

**NOT FOR BIDDING**

**DESIGN-BUILD**

**RFP CONTRACT BOOK 1  
INSTRUCTIONS TO  
DESIGN-BUILDERS (ITDB)**

**I-40**

**Widening from Central Pike to East of SR-109**

**Wilson County- TENNESSEE**

**PROJECT IDENTIFICATION NUMBER (PIN 114169.00)**

**PROJECT NUMBER IM-40-5(140); 95100-0105-44**

**DB CONTRACT NO. DB1101**



**September 16, 2011**

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FROM WEST OF SR-171  
TO EAST SR-109  
WILSON COUNTY*

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*Design-Build Project*  
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**STANDARD INSTRUCTIONS TO DESIGN-BUILDERS**

**A. SCOPE OF SOLICITATION / PROJECT DESCRIPTION**

**1. INTRODUCTION**

This **Contract Book 1 (ITDB - Instructions to Design Builders)** is issued by the Tennessee Department of Transportation (the Department) to all firms and teams of firms (“Design Builders”) that the Department has shortlisted for the Department’s Request for Proposals (RFP) to solicit competitive Proposals for **I-40 From Central Pike to East of SR- 109 - Wilson County** Design Build Project (the “Project”). The Department hereby invites such Design Builders to submit competitive sealed proposals (“Proposals”) for design and construction of the Project as more specifically described in the Contract Documents. Design Builders should not rely on only the limited information contained in this **Contract Book 1 (ITDB - Instructions to Design Builders)**, but should review and understand the specific information and requirements in the RFP.

This solicitation is a request for competitive proposals. Proposals are only invited from and will only be considered from those entities (“Design Builders”) on the short-list as determined through the evaluation of Statements of Qualifications (“SOQ”) submitted in response to the Request for Qualifications (“RFQ”).

The DB is advised to familiarize itself with the provisions of Tennessee Code Annotated, Section 67-6-209, entitled "Use of Property Produced or Severed from the Earth-Exemptions", which relates to the payment of taxes on the use of tangible personal property severed from the earth. This tax is in addition to those levied for other tangible personal property.

The DB must have at their disposal the necessary equipment to put on the Project when instructions are issued to begin work, and to do the work within the time specified. In the event the Design Builder has been awarded contracts for highway work in the past, they shall have financed the work in such a manner that just and proper claims in the discretion of the Department, representing labor and materials entering therein, have not been filed with the Department.

This **Contract Book 1 (ITDB - Instructions to Design Builders)** contains Technical Proposal, Price Proposal, and other submittal requirements, a description of the procurement process to be used, Technical Proposal evaluation criteria, and other instructions to Design-Builders. This **Contract Book 1 (ITDB - Instructions to Design Builders)** shall be used by Design-Builders in conjunction with the other Contract Documents for the generation and submission of responsive Technical Proposals, sealed Price Proposals, and other required pre-award submittals.

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RFP CONTRACT BOOK 1

Submittal of a Price Proposal and the execution by Design-Builders of the signature sheets contained in the RFP, shall constitute the Design-Builder's acknowledgement and understanding of the procurement process, submittal requirements, and evaluation criteria contained herein.

The Contract will include **Contract Book 1 (ITDB - Instructions to Design Builders)**, **Contract Book 2 (Design-Build Contract)**, and **Contract Book 3 (Project Specific Information)**, **DB Standard Guidance** and all referenced documents, including, but not limited to, the listing in the **Contract Book 2 (Design Build Contract)** are to set forth the rights and obligations of the Parties and the terms and conditions governing completion of the work.

This project consists of I-40 construction from the Central Pike to the East of the SR-109 including grading, drainage, and paving, the construction and design of roadway and Bridge widening, possible retaining wall and installation of signals. The approximate Project length is approximately 8.5 miles.

The Design Builder's obligations shall include without limitation the following:

- Furnishing all design services, Quality Management, materials, equipment, labor, transportation, and incidentals required to complete the Project according to the approved Plans, the Department's Standard Specifications, as amended, and terms of the Contract;
- Performing the construction work according to the lines, grades, typical sections, dimensions, and other details shown on the approved Plans, as modified by Change Order or other written directive issued by the Department;
- Performing all work determined by the Department to be necessary to complete the Contract; and
- Contacting the Department Alternative Contracting Office for any necessary clarification or interpretation of the Contract prior to proceeding with the affected work.
- All Project components identified in the Contract and performance of all work described in accordance with all Contract requirements. The shall determine the full Project requirements through comprehensive examination of the Contract and the Project Site.
- Designing, furnishing, constructing, and installing all components of the Project, except for those components, if any, as may be stipulated within the **Contract Book 3 (Project Specific Information)** to be furnished and/or installed by the Department or others.

The Design-Builder shall be fully and totally responsible for the accuracy and completeness of all work performed under the Contract, and shall indemnify and hold the Department harmless for any additional costs and all claims against the Department which may arise due to errors or omissions of the Department in the Provided Materials, and of the Design-Builder in performing the work.

## 2. PROJECT OVERVIEW

The Design-Build Project is in Wilson County. I-40 project limits are Central Pike underpass (LM 2.02) to approximately one mile East of SR-109 eastbound onramp (LM 10.52). The proposed I-40 improvements will provide eight (8) twelve (12) foot wide travel lanes, including one (1) HOV lane each direction, with ten foot wide paved outside shoulders and twelve (12) foot wide paved inside shoulders from Central Pike to SR-109. The improvements will require shoulder width design exception at the SR-171 underpass, bridge widening at Wilson Creek near LM 7.43, replacing ATR#34 near LM 5.95, and a noise barrier will have to be included in the project plans. The barrier will have to be located at/near the edge of shoulder since I-40 and the westbound ramp are on fill. The barrier top elevation should be 10 feet above the finished grade of the outside lane. The barrier will begin near Log Mile 3.70 and extend a distance of 2,600 feet and end along the westbound exit ramp to Mt. Juliet Road near Log Mile 3.21. This section of the corridor will be constructed with minimal disturbance to existing residential and commercial areas.

- The Design Builder shall be responsible for determining all utility conflicts / relocations, and costs. Coordination shall include any and all necessary utility agreements when applicable.
- The Design Builder shall provide right-of-way acquisition services for the Project. Right-of-way acquisition services shall include certified title reports, appraisal, appraisal review, negotiations, relocation assistance services, property management services, parcel closings and all related activities. The Design Builder shall be responsible for the right of way acquisition costs.
- The Design Builder shall be responsible for coordinating the construction/ relocation of private utilities with the appropriate owners.
- The Design Builder shall be responsible for development and installation of the Traffic Control and Pavement Marking Plans.
- The Design Builder shall be responsible for all erosion prevention and sediment control designs and implementation.
- The Design Builder shall be responsible for preparing all documents necessary for to obtain the environmental permits. Should the Design-Builder's activities be in violation of the environmental permits, law and/or regulations and therefore cause fines and/or penalties to be assessed against the Department, said fines and/or penalties will be deducted from monies due the Design-Builder.
- The Design Builder shall follow all reference guidance as stated in **DB Standard Guidance**.
- Specific Technical requirements as stated in **Contract Book 3 (Project Specific Information)**.
- The Design Builder shall be responsible for preparing the design exception request needed for FHWA Approval in accordance with TDOT Design Guidelines.

**3. RFP COMMUNICATION**

The Department Alternative Contracting C.E. Manager 2 for the duration of the procurement process, together with address, phone number, fax number, and e-mail address, are set out in the Contract.

**a. CORRESPONDENCE**

All correspondence and submittals must be submitted in a sealed envelope or package addressed to the Department Alternative Contracting C.E. Manager 2 and labeled as set out in Section C.2 of **Contract Book 2 (Design-Build Contract)**.

**Return Address** – The Design Builder’s must also include on the envelope or package the Design Builder’s name and return address.

Any Department designated contact person specified in the **DB Standard Guidance** for a specific technical area will be disclosed to the contracted Design Builder within the Initial Notice to Proceed (NTP).

**b. OTHER MEANS OF COMMUNICATION**

The Design Builders may also communicate with the Department Alternative Contracting C.E. Manager 2 by fax, phone, or e-mail (or if the Program Manager is unavailable, as a secondary contact, the Department Director of Construction by telephone at 615-741-2414. Advance copies of submittals delivered to the Department by fax or e-mail are not considered official until the Department receives the hard copy. Official communications will only be disseminated in writing by the Department.

**c. COMMUNICATIONS WITH DESIGN-BUILDER;  
DESIGN-BUILDER’S SINGLE POINT OF CONTACT AND  
ADDRESS**

The Department Alternative Contracting C.E. Manager 2 shall be the Design Builder’s single point of contact for all communications during the procurement process prior to the Proposal Due Date. The Design Builder’s single point of contact for communications during the procurement process shall be the only contact person to request information.

**4. THE DEPARTMENT’S DISSEMINATION OF INFORMATION**

**a. INFORMAL COMMUNICATIONS**

The Department may post informal advance notices of Addenda and information on the Project website, and may also utilize e-mail alerts ([liaobaid@tn.gov](mailto:liaobaid@tn.gov)). However, the Design Builders may not rely on oral communications, or on any other information or contact that occurs outside the official communication process specified herein. Official communications will only be disseminated in writing, by e-mail, or via the website by the Department.

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In the event the Department determines that a change of RFP or Contract terms or specifications are warranted, the Department will issue formal written clarifications or Addenda.

