as follows:

(a) Preliminary Project Management Plan (maximum 40 Technical Proposal Score points);

(b) Preliminary Design-Build Plan (maximum 30 Technical Proposal Score points); and

(c) Preliminary Operations and Maintenance Plan (maximum 30 Technical Proposal Score points).

Subfactors are listed in Section 5.4.1.1 through 5.4.1.3. 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.

5.4.1.1 Preliminary Project Management Plan

Objectives: An organization that is designed with clear lines of responsibility, appropriate personnel and well defined roles that respond to the requirements of the PPA Documents. A robust DBE Performance Plan that will achieve the DBE goals and encourage participation of minority and women owned businesses. A robust Workforce Diversity and Small Business Performance Plan that will achieve the goal of educating and training employees. 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 DBE Performance Plan;

(c) Preliminary Workforce Diversity and Small Business Performance Plan;

(d) Preliminary Baseline Schedules;

(e) Quality Management;

(f) Cost Control, Safety, Environment and Risk Management; and

(g) Electronic Document Management System.

Subfactors (a) through (e) are each weighted more than subfactors (f) and (g).

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

5.4.1.2 Preliminary Design-Build Plan

Objective: Incorporation of technical solutions with innovative features that achieve the requirements of the PPA 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) Design-Build technical solutions;

1. East End Bridge;
2. Tunnel;
3. Roadway elements;
4. Bridge structures, retaining walls, noise walls and other surface structures;
5. ITS Systems;
6. Context Sensitive Solutions Elements; and
7. Utility Relocation and Adjustment Work Elements

(b) Design-Build management approach; and

(c) Design-Build quality management.

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

5.4.1.3 Preliminary Operation and Maintenance Plan

Objective: Technical solutions that provide a well operated and maintained East End Crossing responding to the needs of the East End Crossing, the adjacent communities and the traveling public; and an operations and maintenance management organization with clear lines of responsibility, and which presents a well-defined and executable approach for operations and maintenance.

The Preliminary Operations & Maintenance Plan evaluation subfactors are as follows:

(a) Operations and maintenance technical solutions;

(b) Operations and maintenance management approach; and

(c) Operations and maintenance quality management.

The Preliminary Operations and Maintenance Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.3 of Exhibit B.

5.4.2 Schedule Score

The Schedule Score will be determined as set forth in Section 5.2.2.

5.5 Evaluation of Financial Proposal by FPEC

After, or in the sole discretion of the FPEC, prior to completion of the pass/fail and initial responsiveness review, the FPEC will evaluate the Financial Proposal to (i) evaluate the responsiveness and feasibility of the Financial Proposal and (ii) provide its calculation of the MAP Score.

5.5.1 Financial Proposal Feasibility

The FPEC will evaluate and make a recommendation regarding the feasibility of the Financial Proposal. Subfactors that will be considered in evaluating the feasibility of the Proposer's Financial Proposal include the following:

(a) the level of commitment of facilities provided by Core Lender(s) and/or Lead Underwriter(s);

(b) reasonableness of costs and financing assumptions;

(c) the terms and conditions of the financing (including debt, quasi equity and equity), including compliance with the conditions set forth in Section 13.3 of the Agreement and the degree of conditionality attached;

(d) the level of lender and underwriter, as applicable, due diligence performed;

(e) the conditions precedent to Financial Close included in the commitment letters and term sheets;

(f) guarantees and other security required to realize financing; and

(g) the level of commitment of Equity Members.

5.5.2 MAP Score

The evaluation of the MAPs will be independent of any underlying Proposer schedule. The Base MAP is to be stated as of the Proposal Due Date.

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

5.6 Total Proposal Score

After completion of the evaluation of the Technical Proposal by the TPEC and the Financial Proposal by the FPEC, the Public Finance Director, with the assistance of IFA and the

Department representatives and advisors, will determine the Total Proposal Score for each Proposal by adding the Proposal's Technical Score and Financial Score.

5.7 Requests for Clarification

IFA may, at any time, issue requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within three Business Days from receipt of the request (or within such other time as is specified by IFA). The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, IFA.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.8 Requests for Proposal Revisions

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

Upon receipt of Proposal Revisions, the TPEC and FPEC, with assistance from the subcommittees and advisors, as appropriate, will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.9 Identification of the Preferred Proposer

Once the Public Finance Director has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions), the Public Finance Director may authorize staff to notify the Preferred Proposer and commence finalization of the PPA Documents (which may include negotiations) with such Proposer pursuant to Section 5.10, require Proposal Revisions pursuant to Section 5.8, reject the recommendation and cancel the procurement or request reconsideration of the recommendation. If the Public Finance Director recommends to the IFA that the Preferred Proposer shall be preliminarily selected as the Developer under the Agreement, and the IFA adopts a resolution preliminarily selecting the Preferred Proposer as the Developer under the Agreement, the Public Finance Director and staff shall commence finalization of the PPA Documents (which may include negotiations) with such Proposer pursuant to Section 5.10. In addition, a public hearing shall be conducted on such preliminary selection and the terms of the Agreement as required under IC 8-15.5-4-9. If IFA does not believe that the negotiations with the Preferred Proposer will be successful, IFA may suspend

or cease negotiations with the Preferred Proposer and commence negotiations with the Proposer who had the next highest score or terminate the procurement process.

