

Colorado Bridge Enterprise and High Performance Transportation Enterprise: **I-70 East Project**

REQUEST FOR QUALIFICATIONS TO DESIGN, BUILD, FINANCE, OPERATE AND MAINTAIN THE I-70 EAST PROJECT ([ADDENDUM NO. 1](#))

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By: Bridge Enterprise and High-Performance Transportation Enterprise
 c/o High-Performance Transportation Enterprise
 Colorado Department of Transportation

 4201 East Arkansas Avenue
 Denver, Colorado 80222

 www.coloradodot.info/programs/high-performance-transportation-enterprise-hpte
 www.coloradodot.info/projects/i70east

Colorado I-70 East Project

Statements of Qualification are due by 4:00 p.m. Denver, Colorado Time on June 22, 2015.

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EXECUTIVE SUMMARY

1. Introduction

- 1.1. I-70 between I-25 and Tower Road in Denver (the “I-70 East Corridor”) is one of the most heavily traveled and congested highway corridors in the State of Colorado (the “State”). After more than ten years of study, as well as extensive public dialogue, the Colorado Department of Transportation (“CDOT”) has determined that the deteriorating condition and inadequate capacity of the I-70 East Corridor require a comprehensive transportation solution to resolve these challenges and to address other stakeholder and community concerns.
- 1.2. Based on an ongoing review process being conducted in accordance with the National Environmental Policy Act of 1969 (“NEPA”), the preliminarily preferred technical solution to address these challenges is officially known as the “Partial Cover Lowered Alternative with Managed Lanes Option” (for ease of reference, this document simply refers to this solution as the “Partial Cover Lowered Alternative”). As currently conceived, the Partial Cover Lowered Alternative would include:
 - a. the removal of the existing viaduct between Brighton Boulevard and Colorado Boulevard;
 - b. the reconstruction of the I-70 East Corridor, with a portion below the existing ground level;
 - c. the construction of a landscape highway “cover” above one segment of the reconstructed highway, which cover would physically reconnect a divided neighborhood; and
 - d. both managed toll lanes (the revenues of which would be retained by CDOT and not a private party) and untolled general purpose lanes.
- 1.3. Although CDOT cannot definitively commit to the Partial Cover Lowered Alternative or any other technical solution until the conclusion of the ongoing NEPA process (which process is described in Section 2.1 of Part B), it has determined that it is appropriate to prepare for the possibility that the Partial Cover Lowered Alternative ultimately receives approval.
- 1.4. Colorado’s Transportation Commission (the “Transportation Commission”) is the State’s transportation policy decision-making body. CDOT manages the State’s transportation system under the direction of the Transportation Commission. The Transportation Commission has delegated responsibility for the procurement of the I-70 East Project (as defined below) to the High Performance Transportation Enterprise (“HPTE”) and the Colorado Bridge Enterprise (“BE”), each of which is a government-owned business within CDOT and, in the case of HPTE, is a division of CDOT. For purposes of this RFQ, HPTE and BE are collectively referred to as the “Procuring Authorities”; ~~although either one of them may act for both of them in their capacity as the Procuring Authorities under this RFQ unless otherwise expressly provided.~~
- 1.5. At the direction of the Transportation Commission, and acting in collaboration with CDOT, the Procuring Authorities are procuring the potential design, construction, financing, operation and maintenance of a portion of the I-70 East Corridor as more fully described in Section 2.1 of Part B (the “I-70 East Project” or, for short, the “Project”). While the Project would include a significant portion of the Partial Cover Lowered Alternative, the outer boundaries of the area being studied as the Partial Cover Lowered Alternative include areas that would be beyond the scope of the Project. This approach reflects various considerations, including the long-term planning benefits that CDOT has identified in considering a wider scope of work than it might procure in the near term.

2. The Procurement Process

- 2.1. The Procuring Authorities have elected to proceed with a three-stage procurement process for the Project. This process is expected to include the following elements:

- a. The first stage begins with the issuance of this Request for Qualifications (as modified by any addenda, this “RFQ”).
 - i. Pursuant to this RFQ, the Procuring Authorities invite entities or groups of entities (each company, team or Joint Venture acting together for such purpose, a “Proposer” and, collectively, the “Proposers”¹ interested in competing for the Project to submit statements of qualifications (such statements, including any supplemental materials and information submitted or provided by a Proposer in accordance with this RFQ, the “SOQs”) detailing, among other things, their qualifications and preparedness to formally bid for the Project.
 - ii. The Procuring Authorities will evaluate these SOQs in accordance with criteria set out in this RFQ and the Procuring Authorities then expect to select no more than four Proposers as eligible to respond to a Request for Proposals (“RFP”) (each such eligible Proposer, a “Short-listed Proposer” and, collectively, the “Short-listed Proposers”). Section 7 of Part B sets out the selection process and criteria that will be used to identify Short-listed Proposers.
- b. The second stage will begin with the issuance of a draft RFP to the Short-listed Proposers.
 - i. The RFP will govern a process during which the Procuring Authorities will work with Short-listed Proposers to finalize a basis on which they can submit binding proposals (“Proposals”) to develop and implement the Project.
 - ii. Short-listed Proposers will be invited to review and comment on the draft RFP, which will include a draft project agreement (the “Project Agreement”). This comment process is expected to be an iterative process and to include meetings with individual Short-listed Proposers, as well as the issuance of addenda to the original draft RFP. Such addenda might be in the form of a revised draft RFP. After consideration by the Procuring Authorities of comments received with respect to the draft RFP, including the draft Project Agreement, the Procuring Authorities may issue a final RFP. The Procuring Authorities would invite Short-listed Proposers to then respond to any final RFP by submitting their Proposals.
 - iii. The Procuring Authorities would require that any such Proposals will be on terms that are acceptable to it from a public sector perspective. These terms will ultimately be reflected in the Project Agreement to be entered into during the third stage described below. Section 2.4 of Part B sets out a high-level overview of the anticipated key terms of such a Project Agreement.
- c. The third stage will begin with the Procuring Authorities’ selection of a preferred Short-listed Proposer (the “Preferred Proposer”) to enter into the Project Agreement through a special-purpose project company (the “Developer”) to be established by the Preferred Proposer. The Procuring Authorities selection of a Preferred Proposer will be made in accordance with criteria set out by the Procuring Authorities in the RFP. This third and final stage will involve, in sequence:
 - i. finalization of the Project Agreement for execution;
 - ii. execution of that agreement (customarily known as “commercial close”); and
 - iii. the execution of Developer’s debt financing documents and the initial disbursement of funds from such financing (customarily known as “financial close”), which funds will contribute to paying for the cost of the Project.

¹ This RFQ has been prepared based on the assumption that any Proposer will be an unincorporated group of two or more entities, as is customary for similar projects in the US. Any single entity that is considering submission of an SOQ as a Proposer should see Section 5.6 of Part B for further guidance.

As part of this third stage, HPTE and BE will, in their individual capacities, enter into the Project Agreement with Developer on behalf of the State, with the obligations and liabilities of each to be specified in the RFP.

- 2.2. The current Procurement Schedule for this three stage process, as anticipated by the Procuring Authorities, is set out in Section 4.2 of Part B.
- 2.3. Throughout the procurement process the Procuring Authorities expect to use a variety of means to protect the public interest. These may include, but are not limited to, the following:
 - a. maintaining control over the RFQ and RFP processes and, through those processes, the resulting terms of any future Project Agreement² (which includes the ability (i) to choose to include, or not include, particular contract terms, and (ii) to mandate and evaluate compliance with applicable laws, permitting and regulatory regimes, third-party agreements and contractually mandated performance standards);
 - b. requiring Proposers to submit detailed information regarding their professional qualifications in their SOQs and thereafter requiring Short-listed Proposers to submit detailed information regarding their pricing and approach to the Project in their Proposals, and, in both cases, evaluating such information in accordance with evaluation criteria established by the Procuring Authorities;
 - c. requiring Proposers and Short-listed Proposers to conform with certain procedural requirements and meet with the Procuring Authorities periodically as part of the procurement process;
 - d. holding public meetings and periodically releasing other information to the public, subject to maintenance of limited, legally permitted confidentiality restrictions as needed to enable a competitive bidding process; and
 - e. maintaining the right to refine, suspend or terminate the procurement process.

3. **Project Goals and Transparency**

The Procuring Authorities wish to emphasize that Proposers should familiarize themselves with the following and take such matters into consideration when developing their SOQs and, subsequently, their Proposals:

- a. the key goals for the Project, which are listed in Section 1.3 of Part B; and
- b. the Procuring Authorities' commitment to being transparent throughout the procurement process for the Project, further details of which are set out in Section 1.5 of Part B and otherwise reflected throughout this RFQ, including in the public information requirements set out in Section 5.7 of Part B that apply to SOQ submissions.

4. **How to Use this RFQ**

- 4.1. For definitions of capitalized terms and rules of interpretation: see Part A for:
 - a. a reference index of capitalized words and phrases and their associated meanings; and
 - b. a set of rules addressing how to consistently interpret certain types of terms, phrases and grammatical structures throughout this RFQ.
- 4.2. For background information on the Project: see Sections 1, 2 and 3 of Part B. These Sections include descriptions of the scope of the Project and its history to date, as well as a summary overview of anticipated key terms of the Project Agreement and the Project's funding plan.

² Please see Section 2.4 of Part B for a summary of key anticipated elements of the Project Agreement.

- 4.3.** For information on the procurement process: see Sections 4, 5, 6, 7, 8 and 9 of Part B. These Sections include:
- a. a description of the procurement process and procedural rules with which Proposers are required to comply; and
 - b. provisions governing related matters such as protest procedures and the Procuring Authorities' reserved rights to enable it to manage the procurement process in the public interest.
- 4.4.** For the Substantive Evaluation Criteria: see Part C, which sets out the criteria by reference to which the Procuring Authorities will substantively evaluate and score the SOQs for purposes of selecting the highest ranking Proposers as Short-listed Proposers.
- 4.5.** For the SOQ Submission Requirements: see Parts D and E:
- a. Part D sets out the general instructions, and the required structure and contents, for any SOQ that a Proposer submits; and
 - b. Part E includes a number of Forms that a Proposer must use when preparing SOQs. These Forms are required in order to promote uniformity and clarity within a single SOQ, and among SOQs submitted by different Proposers, thereby facilitating review and evaluation by the Procuring Authorities.

PART A: DEFINITIONS AND RULES OF INTERPRETATION

1. DEFINITIONS

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| <u>“ATM”</u> | has the meaning given to it in <u>Section 2.3.13.a of Part B.</u> |
| <u>“Affiliate”</u> | means in relation to any Person: (a) any other Person having Control of that Person; (b) any other Person over whom that Person has Control; (c) any Person over whom any other Person referred to in (a) above also has Control; (d) any Financially Responsible Party for such Person; or (e) only with respect to the use of the term “Affiliate” in Forms D (<i>Legal Disclosures</i>) and E (<i>Certifications</i>), any Joint Venture involving such Person and the Joint Venture’s members or partners (but only as to activities of such members or partners in their roles as members or partners of such Joint Venture), where “Control” of a Person by another Person means that other Person (whether alone or with others, and whether directly or indirectly at any tier): (i) holds the majority of voting rights in the controlled Person; (ii) has the right to appoint the majority of the board of directors (or equivalent) of that controlled Person; and/or (iii) exercises direct or indirect control over that controlled Person’s affairs. |
| <u>“BE”</u> | has the meaning given to it in <u>Section 1.4 of the Executive Summary.</u> |
| <u>“BNSF Market Lead”</u> | means the spur railroad operated by the BNSF Railway between Madison Street and Garfield Street in Denver, Colorado. |
| <u>“Business Day”</u> | means any day that is not a Saturday, a Sunday or a public holiday under State law. |
| <u>“CDOT”</u> | has the meaning given to it in <u>Section 1.1 of the Executive Summary.</u> |
| <u>“Confidential Contents Index”</u> | has the meaning given to it in <u>Section 5.7.5.a of Part B.</u> |
| <u>“Construction Value”</u> | means the original design-build (or equivalent) contract price, <u>excluding any element of such price relating to debt or equity financing costs or operations or maintenance work.</u> |
| <u>“CORA”</u> | means the Colorado Open Records Act, C.R.S. §§ 24-72-101, et seq. |
| <u>“CORA Exempt Materials”</u> | means any trade secrets, privileged information and confidential commercial, financial, geological or geophysical data exempt from public disclosure under C.R.S. §§ 24-72-204(3)(a)(IV). |
| <u>“Core Proposer Team Member”</u> | means each of: (a) the Equity Members; (b) the Lead Contractor; (c) the Lead Engineer; (d) the Lead Operator; and (e) any Financially Responsible Party. |
| <u>“DBE”</u> | has the meaning given to it in <u>Section 2.4.2.a of Part B.</u> |

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| “ <u>Demonstrated Performance</u> ” | has the meaning given to it in the introduction to <u>Part C</u> . |
| “ <u>Developer</u> ” | has the meaning given to it in <u>Section 2.1.c</u> of the <u>Executive Summary</u> . |
| “ <u>DRCOG</u> ” | means the Denver Regional Council of Governments. |
| “ <u>E-470</u> ” | means E-470 Public Highway Authority. |
| “ <u>EIS</u> ” | has the meaning given to it in <u>Section 2.1.1</u> of <u>Part B</u> . |
| “ <u>Eligible Financial Institution</u> ” | <p>means a bank or financial institution having a long-term, unsecured debt rating of not less than “A” or “A3” from at least two Rating Agencies. means a bank or financial institution: (a) having an office in Denver, Colorado or New York, New York at which a letter of credit issued by it can be presented for payment, including by electronic means or fax; and (b) having a Minimum Issuer Rating from at least two Rating Agencies.</p> <p><u>For purposes of this definition “Minimum Issuer Rating” means a long-term unsecured debt rating of at least: (i) “A-” by Standard & Poor’s Ratings Services; (ii) “A-” by Fitch, Inc.; (iii) “A3” by Moody’s Investors Service, Inc.; or (iv) “A low” by DBRS, Inc., in each case with an outlook of “stable” or better.</u></p> |
| “ <u>Eligible Surety</u> ” | <p>means a surety authorized to issue bonds in the State that is having either: (a) rated not less than “A” or “A2” by a <u>Minimum Surety Rating from</u> at least two Rating Agencies; or (b) not less than a rating of at least “A” and “Class VIII” by from <u>A.M. Best and Company, Inc. (but only if it is at the relevant time a Registered Rating Agency).</u></p> <p><u>For purposes of this definition “Minimum Surety Rating” means a long-term unsecured debt rating of at least: (i) “A” by Standard & Poor’s Rating Services; (ii) “A” by Fitch, Inc.; (iii) “A2” by Moody’s Investors Service, Inc.; or (iv) “A” by DBRS, Inc., in each case with an outlook of “stable” or better.</u></p> |
| “ <u>Equity Member</u> ” | means a member of the Proposer team that will contribute equity (directly or indirectly) to Developer as part of the financing of the Project. |
| “ <u>ESB</u> ” | has the meaning given to it in <u>Section 2.4.3.a</u> of <u>Part B</u> . |
| “ <u>ETC</u> ” | has the meaning given to it in <u>Section 2.2.5.b</u> of <u>Part B</u> . |
| “ <u>FEIS</u> ” | has the meaning given to it in <u>Section 2.1.6</u> of <u>Part B</u> . |
| “ <u>FHWA</u> ” | means the Federal Highway Administration. |
| “ <u>Financial Proposal Deadline</u> ” | has the meaning given to it in the Procurement Schedule. |
| “ <u>Financial Requirements</u> ” | means the requirements set out in <u>Section 2</u> of <u>Part D</u> . |
| “ <u>Financially Responsible Party</u> ” | means each parent company or other entity (in either case, if any) that provides a letter of support in accordance with <u>Section 3.1</u> of the <u>Volume 2 Requirements</u> . |
| “ <u>GAAP</u> ” | means Generally Accepted Accounting Principles in the US as in effect from time to time. |

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| <u>“General Reference Project”</u> | means any transportation infrastructure project: <ul style="list-style-type: none"> (a) with a Construction Value equal to or greater than US\$150,000,000, except as permitted otherwise by Section 4.1 of the Volume 1 Requirements (in which case the Construction Value can be less than US\$150,000,000); (b) that either achieved substantial completion during the 10 years prior to, or was under construction as at, the date of this RFQ; and (c) that was contracted on a design-build, design-build-operate, design-build-maintain or design-build-operate-maintain basis (whether or not the relevant project also involved the transfer of financing responsibility (in whole or part) to the private sector). |
| <u>“General Requirements”</u> | means the requirements set out in Section 1 of Part D . |
| <u>“HPTE”</u> | has the meaning given to it in Section 1.4 of the Executive Summary . |
| <u>“HPTE Transparency Policy”</u> | has the meaning given to it in Section 1.5.1 of Part B . |
| <u>“I-70 East Corridor”</u> | has the meaning given to it in Section 1.1 of the Executive Summary . |
| <u>“I-70 East Project”</u> | has the meaning given to it in Section 1.4 of the Executive Summary . |
| <u>“Information Barrier”</u> | means, with respect to any Person, the implementation of internal safeguards and confidentiality protection protocols, including the exclusion of involvement of any individual who himself or herself has consulted or advised on, or otherwise has non-public knowledge of, the Project, this RFQ or the RFP, which barriers are customary and appropriate for the relevant industry of such Person and this Project. |
| <u>“ITS”</u> | has the meaning given to it in Section 2.3.13.a of Part B . |
| <u>“Joint Venture”</u> | means a consortium, partnership, joint venture or any other unincorporated grouping acting together for a common purpose. |
| <u>“Key Personnel”</u> | means the individuals identified by a Proposer in Part A (<i>List of Key Personnel</i>) of Form I (<i>Key Personnel</i>) to fill the various job positions set out in that Form. |
| <u>“Lead Contractor”</u> | means the single entity or Joint Venture that will be primarily responsible for construction of the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Contractor and, consequently, each of them will be considered to be Core Proposer Team Members. |
| <u>“Lead Engineer”</u> | means the single entity or Joint Venture that will be primarily responsible for engineering and design of the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Engineer and, consequently, each of them will be considered to be Core Proposer |

Team Members.

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| <u>“Lead Operator”</u> | means the single entity or Joint Venture that will be primarily responsible for operations, maintenance and/or rehabilitation in connection with the Project. If this role will be performed by a Joint Venture, then all members or partners of that Joint Venture will be considered to be the Lead Operator and, consequently, each of them will be considered to be Core Proposer Team Members. If any or all of the role of the Lead Operator will be self-performed by Developer, then, for the purposes of the SOQ Submission Requirements and the Procuring Authorities’ review and evaluation of SOQs, the Equity Members of the relevant Proposer will, in addition to being considered as Equity Members, also be considered to be a Joint Venture that must submit the same information that is required by the SOQ Submission Requirements to be submitted in respect of a Lead Operator, to the extent of such self-performance. |
| <u>“NEPA”</u> | has the meaning given to it in <u>Section 1.2</u> of the <u>Executive Summary</u> . |
| <u>“O&M Reference Project”</u> | means any surface transportation infrastructure project for which operations, maintenance or operations and maintenance (in either case alone or in any combination with design, construction and/or financing) has been conducted during the 10 years prior to the date of this RFQ <u>SOQ Deadline</u> . |
| <u>“Official Representative”</u> | has the meaning given to it in <u>Section 5.2.1.a</u> of <u>Part B</u> . |
| <u>“OJT”</u> | means On-the-Job Training. |
| <u>“Organizational Change”</u> | has the meaning given to it in <u>Section 5.4.1</u> of <u>Part B</u> . |
| <u>“PABs”</u> | has the meaning given to it in <u>Section 3.4.b</u> of <u>Part B</u> . |
| <u>“Partial Cover Lowered Alternative”</u> | has the meaning given to it in <u>Section 1.2</u> of the <u>Executive Summary</u> . |
| <u>“Pass/Fail Evaluation”</u> | means the evaluation of SOQs to be conducted by the Procuring Authorities in accordance with <u>Section 7.1.1.a</u> of <u>Part B</u> . |
| <u>“Pass/Fail Evaluation Criteria”</u> | means the Pass/Fail Evaluation criteria set out in <u>Section 7.2</u> of <u>Part B</u> . |
| <u>“Performance Payment”</u> | has the meaning given to it in <u>Section 2.4.1.c</u> of <u>Part B</u> . |
| <u>“Person”</u> | means any individual, sole proprietorship, corporation, partnership, unincorporated association or public entity, including successors and permitted transferees and assigns. |
| <u>“Preferred Proposer”</u> | has the meaning given to it in <u>Section 2.1.c</u> of the <u>Executive Summary</u> . |
| <u>“Preliminary Organizational Conflict of Interest Disclosure”</u> | has the meaning given to it in <u>Section 5.3.1.c</u> of <u>Part B</u> . |
| <u>“Procurement Schedule”</u> | has the meaning given to it in <u>Section 4.2.a</u> of <u>Part B</u> . |

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| “ <u>Procuring Authorities</u> ” | has the meaning given to it in <u>Section 1.4</u> of the <u>Executive Summary</u> . |
| “ <u>Procuring Authorities’ Contact Person</u> ” | has the meaning given to it in <u>Section 5.2.2.c</u> of <u>Part B</u> . |
| “ <u>Project Agreement</u> ” | has the meaning given to it in <u>Section 2.1.b.iii-1.5</u> of the <u>Executive Summary</u> . |
| “ <u>Project <u>Agreement</u></u> ” | has the meaning given to it in <u>Section 1.4-2.1.b.iii</u> of the <u>Executive Summary</u> . |
| “ <u>Project Information</u> ” | <u>has the meaning given to it in Section 1.4.3.a.i of Part B.</u> |
| “ <u>Project Website</u> ” | has the meaning given to it in <u>Section 1.4.1</u> of <u>Part B</u> . |
| “ <u>Proposal</u> ” | has the meaning given to it in <u>Section 2.1.b.i</u> of the <u>Executive Summary</u> . |
| “ <u>Proposer</u> ” | has the meaning given to it in <u>Section 2.1.a.i</u> of the <u>Executive Summary</u> . |
| “ <u>Protest Review Committee</u> ” | has the meaning given to it in <u>Section 8.1.2</u> of <u>Part B</u> . |
| “ <u>Public Disclosure SOQ</u> ” | has the meaning given to it in <u>Section 5.7.3.a</u> of <u>Part B</u> . |
| “ <u>Public Disclosure SOQ Deadline</u> ” | has the meaning given to it in the <u>Procurement Schedule</u> . |
| “ <u>Rating Agency</u> ” | <p><u>means each of:</u></p> <p><u>(a) <u>Fitch, Inc.</u>;</u></p> <p>means each of Fitch, Inc., <u>(b) <u>Moody’s Investors Service, Inc.</u> and;</u></p> <p><u>(c) <u>Standard & Poor’s Ratings Services</u>, each to the extent; <u>and</u></u></p> <p><u>(d) <u>DBRS, Inc.</u>,</u></p> <p><u>provided that</u> such entity is at the relevant time a nationally recognized statistical rating organization registered with the Office of Credit Rating of the U.S. Securities and Exchange Commission <u>Registered Rating Agency</u>.</p> |
| “ <u>Reference Projects</u> ” | means both <u>General Reference Projects</u> and <u>O&M Reference Projects</u> . |
| “ <u>Registered Rating Agency</u> ” | <u>means a nationally recognized statistical rating organization registered with the Office of Credit Rating of the U.S. Securities and Exchange Commission.</u> |
| “ <u>Restricted Contact Period</u> ” | has the meaning given to it in <u>Section 5.2.2.a</u> of <u>Part B</u> . |
| “ <u>RFP</u> ” | has the meaning given to it in <u>Section 2.1.a.ii</u> of the <u>Executive Summary</u> . |
| “ <u>RFQ</u> ” | has the meaning given to it in <u>Section 2.1.a</u> of the <u>Executive Summary</u> . |
| “ <u>RFQ Comment Deadline</u> ” | has the meaning given to it in the <u>Procurement Schedule</u> . |
| “ <u>RFQ Comment Response</u> ” | has the meaning given to it in the <u>Procurement Schedule</u> . |

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| <u>Deadline</u> | |
| <u>“RFQ Comments”</u> | has the meaning given to it in <u>Section 5.1.1.a</u> of <u>Part B</u> . |
| <u>“ROD”</u> | has the meaning given to it in <u>Section 2.1.1</u> of <u>Part B</u> . |
| <u>“SDEIS”</u> | has the meaning given to it in <u>Section 2.1.3</u> of <u>Part B</u> . |
| <u>“Short-listed Proposer”</u> | has the meaning given to it in <u>Section 2.1.a.ii</u> of the <u>Executive Summary</u> . |
| <u>“SOQ”</u> | has the meaning given to it in <u>Section 2.1.a.i</u> of the <u>Executive Summary</u> . |
| <u>“SOQ Deadline”</u> | has the meaning given to it in the Procurement Schedule. |
| <u>“SOQ Submission Location”</u> | has the meaning given to it in <u>Section 6.1.1.a</u> of <u>Part B</u> . |
| <u>“SOQ Submission Public Statement”</u> | has the meaning given to it in <u>Section 5.7.2.iv</u> of <u>Part B</u> . |
| <u>“SOQ Submission Requirements”</u> | means the Volume 1 Requirements and the Volume 2 Requirements. |
| <u>“State”</u> | has the meaning given to it in <u>Section 1.1</u> of the <u>Executive Summary</u> . |
| <u>“Submittal Letter”</u> | means the letter submitted by a Proposer in accordance with <u>Section 1.1</u> of the <u>Volume 1 Requirements</u> . |
| <u>“Substantive Evaluation”</u> | means the evaluation and scoring of SOQs to be conducted by the Procuring Authorities in accordance with <u>Section 7.1.1.b 7.3</u> of <u>Part B</u> . |
| <u>“Substantive Evaluation Criteria”</u> | means the Substantive Evaluation criteria set out in <u>Part C</u> . |
| <u>“Technical Proposal Deadline”</u> | has the meaning given to it in the Procurement Schedule. |
| <u>“Transportation Commission”</u> | has the meaning given to it in <u>Section 1.4</u> of the <u>Executive Summary</u> . |
| <u>“US DOT”</u> | means the United States Department of Transportation. |
| <u>“Volume 1”</u> | means that portion of a SOQ prepared in accordance with the Volume 1 Requirements. |
| <u>“Volume 1 Requirements”</u> | means the requirements set out in <u>Part D</u> under the heading “Volume 1 Requirements”. |
| <u>“Volume 2”</u> | means that portion of a SOQ prepared in accordance with the Volume 2 Requirements. |
| <u>“Volume 2 Requirements”</u> | means the requirements set out in <u>Part D</u> under the heading “Volume 2 Requirements”. |

2. RULES OF INTERPRETATION

In this RFQ:

- a. the singular includes the plural and vice versa;
- b. the headings are inserted for convenience only and shall not affect interpretation of this RFQ;
- c. a reference to any Section, Part, Form or Annex:
 - i. within this RFQ, is a reference to such Section, Part, Form or Annex of or to this RFQ; and
 - ii. within a Form or Annex, is to a Section or ~~annex~~Annex of or to that Form or Annex, in each case except ~~whereas otherwise~~ expressly ~~stated to the contrary~~provided in this RFQ;
- d. when there are references with general words followed by a list, or a reference to a list, to make it clear that those general words “include” the matters set out in that list, then the contents of the list shall not, and shall not be deemed to, limit the generality of those general words;
- e. except as otherwise expressly provided in this RFQ, words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;
- f. except as otherwise expressly provided in this RFQ, all terms of an accounting or financial nature shall be construed in accordance with GAAP;
- g. any reference to any law, enactment, order, regulation or other similar instrument shall be construed as a reference to the law, enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted; ~~and~~
- h. while for ease of reference HPTE and BE are collectively referred to as the “Procuring Authorities”, either one of them may act for both of them in their capacity as the Procuring Authorities under this RFQ except as otherwise expressly provided in this RFQ; and
- i. ~~h.~~ any reference to the Procuring Authorities’ “discretion” means the Procuring Authorities (including either one of them acting on behalf of both of them) exercising their sole and absolute discretion in regards to a particular decision or action, including the ability to refrain from taking any action and the ability (where appropriate) to impose any conditions in the exercise of such discretion.