## b. RESPONSES TO FORMAL REQUESTS

Questions on or modification of provisions of the RFP or any Addenda can be pursued through submittal of Form QR. The Department will provide responses to all:

- Requests for QPL product determination;
- Requests for answers; and
- Requests for change of Contract terms or specifications.

Information that the Department issues to the Design Builders in writing responding to the questions submitted on Form QR will be posted to the website for all Design Builders to view.

## c. ADDENDA

If the Department determines that a formal request or protest raises an issue that should be resolved by amending a RFP provision, specification or Contract term, the Department will do so by issuing a formal Addendum clearly identifying the change as amending, revising, or modifying the RFP provision, specification or Contract term in question.

The Department may issue Addenda up to five (5) Calendar Days prior to the Proposal Due Date, unless the Department extends the Proposal Due Date concurrent with issuance of the Addendum.

## d. REQUESTS FOR QPL PRODUCT DETERMINATION

The Design Builder may request a product in lieu of a QPL product by identifying the product category included on the QPL. The shall provide sufficient manufacturer product information, together with supporting documentation such as industry studies and test results, and product demonstration, if relevant, as may be reasonably necessary to enable the Department to make a determination as to the inclusion of said product on the Department's QPL. The Design Builder shall not submit any proprietary items, unless specified in accordance with 23 CFR 635.411 and approved by the Department prior to the request.

The Department may reject any request without recourse by the Design Builder. The Department has no obligation but to review the product and shall not be liable for failure to accept or act upon any request. The Department shall be the sole judge of the acceptance or rejection of a product. If an agreement has not been reached by five (5) Calendar Days prior to the Proposal Due Date, the product shall be deemed rejected.

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## e. QUESTIONS

The Design Builders may provide questions on RFP provisions, Contract provisions, and specifications that the Design Builder considers unclear or incomplete. To be considered, the questions must identify the unclear language or omission, or the specific discrepancies between identified provisions that result in ambiguity. All requests shall be submitted to the Department Alternative Contracting C.E. Manager 2 and will only be accepted in the format of Form QR in electronic format by e-mail ([lia.obaid@tn.gov](mailto:lia.obaid@tn.gov)) or fax. Any questions to addenda issued after the question deadline will be considered and answers issued if time allows.

## f. REQUESTS FOR CHANGE OF CONTRACT TERMS OR SPECIFICATIONS

The Design Builders may submit a request for change of Contract terms or specifications setting out the language for which change is sought and indicating the document title, page, and subsection where the language is located. To be considered, the request must include the reason for the requested change, supported by factual documentation, and the proposed change. All requests shall be submitted to the Department Alternative Contracting C.E. Manager 2 and will only be accepted in the format of Form QR in electronic format using MS Word by e-mail ([lia.obaid@tn.gov](mailto:lia.obaid@tn.gov)) or fax.

## g. PROHIBITED DESIGN-BUILDER COMMUNICATIONS

No member of Design Builder's organization (employees, agents, Principal Participants, the Designer, Key Personnel or the Technical Manager) may communicate with members of another Design Builder's organization to give, receive, or exchange information, or to communicate inducements, that constitute anti-competitive conduct in connection with this procurement.

The Design Builders shall not contact stakeholder staff regarding the RFP content or the requirements for the Project. Stakeholder staff includes employees of the Department, city(ies) and county(ies) in which the Project or any part of it are located.

Prohibited communications do not include contact with regulatory/county/city officials for the limited purpose of obtaining information regarding available detour routes and conditions associated with such use or regulatory/county/city guidelines.

## 5. PROCUREMENT SCHEDULE/SUBMITTAL DEADLINES

The Procurement Schedule and submittal deadlines are set out below. The Department will not consider requests on any submittal received by the Department after the deadline for its submittal date stated below. The Department will not consider requests on any submittals pertaining to an Addendum after the deadline established in the Addendum.

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Deadline for Submittal of Initial Right-Of-Way Acquisition	<i>October 17, 2011 4:00 p.m., CT</i>
Deadline for Submittal of Alternate Technical Concepts	<i>October 17, 2011 4:00 p.m., CT.</i>
Deadline for Response to Alternate Technical Concepts, and ROW acquisition	<i>October 31, 2011 4:30 p.m., CT.</i>
Deadline for Submittal of Question Requests, and Requests for QPL Determination	<i>November 14, 2011 4:00 p.m., CT.</i>
Anticipated Deadline for Issuance of Last Addendum	<i>November 21, 2011 4:00 p.m., CT.</i>
Technical Proposal and Price Proposal Due Date and Time	<i>November 28, 2011 4:00 p.m., CT.</i>
Public Price Proposal Opening	<i>December 9, 2011 9:00 a.m., CT.</i>
Award of DB contract, or rejection of all proposal	<i>On or before January 9, 2012</i>
Anticipated Issuance of Initial Notice to Proceed	<i>January 23, 2012</i>

The Department will not consider any late Proposals. Proposals received after the Proposal Due Date will be returned to the unopened. The Department will not consider any Proposal modifications submitted after the Proposal Due Date. Nor will the Department acknowledge Proposal withdrawals submitted after the Proposal Due Date. Any such attempted withdrawal will be ineffective.

If the Design Builder does not submit a Proposal by the Due Date and the Department chooses to issue a new, revised, or modified RFP, the Proposal will be considered non-responsive to the requirements set forth herein. As a result, the Design Builder will not be eligible to respond to any additional RFP requests from the Department on this project.

## 6. CONTRACT DOCUMENTS

- Contract Book 1 (ITDB - Instructions to Design Builders);
- Contract Book 2 (Design-Build Contract);
- Contract Book 3 (Project Specific Information);
- DB Standard Guidance and Addendum;
- The Department Standard Specifications;

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- The Department Supplemental Specifications;
- The Department Design Guidelines, and Addendum;
- The Department Construction Circular Letters;
- The Department Standard Drawings;
- Design Procedures for Hydraulic Structures 2004;
- Drainage Manual;
- FHWA scour publication HEC-18, FHWA publication HEC-21 or HEC-22;
- Exhibit A (Technical Proposal), including any ATCs;
- Change Orders;
- Force Account Work Orders;
- Written Orders and Authorizations Issued by the Department;
- All Other Programmatic Plans or any Other Documents;
- All Material Included by Reference in any of the above Documents.
- The Department Material and Test Standard Operating Procedures.

## 7. **COMPLETION DATES**

- Contract Completion Time – The Design Builder shall specify the number of Calendar Days after receipt of the Initial Notice to Proceed required for completion of the project within their Price Proposal. Completion of the project is completion of all work to be done under the Contract, except for plant establishment, and the Department has provided final acceptance as stated in the Department’s Standard Specifications. The number of Calendar Days specified by the Design Builder in their Price Proposal will be placed in the Contract prior to execution of this Design Build Contract.
- Interim Completion Dates – To be determined by the Critical Path Method (CPM) Schedule.

## 8. **CRITICAL PATH METHOD (CPM)**

The Technical Proposal CPM Schedule shall follow the applicable categories within the Schedule of Items and other cost control systems, including the Payment Progress Process.

The CPM Schedule shall include all major activities of work required under the Contract, in sufficient detail to evaluate design and construction process. The Design Builder shall provide adequate time in the schedule for all parties involved with the Project to complete their work, including inspections, procurement activities, and testing. The Design Builder’s plan, as presented in the CPM, shall adhere to all Contract requirements. The Design Builder shall include in the CPM schedule the work of subcontractors, vendors, suppliers, utilities, railroads, permitting agencies, the Department, and all other parties associated with the Project. Failure by the Design Builder to include any element of its work or the work of others required for

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completion of the Project will not excuse the Design Builder from completing the Project by the Contract Completion Date(s).

The scheduling compatible software employed by the Design Builder shall be with the current and any future scheduling software employed by the Department. The Department's current software in use is Primavera Project Manager (v 5.0). The software shall be compatible provided in an electronic file version of the Project Schedule that can be loaded or imported by the Department using the Department's scheduling software with no modifications, preparation or adjustments.

The CPM Schedule shall show the order in which the Design Builder proposes to carry on the work, the time frame which it will start the major items of work and the critical features of such work (including procurement of materials, plant, and equipment), and the contemplated time frames for completing the same. For the purposes of developing the CPM Schedule, the Design Builder shall use ten (10) business days for the Review and Approvals performed by the Department. The CPM Schedule shall include, at a minimum, the following items:

- Controlling items of work, major work and activities to be performed;
- Seasonal weather limitations;
- Land disturbance restrictions;
- Phase duration or milestone events, as applicable;
- Specified contract completion time (defined above) from Price Proposal.

The purpose of this scheduling requirement is to ensure adequate planning and execution of the work and to evaluate the progress of the work. The CPM Schedule proposed shall meet or exceed minimum Contract requirements, as determined by the Department in its sole discretion, where all Design-Builder risks are mitigated with schedule logic. The Design Builder is and shall remain solely responsible for the scheduling, planning, and execution of the work in order to meet the Project Milestones, the Intermediate Contract Times, and the Contract Completion Date(s).

Within ten (10) after award of the Contract, the Design Builder shall assign a percentage of the Pay Item Cost to each activity in the proposed CPM that reflects an accurate percentage value to each activity based on estimated costs plus associated profit and overhead. The profit and overhead assigned by the to the individual activities starting shall be equal to or less than the mark-up applied to the work when establishing the Contract Lump Sum Price. The schedule shall be in a suitable scale to indicate graphically the total percentage of work scheduled to be completed at any time.

