

REQUEST FOR PROPOSALS

To Design and Construct
I-69 Section 6 Contract 5 Project
Through a Public Private Agreement

VOLUME I INSTRUCTIONS TO PROPOSERS

A Project of the
INDIANA FINANCE AUTHORITY
ISSUED MARCH 12, 2020
ADDENDUM #1 ISSUED MAY 13, 2020

Indiana Finance Authority
1 North Capitol Ave., Suite 900
Indianapolis, Indiana 46204

CERTAIN KEY DATES

Event	Date
Issue Final Request for Proposals	March 12, 2020
Proposal Due Date	August 13, 2020
Anticipated Notification of Preferred Proposer	September 17, 2020
Execution of PPA and other Execution Documents (unless extended pursuant to Section 1.8.3)	Subject to law, anticipated to be November 16, 2020

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Exhibit C	Price Proposal Instructions
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Exhibit E	Summary and Order of Proposal Contents

FORMS

Form A	Proposal Letter
Form B-1	Identification of Proposer and Equity Members
Form B-2	Information About Proposer's Organization
Form B-3	Information About Major Participants and Identified Subcontractors
Form C	Responsible Proposer, Equity Member, Major Participant and Financially Responsible Party Questionnaire
Form D	Industrial Safety Record for Proposer, Equity Members and Major Participants
Form E	Personnel Work Assignment Form and Commitment of Availability
Form F	Non-Collusion Affidavit
Form G	DBE Certification
Form H	Conflict of Interest Disclosure Statement
Form I	Price Proposal Form
Form I-1	Summary Cost Table Form
Form J	Proposal Bond
Form K	Debarment and Suspension Certification
Form L	Completion Deadlines
Form M	Form of Waiver and Release Re: Stipend
Form N	Form of Stipend Agreement
Form O	Proposer Comments/Questions Form
Form P	Guarantor Commitment Letter
Form Q	Buy America Certification
Form R	Equal Employment Opportunity Certification
Form S	Use of Contract Funds for Lobbying Certificate
Form T	Prequalification Identification

INSTRUCTIONS TO PROPOSERS

Request for Proposals: I-69 Section 6 Contract 5

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 politic and corporate, not a state agency but an independent instrumentality exercising essential public functions, in cooperation with the Indiana Department of Transportation (“INDOT”), to seek competitive proposals (individually, a “Proposal” and collectively, “Proposals”) under a design-build best value (“DBBV”) model for a fixed, lump sum price design-build contract (“Public-Private Agreement” or “PPA”) as more fully described in this RFP and the PPA Documents.

Pursuant to the PPA, the successful Proposer (the “Design-Build Contractor”) shall design and construct the I-69 Section 6 Contract 5 Project (the “Project”). The Project involves full reconstruction and conversion of a portion of existing State Road 37 to proposed I-69, full reconstruction and widening to provide added travel lanes on a portion of I-465, the conversion of at-grade crossings to interchanges or overpasses, reconstruction and construction of local access roads, reconfiguring of existing interchanges, and a new system interchange for I-69 and I-465. The Project will improve the safety and operations of the corridor and includes 45 new or replacement bridges, 6 rehabilitation or preventative maintenance bridges, and replacement of approximately 168 lane miles of pavement. A general map of the Project can be found at the following website:

<https://www.in.gov/ifa/3034.htm> (“Website”).

The form of PPA, with the other PPA Documents, is included in Volume II of this RFP.

IFA is issuing this RFP to those Proposers shortlisted on October 11, 2019, based on the evaluation of Statements of Qualification (“SOQs”) delivered to IFA on September 13, 2019 in response to the Request for Qualifications for the Project issued on July 26, 2019 (as amended, the “RFQ”).

Proposers must comply with these Instructions to Proposers (“ITP”) during the procurement and in their respective Proposals.

1.2 Definitions and Interpretation

Initially capitalized terms are defined in the body of this ITP.

Use of the term “include,” “includes” or “including” should be read as if followed by the words “without limitation” or “but not limited to,” as the case may be.

Days shall mean calendar days unless otherwise expressly indicated herein.

1.3 Project Goals

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

- Achieve Substantial Completion by the end of 2024.
- Provide a new transportation facility for the final I-69 connection to I-465 that is designed and constructed to interstate standards.
- Improve safety by reducing or eliminating conditions that contribute to crashes and other hazardous situations.
- Improve interchange and at-grade operations and reduce congestion.
- Meet federal Disadvantaged Business Enterprise ("DBE") goals.
- Develop innovative solutions for the Project, including life-cycle considerations, pavement, bridges, traffic operations, safety, construction sequencing and maintenance of traffic during construction.
- Design and construct the Project to meet or exceed all technical, environmental, and social requirements and commitments.
- Provide a safe Project for workers and the traveling public.
- Provide a high-quality, durable, and maintainable facility.
- Provide best value for Project cost.
- Minimize duration of construction, adverse impacts, congestion and delay to public during construction.
- Provide advance, clear communication with public and stakeholders during construction.

1.4 Procuring Agency

IFA will be the procuring Governmental Entity for the Project. IFA will work closely with INDOT, 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, INDOT will work closely with IFA to assist with the procurement of the Project and oversee the work of Design-Build Contractor in the design and construction of the Project. INDOT's procurement role includes participation in one-on-one meetings with

Shortlisted Proposers, development of the Technical Provisions and other procurement documents for the RFP, management and oversight of the overall procurement and supporting the evaluation of the Proposals.

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

1.5.1 Overview

The purpose of the Project is to reconstruct, improve, and convert the existing State road and interstate facilities within the SR 37 and I-465 project area. The Project includes the conversion of existing SR 37 to future I-69 from Fairview Road to I-465, as well as widening and reconstruction of I-465 from I-70 to I-65 on the southwest side of Indianapolis. The future I-69 route will depart the existing SR 37 alignment at Epler Avenue and head northwest to a new system interchange with I-465, west of the existing Harding Street interchange.

1.5.2 Project Design Features

The Project limits and segments are defined as follows:

1. Segment A – The western Project limit on I-465 begins at the I-465/I-70 interchange. This Segment includes added travel lanes and pavement rehabilitation ending west of the Mann Road partial interchange, connecting with Segment B.
2. Segment B – Connecting with Segment A, this Segment includes added travel lanes and full reconstruction on I-465 beginning west of Mann Road and ending west of the US 31/East Street interchange, connecting with Segment C. Limits include the I-465 and I-69 system interchange ending north of Epler Avenue, connecting with Segment D.
3. Segment C – Connecting with Segment B, this Segment includes added travel lanes and pavement rehabilitation of I-465 beginning west of the US 31/East Street interchange extending to the eastern Project limit west of the I-465/I-65 interchange.
4. Segment D – Connecting with Segment B, this Segment includes added travel lanes and full reconstruction of existing SR 37 as part of the conversion to future I-69. Limits for I-69 begin north of Epler Avenue and end north of Wicker Road, connecting with Segment E.
5. Segment E – Connecting with Segment D, this Segment includes added travel lanes and full reconstruction of existing SR 37 as part of the conversion to future I-69. Limits for I-69 begin north of Wicker Road and extend to the southern Project limit south of Fairview Road.

The anticipated Project scope of work includes:

1. I-69 and I-465 mainline new pavement reconstruction, replacement, or widening;
2. Local Access Road pavement reconstruction, replacement, or rehabilitation;
3. New system interchange at the I-69/I-465 junction;
4. New service interchanges at County Line Road, Southport Road, Epler Avenue, and reconstruction of service interchange ramps at Mann Road and Harding Street;
5. New signals, signing, lighting and ITS facilities;
6. Aesthetics and landscaping improvements;
7. Approximately 45 new or replacement bridges and 6 rehabilitated or preventative maintenance bridges;
8. Approximately 14 sound barriers;
9. Approximately 23 large culverts; and
10. Approximately 10.7 miles of retaining wall.
11. Additional items identified in the PPA documents.

Descriptions of these Project features are general in nature and more precise delineations are set forth in the Technical Provisions.

Additional details follow in Sections 1.5.3 through 1.5.6.

Design-Build Contractor shall perform all Work in accordance with applicable INDOT and federal standards, applicable Governmental Rules and Governmental Approvals, Good Industry Practice and the requirements of the PPA. Design-Build Contractor will be responsible for furnishing all labor, material, equipment, services and support facilities for the Work.

This is a best value procurement. The successful Proposer will be selected based on a combination of a technical proposal score and price proposal score as provided in this RFP.

1.5.3 Environmental

The required National Environmental Policy Act (NEPA) environmental review for the Project was completed in two separate environmental documents. An Environmental Impact Statement (“EIS”) (as defined under NEPA) was prepared by INDOT for Segments B, D, and E of the Project. The combined Final EIS and Record of Decision was signed in February 2018.

Segments A and C of the Project were analyzed under a Categorical Exclusion Level 4 (“CE 4”) (as defined under NEPA), which is separate from the EIS approved for Segments B, D and E. The CE 4 received final approval on February 28, 2020.

Design-Build Contractor’s responsibility will include compliance with all commitments as set forth in both NEPA approvals, if and as obtained. IFA will support Design-Build Contractor in coordination with environmental regulatory and permitting agencies.

As set forth in the PPA, the Record of Decision and CE 4 are considered IFA-Provided Approvals. To the extent that either or both of the Record of Decision or CE 4 must be modified or another NEPA approval must be obtained for a reason other than an IFA-Directed Change or a Necessary Basic Configuration Change, Design-Build Contractor shall bear the risk and cost of such modification or approval, including the risk that the modification or approval may not be obtained. In connection with any such modification or approval, even if at the risk of Design-Build Contractor, IFA shall retain its role under NEPA as the manager of the environmental process and Design-Build Contractor shall support IFA in connection with the environmental process. Language in this ITP indicating that Design-Build Contractor shall obtain such modification or approval shall not be construed as affecting IFA’s role under NEPA.

1.5.4 Scope of Design-Build Contractor’s Permitting Obligations

INDOT has obtained the USACE Section 404 Permits and IDEM Section 401 Water Quality Certification (WQC) commensurate with the state of the Project development. INDOT has acquired the USACE Section 404 Permits and IDEM Section 401 WQC for Segments B, D, and E. The USACE Section 404 Permits and IDEM Section 401 WQC applications for Segments A and C are currently under review by the permitting agencies and INDOT anticipates that these permits will be acquired by the end of 2020. INDOT is pre-coordinating the need and method of mitigation with the USACE and IDEM. Based on that coordination, INDOT is advancing mitigation site design and will provide the mitigation required by the USACE Section 404 Permits and IDEM Section 401 WQC. Design-Build Contractor’s mitigation responsibilities are as set forth in the PPA Documents, including Section 6.11.3.3 of the PPA.

INDOT is also obtaining the IDNR Construction in a Floodway Permits commensurate with the state of Project development. IDNR Construction in a Floodway Permit applications for Segments B, D, and E are: 1) approved for work within the regulated floodway associated with Harmon (State) Ditch, White River, Lick Creek, Little Buck Creek, and Orme Ditch; and, 2) currently under review by the IDNR to authorize work within the regulated floodway associated with Haueisen Ditch and Pleasant Run Creek. IDNR Construction in a Floodway Permit applications for Segments A and C are under review by the IDNR to authorize work within the regulated floodway associated with Lick Creek and McFarland Creek. INDOT is coordinating the need and method of mitigation with the IDNR. Based on that coordination, INDOT is advancing mitigation site design and will provide the mitigation required by the IDNR Construction in a Floodway Permits.

All Governmental Approvals for which IFA will be responsible to obtain are set forth in Section 7, Table 7-1 of the Technical Provisions.

Upon award, Design-Build Contractor will be responsible for obtaining the following: all erosion and sediment control approvals required under 327 IAC 15-5 (“Rule 5”) and any modifications required for the INDOT obtained Section 404 Permits, any Section 401 Water Quality Certifications, and any IDNR Construction in a Floodway Permit based on Design-Build Contractor’s design or otherwise.

Design-Build Contractor will be required to obtain and maintain, throughout the duration of the Project:

- relevant Federal Aviation Administration (FAA) permits and related coordination with the Indianapolis Airport Authority required to construct the Project;
- relevant local permits and approvals from the City of Indianapolis and Marion County and Johnson County; and
- all other Governmental Approvals (other than IFA-Provided Approvals), including bearing the risk of any modifications of IFA-Provided Approvals to design and construct the Project, including any resulting increases in the required mitigation.

Design-Build Contractor’s responsibility will include compliance with all conditions included in any Governmental Approvals. Design-Build Contractor will finalize all applications for Governmental Approvals based on its proposed design and obtain final Governmental Approvals from all the permitting agencies, including taking responsibility for any changes in IFA-Provided Approvals arising out of Design-Build Contractor’s design. IFA will reasonably support Design-Build Contractor in coordination with Governmental Entities regarding Governmental Approvals.

In addition to those identified in this Section 1.5.4, Design-Build Contractor is specifically responsible for the Governmental Approvals outlined in Section 7, Table 7-2 of the Technical Provisions. For avoidance of doubt, except as expressly provided in the PPA, if any IFA-Provided Approvals outlined in Section 7, Table 7-1 of the Technical Provisions require modification or reissuance due to Design-Build Contractor’s design or otherwise, Design-Build Contractor shall support the Project Sponsors in completing the modification or reissuance process and shall bear associated costs and schedule risks of undertaking such process.