PART B: PROJECT INFORMATION AND INSTRUCTIONS TO PROPOSERS

1. BACKGROUND INFORMATION

1.1. Overview

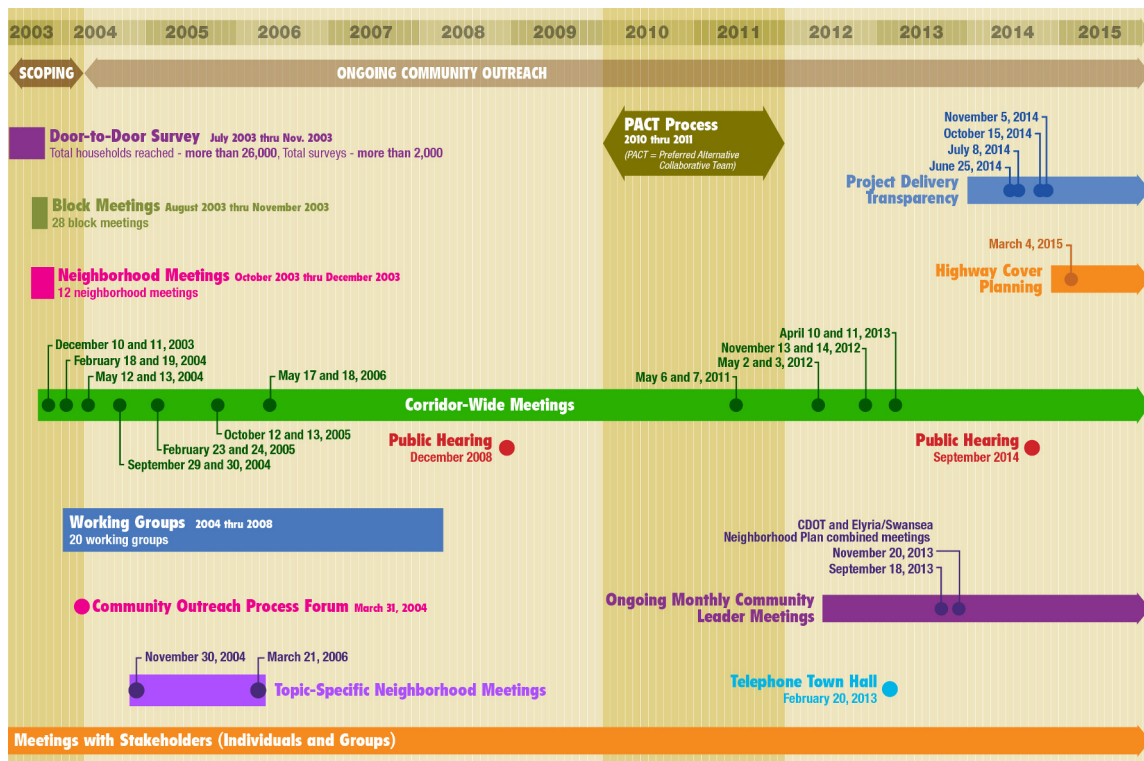
The Project is anticipated to include a significant portion of the overall scope of the Partial Cover Lowered Alternative, as such scope of work may be modified and enhanced (in compliance with relevant approvals) through the procurement process for the Project and the ongoing NEPA process. Section 2.1 of this Part B provides an overview of the Project's currently anticipated scope of work. Sections 2.1 and 2.2.7 of this Part B explain the conditional nature of such scope pending completion of the ongoing environmental review process and other factors referred to in such Sections.

1.2. Stakeholder Engagement and Dialogue

1.2.1. CDOT has spent more than a decade studying the long-term needs of the I-70 East Corridor. This process has involved a community engagement process far exceeding any otherwise similar initiative in CDOT history. Because the reconstruction of the I-70 East Corridor most directly impacts the neighborhoods of Swansea, Elyria and Globeville, CDOT's engagement has focused on residents, business owners and other key stakeholders from these neighborhoods.

1.2.2. CDOT's engagement activities since 2003 are summarized in the diagram below:

Public Involvement in the I-70 East Corridor Planning Process



1.3. Project Goals

Reflecting the multi-year planning process that has led to this RFQ, the Procuring Authorities and CDOT have established the following goals (which are not listed in order of priority or importance) for this Project:

- a. Optimize the scope of the transportation, and supporting, infrastructure delivered through the Project in order to promote corridor-wide economic and community vitality.
- b. Optimize operating and life cycle maintenance costs by delivering a Project using quality design, materials and techniques.
- c. Minimize impacts to the traveling public, businesses and nearby communities during and after construction.
- d. Once operational, ensure reliable travel speeds in the tolled express/high occupancy vehicle (HOV) lanes and, for all lanes, a minimum appropriate standard of maintenance.
- e. Utilize a collaborative process to enhance community values and Project benefits.
- f. Protect the safety of the workforce and public.

1.4. Additional Project Related Information

1.4.1. The Procuring Authorities have assembled documents and information relating to this RFQ and the Project, which will be made available to Proposers and the public at: www.coloradodot.info/projects/i70east (the "Project Website").

1.4.2. Notwithstanding the public nature of the Project Website, the Procuring Authorities recognize that a competitive and secure procurement process may require confidential communications and disclosures with and to Proposers, any Short-listed Proposers and the Preferred Proposer. As such, to the extent necessary to preserve confidentiality for such purposes, the Procuring Authorities reserve the right to establish a limited-access website and/or conduct direct written or oral communications with Proposers, Short-listed Proposers and the Preferred Proposer in compliance with CORA. Information regarding such a resource will be provided to Proposers as necessary.

1.4.3. Subject to the terms of the Project Agreement as executed:

a. neither Procuring Authority:

- i. ~~1.4.3. Neither of the Procuring Authorities makes~~ makes (or shall be deemed to have made) any representation or warranty or guarantee as to the accuracy, completeness, utility, completeness or relevance of any of the documents and information made available on the Project Website, referred to in this RFQ (including on third party websites) or otherwise made available by either Procuring Authority, CDOT, the State or any other public body or organization to Proposers in connection with this Project (including as contemplated in Section 1.4.2 of this Part B) and no Proposer shall "Project Information";
- ii. has (or shall be deemed to have) any obligation to update any Project Information, the contents of which may reflect information available as of the date that it was prepared or as of such other date indicated therein; or
- iii. shall be responsible or liable (or be deemed to be responsible or liable) for any lack of accuracy, completeness, utility or relevance of, or any interpretations of or conclusions drawn from, any Project Information; and

b. Proposers:

- i. shall assume full responsibility for their use of any Project Information; and
- ii. shall not be entitled to rely, ~~nor and shall~~ be deemed not to have relied, on any ~~such documents or information~~ Project Information.

1.5. Statement of Commitment to Transparency

- 1.5.1. The Procuring Authorities have committed themselves to being transparent during the procurement process for the I-70 East Project. In particular, in 2014, Gov. John Hickenlooper signed Executive Order D2014-010 directing HPTE to adopt additional transparency measures in transportation infrastructure public-private partnerships. Reflecting this, HPTE’s board adopted its own policy (the “[HPTE Transparency Policy](#)”) to ensure transparency and accountability for, and public participation in, any public-private partnership entered into by HPTE.³ In addition, BE has chosen to follow the HPTE Transparency Policy for purposes of the procurement of this Project.
- 1.5.2. The Procuring Authorities have already taken steps to prioritize transparency and accountability in the development and implementation of the Project. For example, please see [Section 1.2](#) of this [Part B](#) for an overview of the community engagement and dialogue initiatives that have been undertaken to date. The Procuring Authorities expect to continue to reflect this commitment to transparency throughout the procurement process for the Project, as for example shown by the requirement that SOQs shall comply with certain public information requirements in accordance with [Section 5.7](#) of this [Part B](#).
- 1.5.3. The HPTE Transparency Policy calls for HPTE, in coordination with interested local governments, to hold a minimum of three public town hall meetings in relation to a potential project such as the I-70 East Project. Consistent with the HPTE Transparency Policy, the Procuring Authorities have held or intend to hold the following public town hall meetings:

| HPTE Meeting Requirements | Status for the I-70 East Project |
|--|--|
| <u>First Meeting</u> During the "visioning" stage of the Project. | HPTE held a telephone Telephone town hall meeting held on June 25, 2014 and a town hall on July 8, 2014. |
| <u>Second Meeting</u> Before HPTE issues Prior to issuance of a draft RFQ for the Project. | HPTE held a telephone Telephone town hall meeting held on October 16, 2014 and a public meeting held on November 5, 2014. |
| <u>Third Meeting</u> Before HPTE issues Prior to issuance of a draft RFP for a public-private partnership the Project . | To be conducted at the appropriate time. |
| <u>Fourth Meeting</u> After preparation of, but prior to issuance of, a final RFP for the Project. | To be conducted at the appropriate time. |

The Procuring Authorities consider the meetings specified above as the required minimum and therefore has engaged in additional public engagement activities. These have included HPTE holding telephone town hall meetings on June 25, 2014 and October 16, 2014 and another in person town hall meeting on November 5, 2014. HPTE has also conducted related online surveys.

- 1.5.4. The above types of meetings have been and will:
 - a. be held either at a location near the primary communities expected to be affected by the Project and at such other forums as HPTE (in consultation with CDOT and BE) may deem appropriate to provide access to the public;

³ The HPTE Transparency Policy is available at: www.coloradodot.info/programs/high-performance-transportation-enterprise-hpte/about-us/rules-policy/hpte-transparency-policy.pdf.

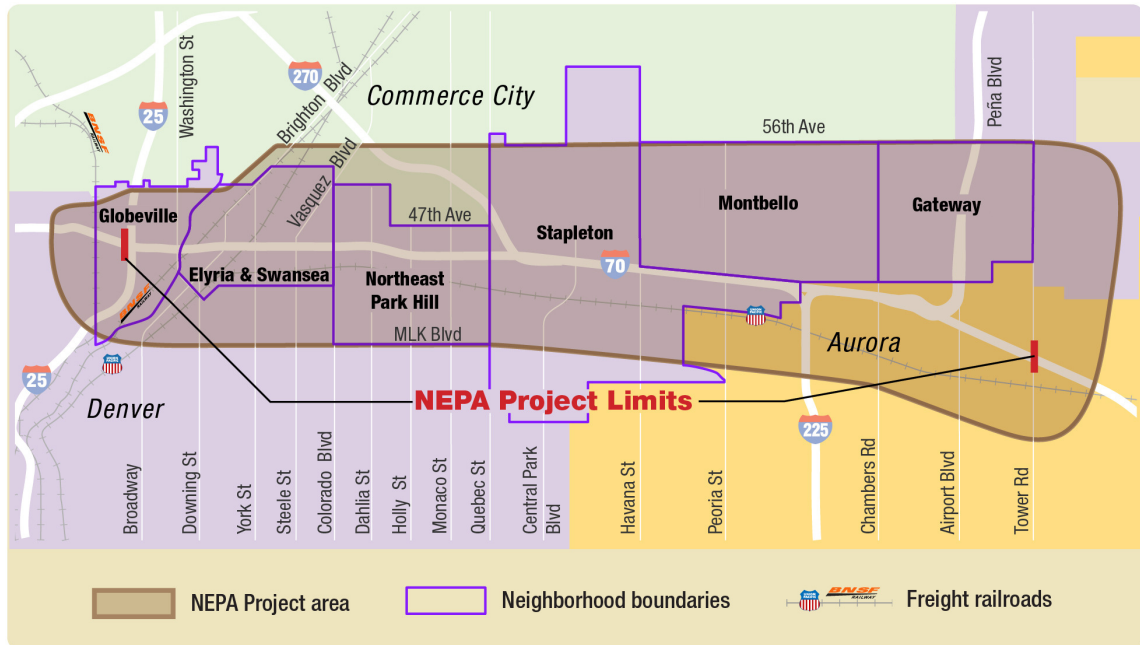
- b. allow for comment, input and questions from the public and response from [HPTE staff or board members](#) ~~and/or HPTE staff of the Procuring Authorities~~; and
 - c. update the public on additional developments regarding the Project and other information as required by, or consistent with, the HPTE Transparency Policy.
- 1.5.5. All meetings required by the HPTE Transparency Policy have been or will be preceded by full and timely notice. This includes posting notice on the Project Website and providing notice to appropriate media, to members of the General Assembly whose districts include any geographic area located within the expected boundaries of the Project and to the county/municipal governing bodies of those geographic areas.
- 1.5.6. Further, in accordance with the HPTE Transparency Policy:
- a. the Procuring Authorities have included provisions in [Section 5.7](#) of this [Part B](#) to facilitate the public disclosure of information provided by Proposers;
 - b. along with the notice described in [Section 1.5.5](#) of this [Part B](#), the Procuring Authorities will make available other relevant information relating to the Project that will assist the public in considering meaningful comments, including, in the case of the third meeting described in [Section 1.5.3](#) of this [Part B](#), posting on the HPTE website the final RFP; and
 - c. when the Project Agreement is executed, the Procuring Authorities will post on the Project's Website the fully executed agreement together with a summary of the key terms of such agreement, in each case subject to the safeguards referred to in [Section 5.7](#) of this [Part B](#).

2. PROJECT BRIEFING

2.1. The NEPA Process

- 2.1.1. NEPA requires the preparation of an Environmental Impact Statement (“[EIS](#)”) for projects that could have a significant impact on the environment. The EIS process is a method of decision-making through which various “alternatives” are considered from environmental, community and other perspectives. Once a “preferred alternative” has been identified by CDOT, the outcomes of an EIS process are formalized in one or more Records of Decision (“[ROD](#)”). Only once a ROD is issued may a project proceed.
- 2.1.2. During the past several years CDOT has been working to progress the EIS process for the I-70 East Corridor. The following map illustrates the area that has been the subject of review during this process:

The I-70 East Corridor and the NEPA Project Limits



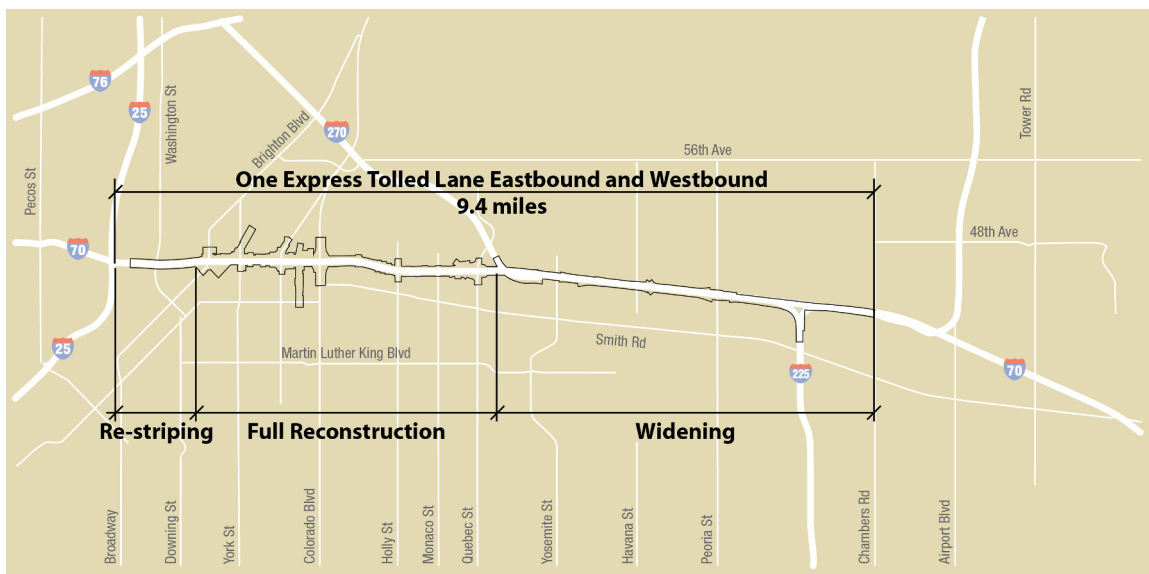
- 2.1.3. In August 2014, CDOT released a Supplemental Draft EIS (the “SDEIS”) for the I-70 East Corridor. The SDEIS, and prior NEPA process reports, are available at: www.i-70east.com/reports.html.
- 2.1.4. The SDEIS built upon prior work and added a new alternative for consideration – the Partial Cover Lowered Alternative. The Partial Cover Lowered Alternative has been *preliminarily* identified by CDOT as the “preferred alternative” for proceeding under NEPA. CDOT is still reviewing the comments received on the SDEIS.⁴
- 2.1.5. Completion of the NEPA process will involve the issuance of a Final EIS (the “FEIS”), which may include a recommendation to proceed with one of the alternatives considered in the SDEIS. The Procuring Authorities have chosen to proceed with the procurement process contemplated by this RFQ concurrently with the preparation of an FEIS. They have chosen this approach in order to potentially expedite construction once the NEPA process is complete.
- 2.1.6. Notwithstanding the steps that have been taken to date (including the issuance of this RFQ), CDOT does not commit to any alternative currently being evaluated in the I-70 East NEPA process, including the preliminary identified “preferred alternative” in the SDEIS – the Partial Covered Lowered Alternative. A final selection of an alternative will not be made until the issuance of a ROD. Since a ROD has not been issued for this Project, all the information provided in this RFQ or otherwise is preliminary. Furthermore, providing preliminary information in this RFQ will not prejudice the I-70 East NEPA process. In particular, the ROD could select a no build alternative or another build alternative.
- 2.1.7. In any case, following the issuance of the FEIS, one or more RODs may be issued for all or a portion of the preferred alternative. A ROD will be issued only with the approval of FHWA (as the relevant lead Federal agency). The RFP will update Short-listed Proposers regarding the process for securing a ROD in relation to the Project.

⁴ These comments are available at: www.i-70east.com/reports.html#sdeiscomments.

2.2. Project Scope to be undertaken by Developer

- 2.2.1. The NEPA process will identify the key components of the ultimate improvements for the entire project corridor between I-25 and Tower Road. Due to funding constraints, it is anticipated that the FEIS and ROD will follow a phased approach. The outer physical boundaries of the area of the Partial Cover Lowered Alternative as reflected in the SDEIS therefore include areas that could be beyond the scope of the Project as described in this [Section 2.2](#) of this [Part B](#). The analysis of the fuller scope reflects various considerations, including the long-term planning benefits that CDOT has identified in considering a broader scope of work than it might procure in the near term.
- 2.2.2. With respect to design and construction, the Project scope of work will match the ROD “Phase I” project and may be subject to change, including for the reasons explained in [Section 2.2.7](#) of this [Part B](#). The following map illustrates the anticipated Project limits and major divisions within the scope of work:

Anticipated Project Scope of Work



- 2.2.3. The Procuring Authorities anticipate that Developer’s scope of work will incorporate portions of the Partial Cover Lowered Alternative and include the following:
- a. removal of the existing viaduct between Brighton Boulevard and Colorado Boulevard and then reconstruction of the I-70 along this segment below grade on the existing alignment, with the ultimate typical Project roadway configuration to be constructed through this segment to include:
 - i. to improve mobility, one managed lane to be striped in each of the eastbound and westbound directions, which configuration would include a wide inside shoulder in each direction that will then be striped in the future as a second managed lane;
 - ii. elimination of access to I-70 at York Street;
 - iii. partial reconstruction of the Brighton Boulevard interchange;
 - iv. reconstruction of the Steele/Vasquez interchange and Colorado Boulevard interchange with a split diamond interchange, which will also include an eastbound bypass lane from the eastbound Steele/Vasquez/Colorado exit ramp to Colorado Boulevard, and a westbound slip ramp to I-70 from Colorado Boulevard (the slip ramp is currently designed as a separate entrance to westbound I-70 and would not be combined with the westbound Steele/Vasquez entrance ramp);

- v. a landscaped cover over the highway, from west of Columbine Street to east of Clayton Street, next to Swansea Elementary School, which will reconnect the surrounding neighborhoods;
 - vi. maintenance of north-south connections at Brighton Boulevard as well as York Street, Josephine Street, Columbine Street, Clayton Street, Fillmore Street, Steele Street/Vasquez Boulevard and Colorado Boulevard over the lowered, reconstructed highway;
 - vii. the addition of north-south connections at Cook Street and Monroe Street;
 - viii. replacement of the existing Union Pacific Railroad bridge structure, which passes under the existing viaduct, with corresponding track work (e.g. the crossing of the I-70 mainline and East 46th Avenue under the Union Pacific Railroad bridge);
 - ix. an at-grade crossing at 46th Avenue and a span over I-70 and ramps for the BNSF Market Lead, including track design to accommodate new structures; and
 - x. an overall approach to design and construction that would technically not preclude for the construction of a second cover over the highway from west of the Steele/Vasquez highway crossing to east of Cook Street but on the basis that such a second cover will not be included as part of the Project;
- b. full reconstruction of I-70 and the associated frontage roads continuing (at grade) between Colorado Boulevard and Quebec Street, with the ultimate typical Project roadway configuration to be constructed through this segment, and including:
- i. to improve mobility, one managed lane to be striped in each of the eastbound and westbound directions, which configuration would include a wide inside shoulder in each direction that will then be striped in the future as a second managed lane;
 - ii. removal of the existing slip ramps west of Dahlia Street and east of Monaco Street and replacement of the existing slip ramps with a full interchange at Holly Street;
 - iii. new I-70 structures at Dahlia Street, Holly Street, Monaco Street and Quebec Street to maintain north-south connections under the highway;
 - iv. partial reconstruction of the existing Quebec Street interchange, where (A) the west side ramps will be constructed to the ultimate typical Project roadway configuration, including grade separation over the Denver Rock Island Railroad and access to both I-70 and the frontage roads, and (B) the east side ramps will be partially reconstructed to tie into existing condition; and
 - v. replacement of the existing I-70 structure over the Denver Rock Island Railroad;
- c. east of Quebec Street, roadway widening to accommodate only a single managed lane from Quebec Street to Chambers Road, which will also include:
- i. a mill and overlay for resurfacing;
 - ii. replacement of the I-270 southbound to I-70 eastbound flyover structure due to abutment encroachment;
 - iii. non-disturbance of Central Park Boulevard, which has recently been reconstructed;
 - iv. a new structure at Peoria Street to maintain the ultimate typical Project roadway configuration with the auxiliary lane from Peoria Street to I-225 to be continued through the I-70 eastbound to I-225 southbound connection;
 - v. no new structure at Havana Street as the replacement of the structure is planned to be completed as a separate project by CDOT during Spring 2016; and
 - vi. no managed lane direct connections or flyovers;

- d. all associated roadside facilities, lighting infrastructure and drainage facilities; and
 - e. other general improvements, including:
 - i. reconstruction of 46th Avenue between Colorado and Brighton Boulevards, including lighting, pedestrian and bicycle amenities and other streetscape improvements as agreed upon by CDOT;
 - ii. civil construction related to certain ITS as further described in Section 2.3.13.a of this Part B;
 - iii. providing new storm water detention and drainage facilities for both the interstate facility and reconstructed local streets adjacent to the Project;
 - iv. providing approved and agreed-upon environmental, traffic and user access impact mitigation during and after construction; and
 - v. providing utility connections across the below grade facility.
- 2.2.4. Developer's operations and maintenance responsibilities are expected to include:
- a. maintenance, including lifecycle maintenance, of infrastructure constructed by Developer and including, by way of example, maintenance of:
 - i. roadway surfaces, including general purpose lanes, the managed lanes and the shoulders;
 - ii. roadside facilities, such as sound barriers, fences and safety appurtenances;
 - iii. drainage facilities, such as ditches, storm water outfalls and water quality/detention ponds;
 - iv. roadside appearances, including through vegetation control and graffiti removal;
 - v. traffic services, such as signs, lighting, signals, safety appurtenances and pavement striping; and
 - vi. structures, such as bridge structures, covered sections and retaining walls;
 together with all associated inspection, record keeping and reporting of such maintenance activities;
 - b. rehabilitation of certain existing infrastructure that is not the subject of new construction or reconstruction, but is within the Project limits, as further specified in the Project Agreement; and
 - c. handback of infrastructure in accordance with requirements to be specified in the Project Agreement;
- 2.2.5. In addition to Developer's general design, construction, operations and maintenance responsibilities:
- a. the Procuring Authorities may consult with Proposers regarding alternative approaches for certain operations and maintenance responsibilities, such as snow and ice removal, on all or a portion of the Project, and subsequently may ask Short-listed Proposers to bid priced optional approaches to such responsibilities; and
 - b. Developer will be responsible for providing, installing and maintaining the civil infrastructure associated with the Electronic Toll Collection ("ETC") system, while the tolling equipment is expected to be provided, installed and maintained by others, including CDOT and E-470.
- 2.2.6. In addition to the anticipated technical elements of the Project, Developer's responsibilities are expected to include:
- a. mitigation of the impact of construction, and thereafter of the reconstructed highway, on the surrounding community;

- b. participation in community engagement initiatives to educate the public about construction progress and potential impacts;
 - c. attention to maintenance of traffic and access to residents and businesses in the I-70 East Corridor during construction, including mitigation of air and noise impacts; and
 - d. environmental and hazardous materials mitigation and compliance activities.
- 2.2.7. A more detailed scope of work for the Project, together with relevant technical specifications, will be included in the draft Project Agreement to be issued as part of the RFP. However, the Procuring Authorities offer the following guidance to Proposers in advance of issuance of the RFP.
- a. Because the NEPA process remains ongoing, elements of what is currently considered the Partial Cover Lowered Alternative could be modified during the RFP process, even assuming that the Partial Cover Lowered Alternative is confirmed as the preferred alternative. This in turn could affect the scope of the Project.
 - b. In addition, because the Procuring Authorities must procure the Project within a defined budget and based on limited funding sources (see Section 3.3 of this Part B), it anticipates that it might use the RFP process to further determine the extent of the potential scope of work that can be performed by Developer within the Procuring Authorities' budget.
 - c. As a consequence, the Procuring Authorities anticipate working with Short-listed Proposers to identify opportunities to maximize Project scope and achieve innovations and efficiencies, particularly in design and construction. This process could also result in some modifications or enhancements to the final scope of work. In making these modifications, the Procuring Authorities anticipate also considering the input that it has received through the SDEIS comment process.

2.3. Project Technical Considerations

In addition to the description of the Project scope set out in Section 2.1 of this Part B, the following descriptions of certain key technical aspects of the Project (which are not listed in order of priority or importance) are intended to provide Proposers with additional information relevant to preparing a SOQ. In addition, some of these aspects may provide potential opportunities for innovation. Details of the specific risk allocation relating to these aspects will be set out in the draft Project Agreement.

2.3.1. Railroads

- a. The Union Pacific Railroad, BNSF Market Lead and Denver Rock Island Railroad operate within the I-70 East Corridor. The Partial Cover Lowered Alternative will require the construction of new bridges as described in Section 2.2.2 of this Part B.
- b. Construction of these bridges will result in temporary impacts to railroad operations for track relocations required to phase the construction of the new grade separated structures.
- c. CDOT has conducted preliminary coordination with all of the above mentioned railroads, but has not reached any formal agreements with these railroads in relation to the Project.

2.3.2. Drainage System(s)

The Project is expected to include two new storm outfall systems to the South Platte River. One system will protect the proposed below grade section of I-70 from off-site flows and another system will drain the on-site flows for such section. CDOT has been working collaboratively with the City and County of Denver and the Urban Drainage and Flood Control District on hydrology and hydraulics for the off-site flows. The resulting requirements will be set out in the RFP. CDOT's current proposal for the on-site outfall system includes extensive subsurface jacking of a large diameter pipe for an approximate 1-mile length.

2.3.3. Geotechnical Investigation

CDOT has performed and will continue to perform certain geotechnical investigation work relating to the Project. The results of such work are expected to be made available to Short-listed Proposers. In the interim, see Section 5.17 of the SDEIS for information related to geological and soil conditions relating to the Partial Cover Lowered Alternative.

2.3.4. Hazardous Material Investigation

CDOT has performed certain hazardous material investigation work in association with the geotechnical investigation work relating to the Project. CDOT is also performing additional investigations relating to property acquisitions. The results of all such work are expected to be made available to Short-listed Proposers. In the interim, see Section 5.18 of the SDEIS for information related to hazardous materials relating to the Partial Cover Lowered Alternative.

2.3.5. Construction Phasing and Maintenance of Traffic

Project construction work is anticipated to be substantial with major activities involving new highway facilities, railroad bridges, local street bridges, storm drainage outfalls and collection system, utilities, pavement reconstruction and permanent traffic controls, among many others. Construction will result in impacts to the travelling public, businesses and residents. Project construction phasing strategies are anticipated to be based on minimizing such impacts.

2.3.6. Utility Investigation and Relocations

The Project will include complex utility relocation works that will involve the crossing of major utilities over (or under) the reconstructed I-70. CDOT has initiated utility locating and mapping, and begun coordination with affected utilities, which may result in related utility relocation agreements. Details of the utility relocations, and of any adjustments which the Procuring Authorities anticipate will be necessary, are expected to be made available to Short-listed Proposers. In the interim, see Section 5.19 of the SDEIS for information related to utilities relating to the Partial Cover Lowered Alternative.

2.3.7. Retaining Walls

The Project is anticipated to include extensive retaining walls between Brighton Boulevard and Colorado Boulevard, and assumes the use of top-down construction techniques. Additional details regarding the anticipated approach to constructing the retaining walls will be provided in the RFP.

2.3.8. Deep Excavation

The Project will include elements located below the existing ground elevation between Brighton Boulevard and Colorado Boulevard. The associated roadway excavation is expected to be a major work activity and coordination between the excavation and other work elements including utility relocations, maintenance of traffic, dewatering, structures and drainage improvements will be required.

2.3.9. Ground Water Considerations

Construction excavations for a portion of the lowered I-70 are anticipated to be below the groundwater surface elevation. The Project's requirements will therefore include temporary dewatering during construction and also address potential groundwater issues after construction.

2.3.10. Highway Cover adjacent to Swansea Elementary School

The Project is anticipated to include a highway cover that extends from west of Columbine Street to east of Clayton Street, a span of just under 1,000 feet in length. An urban landscape is proposed to be located on the cover with the potential to include playgrounds, outdoor classrooms and community gardens. Strategically placed landscape elements, such as trees, are expected to be included only at designed locations to minimize the loadings on the

structure. To design the amenities on the cover, structural limitations will have to be considered. Some of these considerations include:

- a. Design life of the cover structure: Consideration will need to be given to the level of complexity and expense of the amenities and features placed on the cover. Replacement of the cover structure, regardless of design life, would require replacement or reinstallation of all amenities constructed on the top of the cover.
- b. Damage to one or more girders resulting from an over-height vehicle or fire: Replacement of one or more girders may require replacement or reinstallation of amenities constructed above the damaged girder(s).
- c. Wet utilities: Any amenity requiring wet utility services, such as water and sewerage, would require special design considerations to ensure long service life without failure or replacement.
- d. Maintenance responsibilities: Developer's responsibilities may include maintenance of all amenities and structures considered for the top of the cover, including their interface with maintenance of the overall cover structure.

2.3.11. Covered and Below Grade Sections Ventilation and Fire Life Safety Report

Ventilation and fire life safety requirements are being developed by CDOT for the Project that are in line with international best practices. Such practices are based upon key safety objectives such as: permitting the users of the covered and below grade sections of the I-70 East Project to evacuate in reasonable safety; reducing the life safety risk to as low as reasonably practicable; and allowing fire department personnel to operate in reasonable safety. In connection with this, CDOT has prepared a Ventilation and Fire Life Safety Report, which it expects to make available to Short-listed Proposers.

