

Appendix D: Template Progressive RFP

REQUEST FOR PROPOSALS

TO

[DESIGN AND]/[NTD: unbracket for CM/GC only]/CONSTRUCT

THE

[] PROJECT

THROUGH A

[PROGRESSIVE DESIGN-BUILD AGREEMENT]/[CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT]/[NTD: delete inapplicable delivery method]

A PROJECT OF THE

INDIANA DEPARTMENT OF TRANSPORTATION



REQUEST FOR PROPOSALS

RFP #: []

ISSUED: [], 202[]/[NTD: enabling legislation expires July 1, 2028 (IC § 8-23-9.5(28)]

[AMENDMENT # [], ISSUED [], 202[]]/[NTD: include and conform only if amendments (f/k/a addenda) issued]

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ATTACHMENTS

Attachment A Form of Agreement

FORMS

- Form A Proposal Letter
- Form B Proposer and Identified Contractor Certification
- Form C Key Personnel Hourly Rates
- Form D Identified Contractors
- Form E Firm Experience
- Form F Key Personnel Experience
- Form G Proposer Questions
- Form H Form of Commitment Letter
- Form I Prequalification Identification
- Form J Proposal Bond
- Form K Other Department Requirements

SECTION 1 INTRODUCTION AND GENERAL INFORMATION

1.1 Introduction

This Request for Proposals (“RFP”) is issued by the Indiana Department of Transportation (the “Department”) to seek competitive proposals (individually, a Proposal and collectively, Proposals) for a [progressive design-build project through a progressive design build agreement (“Progressive Design-Build Agreement”, or “Agreement”)]/[project to be delivered under a construction manager/general contractor method and agreement (“Construction Manager/General Contractor Agreement, or “Agreement”)]**[NTD: adjust based upon project delivery method]**. Upon execution, the Agreement will provide that the Apparent Best Value Proposer (i.e., the Proposer whose Proposal, including assembled team, if accepted, is in the best interests of the State of Indiana) (as defined in Section 5.6 (Final Scoring and Announcement)) (“Progressive Contractor” (such party being the [“PDB” as defined under IC § 8-23-9.5.10]/[“CMGC” as defined under IC § 8-23-9.5.2])) **[NTD: adjust based upon project delivery method]** shall develop[, design,] and potentially construct the [_____]**[NTD – insert Project name]** project (the “Project”). The form of Agreement is included as Volume II of the RFP. The entity desiring to enter into the Agreement (individually, a “Proposer” and collectively, “Proposers”) is invited to submit a Proposal. The Proposer shall comply with the requirements set forth within this RFP during the procurement. The Proposer shall also take into consideration the Project goals identified in Section 1.3 (Project Goals) in drafting its Proposal.

It is anticipated that the Proposer will include, as part of its team, the Lead Contractor, [Lead Designer,]**[NTD: delete for CM/GC]** Key Personnel Firms, and any entities required for the team to meet the Project prequalification requirements described in Section 3.5 (Department Prequalification) (such parties, together with any other firms listed on Form D (Identified Contractors), being the “Identified Contractors”). The Proposer shall provide certain items as required in this RFP.

All times in this RFP are Eastern Time. Capitalized terms and acronyms not otherwise defined herein are defined in Agreement Exhibit A (Acronyms, Abbreviations, Definitions, and Submittals).

1.2 RFP Documents

1.2.1 Documents Comprising the RFP

The RFP consists of these instructions to Proposers and the attachments and forms hereto. For avoidance of doubt, the RFP includes the form of [Progressive Design-Build]/[Construction Manager/General Contractor] **[NTD: delete inapplicable delivery method]** Agreement (including its exhibits and attachments), attached as Attachment A (Form of Agreement).

1.2.2 RFP Amendments

The Department reserves the right to revise, modify, or change the RFP and procurement at any time before the Proposal Due Date (as set forth in Section 1.5 (Procurement Schedule)) or thereafter as described in Section 4.1 (General Submittal and Format Requirements) (each a “RFP Amendment”).

1.2.3 Errors

If any mistake, discrepancy, deficiency, ambiguity, error, or omission is identified in any of the documents by a Proposer at any time during the procurement, the Proposer shall notify the Department, and is encouraged to suggest a recommended correction, in writing in accordance with Section 2.5 (*Questions and Responses Regarding the RFP*).

1.2.4 Reference Information Documents

Additional information that may prove helpful to the Proposer in understanding the Project will be made available from time to time as Reference Information Documents (“RIDs”) or RIDs updates. The Department has not determined whether any documents included in the RID are accurate, complete, or pertinent. The RIDs are provided for information only and are not currently envisioned to become part of the Agreement.

1.3 Project Goals

The Department has identified the following goals for the Project:

- (1) Maximize use of the Project budget to provide the best value to the Department;
- (2) Minimize impacts to the natural and built environment;
- (3) Incorporate innovative project management processes to maximize efficiency;
- (4) Realize the benefits of [progressive design-build]/[construction manager/general contractor] project delivery;
- (5) [_____]*[NTD – project goals 1-4 are of general applicability and can be included on each project (but tailored as necessary); additional goals (if applicable) may be added in project goal 5 and onwards in accordance with Section [2.1.1.2] of the INDOT Alternative Project Delivery Manual (APDM)]*

1.4 Project Description and Status

The Project includes [_____]*[NTD – describe scope, location, and status of Project; refer to constraints in IC § 8-23-9.5(11)(a), (b) (i.e., what can be a “project” under the enabling legislation)].*

The Department is scheduled to complete the National Environmental Policy Act (NEPA) process in [_____]*[NTD – describe contemplated NEPA approval timing]*. The Department will retain NEPA responsibilities, as detailed in Agreement [Section 4.1 (*Compliance with 23 CFR 636.109*)]*[NTD: PDBA]*[Section 4.1 (*NEPA*)]*[NTD: CM/GC]*.

1.5 Procurement Schedule

The following represents the current anticipated schedule for the procurement. Further dates may be provided in subsequent iterations of the procurement schedule via RFP Amendments or other communication with [would-be]*[NTD: remove from DRAFT RFP]* Proposers.

Table 1: Procurement Schedule *[NTD – complete with applicable Project dates]*

| Activity | Anticipated Date |
|---|--|
| DRAFT RFP issued | [] |
| [Anticipated date of Department engagement of professional services consultant to perform design services for the Project] <i>[NTD: CM/GC only]</i> | [] |
| Issue Final RFP | [] |
| [Deadline to Submit Questions on Final RFP] | [[]] |
| [Deadline for effective date of all required prequalifications] | [[]] |
| [Issue Answers to Questions on Final RFP] | [[]] |
| Proposer submits draft <u>Form C</u> (<i>Key Personnel Hourly Rates</i>) to Department for approval | [] |
| Proposal Due Date | [] at [] p.m. ET |
| Proposer Interviews | [] |
| Apparent Best Value Proposer Announced | [] |
| Project Award | [] |
| (exp.) Agreement Negotiations Concluded | [] <i>[NTD: X months following project award]</i> |

Where the RFP provides a deadline or due date for submission of documents, correspondence, or other materials to the Department, the submission will only be considered timely if the Department receives the submission by the date and, if applicable, the time identified. If no time is identified, a submission will be considered timely if it arrives before 4:00 p.m. EST on the day identified.

1.6 Total Project Funding

Total anticipated Project construction cost is \$[] [of which the Department has, as of the date of this RFP, programmed \$[] million in available funding *[NTD – input price of construction and programmed funding as applicable]*. This amount reflects []. Available funds must cover all Project costs including but not limited to costs for design, preconstruction, construction, management, utility relocations, Governmental Approval compliance, construction and engineering inspections required to complete the Project.

[If additional funding is not secured by [], 202[] *[NTD – confirm funding deadline]*, the unfunded portion of the Project, the limits and scope of which will be determined by both Parties, will not be included in this Project (see Agreement Section 1.5 (*Potential Funding Constraints and Project Authorization*) for additional guidance).]

1.7 [Federal Requirements] *[NTD – include only if federalized deal]*

1.7.1 General Obligations

To preserve the ability of the Department to use federal funding for the Project, the procurement and the Agreement shall comply with applicable federal Laws. The Project is a Federal-aid highway contract and the Progressive Contractor will be required to comply with all federal laws and regulations, as more fully set forth in Agreement Exhibit H (*Federal Requirements*), in addition to analogous and other State laws and regulations.

1.7.2 Disadvantaged Business Enterprise Program

It is the policy of the Department that Disadvantaged Business Enterprises (“DBEs”) shall have the opportunity to participate in the development and performance of highway construction projects financed in whole or in part by federal funds in order to create a level playing field for all businesses who wish to contract with the Department. To that end, the Department will comply with the regulations found in 49 CFR Part 26, and the definitions and requirements contained therein shall be adopted as if set out verbatim herein.

No party involved on the Project shall discriminate on the basis of race, color, national origin, or sex in the performance of work performed pursuant to Department contracts. The Progressive Contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of federally assisted highway construction projects. The Progressive Contractor shall include this provision in all its subcontracts and supply agreements pertaining to contracts with the Department.

Failure by the Progressive Contractor to carry out these requirements will be considered a material breach of the Agreement, which may result in the termination of the Agreement or such other remedies as may be available thereunder.

1.7.2.1 DBE Goal

The DBE goal for the Project will be established after selection of the Progressive Contractor and prior to authorization of any Construction Work. It is expected to range between []% and []% *[NTD – insert DBE goal range]* of the total Project value. The Progressive Contractor will be required to exercise all necessary and reasonable steps to ensure that the DBE goal is met.

1.7.2.1 Obligation of the Progressive Contractor

The Progressive Contractor shall designate and make known to the Department a DBE compliance manager who is responsible for developing, managing, and implementing the DBE Performance Plan on a day-to-day basis, for carrying out technical assistance activities for DBEs, and for working with the DBE Liaison in disseminating information on available business and subcontracting opportunities so that DBEs are provided an equitable opportunity to compete and perform the Work.

1.7.3 Civil Rights/Equal Employment Opportunity

The Indiana Civil Rights Law (IC § 22-9-1) and the federal Civil Rights Act of 1964 (as well as 41 CFR Part 60 and 23 CFR Part 230) shall each apply to the Project and the Agreement.

1.7.4 Prevailing Wage Requirements

Prevailing wage requirements under the federal Davis-Bacon Act will be applicable to the Project.

SECTION 2 PROCUREMENT PROCESS

2.1 Procurement Method

The Department intends to use a single step with interview procurement method to select the Progressive Contractor. The Department reserves the right to modify the procurement to comply with applicable Law or address the best interests of the Department and the State of Indiana, including canceling the procurement at any time.