1.5.5 Fixed Lump Sum Price; Scope and NTP

Design-Build Contractor will design and construct the Project in return for a fixed, lump sum price and within a period of time defined in the PPA.

A specific description of the Project and Design-Build Contractor’s scope of work is contained in the Technical Provisions (Volume II - PPA Documents). Design-Build Contractor’s authorization to commence and pursue the Work shall be pursuant to the issuance of a notice to proceed, as described and defined in the PPA Documents.

1.5.6 Maintenance During Construction; Warranties

Design-Build Contractor will be responsible for performing any maintenance during construction of the Project that is required by the PPA Documents, including the Technical Provisions; provided, however, that Construction Memorandum 09-02 – “Potholes in Work Zones” shall not apply to the Project. Design-Build Contractor will be required to repair any Potholes that are pre-existing or that develop during construction as part of its Work and lump-sum bid. Design-Build Contractor shall also provide a warranty for the Project for a period specified in the PPA Documents. A Warranty Bond from Design-Build Contractor shall be required to support its obligations with respect to such warranties and work relating to such portions as described in the PPA Documents.

1.6 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 (“RFP Documents”):

Volume I - this ITP (including exhibits and forms)

Volume II - the PPA Documents

Volume III - the Reference Information Documents

Refer to Section 1.3 of the PPA for a list of the PPA Documents and their order of precedence.

The Reference Information Documents can be accessed by registered Proposers on the project SharePoint system (located at <https://indotmajorprojects.sharepoint.com/I-69Section6/>) (the “SharePoint Site”). Proposers may register for access by submitting a Guest Access Form. When access is granted, instructions to access the data will be provided to the individual user. Except as may be expressly provided otherwise in the PPA Documents, (a) the Reference Information Documents are not mandatory or binding on Proposer, Design-Build Contractor or either or both of the Project Sponsors, 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 Governmental Rules.

Except as may be expressly provided otherwise in the PPA Documents, neither of the Project Sponsors 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 the Project Sponsors or any other Governmental Entity or represent any statement of approval or acceptance thereof by the Project Sponsors 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 roadway and pavement patching (including the sites, locations and sizes thereof), site conditions, geotechnical conditions, Utilities, structures and bridge design, (y) the preparation of its Proposal, and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Reference Information Documents.

The Project Sponsors do not represent or warrant that the information, opinions and recommendations contained in the Reference Information Documents are complete or accurate or that such information, opinions and recommendations are in conformity with the requirements of the RFP, Governmental Approvals or applicable Governmental Rules. Proposers shall have no right to compensation, time extension or other claim in connection with participation in this procurement based on any incompleteness or inaccuracy in the Reference Information Documents, except as otherwise expressly provided in the PPA Documents.

Nothing contained in this Section 1.6 is intended to diminish or derogate from the rights of Design-Build Contractor for compensation or time relief in connection with Section 13 of the PPA.

1.7 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 Exhibit A.

In addition, this ITP (and the other RFP Documents) will be interpreted as set out in Section 1.4 of the PPA as if references to "the PPA" were to "the ITP" (or "the RFP Documents"), and references to "Design-Build Contractor" were to "Proposer".

1.8 Procurement Schedule, Address for Proposal Delivery and PPA Execution Deadline

1.8.1 Procurement Schedule

The following represents the current schedule for the procurement.

Event	Date
Issue Final RFP	March 12, 2020
Last date for Proposers to submit Concept ATCs	March 19, 2020, by noon ET
Deadline for Proposers' submittal of questions/comments on RFP Documents before March 31 to April 1, 2020 one-on-one Meetings	March 25, 2020, by noon ET
One-on-One Meetings (Concept ATCs, RFP Documents) (one day per team)	March 31 to April 1, 2020
Last date for Proposers to provide input on invitee list for Utility Owner Forum	April 6, 2020
Utility Owner Forum	April 20, 2020
Target Date for Issuance of Addendum #1 to RFP	May 13, 2020
One-on-One Meetings re: ATCs	May 19, 2020
Deadline for Proposers' submittal of questions/comments on Addendum #1 to RFP	May 26, 2020, by noon ET
One-on-One Meetings re: RFP Documents and ATCs	June 3-4, 2020
Last date for Proposers to submit ATCs	June 29, 2020, by noon ET
Last date for Proposers to submit Pre-Proposal Submittals (other than ATC Submittals)	July 6, 2020, by noon ET
Target Date for Issuance of Addendum #2 to RFP	July 15, 2020
Last date for IFA responses to ATCs	July 15, 2020
Setting Date	July 15, 2020
Last date for IFA responses to Pre-Proposal Submittals	July 17, 2020
Deadline for Proposers' submittal of questions/comments on Addendum #2 to RFP	July 22, 2020, by noon ET
Last date for resubmittal of Pre-Proposal Submittals	July 24, 2020, by noon ET
Target Date for Issuance of Addendum #3 to RFP	July 31, 2020
Last date for IFA's responses to resubmittal of Pre-Proposal Submittals	August 3, 2020
Proposal Due Date	August 13, 2020, by noon ET
Anticipated Selection of Preferred Proposer	September 17, 2020
Execution of PPA and other Execution Documents	Subject to law, anticipated to be November 16, 2020

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

1.8.2 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 1.8.1. The Proposals are to be delivered to IFA at the following address:

Indiana Finance Authority
1 North Capitol Ave., Suite 900
Indianapolis, Indiana 46204
Attn: Silvia Perez

1.8.3 Deadline for PPA Execution

The Preferred Proposer selected for negotiations or execution of the PPA shall deliver to IFA executed copies of the PPA and the documents required under Section 6.1.2 on or before the date specified in Section 1.8.1 for execution of the PPA.

IFA may extend the deadline for PPA execution by written notice to the Preferred Proposer but may not extend such date beyond the 150-day Proposal validity period without agreement by the Preferred Proposer.

1.9 General Provisions Regarding Proposals

1.9.1 Proposal Contents

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

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

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

Proposer. In addition, no additional information shall be submitted electronically beyond what is included in the hard copies of the Proposal.

1.9.2 Inclusion of Proposal in PPA Documents

Portions of the Preferred Proposer's Proposal will become part of the PPA Documents through inclusion of Exhibit 7 to the PPA. All other information is for evaluation purposes only and will not become part of the PPA Documents.

1.9.3 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).

1.9.4 Ownership of Proposal and Applicability of Public Records Law

Except for Escrowed Proposal Documents delivered to IFA pursuant to Section 5.12.1(a), all documents submitted by the Proposer in response to this RFP shall become the property of the Project Sponsors 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 the Project Sponsors free of all intellectual property rights and claims, without further action on the part of the Project Sponsors. Except as otherwise required by law or under order from a court with jurisdiction, IFA will not disclose the contents of Proposals during discussions or negotiations with eligible Proposers to other Proposers. In connection with a request under the Public Records Act, IFA will disclose the contents of Proposals, except for those portions that IFA determines shall be treated as confidential in accordance with the Public Records Act, when either: (i) the RFP process is terminated or (ii) the PPA has been executed.

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 the Project Sponsors during this procurement process, whether included in the Proposal or otherwise submitted, become the property of the Project Sponsors upon delivery and will not be returned to the submitting parties. The foregoing does not apply to Escrowed Proposal Documents required to be delivered to IFA.

Proposers shall familiarize themselves with the provisions of the Public Records Act. All materials submitted by Proposers, including the Proposals and the SOQs, shall be subject to the Public Records Act and any other Governmental Rules applicable to the disclosure of documents submitted under this RFP. 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 (other than the Preferred Proposer) will be required to submit a redacted copy of their respective Proposals and SOQs to IFA no later than 15 days after PPA execution, with redactions limited to only those portions of the Proposal and SOQ that IFA determined fall under a specific exemption of the Public Records Act. 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 a 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 PPA execution shall constitute consent by Proposer to, and a waiver of any right to contest, disclosure by IFA of the Proposer's Proposal and SOQ in their entirety, without redaction, in response to a request submitted under the Public Records Act. As between a Proposer and a third party requesting disclosure under the Public Records Act (as opposed to as between a Proposer and IFA exercising its sole discretion rights pursuant to this ITP), this Section 1.9.4 shall not constitute a waiver of the Proposer's rights under the Public Records Act.

In no event shall either of the Project Sponsors or any 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 1.9.4. See also Section 2.5.

1.10 Federal Funding

Proposers are advised that the RFP has been drafted based on the assumption that the Project will remain eligible for federal-aid funds. Accordingly, the RFP Documents and PPA Documents will conform to requirements of applicable federal Governmental Rules and Federal Highway Administration ("FHWA") regulations, including those set forth in Exhibit 11 to the PPA and Buy America requirements, Title VI of the Civil Rights Act of 1964 and Title 23 Code of Federal Regulations Part 230, each as amended, regarding Equal Employment Opportunity, and Title 49 Code of Federal Regulations 49 CFR Parts 23 and 26, as amended regarding Disadvantaged Business Enterprises. The Project is considered a Major Project by FHWA requiring major project review.

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 disability. IFA views State Governmental Rules, specifications, regulations, and policies that are relevant to this procurement and to the Project as not contrary to applicable federal Governmental

Rules (including specifically FHWA regulations), but, in the abundance of caution, if IFA determines that any provisions of State Governmental Rules, specifications, or policies operate in any manner contrary to federal requirements, including those mentioned specifically in the second sentence of this Section 1.10, 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 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.

1.10.1 EEO and DBE Requirements

1.10.1.1 EEO

The Project Sponsors are each Equal Employment Opportunity (“EEO”) employers.

1.10.1.2 DBE Requirements

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

IFA must apply the program on federal-aid projects as set forth in 49 CFR Parts 23 and 26 as well as the federal contractual requirements set forth in FHWA Form 1273. The DBE goal for the Project is 10% for design services, construction or supplies, in the aggregate, all pursuant to and subject to the procedures, rules and regulations outlined in Title 49 CFR Parts 23 and 26. Additional creative efforts to expand inclusion of other disadvantaged, minority and women-owned firms and workers is encouraged.

1.11 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.

1.12 Qualification To Do Business

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

1.13 INDOT Prequalification

Design-Build Contractor and its Subcontractors must have certain INDOT Certificates of Qualification and INDOT Prequalification Work Type Certifications as set forth below (<https://www.in.gov/indot/2740.htm>):

- (a) Proposer (or its Equity Members) must have an INDOT Certificate of Qualification for at least \$650 million in the aggregate by INDOT.

Subcontractors will not be counted toward this Section 1.13(a) of this assessment of prequalification.

- (b) Proposer (or its Equity Members or Major Participants) must have an INDOT Prequalification Work Type Certification for \$Unlimited in one of the following INDOT construction prequalification work types:

- (i) A (a) Concrete Pavement – General; or
- (ii) D (b) Highway or Railroad Bridges over Highway.

Subcontractors, unless they are a Major Participant, will not be counted toward this Section 1.13(b) INDOT Prequalification Work Type Certification requirement.

- (c) The Proposer team, in the aggregate (including Subcontractors), must have INDOT Prequalification Work Type Certification in the following INDOT construction prequalification work types:

- (i) B (a) Asphalt Pavement – with INDOT Certified Hot Mix Asphalt (HMA) Plant;
- (ii) C (a) Heavy Grading;
- (iii) D (a) Highway or Railroad Bridges over Water;
- (iv) D (c) Bridge Involving Protection of Railroad Tracks;
- (v) E (a) Traffic Control: Signal Installation;
- (vi) E (d) Traffic Control: Sign Installation;
- (vii) E (g) Traffic Control: Pavement Markings;
- (viii) E (i) Permanent Seeding, Sodding, and Top Soil; and
- (ix) E (k) Guardrail, Cable Barrier, Crash Attenuators, and Fence.

Subcontractors and subconsultants will be counted toward this Section 1.13(c) INDOT Prequalification Work Type Certification requirement.

Proposers are advised that, while the prequalification work types set forth in clauses (v)-(ix) above are required for the Work, they need not be satisfied as of the Proposal Due Date.

- (d) The Proposer team, in the aggregate (including Subcontractors), must have INDOT Prequalification Work Type Certification in the following INDOT consultant prequalification work types:
- (i) 5.1 Environmental Document Preparation – EA/EIS;
 - (ii) 5.2 Environmental Document Preparation – CE;
 - (iii) 5.4 Ecological Surveys;
 - (iv) 5.6 Waterway Permits;
 - (v) 5.8 Noise Analysis and Abatement Design;
 - (vi) 5.9 Archaeological Investigations;
 - (vii) 5.10 Historical/Architectural Investigations;
 - (viii) 5.14 Phase II ESA and Further Site Investigation/Corrective Action;
 - (ix) 6.1 Topographic Survey Data Collection;
 - (x) 7.1 Geotechnical Engineering Services;
 - (xi) 8.2 Complex Roadway Design;
 - (xii) 8.3 Roundabout Design;
 - (xiii) 9.2 Level 2 Bridge Design;
 - (xiv) 10.1 Traffic Signal Design;
 - (xv) 10.2 Traffic Signal System Design;
 - (xvi) 10.3 Complex Roadway Sign Design;
 - (xvii) 10.4 Lighting Design;
 - (xviii) 10.5 Intelligent Transportation System Design;
 - (xix) 10.6 Intelligent Transportation System Integration;
 - (xx) 16.1 Utility Coordination;

- (xxi) 17.2 Small Structure and Pipe Hydraulic Design;
- (xxii) 17.3 Storm Sewer and Detention Design;
- (xxiii) 17.4 Bridge Hydraulic Design; and
- (xxiv) 18.1 Pavement Analysis and Design.