2.3.12. Tolling Infrastructure and Operations

- a. The managed express lanes included in the Project will be tolled through a 100% barrier-free ETC open road system requiring no reduction in speed. Bus rapid transit and high occupancy vehicles will be able to use these lanes without payment of a toll, provided that a transponder is used. Other vehicles will pay tolls. The division of responsibility for ETC and related infrastructure between Developer, on the one hand, and E-470 and/or CDOT, on the other hand, is described in Section 2.2.5.b of this Part B.
- b. Developer will not be entitled to retain any toll revenues and, as a consequence, will not be expected to assume any revenue risk associated with the traffic volume on the tolled lanes.

2.3.13. ITS

- a. The Project will include Intelligent Transportation Systems ("ITS") infrastructure, active traffic management ("ATM") and related equipment which, at a minimum, are anticipated to include fiber optic conduits and cable interconnections, including new and existing equipment such as: closed circuit TV cameras owned by CDOT and the City and County of Denver; variable message signs; road and weather information systems; speed collection devices (e.g. toll tag readers, speed doppler); bridge deicers; ramp meters; traffic signals; lane use control signs/signals; variable speed limit signs; and variable toll message signs.
- b. Developer's ITS and ATM responsibilities are anticipated to include:
 - i. responsibility for civil construction work, including installation of the fiber optic backbone and laterals within Project limits;
 - ii. integration of the ITS and ATM equipment into the existing CDOT traffic management software;
 - iii. coordination of the shared fiber with private telecommunications companies, which jointly cohabitate with CDOT and the City and County of Denver either the existing

conduits or fiber in and outside the highway right-of-way, that in any such case could be affected by the Project; and

- iv. communication with all existing ITS, and potentially ATM, equipment and private telecommunications providers regarding construction activities during construction.

2.3.14. Permitting

Developer is expected to be generally responsible for continuing to advance and secure most if not all required environmental permits for the Project (other than the ROD) and for identifying and securing most if not all necessary regulatory, environmental and building permits to design, construct, finance, operate and maintain that portion of the Project within Developer's scope of work. As part of such responsibility, Developer would be responsible for complying with applicable local permitting and regulatory review requirements. Additional details will be provided in the RFP.

2.3.15. ROW Acquisition

- a. CDOT has initiated right-of-way acquisition for the Project. The Procuring Authorities expect that CDOT will acquire land necessary to complete construction of the Project in accordance with the ROD. It is intended that as many properties as practical would be acquired (and any necessary relocations and demolition completed) in advance of the selection of a Preferred Proposer. However, the Procuring Authorities expect that certain acquisitions will remain to be completed after such selection. Additional details will be provided in the RFP.
- b. Developer is expected to be responsible for (i) the cost and time delay associated with any right-of-way acquisitions that result from any of its proposals or designs that require additional right-of-way beyond the existing identified right-of-way requirements, and (ii) providing reasonable and customary levels of assistance and schedule accommodation (within pre-defined parameters) to the Procuring Authorities and the State on all right-of-way acquisitions required for the Project that occur after execution of the Project Agreement. Additional details will be provided in the RFP.

2.3.16. Project Coordination

Developer is expected to be responsible for coordination of the construction of the Project, and associated traffic management, with any interfacing project (including coordinating with the owners, procurers and/or contractors responsible for such project). This may include coordination with a design-build contractor for the Havana Bridge project. Additional details of the Havana Bridge project, and any other known such projects, will be provided at the RFP stage.

2.4. Elements of Anticipated Public-Private Partnership

2.4.1. Overview of Project Agreement

- a. The Project Agreement will be a legal contract among HPTE, BE and Developer. HPTE's and BE's respective obligations and liabilities will be specified in the RFP.
- b. The Project Agreement will establish the terms of a long term relationship, pursuant to which Developer will commit to design, construct, finance, operate and maintain the Project.
- c. Key anticipated elements of the Project Agreement are summarized below. All of these remain subject to the Procuring Authorities' ongoing review and further details will be set out in the RFP.

Anticipated Project Agreement Provisions

| Term | Description |
|---|--|
| Key Project Agreement Terms | |
| Ownership | <ul style="list-style-type: none"> • CDOT will maintain ownership of the Project. • Developer will be granted legal access rights (other than ownership) to enable it to construct and implement the Project. |
| Construction Period | <ul style="list-style-type: none"> • 4 to 5 years. |
| Contract Term | <ul style="list-style-type: none"> • To expire 30 to 35 years following completion of construction. |
| Governing Law | <ul style="list-style-type: none"> • The Project Agreement will be governed by Colorado law. |
| Core Developer Responsibilities | |
| Design | <ul style="list-style-type: none"> • Developer will generally be responsible for design of the Project in compliance with technical provisions to be set out in the RFP. • Developer will generally be responsible for design defects. |
| Construction | <ul style="list-style-type: none"> • Developer will generally be responsible for construction of the Project in compliance with technical provisions to be set out in the RFP. • Developer will generally be responsible for construction defects. |
| Operations and maintenance | <ul style="list-style-type: none"> • Developer will generally be responsible for operations and maintenance of most if not all of the Project in compliance with technical provisions and performance requirements to be set out in the RFP. • Developer will generally be responsible for failure to perform its operation and maintenance obligations. |
| Handback | <ul style="list-style-type: none"> • Developer will generally be responsible for handing back the Project following expiry of the contract term in a condition that meets or exceeds requirements to be set out in the RFP. |
| Other Responsibilities | |
| ROW Acquisition | <ul style="list-style-type: none"> • The Procuring Authorities will generally be responsible, as between themselves and Developer, for obtaining and maintaining ownership and rights of access to the core right-of-way for the Project. |
| Permits (excluding the ROD) | <ul style="list-style-type: none"> • Developer is anticipated to be responsible for obtaining and maintaining most if not all permits, with the exception of the ROD which the Procuring Authorities and CDOT will be responsible for obtaining. |
| Changes to NEPA, Environmental Clearance, ROW and Interstate Access Request | <ul style="list-style-type: none"> • Developer is anticipated to be responsible for the costs of design changes initiated or caused by it that affect the documentation required for the Project, including with respect to NEPA, other environmental clearances, right-of-way acquisitions, design variances and FHWA interstate access requests. |

| Term | Description |
|--|---|
| Subcontracting | <ul style="list-style-type: none"> • Developer will be responsible for the performance of its subcontractors. |
| Insurance | <ul style="list-style-type: none"> • Developer (and its subcontractors) will be required to maintain minimum levels of insurance. • The Procuring Authorities anticipate making customary allowances to account for significant changes in the pricing and/or availability of insurance. |
| <u>Financing and Payments</u> | |
| Responsibility for Financing | <ul style="list-style-type: none"> • Developer will be responsible for achieving conditions to financial close, subject to limited conditions that necessarily or customarily must be completed by the Procuring Authorities. |
| Payments during Construction Phase | <ul style="list-style-type: none"> • It is anticipated that the Procuring Authorities will make a limited number of payments to Developer during construction, which payments Developer will be expected to use to fund Project costs. |
| Payments during Operations and Maintenance Phase | <ul style="list-style-type: none"> • It is anticipated that after substantial completion (to be defined in the Project Agreement) of the Project the Procuring Authorities will make regular payments during the main operations and maintenance phase of the Project ("<u>Performance Payments</u>"), which payments will be made in compensation for operating and maintaining the Project in accordance with the performance standards established and monitored by the Procuring Authorities (and which payments will also be used in part to pay financing costs). • Performance Payments will be subject to reduction and abatement according to Developer's level of compliance with performance standards governing the quality of service and general availability of the Project. |
| Tolling | <ul style="list-style-type: none"> • Toll revenues (and associated revenue risk) will be retained by the Procuring Authorities and not Developer. |
| <u>Unanticipated and Intervening Events and Changes</u> | |
| Responsibility for Site Conditions (e.g. environmental, geotechnical, utilities, etc.) | <ul style="list-style-type: none"> • The Procuring Authorities are developing fair and cost-effective methods for allocating the risks associated with site conditions. • At a minimum, the Procuring Authorities anticipate requiring Developer to manage and bear the costs associated with known or knowable site conditions (to be defined in the Project Agreement). • To facilitate the anticipated significant transfer of risks for site conditions from the Procuring Authorities to Developer, the Procuring Authorities anticipate providing Proposers with relatively early |

| Term | Description |
|---------------------------------------|---|
| | access to diligence materials following issuance of the RFP, as well as opportunities to seek additional diligence information prior to bid submission. |
| Relief and Compensation Events | <ul style="list-style-type: none"> • The Procuring Authorities recognize that (i) Proposers cannot efficiently price the cost of certain events that may or may not occur during the contract term and (ii) Developer cannot fairly be held accountable for the consequences of certain events that occur outside its control. • To address this, the Procuring Authorities anticipate offering Developer (i) compensation following the occurrence of certain clearly defined events and (ii) temporary relief from, and extensions of time to perform, its contractual obligations due to such events, as well as other events (for which no compensation would be paid), in both cases assuming that Developer mitigates the impact of such events. |
| Change Orders | <ul style="list-style-type: none"> • The Project Agreement will include provisions allowing for change orders to be initiated by either the Procuring Authorities or Developer. • The Procuring Authorities will have approval rights over Developer change order requests. |
| <u>Default and Termination</u> | |
| Defaults and Termination | <ul style="list-style-type: none"> • The Project Agreement will include a detailed list of “defaults” due to failure to perform by, or the occurrence of a specified event (such as bankruptcy) relating to, Developer and the Procuring Authorities. • Certain defaults, as well as other conditions (such as force majeure frustrating the contract objectives), may lead to a right of either party to terminate the Project Agreement. • The Procuring Authorities’ rights to terminate will include termination due to unremedied Developer default as well as voluntarily (i.e. for “convenience”). • The Procuring Authorities anticipate agreeing to pay compensation upon termination, subject to handback of the Project by Developer to the State. The calculation of such compensation will vary depending on the reason for the termination. |
| <u>Protecting the Public Interest</u> | |
| Construction Completion | <ul style="list-style-type: none"> • The Project Agreement will include a procedure to determine whether construction of the Project has been completed in accordance with the agreement’s requirements. |
| Performance Standards and Deductions | <ul style="list-style-type: none"> • Developer’s failure to comply with performance standards, or to make the Project available for use, |

| Term | Description |
|---|---|
| | may result in reduced payments by the Procuring Authorities. |
| DBE, Small Business, Disabled Veterans and OJT Requirements | <ul style="list-style-type: none"> Developer will be required to comply with subcontractor, supplier and workforce related requirements. See <u>Sections 2.4.2</u> through <u>2.4.6</u> of this <u>Part B</u>. |
| Payment and Performance Security | <ul style="list-style-type: none"> The Procuring Authorities will require the maintenance of payment and performance bonds or equivalent letters of credit in amounts equal to or exceeding those required by law. |
| Indemnity | <ul style="list-style-type: none"> Developer will be required to indemnify the Procuring Authorities, CDOT and others against a variety of potential damage and loss scenarios. |
| Monitoring, Inspection and Auditing | <ul style="list-style-type: none"> The Procuring Authorities will maintain rights to monitor, inspect and audit the Project, Developer and Developer's performance. |
| Abandonment or Cessation of Work | <ul style="list-style-type: none"> The Project Agreement will include a number of mechanisms to enable the Procuring Authorities to respond to actions or inactions by Developer, or its subcontractors, that amount to an abandonment or cessation of the work, or which otherwise materially jeopardize the progress of the Project. |
| Step-in during Emergencies | <ul style="list-style-type: none"> During certain emergency situations, the Procuring Authorities may retain the right to intervene in the Project. |

2.4.2. Disadvantaged Business Enterprises

- a. If, as expected, Disadvantaged Business Enterprise (“DBE”) requirements apply to the Project due to the use of US DOT funds, then the Project Agreement will require that DBEs have the opportunity to compete fairly for opportunities on any contract entered into pursuant to this procurement process.
- b. Furthermore, the Procuring Authorities, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 200d-200d4) and applicable regulations, will affirmatively ensure that, with respect to any contract entered into pursuant to this procurement process, DBEs will be afforded a full and fair opportunity to submit bids in response to this process and will not be discriminated against on the grounds of sex, race, color or national origin in consideration for an award of such contract.
- c. While CDOT has not yet established Project-specific DBE goals for the various phases of the Project, Proposers are advised that CDOT has established an agency overall goal of 10.25% DBE participation for Federal fiscal year 2015. In August 2015, the overall goal will be established for Federal fiscal years 2016, 2017, and 2018.
- d. For this Project, the Procuring Authorities may establish a goal or multiple goals, including, for example, separate DBE goals for design/engineering and for construction. Additionally, a goal or multiple goals may also be established with respect to ongoing maintenance work. All Project-specific DBE requirements will be set out in the RFP.
- e. See also Sections 5.3.2.a.ii and 5.3.2.b.ii of this Part B with respect to teaming with DBEs.

2.4.3. Emerging Small Businesses

- a. The Emerging Small Business (“ESB”) program is a CDOT-specific small business program, which has been approved as CDOT’s race-neutral small business element of its DBE program in accordance with 49 CFR Part 26. The ESB program is open to all independent businesses that do not exceed one-half the DBE size standard for the firm’s primary industry. A list of currently certified ESBs is available at: www.coloradoesb.org.
- b. CDOT may establish ESB goals, incentives, or other methods to increase ESB participation on the Project. All Project-specific ESB requirements will be set out in the RFP.

2.4.4. Service Disabled Veteran Owned Small Businesses

Procurements by the Procuring Authorities are not subject to the provisions of House Bill 14-1224 regarding service disabled veteran owned small businesses. However, the Procuring Authorities may implement goals, incentives or other measures to assist service disabled veteran owned small businesses in obtaining opportunities on this project. These measures will be set out in the RFP.

2.4.5. Small Business Development and Support

The Procuring Authorities are committed to providing support to, and developing the capacity of, all small businesses prior to and during the completion of the Project. Therefore in addition to participation goals, the Procuring Authorities may require Developer to engage in specific outreach, mentoring and/or other activities to increase small business participation on the Project, promote diversity among Project participants and assist in the development of small businesses. Such mechanisms may include partnering with current supportive services programs such as the CDOT Connect2DOT program and the US DOT Office of Small Business Development Bonding Education Program, developing a mentor protégé program, providing individualized training, and having small business specific networking events. Details regarding any such requirements will be set out in the RFP.

2.4.6. On-the-Job Training (OJT)

- a. If, as expected, Federal requirements apply to the Project due to the use of FHWA funds, the Project will be subject to the requirements of CDOT’s OJT program. The goal of CDOT’s OJT program is to provide individuals with meaningful on-the-job training that builds career skills that are useful beyond an initial project. Compliance with the requirements of the OJT program will be an essential element of the Developer’s Equal Employment Opportunity Affirmative Action (EEO/AA) program, the primary objective of which is to develop women, minorities and disadvantaged individuals into full journey workers in skilled highway construction crafts.
- b. Under the anticipated terms of the Project Agreement, compliance with CDOT’s OJT program would require that Developer obtain performance of a minimum number of hours of work on the Project by program approved trainees. Developer (and therefore each of its contractors) may, but will not be required to, employ workers from CDOT’s Supportive Services providers (see Section 2.4.6.c of this Part B) or apprentices from U.S. Department of Labor sponsored or recognized apprenticeship programs in order to meet such OJT requirements. Developer (and therefore its contractors) will in all cases be required to operate under an approved trainee plan. Additional information will be set out in the RFP.
- c. CDOT operates the OJT Supportive Services program through a partnership with Aims Community College. The Supportive Services program provides entry level training for qualified individuals interested in obtaining work in the highway construction industry. The goal of the Supportive Services program is to provide individuals with meaningful training to increase opportunities for entering a career pathway in the highway construction industry. As such, this program is expected to be a resource for Developer when it seeks to comply with its OJT program requirements under the Project Agreement.

- d. In addition to leveraging the existing OJT Supportive Services program, due to the expected size and duration of the Project the Procuring Authorities are currently collaborating with various local workforce organizations and the highway construction industry to evaluate supplementary state and local workforce development initiatives for this Project. The Procuring Authorities are evaluating ways in which the Project may promote skilled training, contribute to the development of the Colorado workforce and provide opportunities for individuals living in local communities, for example through targeted recruitment and job fairs in communities adjacent to the Project. As a result of these evaluations, the Procuring Authorities may add requirements into the RFP beyond the CDOT OJT requirements described in Sections 2.4.6.a to c of this Part B. The Procuring Authorities may also incorporate other mechanisms into the RFP to incentivize workforce development. Additional information will be provided in the RFP.

2.4.7. Non-discrimination

In accordance with CDOT policy, no party shall discriminate on the ground of race, color, national origin, sex, handicap or age against any person or business in the award and administration of the Project.

2.5. Communications with Local Communities, Governmental Agencies and Other Key Stakeholders

- 2.5.1. The implementation of this Project will require active and proactive communication with community members, governmental agencies and other key stakeholders in and around the I-70 East Corridor. Local communities, residents and businesses will be impacted by this Project. They therefore reasonably expect to be informed of decisions, activities and impacts associated with the Project's final design, construction, maintenance and operations.

- 2.5.2. As the greatest impacts of this Project occur in environmental justice communities, an emphasis on cultural sensitivity with respect to such communities will be important. These communication activities are expected to build on the last ten years of engagement conducted in connection with the EIS as identified in Section 1.2 of this Part B.

- 2.5.3. Furthermore, a total of 1,200 businesses are located within one-quarter mile of the Project. Communication with these businesses, many of which depend on access to I-70 East, will also be critical.

- 2.5.4. The agencies and stakeholders who are expected to be involved in such communications include:

- a. the City and County of Denver, Commerce City, Adams County and the City of Aurora;
- b. impacted communities, including the neighborhoods of Globeville, Swansea, Elyria, Park Hill, Stapleton, Montbello and Gateway;
- c. impacted community entities within the Globeville, Swansea and Elyria neighborhoods, including Swansea Elementary School, Swansea Park, Globeville Community Centers, the Growhaus, Focus Points Family Resource Center, Globeville, Elyria and Swansea LiveWell and local historic churches; and
- d. impacted businesses and relevant associations.

Developer's responsibilities with respect to ongoing agency and stakeholder communications will be set out in the RFP.

- 2.5.5. CDOT is committed to proactive, two-way communications and issue management that engages stakeholders through the life of the Project. Stakeholders and others will be engaged on a regular basis in coordination with CDOT, HPTe and BE leadership and communications teams.

- 2.5.6. Proposers should note that throughout the Restricted Contact Period they are required to comply with rules governing independent communications with stakeholders as set out in

Section 5.2.2 of this Part B, as such rules may be updated by the RFP. These rules are intended to ensure a fair and productive procurement process.

3. PROJECT FUNDING PLAN

3.1. Overview of Anticipated Sources of Funding and Financing

- 3.1.1. The Project is expected to be funded through a combination of sources, including local, State and Federal funding and private investment. The private investment is likely to include:
- a. debt (including PABs or loans from the US DOT's TIFIA program that are non-recourse to the State, HPTE, CDOT or BE); and
 - b. equity investments.

3.2. Payments to Developer

- 3.2.1. The payment structure for the Project is anticipated to include the following features.
- a. The Procuring Authorities will make payments to Developer during construction. Additional details concerning such payments, including the amounts and timing, will be set out in the Project Agreement.
 - b. The Procuring Authorities will make Performance Payments to Developer during the main operations and maintenance phase of the Project, which payments will be made in compensation for operating and maintaining the Project in accordance with the performance standards established and monitored by the Procuring Authorities (and which payments will also be used in part to pay financing costs). These payments will be made according to an agreed schedule for a period expected to be 30 to 35 years and in accordance with terms and conditions to be specified in the Project Agreement. Such terms and conditions will include the Procuring Authorities' right to reduce Performance Payments by reference to Developer's level of compliance with performance standards governing the quality of service and general availability of the Project, including rehabilitation and handback.
 - c. The Procuring Authorities, acting on behalf of CDOT, will retain the right to toll, advertising and other revenues derived from the Project.

3.3. Public Funding

The Procuring Authorities intend to make available a certain amount of public funds for the Project. Public funds are intended to be used to fund the State's retained costs (e.g. right-of-way acquisition), as well as construction period payments and Performance Payments, both payable to Developer under the Project Agreement. The Procuring Authorities and CDOT have already spent or budgeted significant funds for the Project. Public funding will come from four primary sources:

- a. Colorado Bridge Enterprise Safety Surcharge: The BE was formed in 2009 as part of the State's FASTER ("Funding Advancement for Surface Transportation and Economic Recovery") legislation. The BE generates revenue from a bridge safety surcharge on vehicle registration based upon vehicle weight.
- b. Denver Regional Council of Governments and Other Local Funds: DRCOG establishes guidelines, sets policy and allocates funding in the area of transportation and personal mobility in the Denver region. Federal transportation planning dollars comprise the majority of DRCOG's funding sources. In addition, other local funds (including funds from the City and County of Denver) are expected to be contributed to the Project.
- c. SB 09-228: This is a State law enacted in 2009, which provides that up to 2% of gross general fund revenues may be transferred to the Highway Users Tax Fund when certain conditions are met.

- d. Colorado Highway Users Tax Fund: These funds include motor fuel taxes and vehicle registration fees. These funds are anticipated to be used only for operations, maintenance and rehabilitation work.

The Procuring Authorities will provide additional details with respect to the availability and use of public funds in the RFP.

3.4. Financing

The Procuring Authorities currently anticipate that Developer will provide private financing to support the performance of its obligations under the Project Agreement. Developer will fund the balance of the amount required that is not covered by public funding and will be solely responsible for its financing of the Project. Developer's financing may include the use of Federal programs, such as those discussed below. The Procuring Authorities intend to assist Developer in obtaining, or obtaining approval for, any available TIFIA or PABs financing. Developer's debt, including any debt arranged through a Federal program, will be non-recourse to the State, HPTE, CDOT or BE.

- a. TIFIA Loan Application: The Procuring Authorities intend to advance the TIFIA process as far as possible prior to the Financial Proposal Deadline. Additional details regarding the TIFIA process and Developer's obligations with respect to the TIFIA loan will be set out in the RFP.⁵ In any case, the use of a TIFIA loan, if available, in a Proposer's plan of finance will be optional and entirely at Proposer's discretion. Developer, and not HPTE, CDOT, BE or the State, would be responsible for repaying any TIFIA financing.
- b. Private Activity Bonds: The Procuring Authorities have begun the process of applying to the US DOT's Office of Infrastructure Finance and Innovation requesting an allocation of borrowing capacity for private activity bonds ("PABs") on behalf of the future Developer. If successful in their application, the Procuring Authorities expects the allocation to remain available throughout the solicitation process and until financial close of the Project. Additional information regarding the availability and use of PABs will be set out in the RFP.⁶ The use of PABs, if available, in a Proposer's plan of finance will be optional and entirely at Proposer's discretion. Developer, and not HPTE, CDOT, BE or the State, would be responsible for repaying any PABs financing.

4. DESCRIPTION OF THE PROCUREMENT PROCESS

4.1. Procurement Process

4.1.1. Statutory Position and General Approach

The Procuring Authorities are not bound by the general Colorado Procurement Code⁷ although HPTE previously adopted "Project Proposal Guidelines"⁸ (and BE's board has approved the use by BE of HPTE's guidelines for this Project). HPTE's guidelines contemplate that HPTE will issue such solicitation documents, and adopt such a process, as it determines may be appropriate under the circumstances (in this case acting together with BE). In making their decisions concerning the approach to be adopted for this Project, the Procuring Authorities' objectives include encouraging competition, ensuring transparency and ensuring the non-discriminatory treatment of Proposers.

⁵ Prior to issuance of the RFP by the Procuring Authorities, Proposers should monitor the US DOT's TIFIA website (www.dot.gov/tifia) for any publicly available details concerning the TIFIA financing request for the Project.

⁶ Prior to issuance of the RFP by the Procuring Authorities, Proposers should monitor the FHWA's PABs website (www.fhwa.dot.gov/ipd/finance/tools_programs/federal_debt_financing/private_activity_bonds) for any publicly available details concerning the PABs allocation application for the Project.

⁷ C.R.S. articles 101 to 112, Title 24. See C.R.S. § 43-4-809(1) (Colorado Procurement Code not applicable to either HPTE or BE).

⁸ The guidelines are posted on HPTE's website: www.coloradohpte.com.

4.1.2. Procurement Approach

The Procuring Authorities intend to procure the Project through a three stage process that begins with issuance of this RFQ, proceeds through issuance of an RFP to Short-listed Proposers leading to identification of a Preferred Proposer and then concludes with execution of a Project Agreement with a Developer to be organized or formed by that Preferred Proposer, followed by financial close. Please see Section 2 of the Executive Summary for a more detailed overview of the procurement process.

4.2. Procurement Schedule

- a. The Procuring Authorities anticipate carrying out the procurement process in accordance with the following indicative schedule (the “Procurement Schedule”):

| Event | Date/Time |
|--|---|
| <u>RFQ Process</u> | |
| Industry Forum | March 11-12, 2015 |
| RFQ Issuance | March 25, 2015 |
| Prospective Proposer submission of contact person information in accordance with <u>Section 5.2.1.a</u> of this <u>Part B</u> | As soon as reasonably practicable following issuance of this RFQ |
| Prospective Proposer submission of Preliminary Organizational Conflict of Interest Disclosure (if any) in accordance with <u>Section 5.3.1.c</u> of this <u>Part B</u> | 30 calendar days following the release of this RFQ |
| Final date for RFQ Comments (the “ <u>RFQ Comment Deadline</u> ”) | May 4, 2015 (2:00 pm Denver, Colorado time) |
| Anticipated final date for Procuring Authority responses to RFQ Comments (the “ <u>RFQ Comment Response Deadline</u> ”) | June 1, 2015 |
| SOQ submission deadline (the “ <u>SOQ Deadline</u> ”) | June 22, 2015 (4:00 pm Denver, Colorado time) |
| Deadline for submission of Public Disclosure SOQ (the “ <u>Public Disclosure SOQ Deadline</u> ”) | The fifth Business Day following the SOQ Deadline (4:00 pm Denver, Colorado time) |
| Interviews (if required) | July, 2015 |
| Anticipated announcement of Short-listed Proposers | Late July, 2015 |
| <u>RFP Process</u> | |
| Issuance of draft RFP to Short-listed Proposers | Late Summer (after Labor Day) , <u>Fall</u> , 2015 |
| Short-listed Proposer comments on draft RFP and subsequent round of one-on-one meetings with Short-listed Proposers to discuss draft RFP | Early -Fall, 2015 |
| Issuance of second draft RFP to Short-listed Proposers | Fall <u>Winter</u> , 2015 <u>2016</u> |
| Short-listed Proposer comments on second draft RFP and subsequent round of one-on-one meetings with Short-listed Proposers to discuss draft RFP | Late Fall , 2015 <u>Winter</u> , <u>2016</u> |
| Issuance of third draft RFP to Short-listed Proposers | <u>Late Winter</u> / <u>Early Spring</u> , 2016 |

| | |
|--|--|
| Short-listed Proposer comments on third draft RFP and subsequent round of one-on-one meetings with Short-listed Proposers to discuss draft RFP | Late Winter/Early Spring, 2016 |
| Issuance of final RFP to Short-listed Proposers | <u>Late</u> Spring/ <u>Early Summer</u> , 2016 |
| Short-listed Proposer comments on draft RFP and subsequent round of one-on-one meetings/calls with Short-listed Proposers to discuss final RFP | Spring/Late Spring / <u>Early Summer</u> , 2016 |
| Deadline for submission of technical component of Proposal (the " <u>Technical Proposal Deadline</u> ") | Summer, 2016 |
| Deadline for submission of financial component of Proposal (including pricing) (the " <u>Financial Proposal Deadline</u> ") | Summer, 2016 |
| Selection of Preferred Proposer | Late Summer/Early Fall, 2016 |
| <u>Closing Process</u> | |
| Commercial close (i.e. execution of the Project Agreement by HPTE, BE and Developer) | Fall, 2016 |
| Financial close (i.e. execution of Developer's financing documents and first funding of third-party financing) | Late Fall/Early Winter, 2016 |

- b. This Procurement Schedule is subject to modification at the discretion of the Procuring Authorities. Proposers will be notified of any change by an addendum to this RFQ or, following identification of the Short-listed Proposers, in the RFP.

4.3. Addenda

The Procuring Authorities reserves the right to revise this RFQ by issuing one or more addenda to this RFQ at any time before the SOQ Deadline. If the Procuring Authorities issue an addendum shortly before the SOQ Deadline, the Procuring Authorities shall consider whether an extension of the SOQ Deadline (and of the timing of any other steps in the procurement process) are warranted.

5. PROCUREMENT RULES

5.1. Comments and Requests for Clarification on RFQ

5.1.1. Delivery of RFQ Comments

- a. Proposers may submit written comments, questions and/or requests for clarification relating to this RFQ (collectively, "RFQ Comments") to the Procuring Authorities at any time prior to the RFQ Comment Deadline. Proposers should submit all RFQ Comments through the Official Representative.
- b. Proposers are encouraged to submit RFQ Comments as and when they are ready for submission. To the extent reasonably practical, substantively related comments should be delivered simultaneously.
- c. All RFQ Comment submissions must be:

- i. in the form of Annex 1 (*RFQ Comment Submission Template*) and compliant with the instructions provided in that Annex;
 - ii. written so as not to identify the Proposer in the body of the question; and
 - iii. delivered by email to the Procuring Authorities' Contact Person with the subject line and electronic file name to both begin with "I-70E RFQ Comments – [*Proposer Name*] – Nos. [] to []"⁹.
- d. Proposers are responsible for ensuring the receipt of their RFQ Comments by the Procuring Authorities through the use of automated receipt and read message confirmations.
- e. Proposers should assume that the Procuring Authorities will not give consideration to any RFQ Comments that are:
- i. submitted after the RFQ Comment Deadline, except reasonable logistical questions received after such deadline the response to which may be necessary to facilitate timely and compliant delivery of the SOQs by the SOQ Deadline;
 - ii. telephone or oral comments;
 - iii. comments submitted to a person other than the Procuring Authorities' Contact Person; or
 - iv. comments submitted by a person other than an Official Representative.