2.2 [Progressive Design-Build]/[CM/GC] Model/[NTD: delete the inapplicable delivery method]

[Progressive Design-Build (“PDB”) is an alternative contracting method in which a contractor teams with a designer and other firms in any legal manner (sub-prime, joint venture, etc.) to perform design and other preconstruction services for a project. In this model, the Department enters into a progressive design-build agreement with a legal entity or joint venture (as the “Progressive Contractor”) to perform “preconstruction services” and “design services” (each as defined under IC 8-23-9.5). If the Department determines that the Progressive Contractor, with and through its assembled team, has been successful in meeting the goals of the particular project, the Progressive Contractor (with its team) will be given an opportunity to construct it. The Progressive Contractor, with and through its team, shall share pricing information with the Department to facilitate price discussions and to help ensure the Department is receiving a fair price for the work to deliver the project as designed. The Department will utilize an Independent Cost Estimator (“ICE”) to evaluate the Progressive Contractor’s “Cost Model” and “Pricing Milestone Estimates” (“PME”). If the Department is satisfied with the performance of the Progressive Contractor, its approach to building the project, and the price, then the Department would award the construction of the Project through execution of the “Construction Phase Amendment” with the Progressive Contractor, capturing the price and finalizing other terms and conditions for project delivery. The Progressive Contractor will contract to perform such construction and related work. If the Department is not satisfied, the Department will have the right to terminate the progressive design-build agreement (depending on the circumstances, for convenience, failure to agreement upon Construction Phase terms, or Progressive Contractor default – see Agreement Section 24 (*Breach of Contract*) and Agreement Section 25 (*Termination for Convenience; Failure to Agree on Construction Phase Amendment or Pricing Package Amendment*) of the Agreement for more information), and re-procure a progressive design-builder (and team), retaining the Progressive Contractor’s Lead Designer or Lead Contractor, (or both), or procure the project by some other method.

Agreement Exhibit B (*Preconstruction Phase Requirements*) outlines potential services to be performed during the Preconstruction Phase of the Project. The scope of work for Preconstruction Phase services will be negotiated with each Preconstruction Phase Amendment, see Agreement Section 2.1 (*Preconstruction Phase*) for additional information.][NTD: Include foregoing two paragraphs if procuring under progressive design-build, and delete the alternative (CM/GC) below]

[“Construction Manager/General Contractor” (“CM/GC”) is an alternative contracting method in which a contractor team, led by the “CM/GC Contractor”, is procured separately from the professional services consultant (designer) retained for a project, before completion of the design, to perform certain “preconstruction services” (i.e., consulting to provide information to the Department and its designer regarding the impact of the design on the construction of the project, to include among other things, scheduling impacts, work sequencing impacts, cost engineering, constructability, cost estimating, and risk identification). See IC 8-23-9.5(8). In this model, the Department enters into an agreement with the CM/GC Contractor as the “Progressive Contractor” to participate in the professional services consultant’s (designer’s) efforts by performing such preconstruction services. If the Department determines that the design and anticipated pricing, having benefitted from the CM/GC Contractor’s preconstruction services and that the collective effort successfully met the goals of the particular project, then the CM/GC Contractor will be given an opportunity to construct it at such price. Prominently within the preconstruction services is the CM/GC Contractor’s iterative sharing of cost and pricing information with the Department and its designer to facilitate price discussions and to help ensure the Department is receiving a fair price for the construction services to deliver the project as designed. The Department will utilize an Independent Cost Estimator (“ICE”) to evaluate the CM/GC Contractor’s “Cost Model” and “Pricing Milestone Estimates” (“PME”). If the Department is satisfied with the performance of the CM/GC Contractor, its approach to building the project, and the price, then the Department would award the construction of the Project through execution of the “Construction Phase Amendment” with the CM/GC Contractor, capturing the price and finalizing other terms and conditions for project delivery. If the Department is not satisfied, the Department will have the right to terminate the agreement with the CM/GC Contractor (depending on the circumstances, either for convenience, failure to agreement upon Construction Phase terms, or CM/GC Contractor default – see Agreement Section 24 (*Breach of Contract*) and Agreement Section 25 (*Termination for Convenience; Failure to Agree on Construction Phase Amendment or Pricing Package Amendment*) of the Agreement for more information), and procure a construction contractor to deliver the project under its conventional project delivery method (or, depending upon when terminated, by another project delivery method).

Agreement Exhibit B (*Preconstruction Phase Requirements*) outlines potential services to be performed during the Preconstruction Phase of the Project. The scope of work for Preconstruction Phase services will be negotiated with each Preconstruction Phase Amendment, see Agreement Section 2.1 (*Preconstruction Phase*) for additional information.][NTD: **Include foregoing two paragraphs if procuring under CM/GC, and delete the alternative (PDB) above**]

For purposes of IC § 8-23-9.5(16)(a)(9) and (6), the “GMP” is the aggregate of Preconstruction Phase Work and, if the Department elects to pursue construction of the Project, the Pricing Package amendments.

2.3 Department Authorized Representative

The Department has designated the following individual to be its authorized representative for the procurement (“Department Authorized Representative”) who will provide all official Project communications:

[NTD – insert Director of Major Projects information below]

[name]

Director of Major Projects

Indiana Department of Transportation
[physical address]
E-mail: [project-specific email address]@indot.IN.gov

2.4 Rules of Contact

The rules of contact remain in effect until identification of the Apparent Best Value Proposer or until the formal cancellation of the procurement by the Department. The Proposer shall comply with all applicable Laws and refrain from lobbying any governmental authority in connection with the procurement. No employee, member, agent, advisor, or consultant of any Proposer or Identified Contractor may undertake any ex-parte communications, directly or indirectly, regarding this procurement with any representative of the State of Indiana, the Department, or FHWA, including staff, advisors, contractors, or consultants, except for communications expressly permitted by this RFP.

2.5 Questions and Responses Regarding the RFP

The Proposer shall review the RFP and any RFP Amendments issued by the Department prior to the Proposal Due Date. If the Proposer identifies any real or perceived mistake, discrepancy, deficiency, ambiguity, error, or omission contained therein, the Proposer shall request written clarification or pose questions using Form G (*Proposer Questions*).

Proposers may also request written clarification or pose questions using Form G (*Proposer Questions*) with respect to the RFP documents set forth in Section 1.2.1 (*Documents Comprising the RFP*). Clarification requests and questions in this regard should be in the nature of seeking additional information rather than proposing adjustments to risk apportionment, terms, or conditions.

The Department will consider questions in issuing the final RFP and any RFP Amendments. The Department also may elect, at its discretion, to respond to questions through written responses. Responses to questions will be issued on the dates specified in Section 1.5 (*Procurement Schedule*). Any written responses to questions given by the Department will be for the information of the Proposer only and will not become part of the Agreement, except to the extent that the Department, in its discretion, may incorporate the substance of a response into, as appropriate, the RFP, whether in the final RFP issuance or by means of any RFP Amendments.

The Department will only consider questions submitted using Form G (*Proposer Questions*) via email to the Department's Department Authorized Representative in accordance with the requirements described below. All communication between the Department and the Proposer shall be in writing utilizing the Department Authorized Representative's e-mail listed in Section 2.3 (*Department Authorized Representative*).

Questions shall be submitted prior to the dates specified in Section 1.5 (*Procurement Schedule*) using Form G (*Proposer Questions*) **in its native format**. If a question is submitted after a due date, the Department, at its discretion, may elect to respond to the question in a subsequent answers to questions issuance. In completing Form G (*Proposer Questions*), the Proposer shall specify the relevant document (e.g., the RFP, form of Agreement, etc.), including the relevant page and section number, for reference. With respect to each Question Deadline specified in Section 1.5 (*Procurement Schedule*), the Proposer is encouraged to submit all questions at one time and in one submission. All questions shall:

- (1) Be listed separately;
- (2) Not identify the Proposer in the body of the question or comment;
- (3) Be sequentially numbered;
- (4) Specifically reference the relevant document and Section (include the exact language in question) unless it is a general question;
- (5) Address a single issue per question on an eligible topic;
- (6) Clearly indicate why the comment was made; and
- (7) Conspicuously identify whether the Proposer views its question or comment as confidential or proprietary in nature by indicating on Form G (*Proposer Questions*). The question shall explain why the Proposer considers the question to be confidential or proprietary.

The Department, in its sole discretion, may disagree with a Proposer's assessment regarding confidentiality of a question in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, it will inform the Proposer and may allow the Proposer to withdraw the question, rephrase the question, or have the question answered non confidentially.

2.6 Pre-Proposal One-on-One Meetings

The Department may invite Proposers to participate in a one-on-one meeting. If invited, the Proposer shall submit an agenda for the one-on-one meeting by the date specified in Section 1.5 (*Procurement Schedule*). The agenda shall include a list of names of individuals from the Proposer who will be in attendance as well as general topics for discussion. This information will be used to assure that the Department includes appropriate representation at the meeting. One-on-one meetings will be held on the dates set forth in Section 1.5 (*Procurement Schedule*). One-on-one meetings may in the Department's sole discretion be held virtually, in-person at [100 North Senate, Indianapolis, Indiana 46204], or hybrid virtually/in-person.

During one-on-one meetings, the Proposer may ask questions and the Department may provide responses for informational purposes. Any responses provided by the Department during one-on-one meetings may not be relied upon; provided, however, that the Department may, in its discretion, and subject to Section 2.5 (*Questions and Responses Regarding the RFP*), incorporate the substance of its responses into the RFP. The Department reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that the Department determines such disclosure would reveal a Proposer's confidential business strategies, intellectual property, or technical solutions. The Department will maintain the confidentiality of information related to Proposers and their Proposals to the extent permitted by Law.

2.7 Confidentiality

2.7.1 Release of Information and the Access to Public Records Act

All Proposals will be deemed, once submitted, to be the property of the Department. The Department will not disclose any portion of any Proposal prior to award to anyone outside the Department, other than representatives of the federal government (if required) and any State personnel or outside consultants engaged by the Department in connection with this procurement. Upon the execution of the Agreement, the Department will have the right to duplicate, use, or disclose all Proposal data, except proprietary data, submitted by Proposers in response to this solicitation as a matter of public record. Records and other prequalification information confidentially disclosed as part of the bid process shall be exempt from disclosure as provided in IC § 5-14-3-4. If a Proposer believes information or materials submitted to the Department constitute trade secrets or are otherwise exempt from disclosure under the IC § 5-14-3-4, the Proposer shall be solely responsible for specifically and conspicuously designating that information by placing “CONFIDENTIAL” in the center header of each such document or page affected, as it determines to be appropriate. Any specific trade secret or other basis for exemption shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim including the specific applicable exemption from disclosure under IC § 5-14-3-4.

