

FINAL

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

RFP SOLICITATION #: 3513R16

REQUEST FOR PROPOSALS

**TO DESIGN, BUILD, FINANCE AND MAINTAIN
THE PENNSYLVANIA RAPID BRIDGE REPLACEMENT PROJECT
THROUGH A PUBLIC-PRIVATE TRANSPORTATION PARTNERSHIP AGREEMENT**

**A PROJECT OF THE
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

August 12, 2014

**Pennsylvania Department of Transportation
400 North Street
Harrisburg, Pennsylvania 17120**

AS AMENDED BY:

ADDENDUM NO. 1 (DATED AUGUST 26, 2014)

ADDENDUM NO. 2 (DATED SEPTEMBER 5, 2014)

ADDENDUM NO. 3 (DATED SEPTEMBER 16, 2014)

ADDENDUM NO. 4 (DATED SEPTEMBER 24, 2014)

ALLEN & OVERY

Allen & Overy LLP

Pennsylvania Department of Transportation
Rapid Bridge Replacement Project:
Instructions to Proposers

CERTAIN KEY DATES

EVENT	DATE
Issuance of First Industry Review Draft of RFP Documents	April 4, 2014
Issuance of Second Industry Review Draft of RFP Documents	May 16, 2014
Issuance of Third Industry Review Draft of RFP Documents	June 3, 2014
Issuance of Fourth Industry Review Draft of RFP Documents	June 30, 2014
Issuance of Draft Final RFP	July 3, 2014
Last Date for Issuance of Final RFP	August 12, 2014
Proposal Due Date	September 29, 2014
Anticipated Date of Announcement of Preferred Proposer	October 31, 2014
Commercial Closing Deadline (unless extended pursuant to Section 1.7(c) (<i>Commercial Closing Deadline and Financial Closing Deadline</i>))	December 16, 2014

CONTENTS

Sections	Page
1. Introduction and General Provisions	1
2. Procurement Process	16
3. Alternative Technical Concept Reviews	30
4. Requirements for Submittal of Proposals and Acceptance of Delivery by the Department.....	38
5. Evaluation and Post-Selection Process.....	45
6. Award and Execution; Post-Execution Actions	64
7. Protests	68
8. Department Rights and Disclaimers.....	69

EXHIBITS

Exhibit 1	Definitions and Acronyms
Exhibit 2	Technical Proposal Instructions
Exhibit 3	Financial Proposal Instructions
Exhibit 4	Required Forms
Exhibit 5	Summary and Order of Proposal Contents

FORMS

Form A	Proposal Letter
Form B-1	Identification of Proposer and Equity Members
Form B-2	Information About Proposer Organization
Form B-3	Information About Major Participants and Identified Contractors
Form C	Responsible Proposer and Major Participant Questionnaire
Form D	Industrial Safety Record for Equity Members and Major Participants
Form E	Personnel Work Assignment Form and Commitment of Availability
Form F	Non-Collusion Affidavit
Form G	Buy America Certification
Form H	DBE Pledge
Form I	Conflict of Interest Disclosure Statement
Form J-1	Financial Price Proposal Form–Milestone & Availability Payments
Form J-2	Financial Price Proposal Form–Present Value Calculation
Form K-1	Form of Proposal Security (Proposal Letter of Credit)
Form K-2	Form of Proposal Security (Proposal Demand Guarantee)
Form L-1	Summary Cost Table Form
Form L-2	Unit Price Information
Form M	Financial Plan Summary
Form N	Equal Employment Opportunity Certification
Form O	Use of Contract Funds for Lobbying Certification
Form P	Debarment and Suspension Certification
Form Q	Form of Waiver and Release Re: Stipend
Form R	RFP Comment Form
Form S	Form of Stipend Agreement

FINAL

Form T Independent Insurance Broker/Consultant Letter

INSTRUCTIONS TO PROPOSERS

(Request for Proposals: The Pennsylvania Rapid Bridge Replacement Project)

1. INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (**RFP**) is issued by the Pennsylvania Department of Transportation (the **Department**), an administrative department of the Commonwealth of Pennsylvania (the **Commonwealth**), to seek competitive proposals (each, a **Proposal** and collectively, **Proposals**) to enter into a Public-Private Transportation Partnership Agreement (**PPA**) as more fully described in this RFP and the Project Documents.

The PPA provides that the Development Entity shall design, build, finance and maintain a replacement of each bridge identified in the PPA (each, a **Replacement Bridge** and collectively, the **Project**) pursuant to the terms of PPA. The form of the PPA, together with the other Project Documents, is set forth in Volume II of the RFP.

The Department is issuing the RFP to those proposers shortlisted on March 26, 2014 (each, a **Proposer** and collectively, the **Proposers**), based on the Department's evaluation of Statements of Qualification (**SOQs**) delivered to the Department on or before February 7, 2014, in response to the Request for Qualifications for the Project issued on December 12, 2013 (as amended, the **Request for Qualifications** or **RFQ**).

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

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

1.2 Department Goals

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

- (a) expedite delivery of the Replacement Bridges;
- (b) design, build, and maintain each Replacement Bridge using high-quality, cost-effective and sustainable technical solutions;
- (c) design, build, and maintain each Replacement Bridge in an environmentally sound manner that ensures the safety of the traveling public and minimizes environmental impacts;
- (d) minimize the duration of public inconvenience during construction and maintenance of each Replacement Bridge;

FINAL

- (e) undertake all work on a whole-life management basis to ensure that each Replacement Bridge is handed back to the Department in a suitable condition upon termination of the PPA; and
- (f) minimize the cost and funds required to design, build, finance, and maintain the Project.

1.3 The Stakeholders

The Project may necessitate coordination with Stakeholders. For purposes of this RFP, **Stakeholder** means any Person that may have a stake in the Project by virtue of its location or funding other than the Department, including such Person's officers, directors, and employees and each of the following Persons:

- (a) Pennsylvania Economic Development and Finance Authority (**PEDFA**);
- (b) Pennsylvania Department of Conservation & Natural Resources (**DCNR**);
- (c) Pennsylvania Department of Environmental Protection (**DEP**);
- (d) Pennsylvania Historic and Museum Commission (**PHMC**);
- (e) Pennsylvania Fish & Boat Commission (**PFBC**);
- (f) Pennsylvania Game Commission (**PGC**);
- (g) Federal Highway Administration (**FHWA**);
- (h) US Army Corps of Engineers (**USACOE**);
- (i) US Environmental Protection Agency (**EPA**);
- (j) US Fish & Wildlife Service (**USFWS**);
- (k) Pennsylvania Association of Conservation Districts (**PACD**);
- (l) US Department of Transportation Secretary's Office (**USDOT Secretary's Office**);
- (m) US Department of Transportation Innovative Program Office (**USDOT Innovative Program Office**);
- (n) Pennsylvania Public Utilities Commission (**PPUC**);
- (o) any political subdivision of the Commonwealth or local government body or locality within the Commonwealth, in which a Replacement Bridge is located; and
- (p) any other Persons specifically identified as Stakeholders by the Department.

1.4 Project Overview

The Project contemplates the design, construction, financing and maintenance of the Replacement Bridges.

The Project is expected to create efficiencies through economies of scale, innovation and optimal risk-allocation that will allow the Department to deliver more bridges faster at a lower whole-life cost than is possible when using a traditional "design, bid, build" procurement. The Project will also help improve the connectivity of the Commonwealth's transportation network, while minimizing the impacts on the traveling public. The improved connectivity, including removal or modification of certain weight restrictions on certain Replacement Bridges, will increase the efficiency of freight and commercial movements, which benefits the economy of the Commonwealth. The Department will seek innovative solutions from the Development Entity that is challenged with delivering quality bridges on a large scale as quickly as possible, while providing good value and minimal inconvenience to the public.

(a) Scope of Work

The Development Entity will design, build, finance and maintain the Project in return for Availability Payments, Milestone Payments and the Mobilization Contribution as described in the PPA. A specific description of the Development Entity's scope of work is contained in the Technical Provisions (Volume II, Project Documents). The Development Entity shall be authorized to commence and undertake the Work pursuant to each notice to proceed described in the PPA. Each such notice to proceed includes schedule requirements and limitations concerning the implementation of the Work.

(i) Early Completion Bridges

The Appendix to Section 10 (*Roadway and Pavement*) of the Technical Provisions sets forth a list of Replacement Bridges referred to as the **Early Completion Bridges**. In the interest of supporting accelerated delivery of the Early Completion Bridges, the Department will assume pursuant to the PPA certain responsibilities and risks with respect to the environmental clearance and permitting of the Early Completion Bridges, as further described in Section 1.4(b) (*Certain Environmental and Permitting Matters*). The Early Completion Bridges are situated in two clusters: the first cluster being located in the northeast part of the Commonwealth (District 3, District 4, and District 5 of the Department) and the second cluster being located in the southwest part of the Commonwealth (District 10, District 11, and District 12 of the Department). For more information regarding the Early Completion Bridges, please see Volume III of the RFP.

(ii) Remaining Eligible Bridges

The Appendix to Section 10 (*Roadway and Pavement*) of the Technical Provisions sets forth a list of Replacement Bridges that are not Early Completion Bridges (the **Remaining Eligible Bridges**). For more information regarding the Remaining Eligible Bridges, please see Volume III of the RFP.

(iii) Substantial Completion

Pursuant to the PPA, the Development Entity will achieve Substantial Completion with respect to the Replacement Bridges by the Substantial Project Completion Deadline.

(b) **Certain Environmental and Permitting Matters**

Important environmental and permitting matters related to the Project are set forth in the PPA and the Technical Provisions. In general, and without limitation of terms set forth in the PPA, the Technical Provisions, or any other Project Document:

(i) Early Completion Bridges

- (A) NEPA: Each Early Completion Bridge is expected to conform with the scope of one or more bridge replacement projects "stipulated" by the Department and FHWA as qualified for a "categorical exclusion" under 23 CFR Part 771.117. As further provided in the PPA and Section 4 (*Environmental*) of the Technical Provisions, the Department will be responsible for qualifying on or before March 31, 2015, each Early Completion Bridge for a categorical exclusion under NEPA (each, a **CE**) on the basis of the dimensions, characteristics, and impacts of the conceptual designs and "areas of potential effect" (**APE**) associated with each Early Completion Bridge provided to Proposers pursuant to Section 1.4(b)(i)(D).
- (B) Other Department Obtained Governmental Approvals: As further provided in the PPA and Section 4 (*Environmental*) of the Technical Provisions, the Department will be responsible for procuring on or before March 31, 2015, all other Department Obtained Governmental Approvals required for each Early Completion Bridge on the basis of the dimensions and characteristics of the conceptual designs and APEs associated with each Early Completion Bridge provided to Proposers pursuant to Section 1.4(b)(i)(D).
- (C) Non-Compliance: As provided in the PPA and the Technical Provisions, to the extent that any Proposal with respect to an Early Completion Bridge deviates from the basis on which the CE or any other Department Obtained Governmental Approval for such Early Completion Bridge was granted or approved, the Development Entity will be responsible for procuring (x) the NEPA clearance of such Early Completion Bridge, and (y) any other Department Obtained Governmental Approvals needed to undertake the Work with respect to such Early Completion Bridge. Please see Section 4 (*Environmental*) of the Technical Provisions.
- (D) Information: The dimensions, characteristics and impacts of the conceptual design and the APE associated with an Early Completion Bridge that form the basis of any Department Obtained Governmental Approval issued for such bridge (including a CE for such bridge) are referred to collectively as the **ECB Permit Constraints**. It is the Department's expectation that Proposers will propose a replacement for each Early Completion Bridge that complies with the

ECB Permit Constraints for such Early Completion Bridge. However, because some or all of the relevant Government Approvals for Early Completion Bridges may not be obtained early enough in the procurement for purposes of Proposal preparation, on or before the relevant date set forth in Section 1.7(a) (*Procurement Schedule*), the Department will issue an Addendum setting forth the ECB Permit Constraints for each Replacement Bridge.

(ii) Remaining Eligible Bridges

As set forth in Article 5 (*Governmental Approvals; Utilities*) of the PPA, Section 7.1(c) (*NEPA Compliance*) of the PPA, and Section 4 (*Environmental*) of the Technical Provisions, and subject to the terms thereof, the Development Entity will be responsible for (A) performing certain activities, in conjunction with the Department, with respect to the NEPA clearance of each Remaining Eligible Bridge, and (B) procuring any other Governmental Approvals needed to undertake the Work with respect to each Remaining Eligible Bridge.

(iii) No Prejudice to NEPA

Proposers should be aware that final NEPA environmental approvals and related requirements have not yet been secured for any of the Replacement Bridges as of the date hereof. Nothing contained in this RFP is intended to modify, limit, or otherwise constrain the NEPA process or commit the Department or any other entity to undertake any action with respect to the Project under the NEPA process, including any procurement or the final design and construction of the Project.

(c) **Investigations of Project Sites**

The Department is conducting investigations of the Project Sites. The Department will provide the preliminary results of such investigations to the Proposers as Disclosed Information. For the avoidance of doubt, such results constitute Disclosed Information pursuant to the PPA.

(d) **Utilities**

As provided in Section 5.2 (*Utilities*) of the PPA and Section 6 (*Utilities*) of the Technical Provisions, the Development Entity shall be responsible for coordinating and causing all Utility Relocations necessary in order to comply with its obligations under the Project Documents. The Department intends to organize an informational forum with the PPUC for all Proposers concerning the Project.

(e) **Right-of-way**

As provided in the PPA and Section 7 (*Right-of-Way*) of the Technical Provisions, the Department will be responsible for acquiring at its own expense the right-of-way that comprises the Project Site of each Replacement Bridge. On or before the relevant date set forth in Section 1.7(a) (*Procurement Schedule*), the Department will issue an Addendum to the RFP that sets forth a draft of the Construction Limits of each Early Completion Bridge. Subject to the final right-of-way plan for the Early Completion Bridges delivered by the Department to the

Development Entity in accordance with Section 7 (*Right-of-Way*) of the Technical Provisions, the Department will acquire the right-of-way that comprises the Construction Limits for each Early Completion Bridge on or before March 31, 2015. Please see Section 7 (*Right-of-Way*) of the Technical Provisions for more information regarding the acquisition of right-of-way for the Project.

(f) **Milestone Payments**

On or before the relevant date designated in Section 1.7(a) (*Procurement Schedule*), the Department will issue an Addendum setting forth the amount available as the Maximum Milestone Payments. Please see Section 14.1 (*Mobilization Fund and Milestone Payments*) of the PPA for more information regarding the Maximum Milestone Payments.

1.5 Documents in the Request for Proposals

The RFP consists of the following volumes, and any other documents that may be issued by Addendum, as such documents may be amended and supplemented in accordance with the terms hereof and thereof, as applicable (collectively, the **RFP Documents**):

Volume I—this ITP (including Exhibits and forms);

Volume II—the Project Documents; and

Volume III—the Disclosed Information.

Please see Section 1.2 (*Project Documents; Order of Precedence*) of the PPA for a list and the order of precedence of the Project Documents and Volume III for the Disclosed Information.

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

Except as may be expressly provided otherwise in the Project Documents, the Department shall not be responsible or liable in any respect for any causes of action, suits, judgments, claims, expenses, damages or losses whatsoever suffered by any Proposer by reason of (i) any use, in connection with participation in this procurement, of information, opinions or recommendations contained in the Disclosed Information, or (ii) any action or forbearance in reliance on the Disclosed Information. Although the Disclosed Information may include interpretations, extrapolations, analyses and recommendations concerning data, design solutions, technical issues and solutions and construction means and methods, such interpretations, extrapolations, analyses and recommendations are (A) preliminary in nature and may be obsolete, (B) not intended to express the views or preferences of the Department or any other Governmental Entity or represent any statement of approval or acceptance thereof by the Department or any other Governmental Entity, and (C) not intended to form the basis of a Proposer's design solutions, technical solutions or construction means and methods. Proposers shall use or not use the Disclosed

Information at their sole risk and remain solely responsible and liable for (x) all investigations and analyses relating to the Project, including those relating to any geotechnical conditions, Utilities, structures or bridge design with respect to any Project Site, (y) the preparation of their Proposals, and (z) any design and construction solutions, means, and methods that they select, in each case, without regard to anything contained in the Disclosed Information.

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

Nothing contained in this Section 1.5 (*Documents in the Request for Proposals*) is intended to diminish or derogate from the rights of the Development Entity for compensation or time relief in connection with Compensation Events or Relief Events pursuant to Article 12 (*Supervening Events*) of the PPA (or any other right of the Development Entity under the Project Documents).

1.6 Definitions and Acronyms

Refer to Exhibit 1 (*Definitions and Acronyms*) hereto for the meaning of various capitalized terms and acronyms used but not defined herein, and refer to Schedule 1 (*Definitions*) to the PPA for the meaning of capitalized terms and acronyms used but not defined herein or in said Exhibit 1 (*Definitions and Acronyms*).

