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

I-69 SECTION 5 PROJECT

THROUGH A PUBLIC-PRIVATE AGREEMENT

VOLUME I
INSTRUCTIONS TO PROPOSERS

A PROJECT OF THE

INDIANA FINANCE AUTHORITY

ISSUED OCTOBER 15, 2013

Addendum #1 Issued November 26, 2013
Addendum #2 Issued December 20, 2013
Addendum #3 issued January 7, 2014

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

CERTAIN KEY DATES

EVENT	DATE
Issue Final Request for Proposals	October 15, 2013
Proposal Due Date	January 21, 2014
Anticipated Notification of Preferred Proposer	On or around February 19, 2014
Execution of PPA and Other Execution Documents (unless extended pursuant to Section 1.7.3) and Commercial Close	On or after 22 days after the date of publication of the notice of the

EVENT	**DATE**
	designation of the Preferred Provider required under IC 8-15.5-4-11(b). (execution date anticipated to be April 8, 2014)

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INSTRUCTIONS TO PROPOSERS

(Request for Proposals: The 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, in cooperation with the Indiana Department of Transportation ("the Department" or "Department"), 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 ("PPA") as more fully described in this RFP and the PPA Documents.

The PPA shall provide that the successful Proposer (the "Developer") shall develop, design, construct, finance, operate, and maintain the I-69 Section 5 project. The I-69 Section 5 project consists of upgrading approximately 21 miles of existing State Route 37, a four-lane median divided highway, between Bloomington, IN and Martinsville, IN to an interstate highway (the "Project"). A general map of the Project can be found at the following procurement website: http://www.i69indyevn.org/section-5/. The form of PPA, with the other PPA Documents, is included in Volume II of the RFP.

IFA is issuing this RFP to those Proposers shortlisted on July 30, 2013, based on IFA's evaluation of Statements of Qualification ("SOQs") delivered to IFA on July 9, 2013 in response to the Request for Qualifications for the Project issued on May 23, 2013 (as amended, the "RFQ").

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

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

1.2 IFA Goals

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

(A) Provide congestion relief on SR 37;

(B) Reduce existing and forecasted traffic congestion, improving traffic safety and supporting local economic development initiatives;

(C) Spur economic development within Monroe and Morgan Counties, particularly in the areas of Bloomington and Martinsville;

(D) Strengthen the transportation network in Southwest Indiana (including improved business accessibility to labor, suppliers and markets and improved personal accessibility for residents);

(E) Reduce traffic safety problems and existing and forecasted traffic congestion;

(F) Support economic development in Southwest Indiana;

(G) Completes a key portion of the national I-69 corridor between Evansville and Indianapolis;

(H) Minimize the cost and funds required to develop, design, construct, finance, operate and maintain the Project;

(I) Achieve substantial completion for the Project by October 31, 2016;

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

(K) Provide a high quality, durable and maintainable facility;

(L) Meet Disadvantaged Business Enterprise ("DBE") goals and project "on-the-job" training ("OJT") program opportunities;

(M) Seek private sector innovation and efficiencies, and encourage design solutions that respond to actual and anticipated environmental concerns, permits and commitments; and

(N) Generate additional permanent and temporary jobs that include construction related employment.

1.3 Procuring Agency and Stakeholders

IFA will be the procuring agency for the Project. IFA will work closely with the Department, and together may be referred to as the "Project Sponsors." 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 the State.

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 Project and oversee the work of Developer in the development, design, construction, operation and maintenance of the Project. The Department's procurement role includes development of the Technical Provisions for the RFP and supporting the evaluation of the SOQs and responses to this RFP.

The BMCMPO (Bloomington/Monroe County Metropolitan Planning Organization) is the Metropolitan Planning Organization ("MPO") serving the City of Bloomington, the Town of Ellettsville, and parts of Monroe County, as originally designated by the Governor of Indiana in 1982. The BMCMPO also includes Indiana University and Bloomington Transit as planning partners. The MPO provides a forum for coordinating the transportation planning practices of local communities within a regional framework that benefits all citizens. The MPO is responsible for conducting its transportation planning activities within its "Metropolitan Planning Area," which encompasses portions of the Project.

1.4 General Description of and Scope of Developer's Obligations for the Project

1.4.1 Overview

The Project begins at State Road 37 in Bloomington, IN and extends north approximately 21 miles to SR 39 in Martinsville, IN. The Project extends through Monroe and Morgan Counties, Indiana, with the majority of the Project being in Monroe County. The purpose of the Project, as well as the broader I-69 project, is to strengthen the transportation network in the State, support economic development in the region and complete a key portion of the broader I-69 project between Evansville and Indianapolis.

1.4.2 Project Design Features

The design features for the Project, which must be consistent with the FEIS and the ROD, are described below.

(A) Rural Design Features:

- Four-lane highway with two 12-foot-wide lanes in each direction;
- Lanes separated by either an 84-foot-wide depressed median or 60-foot-wide depressed median;
- Medians consist of two 7-foot-wide usable inside shoulders where six of those feet are paved.
- Additional 12 foot-wide outer shoulder is required in select locations for truck climbing lanes and ramp acceleration and deceleration lanes;

(B) Urban Design Features:

- Six-lane divided highway with three 12-foot-wide lanes in each direction;
- Median treatment options include a depressed median 60 feet in width (initial cross-section) or paved shoulders separated by a concrete barrier wall(low-impact cross section);

- Additional 12-foot-wide lanes are provided in locations warranting auxiliary lanes and ramp acceleration and deceleration lanes, and an 8- to 12-foot-wide paved outside shoulder.

(C) Local Access Roads Design Features:

- These roads are designed for either side of the mainline at various points throughout the Project corridor;
- Provide access to otherwise landlocked properties;
- Either 100-foot-wide median (initial cross-section) or barrier wall (low-impact cross-section) will be used between the interstate mainline and access roads;
- Paved shoulders, varying by specific alternative, will range from 5-8 feet;
- Minimum clear zone on each side without a barrier wall is 20 feet;
- Cross section for these lanes typically includes two travel lanes (width between 11-12 feet).

1.4.3 Environmental

Environmental studies for the Project have been completed. A Tier 2 Draft Environmental Impact Statement ("DEIS") for the Project was prepared and circulated by the Federal Highway Administration ("FHWA") and the Department in October 2012. FHWA issued a combined Tier 2 Final Environmental Impact Statement ("FEIS") and Record of Decision ("ROD") for the Project on August 7, 2013, which, among other things, governs the alignment of the Project.

Final environmental approvals and related requirements have not yet been secured.

1.4.4 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 Project and operate and maintain the Project (as more fully set forth in the Technical Provisions), in return for periodic availability payments. Developer will also be entitled to receive milestone and completion payments as described in the PPA Documents.

The PPA will require Developer to design and construct the elements of the Project within a period of time defined in the PPA.

Developer's scope of work shall also exclude the design and construction of the SR 37 Clearing Contract and the bridge rehabilitation of the Walnut Street Bridge over existing SR 37 (collectively, the "Advance Construction Projects"). The Advance Construction Projects will be

included in separate design-bid-build contracts that will be separately let by the Department, with the lettings currently planned for November 2013. The Advance Construction Projects are expected to be awarded in December 2013. The SR 37 Clearing Contract is anticipated to be completed by the end of May 2014 and the Walnut Street Bridge rehabilitation is anticipated to be completed by the end of August 2014. Developer will be required to coordinate with the contractors constructing the Advance Construction Projects during the construction period, as more particularly set forth in the PPA and the Technical Provisions. Once complete, the Walnut Street Bridge will be included within the O&M Work and O&M Limits. The contracts for the Advance Construction Projects are included in the Reference Information Documents.

A specific description of the Project 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.

1.4.5 Operations and Maintenance; Warranties

Developer will be responsible for performing operations and maintenance (routine and capital/life cycle) for the term of the Project as described and defined (as "O&M Work") in the PPA Documents. Developer's operations and maintenance responsibilities will generally occur in two phases (one starting at NTP2 through Substantial Completion and the other during the Operating Period). Developer's Design-Build Contractor may also be required to provide a warranty of the D&C Work of the Project for a period specified in the PPA, and Developer may be required to provide parent guaranties and warranty bonds from the Design-Build Contractor to support the Design-Build Contractor's obligations with respect to such warranties and work relating to such D&C Work.

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 PPA for a list of the PPA Documents and their order of precedence.