Information declared by the Proposer to be confidential, either in whole or in part, other than described in this Section 2.7.1, may be deemed unresponsive to the solicitation, and may be rejected. Except as provided in this RFP, the Department will have the right to use all ideas, or adaptations of those ideas, contained in any received response to the solicitation. Selection or rejection of the Proposal shall not affect this right.

2.7.2 Observers During Evaluation

The Proposer is advised that observers from federal or other agencies including FHWA, as well as Department consultants, may observe the Proposal evaluation process and will be permitted to review the Proposals. All persons provided with access to the Proposals will maintain confidentiality of the information contained therein in accordance with Department policy.

2.8 Changes in Proposer’s Organization and Identified Contractors

Except as provided in this RFP, a Proposer may not make any changes with respect to the ownership of the Proposer or any Identified Contractor following the Proposal Due Date. Between the Proposal Due Date and execution of the Agreement, the Department will consider requests by Proposers to make changes with respect to the ownership of the Proposer and any Identified Contractors, such determination to be made in the Department’s sole discretion based upon its written determination that a legitimate reason exists for the subject replacement. Any violation of the foregoing restrictions may result in disqualification of the Proposer from the procurement, including invalidating award of the mandate.

2.9 Notice to Proposers

To report bid rigging activities call: 1-800-424-9071.

The U.S. Department of Transportation (DOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m. ET. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of the DOT’s continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

SECTION 3 GENERAL REQUIREMENTS FOR PROPOSERS

3.1 Organizational Conflicts of Interest

The Proposer is prohibited from receiving any advice or discussing any aspect relating to the Project or the procurement with anyone with an organizational conflict of interest. The Proposer shall include a full disclosure of all potential organizational conflicts of interest in the Proposal, including all relevant facts concerning any past, present, or currently planned interests which may present an organizational conflict of interest, as required by 23 CFR 636.116.

Each of the following circumstances shall be deemed an organizational conflict of interest disqualifying the Proposer:

- (1) Participation by any of the following firms on more than one Proposer team:
 - (a) Lead Contractor;
 - (b) [Lead Designer; **NTD: delete for CM/GC**] or
 - (c) Key Personnel Firm.
- (2) Participation by an Affiliate of any such entity identified in clause (1) above, on another Proposer team.
- (3) [Participation by, or by an Affiliate of, the professional services consultant (designer) retained by the Department for the Project] **NTD: CM/GC only**

Without limiting the foregoing, the Proposer and Progressive Contractor shall comply in all respects with the Department Conflict of Interest Policy set forth in Agreement Exhibit H, Attachment 1 (*Department Conflict of Interest Policy*).

The Proposer and each Identified Contractor shall disclose all conflicts of interest, including all present or planned contractual arrangements with the Department’s project management team in Form B (*Proposer and Identified Contractor Certification*). The Proposer and each Identified Contractor shall, in the disclosure, identify planned efforts to avoid, neutralize, or mitigate any potential conflict of interest between such entity on the Project and such other contractual arrangements.

The Proposer is encouraged to disclose all potential organizational conflict of interest in advance of the Proposal Due Date for determination by the Department if such organizational conflict exists. If an organizational conflict of interest is determined to exist at the time of Proposal submittal, the Department may, in its sole discretion, disqualify the Proposer from the procurement. If the Proposer was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to

the Department using the prescribed form of notification in this RFP, the Department may terminate the Agreement for breach of contract.

3.2 Ineligible Individuals and Firms

No entity that has been debarred or suspended from bidding or is otherwise ineligible for state or federal contracts may participate on any Proposer team.

At the time of submitting its Proposal, the Proposer, and each Identified Contractor shall certify on Form B (*Proposer and Identified Contractor Certification*) that it is not presently debarred, suspended, proposed for debarment, voluntary excluded, or disqualified from bidding by any federal or state agency and shall certify and indicate exceptions to the statements identified in xForm B (*Proposer and Identified Contractor Certification*).

The Department, in its sole discretion, may reject a Proposal based on any such exception except to the extent the Department has evaluated the item during Proposal evaluation as provided in Section 5.1 (*Responsiveness and Pass/Fail Evaluation*) and there is no new information following Proposal submission that warrants rejection of the Proposal.

3.3 Restricted Firms

The following firms are not allowed to participate on any Proposer team due to a conflict of interest:

(1) [_____]; ***[NTD – list out any firms that would be prohibited by conflict of interest guidelines from participating on a Proposer Team]***

3.4 Registration with the Secretary of State

The Apparent Best Value Proposer will be required to provide to the Department evidence of the Apparent Best Value Proposer's and each Identified Contractor's authorization to transact business in the State, prior to execution of the Agreement and as a condition precedent to the Department's execution thereof. 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 such party; (ii) a "Certificate of Existence" from the Indiana Secretary of State; or (iii) other evidence acceptable to the Department, in its sole discretion. Each such party shall also provide a valid State business license.

3.5 Department Prequalification

In order to submit a Proposal and applicable Identified Contractors shall be prequalified with the Department prior to the Proposal Due Date for all classifications of work identified in this Section 3.5. If any such party is a partnership, joint venture, or consortium, then the foregoing shall be construed to apply to its partners or members. All subcontractors utilized by the Proposer on the Project shall be pre-qualified to perform work for the Department or their services shall not be allowed.

See Section 3.5.1 (*Contractor Prequalification*) for additional, specific information as to the particular prequalifications required and those entities that must be prequalified. Responses that do not have all mandatory areas of prequalification fulfilled will be deemed nonresponsive.

Information on Department contractor prequalification is available at: <https://www.in.gov/indot/doing-business-with-indot/contractorsconstruction/contractors-prequalification/>.

3.5.1 Prequalification Types *[NTD: modify to remove design prequalifications/entities for CMGC, mindful that some CMGC Contractor as “Progressive Contractor” scope may require design/engineering professionals]*

As part of the Technical Submittal to be provided by the Proposer, the Proposer shall must demonstrate compliance with the following requirements:

(1) Consistent with IC § 8-23-10, the Proposer (as Progressive Contractor) or its Lead Contractor, and any subcontractors proposed to perform more than \$300,000 of construction services, as defined in IC-8-23-9.5(8), must collectively have certain INDOT Certificates of Qualification and INDOT Prequalification Work Type Certifications (<https://www.in.gov/indot/2740.htm>) and Department construction prequalification types as set forth below: *[NTD – complete as applicable to each Project]*

| Work Type | Prequalification |
|-----------|------------------|
| | |

Proposer must have a Department “Certificate of Qualification” for at least \$[] million. Subcontractors will not be counted toward this assessment of prequalification.

(2) The Proposer (as Progressive Contractor) or its Lead Designer, and any subcontractors that are to perform design or other professional services, as defined in IC-8-23-9.5(4), must collectively have certain INDOT Certificates of Qualification and INDOT Prequalification Work Type Certifications (<https://www.in.gov/indot/2740.htm>) and Department consultant prequalification types as set forth below: *[NTD – complete as applicable to each Project]*

| Work Type | Prequalification |
|-----------|------------------|
| | |

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

3.6 Insurance, Licensing, and Permits

The Proposer shall ensure that, if selected as the Progressive Contractor, it will comply with those insurance, licensing to provide insurance specified in the Agreement.

All firms participating in this procurement, or the Agreement, shall obtain all licenses and permits and take all necessary steps to conduct business in the State of Indiana and perform the Work required

under the Agreement, including proposing and carrying out contracts consistent with the laws of the State of Indiana.

All licensed professionals identified in the Proposal who are required to be licensed for the Project shall be licensed in the State of Indiana on or before the Proposal Due Date.

3.7 Approved Overhead or Labor Burden Rates

Proposers shall submit the hourly rates on Form C (*Key Personnel Hourly Rates*) that, in each case, are consistent with the Department's rate policy as provided to the Proposer, evincing such prior Department approval of the same. Proposer shall provide such backup documentation and other justifications as are consistent with such rate policy and otherwise as may be requested by the Department.

3.8 Other Department Requirements

Proposers shall provide the certifications and verification affidavits with the Proposals, as more fully set forth in Section 4.2 (*Compilation and Uploading of Proposal*), evidencing compliance (and intent to comply) with certain State laws and Department policies (e.g., drug-free workplace, employment eligibility, prohibitions on certain investments, etc.). All such certifications and verification documents shall be submitted as the forms attached as Form K (*Other Department Requirements*), some of which will be attached to the Agreement as representations and warranties thereunder.

SECTION 4 PROPOSAL SUBMITTAL REQUIREMENTS

4.1 General Submittal and Format Requirements

Proposals shall be received no later than the time on the Proposal Due Date specified in Section 1.5 (*Procurement Schedule*). Late submittals will not be considered.

A [EDMS] site has been established for the purpose of receiving Proposals.

Only PDF files of the Proposal shall be submitted. The PDF files shall include bookmarks aligned with the organization described in Section 4.2 (*Compilation and Uploading of Proposal*) to facilitate navigation of the document. If more than one PDF attachment comprising the Proposal is transmitted, the Proposer shall ensure that each PDF is separated by volume with the cover of each volume of the Proposal referencing (1) the Project name "[]" (2) RFP # [] and (3) volume number. **[NTD – complete with project specifics]**

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, 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 be submitted in Primavera P6 format. All pages should be sequentially numbered. Typed text must 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 the Department, in its sole discretion. The use of 11 by 17-inch pages for tables, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch page will be considered one page. Use of section dividers is allowed and dividers will not count against the total page count.

It should be noted that once uploaded Proposals cannot be modified; however, prior to the date and time specified in Section 1.5 (Procurement Schedule), revised versions of the Proposal may be uploaded to [EDMS]. Revised versions, if required, shall be clearly identifiable as submissions, and Proposers are invited to notify the Department Authorized Representative, via email, of the appropriate version to use. The Department will not accept any unsolicited amendments, addenda, revisions, or alterations to any Proposal after the Proposal Due Date. If the Department issues a RFP Amendment after the Proposal Due Date, then the Proposer may respond. The Proposer's response shall precisely respond to the contents of the RFP Amendment.

4.2 Compilation and Uploading of Proposal

The Proposal shall consist of two volumes: the Administrative Submittal (Proposal Volume I) and the Technical Submittal (Proposal Volume II).

The contents of the Proposal Volumes shall be organized in the order set forth in this Section 4.2 (Compilation and Uploading of Proposal).

The Proposer shall provide one electronic copy of each component part of the Proposal to the Department by uploading to the [EDMS] site that has been established for receipt of Proposals.