1.7 Procurement Schedule, Address for Proposal Delivery and Certain Deadlines

(a) Procurement Schedule

The following represents the current schedule for the procurement:

EVENT	DATE and TIME
Issuance of First Industry Review Draft of RFP Documents	April 4, 2014
One-on-One Meetings re: Draft RFP Documents	Week of April 21, 2014
One-on-One Meetings re: Draft Technical Provisions	Week of May 5, 2014
Issuance of Second Industry Review Draft of RFP Documents	May 16, 2014
One-on-One Meetings re: Draft Technical Provisions	Week of May 19, 2014
One-on-One Meetings re: Draft RFP Documents	Week of May 27, 2014
Issuance of Third Industry Review Draft of RFP Documents	June 3, 2014
One-on-One Meetings re: Draft RFP Documents	Week of June 16, 2014
Issuance of Fourth Industry Review Draft of RFP Documents	June 30, 2014

EVENT	DATE and TIME
One-on-One Meetings re: ATCs	June 25, 2014
Issuance of Draft Final RFP	July 3, 2014
Last date for submittal of qualifications of Lead Underwriter(s) pursuant to Section 1.9(b)(i) (<i>USDOT Private Activity Bonds</i>)	July 3, 2014
Last date for Department to issue Addendum setting forth the available Maximum Milestone Payment amounts and schedule for payment per Section 1.4(f)	July 14, 2014
One-on-One Meetings re: Draft Final RFP Documents	Week of July 14, 2014
Last date for submittals of Formal ATCs	August 11, 2014, at 1:00 p.m. Eastern Daylight Time
Last date for Issuance of Final RFP	August 12, 2014
Last date for Department responses to Formal ATCs	August 25, 2014
Last date for Department to publish Design Exceptions approved by FHWA and the Department, as applicable	August 25, 2014
Last date for Department to provide applications for Department Obtained Governmental Approvals comprising the ECB Permit Constraints for each Early Completion Bridge per Section 1.4(b)(i)(D)	Setting Date
Last date for Department to provide information concerning Utilities	Setting Date
Last date for Department to issue a draft of the Construction Limits for each Early Completion Bridge per Section 1.4(e)	Setting Date
Last date for submittal of questions by Proposers regarding Final RFP	August 29, 2014, at 1:00 p.m. Eastern Daylight Time
Last date for submittal of Model Auditor information to the Department	September 5, 2014, at 1:00 p.m. Eastern Daylight Time
Last date for submittal of Pre-Proposal Submittals contemplated by Section 2.11(a) (<i>Changes in Proposer's Organization</i>), Section 2.11(b) (<i>Changes in Key Personnel</i>), and Section 2.11(c) (<i>New Key Personnel Positions Identified Following RFQ</i>)	September 9, 2014, at 1:00 p.m. Eastern Daylight Time
Last date for submittal of suggested value of the Base Benchmarked Insurance Cost per Section 1.10(a) (<i>Insurance</i>)	September 15, 2014, at 1:00 p.m. Eastern Daylight Time
Last date for submittal of Pre-Proposal Submittals (other than submittal of Benchmark Rates, Credit Spreads, and updated Bank Debt Financing Benchmark Rates amortization	September 15, 2014, at 1:00 p.m. Eastern Daylight Time

EVENT	DATE and TIME
schedules) not required to be submitted by earlier date hereunder	
Submittal of names and data sources of the benchmarks for the Benchmark Rates to be submitted to the Department per Section 5.10 (<i>Finalization</i>)	September 15, 2014, at 10:00 a.m. Eastern Daylight Time
Submittal of Benchmark Rates and Credit Spreads per Section 5.10 (<i>Finalization</i>)	September 16, 2014, at 10:00 a.m. Eastern Daylight Time
Department notification regarding Benchmark Rates and Credit Spreads per Section 5.10 (<i>Finalization</i>)	September 19, 2014, at 10:00 a.m. Eastern Daylight Time
Last date for Department to respond to Pre-Proposal Submittals (other than Submittal of Benchmark Rates, Credit Spreads, and Updated Bank Debt Financing Benchmark Rates amortization schedules) not requiring an earlier Department response pursuant to the RFP	September 22, 2014, at 1:00 p.m. Eastern Daylight Time
Last date for submittal of Updated Bank Debt Financing Benchmark Rates amortization (drawdown and repayment) schedules and Benchmark Rates based on the September 16, 2014 pricing data per Section 5.10(c) (<i>Market Interest Rate Adjustment</i>)	September 26, 2014, at 10:00 a.m. Eastern Daylight Time
Last date for Department notification regarding Updated Bank Debt Financing Benchmark Rates amortization (drawdown and repayment) schedules per Section 5.10(c) (<i>Market Interest Rate Adjustment</i>)	September 27, 2014, at 1:00 p.m. Eastern Daylight Time
Proposal Due Date	September 29, 2014, at 1:00 p.m. Eastern Daylight Time
Anticipated Announcement of Preferred Proposer	October 31, 2014
Commercial Closing Deadline (unless extended pursuant to Section 1.7(c) (<i>Commercial Closing Deadline and Financial Closing Deadline</i>))	December 16, 2014, at 1:00 p.m. Eastern Daylight Time
Anticipated date of Financial Close (for reference only, as terms and conditions governing Financial Close are set forth in the PPA)	90 days after Commercial Closing Deadline

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

(b) **Address for Proposal Delivery**

The completed Proposal shall be submitted and delivered in sealed containers no later than the Proposal Due Date and time specified in Section 1.7(a) (*Procurement Schedule*). The Proposals are to be delivered to the Department at the following address:

Office of Policy & Public Private Partnerships
Pennsylvania Department of Transportation
P.O. Box 35345
400 North Street, 8th Floor
(5th floor reception if hand delivered)
Harrisburg, PA 17120-3545
Attention: Bryan Kendro

(c) **Commercial Closing Deadline and Financial Closing Deadline**

If any Proposer is selected as the Preferred Proposer for negotiation, finalization and execution of the PPA, such Proposer shall be required, on or before the Commercial Closing Deadline set forth in Section 1.7(a) (*Procurement Schedule*) (the **Commercial Closing Deadline**) (as the same may be extended pursuant to this Section 1.7(c) (*Commercial Closing Deadline and Financial Closing Deadline*)) to (i) execute and deliver to the Department the PPA and (ii) satisfy each of the DE Conditions Precedent. If notification of Preferred Proposer does not occur on or before the 45th day before the Commercial Closing Deadline, then the Commercial Closing Deadline shall automatically be extended on a day-for-day basis for each day such notification is made after the 45th day before the Commercial Closing Deadline. In addition, the Department may extend the Commercial Closing Deadline in its sole discretion by Addendum. Notwithstanding the foregoing of this Section 1.7(c) (*Commercial Closing Deadline and Financial Closing Deadline*), in no event may the Commercial Closing Deadline be extended pursuant to this Section 1.7(c) (*Commercial Closing Deadline and Financial Closing Deadline*) to a date that is beyond the Proposal Validity Period.

If any document executed and delivered to the Department by the Preferred Proposer (or an entity organized as the Development Entity by the Preferred Proposer) pursuant to Section 6.1(b) (*Documents To Be Delivered by Preferred Proposer with Executed PPA*) is delivered prior to expiration of the protest period set forth in 62 Pa.C.S. § 1711.1(b), then such document shall be held in escrow by the Department. If no protest has been filed with respect to this procurement by the expiration of such period, and no action to contest the validity of the PPA is then pending, such documents shall be immediately released from escrow and shall be deemed delivered to the Department.

The Development Entity shall be required to achieve financial close on or before the Financial Closing Deadline as set forth in the PPA.

1.8 General Provisions Regarding Proposals

(a) **Proposal Contents**

As used in this procurement, the term Proposal means a Proposer's complete response to this RFP, including (i) a Technical Proposal, including a Preliminary Project Management Plan and properly completed Proposal forms, and (ii) a Financial Proposal, including a Financial Plan, Preliminary Financial Model, and properly completed Proposal forms.

Requirements for the Technical Proposal and the Financial Proposal are set forth in Exhibit 2 (*Technical Proposal Instructions*) and Exhibit 3 (*Financial Proposal Instructions*), respectively,

and a checklist showing the required contents of the entire Proposal is found in Exhibit 5 (*Summary and Order of Proposal Contents*). The Proposal shall be organized in the order listed in Exhibit 5 (*Summary and Order of Proposal Contents*), and shall be clearly indexed. Each Proposal component shall be clearly titled and shall be submitted without reservations, qualifications, conditions or assumptions set forth therein. Any failure to provide all the information and all completed forms in the format specified, or any submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions, may result in the Department's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms by the Proposer.

(b) Inclusion of Proposal in Project Documents

Proposers should note that portions of the Preferred Proposer's Proposal will become the *Development Entity's Proposal Commitments* and will be attached as Appendix 1 (*Development Entity's Proposal Commitments*) of the PPA (or otherwise made a part of the PPA as provided therein or herein), and shall be binding obligations of the Development Entity thereunder, including portions of the Proposer's:

- (i) Technical Proposal;
- (ii) Financial Plan;
- (iii) Preliminary Financial Model;
- (iv) Preliminary Project Baseline Schedule; and
- (v) such other portions of the Preferred Proposer's Proposal deemed by the Department to be relevant to the obligations of the Development Entity with respect to the Project.

(c) Commitments in the Proposal

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

(d) Ownership of Proposal; Applicability of Right-to-Know Law and P3 Records Provision

All documents submitted by the Proposer in response to the RFP shall become the property of the Department and will not be returned to the Proposer. Upon the Proposer's acceptance of the stipend payment offered by the Department, the Proposer grants the Department the non-exclusive, non-revocable, worldwide right to make or use Proposer's intellectual property (including but not limited to patents, inventions, concepts, ideas, methods, and processes submitted by or on behalf of the Proposer to the Department during the procurement and in connection with the Proposal). The right of the Department to make or use the Proposer's intellectual property shall be royalty-free. The Proposer acknowledges that the stipend payment

offered by the Department contains sufficient consideration for the Department's manufacture and use of the Proposer's intellectual property.

Subject to the exceptions specified herein and such Proposer's acceptance of the payment for work product, all written and electronic correspondence, Exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to the Department by any Proposer during this procurement process, whether included in the Proposal or otherwise submitted, shall become the property of the Department upon delivery to the Department and will not be returned to the submitting parties.

Proposers shall familiarize themselves with the provisions of 65 P.S. § 67.101 *et seq.* (the **Right-to-Know Law**), and 74 Pa.C.S. § 9111 (the **P3 Records Provision**). Unless otherwise qualified for exemption from disclosure therein, all materials submitted by Proposers shall be subject to disclosure pursuant to the Right-to-Know Law or the P3 Records Provision and any other laws and regulations applicable to the disclosure of documents submitted under this RFP. In no event shall the Department or any of its agents, representatives, consultants, directors, officers or employees be liable to any Proposer or any Proposer team member for the disclosure of any materials or information submitted in response to this RFP.

1.9 Certain Policy Requirements

The Project is being procured by the Department on terms intended to establish the eligibility of the Project for federal aid funds. Accordingly, the procurement documents and Project Documents require compliance with applicable federal law and FHWA regulations, including those set forth in Schedule 15 (*Additional Federal Requirements*) to the PPA. The Department reserves the right to modify the procurement process described herein to address any concerns, conditions or requirements of FHWA. Proposers will be notified of any such modifications.

(a) EEOC; DBE Requirements

The Department is an Equal Employment Opportunity (**EEO**) employer. Since the Project is being procured on terms intended to establish its eligibility for the use of federal-aid funds, the Department has determined that the federal Disadvantaged Business Enterprise (**DBE**) requirements set forth in Title 49 of the Code of Federal Regulations Part 26 (**Part 26**) shall apply to the D&C Work. To this end, the Department intends to administer the DBE goal, DBE good faith efforts, DBE assurances and DBE counting provisions of Part 26.

By applying the DBE program to the D&C Work, the Department intends to afford DBEs contracting opportunities to participate in such capacities as service providers, vendors, contractors, subcontractors, advisers and consultants. A "DBE" is a small for-profit business concern that complies with the definition of "Disadvantaged Business Enterprise" set forth in Section 26.5 of Part 26. A DBE must be certified by the Pennsylvania Unified Certification Program (**PA UCP**) and be a registered business partner with the Department. All responses to solicitations involving the use of DBEs shall be governed by all applicable federal regulations, including Part 26, as well as applicable requirements set forth in the Project Documents, including Attachment 9 (*Disadvantaged Business Enterprises*) of Schedule 15 (*Additional Federal Requirements*) to the PPA. The Department intends to organize an informational forum with the Department's DBE program personnel for all Proposers concerning the Project.

The Department has set forth the applicable DBE goal, DBE assurances, DBE good faith efforts, DBE counting, reporting, monitoring and oversight provisions in the PPA and intends to comply with the reporting requirements delineated in Section 26.11 of Part 26, including the *Uniform Report of DBE Awards or Commitments and Payments*. The Proposer's DBE compliance obligations, including its compliance obligations with respect to the D&C Work, are set forth in Attachment 9 (*Disadvantaged Business Enterprises*) of Schedule 15 (*Additional Federal Requirements*) and shall otherwise be governed by Part 26.

(i) DBE Contract Goal

The DBE contract goal for the Project is 7.0% of the D&C Contract Amount. With respect to the Maintenance Work, there is no DBE goal; however, the Development Entity will be required to use good faith efforts to encourage DBE participation in the Maintenance Work. As set forth in Section 3.2(i) (*DBE Pledge*) of Exhibit 2 (*Technical Proposal Instructions*), each Proposer shall submit a pledge to use good faith efforts to attain the DBE contract goal for the Project.

(ii) Preliminary Plan

In addition, as set forth in Section 4.1(b) (*Preliminary DBE Performance Plan*) of Exhibit 2 (*Technical Proposal Instructions*), each Proposer shall complete and submit a Preliminary DBE Performance Plan and the DBE pledge in the form set forth as Form H. Failure to provide such plan and such pledge shall be considered a material breach of the Proposal requirements and may render a Proposal non-responsive. The Preferred Proposer shall also be required to provide DBE commitments on the form required by the Department, since DBE contractors are identified in accordance with the approved Detailed DBE Performance Plan.

(iii) Detailed Plan

The Development Entity shall be required to submit to the Department a detailed DBE performance plan (the **Detailed DBE Performance Plan**), including for avoidance of doubt a DBE participation schedule, describing the methods to be employed for achieving the Department's DBE goals for the Project, including the Development Entity's exercise of DBE good faith efforts and complying with the requirements set forth in Attachment 9 (*Disadvantaged Business Enterprises*) to Schedule 15 (*Additional Federal Requirements*) of the PPA. The Detailed DBE Performance Plan shall be subject to review, comment and approval by the Department solely for conformity with the requirements set forth in the PPA as a condition precedent to the issuance of NTP1 and NTP3 (as applicable).

(b) **USDOT Private Activity Bonds; TIFIA Credit Assistance**

(i) USDOT Private Activity Bonds

USDOT has reserved a conditional allocation for the issuance of a principal amount of private activity bonds (**PABs**) for the Project in the amount of \$1.2 billion. The date of expiration of the allocation is July 1, 2015. Each Proposer may, but is not obligated to,

use the PABs allocation in its Financial Proposal. If the Preferred Proposer's Financial Proposal includes the use of PABs, PEDFA will serve as the conduit issuer of the PABs.

Ballard Spahr LLP has been appointed to act as bond counsel to PEDFA in connection with the issuance of PABs contemplated by this RFP. Except as otherwise set forth in the PPA, the Development Entity shall be responsible for payment of all fees, costs, and expenses incurred by PEDFA in connection with any PABs issuance. The Development Entity should be familiar with PEDFA's regulations and guidelines for acting as a "conduit issuer" of PABs that the Development Entity must satisfy as a condition to issuance of PABs by PEDFA. The Department will make this allocation available to provide for a portion of the financing for the Project, as set forth in the Preferred Proposer's Financial Proposal. A Proposer wishing to use PABs shall be solely responsible for obtaining ratings, bond counsel opinions and any proposed credit enhancement, an underwriting commitment or placement of PABs, as well as satisfying any conditions placed on the use of the allocation by USDOT or complying with any other requirements of state and federal tax laws.

If any Proposer intends to use PABs as part of its Financial Proposal, such Proposer's lead underwriter(s) (**Lead Underwriter(s)**) must be a nationally recognized firm with experience in transportation infrastructure finance, including experience in PABs financings of transportation infrastructure. The Proposer must obtain the Department's approval of its Lead Underwriter(s) prior to the Proposal Due Date in accordance with Section 2.4 (*Pre-Proposal Submittals*). The Proposer shall provide the qualifications of Proposer's Lead Underwriter(s) in advance of the Proposal Due Date no later than the date for submittal of such qualifications forth in Section 1.7(a) (*Procurement Schedule*) for such submission. The Proposer shall provide an original and seven copies of all information necessary for the Department to assess the qualifications of the Lead Underwriter(s). If any Proposer intends to use PABs' as part of its Financial Proposal, such Proposer shall specifically provide information regarding the experience of the Lead Underwriter(s) with PABs and transportation infrastructure finance.

The Department makes no representation as to the amount, if any, of PABs that can be issued for the Project or the use of proceeds to finance the Project as a matter of federal tax law. Proposers should seek the advice of their own tax consultants. Should a Proposer elect to include PABs in its Financial Proposal, then except to the extent set forth in the ITP and PPA, it does so at its own risk and cost, and the Department shall have no liability with respect thereto. Each Proposer shall be solely responsible for procuring any increase in the PABs allocation from USDOT that such Proposer may require as part of its Financial Plan.

(ii) TIFIA Credit Assistance

The Department does not intend to apply for TIFIA credit assistance in support of the Project, but reserves the right to make such application on behalf of the shortlisted Proposers.

(c) **Public Funding**

Proposers should be aware that, except with respect to those sources of funds, if any, that are available for payments required to be made by the Department under the PPA that as a matter of law are not subject to appropriations, the Department's obligations to provide funding under the PPA are subject to the appropriation of funds for such purposes by the General Assembly of the Commonwealth (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth) and the certification of the availability of such funds by the Commonwealth's Office of the Budget pursuant to Section 327 of the Commonwealth Procurement Code, 62 Pa.C.S. § 327.

(d) **Major Project**

The Project meets the definition of a "major project" under 23 U.S.C § 106, and accordingly requires a (i) "major project review" by FHWA prior to the award of the PPA and (ii) submission of annual reports by the Department to the FHWA concerning the Project. Please see Section 28.2 (*Federal Status of Project*) of the PPA for certain obligations of the Development Entity concerning assistance in preparation of such reports.

1.10 Insurance

- (a) Proposers should note that the PPA contains certain minimum insurance requirements which must be reflected in Proposals. Please refer to clauses (b) and (c) of this Section 1.10 (*Insurance*) and Article 19 (*Insurance*) of the PPA for further details.
- (b) By no later than the relevant date set forth in Section 1.7(a) (*Procurement Schedule*), each Proposer is invited to submit its suggested value to be included in clause (a) of the definition of "Base Benchmarked Insurance Cost" set forth in Schedule 1 (*Definitions*) of the PPA, together with any information or quotes that the Proposer considers relevant in supporting these amounts.
- (c) The Department will review any such suggested values submitted by the Proposers and, in advance of the Proposal Due Date, inform each Proposer of the value that the Department will insert in the PPA. For the avoidance of doubt, the value will be the same for each Proposer.

1.11 Qualification To Do Business

- (a) No later than 15 days prior to the Proposal Due Date, the Proposer shall certify to the Department that as of such date:
 - (i) the D&C Contractor or, to the extent that the D&C Contractor is a consortium, partnership, or other form of joint venture, each member of the D&C Contractor performing any of the Construction Work, set forth in the Proposer's Proposal is prequalified pursuant to 67 Pa. Code Ch. 457 (A)(x) to perform structure "S" and "T" work types or (y) as a "general highway contractor," and (B) has "unlimited financial capacity"; and
 - (ii) to the extent that the D&C Contractor set forth in the Proposer's Proposal is a consortium, partnership or other form of joint venture, each member of the D&C Contractor performing any of the Construction Work is capable of performing at least

FINAL

50% of the original contract price of the member's portion of the D&C Contract as provided in 67 Pa. Code § 457.15(c).

- (b) The requirements of 67 Pa. Code § 457.15(a) do not apply with respect to any Key Contractor that is a consortium, partnership or other form of joint venture.