The Reference Information Documents, which can be found at http://i69section5.com/sites/rfp/SitePages/Home.aspx (the "FTP Site"), 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 on Proposer, Developer or IFA 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, neither IFA nor the Department shall 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, the Department or any other Governmental Entity or represent any statement of approval or acceptance thereof by IFA, the Department or any other Governmental Entity; and (iii) not intended to form the basis of a Proposer's design solutions, technical solutions or construction means and methods. Except as may be expressly provided otherwise in the PPA Documents, a Proposer shall use or not use the Reference Information Documents at its sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating to site conditions, geotechnical conditions, Utilities, structures and bridge design, (y) the preparation of its Proposal, and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Reference Information Documents.

Neither IFA nor the Department represents or warrants that the information, opinions and recommendations contained in the Reference Information Documents are complete or accurate or that such information, opinions and recommendations are in conformity with the requirements of the RFP, Governmental Approvals or applicable 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 or derogate from the rights of Developer for compensation or time relief in connection with Relief Events or pursuant to Section 16 of the PPA.

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 PPA 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	October 15, 2013
One on One Meetings re: ATCs	October 29-30, 2013
Deadline for Proposer submittal of questions/comments on RFP Documents Before November 13-14, 2013 One on One Meetings	October 31, 2013 at 12:00 P.M. (Eastern Time)
Last date for IFA to provide Addendum setting forth the available Milestone Payment amounts and schedule for payment per Section 2.7.5	November 4, 2013
One on One Meetings re: RFP Documents and ATCs	November 13-14, 2013
Updates regarding Project Right of Way and Utility status	Approximately every 2 weeks
Last date for submittals of ATCs	November 21, 2013 at 12:00 P.M. (Eastern Time)
Last date for IFA to provide Addendum identifying Project Right of Way status per Section 2.7.3	November 26, 2013
Last date for IFA to provide Addendum identifying Utility status per Section 2.7.4	December 6, 2013
Last date for IFA to provide Addendum regarding certain Governmental Approvals per Section 2.7.6	November 26, 2013
Last date to submit Pre-Proposal Submittals (other than those separately listed in this schedule)	November 26, 2013 at 12:00 p.m. (Eastern Time)
Last date for Proposer submittal of questions regarding the RFP (other than as to Addenda #2 and #3 to the RFP), as described in Section 2.3.1	December 6, 2013 at 3:00 P.M. (Eastern Time)
Last date for IFA notification regarding Pre-Proposal Submittals (other than those separately	December 9, 2013

EVENT	**DATE and TIME**
listed in this schedule)	
One on One Meetings re: RFP Documents (if applicable)	December 11-12, 2013
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)	December 16, 2013 at 3:00 P.M. (Eastern Time)
Last date for IFA responses to ATCs	December 20, 2013
Last date for IFA responses to timely submitted questions regarding the RFP (if necessary) (other than as to Addenda #2 and #3 to the RFP)	December 20, 2013
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)	December 20, 2013
Last date for Proposer submittal of questions regarding Addendum #2 to the RFP, as described in Section 2.3.1	December 27, 2013 at 3:00 P.M. (Eastern Time)
Last date for IFA responses to timely submitted questions regarding Addendum #2 to the RFP (if necessary)	January 7, 2014
Deadline for submittal of Credit Spreads and Benchmark Rates	January 8, 2014 at 3:00 P.M. (Eastern Time)
Last date for Proposer submittal of questions regarding Addendum #3 to the RFP, as described in Section 2.3.1	January 10, 2013 at 12:00 P.M. (Eastern Time)
IFA Notification regarding Credit Spreads and Benchmark Rates	January 13, 2014 at 3:00 P.M. (Eastern Time)
Last date for IFA responses to timely submitted questions regarding Addendum #3 to the RFP (if	January 14, 2014

EVENT	**DATE and TIME**
necessary)	
Proposal Due Date	January 21, 2014 at 3:00 P.M. (Eastern Time)
Anticipated Notification of Preferred Proposer	On or around February 19, 2014
Execution of PPA and Other Execution Documents (unless extended pursuant to Section 1.7.3) and Commercial Close	On or after 22 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 April 8, 2014)
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 PPA, 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 PPA, or (c) 120 days after issuance of the IPDC Commencement Notice by IFA as provided in Section 13.7.2 of the PPA

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
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Attention: Silvia Perez

1.7.3 Deadline for Commercial Close and Financial Close Deadline

If a Proposer is selected as the Preferred Proposer for negotiations or execution of the PPA, then that Proposer shall be required to, on or before the date specified in Section 1.7.1 for PPA execution, deliver to IFA executed copies of the PPA and the documents required under Section 6.1.1. If notification of Preferred Proposer does not occur on or before February 21, 2014, the deadline for execution of the PPA and Execution Document and commercial close of April 8, 2014 shall be extended on a day for day basis.

IFA may, in its sole discretion, extend the deadline for PPA 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 PPA.

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 as specified in Section 4.4.3).

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 and order 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. Except as expressly provided in the Proposal forms (e.g., requirements to fill the forms out, etc.), 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 PPA. 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 commitments 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 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 its 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 stipend payment, 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 and the SOQs, shall be subject to the Public Records Act and any other Laws applicable to the disclosure of documents submitted under this RFP. Specifically, Proposers are advised that, except for portions of the Proposals and SOQs that fall under a specific exemption of the Public Records Act, Proposals and SOQs will be made available to the public pursuant to a request submitted under the Public Records Act. In furtherance thereof, Proposers will be required to submit a redacted copy of their respective Proposals and SOQs to IFA no later than 15 days after commercial close, with redactions limited to only those portions of the Proposal and SOQ that fall under a specific exemption of the Public Records Act (and Proposers shall be required to submit, for IFA’s review and approval, documentation identifying the specific exemption asserted and such other information requested by IFA in order for IFA to assess the eligibility of such portions of the Proposal and the SOQ for exemption from publication). Notwithstanding any proposed redactions and/or claims of exemption asserted by Proposer, IFA shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder. Failure of Proposer to submit a redacted form of its Proposal and SOQ, containing only those redactions consistent with IFA’s determination as to the content that may be redacted, to IFA by 15 days after commercial close shall constitute consent by Proposer to, and a waiver of any right to contest, disclosure by IFA of Proposer's Proposal and SOQ in their entirety, without redaction, in response to a request submitted

under the Public Records Act. As between a Proposer and a third party requesting disclosure under the Public Records Act (as opposed to as between a Proposer and IFA exercising its sole discretion rights pursuant to this ITP), this Section 1.8.4 shall not constitute a waiver of the Proposer's rights under the Public Records Act.

In no event shall IFA, the Department or any of either of their respective agents, representatives, consultants, directors, officers or employees be liable to a Proposer or any 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 has been drafted based on the assumption that the Project and the plan of finance for the Project will remain eligible for federal-aid funds. Accordingly, the procurement documents and PPA Documents conform to requirements of applicable federal law and FHWA regulations, including those set forth in Exhibit 22 to the PPA 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 (CFR) 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, specifications, regulations and policies that are relevant to this procurement and the Project 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 any federal requirements, including those mentioned specifically in the second sentence of this Section 1.9, so as to prevent submission of a Proposal, or prohibit consideration of a responsive Proposal submitted by any responsible Proposer, such provisions shall not be applicable to the Project. In light of the foregoing, IFA reserves the right, in its sole discretion, 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 2.3.2. The Project has federal funding and meets the definition of a major project requiring a major project review. As a major project, IFA and the Department shall be required to develop and maintain a project management plan and a finance plan.

1.9.1 EEOC; DBE Requirements

1.9.1.1 EEOC

IFA is an Equal Employment Opportunity employer.

1.9.1.2 DBE Requirements

IFA has determined that the DBE requirements apply to design and construction of the Project, and has adopted a DBE program to provide DBEs opportunities to participate in the business activities of 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 Project shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the PPA Documents and the Department's "DBE Program Manual."

IFA's DBE requirements applicable to the Project are set forth in Section 7.10 of the PPA and the DBE Special Provisions and IFA's DBE program adopted pursuant to Title 49 CFR Part 26. The DBE Goal for the Project is 11% of the Total Project Capital Cost for the professional services and construction portions of the Work performed under the PPA. Compliance with 49 CFR Part 26 shall be as set forth in the DBE Special Provisions. 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 Preliminary DBE Performance Plan 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, the approved DBE Performance Plan, Exhibit 2-L to the PPA, 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 Goal for the Project, including Developer's exercise of good faith efforts. Requirements for the DBE Performance Plan are set forth in the DBE Special Provisions. 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.

Developer shall comply with 25 IAC 5 as set forth in the DBE Special Provisions.