5.10 Finalization of the Agreement; Extension of Deadlines for Commercial Close

5.10.1 Negotiation of PPA Documents

If authorized by the Public Finance Director, IFA will proceed with the Preferred Proposer to finalize the PPA Documents. IFA may elect to negotiate various aspects of the PPA Documents with the Preferred Proposer, including aspects of the Proposal that will be incorporated into the PPA Documents and incorporation of unsuccessful Proposers' work product; however, any decision to commence negotiations regarding the terms of the PPA Documents is at IFA's sole discretion.

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

If IFA elects to negotiate various aspects of the PPA Documents with the Preferred Proposer and an Agreement satisfactory to IFA, in its sole discretion, cannot be negotiated with the Preferred Proposer, IFA may formally suspend or end negotiations with that Preferred Proposer and take action consistent with the direction provided by the Public Finance Director. Such action may include (a) requiring the Preferred Proposer to enter into the form of PPA Documents included in the RFP, without further negotiation or variation except to fill in blanks and include information that the form of Agreement indicates is required from the Proposal (e.g., ATCs); (b) rejection of all Proposals; or (c) proceeding to the next most highly ranked Proposal to finalize or attempt to negotiate a Agreement with that Proposer in accordance with this Section 5.10.

In the event IFA elects to commence negotiations with a Preferred Proposer, such Preferred Proposer will be deemed to have failed to engage in good faith negotiations with IFA and shall forfeit its Proposal Security as set forth in Section 4.7 if the Preferred Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with IFA or insists upon terms or conditions for any documents to be negotiated or provided by the Developer hereunder that are inconsistent with the PPA Documents. Failure by a Preferred Proposer to agree to inclusion of ATCs from unsuccessful Proposers shall not be deemed a failure to engage in good faith negotiations that will entitle IFA to draw upon the Proposal Security.

5.10.2 Financial Model Audit

As a condition precedent to award of the Agreement, the Preferred Proposer shall cause a preliminary independent audit of the Preferred Proposer's Financial Model to be conducted by a firm engaged by the Preferred Proposer and approved by IFA (the "Model Auditor"), at the Preferred Proposer's sole cost and expense. Copies of the preliminary audit report(s) and opinion(s) shall be co-addressed to IFA, and IFA shall be expressly identified therein as an entity entitled to rely upon such audit, subject to the Model Auditor's contractual caps on liability. The Preferred Proposer shall cause the drafts or pro formas of the preliminary audit

report(s) and opinion(s) to be delivered to IFA no later than 10 days after the date of notification by IFA that it is the Preferred Proposer.

Prior to engaging the Model Auditor and in accordance with the dates set forth in Section 1.7.1, the Preferred Proposer will provide IFA with information about the proposed Model Auditor (including qualifications and relevant experience), the proposed terms of engagement (including the proposed form of the model audit opinion and any governing law provisions) and the level of professional liability coverage (which must include IFA as an additional insured and which must cover claims by IFA arising from any errors or omissions by the Model Auditor in connection with the model audit). The engagement terms with the Model Auditor may limit the Model Auditor's liability to IFA for the Model Auditor's opinion's failure to identify any error(s) in the Financial Model to five years from completion of services and in an amount of no less than five times the fees of the Model Auditor as contained in its contract at the date of Proposal submittal or as subsequently amended, whichever is higher; provided that such caps shall be effective only if the Model Auditor maintains professional liability insurance in the amount and for the duration of the cap. The Model Auditor chosen by the Preferred Proposer must be unaffiliated with the Preferred Proposer and otherwise be free of any conflict of interest.

The information to be submitted by the Proposer to IFA pursuant to this Section 5.10.2 shall also include, at a minimum, the following: (a) the name and address of the proposed Model Auditor; (b) a list of transportation projects, grouped by geographic location, for which the proposed Model Auditor has provided model auditing services; (c) a list of the Model Auditor team members; and (d) a resume for each Model Auditor team member. The required information is a Pre-Proposal Submittal subject of the submission and deadline requirements of Section 2.4.