Review and Comment by the Department shall not be construed to imply approval of any particular method or sequence of construction or to relieve the Design Builder of providing sufficient materials, equipment, and labor to guarantee completion of the Project in accordance with all Contract requirements. The Department Review and Comment shall not be construed to modify or amend the Contract, Interim Completion

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Dates, or the Contract Completion Date. The updated CPM Schedule may be utilized to facilitate the Department's Quality Assurance (QA) activities.

If at any time the design of the project potentially affects the approved FHWA NEPA document, the Design Builder shall cease work and contact the Department Alternative Contracting Office.

The Department acceptance of any schedule does not relieve the Design Builder of responsibility for the accuracy or feasibility of the schedule, does not modify the Contract, will not be construed as an endorsement or validation of the Design Builder's plan, and does not guarantee that the Project can be performed or completed as scheduled. The Department's acceptance of the Design Builder's schedules in no way attests to the validity of the assumptions, logic constraints, dependency, relationships, resource allocations, resource availability, manpower and equipment, or any other aspect of the means and methods of performing the work.

The Design-Builder shall produce a schedule that does not contain open-ended activities, except for the first and last activity in the schedule.

## 9. SUBMITTALS

Design Build submittals will be based on the approved CPM Schedule. All submittals must be stamped into the Department designated contact office before 12:00 p.m. CST to start the review period that day. If submittals are received after 12:00 p.m. CST, the review period will begin on the following business day. The review period includes only the Department workdays.

Submittals shall be transmitted in a logical order and in accordance with the submittal schedule. All submittals shall be stamped by a Professional Engineer licensed in Tennessee.

## B. PREPARATION OF PROPOSAL

### 1. METHOD OF PROCUREMENT

The Contract will be for Design Build services to be paid on a lump sum basis for each Pay Item Number. The Department will award the Contract to the Design Builder that submits a responsive Proposal that is determined by the Department to offer the lowest Adjusted Price considering the evaluation factors set forth in this ITDB.

The procurement process includes two steps:

**Step One: RFQ** (determination of Short list); and,

**Step Two: RFP** (selection of from submitting responsive Proposals).

Evaluation of Proposals will be based on information submitted in the Proposals or otherwise available to the Department, and will involve both pass/fail factors and price, as further detailed below

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The Design Builder shall comply with the Proposal preparation instructions set out in this **Contract Book 1 (ITDB - Instruction to Design-Builders)**, the **Contract Book 2 (Design-Build Contract)**, the **Contract Book 3 (Project Specific Information)**, the **DB Standard Guidance** and any other Contract Documents released for this procurement.

## 2. **ALTERNATIVE TECHNICAL CONCEPTS – SUBMITTAL REQUIREMENTS AND AUTHORIZATION TO USE**

### a. **INFORMATION**

To accommodate innovation that may or may not be specifically allowed by the RFP Documents, the Design Builder has the option of submitting Alternative Technical Concepts.

An Alternative Technical Concept (ATC) is a private query to the Department that requests a variance to the requirements of the RFP or other Contract Documents that is equal or better in quality or effect as determined by the Department in its sole discretion and that have been used elsewhere under comparable circumstances.

The Design Builder may include an ATC in the Proposal only if the ATC has been received by the Department by the deadline identified in this **Contract Book 1 (ITDB - Instruction to Design Builders)** and it has been approved by the Department).

The submittal original deadline applies only to initial ATC submittals. Resubmittal of an ATC that has been revised in response to the Department's requests for further information concerning a prior submittal shall be subsequently received as directed by the Department.

An ATC shall in no way take advantage of an error or omission in the RFP. If, at the sole discretion of the Department, an ATC is deemed to take advantage of an error or omission in the RFP, the RFP will be revised without regard to confidentiality.

By approving an ATC, the Department acknowledges that the ATC may be included in the design and RFC (Readiness-for-Construction) plans; however, approval of any ATC in no way relieves the of its obligation to satisfy (1) other Contract requirements not specifically identified in the ATC submittal; (2) any obligation that may arise under applicable laws and regulations; and (3) any obligation mandated by the regulatory agencies as a permit condition.

A proposed ATC is not acceptable if it merely seeks to reduce quantities, performance, or reliability, or seeks a relaxation of the contract requirements. ATCs shall be submitted by the Design Builder and pre-approved in writing by the Department. All Technical Proposals must include the Department's pre-approval letters for consideration of the ATCs.

**b. SUBMITTAL REQUIREMENTS**

Each ATC submittal shall include two (2) individually bound copies and shall use Form ATC located in **Contract Book 3 (Project Specific Information)**. Each ATC shall include the following information:

- 1) Description. A detailed description and schematic drawings of the configuration of the ATC or other appropriate descriptive information (including, if appropriate, product details [i.e., specifications, construction tolerances, special provisions] and a traffic operational analysis, if appropriate).
- 2) Usage. Where and how the ATC would be used on the Project.
- 3) Deviations. References to all requirements of the RFP that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements, and a request for approval of such variance(s).
- 4) Analysis. An analysis justifying use of the ATC and why the variance to the requirements of the RFP should be allowed.
- 5) Impacts. Discussion of potential impacts on vehicular traffic, environmental impacts identified, community impact, safety and life-cycle Project impacts, and infrastructure costs (including impacts on the cost of repair and maintenance).
- 6) History. A detailed description of other projects where the ATC has been used, the success of such usage, and names and telephone numbers of project owners that can confirm such statements.
- 7) Risks. A description of added risks to the Department and other entities associated with implementing the ATC; and
- 8) Costs. A description of the ATC implementation costs to the Department, the Design Builder, and other entities (right-of-way, utilities, mitigation, long term maintenance, etc.).

The ATC, if approved, shall be included in the Price Proposal if the Design-Builder elects to include it in their Technical Proposal.

**c. REVIEW OF ATCS.**

A panel will be selected to review each ATC, which may or may not include members of the Design Build Review Committee. The Design Builder shall make no direct contact with any member of the review panel, except as may be permitted by the Department Alternative Contracting C.E. Manager 2. Unapproved contact with any member of the review panel will result in a disqualification of that ATC.

The Department may request additional information regarding a proposed ATC at any time. The Department will return responses to, or request additional information from, the within five (5) business days of the original submittal. If additional information is requested, the Department will provide a response within five (5) business days of receipt of all requested information.

Under no circumstances will the Department be responsible or liable to the or any other party as a result of disclosing any ATC materials, whether the disclosure is

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deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of the Department or their respective officers, employees, contractors, or consultants.

## d. THE DEPARTMENT RESPONSE

The Department will review each ATC and will respond to on Form ATC as shown in **Contract Book 3 (Project Specific Information)** with one of the following determinations:

- 1) The ATC is approved.
- 2) The ATC is not approved.
- 3) The ATC is not approved in its present form, but may be approved upon satisfaction, in the Department's sole discretion, of certain identified conditions that shall be met or certain clarifications or modifications that shall be made (conditionally approved).
- 4) The submittal does not qualify as an ATC but may be included in the Proposal without an ATC (i.e., the concept complies with the baseline requirements of the RFP Documents).
- 5) The submittal does not qualify as an ATC & may not be included in the Proposal; or
- 6) The ATC is deemed to take advantage of an error or omission in the RFP, in which case the ATC will not be considered, and the RFP will be revised to correct the error or omission.

## e. ATC INCLUSION IN TECHNICAL PROPOSAL.

The Design Builder may incorporate one or more approved ATCs as part of its Technical and Price Proposals. If the Department responded to an ATC by stating that it would be approved if certain conditions were met, those conditions must be stipulated and met in the Technical Proposal. If the ATC is used in the submittal, the approved Form ATC shall be included in the Technical Proposal.

In addition to outlining each implemented ATC, and providing assurances to meet all attached conditions, the shall also include a copy of the ATC approval letter with approved form from the Department in the Technical Proposal within the Appendix and these will not count towards the page limit maximum; however the ATC must be discussed within the Technical Proposal Response Category for scoring.

Approval of an ATC in no way implies that the ATC will receive a favorable review from the Design Build Review Committee. The Technical Proposals will be evaluated in regards to the evaluation criteria found in this **Contract Book 1 (ITDB - Instructions to Design Builders)**, regardless of whether or not ATCs are included.

The Price Proposal shall reflect all incorporated ATCs. Except for incorporating approved ATCs, the Technical Proposal may not otherwise contain exceptions to, or deviations from, the requirements of the RFP.

**3. SELECTION PROCEDURE**

The Department will utilize a *Meets Technical Criteria (A+B)* selection process in this procurement to award a Contract to the responsible Design Builder that demonstrates it meets the technical criteria and can deliver the best combination of price and time (A+B) in the design and construction of the Project.

Price Proposals will be calculated in accordance with the following method:

$$\text{Total Contract (A+B)} = A + (B \times \text{TIME})$$

Where, A = Contract Amount

B = the number of Calendar Days (from the Initial Notice to Proceed) indicated by the time needed to complete the Project in their Price Proposal and will become the contract completion time.

TIME VALUE = Value associated with time of completion on this Project.