1.9.2 Workforce Diversity and Small Business Performance Plan Requirements

As set forth in Section 4.1.4 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 DBE Special Provisions. 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 Private Activity Bonds

On or about November 4, 2013, USDOT reserved a conditional allocation for the issuance of a principal amount of private activity bonds ("PABs") in the amount of $400 million for the Project. The expiration of the allocation will be December 31, 2014. 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 Project, 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; provided, however, that, as more particularly set forth in the PPA, IFA shall (i) agree to enter into a continuing disclosure agreement with respect to the PABs in substantially the form attached to the PPA as Exhibit 3, (ii) authorize the Developer to include, in the preliminary and final official statement for the PABs, the Financial and Economic Statement for the State of Indiana in the form posted on the Electronic Municipal Market Access (EMMA) site at the time of the publication of such offering materials, (iii) agree to provide a certificate of Public Finance Director with respect to the official statement in substantially the form attached to the PPA as Exhibit 11 and (iv) agree to provide an opinion from the Attorney General containing a statement that, to the best of his knowledge, the portion of the Financial and Economic Statement for the State of Indiana entitled "Litigation" does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Proposer's lead underwriter(s) ("Lead Underwriter(s)") or private placement agent ("Private Placement Agent", as applicable, must be a nationally-recognized firm with experience in transportation infrastructure finance. Counsel for the Lead Underwriter(s) must also be a nationally-recognized law 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 waivers of conflict(s) of interest;
- The engagement letter must expressly state that 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 shall pay all associated counsel fees and expenses to IFA; and
- The engagement letter must expressly state that 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), Private Placement Agent and counsel for the Lead Underwriter(s) prior to the Proposal Due Date in accordance with Section 2.4. The Proposer shall provide the qualifications of Proposer's intended Lead Underwriter(s) or Private Placement Agent, as applicable, and intended counsel for the Lead Underwriter(s) no later than the date for Pre-Proposal Submittals set forth in Section 1.7.1 for such submission; provided, however, that with respect to counsel for the Lead Underwriter(s), the Proposer may submit information about more than one (1) but no more than three (3) law firms. Such law firms shall not, in IFA's determination, have any conflicts of interest with respect to IFA or the Department with respect of the Project. The Proposer shall provide an original and seven copies of all information necessary for IFA to assess the qualifications of the intended Lead Underwriter(s) or Private Placement Agent, as applicable. and intended counsel for the Lead Underwriter(s). Each Proposer shall specifically provide information regarding the experience of the intended Lead Underwriter(s) and intended counsel for the Lead Underwriter(s) with PABs and transportation infrastructure finance. Each Proposer shall specifically provide information regarding the experience of the intended Private Placement Agent with Private Placements and transportation infrastructure finance. IFA may approve the Lead Underwriter(s) without approving counsel for the Lead Underwriter(s), but will not approve counsel for the Lead Underwriter(s), without approving the Lead Underwriter(s).

Following approval of IFA's application for a PABs allocation, 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 Project or the use of proceeds to finance the Project as a matter of federal tax law. Proposers should seek the advice of their own respective 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.

1.9.4 Public Funding; Milestone Payments

It is currently anticipated that the Department, commencing with fiscal year 2015, shall transfer to IFA an aggregate amount over 3 fiscal years of $80 million (inclusive of the aggregate $20 million for Utility Milestone 1 and Utility Milestone 2), as more particularly set forth in the Milestone Agreement, in support of the Project. It is currently anticipated that all or a portion of such funds will be paid by IFA to Developer through Milestone Payments for Developer's D&C Work (and not O&M Work). In addition, the Availability Payments payable to Developer for its O&M Work will be funded from use payments made by the Department to IFA under a Use Agreement to be entered into between IFA and the Department. All of the foregoing funds from the Department are subject to legislative appropriation by the State.

To the extent that any other payments under the PPA come from State or federal funds (as opposed to bond proceeds, loans, etc.), Proposers should be aware that such state and federal funds shall be subject to legislative appropriation by the State.

1.10 Insurance Requirements

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

1.11 Qualification To Do Business

On or before 30 days prior to the Proposal Due Date and continuing through the date of commercial close, Major Participants (excluding the Equity Members) must be qualified to transact business in the State. As of 15 days prior to commercial close, Developer must be qualified to transact business in the State.

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 PPA (if at all) to the responsive 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.

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

Except for pre-approved Alternative Technical Concepts ("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 Project, located at 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 PPA, IFA may designate another Authorized Representative or Representatives to carry out some or all of IFA's obligations pertaining to the Project.

2.2.2 Identification of Proposer Authorized Representative

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

Proposer may elect to designate a second individual, who may submit communications, questions and comments to IFA and who IFA may elect to include in official correspondence (as a “copy to”). If Proposer designates a second individual, such individual shall not be, nor be deemed to be, the "Proposer Authorized Representative." Failure by IFA to include the second designated individual in official correspondence shall not, and shall not be deemed to, render any communication to the Authorized Representative invalid. Any communication coming from the second designated individual to IFA shall also be delivered to the Proposer Authorized Representative.

2.2.3 Rules of Contact

From the date of issuance of the RFQ until the issuance of that certain letter agreement dated August 1, 2013, the rules of contact provisions in the RFQ were applicable to this procurement. From August 1, 2013 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 PPA, (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 its 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 the Proposer Authorized Representative.

(c) No Proposer or representative thereof through either of their respective employees, agents or representatives shall have any *ex parte* communications regarding the RFP or the procurement described herein with any member of IFA or the Department, or with any IFA or Department staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance by the Authorized Representative 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:

- Indiana University;
- Monroe County, IN;
- City of Bloomington, IN;
- BMCMPO (Bloomington/Monroe County Metropolitan Planning Organization);
- Morgan County, IN;
- Town of Ellettsville, IN;
- City of Martinsville, IN;
- FHWA;
- USDOT Secretary's Office;
- USDOT Innovative Program Office;
- Environmental, regulatory and permitting agencies;
- Utilities; and
- Railroads (including CSX and Indiana Rail Road Company)

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 discussion of any confidential matters. Following any such general meeting, IFA may allow individual meetings between a Proposer and such entity(ies); provided that such Proposer notifies IFA in writing of any planned meeting at least three business days in advance and sends IFA an agenda along with the date, time, location or dial in number and proposed attendees for such meeting. In such event, IFA reserves the right, in its sole discretion, but without obligation, to send a representative to such meeting or join by phone. The representative will not actively or substantively participate in any such call or meeting and will not answer any questions during such call or meeting. Refer to Section 1.9.3 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 Project 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.

The Proposer shall note that no correspondence or information from IFA or anyone representing IFA regarding the RFP or the procurement 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 PPA, 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 Developer and achieve Financial Close; and (b) the Proposer notifies IFA in writing within ten 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, ATCs, Proposal, and PPA are to be in the English language. Except as may be otherwise expressly permitted in these RFP Documents, if any original documents required for the Proposal are in any other language, the Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Responses Regarding the RFP and Addenda

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP and any Addenda issued by 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 request such clarification(s) or interpretations and to so examine and inform itself shall be at its sole risk, and no relief for perceived discrepancy, deficiency, ambiguity, error or omission contained therein will be provided by 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 Proposer to the Authorized Representative, by electronic transmission (with facsimile or hard copy delivered within 72 hours thereafter) in the prescribed format.

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

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

Proposers will be limited to 100 comments/questions for the RFP; provided, however, that (i) Proposers will be limited to 50 comments/questions for any Addenda; and (ii) neither of 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 or 50-question, as applicable, limitation. Notwithstanding this paragraph, IFA may, in its sole discretion, change the maximum number of comments/questions for future RFP versions by Addendum. In accordance with this discretion, for purposes of Addendum #2, Proposers are limited to 25 questions regarding the RFP Documents, exclusive of the Technical Provisions ,and, for purposes of Addendum #3, Proposers are limited to 10 questions regarding the RFP Documents, exclusive of the Technical Provisions.

No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or clarification to any Person other than the 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. IFA will only provide responses to the Proposer Authorized Representative notwithstanding any submission on Proposer's behalf by any designee.

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 ("confidential") information. If a Proposer believes a question contains confidential or proprietary information (including that the question itself is confidential), it may mark such question as "confidential." IFA reserves the right to disagree with Proposer's assessment as to the confidentiality of information in the interest of maintaining a fair process or complying with applicable 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, 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 period set by IFA, such failure shall be deemed Proposer's consent to IFA's answering 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.

A Proposer may, at its option, elect to submit revised drafts, in redline, of the ITP, PPA, and Technical Provisions in connection with the submission of its 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 submission meetings with Proposers as it deems necessary (*see* Section 2.5), and Proposers must make themselves available to IFA for such pre-Proposal submission 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 such date. If IFA finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the Proposal Due Date determined necessary by IFA, in its sole discretion.

2.4 Pre-Proposal Submittals

The "Pre-Proposal Submittals" are as follows:

- Pursuant to Section 1.9.3 (regarding Proposer's Lead Underwriter(s) or Private Placement Agent, as applicable, and counsel for 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 Spreads).