The Proposer assumes the risk of errors, omissions, defects and deficiencies in its Financial Model. Any amendment to the Financial Model required due to the results of the Financial Model Audit will be implemented without any adjustment to the MAP or Milestone Payment based on the results of the model audit.

The Preferred Proposer shall also provide IFA with an opinion from the Model Auditor stating that the Financial Model is suitable for use in connection with the Relief Event procedures set forth in the Agreement. The Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with GAAP. This opinion, on which IFA shall be a co-addressee and expressly entitled to rely, may also result from an independent review of the Financial Model required by the Preferred Proposer's lenders. The opinion is to be provided at the Preferred Proposer's cost.

The preliminary audit report(s) and opinion(s) shall be delivered prior to final award and commercial close.

5.10.3 Market Interest Rate Adjustment

Except as set forth in the Agreement, IFA will bear the risk and have the benefit of changes in market interest rates (either positive or negative) for the period beginning at 10:00 A.M. Eastern Time on October 17, 2012 and ending on the date of Financial Close.

The interest rate adjustment will be based on the movement, if any, in the benchmark bond(s) or SWAP rates underlying the financing contained in Proposer's Financial Plan and Financial Model (the "Benchmark Rate(s)"). The Benchmark Rate(s) must be independently verifiable by IFA using Bloomberg U.S.-based screens or another independently verifiable source acceptable to IFA, as appropriate. Proposers shall submit their selected indices and Benchmark Rate(s) to IFA for approval by the date set forth in Section 1.7.1 and the Benchmark Rate(s) must be approved by IFA not later than 3:00 P.M. Eastern Time on the date set forth in Section 1.7.1 to be included in the Proposal; provided, however, that if IFA has a clarification or issue regarding a Proposer's submittal, IFA may extend the date by which it must approve the selected indices and Benchmark Rate(s) while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the approved indices and Benchmark Rate(s) shall be included in the Proposal (and the delay in approval shall not affect the October 17, 2012 date above). Proposers may also provide Benchmark Rates for alternate forms of financing and must do so in order to be entitled to a Credit Spread Adjustment under the Agreement.

Proposer shall use Table 6 of Form P for purposes of the Benchmark Rate submittal. The Agreement sets forth the process, mechanics and constraints on any applicable market interest rate adjustment.

5.10.4 Credit Spread Adjustment

IFA will bear a portion of the risk and share in a portion of the benefit of changes in credit spreads (either positive or negative) in accordance with the Agreement. The Agreement sets forth the process, mechanics and constraints on any applicable credit spread fluctuation adjustment.

(a) No later than 3:00 P.M. Eastern Time on October 17, 2012, each Proposer must submit to IFA for approval the credit spreads that the Proposer intends to use in its Financial Model. Proposer may also provide credit spreads for alternate forms of financing and must do so in order to be entitled to a credit spread adjustment under the Agreement. As part of the credit spread submittal, Proposer shall provide the indicative credit rating(s), approximate average life of the financing instruments, market comparables and/or other supporting data. Proposer shall use Table 6 of Form P for purposes of the credit spread submittal.

(b) No later than 3:00 P.M. Eastern Time on the date specified in Section 1.7.1, IFA will provide written approval to each Proposer of the credit spreads to be assumed in the Proposer's Financial Model; provided, however, that if IFA has a clarification or issue regarding a Proposer's submittal, IFA may extend the date by which it must approve the credit spreads while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the credit spreads shall be included in the Proposal (and the delay in approval shall not affect the October 17, 2012 date above).

5.11 IFA Review of Post-Selection Deliverables

5.11.1 Documents to be Submitted Following Notification of Preferred Proposer

As a condition precedent to award of the Agreement, the Preferred Proposer shall deliver the following to IFA within 7 days after notification that it is the Preferred Proposer, unless otherwise noted:

(a) Evidence of Developer's (and all Major Participants', excluding Equity Members) authority to transact business in the State of Indiana, dated no earlier than 30 days prior to the Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in Indiana along with a Certificate of Good Standing from the state of organization of the member; (ii) a Certificate of Existence from the Indiana Secretary of State; or (iii) other evidence acceptable to IFA. Each such entity shall also provide a valid Indiana business license.

(b) Evidence of Developer's (and all Major Participants', excluding Equity Members) authority to transact business in the Commonwealth of Kentucky, dated no earlier than 30 days prior to the Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in Kentucky along with a Certificate of Good Standing from the state of organization of the member; (ii) a Certificate of Good Standing from the Kentucky Secretary of State; or (iii) other evidence acceptable to IFA. Each such entity shall also provide a valid Kentucky business license.

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

(d) Drafts of the deliverables identified in Section 6.1.1 for pre-approval by IFA.