4.2.1 Administrative Proposal (Proposal Volume I)

The requirements and information to be submitted, in the order noted below, in Volume 1 of the Proposal are as follows:

- (1) Form A (*Proposal Letter*);
- (2) Form B (*Proposer and Identified Contractor Certification*);
- (3) Form C (*Key Personnel Hourly Rates*);
- (4) Form D (*Identified Contractors*);
- (5) Form H (*Form of Commitment Letter*);
- (6) Form I (*Prequalification Identification*);
- (7) The certifications and verification documents set forth in Form K (*Other Department Requirements*); and
- (8) All required attachments relevant to each form.

4.2.1.2 Surety Letter

Proposal Volume I shall include a letter from a Surety or insurance company indicating that the Surety has reviewed the Proposer's and relevant entities' financial statements, works in progress, and other diligence information and is of the opinion that the Proposer could obtain both P&P Bonds, each with a penal sum of not less than the estimated total Project cost as described in Section 1.6 (Total Project

Funding) and otherwise in accordance with the requirements of Section 5.8 (Delivery of P&P Bonds) and the Agreement. If the Progressive Contractor is to be a joint venture, partnership, limited liability company, or other association, then a separate letter shall be submitted for each member or partner thereof with respect to which the Surety is certifying to the entity's bonding capacity with the foregoing requirements. Letters indicating "unlimited" bonding capability are not acceptable, nor letters with unreasonable qualifications or that admit of deferred due diligence, to be determined in the Department's sole discretion.

4.2.1.3 Identified Contractors

Proposal Volume I shall include a list of Identified Contractors in the form of Form D (Identified Contractors). Pursuant to the Agreement, engagement and selection of subcontractors and subconsultants after execution of the Agreement is subject to competitive selection and Department approval. All firms identified on Form D (Identified Contractors) shall be subject to the requirements of the Agreement, including being subject to Open Book Basis requirements.

4.2.2 Technical Proposal (Proposal Volume II)

The contents of Proposal Volume II shall be organized in the order set forth in this Section 4.2.2.

4.2.2.1 General Organization

The Proposer shall provide the organization and communication structure among the Lead Contractor, [the Lead Designer]**[NTD: delete for CM/GC]**, any Key Personnel Firms, and, if applicable, any other Identified Contractors. This information shall be submitted in a one-page organization chart in 11-inch by 17-inch format.

4.2.2.1 Preliminary Staffing Plan and Organizational/Staffing

Approach

The Proposer shall provide a brief narrative identifying the particular skills, roles, and other information to demonstrate which entity, and which persons, within the organizational structure submitted pursuant to Section 4.2.2.1 (General Organization), so as to describe the Proposer's intended approach to completing the Work under the Agreement. This information shall specifically identify those entities and persons responsible for [cost estimating, risk register building/management, _____], and [_____]. This information shall be submitted in no more than two pages of narrative.

4.2.2.2 Experience of the Firms

The Proposer shall provide a narrative detailing work capacity and experience of the any Identified Contractors. (4 pages total)

In addition, using Form E (Firm Experience) and following the instructions provided, provide firm experience for the Lead Contractor [and Lead Designer]**[NTD: delete for CM/GC]**. Experience shall be relevant to the Project. The Proposer shall outline, with specifics, how a collaborative design or construction environment was maintained. The Proposer shall provide examples where the firm has added value through innovative strategies, including use of effective risk management, value engineering, and alternative technical concepts.

4.2.2.3 Key Personnel Experience

The Proposer shall submit a completed Form F (*Key Personnel Experience*) for each of the required Key Personnel. The same individual may fill more than one Key Personnel position; however, a separate form is required for each position.

The Proposer shall include the name and contact information of the project representative for each project listed on Form F (*Key Personnel Experience*). It is the responsibility of the Proposer to verify the accuracy of the contact information provided. If experience cannot be validated by the Department due to inaccurate contact information, the experience will not be considered in the evaluation of Proposals. Project representatives shall be owners or clients for whom the Key Personnel performed the work on the project.

Key Personnel requirements: **[NTD: GEC to modify for each project.]**

(1) **[Project Manager:** Shall have demonstrable, meaningful, relevant experience of sufficient duration in or directly relating to construction and management of design and construction of highway projects. Preference will be given to a Project Manager that shows the ability to coordinate third-party involvement and experience with major earthwork projects. The Project Manager shall hold a full-time position within the Lead Contractor's organization with authority to make decisions affecting any aspect of the Project. The Project Manager will be responsible for the overall design, construction, maintenance, contract administration, safety, quality, and environmental compliance on behalf of Progressive Contractor. The Project Manager shall be in the position to take full responsibility for the prosecution of the Work and will act as a single point of contact on all matters on behalf of Progressive Contractor. *Preferred duration of experience in same/similar role: 10 years.*

(2) **Construction Manager:** Shall have demonstrable, meaningful, relevant experience of sufficient duration in or directly relating to construction and construction management on highway and bridge projects. *Preferred duration of experience in same/similar role: 10 years.*

The Construction Manager is responsible for ensuring that the Project is constructed in accordance with the Contract Documents. The Construction Manager will be responsible for coordinating with [the Lead Designer]**[NTD: delete for CM/GC]**[the Department's professional services consultant retained for the Project]**[NTD: delete for PDB]**to resolve any issues that occur during construction.

(3) **[Design Manager:** Shall be a Professional Engineer licensed in the State of Indiana. Shall be a direct, full-time employee of the Lead Designer. Shall have demonstrable, meaningful, relevant experience of sufficient duration in or directly relating to managing design for multidisciplinary highway and bridge projects. *Preferred duration of experience in same/similar role: 10 years.*

The Design Manager will be responsible for ensuring the design Work is completed and design criteria and requirements are met. The Design Manager will be responsible for coordinating with Key Personnel, the Lead Contractor, and the Department to ensure that any design issues are resolved expediently.**[NTD: reserve for CM/GC]**

(4) **Lead Estimator:** Shall have demonstrable, meaningful, relevant experience of sufficient duration in or directly relating to preparing production-based construction costs estimates, managing risk,

and managing construction schedules for projects with similar scope and complexity. *Preferred duration of experience in same/similar role: 7 years.*

The Lead Estimator will be responsible for complying with the open-book process as well as coordinating with the ICE to help reach agreement during Construction Cost Estimate Review Meetings. The Lead Estimator will assist the Department in managing the Risk Register, provide input on the Project Schedule, and coordinate with the Lead Contractor and Lead Designer in regard to managing and mitigating risks.

(5) **Geotechnical Lead:** Shall be a Professional Engineer licensed in the State of Indiana. Shall have demonstrable, meaningful, relevant experience of sufficient duration in or directly relating to geotechnical engineering. *Preferred duration of experience in same/similar role: 10 years.*

The Geotechnical Lead will be responsible for ensuring the design and analysis of all geotechnical elements are completed and design criteria requirements are met.

(6) **[Structure Design Lead:** Shall be a Professional Engineer licensed in the State of Indiana. Shall have Demonstrable, meaningful, relevant experience of sufficient duration in or directly relating to the structural design of highway projects, including retaining walls. *Preferred duration of experience in same/similar role: 10 years.*

The Structure Design Lead will be responsible for overseeing the design and construction of all structural elements of the Project to ensure design requirements are met. **[NTD: reserve for CM/GC]**

(7) **Environmental Compliance Manager:** Shall Demonstrable, meaningful, relevant experience of sufficient duration in or directly relating to a combination of environmental archeology, cultural-historic analysis, NEPA documentation, terrestrial ecosystems, hazardous materials, and environmental commitment compliance. *Preferred duration of experience in same/similar role: 10 years.*

The Environmental Compliance Manager will be responsible for monitoring, documenting, and reporting the current status of environmental compliance for the Work (Design and Construction) reporting and coordinating all issues directly with the Department and the Project Manager. **[NTD: GEC to adjust roles; drafter to map to final PDBA/CMGCA exhibit]**

4.2.2.4 Preconstruction Phase Approach

The Proposer's Preconstruction Phase Approach shall include:

(1) The Proposer's overall approach to delivery of preliminary engineering and other Work required during this phase;

(2) The Proposer's approach to Project design in alignment with the Project goals, including collaboration with the Department and integration of the funding, environmental, geographic features, as well as the following additional design considerations:

(a) [] **[NTD: GEC to adapt for project-specifics]**

(3) The Proposer's schedule management approach and methods to optimize the construction schedule with design.

- (4) The Proposer’s approach to identifying potential Pricing Packages;
- (5) The Proposer’s approach to pricing and subcontracting, including specifically, open-book strategies, competitive solicitations, ensuring Department equal employment opportunities, as well as:

- (a) [] **[NTD: GEC to adapt for project-specifics]**

- (6) The Proposer’s approach to risk management including methods used to identify, mitigate, and price risk during the Preconstruction Phase; and

- (7) The Proposer’s approach to design quality management.

The Preconstruction Phase approach shall be limited to 15 pages.

4.2.2.5 Construction Phase Approach

The Proposer’s Construction Phase Approach shall include:

- (1) The Proposer’s overall construction management approach in consideration of the Project goals, including project control methods;

- (2) The Proposer’s approach to management of construction phasing;

- (3) The scope of work the Proposer intends to self-perform to meet self-performance requirements and the scopes of work that the Proposer intends to subcontract;

- (4) The Proposer’s procedure to manage subcontracting and subcontractor performance;

- (5) The Proposer’s approach to tracking, documenting, and ensuring compliance with equal employment opportunities requirements[, include DBE requirements] **[NTD: include only if federalized]**;

- (6) The Proposer’s approach to risk management during the Construction Phase of the Project; and

- (7) The Proposer’s approach to construction quality management.

The Construction Phase approach shall be limited to 10 pages.