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

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

- The meetings are intended to provide Proposers with a better understanding of the Project and Project-related documents or communications provided by 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 Project 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 Person.
- No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.

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

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions, and 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, in either case, 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 Proposers to other Proposers. Following the preliminary selection of the Preferred Proposer as 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). See also Section 1.8.4 of this RFP.

IFA shall disclose the contents of all Proposals if it receives a proper Public Records Act request, 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) both commercial close and Financial Close has been achieved. (IC 8-15.5-4-13, IC 5-14-3). Subject to the provisions of this Section 2.6 and the other terms and conditions of the ITP with respect to permitting the Proposer and/or IFA to assert claims of confidentiality and to defend against requests for disclosure, 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 or is otherwise exempt from disclosure under the Public Records Act, such responding Proposer team shall specifically and conspicuously designate that information by placing "CONFIDENTIAL" in the header or footer of each such page affected. Any such designation of trade secret or other basis for exemption shall be accompanied by a concise statement of reasons supporting the claim including the specific Law that authorizes the exemption from disclosure under the Public Records Act. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for 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 PPA, IFA will take reasonable steps to 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, the Department, or their respective officers, employees, contractors or consultants, employees or consultants be responsible or liable to a Proposer or any other party as a result of disclosing any such materials, including materials marked "CONFIDENTIAL," whether the disclosure is deemed required by Law or by an order of court or IFA General Counsel or occurs through inadvertence, mistake or negligence on the part of IFA, the Department, or their respective 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 PABs process, FHWA and USDOT personnel are subject to the terms of the Freedom of Information Act ("FOIA").

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

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

The Department has already performed certain geotechnical investigation work for the Project and certain historical geotechnical investigation work exists for the Project corridor. Such work includes activities conducted on environmental resources such as karst, wetlands, and historical/archaeological conditions. Additional geotechnical investigation work by the Department is currently under way. IFA will make such historical and new information available to Proposers.

The Project is located within a karst region in the State. In 1993, the Department, the Indiana Department of Environmental Management ("IDEM"), the Indiana Department of Natural Resources ("IDNR"), and the United States Fish and Wildlife Services ("USFWS") entered into a Karst Memorandum of Understanding to define guidelines for the development of transportation projects located within a karst region. The Department is conducting additional karst investigation pursuant to the Karst Memorandum of Understanding. The Department currently anticipates that a Project-specific memorandum of agreement will be developed to provide a process for addressing karst features in the Project. The karst study that was undertaken extends from Clear Creek, south of the Project site, to Chambers Pike and covers 12.1 of the 21 miles of the Project site. Three distinct areas of karst geology were identified in the study. IFA will make such historical and new information available to Proposers.

To the extent that any Proposer desires additional geotechnical investigation prior to submittal of its Proposal, then such Proposer will need to coordinate with the Project Sponsors prior to conducting any investigation. The Project Sponsors may decide to perform additional geotechnical investigation based on input received from Proposers during the draft RFP process.

Except as otherwise expressly set forth in the PPA Documents, 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 Hazardous Materials

The Department has certain hazardous materials information for the Project and has such information available to Proposers through the Reference Information Documents. The Department is also currently undertaking additional hazardous materials investigation work which also will be made available to Proposers. At this time, no material hazardous materials issues have been identified in the Project footprint. Proposers may, during the draft RFP process, be asked to provide input on what, if any, additional hazardous materials investigation information may need to be collected. The Project Sponsors may decide to perform additional hazardous material investigation based on the input received from Proposers during the RFP process.

2.7.3 Right of Way

No ROW has been acquired for the Project as of the date of this RFP. IFA anticipates that the Department will commence ROW acquisition and portions of the ROW will be acquired (or access rights obtained), 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); 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.

2.7.4 Utilities

The Department has certain historical Utility Information for the Project and has made such information available to Proposers through the Reference Information Documents. The Department is also currently undertaking additional utility investigation work which also will be made available to Proposers. Proposers may be asked to provide input on what, if any, additional utility investigation information may need to be collected. The Project Sponsors may decide to perform additional utility investigation based on the input received from Proposers during the RFP process.

IFA and the Department are working with Utility Owners and attempting to negotiate agreements with the Utility Owners. Developer, however, will be responsible for coordination with Utility Owners, obtaining utility agreements and compliance with such utility agreements during the term of the PPA. Developer will be responsible for performing or causing certain necessary Utility Adjustments to be performed in accordance with applicable standards and Laws and for the costs associated with Utility Adjustments, except to the extent the Utility Owners are legally responsible for such costs or IFA expressly retains such responsibilities in accordance with the PPA.

IFA has discussed certain types of Utility Adjustments with the affected Utility Owners, as defined in Section 15 of the Technical Provisions.

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.

2.7.5 Milestone Payments

As noted in Section 1.9.4, IFA is in the process of determining the available Milestone Payment amounts and schedule for payment. 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 available Milestone Payment amounts and schedule for payment.

2.7.6 Governmental Approvals

Prior to the date set forth in Section 1.7.1, IFA and the Department intend to advance several key preconstruction environmental Governmental Approvals commensurate with the state of Project development. See Table 7-1 in Section 7 of the Technical Provisions for a list of such Governmental Approvals, along with a list of other major permits that IFA and the Department anticipate shall be required for the Project.

Such list is not an exhaustive list of all Governmental Approvals required for the Project and Proposers are not entitled to rely upon such list.

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 be the responsibility of Developer.

Upon commercial close, under the PPA Documents, Developer will generally be responsible for continuing to advance, obtain and maintain (including preparation of Governmental Approval applications) all pending Governmental Approvals and obtain and maintain all other necessary regulatory, environmental, building and other permits and Governmental Approvals (including any Governmental Approval modifications) to develop, design, construct, finance, operate and maintain the Project. Developer's responsibility will include compliance with all NEPA commitments for mitigation and monitoring as set forth in the NEPA documents and all Governmental Approval conditions included in any Governmental Approvals. Developer will finalize all Governmental Approval applications based on its proposed design and obtain final Governmental Approvals from the permitting agencies, including taking responsibility for any changes in permits and permit conditions arising out of Developer's design. The Department will support Developer in coordination with environmental regulatory and permitting agencies. Except as otherwise required by Law or set forth in the PPA, it is anticipated that the Department will be the permittee on all Governmental Approvals.

2.7.7 Railroad Companies

CSX and the Indiana Rail Road Company have rail lines and facilities that may be impacted by the Project. Developer will be responsible for coordination with railroads, including design reviews. Developer will be responsible for causing the necessary railroad work or protection to be performed in accordance with applicable standards and Laws and for the costs associated with the railroad work or protection, except to the extent the railroad is legally responsible for such costs.

2.7.8 Governmental Agencies, Key Stakeholders Coordination

Key stakeholders include IFA, the Department, Indiana University, BMCMPO, City of Bloomington, Morgan County, Monroe County, Town of Ellettsville, and City of Martinsville, and it is anticipated that Developer will play an active role in coordinating with these and other stakeholders.

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, all Addenda, materials posted on the FTP Site 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 and for monitoring the FTP Site and http://www.in.gov/ifa/2779.htm (the "Website") for information concerning this RFP and procurement. The Proposal Letter (Form A) includes an acknowledgment that the Proposer has received and reviewed all such materials. Failure of a Proposer to so examine and inform itself of the aforementioned documents and materials shall be at its sole risk, and IFA will provide no relief for any error or omission. The ability of Proposers to rely on the Reference Information Documents is limited and is expressly set forth in Section 1.5 and 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, karst features, permanent and temporary Utility appurtenances, area population and demographics, land use and development (including development-related infrastructure), and traffic patterns and driver preferences. The Proposer's receipt of IFA-furnished information (including specifically the Reference Information Documents) does not relieve the Proposer of this responsibility.

The submission of a Proposal shall be considered *prima facie* evidence that the Proposer has made the above-described examination and is satisfied as to all matters and conditions to be encountered in performing the Work and as to the requirements of the 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 Project updates concerning the status of existing construction by the Department, including the Advance Construction Projects. These updates will be considered additions to the Reference Information Documents described in Section 1.5. In addition, IFA and the Department will use reasonable efforts to assist Proposers with, but does not guarantee, 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 Project 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 Project 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 the Project Right of Way, please contact the designated site manager no later than 24 hours prior to desired visit: Mr. David Pluckenbaum, dpluckebaum@corradino.com, 812-334-8869.