Subcontractors will be counted toward this Section 1.13(d) INDOT Prequalification Work Type Certification requirement.

In addition to the above, other members of a Proposer team that will be undertaking work on the Project that requires INDOT Prequalification Work Type Certification must have the INDOT Prequalification Work Type Certification prior to performing the applicable work assigned to such member.

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 State and federal Governmental Rules. 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 Governmental Rules and this RFP, to provide the best value to the Project Sponsors and to be in the best interest of the State.

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

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

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

The RFP will be issued and made available to Short-Listed Proposers in electronic format on the secure file transfer site for the Project, located on the SharePoint Site.

2.2.1 Authorized Representative

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

I-69 Section 6 Contract 5 Project
Attn: Mary Loy
Indiana Finance Authority
c/o Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, Indiana 46204
Telephone: (317) 234-1901
Email: I69S6DBBV@indot.in.gov

From time to time during the procurement process or during the term of the PPA, IFA may designate another Authorized Representative 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's "Authorized Representative"). If a Proposer changes its Authorized Representative to receive documents, communications or notices in connection with this procurement subsequent to its submission of its Proposal, Proposer shall provide IFA's Authorized Representative with the name and address of such new Proposer Authorized Representative. Failure to identify an

Authorized Representative in writing may result in the Proposer failing to receive important communications from the Project Sponsors. The Project Sponsors are not responsible for any such failure.

A 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’s Authorized Representative. Failure by the Project Sponsors to include the second designated individual in official correspondence shall not, and shall not be deemed to, render any communication to Proposer’s Authorized Representative invalid. Any communication coming from the second designated individual to IFA shall also be delivered to the Proposer’s Authorized Representative.

2.2.3 Rules of Contact

From the date of issuance of the RFQ and until the issuance of that certain letter agreement dated October 15, 2019, the rules of contact provisions in the RFQ were applicable to this procurement. From October 15, 2019 until issuance of the final RFP, the rules of contact provisions in the letter agreement are 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), social media, 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) a Proposer or its team members may communicate with another Proposer team only for the purpose of obtaining price information for concrete or asphalt pavement materials and/or installation; (ii) 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 (iii) this prohibition does not apply to public discussions regarding the RFP at any of the Project Sponsors’ individual or collective informational meetings.
- (b) Each Proposer shall designate one Authorized Representative responsible for contacts with IFA, and shall correspond with IFA regarding the RFP only through IFA’s Authorized Representative and the Proposer’s 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 the Project Sponsors, or with any of the Project Sponsors' staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by this RFP or except as approved in advance by IFA's Authorized Representative or IFA's Public Finance Director or designee, in his/her sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to this RFP or participation in public meetings or any public or Proposer workshop related to this RFP. Any Proposer engaging in such prohibited communications may be disqualified at any time in 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. IFA will provide any necessary coordination during the RFP process, including the evaluation stage, with such entities in order that, among other things, the procurement be implemented in a fair, competitive and transparent manner and with uniform information:
- City of Indianapolis and Marion County, Indiana
 - Johnson County, Indiana
 - Indianapolis Metropolitan Planning Organization
 - FHWA
 - Environmental, regulatory and permitting agencies, including:
 - Indiana DNR Division of Historic Preservation and Archaeology (Indiana State Historic Preservation Officer)
 - U.S. Army Corps of Engineers
 - Indiana Department of Environmental Management
 - Indiana Department of Natural Resources
 - Federal Aviation Administration
 - Utilities, including:
 - AT&T - telecommunications
 - Century Link National Network – telecommunications

- Citizens Energy Group – sewer, water, and gas
 - Comcast Communications – telecommunications
 - Crown Castle – telecommunications
 - Duke Energy – transmission power
 - Enterprise Products – oil and gas
 - I-Light/Indiana University Fiber – telecommunications
 - Indiana American Water – water
 - Indianapolis Power and Light – transmission and distribution power
 - Johnson County REMC – electric
 - MCI – telecommunications
 - Metro Fibernet – telecommunications
 - Mobilitie – telecommunications
 - United States Geological Survey – stream gauge
 - Vectren Energy – natural gas
 - Windstream – telecommunications
 - Zayo Bandwidth – telecommunications
 - Railroads, including:
 - Indiana Southern Railroad
 - The Indiana Rail Road Company
 - Louisville & Indiana Railroad
- (e) Information requests concerning these Stakeholders 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. Proposers may be given an opportunity to speak individually with the entities at those meetings. In addition, as to those and other Stakeholders, IFA may allow individual meetings between a Proposer and such entity(ies); provided that such Proposer notifies the Project Sponsors in writing of any planned meeting at least three Business Days in advance

and sends the Project Sponsors 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. Notwithstanding the foregoing, a Proposer may not have more than two meetings with any individual Stakeholder without additional advance approval from IFA, in its sole discretion; provided, however, that for a Utility Owner that has more than one critical department (for example IPL Transmission and IPL Distribution), Proposers will be permitted to schedule two meetings per department.

- (f) 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.
- (g) Any official information, communications, or correspondence regarding the Project will be in writing, on IFA/INDOT letterhead, and signed by IFA’s Authorized Representative or its designee.
- (h) The Project Sponsors will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified in this Section 2.2.3.

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

2.2.4 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 1.8.1. 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 the Proposer's Authorized Representative to IFA's Authorized Representative, by electronic transmission in the prescribed format. 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. Comments and questions must include the requestor's name, address, telephone and facsimile numbers, and the Proposer he/she represents.

Such comments/questions may be submitted at any time prior to the applicable date specified in Section 1.8.1 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 O; (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, pages 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 (unless the question is confidential, in which case it must be conspicuously marked as confidential); (vi) be self-standing and comprehensible independent of other questions or requests for clarification or interpretation (i.e., not reference prior questions asked without reiterating the substance of the reference); and (vii) 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 75 comments/questions for the RFP (inclusive of this ITP and the PPA); provided, however, that (i) Proposers will be limited to 50 comments/questions for any Addenda (unless otherwise noted in an Addendum); and (ii) the foregoing limitations shall not apply to questions relating to the Technical Provisions, Reference Information Documents or corrections of typographical errors, incorrect cross references or inconsistencies/conflicts within or among the RFP Documents. If a question has more than one subpart, each subpart will be considered a separate question. Notwithstanding

this paragraph, IFA may, in its sole discretion, change the maximum number of comments/questions for future RFP versions by Addendum.

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 Governmental Rules.

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 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 this RFP, the last set of responses will be issued no later than the date specified in Section 1.8.1. A consolidated, final set of questions and answers will be compiled and delivered to the successful Proposer prior to award.

Proposers may submit revised drafts, in redline, of the ITP and PPA (but not the Technical Provisions), in connection with the submission of their comments/questions for the 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, but IFA may consider such revisions as it considers and prepares any Addenda.

IFA may convene pre-Proposal submission meetings with Proposers as it deems necessary (see Section 2.4), and Proposers must make themselves available to the Project Sponsors 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 and for any reason 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 SharePoint 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 Form A (Proposal Letter) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause a Proposal to be deemed non-responsive and rejected. 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 Submission Meetings

2.4.1 Informational Meetings

The Project Sponsors 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 the Project Sponsors. 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.

2.4.2 One-on-One Meetings

IFA intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.8.1 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 the Project Sponsors or the Proposers (including the RFP), and Proposer's ATCs.

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

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

- The Project Sponsors will not discuss with any Proposer any information submitted as part of this procurement other than its own.
- Proposers shall not seek to obtain commitments from the Project Sponsors in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Accordingly, except as provided in this ITP, IFA shall reasonably attempt to provide material information about the Project or procurement that the Project Sponsors reveal or discuss in response to questions raised in a one-on-one meeting to the other Proposers.
- The discussions or any statements made by either party in one-on-one meetings shall not be binding on such Person.
- No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.
- Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules at each meeting.

2.4.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions, and the Project Sponsors may provide responses. However, any responses provided by the Project Sponsors 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).

The Project Sponsors reserve the right to disclose to all Proposers any issues raised during any of the one-on-one meetings; provided, however, that the Project Sponsors will not disclose such issues if the Project Sponsors, in their respective sole discretion, determines that disclosure (i) would (x) impair the confidentiality of information submitted as part of this procurement, such as a Concept ATC or ATC (unless otherwise provided in Section 3 below), or (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. Nothing stated at any pre-Proposal meeting or included in a written record or summary

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

2.5 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(6), 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 Design-Build Contractor by IFA under IC 8-15.5-4-8, the Preferred Proposer's Proposal shall be made publicly available for inspection and copying (except for portions that may be treated confidential in accordance with IC 5-14-3). See also Section 1.9.4 of this ITP.

The Project Sponsors shall disclose the contents of all Proposals if either or both 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 PPA execution and financial close has been achieved. (IC 8-15.5-4-13, IC 5-14-3). Subject to the provisions of this Section 2.5 and the other terms and conditions of the ITP with respect to permitting Proposer and/or the Project Sponsors 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 the Project Sponsors 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 the Project Sponsors to treat the entire Proposal as public information. The Project Sponsors will not advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Public Records Act or other applicable Governmental Rules, as to the interpretation of such Governmental Rules, or as to the definition of a trade secret. Nothing contained in this provision shall modify or amend requirements and obligations imposed on the Project Sponsors by the Public Records Act or other applicable Governmental Rules. The provisions of the Public Records Act or other laws shall control in the event of a conflict between the procedures described above and the applicable Governmental Rules.

By submitting a Proposal to IFA in response to this RFP, Proposer consents to, and expressly waives any right to contest the disclosure by the Project Sponsors of the Proposal and Pre-Proposal Submittal in accordance with the Public Records Act. Under no circumstances will the Project Sponsors, 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 applicable Governmental Rules or in the good faith discretion of the IFA General Counsel or occurs through inadvertence, mistake or negligence on the part of the Project Sponsors, 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 Governmental Rules. The Project Sponsors 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 Governmental Rules, as to the interpretation of such Governmental Rules, or as to the definition of a trade secret. Each Proposer shall be solely responsible for all determinations made by it under applicable Governmental Rules 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 Governmental Rules 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 the Project Sponsors reserve the right, in their respective sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. All costs and fees (including attorneys' fees and costs) incurred by the Project Sponsors 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 FHWA and USDOT personnel are subject to the terms of the Freedom of Information Act.

Submission of a Proposal constitutes Proposer's agreement to the provisions of this Section 2.5. See also Section 1.9.4.

2.6 Status Updates

IFA intends to provide periodic informal updates to the Proposers regarding changes in the status of the matters addressed in this Section 2.6.

2.6.1 Site Studies, Conditions and Investigations; Historic Information; Aesthetics

The Project Sponsors have already performed certain geotechnical investigation work for the Project. Such work also includes activities conducted on environmental resources

such as wetlands. The Project Sponsors have made such available historical and new information available to Proposers through the Reference Information Documents. The Project Sponsors will also make the previously performed geotechnical borings and cores available to Proposers for inspection, under the supervision of the Project Sponsors.

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. A Proposer may, at its sole cost and risk, undertake corings, borings and other investigations within the right of way currently owned by the State subject to obtaining all required approvals and permits from INDOT and complying with all requirements relating thereto. The responsibility for timely seeking any desired access, permits and approvals to undertake such corings, borings and other investigations shall be the sole responsibility of the Proposers, and the Project Sponsors shall not have any responsibility or liability with respect to any delay, denial or failure in obtaining such access. See Section 2.7.2 for contact information for access.

There are historic properties adjacent to the construction areas in Segments B, D, and E. The Section 106 consultation process for Segments B, D, and E was completed as part of the Environmental Impact Statement. Due to adverse effects to historic properties as a result of the Project, a Memorandum of Agreement (“MOA”) was executed with FHWA, INDOT and the Indiana State Historic Preservation Office on November 13, 2017. The MOA identifies mitigation measures and additional coordination required to address the adverse effects to historic properties. These coordination processes and measures are included in the environmental requirements in the Technical Provisions.

The Section 106 consultation process for Segments A and C is completed and no mitigation is required.

The Technical Provisions contain Design-Build Contractor’s obligations with respect to the aesthetic and landscaping features for the Project.

2.6.2 Hazardous Materials

INDOT has completed Phase I Environmental Site Assessments to identify possible hazardous material sites near the Project area. Where necessary, INDOT has also completed Phase II Environmental Site Assessments. This information has been provided as Reference Information Documents.

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

2.6.3 Right of Way

No additional ROW is required for Segments A and C of the Project.

ROW acquisition has started for the Segments B, D, and E of the Project. The Project Sponsors anticipate significant portions of the ROW will be acquired (or access rights obtained) prior to award of the PPA. To the extent that ROW has not been acquired prior to award, Attachment 18-2 (ROW Acquisition Status) of the Technical Provisions sets forth a schedule of the dates when specific parcels will be available to Design-Build Contractor, on which Design-Build Contractor shall be entitled to rely. Right of way acquisitions will include the following:

- 177 permanent and temporary right of way parcels (of which 67 have been acquired);
- 33 residential relocations (of which 5 have been completed); and
- 22 business relocations (of which 4 have been completed).

The Project will be constructed within the Planned ROW Limits. In addition, IFA will provide certain temporary property interests within the Temporary ROW Limits for specific improvements as described in the Technical Provisions. Any other temporary easements or real property interests to be used for construction purposes or construction access will be the responsibility of Design-Build Contractor, who will be responsible for following applicable Governmental Rules in acquiring such interests.

2.6.4 Utilities

Several utilities will be impacted by the Project. INDOT has certain historical Utility Information for the Project and has made such information available to Proposers through the Reference Information Documents. With respect to Utilities found to be in conflict with the reference design, IFA has initiated coordination with affected Utilities and will be responsible for certain coordination with Utility Owners, obtaining Utility Agreements and developing Utility Work Plans. Certain Utility Adjustments will be undertaken by IFA or the Utility Owners pursuant to such work plans and Design-Build Contractor shall not be responsible for such work. Other Utility Adjustments will be performed by Design-Build Contractor, as set forth in the PPA Documents. With respect to Utilities not impacted by the reference design, but requiring Utility Adjustment as a result of Design-Build Contractor's design, Design-Build Contractor will be responsible for performing or causing the necessary Utility Adjustments to be performed in accordance with the Utility Agreements, Project Standards and Governmental Rules, 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.

2.6.5 Governmental Approvals

Prior to the Proposal Due Date, IFA intends to advance several Governmental Approvals commensurate with the state of Project development. See Table 7-1 of the Technical

Provisions for a list of such Governmental Approvals. Table 7-2 of the Technical Provisions lists other major Governmental Approvals that the Project Sponsors anticipate shall be required for the Project and for which Design-Build Contractor will be responsible for obtaining and maintaining. Table 7-1 and Table 7-2 of the Technical Provisions are not exhaustive lists of all Governmental Approvals required for the Project, and Proposers are not entitled to rely upon such list as such.

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

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

2.6.6 Railroad Companies

Indiana Southern Railroad, The Indiana Rail Road Company, and Louisville & Indiana Railroad have rail lines and facilities that will be impacted by or require coordination for the Project. IFA is conducting preliminary coordination with the railroads. Design-Build Contractor shall be responsible for certain coordination with the railroads, including design and construction reviews. Design-Build Contractor shall be responsible for modifications to the Railroad Agreements resulting from Design-Build Contractor's design, for causing the necessary railroad work or protection to be performed in accordance with the Railroad Agreements, applicable standards, and Governmental Rules, and for the costs associated with the railroad work or protection, except to the extent the railroad is legally responsible for such costs.

2.6.7 Governmental Entities, Stakeholders Coordination

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

2.6.8 Other Major INDOT Projects

Other INDOT projects under construction within the same time frame as the Project are as follows:

- I-65/I-70 North Split Project under Contract B-36910 with anticipated construction starting Winter 2020\2021 and substantially complete Winter 2022\2023.
- Clear Path 465 under Contract R-38526 with anticipated construction starting Winter 2021\2022 and approximate substantial completion in Fall 2024.
- I-69 Section 6 Contract 2 under Contract R-33493; construction started Winter 2019\2020 and approximate substantial completion in Fall 2022.
- I-69 Section 6 Contract 3 under Contract R-33541; construction started Winter 2019\2020 and approximate substantial completion in Spring 2021.
- I-69 Section 6 Contract 4 under Contract R-41542 with anticipated construction starting Winter 2021\2022 and approximate substantial completion in Spring 2024.
- SR 135 under Contracts R-42140 and R-40870 with anticipated construction starting Spring 2020 and approximate substantial completion Fall 2022.
- US 31 Intersection Improvements under Contract R-40869 with anticipated construction starting Summer 2021 and approximate substantial completion Fall 2022.
- US 31 Intersection Improvements with added turn lanes under Contract R-42526 with anticipated construction starting Summer 2023 and approximate substantial completion Fall 2024.
- Tree Clearing under Contract R-42635 with anticipated construction starting October 2020 and approximate substantial completion March 2021.
- Three demolition packages under Contracts R-42592, R-42593, and R-42594 with anticipated construction starting Spring 2020 and approximate substantial completion Fall 2020.

Design-Build Contractor shall be obligated under the PPA Documents to coordinate its Work with the work of the contractors engaged under the foregoing contracts.

There are also other local and regional projects that may impact the MOT areas. Information about some of these projects are included in the Reference Information Documents.

2.6.9 Noise Analysis/Abatement

INDOT has completed a noise analysis for the Project. Noise abatement measures in the form of feasible and reasonable sound barriers were recommended for implementation to mitigate noise impacts in Segments A, B, C, D and E. Design-Build Contractor will be required to complete the final sound barrier analysis based on Design-Build Contractor's proposed design and incorporate any changes that result from the analysis into the Project. To the extent any changes resulting from the final sound barrier analysis require further public involvement, Design-Build Contractor shall support the Project Sponsors in completing the appropriate public involvement. Design-Build Contractor shall bear all associated costs and schedule risks of undertaking the required analysis, final design and construction of the sound barriers.

2.6.10 Information Provided

Except as otherwise expressly set forth in the PPA Documents, all information provided by the Project Sponsors will be subject to the same limitations applicable to similar information furnished in the Reference Information Documents. Specifically, the Project Sponsors make no representation or warranty as to the accuracy, completeness or suitability of the additional information. See Section 1.6 and the PPA for further limitations on Reference Information Documents.

2.7 Examination of RFP and Site Access

2.7.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Reference Information Documents, all Addenda, and materials posted on the SharePoint 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 Design-Build Contractor's obligations under the PPA Documents and for monitoring the SharePoint Site and the Website for information concerning this RFP and procurement. Form A (Proposal Letter) includes an acknowledgment that the Proposer has received and reviewed all such materials. Failure of a Proposer to so examine and inform itself of the aforementioned documents and materials shall be at its sole risk, and the Project Sponsors 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 1.6 and in the PPA. The Project Sponsors shall have no obligation or liability to any party for or related to the RFP or the SharePoint Site.

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

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

2.7.2 Access

Proposers may be allowed access, through the Proposal Due Date, to the Project ROW, subject to the terms and conditions of any INDOT regular disturbance, access or equivalent permit(s), for purposes of inspection of in-place assets and determining site conditions. Except as set forth in Section 2.6.1, Proposers' access, if any, will be for purposes of surveys and inspections only. Except as set forth in Section 2.6.1, no

construction equipment or drilling equipment will be permitted on any portion of the Project ROW during the procurement period and no intrusive site investigations (e.g. borings, potholing, etc.) by Proposers will be permitted unless approved by IFA, in its sole discretion. For access to the Project ROW, please contact the designated site manager below to schedule, copying IFA's Authorized Representative in writing contemporaneously:

For access within INDOT Greenfield District:

Ms. Andrea Throneburg
INDOT Greenfield District
317-467-3938
athroneburg@indot.in.gov

For access within INDOT Seymour District:

Trenton Jewell
INDOT Seymour District
812-524-3954
tjewell@indot.in.gov

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

2.8 Errors

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

2.9 Improper Conduct

2.9.1 Non-Collusion

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

2.9.2 Organizational Conflicts of Interest

It is IFA's policy that any Person under contract, or previously under contract with either of the Project Sponsors, to prepare procurement documents, preliminary plans, planning reports or other project development products for the Project will not be allowed to participate in any capacity on a Proposer or Design-Build Contractor team as further defined in the INDOT P3 Guidelines available at https://www.in.gov/indot/files/P3_Implementation_Guidelines.pdf. It is IFA's policy that any Person under contract with either of the Project Sponsors to perform "Procurement

Services” as defined in the INDOT P3 Guidelines will not be allowed to participate in any capacity on a Proposer or Design-Build Contractor team. Exceptions to this policy may be granted by IFA, in its sole discretion, upon written request from such Person, if it is determined that the person’s or firm’s involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit a written request as soon as possible (optimally within 30 days after the issuance date of the final RFP) because IFA shall not extend the Proposal Due Date or be responsible for any inability or failure to respond prior to the Proposal Due Date to any such request.

In addition to the foregoing, the organizational conflict of interest rules found in 23 CFR Part 636, Subpart A, including 23 CFR § 636.116, also apply to this procurement. 23 CFR § 636.103 defines an “organizational conflict of interest” as follows:

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

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

Proposer is prohibited from teaming with, receiving any advice from or discussing any aspect relating to the Work, Project or procurement of the PPA with any Person with an organizational conflict of interest, including:

- Nossaman LLP
- Ice Miller LLP
- HNTB Corporation
- HNTB Indiana, Inc.
- Parsons Construction Group Inc.
- Parsons Transportation Group Inc.
- Corradino, LLC
- ATC Group Services, LLC
- Infrastructure Engineering, Inc.

- SJCA P.C.
- VS Engineering, Inc.
- Butler, Fairman, & Seufert, Inc.
- Civil Engineering Services, Inc.
- ASC Group, Inc.
- Resource International Inc.
- C2 Communications
- BAR Communications
- Gray & Pape
- Preferred Title
- Lochmueller Group
- Cardno, Inc.
- United Consulting Engineers, Inc.
- Beam, Longest and Neff, LLC
- Appraising Indiana, LLC
- Boomerang Ventures, LLC
- CMK Real Estate Services, LLC
- CPS Acquisitions, LLC
- Certified Engineering, Inc.
- Dena's Place Real Estate Services, LLC
- Dodd Title Corporation
- Hanson Professional Services, Inc.
- JAY Real Estate Services, Inc.
- Metropolitan Abstracting Consultants, LLC
- Monroe/Owen Appraisal

- Perry & Assoc. Appraisal Service, Inc
- RWS South, Inc.
- Roadway Services, LLC
- STS, Inc.
- Stankoven and Company, Inc.
- Terzo & Bologna, Inc.
- Traynor & Associates, Inc.
- Veteran Right-of-Way Inc.
- Michael Baker International
- Affiliates of any of the above

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

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

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

2.9.3 Fair and Equitable Treatment of Proposers

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

2.9.4 Participation on More than One Team

To ensure a fair procurement process, Equity Members, Major Participants (other than a Proposer team member that is required for the Proposer team to satisfy the INDOT Prequalification Work Type Certification requirement set forth in clause (c)(i) in ITP Section 1.13), Guarantors and legal advisors of Proposer teams shall not participate in any capacity, on more than one Proposer team during the course of the Project procurement. Individuals serving Key Personnel roles on one Proposer team may not serve Key Personnel roles on another Proposer team. In addition, entities that are under direct or indirect common ownership or have the same upstream parents may not participate on separate Proposer teams as Proposer, Equity Members, Major Participants, or Guarantors. IFA may disqualify any Proposer that fails to comply with these prohibitions.

2.10 Pre-Proposal Submittals; Changes in Proposer's Organization and Key Personnel

2.10.1 Pre-Proposal Submittals

"Pre-Proposal Submittals" include, and are required for:

- (a) Requested changes in a Proposer's organization (as described in Section 2.10.2);
- (b) Key Personnel (as described in Section 2.10.3); and
- (c) Any Alternative Technical Concept that a Proposer wishes to be considered (as described in Section 3.0).

2.10.2 Changes in Proposer's Organization, Major Participants and Key Personnel

In order for a Proposer to remain qualified to submit a Proposal, unless otherwise approved in writing by IFA, 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 ownership of the Proposer or any Equity Members, Major Participants, or Key Personnel identified in its SOQ, including additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, 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 in Section 1.8.1 for submission of Pre-Proposal Submittals and in accordance with Section 2.2.1, accompanied by the information specified for such Persons in the RFQ.

If a request is made to allow deletion of, or role change by, any Equity Member, Major Participant or Key Personnel identified in its RFP, Proposer shall submit such information as may be required by IFA to demonstrate that the changed team continues to meet the RFQ and RFP criteria (pass-fail and technical). Proposer shall submit an electronic copy, as well as 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 in this RFP and in the PPA, a Proposer may not make any changes in the ownership of Proposer or in any Equity Members, Major Participants, or Key Personnel identified in its SOQ after the deadline in Section 1.8.1 for submission of Pre-Proposal Submittals. Between the deadline in Section 1.8.1 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 Proposers' organization or Key Personnel based only on unusual circumstances beyond Proposer's control.

2.10.3 Key Personnel

Each Proposer shall submit to IFA a written request for IFA's approval of those individuals proposed for Key Personnel positions, in no event later than the date and time in Section 1.8.1 for submission of Pre-Proposal Submittals. This requirement applies to all Key Personnel, including those that were included in a Proposer's SOQ. If a Proposer proposes more than one individual to serve in a Key Personnel role, each individual shall be considered a Key Personnel under this ITP and the PPA. For each of the Key Personnel positions, the request shall be addressed to IFA at the address set forth in Section 2.2.1, accompanied by the information specified in this RFP for Key Personnel positions (see Section 3.2.5 of Exhibit B), together with three references (no more than one per project) for projects that the individual has worked on during the past five years; provided, however, that where the individual has only worked on one or two projects during the past five years (measured from the date of issuance of this RFP), the Proposer shall (i) affirmatively state that such individual has only worked on one or two projects during the past five years (measured from the date of issuance of this RFP); (ii) include references for each of such projects; and (iii) include references for projects worked beyond the past five years (measured from the date of issuance of this RFP) so that the number of references equals three in total. References for each individual shall be placed on that individual's respective resume.

References shall be previous owners or clients with whom the identified personnel have worked within the past five years (measured from the date of issuance of this RFP) and shall include the name, position, company, or agency, current postal and email addresses, and phone and fax numbers. Proposers shall verify that the contact information is correct, and are advised that if the contact information provided is not current, IFA may exclude the experience represented in determining the Key Personnel's qualifications.

Each Proposer shall submit an original and five copies of each 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 in its sole discretion. Once approved, any changes to such individuals and Key Personnel positions may only be made with the written approval of IFA. Notwithstanding the foregoing, IFA may, in its sole discretion, after such date set forth in Section 1.8.1, 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.

The Key Personnel positions with respect to which approval must be obtained under this Section 2.10.3, including the responsibilities, requirements and restrictions (including those relating to individuals filling of multiple Key Personnel roles) of those Key Personnel are further described in Section 1.3 of the Technical Provision and are:

- Project Manager;
- Design Manager;
- Structural Design Lead Engineer;
- Roadway Design Lead Engineer;
- Construction Manager;
- Design-Build Coordinator;
- Design Quality Manager;
- Construction Quality Manager;
- Maintenance of Traffic Design-Build Coordinator;
- Environmental Compliance Manager;
- Utility Coordination Manager;
- Safety Manager; and
- Project Scheduler.

2.11 Guarantors

A guaranty of Design-Build Contractor's obligations under the PPA will be required by a Guarantor under the following circumstances: (i) Proposer was advised by IFA, in its sole discretion, that a guaranty would be required as a condition to the shortlisting of Proposer, (ii) Design-Build Contractor's organization is a newly-formed or shell corporation or a limited liability entity, (iii) Proposer (or an Equity Member if Proposer is a partnership, joint venture or limited liability company) is not the ultimate parent entity in its

organizational/corporate structure; (iv) the form of organization of Proposer changes after shortlisting and IFA determines, in its sole discretion, to require a Guarantor as a condition to approving such change; (v) if financial statements of a Financially Responsible Party are provided to demonstrate financial capability of the Proposer or an Equity Member; or (vi) Proposer's financial capability adversely changes between its SOQ submission and the Proposal Due Date, as determined by IFA, in its sole discretion.

2.12 Land Acquisition within the Project Right-of-Way

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

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPT REVIEWS

3.1 Alternative Technical Concepts

Sections 3.1 through 3.6 set forth a process for pre-Proposal review of concepts conflicting with the requirements for development, design and construction of the Project, or otherwise requiring a modification of the requirements of the Technical Provisions (“Alternative Technical Concepts” or “ATCs”). ATCs also include those concepts that do not require a modification of the Technical Provisions, but that, if implemented, would require further environmental evaluation of any portion of the Project. Except as noted above, innovative design solutions that comply with the Technical Provisions are encouraged, are not considered ATCs, and do not require IFA approval to be included in the Proposal. Any revisions to the pavement designs specified in Section 9.3.2 of the Technical Provisions shall only be allowed through an approved ATC.

The ATC process is intended to allow Proposers to incorporate additional innovation and creativity into the Proposals, in turn allowing IFA, in its 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 PPA Documents (including modification of the Technical Provisions), or those concepts requiring further environmental evaluation, 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 its 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 something that would require an environmental impact statement, supplemental environmental impact statement, or environmental assessment; (d) the addition of a separate IFA or INDOT 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 Contract 4 Interface Completion Milestone beyond the Contract 4 Interface Completion Deadline; (g) an increase in the amount of time required for Substantial Completion beyond the last date for Substantial Completion set forth in Form L; (h) multiple or material additional right-of-way parcels; or (i) a change to the pavement type for Segment B set forth in the PPA Documents.

ATCs that, if implemented, would require further environmental evaluation of the Project, such as a re-evaluation of the environmental documents or modification of Governmental Approvals, may be considered; provided that Design-Build Contractor bears the schedule and cost risk associated with such additional environmental evaluation or modification of Governmental Approvals and the changes are not major, as determined in IFA’s sole discretion. If the Governmental Approvals necessary to implement the ATC are not

obtained, Design-Build Contractor will be obligated to develop the Project in accordance with existing Governmental Approvals without additional cost to IFA or extension of time (and IFA may be entitled to a reduction in the Contract Price as set forth in the PPA Documents).

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

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

ATCs are Pre-Proposal Submittals (see Section 2.10.1(c) and Section 3.3). Once an ATC is submitted and IFA responds thereto pursuant to Section 3.4, 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 Concept ATC Requirements

By no later than the deadline in Section 1.8.1, each Proposer may deliver to IFA up to ten confidential Concept ATCs for early consideration and review prior to formal ATC submission as defined in Section 3.3 below. In accordance with Section 2.2.1, for each Concept ATC, submit one electronic copy and five hard copies of the following:

- (a) A general (minimum of one page but not to exceed two pages) description of the proposed Concept ATC, how the proposed Concept ATC will be used on the Project, proposed location of the Concept ATC and any other pertinent information that would provide a clear understanding of the proposed Concept ATC; and
- (b) Any conceptual drawings (if applicable) of the configuration of the Concept ATC or other appropriate descriptive information that provided an understanding of the proposed Concept ATC.

The confidential Concept ATC process gives the Project Sponsors the opportunity to review and develop an early understanding of potential ATCs, and gives Proposers the opportunity to receive from the Project Sponsors early, oral feedback as to the merit of those potential ATCs before Proposers make their formal ATC Submittals. For Concept ATCs submitted in accordance with this Section 3.2, informal discussions between the Project Sponsors and Proposers will take place during the corresponding one-on-one meeting described in Section 1.8.1.

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

3.3 Submission of ATCs

Proposers may submit ATCs for review to the Project Sponsors at the address specified in Section 2.2.1, until the last date and time for submittals of ATCs identified in Section 1.8.1. Proposers are encouraged to submit ATCs at any time prior to the stated deadlines, and IFA 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 6 Contract 5 – 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 one original and four copies of a narrative description of the ATC and technical information, including drawings, as described below and one electronic copy on a USB flash drive. In addition, ATCs shall be submitted electronically through the SharePoint Site.

3.3.1 ATC Submittal Requirements

ATC submissions shall include:

- (a) a sequential ATC number identifying the Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);
- (b) a description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information, including necessary design exceptions and a traffic operational analysis, if applicable;
- (c) the locations where, and an explanation of how, the ATC will be used on the Project;
- (d) any changes in roadway or operations requirements associated with the ATC, including ease of operations;
- (e) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;
- (f) any changes in the anticipated life of the item(s) comprising or affected by the ATC;
- (g) any reduction in the time period to reach the Contract 4 Interface Completion Milestone resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

- (h) any reduction in the time period to reach Substantial Completion resulting from implementing the ATC, including, as appropriate, a description of method and commitments;
- (i) references to requirements of the RFP which are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such deviations;
- (j) the analysis justifying use of the ATC and why the deviation, if any, from the requirements of the RFP should be allowed;
- (k) a preliminary analysis of potential impacts on vehicular traffic (both during and after construction), environmental permitting, community impact, safety, and life-cycle and infrastructure costs, including impacts on the cost of repair, maintenance and operation;
- (l) a preliminary analysis of potential impacts on environmental permitting (including impacts to the NEPA Documents) and other applicable Governmental Approvals and an analysis of whether the Proposer believes an updated or supplemental environmental determination or any additional mitigation would or would not be required and why);
- (m) any additional right-of-way required to implement the ATC;
- (n) a description of other projects where the ATC has been used, the degree of success or failure of such usage and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such assessments;
- (o) a description of added risks to the Project Sponsors or third parties (e.g., risks of delays in ROW acquisition, discovery of Hazardous Materials risk, new technologies or construction methodologies, etc.) associated with implementing the ATC;
- (p) an estimate of any additional costs and impacts to the Project Sponsors, Design-Build Contractor and third-parties (including affected utilities and railroads, if any), associated with implementation of the ATC;
- (q) an estimate of any Contract Price adjustment that would accrue to IFA should the ATC be approved and implemented;
- (r) an estimate of the adjustment to the Project schedule, should the ATC be accepted and implemented;
- (s) a proposed technical specification for the ATC (including identification of any governmental entity that used the same and where);

- (t) an analysis of how the ATC is equal or better in quality, utility and performance than the requirements of the RFP; and
- (u) for any ATC related to pavement design, design calculations in accordance with Section 9.3.2 of the Technical Provisions.

3.3.2 ATC Disclosures

Proposers shall not make any public announcement or disclosure to third parties concerning any ATC until approval (including conditional approval) has been obtained. Following approval (including conditional approval), if a Proposer wishes to make any such announcement or disclosure, it must first notify 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.

3.3.3 Responsibility for Third Party Approvals for ATCs

If implementation of an ATC will require approval by a third party (e.g., Governmental Entity), IFA may condition any approval of the ATC with a requirement that Proposer will have full responsibility for, and bear the full cost and schedule risk of, obtaining any such approvals after award 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 Proposer must comply with the requirements of the original RFP and PPA Documents (without regard to the ATC), Proposer will not be entitled to a Change Order under the PPA (and IFA may be entitled to a reduction in the Contract Price as set forth in the PPA Documents).

3.3.4 ATC Disclaimers

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

3.3.5 Reservation of Rights

If IFA determines, based on a proposed ATC or otherwise, that this RFP contains an error, ambiguity or mistake, IFA reserves the right to modify this 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).

3.4 Review of ATCs

The Project Sponsors 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 1.8.1, provided that the Project Sponsors have received all requested information regarding such ATC.

IFA's responses will be limited to one of the following (or similar) statements:

- (a) the ATC is acceptable for inclusion in the Proposal (with such conditions, modifications or requirements as identified by IFA);
- (b) the ATC, although eligible for consideration as an ATC, is not acceptable for inclusion in the Proposal;
- (c) the ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in IFA's sole discretion, of certain identified conditions that must be met or clarifications or modifications that must be made through resubmittal of the ATC before the applicable last date and time for submittal of ATCs identified in Section 1.8.1;
- (d) the submittal is not eligible to be considered as an ATC because it appears to be within the requirements of this RFP and may be included in the Proposal (provided, however, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of this RFP, IFA reserves the right to require compliance with the requirements of this 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 Design-Build Contractor to a Change Order for additional compensation or a time extension under the PPA); or
- (e) the submittal does not qualify as an ATC and may not be included in the Proposal.

IFA 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 INDOT design exception review process. IFA and FHWA reserve the right to review, condition or disapprove of the design exception.

In its Proposal, Proposer must specifically state whether any approved ATCs are included, with reference to the ATC identification number 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 the comments regarding an ATC provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a written request for clarifications under Section 2.3.1, in each case, subject to the end dates set forth in Section 1.8.1 of this ITP.

3.5 Incorporation of ATCs into the PPA Documents

Following notification of the Preferred Proposer, the ATCs that were 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 Design-Build Contractor does not comply with one or more conditions of approval for an ATC or Design-Build Contractor fails to obtain a required third-party approval for an ATC, Design-Build Contractor 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 (and IFA may be entitled to a reduction in the Contract Price and/or schedule as set forth in the PPA Documents).

In accordance with Section 3.6 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 Design-Build Contractor as a Change Order 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.

3.6 Confidentiality of ATCs

Subject to the provisions of the RFP, the Public Records Act and other applicable Governmental Rules, 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) PPA execution; (c) payment of the stipend to the Proposer; or (d) such other date as may be prescribed under the Public Records Act or other applicable Governmental Rules, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Public Records Act, applicable Governmental Rules and Sections 1.9.4 and 2.5 of this ITP. By submitting a Proposal and agreeing to accept the stipend payment, Proposer agrees, if it is not selected as the Preferred Proposer or to be in the competitive range, to disclosure of its work product (including regarding ATCs and its Technical Proposal) to the Preferred Proposer. The foregoing shall not preclude the Project Sponsors from exercising any of their 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 (i) address issues in connection with an ATC; (ii) correct a mistake, error or ambiguity in the Technical Provisions; or (iii) incorporate concepts and ideas that were already under consideration by the Project Sponsors prior to submission of the 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 meeting the requirements set forth in Exhibit B and Price Proposal meeting the requirements set forth in Exhibit C. The completed Technical Proposal and Price Proposal shall be submitted separately in sealed containers in the format and manner described in Sections 4.3 and 4.4.

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

Form A (Proposal Letter) shall be signed in blue ink (wet signatures not graphic reproductions) by all Equity Members and shall be accompanied by evidence of signatory authorization as specified in Form A (Proposal Letter).

4.1.3 Certified Copies

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

4.1.4 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 and will make a reasonable attempt to notify Proposer of its determination.

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 approved ATCs (including conditionally 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. Any Proposal that assumes or would require material changes to the Contract, as determined by IFA, in its sole discretion, may result in IFA's rejection of the Proposal.

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 (Proposal Letter). 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, in its sole discretion, 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) Excepting pre-approved ATCs, if the Proposal includes any unapproved ATCs, assumptions, qualifications, conditions, reservations, exceptions to or deviations from the requirements of the RFP, including pricing assumptions not expressly required in the Price Proposal or any other item that, in IFA's sole discretion, is an attempt to shift or otherwise modify the risk allocation provisions of the PPA or this RFP;
- (e) If the Proposer attempts to limit or modify the Proposal Security (see Section 3.0 of Exhibit C), if the Proposal Security is not provided, and/or if requested information deemed material by IFA is not provided;
- (f) 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 Form J (Proposal Bond).

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 Price Proposal are essential. The Technical Proposal shall not exceed the page limitations set forth in Section 2.0 of Exhibit B. 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. Additional information submitted electronically and not included in the hard copy Proposals (including any video files) shall not be reviewed or considered.

An 8½ by 11-inch format (½ inch margins) is required for typed submissions and an 11 by 17-inch format is required for technical/design drawings, unless otherwise noted in Exhibit B, and such design drawings shall be submitted on USB flash drive in PDF format, with individual file sizes limited to a maximum of 50 megabytes. For ease of review, Proposers are requested to minimize the number of pages with, and size of, color three-dimensional graphics and renderings. Preliminary schedule submissions shall include both a hard copy and the electronic files 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 12-point (either Times New Roman or Arial), provided the font in organizational charts, graphics and tables may be as small as 10-point so long as the organizational charts, graphics and tables are legible, 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/design drawings and schedules in 11 by 17-inch format that comprise large continuous portions of the Proposal (i.e., more than 10 continuous pages) shall be bound in an appendix such that the 11 by 17-inch sheets are not folded. In addition, sheets for technical/design drawings that exceed 11 by 17-inch size 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 1.8.2.

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

4.4.1 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, with appendices in separate volumes, as more fully described in Exhibit B.

All of the binders comprising (i) the original Technical Proposal; (ii) Volume 1 and Volume 2 of the Appendices described in Exhibit B; and (iii) an electronic copy of the entire Technical Proposal and Appendices (including technical/design drawings) uploaded to one or more USB 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 6 Contract 5.”

Proposers shall provide one original and 10 certified copies of bound Technical Proposal, except Proposers shall provide (i) one original and five certified copies of the organizational documents described in Section 3.2.2 of Exhibit B (ii) one original and five certified copies of the Key Personnel documents described in Section 3.2.5 of Exhibit B; (iii) one original and five certified copies of the executed contract, term sheet or heads of terms described in Section 3.2.2 of Exhibit B; and (iv) one original and five certified copies of technical/design drawings that are referenced in Proposer’s Technical Proposal. The “original” shall serve as the Proposal record copy. The “original” of the items in clauses (i), (iii), and (iv) shall be a certified copy of Proposer’s actual organizational documents, technical/design drawings, and executed contracts, term sheets or heads of terms described in Section 3.2.2 of Exhibit B.

The containers that include the required hard copies of the Technical Proposal shall be labeled “[Proposer Name]: Copies of Technical Proposal for the I-69 Section 6 Contract 5.”

The electronic copy shall be in a searchable PDF format on USB flash drives, with file names that correspond to the (or portions of the) Technical Proposal, with individual file sizes limited to a maximum of 50 megabytes (for ease of review, Proposers are requested to minimize the number of pages with, and size of, color three-dimensional graphics and renderings); provided, however, that (a) Proposal forms may be submitted in either PDF or Microsoft Word (.docx) 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

One original and three certified copies of the Proposal Security shall be provided with the Price Proposal, and shall be in one separate envelope labeled “[Proposer Name]: Proposal Security for the I-69 Section 6 Contract 5.” The amount of the Proposal Security shall be \$25 million. The original of the Proposal Security shall be stamped “original” in the single envelope with the three certified copies. The Proposal Security must be either

in the form of a certified check payable to IFA or a bond in the form of Form J (Proposal Bond).

4.4.3 Stipend Agreement

If submitted, two originals and three certified copies of the Stipend Agreement Security shall be provided with the Technical Proposal, and shall be in one separate envelope labeled “[Proposer Name]: Stipend Agreement for the I-69 Section 6 Contract 5.” The originals of the Stipend Agreement shall be stamped “original” in the single envelope with the three certified copies. The Stipend Agreement must be in the form of Form N (Form of Stipend Agreement).

4.4.4 Price Proposal

One original and seven certified copies of the Price Proposal (except for the Proposal Security, which shall include the original and copies in accordance with Section 4.4.2) shall be delivered to IFA together with electronic copies on four USB flash drives using (a) Microsoft Excel (.xls or .xlsx only) format for the Proposal Forms and (b) searchable PDF format for the remainder of the Price Proposal. The Price Proposal shall include the envelopes described in Section 4.4.2. The documents shall be included in a sealed container labeled “[Proposer Name]: Price Proposal for the I-69 Section 6 Contract 5.” In addition, an electronic copy of the entire Price Proposal shall be uploaded to one or more USB flash drives (and clearly labeled as such).

4.5 Currency

All required pricing, revenue and cost information shall be provided in US\$ currency only. Where pricing is to be provided in 2020 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 the Project Sponsors can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. Proposer shall deliver any such modification(s) in the types and manner described in this Section 4.0; 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 the Proposer's 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 150 days after the Proposal Due Date. No Proposer shall withdraw its Proposal within this 150-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 Design-Build Contractor, (iii) IFA does not intend to award the PPA to the Proposer; or (iv) the Proposer is not notified during the 150-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 150-day period set forth above.

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; or (ii) 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 5.11;
- (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 5.12.1 and 6.1.2;
- (c) Following notification from IFA that it is the Preferred Proposer, the Preferred Proposer fails to deliver the EPDs as set forth in Section 5.12.1 or provide access to, or participate in the review of, or both, the EPDs as set forth in Section 5.12.3;

- (d) Any other forfeiture event or condition occurs pursuant to the terms of the Proposal Security;
- (e) Following notification from IFA that it is the Preferred Proposer, PPA execution does not occur by the deadline specified in Section 1.8.1, 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 5.12.2;
 - (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 5.11, without cause by the Preferred Proposer;
 - (iii) IFA's failure to execute the PPA within five Business Days after the 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 that IFA is required to deliver to Design-Build Contractor as a condition precedent to PPA execution, where such failure is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Preferred Proposer;
 - (v) An unresolved pending protest filed pursuant to Section 7.1(c) or an unresolved action to contest the validity of the PPA (unless, in either case, IFA has elected, in its sole discretion, to undertake PPA execution irrespective of such protest or action, in which case, this clause (v) shall not apply);
 - (vi) 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
 - (vii) Issuance by a court of competent jurisdiction of an order or injunction that prohibits IFA from executing the PPA and proceeding with PPA execution, where such order or injunction is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Preferred Proposer.

For purposes of this Section 4.7, Proposer's obligation to achieve PPA execution 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 5.12.1 and Section 6.1.2.

4.8 Acceptance of Delivery by IFA

Upon request, IFA will provide a receipt for Proposals that are timely delivered to IFA as specified herein.

SECTION 5.0 EVALUATION AND POST-SELECTION PROCESS

5.1 Overview

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

The Proposal evaluation process will include an initial review of each Proposal for responsiveness to the requirements of the RFP Documents and as against pass-fail criteria. For Proposals that are responsive and pass all pass-fail criteria, a qualitative and quantitative evaluation of the Technical Proposal, a quantitative evaluation of the Price Proposal, and a best value determination will occur. The process may include a request for Proposal Revisions, the establishment of a competitive range, and a negotiations phase with the Preferred Proposer. The steps and details in the process and evaluation criteria are described in Sections 5.3 through 5.12. The evaluation and selection process is subject to modification by IFA, in its sole discretion.

5.2 Organization of the Evaluation Committees

Evaluation of Proposals will be conducted by a Technical Proposal Evaluation Committee ("TPEC"), and a Price Proposal Evaluation Committee ("PPEC") with assistance from subcommittees, which may include an administrative/legal subcommittee, a Technical Proposal pass/fail and responsiveness subcommittee, and a Price Proposal pass/fail and responsiveness subcommittee. The IFA Public Finance Director may serve on either the PPEC or the TPEC.

The TPEC and PPEC will be comprised of representatives from the Project Sponsors, selected at the sole discretion of the IFA Public Finance Director or his/her designee. The subcommittees will be comprised of representatives from the Project Sponsors and, at the sole discretion of the IFA Public Finance Director or his/her designee, advisors (including outside consultants) and other qualified individuals. The primary responsibility of these advisors will be to assist the TPEC and PPEC in making an educated and informed assessment of the individual strengths and weaknesses of the Proposals. In addition, observers from the Project Sponsors and other federal, State or local Governmental Entities with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. All evaluators and outside consultants and observers will be required to sign confidentiality statements and conflict of interest disclosures, or otherwise be subject to confidentiality restrictions and conflict of interest requirements.

5.3 Best Value Determination

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

**Total Proposal Score = Technical Proposal Score (maximum 35 points available) +
Price Proposal Score (maximum 65 points available)**

5.3.1 Technical Proposal Score

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

Technical Proposal Score = $(TP/TP_{High}) * 35$, where:

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

TP_{High} = Highest Technical Proposal evaluation score achieved by any Proposer, as determined pursuant to Section 5.5.

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

5.3.2 Price Proposal Score

IFA will score the Price Proposal Score in accordance with the following formula:

Price Proposal Score = $(P_{Low}/P) * 65$, where:

P_{Low} = lowest Proposal price submitted by any Proposer, as determined pursuant to Section 5.6.

P = Proposer's Proposal price, as determined pursuant to Section 5.6.

5.4 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals and Price Proposals will be reviewed by the relevant responsiveness and pass-fail 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 this RFP; and (b) based on the pass-fail criteria in this Section 5.4. Responsiveness shall be assessed on the basis of overall responsiveness, with IFA retaining the sole discretion to disregard or waive minor informalities, irregularities, omissions, nonconformities, discrepancies and apparent clerical mistakes. Ultimate decisions and determinations of responsiveness and pass-fail criteria shall be made by the TPEC and the PPEC, respectively.

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

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

5.4.1 Technical Proposals

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

- (a) The business form of the Proposer and any Persons that will have joint and several liability under the 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 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 Section 3.2.8 of Exhibit B;
- (c) The Proposer has provided a Preliminary DBE Project Plan in accordance with Section 3.2.1.17 of Exhibit B and such plan is consistent with the DBE requirements and goal;
- (d) The information, certifications, signed statements and documents as listed in Section 3.2 of Exhibit B do not identify any material adverse information;
- (e) The date for Contract 4 Interface Completion Milestone set forth and in the Preliminary Project Baseline Schedule submitted pursuant to Section 4.1.2 of Exhibit B is not later than 635 days after issuance of NTP;
- (f) The date for Substantial Completion set forth on Form L (Completion Deadlines) and in the Preliminary Project Baseline Schedule submitted pursuant to Section 4.1.2 of Exhibit B is (a) not later than 1442 days after issuance of NTP, and (b) not earlier than 1262 days after issuance of NTP;
- (g) The Technical Proposal contains the required materials as listed in Section 3 of Exhibit B.
- (h) If Proposer anticipates execution of the PPA by a special purpose or newly formed entity, the Proposer has delivered either:
 - (i) Pro formas of the special purpose entity organizational documents (i.e., certificate of formation/charter, bylaws/partnership agreement/operating agreement); or

- (ii) Indicative term sheets of such corporate formation documents that will be used to establish the entity, in either case, should IFA select it as the Preferred Proposer;
- (i) The ownership of Proposer and the Equity Members and Major Participants, have not changed since the Proposer's submission of the SOQ, or Proposer has previously sought 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;
- (j) IFA has approved all Key Personnel pursuant to Section 2.10.3;
- (k) Proposer, and each of Proposer's Equity Members, Major Participants, other Subcontractors identified in the Proposal and Financially Responsible Parties, have delivered a properly completed and executed Form H (Conflict of Interest Disclosure Statement) and no material and unresolvable conflicts, in IFA's sole discretion, have been identified;
- (l) 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 stating that Proposer 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 Section 9 of 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 (including the insurance requirements) 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; and
- (m) Proposer has delivered all other documents, properly completed and signed (if required), in form and substance as specified under the RFP Documents, and such documents do not identify any material adverse information.

5.4.2 Price Proposals

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

- (a) The Price Proposal is reasonable;
- (b) The Price Proposal contains all the materials required by Section 1.2 of Exhibit C;
- (c) The Price Proposal contains one or more letter(s) from one or more Eligible Surety(ies) with respect to the Performance Bond and Payment Bond, as described in Section 3.2 of Exhibit C;

- (d) Based on the information provided pursuant to Section 2.0 of Exhibit C, 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 provided in the SOW, such that Proposer (by and through its Equity Member(s)) continues to have the financial capacity to design and construct a project of the nature and scope of the Project. Factors that will be considered in evaluating Proposer's financial capacity include the following:
- (i) Profitability;
 - (ii) Capital structure;
 - (iii) Ability to service existing debt; and
 - (iv) Other commitments and contingencies.

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

- (e) If a guaranty is required by IFA pursuant to Section 2.11, the financial condition and capabilities of the Proposer's Guarantor(s) demonstrate Guarantor(s)'s financial capacity and ability to guarantee the obligations of the Proposer pursuant to the form of guaranty. Factors that will be considered in evaluating the proposed Guarantor(s)'s financial capacity include the following:
- (i) Profitability;
 - (ii) Capital structure;
 - (iii) Ability to service existing debt; and
 - (iv) Other commitments and contingencies; and
- (f) Proposer has delivered Proposal Security in the form of a certified check in the amount of \$25 million payable to IFA or a complete, properly executed bond that complies with the requirements of Section 3.1 of Exhibit C.

5.5 Evaluation of Technical Proposal by TPEC

After completion of, or concurrently with, the pass/fail and responsiveness review, the TPEC will evaluate the Proposer's Technical Proposal based on the Technical Proposal evaluation factors in Section 5.5.1 to determine whether the Technical Proposal meets, and also whether it includes any improvements over, and brings additional benefits or value to IFA, the Project 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. Technical Proposal Scores will be determined as described in Section 5.3.1.

5.5.1 Technical Proposal Evaluation Factors

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

- (a) Preliminary Project Management Plan (maximum 20 Technical Proposal Score points available);
- (b) Preliminary Design-Build Plan (maximum 45 Technical Proposal Score points available); and
- (c) Total Project Duration (maximum 35 Technical Proposal Score points available).

Subfactors for clauses (a) and (b) are listed in Section 5.5.1.1 through 5.5.1.2. Consecutive subfactors are set forth in descending order of importance, provided, however, except as otherwise noted, consecutive subfactors may be of equal value to each other. The Total Project Duration shall be scored quantitatively using the assigned weighting values in Section 5.5.1.3.

5.5.1.1 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 well-defined and logical approach to the project schedule methodology, and schedule and cost information in detail sufficient for assessing the project schedule/cost balance.

The Preliminary Project Management Plan evaluation subfactors include:

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

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

5.5.1.2 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) Preliminary Transportation Management Plan;
- (b) Roadway elements;
- (c) Bridge structures, retaining walls, sound barriers, and other structures;
- (d) Utility Adjustment Work elements; and
- (e) Drainage design, and culvert replacement.

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

5.5.1.3 Total Project Duration

Objective: Reduce the total calendar days to achieve Substantial Completion of the Project (Form L).

This subfactor will be scored on a quantitative basis as follows:

Total Project Duration points (35 Technical Proposal Score points maximum) will be allocated as follows:

- Total Project Duration (35 Technical Proposal Score points maximum).

Total Project Duration

Total Project Duration points will be allocated based on Form L. The lowest proposed duration, measured by number of days, will receive 35 Technical Proposal Score points, and other proposals will receive a normalized portion of the maximum Total Project Duration points.

As to Total Project Duration, the points will be calculated as follows:

Total Project Duration points = $(TPD_{Low}/TPD) * 35$, where:

TPD_{Low} = Lowest Total Project Duration submitted by any Proposer, in days

TPD = Proposer's Total Project Duration, in days.

5.6 Evaluation of Price Proposal by PPEC

After, or in the PPEC's sole discretion, prior to completion of the pass-fail and initial responsiveness review, the PPEC will evaluate the Price Proposal pursuant to Sections 5.3.2 and 5.4.2.

5.7 Total Proposal Score

After completion of the evaluation of the Technical Proposal by the TPEC and the Price Proposal by the PPEC, the IFA Public Finance Director or his/her designee, with the assistance of representatives of the Project Sponsors and advisors, will determine the Total Proposal Score for each Proposal by adding the Technical Proposal Score and the Price Proposal Score.

5.8 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.

5.9 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 that passed all pass-fail criteria will be permitted to submit Proposal Revisions; provided, however, that if IFA determines it wishes to proceed with Proposal Revisions prior to completion of the pass/fail and responsiveness review, all Proposers shall be eligible to submit Proposal Revisions. IFA may also further limit those Proposers eligible to submit Proposal Revisions by developing a competitive range based on the initial Proposals. 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 in this RFP. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. 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 PPEC, with assistance from the subcommittees and advisors, as appropriate, will re-evaluate the Proposals as revised, and will revise ratings and scores as appropriate following the process described above.

5.10 Identification of the Preferred Proposer

Once the IFA Public Finance Director or his/her designee 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 IFA Public Finance Director or his/her designee 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 Design-Build Contractor under the PPA Documents. If IFA preliminarily selects the Preferred Proposer as Design-Build Contractor under the PPA Documents, the IFA Public Finance Director or his/her designee 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 5.11. Alternatively, the IFA Public Finance Director or his/her designee may require Proposal Revisions pursuant to Section 5.9, reject the recommendation and cancel the procurement or request reconsideration of the recommendation. In addition, a public hearing shall be conducted on any 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.

5.11 Negotiation and Finalization of the PPA

After preliminary selection by IFA, staff of the Project Sponsors 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 and the extent and nature of such negotiations is at IFA's sole discretion.

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

Negotiations will include the negotiation of (i) Attachment 1 to Exhibit 7 of the PPA concerning Proposal Commitments; (ii) clarifications and any conforming changes to address the status of IFA-Provided Approvals relating to the Project, specifically all IFA-Provided Approvals listed on Exhibit 2 to the PPA; (iii) the NTP + 180 Schedule; and (iv) in IFA's sole discretion, the amounts of the builder's risk insurance coverage required under the PPA. IFA will prepare the initial draft of Attachment 1 to Exhibit 7 of the PPA, which is intended to reflect (a) clarification of ambiguities within Proposer's Technical

Proposal, (b) elements of the Proposal that were relevant, in IFA's sole judgment, to evaluation of the Proposal, (c) areas of the Proposal that exceed the requirements of the PPA Documents, including the Technical Provisions, and (d) such other items identified in the Proposal by IFA, in its sole discretion. Attachment 1 to Exhibit 7 of the PPA shall not include (x) any clarifications of the PPA Documents; (y) any approval, consent, waiver or acknowledgment from IFA concerning aspects of the Preferred Proposer's Proposal, including any means, methods, approaches or techniques proposed; or (z) additional elements not agreed to by IFA, in its sole discretion.

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 IFA Public Finance Director or his/her designee. 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 5.11.

If 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 described in Section 4.7 if the Preferred Proposer fails to attend or actively participate in reasonably scheduled negotiation meetings with IFA, fails to negotiate in a manner consistent with the requirements of this RFP, fails to timely submit deliverables as required by this RFP or IFA in the course of negotiations, or insists upon terms or conditions for any documents to be negotiated or provided by Proposer hereunder that are inconsistent with its Proposal or the PPA Documents as issued in the RFP Documents (including inclusion of assumptions, qualifications, conditions, pricing basis, or exceptions in the PPA beyond those that expressly exist in the RFP Documents as of the last Addenda to this RFP). Failure by a Preferred Proposer to agree to inclusion of (i) ATCs from unsuccessful Proposers, or (ii) material terms initiated by IFA that are materially inconsistent with the Proposal or the PPA Documents as issued in the RFP Documents (as of the last Addenda to this RFP), shall not be deemed a failure to engage in good faith negotiations that will entitle IFA to draw upon the Proposal Security.

5.12 Review of Post-Selection Deliverables

5.12.1 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 pursuant to Section 5.10 that it is the Preferred Proposer, unless otherwise noted (resubmittals, as necessary, shall be required within five days after receipt of IFA comments or notification, as applicable):

- (a) Within 48 hours after notification that it is the Preferred Proposer, one or more sealed container(s) labeled: “[Proposer Name]: Price Proposal for the I-69 Section 6 Contract 5 – Escrowed Proposal Documents,” containing one set of the Cost and Pricing Data (“Escrowed Proposal Documents” or “EPDs”) shall be delivered in a jointly keyed and locked fireproof cabinet supplied by Preferred Proposer, to a location identified by IFA. The Preferred Proposer shall submit its EPDs in hard copy and whenever possible shall also provide electronic copies. The Preferred Proposer shall submit the EPDs in such format as is used by the Preferred Proposer and its Subcontractors in connection with the Proposal. The EPDs provided shall be personally examined by the Authorized Representative of the Preferred Proposer prior to delivery who shall ensure that they meet the requirements of this Section 5.12.1(a).
- (b) Evidence of the Preferred Proposer and each Major Participant’s (excluding Equity Members) authorization to transact business in the State, dated no earlier than 30 days prior to the anticipated date of execution of the PPA. Depending on the form of organization, such evidence may be in the form of (i) a certificate of authority to do business in the State along with a “certificate of good standing” (or equivalent) from the state of organization of the Person; (ii) a Certificate of Existence from the Indiana Secretary of State; or (iii) other evidence acceptable to IFA, in its sole discretion. Each such Person shall also provide a valid State business license.
- (c) Evidence that the Preferred Proposer and its Subcontractors that are Major Participants hold all licenses required to perform the Work under the PPA.
- (d) Drafts of the deliverables identified in Section 6.1.2 for approval by IFA.
- (e) No later than 48 hours after notification that it is the Preferred Proposer, a redacted copy of its Proposal and SOQ to IFA, with redactions limited to only those portions of the Proposal and SOQ that fall under a specific exemption of the Public Records Act (and the Preferred Proposer 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 Preferred Proposer, (i) 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; and (ii) any part of the Preferred Proposer’s Proposal that is part of the PPA, including any exhibit to the PPA, or forms the basis of any portion of the PPA, may not be redacted. Failure of Preferred 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 constitutes consent by the

Preferred Proposer to, and a waiver of any right to contest, disclosure by the Project Sponsors of the Preferred Proposer's Proposal and SOQ in their entirety, without redaction, in response to a request submitted under the Public Records Act. As between the Preferred Proposer and a third party requesting disclosure under the Public Records Act (as opposed to as between the Preferred Proposer and IFA exercising its sole discretion rights pursuant to this ITP), this Section 5.12.1 shall not constitute a waiver of the Preferred Proposer's rights under the Public Records Act.

5.12.2 Comments on Post-Selection Deliverables

IFA shall provide comments to the Preferred Proposer on any Post-Selection Deliverable required to be delivered to IFA for review and approval under this RFP, within seven Business Days after the date of IFA's receipt of such deliverable. IFA shall have five Business Days to review and respond to any resubmittals of the Post-Selection Deliverables.

5.12.3 Review of Escrowed Proposal Documents

The Project Sponsors (including their advisors) shall be entitled to access and review the EPDs of the Preferred Proposer following the notification of the Preferred Proposer, such review to be jointly undertaken with the Preferred Proposer. The Project Sponsors' review shall assess the completeness and accuracy of the EPDs, and the Project Sponsors and the Preferred Proposer shall jointly develop and countersign a detailed index and catalogue of the contents of the EPDs. If, following the initial review and organization, IFA determines that the EPDs are incomplete, IFA may, as a condition to award, require the Preferred Proposer to supply data to make the EPDs complete. Completion of such review and indexation of the EPDs shall be a condition to award and execution of the PPA.

5.12.4 Project Management Plan

During the period between completion of negotiations and final award of the Agreement, the Preferred Proposer may, but is not required to, submit all or portions of the Project Management Plan for review and comment. IFA encourages such early submittal(s), and, as an accommodation to the Preferred Proposer, will reasonably attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the PPA Documents, but cannot guarantee that it will in fact undertake such review or provide comments. Any such review prior to execution of the PPA by the Project Sponsors shall in no event limit or modify any rights of review, comment or approval set forth in the PPA Documents.

SECTION 6.0 AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Final Award, Execution and Delivery of PPA Documents

6.1.1 Conditions Precedent to Final Award of the PPA

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

- (a) successful negotiation of the PPA, in IFA's sole discretion;
- (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 6.1.2;
- (d) review and indexation of the EPDs in accordance with Section 5.12.3;
- (e) execution and delivery to IFA of the Execution Documents by the Preferred Proposer, as Design-Build Contractor; and
- (f) any other conditions to award set forth in this ITP or required by the Act.

In addition to the foregoing, following the public hearing on the preliminary selection of the Preferred Proposer and the terms of the PPA, IFA shall make a determination (i) whether or not the Preferred Proposer should be designated as Design-Build Contractor 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 Design-Build Contractor under the PPA, then such determination shall be submitted to the State Budget Committee, the State Budget Director and, then, the Governor of the State. Following review of such determination by the State Budget Committee and approval by the State Budget Director, 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 Design-Build Contractor under the PPA. Following the designation by the Governor of the Preferred Proposer as Design-Build Contractor 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 6.1.2. If Design-Build Contractor 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, IFA may, in its discretion, execute the Execution Documents. Unless extended pursuant to Section 1.8.3, final award and PPA execution shall be deemed to have occurred as of the date of execution of the PPA and the other Execution Documents.