4.3 Proposal Security

4.3.1 Proposal Security Requirements and Delivery

One original and three certified copies of Proposal security in the form of a bond in the form of Form J (*Proposal Bond*) (only, if applicable, with such non-material alterations to the form as may be agreed to by the Department in writing, in its sole discretion, prior to the Proposal Due Date) (the “Proposal Security”) shall be delivered to the Department at the address set forth in this Section 4.3.1 prior to or on the date of the electronic submission of the Proposal, and shall be in a single envelope labeled “[Proposer Name]: Proposal Security for the [] Project.” The amount of the Proposal Security shall be \$[] **[NTD: GEC recommendation/client decision]**. Any Proposal Bond must be issued

by an Eligible Surety (as defined under the Agreement). The original of the Proposal Security shall be stamped “original”. The Proposal Security shall be delivered to the Department at the following address:

Indiana Department of Transportation
Attn. [] **[NTD – insert Department Authorized Representative]**
100 North Senate
Indianapolis, Indiana 46204 **[NTD: blanks in this section to be filled in based upon project specifics]**

4.3.2 Forfeiture of Proposal Security

4.3.2.1 Events of Proposal Security Forfeiture

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

(1) Following notification from the Department that it is the Apparent Best Value Proposer, the Apparent Best Value Proposer fails to attend or actively participate in reasonably scheduled negotiation meetings with the Department, fails to work towards finalizing the Agreement in a manner consistent with the requirements of Section 5.7 (Finalization and Execution of Agreement), fails to timely submit deliverables as required by this RFP in the course of finalization and execution of the Agreement, 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 Agreement as issued in this RFP (including inclusion of assumptions, qualifications, conditions, key personnel hourly rates, or exceptions not set forth therein);

(2) Following notification from the *Department* that it is the Apparent Best Value Proposer, the Apparent Best Value Proposer fails to provide the P&P Bonds as required under Section 5.8 (Delivery of P&P Bonds) or the authorization to transact business in the State as required under Section 3.4 (Registration with the Secretary of State), or fails to deliver any other deliverable for which delivery as of the effective date of the Agreement is an express requirement of the Agreement;

(3) Following finalization of the Agreement, the Apparent Best Value Proposer fails to provide the Department with an executed copy of the Agreement within five business days of the Department’s request therefore as required under Section 5.7 (Finalization and Execution of Agreement);

(4) Any other forfeiture event or condition occurs pursuant to the terms of the Proposal Security;

(5) Following notification from the Department that it is the Apparent Best Value Proposer, execution of the Agreement does not occur by the deadline specified in Section 1.5 (Procurement Schedule), unless such failure to close is directly attributable to:

(a) the Department’s cancellation of the procurement or decision not to close with the Apparent Best Value Proposer and end negotiations (without cause by the Apparent Best Value Proposer as described in this Section 4.3.2.1(1), (2), or (3));

(b) additional negotiation of the Agreement required by the Department pursuant to Section 5.7 (Finalization and Execution of Agreement) (for avoidance of doubt, excluding negotiation of the Preconstruction Phase Cost Cap);

(c) the Department's failure to provide any other deliverable that the Department is required to deliver to the Progressive Contractor as a condition precedent to execution of the Agreement, where such failure is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Apparent Best Value Proposer;

(d) an act or omission by the Department (except as may be consistent with the procedures set forth in this RFP) that materially inhibits the Apparent Best Value Proposer's finalization or execution of the Agreement, where such act or omission does not result in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Apparent Best Value Proposer; or

(e) issuance by a court of competent jurisdiction of an order or injunction that prohibits the Department from executing the Agreement and proceeding with execution of the Agreement, where such order or injunction is not caused in whole or in part by the acts, omissions, negligence, fault, fraud, bad faith, recklessness or willful misconduct of the Apparent Best Value Proposer.

4.3.2.2 Proposal Security as Liquidated Damages

Forfeiture of Proposal Security in accordance with Section 4.3.2.1 (Events of Proposal Security Forfeiture) will constitute liquidated damages. By submitting its Proposal, Proposer agrees and acknowledges that such liquidated damages:

(1) are reasonable in order to compensate the Department for damages it will incur as a result of Proposer's failure to satisfy the obligations under this RFP to which Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Project and the Department with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs);

(2) would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts;

(3) represent good faith estimates and evaluations as to the actual potential damages that the Department would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal, and do not constitute a penalty; and

(4) are agreed by Proposer in order to fix and limit Proposer's costs and to avoid later disputes over what amounts of damages are properly chargeable to Proposer.

4.4 Proposal Validity Period; No Withdrawal of Proposals

All Proposals are valid for a period of 150 days after the Proposal Due Date (the "Proposal Validity Period"). No Proposer shall withdraw its Proposal unless (i) the Proposer is notified by the Department

that no Agreement for the Project will be awarded by the Department pursuant to the RFP, (ii) the Proposer is notified by the Department that the Department has awarded the Agreement to another Proposer, and the Department has received the executed Agreement and all other required documents from the Apparent Best Value Proposer, (iii) the Proposer is notified by the Department that the Department does not intend to award the Agreement to the Proposer; or (iv) the Proposer is not notified prior to expiration of the Proposal Validity Period that the Department has selected the Proposer as the Apparent Best Value Proposer. Any Proposer may elect, in its sole discretion, to extend the Proposal Validity Period. Any attempt to withdraw a Proposal in violation of this Section 4.4 will result in a draw by the Department upon the Proposal Security.

SECTION 5 PROPOSAL EVALUATION PROCESS

5.1 Proposal Evaluations Generally

The Department will appoint such persons, and conduct the evaluations of the Proposals in accordance with APDM Section [4.2.5] and this Section 5 (Proposal Evaluation Process). Without limiting the Department's internal conflict of interest disclosures and policies, and to the extent permitted under applicable laws, by submitting Proposals, Proposers acknowledge and agree that (a) Department personnel's personal knowledge of and experience with Proposer, Identified Contractors, as well as the individual persons (to include proposed Key Personnel) and (b) Department's corporate experience with Proposer, Identified Contractors, and any of their Affiliates are not, in each case, in themselves, irrelevant to the evaluation of the Proposals.

5.2 Responsiveness and Pass/Fail Evaluation

The Department will review each Proposal to confirm that it is responsive. A responsive Proposal shall be complete and shall not deviate from the RFP requirements in any material respect.

Following the Department's determination of responsiveness, the Department will evaluate each Proposal based upon the following pass/fail criteria:

- (1) The Proposer has presented evidence showing the makeup of its organization and evidence that its organization has the legal ability to enter into and perform the Agreement to deliver the Project;
- (2) The Proposer and each Identified Contractor identified on Form D (*Identified Contractors*) is not currently suspended, debarred, voluntarily excluded, or disqualified from performing or bidding on work for any federal or state agency;
- (3) The information disclosed in Form B (*Proposer and Identified Contractor Certification*) does not, in the Department's sole determination, materially adversely affect the Proposer's responsibility, including its integrity and ability to carry out the Project responsibilities potentially allocated to it;
- (4) The information disclosed in Form B (*Proposer and Identified Contractor Certification*) does not identify any restricted firms listed in Section 3.3 (*Restricted Firms*), and Proposer's submitted Form B (*Proposer and Identified Contractor Certification*) does not modify the certification that it has not and will not engage any such restricted firms, if selected as the Progressive Contractor, to carry out the Project responsibilities potentially allocated to it;

(5) The Proposer demonstrates, in the Department’s sole determination, that the Proposer is capable of obtaining the P&P Bonds in the amount set forth in Section 4.2.1.2 (Surety Letter).

(6) The Proposer’s rates identified in Form C (Key Personnel Hourly Rates) are determined to be reasonable by the Department (i.e., conform to the rate-setting constraints [set forth in the APDM], as more fully set forth in Section 3.7 (Approved Overhead or Labor Burden Rates).

(7) Proposer has delivered the Proposal Security in accordance with the requirements of Section 4.3.1 (Proposal Security Requirements and Delivery).

A Proposal that does not achieve a “pass” rating on any pass/fail element will be deemed unacceptable and will not progress to further evaluation and scoring.

5.3 Proposal Evaluation

The Department intends to identify the Proposer with the highest overall score as the Apparent Best Value Proposer. The Proposer’s scores are the sum of the Technical Proposal score and the interview score. Table 4 (Distribution of Points) shows the maximum points allocated to each category.

Table 2: Distribution of Points

| Evaluation Criteria | | Maximum Score |
|---|---|---------------|
| Technical Proposal | Experience of the Firms | [15] points |
| | Key Personnel Experience | [30] points |
| | Preconstruction Phase Approach & Organization | [25] points |
| | Construction Phase Approach & Organization | [10] points |
| Interview <i>(top 3 Proposers, following Technical Proposal evaluation)</i> | | [20] points |
| Total | | 100 points |

[NTD – this is a fairly standard point distribution to be tailored as necessary for each project]

5.4 Technical Proposal Evaluation

The Technical Proposal evaluation consists of the scoring of Department evaluators for the following categories:

5.4.1 Experience of the Firms

Firm experience will be evaluated on:

- (1) The extent to which the Proposer's experience demonstrates experience relevant to the size, complexity, and composition of the anticipated Project in the areas of the ability to maintain the project schedule, coordinate with adjacent projects, develop and maintain an agile design and construction environment, and construct using innovative designs, methods, or materials; and
- (2) The extent to which the Proposer demonstrates proven experience working with owners to develop and implement innovative, cost saving, and value additive concepts on prior projects.
- (3) The extent to which the Proposer's experience demonstrates relevant experience that will improve the likelihood of successful project delivery.

The Department will consider all relevant firm experience that demonstrates the likelihood of successful project delivery in its evaluation and scoring.

5.4.2 Key Personnel Experience

Key Personnel Experience will be evaluated based on the extent to which:

- (1) The Key Personnel meet or exceed preferred requirements for qualifications and experience;
- (2) The experience of each Key Personnel included work of a similar scope, nature, and complexity as the Project; and
- (3) The Key Personnel can demonstrate a history of commitment to collaboration among all parties.

5.4.3 Preconstruction Phase and Construction Phase Approach

The evaluation of the Proposer's approach (preconstruction and construction) will be based on the extent the Proposer demonstrates:

- (1) a general management structure and corporate culture that facilitates coordination and collaboration among the parties involved in the Project in a manner that is aligned with progressive design-build delivery;
- (2) an understanding of the Project and alignment of the approach with Project goals;
- (3) technical expertise and management approaches that will increase the likelihood of Project success; and
- (4) an understanding of key points of progressive design build including the Progressive Contractor's role in Project advancement at each Project phase, likely issues and Project stressors at each Project phase, and understanding of the GMP process and pricing transparency.

5.5 Interviews

As part of the evaluation and scoring process, the Proposers that submitted the three highest scoring Technical Proposals (as scored in accordance with Section 5.3 (Technical Proposal Evaluation))¹ will be required to attend an interview with the Department². The interviews are anticipated to occur in-person at the Department Central Office. The interview will last 60 minutes and will consist of a 30-minute presentation from the Proposer followed by a 30-minute question and answer period. All Proposers will be asked the same questions. Questions will either be posed to specific Key Personnel or to the team as a whole. No such interview shall be open to the public.

The Proposer may bring to its interview any material it believes may assist the Department in the evaluation process. The Proposer shall attend the interview with all Key Personnel. The Proposer may bring other individuals so long as the total number of attendees does not exceed 10 individuals.

The Proposer will be evaluated on the quality of the information presented in the interview, including the extent to which:

- (1) the Proposer communicated Project understanding in a clear and concise manner that was easy to understand;
- (2) the Proposer demonstrated technical expertise, ability to anticipate technical issues, and required levels of expertise for each Project phase; and
- (3) the Proposer demonstrated recognition of key points and ideas, including the Progressive Contractor's role in Project advancement at each Project phase, likely issues, and Project stressors at each Project phase, understanding of the GMP process and pricing transparency, and ideas and ability necessary to effectively collaborate with the Department and other stakeholders to achieve Project goals.