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 under contract with IFA or the Department to prepare procurement documents for the Project will not be allowed to participate in any capacity on a Proposer team. Any Person previously under contract with IFA or the Department to prepare preliminary plans, planning reports or other project development products for the Project may be able to participate on a Proposer team if such Persons 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 (and, in the case of any confirmation of conditional participation, subject to observation of any or all such condition(s)).

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 October 31, 2013) because IFA does not intend to extend the Proposal Due Date. Notwithstanding the preceding sentence, IFA is not 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."
>
> ("Owner" thereunder means IFA and the Department)

The 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. The 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 Project or the procurement of the Project with any Person with an organizational conflict of interest, including, but not limited to:

- KPMG LLP
- Nossaman LLP
- Ice Miller LLP
- Perkins Coie LLP
- Michael Baker Corporation
- Philip Moss PG
- Bernardin Lochmueller & Associates
- Weintraut and Associates, Inc.
- Gray and Pape, Inc.
- Atkins
- Faithful & Gould
- Dyer Environmental, Inc.
- Shrewsberry and Associates, Inc.
- Environmental Solutions and Innovations, Inc.
- BHE Environmental

- Traynor & Associates, Inc.
- First Appraisal Group, Incorporated
- Boomerang Ventures
- Kristin Murney Compass Rose Consulting, LLC
- Monroe/Owen Appraisal, Inc.
- David Patterson Agency, LLC
- Roadway Services, LLC
- RWS South, Inc.
- CPS Acquisitions, LLC,
- JAY Real Estate Services, Inc.
- STS, Inc. d/b/a Will Stump & Associates
- Metropolitan Abstracting Consultants, LLC
- Beam, Longest and Neff
- HNTB Corporation
- American Structurepoint
- Corradino Group
- Stephen J. Christian and Associates
- Parsons Cunningham and Shartle Engineers Inc.
- Cardno ATC Group Services Inc.
- Earth Exploration Inc.
- K & S Engineers Inc.
- Padgett Inc.
- Cardno JF New and Associates
- Cardno TBE

- Delcan
- Ozark Underground Laboratory
- Courtland Title & Escrow, Inc.
- KKM, Inc.
- Metropolitan Abstracting Consultants LLC
- Woodco Enterprises LTD
- Central States Consulting
- Durham Engineering
- Hanson Professional Services
- Affiliates (meaning includes parent companies, subsidiary companies, Persons under common ownership, joint venture members and partners, and other financially liable parties for a Person) of any of the above

Such Persons are also prohibited from participating on a Proposer team as an Equity Member, 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 about which the Proposer knew, or should have known, but failed to disclose is determined to exist during the procurement process, IFA may, in its sole discretion, disqualify the Proposer. If an organizational conflict of interest about which the Proposer knew, or should have known, but failed to disclose exists and the Proposer has entered into the PPA as Developer, IFA may, at its sole discretion, terminate the PPA. In either case, IFA reserves all 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 the Laws and rules relating to NEPA. Such applicable Law will also apply to Proposer teams and teaming and may preclude certain Persons 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, 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 (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 Persons 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 PPA, 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 PPA, 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 (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 PPA, 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 PPA, 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 those individuals proposed for Key Personnel positions that were added to the RFP since submittal of the SOQs 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. Notwithstanding the foregoing, IFA may, in its sole discretion, after such date set forth in Section 1.7.1, consider resubmittals of Key Personnel positions where prior timely submittals were not approved by IFA; provided, however, that Proposer shall remain solely responsible for submitting Key Personnel acceptable to IFA and in no event shall the Proposal Due Date be extended or shall IFA incur any liability for any disapproval of a Key Personnel. For clarification, the new Key Personnel positions with respect to which approval must be obtained under this Section 2.11.3 are:

- Engineer of Record;
- Financial Director;
- Public Information Coordinator;
- DBE Coordinator;
- Utility Manager;
- Construction Quality Manager;
- Design Quality Manager;
- Safety Manager;
- Environmental Compliance Manager;
- Karst Specialist; and
- Erosion and Sediment Control Manager; and
- Maintenance of Traffic (MOT) Manager.

2.12 Non-Exclusive Relationship with Rating Agencies

The market for rating agencies is small enough that exclusive teaming arrangements between 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 rating agencies.

2.13 Release of Exclusive Relationship with Core Lender(s), Lead Underwriter and Private Placement Agent

Each unsuccessful Proposer shall release its Core Lender(s), Lead Underwriter and Private Placement Agent of any exclusivity obligations no later than 5 days after being notified by IFA that IFA has executed the PPA 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 Persons 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/or operation and maintenance of the Project, 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 are limited to those deviations from the requirements of the as-issued PPA Documents that result in performance, quality and utility of the Project that is equal to or better than the performance, quality and utility of the Project absent the deviation, as determined by 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 or result in (a) a reduction in quantities without achieving equal or better performance, quality and utility; (b) a reduction in performance, quality, utility or reliability; (c) major changes to the environmental documents, including the NEPA Documents, such as another supplemental environmental impact statement; (d) the addition of a separate IFA or Department project to the PPA (such as expansion of the scope of the Project to include additional roadways); (e) a Change in Law, (f) an increase in the amount of time required for Substantial Completion beyond the last date for Substantial Completion set forth in Form N, or (g) multiple or material additional right-of-way parcels. ATCs that, if implemented, would require further environmental evaluation of the Project, such as a revaluation of the environmental impact statement or modification of Governmental Approvals, may be considered; provided that Developer bears the schedule and cost risk associated with such additional environmental evaluation or modification of Governmental Approvals and the changes are not major, as determined in IFA's sole discretion. If Developer is not able to obtain the Governmental Approvals necessary to implement the ATC, Developer will be obligated to develop the Project in accordance with existing Governmental Approvals without additional IFA cost or extension of time (and IFA may be entitled to a reduction in the MAP, Milestone Payments and/or schedule as set forth in the PPA Documents).

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 for 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 "I-69 Section 5 Project – Confidential ATC[s]." Proposers shall clearly identify the submittal as a request for review of an ATC under this ITP. If a Proposer does not clearly designate its submittal as an ATC, the submission will not be treated as an ATC by 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 Project;

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

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

(f) any changes in 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 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 Documents), Major Environmental Approvals and other applicable Governmental Approvals and an analysis of whether the Proposer believes an updated or supplemental EIS or any additional mitigation 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 PPA Documents, including the cost thereof and obtaining any necessary Environmental Approvals; (ii) not be entitled to any Change Order or Relief Event as a result of Site conditions (e.g., Hazardous Materials, differing Site conditions, geotechnical issues, Utilities, etc.) on such additional right-of-way; and (iii) not be entitled to any Change Order 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 assessments;

(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, Department, Developer and third-party costs, if any, associated with implementation of the ATC;

(q) an estimate of any savings 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, utility and performance than the requirements of the RFP; and

(s) a preliminary analysis of potential impacts on the annual 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 PPA and submission of data; provided, however, that, in such event, IFA shall retain its role as liaison with any Governmental Entities as more particularly described in the PPA Documents. If any such condition is imposed and the required third-party approval is not subsequently granted with the result that the Proposer must comply with the requirements of the original RFP and PPA Documents (without regard to the ATC), the Proposer will not be entitled to a Change Order or other Relief Event under the PPA.

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 that 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, under the PPA Documents, entitle Developer to a Change Order for additional compensation or a time extension under the PPA).

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

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

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. Approval of an ATC is limited to deviations from the requirements of the PPA Documents that are expressly identified as deviations in the narrative of the proposed ATC and for which deviations the Proposer requested specific approval. All other requirements of the PPA Documents not otherwise expressly identified as deviations in the ATC and expressly approved by IFA in its approval letter remain in full force and effect and all conditions relating to such ATCs reflected in the PPA Documents must be satisfied by the Proposer.

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

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

Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to the ATC process as well as IFA's determinations regarding ATCs.

IFA's rejection of a pre-Proposal submission of an ATC does not entitle the Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; 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, in each case, subject to the end dates set forth in Section 1.7.1 of this ITP.

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 of 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 PPA, 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 Payments 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 into the PPA Documents. In addition, following execution of the PPA 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 PPA Documents.

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 Public Records 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; (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 Sections 1.8.4 and 2.6 of this ITP. By submitting a Proposal and agreeing to accept the stipend payment, Proposer agrees, if it is not selected as the Preferred Proposer or to be in the competitive range, to disclosure of its work product (including 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 to IFA 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 Authorized Representative. The over-signature can be undertaken by graphic reproduction.

4.1.4 Conflict Between Electronic and Paper Copies of Proposal

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

4.1.5 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent early opening if 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 set on the Proposal Due Date shall be rejected without consideration or evaluation.

4.2 Requirement to Submit Responsive, Compliant Proposal

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

Each Proposal must be submitted in the official format specified by IFA in this RFP. Proposers shall each sign the original copy of their respective Proposals submitted to IFA (on Form A). Multiple or alternate proposals or proposals with options may not be submitted.