5.1.2. Responses to RFQ Comments

- a. Subject to Section 5.1.1.e of this Part B, the Procuring Authorities will provide responses to RFQ Comments. The Procuring Authorities will endeavor to provide responses within the timeframes indicated in the Procurement Schedule and otherwise within a reasonable period following receipt.
- b. Subject to Section 5.1.2.c of this Part B, the Procuring Authorities' responses will be in writing and will be digitally released or delivered, in the Procuring Authorities' discretion, on the Project Website, by email or otherwise. In responding to RFQ Comments, the Procuring Authorities may rephrase them as they deem appropriate and may consolidate similar comments. The Procuring Authorities may also create and answer questions independent of those submitted by Proposers.
- c. The Procuring Authorities intend to respond individually to those RFQ Comments identified by a Proposer, or deemed by the Procuring Authorities, as containing ~~–confidential or proprietary information relating to that Proposer's SOQ~~ CORA Exempt Materials. In regards to any such RFQ Comments, Proposers should note the following.
 - i. As indicated in Section 1.5 of this Part B, the Procuring Authorities are strongly committed to the principle of transparency. Without denying Proposers the opportunity to protect CORA Exempt Materials from any public disclosure, the submission of which information or materials data may in certain instances allow the Procuring Authorities to consider an RFQ Comment that might not otherwise have been submitted, Proposers are encouraged to consider transparency interests before identifying an RFQ Comment as containing CORA Exempt Materials.
 - ii. The Procuring Authorities reserve the right to disagree with a Proposer's assessment as to whether any RFQ Comment contains CORA Exempt Materials in the interest of maintaining a fair process and/or complying with CORA or any other applicable law. If the Procuring Authorities disagree with a Proposer's assessment, the Procuring Authorities will inform the relevant Proposer of their determination and will either (A)

⁹ Proposers to specify sequentially numbered comment numbers.

allow the Proposer to withdraw the relevant RFQ Comment, rephrase it or have it answered non-confidentially (with the understanding that the Procuring Authorities cannot guarantee that the original RFQ Comment will not still be subject to disclosure under CORA or any other applicable law) and/or (B) if the Procuring Authorities determine that it is appropriate to provide a general response to the relevant RFQ Comment to all Proposers, the Procuring Authorities may modify the RFQ Comment as released in any general response document to remove information that the Procuring Authorities determine in their discretion constitutes CORA Exempt Materials.

5.2. Communications

5.2.1. Proposer Contacts

- a. As soon as reasonably practicable following issuance of this RFQ, prospective Proposers shall notify the Procuring Authorities' Contact Person by email of the name, title, mailing address, phone numbers (work and cell), email address and fax number (if any) of a single contact person for that prospective Proposer team (the "Official Representative"). Proposers may update the identity of such Official Representative from time to time ~~by~~ by notifying the Procuring Authorities' Contact Person by email of the name, title, mailing address, phone numbers (work and cell), email address and fax number (if any) of the replacement Official Representative. Such replacements may be made on a time-limited basis, as needed, to address temporary unavailability of a Proposer's primary Official Representative, provided that the Proposer notifies the Procuring Authorities of the start and end date for such time-limited replacement.
- b. Upon submission of a SOQ, all future communications by the Procuring Authorities will be made to the Official Representative of a Proposer whose contact information is included in the Submittal Letter, which may but is not required to be the same person as was previously identified to the Procuring Authorities in accordance with Section 5.2.1.a of this Part B.

5.2.2. Rules for Contact and Communications

- a. Commencing with the issuance of this RFQ and continuing until the earliest of:
 - i. execution of the Project Agreement;
 - ii. public non-acceptance of all Proposals by the Procuring Authorities;
 - iii. public cancellation of the procurement by the Procuring Authorities; or
 - iv. with respect to a Proposer, such Proposer being informed in writing by the Procuring Authorities that it: (A) is not a Short-listed Proposer; or (B) has been disqualified or is otherwise considered removed from further involvement in the procurement process as a Proposer or Short-listed Proposer,(such period of time, the "Restricted Contact Period"), the rules of contact in this Section 5.2.2 will apply to Proposers, including any that are selected as Short-listed Proposers, unless such rules are superseded or modified by the RFP.
- b. For purposes of this Section 5.2.2:
 - i. references to Proposers include their Core Proposer Team Members and representatives (including all Key Personnel); and
 - ii. contact and communications are deemed to include:
 - A. face-to-face meetings;
 - B. telephone and videoconference discussions;
 - C. facsimile, email, directed social media messaging, mobile text or equivalent transmissions; and

- D. any publication by print, website, broadcast social media messaging, video or audio mass communication or equivalent digital transmission which the Procuring Authorities conclude in their discretion was intended to circumvent the above restrictions.
- c. The Procuring Authorities shall be the sole contacts for Proposers with respect to the Project, this RFQ and the RFP (but subject always to Section 5.2.2.d of this Part B). Proposers shall correspond with the Procuring Authorities regarding such matters only through the Procuring Authorities' designated representative(s), which initially shall be:
- Nicholas Farber
Enterprise Specialist
High Performance Transportation Enterprise
4201 E. Arkansas Ave., Room 230
Denver, CO 80222
(720) 248-8544
DOT_I70EProject@state.co.us
- (as updated by the Procuring Authorities from time to time, the "Procuring Authorities' Contact Person").
- d. No Proposer shall have any direct or indirect contact or communications regarding the Project, this RFQ and the RFP with:
- i. subject to Section 5.3.2.c of this Part B, another Proposer or any Core Proposer Team Member or representative (including Key Personnel) of another Proposer;
 - ii. any member of HPTE or its Board, BE or its Board, CDOT, the Transportation Commission or the State Attorney General's office; and
 - iii. any employees, advisors, contractors or consultants of the foregoing involved with the procurement of the Project (including those referenced in Section 5.3.1.d of this Part B),
- except for:
- iv. with respect to Section 5.2.2.d.i of this Part B, contacts made prior to SOQ submission that ~~relate~~related solely to bona fide inquiries regarding the formation of potential Proposer teams; and/or
 - v. contact or communications expressly permitted by the terms of this RFQ or the RFP or in any written notice from the Procuring Authorities.
- e. Proposers shall not directly or indirectly contact or communicate with the following identified stakeholders regarding the Project, this RFQ or the RFP, including employees, representatives or members, or consultants and advisors, of the stakeholders listed below (provided that, with respect to consultants and advisors, such restrictions on contact and communications only apply to the extent any such consultant or advisor provides or has provided services related to the Project, this RFQ or the RFP):
- i. the State and any divisions or departments of the State to the extent not otherwise already subject to the restrictions under Section 5.2.2.d.ii of this Part B;
 - ii. DRCOG or any member thereof, including the City and County of Denver, Commerce City, the City of Aurora and Adams County;
 - iii. any office of the US DOT;
 - iv. FHWA;
 - v. any railroad that operates in the I-70 East Corridor, including the Union Pacific Railroad, BNSF Market Lead and Denver Rock Island Railroad;

- vi. any utility that provides service in the I-70 East Corridor;
 - vii. environmental, regulatory and permitting agencies;
 - viii. Denver Public Schools or Swansea Elementary School;
 - ix. Denver International Airport; and
 - x. Regional Transportation District.
- f. In order to ensure that, among other things, the procurement is implemented in a fair, competitive and transparent manner, the Procuring Authorities will provide any necessary intermediary coordination during the procurement process between Proposers and Short-listed Proposers, on the one hand, and the stakeholders and related Persons who are the subject of the restrictions in Section 5.2.2.e of this Part B, on the other hand, provided that Proposers are permitted to submit written requests to the Procuring Authorities for their approval, to be given in their discretion, to:
- i. engage a consultant or advisory firm that also acts for any such stakeholder in connection with the Project, this RFQ or the RFP, subject to such firm's implementation of Information Barriers; and
 - ii. engage in Procuring Authority monitored contacts or communications with any such stakeholder or related Person.

Any such requests should identify the anticipated benefits to the Project and/or the procurement process that may result from the requested engagement, contact or communication.

- g. Without limiting the generality of the foregoing:
- i. Proposers shall not directly or indirectly contact any FHWA or US DOT office or any representative, advisor or consultant of FHWA or the US DOT regarding the TIFIA application process, any requests for a PABs allocation for the Project, any other applications that may be submitted to FHWA or the US DOT and any matter otherwise related to the subject of any such TIFIA, PABs or other application.
 - ii. Proposers shall not engage in any geotechnical or environmental field investigations¹⁰ associated with the Project without advance written approval by the Procuring Authorities, to be given in their discretion. Following short-listing, to the extent that any Short-listed Proposer desires additional site-related information, such Proposer will need to coordinate through the Procuring Authorities, CDOT and applicable local agencies prior to conducting any field investigation which coordination may include mandatory compliance with conditions to any site access or investigations (i.e. permitting, traffic control, notification, insurance etc.). Additional details regarding this process will be included in the RFP.

5.2.3. Official Communications

- a. Any official information regarding the Project will be disseminated from the Procuring Authorities either from an official email account or on agency letterhead, in either case from the Procuring Authorities' Contact Person or the executive director of either of the Procuring Authorities.
- b. The Procuring Authorities will not be (and shall be deemed not to be) responsible for, and Proposers may not rely (and shall be deemed not to have relied) on, any oral or written communication or contact or any other information or exchange that occurs outside the official ~~process~~processes contemplated by this RFQ.

¹⁰ Restrictions on field investigations do not extend to visual inspections from publicly accessible areas.

5.3. Organizational Conflicts of Interest and Limitations on Proposer Team Membership

5.3.1. Organizational Conflicts of Interest

- a. Proposers' attention is directed to the conflict of interest rules set out in [2 C.C.R 601-15 Sec. 7 and in](#) 23 CFR § 636, Subpart A, including 23 CFR § 636.116, ~~which are, 23 CFR § 636, Subpart A is~~ expected to apply to this procurement to the extent that Federal funds are assumed to be used. 23 CFR § 636.103 defines an "organizational conflict of interest" as follows:

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

- b. Each Proposer shall submit to the Procuring Authorities information concerning organizational conflicts of interest as [described in 2 C.C.R. 601-15 Sec. 7 and as](#) defined under 23 CFR § 636.116 and disclose all relevant facts¹¹ concerning any past, present or currently planned interests that may present an organizational conflict of interest (i) at any time during the Restricted Contact Period, as soon as such conflict is discovered, and (ii) in its SOQ in accordance with [Section 3.1](#) of the [Volume 1 Requirements](#) (which requirement may be satisfied by inclusion of a confirmation that no such organizational conflicts of interest exist in relation to such Proposer).
- c. In order to facilitate compliance with this [Section 5.3.1](#), Proposers may, but are not required, to submit a preliminary disclosure of potential or perceived organizational conflicts of interest (a "[Preliminary Organizational Conflict of Interest Disclosure](#)") to the Procuring Authorities for discussion and evaluation. Such Preliminary Organizational Conflict of Interest Disclosure (if any) should be submitted to the Procuring Authorities no later than the date specified in the Procurement Schedule using the form required for SOQ submissions under [Section 3.1](#) of the [Volume 1 Requirements](#), together with an explanation as to why there is a question as to the existence of, or potential for, such an organizational conflict of interest. The Procuring Authorities will use reasonable efforts to respond to any such submission as soon as practical in order to enable Proposer to consider such response in preparing its SOQ. If a Proposer becomes aware of a potential or perceived organizational conflict of interest after the deadline for submission of a Preliminary Organizational Conflict of Interest Disclosure specified in the Procurement Schedule, it may also submit such a disclosure, although the Procuring Authorities cannot commit to consider or respond to such disclosure prior to the SOQ Deadline.
- d. During the Restricted Contact Period, each Proposer is prohibited from:
- i. directly or indirectly receiving any advice relating to the Project, this RFQ or the RFP from; or
 - ii. including as Core Proposer Team Member or contractor, subcontractor, consultant or subconsultant to the Proposer or any Core Proposer Team Member,
- any Person with an organizational conflict of interest [as described in 2 C.C.R 601-15 Sec. 7 or](#) as defined under 23 CFR § 636.116, including:
- A. Macquarie Capital;
 - B. Atkins;
 - C. Altus Group Limited;
 - D. Kaplan Kirsch & Rockwell LLP;

¹¹ [Such relevant facts include any relevant CDOT contract numbers and CDOT points of contact.](#)

- E. Freshfields Bruckhaus Deringer US LLP;
- F. Strategies 360;
- G. Communication Infrastructure Group, LLC;
- H. Yeh and Associates, Inc.;
- I. E-470;
- J. Michael Major d/b/a Major Enterprises;
- K. [Design Workshop, Inc.;](#)
- L. [Kutak Rock LLP;](#)
- M. [IMA Financial Group;](#)
- N. ~~K.~~ any other Person that, to the best of Proposer's knowledge and belief:
 - I. subject to [Section 5.3.1.e](#) of this [Part B](#), was engaged by HPTE, CDOT, BE or the State, or any of the above listed entities, in connection with the Project, this RFQ or the RFP; or
 - II. had access to non-public information regarding the same by virtue of an otherwise unrelated engagement; and

O. ~~L.~~ Affiliates of any ~~of the above~~ [Person specified in Sections 5.3.1.d.ii.A to 5.3.1.d.ii.N of this Part B.](#)

- e. Proposers should note, in connection with [Section 5.3.1.d.i and 5.3.1.d.ii](#) of this [Part B](#), that the Procuring Authorities and CDOT have provided or will provide Persons previously engaged by Atkins with a letter confirming that such Person is permitted to be a member of, or advise, a Proposer Team or any Core Proposer Team Member. Proposers should confirm that any potentially relevant entity with which it is considering a relationship has received such a letter.
- f. Proposers are advised that this [Section 5.3.1](#) is intended to augment applicable Federal and state law, including Federal organizational conflict of interest laws and rules and the laws and rules relating to NEPA. Such applicable law will also apply to Proposer teams and teaming and may additionally preclude certain firms and their entities from participating on a Proposer team.

5.3.2. Other Limitations on Proposer Team Membership

- a. To ensure a fair and competitive procurement process:
 - i. Core Proposer Team Members and each of their Affiliates are prohibited from participating, in any capacity, on another Proposer team during the course of the procurement process; and
 - ii. if a Proposer (including through any Core Proposer Team Member or any of their Affiliates) engages any (A) financial, technical, insurance, legal, public relations or other specialist advisor, (B) commercial bank, arranger, underwriter, placement agent or other potential provider or arranger of financing or (C) any DBE (to the extent not otherwise already covered by (A) or (B)), on a non-exclusive basis, then such engagement should be made subject to such engaged Person implementing Information Barriers prior to entering into any separate engagement with another Proposer (including through any Core Proposer Team Member or any of their Affiliates), which Information Barriers shall be acceptable to the Procuring Authorities.
- b. In the context of [Section 5.3.2.a](#) of this [Part B](#), Proposers should note that:

- i. the Procuring Authorities anticipate that the RFP will prohibit and/or otherwise restrict Short-listed Proposers' ability to enter into and maintain exclusivity arrangements with (A) monoline insurers, (B) commercial banks and (C) more than two underwriters; and
- ii. unless otherwise prohibited under Sections 5.3.2.a.i and 5.3.2.b.i of this Part B for reasons unrelated to a Person's status as a DBE, Proposers may enter into and maintain exclusivity arrangements with DBEs, recognizing that, in the interests of a competitive procurement that maximizes opportunities for DBEs to meaningfully participate in the Project, the Procuring Authorities discourage Proposers from seeking out and entering into exclusivity arrangements with two or more DBEs that provide similar services. Additional details will be included in the RFP.
- c. If a Proposer is not selected as a Short-listed Proposer, then following public announcement of the identity of the Short-listed Proposers the members of each unsuccessful Proposer team will be free to participate on Short-listed Proposer teams, subject to compliance with the still applicable requirements of this RFQ, including Section 5.4 of this Part B, and of the RFP.

5.4. Changes in Proposer Organization

5.4.1. Subject to Sections 5.4.2 and 5.4.3 of this Part B, no Proposer shall:

- a. add, delete or substitute Core Proposer Team Members, Key Personnel and other Persons specifically identified in its SOQ in accordance with Section 2.1.5 of the Volume 1 Requirements;
- b. materially alter the relationships or responsibilities among the foregoing Persons, or with any Affiliate of a Core Proposer Team Member the experience of which is included in any Form F (Project Experience) in order to comply with Section 4.1 of the Volume 1 Requirements, as compared to how ~~they~~such relationships and responsibilities are described in its SOQ; or
- c. otherwise reorganize its team to the extent that such reorganization would render the organizational charts and descriptions provided in their SOQ in accordance with Sections 2.1.2 and 2.1.3 of the Volume 1 Requirements inaccurate or incomplete, ~~(together~~each, an "Organizational ChangesChange") at any time from the SOQ Deadline to the date of the public announcement of the identity of the Short-listed Proposers.

5.4.2. Short-listed Proposers may make Organizational Changes with the Procuring Authorities' consent, to be given in the Procuring Authorities' discretion. As a condition to making any such Organizational Change, a Short-listed Proposer must submit to the Procuring Authorities a description of the proposed change and any relevant documentation related to the change.

5.4.3. While the Procuring Authorities reserve the right to withhold their consent to any Organizational Change under Section 5.4.2 of this Part B in their discretion, the Procuring Authorities expect that they will base their decision as to whether to accept a proposed Organizational Change on:

- a. whether the proposed Organizational Change would:
 - i. render the Proposer materially different from or less qualified than the Proposer originally selected as a Short-listed Proposer;
 - ii. result in any organizational conflict of interest as defined under 23 CFR § 636.116; and/or
 - iii. cause the Short-listed Proposer to be in violation of another provision of this RFQ; and/or
- b. any other factors that the Procuring Authorities consider relevant or material.

5.5. Disqualification for Non-compliance

Any violation by any Proposer or other Person of, or failure to comply with, Sections 5.2.2.d through 5.2.2.g, 5.3.1.d, 5.3.2.a or 5.4 of this Part B may, in the Procuring Authorities' discretion, result in the relevant (a) Proposer, (b) Person and/or (c) Proposer with which such Person is affiliated, being disqualified from further participation in the procurement or the Project.

5.6. Proposer Team Assumption

This RFQ has been prepared based on the assumption that any Proposer will be an unincorporated group of two or more entities. If any single Person is considering submitting an SOQ as a "Proposer", meaning that such Person would either be the sole Equity Member, an Affiliate ultimately wholly owned by the same Person as all other Equity Members or itself serve as the Developer, then:

- a. such Person should submit for itself, as well as for its own Equity Members (if any), all information required to be submitted by an Equity Member under the SOQ Submission Requirements, in addition to the information it is required to deliver with respect to any other Core Proposer Team Member roles that it proposes to self-perform; and
- b. if such Person believes that further amendments to this RFQ and/or guidance is required to account for its circumstances as a single Person Proposer, such Person should submit appropriate RFQ Comments by the RFQ Comment Deadline, including any recommendations regarding such amendments.

5.7. Confidentiality and Public Disclosure

5.7.1. Compliance with CORA

- a. Once submitted, the SOQs, any RFQ Comments and any other information or materials provided by Proposers:
 - i. will become the property of the Procuring Authorities;
 - ii. subject to Section 5.1.2.c.ii of this Part B with respect to RFQ Comments, may not be returned to Proposers; and
 - iii. will be subject to CORA.
- b. All Proposers should thoroughly familiarize themselves with CORA and all other potentially applicable regulations and statutes related to confidentiality and public disclosure.
- c. CORA provides for certain exceptions where information or materials provided to a State agency may not be produced in response to an open records request. The Procuring Authorities will not advise a submitting party as to the nature or content of documents entitled to protection as CORA Exempt Materials or under other applicable laws, as to the interpretation of CORA or such laws or as to the definition of trade secret or any related concept. The Procuring Authorities reserve the right to disagree with a Proposer's assessment regarding confidentiality or the proprietary nature of CORA Exempt Materials in the interest of complying with CORA or any other applicable law.
- d. Proposers should furthermore be aware that information and materials submitted by Proposers may be made available to FHWA representatives as well as to select public authorities that have executed non-disclosure agreements with HPTE, BE and/or CDOT. The Procuring Authorities intend to follow procedures established by FHWA and to limit sharing of information to other public authorities that have executed non-disclosure agreements, in order to avoid disclosure, to the extent possible, of such information and materials under the Federal Freedom of Information Act and CORA.

5.7.2. SOQ Submission Public Statement

Each Proposer shall include in its SOQ a statement suitable for release to the public by the Procuring Authorities at any time following the SOQ Deadline, which statement shall:

- i. identify the Equity Members and Core Proposer Team Members;
- ii. briefly describe Proposer's relevant experience;
- iii. indicate why Proposer has submitted the SOQ; and
- iv. be limited in page length in accordance with Section 1.3.1 of the Volume 1 Requirements and otherwise be formatted as part of the SOQ in accordance with the General Requirements,

(the "SOQ Submission Public Statement"), with the understanding that the Procuring Authorities may or may not publicly release such statement, in whole or in part, or may request that the relevant Proposer make or authorize reasonable changes to such statement to facilitate its public release.

5.7.3. Preparation and Release of Public Disclosure SOQ

a. Each Proposer that submits an SOQ shall subsequently prepare a redacted version of its SOQ (the "Public Disclosure SOQ"), which version must be identical to the previously submitted SOQ other than redactions that only exclude CORA Exempt Materials as previously identified in Proposer's Confidential Contents Index.

b. No later than the Public Disclosure SOQ Deadline, each Proposer shall deliver one digital copy and two physical copies of its Public Disclosure SOQ to the SOQ Submission Location. The copies shall be:

- i. in the same digital and physical formats as are required for the SOQ under the General Requirements; and
- ii. accompanied by the following written certification from Proposer's Official Representative:

"In connection with the Request for Qualifications dated ~~[date]~~ March 25, 2015 (as amended by the addendum dated May 29, 2015) (the "RFQ") issued by the High Performance Transportation Enterprise and the Bridge Enterprise, divisions of the Colorado Department of Transportation, in relation to the I-70 East Project (as defined therein), under penalty of perjury I hereby certify on behalf of [*Proposer*] (the "Proposer") that the enclosed digital and physical copies of Proposer's Public Disclosure SOQ (as defined in the RFQ) have been prepared in compliance with Section 5.7.3 of Part B of the RFQ, and I further acknowledge that the Procuring Authorities are relying on my certification to this effect."

c. If a Proposer does not comply with Section 5.7.3 of this Part B, such non-compliance may, in the discretion of the Procuring Authorities, be treated as a "fail" for purposes of the Pass/Fail Evaluation, unless no later than five Business Days after the Public Disclosure SOQ Deadline such Proposer authorizes the Procuring Authorities in writing to release its entire SOQ.

d. The Procuring Authorities, in conjunction with the State's Attorney General's office, may review each Public Disclosure SOQ for compliance with CORA, provided that the results of such review shall not constitute a definitive determination as to whether the Public Disclosure SOQ (and, consequently, the designations in the Confidential Contents Index) complies with CORA and other applicable laws.

e. No ~~later than 10 Business Days following the SOQ Deadline~~ earlier than the expiry of the 14 calendar day period specified in Section 8.1.2 of this Part B (or, if later, after the resolution of any protest filed under Section 8.1 of this Part B), the Procuring Authorities expect to release each Public Disclosure SOQ to the public, including by posting their contents on

the Project Website, together with additional materials related to the RFQ process as determined by the Procuring Authorities in compliance with CORA. The Procuring Authorities, in consultation with the State's Attorney General's office, may modify the timing and/or extent of any such release as may be necessary or desirable to comply with CORA, other applicable ~~laws~~law and/or to protect the integrity of the competitive bidding process.

5.7.4. Final Release of All Other Non-CORA Exempt Materials

After a Project Agreement has come into force or, if no Project Agreement comes into force, after a final determination is made by the Procuring Authorities not to proceed with this procurement, then in either case any previously undisclosed information and materials submitted by Proposers (including any previously undisclosed RFQ Comments) will become public record and open to inspection, other than any CORA Exempt Materials.

5.7.5. Submission of Confidential and Proprietary Information

- a. If a Proposer believes that any portion of its SOQ contains CORA Exempt Materials:
 - i. the Proposer must include an index of such information (a "Confidential Contents Index") in the form of Form B (Confidential Contents Index) in Volume 1 of its SOQ; and
 - ii. to the extent practical and for ease of disclosure, prepare and compile its SOQ such that CORA Exempt Materials do not appear on the same page as non-confidential and non-proprietary information.
- b. In the event that a Proposer submits information or materials other than in a SOQ, including any submission in response to Procuring Authorities' request in accordance with Section 7.1.3.a of this Part B, that it believes constitute CORA Exempt Materials, then it shall mark each document containing such information or materials "CONFIDENTIAL AND PROPRIETARY" in the header of each affected page (or, for partially affected pages, within the page in such a manner that makes clear where such information begins and ends). ~~For certainty, relevant pages and sections of a Proposer's SOQ should not be so marked.~~¹² In addition, a Proposer must include with such submission a statement as to whether it believes that such information or materials are CORA Exempt Materials for a certain period of time (to be specified) or permanently, together with a brief explanation of the basis for such belief.
- c. No designation by a Proposer or Short-listed Proposer of information or materials as CORA Exempt Materials will be:
 - i. binding on the Procuring Authorities; or
 - ii. determinative of any issue relating to the application of, or treatment of such information or materials under, CORA or any other applicable law.
- d. The Procuring Authorities will notify a Proposer if either (i) a request is made under CORA or any other applicable law for information or materials that a Proposer has identified as CORA Exempt Materials or (ii) any Procuring Authority denial of such request is challenged, so that such Proposer may take any action it deems necessary to defend the challenge. The relevant Proposer, not the Procuring Authorities or CDOT, shall be responsible for the costs associated with defending any request for disclosure of any information or materials claimed by Proposer to be CORA Exempt Materials. In connection with this obligation, such Proposer shall:
 - i. use its best efforts to assist the Procuring Authorities and the State in such defense;

¹² For certainty, relevant pages and sections of a Proposer's SOQ should not be so marked.

- ii. indemnify the Procuring Authorities and the State for any costs and expenses incurred by them in such defense; and
- iii. at the Procuring Authorities' or the Attorney General's request, intervene in any such defense at its own cost and expense.

6. SOQ SUBMISSION REQUIREMENTS

6.1. Delivery Timing and Procedure

6.1.1. Location and Manner of Delivery

- a. SOQs shall be physically delivered to:

High Performance Transportation Enterprise and Colorado Bridge Enterprise
 c/o Colorado Department of Transportation
 2000 S. Holly Street, Denver, CO, 80222
 Attention: I-70E Project Coordinator

(the "SOQ Submission Location").

- b. All packages constituting the SOQ shall be divided by volume (and sub-volume, as applicable) into sealed containers (i.e. separate containers for each of Volume 1 and Volume 2 ~~and~~, individually labeled as follows:

I-70 East Project SOQ: [*Proposer's Name*]
 Contents: [One Original] [and] [[*Number*] Copies] of Volume [1][2]
 [Sub-Volume for [*name and role (e.g. Equity Member, Lead Contractor, Lead Operator, Lead Engineer, Financially Responsible Party)*] of entity to which sub-Volume relates in accordance with Section 2.1 of the Volume 2 Requirements]

6.1.2. Timeliness of Delivery

- a. SOQs will be accepted by the Procuring Authorities at the SOQ Submission Location during the hours of 9:00 a.m. to 4:00 p.m., Denver, Colorado time, on any Business Day, up to and including the date and time established in the Procurement Schedule as the SOQ Deadline.

b. The Procuring Authorities will not unseal the SOQs prior to the SOQ Deadline.

c. ~~b.~~ In any event, SOQs shall be submitted to the Procuring Authorities at the SOQ Submission Location no later than the SOQ Deadline. Any SOQs received after the SOQ Deadline should be accompanied by a separate envelope containing a written explanation as to the reason for such delay ~~and nevertheless~~. Notwithstanding such written explanation, such submission will (unless the Procuring Authorities waive such delay in their discretion and in accordance with applicable law) be rejected and returned unopened, other than with respect to the written explanation, to the relevant Proposer.

6.1.3. Confirmation of, and Responsibility for, Delivery

- a. Acknowledgment of receipt of SOQs will be evidenced by the issuance of a physical receipt by the Procuring Authorities' Contact Person or his or her designee.
- b. Notwithstanding the provision by the Procuring Authorities of such a receipt, Proposer is solely responsible for ensuring that the Procuring Authorities receive such Proposer's SOQ by the SOQ Deadline at the SOQ Submission Location. Postmarking prior to the SOQ Deadline will not of itself evidence compliance by a Proposer with Section 6.1.2.c of this Part B. Such compliance shall only be evidenced by the issuance by the Procuring Authorities of a written receipt of a Proposal. The Procuring Authorities shall not be responsible for any delays in delivery, regardless of the cause.

6.2. Substantive SOQ Requirements

- 6.2.1. Proposers should refer to Part D and the Forms in Part E (including the instructions to the Forms), in addition to the SOQ Submission Requirements, when developing their SOQs.
- 6.2.2. The Procuring Authorities expect that SOQs submitted in full compliance with this RFQ will provide enough information to allow the Procuring Authorities to evaluate and score SOQs and competitively rank Proposers by reference to the Substantive Evaluation Criteria. If a Proposer believes that the guidance provided in this RFQ does not provide sufficient clarity as to the information that is required to enable the Procuring Authorities to conduct their evaluation, scoring and competitive ranking, then such Proposer should submit one or more related RFQ Comments to such effect in accordance with Section 5.1 of this Part B.