It is intended that all construction be completed by the earliest feasible date to minimize public inconvenience and enhance public safety. Should the total number of calendar days that the Design Builder placed in the Proposal under the “B” portion of the Proposal to be deemed excessive, then the Proposal will be rejected. To this end the Design Builder shall pursue the work rigorously utilizing the necessary work week, work hours and/or work shift schedules to expedite the work. The total Contract (A+B) cost will be used by the Department to determine the Apparent Design Builder, but reimbursement to the Design Builder shall be based solely on the Proposal Price total “A” and any incentive or disincentive payment made in accordance with the Contract.

**IMPORTANT:** The number of Calendar Days “B” is to be placed in the Price Proposal. Failure to enter a value for “B” will make the Proposal irregular and be cause for rejection.

Calendar days will be charged in accordance with the Contract and time charges will begin on the date shown on the initial NTP letter. Time charges will continue until work is complete, including punch list items, on the Project by the Department in accordance with the Contract.

No time adjustments will be allowed for:

- Adverse weather conditions;
- The time required to Review and Approve Shop Drawings;
- The time required to review VECs;
- The time to process Change Orders or plan revisions requiring additional Review and Approval;
- The time to complete work not on the CPM Schedule;
- Any delays typically encountered during a Project regardless of the source.

Time adjustments may be considered for:

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- The time for plan revisions requiring additional Review and Approval if the Design Builder was unable to work on the controlling item of work without revised plans or shop drawings;
- The time for ordering and delivery of materials for Extra Work directed by the Department that affects the CPM Schedule;
- Delays encountered due to a catastrophic event, beyond the control of the Design Builder, that the Department determines adversely affected the progress of work.

The Department reserves the right to reject any or all Proposals, to waive technicalities, or to advertise for new Proposals, if, in the judgment of the Department, the best interests of the public will be promoted thereby. In putting together their Proposals, the Design Builder should keep in mind and address the Project goals stated herein.

## C. RELATIVE WEIGHTS ALLOCATED TO TECHNICAL AND PRICE PROPOSALS

The selection method to be utilized for this Project is “Meets Technical Criteria (A+B)”. The Technical Proposal will be evaluated on the pass/fail and technical evaluation factors identified herein. A Proposal must achieve a **Pass** rating for RC I, II, III, and IV. The Department shall first determine whether the Proposals are responsive to the requirements of the RFP. Prior to making such determination, the Department may offer a Design Builder the opportunity to provide supplemental information or clarify its Proposal. Each responsive Technical Proposal shall be evaluated based on the criteria provided herein. After evaluation of the Technical Proposal, the Department, as required by Department Rule 1680-5-4, Procedures for the Selection and Award of Design Build Contract, will publically open and read the Total Contract Amount (A+B). Although the selection will be made on the bid proposal that qualifies as the lowest and best adjusted bid, the cost of the Contract will be the amount received as the Proposal Price “A” and will be placed in **Contract Book 2 (Design Build Contract)** upon award.

## D. TECHNICAL RESPONSE CATEGORIES AND SCORING

Proposal responses for Response Categories I through IV will be evaluated using the rating guidelines set out in this **Contract Book 1 (ITDB - Instruction to Design Builders)**.

EVALUATION FACTORS	POINTS
RESPONSE CATEGORY I	PASS/FAIL
RESPONSE CATEGORY II	PASS/FAIL
RESPONSE CATEGORY III	PASS/FAIL
RESPONSE CATEGORY IV	PASS/FAIL
<b>TOTAL</b>	

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During the evaluation period, each Technical Proposal will be reviewed by the Department Design Build Review Committee (DBRC) individually.

## 1. **RESPONSE CATEGORY I**

The submittals required under Response Category I as stated in this **Contract Book 1 (ITBD - Instruction to Design Builders)** will be evaluated as a matter of responsibility on a pass/fail basis.

### a. **FORMS**

- 1) All required contract forms filled out. All Response Category forms and any forms specified within a Response Category shall be placed within the appropriate response category below. If any Response Category item requires additional sheets, the form shall indicate at the bottom of the item, see additional sheets. Additional forms can be used, but are not necessary if only one item requires additional sheets.
- 2) All other forms are to be placed within this Response Category.

### b. **OTHER**

- 1) City and state where assigned staff will be located, particularly the location(s) of design staff.
- 2) List of DBEs Contacted (Include identification of the type of work considered.).

## 2. **RESPONSE CATEGORY II: DESIGN-BUILDER'S ORGANIZATION AND EXPERTISE**

Submit as much of the following for Evaluation on the Response Category II form in **Contract Book 3 (Project Specific Information)**, will be evaluated as a matter of responsibility on a pass/fail basis (be as specific as possible):

### a. **ORGANIZATION**

- 1) Project-Wide Organizational Chart, including Design and Construction Functions; Key Personnel and Design Professionals.
  - Include responsibilities and reporting relationships or chain of command, clearly identifying the Project Manager, and personnel who will be assigned to the various tasks identified in this RFP.
- 2) Description of those categories of work which the Design Builder anticipates will be performed by the Design Builder's own forces and those categories which will be performed by Subcontractors.
- 3) Plans and procedures for management of Subcontractors.
- 4) Personnel Organization (Format as stated in **Contract Book 3 (Project Specific Information)** Section 2).

**b. PROJECT EXPERTISE**

- 1) The Design-Builder shall identify all major subcontractors in the Technical Proposal.
- 2) Describe the overall strengths of the Design Team and their ability to fulfill the design requirements of this Project.

**3. RESPONSE CATEGORY III: PROJECT CONTROLS AND MANAGEMENT**

Submit as much of the following for Evaluation on the Response Category III form in **Contract Book 3 (Project Specific Information)** will be evaluated as a matter of responsibility on a pass/fail basis (be as specific as possible):

**a. PROJECT UNDERSTANDING**

- 1) Describe or outline the objectives, goals, and tasks to show or demonstrate the Design Builder's view and understanding of the nature of the contract. Consider if the Scope of Services attached to this RFP is sufficient to attain the Department's goals and objectives.
- 2) Identify any potential right-of-way and utility conflicts.
- 3) Identify innovative approaches to minimize any impacts to the right-of-way. Describe any temporary impacts and associated minimization approaches.

**b. SCHEDULE MANAGEMENT**

- 1) CPM Time Schedule (to be submitted in color) meeting the requirements established in the Contract, and consistent with the Department's Project Sections, and Pay Items identified. See Section A.7 of this **Contract Book 1 (ITDB - Instruction to Design Builders)**.
- 2) Describe or outline the assumptions upon which the CPM Schedule was based, risks, constraints, contingencies, sequence of work, the controlling operation or operations, intermediate completion dates, milestones, project phasing, anticipated work schedule and estimated resources that impacted the schedule.
  - a) The CPM Schedule shall indicate how the Design Builder intends to:
    - Divide the Project into work segments to enable optimum construction performance and explain the planned sequence of work, the critical path, proposed phasing of the Project, and any other scheduling assumptions made by the Design Builder.
    - Plans and procedures to insure timely deliveries of materials to achieve the Project schedule.
    - Categories of work that anticipates will be performed by Design Builder's own direct labor force, those categories that will be performed by Subcontractors, those categories that will be performed by project specific teams, and those categories that will be performed by existing teaming arrangements.
    - An explanation of Design Builder's methodology for updating it.

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- b) The Design Builder may adjust the list to more accurately reflect planned sequences and methods, although the level of detail shall be similar to that reflected in the list of required Pay Items in the Schedule of Items.
- 3) Submit a description of Pay Item Breakdowns including the physical features and activities included in the Pay Item, and all work included in the Pay Item Totals as reflected on the Schedule of Items.

For example, but not limited to:

105-01.20 Design Build Construction Stakes, Lines & Grades

- Field Survey
- ITS
- Construction Staking

105-01.55 Design Build Design Services

- Definitive Design and Reviews
- Readiness-for-Construction Plans and Reviews, Specification and quantity estimates
- Working Drawings
- As-Built Plans and Reviews

105-08.20 Design Build Contract Management

- Project Administration
- Project progress (scheduling)
- Contract progress submittals for payment

109-04.50 Design Build ROW Services

- Appraisal
- Acquiring
- Public meetings if required

109-10.01 TRAINEE

Trainee at the unit price \$0.80 per hour for each hour approved training provided, as indicated in SP1240

203-01.95 Design Build Grading & Roadways

- Road and Drainage excavation
- Borrow excavation (rock)
- Borrow excavation (other than solid rock)
- Undercutting

204-05.50 Design Build Geotechnical

- Borings
- Geotechnical Investigations
- Sinkhole

209-01.50 Design Build Environmental Management

- EPSC measures, EPSC installation

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- EPSC inspections
- Permit Acquisitions

## 301-50.50 Design Build Pavement

- Any aggregate base
- Any Bituminous Plant Mix Base (HM) (A, BM-2, Etc.)
- Any Bituminous Concrete Surface (HM) (D, E)
- Treated Permeable Base Or Lean Concrete Base
- Any Portland Cement Concrete Pavement ( $\leq$  10 in. Thickness)
- Any Portland Cement Concrete Pavement ( $>$  10 in. Thickness)
- Tack, Prime coat

## 604-10.95 Design Build Bridges

- Components (steel, deck drains, etc.)
- Bridge
- Bridge Repairs
- Inspections

## 604-50.50 Design Build Minor Structures (Other)

- Removal of Existing Buildings and Improvements
- Box Culvert
- Retaining Walls
- Endwalls
- Wingwalls
- Temporary structure

## 610-10.50 Design Build Drainage

- Catch Basins
- Storm Drainage System
- Side drain
- Under drain

## 712-01-75 Design Build Maintenance of Traffic

- Work Zone Safety Plan
- Barrier Rail
- Changeable Message Sign
- Traffic Control

## 714-40.75 Design Build Utilities

- Coordination
- Relocation
- Lighting

## 713-15.25 Design Build Signing

- Footings
- Installation

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- Removal and Disposal

## 716-99.50 Design Build Striping/Pavement Markings

- Material
- Raised Pavement Markers
- Snowplowable Raised Pavement Markers

## 717-99.95 Design Build Mobilization

## 718-01.95 Design Build Noise Wall Barrier

- Payment under this item shall include all costs to construct the noise wall including but not limited to construction, materials, engineering, drilling and other preliminary costs. In the event that the Department determines the noise wall is not needed, the Department will notify the Design Builder and will reduce the LS payment for the contract by the amount the DB team has submitted for item 718-01.50.