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

(A) If the Proposal is submitted in a paper or electronic form other than that specified by 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 PPA 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 limitations 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 (.dgn) format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and analyze the schedule in Primavera P6.

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

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

4.4 Additional Requirements for Proposal 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) shall be uploaded to one or more CDs or flash drives (and clearly labeled as such) together with the envelopes described in Section 4.4.2, shall be packaged in a single container, clearly addressed to IFA as provided herein, and shall each be labeled “[Proposer Name]: Original Technical Proposal for the I-69 Section 5 Project.”

Proposers shall provide one original and 20 certified copies of bound Technical Proposal except Proposers shall provide (i) (the original and copies of the Proposal Security in accordance with Section 4.4.2; (ii) a certified copy of the Escrow Agreement in accordance with Section 4.4.2; (iii) only two (2) certified copies of all roll form technical drawings that are referenced in Proposer’s Technical Proposal; and (iv). only 10 certified 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). Proposers do not have to provide originals of the roll form technical drawings or the executed contracts, term sheets or heads of terms described in Section 3.2.2 of Exhibit B to this ITP.

The containers that include the required hard copies of the Technical Proposal shall be labeled "Copies of Technical Proposal for the I-69 Section 5 Project." "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, with file names that correspond to the (or portions of the) Technical Proposal; provided, however, that (a) Proposal forms may be submitted in either Adobe (.pdf) or Microsoft Word (.doc or .docx only) format, and (b) corporate, partnership, joint venture and limited liability company documents (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 I-69 Section 5 Project." The original of the Proposal Security shall be stamped "original" in the single envelope with the three certified copies. A certified copy of the Escrow Agreement shall be provided with the Technical Proposal in a separate envelope labeled "[Proposer Name]: Escrow Agreement for the I-69 Section 5 Project."

4.4.3 Financial Proposal

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

(a) One original and 10 certified copies of the Financial Proposal (excluding the components identified in Section 4.4.3(b)), together with one electronic copy on (a) CDs or flash drive(s) of the financial capacity information and Financial Plan in either Adobe (.pdf) or Word (.doc or .docx only) format. The documents shall be included in a sealed container labeled "[Proposer Name]: Financial Proposal for the I-69 Section 5 Project." If the Financial Proposal includes audited Financial Statement information prepared in a language other than English, Proposer's original hard-copy Financial Proposal submission (including electronic submission) and one additional copy (in Financial Proposal copy #1) shall contain both the original language audited Financial Statement information and a translation of all such Financial Statement information with certification by subject Person's chief executive, chief financial officer or treasurer (or equivalent position or role) that such translation is true, correct and accurate. If the certifying individual is not the chief executive, chief financial officer or treasurer, then such certification shall include the additional certification that (i) the certifying individual's position or role is equivalent to that of the entity's chief executive, chief financial officer or treasurer and (ii) the certifying individual has been duly authorized by all requisite organization action to deliver the certification that the such translation is true, correct and accurate. Copies #2 to 10 shall include only the translation of all such Financial Statement information and accompanying certification(s).

(b) One or more sealed containers labeled: "[Proposer Name]: Financial Proposal for the I-69 Section 5 Project – Financial Model" containing the following (see Exhibit C, Section 5.0):

(i) One original and 10 certified copies of the Financial Model output sheets and the Assumptions Book and Instructions Guide;

(ii) One original and 10 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 (.pdf) or Microsoft Word (.doc or .docx only) 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 (.pdf) or Microsoft Word (.doc or .docx only) format on a CD or flash drive; and

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

In addition, one or more sealed container(s) labeled: "[Proposer Name]: Financial Proposal for the I-69 Section 5 Project – 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 PPA.

4.5 Currency

All required pricing, revenue and cost information shall be provided in US$ currency only. Where pricing is to be provided in 2014 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. Proposer shall deliver any such modification(s) in the types and manner described in this Article 4; no facsimile or other electronically transmitted modifications will be permitted.

4.6.2 Withdrawal and Validity of Proposals

A Proposer may withdraw its Proposal at any time prior to the time due on the Proposal 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 deliver a new Proposal; provided that it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by IFA upon the Proposal Security.

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

Notwithstanding the foregoing, if a Proposer's commitment for a Bank Debt Financing or Private Placement expires on or after 120 days after the Proposal Due Date but before commercial close, then (i) the 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 the Core Lender(s)' commitments to a date no earlier than 180 days after the Proposal Due Date; and (ii) the Proposer shall be entitled to the risk sharing and relief set forth in Section 13.7.8.3 of the PPA 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 PPA, 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 PPA). If the sole reason that commercial close has not occurred within the 120 day commitment period is due to an event set forth under Section 4.7(d) and Preferred Proposer has otherwise complied with all of its obligations under this paragraph within the 180 day Proposal validity period, Section 4.7 shall apply.

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 or Private Placement Agent, as applicable, 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 that it is 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 PPA within three 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, fraud, bad faith, 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, fraud, bad faith, 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 PPA 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);

(vii) IFA's failure to comply with any other conditions required by the Act (as required by Section 6.1), where such failure is not caused in whole or in part by the acts,

omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Preferred Proposer; or

(viii) Issuance by a court of competent jurisdiction of an order or injunction that prohibits IFA from executing the PPA and proceeding with commercial close, where such order or injunction is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the 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 PPA 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; Delivery into Escrow

IFA will provide a receipt for Proposals that are timely delivered to IFA as specified herein. The Proposer will be responsible for obtaining a delivery receipt from the Escrow Agent and obtaining the Escrow Agent's signature on the Escrow Agreements. Proposer shall deliver to IFA no later than three (3) Business Days after delivery a certified copy of such delivery receipt evincing the time and date of delivery in conformance with the requirements hereunder.

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 to the requirements of the RFP Documents and as against 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, selected 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 Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and conflict of interest disclosures, or otherwise be subject to 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 80 points of the total score and the "Technical Score" will represent up to 20 points of the total score. A Proposer achieving 100% of the points available for the Financial Score will score 80 points and a Proposer achieving 100% of the points available for the Technical Score will score 20 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. 80 points) + Technical Score (max. 20 points)

5.2.1 Financial Score

The Financial Score (maximum of 80 points) will be comprised of the sum of the MAP Score and the Financial Proposal Feasibility Score.

The MAP Score (maximum of 75 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:

$$\text{MAP Score} = \frac{\text{Lowest Value of Base MAP}}{\text{Proposer's Value of Base MAP}} \times 75 \text{ points}$$

The Financial Proposal Feasibility Score shall be a maximum of 5 points.

Financial Score = MAP Score + Financial Proposal Feasibility Score

5.2.2 Technical Score

The Technical Score (maximum of 20 points) will be comprised of the Technical Proposal Score.

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 0.20.

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 respective recommendations, or the TPEC and FPEC, respectively, 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 in its sole discretion to disregard or waive minor informalities, irregularities, nonconformities, discrepancies, omissions and apparent clerical mistakes which, in each case, are unrelated to the substantive content of the Proposals.

5.3.1 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 Persons that will have joint and several liability under the PPA or that will provide a performance guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation bylaws or equivalent documents) is consistent with the requirements of the Project and PPA Documents and provides for continuation of Proposer (and Developer) 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 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 date for Baseline Substantial Completion set forth on Form N is not later than the IFA Last Allowable Date for Baseline Substantial Completion, as set forth on 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 PPA by a special purpose entity, Proposer has delivered either (i) pro formas of the special purpose entity organizational documents (i.e., certificate of formation/charter, bylaws/partnership agreement/operating

agreement) or (ii) indicative term sheets of such corporate formation documents that will be used to establish the entity, in either case, should IFA select it as the Preferred Proposer;

(h) Proposer has delivered (1) executed Contracts, or if a Contract has not been executed, detailed, binding term sheets or heads of terms outlining the key commercial and required Key Contract terms between (A) Proposer (or Developer) and Design-Build Contractor and (B) Proposer (or Developer) and Lead O&M Contractor and (2) detailed, signed binding term sheets or heads of terms outlining the key commercial and required Key Contract terms between Proposer (or Developer) or Design-Build Contractor and Lead Engineering Firm, provided, however, if Proposer commits its Developer in the Proposal to self-perform the O&M Work under the PPA Documents in an amount no less than 30% of the O&M Work (excluding Rehabilitation Work and Handback Requirements Work, such amount to be measured by the aggregate value of O&M Work over the term of the PPA, as delineated in Form O-3), the foregoing items relating to the (i) Key Contract between Developer and the Lead O&M Contractor or (ii) executed, detailed binding term sheet or heads of terms between Proposer and Lead O&M Contractor, as applicable, shall not be required;