~~6.2.3. The Procuring Authorities will not be responsible for any errors, omissions, inaccuracies or incomplete statements in a SOQ.~~

6.2.3. Each Proposer, and not the Procuring Authorities, will be responsible for any errors, omissions, assumptions, inaccuracies or incomplete statements in its SOQ, including as such may result from a misinterpretation of or oversight involving (a) any of the instructions and requirements referred to in Section 6.2.1 of this Part B, (b) any other provision of this RFQ and/or (c) any Project Information.

6.3. Stipends and Payments for Work Product

- 6.3.1. Subject to Section 6.3.2 of this Part B, no stipend or other payment will be made to any Proposer or any other Person in consideration of a Proposer (i) submitting a SOQ or a Proposal or (ii) otherwise participating in the procurement process for the Project, including through meetings, interviews or the submission of comments.
- 6.3.2. The Procuring Authorities intend to offer a stipend to each unsuccessful Short-listed Proposer that:
 - a. submits a Proposal that is determined, in accordance with the RFP, to be compliant with the RFP requirements; and
 - b. in consideration of the payment of the stipend, grants to HPTE, CDOT, BE and/or the State the right to use elements of such unsuccessful Short-listed Proposer's work product as contained in its Proposal for the public benefit.

The amount of such stipend, and any other terms and conditions applicable to the payment thereof, will be stated in the RFP.

7. EVALUATION PROCESS, EVALUATION CRITERIA AND SCORING

7.1. Overview of Evaluation Process

7.1.1. Description of Evaluation Process

The Procuring Authorities anticipate using the following two-stage process to evaluate SOQs:

- a. ~~The first~~One stage of the evaluation process will consist of the Pass/Fail Evaluation of each SOQ. This evaluation will consider whether each SOQ complies with the Pass/Fail Evaluation Criteria. A "failure" on any one of the criteria may result in the Procuring Authorities not evaluating the relevant SOQ any further. Subject to the Procuring Authorities' reservation of rights under Section 9 of this Part B, a Proposer shall be required to obtain a "pass" (defined as having fully complied with a criterion) on all Pass/Fail Evaluation Criteria in order for ~~its SOQ to then be evaluated in accordance with the Substantive Evaluation process~~it to be eligible to be selected by the Procuring Authorities as a Short-listed Proposer.
- b. The ~~second~~other stage of the evaluation process will consist of the Substantive Evaluation of each SOQ. ~~This evaluation will consider the merits of each Proposer's overall~~

~~qualifications, experience and approach by reference to the Substantive Evaluation Criteria. It will conclude with a scoring process, following which the Procuring Authorities anticipate selecting no more than the four highest ranking Proposers (based on their SOQs and subject to Procuring Authorities' reservation of rights under~~in accordance with Section 9-7.3 of this Part B) as the Short-listed Proposers.

7.1.2. Procuring Authorities' Rights during Evaluation Process

- a. The Procuring Authorities anticipate utilizing one or more committees representing different skillsets, knowledge and experience to conduct the Pass/Fail Evaluation and the Substantive Evaluation.
- b. At any time during either stage of the evaluation process, the Procuring Authorities may:
 - i. issue one or more requests for written clarification or additional information to a Proposer as contemplated by Section 7.1.3 of this Part B;
 - ii. require in person, telephone or videoconference interviews with a Proposer, including as anticipated in Sections 7.1.3 and 7.1.4 of this Part B; and
 - iii. contact firm and personnel references supplied by a Proposer, as well as request additional references not initially listed in a Proposer's SOQ.
- c. The Procuring Authorities may, in their discretion, based upon their review of a Proposer's SOQ, or Proposer's form of organization, require the addition of an acceptable Financially Responsible Party in respect of a Core Proposer Team Member as a condition precedent to a Proposer being selected as a Short-listed Proposer. The Procuring Authorities' consideration for approval of any Financially Responsible Party identified by a Proposer in response to such a condition will be contingent upon Proposer's submission of all information and materials that otherwise would have been required to be included under the SOQ Submission Requirements with respect to such an entity.

7.1.3. Requests for Additional Information

- a. The Procuring Authorities may, at any time following submission of a Proposer's SOQ, (i) request written clarification or additional information from a Proposer, or (ii) request a Proposer to verify or certify certain aspects of its SOQ, including through an oral presentation or interview (in person or remotely held); or (iii) contact firm and personnel references supplied by a Proposer, as well as request additional references not initially provided by a Proposer.
- b. The scope and length of, and topics to be addressed in, any response to such a request from the Procuring Authorities will be subject to the Procuring Authorities' discretion.
- c. The Procuring Authorities may make and retain a written record of any oral presentation or interview conducted in accordance with this Section 7.1.3 or Section 7.1.4 of this Part B, including as required to comply with 23 CFR 636.111(b) with respect to any oral presentations or interviews that are used as a substitute for, or augmentation of, written information, to the extent the Procuring Authorities may choose to rely on such information in their SOQ evaluation process.

7.1.4. Interviews

- a. After receiving SOQs from Proposers, the Procuring Authorities may elect to interview Proposers. Participation in any requested interview by representatives of each of Proposer's Equity Members and Lead Contractor and any other specifically requested Core Proposer Team Member is one of the Pass/Fail Evaluation Criteria, although the absence of any particular individual will not result in a "fail" for that criterion.
- b. The Procuring Authorities anticipate inviting to any interviews either all Proposers or only those Proposers which it has preliminarily determined, based on an initial Pass/Fail

Evaluation and/or Substantive Evaluation, remain eligible to be selected as a Short-listed Proposer.

- c. The sole purpose of any interview will be to enable the Procuring Authorities to resolve questions related to the review, evaluation and scoring of SOQs.
- d. Additional details regarding interviews, including any procedures to maintain confidentiality and/or enhance transparency, will be provided at the time that such interviews are requested.

7.1.5. Exercise of Discretion in Evaluation Process

- a. Evaluation and scoring of SOQs and ranking of Proposers are subject to the discretion of the Procuring Authorities (with assistance from the committees referred to in [Section 7.1.2.a](#) of this [Part B](#) and such professional and other advisors as the Procuring Authorities may designate). The Procuring Authorities retain discretion to select Short-listed Proposers based on their assessment of the best interests of the Project, their stakeholders and the State.
- b. Proposers should note that, unless expressly permitted by this RFQ:
 - i. any failure to fully disclose requested information;
 - ii. any incomplete, inaccurate, materially misleading or non-responsive submissions; or
 - iii. any conditional or qualified submissions (i.e., “to our knowledge”, “to the extent of available information”, “such information is not readily available”, “such information is not maintained in the manner requested”, etc.) to requests or questions posed;

may, in the discretion of the Procuring Authorities, lead to (x) a “fail” as part of the Pass/Fail Evaluation, (y) disqualification of a Proposer or a relevant Core Proposer Team Member from the procurement process and/or (z) a relatively lower score under the Substantive Evaluation.

7.2. **Pass/Fail Evaluation Criteria**

The Pass/Fail Evaluation Criteria are summarized in the table below.

Pass/Fail Evaluation Criteria

| No. | Pass/Fail Evaluation Criteria | RFQ Sec. Ref. |
|-----|---|---|
| (1) | SOQ submitted at the SOQ Submission Location on or before the SOQ Deadline. | Section 6.1.1 of Part B |
| (2) | SOQ complies with all Pass/Fail Evaluation Criteria set out in Annex A of the Submittal Letter, as independently verified by the Procuring Authorities. | Annex A to the Form of Submittal Letter |
| (3) | Proposer and all required Core Proposer Team Members participated in interview (if any). | Section 7.1.4 of Part B |
| (4) | Public Disclosure SOQ submitted at the SOQ Submission Location on or before the Public Disclosure SOQ Deadline. | Section 5.7.3 of Part B |
| (5) | SOQ not deemed to “fail” any Pass/Fail Evaluation Criteria due to any non-responsive submission. | Section 7.1.5.b of Part B |

7.3. **Substantive Evaluation ~~Criteria and Scoring~~**

~~If an SOQ achieves a “pass” on all Pass/Fail Evaluation Criteria (subject to~~ [Subject to Section 7.1.1.a of this Part B and](#) the Procuring Authorities’ reservation of rights under [Section 9](#) of this

Part B), ~~then~~ the Procuring Authorities will substantively evaluate ~~and numerically score such SOQ~~ each SOQ by considering the merits of each Proposer's overall qualifications, experience and approach by reference to the Substantive Evaluation Criteria. ~~The~~ This evaluation will conclude with a scoring process. Under this scoring process the Procuring Authorities may award an aggregate maximum of 100 points to any SOQ, with the maximum number of points that may be awarded in relation to any subcriteria within the Substantive Evaluation Criteria being as set out against such subcriteria in Part C. ~~The~~ Subject to the Procuring Authorities' reservation of rights under Section 9 of this Part B, the Procuring Authorities anticipate selecting as Short-listed Proposers no more than four Proposers that submitted SOQs that ~~(i)~~ have satisfied all Pass/Fail Evaluation Criteria and ~~(ii)~~ are determined to have received the highest aggregate scores in accordance with this Section 7.3 ~~and the Substantive Evaluation Criteria.~~

8. PROTEST PROCEDURES AND DEBRIEFINGS

8.1. Protest procedures

- 8.1.1. Only Proposers and Core Proposer Team Members are permitted to file protests regarding the RFQ process in accordance with this Section 8.
- 8.1.2. Any protests regarding the RFQ process, including the selection of the Short-listed Proposers, shall be addressed to (a) the Executive Director of CDOT, (b) the Director of the Office of Government Relations of CDOT and (c) the Chief Engineer of CDOT (acting together, the "Protest Review Committee") and hand delivered to the Procuring Authorities' Contact Person no later than 14 calendar days after the public announcement by the Procuring Authorities of the identity of the selected Short-listed Proposers. Any Proposer or Core Proposer Team Member submitting such a protest is responsible for obtaining proof of delivery.
- 8.1.3. Any protest must include the following in order to be considered complete and delivered by the deadline specified in Section 8.1.2 of this Part B:
 - a. the full legal name and address of Proposer or Core Proposer Team Member(s) that is/are making the protest; and
 - b. a succinct statement of the grounds, legal authority and factual basis for such protest; and
 - c. all documentation required to establish the merits of the protest.
- 8.1.4. Unless the Protest Review Committee decides otherwise in its discretion, no hearing will be held on the protest and the Protest Review Committee or its designees shall decide it on the basis of the written submissions received from the protesting parties. The Protest Review Committee or its designees may, in its discretion, discuss the protest with the protesting parties, the other Proposers, the Procuring Authorities' advisors and other State entities or their representatives.
- 8.1.5. Any additional information regarding the protest requested from the protesting parties by the Protest Review Committee or its designees shall be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to expeditiously comply with any request for information, the protest may be resolved without such information.

8.2. Debriefings

- 8.2.1. After the announcement of the Short-listed Proposers and expiration of the period for filing protests set out in Section 8.1.2 of this Part B (or, in the event a protest is filed, the resolution of such protest), the Procuring Authorities will conduct a debriefing for any Proposer upon request.
- 8.2.2. In a debriefing, ~~Proposer~~ the Procuring Authorities will discuss the strengths and weaknesses of that Proposer's SOQ, but the Procuring Authorities will not disclose or discuss any confidential information relating to any other Proposer or its SOQ.

- 8.2.3. By requesting and participating in any debriefing session, a Proposer and each of its Core Proposer Team Members will be deemed to have waived any right to use any information provided by the Procuring Authorities in good faith during such a debriefing against the Procuring Authorities or their representatives in any way whatsoever, including in any protest or legal action.

9. **PROCURING ~~AUTHORITY~~AUTHORITY RESERVED RIGHTS**

- 9.1.1. In connection with the procurement described in this RFQ, the Procuring Authorities reserve to themselves, and on behalf of each of, CDOT and the State, any and all of the rights set out in Sections 9.1.1.a through 9.1.1.g of this Part B and any other rights available to it under applicable law (any of which rights shall be exercisable by either Procuring Authority (or, on its behalf, by CDOT or the State) in the Procuring Authorities' discretion, with or without cause and with or without notice). The rights referred to in the preceding sentence include the right to:
- a. modify the procurement process described in this RFQ (including as previously modified in accordance with this Section 9.1.1) to address:
 - i. applicable law;
 - ii. the best interests of HPTE, CDOT, BE and the State;
 - iii. changes to the preferred alternative that arise from the NEPA process; and/or
 - iv. any concerns, conditions or requirements of FHWA, US DOT or any other Federal department or agency;
 - b. in reviewing and/or evaluating any SOQ:
 - i. appoint evaluation committees to review SOQs and seek the assistance of outside technical, financial, legal and other experts and consultants;
 - ii. waive deficiencies in a SOQ, accept and review a SOQ that it could otherwise have determined to have failed the Pass/Fail Evaluation or permit clarifications or additional information to be submitted with respect to a SOQ;
 - iii. make independent calculations with respect to numbers and calculations submitted in a SOQ for purposes of their evaluation;
 - iv. require confirmation of information submitted by a Proposer, require additional information from a Proposer concerning its SOQ or require additional evidence of qualifications to perform the work described in this RFQ;
 - v. seek or obtain data from any source that has the potential to improve the Procuring Authorities' understanding and evaluation of such SOQ; and/or
 - vi. if:
 - A. only one SOQ is received;
 - B. only one SOQ satisfies all Pass/Fail Evaluation Criteria; or
 - C. only one SOQ provisionally receives a sufficiently high numerical score following Substantial Evaluation to result in the relevant Proposer being selected as a Short-listed Proposer,then the Procuring Authorities may take such steps as appear to be appropriate to it under the circumstances, including:
 - D. modifying any element of this RFQ;
 - E. seeking additional or updated SOQs, information or clarifications from other Proposers; or

- F. terminating this procurement;
- c. in otherwise conducting the procurement process under this RFQ and any RFP:
 - i. reject any and all submittals, responses, SOQs and Proposals received at any time;
 - ii. not select any Proposer as a Short-listed Proposer;
 - iii. add as a Short-listed Proposer any Proposer that submitted a SOQ in order to replace a previously selected Short-listed Proposer that withdraws or is disqualified from participation in this procurement;
 - iv. engage in negotiations with the highest-ranked Short-listed Proposer or with any other Short-listed Proposer;
 - v. negotiate with a Short-listed Proposer without being bound by any provision in its SOQ or subsequent Proposal;
 - vi. disqualify any Proposer or any Short-listed Proposer from the procurement process for violating any rules or requirements of the procurement specified in (A) this RFQ, (B) the RFP, (C) any other communication from the Procuring Authorities or (D) applicable law; and/or
 - vii. accept, reject or seek additional information regarding a Proposer's request to make any Organizational Change;
- d. procure and develop the Project, including any portion thereof, in any manner that they deem necessary, including the right to:
 - i. modify the scope, structure, schedule and/or specific terms of, or cancel, this RFQ or any subsequent RFP in whole or in part at any time prior to the execution by the Procuring Authorities of a Project Agreement, without incurring any cost obligations or liabilities, except to the extent that the RFP expressly provides for the payment of a stipend to a Short-listed Proposer;
 - ii. issue addenda, supplements and modifications to this RFQ or the RFP;
 - iii. issue a new request for qualifications or request for proposals after cancellation of this RFQ or the RFP;
 - iv. not issue an RFP;
 - v. not pursue TIFIA credit approval or a PABs allocation, or not pursue other financing or public funding for the Project on behalf of the Proposers, other than as it may commit itself under the terms of the Project Agreement;
 - vi. elect not to commence or continue Project Agreement negotiations with the then Preferred Proposer or any other Short-listed Proposer, and/or suspend or terminate Project Agreement negotiations at any time; and/or
 - vii. develop some or all of the Project themselves or through another State entity;
- e. if the Procuring Authorities are unable to negotiate a Project Agreement to their satisfaction with the Preferred Proposer, to:
 - i. negotiate with the next highest-ranked Short-listed Proposer;
 - ii. seek amended, revised or supplemented proposals from any or all Short-listed Proposers;
 - iii. terminate the procurement;
 - iv. pursue the development of the Project through a procurement or contracting approach not expressly anticipated by this RFQ or the RFP; and/or
 - v. exercise such other rights under Colorado law as they deem appropriate;

- f. exercise any other right reserved or afforded to the Procuring Authorities under this RFQ or the RFP or applicable laws and regulations; and/or
 - g. exercise their discretion in relation to the matters that are the subject of this RFQ or the RFP as they consider necessary or expedient in the light of all circumstances prevailing at the time which the Procuring Authorities consider to be relevant.
- 9.1.2. This RFQ does not commit or bind the Procuring Authorities to enter into a contract or proceed with the procurement described in this RFQ. Neither Procuring Authority assumes any obligations, responsibilities and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFQ or any subsequent RFP and all such costs shall be borne solely by each Proposer, except to the extent that the RFP expressly provides for the payment of a stipend to a Short-listed Proposer.
- 9.1.3. In no event shall the Procuring Authorities be bound by, or liable for, any obligations with respect to the Project or any portion thereof, except to the extent that the RFP expressly provides for the payment of a stipend to a Short-listed Proposer, until such time (if at all) as the NEPA process is completed for the Project, the FHWA has issued a ROD for the Project and a Project Agreement, in form and substance satisfactory to the Procuring Authorities, has been executed and authorized by the Procuring Authorities and, then, only to the extent set out therein.

PART C: SUBSTANTIVE EVALUATION CRITERIA

The Procuring Authorities' evaluation and scoring of the SOQs under Section 7.3 of Part B shall be conducted in accordance with Section 7.1 of Part B by reference to the following Substantive Evaluation Criteria. For purposes of these Substantive Evaluation Criteria:

- a. although individual criteria may state that the evaluation will be based on a specific part of a Proposer's SOQ, such evaluation may also take into account relevant information (if any) that forms part of Proposer's SOQ; and
- b. evaluation criteria are not necessarily listed in order of priority or importance.

Furthermore, in accordance with 23 CFR § 636.205 the Procuring Authorities will consider Demonstrated Performance where indicated in the Substantive Evaluation Criteria. However, in accordance with 23 CFR § 636.206, the Procuring Authorities will not evaluate a Proposer without a record of relevant Demonstrated Performance in a particular area, or for whom information is not available (other than for the reasons listed in Section 7.1.5.b of Part B), either favorably or unfavorably with respect to Demonstrated Performance in such particular area.

For purposes of the Substantive Evaluation Criteria, "Demonstrated Performance" means the record of past legal, financial, commercial, technical, workforce, safety, community or other negative or positive performance of Proposer, including of Core Proposer Team Members and Key Personnel, which record the Procuring Authorities have required to be documented through the submission of information documenting past performance in accordance with the SOQ Submission Requirements.

| Substantive Evaluation Criteria | Maximum Points |
|--|-----------------------------|
| 1. TECHNICAL CRITERIA | 70 POINTS OUT OF 100 |
| 1.1. Organization, Structure, Experience and Performance | 60 points out of 70 |
| <p>The Procuring Authorities will award up to a maximum of 60 points to a Proposer based on the Procuring Authorities' qualitative evaluation of, primarily, those parts of such Proposer's Volume 1 submitted in accordance with <u>Sections 2 through 4 of the Volume 1 Requirements</u>. The Procuring Authorities will consider the following criteria when conducting such evaluation and scoring:</p> | |
| <p>a. Proposer's likelihood of success in delivering the Project based on:</p> <ol style="list-style-type: none"> i. its management (including management's Demonstrated Performance), organization and structure; and ii. prior experience and Demonstrated Performance of some or all Proposer team members in working together on Reference Projects; | 10 points out of 60 |
| <p>b. the extent and relevance of Proposer's experience and Demonstrated Performance on Reference Projects, where the Procuring Authorities' consideration of relevance (i) will be made by reference to <u>will include, but not be limited to, reference to (i) the project features listed in Sections 1.1.b.i 1.1.b.i and 1.1.b.ii 1.1.b.ii of this Part C (other features that may be considered include the Construction Value of a General Reference Project)</u> and (ii) will be based on the number of such <u>listed</u> features that apply to a Reference Project, provided that, although no one Reference Project is required to include all or any particular number of such</p> | 50 points out of 60 |

| Substantive Evaluation Criteria | Maximum Points |
|---|-----------------------------------|
| <p>features <u>(and, for certainty, a Reference Project may include none of such features)</u>, greater merit will be awarded the more such features apply to a Reference Project:</p> | |
| <p>i. design and construction and operations and maintenance activities, where:</p> <p>A. with respect to design and construction activities, such activities may include any or all of:</p> <ul style="list-style-type: none"> I. roadway expansion and reconstruction, including interchange reconstruction; II. demolition of existing infrastructure in urban environments; III. major excavation work, including groundwater considerations and/or drainage requirements; IV. complex traffic management in urban areas; V. construction staging in confined spaces; VI. structures that include ventilation and/or fire life safety considerations; and/or VII. coordination with railroad and/or utility companies; <p>B. with respect to operations and maintenance activities, such activities may include any or all of:</p> <ul style="list-style-type: none"> I. roadway pavement and associated infrastructure under environmental conditions that are similar to those affecting the Project; and/or II. interfaces with adjacent road operators; and/or | <p><i>35 points out of 50</i></p> |
| <p>ii. workforce, subcontractor and stakeholder engagement and environmental monitoring and mitigation activities, where:</p> <p>A. with respect to workforce, subcontractor and stakeholder engagement activities, such activities may include any or all of:</p> <ul style="list-style-type: none"> I. workforce development programs, including partnerships with local community organizations and/or apprenticeship programs; II. achievement of or exceeding goals relating to participation of disadvantaged businesses, small businesses and/or other business that are subject to equivalent programs; and <p>B. with respect to environmental monitoring and mitigation activities, such activities may include any or all of:</p> <ul style="list-style-type: none"> I. air quality monitoring and mitigation in urban | <p><i>15 points out of 50</i></p> |

| Substantive Evaluation Criteria | Maximum Points |
|--|-----------------------|
| environments; and/or II. noise monitoring and mitigation in urban environments. | |

| | |
|--|----------------------------|
| 1.2. Technical Approach to Project | 10 points out of 70 |
| <p>The Procuring Authorities will award up to a maximum of 10 points to a Proposer based on the Procuring Authorities' qualitative evaluation of such Proposer's statement of technical approach submitted in such Proposer's Volume 1 in accordance with <u>Section 5</u> of the <u>Volume 1 Requirements</u>. The Procuring Authorities will consider the following criteria when conducting such evaluation and scoring:</p> | |
| <p>a. the extent to which Proposer's approach to each phase of the Project (e.g. development, design, construction, and operations and maintenance) as submitted in accordance with <u>Sections 5.a</u> and <u>5.b</u> of the <u>Volume 1 Requirements</u> demonstrates an understanding of the key technical challenges and risks of the Project and a sound approach to addressing such challenges and risks, including:</p> <ul style="list-style-type: none"> i. explanation of how relevant experience, best practices, innovations and/or lessons learned can be applied to the Project; and ii. potential risk mitigation strategies (regardless of anticipated risk allocation under the Project Agreement); | 6 points out of 10 |
| <p>b. the extent to which Proposer demonstrates in its project plan submitted in accordance with <u>Section 5.c</u> of the <u>Volume 2 Requirements</u>:</p> <ul style="list-style-type: none"> i. a focus on, and commitment to, quality management and efficient and effective oversight in each phase of the Project; ii. Proposer's ability to provide sufficient materials, equipment and qualified personnel to undertake Developer's anticipated obligations for the Project; iii. Proposer's ability and commitment to managing safety on the Project; and iv. Proposer's ability to manage schedule under anticipated project constraints; and | 2 points out of 10 |
| <p>c. the extent to which Proposer demonstrates in its public interest and engagement plan submitted in accordance with <u>Section 5.d</u> of the <u>Volume 1 Requirements</u>:</p> <ul style="list-style-type: none"> i. its awareness of public interest and concerns in relation to the Project; and ii. its commitment to, and the anticipated effectiveness of its strategies for, public engagement and communications, including necessary coordination with local authorities. | 2 points out of 10 |

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| 2. FINANCIAL CRITERIA | 30 POINTS OUT OF 100 |
| 2.1. Financial Qualifications and Capacity | 25 points out of 30 |
| <p>The Procuring Authorities will award up to a maximum of 25 points to a Proposer based on the Procuring Authorities' qualitative evaluation of, primarily, such Proposer's Volume 2 submitted in accordance with Sections 1, 3 and 4 of the Volume 2 Requirements. The Procuring Authorities will consider the following criteria when conducting such evaluation and scoring:</p> | |
| <p>a. the extent and relevance of Proposer's experience and Demonstrated Performance on successfully closing the financing of Reference Projects, where the Procuring Authorities' consideration of relevance (i) will include reference to <u>will include, but not be limited to, reference to (i) the project features listed in Sections 2.1.a.i through 2.1.a.iv of this Part C (other features that may be considered include the Construction Value of a General Reference Project)</u> and (ii) will be based on the number of such <u>listed project</u> features that apply to a Reference Project, provided that, although no one Reference Project is required to include all or any particular number of such features (and, for certainty, a Reference Project may include none of such features), greater merit will be awarded the more such features apply to a Reference Project:</p> <ul style="list-style-type: none"> i. the project's financing included a TIFIA loan that was closed by the project developer and not a public authority; ii. the project's financing used PABs; iii. the financed project was a highway or road project; and/or iv. the financed project was located in North America; and | 10 points out of 25 |
| <p>b. the financial capacity of Proposer, including as demonstrated by:</p> <ul style="list-style-type: none"> i. the robustness of: <ul style="list-style-type: none"> A. the financial statements included in the SOQ submitted in accordance with Section 4.1 <u>Section 4.1</u> of the Volume 2 Requirements; and B. any Financially Responsible Party letters of support submitted in accordance with <u>Section 3.1</u> of the Volume 2 Requirements; ii. Proposer's ability to obtain payment and performance security as demonstrated by the level of financial support for Proposer (or, with respect to payment and performance bonds, the Lead Contractor) from an Eligible Surety and/or Eligible Financial Institution as determined by reference to the letter or letters submitted in accordance with Section 3.2 <u>Section 3.2</u> of the Volume 2 Requirements, and the degree to which such letter or letters demonstrate that such financial support was based on Proposer specific and Project specific considerations; | 15 points out of 25 |

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| <p>and</p> <p>iii. availability of funds (as evidenced by equity funding letters submitted in accordance with <u>Section 3.3 3.3</u> of the <u>Volume 2 Requirements</u>) to invest equity in Developer consistent with the expected scope and nature of the Project.</p> | |
| <p>2.2. Financial Approach to Project</p> | <p>5 points out of 30</p> |
| <p>The Procuring Authorities will award up to a maximum of 5 points to a Proposer based on the Procuring Authorities' qualitative evaluation of such Proposer's statement of financial approach submitted in such Proposer's Volume 2 in accordance with <u>Section 2</u> of the <u>Volume 2 Requirements</u>. The Procuring Authorities will consider the following criteria when conducting such evaluation and scoring:</p> <ul style="list-style-type: none"> a. the extent to which such approach identifies key financing issues that are specific to the Project; and b. the extent to which such approach suggests adequate and, as appropriate, innovative approaches to address such issues in a manner consistent with the needs of the Project as anticipated by the RFQ. | |

PART D: REQUIREMENTS FOR PREPARATION AND SUBMISSION OF SOQS

1. GENERAL REQUIREMENTS

1.1. Submission Format

1.1.1. Formatting

- a. All pages in the SOQ (other than pages of pre-existing or third party materials, such as published financial statements or letters of support) shall be printed on 8-1/2" x 11" sized white paper with at least 1" margins, provided that 11" x 17" pages are allowed for schematics, organizational charts, other drawings or schedules, but not for narrative text.
- b. SOQs should be printed on recycled paper to the extent possible, although failure to do so will not be considered a "fail" for purposes of the Pass/Fail Evaluation. Double sided printing is also encouraged wherever appropriate.
- c. Subject to Section 1.1.1.d of these General Requirements:
 - i. fonts used in the SOQ (other than for text in any pre-existing or third party materials, such as published financial statements or letters of support, or on the cover and spine of any ring binder) shall be (A) no smaller than twelve-point (or 9-point font in any table, graphic or chart), (B) any of standard-form Arial, Helvetica or Times New Roman and (C) in black (other than in any heading, table or graphic); and
 - ii. line spacing (paragraph formatting) shall have 0 points before each line, 6 points after each line (other than in any table, graphic, chart or Form) and use "single line" spacing.
- d. Text in any Forms or Annexes should retain the format of the template provided by the Procuring Authorities, excluding the instructions box (which may be deleted). Proposers may insert page breaks in Forms or Annexes for presentation purposes, provided that such page breaks do not result in any completed Form or Annex exceeding any applicable page limit.

1.1.2. Tabulation and Cross-references

- a. Each Proposer is required to assemble its SOQ in the order set out in the tables specifying the relevant SOQ Submission Requirements.
- b. Each Volume shall be sub-divided and tabbed to correspond to the Section numbering set out in the tables specifying relevant SOQ Submission Requirements.

1.1.3. Page Numbers and Limits

- a. All pages in Volume 1 and those parts of Volume 2 submitted in accordance with Sections 1 and 2 of the Volume 2 Requirements should be sequentially numbered.
- b. For purposes of any page limit, each printed side shall be considered one page.
- c. Proposers are encouraged to be succinct, to the extent possible. Submission of less than the maximum permitted number of pages for relevant sections of a SOQ will not be negatively evaluated.

1.2. Preparation of Binders

1.2.1. Originals and Copies

- a. Each Proposer that submits a SOQ shall submit:
 - i. one original and 15 copies of Volume 1 (for a total of 16); and
 - ii. one original and 6 copies of Volume 2 (for a total of 7),

with each original and each copy to be contained in loose-leaf three ring binders.