The Design Builder shall seek approval from the Alternative Contracting Office before proceeding with any design work on the noise wall. The Design Builder shall include in their cost proposal the price for the proposed wall under item 718-01.01 Noise Barrier.

#### 4) Issues Resolution Plan

### c. PROJECT MANAGEMENT

- 1) Describe the administrative and operational structure that would be used to perform the proposed work, including:
  - Describe how design personnel will interface with the construction personnel.
  - Communicating and coordinating between the Department and the Design Builder. Include the approach for change management during construction for design initiated, field initiated, and the Department-initiated changes.
  - Describe existing design and/or construction quality management plan(s) that the Design Builder may have already developed, and how it (they) will be implemented into work performed. Describe coordination of design and construction activities to ensure consistency in quality. Explanation of how independence of quality staff and function will be maintained.
  - Approach to managing costs under this Contract while fulfilling required tasks and assuring quality of work.
  - Describe or outline the process for constructability, durability, maintainability, safety, aesthetics and environmental mitigation in the design and construction processes.
  - Describe or outline the process for coordinating design and construction functions, including both design and construction components and all Subcontractor activities. Include a brief description (Construction

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Management Plan) of the Design Builder proposes to deal with unexpected disruptions (e.g., weather- or accident-related).

- Describe or outline the process (Design Review Plan) on how the Design Builder will facilitate and implement Design Reviews as required under the Contract. Describe how the Designer and the design staff will be involved during construction. Also include the Design Builder's Construction Staging and Phasing Plan, indicating timing and sequencing of major activities for the Project.
- Describe or outline the process (Diversity Plan) of the plan to ensure projected subcontracting plan is applied at all tiers. Describe how the Design Builder will achieve the goal set forth on this project. Participation shall be accomplished by including certified DBEs in any part of the Contract work that is necessary to complete the Contract obligation. A certified DBE may participate as a Design Builder, subcontractor, joint venture member, material supplier, material manufacturer, or professional service provider. Identify DBE and EEO representatives and their roles and responsibilities and identification of specific strategies and approaches that will be taken by the Design Builder to meet the requirements of the Affirmative Action and Equal Employment Opportunity provisions described in **DB Standard Guidance**.
- The Design Builder will also be responsible for fulfilling FHWA 1273 "Contract Provisions"

## d. ENVIRONMENTAL COMPLIANCE

- 1) Identify any potential environmental impacts.
- 2) Describe or outline the process for environmental compliance.
- 3) Describe or outline the approach to Erosion Prevention and Sediment Control for the Project.
- 4) Describe or outline the understanding of the overall approach to permitting and the comfort level with obtaining the required permit application/ modification within the allowed timeframe.
- 5) Identify innovative approaches to minimize any impacts in environmentally sensitive areas.

## e. INNOVATION

- 1) Identify any design or construction solutions that the Design Builder considers innovative and how those solutions will better serve the Project. Include a description of ideas that were considered, whether implemented or not. If this is an alternate technical concept, include only approved ATCs.
- 2) Identify any potential innovative traffic control and how those solutions will better serve the Project. Describe any temporary impacts and associated with innovations.
- 3) Will these innovations add to, subtract from or have no effect on the costs?

**4. RESPONSE CATEGORY IV: TECHNICAL SOLUTIONS**

Submit as much of the following for Evaluation on form Response Category IV form in **Contract Book 3 (Project Specific Information)** (be as specific as possible):

- a. See **Contract Book 3 (Project Specific Information)** for specific technical and design required information.
- b. It is not the intent of the Department for the Design Builder to submit design plans. The details submitted shall be of sufficient detail to illustrate color, texture, pattern, emblems, proportion, corridor consistency, complementing details, or other such visual effects. For those details used in multiple locations, typical details will suffice with the locations for their use noted in narrative or graphic form.
- c. Conceptual plans, drawings, etc within the Technical Proposal (these plans are in addition to and are separate from the ROW Acquisition sheets required in **Contract Book 3 (Project Specific Information)**) shall include at a minimum the following:
  - Show plan view of design concepts with key elements noted.
  - Show preliminary drawing of bridge elements.
  - Identify preliminary horizontal and vertical alignments of all roadway elements.
  - Show typical sections for the mainline of the Project.
  - Identify drainage modifications and designs to be implemented.
  - Identify the appropriate design criteria for each feature if not provided.
  - Identify all bridge types to be constructed, including any special design features or construction techniques needed.
  - Identify any deviations or proposed design exceptions, from the established design criteria that will be utilized. Explain why the deviation is necessary.
  - Describe any geotechnical investigations to be performed by the Design Builder.
  - Describe how any utility conflicts will be addressed and any special utility design considerations. Describe how the design and construction methods minimize the Department's utility relocation costs.
  - Describe how the design will affect the right-of-way costs.
  - Identify types of any retaining walls and /or noise walls if applicable.
- d. The Technical Proposal shall include half-size plan sheets depicting those elements required by the RFP.
- e. Describe any traffic control requirements that will be used for each construction phase.
- f. Describe how traffic will be maintained as appropriate and describe understanding of any time restrictions noted in the RFP.
- g. Describe the safety considerations specific to the Project.
- h. Discuss overall approach to safety.
- i. Describe any proposed improvements that will be made prior to or during construction that will enhance the safety of the work force and/or traveling public both during and after the construction of the Project.

**E. PROPOSALS**

**1. MINIMUM CONTRACT REQUIREMENTS**

The RFP Contract Documents constitute the minimum Contract requirements established by the Department. Please refer to the **Contract Book 2 (Design-Build Contract)** for the order of precedence established in the Contract. Therefore, those portions of the Proposal that meet or exceed minimum Contract requirements established by the Department, as determined by the Department in its sole discretion, will themselves become minimum Contract requirements upon Contract execution.

The award of the Contract does not in any way imply that the Department will modify, relax, or relieve the Contract Documents in favor of the details of the Technical Proposal submitted by the Design Builder.

**a. TOTAL PROPOSAL SUBMITTAL**

The Proposal consists of the Technical Proposal, the Price Proposal, and all required Contract Documents. The Technical Proposal shall be delivered in a sealed container within the mailing package clearly identified, labeled, and addressed as follows:

- **Recipient (the Department) set out in the Contract and “Proposal - Procurement Sensitive”**
- **Return address: Design-Builder’s name, contact person’s name, mailing address;**
- **Date of submittal;**
- **Contents labeled as “PIN 114169.00, I-40 From Central Pike to East of SR-109; and**
- **Design Build Project (DB1101)” and “Design Build Technical Proposal”.**

The Technical Proposal may be sent by United States Mail or private carrier (i.e., Federal Express, United Postal Service, etc.), or be hand-delivered to the address shown in Section C.2 of **Contract Book 2 (Design-Build Contract)**. The container shall include the packaged sealed manila envelope as follows:

- Technical Proposal Package labeled as such (including required forms) and all other required Contract Documents.

Text for all documents can be single spaced, Times New Roman, 12-point font shown in English units. Font size on tables and figures may be of any size so long as it is easily readable. Pricing shall be in US currency, in current dollars and cents. In each case in which a form is required to be submitted, it will be found in the **Contract Book 2 (Design-Build Contract)** or in **Contract Book 3 (Project Specific Information)** and its use is mandatory. Technical Proposals shall be organized and formatted as specified herein. Each Technical Proposal Response Category shall be preceded by a simple tab divider identifying the Response

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Category (e.g., “Response Category I,” “Response Category II Design Builder’s Organization and Expertise,” etc.) with each appropriate Response Category Form.

Technical Proposal pages shall be 8-½ inch x 11-inch white paper. Drawings or sketches shall be submitted on 11-inch x 17-inch and/or 8 ½-inch x 11-inch white paper. Schedule plots shall be on 8-½-inch x 11-inch or 11-inch x 17-inch paper. Double-sided pages shall be used except for pre-printed information, such as corporate brochures, and the original copy of all signed forms, which shall be single-sided.

The Technical Proposal should present information clearly and concisely. Text or other information that is difficult to read may be disregarded, potentially resulting in either a lowered score or rejection of the Proposal as non-responsive.

All Technical Proposal responses shall be easily reproducible by normal black and white photocopying machines. Color photographs, renderings and brochures shall be adequately bound and suitably protected for handling and circulation during review.

Three (3) originals and eight (8) copies of the Technical Proposal. Label the original Technical Proposals “ORIGINAL” and label each copy “COPY \_\_\_ of 8”.

Price Proposals shall be submitted using Internet bidding with electronic bid bond. The Design Builder shall not submit a hardcopy Price Proposal to the Department. The Internet bid and electronic bid bond executed by the Design Builder and their Surety will be considered as a complete Price Proposal and will be printed at the time of the public opening. Letters recognizing the addenda to the RFP and amendments to the electronic bidding file will be posted on the Bid Express website. You must acknowledge addenda by completing the Technical Proposal Signature Page (Form TPSP) found in **RFP Contract Book 2 (Design-Build Contract)** and placed within your Technical Proposal. Also, by submitting the EBS bid file within your Price Proposal you are also acknowledging all addenda associated with the Price Proposal. It is the bidder's responsibility to notify all affected manufacturers, suppliers and subcontractors of any change. Failure to acknowledge receipt of Addenda or to apply any applicable amendments to the electronic bidding file is grounds for rejection. The electronic bid “A” shall be the Total Bid Amount using the ATC.

There will be projects that will have numerous alternates. The will be required to bid on only one alternate for each construction item. The proper procedure for entering alternate bids is to enter prices for the intended alternate item(s) of construction and leave the undesired alternate item(s) of construction blank.

Additionally, one (1) electronic copy of the Technical Proposals and the ROW Acquisition sheets required in **Contract Book 3 (Project Specific Information)**, shall be submitted in Adobe.pdf format on CD, organized and numbered consistent with the required organization.

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## 1) TECHNICAL PROPOSAL

Place the required Technical Proposal forms, except the Response Category Forms, in Technical Proposal Response Category I after a tab labeled “Forms.”

**Technical Proposal Response Category I** – There is *no page limit* on the information required to be submitted under Response Category I.

**Technical Proposal Response Categories II through IV** – Proposal responses to Response Categories II through IV shall be limited to the combined maximum total of 75 page count (not pages), not including section dividers and tabs, certain contract forms (Response Category Forms will be counted toward the total page count). The forms provided for response shall be used for the information requested. All information submitted in Response Categories II through IV will be counted in calculating page count, regardless of format or medium, including all materials attached to section dividers and tabs.

## 2) PROPOSAL PRICE

Design Builders are cautioned that the total of price proposed in the Price Proposal “Schedule of Items” (the “A”) shall become the Contract Amount upon Contract execution, and shall constitute total compensation to the selected for performing the Contract, including but not limited to all minimum Contract requirements. Therefore, the fact that a selected Design Builder’s Technical Proposal may contain elements that do not meet or exceed all minimum Contract requirements, as determined by the Department in its sole discretion, shall not entitle the selected to receive compensation in excess of the amount of the Proposal Price as a condition of performing the minimum Contract requirements or any other Contract obligation. Nor shall such fact entitle the selected to perform below minimum Contract requirements or fail to perform any other Contract obligation.

## 2. PROPOSAL OPENING

### a. TECHNICAL PROPOSALS

The Department Alternative Contracting C.E. Manager 2 and the Design Build Review Committee will open the Technical Proposal Package from each Design Builder. They will determine responsiveness and the Pass/Fail rating for RC I to RC IV. Responsive and Passing Technical Proposals that meet all minimum criteria will be opened at the Proposal Due Date and time set out in this **Contract Book 1 (ITBD - Instruction to Design Builders)** Section A.5, page 7. All technical proposals deemed non-responsive or failing to meet the minimum criteria will be notified prior to the public opening of the price proposals.

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## b. PRICE PROPOSALS; PUBLIC OPENING

Upon concluding its evaluation and scoring of the Technical Proposals, the Department will conduct a public opening of the Price Proposals for each responsive bid at the following location:

**505 Deaderick Street, J.K. Polk Bldg.**

**Suite 700, Nashville, TN 37243, 7<sup>th</sup> floor Large Conference Room.**

on the date and time set out in above in Section A.5, page 7.

Totals read at the opening of the Price Proposals are not guaranteed to be correct and no final award of the Contract will be made until Proposals have been checked and re-checked.

On all projects which are financed in whole or in part by funds received through Federal agencies and other third parties, the awarding of Contracts by the Department will be subject to approval or concurrence by the party or parties through which funds are received. The Department reserves the right to reject any Proposal which is not acceptable to any such third party set out above, although such bid proposal would otherwise qualify as the best Proposal in accordance with the Contract. It shall be the responsibility of the Department to determine which projects are so financed in part by third parties, such information being available upon request from the Department.

## 3. PROPOSAL STIPEND

A stipulated fee of **\$80,000** will be awarded to each eligible Design Builder on the short-list that provides a responsive bid, but unsuccessful, Proposal. If a contract award is not made, all Design Builder's on the short-list that submits a responsive Proposal shall receive the stipulated fee. If the Department chooses to continue the process by revising, modifying, or issuing a new RFP, or issuing a Best and Final Offer, the stipend will only be paid to each eligible responding to the additional request and/or requirement. The Department Alternative Contracting C.E. Manager 2 will be notified of the opportunity to request to invoice for the stipulated fee from each eligible Design Builder within thirty (30) days after the award of the Contract or the decision not to award. If the Design Builder requests and accepts the stipulated fee, the Department reserves the right to use any ideas or information contained in the Proposals in connection with any contract awarded for the Project, or in connection with any subsequent procurement, with no obligation to pay additional compensation to the unsuccessful Proposers. Unsuccessful Design Builders may elect not to invoice and thus refuse payment of the stipulated fee to retain any rights to its Proposal and the ideas and information contained therein.

The decision to issue a new RFP, a modified/revised RFP, or a "Best and Final Offer" indicates the Departments decision to continue with the award on or not to cancel the

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project; therefore the stipend will only be paid once after the conclusion of the entire procurement process.

## F. PRICE PROPOSAL EVALUATION

### 1. PRICE PROPOSAL EVALUATION METHODOLOGY

#### a. PRELIMINARY EVALUATION

##### 1) PRICE REALISM AND REASONABLENESS

The Department will make a preliminary evaluation of the Price Proposal to determine if the prices set forth reflect Price Realism and Price Reasonableness in comparison with the Departments cost estimate. In making this evaluation, the Department may require review of Price Documents. In such case, the Design Builder shall make itself available upon the Department's request to conduct a joint review of the Price Documents. If the Department concludes that the Price Proposal does not reflect Price Realism or Price Reasonableness, the Department will consider the Price Proposal non-responsive.

##### 2) UNBALANCED PRICING

The Department will prepare a Department cost estimate prior to accepting Price Proposals. This will be used as a basis for a preliminary evaluation of the Price Proposal to determine if any of the prices are significantly unbalanced to the potential detriment of the Department. An unbalanced Proposal is considered to be one containing lump sum which does not reflect reasonable actual costs plus a reasonable proportionate share of the Design Builder's anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the items in question in comparison with the Departments cost estimate.

## G. TECHNICAL PROPOSAL RESPONSE CATEGORIES AND REQUIRED TECHNICAL PROPOSAL CONTENT

Additional information or requirements for each Response Category, or modifications to the Response Category instructions and requirements set out below, will be identified in the **Contract Book 3 (Project Specific Information)**. **Design Builders are therefore advised to download this Contract Book 1 (ITDB - Instruction to Design-Builders) and the Contract Book 3 (Project Specific Information) and read them together.**

Regardless of the score assigned to any Technical Proposal evaluation factor or Response Category, and notwithstanding the fact that a Proposal is selected for award, only those portions of Sections II through IV of the Technical Proposal that meet or exceed the Department's minimum Contract requirements, as determined by the Department in its sole discretion, shall be incorporated into the resulting Contract. Those portions that do not meet or exceed the stipulated criteria, as determined by the Department in its sole

discretion, shall not be incorporated into the resulting Contract or modify any of the terms and conditions of the Contract.

***1. RESPONSE CATEGORY I through IV***

The submittals required under Response Category I through IV will be evaluated as a matter of responsibility on a pass/fail basis. Submit responses for each element of Category I through IV using the required forms as instructed acknowledging receipt of RFP, all Addenda and responses to questions, if any, issued by the Department.

**a. COVER LETTER**

The Design Builder shall provide with its Technical Proposal a cover letter (maximum two pages) indicating its desire to be considered for the Project and stating the official names and roles of all Principal Participants, the Designer, and Project Manager. The Design Builder shall identify a single point of contact for the and the address and telephone and fax numbers and e-mail address to which communications should be directed. An authorized representative of the Design Builder’s organization shall sign the letter. If the Design Builder is not yet a legal Entity or is a joint venture or general partnership, authorized representatives of all Principal Participants shall sign the letter. Additionally, if the Design Builder wishes to add, delete, or substitute a Principal Participant, or wishes to substitute its Designer or any Key Personnel that it identified in its SOQ, the Design Builder must make such request in this cover letter. In addition to including such a substitution or change request in its cover letter, the Design Builder must follow the procedures and submit the information required under this RFP.

The Design Builder shall attach to the cover letter the Acknowledgment of Receipt acknowledging receipt of RFP, all Addenda and responses to questions, if any, issued by the Department.

**b. FORMS**

Form QR, Form ATC, and Response Category Forms are located in **Contract Book 3 (Project Specific Information)**. All other contract forms are located within **Contract Book 2 (Design-Build Contract)**.

**c. EVIDENCE OF CORPORATE EXISTENCE; CERTIFICATE OF AUTHORITY**

Submit the following, as applicable:

- A Certificate of Good Standing issued by the Design Builder’s state of residence; or
- For Entities not residents of the State of Tennessee, a Certificate of Authority to transact business in Tennessee.

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## d. EVIDENCE OF AUTHORITY TO ENTER INTO JOINT VENTURE; EXECUTE JOINT-VENTURE AGREEMENT

If the Design Builder is a joint venture; submit a copy of the joint venture agreement. Also, for each joint venturer submit the partnership agreement or corporate resolution authorizing it to enter into the joint venture and authorizing named individuals to execute the joint venture agreement on the joint venturer's behalf.

## e. EVIDENCE OF PROPOSAL SIGNATORY AUTHORITY

Submit bylaws, or the corporate resolution, partnership agreement, or joint venture agreement evidencing authority of each signatory to the Technical Proposal Signature Page and Proposal Firm Offer to execute it on behalf of the Design Builder. NOTE: If the is a joint venture or partnership, each joint venture or partner must sign the Technical Proposal Signature Page (Form TPSP).

## H. PRICE PROPOSAL RESPONSE CATEGORIES AND REQUIRED PRICE PROPOSAL CONTENT

Submit responses for each element below, using the required forms where instructed. All prices quoted shall be in U.S. currency.

### 1. PRICE PROPOSAL CONTENTS

Design Builders shall include each of the following in the Price Proposal:

- Electronic Price Proposal (including specified Contract Completion Time); and
- Electronic Proposal Security in the amount of five (5%) percent of the Proposal Price. Proposal Security may be submitted in the form of a Proposal Bond or Proposal Guarantee issued by an insured institution or certified check payable to the Department of Transportation.

### 2. INSTRUCTIONS REGARDING PREPARATION OF SCHEDULE OF ITEMS

Design-Builders shall complete and submit in compliance with the following instructions:

- a. Provide a lump-sum price for each Pay Item Total in each Pay Item. The lump-sum price shall represent the total price to complete and integrate all work represented by that Pay Item into the Project, inclusive of associated overhead, labor, materials, equipment, tools, transportation and Project administration. These are not bid items and will be used as a basis in developing the cost-loaded CPM after award.
- b. Utilize the same titles, contents, and limits as are shown on Schedule of Items.
- c. Price Proposal supporting documentation may be requested by the Department.

**I. FORMS**

The following forms are required to be used in preparation of the Proposal. They are located within **Contract Book 2 (Design-Build Contract)** and **Contract Book 3 (Project Specific Information)**. The Design Builders shall download the forms and complete them in accordance with the instructions contained in the forms and the text of this **Contract Book 1 (ITDB - Instruction to Design Builders)** or to the **Contract Book 2 (Design Build Contract)** in which the forms are referenced.

**1. DESIGN-BUILDER QUESTIONS**

FORM QR, Question Request Form.

**2. TECHNICAL PROPOSAL FORMS**

- RESPONSE CATEGORY FORMS II THRU IV;
- ATC FORM;
- FORM COI, CONFLICT OF INTEREST DISCLOSURES;
- FORM TPSP, TECHNICAL PROPOSAL SIGNATURE PAGE FORM;

**3. FORM LC, LOBBYING CERTIFICATE; BONDS AND FORMS TO BE SUBMITTED BY THE APPARENT DESIGN-BUILDER**

- FORM CP&PB, CONTRACT PAYMENT AND PERFORMANCE BOND (submitted after award of the Contract).

**J. PROPOSAL MEETINGS**

The Department may elect to hold meetings with all Design Builders. The Design Builders are strongly encouraged to attend, and will be expected to bring (a) appropriate members of its anticipated Key Personnel, and if required by the Department, (b) senior representatives of the proposed Designer and proposed Technical Manager. The Department shall provide sufficient time to the Design-Builder's for travel and preparation for the meetings.

The information received by the Department will be part of the procurement process and will not be disclosed by the Department until award of the Contract, at which time the information will be subject to disclosure except as to information that is subject to exemption from disclosure under the Tennessee Open Records Law.

**1. MANDATORY PRE-PROPOSAL MEETINGS**

The Department does not expect to hold a pre-proposal meeting on this project; however, the Department may hold one or more mandatory pre-proposal meetings with all Design Builder's prior to the Proposal Due Date, to provide additional opportunity for questions and comments. Failure of a Design Builder to attend any such meetings will result in elimination of that from the short-List, and any Proposal submitted by that

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will be rejected. The decision to hold pre-proposal meetings will be disclosed by the Department no later than the date shown in Section A.5 for the anticipated deadline for issuance of the last addendum

The Department will respond, orally or in writing, to Design Builders' questions, if any, raised at the meetings. In the event the Department determines that formal answers or change of the RFP, specifications or Contract terms is warranted, the Department will issue formal written clarifications or Addenda in accordance with the terms of **Contract Book 2 (Design Build Contract)**.

## **2. ORAL PRESENTATIONS AFTER SUBMISSION OF PROPOSALS**

The Department may elect, in its sole discretion, to require each to make a one-on-one oral presentation regarding the Technical Proposal. The oral presentations will be mandatory, and failure of a Design Builder to appear and make the presentation will result in elimination of that Design Builder from the Short-List. The Department will give no further consideration to that Design Builder's Proposal, and that will be ineligible for a stipend. If the Department elects to require oral presentations, the Department will notify the Design Builders in writing or by e-mail of the dates, times and locations, rules, requirements and protocols for the oral presentation.

The oral presentation will be an opportunity for the Design Builders to either explain or present their Technical Proposals and respond to the Department requests for clarification, but such presentations will not be a substitute for, nor be a means to modify or augment, any part of the Technical Proposal. The oral presentations will be used by the Department to assist in the evaluation of the Technical Proposals, and the information from the oral presentations may be used by the Department to evaluate the Technical Proposal Score.

## **K. CHANGES IN DESIGN-BUILDER'S ORGANIZATION AFTER SUBMITTAL OF SOQ**

Key Personnel identified in the SOQ shall not be modified in the Technical Proposal without written approval of the Department. Any request for modification shall be sent to the Department Alternative Contracting C.E. Manager 2. The written approval to modify the Key Personnel shall be included in Technical Proposal Response Category I. Failure to comply with this requirement may be justification for removing the Design Builder from further consideration for this Project.

The must submit with any request the same information about the proposed Principal Participant or team member that was originally required to be submitted in the SOQ, including legal and financial information (pass/fail) and Technical evaluation information. If a Major Participant is being added, deleted, or substituted, the must submit such additional information as may be required by the Department to demonstrate that the

changed organization still meets the RFQ criteria upon which short-list selection was based.

**L. MODIFYING A PROPOSAL PRIOR TO PROPOSAL DUE DATE**

***1. ERASURES, INTERLINEATIONS, STRIKEOUTS***

If the initial Proposal has been modified by hand-written interlineations, strikeouts, or erasures, **EACH** such alteration must be initialed in blue ink by the signatory to the Technical Proposal and submitted to the Department Alternative Contracting C.E. Manager 2.

***2. SUBSEQUENT TO THE INITIAL SUBMITTAL***

Subsequent to Proposal submittal, a Design Builder may submit written modifications identified either by redlined text or on Design Builder's letterhead indicating the revisions with reference to the Proposal or form section, subsection, paragraph (if applicable) and page number. The must submit with its Proposal modifications an affirmation signed by each of the original signatories that the modifications amend the terms of the Proposal previously submitted and submitted to the Department Alternative Contracting C.E. Manager 2.

**M. WITHDRAWING A PROPOSAL**

***1. BY WRITTEN NOTICE***

A Design Builder may withdraw its Proposal prior to the Proposal due date by submitting written notice to the Department Alternative Contracting C.E. Manager 2 on the Design Builder's letterhead signed by an authorized representative. The notice must include the name and telephone number of the Design Builder's representative that will be contacted to arrange for the Design Builder to retrieve the withdrawn Proposal.

***2. IN PERSON***

A Design Builder may withdraw its Proposal in person prior to the Proposal Due Date upon presentation of identification and evidence of authorization to act for the Design Builder. If possible, the Department will return all Proposal materials at the time an in-person withdrawal is presented. However, Proposals are in the possession of one individual and are available only when that person is present.

***3. SUBSEQUENT PROPOSAL SUBMITTAL NOT PRECLUDED***

Withdrawal of a Proposal will not preclude a Design Builder from subsequently submitting a new Proposal, so long as that new Proposal is properly submitted and

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received by the Department's Alternative Contracting C.E. Manager 2 prior to the Proposal Due Date.

If the Design Builder withdraws their Proposal and the Department chooses to issue a new, revised, or modified RFP after the Proposal Due Date (as stated in Section T), the Design Builder must state within their withdraw written notice their request to be considered eligible to submit a Proposal in this instance. If the withdrawal is in person or the written notice does not state this request, the Design Builder will no longer be considered eligible for the Project.

## N. CONFLICT-OF-INTEREST DISCLOSURE REQUIREMENTS

If the Design Builder finds that a Principal Participant, Design Professionals, or any Key Personnel listed in its SOQ is no longer eligible to be part of its organization or team for this procurement due to a conflict of interest (as defined in 23 CFR 636), if the Design Builder's organization has changed since submittal of the Design Builder's SOQ, or if additional potential conflicts of interest have developed since the Design Builder's submittal of its SOQ, the Design Builder shall comply with the following disclosure requirements.

### 1. THE DESIGN-BUILDER ORGANIZATION CHANGE OR ADDITIONAL POTENTIAL CONFLICTS OF INTEREST

If the Design Builder's organization has changed and the change has been approved by the Department per Section G., or additional potential conflicts of interest have developed since the Design Builder's RFQ submittal, the Design Builder shall submit with its Proposal a new RFQ submittal for that SOQ Section and making a full disclosure of all potential 23 CFR 636 organizational conflicts of interest other than those already disclosed in the SOQ. If the Design Builder's organization has not changed and no additional potential conflicts of interest have developed since initial submittal of the Design Builder's SOQ, the Design Builder shall submit a signed statement that no potential 23 CFR 636 organizational conflicts currently exist other than those already disclosed within the Design Builder's SOQ. Also see **DB Standard Guidance**, and the COI Guidelines provided with Form COI regarding State conflict of interest standards and disclosure regarding former the Department employees.

### 2. SUBCONTRACTORS

The Design Builder shall include in its subcontracts a completed Conflict of Interest statement from each Subcontractor for whom the Design Builder will utilize on the Project. The Design Builder shall provide each Subcontractor with the Department's "Conflict of Interest Guidelines, and Disclosure Process" attached hereto.

**O. PROPOSALS RESPONSIVENESS, RESPONSIBILITY AND REJECTION**

**1. SUBSTANTIAL COMPLIANCE REQUIRED**

The Department may in its discretion reject any Proposal that does not substantially comply with the requirements set forth in the RFP, including this **Contract Book 1 (ITDB – Instruction to Design Builders)**, and applicable public procurement procedures.

**2. RESPONSIVENESS**

The Department has determined that failure to properly submit the following items (all contract forms are located in **Contract Book 2 (Design-Build Contract)**) and in **Contract Book 3 (Project Specific Information)** will render the Proposal non-responsive:

- Technical Proposal;
- Technical Proposal Response Category Forms;
- Technical Proposal approved ATC Form, if utilizing ATC (In Appendix);
- Electronic Bid Price Proposal Schedule of Items;
- Electronic Proposal Bond or Electronic Proposal Guarantee; and
- CD with the Technical Proposal and the ROW Acquisition sheets.

**3. COMPLETENESS**

The following items must be properly submitted for a complete Proposal:

- Technical Proposal Forms (In RC Category I)
  - Form QR (This is the most current FORM QR with all Department answers);
  - Form COI;
  - Form TPSP;
  - Form LC (Submit Blank if not applicable);

**4. UNINTENTIONALLY INCOMPLETE OR OMITTED PROPOSAL RESPONSES**

Unless the Department, in its discretion, determines that a submitted Proposal is not in substantial compliance with RFP requirements, unintentionally incomplete, qualified, or omitted responses to the Technical Proposal, unlike the omission of any required submittals above, will be dealt with as a matter of Proposal scoring/review as opposed to responsiveness.

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## **5. THE DEPARTMENT'S RIGHT TO SEEK CLARIFICATION; WAIVER**

As permitted by Law, the Department Points of Contact may seek clarification of or discuss any response with the Design Builder, in the Department's sole discretion, and the Department may waive minor informalities and irregularities it deems necessary or advisable that the best interest of the Department and/or the public will be promoted thereby.

As permitted by Law, the Department may hold meetings and conduct discussions and correspondence with one or more of the Design Builders responding to this RFP to seek an improved understanding and evaluation of the responses to this RFP.

## **6. RESPONSIBILITY AND REJECTION OF PROPOSALS**

The Department will reject any Proposal submitted by a Design Builder that does not meet the applicable standards of responsibility.

## **7. REJECTION IN THE PUBLIC INTEREST**

The Department reserves the right to reject any Proposal at its discretion. The Department may reject all Proposals for good cause upon a finding that to do so is in the public interest.

## **P. CONFIDENTIALITY**

Documents submitted pursuant to this RFP will be subject to the Tennessee Open Records Law, TCA §§ 10-7-503 to 10-7-506, et. seq. Information submitted will be kept confidential until award by the Department, unless otherwise provided by law. The State shall not be liable for disclosure or release of information when authorized or required by Law to do so. The State shall also be immune from liability for disclosure or release of information.

## **Q. PROPOSAL BOND**

### **1. REQUIREMENTS**

- Each Proposal must be accompanied by a Design Builders bidder's bond, in an amount of equaling not less than five (5%) percent of the Proposal Price electronically through Bid Express.
- If the Design Builders bidder's bond is offered as guaranty, the bond must be made by a surety company, qualified and authorized to transact business in the State of Tennessee and must be acceptable to the Department.

**R. APPARENT DESIGN-BUILDER REQUIRED SUBMITTALS**

Within ten (10) Calendar Days of the date of the delivery of the Contract by the Department, the apparent Design Builder shall provide the Department, in writing the following:

**1. PAYMENT AND PERFORMANCE BOND**

A Payment and Performance Bond, in the amount of 100 percent of the Contract Amount on the form furnished by the Department (Form CP&PB).

**2. INSURANCE CERTIFICATES**

Insurance certificates evidencing the required insurance coverage. (Refer to the **DB Standard Guidance**).

**3. EVIDENCE OF AUTHORITY**

- The names of all signatories to the anticipated Contract, their capacities and the names of their respective principals if not already provided.
- Corporate Resolutions or Bylaws evidencing the authority of each named signatory to act for its principal in executing the Contract and bind the principal to the terms of the Contract, if not already provided.

**4. LICENSES**

Evidence that the Apparent Design-Builder and its personnel are properly licensed to perform the work, unless previously provided. **This includes the SP712B requirement.**

**5. ATC BREAKDOWN COST SAVINGS**

Price Proposal ATC Breakdown, only if an approved ATC was submitted (format will be a one page summary of the Contract Amount including the original cost for Base Technical Concept cost minus ATC cost savings).

**S. MODIFICATION OF CONTRACT**

The Department may make modifications to the Contract as it may determine, in the exercise of its sole discretion, to be necessary to fully incorporate the terms of the Apparent Design Builder’s Proposal, to correct any inconsistencies, ambiguities, or errors that may exist in the Contract, and to clarify Contract terms, including technical requirements and specifications, if any. If, in the Department’s sole discretion, it determines that the parties will be unable to reach a mutually-acceptable Contract, the Department may terminate discussions with the Apparent Design-Builder. The Department will then continue the process of discussion with the next highest-ranked Design Builder until the Department either successfully executes a Contract or cancels the procurement.

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The Department may investigate the qualifications of any Design Builder under consideration, may require confirmation of information furnished by a Design Builder, and may require additional evidence of qualifications to perform the Work described in this RFP.

## T. MODIFIED OR NEW RFP ISSUANCE

The Department reserves the right, in its sole and absolute discretion, to:

- Reject any or all Proposals.
- Issue new RFP.
- Cancel, modify, or withdraw the RFP in their entirety.
- Solicit subsequent “Best and final offer” (BAFO) from Design Builders.
- Modify the RFP process (with appropriate notice to Design Builders).

A BAFO is a change to a design-builder’s technical and/or price proposal made at the request of, or as allowed by, the Department within a best and final offer RFP after the solicitation closing date when all price proposals exceed an acceptable range of the Department’s estimate. In the event initial price proposals exceed an acceptable range of the Department’s Estimate may choose to make amendments to the details of the RFP and request a Best and Final Offer within a new RFP called a “Best and Final Offer” RFP.

Alternately, the Department reserves the right to redistribute a new or modified RFP for the project, outside the issuance of a BAFO RFP, to the eligible shortlisted firms if in the judgment of the Department that the best interest of the Department or the public will be promoted.

This may occur at any time prior to the execution by the Department of the Design Build Contract, without incurring any obligations or liabilities.

## U. CONTRACT EXECUTION; DELIVERY OF REQUIRED DOCUMENTS

### 1. BY APPARENT DESIGN-BUILDER

The Apparent Design Builder must execute three (3) originals of the Contract and return the executed originals, together with (a) the rest of the Contract (Technical (*Exhibit A*) and Price Proposals) and (b) the Apparent Design Builder required submittals set out above in this **Contract Book 1 (ITDB - Instruction to Design Builders)**, to the Department within ten (10) Calendar Days of the date of the delivery of the Contract by the Department, or within such longer period as the Department may set in writing prior to or during the response period established herein. The Apparent Design Builder’s failure to execute and deliver the duly-executed Contract, Contract, and required submittals to the Department within the response period, will result in (a) forfeiture of the Proposal Security as Liquidated Damages payable to the Department, and (b) the Department’s commencement of discussions with the second highest-

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ranking Design Builder. If the Apparent Design Builder is a joint venture or partnership, each joint venture member or partner must sign the Contract on behalf of both itself and Design Builder.

## 2. BY THE DEPARTMENT

If the Department fails to execute the Contract and deliver to the Apparent Design Builder an original of the Contract within forty-five (45) Calendar Days following receipt of the Apparent Design Builder's duly-executed Contract, and other required submittals, the Design Builder shall have the right to withdraw the Proposal without penalty.

The following information applies to Federal-Aid construction projects:

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

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

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

Nothing in this **Contract Book 1 (ITDB - Instruction to Design Builders)** shall be construed to obligate the Department to enter into a Contract with any Design Builder.