(i) 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 sought IFA's consent to a change, IFA has consented to such change, and the Proposal attaches a true and correct copy of IFA's written consent thereto;

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

(k) Proposer has delivered written evidence, satisfactory to IFA, in its sole discretion, from an insurance company(ies), broker(s), agent(s) or advisor(s) expressly indicating that Proposer (and Developer) will be able to obtain and maintain the insurance types and amounts required by the PPA Documents and can do so under the terms, and subject to the conditions, specified in Article 17 of and Exhibit 18 to the PPA. IFA shall be satisfied if such insurance company(ies)', broker(s)', agent(s)' or advisor(s)' signatories to such written evidence explicitly state that it/they have read the PPA Documents and insurance requirements set for the therein and that the Persons required to obtain insurance under the PPA have the capability of obtaining such insurance in the coverages and under the conditions listed in the PPA;

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

(m) 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 4.1.4 of Exhibit B to the ITP; and

(n) The Preliminary Project Baseline Schedule submitted with the Proposal (see Section 4.1.2 of Exhibit B) delineates that (i) the start of bridge construction, roadway construction (secondary or primary), building demolition, and utility relocation work in the

Bloomington area shall be initiated in 2014 and shall continue on an ongoing basis until complete, (ii) the local access roads and improvements associated with That Road and the overpass and local road improvements associated with Rockport Road will be completed and opened to traffic without the necessity of further Closures by June 1, 2015, and (iii) the interchanges and associated entrance and exit ramps at Fullerton Pike and Tapp Road and the overpass and improvements associated with Vernal Pike will be completed and opened to traffic without the necessity of further Closures by December 31, 2015. The Proposer should note that the dates set forth in the Preliminary Project Baseline Schedule set forth in its Proposal shall become commitments of Developer under the PPA, and the PPA shall require that the Project Schedule that must be approved under the PPA must be consistent with such commitments.

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 (and each of its Equity Member(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 (by and through its Equity Member(s)) continues to have the financial capacity to develop, design, construct, operate, and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating the Proposer's financial capacity include the following:

i. Profitability;

ii. Capital structure;

iii. Ability to service existing debt;

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. it identifies sufficient financing for the Project, including all design, construction, operation, maintenance and Rehabilitation Work;

ii. it is sufficiently developed and (1) has attracted sufficient commitment and provides 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 performed the required due diligence and (3) has attracted sufficient support and commitments from Equity Members, 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 PPA;

B. Achievement of Financial Close;

C. Completion of design and construction of the Project by the Substantial Completion Deadline set forth in, and in accordance with, the PPA Documents; and

D. Operation and maintenance of the O&M Limits throughout the Term in accordance with the requirements of the PPA Documents, including the Handback Requirements.

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

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

v. Proposer has received IFA's approval of the Private Placement Agent if a Private Placement is to be used by the Proposer as part of its Financial Proposal; and

vi. Proposer has delivered a letter(s) of support from an Eligible 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 equity from the Equity Member(s) 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 respective commitments to provide equity funding (or, with respect to Financially Responsible Parties, their guaranty an Equity Member's equity funding commitment) pursuant to Section 3.5 of Exhibit C.

(f) The Financial Proposal contains all other 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 sole discretion); and

(h) Proposer has placed the Escrowed Materials into escrow as specified in Section 4.4.3.

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 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 the Technical Proposal meets, and also whether it includes any improvements over, and brings additional benefits and/or value to IFA, the Department and the public in addition to, the requirements of the PPA Documents. 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 30 Technical Proposal Score points);

(b) Preliminary Design-Build Plan (maximum 35 Technical Proposal Score points); and

(c) Preliminary Operations and Maintenance Plan (maximum 35 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 for all phases of the Work. 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 Baseline Schedules;

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

(d) Quality Management; and

(e) Cost Control, Safety, Environment and Risk Management.

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. Roadway elements;

2. Bridge structures, retaining walls, noise walls and other structures, including the approach to durability;

3. Context Sensitive Solutions Elements; and

4. 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 Project responding to the needs of the Project, 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 to operations and maintenance phases during construction and during the Operating Period as set forth in Section 4.3 of Exhibit B.

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 and duration of commitment of financing facilities provided by Core Lender(s) and/or underwritten by Lead Underwriter(s), as contemplated by Section 3.4 of Exhibit C;

(b) reasonableness of costs and financing assumptions;

(c) the terms and conditions of the financing (including debt, debt securities in a Private Placement, quasi-equity and equity), including compliance with the conditions set forth in Section 13.3 of the PPA and the degree of conditionality attached;

(d) the level of lender, underwriter and Private Placement purchaser, 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;

(g) the level of commitment of Equity Members, as contemplated by Section 3.5 of Exhibit C; and

(h) if a Financially Responsible Party or Guarantor has been identified for a Proposer or Equity Member, the level of commitment and the form of the guaranty provided, as contemplated by Section 2.0(3)(b) of Exhibit C.

The quantitative score born of the qualitative considerations in this Section 5.5.1 is the "Financial Proposal Feasibility Score."

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 in any clarification or additional information soliciting correspondence). 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 PPA, 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, then 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 recommend to IFA that the Proposer with the highest Total Proposal Score be the Preferred Proposer and that the Preferred Proposer be preliminarily selected as Developer under the PPA Documents. If the IFA adopts a resolution preliminarily selecting the Preferred Proposer as Developer under the PPA Documents, the Public Finance Director shall 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. Alternatively, the Public Finance Director may require Proposal Revisions pursuant to Section 5.8, reject the recommendation and cancel the procurement or request reconsideration of the recommendation. In addition, a public hearing shall be conducted on such preliminary selection and the terms of the PPA 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 Total Proposal Score or terminate the procurement process.

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

5.10.1 Negotiation of PPA Documents

After preliminary selection by IFA, the staff of 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 PPA included in the RFP, without negotiation or variation, except to fill in blanks and include information that the form of PPA 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 a PPA 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 PPA 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 PPA with that Proposer in accordance with this Section 5.10.

In the event IFA elects to commence negotiations with a Preferred Proposer, then such Preferred Proposer will be deemed to have failed to engage in good faith negotiations with IFA and shall forfeit its Proposal Security as set forth in Section 4.7 if the Preferred Proposer fails

to attend or actively participate in reasonably scheduled negotiation meetings with IFA or insists upon terms or conditions for any documents to be negotiated or provided by Developer hereunder that are inconsistent with the PPA Documents as issued in the RFP Documents. Failure by a Preferred Proposer to agree to inclusion of ATCs from unsuccessful Proposers shall not be deemed a failure to engage in good faith negotiations that will entitle IFA to draw upon the Proposal Security.

5.10.2 Financial Model Audit

As a condition precedent to award of the PPA, the Preferred Proposer shall cause a preliminary independent audit of the Preferred Proposer's Financial Model to be conducted by a Person 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 entitled to rely upon such audit, subject to the Model Auditor's contractual caps on liability, if any, set forth below. 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 the greater of (i) $2,000,000 or (ii) the amount contained in its contract; 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 in accordance with the dates set forth in Section 1.7.1 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 public-private partnership projects and 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(s) 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 PPA. 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 will be updated, refreshed and delivered again at commercial close.

5.10.3 Market Interest Rate Adjustment

Except as set forth in the PPA, 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 January 8, 2014 and ending on the date set forth in Section 13.7.8.1 of the PPA, as the same may be extended pursuant to the PPA.

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. A Proposer shall submit its 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 January 8, 2014 date above). Proposers may also provide Benchmark Rates for alternate forms of financing by the date set forth in Section 1.7.1 and must do so in order to be entitled to a Credit Spread fluctuation adjustment as set forth in Section 5.10.4 below, to be memorialized in the final, execution-version PPA Documents.

The Proposer shall use Table 6 of Form P for purposes of the Benchmark Rate submittal. The PPA 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 PPA. The PPA 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 January 8, 2014, 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 by the date

set forth in Section 1.7.1 and must do so in order to be entitled to a Credit Spread adjustment under the PPA. As part of the Credit Spread submittal, the Proposer shall provide the indicative credit rating(s), approximate average life of the financing instruments, market comparables and/or other supporting data. The 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 January 8, 2014 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 PPA, the Preferred Proposer shall deliver the following (collectively, the "Post-Selection Deliverables") to IFA within seven days after notification that it is the Preferred Proposer, unless otherwise noted:

(a) Evidence of all Major Participants' (excluding Equity Members) qualification to do business in the State, dated no earlier than 30 days prior to the Proposal Due Date. Depending on the form of organization, such evidence may be in the form of (i) a Certificate of Authority to transact business in Indiana along with a "certificate of good standing" (or equivalent) from the state of organization of the Person; (ii) a Certificate of Existence from the Indiana Secretary of State; or (iii) other evidence acceptable to IFA, in its sole discretion. Each such Person shall also provide a valid Indiana business license.