5.6 Final Scoring and Announcement

Following completion of the interviews conducted pursuant to Section 5.4.3(4) (Interviews), the Department shall finalize scoring for each Proposer [that was interviewed, as well as those Proposers that were not], and the Commissioner of the Department shall make a final determination as to the Apparent Best Value Proposer in accordance with IC § 8-23-9.5. Following such determination, the Department shall notify the Proposers of such selection, following which the Department and the Apparent Best Value Proposer shall each endeavor to negotiate mutually acceptable Contract Documents.

5.7 Finalization and Execution of Agreement

Except as expressly set forth in this Section 5.7, the form of Agreement, however, attached as Attachment A (Form of Agreement), is not intended to be negotiated in form or substance with the Apparent

¹ With respect to CM/GC procurements, the three highest scoring proposers constitute the "short listed" proposers as referred to in 23 CFR 635.504(b)(4).

² Internal note for INDOT – the panel that performs the interviews needs to be the same panel that determines final scoring.

Best Value Proposer. By submitting its Proposal, each Proposer commits to enter into the form of Agreement, without variation, except to fill in blanks and include information that the form of Agreement indicates is required from the Proposal.

Promptly upon notification of selection as the Apparent Best Value Proposer, the Apparent Best Value Proposer and the Department shall engage in negotiations to determine the “Preconstruction Phase Cost Cap” under the Agreement. The Preconstruction Phase Cost Cap shall be determined utilizing the hourly rates submitted in Form C (Key Personnel Hourly Rates) for portions of the Predevelopment Phase Cost Cap attributable to Key Personnel labor, unless the Department elects in its sole discretion to further negotiate such hourly rates. The Department may also elect, in its sole discretion, to negotiate various other aspects of the Contract Documents and scope of Work with the Apparent Best Value Proposer. The Apparent Best Value Proposer shall be deemed to have committed to attend and actively participate in reasonably scheduled negotiation meetings with the Department.

If the Department is unable to negotiate mutually acceptable Contract Documents with the Apparent Best Value Proposer (including a failure to agree on a Preconstruction Phase Cost Cap that the Department and highest scoring Proposer each determine to be fair and reasonable, or if the Apparent Best Value Proposer does not provide sufficient information or timely feedback to finalize the Agreement in accordance with schedule set forth in Section 1.5 (Procurement Schedule)), then the Department shall terminate negotiations with the Apparent Best Value Proposer and may then undertake negotiations with the Proposer with the next Proposer, designated by the Commissioner, as the new Apparent Best Value Proposer, and continue in this manner until an agreement is reached or until a determination is made by the Department to reject all submitted Proposals. The first Proposer designated by the Commissioner (or where the Department is unable to negotiate a contract with the first such designee, the Proposer with which the Department is engaged with in negotiations in accordance with the procedures set forth in this Section 5.6 (Final Scoring and Announcement)), shall be the “Apparent Best Value Proposer”.

Upon finalization of the Agreement, the Apparent Best Value Proposer shall provide the Department with an executed copy within five business days of the Department’s request therefore.

5.8 Delivery of P&P Bonds

The P&P Bonds, in accordance with Agreement Section 29 (Payment and Performance Security), shall be in place for the Apparent Best Value Proposer at the time of the Progressive Contractor’s execution of the Agreement and as a condition precedent to the Department’s execution thereof. Failure of the Apparent Best Value Proposer to comply with the foregoing requirement may result in the Department drawing upon the Proposal Security, and disqualifying such Proposer and undertaking negotiations with the next highest scoring Proposer.

5.9 Public Posting of Scoring; Proposer Debrief

The Department shall, following execution of the Agreement, publish on its website the Department’s final scoring of each Proposal. Unsuccessful Proposers may request in writing (no later than 30 days following execution of the Agreement), and the Department shall provide, an explanation of the reasons such Proposer was not chosen as the Apparent Best Value Proposer.

5.10 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 (a) expiration of the Proposal Validity Period, (b) 10 business days following execution of the Agreement, and (c) 10 business days following cancellation of the procurement by the Department. The Proposal Security for the Apparent Best Value Proposer shall be returned (i) upon execution of the Agreement, (ii) at such time that the Proposal Validity Period, as may be extended pursuant to Section 4.4 (*Proposal Validity Period; No Withdrawal of Proposals*), has expired, or (iii) upon Department cancellation of the procurement.

SECTION 6 MISCELLANEOUS PROVISIONS

6.1 Reserved Rights

The Department reserves to itself all rights (which rights shall be exercisable by the Department in its sole discretion) described herein and available to it by law, including, without limitation, with or without cause, and with or without notice, the right to:

- (1) Develop the Project in any manner that it deems necessary or desirable.
- (2) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals, including reference to personal knowledge of evaluators or the corporate knowledge of the Department and to make judgments where evaluations of the Proposals admit of judgements.
- (3) Modify, withdraw, or cancel this solicitation in whole or in part at any time prior to the execution of the Agreement by the Department, including modification of dates, without incurring any costs, obligations, or liabilities.
- (4) Issue a new RFP after withdrawal of this RFP under any procurement method authorized under State law.
- (5) Accept or reject any and all submittals, responses, and Proposals received at any time.
- (6) Modify the RFP process (with appropriate notice to Proposers).
- (7) Issue amendments, supplements, and modifications to the RFP.
- (8) Add or delete Proposer responsibilities from the information contained in the RFP.
- (9) Require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its Proposal, and require additional evidence of qualifications to perform the Work.
- (10) Waive any informalities, irregularities, or omissions in a Proposal, permit corrections, and seek and receive clarifications to a Proposal.
- (11) Seek the assistance of outside technical experts and consultants in evaluating the Proposals.

- (12) Terminate evaluation of any Proposal, submittal, or response at any time.
- (13) Negotiate with a Proposer without being bound by any provision in its Proposal.
- (14) Suspend, discontinue, or terminate negotiations with any Proposer at any time, or elect not to commence negotiations with any responding Proposer and engage in negotiations with other than the highest ranked Proposer, prior to the actual authorized execution of an agreement by all parties.
- (15) Modify electronic document file names.
- (16) Disqualify any Proposer that violates any rules, constraints, requirements or the terms of the procurement specified in the RFP, applicable law, or any other communication from the Department.
- (17) Exercise any other right reserved or afforded to the Department under this RFP or applicable law or in equity.

The Department assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties responding to this RFP. All such costs shall be borne solely by the Proposer.

6.2 Criminal Penalty

Pursuant to IC § 8-23-9.5(27), it is a Class C infraction for a Proposer to make a false statement regarding the financial worth of the Proposer in a Proposal or other written instrument filed by the Proposer with the Department in connection with this procurement. A Proposer convicted of violating such prohibition will be disqualified from submitting bids on contracts advertised for letting by the Department for a period of two years following the date of conviction.

ATTACHMENT A
FORM OF AGREEMENT

[NTD: insert form of PDBA or CMGCA, depending upon the procurement]

FORM A
PROPOSAL LETTER

Proposer:

[Proposal Date]

Indiana Department of Transportation

[NTD – insert Director of Major Projects information below]

Attn: [name]

Director of Major Projects

[physical address]

E-mail: [project-specific email address]@indot.IN.gov

The undersigned (Proposer) submits this proposal in response to the Request for Proposals (RFP) issued by the Indiana Department of Transportation (the Department) for a contract counterparty to enter into a [progressive design build contract (the “Progressive Design-Build Agreement” or “Agreement”)]/[construction manager/general contractor agreement (the “CM/GC Agreement” or “Agreement”)]**[NTD: delete inapplicable delivery method]** to develop the [_____]**[NTD – insert project name]** (Project) as more specifically described in the documents provided with the RFP. Capitalized terms that are used but not defined in this proposal shall have the meanings set forth in the RFP.

The undersigned undertakes [jointly and severally] [if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally” and delete the brackets; otherwise delete the entire phrase] and agrees that the Proposer shall keep this proposal open for acceptance for 120 days after the Proposal Due Date without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the entity on whose behalf this Proposal is submitted, without first obtaining the prior written consent of the Department, in the Department’s sole discretion.

If selected by the Department, the Proposer agrees:

1. to negotiate the terms of the Agreement with the Department in good faith and in accordance with the requirements of the RFP, if applicable;
2. to enter into and perform its obligations as set forth in the Agreement, including compliance with all commitments contained in its Proposal, and without varying or amending the terms of the Agreement (except for modifications agreed to by the Department in its sole discretion);
3. to satisfy all other conditions to award of the Agreement; and
4. to perform its obligations as set forth in the instructions to Proposers under the RFP, as amended, and the form of Agreement, including compliance with all commitments contained in this Proposal.

Enclosed, and by reference incorporated herein and made a part of this Proposal, are the following:

1. Administrative Proposal; and
2. Technical Proposal.

Proposer acknowledges the following:

1. Proposer has received and reviewed the RFP and all RFP Amendments, and certifies that it has carefully examined and is fully familiar with all provisions of the RFP, as amended, and is satisfied that such provisions provide sufficient detail regarding the Work to be performed and do not contain internal inconsistencies.
2. Proposer acknowledges and will not challenge Department's reserved rights.
3. Proposer represents that all statements made in the Proposal are true, correct, and accurate as of the date hereof.
4. Proposer understands that the Department is not bound to accept any Proposal that it may receive.
5. Proposer understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer.
6. Proposer consents to the Department's disclosure of its Proposal pursuant to the applicable provisions of Indiana law after award of the Agreement.
7. Proposer agrees that the Department will not be responsible for any errors or omissions in its Proposal.
8. Proposer acknowledges and agrees that, under IC § 8-23-9.5(1)(c), participation, selection, entering into a contract with the Department, and performance of the Work thereunder, does not limit or eliminate the responsibility or liability imposed by Indiana law on Proposer (and Proposer's affiliated contract counterparty to the Department under the Agreement) for an in providing services to the Department pursuant to the enabling legislation for this solicitation, including IC § 8-23-9.5, as amended.

[To be signed by authorized signatory or signatories of the Proposer, use appropriate signature blocks]

Sample signature block for corporation or limited liability company:

[*Proposer Name*]

By: _____
Signature

Typed or Printed Name

Title

Date

Sample signature block for partnership or joint venture:

[*Proposer Name*]

By: [General Partner or Member's Name]

By: _____
Signature

Typed or Printed Name

Title

Date

Sample signature block for attorney in fact:

[*Proposer Name*]

For: [Name]

By: _____
Signature

Typed or Printed Name

Title

Date

Proposer's Business Address:

[Name]

[Street Address]

[City, State, ZIP]

[Country]

Proposer's State or Country of Incorporation: [State or Country]

FORM B

PROPOSER AND IDENTIFIED CONTRACTOR CERTIFICATION

Firm Name: _____

Instructions: Proposer and each Identified Contractor shall accurately answer the following certifications. With respect to the Proposer, the term “affiliate” shall mean (1) any other organization that is under common ownership with the Proposer; and (2) any equity owner.