2. PROCUREMENT PROCESS

2.1 Procurement Method

This RFP is issued pursuant to the Public-Private Transportation Partnerships Act, codified at 74 Pa.C.S. § 9101 *et seq.*, as amended, and other applicable provisions of Commonwealth and federal Law. The Department will award the PPA (if at all) to the responsible Proposer offering a Proposal that meets the standards set by the Department and that is determined by the Department, through evaluation based upon the criteria set forth in applicable Law and this RFP, to provide the best value for, and to be in the best interest of, the Department.

The Department will accept Proposals for the Project only from those Proposers that the Department has shortlisted for the procurement based on their responses to the RFQ. Except for ATCs approved by the Department pursuant to Section 3.4 (*Response to Formal ATCs*), the Department will not review or consider alternative proposals.

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

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

(a) Authorized Department Representative

The Department has designated the following individual to be its authorized representative for the procurement (the **Authorized Department Representative**):

Bryan Kendro, Director
Office of Policy & Public Private Partnerships
400 North Street, 8th Floor
Harrisburg, PA 17120-3545
Telephone: (717) 787-8765
Email: RA-PDRBRRFQ@pa.gov

From time to time during the procurement process or during the term of the PPA, the Department may designate another Authorized Department Representative or Representatives to carry out some or all of the Department's obligations pertaining to the Project and shall promptly notify each Proposer upon the occurrence of such designation.

(b) Identification of Authorized Proposer Representative

The Proposer shall identify in its Proposal one individual authorized to act on behalf of the Proposer relating to the procurement (**Authorized Proposer Representative**). If the Proposer changes its Authorized Proposer Representative to receive documents, communications or

notices in connection with this procurement subsequent to its submission of its Proposal, the Proposer shall provide the Authorized Department Representative with the name, address, email address and telephone number of such new Authorized Proposer Representative. Failure to identify an Authorized Proposer Representative in writing may result in the Proposer failing to receive important communications from the Department. The Department is not responsible for any such failure.

(c) **Rules of Contact**

From the date of issuance of the RFQ until the date of delivery by a Proposer of its written commitment to the Department concerning rules of contact and other matters set forth in the form required by the Department, the rules of contact set forth in Section 7.1 of the RFQ are applicable to such Proposer. From the date of such written commitment until the issuance of the final RFP, the terms of such written commitment are applicable to such Proposer.

From and after the date of issuance of the final RFP and ending on the earliest of (x) the execution and delivery of the PPA, (y) rejection of all Proposals by the Department, or (z) cancellation of the RFP:

- (i) No Proposer nor any of its team members may communicate with another Proposer or its team members through their employees, agents or representatives with regard to the RFP or either team's Proposal, except that (A) subcontractors that are shared between two or more Proposer teams may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams, and (B) this prohibition does not apply to public discussions regarding the RFP at any of the Department-sponsored informational meetings.
- (ii) Each Proposer's Authorized Proposer Representative shall be responsible for contacts with the Department on behalf of such Proposer, and, except at one-on-one meetings and other group discussions with the Department, each Proposer may only communicate with the Department regarding the RFP through its Authorized Proposer Representative.
- (iii) No Proposer or representative thereof through their employees, agents or representatives shall have any ex parte communications regarding the RFP or the procurement described herein with any member of the Department or with any Department staff, advisors, contractors or consultants involved with the procurement, except for communications expressly permitted by the RFP or approved in advance by the Authorized Department Representative, in such person's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP or participation in public meetings of the Department or any public or Proposer workshop related to the RFP. Any Proposer engaging in such prohibited communications may be disqualified from the procurement at the sole discretion of the Department.
- (iv) Communication by or on behalf of any Proposer with any Stakeholder (including any of the Stakeholder's employees and representatives) regarding this RFP or the procurement described herein is prohibited, except for communication expressly permitted by the

RFP or approved in advance by the Authorized Department Representative, in such person's sole discretion. It is the intent of the Department that the Department will provide any necessary coordination during the RFP stage with Stakeholders in order that, among other things, the procurement may be implemented in a fair, competitive and transparent manner and with uniform information. Information requests concerning Stakeholders should be sent to the Authorized Department Representative, who, in the Department's good-faith discretion, may arrange for general or separate meetings between one or more of such Stakeholders and the Proposers or facilitate delivery of responses to such questions by a Stakeholder. Except for meetings with PEDFA arranged by the Department at the request of a Proposer, such meetings will be open to all Proposers and will not include any confidential matters.

- (v) Any communications in breach of the foregoing clauses (i) through (iv) may result in disqualification from the procurement.
- (vi) Any official information regarding the Project will be in writing, on Department letterhead, and signed by the Authorized Department Representative or designee.
- (vii) The Department will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified in this Section 2.2 (*Receipt of the Request for Proposal Documents, Communications and Other Information*).

Proposer shall note that no correspondence or information from the Department or anyone representing the Department regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2(c)(vi).

For purposes of this Section 2.2(c) (*Rules of Contact*), "contact" and "communication" includes face-to-face, telephone, facsimile, electronic mail (email), other electronic means or formal written communication.

(d) **Language Requirement**

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

2.3 Questions and Responses Regarding the RFP and Addenda

(a) **Questions and Responses Regarding the RFP**

Proposers shall be responsible for reviewing the RFP and any Addenda issued by the Department and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision that the Proposer fails to understand. Failure of the Proposer to make such review and to request such clarification shall be at its sole risk, and no relief for error or omission will be provided by the Department. Proposers shall submit requests for clarification in accordance with this Section 2.3(a) (*Questions and Responses Regarding the RFP*). The Department reserves the

right not to respond to any such clarification requests (whether received after the last date for Proposer submittal of questions regarding the RFP, as set forth in Section 1.7(a) (*Procurement Schedule*), or otherwise) or such clarification requests with respect to any version of the RFP marked "draft" or "industry draft." To the extent responses are provided, they will not be considered part of the Project Documents and may not be relied upon nor will they be relevant in interpreting the Project Documents, except as otherwise expressly set forth in the Project Documents.

The Department will only consider comments and questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a Proposer to the Authorized Department Representative, by electronic mail in the prescribed format.

Such comments/questions may be submitted at any time prior to the applicable date specified in Section 1.7(a) (*Procurement Schedule*) or such later date as may be specified in any Addendum and shall:

- (i) be submitted in writing in Word using the form set forth in Form R;
- (ii) be sequentially numbered;
- (iii) identify the document (*e.g.*, the PPA, Technical Provisions, etc.);
- (iv) identify the relevant Section number and page number (*e.g.*, Technical Provisions, Section [x], page [x]) or, if it is a general question, indicate so;
- (v) not disclose the Proposer's identity in the body of the question nor contain proprietary or confidential information; and
- (vi) indicate whether the question is a Category 1, 2, 3 or 4 question.

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

Proposers will be limited to 100 comments/questions per RFP version issued, including any Addendum; *provided, however*, that the foregoing limitation shall not apply to the Technical Provisions. If a question has more than one subpart, each subpart will be considered a separate question. Questions relating to the Technical Provisions, corrections of typographical errors, incorrect cross references or inconsistencies within or among the RFP documents will be excluded from the 100-question limitation.

No telephone or oral requests will be considered. Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the Project. No requests for additional information or

clarification to any Person other than the Authorized Department Representative will be considered. Questions may be submitted only by the Authorized Proposer Representative or its designee, and must include the requestor's name, address, telephone and facsimile numbers, and the Proposer he/she represents.

With respect to questions regarding any version of the RFP that is not marked "draft" or "industry draft," the Department's responses, if any, will be in writing and will be delivered to all Proposers, except that the Department intends to respond individually to those questions identified by a Proposer or deemed by the Department as containing confidential or proprietary information. If a Proposer believes a question contains confidential or proprietary information (including that the question itself is confidential), it may mark such question as "confidential." The Department reserves the right to disagree with the confidentiality of information in the interest of complying with applicable Laws and the terms of the RFP. Under such circumstances, the Department will inform the Proposer and will allow the Proposer, within a time period set by the Department, to withdraw the question, rephrase the question, or have the question answered non-confidentially or, if the Department determines that it is appropriate to provide a general response, the Department will modify the question to remove information that the Department determines is confidential. If a Proposer fails to respond to the Department within the time frame identified by the Department, such failure shall be deemed to allow the Department to answer the question non-confidentially. The Department may rephrase questions as it deems appropriate and may consolidate similar questions. The Department may also create and answer questions independent of the Proposers. The Department contemplates issuing multiple sets of responses at different times during the procurement process. A consolidated, final set of questions and answers will be compiled and delivered to the Preferred Proposer prior to award.

Proposers may, at their option, elect to submit revised drafts, in redline, of this ITP and PPA (but not the Technical Provisions) in connection with the submission of their comments/questions per RFP version issued. Subject to the Right-to-Know Law, the Department will not circulate any Proposer's submitted revised drafts, nor make such revised drafts public. The Department will not respond to any such revised drafts, nor is the Department obligated to review any such revised drafts. The Department may convene pre-Proposal meetings with Proposers as it deems necessary pursuant to Section 2.5 (*Pre-Proposal Meetings*), and Proposers must make themselves available to the Department for such pre-Proposal meetings and to discuss any matters they submit to the Department under this Section 2.3(a) (*Questions and Responses Regarding the RFP*). If the Department determines, in its sole discretion, that its interpretation or clarification requires a change in the RFP, the Department will prepare and issue an Addendum.

(b) **Addenda**

The Department reserves the right, in its sole discretion, to revise, modify, or change the RFP (i) at any time before the Proposal Due Date, (ii) if Proposal Revisions are requested, prior to the due date for Proposal Revisions, or (iii) at any time to extend the Commercial Closing Deadline pursuant to Section 1.7(c) (*Commercial Closing Deadline and Financial Closing Deadline*). Any such revisions, modifications, or changes will be implemented through issuance of Addenda to the RFP. Addenda will be posted on the FTP Site, and shortlisted Proposers will be notified of the issuance of such Addenda. If any Addendum significantly impacts this RFP, as

determined in the Department's sole discretion, the Department may change the Proposal Due Date or the Commercial Closing Deadline. The announcement of such new date will be included in the Addendum. In addition, if the last date for the Proposer to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests concerning the Addendum.

Each Proposer shall acknowledge in its Proposal Letter receipt of all Addenda and question-and-answer responses issued by the Department prior to the Proposal Due Date. Failure to acknowledge such receipt may cause a Proposal to be deemed non-responsive and be rejected. The Department reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addenda or response to requests for clarifications. The Department does not anticipate issuing any Addenda later than 15 Business Days prior to the Proposal Due Date. However, if the need arises, the Department reserves the right to issue Addenda after such date. If the Department finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the Proposal Due Date determined necessary by the Department, in its sole discretion.

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required as follows:

- (a) pursuant to Section 1.9(b)(i) (*USDOT Private Activity Bonds*) (regarding Proposer's Lead Underwriter(s));
- (b) pursuant to Section 1.10 (*Insurance*) (regarding the Base Benchmarked Insurance Cost);
- (c) pursuant to Section 1.11(a) (regarding contractor pre-qualification and registration);
- (d) pursuant to Section 2.11 (*Changes in Proposer's Organization and Key Personnel*) (regarding changes in a Proposer's organization, changes in Key Personnel and new Key Personnel);
- (e) pursuant to Section 3.2 (*Pre-Proposal Submission of Formal ATCs*) (regarding Alternative Technical Concepts);
- (f) pursuant to Section 5.10(b) (*Preliminary Financial Model Audit*) (regarding the Model Auditor);
- (g) pursuant to Section 5.10(c) (*Market Interest Rate Adjustment*) (regarding the Benchmark Rates); and
- (h) pursuant to Section 5.10(d) (*Credit Spread Adjustment*) (regarding the Credit Spread).

The applicable deadlines for submission of the Pre-Proposal Submittals, and the last date for the Department to respond thereto (as such date may be extended by the Department pursuant to this Section 2.4) (*Pre-Proposal Submittals*), are set forth in Section 1.7(a) (*Procurement Schedule*).

Except to the extent that Proposers are required by this ITP to make a Pre-Proposal Submittal on a certain date (or at a certain time), Proposers are encouraged to submit Pre-Proposal Submittals at any time prior to the stated deadlines. The Department will endeavor to respond to the Pre-Proposal

Submittals within 14 days of the Friday in the week in which the Pre-Proposal Submittals were submitted; *provided, however*, that this time period for the Department's response may be extended in the Department's sole discretion based on the number and complexity of the Pre-Proposal Submittals in receipt at any one time. The Department reserves the right to respond to Pre-Proposal Submittals in whatever order it chooses in order to expedite reviews.

2.5 Pre-Proposal Meetings

(a) Informational Meetings

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

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

(b) One-on-One Meetings

The Department intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.7(a) (*Procurement Schedule*) herein, and on such other dates designated by the Department in writing to the Proposers, to discuss issues and clarifications regarding the Project and Project-related documents or communications provided by the Department or the Proposers (including the RFP), and the Proposer's ATCs. Subject to Section 3.9 (*Confidentiality of ATCs*), the Department reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that such disclosure would reveal a Proposer's confidential or proprietary information not otherwise required to be disclosed by applicable Law or permitted to be disclosed pursuant to this ITP. Participation at such meetings by the Proposers shall be mandatory. Representatives of any Stakeholder identified in Section 1.3(a) through (n) and their consultants may attend and participate in one-on-one meetings.

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

- (i) The meetings are intended to provide Proposers with a better understanding of the Project and Project-related documents or communications provided by the Department.
- (ii) The Department, except as provided in this ITP, will not discuss with any Proposer any information submitted as part of this procurement (including other Proposals or other Proposers' ATCs) other than its own.
- (iii) Proposers shall not seek to obtain commitments from the Department in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.

- (iv) No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Accordingly, material information about the Project or procurement that the Department reveals or discusses in response to questions raised in a one-on-one meeting will, except as provided in this ITP, be revealed to the other Proposers.
- (v) The discussions or any statements made by either party in one-on-one meetings shall not be binding on such entity.
- (vi) No part of the evaluation of Proposals will be based on the conduct or discussions that occur during one-on-one meetings.

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

(c) **Questions and Responses During One-on-One Meetings**

During one-on-one meetings, Proposers may ask questions, and the Department may provide responses. However, any responses provided by the Department during one-on-one meetings may not be relied upon unless questions were submitted in writing and the Department provided written responses in accordance with Section 2.3(a) (*Questions and Responses Regarding the RFP*) (and then, only to the extent provided in the Project Documents). Such questions and responses will be provided in writing to all Proposers, except to the extent such questions contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs not otherwise required to be disclosed by applicable Law or permitted to be disclosed pursuant to this ITP. Nothing stated at any pre-Proposal meeting or included in a written record or summary of a meeting will modify this ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3(b) (*Addenda*).

2.6 Confidentiality

(a) **Confidentiality of Proposer Information**

- (i) If a Proposer has special concerns about information that it desires to make available to the Department but that it believes constitutes a trade secret, proprietary information, or other information exempted from disclosure pursuant to the Right-to-Know Law or the P3 Records Provision, then such Proposer shall specifically and conspicuously designate that information by placing "CONFIDENTIAL" in the header or footer of each such page affected. Blanket designations that do not identify the specific information shall not be acceptable and shall be cause for the Department to treat the entire Proposal (other than such Sections for which a specific designation was provided) as public information. The Department will neither (A) advise a submitting party as to the nature or content of documents entitled to protection from disclosure under the Pennsylvania Right-to-Know Law, the P3 Records Provision or other applicable Laws, nor (B) advise the submitting party as to the interpretation of such Laws, including with respect to the meaning of the terms "proprietary information," "trade secret," "commercial information," "financial information," and "security information" as used therein. Nothing contained in this provision shall modify or amend requirements and obligations

imposed on the Department by the Right-to-Know Law, the P3 Records Provision, or other applicable Law. A Proposer asserting that certain information is confidential under this Section 2.6(a)(i) shall be solely responsible for all determinations made by it under applicable Laws and for clearly and prominently marking each and every page or sheet of materials with "CONFIDENTIAL" as it determines to be appropriate. Such Proposer is advised to contact its own legal counsel concerning the effect of applicable Laws to that Proposer's own circumstances. The provisions of the Right-to-Know Law, the P3 Records Provision, and other applicable Laws shall control in the event of a conflict between the procedures described above and the applicable Law.

- (ii) Notwithstanding Section 2.6(a)(i), the Department may disclose the Proposal of the Preferred Proposer to the representative of any Stakeholder identified in Sections 1.3(a) through (m) (together with the Stakeholder's consultants, **Stakeholder Representatives**) solely for the purpose of its review of the Proposal on behalf of the Stakeholder; *provided that* the Departments shall inform such Stakeholder Representative of the confidentiality requirements set forth in this ITP and direct such Stakeholder Representative to treat the Proposal confidentially; *provided, further,* that the Department will not be responsible for any disclosure of the Proposal by such Stakeholder Representative if the Department has complied with this Section 2.6(a)(ii).

(b) **Request for Disclosure**

If a request is made for disclosure of the Proposals or other materials pursuant to the Right-to-Know Law or the P3 Records Provision, the Department will comply with its obligations under the Right-to-Know Law, the P3 Records Provision, and other applicable Laws. Each Proposer consents to, and expressly waives any right to contest, the provision by the Department to the Department Chief Counsel of all, or representative samples of, the Proposal or other materials in accordance with the Right-to-Know Law. The Department shall have no responsibility or obligation for a failure of the Department Chief Counsel to respond timely or at all to any Department request for advice and the Department shall not be required to wait therefor if it is required to disclose or otherwise take action under the Right-to-Know Law, the P3 Records Provision, or other applicable Law; *provided, however,* that prior to disclosing any information or otherwise taking any action under such applicable Law, the Department will notify the relevant Proposer and give such Proposer an opportunity to either consent to the disclosure or action or assert its basis for non-disclosure or non-action and its claimed exemption from disclosure or action under applicable Law to the Department. **Under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any such materials, including materials marked "CONFIDENTIAL," whether the disclosure is deemed required by law or by an order of court or the Department Chief Counsel or occurs through inadvertence, mistake or negligence on the part of the Department or its officers, employees, contractors or consultants.**

(c) **Litigation**

In the event of any proceeding or litigation concerning the disclosure of any Proposal, portion thereof or other materials, the relevant Proposers shall be responsible for prosecuting or defending any action concerning the materials at its sole expense and risk; *provided that* the Department reserves the right, in its sole discretion, to intervene or participate in the litigation in

such manner as it deems necessary or desirable. All reasonable costs and fees (including attorneys' fees and costs) incurred by the Department in connection with any litigation, proceeding or request for disclosure shall be reimbursed and paid by the Proposer whose Proposal or other materials are the subject thereof.

2.7 Status Updates

The Department intends to provide updates to the Proposers regarding the matters addressed in Section 1.4 (*Project Overview*) (as new information becomes available) through the FTP Site. Proposers should regularly visit the FTP Site for such updates.

2.8 Examination of RFP and Access to Project Sites

(a) Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including Disclosed Information and any Addenda, and material posted on the FTP Site for the Project, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal, or the performance of the Development Entity's obligations under the Project Documents with the Department. Each Proposer also is responsible for monitoring the Collaboration Portal and FTP Site for information concerning this RFP and the procurement. The Proposal Letter includes an acknowledgment that the Proposer has received and reviewed all materials posted thereon. Failure of a Proposer to so examine and inform itself of the aforementioned documents and materials shall be at its sole risk, and the Department will provide no relief for any error or omission. The extent to which Proposers may rely on the Disclosed Information, if any, shall be as expressly set forth in the PPA.

(b) Access to Project Sites

Proposers may conduct surveys and visual inspection of each Project Site. No construction equipment or drilling equipment and no intrusive site investigations (*e.g.*, borings, potholing, etc.) by Proposers will be permitted on any portion of any Project Site prior to the Commercial Closing Date. In no event may any survey or visual inspection by a Proposer disrupt or interfere with the use of any part of any Project Site by the public, including use by the public of any bridge or roadway located at such Project Site.

2.9 Errors

If any mistake, error, or ambiguity is identified by the Proposer at any time during the procurement process in any of the documents supplied by the Department, the Proposer shall have a duty to notify the Department of such mistake, error, or ambiguity and recommend a correction in writing in accordance with Section 2.3(a) (*Questions and Responses Regarding the RFP*).

2.10 Improper Conduct

(a) Non-Collusion

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

(b) **Organizational Conflicts of Interest**

Pursuant to the State Adverse Interest Act, codified at 71 P.S. § 776 (the **State Adverse Interest Act**) and 74 Pa.C.S. § 9120, and except as otherwise provided therein, no Commonwealth employee may have an adverse interest in any contract with the Commonwealth agency employing such employee or attempt to influence the employing Commonwealth agency into taking a course of action in which such employee has an adverse interest, nor may any person or firm under contract with the Department to prepare procurement documents or provide advice for the Project be allowed to participate in any capacity on a Proposer team. Any person or firm previously under contract with the Department to prepare preliminary plans, planning reports or other project development products for the Project may be able to participate on a Proposer team, if such firms first submit a written request for a determination of no conflict from the Department and receive written confirmation that they may participate, or conditionally participate, on a Proposer team. The Authorized Proposer Representative for a Proposer shall be responsible for submitting any written request for a determination of no conflict to the Department for any member or potential member of such Proposer's team. No other Person shall submit to the Department a request for a determination of no conflict.

Additional exceptions to this policy may be granted by the Department, upon written request from such person, if it is determined that the person's involvement is in the best interest of the public and does not constitute an unfair advantage. Proposer teams seeking such exception shall submit such written request as soon as possible because the Department does not intend to extend the Proposal Due Date nor will the Department be responsible for any inability or failure to respond prior to the Proposal Due Date to any such request.

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

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

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

Prior to the Commercial Closing Date, each Proposer is prohibited from teaming with, receiving any advice from, or discussing any aspect with (in each case, relating to the Project or the

procurement of the Project) any person or entity with an organizational conflict of interest, including, but not limited to:

- (i) Allen & Overy LLP;
- (ii) Ames & Gough;
- (iii) Ballard Spahr LLP;
- (iv) CDM Smith;
- (v) HW Lochner, Inc.;
- (vi) KPMG Corporate Finance LLC;
- (vii) NTM Engineering, Inc.;
- (viii) Parsons Brinckerhoff;
- (ix) Public Financial Management, Inc.; and
- (x) Affiliates (including parent companies, subsidiary companies, entities under common ownership, joint venture members and partners, and other financially liable parties for an entity) of any of the above.

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

By submitting its response to this RFP, each Proposer agrees that, if an organizational conflict of interest that existed prior to the Commercial Closing Date is discovered after Proposer's submittal of its Proposal, then the Proposer must make an immediate and full written disclosure to the Department that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew, or should have known about, but failed to disclose is determined to exist during the procurement process, the Department may, at its discretion, disqualify the Proposer. The Department reserves all legal rights and remedies.

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

(c) **Equitable Treatment of Proposers**

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

2.11 Changes in Proposer's Organization and Key Personnel

(a) Changes in Proposer's Organization

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by the Department, the Proposer's organization as identified in the SOQ must remain intact for the duration of the procurement process (*i.e.*, until the Commercial Closing Date). If a Proposer wishes to make changes in the Major Participants identified in its SOQ, including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests and/or role changes in or of any of the foregoing, the Proposer shall submit to the Department a written request for its approval of the change as soon as possible but in no event later than the date and time designated in Section 1.7(a) (*Procurement Schedule*) as the deadline for submission of such Pre-Proposal Submittal. Any such request shall be addressed to the Department at the address set forth in Section 1.7(b) (*Address for Proposal Delivery*), accompanied by the information specified for such entities or individuals in the RFQ. If a request is made to allow deletion of any Major Participants identified in its RFP, the Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). The Proposer shall submit an original and five copies of each such request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Except as provided herein and in the PPA, a Proposer may not make any changes in any Major Participants identified in its RFP after the deadline set forth in Section 1.7(a) (*Procurement Schedule*) for submission of such Pre-Proposal Submittal. Between the deadline set forth in Section 1.7(a) (*Procurement Schedule*) for submission of such Pre-Proposal Submittal and the Commercial Closing Date, the Department, in its sole discretion, will consider requests by Proposers to make changes in the Proposers' organization based only on unusual circumstances beyond the Proposer's control.

(b) Changes in Key Personnel

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by the Department, the Proposer's personnel identified in Volume 1 of its SOQ (the **Key Personnel**) must remain intact for the duration of the procurement process (*i.e.*, until the Commercial Closing Date). If a Proposer wishes to make changes in the Key Personnel identified in its SOQ, the Proposer shall submit to the Department a written request for its approval of the change as soon as possible but in no event later than the date and time set forth in Section 1.7(a) (*Procurement Schedule*) as the deadline for submission of such Pre-Proposal Submittal. Any such request shall be addressed to the Department at the address set forth in Section 1.7(b) (*Address for Proposal Delivery*), accompanied by the information specified for such individuals in the RFQ. If a request is made to allow deletion of any Key Personnel identified in its SOQ, the Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). The Proposer shall submit an original and five copies of each such request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion; *provided that* it shall do so within 15 Business Days of receiving such requests. Except as provided herein and in the PPA, a Proposer may not make any changes in any Key

Personnel identified in its SOQ after the deadline set forth in Section 1.7(a) (*Procurement Schedule*) for submission of such Pre-Proposal Submittal. Between the deadline set forth in Section 1.7(a) (*Procurement Schedule*) as the deadline for the submission of such Pre-Proposal Submittal and the Commercial Closing Date, the Department, in its sole discretion, will consider requests by Proposers to make changes in the Proposers' Key Personnel based only on unusual circumstances beyond the Proposer's control.

(c) **New Key Personnel Positions Identified Following RFQ**

In order for Proposers to have confidence that those individuals proposed for Key Personnel positions that were added to the RFP since submittal of the SOQs are acceptable to the Department, each Proposer shall submit to the Department a written request for its approval of such individuals in no event later than the date and time set forth in Section 1.7(a) (*Procurement Schedule*) as the deadline for submission of such Pre-Proposal Submittal. Any such request shall be addressed to the Department at the address set forth in Section 1.7(b) (*Address for Proposal Delivery*), accompanied by the information specified in the RFQ for Key Personnel positions. The Proposer shall submit an original and five copies of each such request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its sole discretion. Once approved, any changes to such individuals and Key Personnel positions shall be handled pursuant to Section 2.11(b) (*Changes in Key Personnel*). For clarification, the new Key Personnel positions with respect to which approval must be obtained under this Section 2.11(c) (*New Key Personnel Positions Identified Following RFQ*) are:

- (i) Public Information Coordinator;
- (ii) DBE Coordinator;
- (iii) Construction Quality Control Manager;
- (iv) Construction Quality Acceptance Manager (appointed by the Construction Quality Acceptance Firm);
- (v) Financial Director;
- (vi) Utility Manager;
- (vii) Design Quality Control Manager;
- (viii) Safety Manager;
- (ix) Environmental Compliance Manager; and
- (x) Quality Assurance Manager.

2.12 Non-Exclusive Relationship with Monoline Insurers and Rating Agencies

The market for monoline insurers and rating agencies is small enough that exclusive teaming arrangements between monoline insurers, rating agencies and Proposers would give Proposers in

exclusive arrangements a distinct and unfair advantage over other Proposers. As a result, to ensure a fair procurement process, Proposers are forbidden from entering into exclusive teaming arrangements with monoline insurers and rating agencies.

For the avoidance of doubt, please see Section 3.3 of Exhibit 3 (*Financial Proposal Instructions*) disallowing the inclusion, or the assumption of use, of monoline insurance in Financial Proposals (except as otherwise provided in Section 3.3(e)(ii) of Exhibit 3 (*Financial Proposal Instructions*)).

From the Department's perspective, a Proposer will be in breach of the requirements of this Section 2.12 (*Non-Exclusive Relationship with Monoline Insurers and Rating Agencies*) if it enters into any arrangement with a monoline insurer or rating agency that would preclude another Proposer from benefitting from the same level of services from that monoline insurer or rating agency. By way of example, if a Proposer enters into an arrangement with a monoline insurer or rating agency that requires it to use different personnel in the provision of services to each Proposer, but the relevant monoline insurer or rating agency does not have sufficient personnel to provide services to each Proposer on that basis, the inclusion of such a requirement will be deemed to represent an exclusive arrangement for the purposes of this Section 2.12 (*Non-Exclusive Relationship with Monoline Insurers and Rating Agencies*).

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

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

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

Subject to Section 2.13 (*Release of Exclusive Relationship with Core Lender(s) and Lead Underwriter*), Proposers may enter into an exclusive relationship with not more than one Lead Underwriter and with any of its Core Lenders. If a Proposer wishes to engage additional underwriters, such additional underwriters must be engaged on a non-exclusive basis.

3. ALTERNATIVE TECHNICAL CONCEPT REVIEWS

3.1 Alternative Technical Concepts

- (a) A Proposer may request one or more variances from the requirements of the Technical Provisions (or the requirements of other documents incorporated into the Technical Provisions by reference) (such variances, **Alternative Technical Concepts** or **ATCs**).
- (b) A Proposer may include a Formal ATC in the Technical Proposal only if the ATC has been received by the Department and approved by the Department in accordance with this Section 3 (*Alternative Technical Concept Reviews*) by the relevant *dates set forth in Section 1.7(c) (Commercial Closing Deadline and Financial Closing Deadline)*.
- (c) If the Department revises the RFP or issues an Addendum after a Formal ATC has been approved, the Proposer shall be solely responsible for reviewing the RFP and determining if the

ATC deviates from the revised requirements of the Project Documents. If necessary, the Proposer must submit a request for approval of all additional required variance(s) within 10 Business Days after the revised RFP or Addendum distribution (as applicable).

- (d) ATCs eligible for consideration pursuant to this Section 3 (*Alternative Technical Concept Reviews*) shall be limited to those variances that result in performance, safety, durability, quality and utility of the end product that is equal to or better than the performance, safety, durability, quality and utility of the end product that would result from full compliance with the requirements of the Technical Provisions as determined by the Department in its sole discretion. Without limiting the foregoing of this subsection (d), a concept is not eligible for consideration as an ATC hereunder if, in the Department's sole judgment, the request assumes or requires:
 - (i) variances from the requirements of the Technical Provisions without enabling significant innovation in bridge design and/or construction;
 - (ii) a reduction in quantities without achieving equal or better performance, safety, durability, quality and utility;
 - (iii) a reduction in performance, safety, durability, quality, utility or reliability;
 - (iv) any change in any Department Obtained Governmental Approval;
 - (v) the addition of a separate Department project to the PPA (such as expansion of the scope of the Project to include additional bridges);
 - (vi) a Change in Law; or
 - (vii) an increase in the amount of time required for Substantial Project Completion beyond the Substantial Project Completion Deadline.
- (e) An ATC shall in no way take advantage of an error or omission in the Technical Provisions or other documents incorporated into the Technical Provisions by reference. If, at the sole discretion of the Department, an ATC is deemed to take an advantage of an error or omission in the Technical Provisions, or other documents incorporated into the Technical Provisions by reference, the RFP will be revised without regard to confidentiality of such ATC. If, at any time, the Department receives a question on the Project from another Proposer similar to a concept submitted in the form of a Preliminary ATC or Formal ATC, the Department reserves the right to revise the RFP without regard to the confidentiality of such question.
- (f) Approval of any ATC in no way relieves Proposer of its obligation to satisfy (i) other requirements of the Technical Provisions not specifically identified in the ATC submittal, (ii) any obligation that may arise under applicable Laws, (iii) any obligation mandated by Governmental Entities as a condition of a Department Obtained Governmental Approval, and (iv) all other conditions imposed in connection with the approved ATC.

3.2 Pre-Proposal Submission of Formal ATCs

Proposers shall submit Formal ATCs for review to the Department in electronic format on the secure file transfer site for the Project, until the deadline for submittals of Formal ATCs identified in Section 1.7(a)

FINAL

(*Procurement Schedule*). ATCs will be accepted in electronic format to the FTP Site on Monday of each week between 12:01 AM and 11:59 PM Eastern Daylight Time. Any submission submitted in electronic format at any other time will be rejected.

A Proposer wishing to submit a Formal ATC shall submit (x) a cover sheet identifying the Proposer and stating "Rapid Bridge Replacement Project—Confidential ATCs," and (y) one searchable electronic PDF of the Formal ATC. Proposers shall clearly identify the submittal as a request for review of an ATC under this ITP. If a Proposer does not clearly designate its submittal as an ATC, the submission will not be eligible for consideration as an ATC by the Department.

- (a) Each Formal ATC shall include:
- (i) Identification. A sequential ATC number identifying the Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers);
 - (ii) Description. A detailed narrative description and conceptual drawings of the configuration of the ATC and other appropriate descriptive information (including, as applicable, a narrative description of necessary Design Exceptions, proposed construction means and methods, a traffic operational analysis, product and materials details, including chemical and physical compositions, construction tolerances, specifications, and any special provisions among others);
 - (iii) Deviations. Express and specific references to all requirements of the Technical Provisions (or the requirements of other documents incorporated into the Technical Provisions by reference) that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, including any Design Exceptions, and a request for approval of such deviation(s);
 - (iv) Usage. The locations where, and an explanation of how, the ATC will be used on the Project;
 - (v) Analysis. An analysis justifying use of the ATC and why the deviation from the requirements of the Technical Provisions (or the requirements of other documents incorporated into the Technical Provisions by reference), should be allowed, including, without limitation, an analysis demonstrating how the ATC is equal or better in quality, performance, and utility than the requirements of the Technical Provisions (or requirements of the other documents incorporated into the Technical Provisions by reference);
 - (vi) Impacts. Discussion and preliminary analysis of potential impacts, including on vehicular traffic (before, during and after construction), environmental impacts identified, community impact, and safety and life-cycle Project impacts;
 - (vii) Handback. Any changes in Handback Requirements associated with the ATC;
 - (viii) Longevity. Any changes in the anticipated life of the item(s) comprising or affected by the ATC;

- (ix) Time. Any reduction in the time period to reach Substantial Project Completion resulting from implementing the ATC, including, as appropriate, a description of method and commitments;
- (x) Right-of-Way. With respect to any Replacement Bridge, any right-of-way impact (positive or negative) required to implement the ATC that is located outside the Project Site of any Early Completion Bridge and, with respect to any Remaining Eligible Bridge, any right-of-way impact (positive or negative) required to implement the ATC;
- (xi) History. A description of other projects where the ATC has been used, if any, the degree of success or failure of such usage, and names and contact information (including phone numbers and email addresses) for project owner representatives who can confirm such statements;
- (xii) Risk. A description of added risks to the Department or third parties associated with implementing the ATC;
- (xiii) Additional Costs. An estimate of any additional Department, Development Entity and third-party costs associated with implementation of the ATC;
- (xiv) Savings. An estimate of any savings that would accrue to the Department should the ATC be approved and implemented; and
- (xv) Payments. A preliminary analysis of potential impacts on the Base MAP as described in Schedule 8 (*Payment Mechanism*) of the PPA.

A Proposer's failure to indicate a specific instance of usage under subclause (xi) above shall not render its ATC submission non-compliant if the Proposer and its members were not aware of such example; *provided that* reasonable inquiry was undertaken.

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

3.3 Department Review of ATCs

A panel will be selected to review each ATC submitted to the Department in accordance with this Section 3 (*Alternative Technical Concept Reviews*), which panel may or may not include members of the Technical Review Panel. Proposer shall make no direct contact with any member of the review panel, except as may be permitted by the Authorized Department Representative. Unapproved contact with any member of the review panel will result in a rejection of that ATC and potential disqualification from the procurement.

The Department may request additional information regarding a proposed ATC at any time. To the extent reasonably possible, the Department will return responses to, or request additional information from, the relevant Proposer within 14 days after receipt of the original electronic submittal of a Formal

FINAL

ATC. If additional information is requested, the Department will use reasonable efforts to provide a response within five Business Days of receipt of all requested information.

In addition to conducting scheduled one-on-one meetings with Proposers (and having discussions with such Proposers concerning their respective ATCs), the Department may conduct separate confidential one-on-one meeting(s) with any Proposer to discuss its ATC. Under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any of such Proposer's ATC materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of the Department or its respective officers, employees, contractors, or consultants.

In the event that the Department receives ATCs from two or more Proposers that are deemed by the Department to represent the same concept, the Department reserves the right to revise the Project Documents without further regard for confidentiality.

3.4 Response to Formal ATCs

The Department will review each Formal ATC submitted by a Proposer and will respond to such Proposer with one of the following determinations:

- (a) the Proposer's ATC is approved for inclusion in the Proposer's Technical Proposal (with such conditions, modifications or requirements as identified by the Department and in this ITP);
- (b) the Proposer's ATC is not approved for inclusion in the Proposer's Technical Proposal;
- (c) the Proposer's ATC is not approved in its present form for inclusion in the Proposer's Technical Proposal, but may be approved upon the satisfaction, in the Department's sole discretion, of certain identified conditions that must be met or clarifications or modifications that must be made;
- (d) the submittal appears to be within the requirements of the RFP and does not qualify as an ATC (*provided, however*, that should it turn out that the concept as incorporated into the Proposal is not within the requirements of the RFP, the Department reserves the right to require compliance with the requirements of the RFP and Project Documents (without regard to the submittal), in which event the Proposer will not be entitled to modify its Proposal or obtain a Department Change Request for additional compensation or a time extension under the PPA);
- (e) the submittal does not qualify as an ATC and may not be included in the Proposer's Proposal;
- (f) the ATC is deemed to take advantage of an error or omission in the Technical Provisions (or other documents incorporated into the Technical Provisions by reference), in which case the ATC will not be considered, and the RFP will be revised to correct the error or omission;
- (g) a question has been received outside of the ATC process on the same topic and the RFP will be revised to address that question; or
- (h) the concept represented in the ATC has been submitted as ATCs from two or more Proposers and the Department has elected to exercise its right to revise the RFP. This response could also follow and supersede one of the other previously supplied responses above.

FINAL

Only those deviations expressly included in an ATC that are approved or conditionally approved by the Department may be included in a Proposal. Deviations that are included within an ATC submittal but that are not expressly and specifically referenced in the information required by Section 3.2(a)(ii) and Section 3.2(a)(iii) shall not be considered part of any approval or conditional approval by the Department.

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

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

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

The Department anticipates that its comments regarding an ATC provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to its ATCs. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a written request for clarifications under Section 2.3(a) (*Questions and Responses Regarding the RFP*).

3.5 Formal ATC Inclusion in Technical Proposal

- (a) A Proposer may incorporate one or more approved Formal ATCs as part of its Proposal. If the Department responded to a Formal ATC by stating that it would be approved if certain conditions were met, the Proposer shall demonstrate in the Technical Proposal that these conditions have been met, or make a commitment in the Technical Proposal to meet those conditions, and such conditions shall be incorporated into the Project Documents pursuant to Section 3.7 (*Incorporation of ATCs into the Project Documents*).
- (b) In addition to outlining each implemented Formal ATC and providing assurances to meet all attached conditions, the Proposer shall also include a copy of the Formal ATC approval letter from the Authorized Proposer Representative in each copy of the Technical Proposals submitted. This letter will be included in the distribution of the Technical Proposals to the Technical Review Panel.
- (c) Approval of a Formal ATC in no way implies that the Formal ATC or the Technical Proposal will receive a favorable review from the Technical Review Panel. The Technical Proposals will be evaluated in regards to the evaluation criteria found in this ITP, regardless of whether or not Formal ATCs are included.

FINAL

- (d) Except for incorporating approved Formal ATCs, the Technical Proposal may not otherwise contain exceptions to, or deviations from, the requirements of the RFP or the Project Documents, or other documents incorporated into the RFP or the PPA by reference.

3.6 Preliminary ATCs

- (a) At the Proposer's option and at any time prior to the deadline for the submission of Formal ATCs set forth in Section 1.7(a) (*Procurement Schedule*), a Preliminary ATC submittal may be made that presents a concept and a brief narrative of the benefits of said concept. The purpose of allowing such a Preliminary ATC is to limit the Proposer's expense in the pursuit of a Formal ATC that may be quickly denied by the Department.
- (b) To the extent reasonably possible, the Department will review Preliminary ATCs within 10 Business Days of submittal and provide written comments and one of the following responses:
 - (i) the Preliminary ATC is denied;
 - (ii) if the Proposer submits the Preliminary ATC as a Formal ATC in accordance with Section 3.2 (*Pre-Proposal Submission of Formal ATCs*), the Preliminary ATC will be considered a Formal ATC;
 - (iii) an ATC is not required;
 - (iv) a question has been received outside of the ATC process on the same topic and the RFP will be revised to address that question;
 - (v) the Preliminary ATC is deemed to take advantage of an error or omission in the Technical Provisions (or other documents incorporated into the Technical Provisions by reference), the ATC will not be considered, and the RFP will be revised to correct the error or omission; or
 - (vi) the Preliminary ATC takes advantage of an error or omission in the Technical Provisions or other documents incorporated into the Technical Provisions by reference, the ATC will not be considered and the RFP will be revised to correct the error or omission.
- (c) The Department in no way warrants that a favorable response to a Preliminary ATC submittal will translate into a favorable response to a Formal ATC submittal. Likewise, a favorable response to a Preliminary ATC submittal is not sufficient to include the ATC in a Technical Proposal.

3.7 Incorporation of ATCs into the Project Documents

Following notification of the Preferred Proposer, the ATCs that were pre-approved by the Department and incorporated in the Proposal by the Preferred Proposer shall be included in the Project Documents. If the Department responded to any ATC by stating that such ATC would be acceptable if certain conditions were met, those conditions will become part of the Project Documents. The Project Documents will be conformed after notification of the Preferred Proposer, but prior to execution of the PPA, to reflect the ATCs, including any Department conditions thereto. Notwithstanding anything to

the contrary herein, if the Development Entity does not comply with one or more Department conditions of pre-approval for an ATC or the Development Entity fails to obtain a required third-party approval for an ATC, the Development Entity will be required to comply with the original requirements of the RFP and the Project Documents without regard to the ATC and without being entitled to a Department Change Request, Compensation Event or Relief Event. To the extent an ATC represented additional Work or higher-quality materials from what is otherwise required by the Project Documents, the Department shall be entitled to a credit for the reduced cost to the Development Entity of reverting to the baseline requirements of the Project Documents.

3.8 ATCs Requiring Design Exceptions

Without limitation of Section 3.7 (*Incorporation of ATCs into the Project Documents*), if an ATC requires a Design Exception, the Department may approve the ATC, conditioned on the Development Entity's obtaining approval of the Design Exception after PPA award at the Development Entity's sole risk and expense. If the Department notifies the Proposer of the Department's approval of such ATC, the Development Entity may, at its sole election, seek approval of the Design Exception in accordance with Section 3.10 (*Design Exceptions*), and the Proposer shall notify the Department in writing of such election after receiving the Department's conditional approval of the applicable ATC. In the event that the Proposer seeks approval of the Design Exception in accordance with Section 3.10 (*Design Exceptions*), then the Proposer waives any confidentiality with respect to such Design Exception and any supporting documentation, and such Design Exception may be disclosed to FHWA and other Proposers in accordance with Section 3.10 (*Design Exceptions*). If such Design Exception is not approved 45 days prior to the Proposal Due Date and *provided that* such Design Exception was not rejected, the Proposer may include the applicable ATC as part of its Proposal, conditioned on the Development Entity obtaining approval of the Design Exception after PPA award at the Development Entity's sole risk and expense. The Department's conditional approval of an ATC requiring a Design Exception shall not diminish or waive any of the Department's rights to review and reject the Design Exception as set forth in Section 3.10 (*Design Exceptions*) or the Department's rights to review and reject the Design Exception after PPA award in accordance with the Technical Provisions.

3.9 Confidentiality of ATCs

Subject to the provisions of the RFP and other applicable Law, and except as otherwise provided in Section 3.7 (*Incorporation of ATCs into the Project Documents*) and Section 6.3(b) (*Eligibility*), the Department shall maintain the confidentiality of the ATCs and all communications regarding the ATCs until the earlier of (a) cancellation of the procurement without selection of a Preferred Proposer, (b) the Commercial Closing Date, (c) payment of the stipend to the Proposer, or (d) such other date as may be prescribed under the Right-to-Know Law or other applicable Law, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Right-to-Know Law, applicable Law and Section 2.6 (*Confidentiality*). By submitting a Proposal and agreeing to accept payment for work product, Proposer agrees, if it is not selected as the Preferred Proposer, to disclosure of its work product (including regarding ATCs and its Technical Proposal) to the Preferred Proposer. The foregoing shall not preclude the Department from exercising any rights with respect to ATCs, as set forth in Section 3 (*Alternative Technical Concept Reviews*), including the right to modify the RFP following submission of an ATC to address issues raised by or arising out of an ATC, which modification(s) may render such ATC moot or no longer applicable.

3.10 Design Exceptions

The Department recognizes that certain Design Exceptions may be needed for the Project. Accordingly, in connection with the development of a Stewardship and Oversight Agreement to be entered into by the Department and FHWA in relation to the Project, the Department and FHWA are discussing providing Proposers with certain conditional risk relief for Design Exceptions in the form of the approved Design Exceptions set forth in Section 10.3.5 (*Design Exceptions*) of the Technical Provisions, with supporting documentation posted on the FTP Site. Except as provided in Section 3.8 (*ATCs Requiring Design Exceptions*), if the Proposer intends to submit a Proposal that requires a Design Exception that is not listed in Section 10.3.5 (*Design Exceptions*) of the Technical Provisions, the Proposer shall seek approval of the Design Exception in accordance with this Section 3.10 (*Design Exceptions*). The process for approving Design Exceptions described in Section 10.3.5 (*Design Exceptions*) of the Technical Provisions shall only apply to Design Documents developed after PPA award or Design Exceptions that have been submitted as part of a conditionally approved ATC pursuant to Section 3.8 (*ATCs Requiring Design Exceptions*). The Proposer shall submit to the Department all information, plans, data, reports and analyses required by the Department, in its sole discretion, to process the Design Exception, and the Proposer waives all confidentiality with respect to the Design Exception and any information submitted in connection with the Design Exception or the approval thereof. If the Design Exception is approved by the Department and FHWA on or before 45 days prior to the Proposal Due Date, the Design Exception will be added to the list of approved Design Exceptions in Section 10.3.5 (*Design Exceptions*) of the Technical Provisions by Addendum, and all Proposers will be able to use such Design Exception in their Proposals. Except as provided in Section 3.8 (*ATCs Requiring Design Exceptions*), if the Proposer submits a Proposal that requires a Design Exception that is not listed in Section 10.3.5 (*Design Exceptions*) of the Technical Provisions, such Proposal may be deemed not responsive to the requirements of the RFP and may be excluded from further consideration. The Department has no obligation to approve the Design Exception, and reserves the right, in its sole discretion, to discontinue the review and processing of the Design Exception at any time and for any reason. The scope of a Design Exception submitted to the Department in accordance with this Section 3.10 (*Design Exceptions*) shall relate to the bridge structure and transitional lengths with respect to a Replacement Bridge.

4. REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY THE DEPARTMENT

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal and a Financial Proposal that meet the requirements set forth in Exhibit 2 (*Technical Proposal Instructions*) and Exhibit 3 (*Financial Proposal Instructions*), respectively.

(a) Proposal Due Date

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

(b) **Signatures Required**

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

(c) **Certified Copies**

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

(d) **Consequences of Failure to Follow Requirements**

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

4.2 Requirement to Submit Compliant Proposal

If a Proposal does not fully comply with the instructions and rules contained in this ITP, including the Exhibits, it may be considered non-responsive.

Proposers shall sign the original copy of their Proposal submitted to the Department. Multiple or alternate proposals or proposals with options may not be submitted.

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

- (a) the Proposal is submitted in a paper or electronic form other than that specified by the Department, if it is not properly signed, if any part of the Proposal is missing from the Proposal package, and/or if it otherwise does not meet the Proposal submittal requirements;
- (b) the Department determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including due to illegible text, omissions, erasures, alterations, items not called for in the RFP, or unauthorized additions;
- (c) multiple or alternate Proposals or Proposals with options are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject an award or to enter into a PPA following award;
- (d) the Proposer attempts to limit or modify the Proposal Security;
- (e) the Proposal Security is not provided;
- (f) the Proposer does not provide material information requested by the Department;

FINAL

- (g) the Proposal contains a material alteration of any of the forms or Exhibits set forth in the RFP; and
- (h) the Proposal includes any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval).

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

4.3 Format

Each Proposal shall contain concise written material and drawings that enable a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Technical Proposal and Financial Proposal are essential. The Technical Proposal shall not exceed the page limitation set forth in Section 2 (*Format*) of Exhibit 2 (*Technical Proposal Instructions*). No page limit applies to appendices, dividers, Exhibits and tables of contents; however, the Department does not commit to review any information in appendices and Exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and Exhibits.

An 8½ by 11-inch format (½-inch margins) is required for typed submissions and an 11 by 17-inch format is required for drawings, except that design drawings may be submitted in roll format not to exceed 36 by maximum 120 inches (and such design drawings shall be submitted on a CD-ROM, DVD, or flashdrive in Adobe (.pdf) format and in MicroStation format). Preliminary schedule submissions shall include both a hard copy and the electronic files necessary to view and analyze the schedule in Primavera P6.

Submittals must be bound with all pages in binders sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than 12-point (*provided that* organizational charts, graphics and tables may be in type font no smaller than 10-point font) in each case, either Times New Roman or Arial. The use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch foldout will be considered one page. Technical drawings and schedules in 11 by 17-inch format that comprise large continuous portions of the Proposal (*i.e.*, more than 10 continuous pages) shall be bound in an appendix such that the 11 by 17-inch sheets are not folded. In addition, sheets for technical drawings that exceed 11 by 17-inch size shall be submitted in roll form and need not be placed within the bound document.

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

4.4 Additional Requirements for Proposal Delivery

Proposals are to be delivered to the Department at the address set forth in Section 1.7(b) (*Address for Proposal Delivery*).

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

(a) **Technical Proposal**

The Technical Proposal shall be contained in two volumes: Volume 1—Executive Summary, Administrative Materials and Forms and Volume 2—Preliminary Performance Plans and Design-Build Technical Solutions, as more fully described in Exhibit 2 (*Technical Proposal Instructions*).

All of the binders comprising the original Technical Proposal (including roll form documents) together with an electronic copy of the entire Technical Proposal (including roll form documents) on one or more CD-ROMs, DVDs, or flash drives and the envelopes described in Section 4.4(b) (*Proposal Security*), shall be packaged in a single container, clearly addressed to the Department as provided herein, and labeled "[Proposer Name]: Original Technical Proposal for the Pennsylvania Rapid Bridge Replacement Project." Proposers shall provide one original and 15 certified copies of bound Technical Proposal (except (i)(A) for the Proposal Security, and (B) two original certified copies of all roll form technical drawings that are referenced in the Technical Proposal and (ii) that only 10 copies of the executed contracts, term sheets or heads of terms described in Section 3.2(b) (*Information About the Proposer, Major Participants, and Other Contractors*) of Exhibit 2 (*Technical Proposal Instructions*) to this ITP are required). The containers that include the required hard copies of the Technical Proposal shall be labeled "Copies of Technical Proposal for the Pennsylvania Rapid Bridge Replacement Project." "Hard copy" roll form documents shall be included in the containers in a fashion that the Proposer deems most prudent to deliver such roll form documents.

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

(b) **Proposal Security**

(i) As security for its commitment to enter into the Project Documents in accordance with its Proposal commitments if it becomes the Preferred Proposer, each Proposer shall submit to the Department security either in the form of Form K-1 or Form K-2 (or in any combination thereof) (in each case, the **Proposal Security**). The Proposer shall provide as part of its Proposal one original copy of the Proposal Security and three certified copies of the Proposal Security enclosed in a single envelope labeled "[Proposer Name]: Proposal Security for the Pennsylvania Rapid Bridge Replacement Project." The original of the Proposal Security shall be stamped "original."

(ii) Each Proposer shall provide Proposal Security in an amount equal to \$15,000,000. The Proposer may submit more than one letter of credit or demand guarantee in the form of

Form K-1 and Form K-2, respectively, as its Proposal Security; *provided that* the amount of all such Proposal Security will equal \$15,000,000 in the aggregate.

- (iii) The Proposal Security shall be issued by an Eligible Security Issuer, and the Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. At any time following the Proposer's submission of its Proposal Security to the Department, if any issuer thereof shall fail to be an Eligible Security Issuer, the Proposer shall promptly notify the Department in writing of such change, and within 10 days of such notice, the Proposer shall deliver to the Department new Proposal Security from a replacement Eligible Security Issuer. Upon the Department's receipt of such replacement Proposal Security, the Department shall promptly return the replaced Proposal Security to the Proposer.

(c) **Financial Proposal**

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

- (i) One original and 10 certified copies of the Financial Proposal (excluding the components identified in Section 4.4(c)(ii)), together with one electronic copy on a CD-ROM, DVD, or flash drive of the financial capacity information and Financial Plan in either Adobe or Word format. The documents shall be included in a sealed container labeled "[Proposer Name]: Financial Proposal for the Pennsylvania Rapid Bridge Replacement Project."
- (ii) One or more sealed containers labeled: "[Proposer Name]: Financial Proposal for the Pennsylvania Rapid Bridge Replacement Project—Preliminary Financial Model" containing the following (see Section 5 (*General Preliminary Financial Model Requirements*) of Exhibit 3 (*Financial Proposal Instructions*)):
 - (A) one original and five certified copies of the Preliminary Financial Model output sheets and the Assumptions Book and Instructions Guide (with any outputs that are provided in Microsoft Excel format printed on legal-sized paper with print equivalent to a font size of 11 point when printed from a Microsoft Word document);
 - (B) one original and five certified copies of each of the Financial Price Proposal Form—Milestone & Availability Payments (Form J-1) and the Financial Price Proposal Form—Present Value Calculations (Form J-2) and one electronic copy of each of the Financial Price Proposal Form-Milestone & Availability Payments (Form J-1) and the Financial Price Proposal Form—Present Value Calculation (Form J-2), each in either Adobe or Word format on a CD-ROM, DVD, or flash drive;
 - (C) one electronic copy of the Preliminary Financial Model on a CD-ROM, DVD, or flash drive, including a summary document (as a clearly labeled document in either Adobe or Word format) identifying the names of all the workbooks and identifying their respective functions; and

- (D) one electronic copy of the Assumptions Book and Instructions Guide in either Adobe or Word format on a CD-ROM, DVD, or flash drive.

4.5 Currency

All required pricing, revenue and cost information shall be provided in US\$ currency only. Where pricing is to be provided in 2014 dollars, such pricing shall be as of the Proposal Due Date.

4.6 Modifications, Withdrawals and Late Submittals

(a) Modifications to a Proposal

The Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date set forth in the RFP. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so the Department can accurately identify the final Proposal. The modification must contain complete Proposal Sections, complete pages or complete forms as described in Exhibit 2 (*Technical Proposal Instructions*) and Exhibit 3 (*Financial Proposal Instructions*). Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

(b) Withdrawal and Proposal Validity Period

- (i) The Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date by means of a written request signed by its Authorized Proposer Representative. Such written request shall be delivered to the address in Section 1.7(b) (*Address for Proposal Delivery*). A withdrawal of a Proposal will not prejudice the right of the Proposer to file a new Proposal; *provided that* it is received before the time due on the Proposal Due Date. No Proposal may be withdrawn on or after the time due on the Proposal Due Date and any attempt to do so will result in a draw by the Department upon the Proposal Security. Proposals shall be valid for a period of 180 days after the Proposal Due Date (as such period may be extended pursuant to Section 4.6(b)(ii), the **Proposal Validity Period**). No Proposer shall withdraw its Proposal during the Proposal Validity Period, unless notified by the Department that (A) no PPA for the Project will be awarded by the Department pursuant to the RFP, (B) the Department has awarded the PPA to another Proposer and has received the executed PPA and other required documents, (C) the Department does not intend to award the PPA to the Proposer, or (D) such Proposer is not notified during the Proposal Validity Period that the Department has selected the Proposer as the Preferred Proposer to negotiate and finalize the PPA.
- (ii) Any Proposer may elect, in its sole discretion, to extend its Proposal Validity Period; *provided that* such Proposer will, as a condition to the Department's acceptance thereof, provide an amended or replacement Proposal Security covering the validity period of the Proposal, as extended.

(c) **Late Proposals**

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

4.7 Forfeiture of Proposal Security

By submitting its Proposal, each Proposer understands and agrees that the Department shall be entitled to draw on such Proposer's Proposal Security in its entirety if any of the following events occurs:

- (a) the Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet one or more commitments made in its Proposal; or
- (b) the Proposer does not comply with its obligations set forth in Section 2.13 (*Release of Exclusive Relationship with Core Lender(s) and Lead Underwriter*); or
- (c) following notification by the Department of the Proposer that such Proposer is the Preferred Proposer:
 - (i) the Preferred Proposer fails to negotiate in good faith as expressly defined in Section 5.10(a) (*Finalization of Project Documents*);
 - (ii) the Preferred Proposer fails to provide the documents as, when, and to the extent required under, or satisfy the conditions set forth in, Section 5.11(a) (*Documents to be Submitted Following Notification of Preferred Proposer*) and Section 6.1(b) (*Documents To Be Delivered by Preferred Proposer with Executed PPA*); or
 - (iii) the Commercial Closing Date does not occur by the Commercial Closing Deadline specified in Section 1.7(a) (*Procurement Schedule*) (as the same may be extended pursuant to Section 1.7(c)) (*Commercial Closing Deadline and Financial Closing Deadline*), unless:
 - (A) the Development Entity has satisfied (or caused to be satisfied) each of the DE Conditions Precedent on or before the Commercial Closing Deadline; and
 - (B) the failure of the Commercial Closing Date to occur by the Commercial Closing Deadline is not attributable to either (1) any action or omission of the Proposer, or (2) the Proposer failing to honor any commitment made in its Proposal; or
- (d) (i) the Proposer fails to notify the Department of the ineligibility of the issuer of the Proposal Security or fails to deliver replacement Proposal Security, if applicable, in each case in accordance with Section 4.4(b)(iii), (ii) the Proposer fails to deliver replacement Proposal Security pursuant to Section 4.4(b)(ii) five days prior to the expiration of the Proposal Security then in effect, or (iii) the Department determines that the Proposal Security submitted by such Proposer contains a material alteration from the form of Proposal Security set forth in Form K-1 or Form K-2 that has not been previously approved by the Department, as the case may be; *provided that*, to the extent that the Department draws on the Proposer's Proposal Security pursuant to this Section 4.7(d) and the Proposer replaces such drawn cash with replacement

Proposal Security from an Eligible Security Issuer in compliance with this RFP, the Department will return such drawn cash to the Proposer.

4.8 Acceptance of Delivery by the Department

The Department will provide a receipt for Proposals that are timely delivered to the Department as specified herein.

5. EVALUATION AND POST-SELECTION PROCESS

The Department's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable Laws governing this procurement. Pursuant to Section 2.3(b) (*Addenda*) (and without limitation thereof), and except for any revision, modification or change required by FHWA, at any time prior to the Proposal Due Date, the Department in its sole discretion may revise, modify or change the evaluation and selection process and criteria set forth in this Section 5 (*Evaluation and Post-Selection Process*). The details of the evaluation and selection process are set forth more fully in this Section 5 (*Evaluation and Post-Selection Process*).

5.1 Organization of Review Panels and Evaluation and Scoring Committee

(a) Review Panels

The Director of the Office of Policy & Public Private Partnerships will select Commonwealth staff and/or Commonwealth consultants experienced in financial, technical and/or legal/administrative aspects of transportation projects to comprise, and participate in, the Pass/Fail Review Panel (the **Pass/Fail Review Panel**), the Technical Review Panel (the **Technical Review Panel**), and the Financial Review Panel (the **Financial Review Panel**).

- (i) The Pass/Fail Review Panel will conduct fact-gathering and analyze the extent to which each Proposal satisfies the "pass/fail" requirements set forth in Section 5.3 (*Responsiveness and Pass/Fail Review*).
- (ii) The Technical Review Panel will conduct fact-gathering and analyze each Proposal in light of the evaluation criteria set forth in Section 5.4 (*Evaluation of Technical Proposal by Evaluation and Scoring Committee*).
- (iii) The Financial Review Panel will conduct fact-gathering and analyze each Proposal in light of the evaluation criteria set forth in Section 5.5 (*Evaluation of Financial Proposal by Evaluation and Scoring Committee*).

Each of the Pass/Fail Review Panel, the Technical Review Panel, and the Financial Review Panel shall deliver its respective findings in writing to the Office of Policy & Public Private Partnerships and thereafter brief the Evaluation and Scoring Committee on its respective findings.

(b) Evaluation and Scoring Committee

The Director of the Office of Policy & Public Private Partnerships will select Commonwealth staff and/or Commonwealth consultants experienced in financial, technical and/or

legal/administrative aspects of transportation projects to comprise, and participate in, the Evaluation and Scoring Committee (the **Evaluation and Scoring Committee**). The Evaluation and Scoring Committee will select a chairperson. The Evaluation and Scoring Committee will conduct fact-gathering, and will:

- (i) determine the extent to which each Proposal satisfies the responsiveness and "pass/fail" requirements set forth in Section 5.3 (*Responsiveness and Pass/Fail Review*);
- (ii) score each Technical Proposal in light of the evaluation criteria set forth in Section 5.4 (*Evaluation of Technical Proposal by Evaluation and Scoring Committee*); and
- (iii) score each Financial Proposal in light of the evaluation criteria set forth in Section 5.5 (*Evaluation of Financial Proposal by Evaluation and Scoring Committee*).

The Evaluation and Scoring Committee shall deliver its scoring of the Proposals in writing to the Office of Policy & Public Private Partnerships and thereafter brief the Office of Policy & Public Private Partnerships on its findings.

(c) **Use of Advisors**

The chairperson of any of the Pass/Fail Review Panel, the Technical Review Panel, the Financial Review Panel, and the Evaluation and Scoring Committee may, in his or her discretion, decide to use subject matter advisors. In addition, observers from federal, state or other agencies with specific interests and responsibilities associated with the Project may be invited to observe aspects of the evaluation process. Except for FHWA which reserves the right to observe the evaluation process without limitation, all participants in the evaluation process, including evaluators, outside consultants and observers, will be required to sign confidentiality statements and conflict of interest disclosures, or otherwise be subject to the Department confidentiality restrictions and conflict of interest control requirements.

5.2 Best Value Determination

The best value determination will be based on the following 100-point scale. The Financial Price Score will represent up to 90 points of the Total Proposal Score and the Technical Proposal Score will represent up to 10 points of the Total Proposal Score. A Proposer achieving 100% of the points available for the Financial Price Score will score 90 points and a Proposer achieving 100% of the points available for the Technical Proposal Score will score 10 points. The determination of apparent highest-ranked Proposal shall be based on the highest Total Proposal Score computed as follows:

Total Proposal Score (max. 100 points) = Financial Price Score (max. 90 points) + Technical Proposal Score (max. 10 points).

(a) **Financial Price Score**

The Financial Price Score shall be a maximum of 90 points. The Financial Price is sum of the net present values (**NPVs**) of Availability Payments (assuming no adjustments for Unavailability Events and Noncompliance Events) and Milestone Payments set forth on Form J-2 (the **Financial Price**).

Proposers will calculate the Availability Payments and Milestone Payments pursuant to the requirements of Exhibit 3 (*Financial Proposal Instructions*) of this ITP and Schedule 8 (*Payment Mechanism*) of the PPA.

The Department will calculate the Financial Price on the following basis:

- (i) For purposes of the Financial Price calculation, payment for the Availability Payments and the Milestone Payments shall be assumed to be made when earned by the Development Entity.
- (ii) All Availability Payments and Milestone Payments occurring during any calendar year from January 1 to December 31 will be assumed to be made on December 31 of that calendar year for purposes of the calculation in Form J-2.
- (iii) A discount factor for each period will be applied to the Availability Payments and the Milestone Payments in year of expenditure dollars to arrive at the NPVs of Availability Payments and Milestone Payments as at January 1, 2015. The discount factor to be used is included on Form J-2.
- (iv) The sum of the NPVs of Availability Payments and Milestone Payments as at January 1, 2015, will be the Proposer's Financial Price.
- (v) For the avoidance of doubt, the calculation of the NPVs of Availability Payments and Milestone Payments pursuant to this Section 5.2(a) shall not take into account the payment of any Mobilization Contribution.

The Department will score the Financial Price in accordance with the following formula:

$$\text{Financial Price Score} = \frac{\text{Lowest Financial Price Proposed}}{\text{Proposer's Financial Price}} \times 90 \text{ points}$$

(b) **Technical Proposal Score**

The Technical Proposal Score shall be a maximum of 10 points.

The Technical Proposal Score will be calculated based on the Evaluation and Scoring Committee's evaluation score for the Preliminary Performance Plans and Design-Build Technical Solutions (maximum 10 points) as described in Section 5.4(a) (*Technical Proposal Score*). The Preliminary Performance Plans and Design-Build Technical Solutions for technical scoring purposes will be divided into seven parts: the Preliminary Project Management Plan elements as further described in Section 5.4(a)(ii) (*Preliminary Project Management Plan*), the Preliminary Quality Management Plan elements as further described in Section 5.4(a)(iii) (*Preliminary Quality Management Plan*), the Preliminary Maintenance Management Plan elements as further described in Section 5.4(a)(iv) (*Preliminary Maintenance Management Plan*), the Preliminary Transportation Management Plan as further described in Section 5.4(a)(v) (*Preliminary Transportation Management Plan*), the Preliminary Safety Plan as further described in Section 5.4(a)(vi) (*Preliminary Safety Plan*), the Preliminary Public Information and Communications Plan as further described in Section 5.4(a)(vii) (*Preliminary Public*

Information and Communications Plan), and the Design-Build Technical Solutions as further described in Section 5.4(a)(viii) (*Design-Build Technical Solutions*). The Evaluation and Scoring Committee's evaluation score of the Technical Proposal is the sum of the values of the seven parts described in the preceding sentence. The Technical Proposal Score will be calculated using the following formula:

$$\text{Technical Proposal Score} = \text{Evaluation and Scoring Committee's evaluation score of the Technical Proposal} \times 0.10$$

5.3 Responsiveness and Pass/Fail Review

Upon receipt, the Technical Proposals and the Financial Proposals will be made available for review by the Pass/Fail Review Panel and the Evaluation and Scoring Committee. They will be reviewed (x) for the Proposal's conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP and (y) based on the pass/fail criteria set forth below. Any Proposal that fails to achieve a passing score on any of the pass/fail portions of the evaluation may not be eligible for recommendation for award and will be considered unresponsive. Responsiveness shall be assessed on the basis of overall responsiveness, with the Department retaining the sole discretion to disregard or waive minor irregularities, omissions, nonconformities and discrepancies.

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

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

(a) Technical Proposals

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

- (i) the business form of the Proposer, the proposed Development Entity, and any entities that will have joint and several liability under the PPA or that will provide a performance guaranty (including any joint venture agreement, partnership agreement, operating agreement, Articles of incorporation bylaws or equivalent documents) is consistent with the requirements of the Project and Project Documents and provides for continuation of the Proposer in the event of bankruptcy or withdrawal of any of its members;
- (ii) the Proposer has provided a DBE pledge in accordance with the requirements of Section 3.2(i) (*DBE Pledge*) of Exhibit 2 (*Technical Proposal Instructions*);

FINAL

- (iii) the information, certifications, signed statements and documents as listed in Section 3.2 (*Proposer Information, Certifications, and Documents*) of Exhibit 2 (*Technical Proposal Instructions*) are included in the Technical Proposal and do not identify any material adverse information;
- (iv) the Proposer has delivered Proposal Security in the form of a complete, properly executed letter of credit and/or demand guarantee that complies with the requirements of Section 4.4(b) (*Proposal Security*);
- (v) the Proposal provides for Entire Project Completion no later than the Substantial Project Completion Deadline;
- (vi) the Technical Proposal (A) contains the required materials as listed in Section 3 (Contents of the Technical Proposal) and Section 4 (Preliminary Performance Plans and Design-Build Technical Solutions) of Exhibit 2 (Technical Proposal Instructions) and (B) demonstrates, at a minimum, compliance with the relevant requirements of the Technical Provisions;
- (vii) if the Proposer anticipates execution of the PPA by a special purpose entity, the Proposer has delivered either (A) pro formas of the special purpose entity organizational formation documents (*i.e.*, certificate of formation/charter, bylaws/partnership agreement/operating agreement) or (B) indicative term sheets of such corporate formation documents, in either case, that will be used to establish the entity should the Department select it as the Preferred Proposer;
- (viii) the Proposer has delivered executed contracts, or if a contract has not been executed, detailed, signed term sheets or heads of terms outlining the key commercial and required Key Contract terms between (A) the Proposer and D&C Contractor and (B) the Proposer and Lead Maintenance Contractor and detailed, signed term sheets or heads of terms outlining the key commercial and required Key Contract terms between D&C Contractor and Lead Engineering Firm; *provided, however*, that if the Development Entity shall, and commits in the Proposal to, self-perform the Maintenance Work under the Project Documents in an amount no less than 30% of the Maintenance Work (excluding Renewal Work), the foregoing items relating to the Key Contract between the Development Entity and the Lead Maintenance Contractor shall not be required;
- (ix) (A) each Major Participant and Key Personnel listed in the Proposer's SOQ have not changed since the Proposer's submission of the SOQ, or if the Proposer has previously advised the Department of a change, the Department has consented to such change, and the Proposal attaches a true and correct copy of the Department's written consent thereto; and (B) the Proposer has requested the Department's approval of new Key Personnel pursuant to Section 2.11(c) (*New Key Personnel Positions Identified Following RFQ*), the Department has approved such new Key Personnel, and the Proposal attaches a true and correct copy of the Department's written approval thereof;
- (x) the Proposer has delivered a properly completed and executed Conflict of Interest Disclosure Statement (Form I);

- (xi) the Proposer has delivered either (A) certificates of insurance policies evidencing proof of insurance coverages required by the PPA, or (B) written confirmation from an insurance company(ies), broker(s) or agent(s) that the signatories have read the PPA and insurance requirements set forth therein and that the entities required to obtain insurance under the PPA have the capability, as of the Proposal Due Date, of obtaining such insurance in the coverages and under the conditions listed in the PPA;
- (xii) the Proposer has delivered all other specified forms and documents, properly completed and signed (if required), and such forms and documents do not identify any material adverse information (to the extent applicable); and
- (xiii) the Proposer has certified to the Department that the requirements of Section 1.11(a) have been satisfied.

(b) **Financial Proposals**

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

- (i) Based on the information provided pursuant to Section 2 (*Financial Capacity Information*) of Exhibit 3 (*Financial Proposal Instructions*), the financial condition and capabilities of the Proposer (and each other entity listed therein) shall not have materially adversely changed from their respective financial conditions and capabilities as evidenced by the financial and other data submitted in the SOQ, such that the Proposer (and each other entity listed therein) continues to have the financial capacity to design, build, finance and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating the Proposer's financial capacity include the following:
 - (A) profitability;
 - (B) capital structure;
 - (C) ability to service existing debt;
 - (D) ability to invest equity; and
 - (E) other commitments and contingencies.

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

- (ii) The Proposer's Financial Proposal demonstrates the following:
 - (A) that it identifies sufficient financing for the Project, including all D&C Work and Maintenance Work;

- (B) that it is sufficiently developed and (x) has attracted sufficient commitment and the commitment letters described in clause (iii) of this Section 5.3(b) (*Financial Proposals*), (y) that the Core Lender(s) and/or Lead Underwriter(s), as applicable, have completed final due diligence (other than any diligence that is required to be undertaken after the Proposal Due Date as a result of applicable securities Law requirements), and (z) has attracted sufficient support and commitments from equity investors, in each case, to satisfy the Department that there is no material risk on financial grounds of any performance failure, including failure to perform any of the following:
 - I. execution and delivery of the PPA;
 - II. achievement of Financial Close;
 - III. achievement of Entire Project Completion by the Substantial Project Completion Deadline set forth in the PPA and in accordance with PPA requirements; and
 - IV. maintenance of the portions of the Project to be maintained by the Development Entity throughout the term in accordance with the requirements of the Project Documents, including the Handback Requirements;
 - (C) that it contains key milestones that are consistent with the Preliminary Performance Plans and Design-Build Technical Solutions in Section 4 (*Preliminary Performance Plans and Design-Build Technical Solutions*) of Exhibit 2 (*Technical Proposal Instructions*); and
 - (D) that the Proposer has received the Department's approval of the Lead Underwriter(s) (if bonds are used by the Proposer as part of its Financial Proposal).
- (iii) The Proposer has provided at least one commitment letter from one or more of the Core Lender(s) and/or Lead Underwriter(s), as applicable, described in Section 3.4 (*Additional Information*) of Exhibit 3 (*Financial Proposal Instructions*) and evidencing the willingness of such Core Lender(s) and/or Lead Underwriter(s) to provide the financing described in such letter. In the event a Proposer elects to provide a commitment letter from only one Core Lender or Lead Underwriter, the commitment letter must expressly state that such Core Lender or Lead Underwriter will finance or underwrite, as applicable, the full amount of debt required to be financed or underwritten pursuant the Proposer's Financial Plan; *provided that*, after the announcement of the Preferred Proposer, such commitment may be reduced upon appointment of additional lenders and/or underwriters, as applicable, solely in an amount equal to the amount of debt committed to be financed or underwritten by such additional lenders or underwriters, as applicable; *provided further* that the appointment of such additional lenders or underwriters shall be subject to the prior written approval by the Department in its sole discretion.

FINAL

- (iv) The Proposer has provided assurance that private equity will be in place in at least the amounts required under the Project Documents, including the required letters from Proposer's Equity Members evidencing their commitment to provide equity funding pursuant to Section 3.6 (*Details of Equity Source and Equity Member Letters*) of Exhibit 3 (*Financial Proposal Instructions*).
- (v) The Financial Proposal (A) contains all the materials required by Exhibit 3 (*Financial Proposal Instructions*) and (B) neither includes nor assumes the use of TIFIA or monoline insurance in accordance with Section 3.3(e) of Exhibit 3 (*Financial Proposal Instructions*).
- (vi) The Proposer has provided a letter from its independent insurance consultant or broker in accordance with the requirements of Section 7 (*Independent Insurance Broker/Consultant Letter*) of Exhibit 3 (*Financial Proposal Instructions*) and substantially in the form of Form T (*Letter from Independent Insurance Broker/Consultant*) (with such modifications as shall be acceptable to the Department, in its good faith discretion).
- (vii) The Proposer's Financial Proposal is likely to result in Financial Close in view of:
 - (A) the level of commitment of facilities provided by Core Lender(s) and/or Lead Underwriter(s);
 - (B) the reasonableness of costs and financing assumptions;
 - (C) the terms and conditions of the financing (including debt, quasi-equity and equity);
 - (D) the level of lender and underwriter, as applicable, due diligence performed;
 - (E) the conditions precedent to Financial Close included in the commitment letters and term sheets;
 - (F) guarantees and other security required to realize financing; and
 - (G) the level of commitment of Equity Members.

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

5.4 Evaluation of Technical Proposal by Evaluation and Scoring Committee

After completion of the pass/fail and responsiveness review by the Evaluation and Scoring Committee, the Preliminary Performance Plans and Design-Build Technical Solutions will be evaluated by the Evaluation and Scoring Committee based on the factors set forth in this Section 5.4 (*Evaluation of Technical Proposal by Evaluation and Scoring Committee*) to determine whether it includes any

improvements over the requirements of the Project Documents and brings additional benefits and/or value to the Department and the public. In evaluating the Technical Proposal, the Evaluation and Scoring Committee may consider other information provided with the Technical Proposal.

(a) **Technical Proposal Score**

(i) Preliminary Performance Plans and Design-Build Technical Solutions Evaluation Factors

The evaluation factors for the Preliminary Performance Plans and Design-Build Technical Solutions component of the Technical Proposal are as follows:

- (A) Preliminary Project Management Plan (maximum 16 Technical Proposal Score points);
- (B) Preliminary Quality Management Plan (maximum 16 Technical Proposal Score points);
- (C) Preliminary Maintenance Management Plan (maximum 20 Technical Proposal Score points);
- (D) Preliminary Transportation Management Plan (maximum 20 Technical Proposal Score points);
- (E) Preliminary Safety Plan (maximum 4 Technical Proposal Score points);
- (F) Preliminary Public Information and Communications Plan (maximum 8 Technical Proposal Score points); and
- (G) Design-Build Technical Solutions (maximum 16 Technical Proposal Score points).

(ii) Preliminary Project Management Plan

Objectives: A plan that complies with Section 2 (*Project Management*) of the Technical Provisions; an organization designed with clear lines of responsibility, appropriate personnel and well-defined roles that respond to the requirements of the Project Documents; a Preliminary DBE Performance Plan that is designed to achieve the DBE goals and encourage participation of minority-and women-owned businesses; a proactive and inclusive approach to community relations; a well-defined and logical approach to the Project schedule methodology; and schedule and cost information in detail sufficient for assessing the project schedule/cost balance.

(A) The Preliminary Project Management Plan evaluation subfactors include:

- I. Management Structure and Staffing Plan;
- II. Internal Organization Systems Plan;

- III. Preliminary DBE Performance Plan;
- IV. Preliminary Comprehensive Environmental Protection Plan;
- V. Preliminary Document and Data Management Plan;
- VI. Preliminary Risk Management Plan; and
- VII. Preliminary Project Baseline Schedule.

The Preliminary Project Management Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.1 (*Preliminary Project Management Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(iii) Preliminary Quality Management Plan

Objective: A plan that complies with Section 2 (*Project Management*) of the Technical Provisions and results in Design Work that is compliant with the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

(A) The Preliminary Quality Management Plan evaluation subfactors include:

- I. design quality component information;
- II. construction quality component information; and
- III. maintenance quality component information.

The Preliminary Quality Management Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.2 (*Preliminary Quality Management Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(iv) Preliminary Maintenance Management Plan

Objective: A plan that complies with Section 17 (*Maintenance Work*) of the Technical Provisions and other obligations of the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

(A) The Preliminary Maintenance Management Plan subfactors are as follows:

- I. internal organization system information;
- II. Maintenance Management Plan information;
- III. routine and preventative maintenance program information; and
- IV. Renewal Work program information;

The Preliminary Maintenance Management Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.3 (*Preliminary Maintenance Management Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(v) Preliminary Transportation Management Plan

Objective: A plan that complies with Section 16 (*Maintenance and Protection of Traffic*) of the Technical Provisions and other obligations of the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

(A) The Preliminary Transportation Management Plan subfactors are as follows:

- I. Procedures for construction sequencing for each type of bridge and approach to traffic management and control during construction;
- II. Procedures for business and residential access;
- III. Procedures for scheduling and sequencing the construction;
- IV. Procedures for laydown, recycling, staging, disposal and maintenance locations to be used during construction;
- V. Procedures for coordination with the Department and local Governmental Entities on the development and ongoing monitoring of the Traffic Control Plans (TCPs) for each Replacement Bridge;
- VI. Procedures for research, identification and inclusion of special events;
- VII. Procedures for Emergencies, Incidents, and release of Hazardous Materials;
- VIII. Procedures for the identification and incorporation of the needs of transit operators, Utility Owners, Governmental Entities, emergency service providers, school districts, business owners, hospitals, farmers, local residents and other related Users or entities affected by the Replacement Bridge and surrounding affected areas;
- IX. Procedures for coordinating the TMP with other Department, local Governmental Entities and private projects that are or will be under construction;
- X. Procedures for ensuring compliance with all local ordinances;
- XI. Procedures for incorporating the accommodation of snow plowing and other Department maintenance procedures into the TCPs;
- XII. Procedures to provide continuous access to established truck routes and Hazardous Material routes, and to provide suitable detour routes; and

XIII. Procedures for night work.

The Preliminary Transportation Management Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.4 (*Preliminary Transportation Management Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(vi) Preliminary Safety Plan

Objective: A plan that demonstrates a culture of safety and that complies with Section 2 (*Project Management*) of the Technical Provisions and other obligations of the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

(A) The Preliminary Safety Plan subfactors are as follows:

- I. Procedures, policies, training, and enforcement programs to ensure the safety of all personnel, Department employees, and the general public and prevent incidents and accidents;
- II. Safety records for each Major Participant that will perform or supervise installation and/or construction Work for the Project;
- III. Procedures for coordination with Governmental Entities on issues related to fire, security, and life safety;
- IV. Procedures for tracking, documenting and reporting on safety compliance; and
- V. Procedures for incorporating audit findings.

The Preliminary Safety Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.5 (*Preliminary Safety Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(vii) Preliminary Public Information and Communications Plan

Objective: A plan that complies with Section 3 (*Public Information and Communications*) of the Technical Provisions and other obligations of the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

(A) The Preliminary Public Information and Communications Plan subfactors are as follows:

- I. Procedures to identify of customer groups;
- II. Procedures for to specific outreach and engagement activities, including the mode of communication and methods to measure the effectiveness of these activities and how the activities will be coordinated with the Department;

- III. Procedures to effectively communicate impacts from Project activities during the design, construction, and maintenance phases in order to effectively manage the public's expectations related to these impacts; and
- IV. Procedures for communications for all lane closures and Emergency events, such as major vehicle collisions, ice/snow conditions, and Hazardous Material spills and coordination of these communications with the Department.

The Preliminary Public Information and Communications Plan subfactors listed above will reflect the solutions and approaches as set forth in Section 4.6 (*Preliminary Public Information and Communications Plan*) of Exhibit 2 (*Technical Proposal Instructions*).

(viii) Design-Build Technical Solutions

Objective: A set of technical solutions for the design and construction of the Project that addresses the unique characteristics of the Project, meets the quality objectives of the Project Documents, minimizes the lifecycle cost of the Project over the useful life of the Project assets and results in Construction Work throughout the term, including Renewal Work, that is compliant with the Project Documents, Governmental Approvals and applicable Law and Good Industry Practice.

(A) The Design-Build Technical Solutions evaluation subfactors are as follows:

- I. Replacement Bridge structures information;
- II. roadway elements information;
- III. construction logistics and supply chain management information;
- IV. ROW plan development information;
- V. Utility Relocation and adjustment Work Elements information; and
- VI. context sensitive aesthetic solution Elements information;

The Design-Build Technical Solutions subfactors listed above will reflect the solutions and approaches as set forth in Section 4.7 (*Design-Build Technical Solutions*) of Exhibit 2 (*Technical Proposal Instructions*).

5.5 Evaluation of Financial Proposal by Evaluation and Scoring Committee

After completion of the pass/fail and responsiveness review by the Evaluation and Scoring Committee, the Evaluation and Scoring Committee will evaluate the Financial Proposal to provide its calculation of the Financial Price Score.

5.6 Total Proposal Score

After completion of the evaluation of the Technical Proposal by the Evaluation and Scoring Committee and the Financial Proposal by the Evaluation and Scoring Committee, the Director of the Office of Policy & Public Private Partnerships, with the assistance of Department representatives and advisors, will determine the total proposal score for each Proposal by adding the Proposal's Technical Proposal Score to the Proposal's Financial Price Score (the **Total Proposal Score**).

5.7 Requests for Clarification

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

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

5.8 Requests for Proposal Revisions

Pursuant to 74 Pa.C.S. § 9109(i), the Department may, at any time after receipt of Proposals and prior to the Commercial Closing Date, determine that it is appropriate to request changes to the Proposals (**Proposal Revisions**). Only Proposers that submitted responsive Proposals will be permitted to submit Proposal Revisions. If Proposal Revisions are requested, the Department will follow the procedures for revised proposals described in 23 CFR Part 636. The Department may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP Documents, shall mean the original Proposal, as modified by the Proposal Revision.

Upon receipt of Proposal Revisions, the procedures set forth in Section 5.1 (*Organization of Review Panels and Evaluation and Scoring Committee*) through Section 5.7 (*Requests for Clarification*) (*inclusive*) shall be repeated with respect to such Proposal Revisions, as appropriate, and the Evaluation and Scoring Committee shall revise ratings and value estimates as appropriate following the completion of such procedure. For the avoidance of doubt, to the extent that the Department requests Proposal Revisions and the Proposer elects not to submit a Proposal Revision, such election shall not constitute a withdrawal of such Proposer's Proposal Security and the Department shall promptly return such Proposer's previously-provided Proposal Security in its entirety.

5.9 Identification of the Preferred Proposer

- (a) Once the Director of the Office of Policy & Public Private Partnerships has determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions) and, thereafter, recommends to the Pennsylvania Secretary of Transportation the designation of the Proposer

whose Proposal has the highest Total Proposal Score as the Preferred Proposer, then the Pennsylvania Secretary of Transportation may authorize the Authorized Department Representative to:

- (i) select such Proposer as the Preferred Proposer for contract negotiation pursuant to 74 Pa.C.S. § 9109(j) and finalize the Project Documents with such Preferred Proposer, in each case pursuant to Section 5.10 (*Finalization*);
 - (ii) require Proposal Revisions pursuant to Section 5.8 (*Requests for Proposal Revisions*); or
 - (iii) reject the recommendation and cancel the procurement or request reconsideration of the recommendation.
- (b) If the Director of the Office of Policy & Public Private Partnerships recommends to the Pennsylvania Secretary of Transportation that the Preferred Proposer shall be preliminarily selected as the Development Entity under the PPA, and the Pennsylvania Secretary of Transportation preliminarily selects the Preferred Proposer as the Development Entity under the PPA, the Authorized Department Representative will select such Proposer as the Preferred Proposer for contract negotiation pursuant to 74 Pa.C.S. § 9109(j) and finalize the Project Documents with such Proposer, in each case pursuant to Section 5.10 (*Finalization*).

5.10 Finalization

(a) Finalization of Project Documents

If authorized by the Authorized Department Representative, the Department will proceed with the Preferred Proposer to negotiate and finalize the Project Documents. By submitting its Proposal, each Proposer commits to enter into the form of Project Documents included in the RFP, without variation except to fill in blanks and include information that the form of PPA indicates is required from the Proposal (including, without limitation, ATCs) in accordance with Section 3.7 (*Incorporation of ATCs into the Project Documents*); *provided, however*, that, at the Department's request, the Preferred Proposer shall negotiate in good faith with the Department regarding (i) incorporation of ATCs or other work product from unsuccessful Proposers into the Project Documents and (ii) any other aspect of the Project Documents; *provided that* neither the Department nor the Preferred Proposer shall negotiate any matter (or be required to agree to any matter) that is inconsistent with this ITP.

If the Department elects to negotiate and finalize the Project Documents with the Preferred Proposer and a PPA satisfactory to the Department, in its sole discretion, cannot be negotiated and finalized with the Preferred Proposer, the Department may formally suspend or end negotiations and finalization with that Preferred Proposer and take action consistent with the direction provided by the Authorized Department Representative. Such action may include (A) requiring the Preferred Proposer to enter into the form of Project Documents included in the RFP, without further negotiation or variation except to fill in blanks and include information (x) from the Proposal as Development Entity's Proposal Commitments in accordance with this ITP and (y) that the form of PPA indicates is required from the Proposal (*e.g.*, ATCs), (B) rejection of all Proposals, or (C) proceeding to the next most highly ranked Proposal to

finalize or attempt to negotiate and finalize a PPA with that Proposer in accordance with this Section 5.10 (*Finalization*).

The Preferred Proposer will be deemed to have failed to engage in good faith negotiations with the Department and shall forfeit its Proposal Security if the Preferred Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with the Department or insists upon terms or conditions for any documents to be negotiated or provided by the Development Entity hereunder that are inconsistent with the Project Documents. Failure by a Preferred Proposer to agree to inclusion of ATCs or other work product from unsuccessful Proposers shall not be deemed a failure to engage in good faith negotiations that will entitle the Department to draw upon the Proposal Security.

(b) **Preliminary Financial Model Audit**

As a condition precedent to award of the PPA, the Preferred Proposer shall cause a preliminary independent audit of the Preferred Proposer's Preliminary Financial Model to be conducted by a firm engaged by the Preferred Proposer and approved by the Department (the **Model Auditor**) (which approval shall not be unreasonably withheld, conditioned, or delayed), at the Preferred Proposer's sole cost and expense. Copies of the preliminary audit report(s) and opinion(s) shall be co-addressed to the Department, and the Department shall be expressly identified therein as an entity entitled to rely upon such audit, subject to the Model Auditor's contractual cap on liability. The Preferred Proposer shall cause the drafts or pro formas of the preliminary audit report(s) and opinion(s) to be delivered to the Department no later than 10 days after the date of notification by the Department that it is the Preferred Proposer.

Prior to engaging the Model Auditor and in accordance with the dates set forth in Section 1.7(a) (*Procurement Schedule*), the Preferred Proposer will provide the Department with information about the proposed Model Auditor (including qualifications and relevant experience), the proposed terms of engagement (including the proposed form of the model audit opinion and any governing law provisions) and the level of professional liability coverage (which must cover claims by the Department arising from any errors or omissions by the Model Auditor in connection with the model audit). The engagement terms with the Model Auditor may limit the Model Auditor's liability to the Department for the failure of the Model Auditor's opinion to identify any error(s) in the Preliminary Financial Model to five years from completion of services and in an amount of no less than the lesser of (x) \$5,000,000 dollars and (y) five times the amount payable to the Model Auditor for preparation of such report(s) and opinion(s); *provided that* such caps shall be effective only if the Model Auditor maintains professional liability insurance in the amount and for the duration of the cap; *provided further* that any Lender may have an interest in the proceeds of such insurance in priority to the interest of the Department therein. The Model Auditor chosen by the Preferred Proposer must be unaffiliated with the Preferred Proposer and otherwise free of any conflict of interest.

The information to be submitted by the Proposer to the Department pursuant to this Section 5.10(b) (*Preliminary Financial Model Audit*) shall also include, at a minimum, the following:

- (A) the name and address of the proposed Model Auditor;

- (B) a list of transportation projects, grouped by geographic location, for which the proposed Model Auditor has provided model auditing services;
- (C) a list of the Model Auditor team members; and
- (D) a resume for each Model Auditor team member.

The required information is a Pre-Proposal Submittal subject to the submission and deadline requirements of Section 2.4 (*Pre-Proposal Submittals*).

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

The Preferred Proposer shall also provide the Department with an opinion from the Model Auditor stating that the Preliminary Financial Model is suitable for use in connection with the procedures for reconciling amounts of compensation payable by the Department pursuant to Schedule 8 (*Payment Mechanism*) of the PPA. The Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with GAAP. This opinion, on which the Department shall be a co-addressee and expressly entitled to rely, may also result from an independent review of the Preliminary Financial Model required by the Preferred Proposer's lenders. The opinion is to be provided at the Preferred Proposer's cost. At a minimum, the opinion shall affirm that:

- I. the Financial Model reliably, accurately, and consistently calculates profit and loss, cash flow, balance sheet projections, key financial ratios, and investors' returns;
- II. assumptions and logic used within the Financial Model are materially consistent with the project's documentations (including the financing documents or term sheets, as applicable);
- III. the size of the Availability Payments can be generated by following the steps described in Schedule 8 (*Payment Mechanism*) of the PPA;
- IV. the Financial Model's outputs do not have any unexplainable variations or trends;
- V. there are not any significant inconsistencies between the operation of the macros contained in the Financial Model and the intended purpose of the Financial Model; and
- VI. the Financial Model can be used for the calculation of compensation payments.

The preliminary audit report(s) and opinion(s) shall be delivered prior to final award and the Commercial Closing Date.

(c) **Market Interest Rate Adjustment**

To the extent provided in the PPA, the Department will bear the risk and have the benefit of 100% of the changes in the Bond Financing Base Interest Rate(s) and the Bank Debt Financing Benchmark Rate(s) (collectively, **Benchmark Rates**) (either positive or negative) for the period between the date such rates are provided by the Department to Proposers in accordance with Section 1.7(a) (*Procurement Schedule*) and ending on the earliest of: (i) 10:00 a.m. Eastern Time on the Financial Closing Date, (ii) 10:00 a.m. Eastern Time on the Financial Closing Deadline, (iii) with respect to the Bond Financing Base Interest Rates, the date of the execution of a bond purchase agreement relating to a Bond Financing, and (iv) with respect to the Bank Debt Financing Benchmark Rates(s), the date of execution of any interest rate hedging instrument by the Development Entity in relation to a Bank Debt Financing. Each Proposer's Financial Plan and Preliminary Financial Model shall include the Benchmark Rates underlying the financing set forth in such Proposer's Financial Plan and Preliminary Financial Model. By the relevant date set forth in Section 1.7(a) (*Procurement Schedule*), Proposers shall submit the names and data sources of the benchmarks for the Benchmark Rates to be submitted by Proposers to the Department pursuant this Section 5.10(c). Thereafter, Proposers shall submit their selected indices and Bond Financing Base Interest Rate(s), or Bank Debt Financing Benchmark Rate(s), as the case may be, to the Department for approval by the date set forth in Section 1.7(a) (*Procurement Schedule*), and such rates must be approved by the Department not later than the date and time set forth in Section 1.7(a) (*Procurement Schedule*) in order to be included in the Proposal; *provided, however*, that if the Department has a clarification or issue regarding a Proposer's submittal, the Department may extend the date by which it must approve the selected indices and Bond Financing Base Interest Rate(s), or Bank Debt Financing Benchmark Rate(s), as the case may be, while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the approved indices and Bond Financing Base Interest Rate(s), or the approved Bank Debt Financing Benchmark Rate(s), as the case may be, shall be included in the Proposal (and the delay in approval shall not affect the relevant date and time set forth in Section 1.7(a) (*Procurement Schedule*)).

- (i) In the case of a Bond Financing, the Bond Financing Base Interest Rate(s) submitted by Proposers must be independently verifiable by the Department using Bloomberg U.S.-based screens or another independently verifiable source acceptable to the Department, as appropriate. Proposers may also provide Bond Financing Base Interest Rate(s) for alternate forms of financing and must do so in order to be entitled to a credit spread adjustment under the PPA.
- (ii) In the case of a Bank Debt Financing, the Department reserves the right to request additional information if needed to verify the Bank Debt Financing Benchmark Rate(s). The Bank Debt Financing Benchmark Rate(s) provided by the Proposer shall be (i) based on the Bank Debt Financing drawdown and repayment profile; (ii) priced as of 10:00 A.M Eastern Daylight Time on the date of submittal; (iii) priced without any forward component as if the trade was executed on the date provided and not to the projected Financial Closing Date; and (iv) priced without any swap margin. In addition, Proposers must provide, at a minimum, the following detailed supporting documentation by the relevant date set forth in Section 1.7(a) (*Procurement Schedule*) in order for the Department to verify the Bank Debt Financing Benchmark Rate(s): (i) step-by-step screenshots on Bloomberg; and (ii) assumptions, including amortization schedule, trade date, floating rate, fixed rate day count, and floating rate day count. In the event that Proposers are including swaps in their submittal, following the

Department's confirmation of the Proposer's Bank Debt Financing Benchmark Rate(s) on or prior to the relevant date set forth in Section 1.7(a) (*Procurement Schedule*), Proposers may, until the relevant time set forth in Section 1.7(a) (*Procurement Schedule*), submit updated Bank Debt Financing Benchmark Rate(s) to account solely for drawdown and repayment schedule changes. Subject to the first paragraph of this Section 5.10(c) (*Market Interest Rate Adjustment*), the Department will confirm any revised Bank Debt Financing Benchmark Rate(s) by the end of the business day following submission.

Proposer shall use Table 6 of Form M for purposes of the Benchmark Rate submittal. Each Proposer shall ensure that its Preliminary Financial Model reflects the approved Benchmark Rate that is for the period of time running from (i) the date of Financial Close assumed in the Preliminary Financial Model to (ii) the date of maturity of the Bond Financing or the Bank Debt Financing, as the case may be, set forth in such model. For example, in the case of a Bond Financing, if the date of Financial Close is assumed to be March 30, 2015, and the date of maturity of the Bond Financing is March 30, 2019, then the four-year Bond Financing Base Interest Rate shall be used. The PPA, including without limitation Schedule 2 (*Update to the Base MAP*) of the PPA, sets forth the process, mechanics and constraints on any applicable market interest rate adjustment.

(d) **Credit Spread Adjustment**

To the extent provided in the PPA, the Department will bear 85% of the risk and the benefit of changes in Credit Spreads (either positive or negative) (with the Development Entity bearing 15% of the risk of such changes (either positive or negative)) solely with respect to a Bond Financing, in accordance with the PPA. The PPA sets forth the process, mechanics and constraints on any applicable Credit Spread fluctuation adjustment.

- (i) No later than the relevant date and time specified in Section 1.7(a) (*Procurement Schedule*), each Proposer must submit to the Department for approval the Credit Spreads that the Proposer intends to use in its Preliminary Financial Model. As part of this submittal, Proposer shall provide its bond maturities and credit rating assumptions, market comparables and/or other supporting data. Proposer shall use Form M for purposes of the Credit Spread submittal.
- (ii) No later than the relevant date and time specified in Section 1.7(a) (*Procurement Schedule*), the Department will provide written approval to each Proposer of the Credit Spreads to be assumed in the Proposer's Preliminary Financial Model; *provided, however*, that if the Department has a clarification or issue regarding a Proposer's submittal, the Department may extend the date by which it must approve the Credit Spreads while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the Credit Spreads shall be included in the Proposal (and the delay in approval shall not affect the relevant date and time specified in Section 1.7(a) (*Procurement Schedule*)).

To facilitate flexibility in determining their final plan of finance, Proposers may submit separate curves for multiple rating categories that could range from BBB-/Baa3 through A/A2; however, only bond maturities and associated ratings that have been submitted for approval will

ultimately be eligible for interest rate protection. In advance of the date set forth in Section 5.10(d)(i), the Department may request Proposers and their Lead Underwriters to submit indicative Credit Spreads and yields for different credit ratings. Depending on the results of the review of the Credit Spreads submitted, the Department may require a floor on the Credit Spread that Proposers will assume in their Financial Proposals.

The Department will not accept increases in Credit Spreads on a Bond Financing resulting from the final credit rating being lower than the indicative investment grade rating(s) provided in the Financial Proposal. In the event that there is a difference in indicative investment grade ratings received by Proposers from the Rating Agencies, then Proposers are required to assume the lowest indicative investment grade rating in their Financial Proposal. Movements in margins from the Proposal Due Date to the Financial Closing Date associated with a Bank Debt Financing, including bank lender margin and swap credit margin, will be borne solely by the Proposer.

Proposer shall use Table 6 of Form M for purposes of the Credit Spread submittal. The PPA, including without limitation Schedule 2 (*Update to the Base MAP*) of the PPA, sets forth the process, mechanics and constraints on any applicable Credit Spread adjustment.

(e) Monoline Insurance

In the event that the Preferred Proposer includes monoline insurance in its Financial Plan in accordance with the terms of Section 3.3(e)(ii) of Exhibit 3 (*Financial Proposal Instructions*), the Department shall receive 85% of the benefit resulting from such inclusion.

5.11 Department Review of Post-Selection Deliverables

(a) Documents to be Submitted Following Notification of Preferred Proposer

Not later than 14 days prior to the Commercial Closing Deadline, and as a condition precedent to award of the PPA, the Preferred Proposer shall deliver to the Department for the Department's comment and approval (in respect of compliance with requirements of the RFP) copies, each in final form, of the documents described in Section 6.1(b) (*Documents To Be Delivered by Preferred Proposer with Executed PPA*).

(b) Department Comment on Post-Selection Deliverables

The Department shall provide comments on any Post-Selection Deliverable required to be delivered to the Department for review and approval hereunder (in respect of compliance with requirements of the RFP), within 10 Business Days after the date of the Department's receipt of such deliverable. The Department shall have four Business Days to review and respond to subsequent submittals of the deliverable.

6. AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Execution

(a) Award and Execution of the PPA

The Department will neither award nor execute the PPA unless there has been (i) successful negotiation and finalization of the PPA in accordance with Section 5.10 (*Finalization*), (ii) concurrence in award by FHWA, (iii) receipt by the Department of all of the documents required to be provided pursuant to Section 6.1(b) (*Documents To Be Delivered by Preferred Proposer with Executed PPA*), and (iv) satisfaction of any other conditions to award set forth in this ITP or required by Law.

(b) **Documents To Be Delivered by Preferred Proposer with Executed PPA**

Prior to the execution of the PPA by the Department, the Preferred Proposer shall deliver to the Department with the executed copy of the PPA:

- (i) each document described in the DE Conditions Precedent, each duly executed as provided in the PPA;
- (ii) the preliminary audit report(s) and Model Auditor opinion(s) pursuant to Section 5.10(b) (*Preliminary Financial Model Audit*), in form and substance reasonably satisfactory to the Department; and
- (iii) any other documents reasonably required by the Department as a result of the Department's pre-award negotiations with the Preferred Proposer conducted in accordance with Section 5.10 (*Finalization*).

6.2 Debriefings

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

Debriefings shall:

- (a) be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;
- (b) be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and
- (c) provide information on areas in which the unsuccessful Proposer's Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the thoughts, notes, or rankings of individual members of the Evaluation and Scoring Committee, but may include a summary of the rationale for the selection decision and PPA award.

6.3 Stipend Payment to Unsuccessful Proposers

- (a) **Maximum Stipend Amount**

- (i) Except as set forth in the Stipend Agreement and this Section 6.3 (*Stipend Payment to Unsuccessful Proposers*), each Proposer that has executed the Stipend Agreement (a **Stipend Eligible Proposer**) shall be eligible to receive a stipend in an amount not to exceed \$1,000,000 (the **Maximum Stipend Amount**) if:
 - (A) the Department cancels the procurement after the issuance of this RFP but on or before the Proposal Due Date; or
 - (B) the Department has not cancelled the procurement on or before the Proposal Due Date, and such Stipend Eligible Proposer has submitted a timely and responsive, but unsuccessful, Proposal by the Proposal Due Date in accordance with the terms and conditions of the RFP Documents.
- (ii) If any Stipend Eligible Proposer shall be eligible to receive a stipend as a result of:
 - (A) any event described in Section 6.3(a)(i)(A), then such Stipend Eligible Proposer shall be eligible to receive the full amount of the actual, reasonable and documented out-of-pocket development costs actually incurred and paid by such Stipend Eligible Proposer in preparing a Proposal in an amount not to exceed the Maximum Stipend Amount; *provided that* such Stipend Eligible Proposer submits to the Department an invoice, waiver and release and the documentation of out-of-pocket development costs as further described in Section 6.3(a)(iii) (which shall be subject to the Department's reasonable review and concurrence) (x) no earlier than the date of notice from the Department that the procurement has been cancelled on or before the Proposal Due Date and (y) no later than 90 days after the date of such notice; or
 - (B) Any event described in Section 6.3(a)(i)(B), then the Stipend Eligible Proposer shall receive 100% of the Maximum Stipend Amount; *provided that* (1) a timely and responsive Proposal shall be considered unsuccessful if the Department cancels the procurement without award after the Proposal Due Date or names another Proposer as the Preferred Proposer and (2) such Stipend Eligible Proposer submits to the Department an invoice, waiver and release and the documentation of out-of-pocket development costs as further described in Section 6.3(a)(iii) (which shall be subject to the Department's reasonable review and concurrence) (x) no earlier than the earlier of (1) the date of notice from the Department that the Commercial Closing Date has occurred and (2) the date of notice from the Department that the Commercial Closing Date has not occurred and that the procurement has been cancelled, and (y) no later than 90 days after the date of such notice; *provided that* in no event shall a Stipend Eligible Proposer that becomes the Development Entity be entitled to receive payment pursuant to this Section 6.3(a)(ii)(B).
- (iii) Any invoice to be submitted by a Stipend Eligible Proposer shall be in the form set forth in Exhibit 1 of Form S and shall be accompanied by an executed irrevocable waiver of protest and full, unconditional and irrevocable release of all claims against the Department, in the form attached as Form Q.

- (iv) Any stipend payable pursuant to the Stipend Agreement and this Section 6.3 (*Stipend Payment to Unsuccessful Proposers*) shall become due and payable 60 days after the date the Proposer submits to the Department the invoice, waiver and release described in Section 6.3(a)(iii).
- (v) Except as provided in the Stipend Agreement and this Section 6.3 (*Stipend Payment to Unsuccessful Proposers*), no Proposer shall be entitled to reimbursement of any of its costs in connection with this RFP.

(b) **Eligibility**

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

- (i) if such Proposer has not executed and delivered the Stipend Agreement to the Department on or before 10 days after the date that the Department sends the Stipend Agreement to such Proposer with instructions to execute and return the Stipend Agreement to the Department;
- (ii) if such Proposer withdraws from the procurement;
- (iii) if such Proposer has not complied in all material respects with the terms and conditions of the RFP Documents;
- (iv) if such Proposer fails to satisfy the terms and conditions set forth in the Stipend Agreement or this Section 6.3 (*Stipend Payment to Unsuccessful Proposers*), including delivering an invoice and documentation of out-of-pockets costs pursuant to Section 6.3(a) (*Maximum Stipend Amount*) within the time periods specified herein and the waiver and release as described herein;
- (v) if such Proposer has filed a protest of, or otherwise challenges, the procurement process, award or cancellation of the procurement process and such protest or challenge is dismissed or otherwise is unsuccessful; or
- (vi) if such Proposer was the Preferred Proposer and (A) it proceeds to the Commercial Closing Date and Financial Close or (B) it fails to proceed to the Commercial Closing Date or Financial Close for any reason other than failure of one or more express closing contingencies that are set forth in the RFP Documents or the PPA, the failure of which does not arise out of or result from the acts, omissions, negligence, fraud, breach of contract or law or willful misconduct of the Preferred Proposer; or the Department's election to cancel the procurement after the Proposal Due Date, which election does not arise out of or result from the acts, omissions, negligence, fraud, breach of contract or law or willful misconduct of the Preferred Proposer.

(c) **Work Product**

Each Proposer agrees that the Department shall be entitled to use Proposer's intellectual property and work product contained in its Proposal (including ATCs, written and electronic correspondence, Exhibits, photographs, reports, printed material, tapes, disks, patents,

inventions, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications and other graphic and visual aids generated by or on behalf of Proposer). Work product is not required to be returned to the Proposer under this RFP when received by the Department prior to the cancellation and/or contained in a Proposal, in consideration for the Department's agreement to make payment as provided herein and in the Stipend Agreement, without any further compensation or consideration to the Proposer.

In accordance with Section 3.9 (*Confidentiality of ATCs*) and subject to the confidentiality provision of the RFP and applicable Law, the Department will have the right to inform the Preferred Proposer regarding the contents of the other Proposals after notification of the Preferred Proposer, and that the PPA may incorporate the above-described work product, ideas or concepts based thereon. Upon the Proposer's receipt of payment hereunder, this right shall extend to allow the Department to use such work product, ideas and concepts in the performance of its functions. Payment of the stipend to the Proposer shall operate as a release and waiver by the Proposer of any and all claims challenging the procurement process, award and/or cancellation of the procurement process.

(d) **Stipend Agreement**

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

6.4 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before the Commercial Closing Date, including costs incurred for any interviews, costs associated with Post-Selection Deliverables and costs relating to finance process and achieving the Commercial Closing Date, shall be borne by the Proposer, except for any costs paid in accordance with Section 6.3 (*Stipend Payment to Unsuccessful Proposers*).

6.5 Return of Proposal Security

Except for any Proposal Security that has been forfeited pursuant to Section 4.7 (*Forfeiture of Proposal Security*), the Proposal Security as to each Proposer will be returned to the respective Proposers within 10 Business Days of the earliest of (a) expiry of the Proposal Validity Period, as extended, (b) the Commercial Closing Date, and (c) cancellation of the procurement by the Department.

7. PROTESTS

This Section 7 (*Protests*) sets forth the exclusive remedies for protests and claims related to the selection of a Proposal available with respect to the RFP.

FINAL

7.1 Protests and Claims against a Commonwealth Agency

Pursuant to 74 Pa.C.S. § 9101(m), Proposers must file any protest or claim against the Department or any other Commonwealth agency in accordance with the procedures set forth in 62 Pa.C.S. Ch. 17, including 62 Pa.C.S. § 1711.1(b) (*Filing of Protest*).

7.2 Protests and Claims against Non-Commonwealth Entities

Pursuant to 74 Pa.C.S. § 9101(n), Proposers must file any protest or claim against a public entity other than a Commonwealth agency in a court of common pleas where that entity is located.

8. DEPARTMENT RIGHTS AND DISCLAIMERS

8.1 Department Rights

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

- (a) develop the Project in any manner that it, in its sole discretion, deems necessary;
- (b) reject any or all of the Proposals;
- (c) modify any dates set or projected in this RFP and extend any deadlines;
- (d) cancel, modify or withdraw the RFP in whole or in part at any time prior to the execution by the Department of a PPA, without incurring any cost obligations or liabilities, except as otherwise provided in Section 6.3 (*Stipend Agreement and Proposal Letter*); *provided that* the Department's right to modify the evaluation process and scoring criteria set forth in Section 5 (*Evaluation and Post-Selection Process*) shall be limited as provided therein;
- (e) terminate this procurement and commence a new procurement for part or all of the Project;
- (f) terminate evaluations of Proposals received at any time;
- (g) suspend or terminate negotiations at any time, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence PPA negotiations with any responding Proposer, or engage in negotiations with other than the highest ranked Proposer;
- (h) modify the procurement process (with appropriate notice to Proposers);
- (i) waive or permit corrections to data submitted with any response to this RFP until such time as the Department declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (j) permit submittal of addenda and supplements to data and information previously provided in a Proposal pursuant to a request for clarification issued by the Department until such time as the

FINAL

Department declares that a particular stage or phase of its review of the responses to this RFP has been completed and closed;

- (k) appoint evaluation committees to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;
- (l) disclose information contained in a Proposal to the public as described herein;
- (m) approve or disapprove changes in the Key Personnel identified in the SOQ;
- (n) approve or disapprove changes in the Proposer's organization;
- (o) waive deficiencies, informalities and irregularities in Proposals, accept and review a non-conforming Proposal, or seek clarifications or modifications to a Proposal;
- (p) request Proposal Revisions as specified herein;
- (q) offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the PPA by a third party;
- (r) develop some or all of the Project itself (including financing some or all of the Project itself);
- (s) disqualify any Proposer that violates the terms of the RFP; and
- (t) exercise any other right reserved or afforded to the Department under this RFP or applicable Law.

8.2 Department Disclaimers

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

By submitting its Proposal in response to this ITP, each Proposer agrees to (a) comply with each of the instructions set forth herein and (b) the terms and conditions set forth in the RFP.

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