- b. In addition to the hard copy volumes, each Proposer shall submit a digital copy of the SOQ in pdf (searchable) format (together with a Microsoft® Word copy of the SOQ Submission Public Statement) on a single, labeled USB flash drive that contains no other materials, provided that, if more than one USB flash drive is required due to file storage limitations, a Proposer may submit two or more labeled USB flash drives accompanied by written guidance as to the division of files between flash drives (a copy of which guidance should also be included in digital format on each flash drive). A Proposer may submit a separate labeled USB flash drive that contains only a copy of the information of a privately held firm submitted in accordance with Section 4 of the Volume 2 Requirements, provided that such Proposer also submits written guidance as contemplated by the prior sentence.

1.2.2. Separation of Volumes and Sub-Volumes

- a. Each hard copy original and copy of Volume 1 and Volume 2 shall be submitted in a separate ring binder apart from each other Volume.
- b. If needed, multiple ring binders can contain a single Volume.
- c. In all cases, Volume 2 shall be further divided into separate sub-Volumes as required by Section 2.1 of the Volume 2 Requirements. Each sub-Volume of Volume 2 shall be contained in one or more separate ring binders apart from each other sub-Volume. The contents of sub-Volumes prepared in accordance with Section 2.1 of the Volume 2 Requirements for entities that are privately held firms may be submitted in sealed envelopes that are placed in a sleeve that is bound in the appropriate ring binder of such sub-Volume.

1.2.3. Labeling of Binders

- a. The front cover and spine of each ring binder shall be marked with the following text (as such text may be adjusted by modifying or, if relevant, deleting the bracketed text):

"I-70 East Project SOQ: [*Proposer's Name*]
[[Original]/[Copy No. *number*]] of Volume [[1]/[2]],
[Sub-Volume for [*name and role (e.g. Equity Member, Lead Contractor, Lead Operator, Lead Engineer, Financially Responsible Party)*] of entity to which sub-Volume relates in accordance with Section 2.1 of the Volume 2 Requirements]
[Binder *number*] of [*total number*] for such [sub-]Volume]"

1.3. Contents

1.3.1. Units of Measure and Language

SOQs shall be submitted exclusively in the English language, use United States customary units of measure and specify monetary amounts in US dollar denominations. However, additional references may be made to the International System of Units and to monetary amounts in a different base currency provided that any such amounts are also specified in US dollars at an appropriate rate of conversion specified in the SOQ.

1.3.2. References to Time Periods

Any reference in the SOQ Submission Requirements or in any Form to a prior time period (e.g. the past 10 years, the past 12 months, etc.) is to such period ending on the date of this RFQ's initial issuance, provided Proposers shall have an obligation to promptly disclose any subsequent events or circumstances that occur prior to the SOQ Deadline to the extent that such events would otherwise result in the SOQ containing an untrue statement of a material fact or an omission of a material fact necessary to make the SOQ's contents true and otherwise not misleading.⁺⁺¹³

⁺⁺¹³ By way of example only, Proposers shall disclose in Form D (*Legal Disclosures*) any adverse events that occur after the RFQ is issued to the extent that they would have had to disclose such events had they occurred

1.3.3. Placeholders

If a Proposer does not include information or materials in its SOQ that are described as required only if certain circumstances apply (and such circumstances do not apply) under any of the SOQ Submission Requirements, then to facilitate the Pass/Fail Evaluation such Proposer shall include in the relevant section in its SOQ a statement to the following effect: “Section[s] [●] of the Volume [1] [2] Requirement[s] do[es] not apply because [*Proposer to insert brief explanation*].”

1.3.4. Additional Materials

- a. Proposers shall not electively include in SOQs any information or materials in addition to the information and materials specifically requested in this RFQ.
- b. The Procuring Authorities expect that SOQs will be developed to address the Project-specific SOQ Submission Requirements. As such, standard corporate brochures, awards, licenses and marketing materials should not be included in a SOQ, although reference can be made to awards and licenses where relevant.

1.4. Signatures

Signatures in the original SOQ required to be submitted under Section 1.2.1.a of these General Requirements ~~should be made in blue ink (although use of a different color ink will not be considered a “fail” for purposes of the Pass/Fail Evaluation) and shall~~ may be original ~~(and not or~~ electronic) signatures. As a matter of convenience, Proposers may submit PDF copies of all signature pages in the original SOQ. All signed documents contained in a SOQ may be executed in one or more counterparts, the originals of which together shall be deemed to be an original.

1.5. Submissions by Joint Ventures

In accordance with the definitions of Lead Contractor, Lead Engineer and Lead Operator set out in Part A, if any such role is to be performed by a Joint Venture then all members or partners of that Joint Venture will be considered to be the Lead Contractor, Lead Engineer or Lead Operator, as the case may be, and each such member or partner will also be considered to be a Core Proposer Team Member. Therefore, any information that is required to be submitted as part of the SOQ by the Lead Contractor, Lead Engineer or Lead Operator under the SOQ Submission Requirements must be submitted by each relevant member or partner unless otherwise expressly provided.

2. FINANCIAL REQUIREMENTS

2.1. Organization of Volume 2

2.1.1. Proposers shall organize Volume 2 such that:

- a. the information submitted in accordance with Sections 1, 2 and 3 of the Volume 2 Requirements is contained in a single sub-Volume; and
- b. a separate sub-Volume is prepared for each entity in respect of which information is submitted in accordance with Section 4 of the Volume 2 Requirements.¹²¹⁴

2.1.2. In accordance with Section 1.2.2 of the General Requirements, each sub-Volume shall be separately bound in one or more ring binders.

occur after the RFQ is issued to the extent that they would have had to disclose such events had they occurred immediately prior to the RFQ issuance.

¹²¹⁴ For any Lead Contractor, Lead Engineer or Lead Operator that is a Joint Venture, a sub-Volume should be provided for each Joint Venture member or partner.

2.2. Financial Statements

All financial statements submitted in accordance with Section ~~4.1~~ 4.1 of the Volume 2 Requirements shall comply with the following requirements.

2.2.1. Fiscal Year and Auditing Requirements. In respect of each entity for which a Proposer submits financial statements, such financial statements must be ~~either~~:

- a. audited and in respect of the three most recently completed fiscal years of such entity; or
- b. if audited statements are not ~~yet~~ available for the most recently completed fiscal year of such entity, (i) unaudited in respect of such fiscal year and (ii) audited or, subject to Section 2.2.1.d of this Part D, unaudited in respect of the previous three most recently completed fiscal years of such entity,

provided that:

- c. if a Proposer cannot fully comply with the foregoing because any entity was not in existence during one or more relevant fiscal years, then such Proposer shall submit financial statements complying with the foregoing in respect of fiscal years during which such entity was in existence, together with a statement that such entity was not in existence for any other fiscal years in respect of which financial statements would otherwise have been required to be submitted in accordance with Sections 2.2.1.a or 2.2.1.b of this Part D; and
- d. if audited statements were not prepared for any fiscal year of an entity (other than the one most recently completed ~~(, in which case Section ~~2.2.1~~ 2.2.1.b(i)~~) of this Part D applies), then Proposer shall submit unaudited statements in respect of each such fiscal year together with a statement explaining why audited financial statements are unavailable for such fiscal year;

where for purposes of this Section 2.2.1 of these Financial Requirements:

- i. to qualify as "audited financial statements" such financial statements must have been audited by an independent party qualified to render audit opinions (e.g., a certified public accountant); and
- ii. any unaudited financial statements must be certified as true, correct and accurate by the chief executive, chief financial officer or treasurer (or equivalent) of the relevant entity (if such individual is not also a signatory for the relevant entity in the Submittal Letter).

2.2.2. Investment Fund Managers. In respect of any entity that is a fund manager of an investment fund, Proposers shall submit the financial statements for the fund manager, the limited partnership(s) constituting the investment fund and the general partner(s) of the investment fund (for certainty, with the financial statements for each such entity being included in a separate sub-Volume of Volume 2).

2.2.3. Newly Formed Entities. In respect of any entity that is (a) a ~~Joint Venture or (b) a~~ newly formed entity that does not yet have independent financial statements for at least one 12-month fiscal year or (b) a Joint Venture, Proposers shall submit financial statements for (in the case of (a)) ~~each of the Joint Venture members or partners~~ its Financially Responsible Party or (in the case of (b)) ~~the equity owners of such entity together with a brief narrative statement as to why independent financial statements have not been submitted in respect of the relevant entity~~ each of the Joint Venture members or partners.

2.2.4. SEC Filings Requirement. In respect of any entity that files reports with the US Securities and Exchange Commission, Proposers shall submit financial statements by submitting a copy of such entity's annual report on Form 10-K. To the extent a Form 10-K is not yet available for the most recent fiscal year, Proposers shall submit, in respect of the relevant entity, a copy of any report filed on Form 10-Q or Form 8-K which has been filed since the latest filed Form 10-K.

2.2.5. Required elements. Financial statements shall include:

- a. opinion letter (auditor's report);
- b. balance sheet;
- c. income statement;
- d. statement of cash flow; and
- e. footnotes.

2.2.6. Discussion of Negative Net Income. If any of the financial statements submitted indicate that the expenses and losses of an entity exceed its income in each of its three most recently completed fiscal years (or, such entity has fewer than three completed fiscal years, in all its completed fiscal years, if any), even if there has not been a material change as described in Section 4.3 of the Volume 2 Requirements, Proposers shall submit an explanation of the measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

2.2.7. Compliance with GAAP or IFRS. Financial statements shall be prepared in accordance with GAAP or International Financial Reporting Standards ("IFRS"), provided that, if financial statements are prepared in accordance with principles other than GAAP or IFRS, then together with such statements Proposers shall submit a letter from a certified public accountant explaining the areas of the financial statements that would be affected by a conversion to GAAP or IFRS (for certainty, a restatement of the financial information in accordance with GAAP or IFRS is not required).

2.2.8. US Dollar Requirements. Financial statements shall be prepared in US dollars, provided that, if financial statements for any entity are not available in US dollars, Proposers shall submit summaries (prepared by a certified public accountant by reference to the audited non-US dollar financial statements) of such entity's balance sheet, income statement and statement of cash flow for the applicable time periods converted to US dollars (at ~~an appropriate rate~~end of calendar year rates of conversion ~~specified in the SOQ~~).

2.2.9. English Language. Financial statements shall be prepared in English, provided that, if any part of the financial statements is prepared in a language other than English, translations (certified by the translator or translation service that they are true and correct) of the relevant financial statement information shall accompany the original financial statement information.

2.3. Material Changes in Financial Condition

Any information regarding material changes in financial condition of any entity submitted in accordance with Section 4.2-4.2 of the Volume 2 Requirements must include:

2.3.1. in relation to any such material change, a statement describing:¹³¹⁵

- i. such change;
- ii. actual and anticipated changes or disruptions in executive management relating to such change;
- iii. the likelihood that such change will continue during the proposed period of Project construction;
- iv. the projected full extent, nature and impact, positive and negative, of such change experienced and anticipated to be experienced in the proposed period of Project construction; and

¹³¹⁵ References to the notes in the financial statements shall not be sufficient to fulfill this requirement to discuss the impact of material changes.

- v. how such change is anticipated to affect the organizational and financial capacity and ability of the relevant entity to remain engaged in the procurement described in this RFQ and to ultimately submit a Proposal;
- 2.3.2. to the extent not otherwise provided, estimates of the impact on revenues, expenses and the change in equity availability, separately for each material change, as certified by the chief executive officer, chief financial officer or treasurer (or equivalent) (if such individual is not also a signatory for the relevant entity on the Submittal Letter); and
- 2.3.3. if a material change will have a negative financial impact, an explanation of measures that have been taken, are currently in progress or would be reasonably anticipated to be taken to insulate the Project from any such material changes.

2.4. Financially Responsible Party Letter of Support

A Proposer may identify one or more Financially Responsible Parties where applicable throughout its SOQ in order to demonstrate the financial capacity of any Core Proposer Team Member (making clear which Core Proposer Team Member any Financially Responsible Party is "supporting"). A Proposer is required to identify a Financially Responsible Party for any Core Proposer Team Member that is a newly formed entity that does not yet have independent financial statements for at least one 12-month fiscal year. If a Proposer identifies one or more Financially Responsible Parties in its SOQ, then it must also submit all information required by the SOQ Submission Requirements to be submitted in respect of a Financially Responsible Party in respect of such entity. This information must, in accordance with Section 3.1 3.1 of the Volume 2 Requirements, include ~~an appropriate letter from the applicable Financially Responsible Party,~~ a letter addressed to the Procuring Authorities (care of the Procuring Authorities' Contact Person) and signed by the chief executive officer, chief financial officer or treasurer (or equivalent) of the relevant Financially Responsible Party, confirming that it will financially support or, as applicable, guarantee all the obligations of the relevant entity with respect to the Project, which confirmation shall include a description of the nature of such support or guarantee.

2.5. Surety or Bank/Financial Institution Letter

- 2.5.1. Each letter from an Eligible Surety submitted by a Proposer in accordance with Section 3.1 3.1 of the Volume 2 Requirements ~~must~~ shall be addressed to the Procuring Authorities (care of the Procuring Authorities' Contact Person) and shall state that the Lead Contractor is capable of obtaining both a performance bond (or bonds) and a payment bond (or bonds), each in a minimum aggregate stated amount of at least \$250,000,000, provided that:
- i. if the Lead Contractor is a Joint Venture, limited liability company or other association, separate letters for one or more of the individual Joint Venture members or partners or equity owners are acceptable, as is a single letter covering all members, partners or equity owners; provided that each such letter shall reference the specific dollar figure portion of the total required amount that the Eligible Surety is indicating it is willing to provide;
 - ii. any such letter must not indicate unspecified "unlimited" bonding capacity;
 - iii. each letter shall specifically acknowledge that the Eligible Surety has received and reviewed the relevant terms of this RFQ and evaluated the Lead Contractor's and/or another relevant Person's backlog and work-in-progress in determining its bonding capacity; and
 - iv. in instances where there has been or is anticipated any material change in the financial condition of an entity as described in Section 4.2 4.2 of the Volume 2 Requirements, a certification (to be included in each letter) that the Eligible Surety's analysis specifically incorporates a review of the factors surrounding such change(s) and identifying any special conditions which may be imposed before it would be prepared to issue surety bonds in respect of the Project.

- 2.5.2. If a Proposer submits a letter from an Eligible Financial Institution in accordance with Section ~~3.2-3.2~~ of the Volume 2 Requirements, such letter must indicate a willingness, without conditions or qualifications, to issue a letter or letters of credit on behalf of the Lead Contractor as account party in a minimum aggregate stated amount of \$250,000,000, provided that:
- i. if the Lead Contractor is a Joint Venture, limited liability company or other association, separate letters for one or more of the individual Joint Venture members or partners or equity owners are acceptable, as is a single letter covering all members, partners or equity owners; provided that each such letter shall reference the specific dollar figure and portion of the total required amount that the Eligible Financial Institution is indicating it is willing to provide;
 - ii. any such letter must not indicate unspecified “unlimited” capacity;
 - iii. if a Proposer submits a letter in accordance with Section ~~3.2-3.2~~ of the Volume 2 Requirements, it shall also still submit a letter (or letters) in accordance with Section ~~3.1-3.1~~ of the Volume 2 Requirements in respect of such Proposer’s capacity to obtain a payment bond (or bonds); and
 - iv. in instances where there has been or is anticipated any material change in the financial condition of an entity as described in Section ~~4.2-4.2~~ of the Volume 2 Requirements, a certification (to be included in each letter) that the Eligible Financial Institution’s analysis specifically incorporates a review of the factors surrounding such change(s) and identifying any special conditions which may be imposed before it would be prepared to issue a letter of credit in respect of the Project.

2.6. Equity Funding Support Letters

2.6.1. Each equity funding letter submitted by a Proposer in accordance with Section ~~3.3-3.3~~ of the Volume 2 Requirements shall be addressed to the Procuring Authorities (care of the Procuring Authorities’ Contact Person) and shall comply with the following:

- a. any such letter shall include:
 - i. an overview of the completed to-date and remaining approval process required to commit to and fund the required equity commitment for the Project; ~~and~~
 - ii. confirmation that the Project meets all of the corporate strategy (other than for investment funds) and investment policy requirements of the relevant entity (e.g., is an approved project, does not contradict any capital allocation policy, etc.) and is consistent with its investment objectives; and
 - iii. state the dollar value (and/or percentage of total equity) limitation on the equity commitment for the Project or the absence of such a limitation;
- b. if the Equity Member is an investment fund, then the equity funding letter shall be signed by the fund’s chief executive officer, chief financial officer or treasurer (or equivalent), and shall include:
 - i. the name and ownership structure of the investment fund that will ultimately carry the investment; and
 - ii. supplemental information to the financial statements (as necessary) of the investment fund submitted in accordance with Section ~~4.1-4.1~~ of the Volume 2 Requirements to positively demonstrate the existence of committed capital capacity for the Project consistent with the likely equity investment and the Equity Member’s responsibility to submit its percentage share of Developer’s equity; and
- c. if the Equity Member is not an investment fund, then the equity support letter shall be signed by the chief financial officer, the chief executive officer or treasurer (or equivalent), and shall include descriptions of (i) where and how the equity commitment will be sourced

and (ii) how competing allocation and capacity issues are considered between several project opportunities that the Equity Member pursues simultaneously.

VOLUME 1 REQUIREMENTS

Volume 1 of the SOQ shall be prepared in accordance with the General Requirements and shall comply with and include the following:

| Volume 1 Submission Requirement | Page Limit |
|--|-------------------------------------|
| 1. GENERAL REQUIREMENTS | |
| 1.1. Submittal Letter | |
| Completed <u>Form A</u> (<i>Submittal Letter</i>), attaching: <ul style="list-style-type: none"> a. <u>Annex A</u> (<i>Pass/Fail Evaluation Criteria Verification</i>); and b. <u>Annex B</u> (<i>Scoring Reference Chart</i>). | n/a |
| 1.2. Executive Summary | |
| Narrative executive summary, which should: <ul style="list-style-type: none"> a. be written in a non-technical style; and b. contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with the key points of Proposer's SOQ. | 15 pages |
| 1.3. Public Disclosure Information | |
| 1.3.1. SOQ Submission Public Statement. | 4 pages |
| 1.3.2. Completed <u>Form B</u> (<i>Confidential Contents Index</i>). | n/a |
| 2. TEAM BACKGROUND INFORMATION | |
| 2.1. Corporate, Organizational and Management Information | |
| 2.1.1. Completed <u>Form C</u> (<i>Information Regarding Proposer</i>) for each of: | n/a |
| a. each Equity Member; | n/a |
| b. Lead Contractor; | n/a |
| c. Lead Engineer; | n/a |
| d. Lead Operator; and | n/a |
| e. each Financially Responsible Party (if any). | n/a |
| 2.1.2. Organizational chart identifying each Core Proposer Team Member, and including: <ul style="list-style-type: none"> a. for each such entity, identification of interim and ultimate parent companies (up to at least the level of Financially Responsible Parties, where relevant); and b. for each such entity, percentages of equity holdings (actual or anticipated) by each interim and ultimate parent company (up to at least the level of Financially Responsible Parties, where relevant). | 1 page (plus up to 1 page of notes) |

| Volume 1 Submission Requirement | Page Limit |
|--|---|
| 2.1.3. Organizational chart (or charts, if different by time period) identifying Key Personnel and Proposer’s management structures: <ul style="list-style-type: none"> a. during the RFQ and RFP process but prior to commercial close; and b. after commercial close. | 1 page per chart (plus up to 1 page of notes per chart) |
| 2.1.4. Narrative description of Proposer’s organizational and management structure as it relates to technical expertise and execution, including an explanation as to how (a) Proposer anticipates constructively integrating and delivering upon the collective experience of all its team members and (b) such structure will facilitate implementation of the Project (including construction completion and performance of operations and maintenance obligations but excluding financing). ⁴⁴¹⁶ | 4 pages |
| 2.1.5. List of full legal names, and names and titles of senior involved personnel, of: <ul style="list-style-type: none"> a. financial, technical, insurance, legal, public relations and other specialist advisors; and b. banks, arrangers, underwriters, placement agents or other potential providers of financing, if any, engaged as at the SOQ Deadline by Proposer or any Core Proposer Team Member or any of their Affiliates in connection with the Project (including any advisors that have been engaged on behalf of any potential provider of financing), including for each a statement indicating (i) whether such have been engaged on an exclusive or non-exclusive basis and (ii) if on a non-exclusive basis, whether such have been required to institute Information Barriers with respect to this Project. | n/a |
| 2.2. Resources, Capacity and Procurement ExperienceResources | |
| Narrative description of: (i) current and projected workloads; (<ul style="list-style-type: none"> <u>i. current and expected workloads; and</u> <u>ii. ii) non-financial resource commitments; and (iii) availability (particularly in relation to management resources which with respect to each of the following other than proposed Key Personnel, the availability of non-financial resources, which resources (A) may, in a Proposer’s discretion, be relevant to the Procuring Authorities’ Substantive Evaluation, and (B) by their nature cannot readily be hired specifically for the Project), for each of:</u> <u>for each of:</u> | 10 pages in total |
| <ul style="list-style-type: none"> a. each Equity Member; | |
| <ul style="list-style-type: none"> b. Lead Contractor; | |
| <ul style="list-style-type: none"> c. Lead Engineer; | |
| <ul style="list-style-type: none"> d. Lead Operator; | |

⁴⁴¹⁶ Reference should be made as appropriate to the charts submitted in accordance with Sections 2.1.2 and 2.1.3 of the Volume 1 Requirements to avoid unnecessary repetition of details that were included in such charts.

| Volume 1 Submission Requirement | Page Limit |
|--|------------|
| e. each Financially Responsible Party (if any); and | |
| f. each of the proposed Key Personnel. | |
| 3. LEGAL MATTERS | |
| 3.1. Organizational Conflicts of Interest | |
| <p>Either:</p> <p>a. confirmation of absence of any organizational conflicts of interest (as defined in <u>Section 5.3.1.a of Part B</u>), including, reference to any prior steps taken under <u>Section 5.3.1.c of Part B</u> to confirm with the Procuring Authorities the absence of any such conflicts); or</p> <p>b. narrative description of any such organizational conflicts of interest as required under <u>Section 5.3.1.b of Part B</u> (together with copies of any relevant documents), which description should:</p> <p>i. identify the Person or Persons which may be involved in the potential organizational conflict of interest;</p> <p>ii. state how Proposer's collective or individual interests, including those of any of its team members, consultants, contractors or subcontractors, or the interests of any chief executives, directors or senior personnel thereof, may result in, or could be viewed as, an organizational conflict of interest; and</p> <p>iii. detail any steps taken to date, and proposed future steps to be taken, to eliminate or mitigate such organizational conflict of interest including reference to any steps taken or to be taken following consultation with the Procuring Authorities in accordance with <u>Section 5.3.1.c of Part B</u>.</p> | |
| 3.2. Legal Disclosures and Certifications | |
| 3.2.1. Completed <u>Form D (Legal Disclosures)</u> . | n/a |
| 3.2.2. Completed <u>Part A (Summary of Certifications)</u> of <u>Form E (Certifications)</u> . | n/a |
| 3.2.3. Completed <u>Part B (Certifications)</u> of <u>Form E (Certifications)</u> for each of: | n/a |
| a. each Equity Member; | |
| b. Lead Contractor; | |
| c. Lead Engineer; | |
| d. Lead Operator; and | |
| e. each Financially Responsible Party (if any). | |
| 3.3. Legal Issues | |
| <p>Either:</p> <p>a. a statement that Proposer has not identified any anticipated legal issues relating to or affecting or anticipated to affect Developer and/or any Core Proposer Team Member that need to be resolved in order for:</p> <p>i. Proposer, assuming it is selected as a Short-listed Proposer, to</p> | 1 page |

| Volume 1 Submission Requirement | Page Limit |
|---|------------|
| <p>deliver a Proposal in response to the RFP; and/or;</p> <p>ii. Developer and all Core Proposer Team Members, assuming Proposer is selected as Preferred Proposer, to perform its and their anticipated obligations under the Project Agreement or any related agreements, as applicable; or</p> <p>b. a descriptive list identifying and explaining any such issues.</p> | |
| 4. TECHNICAL EXPERIENCE | |
| 4.1. Project Experience | |
| Completed <u>Form F</u> (<i>Project Experience</i>) documenting: ⁴⁵¹⁷ | n/a |
| a. for the Equity Members (collectively), experience on at least 3 but no more than 5 General Reference Projects; | |
| b. for the Lead Contractor (collectively), experience on at least 4 but no more than 6 General Reference Projects; | |
| c. for the Lead Engineer (collectively), experience on at least 4 but no more than 6 General Reference Projects; and | |
| d. for the Lead Operator (collectively), experience on at least 2 but no more than 4 O&M Reference Projects ⁴⁵¹⁷ . | |
| <p><u>provided that a Proposer may submit a completed Form F (<i>Project Experience</i>) documenting experience on no more than one General Reference Project for each of a., b. and c. above (for a maximum total of three such projects) where such project has a Construction Value less than \$150,000,000 if the Proposer considers that the experience demonstrated by that project would otherwise be relevant to the Procuring Authorities' Substantive Evaluation.</u></p> | |
| 4.2. Safety Record | |
| Completed <u>Form G</u> (<i>Safety Questionnaire</i>) for each of: | n/a |
| a. Lead Contractor; | |
| b. Lead Engineer; and | |
| c. Lead Operator. | |
| 4.3. Stakeholder Engagement | |
| Completed <u>Form H</u> (<i>Stakeholder and Economic Engagement Questionnaire</i>). | 15 pages |

⁴⁵¹⁷A single completed Form F with respect to a particular project can be prepared and submitted to document the experience on such project of two or more Core Proposer Team Members.

| Volume 1 Submission Requirement | Page Limit |
|---|---------------------------|
| 4.4. Key Personnel | |
| Completed <u>Form I (Key Personnel)</u> attaching resumes (each including a list of references in the form of <u>Annex A to Form I</u>) for each of: | n/a |
| a. Construction <u>Design-Build</u> Manager; | As per Form instructions. |
| b. Design Manager; | As per Form instructions. |
| c. O&M Manager; | As per Form instructions. |
| d. Quality Manager; | As per Form instructions. |
| e. Environmental Manager; | As per Form instructions. |
| f. Utilities Manager; and | As per Form instructions. |
| g. Community and Public Relations Manager. | As per Form instructions. |
| 5. STATEMENT OF TECHNICAL APPROACH | |
| Narrative description of Proposer's proposed technical approach to the Project (distinguishing, where appropriate, differences in approach as between design, construction, operations and maintenance), to be comprised of the following: | See below |
| a. <u>Summary</u> : General summary of Proposer's proposed technical, project management and associated subcontracting approach with respect to each phase of the Project (e.g. development, design, construction, and operations and maintenance). | 1 pages |
| b. <u>Technical Challenges</u> : Based on publicly available information and Proposer's understanding of the Project scope as set out in this RFQ as well as in the SDEIS (to the extent relevant), a description of any perceived technical challenges and risks associated with the Project together with a discussion of potential innovations and/or applications of existing techniques, or approaches to identify such innovations and/or techniques, in order to address such challenges and risks. Such discussion should not be limited to simply restating relevant sections of this RFQ or the SDEIS. | 5 pages |
| c. <u>Project Plan</u> : ^{+6_18} Description of Proposer's preliminary plan to design, construct, operate and maintain the Project, including reference to: <ul style="list-style-type: none"> i. quality management and efficient and effective oversight in each phase of the Project; ii. resource management, including allocation of responsibilities among members of Proposer's team and the use of subcontractors and suppliers for materials, equipment and qualified personnel throughout each phase of the Project; iii. proposed measures to ensure continuity of personnel through the | 2 pages |

⁺⁶¹⁸ To the extent a relevant issue was addressed in a prior part of the Statement, the plan should cross-reference to such part rather than repeat prior language.

| Volume 1 Submission Requirement | Page Limit |
|---|------------|
| procurement and all phases of the Project; iv. safety management; and v. schedule management. | |
| d. <u>Public Interest and Engagement Plan</u> : ⁺⁷⁻¹⁹ Description of Proposer's preliminary plan to address public interest considerations related to all phases of the Project, including a discussion of the approach to: <ul style="list-style-type: none"> i. management of construction activities and operations during construction in a manner that takes into account local community interests and the close proximity of the Project to residential areas and operating businesses; ii. development and maintenance of an environmental, health and safety management and mitigation program for the Project; iii. community and stakeholder engagement and communications, including coordination with local authorities; and iv. otherwise promoting public interest benefits and/or accommodations to reflect the particular interests of the communities in which the Project is located. | 2 pages |

⁺⁷⁻¹⁹ To the extent a relevant issue was addressed in a prior part of the Statement, the plan should cross-reference to such part rather than repeat prior language.