The Proposer/Identified Contractor certifies that:

1. It has carefully examined and is fully familiar with all provisions of the RFP, has reviewed all materials provided, any RFP amendments, and the Department’s responses to questions, and is satisfied that the RFP provides sufficient detail regarding the obligations to be performed and does not contain internal inconsistencies.
2. The information and supporting data provided by the Proposer/Identified Contractor is accurate and complete to the best of its knowledge.
3. It has carefully checked all the words, figures, and statements in the Proposal.
4. It has notified the Department of any identified deficiencies and omissions in the RFP and other documents provided by the Department.
5. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company, or corporation; the Proposal is genuine and not collusive or sham; the Proposer/Identified Contractor has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer/Identified Contractor has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other proposers, or to fix any overhead, profit, or cost element included in the Proposal, or of that of any other proposer, or to secure any advantage against the Department of anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, the Proposer/Identified Contractor has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, proposal depository, or any member, partner, joint venturer, or agent thereof to effectuate a collusive or sham proposal.
6. Proposer has not and will not engage any restricted firms listed in Section 3.3 (Restricted Firms), if selected as the Progressive Contractor, to carry out the Project responsibilities potentially allocated to it;

7. Its responses to the following statements are true and accurate. Except where otherwise noted, all timeframes set forth below shall be measured from the date of issuance of the RFP. Please indicate yes or no for each row.

| Question # | Yes/No | Description |
|------------|--------|--|
| 1 | | The Proposer/Identified Contractor or its affiliates have sought protection under any provision of any bankruptcy act in the past ten years. |
| 2 | | The Proposer/Identified Contractor or its affiliates have been disqualified, removed, debarred or suspended from performing work for the federal government, any state or local government, or any foreign governmental entity in the past ten years. |
| 3 | | The Proposer/Identified Contractor or its affiliates have been indicted or convicted of bid (i.e., fraud, bribery, collusion, conspiracy, antitrust, etc.) or other contract related crimes or violations or any other felony or serious misdemeanor in the past ten years. |
| 4 | | The Proposer/Identified Contractor or its affiliates have been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Indiana governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000e <i>et seq.</i>); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Indiana law in the past ten years. |
| 5 | | The Proposer/Identified Contractor or its affiliates have been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Indiana Department of Labor, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state governing any of common construction wages, (prevailing wages) (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation in the past ten years. |
| 6 | | The Proposer/Identified Contractor or its affiliates have been convicted of violating a state or federal law respecting the employment of undocumented aliens in the past ten years. |
| 7 | | The Proposer/Identified Contractor or its affiliates have been found liable in a civil suit or found guilty in a criminal action for making any false claim or other material misrepresentation to a public entity in the past ten years. |
| 8 | | The Proposer/Identified Contractor or its affiliates have performed or managed any construction project that involved serious, repeated or multiple |

| Question # | Yes/No | Description |
|------------|--------|---|
| | | failures to comply with safety rules, regulations, or requirements in the past ten years. |
| 9 | | The Proposer/Identified Contractor or its affiliates have, with respect to questions 1 – 8 above, if not previously answered or included in a prior response on this form, been involved in any proceeding, claim, matter, suit, indictment, etc. currently pending against the firm that could result in the firm being found liable, guilty or in violation of the matters referenced above and/or subject to debarment, suspension, removal or disqualification by the federal government, any state or local government, or any foreign governmental entity in the past ten years. |
| 10 | | The Proposer/Identified Contractor or its affiliates have had any instance where it submitted a bid on a public works project and found to be nonresponsive or found by an awarding body not to be a responsible bidder in the past ten years. |
| 11 | | The Proposer/Identified Contractor or its affiliates have had any settled adverse claim, dispute or lawsuit with the owner of a public works project during the last five years in which the claim, settlement or judgment exceeded fifty thousand dollars (\$50,000) in the past five years. |
| 12 | | The Proposer/Identified Contractor or its affiliates have had liquidated damages assessed against it during or after completion of a contract in the past five years (if yes, please explain the circumstances, including the amount and basis for the assessment (e.g., \$X total at \$Y/day) within <u>Form B</u>). |
| 13 | | The Proposer/Identified Contractor or its affiliates have had a surety for the firm or any affiliate complete a contract on the entity’s behalf or paid for completion because the entity was in default or terminated by the project owner in the past five years. |
| 14 | | The Proposer/Identified Contractor or its affiliates have had any license, credential, or registration revoked or suspended in the past five years. |
| 15 | | <p>The Proposer/Identified Contractor or its affiliates:</p> <p>(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;</p> <p>(b) have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) or private agreement or transaction; (ii) violation of federal or state antitrust statutes (including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging); (iii)</p> |

| Question # | Yes/No | Description |
|------------|--------|--|
| | | <p>commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, or obstruction of justice; or (iv) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects its present responsibility;</p> <p>(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with commission of any of the offenses enumerated in subsection (b) above;</p> <p>(d) have not within a three year period preceding this proposal had one or more public transactions (federal, State or local) terminated for cause or default;</p> <p>(e) if a corporation, have not been convicted of a felony violation under any Federal law within the two-year period preceding this proposal; and</p> <p>(f) if a corporation, does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.</p> |

If the answer to any item above is affirmative, the Proposer/Identified Contractor shall provide complete details about the matter in an attachment to this Form B. While an affirmative answer to any of these items will not automatically disqualify a Proposer from consideration, at the sole discretion of the Department, such an answer and a review of the background details may result in a rejection of the Proposal. The Department will make this decision based on its determination of the seriousness of the matter, the matter’s possible impact on the Proposer’s performance under the Agreement, and the best interest of the Department.

8. The Proposer/Identified Contractor will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

9. The Proposer/Identified Contractor nor its affiliates, nor any of its proposed team that may work on or benefit from the Contract through the Proposer has a possible conflict of interest other than the conflicts identified immediately below, including any conflicts of interest identified under (a) 23 CFR Part 636 Subpart A; and (b) the Department Conflict of Interest Policy set forth in Agreement Exhibit H (Federal Requirements), Attachment 1 (Department Conflict of Interest Policy). The Proposer/Identified Contractor should identify all relevant facts relating to past, present, or planned interest(s) of Proposer’s team (including Proposer and the Identified Contractors, proposed consultants and subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. If no disclosure is necessary, indicate “None”.

Potential Conflicts (by person or entity affected) with explanation thereof

(Attach an additional sheet if more space is needed.)

10. The DBE goal for the Project, once established in accordance with the Agreement, will be met by the Progressive Contractor obtaining commitments equal to or exceeding the DBE percentage or providing a good faith effort to substantiate the attempt to meet the goal.
11. If awarded the Agreement, the Progressive Contractor shall submit a DBE Performance Plan meeting the requirements set forth in the Agreement.
12. The Proposer/Identified Contractor is either not subject to, or, if subject, has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2; has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that, where required, has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.
13. The Proposer/Identified Contractor will comply with the FHWA Buy America Requirements of 23 CFR 635.410, and the Build America, Buy America Act, Section 70913 *et seq.* of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, which permits FHWA participation in the Agreement as more fully described in the Agreement.
14. No federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer/Identified Contractor or its affiliates, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Proposer/Identified Contractor will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. The firm/entity for which the undersigned is making this certification also agrees that it shall require that the language of this certification be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

15. The Proposer/Identified Contractor is properly authorized under the laws of the State of Indiana to conduct business in this state; is duly registered with the Indiana Secretary of State to the extent required by Indiana law; and will remain in good standing to do business in the State of Indiana for the duration of the Agreement.
16. The Proposer/Identified Contractor is not delinquent on any state taxes or fees owed to the State of Indiana and will remain in good standing for the duration of the Agreement.
17. [If selected as the Apparent Best Value Proposer, the Proposer shall endeavor to negotiate mutually acceptable Contract Documents with the Department.] ***NTD: applicable only to the Proposer***

The Proposer/Identified Contractor agrees and acknowledges that, pursuant to IC § 8-23-9.5(27), it is a Class C infraction for a party to make a false statement regarding its financial worth in the Proposal or other written instrument filed by the Proposer with the Department in connection with this procurement. Any party convicted of violating such prohibition will be disqualified from submitting bids on contracts advertised for letting by the Department for a period of two years following the date of conviction.

[signature on succeeding page]

Under penalty of perjury, I certify that the foregoing is true and correct and that I am duly authorized to attest to these statements on behalf of the Proposer/Identified Contractor.

Signature

Date

Type or print name

Title of Officer signing

Name of Company

FORM C

KEY PERSONNEL HOURLY RATES *[NTD: INDOT to determine Key Personnel roles on a project by project basis]*

Proposer Name _____

| Key Personnel | Fully-Loaded Hourly Rates | Total Hours |
|---|----------------------------------|--------------------|
| Project Manager | \$[_____].00/hour | |
| Construction Manager | \$[_____].00/hour | |
| <i>[Design Manager]</i> <i>[NTD: delete for CM/GC]</i> | \$[_____].00/hour | |
| Lead Estimator | \$[_____].00/hour | |
| Geotechnical Lead | \$[_____].00/hour | |
| <i>[Structure Design Lead]</i> <i>[NTD: delete for CM/GC]</i> | \$[_____].00/hour | |
| Environmental Compliance Manager | \$[_____].00/hour | |

FORM D

IDENTIFIED CONTRACTORS

Instructions: Provide the information below for all Identified Contractors (as defined in RFP Section 1.1).

| Name of Entity and Contact Information (head office address, representative, phone, fax, email) | DBE (Y/N) | Description of Work/Services To Be Performed By Entity |
|--|------------------|---|
| | | |
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| | | |
| | | |
| | | |
| | | |

FORM E
FIRM EXPERIENCE

PROPOSER:

Instructions: Provide firm experience for no more than three projects for [each of the Lead Designer and][**NTD: delete for CM/GC**] [the] Lead Contractor. One Form E shall be completed for each project. This form may be modified; however, the information shall be presented in the order requested and prompts shall be conspicuous to facilitate review. The page limit for each project is two pages.