(e) If not delivered with the Proposal pursuant to Exhibit B, Section 3.2.2, deliver copies of the final form of the Key Contract between the Developer and Design-Builder and the Developer and the Lead O&M Contractor; provided, however, if the Developer shall, and commits in the Proposal to, self-perform the operations and maintenance work under the PPA Documents in an amount no less than 30% of the operations and maintenance work (excluding Rehabilitation Work and Handback Requirements Work), the final form of the Key Contract between the Developer and the Lead O&M Contractor shall not be required.

5.11.2 IFA Comment on Post-Selection Deliverables

IFA shall provide comments on any Post-Selection Deliverable required to be delivered to IFA for review and approval hereunder, within seven Business Days after the date of IFA's receipt of such deliverable. IFA shall have four Business Days to review and respond to subsequent submittals of the deliverable.

5.11.3 Review of Escrowed Materials

IFA shall be entitled to access and review the Escrowed Materials of the Preferred Proposer following the notification of the Preferred Proposer, such review to be jointly undertaken with the Preferred Proposer in accordance with the Escrow Agreement (Form L). IFA's review shall assess the completeness and accuracy of the Escrowed Materials and IFA and the Preferred Proposer shall jointly develop and countersign a detailed index and catalogue of the contents of the Escrowed Materials. Completion of such review and indexation shall be a condition to award and execution of the Agreement.

SECTION 6.0 AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of PPA Documents

The following are conditions precedent to final award of the Agreement: (a) successful negotiation of the Agreement, (b) concurrence in award by FHWA, (c) receipt by IFA of all of the documents required to be provided prior to execution of the Agreement under Section 6.1.1, (d) review and indexation of the Escrowed Materials in accordance with Section 5.11.3; and (e) any other conditions to award set forth in the ITP or required by the Act.

Following the public hearing on the preliminary selection of the Preferred Proposer and the terms of the Agreement, IFA shall make a determination (i) whether or not the Preferred Proposer should be designated as the Developer under the Agreement and, if not, to commence negotiations with the Proposer whose proposal was ranked next highest, or (ii) to terminate the procurement process. If IFA determines to select the Preferred Proposer as the Developer under the Agreement, then such determination shall be submitted to the State Budget Committee and the Governor. Following review of such determination by the State Budget Committee, the Governor may accept or reject the determination of IFA. If the Governor accepts the determination of IFA, the Governor shall designate the Preferred Proposer as the Developer under the Agreement. Following the designation by the Governor of the Preferred Proposer as the Developer under the Agreement, IFA shall publish notice of such designation in accordance with the Act and may execute and deliver the Agreement following such publication.

Upon satisfaction of the foregoing conditions, IFA may deliver four sets of execution copies of the Agreement and other documents to be executed in connection therewith ("Execution Documents") to the Preferred Proposer along with the number of sets of execution copies of the Execution Documents reasonably requested by the Preferred Proposer. The Preferred Proposer shall obtain all required signatures and deliver all of the execution sets of the Execution Documents to IFA within 2 Business Days after receipt, together with the required documents described in Section 6.1.1. If Developer is a joint venture or a partnership, the Agreement must be executed by all joint venture members or general partners, as applicable.

Upon IFA's receipt of all such documents and satisfaction of all conditions precedent and provided that 15 days have elapsed since the date of publication of the notice of the designation of the Preferred Provider required under IC 8-15.5-4-11(b), IFA may, in its discretion, execute the Execution Documents and hold them in escrow, together with the required documents described in Section 6.1.2. Unless extended pursuant to Section 1.7.3, final award and commercial close shall be deemed to have occurred as of 7 days after the date of execution of the Agreement and the other Execution Documents; provided that IFA has executed and delivered all such documents and no procurement protest or action to contest the validity of the Agreement is brought within the time period permitted by IC 8-15.5-4-12.

In the event of a procurement protest or an action to contest the validity of the Agreement is brought within the period permitted by Indiana Code 8-15.5-4-12, IFA, at its sole option and within the exercise of its sole discretion, may elect to move forward with commercial close,

may delay commercial close 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. In no event may IFA delay commercial close beyond the 180 day Proposal validity period without the mutual agreement by the Preferred Proposer.

6.1.1 Documents To Be Delivered By Proposer With Executed Agreement

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

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

(b) Evidence of approval of the final form of the Agreement, and of due authorization, execution, delivery and performance of the Agreement, by Developer and (if Developer is a joint venture) by its joint venture members. Such evidence shall be in form and substance reasonably satisfactory to IFA. If Developer 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 Developer 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 Developer is a limited liability company, such evidence shall be in the form of (1) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, or (2) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (3) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Developer 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.

(c) A written opinion or opinions from counsel for Developer, which counsel shall be approved by IFA in its reasonable discretion (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the state of the formation/organization of the entity for which the opinion is rendered (i.e., Developer, joint venture member, etc.) and the qualification to do business in Indiana and in Kentucky and the enforceability opinion shall be provided by an attorney licensed in the State of Indiana), in substantially the form attached hereto as Form M (with such additional opinions as are reasonably requested by IFA, such changes as agreed to by IFA, in its sole discretion, and such qualifications and assumptions as agreed to by IFA, in its good faith discretion), provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Delaware may be issued by an in-

house or outside counsel not licensed in Delaware but who will issue an opinion under Delaware law.

(d) Copies of an executed Design-Build Contract between Proposer and the Design-Build Contractor, certified as accurate and complete by the Proposer.

(e) If the Performance Security will be in the form of bonds, a letter from a Surety licensed in Indiana and Kentucky, and listed on the Department of the Treasury's Listing and Approved Sureties (http://fms.treas.gov/c570/c570.html) and rated "A" or higher by at least two of the following three rating agencies: Fitch, Moody's or Standard and Poor's and rated "A-, X" or higher according to A.M. Best's Financial Strength Rating and Financial Size, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond as described in Section 17.2 of the Agreement and in form compliant with the requirements of this Section 6.1.1(e) and otherwise reasonably acceptable to IFA, in an amount equal to 25% of the Total Project Capital Cost. The commitment may be for either (a) a Performance Bond securing Developer's performance obligations under the PPA Documents respecting the D&C Work, or (b) Performance Bonds (i) from the Design-Build Contractor and (ii) from any other prime Contractor performing D&C Work, so that each such Performance Bond is security for performance of the respective entity's obligations under its Contract. 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 Agreement and issuance of NTP2 thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Agreement or the Technical Provisions following the date of the letter, but excluding any change orders and any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. If the Design-Build Contractor or any other prime Contractor is to provide a bond, the Surety letter must commit to issuance of a bond on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's work under the respective Design-Build Contract(s) or prime Contract respecting the D&C Work, naming IFA as a dual obligee.

(f) If the Performance Security will be in the form of a letter of credit, a letter from a bank or financial institution having long-term, unsecured debt ratings of not less than "A-/A3" from one of the major national rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's Ratings Group) and with an office in the United States at which the letter of credit can be presented for payment by facsimile or by electronic means, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a letter of credit as described in Section 17.3 of the Agreement and in form compliant with the requirements of this Section 6.1.1(f) and otherwise reasonably acceptable to IFA, in the amount equal to 25% of the Total Project Capital Cost. The commitment may be for either (a) a letter of credit securing Developer's performance obligations under the PPA Documents respecting the D&C Work, or (b) multiple letters of credit (i) from the Design-Build Contractor and (ii) from any other prime Contractor performing D&C Work, so that each such letter of credit is security for performance of the respective entity's obligations under its Contract. 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 Agreement and issuance of NTP2 thereunder. If the Design-Build Contractor or any other

prime Contractor is to provide a letter of credit, the bank or financial institution letter must commit to issuance of a letter of credit on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's work under the respective Design-Build Contract(s) or prime Contract respecting the D&C Work.

(g) A letter from a Surety licensed in Indiana and Kentucky, and listed on the Department of the Treasury's Listing and Approved Sureties (http://fms.treas.gov/c570/c570.html) and rated "A" or higher by at least two of the following three rating agencies: Fitch, Moody's or Standard and Poor's and rated "A-, X" or higher according to A.M. Best's Financial Strength Rating and Financial Size, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Payment Bond as described in Section 17.2 of the Agreement and in form compliant with the requirements of this Section 6.1.1(g) and otherwise reasonably acceptable to IFA, in an amount equal to 5% of the Total Project Capital Cost. The commitment may be for either (a) a Payment Bond securing Developer's payment obligations under the PPA Documents respecting the D&C Work, or (b) multiple Payment Bonds (i) from the Design-Build Contractor and (ii) from any other prime Contractor performing D&C Work, so that each such Payment Bond is security for payment to subcontractors and laborers under its Contract. If multiple Surety letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the Agreement and issuance of NTP2 thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the Agreement or the Technical Provisions following the date of the letter, but excluding any changes or information reflected in the Proposal, such as ATCs and Proposer commitments. If the Design-Build Contractor or any other prime Contractor is to provide a bond, the Surety letter must commit to issuance of a bond on behalf of the Design-Build Contractor or other prime Contractor, as applicable, with respect to the Design-Build Contractor's or other prime Contractor's work under their respective Design-Build Contract(s) or prime Contract respecting the Design and Construction Work, naming IFA as a dual obligee.

(h) If security for the Proposer's obligations under the Agreement is required by IFA pursuant to Exhibit C, Section 2.0.3(b), guarantees from Guarantor(s) in the form previously approved by IFA.

(i) Intentionally Omitted

(j) Financial Close Security in accordance with the requirements of Section 6.6.

(k) The preliminary audit report(s) and Model Auditor opinion(s) pursuant to Section 5.10.2, in form and substance reasonably satisfactory to IFA.

(l) Any other requirements reasonably determined by IFA during pre-award negotiations.

6.1.2 Documents To Be Delivered By IFA to Proposer With Executed Agreement

IFA shall deliver to the escrow held by IFA the documents listed below concurrently with the executed sets of the Agreement and other Execution Documents

(a) A copy of the executed Milestone Payment Agreement;

(b) A copy of the executed Use Agreement;

(c) A copy of the executed Project Trust Agreement;

(d) A copy of the executed Department MOU;

(e) Executed copies of the Escrow Agreement(s) in the form attached hereto as Form L (with such changes as agreed to by IFA, in its sole discretion).

(f) One or more opinion(s) from IFA's counsel in favor of Developer addressing the PPA, the Milestone Agreement, the Use Agreement and the Project Trust Agreement, substantially in the form of Form Y, with such additional opinions and revisions as may be reasonably requested by the Preferred Proposer and agreed to by IFA and their counsel; and

(g) One or more opinion(s) from INDOT's counsel in favor of Developer addressing the Milestone Agreement and the Use Agreement, substantially in the form of Form Y, with such additional opinions and revisions as may be reasonably requested by the Preferred Proposer and agreed to by IFA, INDOT and their respective counsel.

The documents will be released from escrow as of commercial close.

6.2 Debriefings

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

Debriefings shall:

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

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

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

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the TPEC and FPEC, but may include a summary of the rationale for the selection decision and Agreement award.

6.3 Stipend Payment to Unsuccessful Proposers

6.3.1 Prior to Proposal Due Date

Except as set forth in the Stipend Agreement and this Section 6.3, if IFA cancels the procurement after the issuance of this RFP up to and including the Proposal Due Date, then Proposers that have executed a Stipend Agreement are eligible to receive the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by such Proposer, as determined by IFA in its good faith discretion, in preparing a Proposal in an amount not to exceed $1,250,000.

If IFA cancels the procurement on or prior to the Proposal Due Date, then an invoice, waiver and release and the documentation of out-of-pocket development costs (which shall be subject to IFA's reasonable review and concurrence) may be submitted no earlier than the date of the notice of cancellation and no later than 90 days after the date of the notice of cancellation and the stipend (in an amount determined pursuant to this Section 6.3) shall be due and payable 60 days after the date the Proposer submits to IFA the invoice and waiver and release.

The invoice shall be in a form reasonably acceptable to IFA, and must be accompanied by an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against IFA, in the form attached as Form T.

6.3.2 From and After Proposal Due Date

Except as set forth in the Stipend Agreement and this Section 6.3, each Proposer that has executed the Stipend Agreement and submits a timely and responsive, but unsuccessful, Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents shall be entitled to receive payment from IFA, on the terms and conditions described herein; provided, however, that a timely and responsive Proposal shall also be considered unsuccessful if IFA cancels the procurement without award after the Proposal Due Date; provided, further, that Proposers must be eligible for the payment. 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 per Proposer for this procurement is $2,500,000.

If IFA cancels the procurement following the Proposal Due Date, then an invoice may be submitted no earlier than the date of the notice of cancellation and no later than 90 days after the date of the notice of cancellation and the total amount available for a stipend shall be due and payable 60 days after the date the Proposer submits to IFA the invoice and waiver and release.

If IFA does not cancel the procurement and final award and commercial close occurs, then the invoice may be submitted no earlier than 30 days after IFA issues notice of intent to award to the Preferred Proposer and no later than 30 days after commercial close. The total amount

available for a stipend shall be due and payable the later of (a) 60 days after the date the Proposer submits to IFA the invoice and waiver and release or (b) 45 days after the date of commercial close.

The invoice shall be in a form reasonably acceptable to IFA, and must be accompanied by an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against IFA, in the form attached as Form T.

6.3.3 Eligibility

Notwithstanding the foregoing, no stipend shall be payable to a Proposer in the following circumstances:

- If such Proposer has not executed and delivered the Stipend Agreement to IFA on or before 10 days after the date that IFA sends the Stipend Agreement to such Proposer with instructions to execute and return the Stipend Agreement to IFA; or

- If such Proposer withdraws from the procurement; or

- If such Proposer has not complied with the terms and conditions of the RFP Documents; or

- 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 and documentation of out-of-pocket costs pursuant to Section 6.3.1 within the time periods specified herein and the waiver and release as described herein; or

- 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

- If such Proposer was the Preferred Proposer and (a) it proceeds with commercial close and Financial Close or (b) it fails to proceed with commercial close or Financial Close for any reason other than failure of one or more express closing contingencies that are set forth in the RFP Documents or the Agreement, the failure of which do not arise out of or result from the acts, omissions, negligence, fraud, breach of contract or law or willful misconduct of the Preferred Proposer; or IFA'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, breach of contract or law or willful misconduct of the Preferred 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 (including 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 and/or contained in its Proposal will be the property of IFA without any requirement to make payment therefor.

6.3.4 Work Product

Each Proposer agrees that IFA shall 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 (including 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 IFA or the Department prior to the cancellation and/or contained in its Proposal, in consideration for IFA's agreement to make payment as provided herein and in the Stipend Agreement, without any further compensation or consideration to Proposer.

In accordance with Section 3.5, IFA will have the right to inform the Preferred Proposer regarding the contents of the other Proposals after notification of the Preferred Proposer, and that the Agreement may incorporate the above-described work product, ideas or concepts based thereon. Upon the Proposer's receipt of payment hereunder, this right shall extend to allow IFA and the Department to use such work product, ideas and concepts in the performance of its functions. Payment of the stipend by Proposer shall operate as a release and waiver by Proposer of any and all claims challenging the procurement process, award and/or cancellation of the procurement process.

6.3.5 Stipend Agreement and Proposal Letter

Proposers accepting the foregoing terms in this Section 6.3 and the Stipend Agreement shall acknowledge such acceptance by execution of the Stipend Agreement on or after the date of issuance of this RFP. Once executed, the Stipend Agreement shall constitute the irrevocable election by Proposer to accept the stipend described therein and under this Section 6.3.

6.4 Disposition of Escrowed Materials Following Conclusion of Procurement Process

In accordance with the procedures set forth in the Escrow Agreement (Form L), each unsuccessful Proposer shall have the right to retrieve its Escrowed Materials after the PPA Documents have been executed and delivered and commercial close has occurred, after IFA rejects all of the Proposals or after IFA terminates this procurement. The escrowed materials of the Developer that were delivered into escrow under the Escrow Agreement (Form L) in connection with the Proposal Due Date shall be retained in escrow or otherwise handled as set forth in the Escrow Agreement (Form L).

6.5 Costs Not Reimbursable

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

6.6 Financial Close Security and Return of Proposal Security

At, and as a condition precedent to, commercial close, the Preferred Proposer shall submit either: (a) a financial close bond in an amount equal to $20,000,000 and in the form of Form U-1 from a Surety licensed in Indiana and Kentucky and listed on the Department of the Treasury's Listing and Approved Sureties (http://fms.treas.gov/c570/c570.html) and rated "A" or higher by at least two of the following three rating agencies: Fitch, Moody's or Standard and Poor's and rated "A-, X" or higher according to A.M. Best's Financial Strength Rating and Financial Size or (b) a letter of credit in an amount equal to $20,000,000 and in the form of Form U-2 issued by a financial institution having long-term, unsecured debt ratings of not less than "A-/A3" from one of the major national rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's Ratings Group) and has an office in the United States at which the letter of credit can be presented for payment. Provisions addressing the forfeiture or return of the Financial Close Security are set forth in the Agreement.

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) expiry of the Proposal validity period, as extended, (ii) commercial close and (iii) cancellation of the procurement by IFA. The Proposal Security for the Preferred Proposer shall be returned at such time as (i) the Proposer has satisfied all conditions of execution and award, including, without limitation, the conditions set forth in ITP Section 6.1, (ii) the Proposal validity period, as extended, has expired, or (iii) IFA cancels the procurement.

SECTION 7.0 PROTESTS

7.1 Applicability

This Section 7.0 sets forth the exclusive protest remedies available with respect to the RFP. These provisions prescribe the exclusive procedures for protests regarding:

(a) allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed IFA's authority;

(b) a determination as to whether a Proposal is responsive to the requirements of the Request for Proposals, as applicable; and

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

7.2 Required Early Communication for Certain Protests

Protests concerning the issues described in Section 7.1(a) may be filed only after Proposer has informally discussed the nature and basis of the protest with IFA, following the procedures for those discussions prescribed in this Section 7.0. Informal discussions shall be initiated by a written request for a one-on-one meeting delivered to IFA's Authorized Representative. The written request shall include an agenda for the proposed one-on-one meeting. IFA will meet with the Proposer as soon as practicable to discuss the nature of the allegations. If necessary to address the issues raised in a protest, IFA may, in its sole discretion, make appropriate revisions to the RFP Documents by issuing addenda.