(b) If security for the Proposer's obligations under the PPA 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.

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

(d) 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 Developer and Design-Builder and Developer and the Lead O&M Contractor; provided, however, if Proposer commits its Developer in the Proposal to self-perform the O&M Work under the PPA Documents in an amount no less than 30% of the O&M Work (excluding Rehabilitation Work and Handback Requirements Work, such amount to be measured by the aggregate value of O&M Work over the term of the PPA, as delineated in Form O-3), the final form of the Key Contract between Developer and the Lead O&M Contractor shall not be required.

(e) A redacted copy of its Proposal and SOQ to IFA no later than 48 hours after notification that it is the Preferred Proposer, with redactions limited to only those portions of the Proposal and SOQ that fall under a specific exemption of the Public Records Act (and

Proposers shall be required to submit, for IFA's review and approval, documentation identifying the specific exemption asserted and such other information requested by IFA in order for IFA to assess the eligibility of such portions of the Proposal and SOQ for exemption from publication). Notwithstanding any proposed redactions and/or claims of exemption asserted by the Proposer, IFA shall have sole discretion to determine the applicability of any exemptions under the Public Records Act and of the contents to be disclosed in response to a request thereunder. Failure of Proposer to submit a redacted form of its Proposal and SOQ, containing only those redactions consistent with IFA's determination as to the content that may be redacted, to IFA within 48 hours after notification that it is the Preferred Proposer constitute consent by Proposer to, and a waiver of any right to contest, disclosure by IFA of Proposer's Proposal and SOQ in their entirety, without redaction, in response to a request submitted under the Public Records Act. As between a Proposer and a third party requesting disclosure under the Public Records Act (as opposed to as between a Proposer and IFA exercising its sole discretion rights pursuant to this ITP), this Section 5.11.2 shall not constitute a waiver of the Proposer's rights under the Public Records Act.

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 – and incorporation of an amended exhibit to the Escrow Agreement listing the Escrowed Materials, as indexed - shall be a condition to award and execution of the PPA.

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 PPA:

(a) successful negotiation of the PPA,

(b) concurrence in award by FHWA,

(c) receipt by IFA of all of the documents required to be provided prior to execution of the PPA 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 PPA, IFA shall make a determination (i) whether or not the Preferred Proposer should be designated as Developer under the PPA and, if not, to suspend or cease negotiations with the Preferred Proposer and commence negotiations with the Proposer who had the next highest Total Proposal Score, or (ii) to terminate the procurement process. If IFA determines to select the Preferred Proposer as Developer under the PPA, then such determination shall be submitted to the State Budget Committee and the Governor of the State, in turn. 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 Developer under the PPA. Following the designation by the Governor of the Preferred Proposer as Developer under the PPA, IFA shall publish notice of such designation in accordance with the Act and may execute and deliver the PPA following such publication.

Upon satisfaction of the foregoing conditions, IFA may deliver four sets of execution copies of the PPA 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 two 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 PPA 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 22 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. Unless extended pursuant to Section 1.7.3, final award and commercial close shall be deemed to have occurred as of the date of execution of the PPA 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 PPA 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 PPA is brought within the period permitted by Indiana Code 8-15.5-4-12, then 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, if entered into. 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 PPA

The Preferred Proposer shall deliver to IFA the documents listed below concurrently with the executed sets of the Execution Documents as a condition to execution of the PPA 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/partnership agreement or registration for each member or partner of 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 PPA Documents, and of due authorization, execution, delivery and performance of the PPA Documents, by Developer. 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 Person for which the opinion is rendered (i.e., Developer, joint venture member, etc.) and the qualification to do business in Indiana and the enforceability opinion shall be provided by an attorney licensed in the State), 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 (i) the organization/authorization/execution opinion for a Person 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; and (ii) opinions from multiple legal counsel are acceptable as long as the letters in the aggregate provide the opinions required in Form M.

(d) Copies of an executed Design-Build Contract between Developer and the Design-Build Contractor, certified as accurate and complete by the Developer, which Design-Build Contract shall meet the requirements therefor in, and otherwise be consistent with the terms of, the PPA Documents.

(e) If the Performance Security will be in the form of bonds, a letter from an Eligible Surety, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond as described in Section 17.2 of the PPA 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 Person'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 PPA 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 PPA 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 and otherwise substantially conforming to the requirements of this Section 6.1.1(e).

(f) If the Performance Security will be in the form of a letter of credit, a letter from an Eligible Financial Institution 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 PPA 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 Person'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 PPA and issuance of NTP2 thereunder; provided, however, that the Eligible Financial Institution may reserve in its letter the right to reasonably approve any material adverse changes made to the PPA 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 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 and otherwise substantially conforming to the requirements of this Section 6.1.1(f).

(g) A letter from an Eligible Surety, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Payment Bond as described in Section 17.2 of the PPA 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 PPA 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 PPA 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 and otherwise substantially conforming to the requirements of this Section 6.1.1(g).

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

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

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

(k) Evidence of Developer's qualification to do business in the State, dated no earlier than 15 days prior to the date of commercial close. 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" (or equivalent) from the state of organization of the

Person; (ii) a Certificate of Existence from the Indiana Secretary of State; or (iii) other evidence acceptable to IFA, in its sole discretion. Each such Person shall also provide a valid Indiana business license.

(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 PPA

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

(a) A copy of the executed Milestone Agreement;

(b) A copy of the executed Use Agreement;

(c) A copy of the executed Department MOU;

(d) 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), as amended pursuant to Section 5.11.3.

(e) One or more opinion(s) from IFA's counsel in favor of Developer addressing the PPA Documents, 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 and its counsel; and

(f) One or more opinion(s) from the Attorney General of the State, as counsel to IFA and the Department, in favor of Developer addressing the PPA, the Milestone Agreement and the Use Agreement, substantially in the applicable form set forth in Form Y, with such additional opinions and revisions as may be reasonably requested by the Preferred Proposer and agreed to by IFA, IFA's counsel and the State Attorney General.

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, as determined by IFA, in its sole discretion. The debriefing shall be conducted in Indianapolis and by a procurement official familiar with the rationale for the selection decision and PPA 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 PPA award.

6.3 Stipend Payment to Unsuccessful Proposers

6.3.1 Prior to Proposal Due Date

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. 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 $500,000.

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 a compliant 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 $1,000,000.

If IFA cancels the procurement following the Proposal Due Date, and if a Proposer has executed the Stipend Agreement and submits a timely and responsive Proposal, 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 by an eligible Proposer 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 eligible 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 ten 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, all forms required by the State for payment of vendors 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 (in which case, the terms of the PPA will control following commercial close) or (b) it fails to proceed with commercial close or Financial Close for any reason other than (1) the failure of one or more express closing contingencies that are set forth in the RFP Documents or the PPA, (2) the failure of

which do not arise out of or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or law or willful misconduct of the Preferred Proposer; or (3) 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, bad faith, 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 (e.g., 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 own and be entitled to use all ideas and work product in its Proposal and all work product that is not required to be returned to the Proposer under this RFP (e.g., 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 of the procurement 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 PPA 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 to a 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 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 PPA, 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 $15,000,000 and in the form of Form U-1 from an Eligible Surety or (b) a letter of credit in an amount equal to $15,000,000 and in the form of Form U-2 issued by an Eligible Financial Institution that has an office in the United States at which the letter of credit can be presented for payment. At such time as IFA receives the Financial Close Security from the Preferred Proposer, the Preferred Proposer's Proposal Security shall be returned to it. Provisions addressing the forfeiture or return of the Financial Close Security are set forth in the PPA.

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) ten (10) Business Days following commercial close and (iii) ten (10) Business Days following 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 this RFP or as to whether a Proposal passes the pass/fail criteria set forth in the RFP, as applicable; and

(c) award of the PPA 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 copies to the IFA general counsel at Indiana Finance Authority and Public Finance Director of the State of Indiana, each at 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 Developer's obligations under the PPA Documents. IFA reserves the right, in its sole discretion, to:

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

(b) Reject any or all of the Proposals;

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

(d) Cancel, modify or withdraw the RFP in whole or in part at any time prior to the execution by IFA of a PPA, 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 Project;

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

(g) Suspend or terminate negotiations at any time, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence PPA 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 PPA by a third party;

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

(t) Not pursue a PABs allocation on behalf of the Proposers;

(u) Develop some or all of the Project itself (including finance some or all of the Project 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 any 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 Project 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.