

**DRAFT  
REQUEST FOR PROPOSALS  
TO DEVELOP, DESIGN, CONSTRUCT, FINANCE, OPERATE AND MAINTAIN THE  
TRANSFORM 66 P3 PROJECT**

**UNDER THE  
VIRGINIA PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995 (AS AMENDED)**

**VOLUME I  
INSTRUCTIONS TO PROPOSERS**

**VIRGINIA DEPARTMENT OF TRANSPORTATION**

**DRAFT ISSUED DECEMBER 17, 2015  
FIRST REVISED DRAFT ISSUED JANUARY 4, 2016**

**KEY DATES**

<b>EVENT</b>	<b>DATE</b>
Issue RFP	December 17, 2015
Technical Proposal Due Date	July 26, 2016
Financial Proposal Due Date	August 23, 2016
Selection of Preferred Proposer	September 13, 2016
Commercial Close	October 31, 2016
Financial Close	April 28, 2017
Start of Construction	April 28, 2017

<b>SECTION 1</b>	<b>INTRODUCTION AND GENERAL PROVISIONS</b>	<b>1</b>
1.1	Introduction	1
1.2	P3 Project Objectives	2
1.3	P3 Project Description	3
1.4	Documents in the Request for Proposals	7
1.5	Construction and Interpretation of this ITP	7
1.6	Procurement Schedule and Financial Close Deadline	12
1.7	General Provisions Regarding Proposals	14
1.8	Federal Requirements and Funding	15
<b>SECTION 2</b>	<b>PROCUREMENT PROCESS</b>	<b>18</b>
2.1	Procurement Method	18
2.2	Receipt of the Request for Proposal Documents, Communications and Other Information	<del>18</del> <b>1819</b>
2.3	Questions and Response Process; Revised Draft RFPs	<del>23</del> <b>2122</b>
2.4	Pre-Proposal Submittals	23
2.5	Pre-Proposal Meetings	23
2.6	Virginia Freedom of Information Act/Confidentiality	25
2.7	Department Studies and Investigations	26
2.8	Examination of RFP and Site Access	26
2.9	Duty to Notify of Errors	<del>27</del> <b>2728</b>
2.10	Improper Conduct	28
2.11	Changes in Proposer's Organization	29
2.12	Changes to Companies or Entities Filling Key Personnel Roles	30
2.13	Changes in Key Personnel and Designation of New Key Personnel	30
2.14	Non-Exclusive Relationship; Release of Exclusive Relationship	31
<b>SECTION 3</b>	<b>ALTERNATIVE TECHNICAL CONCEPTS, ALTERNATIVE FINANCIAL CONCEPTS</b>	<b>3132</b>
3.1	Alternative Technical Concepts	<del>31</del> <b>3132</b>
3.2	Pre-Proposal Submission of ATCs	<del>32</del> <b>3233</b>
3.3	Department Review of Pre-Proposal Submission of ATCs	34
3.4	Incorporation of ATCs in the Comprehensive Agreement	35
3.5	Innovative Financial Concepts	<del>35</del> <b>3536</b>
3.6	Pre-Proposal Submission of IFCs	37
3.7	Revisions to the RFP	38
3.8	Department Review of Pre-Proposal Submission of IFCs	38
3.9	Incorporation of IFCs in the Comprehensive Agreement	39
3.10	Confidentiality of ATCs and IFCs	39

