



## **North Carolina Department of Transportation**

### **Report to Joint Legislative Transportation Oversight Committee**

#### **Public Private Partnerships – Policy and Document Standardization**

**October 1, 2013**



## **Executive Summary**

Pursuant to Session Law 2013-183, The North Carolina Department of Transportation respectfully submits this status report regarding ongoing efforts to standardize Public Private Partnership procurement and contract documents.

This report addresses standardization from both the procurement policy and long-term contract, or comprehensive agreement, perspectives. The report provides a brief history of public private partnerships in North Carolina, describes both the current and proposed policy regarding procurement of public private partnerships and provides a brief overview of what a typical set of contract documents would contain for a major transportation capital improvement project involving a private partner. Exhibits A and B to this report provide greater detail in regards to procurement policy and typical contract documents, respectively.

## **Public Private Partnerships in North Carolina**

Over the course of the last few years, a small number of public private partnerships have been explored by the NCDOT. More appropriately referred to as sponsorship arrangements, the NCDOT has previously entered into no-cost agreements with private entities to provide visitor center staffing and, most recently, two successful procurements for litter removal services on certain interstates.

In regards to major transportation capital improvements, the NCDOT has advertised two projects, the Mid-Currituck Bridge and the I-77 HOT Lanes projects in Mecklenburg and Iredell Counties. The development of the contract documents for the I-77 project have benefitted from the engagement of four potential bidders in a highly interactive environment. Ten (10) one-on-one meetings have occurred with each bidder addressing concerns and opportunities regarding the draft contract documents. Much of the interaction has resulted in key decisions regarding risk allocation, revenue sharing, dynamic toll pricing, operations, and performance based contract specifications. These decisions and ensuing contract verbiage have formed a solid foundation for standardized contract verbiage. Although each public private partnership for major transportation capital improvement projects will have its own circumstances and risk allocation, the I-77 HOT Lanes project contract documents reflect a wide array of standard decisions and items to be addressed for all future public private partnerships.

## **Public Private Partnerships Policy and Procedures**

The current version of the Public Private Partnerships Policy and Procedures was adopted by the Board of Transportation on October 4, 2012 (Exhibit A). This document was developed based on those of other states, the North Carolina Turnpike Authority, legislative requirements, and perhaps most importantly, the NCDOT's Design-Build Policy and Procedures. This latter

document regarding Design-Build is a mature and robust procurement policy serving a program well-regarded nationally. In the development of the Public Private Partnerships Policy and Procedures, the NCDOT followed practices consistent with those used for design-build to ensure considerable involvement by the Carolinas Associated General Contractors, Inc. and the American Council of Engineering Companies.

The Public Private Partnerships Policy and Procedures document essentially governs the procurement process for public private arrangements. The document, attached as Exhibit A, provides a brief history of enabling legislation, and assigns various NCDOT roles and responsibilities, including that of a programmatic oversight committee comprised of key NCDOT leadership and managerial positions. The document also provides guidance on typical beneficial characteristics of potential public private partnerships as well as details regarding the procurement process such as the public advertisement of a project, typical Request for Proposals contents, the private partner selection process, evaluation committees, and proposal evaluation processes.

It should be noted that the document is written to apply broadly to a range of potential public private arrangements from authorized no-cost sponsorship type agreements to long-term major transportation capital improvement concession projects.

The NCDOT is currently proposing amendments to the attached policy that would update the history of legislative authority to reflect Session Law 2013-183 and outline a process by which the NCDOT could entertain unsolicited proposals. The proposed revisions would outline a process for the submission, consideration, and disposition of unsolicited proposals. The NCDOT would reserve the right to reject any unsolicited proposal or further that concept through a public advertisement. The proposed policy would also state NCDOT's right to issue a Request for Letters of Interest to ensure that adequate competition for a given concept is present in the marketplace prior to a formal public advertisement. These draft revisions have been vetted by the Carolinas Associated General Contractors, Inc. and the American Council of Engineering Companies and will likely go to the Board of Transportation later this year for discussion and consideration of adoption.

### **Standardized Agreements**

The form of standardized agreements has evolved with the development of the I-77 HOT Lanes project. Five (5) formal versions of the draft contract documents for I-77 have been developed over the course of the last 18 months – 24 months. As a result, NCDOT standard public private partnership contract documents will consist of two volumes, with the second volume consisting of three books as described herein. For greater detail on topics covered within the various books and volumes, Exhibit B provides a listing of contents for each of the four documents.

The **Instructions to Proposers** (Volume I) outlines the procurement process to be followed by both the NCDOT and all bidders. It outlines procedures for bidder interaction with the NCDOT during the procurement, mandatory bid submission contents for both technical and price components of the proposals, ethics and conflict of interest standards, proposal securities, proposal evaluation criteria and process, and other instructions to be pertinent during the procurement period. The Instructions to Proposers is not a contractual document and its purpose essentially ceases once a Comprehensive Agreement is executed.

The **Comprehensive Agreement** (Volume II, Book 1) contains the majority of the contractual requirements that apply throughout the term of the contract. The Comprehensive Agreement covers all terms for compensation to the concessionaire, rights and responsibilities of both the public and private sectors regarding third parties, tolling policies, revenue sharing, and long-term risk allocation. The Comprehensive Agreement also outlines responsibilities for development and operations of the project, schedule, handback requirements, insurance requirements, warranties, and terms for liquidated damages payable to the NCDOT, default, and termination for convenience. The emphasis of the Comprehensive Agreement can be characterized as largely pertaining to long-term legal, commercial, and financial aspects of the project.

The **Technical Provisions** (Volume II, Book 2) present requirements and responsibilities that are purely technical in nature. Although these Technical Provisions apply throughout the term of the contract, a large portion of the document pertains to the design and construction of the transportation capital improvement. The Technical Provisions also outline technical management requirements, public involvement activities, as well as long-term operations and maintenance of the facility.

The **Specifications, Standards, Manuals and Guidelines** (Volume II, Book 3) is the mechanism through which NCDOT manuals, specifications, national design standards, and other pertinent design, construction, and maintenance stand-alone documents are incorporated into the contract.



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# **EXHIBIT A**

## **North Carolina Department of Transportation**

### **Public Private Partnerships Policy & Procedures**



October 4, 2012,

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# **PUBLIC PRIVATE PARTNERSHIPS POLICY & PROCEDURES**

## **PURPOSE**

This document establishes the Department's process for soliciting, evaluating, selecting, procuring and administering contracts that include a partnership with one or more private entities that wish to develop, design, establish, enhance, finance, construct, operate, and/or maintain a transportation facility. The primary purpose of public private partnerships is to leverage public funds or other resources with private investment to accelerate, enhance, or otherwise improve the delivery, operation, or maintenance of public transportation infrastructure.

This policy is not intended to supercede or replace Department policies enabling private or public entities from funding transportation projects with no further financial interest upon completion of the project. These procedures are not intended to limit or otherwise apply to the Department's procurement of goods and services in the ordinary course of its operations. This policy document is independent of the policy adopted by the North Carolina Turnpike Authority.

## **SCOPE**

This procedure affects all offices, departments, units, etc., associated with the planning, development, design, construction, operation or maintenance of roads, bridges, highways, or other Department of Transportation infrastructure.

## **AUTHORITY**

Session Law 2008-164

Session Law 2007-357

Session Law 2007-439

General Statute §136-18(39)

General Statute §136-28.1(l)

General Statute §136-28.1(m)

General Statute §143B-350(f)(12a)

## **BACKGROUND**

Session Law 2006-230 first authorized the Department to enter into agreements with private entities to finance the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges, subject to the approval of the Board of Transportation. In the 2007 Legislative Session, this provision was revised to clarify that agreements may be made with private entities for transportation infrastructure projects, with priority given to highways, roads, streets and bridges. Session Law 2007-439 further requires that the Department report concurrently to the Board of Transportation and

to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on Transportation regarding any such proposed agreement. Session Law 2008-164 expanded the Department's authority to expressly permit the Department to enter into agreements to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines in this State. Furthermore, Session Law 2008-164 stipulates that any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to such an agreement entered shall comply with the competitive bidding requirements of Article 2 of Chapter 136 of the General Statutes.

Session Law 2007-439 specifically permits the use of Public Private Partnerships for two pilot projects for internet access at rest areas and two pilot projects for litter removal.

Session Law 2012-184 provides the Department with greater flexibility in regards to proposal, performance, and payment security requirements, as well as developer assignment, for one pilot project. This same session law provides the Department with the ability to fix, charge, revise, and collect tolls and to assign that ability to a third party developer for one pilot project. Session Law 2012-184 further requires that any projects with more than 18 months of post-construction capital cost payments to be approved by the Local Government Commission.

## **DEFINITIONS**

Competitive Negotiation:	A process commonly used in the selection and procurement of design services for transportation projects. Competitive negotiation involves the selection of a Proposer or Proposers based on technical merit or qualifications with or without regard to cost, followed by a period of negotiation with the selected Proposer(s).
Comprehensive Agreement:	The assemblage of all contract documents and requirements, as defined below and incorporated by reference, the final finance arrangements, and other ancillary operating, financing, or encroachment agreements as may be executed by the Department and one or more private entities. The document may also be referred to as a Development Agreement or a Comprehensive Development Agreement. These agreements may include provisions for the permits, encroachment agreements, or lease of rights-of-way in, and airspace over and under, highways, public streets, rail or related facilities.
Contract:	The assemblage of all contractual documents and requirements that include the Request for Proposals, all addenda, a Proposal (both technical and financial), applicable NCDOT Standard Specifications and Drawings, and other documents as referenced in the Request for Proposals.
Design-Build:	A project delivery method that combines construction and preconstruction services into one contract that may be suitable for public private partnerships. Design-Build may combine into a single contract the preconstruction, construction, construction engineering, operation, maintenance, inspection requirements and testing requirements for a project.

Design-Build Team:	Any company, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice engineering, architecture, and construction contracting, as appropriate, in the State of North Carolina.
Interim Agreement:	An initial agreement that may be entered into by the Department and the successful Proposer upon completion of initial negotiations. This agreement typically defines the preconstruction activities and any compensation therefor that may be necessary to further the development of a Comprehensive Agreement.
Letter of Interest:	A written response that is solicited from potential Proposers through advertisements. It is often employed in pre-qualifying Proposers for specific services, based on their resources and experience, before issuing a Request for Proposals.
Project:	The project to be planned, developed, designed, financed, constructed, operated and/or maintained in accordance with the Contract.
Proposal:	The document submitted by a Proposer that may combine technical details, financing approach and costs in a negotiation or competitive negotiation procurement process. A Proposal may be comprised of a separate Technical Proposal and Price Proposal in a competitive procurement process.
Price Proposal:	The sealed “bid” in a competitive procurement process that constitutes the Proposer’s price to complete the activities required by the Request for Proposals and the Proposer’s Technical Proposal. The Price Proposal may also be a component of an evaluated Financial Proposal.
Proposer:	An entity that has submitted a Statement of Qualifications, Proposal, or other submission in order to participate in the procurement of a public private partnership project.
Request for Proposals:	A document that describes the procurement process, provides the scope of services and requirements for the project, and may be used by the Proposer to submit their Proposal. The Request for Proposals typically forms or describes the basis for the Contract and the Agreement.
Request for Qualifications:	A document issued by the Department that solicits Statements of Qualifications or Letters of Interest from Proposers.
Statements of Qualification:	A document that is requested from a potential Proposer that describes the Proposer’s qualifications to perform certain types of work including previous experience, licenses, certifications, personnel, equipment, etc. The Statement of Qualifications may also contain or include specific examples of previous work or financial/bonding capacity of the Proposer.
Technical Proposal:	The proposal as set forth by the Proposer that conveys its design, construction approach, services proposed, schedule, or other items as required by the Request for Proposals in a competitive procurement process. The Technical Proposal, in whole or in part, may be made a part of the Contract as stipulated in the RFP.

Project Manager: The Department staff member assigned to coordinate the development of a project's Request for Proposals and the review of the Proposer's submittals. The Department may also elect to utilize a General Engineering Consultant or other such technical expert to serve as the Project Manager.

## **PROJECT SELECTION**

### **OVERSIGHT**

An Oversight Committee will be maintained to guide the evaluation and selection of Public Private Partnership projects. The membership of the Oversight Committee will mimic that of the Design-Build Executive Committee and include such Executive Department Staff such as representatives from the Office of the Secretary of Transportation and the Chief Engineer's office, Chief Financial Officer, Administrator of the Technical Services Division, Preconstruction Branch Manager, Director of Transportation Program Management, etc. This Oversight Committee will also be responsible for general oversight of the Public Private Partnership Program, procedures, and performance measures.

### **APPLICABLE PROJECTS**

The appropriate selection of projects for a Public Private Partnership is extremely important. Typically, Public Private Partnership projects may be considered if they fall into at least one of the following broad categories:

- 1) Projects where design and construction need to be expedited for the public good and innovative delivery and finance/partnership can facilitate acceleration.
- 2) Projects affording opportunities for innovation in design, construction, operation, maintenance, or financing of the transportation infrastructure.
- 3) Unusual projects that do not lend themselves to normal design-bid-build procedures, or design-build procedures with traditional funding readily available.
- 4) Projects where significant Department resources, which may include rights-of-way or air rights, are available to leverage with private investment.
- 5) Projects conducive to significant private investment.
- 6) Projects for which private investment would fulfill a critical financial need to complete the project.
- 7) Projects that may provide access to new private capital to deliver other critical transportation projects.
- 8) Projects need to be on local long range transportation plans and/or have demonstrated local support.
- 9) Projects for which a business case demonstrates that a Public Private Partnership can deliver the best value to the traveling public.

### **PROPOSAL SOLICITATION**

The Department may solicit interested parties for participation in a Public Private Partnership for any project presuming the project selection criteria includes public need, technical and financial feasibility, transportation efficiency or efficacy, cost effectiveness, available resources, or project acceleration. The selection process must appreciate economy and potential savings to the public, but selection of the successful Proposer will also consider the quality and technical merit of the proposal.

The Department must provide, to the greatest extent possible, for the solicitation of competitive proposals prior to entering into a Private Public Partnership agreement. Furthermore, in accordance with Session Law 2008-164, any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to such an agreement shall comply with the competitive bidding requirements of Article 2 of this Chapter 136 of the General Statutes. While finalization of details, such as Comprehensive Agreement terms and conditions, finance plans, lenders' agreements, etc. may occur following the determination of the successful Proposer and prior to the execution of a Comprehensive Agreement or other such contract, the cost and details of construction may not be negotiated except as is permitted in accordance with the Standard Specifications after contract award.

The Department is not required to respond in any manner to unsolicited proposals and shall not do so formally as a matter of policy. The Department does, however, encourage interested parties to suggest potential projects for Public Private Partnerships. If the Department elects to pursue a project, regardless of the manner in which it is suggested, the Department will issue a formal advertisement and/or Request for Proposals in accordance with this policy.

## **EVALUATION PROCESS**

The Department may use a one-step or two-step process to evaluate Proposals and select a Proposer with which the Department intends to enter into an agreement to execute a project. The evaluation of Statements of Qualifications, Letters of Interest, and Proposals will be done by an Evaluation Committee selected on a project specific basis.

## **EVALUATION COMMITTEE**

The Evaluation Committee is a critical element of the Proposer evaluation and selection process. The Evaluation Committee will be composed of at least five Department employees. To the greatest extent possible, the Evaluation Committee members should have significant NCDOT experience and a thorough understanding of Department procedures. These members will represent major areas of the project planning, design, construction, finance, and/or operation. The Evaluation Committee may also include third party representatives with legal, technical, financial, or otherwise specialized expertise. The Evaluation Committee will serve as a selection committee and is responsible for the evaluation of both (1) the Statements of Qualifications or Letters of Interest for the purpose of shortlisting and (2) the Proposals for the purpose of determining a committee consensus of the Proposal that addresses the cost and financing, as applicable, and performance that will provide the greatest overall benefit under the specified selection criteria. A confidentiality agreement will be signed by all members of the Evaluation Committee that limits their discussion on the Proposals to only those Department personnel or Proposer references that they deem necessary to assist in the evaluation.

In addition, other evaluation committees, such as a Financial Review Committee, may be used to review specific portions of a Proposal, provided the intent to use such committee(s) is outlined in the Request for Proposals. If a Technical Review Committee is used to review the Technical Proposals and a Financial Review Committee is used to review the Financial Proposals, then the review of the Financial Proposals and Technical Proposals may occur concurrently, but shall be done independently and the members of the Financial Review Committee shall not serve on any other review committee for that project. During their independent evaluation of the Proposals, sharing of information regarding the evaluation of the Proposals will be prohibited between the Financial Review and Technical Review Committees.

## **ONE-STEP PROCESS**

The one-step process will include the distribution of a Request for Proposals or in some cases a Request for Qualifications. Otherwise, the evaluation of Proposals and the selection of the successful Proposer under a one-step process will be consistent with that of the second step of the two-step process as outlined below. Generally, a one-step process will be reserved for projects that are specialized in nature or do not require substantial investment to generate a Proposal.

## **TWO-STEP PROCESS**

The two-step process entails the issuance of a Request for Qualifications (RFQ), the development of a short list of Proposers, the issuance of a Request for Proposals, and the determination of the successful Proposer.

## **REQUEST FOR QUALIFICATIONS**

The Request for Qualifications will provide a general description of the work and the Proposers' responsibilities, and will include the prequalification requirements, any pre-Proposal conferences, Department point of contact, additional technical or financial qualifications desired, key Proposer firms, contractors, and personnel to be identified, and the timeframe for Statements of Qualification or Letters of Interest to be submitted to the Department. Requirements in the Request for Qualifications shall be general and not require Proposers to provide technical evaluation or detailed scheduling of project specifics. Each project's Request for Qualifications should be modified to fit the unique needs of that project.

The Request for Qualifications will set forth basic evaluation criteria such as professional experience, technical competence, resources, staffing, management stability, legal contracting entity, organizational structure, and the financial capability and stability necessary to complete a project. The Request for Qualifications may also request other information deemed necessary by the Department.

The Request for Qualifications will include all weighted evaluation criteria to be used in assessing the Letters of Interest or Statements of Qualifications. The Evaluation Committee will review the responses to the Request for Qualifications and will identify those Proposers that are best suited for further consideration. This "shortlist" of Proposers will be invited to submit a conceptual or detailed Proposal in response to the Request for Proposals provided to them. The shortlist will typically consist of three Proposers but the Department may elect to shortlist as many as five Proposers.

At the Department's discretion, one additional Proposer may be designated by the Evaluation Committee as the shortlist alternate. In the event a shortlisted Proposer withdraws from further consideration on the project, the Department may invite the shortlist alternate to submit a Proposal. In this event, all previously shortlisted Proposers will be made aware of this invitation.

Unless specialized services are otherwise stipulated in the RFQ, the Department's standard pre-qualification requirements apply to each entity providing professional engineering services. Likewise, the standard contractor pre-qualification requirements apply to each contractor entity performing construction work within or utilized by the Proposer. Unless otherwise approved by the Department, each entity must be pre-qualified prior to the deadline for the submittal of the Statements of Qualification.

Any consultant engineers under contract, or previously under contract, with the Department to prepare preliminary plans, planning reports or other project development products for a project will not be allowed to participate in any capacity with the Proposer selected to complete that project. Exceptions to

this policy may be granted by the Department, upon written request from the specific firm, if it is determined that the firm's involvement is in the best interest of the public and does not constitute an unfair advantage.

## **REQUEST FOR PROPOSALS**

The Request for Proposals (RFP) document contains the directives and scope description for any given project. Any desired project elements, finance, design, construction, operations and maintenance requirements, guiding documents, responsibilities of the Proposer, responsibilities of the Department, payment or compensation terms, as applicable, and the procurement process to be used for Proposer selection are typically stipulated within this document.

A draft Request for Proposals may be distributed to the shortlisted Proposers. If so designated by the Department, one or more meetings will be afforded to each shortlisted Proposer to address any questions it may have about the project, the requirements of the Request for Proposals, or the selection process. The meetings will be conducted individually with each Proposer. As a result of these meetings, the Request for Proposals may be modified and a Final Request for Proposals issued to all shortlisted Proposers. Addenda to this Final Request for Proposals may be issued as needed to further refine the requirements of the Contract.

The Request for Proposals will solicit conceptual or detailed Proposals and designate the required contents of responsive Proposals, which may include, but not be limited to, the following information:

- (1) Additional information regarding the Proposer's qualifications and demonstrated technical and financial competence.
- (2) A discussion on the feasibility of developing the project as proposed.
- (3) Environmental documentation (NEPA, permitting, etc.) responsibilities
- (4) Detailed engineering or architectural designs.
- (5) Project Schedule and the Proposer's ability to maintain progress.
- (6) A detailed financial plan, including costing methodology, cost proposals, and project financing approach.
- (7) Ongoing or long term operation and maintenance issues related to the infrastructure.
- (8) Any other information the Department deems relevant or necessary.

## **REQUEST FOR PROPOSALS CONTENTS**

The contents of the RFP vary on a project specific basis. However, the RFP, as a minimum should address the items outlined below:

- (1) Estimated Procurement Schedule
- (2) Instructions on Proposal Completion, Submission and Execution
- (3) Department Point of Contact During Procurement Phase
- (4) Notification of any Pre-Proposal Conferences
- (5) Proposal Evaluation Criteria
- (6) Proposer Selection Process
- (7) DBE or MB/WB Goals and Reporting Requirements
- (8) Oral Presentation Requirements (as applicable)
- (9) Planning, Design and Other Preconstruction Services Required
- (10) Submittal Requirements
- (11) Permits (as applicable)

- (12) Construction Services Required
- (13) Operations and Maintenance Services Required
- (14) Third Party Involvement or Restrictions
- (15) Information or Services to be Provided by the Department
- (16) Professional Insurance and Bonding
- (17) Financing/payment/compensation terms, as applicable
- (18) Specific requirements, as to the Proposer firms, contractors, or personnel to be identified in a Proposal
- (19) A description of any limitations regarding changes to any short-listed Proposer construction or design firms

## **SELECTION PROCESS**

The selection process will generally consist of two phases. For a competitive procurement process, these phases will consist of complete evaluation of the Technical Proposals, and Financial Proposals, as applicable, followed by a determination of the most beneficial Proposal using a predetermined algorithm that combines Technical Score, Financial Score, as applicable, and Price. For a negotiation or competitive negotiation procurement process, the phases will consist of evaluation of the Proposals or Statements of Qualifications if only a Request for Qualifications is used, followed by a period of negotiation.

## **PROPOSAL EVALUATION CRITERIA**

The Request for Proposals will clearly outline the criteria to be used to evaluate the Proposals, regardless of procurement process. These criteria may include, but are not limited to:

- 1) Financial plan feasibility/credibility
- 2) Project schedule, milestones, and credibility thereof
- 3) Reasonableness of assumptions, including those related to ownership, legal liability, law enforcement, and operation and maintenance of the project
- 4) Financial exposure and benefit to the Department and the public
- 5) Forecasts
- 6) Compatibility with other existing or planned facilities
- 7) Compliance with DBE or MB/WB goals or good faith efforts
- 8) Proposer's demonstrated capabilities and past performance
- 9) Design features and approach
- 10) Construction approach
- 11) Operations and Maintenance approach
- 12) Financing approach
- 13) Likelihood of obtaining necessary third party approvals or support
- 14) Cost and pricing, including user fees and projected usage
- 15) Innovation in planning, development, design, construction, maintenance, or financing
- 16) Liability insurance provisions
- 17) Staffing and project coordination capabilities, including governmental liaison
- 18) Long term operations and maintenance considerations and life cycle costs
- 19) Traffic control
- 20) Safety records and plan
- 21) Quality control methods and/or project guarantees
- 22) Natural environment responsibility
- 23) Oral presentation (as applicable)

## **REVIEW OF PROPOSALS**

The Evaluation Committee(s) will determine whether the Proposals are responsive to the requirements of the Request for Proposals. If any of the Proposals are considered non-responsive, the Department will notify the Proposer of that fact.

Each Proposal found to be responsive will be evaluated by the Evaluation Committee(s). The Evaluation Committee(s) may be provided tools to assist in the evaluation of the Proposals. The Evaluation Committee(s) may solicit input from other Department employees, independent third party technical, legal and financial advisors, or Proposer references regarding specific information that may be needed outside their experience or expertise.

A Department employee will serve as a facilitator to assist in the evaluation process. The facilitator serves in an ex officio capacity and facilitates the Evaluation Committee's discussion. The facilitator may answer questions regarding the evaluation criteria and process as well as specific questions about Proposal contents. The role of the facilitator is to ensure that (1) the evaluation process occurs in a systematic and consistent manner, (2) false or irrelevant data is not used in the evaluation process, (3) to the greatest extent possible, the overall evaluations are properly valued as relates to the size and complexity of the project and (4) the Evaluation Committee(s) understands the confidential nature and outcome of its work.

Based on the evaluation process and evaluation criteria outlined in the Request for Proposals, the Evaluation Committee(s) will score or rank the Proposals.

### **Competitive Procurement Process**

For projects using a competitive procurement process, the evaluation of the Technical Proposals will result in a consensus Technical Score (and/or Financial Score) for each Proposal and will be conducted in accordance with the Department's current Design-Build Policy and Procedures at the time of the project advertisement. For certain projects and if outlined in the RFP, the Department may use other recognized means of evaluating and scoring Proposals and combining Proposal quality with price in the determination of the best value Proposal..

### **Negotiated or Competitively Negotiated Procurement Process**

For projects using a negotiated or competitively negotiated procurement process, the Evaluation Committee will rank the Proposals, or Statements of Qualifications if only a Request for Qualifications is issued, and will recommend for selection the Proposer whose Proposal offers the best value to the Department.

The Department will issue written notification to each Proposer regarding its rank and the rank order of Proposers will be made public.

## **NEGOTIATIONS**

The Department may pursue a negotiated procurement process, competitive negotiations, or competitive bidding on select projects. The Request for Qualifications and/or Request for Proposals will outline the type of procurement to be used in the determination of the successful Proposer.

## **Competitive Procurement Process**

For a competitive bid procurement process, no negotiations regarding construction costs will occur prior to contract award; however, finalization of details, such as Comprehensive Agreement terms and conditions, finance plans, etc. may occur following the determination of the successful Proposer and prior to the execution of a contract, Comprehensive Agreement, lenders' agreements, or other such instruments. This provision in no way negates the Department's ability to pursue a Best and Final Offer as outlined in the Design-Build Policy and Procedures, issue addenda any time prior to contract award or enact alterations of work after contract award as allowed by the Department's Standard Specifications for Roads and Structures.

## **Negotiated Procurement Process**

Under the negotiated procurement process, the Department will attempt to negotiate an Interim Agreement, Comprehensive Agreement, or other such agreement with the Proposer with the highest ranked Proposal (or Statement of Qualification if only a Request for Qualifications is issued). Such negotiations may include modifications to the Proposal. If any such agreement cannot be successfully negotiated with the Proposer with the highest ranked Proposal to the satisfaction of the Department, or if, in the course of negotiations, the Department deems that the highest ranked Proposal will not provide the Department with the anticipated benefit, the Department will formally end negotiations with the Proposer and, in the Department's sole discretion, either:

- 1) Reject all Proposals
- 2) Modify the Request for Proposals and request a new submission of Proposals
- 3) Attempt to negotiate an agreement to the Proposer with the next highest ranked Proposal
- 4) Discontinue the project indefinitely

## **Competitively Negotiated Procurement Process**

The use of a competitively negotiated procurement process will typically be divulged in the Request for Proposals; however, in the event that (1) multiple Proposers have provided Proposals that are deemed comparable in value by the Evaluation Committee, or (2) the Department deems that it is in the best interest of the Department or the public to do so, the Department may elect to competitively negotiate with two or more Proposers any time after the evaluations of the Proposals. Such negotiations may include modifications to the Proposals. The Department may competitively negotiate with all Proposers or with only those deemed by the Evaluation Committee to be within a competitive range.

## **AGREEMENTS**

The Department may enter into one or more agreements with the successful Proposer. The agreements may be Interim Agreements, covering primarily project development or preconstruction activities, Comprehensive Agreements, financing agreements, operating agreements, or any other agreement appropriate to the project.

The Department may seek policy, legal, financial, and/or technical advice as may be needed to successfully negotiate or execute the agreement(s).

The agreements may include, but not be limited to the following items:

- 1) Appropriation of responsibilities among parties

- 2) Allocation of risk among parties
- 3) Allocation of resources and costs among parties
- 4) Allocation of cost overruns
- 5) Penalties for non-performance
- 6) Incentives for performance
- 7) Invoicing and payment procedures
- 8) Bonding and insurance requirements
- 9) Limitations on user fees
- 10) Revenue sharing
- 11) Encroachment agreements
- 12) Environmental documentation (NEPA, permitting, etc.) requirements
- 13) Asset management requirements
- 14) Hand back provisions and expectations
- 15) Costs for third party constraints such as railroads and utility companies
- 16) Cooperation with other existing or planned facilities
- 17) Rights-of-Way dedicated and the Department's use of eminent domain
- 18) Planning, development, design, construction, operation and maintenance standards
- 19) Submittal requirements
- 20) Inspection requirements and rights
- 21) Terms of reimbursement for services provided by the Department
- 22) Maximum rate or return on investment
- 23) Default of contract provisions
- 24) Force Majeure
- 25) Liability for personal injury, facility repair and unknown hazardous waste remediation
- 26) Record retention and audit requirements
- 27) Submission and review of financial statements
- 28) Other requirements suitable to the type, size, complexity, and duration of the contract

Execution of the agreement(s) shall be subject to the concurrence of the Secretary of Transportation and the Board of Transportation. Execution of the Agreement(s) is also dependent on all necessary federal actions.

### **STIPEND**

If applicable, the notice of a stipend and the amount of the stipend will be made available to all prospective Proposers. This stipend may be made as partial compensation for each unsuccessful shortlisted Proposer that submits a responsive Proposal or as otherwise outlined in the Request for Proposals. The stipend will be determined on a project specific basis and will be based on both the project size and complexity. No additional compensation will be made by the Department for the development of Letters of Interest, Statements of Qualifications, Proposals, Negotiations, or any type of agreement.

### **PROTECTION AGAINST DISCLOSURE**

All Statements of Qualifications, Letters of Interest and Proposals submitted to the Department become the property of the Department upon their submission and may be, except as provided by North Carolina law, subject to the Public Records Act. If a Proposer wishes to provide the Department with information that the Proposer believes constitutes a trade secret, proprietary information or other information exempt from disclosure, the Proposer shall specifically designate that information as such in its Proposal. Further, the Proposer shall identify the statute on which the confidential status is claimed as well as the specific material that the Proposer believes is confidential under that statute.

The Proposer's designation shall not be determinative of the trade secret, proprietary, or exempted nature of the information so designated as a matter of law.

## **RESERVATIONS**

The Department reserves all rights available to it by law in administering these policies and procedures, including without limitation the right in its sole discretion to:

- 1) Withdraw a Request for Qualifications or a Request for Proposals at any time and either issue a new request or suspend the solicitation indefinitely.
- 2) Reject any and all Statements of Qualifications, Letters of Interest or Proposals at any time.
- 3) Terminate evaluation of any and all Statements of Qualifications, Letters of Interest, or Proposals at any time.
- 4) Issue a Request for Qualifications and Request for Proposals for competing proposals for any project presented to the Department in the form of an Unsolicited Proposal.
- 5) Suspend, discontinue, or terminate negotiations with any Proposer at any time prior to the actual authorized execution of a final development agreement by all parties.
- 6) Negotiate with a Proposer or Proposers without being bound by any provision in its Proposal.
- 7) Negotiate with a Proposer to include in the development agreement any aspect of unsuccessful Proposals.
- 8) Request or obtain additional information about any Technical Proposal from any source at any time.
- 9) Modify or issue addenda to any Request for Qualifications or Request for Proposals at any time, including after review of competing Proposals.
- 10) Permit or request clarifications or supplements to Statements of Qualifications and Proposals, either for responsive or non-responsive Proposals.
- 11) Information provided to Proposers is done so for convenience and is without representation or warranty of any kind.
- 12) Enter into a contract with a Proposer with the next best value Proposal (or next highest ranked proposer) in the event that the Department cannot finalize a contract, including financial close as applicable, with the Proposer with the best value Proposal (or highest ranked Proposer) or the Proposer fails to satisfy all obligations to be performed prior to contract execution, including financial close as applicable, as described in the RFP.
- 13) Amend, supercede, or supplement any part of these Policy and Procedures, provided the amendment or supplement is clearly denoted in the Request for Qualifications or Request for Proposals as appropriate.

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- ETCS and Customer Service Performance Requirements

#### ETCS Performance Monitoring, Auditing, and Reporting

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- Interface for ETCS Services
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- Intermediate Design Document Submittal
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## **Volume II, Book 3: Specifications, Standards, Manuals and Guidelines**

Introduction

North Carolina Department of Transportation (NCDOT)

American Association of State Highway and Transportation Officials (AASHTO)

American Institute of Aeronautics and Astronautics (AIAA)

American Nursery and Landscape Association (ANLA)

American Railway Engineering and Maintenance-of-Way Association (AREMA)

CSX Transportation (CSXT)

Department of Justice (DOJ)

Electronic Industries Alliance (EIA)

Environmental Protection Agency (EPA)

E-ZPass Interagency Group

Federal Highway Administration (FHWA) / Federal Aid Policy Guide (FAPG)

Federal Highway Administration (FHWA)

Institute of Electrical and Electronics Engineers (IEEE)

Internet Engineering Task Force (IETF)

National Cooperative Highway Research Program (NCHRP)

National Electrical Code (NEC)

National Electrical Manufacturers Association (NEMA)

National Fire Protection Association (NFPA)

Norfolk Southern Corporation

North Carolina Administrative Code (NCAC)

North Carolina Department of Environmental and Natural Resources (NCDENR)

North Carolina General Statutes (NCGS)

Organization for the Advancement of Structured Information Standards (OASIS)

Telecommunications Industry Association (TIA)

Underwriters Laboratory (UL)