In the event of a procurement protest or an action to contest the validity of the PPA is pending, then IFA, at its sole option and within the exercise of its sole discretion, may elect to move forward with PPA execution, may delay PPA execution or may terminate the procurement at no cost or penalty except, in such event, the Proposer shall be entitled to payment of a stipend upon satisfaction of the other conditions thereto as set forth in this ITP and the Stipend Agreement, if entered into. In no event may IFA delay PPA execution beyond the 150-day Proposal validity period without the mutual agreement by the Preferred Proposer.

6.1.2 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 the documents provided under Section 5.12.1(b) (as evidence of the Preferred Proposer's and each Major Participant's authorization to transact business in the State) are older than 30 days, updated versions of the same documents;
- (b) If not previously submitted, a copy of the executed organizational documents for Design-Build Contractor and, if Design-Build Contractor is a limited liability company, partnership or joint venture, the articles of incorporation/certificate of formation/charter/partnership agreement or registration for each member or partner of Design-Build Contractor. The executed form of the organizational documents for Design-Build Contractor may not differ substantially or materially from the draft organizational documents or indicative term sheets included with the Proposal;
- (c) Evidence of approval of the final form of the PPA Documents, and of due authorization, execution, delivery and performance of the PPA Documents, by Design-Build Contractor. Such evidence shall be in form and substance reasonably satisfactory to IFA. If Design-Build Contractor is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Design-Build Contractor is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Design-Build Contractor is a limited liability company, such evidence shall be in the form of (1) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, or (2) a managing member(s)

resolution, certified by an appropriate officer of the managing member(s), or (3) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Design-Build Contractor is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member;

- (d) One or more letters from an Eligible Surety, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Performance Bond as described in Section 8.1.1 of the PPA and in form compliant with the requirements of this Section 6.1.2(d) and otherwise reasonably acceptable to IFA, in an amount equal to 100% of the Contract Price. If multiple letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the PPA and issuance of the NTP thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the PPA Documents following the date of the letter, but excluding any change orders or information reflected in the Proposal, such as ATCs, the NTP + 180 Schedule and Proposal commitments;
- (e) One or more letters from an Eligible Surety, signed by an authorized representative as evidenced by a current certified power of attorney, committing to provide a Payment Bond as described in Section 8.1.2 of the PPA and in form compliant with the requirements of this Section 6.1.2(e) and otherwise reasonably acceptable to IFA, in an amount equal to 100% of the Contract Price. If multiple letters are provided, the Proposal shall identify which Surety will be the lead Surety. The commitment letter may include no conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to award and execution of the PPA and issuance of the NTP thereunder; provided, however, that the Surety may reserve in its letter the right to reasonably approve any material adverse changes made to the PPA Documents following the date of the letter, but excluding any changes or information reflected in the Proposal, such as ATCs, the NTP + 180 Schedule and Proposal Commitments;
- (f) The insurance policies, certificates of insurance, riders to its existing policies evidencing proof of insurance coverages as required by the PPA, or other written evidence satisfactory to IFA from an insurance company(ies), broker(s) or agent(s) that such company(ies), broker(s) or agent(s) will place all such insurance coverages for the Preferred Proposer (should it become Design-Build Contractor). For the on-site project-specific coverages, the signatories must indicate expressly that they have read the PPA and insurance requirements under the PPA and that the entities

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;

- (g) If security for the Proposer's obligations under the PPA is required by IFA pursuant to Section 2.11, guarantees from Guarantor(s) in the form of Exhibit 14 of the PPA with such modifications approved by IFA, in its sole discretion;
- (h) A letter signed by Proposer, each Major Participant, and each Subcontractor identified in the Proposal indicating the commitment to work on the Project and the commitment of Proposer to retain the specified services of the designated Major Participant or Subcontractor;
- (i) Evidence that Design-Build Contractor and its Major Participants hold all licenses required to perform the work under the Contract; and
- (j) Any other requirements reasonably determined by IFA during pre-award negotiations.

6.1.3 Documents To Be Delivered By IFA to Proposer With Executed PPA

IFA shall deliver to the escrow held by IFA the executed PPA and any other executed documents.

6.2 Debriefings

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

Debriefings shall:

- (a) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;
- (b) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal;
- (c) Provide information on areas in which the unsuccessful Proposer's Proposal had weaknesses or deficiencies;
- (d) Not include discussion or dissemination of the thoughts, notes, or rankings of individual evaluators.

6.3 Stipend Payment to Unsuccessful Proposers

6.3.1 Stipends Generally

Except as set forth in the Stipend Agreement and this Section 6.3, each Proposer shall be entitled to receive a stipend payment from IFA if the Proposer submits a timely and responsive Proposal by the Proposal Due Date in accordance with the terms and conditions of this RFP, but either: (a) the Proposer is unsuccessful, (b) IFA cancels the procurement without award after the Proposal Due Date; (c) IFA does not execute the PPA prior to expiration of the Proposal validity period, as extended; or (d) IFA fails to execute the PPA following Preferred Proposer's timely satisfaction of all conditions to PPA award and execution set forth in the ITP. No Proposer shall be entitled to reimbursement for any of its costs in connection with this RFP except as specified in the Stipend Agreement and this Section 6.3. The anticipated total amount available for a stipulated stipend payment for each Proposer for this procurement is \$1,300,000. Proposers are not required to accept a stipend payment and may elect to reject the payment thereof.

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

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

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

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

In all cases, 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 the Project Sponsors, in the form attached as Form M (Form of Waiver and Release Re: Stipend). IFA may also accelerate payment

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

6.3.2 Eligibility for Stipend

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

- (a) If the Proposer fails to submit a timely and responsive Proposal by the Proposal Due Date;
- (b) If such Proposer has not executed and delivered the Stipend Agreement to IFA with its Proposal;
- (c) If such Proposer withdraws from the procurement;
- (d) If such Proposer has not complied with the terms and conditions of the RFP Documents;
- (e) If such Proposer fails to satisfy the terms and conditions set forth in the Stipend Agreement or this Section 6.3, including delivering an invoice, all forms required by the State for payment of vendors within the time periods specified in this RFP and the waiver and release as described in this RFP;
- (f) If such Proposer has filed a protest of, or otherwise challenges, the procurement process, award or cancellation of the procurement process and such protest or challenge is dismissed or otherwise is unsuccessful; or
- (g) If such Proposer was the Preferred Proposer and it fails to proceed with execution and award of the PPA for any reason other than (1) the failure of one or more closing contingencies in the RFP Documents, the failure of which do not arise out of or result from the acts, omissions, negligence, fraud, bad faith, breach of contract or Governmental Rule or willful misconduct of the Preferred Proposer; or (2) 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 Governmental Rule 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 (such as ATCs, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer) received prior to the cancellation of the procurement or contained in its Proposal will be the property of the Project Sponsors without any requirement to make payment therefor.

6.3.3 Work Product; Ownership

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

In accordance with Section 3.6, the Project Sponsors 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 the stipend payment hereunder, this right shall extend to allow the Project Sponsors 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.

6.3.4 Stipend Agreement

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

6.4 Costs Not Reimbursable

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

6.5 Return of Proposal Security

Except for any Proposal Security which has been forfeited, the Proposal Security as to each unsuccessful Proposer will be returned to the respective Proposers upon the earliest of (i) expiration of the Proposal validity period, as extended, (ii) 10 Business Days following execution of the PPA and (iii) 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 the conditions set forth in Section 6.1, (ii) the Proposal validity period, as extended, has expired, or (iii) IFA cancels the procurement.

6.6 Technical Proposal Following Award

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

SECTION 7.0 PROTESTS

7.1 Applicability

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

- (a) Allegations that the terms of this RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed IFA's authority or with respect to any other matter not described in Section 7.1(a) and Section 7.1(b);
- (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 in this RFP, as applicable; and
- (c) Award of the PPA and any other protest not addressed in this Section 7.1.

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 make appropriate revisions to the RFP Documents by issuing Addenda.

7.3 Deadlines for Protests

- (a) 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 after release of the final RFP, 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 (and may only address any item that has been changed by the Addendum).
- (b) 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.
- (c) Protests concerning the issues described in Section 7.1(c) must be filed no later than 15 days after publication of the notice of Preferred Proposer pursuant to IC 8-15.5-4-11(b).

7.4 Content of Protest

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

7.5 Filing of Protest

Protests shall be filed by hand delivery or express mail courier on or before the applicable deadline to the IFA Public Finance Director or his/her designee at One North Capitol Avenue, Suite 900, Indianapolis, Indiana 46204 with concurrent copies to INDOT's Deputy Commissioner of Districts and INDOT Chief Counsel, both at Indiana Department of Transportation, 100 North Senate Avenue, IGCN 758, Indianapolis, Indiana 46204, as soon as the basis for protest is known to Proposer. For any protests filed after the Proposal Due Date, the Proposer filing the protest shall, at the request of IFA, concurrently send 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

If provided a copy of the protest pursuant to Section 7.5, 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 protestor has the burden of proving its protest by clear and convincing evidence. The Project Sponsors may discuss the protest with the protestor 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 the Protest

The IFA Public Finance Director or his/her designee shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. The decision by the IFA Public Finance Director or his/her designee shall be final. If necessary to address the issues raised in a protest, IFA may make appropriate revisions to the RFP by issuing an Addendum. The written decision shall be final and non-appealable.

7.9 Protestor's Payment of Costs

If a protest is denied or otherwise unsuccessful, the Proposer filing the protest shall be liable for, and shall indemnify, defend and hold the Project Sponsors harmless from and against, all costs reasonably incurred to defend against or resolve the protest, including

attorneys' fees and other legal and consultant fees and costs, and any unavoidable damages sustained by the Project Sponsors as a consequence of the protest.

7.10 Forfeiture of Stipend

In accordance with Section 6.3.2(f), any Proposer that files a protest under this Section 7.0, or otherwise challenges the procurement process, award, or cancellation of the procurement process, shall be ineligible for a stipend payment if such protest or challenge is dismissed or otherwise unsuccessful.

7.11 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 the Proposer under applicable Governmental Rules or otherwise. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 7.0, it shall indemnify, defend, and hold the Project Sponsors and their respective officers, employees, agents, and consultants harmless from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 8.0 PROJECT SPONSORS RIGHTS AND DISCLAIMERS

8.1 Project Sponsors Rights

The Project Sponsors may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer, may require additional information from a Proposer concerning its Proposal, and may require additional evidence of qualifications to perform Design-Build Contractor's obligations under the PPA Documents. The Project Sponsors reserve the right, in their respective sole discretion, to:

- (a) Design and/or build the Project in any manner that it, in its sole discretion, deems appropriate, necessary or warranted;
- (b) Reject any or all of the Proposals;
- (c) Modify any dates set or projected in this RFP and extend any deadlines;
- (d) Cancel, modify or withdraw this RFP in whole or in part at any time and for any reason prior to the execution by IFA of a PPA, without incurring any cost obligations or liabilities, except for any obligations to pay a stipend under the terms of this RFP and the Stipend Agreement;
- (e) Terminate this procurement and commence a new procurement for part or all of the Project at any time and for any reason;
- (f) Terminate evaluations of Proposals received at any time and for any reason;
- (g) Suspend or terminate negotiations at any time and for any reason, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence PPA negotiations with any responding Proposer, or engage in negotiations with other than the highest ranked Proposer;
- (h) Modify the procurement process described in this RFP (including as a result of concerns or requirements of FHWA) at any time and for any reason;
- (i) Waive or permit corrections to data submitted with any response to this RFP until such time as 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) Issue 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, subcommittees, or teams to review Proposals, make recommendations and seek the assistance of outside technical experts, advisors, and consultants in Proposal evaluation;
- (l) Disclose information contained in a Proposal to the public as described in this RFP;
- (m) Approve or disapprove Key Personnel or changes in the Key Personnel identified in the SOQ or proposed under this RFP;
- (n) Approve or disapprove changes in the Proposer's organization;
- (o) Waive deficiencies, informalities and irregularities in Proposals;
- (p) Accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;
- (q) Consider information relating to a Proposer or Proposal based on information outside of the Proposal available to the evaluators, including the evaluators' or Project Sponsors' personal experiences or knowledge;
- (r) Request Proposal Revisions as specified in this RFP;
- (s) Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the PPA by a third party;
- (t) Not issue any notice to proceed after execution of the PPA Documents;
- (u) Not pursue financing for the Project;
- (v) Develop some or all of the Project itself;
- (w) Disqualify any Proposer that violates the terms of the RFP;
- (x) Determine a competitive range and conduct discussions with Proposers in the competitive range;
- (y) Perform a price reasonableness assessment; and
- (z) Exercise any other right reserved or afforded to IFA under this RFP and applicable Governmental Rule.

8.2 Disclaimers

This RFP does not commit IFA to enter into any PPA. Except as expressly described in the Stipend Agreement and Section 6.3 above, the Project Sponsors assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to

and/or responding to this RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

Except to the extent of the obligations regarding the procurement process specifically set out in this ITP, IFA shall not 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.

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