7.3 Deadlines for Protests

7.3.1 Protests concerning the issues described in Section 7.1(a) must be filed as soon as the basis for the protest is known, but no later than 20 days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five Business Days after the Addendum is issued (but in any event, prior to the Proposal Due Date).

7.3.2 Protests concerning the issues described in Section 7.1(b) must be filed no later than five Business Days after receipt of the notification of non-responsiveness.

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

7.4 Content of Protest

Protests filed under Section 7.3 shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. Statements shall be sworn and submitted under penalty of perjury.

7.5 Filing of Protest

Protests shall be filed by hand delivery on or before the applicable deadline to the Public Finance Director with a copy to the IFA General Counsel at Indiana Finance Authority, Public Finance Director of the State of Indiana, One North Capitol Avenue, Suite 900. Indianapolis, Indiana 46204 and the Department Chief Counsel at 100 North Senate Avenue, Room N758, Indianapolis, Indiana 46204-2248, Indiana, as soon as the basis for protest is known to Proposer. Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers whose addresses may be obtained by contacting IFA's Authorized Representative.

7.6 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within seven days of the filing of the protest. IFA shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

7.7 Burden of Proof

The protestant shall have the burden of proving its protest. IFA may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

7.8 Decision on Protest

The Public Finance Director or his or her designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest under Section 7.4. The decision by the Public Finance Director shall be final. If necessary to address the issues raised in a protest, IFA may, in its sole discretion, make appropriate revisions to the RFP by issuing Addenda. The written decision shall be final, binding and not subject to appeal.

7.9 Protestant's Payment of Costs

If a protest is denied, Proposer filing the protest shall be liable for IFA's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by IFA as a consequence of the protest.

7.10 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes and agrees to the limitation on its rights to protest provided in this Section 7.0, and expressly waives all other rights and remedies that may be available to Proposer under Law. These provisions are included in the RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section, it shall indemnify and hold IFA and its officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's

actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 8.0 IFA RIGHTS AND DISCLAIMERS

8.1 IFA Rights

IFA may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform the Developer's obligations under the PPA Documents. IFA reserves the right, in its sole discretion, to:

(a) Develop the East End Crossing in any manner that it, in its sole discretion, deems necessary;

(b) Reject any or all of the Proposals;

(c) Modify any dates set or projected in this RFP and extend any deadlines;

(d) Cancel, modify or withdraw the RFP in whole or in part at any time prior to the execution by IFA of a Agreement, without incurring any cost obligations or liabilities, except as otherwise provided in Section 6.3 of the RFP;

(e) Terminate this procurement and commence a new procurement for part or all of the East End Crossing;

(f) Terminate evaluations of Proposals received at any time;

(g) Suspend or terminate negotiations at any time, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence Agreement negotiations with any responding Proposer, engage in negotiations with other than the highest ranked Proposer ;

(h) Modify the procurement process (with appropriate notice to Proposers);

(i) Waive or permit corrections to data submitted with any response to this RFP until such time as IFA declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;

(j) Permit submittal of addenda and supplements to data and information previously provided in a Proposal pursuant to a request for clarification issued by IFA until such time as IFA 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 to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;

(l) Disclose information contained in a Proposal to the public as described herein;

(m) Approve or disapprove changes in the Key Personnel identified in the SOQ;

(n) Approve or disapprove changes in the Proposer's organization;

(o) Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;

(p) Consider information relating to a Proposer or Proposal based on information outside of the Proposal available to the evaluators, including the evaluators' personal experiences or knowledge;

(q) Request Proposal Revisions as specified herein;

(r) Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the Agreement by a third party;

(s) Not issue a notice to proceed after execution of the PPA Documents;

(t) Not pursue a PABs allocation, TIGER Discretionary Grant and/or the TIFIA credit approval on behalf of the Proposers;

(u) Develop some or all of the East End Crossing itself (including finance some or all of the East End Crossing itself);

(v) Disqualify any Proposer that violates the terms of the RFP;

(w) Determine a competitive range and conduct discussions with Proposers in the competitive range; and

(x) Exercise any other right reserved or afforded to IFA under this RFP and applicable Law.

8.2 IFA Disclaimers

This RFP does not commit IFA to enter into a contract. Except as expressly set forth in the Stipend Agreement and Section 6.3 above, and the return of the Proposal Security to Proposer in accordance with the terms of this ITP, IFA assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall IFA be bound by, or liable for, any obligations with respect to the East End Crossing until such time (if at all) as the PPA Documents, in form and substance satisfactory to IFA, has been authorized and executed by IFA and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of IFA to the Proposers during the procurement process, which obligations are expressly set forth in these RFP Documents. In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.