<b>SECTION 4</b>	<b>REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY THE DEPARTMENT</b>	<b><u>3940</u></b>
4.1	General Submittal Requirements	<b><u>3940</u></b>
4.2	Requirement to Submit Compliant Proposal	40
4.3	Format	41
4.4	Additional Requirements for Technical Proposal and Financial Proposal Delivery	42
4.5	Technical Proposal	42
4.6	Financial Proposal	43
4.7	Modifications and Withdrawals	43
4.8	Submission and Forfeiture of Proposal Security	44
4.9	Acceptance of Delivery by the Department	<b><u>4647</u></b>
4.10	Costs Not Reimbursable	<b><u>4647</u></b>
<b>SECTION 5</b>	<b>EVALUATION AND POST-SELECTION PROCESS</b>	<b>47</b>
5.1	Organization of the Executive Scoring Panel	47
5.2	Best Value Determination	<b><u>4748</u></b>
5.3	Pass/Fail and Responsiveness Evaluation	48
5.4	Evaluation of P3 Project Development Plan	51
5.5	Financial Proposal Evaluations	51
5.6	Executive Scoring Panel Evaluation of Technical and Financial Proposals	<b><u>5152</u></b>
5.7	Requests for Clarification	52
5.8	Requests for Proposal Revisions	52
5.9	Identification of Apparent Best Value Proposal	52
5.10	Department Selection of Preferred Proposer, CTB Endorsement	<b><u>5253</u></b>
5.11	Certification of Finding of Public Interest	53
5.12	Finalization of the Comprehensive Agreement; Post-Selection Process	53
5.13	Post-Selection Deliverables	57
<b>SECTION 6</b>	<b>COMPREHENSIVE AGREEMENT; POST-EXECUTION ACTIONS</b>	<b>58</b>
6.1	Execution and Delivery of Comprehensive Agreement	58
6.2	Debriefings	61
6.3	Payment to Unsuccessful Responsive Proposers	61
<b>SECTION 7</b>	<b>DEPARTMENT RIGHTS AND DISCLAIMERS</b>	<b>62</b>
7.1	Department Rights	62
7.2	Department Disclaimers	63

### 1.5.11 Trade Meanings

Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

### 1.5.12 Laws

Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws and (d) all future Laws pertaining to the same or similar subject matter.

### 1.5.13 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

## 1.6 Procurement Schedule and Financial Close Deadline

### 1.6.1 Procurement Schedule

The following represents the current schedule for the procurement.

<b>EVENT</b>	<b>DATE and TIME</b>
Issuance of Draft RFP	December 17, 2015
<a href="#"><u>Release of First Revised Draft RFP (including Forms accompanying the Instructions to Proposers and Exhibits to the Comprehensive Agreement)</u></a>	<a href="#"><u>January 4, 2016</u></a>
<a href="#"><u>Deadline to submit comments on First Revised Draft RFP</u></a>	<a href="#"><u>January 11, 2016</u></a>
First Round One-on-one meetings	January 20-21, 2016
<a href="#"><u>Release of Second Revised Draft RFP</u></a>	<a href="#"><u>February 3, 2016</u></a>
<a href="#"><u>Deadline to submit comments on Second Revised Draft RFP</u></a>	<a href="#"><u>February 10, 2016</u></a>
Deadline to submit proposed underwriters for pre-approval	February 12, 2016
Second Round One-on-one meetings	February 16-19, 2016
First Round ATC meetings	February 16-19, 2016
Department response regarding proposed underwriters	February 19, 2016
<a href="#"><u>Release of Third Revised Draft RFP</u></a>	<a href="#"><u>February 24, 2016</u></a>
First day to submit ATCs	March 2, 2016

<b>EVENT</b>	<b>DATE and TIME</b>
Second Round ATC meetings	March 6-10, 2016
<a href="#"><u>Deadline to submit comments on Third Revised Draft RFP</u></a>	<a href="#"><u>March 10, 2016</u></a>
Third Round ATC meetings	March 21-25, 2016
Third Round One-on-one meetings	March 21-25, 2016
<a href="#"><u>Release of Fourth Revised Draft RFP</u></a>	<a href="#"><u>April 4, 2016</u></a>
<a href="#"><u>Deadline to submit comments on Fourth Revised Draft RFP</u></a>	<a href="#"><u>April 14, 2016</u></a>
<a href="#"><u>Fourth Round ATC meetings (if needed)</u></a>	<a href="#"><u>April 18-22, 2016</u></a>
<a href="#"><u>Fourth Round One-on-one meetings (if needed)</u></a>	<a href="#"><u>April 18-22, 2016</u></a>
Department to release draft Indicative TIFIA term sheet	April 25, 2016
Deadline to submit ATCs for consideration	April 28, 2016
Deadline to submit questions on draft Indicative TIFIA term sheet	April 29, 2016
First Round IFC meetings	May 2-6, 2016
<a href="#"><u>Department submits RFP to FHWA for review</u></a>	<a href="#"><u>May 16, 2016</u></a>
Department Responses to outstanding ATCs	May 24, 2016
Release final RFP	May 31, 2016
Deadline to submit requests for review of IFCs	May 31, 2016
Deadline to submit requests for changes in Proposer's organization	June 30, 2016
Deadline to submit requests for changes in Key Personnel	June 30, 2016
Deadline to submit form of Proposal Security for pre-approval	June 30, 2016
Deadline to submit proposed model auditors for pre-approval	June 30, 2016
Department response regarding proposed IFCs	June 30, 2016
Department response regarding model auditors	July 7, 2016
Department response regarding form of Proposal Security	July 7, 2016
<b>Technical Proposal Due Date</b>	July 26, 2016, 2:00 PM
Deadline to submit Benchmark Rates and credit spreads for pre-approval	August 9, 2016
Department response regarding Benchmark Rates and credit spreads	August 12, 2016
<b>Financial Proposal Due Date</b>	August 23, 2016, 2:00 PM
Selection of Preferred Proposer	September 13, 2016
Deadline for delivery by the Preferred Proposer of	Five Business days following selection of

<b>EVENT</b>	<b>DATE and TIME</b>
the Financial Close Security	the Preferred Proposer
Deadline for delivery by Preferred Proposer of executed Comprehensive Agreement and the documents required by <u>ITP Section 6.1.46.1.4</u> .	October 31, 2016
Financial Close Deadline	180 days after the Commercial Close Date

Where the RFP provides a deadline or due date for submission of documents, correspondence or other materials to VAP3, on behalf of the Department, the submission will be considered timely only if VAP3 receives the submission by the date and, if applicable, the time identified therein (which will be based on prevailing Richmond, Virginia time). All dates set forth above and elsewhere in the RFP are subject to change, in the Department’s discretion, by notice to Proposers.

### **1.6.2 Selection of Preferred Proposer and Deadline for Comprehensive Agreement Execution**

The Department, in coordination with VAP3 and DRPT, will select the Preferred Proposer on the date indicated in Section 1.6.1. Upon selection of the Preferred Proposer, the Department may, in its discretion, initiate limited negotiations as described herein or recommend execution of the Comprehensive Agreement without negotiations. For the avoidance of doubt, by submitting a proposal in response to this RFP, Proposer commits to enter into the Comprehensive Agreement in the form included in the RFP, without negotiation or variation, except as necessary to fill in the blanks and include information that the form of the Comprehensive Agreement indicates is required from the Preferred Proposer’s Proposal. Subject to the requirements for execution and delivery of the Comprehensive Agreement as provided in Section 6.1.3 and Section 4.7.2, with respect to the period of Proposal validity, the Preferred Proposer shall deliver to the Department executed copies of the Comprehensive Agreement and the documents required under Section 6.1.4 by the deadline specified in Section 1.6.1 for counter-execution by the Department.

### **1.6.3 Financial Close Deadline**

If selection of a Preferred Proposer is made and a Comprehensive Agreement is executed and delivered (as specified in Section 1.6.1), the Preferred Proposer shall be required to achieve Financial Close on or before 180 days after the Commercial Close Date (subject to Section 7.06(c) of the Comprehensive Agreement and any extensions of such deadline in accordance with the Comprehensive Agreement) (the “Financial Close Deadline”).

## **1.7 General Provisions Regarding Proposals**

### **1.7.1 Proposal Contents**

As used in this procurement, the term “Proposal” means a Proposer’s complete response to the RFP, including:

Federal Register by the U.S. Department of Transportation and relating to the Design-Build Contracting and Operations and Maintenance Services.

During performance of the Design-Build Work, the Department has established a goal of 75% for veteran participation and local new hire participation. The annual and long-term goals for the Developer in contracting for the O&M Work is 75% for veterans and local worker new hires.

~~As set forth in Exhibit B, Section 3.2.9, each Proposer shall submit certifications concerning Civil Rights requirements with its Proposal. Failure to provide the required Civil Rights certification shall be considered a breach of the Proposal requirements and shall render a Proposal non-responsive.~~

## 1.8.2 Federal Assistance

### (a) TIFIA Credit Assistance

The TIFIA loan program is a potential source of financing for the P3 Project subject to federal requirements and availability. The Department submitted a Letter of Interest for the P3 Project to the TIFIA Joint Program Office (“TIFIA JPO”) on September 1, 2015, seeking a TIFIA loan of up to \$800 million for the P3 Project. The TIFIA JPO has advanced the P3 Project to the TIFIA creditworthiness review stage, and the Department and the TIFIA JPO have been in discussions regarding additional information requests since that decision. The Department may facilitate communication between the Proposers and the TIFIA JPO prior to the Financial Proposal Due Date.

Should the Proposer elect to include TIFIA in its Financial Proposal, the Proposer must incorporate into its Proposal terms consistent with Exhibit H of the Comprehensive Agreement (Assumed TIFIA Financing Terms), unless the Department has approved a deviation therefrom through the IFC process. The Department will be the sole channel of communication with the FHWA and the TIFIA JPO on the Project and the proposed TIFIA loan until selection of the Preferred Proposer. To the extent the Preferred Proposer has assumed the use of TIFIA in its Financial Proposal, the Preferred Proposer shall provide periodic notice to the Department of the progress of its efforts to negotiate and close the TIFIA loan, in accordance with Section 5.12.5. The Department reserves the right to participate in further negotiations between the Preferred Proposer and TIFIA.

If the Preferred Proposer has elected to use TIFIA financing as part of its Financial Proposal, it shall be responsible for reaching Financial Close with respect to TIFIA.

### (b) Private Activity Bonds

The Department will submit an application for a provisional PABs allocation on or about January 2015. Each Proposer may, but is not obligated to, use the PABs allocation in its Financial Proposal. The Virginia Small Business Financing Authority (“VSBFA”) will serve as the conduit issuer of the PABs (“PABs Issuer”). A summary of the VSBFA’s financing process is attached hereto as Exhibit A. The Developer shall be responsible for all of the

1.6.1. Any such request shall be addressed to the Department at the address set forth in Section 2.2.1, accompanied by the information specified for such entities or individuals in the RFQ. If a request is made to allow deletion or role change of any team members identified in its SOQ, Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and nine copies of each request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its discretion. Except as provided herein and in the Comprehensive Agreement, a Proposer may not make any changes in the team members identified in its SOQ after the deadline set forth in Section 1.6.1. Between the applicable last date set forth in Section 1.6.1 and execution of the Comprehensive Agreement, the Department will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposer's control.

## **2.12 Changes to Companies or Entities Filling Key Personnel Roles**

Each Proposer must identify any company that will (a) fill a key project role, including project management, lead design firm, quality control management and quality assurance management, or (b) serve as a key task leader for geotechnical, hydraulics and hydrology, structural, environmental, utility and ROW issues. Furthermore, Proposer may not make changes to the companies so identified unless the original company or entity: (i) is no longer in business, is unable to fulfill its legal, financial or business obligations, or can no longer meet the terms of the teaming agreement with the Proposer; (ii) voluntarily removes itself from the team; (iii) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or (iv) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the P3 Project. If a Preferred Proposer makes team changes in violation of these requirements, any cost savings resulting from the change shall accrue to the Department and not to the Proposer. The Proposer shall identify all such contractors on Form B-4. Note that all teaming agreements and subcontracts must be executed and provided to the Department before the execution of the Comprehensive Agreement.

## **2.13 Changes in Key Personnel and Designation of New Key Personnel**

Proposers are advised that the Department discourages changes in Key Personnel from the individuals listed in the SOQ. Any proposed changes in Key Personnel from those identified in the SOQ are subject to the Department approval as specified in this Section 2.13.

Each Proposer shall submit a package that includes a list of any proposed changes in Key Personnel from those identified in the SOQ and any new Key Personnel who were not required to be submitted with the SOQ falling within any of the categories identified in Exhibit B, Section 3.2.5.2, along with a copy of a resume for each such person contained on Form PB-4 (which must contain the individual's qualifications and relevant work experience and contact information for three references for each individual).



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

### **3.2 Pre-Proposal Submission of ATCs**

If a Proposer wishes to include ATCs as part of its Proposal, Proposer may submit ATCs for review to the Department Representative until the applicable last date and time identified in Section 1.6.1. Such submission shall be in writing, with a cover sheet identifying Proposer and stating “Transform 66 P3 Project – Confidential ATCs.” Proposer clearly shall identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the Department will not treat the submission as an ATC. Note that the Department is considering an all-electronic ATC submittal process in which Proposers will upload their submissions to a secure site. Additional information will be made available prior to the date on which ATCs may first be submitted, as set forth in Section 1.6.1. The ATC submittals shall use Form TP and include a narrative description of the ATC and technical information, including drawings, as described below.

#### **3.2.1 Pre-Proposal ATC Submittal Requirements**

Pre-Proposal ATC submissions shall be sequentially numbered and shall identify the Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers). Each submittal shall include:

- (a) all references to 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 deviations;
- (b) the locations where, and an explanation of how, the ATC will be used on the P3 Project;
- (c) any reduction in the time period necessary to design and construct the P3 Project resulting from implementing the ATC, including, as appropriate, a description of method and commitments;
- (d) an estimate of any savings that would accrue to the Department should the ATC be approved and implemented and/or any additional Department, Developer and third party costs associated with implementation of the ATC;
- (e) additional ROW, if any, that will be required to implement the ATC (Proposers are advised that they shall (i) be solely responsible for the acquisition of any such ROW as per the Technical Requirements, including the cost thereof and obtaining any necessary Environmental Approvals; and (ii) not be entitled to any Change Order, Delay Event or Compensation Event as a result of acquisition or site conditions on such additional ROW);

previous modifications, if any. If multiple modifications are submitted, they shall be numbered sequentially so the Department can identify accurately the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

#### **4.7.2 Withdrawal and Validity of Proposals**

A Proposer may withdraw its Proposal at any time prior to the time due on the applicable Proposal due date by means of a written request signed by the Proposer's designated representative. Such written request shall be delivered to the Department Representative specified in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that it is received before the time due on the applicable Proposal due date. Except as expressly set forth herein, no Proposal may be withdrawn on or after the time due on the Financial Proposal Due Date and any attempt to do so will entitle the Department to draw on the Proposal Security. Proposals shall be valid for acceptance by the Department for a period of ~~120~~180 days after the Financial Proposal Due Date (as the same period may be extended hereunder, the "Proposal Validity Period"). No Proposer shall withdraw its Proposal within the ~~120~~180-day period, unless notified by the Department that (i) no Preferred Proposer will be selected by the Department pursuant to the RFP; (ii) the Department has selected a Preferred Proposer and has received the executed Comprehensive Agreement and other required documents; or (iii) such Proposer is not the Preferred Proposer or next highest ranking Proposer.

If the next best Proposer is notified during the ~~120~~180-day period that it is selected as the substituted Preferred Proposer, such Proposer shall enter into good faith negotiations with the Department and shall use its best efforts to extend the validity of its Proposal for the period until 180 days after the applicable Proposal due date.

Any Proposer may elect to extend the validity of its Proposal beyond the time periods set forth above; *provided that*, as a condition precedent to the extension of its Proposal Validity Period, such Proposer shall submit to the Department amended and/or replaced forms of Proposal Security that reflect such extension.

#### **4.7.3 Late Proposals**

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

### **4.8 Submission and Forfeiture of Proposal Security**

#### **4.8.1 Submission of Proposal Security**

As security for its commitment to enter into the Project Documents in accordance with its Proposal commitments if it becomes the Preferred Proposer, each Proposer shall submit to the Department a Proposal letter of credit (the "Proposal Security") at or before the date and time

documents) is consistent with the requirements of the P3 Project and Comprehensive Agreement.

- (b) To the extent that there are any changes from Proposer's SOQ regarding the criteria set forth in Exhibit B, Section 3.2.2, that such changes are acceptable to the Department in conformance with the requirements set forth for such personnel in the RFQ.

~~(c) Proposer has provided a DBE certification in accordance with the requirements of Exhibit B, Section 3.2.9.~~

(c) ~~(d)~~ Proposer information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.

(d) ~~(e)~~ The Technical Proposal as outlined in Exhibit B, including the P3 Project Development Plan outlined in Exhibit B, meets all applicable RFP requirements.

### 5.3.2 Financial Proposals

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

- (a) Based on the information furnished in response to Exhibit C, Section 5, Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the SOQ, such that Proposer continues to have the financial capacity to complete, operate and maintain a project of the nature and scope of the P3 Project. Factors that will be considered in evaluating Proposer's financial capacity include changes to the following:
  - i. profitability;
  - ii. ability to manage existing debt;
  - iii. ability to invest equity; and
  - iv. other commitments and contingencies evaluated in the SOQ.

If the Department determines that a Proposer has insufficient financial capacity to fulfill its obligations under the Comprehensive Agreement, it may offer the Proposer the opportunity to meet the financial requirement through one or more guarantors acceptable to the Department. If required, the Proposer shall provide such guaranty in the form attached hereto as Form Q.

- (b) The Proposer's Financing Plan demonstrates the following:

acceptable to the Department, as appropriate. Pricing should not assume any forward component.

In the case of a bank or private placement financing, the Department reserves the right to request additional information if needed to verify the proposed Benchmark Rate(s). Any bank debt, private placement or TIFIA financing provided by the Proposer shall be (i) priced as of 10:00 a.m. Eastern Daylight Time on the date of submittal. In the case of bank financing, it should be priced without any swap margin. In addition, Proposers must provide, at a minimum, detailed supporting documentation by the relevant date set forth in Section 1.6.1, in order for the Department to verify the Benchmark Rate(s), such as step-by-step screenshots on Bloomberg or any price calculations.

Proposer shall use Form UO-1 for purposes of the Benchmark Rate submittal. The Comprehensive Agreement sets forth the process, mechanics and constraints on any applicable market interest rate adjustment.

#### **5.12.4.2 Credit Spread Adjustment**

As provided in the Comprehensive Agreement, the Department will bear certain level of risk and benefit of changes in credit spreads (either positive or negative) solely with respect to a PABs financing. The Comprehensive Agreement sets forth the process, mechanics and constraints on any applicable adjustment of the Public Funds Amount due to changes in credit spreads.

No later than the relevant date and time specified in Section 1.6.1, each Proposer must submit to the Department for approval the credit spreads that the Proposer intends to use in the Financial Model supporting its Financial Proposal. As part of this submittal, Proposer shall provide its bond maturities and credit rating assumptions, market comparables and/or other supporting data. Proposer shall use Form YO-2 for purposes of the credit spread submittal. Depending on the results of the review of the credit spreads submitted, the Department may require a floor on the credit spread that Proposers will assume in their Financial Proposals.

No later than the relevant date and time specified in Section 1.6.1, the Department will provide written approval to each Proposer of the credit spreads to be assumed in the Proposer's Financial Model; *provided, however*, that if the Department has a clarification or issue regarding a Proposer's submittal, the Department may extend the date by which it must approve the credit spreads while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the credit spreads shall be included in the Proposal (and the delay in approval shall not affect other deadlines specified in Section 1.6.1).

Only bond maturities and associated ratings that have been submitted for approval will ultimately be eligible for credit spread protection.

The Department will not accept increases in credit spreads on a PABs financing resulting from the final credit rating being lower than the indicative investment grade ratings provided in the Financial Proposal. In the event that there is a difference in indicative investment grade ratings

- (c) A summary of all Major Participants and identification of any changes in Proposer's organization, Equity Members and Key Personnel since submission of the SOQ; and
- (d) A summary of the P3 Project Development Plan.

### **3.2 Proposer Information, Certifications, and Documents**

#### **3.2.1 Proposal Letter and Additional Documentation**

The Proposal shall include the Technical Proposal Letter (Form A-1). The Proposer shall attach to the Technical Proposal Letter the documents and information described on pages 5 and 6 of Form A-1 and shall identify its authorized representative for all purposes relating to the Technical Proposal, including the Proposer's rights and obligations under the RFP, negotiations of the Comprehensive Agreement and receipt of any submittals returned to Proposer, including the Proposal Security.

The Technical Proposal Letter shall include evidence of signature authorization for each individual executing any Proposal forms.

#### **3.2.2 Information About Proposer, Major Participants, and Other Subcontractors**

To the extent there are any changes from the Proposer's SOQ, the Technical Proposal shall include all of the following, to the extent each is required to reflect changes from the SOQ:

- (a) a completed chart on Form B-1, including the names, contact information, role in organization, licensing information and description of work (if applicable) for the Proposer and all Equity Members;
- (b) a completed Form B-2 providing information about the Proposer and its team as specified therein; and
- (c) a completed Form B-3 providing information regarding: (i) each Major Participant (excluding Equity Members that do not fall into categories (a) through (g) of the definition of Major Participants); (ii) each firm that will provide engineering, architectural, surveying, planning, quality assurance and/or other professional services for development of the P3 Project valued at \$20 million or more ("Major Professional Services Firms"); and (iii) all other subcontractors identified by Proposer as of the Technical Proposal Due Date. The Proposer is advised that all Major Professional Services Firms must be identified at the time of the Proposal, and that, as a condition to execution of the Comprehensive Agreement, the Preferred Proposer must provide evidence that it and its Major Participants hold all necessary licenses, professional registrations and Department pre-qualifications; ~~and~~.

~~(d) a list in the form of Form B-4 of the names of all Key Members that the Proposer intends to use to complete the Work under the Comprehensive Agreement.~~

### 3.2.3 Responsible Proposer Questionnaire

The Proposal shall include Form C (Responsible Proposer Questionnaire) signed by the Proposer. As noted on the form, it may be provided by the Proposer on its own behalf and on behalf of the Developer and Equity Members, or it may be provided by the Proposer on its own behalf and the individual Equity Members on their own behalf. The form executed by the Proposer shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by Equity Members shall be signed by an authorized representative of such Equity Member and the Proposal.

### 3.2.4 Industrial Safety Record

The Proposal shall include an industrial safety record on Form D for each member of Proposer's team that will perform or supervise installation and/or construction Work on the P3 Project, including information for any entity in which such team member holds a substantial interest. If any such entity does not have an industrial safety history (for example if the firm is newly formed), Form D is not required for such entity, but a statement shall be provided explaining why the form is not included. Should any of these parties have been a member of a joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D.

### 3.2.5 Key Personnel

#### 3.2.5.1 Affirmation of Key Personnel

Each Proposer shall certify that the Key Personnel for the DBFOM Delivery Method identified in its SOQ have not changed. To the extent that Key Personnel have changed, such change requires Department approval. If such a change has occurred, the Proposer shall submit a package that includes an original and nine copies of the information specified in this Exhibit B, Section 3.2.5 to the Department, by the date and time for submittal of Key Personnel specified in Section 1.6.1, for review and written approval by the Department in its discretion in the course of Proposal evaluations. The package shall be delivered to the address set forth in Section 2.2.1, and shall include a list of the proposed Key Personnel changes for each category identified in Section 3.2.5.2 below, along with copies of resumes for each such person contained on Form PB-4 (which must contain the individual's qualifications and relevant work experience) and contact information for three references for each individual.

The Proposer may not make any changes in its Key Personnel after receipt of Department approval as specified in this Section 3.2.5.1, except as provided in the Comprehensive Agreement.

#### 3.2.5.2 Information Regarding Key Personnel in the Proposal

The Proposal shall identify the pre-approved Key Personnel and shall include ~~Form E identifying personnel work assignments, as well as~~ a statement signed by Proposer and the employer of each designated key person, committing to maintain such individual's availability for and active involvement in the P3 Project. Refer to the Comprehensive Agreement for information regarding time commitment requirements for Key Personnel and the Department rights if it determines that any such personnel are not devoting sufficient time to the prosecution and performance of the Work required for the P3 Project. The Proposal shall also include copies of the resumes and contact information for each of the identified Key Personnel in Form E.

### **3.2.6 Letter Approving Key Personnel and Changes in Proposer's Organization**

The Proposal shall include a copy of the letter(s) issued by the Department pursuant to Section 3.2.5.1 approving the Key Personnel. If the Proposer's organization for the DBFOM Delivery Method has changed since submission of the SOQ for the DBFOM Delivery Method, the Proposer specifically shall describe such changes and, if applicable, include a copy of the Department's approval letter.

### **3.2.7 Non-Collusion Affidavit**

The Proposal shall include Form F, certifying that the Proposal is not the result of and has not been influenced by collusion.

### **3.2.8 Certification Regarding Buy America**

The Proposal shall include Form G, regarding Buy America requirements.

### ~~3.2.9 Civil Rights Requirements~~

~~The Proposal shall include a Certification of Civil Rights Goal Attainment or Good Faith Efforts (Form H) certifying conformance with Civil Rights requirements.~~

### 3.2.9 ~~3.2.10~~ Conflict of Interest Disclosure Statement

The Proposal shall include a certification on Form I describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present or currently planned interest that may present an organizational conflict of interest.

### 3.2.10 ~~3.2.11~~ Certification Regarding Equal Employment Opportunity

The Proposal shall include Forms O-1E and O-2H, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports.

## **4 P3 Project Development Plan**

The Proposer shall present a P3 Project Development Plan, which shall consist of four components: General Project Management (Section 4.1), Design-Build Management and Technical Solutions (Section 4.2) and Operations and Maintenance Management and Technical

Organization			No	
Non-Collusion Affidavit	Form F	<u>Exhibit B, Section 3.2.7</u>	No	
Buy America Certification	Form G	<u>Exhibit B, Section 3.2.8</u>	No	
<del>Civil Rights</del> <u>Use of Contract Funds for Lobbying</u> Certification	Form H	<u>Exhibit B, Section 3.2.9</u> <del>3.2.9</del> <u>3.2.10</u>	No	
Conflict of Interest Disclosure Statement	Form I	<u>Exhibit B, Section 3.2.10</u> <del>3.2.10</del> <u>3.2.9</u>	No	
Completion Deadlines Form	Form M	<u>Section 5.3.1(e)</u> <del>5.3.1(d)</del>		
Equal Opportunity Employment Certification	Form <del>O-1E</del>	<u>Exhibit B, Section 3.2.11</u> <del>3.2.11</del> <u>3.2.10</u>	No	
Stipend Payment Agreement	Form R	<u>Section 6.3.1</u>		
<b>C. P3 Project Development Plan</b>				
General Project Management		<u>Exhibit B, Section 4.1</u>	Yes	
Design-Build Management and Technical Solutions		<u>Exhibit B, Section 4.2</u>	Yes	
Operations and Maintenance Management and Technical Solutions		<u>Exhibit B, Section 4.3</u>	Yes	
<b>D. Appendices</b>				
Key Personnel Resumes and References		<u>Exhibit B, Section 3.2.5.2</u>	No	
Proposer's Schematic		<u>Exhibit B, Section 4.2.2</u>	No	
Initial Baseline Schedule		<u>Exhibit B, Section 4.1.2</u>	No	
<b>E. Proposal Security (Proposal will include a letter of credit in a form listed below)</b>				
Letter of Credit (Proposal Security)	Form K-1	<u>Section 4.8.1</u>	No	
<b>Financial Proposal</b>				



**EXHIBIT E**  
**REQUIRED FORMS**

- Form A-1 Technical Proposal Letter
- Form A-2 Financial Proposal Letter
- Form B-1 Identification of Proposer and Equity Members
- Form B-2 Information About Proposer Organization
- Form B-3 Information About Major Participants, Major Professional Services Firms and Identified Subcontractors
- Form B-4 Key ~~Contractors~~ [Personnel Resume Form](#)
- Form C Responsible Proposer Certification
- Form D Industrial Safety Record
- Form E ~~Personnel Work Assignment Form~~ [Equal Opportunity Employment Certification](#)
- Form F Non-Collusion Affidavit
- Form G Buy America Certification
- Form H ~~Civil Rights~~ [Use of Contract Funds for Lobbying](#) Certification
- Form I Conflict of Interest Disclosure Statement
- Form J-1 Financial Request/Offer
- Form J-2 Support for Corridor Improvements
- Form K-1 Proposal Security
- Form K-2 Financial Close Security
- Form L Opinion of Counsel
- Form M Completion Deadlines
- Form N Detailed Costing Form
- Form O-1 ~~Equal Opportunity Employment Certification~~ [Benchmark Rate Submittal](#)
- Form O-2 ~~Use of Contract Funds for Lobbying Certification~~ [Credit Spread Submittal](#)
- Form P ~~Key Personnel Resume~~ [ATC Submittal](#) Form
- Form Q Guaranty
- Form R Stipend Payment Agreement
- ~~Form S Questions Regarding the RFP~~
- Form ~~TS~~ [ATC Submittal](#) [Proposer Questionnaire](#) Form
- ~~Form U Benchmark Rate Submittal~~
- ~~Form V Credit Spread Submittal~~