Name of Firm: _____

[Affiliation: Lead Contractor: _____ Lead Designer: _____

*If the Lead Contractor and Lead Designer are a joint venture, check both. **NTD: delete for CM/GC**

Name of Client (Owner/Agency, Contractor, etc.): _____

Client Contact Information:

Name: _____ Telephone: _____ Email: _____

Project name, location, description, and nature of work for which firm was responsible:

Project Status (as of Proposal Date):

Project Delivery Method: _____

Project Cost (US\$): _____

Work Performed Date: From: _____ To: _____

Describe major risks or challenges encountered during design/construction and strategies implemented to resolve/mitigate these items:

Describe use of innovative designs, methods, or materials:

Highlight the Key Personnel and their role in reference project:

Provide the following information for the referenced project:

Percent of Total Work Performed by Firm (% design or % construction): _____

Value of Liquidated Damages and Claims: _____

Any Litigation against Firm? Yes ___ No ___

FORM F

KEY PERSONNEL EXPERIENCE¹

[NTD: INDOT to determine Key Personnel roles on a project by project basis]

Instruction: The Proposer shall complete for each Key Personnel position indicated below.

PROPOSER:

| Position | Name | Years of Experience | License / Certification* |
|--|-------------|----------------------------|---------------------------------|
| Project Manager | | | |
| Construction Manager | | | |
| Design Manager | | | |
| Lead Estimator | | | |
| Geotechnical Lead | | | |
| Structure Design Lead | | | |
| Environmental Compliance Manager | | | |
| *Include professional license number where applicable. | | | |

¹ **NTD – these are fairly standard key personnel roles and role description to be tailored as necessary for each project. See note at RFP Section 4.2.2.3**

| [Key Personnel Name] | | [Key Personnel Position] |
|---|---|--|
| Experience #1 | Project Name | |
| | Delivery Method | |
| | Position Title | |
| | Time in this position | From [year] / [month] to [year] / [month] equals total of _____ years _____ months |
| | Average number of hours worked per week on Project | |
| | Project Description (include construction value) | |
| | Detailed description of project responsibilities related to position title | |
| | Explanation regarding the relevance of this experience to the minimum qualifications for the Key Personnel position | |
| | Project Representative (list name, phone number, and email address of owner representative for listed project) | |
| [Copy and paste Experience as needed to demonstrate Key Personnel experience meeting the minimum requirements set forth in the RFP.] | | |
| Education | List all formal education, certifications, registrations, and other credentials relevant to the Key Personnel role | Institution, date, expiration (if applicable) |
| Summary of Experience | Total number of years and months of experience in a position relevant to experience required for the Key Personnel position | |

FORM G

PROPOSER QUESTIONS

| No. | Document (RFP, Agmt) | Section | Question/Comment |
|-----|-------------------------|---------|------------------|
| | | | |
| | | | |

FORM H

FORM OF COMMITMENT LETTER

Instructions: The Proposer shall complete this Form H for each Key Personnel position.

[DATE]

Indiana Department of Transportation

[NTD – insert Director of Major Projects information below]

Attn: [name]

Director of Major Projects

[physical address]

E-mail: [project-specific email address]@indot.IN.gov

RE: [] Project – Key Personnel Commitment Letter

[],

[KEY PERSONNEL FIRM] commits that, if Department awards the [] Project to [PROPOSER], [KEY PERSONNEL NAME] will be dedicated to the Project as the [KEY PERSONNEL ROLE].

Signature

Title

Typed or Printed Name

Date

I, [KEY PERSONNEL NAME], certify that after Notice to Proceed, I will be committed to the Project during the tenure of my employment with [KEY PERSONNEL FIRM], and available as required to ensure the successful completion of the Project as the [KEY PERSONNEL ROLE].

Signature

Title

Typed or Printed Name

Date

In the table below, provide the percent level of the Key Personnel’s time that will be dedicated to the Project. Completing the explanation column is not required, but, if included, should be brief.

| Preconstruction Phase | Construction Phase | Explanation |
|------------------------------|---------------------------|--------------------|
| | | |

FORM I

PREQUALIFICATION IDENTIFICATION

[This form will be used to provide information about the team members, as of the Proposal Due Date, required for the Proposer team to satisfy the Prequalification Work Type Certification requirements set forth in RFP Section 3.5.1.]

Proposer Name _____

| RFP Section Cross-Reference | Prequalification Work Type | Proposer Team Member Satisfying Prequalification |
|------------------------------------|-----------------------------------|---|
| <u>Section 3.5.1(1)</u> | | |
| <u>Section 3.5.1(2)</u> | | |

FORM J
PROPOSAL BOND

Bond No. _____

[NTD: insert project specifics in blanks where applicable]

KNOW ALL PERSONS BY THESE PRESENTS, that the [_____] ***[NTD: insert name of Proposer as the Principal]***, as Principal and [_____], as Surety or as Co-Sureties, a [corporation] ***[NTD: replace as need be to reflect surety/co-sureties organization form]*** duly organized under the laws of the State of Indiana, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and authorized as a surety in the State of Indiana, are hereby jointly and severally held and firmly bound unto the Indiana Department of Transportation (the "Obligee"), in the sum of \$[_____] ***[NTD: insert amount and delete this bracketed text; amount must be \$[_____] if a single bond is provided; multiple bonds in lesser amount may be provided if the sum equals \$[_____]]*** (the "Bonded Sum"). This Bonded Sum reflects [a portion of] ***[NTD: delete bracketed language if a single bond is provided]*** the total amount payable to the Obligee by the Principal if it is identified as the "Apparent Best Value Proposer" or awarded a contract based on its Proposal for the development[, design] and ***[NTD: delete bracketed language for CM/GC projects]*** construction of the [_____] Project (the "Project"), for the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is herewith submitting its Proposal to develop[, design,] ***[NTD: delete bracketed language for CM/GC projects]*** and construct the Project through a [Progressive Design Build] [Construction Manager/General Contractor] ***[NTD: delete inapplicable form]*** Agreement (the "Agreement"), which Proposal is incorporated herein by this reference and has been submitted pursuant to the Obligee's Request for Proposals dated as of [_____], 202[], as amended or supplemented (the "RFP") (capitalized terms not otherwise defined herein shall have the meaning set forth in the RFP);

NOW, THEREFORE:

1. The condition of this bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to the Obligee as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from the Obligee:
 - (a) Principal's receipt of written notice from the Obligee that either (i) no Agreement for the Project will be awarded by the Obligee pursuant to the RFP, or (ii) the Obligee has awarded an Agreement for the Project, has received the executed Agreement and other required documents, and does not intend to award the Agreement to Principal;
 - (b) Except as expressly provided otherwise in the RFP and/or agreed to by the Obligee in writing, Principal's satisfaction of its obligations to achieve commercial close in accordance with the requirements of the RFP; or

- (c) If the Department has not previously delivered notice of forfeiture hereunder, the expiration of the Proposal Validity Period.
- 2. The Principal and the Surety or Co-Sureties hereby agree to pay to the Obligee the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after occurrence of any occurrences in Section 4.3.2.1 (*Events of Proposal Security Forfeiture*) of the RFP.
- 3. Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate the Obligee for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Obligee's transportation improvement program, including with policy makers and with the general public, delays to the Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). Principal further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that the Obligee would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Principal.
- 4. The following terms and conditions shall apply with respect to this bond:
 - (a) This Proposal Bond shall not be subject to forfeiture in the event that the Obligee disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.
 - (b) If suit is brought on this bond by the Obligee and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by the Obligee in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
 - (c) Any extension(s) of the time for award of the Agreement that Principal may grant in accordance with the Agreement or otherwise, shall be subject to the reasonable approval of Surety or Co-Sureties.
 - (d) Correspondence or claims relating to this bond should be sent to Surety at the following address:

SIGNED and SEALED this _____ day of _____, 202[].

Principal (full legal name):

Address:

By:

Contact Name:

Phone: ()

Surety (full legal name):

Address:

By:

Contact Name:

Phone: ()

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

FORM K

OTHER DEPARTMENT REQUIREMENTS⁴

Form K-1 Drug-Free Workplace Certification

Form K-2 Employment Eligibility Verification

Form K-3 No Investment in Iran Affidavit

Form K-4 Non-Collusion Affidavit

Form K-5 [_____]

⁴ Forms related to the following to be developed or substance converted to covenants by Ballard and INDOT Counsel:

- Employment Eligibility Verification
- No Investment in Iran
- Equal Opportunity – Title VI
- Active/pending contract balances (APB) (under discussion)
- AAC in context of DBE or MBE/WBE/IVOSB (under discussion)

FORM K-1

Drug-Free Workplace Certification

[TO BE COMPLETED BY PROPOSER AS "PROGRESSIVE CONTRACTOR"]

Capitalized terms have the meanings ascribed in that certain Agreement, by and between [_____] , as "Progressive Contractor" and the Indiana Department of Transportation, as "Department" with respect to the [_____] project (the "Agreement").

As required by Executive Order No. 90-5, dated April 12, 1990, issued by the Governor of the State of Indiana, the Progressive Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Progressive Contractor will give written notice to the Department within ten days after receiving actual notice that Progressive Contractor or an employee of Progressive Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the Agreement and/or debarment of contracting opportunities with the State of Indiana for up to 3 years.

In addition to the provisions of the above paragraphs, if the total amount set forth in the Agreement is in excess of \$25,000.00, Progressive Contractor certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Progressive Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Progressive Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify Progressive Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

D. Notifying the Project Sponsors and the Indiana Department of Administration in writing within 10 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within 30 days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

The undersigned affirms, under penalty of perjury that he or she is authorized to execute this Certification on behalf of Progressive Contractor.

Dated _____

Progressive Contractor

By: _____

Name: _____

Title: _____

FORM K-2

Employment Eligibility Verification

[insert]

FORM K-3

No Investment in Iran Affidavit

[insert]

FORM K-4

Non-Collusion Affidavit

[TO BE COMPLETED BY PROPOSER AND EACH IDENTIFIED CONTRACTOR]

STATE OF _____)
) SS:
COUNTY OF _____)

[Each of t]/[T]he undersigned, being first duly sworn, deposes and says that:

A. [] is the [] of [] [and [] is the [] of []], which entit[y is]/[ies are] the [] of [], the entity giving a "Proposal" under that certain Request for Proposals to [design and]/***NTD: unbracket for CM/GC only*** construct the [] project through a [progressive design-build agreement]/[construction manager/general contractor agreement]/***NTD: delete inapplicable delivery method***

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against the Indiana Department of Transportation or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. Proposer will not, directly or indirectly, divulge information or data regarding the terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

Subscribed and sworn to before me this _____ day of _____, 2023.

Notary Public in and for
said County and State

[Seal]

My commission expires: _____ .:

[Duplicate or modify this form as necessary so that it accurately describes (i) the entity making the Proposal and so that it is signed by and on behalf of all partners, members, joint venture members, and (ii) each Identified Contractor]

FORM K-5

[_____]