VOLUME 2 REQUIREMENTS

Volume 2 of the SOQ shall be prepared in accordance with the General Requirements and the Financial Requirements and shall comply with and include the following:

| Volume 2 Submission Requirement | Page Limit |
|--|------------------|
| 1. FINANCIAL EXPERIENCE | |
| 1.1. Description of Organizational and Management Structure and Expertise | |
| Narrative description of Proposer’s organizational and management structure, and overall Developer management expertise and execution experience, in each case as it relates to financial matters, including as to how such structure will facilitate initial financing, and ongoing financial management, of the Project. ⁺⁸²⁰ | 2 pages |
| 1.2. Available Financial Capacity | |
| Narrative description of the financial capacity available to Proposer for this Project, taking into consideration existing commitments as well as anticipated commitments through the expected date of financial close under the Procurement Schedule, for each of: | 5 pages in total |
| a. each Equity Member; | |
| b. Lead Contractor; | |
| c. Lead Engineer; | |
| d. Lead Operator; and | |
| e. each Financially Responsible Party (if any). | |
| 1.3. Project Financing Experience | |
| Narrative description of the relevant experience of Core Proposer Team Members on General Reference Projects for which a <u>Form F</u> summary has otherwise been provided, including: | 5 pages |
| a. in financing such projects on a project finance basis (both equity and debt); | |
| b. participation as an equity member in such projects using an availability payment model; and | |
| c. TIFIA financing, PABs and other credit and financing products customarily used in the US. | |
| 2. STATEMENT OF FINANCIAL APPROACH | |
| Narrative description of: a. Proposer’s conceptual plan to finance the Project, which shall: i. include a list of anticipated timelines and milestones to obtain financial commitments and close a major project financing; ii. identify key considerations and challenges relevant to financing the Project and proposed solutions (whether innovative or not) to meet | 4 pages |

⁺⁸²⁰ Reference should be made as appropriate to the charts submitted in accordance with Sections 2.1.2 and 2.1.3 of the Volume 1 Requirements to avoid unnecessary repetition of details that were provided in such charts.

| Volume 2 Submission Requirement | Page Limit |
|---|-------------------|
| <p>these challenges; and</p> <p>iii. assume the contracting, funding and payment structure, and procurement schedule, of the Project to the extent outlined in this RFQ; and</p> <p>b. Proposer's preferred approach to the selection of commercial banks, arrangers, underwriters, placement agents or other potential providers or arrangers of financing, as applicable. If one or more has already been selected or engaged by Proposer, state how and why such entity was selected or engaged (for certainty, Proposer is not required to make such a selection or engagement at this time).</p> | |
| <p>3. LETTERS OF SUPPORT</p> | |
| <p>3.1. Financially Responsible Party Letter of Support</p> | |
| <p>Letter of support from each Financially Responsible Party (if any) in compliance with <u>Section 2.4</u> of the <u>Volume 2 Requirements</u>.</p> | 1 page per letter |
| <p>3.2. Surety or Bank/Financial Institution Letter</p> | |
| <p>Letter or letters from an Eligible Surety, together (at Proposer's option) with a letter or letters from an Eligible Financial Institution, as evidence of Lead Contractor's bonding capacity and ability to secure performance security, in each case in compliance with <u>Section 2.5</u> of the <u>Financial Requirements</u>.</p> | |
| <p>3.3. Equity Funding Support Letter</p> | |
| <p>Equity funding letter(s)<u>letter from each Equity Member</u> in compliance with <u>Section 2.6</u> of the <u>Financial Requirements</u>.</p> | 1 page per letter |
| <p>4. FINANCIAL INFORMATION</p> | |
| <p>4.1. Financial Statements</p> | |
| <p>Financial statements that comply with <u>Section 2.2</u> of the <u>Financial Requirements</u> for each of:</p> | n/a |
| <p>a. each Equity Member;</p> | |
| <p>b. Lead Contractor;</p> | |
| <p>c. Lead Engineer;</p> | |
| <p>d. Lead Operator; and</p> | |
| <p>e. if relevant, any Financially Responsible Party.</p> | |

| Volume 2 Submission Requirement | Page Limit |
|---|-----------------------|
| 4.2. Material Changes in Financial Condition | |
| <p>Either:</p> <p>a. in compliance with <u>Section 2.3</u> of the <u>Financial Requirements</u>, information regarding any material changes in financial capacity⁴⁹⁻²¹ for any of the following entities for any time during the past three most recently completed fiscal years (or, if such entity has fewer than three completed fiscal years, for all its completed years, if any) and in the current fiscal year (including material changes that are anticipated to occur during such fiscal year); or</p> <p>b. if no material change has occurred and none is anticipated, with respect to any of the following entities, then for each such relevant entity a letter on letterhead from its chief executive officer, chief financial officer or treasurer (or equivalent position or role) certifying that no such material change has occurred or is anticipated (unless such individual is also a signatory of the Submittal Letter on behalf of the relevant entity, in which case the SOQ may include an unsigned statement to this effect);</p> <p>in either case in respect of each of:</p> | <p>n/a</p> <p>n/a</p> |
| <p>i. each Equity Member;</p> | |
| <p>ii. Lead Contractor;</p> | |
| <p>iii. Lead Engineer;</p> | |
| <p>iv. Lead Operator; and</p> | |
| <p>v. each Financially Responsible Party, if any.</p> | |
| 4.3. Off Balance Sheet Liabilities | |
| <p>A letter on letterhead<u>addressed to the Procuring Authorities (care of the Procuring Authorities' Contact Person)</u> from the chief executive officer, the chief financial officer or treasurer (or equivalent) or a certified public</p> | <p>{n/a}</p> |

⁴⁹²¹ Set out below is a representative list of events intended to provide examples of what the Procuring Authorities consider to be a material change in financial condition. This list is indicative only. At the discretion of the Procuring Authorities, any failure to disclose a prior or anticipated material change may result in disqualification from further participation in the procurement process.

- a. an event of default involving the affected entity, or the parent corporation of the affected entity;
- b. a bankruptcy involving the affected entity, or the parent corporation of the affected entity;
- c. a change in tangible net worth of 10% or more of total shareholder equity;
- d. a sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity or parent corporation of the affected entity;
- e. a downgrade in the credit rating of the affected entity or parent corporation of the affected entity;
- f. inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, or other loan covenants, or additional credit support from shareholders or other third parties;
- g. the affected entity or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% or more of the then shareholder equity due to claims, changes in accounting policies, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in labor force exceeding 200 positions or that involved the disposition of assets exceeding 10% of the then shareholder equity; and
- h. other events known to the affected entity which represent a material change in financial condition.

| Volume 2 Submission Requirement | Page Limit |
|---|------------|
| <p>accountant either: (i) identifying and describing off balance sheet liabilities for each fiscal year in respect of which financial statements are submitted in accordance with Section 4.1 of the Volume 2 Requirements to the extent such liabilities exceed \$25 million in the aggregate; or (ii) certifying that there are no such liabilities in excess of such limit (unless such individual is also a signatory of the Submittal Letter on behalf of the relevant entity, in which case the SOQ may include an unsigned statement to this effect), for each of:</p> | |
| <p>a. each Equity Member;</p> | |
| <p>b. Lead Contractor;</p> | |
| <p>c. Lead Engineer;</p> | |
| <p>d. Lead Operator; and</p> | |
| <p>e. each Financially Responsible Party, if any.</p> | |
| <p>4.4. Credit Ratings</p> | |
| <p>4.4.1. Completed Form J (Credit Ratings).</p> | n/a |
| <p>4.4.2. For each entity that has a credit rating as indicated on the completed Form J (Credit Ratings), all rating information (including ratings outlooks, and reports, if applicable) issued by any Rating Agency (i) regarding any debt instrument issued by such entity or (ii) for any other purpose, in either case during the past 3 years.</p> | n/a |

PART E: ANNEXES AND FORMS

Annexes

Annex 1: RFQ Comment Submission Template

Form

Name

| | |
|---------|---|
| Form A: | Submittal Letter |
| Form B: | Confidential Contents Index |
| Form C: | Information Regarding Proposer |
| Form D: | Legal Disclosures |
| Form E: | Certifications |
| Form F: | Project Experience |
| Form G: | Safety Questionnaire |
| Form H: | Stakeholder and Economic Engagement Questionnaire |
| Form I: | Key Personnel |
| Form J: | Credit Ratings |

ANNEX 1: RFQ COMMENT SUBMISSION TEMPLATE

Instructions

Please generally see Section 5.1.1 of Part B. In addition:

- (1) Proposers shall submit RFQ Comments in the Form provided in English and in Microsoft® Word format.
- (2) RFQ references should:
 - (a) first, list the relevant “Part” of this RFQ;
 - (b) then, as relevant, for Part D, reference the “General Requirements”, “Financial Requirements”, “Volume 1 Requirements”, or “Volume 2 Requirements” or, for Part E, reference the relevant Form (and, if applicable, Part of the relevant Form); and
 - (c) finally, reference the relevant Section.

By way of illustration:

- Part B, Section 2.1.3;
 - Part D, Volume 1 Requirements, Section 1; and
 - Part E, Form A, Annex A.
- (3) If an initial comment submission ends with comment number X, then the next comment submission should begin with comment number X+1.
 - (4) The Procuring Authorities strongly encourage Proposers to consider relevance, brevity and clarity when submitting RFQ Comments. As such:
 - (a) each comment should ideally address a single issue. If it is appropriate for it to address multiple issues, consider dividing the comment into sub-comments with appropriate numbering/letter (e.g. 1(a), 1(b), etc.), with each sub-comment set out in a separate row;
 - (b) each comment should clearly indicate why it has been made (or repeated); and
 - (c) Proposers should refer to Section 5.1.2.c of Part B when considering the drafting and submission of any RFQ Comments that may contain confidential or proprietary information.

Proposer Name: *[Proposer to provide]*

Date: *[Proposer to provide]*

I-70 East Project RFQ Comment Submission

| No. | RFQ Reference | RFQ Comment |
|-----|---------------|-------------|
| (1) | | |
| (2) | | |
| (3) | | |
| (4) | | |

FORM A: SUBMITTAL LETTER

Instructions

Please generally see Section 1.1 of the Volume 1 Requirements. In addition:

- (1) The Official Representative shall sign the Submittal Letter on behalf of Proposer.
- (2) An authorized representative of each Core Proposer Team Member shall sign the certification set out at the end of the form of Submittal Letter.
- (3) All signature blocks on this Form may be modified to properly reflect the authority of the person signing.

Proposer Name: [●]
Proposer's business address: [●]²⁰²²

SOQ Submission Date: [June 22], 2015

High Performance Transportation Enterprise and Colorado Bridge Enterprise
c/o High Performance Transportation Enterprise
Colorado Department of Transportation
4201 E. Arkansas Avenue, Room 230
Denver, Colorado 80222

Attn: Michael Cheroutes, HPTE Director and Shailen Bhatt, CDOT Executive Director acting as BE Executive Director

Re. Submission of SOQ in connection with the I-70 East Project

1. Introduction.

(a) [Proposer name] (the "Proposer") submits this statement of qualifications (this "SOQ") in response to the Request for Qualifications dated March 25, 2015 (~~as amended by any addenda~~Addendum No. 1 thereto ~~issued after such date,~~²⁴~~dated May 29, 2015~~, the "RFQ") issued by the High Performance Transportation Enterprise ("HPTE") and the Bridge Enterprise ("BE"), each of which is a division of the Colorado Department of Transportation, in relation to the I-70 East Project.

(b) Capitalized terms not otherwise defined in this letter have the meanings given to them in the RFQ.

(c) References to Sections and Parts herein are references to Sections and Parts of the RFQ.

2. Enclosures.

(a) Enclosed, and by this reference incorporated herein and made a part of this SOQ, are each of Volume 1 Volume 2 of the SOQ as required to be submitted in accordance with the RFQ. This letter itself constitutes the Submittal Letter.

²⁰²² Delete if not applicable.

²⁴ ~~The term "as amended....." should only be included if there have been addenda to the RFQ which have made any amendments. Otherwise, delete square bracketed language.~~

(b) For the Procuring Authorities' ease of reference:

(i) attached as Annex A to this letter is a reference chart indicating the conclusions of Proposer's evaluation of each element of the SOQ for compliance with the Pass/Fail Evaluation Criteria; and

(ii) attached as Annex B to this letter is a reference chart indicating each element of the SOQ that Proposer believes is relevant to each of the Substantive Evaluation Criteria.

3. Representations and Warranties; Acknowledgments and Agreements.

(a) Proposer represents and warrants to HPTE, BE and CDOT that it (i) has read the RFQ ~~{(including all addenda~~Addendum No. 1 ~~thereto)}~~²² and (ii) agrees to abide by the contents and terms of the RFQ and the statements and commitments in Proposer's SOQ.

(b) Proposer acknowledges (i) receipt of, or access to, and understanding and consideration of (A) all information and materials posted on the Project Website²³ and (B) all written information and materials provided directly to it through the Official Representative and (ii) the terms of Section 1.4.3 of Part B, including the limitation on Proposer's ability to rely on such information and materials.

(c) Proposer acknowledges and understands that, under the terms of the RFQ, the Procuring Authorities have reserved to themselves a number of rights related to the selection of Short-listed Proposers and the procurement of the Project, including as set out in Section 9 of Part B.

(d) Proposer further understands that all costs and expenses incurred by it in preparing this SOQ and participating in the Project procurement process will be borne solely by Proposer, other than as may be expressly provided for in the RFP.

(e) Proposer agrees that, in accordance with Section 6.2.3 of Part B, ~~neither of it, and not~~ the Procuring Authorities, will be responsible for any errors, omissions, assumptions, inaccuracies or incomplete statements in this SOQ.

(f) Proposer acknowledges and agrees to the protest provisions set out in Section 8.1 of Part B and understands that such provisions limit Proposer's rights and remedies to protest or challenge any aspect of the RFQ process or any determination or short-listing thereunder.

4. Official Representative. For the purpose of any future communications, the "Official Representative" for Proposer is:

| | |
|-----------------------------|------------------------------|
| Name: | <i>[Proposer to provide]</i> |
| Title: ²⁴ | <i>[Proposer to provide]</i> |
| Employer: | <i>[Proposer to provide]</i> |
| Address: | <i>[Proposer to provide]</i> |
| Phone (office): | <i>[Proposer to provide]</i> |

~~²² Delete if not applicable.~~

²³ The Procuring Authorities anticipate posting all addenda, questions and answers and other relevant information and materials on the "Project Website". ~~If this is not the case, later addenda to this RFQ will modify this provision in the Form as applicable.~~

²⁴ List individual's current job title, other than "Official Representative".

Phone (mobile): [Proposer to provide]
Email: [Proposer to provide]
Fax (if any): [Proposer to provide]

5. Governing law. This letter shall be governed by and construed in all respects according to the law of the State of Colorado.

Under penalty of perjury, I hereby swear and affirm that I am authorized to act on behalf of Proposer in signing and delivering this letter, and acknowledge that the Procuring Authorities are each relying on my representation to this effect.²⁵

Proposer: [insert Proposer name]
By: _____
Printed Name: [insert name]
Title: Official Representative

Under penalty of perjury, each of the undersigned:

- (a) certifies on behalf of the entity for which he or she signs that:
 - (i) the Official Representative named above is authorized by the relevant entity to sign this Submittal Letter on behalf of Proposer; and
 - (ii) the representations, certifications, statements, disclosures, authorizations and commitments made, and information contained, in the SOQ (including, for the avoidance of doubt, in Form D (Legal Disclosures)) in respect of such entity have been authorized by such entity, is or are correct, complete and not materially misleading; and
- (b) swears and affirms that he or she is authorized to act on behalf of the entity for which he or she signs and acknowledges that the Procuring Authorities are each relying on his or her representation to this effect.²⁶

[role of team member]:²⁷ [insert entity name]
By: _____
Printed Name: [insert name]
Title: [insert title]

²⁵ Please see signing instructions in Section 1.4 of the General Requirements.
²⁶ Signature block below to be repeated for each Core Proposer Team Member.
²⁷ For any Core Proposer Core Team Member that is a Joint Venture, include signature by each Joint Venture member or partner.

Annex A to the Submittal Letter
Pass/Fail Evaluation Criteria Verification

| N o. | Pass/Fail Evaluation Criteria | RFQ Reference | Satisfied ²⁸ |
|---------|---|---|--------------------------|
| (1) | SOQ conforms to all RFQ instructions regarding organization, format and content, including page limitations. | <u>General Requirements, Financial Requirements and SOQ Submission Requirements</u> | <input type="checkbox"/> |
| (2) | Volume 1 of SOQ includes each of the following: | | <input type="checkbox"/> |
| | (a) Submittal Letter (<u>Form A</u>); | <u>Section 1.1 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (b) narrative executive summary; | <u>Section 1.2 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (c) SOQ Submission Public Statement; | <u>Section 1.3.1 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (d) Confidential Contents Index (<u>Form B</u>); | <u>Section 1.3.2 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (e) completed <u>Form C (Information Regarding Proposer)</u> for each of: | <u>Section 2.1.1 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (i) each Equity Member; | <u>Section 2.1.1.a of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (ii) Lead Contractor; | <u>Section 2.1.1.b of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (iii) Lead Engineer; | <u>Section 2.1.1.c of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (iv) Lead Operator; and | <u>Section 2.1.1.d of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (v) each Financially Responsible Party (if any); | <u>Section 2.1.1.e of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (f) organizational chart (entity level); | <u>Section 2.1.2 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (g) organizational chart (or charts, if different by time period) identifying Key Personnel and management structures; | <u>Section 2.1.3 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (h) narrative description of Proposer's organizational and management structure; | <u>Section 2.1.4 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (i) list of names and titles of senior involved personnel; | <u>Section 2.1.5 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (j) narrative description of workloads, non-financial resource commitments and <u>and (other than for (vi) below) availability of non-financial</u> resources for each of: | <u>Section 2.2 of the Volume 1 Requirements</u> | <input type="checkbox"/> |

²⁸ Proposer should check each box to confirm that it believes the relevant Pass/Fail Evaluation Criteria has been satisfied.

| | | | |
|--|--|---|--------------------------|
| | (i) each Equity Member; | <u>Section 2.2.a of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (ii) Lead Contractor; | <u>Section 2.2.b of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (iii) Lead Engineer; | <u>Section 2.2.c of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (iv) Lead Operator; | <u>Section 2.2.d of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (v) Financially Responsible Party (if any); and | <u>Section 2.2.e of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (vi) each proposed Key Personnel; | <u>Section 2.2.f of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (k) either: (i) confirmation of absence of any organizational conflicts of interest; or (ii) narrative description of any such organizational conflicts of interest; | <u>Section 3.1 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (l) completed <u>Form D (Legal Disclosures)</u> ; | <u>Section 3.2.1 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (m) completed Part A (<i>Summary of Certifications</i>) of <u>Form E (Certifications)</u> ; | <u>Section 3.2.2 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (n) completed Part B (<i>Certifications</i>) of <u>Form E (Certifications)</u> for each of: | <u>Section 3.2.3 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (i) each Equity Member; | <u>Section 3.2.3.a of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (ii) Lead Contractor; | <u>Section 3.2.3.b of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (iii) Lead Engineer; | <u>Section 3.2.3.c of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (iv) Lead Operator; and | <u>Section 3.2.3.d of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (v) each Financially Responsible Party (if any); | <u>Section 3.2.3.e of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (o) statement regarding the presence (or absence) of anticipated legal issues; | <u>Section 3.3 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (p) completed <u>Form F (Project Experience)</u> ; <u>for each of:</u> | <u>Section 4.1 of the Volume 1 Requirements</u> | <input type="checkbox"/> |
| | (i) <u>the Equity Members (collectively), with respect to at least 3 but no more than 5 General Reference Projects (of which the Procuring Authorities permit 1 General Reference Project to not satisfy paragraph (a) of the definition of General Reference Project)</u> ; | <u>Section 4.1.a of the Volume 1 Requirements</u> | <input type="checkbox"/> |

| | | | |
|--|---|--|--------------------------|
| | (ii) the Lead Contractor (collectively), with respect to at least 4 but no more than 6 General Reference Projects (of which the Procuring Authorities permit 1 General Reference Project to not satisfy paragraph (a) of the definition of General Reference Project); | Section 4.1.b of the Volume 1 Requirements | <input type="checkbox"/> |
| | (iii) the Lead Engineer (collectively), with respect to at least 4 but no more than 6 General Reference Projects (of which the Procuring Authorities permit 1 General Reference Project to not satisfy paragraph (a) of the definition of General Reference Project); and | Section 4.1.c of the Volume 1 Requirements | <input type="checkbox"/> |
| | (iv) the Lead Operator (collectively), with respect to at least 2 but no more than 4 O&M Reference Projects. | Section 4.1.d of the Volume 1 Requirements | <input type="checkbox"/> |
| | (q) completed Form G (Safety Questionnaire) for each of: | Section 4.2 of the Volume 1 Requirements | <input type="checkbox"/> |
| | (i) Lead Contractor; | Section 4.2.a of the Volume 1 Requirements | <input type="checkbox"/> |
| | (ii) Lead Engineer; and | Section 4.2.b of the Volume 1 Requirements | <input type="checkbox"/> |
| | (iii) Lead Operator; | Section 4.2.c of the Volume 1 Requirements | <input type="checkbox"/> |
| | (r) completed Form H (Stakeholder and Economic Engagement Questionnaire) ; | Section 4.3 of the Volume 1 Requirements | <input type="checkbox"/> |
| | (s) completed Form I (Key Personnel) attaching resumes (including a list of references in the form of Annex A to Form I) for each of: | Section 4.4 of the Volume 1 Requirements | <input type="checkbox"/> |
| | (i) Construction Design-Build Manager; | Section 4.4.a of the Volume 1 Requirements | <input type="checkbox"/> |
| | (ii) Design Manager; | Section 4.4.b of the Volume 1 Requirements | <input type="checkbox"/> |
| | (iii) O&M Manager; | Section 4.4.c of the Volume 1 Requirements | <input type="checkbox"/> |
| | (iv) Quality Manager; | Section 4.4.d of the Volume 1 Requirements | <input type="checkbox"/> |
| | (v) Environmental Manager; | Section 4.4.e of the Volume 1 Requirements | <input type="checkbox"/> |

| | | | |
|-----|--|--|--------------------------|
| | (vi) Utilities Manager; and | Section 4.4.f of the Volume 1 Requirements | <input type="checkbox"/> |
| | (vii) Community and Public Relations Manager; and | Section 4.4.g of the Volume 1 Requirements | <input type="checkbox"/> |
| | (t) statement of technical approach. | Section 5 of the Volume 2 Requirements | <input type="checkbox"/> |
| (3) | Volume 2 of SOQ includes each of the following: | | <input type="checkbox"/> |
| | (a) narrative description of Proposer's organizational and management structure as it relates to financial matters; | Section 1.1 of the Volume 2 Requirements | <input type="checkbox"/> |
| | (b) narrative description of the financial capacity available to Proposer for this Project; for each of: | Section 1.2 of the Volume 2 Requirements | <input type="checkbox"/> |
| | (i) each Equity Member; | Section 1.2.a of the Volume 2 Requirements | <input type="checkbox"/> |
| | (ii) Lead Contractor; | Section 1.2.b of the Volume 2 Requirements | <input type="checkbox"/> |
| | (iii) Lead Engineer; | Section 1.2.c of the Volume 2 Requirements | <input type="checkbox"/> |
| | (iv) Lead Operator; and | Section 1.2.d of the Volume 2 Requirements | <input type="checkbox"/> |
| | (v) each Financially Responsible Party (if any); | Section 1.2.e of the Volume 2 Requirements | <input type="checkbox"/> |
| | (c) narrative description of the relevant experience of the Core Proposer Team Members on General Reference Projects; | Section 1.3 of the Volume 2 Requirements | <input type="checkbox"/> |
| | (d) statement of financial approach; | Section 2 of the Volume 2 Requirements | <input type="checkbox"/> |
| | (e) letter of support from each Financially Responsible Party (if any); | Section 3.1 of the Volume 2 Requirements | <input type="checkbox"/> |
| | (f) letter or letters from an Eligible Surety, together (at Proposer's option) with a letter or letters from an Eligible Financial Institution, as evidence of bonding/letter of credit capacity and ability to secure performance security; | Section 3.2 of the Volume 2 Requirements | <input type="checkbox"/> |
| | (g) equity funding letter(s) letter from each Equity Member; | Section 3.3 of the Volume 2 Requirements | <input type="checkbox"/> |
| | (h) financial statements for: | Section 4.1 of the Volume 2 Requirements | <input type="checkbox"/> |
| | (i) each Equity Member; | Section 4.1.a of the Volume 2 Requirements | <input type="checkbox"/> |
| | (ii) Lead Contractor; | Section 4.1.b of the Volume 2 Requirements | <input type="checkbox"/> |

| | | | |
|--|--|---|--------------------------|
| | (iii) Lead Engineer; | <u>Section 4.1.c of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (iv) Lead Operator; and | <u>Section 4.1.d of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (v) each Financially Responsible Party (if any); | <u>Section 4.1.e of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (i) information regarding material changes in financial capacity, or confirmation of the absence of any such changes, for: | <u>Section 4.2 of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (i) each Equity Member; | <u>Section 4.2.b.i of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (ii) Lead Contractor; | <u>Section 4.2.b.ii of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (iii) Lead Engineer; | <u>Section 4.2.b.iii of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (iv) Lead Operator; and | <u>Section 4.2.b.iv of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (v) each Financially Responsible Party (if any); | <u>Section 4.2.b.v of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (j) identification of off balance sheet liabilities, or confirmation of the absence of such liabilities, for each of: | <u>Section 4.3 of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (i) each Equity Member; | <u>Section 4.3.a of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (ii) Lead Contractor; | <u>Section 4.3.b of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (iii) Lead Engineer; | <u>Section 4.3.c of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (iv) Lead Operator; and | <u>Section 4.3.d of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (v) each Financially Responsible Party (if any); | <u>Section 4.3.e of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (k) completed <u>Form J (Credit Ratings)</u> ; and | <u>Section 4.4.1 of the Volume 2 Requirements</u> | <input type="checkbox"/> |
| | (l) all rating information and materials for each entity that has a credit rating as indicated on the completed <u>Form J (Credit Ratings)</u> . | <u>Section 4.4.2 of the Volume 2 Requirements</u> | <input type="checkbox"/> |

Annex B to the Submittal Letter
Scoring Reference Chart

| Relevant RFQ Section (of Part C) | Substantive Evaluation Criteria | Relevant RFQ Section | SOQ Vol. & Sec. Ref. |
|--|--|---|-----------------------|
| | Technical Criteria | | |
| Section 1.1 | Organization, Structure and Experience | Section 1.1 of Part C | [Proposer to provide] |
| Section 1.1.a | <ul style="list-style-type: none"> Likelihood of success based on: | Section 1.1.a of Part C | [Proposer to provide] |
| Section 1.1.a.i | - management, organization and structure | Section 1.1.a.i of Part C | [Proposer to provide] |
| Section 1.1.a.ii | - prior experience and Demonstrated Performance | Section 1.1.a.ii of Part C | [Proposer to provide] |
| Section 1.1.b | <ul style="list-style-type: none"> Experience and Demonstrated Performance on Reference Projects based on: | Section 1.1.b of Part C | [Proposer to provide] |
| Section 1.1.b.i.A | - design and construction | Section 1.1.b.i.A of Part C | [Proposer to provide] |
| Section 1.1.b.i.B | - operations and maintenance | Section 1.1.b.i.B of Part C | [Proposer to provide] |
| Section 1.1.b.ii.A | - workforce, subcontractor and stakeholder engagement | Section 1.1.b.ii.A of Part C | [Proposer to provide] |
| Section 1.1.b.ii.B | - environmental monitoring and mitigation | Section 1.1.b.ii.B of Part C | [Proposer to provide] |
| Section 0 | Technical Approach to Project | Section 1.2 of Part C | [Proposer to provide] |
| Section 1.2.a | <ul style="list-style-type: none"> Understanding of key challenges and risks | Section 1.2.a of Part C | [Proposer to provide] |
| Section 1.2.b | <ul style="list-style-type: none"> Project plan | Section 1.2.b of Part C | [Proposer to provide] |
| Section 1.2.c | <ul style="list-style-type: none"> Public interest and engagement plan | Section 1.2.c of Part C | [Proposer to provide] |
| | Financial Criteria | | [Proposer to provide] |
| Section 2.1 | Financial Qualifications and Capacity | Section 2.1 of Part C | [Proposer to provide] |
| Section 2.1.a | <ul style="list-style-type: none"> Experience and Demonstrated Performance on closing financing of Reference Projects | Section 2.1.a of Part C | [Proposer to provide] |
| Section 2.1.b | <ul style="list-style-type: none"> Financial capacity | Section 2.1.b of Part C | [Proposer to provide] |
| Section 2.2 | Financial Approach to Project | Section 2.2 of Part C | [Proposer to provide] |

FORM B: CONFIDENTIAL CONTENTS INDEX

Instructions

Please generally see Sections 5.7.5 of Part B. In addition:

- (1) Include a brief explanation of the relevant exemption under CORA (or otherwise).
- (2) Note that the Procuring Authorities will not accept blanket designations that do not clearly identify CORA Exempt Materials. The Procuring Authorities may, in their discretion, and subject to compliance with CORA and applicable law, treat the whole of the relevant section(s)/document(s) that are subject to such a blanket designation as non-CORA Exempt Materials.
- (3) Include SOQ page references only if the relevant materials are paginated. Otherwise, indicate "n/a" in the SOQ Page(s) column.
- (3) Include as "Other Identifying Information" other indications, if any, necessary to determine which information or materials constitute potentially CORA Exempt Materials (e.g. information in a graphic or chart that cannot be referenced alone by a combination of Volume, heading, Section and page references). If not applicable, indicate "n/a" in the Other Identifying Information column.
- (4) [For the "Duration of Exemption", indicate either "Permanent" or "Until \[date/event\]" and include a brief explanation of the basis for such belief.](#)

Proposer Name: [Proposer to provide]

Form B: Confidential Contents Index

Volume 1:

| N o. | SOQ Heading(s) | SOQ Section(s) | SOQ Page(s) | Other Identifying Information (if any) | Relevant CORA Exemption(s) | <u>Duration of Exemption</u> |
|------|----------------|----------------|-------------|--|----------------------------|--|
| (1) | | | | | | |
| (2) | | | | | | |
| (3) | | | | | | |

Volume 2, Sub-Volume [●]:²⁹

| N o. | SOQ Heading(s) | SOQ Section(s) | SOQ Page(s) | Other Identifying Information (if any) | Relevant CORA Exemption(s) | <u>Duration of Exemption</u> |
|------|----------------|----------------|-------------|--|----------------------------|--|
| (1) | | | | | | |
| (2) | | | | | | |
| (3) | | | | | | |

²⁹ Replicate this table as needed for each Sub-Volume.

FORM C: INFORMATION REGARDING PROPOSER

Instructions

Please generally see Section 2.1.1 of the Volume 1 Requirements. In addition:

- (1) For all Core Proposer Team Members, complete Sections A and B.
- (2) If information requested in relation to an entity is not relevant to such entity, state "Not applicable".

Proposer Name: [Proposer to provide]

Form C: Core Proposer Team Member Information

A. Team Member and Role

(1) **Name of Team Member:**

[Proposer to provide]

(2) **Role:**

- Equity Member
- Lead Contractor
- Lead Engineer
- Lead Operator
- Joint venturer in Lead
- [Contractor][Engineer][Operator]
- ~~[Proposer to delete as appropriate]~~
- Financially Responsible Party for
[Proposer to provide entity name]

B. Legal Information

(1) **Type of Legal Entity:**

- Corporation
- Limited Liability Company
- Joint Venture
- Partnership
- Other: [Proposer to provide]

(2) **Year Established:**

_____ [Proposer to provide]

(3) **Country of Organization or Formation
(and, if US or Canada, state or Province of
Organization or Formation):**

_____ [Proposer to provide]

(4) **Federal Tax ID:**

_____ [Proposer to provide]

(5) **Authorized to do Business in Colorado:**

- Yes (ID No.: [Proposer to provide])
- No

(6) **North American Industry Classification
Code:**

_____ [Proposer to provide]

(7) **Prior Name(s) (past five years):**

_____ [Proposer to provide]

(8) **Successor in Interest to Entity/Entities (if
any, past five years):**

_____ [Proposer to provide]

FORM D: LEGAL DISCLOSURES

Instructions

Please generally see Section 3.2.1 of the Volume 1 Requirements. In addition:

- (1) For purposes of this Form, the relevant experience of an entity is deemed to include experience on any Reference Project in which its level of involvement was at least equivalent to the relevant threshold set out in instruction (23) to Form F (*Project Experience*).
- (2) For the relevant project owner's or contract counterparty's contact information, please submit a current name, title, phone number and email address of an individual employed by the owner or counterparty involved in the relevant dispute, breach of contract or termination.
- (3) If the relevant circumstances described in either question do not apply to any of Proposer's Core Proposer Team Members, or any Affiliate of any of them, replace the relevant table with "None applicable."

Proposer Name: [Proposer to provide]

Form D: Summary of Legal Liabilities and Proceedings

Question 1:

List and briefly describe all instances during the last five years involving Reference Projects in relation to which any Core Proposer Team Member or any Affiliate of any of them:

- (a) was determined by a court of law or in an arbitration proceeding, a dispute review board proceeding or any other dispute resolution proceeding to be liable for a material breach of contract;
- (b) was otherwise acknowledged in writing to be liable for a material breach of contract;
- (c) had a contract terminated for cause or convenience; or
- (d) received a written waiver of another party's right to terminate a contract for cause.

Response to Question 1

| | | |
|-----|--|--|
| | [Role of Entity in Proposer]: [Entity Name] | |
| (1) | Description: | |
| | Owner's or Counterparty's Representative: | |
| | [Role of Entity in Proposer]: [Entity Name] | |
| (2) | Description: | |
| | Owner's or Counterparty's Representative: | |

Question 2:

List and briefly describe (including as to the resolution) each arbitration, litigation, dispute review board and other dispute resolution proceeding (including to the extent settled prior to completion of the proceeding) occurring during the last five years related to Reference Projects, which involved:

- (a) a claim or dispute between the project owner(s) (or any public-private partnership project company, concessionaire, developer or the equivalent), on the one hand, and any Core Proposer Team Member or any Affiliate of any of them, on the other hand; and
- (b) an amount in excess of the lesser of:
 - (i) 2% of the original contract value; or

- (ii) \$500,000 on projects with an original contract value in excess of \$25 million.

Response to Question 2

| | | |
|-----|---|--|
| | <u>[Role of Entity in Proposer]:</u> [Entity Name] | |
| (1) | <u>Description:</u> | |
| | <u>Owner's or Counterparty's Representative:</u> | |
| | <u>[Role of Entity in Proposer]:</u> [Entity Name] | |
| (2) | <u>Description:</u> | |
| | <u>Owner's or Counterparty's Representative:</u> | |

FORM E: CERTIFICATIONS

Instructions

Please generally see [Sections 3.2.2](#) and [3.2.3](#) of the [Volume 1 Requirements](#). In addition:

- (1) In [Part A](#), references to an entity include the relevant experience of any entity to which it is a successor or assign (but only to the extent the experience is legally deemed to be that of the firm as a result of the relevant succession or assignment).
- (2) [The certifications in this Form E that are required in respect of Affiliates are limited to Affiliates that have engaged in business or investments in North America during the past 10 years.](#)
- (3) An authorized representative of each Core Proposer Team Member is required to sign the certification set out at the end of the form of certifications in [Part B](#).
- (4) The signature block on this Form may be modified as needed to properly reflect the authority of the person signing.

Proposer Name: *[Proposer to provide]*

Form E

Part A: Summary of Certifications

| No. | Entity Providing a completed Part B of Form E | Role of such Entity on Proposer ³⁰ | Answered Yes to One or More Certifications of Questions (1) through (8) of Part B? | |
|-----|---|---|---|-----------------------------|
| (1) | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (2) | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (3) | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (4) | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (5) | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (6) | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (7) | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

³⁰ E.g. Equity Member, Financially Responsible Party, Lead Contractor, Lead Engineer or Lead Operator.

Proposer Name: [Proposer to provide]
Name of Team Member: [Proposer to provide]
Role on Proposer: Equity Member
 Lead Contractor
 Lead Engineer
 Lead Operator
 Joint venturer in Lead [Contractor][Engineer][Operator]
 Financially Responsible Party for [~~Proposer to delete as appropriate~~]
 Financially Responsible Party for [Proposer to provide relevant entity]

Part B: Certifications

| <u>N</u> | <u>Certification Questions</u> | <u>Yes</u> | <u>No</u> |
|------------------|---|--------------------------|--------------------------|
| <u>o.</u> | | | |
| (1) | Has the entity or any Affiliate or any current officer thereof been indicted or convicted of bid or other contract related crimes or violations (i.e., fraud, bribery, collusion, conspiracy, antitrust, etc.) or any other felony or serious misdemeanor within the past ten years? <i>If yes, please explain, including the name of the relevant prosecuting agency, the applicable law(s) and the status of any appeal(s).</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| (2) | Has the entity or any Affiliate ever sought protection under any provision of any bankruptcy act, law or regulation in any jurisdiction within the past ten years? <i>If yes, please explain, including identification of the relevant jurisdiction(s) and applicable laws, and the status or outcome of any resulting bankruptcy process.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| (3) | Has the entity or any Affiliate ever been disqualified, removed, debarred or suspended from performing work for the US Federal government, any US state or local government, or any foreign governmental entity within the past ten years? <i>If yes, please explain, including the name of the relevant public agency, the date, grounds and results of any such action:</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| (4) | Has the entity or any Affiliate ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or other material misrepresentation to a public entity within the past ten years? <i>If yes, please explain, including owner contact information:</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| (5) | Has any construction or project or operations and maintenance contract performed or managed by the entity or, to the knowledge of the undersigned, any Affiliate involved repeated or multiple failures to comply with safety rules, regulations or requirements within the past ten years? <i>If yes, please explain:</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| (6) | Has the entity or any Affiliate been found, adjudicated or determined by any Federal court, Federal agency, state court or state agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Colorado governmental agency) to have violated any law or executive order relating to employment discrimination or affirmative action within the past ten years, (including but not limited to Title VII of the Civil Rights Act of 1964, as | <input type="checkbox"/> | <input type="checkbox"/> |

N **Certification Questions**
o.

Yes **No**

amended (42 U.S.C. Sections 2000 et seq.); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Colorado law)?

If yes, please explain:

- (7) Has the entity or any Affiliate been found, adjudicated, or determined by any Federal court, Federal agency, state court or state agency to have violated or failed to comply with any law or regulation of the United States or any state within the past ten years governing prevailing wages (including but not limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

If yes, please explain:

- (8) With respect to each of Questions 1-7 above, if not previously answered or included in a prior response on this Form, is any [legally effective or recognized form of](#) notice, [or](#) warning, [or](#) investigation, proceeding, claim, matter, suit, indictment, etc., currently pending against the entity that could (assuming subsequent necessary actions are taken) result in the entity being found liable, guilty or in violation of any of laws or regulations referenced in Questions 1-7 above and/or subject to debarment, suspension, removal or disqualification by the Federal government, any state or local government, or any foreign governmental entity?

If yes, please explain and submit the information requested as to such similar items set out in Questions 1-7 above.

- (9) Under penalty of perjury, the undersigned certifies on behalf of the entity for which he or she signs that each of the foregoing representations, certifications, statements and disclosures is correct, complete and not materially misleading:

[role of team member]: *[insert entity name]*

By: _____

Printed Name: *[insert name]*

Title: *[insert title]*

FORM F: PROJECT EXPERIENCE

Instructions

Please generally see Section 4.1 of the Volume 1 Requirements. In addition:

- (1) Complete:
 - (a) Sections I., II., III. and IV. for all projects; and
 - (b) Section V. only for projects referenced with respect to Proposer's experience as relevant for purposes of Section 2.1.a of the Substantive Evaluation Criteria.
- (2) For the "Core Proposer Team Member(s) Involved", check all that apply to the relevant Reference Project. If more than one Core Proposer Team Member was involved in the relevant Reference Project (including through an Affiliate), the completed Form may highlight different aspects of the Project experience as relevant to each Core Proposer Team Member (including its Affiliate), provided that the relevant Core Proposer Team Member is clearly identified in connection with its or its Affiliate's experience.
- (23) In order to qualify as relevant experience for Sections 1.1.b and 2.1.a of the Substantive Evaluation Criteria, the entity or entities to which such experience relates shall have had at least the following level of involvement in that project or transaction (provided that the percentage thresholds referred to below may be satisfied by the involvement of an Affiliate of the relevant Core Proposer Team Member in the relevant project or transaction):
 - (a) for Equity Members, at least either (i) a 30% direct or indirect equity investment (including shareholder loans) in the company acting as the developer; or (ii) at least a 10% direct or indirect equity investment (including shareholder loans) in the company acting as the developer but only if such Equity Member (or its Affiliate) was also the Lead Contractor with at least the level of involvement in that project or transaction required by instruction (3)(b) below, and in the case of either (i) or (ii) where such Equity Member (x) invested or committed to invest equity at the same time as all other original equity investors and (y) participated in the project development and procurement process for the majority of the period following shortlisting (in a two stage procurement) or issuance of a request for proposals (in a one stage procurement);
 - (b) for a Lead Contractor, at least 30% of the primary responsibility for the project's construction;
 - (c) for a Lead Engineer, at least 30% of the primary responsibility for the project's design and engineering; and
 - (d) for a Lead Operator, at least 30% of the primary responsibility for the project's operations and maintenance work,provided that, if the Lead Contractor, Lead Engineer or Lead Operator is a Joint Venture, only the experience of members or partners that will perform at least 30% of the relevant work by value for the Project (as otherwise indicated in the SOQ) may be listed.
- (34) In addition, in order to qualify as relevant experience for Section 2.1.a of the Substantive Evaluation Criteria:
 - (a) the Reference Project must have achieved financial close; and
 - (b) the entity or entities to which such experience relates must have had at least the level of involvement in the project or transaction specified in instruction (23) above at the time of financial close.
- (45) All values should be given in US Dollars. Identify exchange rates of amounts in other currencies using the exchange rate as of March 25, 2015 as published in the Wall Street Journal.

Proposer Name: [Proposer to provide]

Core Proposer Team Member(s) Involved:

Equity Member: [Name]³¹

Lead Contractor

Lead Engineer

Lead Operator

Joint venturer in Lead [Contractor][Engineer][Operator]³² [Name]

Affiliate(s) of [Equity Member (Name)] [Lead Contractor] [Lead Engineer] [Lead Operator]: [Name]³³

Form F: Project/Transaction Description

| No. | Required Information | Response ³¹³⁴ |
|---------------------------|---|---|
| I. Background Information | | |
| (1) | Project Name: | |
| (2) | Type of Facility: | [e.g. interstate toll road with managed lanes, bridge and connector roads, etc.] |
| (3) | Owner/Procuring Authority: | |
| (4) | Brief Description of Project: | |
| (5) | Contract Term: | [state both total term length and start and end dates for the contract] |
| (6) | Current Status: | [e.g. under construction (including approx. % complete), in operation etc.] |
| (7) | Key Dates and Milestones: ³²³⁵ | Key Dates/Milestones: [Contract execution: [●] (anticipated/contracted); [●] (actual) Commencement of design (if separate from construction): [●] (anticipated/contracted); [●] (actual) Commencement of construction: [●] (anticipated/contracted); [●] (actual) Achievement of Substantial Completion: [●] (anticipated/contracted); [●] (actual) Service/Operations Commencement: [●] (anticipated/contracted); [●] (actual) Achievement of Final Completion: [●] (anticipated/contracted); [●] (actual) End of Service/Operations: [●] (anticipated/contracted); [●] (actual)] ³³³⁶ |
| (8) | Relevance to the Project: | [Brief description of key aspects of project/transaction experience that are particularly relevant to the Project, to the extent not clear below, which should explain the relevance of such aspects and not |

³¹ If more than one Equity Member is relevant, add an additional checkbox and line for each Equity Member.

³² If more than one Joint Venture or Joint Venture member is relevant, add an additional checkbox and line for each Joint Venture and Joint Venture member.

³³ If more than one Affiliate is relevant, add an additional checkbox and line for each Affiliate.

³¹³⁴ Bracketed and italic text in the “Response” column constitutes additional guidance for completing this Form, which should be deleted when completing the Form.

³²³⁵ The schedule should generically refer to the period of time that events occurred after contract execution, rather than to specific calendar months and years (e.g. June 2012) in order to facilitate comparison across projects.

³³³⁶ Modify as necessary.

| | | |
|---|--|---|
| | | <i>just their existence. This should include cross-references to potentially relevant Substantive Evaluation Criteria.]</i> |
| II. Description of Team Member Involvement | | |
| (9) | Proposer Team Member(s) <u>(or Affiliate(s))</u> Involved: | <i>[For Core Proposer Team Members, describe how the entity's level of involvement satisfies the applicable threshold percentage of equity and/or responsibility referred to in instruction (3) to this Form and therefore satisfies the requirements for a Reference Project.]</i> <i>[For Affiliates, also (i) describe the relationship of the Affiliate to the Core Proposer Team Member, (ii) describe how the applicable threshold percentage of equity and/or responsibility referred to in instruction (3) to this Form flows through the relevant corporate organizational structure and therefore satisfies the requirements for a Reference Project and (iii) explain how such experience will be made available to and applied by the relevant Core Proposer Team Member in the context of the Project.]</i> |
| (10) | Role of Proposer Team Member(s) <u>(or Affiliate(s))</u> : | <i>[State whether the entity was involved in all or just some phases or aspects of the project.]</i> |
| (11) | Key Personnel Involved, Roles & Responsibilities: | |
| III. Reference | | |
| (12) | Name: | |
| (13) | Title & Employer (current): | |
| (14) | Title & Employer (at time of project/transaction): | |
| (15) | Phone & Email: | |
| (16) | Location & Time Zone: | |
| (17) | Other: ³⁴³⁷ | |
| IV. Technical Information | | |
| (18) | Construction Value: | <i>[See defined term "Construction Value".]</i> |
| (19) | Completion within/above Budget: | <i>[Detail (by approximate value and percentages) amount over/under budget and briefly explain reasons for such deviations.]</i> |
| (20) | O&M Value: | <i>[Approximate annual service payment when facility is fully in service (assuming no deductions).]</i> |
| (21) | Length of Road under Operation (centerline miles): | <i>[Before and after any construction activities, where operations predate e.g. completion of an expansion project.]</i> |
| (22) | Key Technical Challenges and Solutions Implemented: | |
| V. Financial Information | | |
| (23) | Payment Mechanism: | <i>[Identify and describe type of payment structure in detail, including matters such as payment indexation, basic deduction regime, etc. If construction period payments were made by the public sector, identify the percentage of the total construction cost that was paid during construction from such payments.]</i> |
| (24) | Source(s) of Revenues or Payments: | <i>[E.g. toll revenues, government appropriations, grants, etc. Identify differences between the sources of funds allocated toward different payments to developer/concessionaire, as applicable.]</i> |
| (25) | Proposer Team Member(s) Equity Investment: | <i>[Include value, percentage of the whole and method of investment.]</i> |
| (26) | Financing Method(s) and | <i>[Identify features such as TIFIA financing, PABs, bank loans and</i> |

³⁴³⁷ Include any other notes that may be useful when speaking to this individual e.g. that they are a non-English speaker, etc.

| | | |
|------|---|--|
| | Value(s): | <i>other credit and financing products, and the principal amount of each type of financing.]</i> |
| (27) | Key Financial and Funding Challenges and Solutions Implemented: | |

FORM G: SAFETY QUESTIONNAIRE

Instructions

Please generally see [Section 4.2](#) of the [Volume 1 Requirements](#). In addition, information on how to calculate fatal injury rates and the incidence rates is available at the United States Department of Labor, Bureau of Labor Statistics website: www.bls.gov/iif/oshcfoi1.htm. Additional instructions on how to calculate incidence rates is available in the instructions on completing "OSHA Forms for Recording Work-Related Injuries and Illnesses" (OSHA Forms 300, 300A, 301). Further information regarding Heavy and Civil Engineering Construction (NAICS 237) industry data may be found via the United States Department of Labor website: www.bls.gov/iag/tgs/iag237.htm.

Proposer Name: [Proposer to provide]
Name of Team Member: [Proposer to provide]
Role on Proposer: Lead Contractor
 Lead Engineer
 Lead Operator
 Joint venturer in Lead [Contractor][Engineer][Operator]:
[Proposer to delete as appropriate[Name](#)]

Form G: Safety Questionnaire

A. Required Statistics

(1) Please provide the following information:

| Data Series | 2011 | 2012 | 2013 | 2014 |
|--|-------------|-------------|-------------|-------------|
| <u>Fatalities</u> | | | | |
| Total Number of Fatalities (Workers): | | | | |
| Fatal Injury Rate: | | | | |
| Total Number of Fatalities (Members of the Public): | | | | |
| <u>Other Incidents</u> | | | | |
| Total Number of Non-fatal Recordable Cases: | | | | |
| - Cases with Days Away from Work: | | | | |
| - Cases with Job Transfer or Restriction: | | | | |
| - Other Non-fatal Recordable Cases: | | | | |
| OSHA Incident Rate: | | | | |
| DART Rate: | | | | |
| Total Number of Non-fatal Injuries to Members of the Public: | | | | |
| <u>Lost Work Days</u> | | | | |
| Total Lost Work Days: | | | | |

| Data Series | 2011 | 2012 | 2013 | 2014 |
|---------------------|-------------|-------------|-------------|-------------|
| Lost Workday Index: | | | | |

| | | | | |
|--|--|--|--|--|
| Cost of Accidents | | | | |
| Cost of Accident per Employee: | | | | |
| Cost of Accidents involving Members of the Public: | | | | |
| Safety Metrics | | | | |
| OSHA Incident Rate | | | | |
| EMR: | | | | |

Where:

- (a) Fatal Injury Rate = (Number of fatal work injuries x 200,000,000) / total employee hours worked during the calendar year.
- (b) Non-fatal Recordable Cases refers to non-fatal occupation injuries and illnesses for Heavy and Civil Engineering Construction, as defined by the North American Industry Classification System (NAICS 237).
- (c) OSHA Incident Rate = (Number of cases of injury and illness x 200,000) / total employee hours worked during the calendar year.
- (d) DART Rate = (Number of recordable incidents of injury or illness that resulted in days away (lost), restricted or transferred during the calendar year) / 100 full time employees.
- (e) Lost Workday Index = (Number of lost workdays x 200,000) / total employee hours worked during the calendar year.
- (f) Cost of Accident per Employee = Total cost of accidents / average number of employees.
- (g) EMR refers to the National Council on Compensation Insurance (NCCI) Experience Modification Rating.

B. Questions Regarding Safety Record and Approach

- (1) How is your entity's management included in the accident reduction process?

Response:

- (2) How often do you hold site meetings for supervisors for a typical Reference Project? If you do not hold meetings, why not?

Response:

- (3) How often do you conduct project safety inspections? Who conducts these inspections? If you do not, why not?

Response:

- (4) Please describe your written safety program. If you do not have one, explain why.

Response:

- (5) Please describe your preferred methods for securing worksites in urban environments, including as such methods may promote the safety of members of the local community.

Response:

- (6) Please describe your orientation or training program for new hires and for newly promoted individuals (including foremen), including any safety related elements. If you do not have such a program, explain why.

Response:

- (7) With respect to no. (76) above, for any program that relates to foremen, indicate whether it includes instruction on the following:

| Topic | Yes | No |
|--------------------------------|--------------------------|--------------------------|
| Safety Work Practices | <input type="checkbox"/> | <input type="checkbox"/> |
| Safety Supervision | <input type="checkbox"/> | <input type="checkbox"/> |
| On-site Meetings | <input type="checkbox"/> | <input type="checkbox"/> |
| Emergency Procedures | <input type="checkbox"/> | <input type="checkbox"/> |
| Accident Investigation | <input type="checkbox"/> | <input type="checkbox"/> |
| Fire Protection and Prevention | <input type="checkbox"/> | <input type="checkbox"/> |
| New Worker Orientation | <input type="checkbox"/> | <input type="checkbox"/> |

- (8) How often does your entity hold safety meetings which extend to the laborer level, and how does this vary by type of project? If you do not hold such meetings, explain why not.

Response:

- (9) Please explain any program or written practices that expressly address the safety of the traveling public and the safety of personnel within the construction area. If the entity has no such program or practices, explain why not.

Response:

- (10) Please describe any differences between the entity's standard or typical safety program or practices as described in your responses to (1) through (9) above and (a) the entity's safety program or practices on projects similar to this Project in size and scope and/or (b) the anticipated safety program or practices for this Project as may be preliminarily anticipated in the statement of technical approach included in the SOQ in accordance with Section 5 of the Volume 1 Requirements.

Response:

FORM H: STAKEHOLDER AND ECONOMIC ENGAGEMENT QUESTIONNAIRE

Instructions

Please generally see Section 4.3 of the Volume 1 Requirements. In addition, responses should relate to Proposer's plans for this Project and/or to the collective experience of its Core Proposer Team Members, [\(including the experience of Affiliates of Core Proposer Team Members for whom a completed Form F \(Project Experience\) is included in the SOQ in accordance with Section 4.1 of the Volume 1 Requirements\)](#),³⁸ as applicable.

Proposer Name: [Proposer to provide]

Form H: Stakeholder and Economic Engagement Questionnaire

No Questions & Responses

- (1) Describe your experience on Reference Projects located in neighborhoods designated as environmental justice communities.

Response:

- (2) To the extent not addressed in the response to (1) above, describe Proposer's experience on Reference Projects where environmental concerns (including noise, air quality, ground water, and/or hazardous materials management concerns), traffic management concerns, concerns regarding access to businesses, residences and other resources located within the affected community, and the generalized impacts of construction were among the primary concerns of the local community.

Response:

- (3) Sharing information with the local community will be critical to a successful Project. Describe Proposer's preferred methods of (a) engagement with local communities, including with residents living in close proximity to a Reference Project, and (b) coordination of such activities with the owner.

Response:

- (4) Close coordination with affected local governments during all phases of the Project is expected. Describe Proposer's preferred methods of coordination with a closely involved local government partner.

Response:

- (5) Describe your achievements in obtaining small and disadvantaged business participation on Reference Projects, including whether you have met or exceeded required goals and/or electively implemented any non-required approaches to outreach, education, communication and/or business development.

Response:

- (6) Describe your achievements in developing the workforce on Reference Projects, including whether you have met program requirements and/or electively implemented any non-required approaches to workforce development such as partnering and/or outreach.

³⁸ [For Affiliates, please briefly \(i\) describe the relationship of the Affiliate to the Core Proposer Team Member and \(ii\) explain how the Affiliate's experience referenced in this Form will be made available to and applied by the relevant Core Proposer Team Member in the context of the Project.](#)

No Questions & Responses

•

Response:

FORM I: KEY PERSONNEL

Instructions

Please generally see Section 4.4 of the Volume 1 Requirements. In addition:

- (1) Excluding the page required under instruction (2) below, each resume shall not exceed two pages in length and shall include (in the following order):
 - (a) an introductory narrative statement of up to one quarter page in length explaining the relevance of the individual's qualifications;
 - (b) years of experience performing similar work;
 - (c) length of employment with current employer and all prior employers (the names of each of which must be specified) for at least the past 10 years;
 - (d) title, employer, roles and responsibilities on (i) any of the projects listed in a completed Form F (Project Experience) and (ii) any other potentially relevant Reference Projects; and
 - (e) identification of any relevant (i) licenses and/or registrations, (ii) community or professional organization service activities or recognitions and/or (ii) professional disciplinary actions.
- (2) Each resume shall include details of three references on a third page in the format provided in Annex A to this Form. References shall be previous owners, clients or employers on projects on which the individual has worked within the past five years. If the individual has worked on less than three projects that meet these criteria, then other references may be included but shall clearly be marked as such.

Proposer Name: [Proposer to provide]

Form I: List of Key Personnel

By submitting this completed form, Proposer is deemed to confirm that each of the below named individuals is, and is reasonably expected to remain, available to serve in the position indicated by their name in connection with the Project for the period for which such position will be required to be filled as specified below.³⁵³⁹

Construction Design-Build Manager

Position Description: The **Construction Design-Build Manager** is responsible for overseeing all aspects of the design and construction work.

Minimum Period of Availability: From commercial close to total construction completion.

Name:

Title:

Current Employer:

To be seconded to/employed by: Lead Contractor³⁶⁴⁰

Design Manager

Position Description: The Design Manager is responsible for the management of the design team, including ensuring all design requirements are met.

Minimum Period of Availability: From commercial close to total construction completion.

Name:

Title:

Current Employer:

³⁵³⁹ For purposes of this confirmation, a Proposer may reasonably expect an individual will remain available to serve in a particular position while also anticipating that the Project Agreement will provide a mechanism to allow the Developer to identify suitable replacements under customary circumstances for a project of this kind.

³⁶⁴⁰ The **Construction Design-Build Manager** must be employed by or seconded to Lead Contractor.

To be seconded to/employed by: Lead Engineer³⁷⁴¹

O&M Manager

Position Description:

The O&M Manager is responsible for all operations, maintenance and/or (at Proposer's election) rehabilitation work. From commercial close to end of Project Agreement term.

Minimum Period of Availability:

Name:

Title:

Current Employer:

To be seconded to/employed by: Lead Operator³⁸⁴²

Quality Manager

Position Description:

The Quality Manager is responsible for ensuring that Developer (and all sub-contractors) satisfy all quality requirements on the Project, including, as a minimum, oversight of the establishment and maintenance of a quality maintenance system.

Minimum Period of Availability:

From commercial close to total construction completion; and separately through to the end of Project Agreement term.

Name:

Title:

Current Employer:

To be seconded to/employed by: Developer³⁹⁴³

Environmental Manager

Position Description:

The Environmental Manager is responsible for ensuring compliance with all environmental obligations.

Minimum Period of Availability:

From commercial close to the second anniversary of total construction completion.

Name:

Title:

Current Employer:

To be seconded to/employed by: Developer⁴⁰⁴⁴

Utilities Manager

Position Description:

The Utilities Manager is a management role with a minimum of five years of relevant experience on major infrastructure projects. This role is responsible for managing all required utility works and coordination with utility companies.

Minimum Period of Availability:

From commercial close to total construction completion.

Name:

Title:

Current Employer:

To be seconded to/employed by: Lead Contractor

³⁷⁴¹ The Design Manager must be employed by or seconded to Lead Engineer.

³⁸⁴² The O&M Manager must be employed by or seconded to Lead Operator.

³⁹⁴³ The Quality Manager must be employed by [or seconded to](#) Developer.

⁴⁰⁴⁴ The Environmental Manager must be employed by or seconded to Developer.

Community and Public Relations Manager

Position Description: The Community and Public Relations Manager is responsible for media relations, crisis management and community engagement activities in coordination with HPTE and BE.

Minimum Period of Availability: From commercial close to the second anniversary of total construction completion.

Name:

Title:

Current Employer:

To be seconded to/employed by: Developer⁴⁴⁴⁵

⁴⁴⁴⁵ The Community and Public Relations Manager must be employed by or seconded to Developer.

**Annex A to Form I
Form for Key Personnel References**

Proposer Name: *[Proposer to provide]*
Position: *[relevant Key Personnel position]*
Individual: *[name]*

References

| Required Information | Reference No. 1 | Reference No. 2 | Reference No. 3 |
|---|------------------------|------------------------|------------------------|
| Project(s)/Transaction(s) (name and cross-reference in SOQ to relevant <u>Form F</u> (if applicable)): | | | |
| Reference's Name: | | | |
| Reference's Title (current): | | | |
| Reference's Employer (current): | | | |
| Reference's Title (at time of project/transaction): | | | |
| Reference's Employer (at time of project/transaction): | | | |
| Reference's Phone and Email: | | | |
| Reference's Location and Time Zone: | | | |
| Other: ⁴²⁴⁶ <u> </u> | | | |

⁴²⁴⁶ Include any other notes that may be useful when speaking to this individual e.g. that they are a non-English speaker, etc.

FORM J: CREDIT RATINGS

Instructions

Please generally see Section 4.4 of the Volume 2 Requirements. In addition:

- (1) For "Role" and "Name" indicate, respectively, role of Core Proposer Team Member in Proposer team and such member's legal name.
- (2) If any entity that is rated by one or more Rating Agencies is not rated by any other Rating Agency, indicate "Not rated".

Proposer Name: [*Proposer to provide*]

Form J: Credit Ratings

| Role | Entity Name | Fitch | Moody's | S&P | DBRS |
|------|-------------|-------|---------|-----|----------------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |