STATE OF DELAWARE

DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD PROJECT

for

INDIAN RIVER INLET BRIDGE

Replacement of Bridge 3-156,
SR1 over Indian River Inlet
State Contract # 26-073-03 Readvertised
Federal Contract # BRN-S050(14)

SCOPE OF SERVICES PACKAGE

INSTRUCTIONS TO PROPOSERS

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1.0 INTRODUCTION

This Scope of Services Package is issued by the Delaware Department of Transportation (Department) to seek competitive Proposals for the Replacement of Bridge 3-156, SR1 over Indian River Inlet Project (Project). Proposals will only be considered from those Proposers that have been notified of their inclusion on the Short-List.

The Project shall utilize a Design Build delivery method and is to include services associated with the design, construction, and inspection of a new bridge having an overall length of approximately 2600 feet while providing a minimum of 900 feet of horizontal clearance over the Indian River Inlet in Sussex County, Delaware. The new bridge will be located on a new alignment just west of the existing Delaware State Route 1 (SR 1) inlet crossing and is to be properly designed and constructed to meet the new roadway approaches being constructed under separate contract. As part of the Department's initial design and development for the overall Project, utility provisions, rights of way, and permits needed to perform the anticipated work were obtained. The utility relocations, rights of way available, and permits will also apply to the new Design Build bridge replacement project as detailed in the Scope of Services Package.

In the preparation of the Proposals, Proposers should address and/or consider the Project goals identified in Instructions to Proposers (ITP) Section 1.1.

See also Part 1 - Appendix A of the Contract Documents, Agreement .

Appendix E contains a complete list of Abbreviations and Definitions of specific terms referenced throughout this Request For Proposal (RFP).

1.1 PROJECT GOALS

The following are the Delaware Department of Transportation's goals for the Project:

A) Issue the Notice to Proceed for the Contract by summer 2008;
B) Completion of a serviceable Project by December 31, 2011;
C) Design and construction of a maintainable, easily inspectable, long-lasting bridge;
D) Design and construction of a Project of the highest quality that is both durable and aesthetic;
E) Construction that is safe;
F) A Project that is sensitive to the environment, the community, and adjacent Park;
G) A Project that allows the Department to evaluate the Design-Build (DB) project delivery method, and;
H) A Project delivered ***within or under*** the Department's budget.

1.2 THE PROPOSAL

1.2.1 Documents in the Scope of Services Package

The documents issued as part of this Scope of Services Package consist of the following:

A) Instructions to Proposers;
B) Contract Documents Parts 1 through 8, inclusive;
C) Reference Documents; and
D) Additional documents issued by Addenda to this Scope of Services Package.

1.2.2 Technical Proposal

The Technical Proposal, consisting of the Technical Proposal and the Supplemental Selection Information requested in Appendix A to this ITP, shall be submitted as specified therein.

1.2.3 Lump Sum Price Proposal

The Lump Sum Price Proposal and any Supplemental Pricing Information requested in Appendix B to this ITP shall be submitted as specified therein.

1.2.4 Inclusion in Contract

Only that portion of the Technical Proposal information identified in Section A1.0 of Appendix A to this ITP and the Lump Sum Price Proposal and Supplemental Pricing Information identified in Appendix B to this ITP submitted by the successful Proposer will be included with and bound into the Contract as Part 8 - Proposal Information at execution. The Executive Summary, Summary Statement, and information submitted in Appendix A of the Technical Proposal, as specified in Appendix A to this ITP, are for evaluation purposes only and will not be included as part of the Contract Documents.

1.2.5 Required Forms

Failure to provide all the information and all completed forms (see Appendix C to this ITP) in the format specified in Appendices A and B of this ITP may result in the Department's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms shall be filled in as noted and no change shall be made in the phraseology of the Scope of Services Package or in the items mentioned therein.

1.2.6 Language in Proposal

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

1.2.7 Property of the Department

All documents submitted by the Proposer in response to this Scope of Services Package will become the property of the Department except for the Escrow Proposal Documents and any documents that have been properly identified as containing confidential proprietary or trade secret information in accordance with Section 2.6. Documents will not be returned to the Proposer except as specified in Sections 2.6 and 3.4.3. The concepts and representations in the information contained in the Proposal submitted by a Proposer accepting a stipend, will also become the property of the Department.

1.2.8 Errors

If the Proposer identifies any mistake, error, or ambiguity at any time during the Proposal process in any of the documents supplied by the Department, the Proposer shall have a duty to

notify the Department of the recommended correction in writing in accordance with Section 2.2.

1.3 IMPROPER CONDUCT

1.3.1 Prohibited Activities

If the Proposer, or Person(s) representing the Proposer, offers or gives any advantage, gratuity, bonus, discount, bribe, or loan of any sort to the Department, including its agents or Person(s) representing the Department at any time during this procurement process, the Department shall immediately disqualify the Proposer; the Proposer shall forfeit its Proposal Security; the Proposer shall not be entitled to any payment, including the stipend; and the Department may sue the Proposer for damages.

1.3.2 Proposal Certification Form

The Proposer shall provide as part of the supporting information the Proposal Certification Form (Appendix C to this ITP) attesting to, among other things, Non-Collusion . See also Appendix A to this ITP.

1.4 LANGUAGE REQUIREMENT

All correspondence regarding the Scope of Services Package, Proposal, and the Contract are to be in the English language. If any original documents required for the Proposal are in any other language, the Proposer shall provide an English translation, which shall take precedence in the event of conflict with the original language.

1.5 PROPOSAL SCHEDULE

1.5.1 Anticipated Schedule

The following schedule is anticipated. The schedule is subject to change at the discretion of the Department.

Activity	Due Date
Pre-Proposal Meeting	January 30, 2008
Issue Request For Proposals	January 30, 2008
Concept Plan Presentations the week of	February 25, 2008
Last Day to Submit Questions	April 8, 2008
Final Technical Proposal Due	April 10, 2008
Final Cost Proposal Due Date	May 1, 2008
Notice to Apparent Successful Proposer	May 5, 2008
Protest Deadline of RFP	May 6, 2008
Submittal of DBE Subcontracts	May 15, 2008
Award (No later than)	May 31, 2008
Issue Notice-to-Proceed Prior to	July 7, 2008
Work begins on or about	July 21, 2008

1.5.2 Technical and Price Proposal Due Date

The completed Technical and Price Proposals shall be delivered to the addressee at the address specified below, no later than 2:00 p.m. (Local Time), on the date specified in Section 1.5.1:

Delaware Department of Transportation Attention: Mr. John V. Eustis, Jr. Contract Services Project Manager Bidder's Room (B1.11.01)	
By Courier or Delivery Service	By USPS Mail
800 Bay Road Dover, DE 19901	P.O. Box 778 Dover, DE 19903

Each Proposer shall be responsible for obtaining a written receipt appropriate to the means of delivery from the Department office specified in this Section 1.5.2 at time of delivery of its Proposal. ***It is the Proposer's sole responsibility to ensure delivery of its Proposal to the Department at the time and place specified above.***

1.6 INSURANCE

Refer to Contract Documents Part 2 - DB Section 107-2.2 for insurance requirements. Insurance certificates shall be submitted with the Contract that has been signed by the Proposer, as a condition of execution by the Department.

1.7 CHANGES TO THE PROPOSER'S ORGANIZATION

If the Proposer wishes to change the organization represented in its SOQ by adding, deleting, or substituting a Principal Participant, a Designer, and/or the QC Engineer, or if the role of a Principal Participant changes from the role identified in the Proposer's SOQ, the Proposer must submit a request to change its organization not later than 45 working days prior to the Proposal due date identified in Section 1.5.1. If a request is made to add to the organization, the Proposer shall submit with its request that information specified for a Principal Participant, Designer, and/or QC Engineer in the RFQ, including legal and financial data as well as the information for quality evaluation. If a Principal Participant, Designer, and/or QC Engineer is being deleted, the Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ criteria (pass/fail and technical).

If the Proposer wishes to change any of the key personnel presented by the Proposer in its SOQ, the Proposer must submit a request to change its organization not later than 45 working days prior to the Proposal due date identified in Section 1.5.1. If a request is made to change key personnel, the Proposer shall submit with its request that information specified for that key personnel in the RFQ, including a resume.

1.8 INELIGIBLE FIRMS

The Proposer shall include a full disclosure of all potential organizational conflicts of interest in their Proposal. In addition, any firm that is rendered ineligible due to any state or federal action is ineligible to participate with any Proposer.

1.9 SCOPE OF WORK

Refer to Contract Documents Part 1 for a description of the scope of the Work.

1.10 CURRENT PROJECT BUDGET

The Department's current budget for the Design-Build Contract is $150 million.

2.0 PROCUREMENT PROCESS

2.1 METHOD OF PROCUREMENT

The Contract will be procured through a single DB Contract per the Delaware Code. The intent of the Department is to award the Contract to the qualified Proposer with the highest Total Score.

The overall procurement process includes the following two steps:

A) Request for Qualifications/Statement of Qualifications (determination of the Short-List); and
B) Scope of Services Package/Proposals (selection of the Design-Builder from Proposers on Short-List that submit Proposals).

The Design-Builder will be selected based on both pass/fail evaluation factors and technical evaluation of Technical Proposals and Price Proposals that result in the highest Total Score.

2.2 RECEIPT OF THE REQUEST FOR PROPOSAL DOCUMENTS AND OTHER INFORMATION

The Scope of Services Package and other information may be obtained by Proposers that have been notified of their inclusion on the Short-List from the person designated as the Department point of contact in Section 2.2.1. The Department will provide the Scope of Services Package on one set of Compact Discs - Read Only Memory (CD-ROMs).

2.2.1 Delaware Department of Transportation Designated Point of Contact

The Department will only consider questions regarding the Scope of Services Package, including requests for clarification and requests to correct errors, if submitted in writing by a short-listed Proposer. All such requests must be submitted via E-mail in the format shown on Form CF (see Appendix C to this ITP) and addressed to Mr. John V. Eustis, Jr. at *john.eustis@state.de.us* no later than the date specified in Section 1.5.1. Only written requests to the above addressee will be considered. No requests for additional information or clarification to any other Department office, consultant, or employee will be considered. All responses will be in writing and will be delivered without attribution to all Proposers.

In general, the Department will not consider any correspondence delivered in any other way

except as specified above, except the Department may convene informational meetings with Proposers, as it deems necessary. (See Section 4.1.)

2.2.2 Rules of Contact

The following rules of contact shall apply during Contract procurement for the Project, commencing on the SOQ submission date and concluding with execution of the Contract. Contact includes face-to-face, telephone, facsimile, Electronic-mail (E-mail), or formal written communications.

The rules are designed to promote a fair, unbiased, legally defensible procurement process. The Department's Contract Administration Section is the single source of information regarding the Contract procurement. The rules are as follows:

A) A Proposer or any of its team members shall not communicate with another Proposer or its team members with regard to this Scope of Services Package or either Proposer's Proposal, except that Subcontractors that are shared between two or more Proposers may communicate with their respective Proposer team members so long as those Proposers establish a protocol to ensure that the Subcontractor will not act as a conduit of information between Proposers. Contact among Proposer organizations is allowed during Department sponsored informational meetings;
B) The Proposers shall correspond with the Department regarding this Scope of Services Package only through the Department's and Proposer's designated representatives;
C) The Proposers shall not contact Department employees, including, department heads; Primary Evaluation Committee, or Technical Review Committee; and any official who will participate in the decision to Award the Contract regarding the Project except through the process identified above;
D) Any communications determined to be improper, at the sole discretion of the Department, may result in disqualification;
E) Any official information regarding the Project will be disseminated from the Department's designated representative identified in Section 2.2.1 on Department letterhead. Any official correspondence will be in writing and signed by the Department's designated representative; and
F) The Department will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

2.3 ADDENDA AND RESPONSES TO QUESTIONS

2.3.1 Addenda

The Department reserves the right to issue Addenda at any time during the period of the procurement up to 7 calendar days prior to the Final Technical Proposal submittal date, by certified delivery, facsimile transmission or by other verifiable electronic means. The Department will provide Addenda only to the Short-Listed Proposers. Persons or firms that obtain the Scope of Services Package from sources other than the Department bear the sole responsibility for obtaining any Addenda issued by the Department for the Project.

2.3.2 Correspondence and Information

The Proposer shall note that no correspondence or information from the Department or anyone

representing the Department regarding the Scope of Services Package or the Proposal process in general shall have any effect unless it is in compliance with Section 2.2.2.

2.3.3 Responses to Questions

Each Proposer is responsible for reviewing the Scope of Services Package prior to the dates specified for submission of questions in Section 1.5.1 and for requesting clarification or interpretation of any discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision that the Proposer otherwise fails to understand. Any such request must be submitted in accordance with Section 2.2.1. The Department will provide written responses to questions received from Proposers as specified above. Summaries of the questions and responses will be sent to all Proposers without attribution. Responses to Technical Concept questions will not be considered part of the Contract but may be relevant in interpreting the Contract.

2.4 TECHNICAL CONCEPT REVIEW

The Proposer shall present and submit their Initial Technical Concept(s) to the Department regarding engineering solutions, construction solutions, or design and/or construction management on the date specified in Section 1.5.1. Up to three (3) Technical Concepts may initially be presented to the Department for consideration. Questions, or clarifications regarding the procurement process and procedures or related to contractual language not specific to a proposed engineering solution, construction solution, or design and/or construction management shall be submitted through the standard question and response process set forth in Section 2.2.1.

The Proposer shall submit its questions related to Technical Concepts on Form CF (see Appendix C to this ITP), but the Proposer shall clearly identify such submissions as Technical Concepts. If the Proposer does not clearly so designate the questions as related to Technical Concepts, such submissions shall not be treated as Technical Concepts by the Department.

The Department shall review each Technical Concept as presented within one week of the submittal due date. If a Technical Concept is summarily accepted or rejected, the Department's comments will inform the Proposer that its Technical Concept appears to be generally acceptable and within the requirements of the final Scope of Services Package or the Department will identify areas in which the approach appears to be inconsistent with the final Scope of Services Package. If the Department needs more information to determine whether or not the Technical Concept will be accepted or rejected, the Department will request the information verbally at the time of the presentation or submit written questions to the Proposer within one week following the presentation.

If a Technical Concept is rejected and the Proposer feels that the rejection was an incorrect conclusion by the Department, it may re-submit the Technical concept for one additional review to the Department representative at the E-mail address identified in Section 2.2.1. The Proposer shall re-submit such Technical Concept on Form CF (see Appendix C to this ITP) within one week and the Proposer shall clearly identify such submission as a Technical Concept submitted for an additional review. Any Technical Concept submitted for more than one additional review will not be considered.

If a Technical Concept is rejected and the Proposer would like to submit another concept for acceptance, it may submit the Technical Concept within one week for review to the Department

representative at the E-mail address identified in Section 2.2.1. The Proposer shall submit such technical concept on Form CF (see Appendix C to this ITP) and the Proposer shall clearly identify such submission as a Revised Technical Concept submitted for an additional review. Proposers may submit no more than one additional Technical Concept for review.

The Department will return its acceptance, rejection, or additional questions pertaining to any specific Technical Concept no later than one week after receipt of that Technical Concept.

The Proposer may submit additional questions related to Technical Concepts to the Department until one week prior to the date identified in Section 1.5.1 as the date for Final Technical Proposal submission. All questions related to the Technical Concepts and identified as such shall be submitted in writing to the Department representative and at the E-mail address identified in Section 2.2.1.

The Technical Concepts submitted by the Proposer and all subsequent communications regarding that Technical Concept will be considered confidential in accordance with Section 2.6. However, if an accepted Technical Concept changes the scope of the requirements of the final Scope of Services Package, the change in the requirements will be communicated to all Proposers. The Technical Concept itself will not be shared with other Proposers.

For a Technical Concept to be considered for review by the Department, certain minimum requirements must be met. The minimum requirements shall include details of bridge type, size, and location; primary types of materials; general traffic lane configurations; and proposed Project Limits as defined in Part 1, of the Contract Documents. Additional sketches or renderings may also be provided. For each Technical Concept submitted, a total of eight (8) separately bound sets of all applicable details, sketches, and renderings are to be provided on 8 ½ " x 11" or 11" x 17" bound sheets.

2.5 COMPLIANT PROPOSAL

The Proposer shall submit a Proposal that provides all the information required by the ITP. The Proposer may be disqualified if the Proposal does not fully comply with the instructions and rules contained in the ITP, including the appendices.

Each Proposal must be submitted in the official format, which is specified by the Department. The Proposer shall sign each copy of the Proposal submitted to the Department.

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

A) If the Proposal is submitted on a form other than that furnished or specified by the Department; if it is not properly signed; if the Form of Proposal (see Appendix C to this ITP) is altered except as contemplated hereby; or if any part thereof is deleted from the Proposal package;

B) If the Proposal or any portion thereof is illegible or contains any omission, erasures, alterations, or items not called for in the Scope of Services Package or contains unauthorized additions, conditional or alternate Proposals, or other irregularities of any kind, and if the Department determines that such irregularities make the Proposal incomplete, indefinite, or ambiguous as to its meaning;

C) If the Proposer adds any provisions reserving the right to accept or reject an Award or to enter into a Contract following award;

D) If the Proposer attempts to limit or modify the required form of any required surety bond, if the Proposal Security (see Appendix C to this ITP) is not provided, and/or if requested information deemed material by the Department is not provided; and
E) If for any other reason the Delaware Department of Transportation determines the Proposal to be non-compliant.

2.6 NON-PUBLIC PROCESS

The Department will maintain a process to ensure confidentiality for the duration of this procurement. In accordance with the Delaware Code, the Department may require each Proposer to furnish sufficient information that shall indicate the financial and other capacities of the Proposer to perform the proposed Work. This information shall be subject to audit and shall be submitted by the Proposer in a format clearly marked CONFIDENTIAL, and the information contained therein shall be treated as confidential and shall be exempted from the provisions of the Delaware Code

Further, if the Proposer submits information in its Proposal that it wishes to protect from disclosure, the Proposer must do the following:

A) Clearly mark all proprietary or trade secret information as such in its Proposal at the time the Proposal is submitted and include a cover sheet stating "DOCUMENT CONTAINS CONFIDENTIAL PROPRIETARY OR TRADE SECRET INFORMATION" and identifying each section and page, which has been so marked. Design related information may not be classified as "Trade Secret". As noted in Section 2.7, the Department reserves the right to use any design related information provided by the Proposers. The Proposer's bridge security plan shall be marked CONFIDENTIAL (See Section 6.1.2);
B) Include a statement with its Proposal justifying the Proposer's determination that certain records are proprietary or trade secret information for each record so defined;
C) Submit one copy of the Proposal that has all the proprietary or trade secret information deleted from the Proposal and label such copy of the Proposal "Public Copy"; and
D) Defend any action seeking release of the records it believes to be proprietary or trade secret information and indemnify, defend, and hold harmless the Department and the State of Delaware and its agents and employees from any judgments awarded against the Department and its agents and employees in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the Department's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Proposal, the Proposer agrees that this indemnification survives as long as the confidential business information is in possession of the State.

All records pertaining to this procurement will become public information after execution of the Contract, unless such records are proprietary or trade secret information. Any records marked as proprietary or trade secret information by a Proposer in its SOQ and, if short-listed, in its Proposal, will be returned to the unsuccessful Proposers after the execution of the Contract with the Design-Builder. The records marked proprietary or trade secret information by the successful Proposer in its SOQ and Proposal will remain confidential and will be returned to the Design-Builder concurrently with return of the Escrow Proposal Documents in accordance with Part 2 - DB Section 110.

2.7 PROPOSAL STIPEND

By submitting a Proposal in response to the Scope of Services Package, the Proposer acknowledges

that the Department reserves the right to use any representations or information contained in the Proposal in connection with any Contract awarded for the Project or in connection with a subsequent procurement.

The stipend amount is $600,000.00 and shall be paid to each Proposer not chosen as the successful Proposer and which receives a rating of pass on all pass/fail evaluation criteria. In addition, unsuccessful Proposers must submit Technical and Price Proposals deemed "responsive" in order to receive the indicated stipend amount. No partial stipend payments will be made for "non-responsive" Proposals.

In the event that the procurement is cancelled prior to the Proposal due date, Proposers will be provided the opportunity, at their option, of attending an interview and delivering to the Department the work product of their Proposal preparations to date. There is no specific format required for such work product. Those Proposers that choose to attend the interview and deliver their work product may be paid a portion of the stipend amount, at the Department's discretion, for the work product. No portion of the stipend amount will be paid in the event a Proposer chooses not to attend the interview or chooses not to deliver its work product.

2.8 SUBMISSION OF PROPOSALS

2.8.1 Submission of a Proposal

The Proposal shall be submitted in accordance with the Instructions to Proposers and the following requirements:

A) The Technical Proposal, which includes the Supplemental Selection Information, shall be in a sealed container clearly marked as "Technical Proposal - Indian River Inlet Bridge." (See Appendix A.) The Price Proposal shall be sealed within a separate container and clearly marked as "Price Proposal - Indian River Inlet Bridge" and must include the Proposer's appropriate license number as assigned by the licenses from the Delaware Division of Revenue for Contractors. The Proposal, consisting of the Technical Proposal and Price Proposal shall be delivered to the designated representative at the address identified in Section 1.5.2;

B) The State Project Number 26-073-03 Readvertised, et. al., and the fact that this is a Proposal for the replacement of the Indian River Inlet Bridge shall be clearly shown on the cover of the containers. The name and address of the Proposer shall be clearly marked on the outside of the containers;

C) When sent by United States Postal Service (USPS) or private carrier [e.g., Federal Express (FedEx) or United Parcel Service (UPS)], the sealed containers shall be sent in accordance with this ITP to the Department at the address of and in care of the designated representative specified in Section 2.2.1 and shall be received by such designated representative no later than the time specified in Section 1.5.2. In the alternative, a Proposal may be hand-delivered by the Proposer prior to the specified time on the Proposal due date to the designated representative identified in Section 2.2.1; and

D) Where certified copies are required, the Proposer shall stamp the document or cover with the words "Certified True Copy" and have the stamp oversigned by the Proposer's designated point of contact.

2.8.2 Modifications to a Proposal

A Proposer may modify its Proposal in writing to the person specified in Section 1.5.2 of the ITP prior to the time on the Proposal due date identified in Section 1.5.1. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so the Department can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages, or complete forms as described in Appendices A and B of this ITP. Line item changes will not be accepted. The Department will not consider telegraphic, facsimile, or other electronically transmitted modifications as modifications.

2.8.3 Withdrawal of a Proposal

A Proposer may withdraw its Proposal only by a written and signed request that is received by the person specified in Section 1.5.2 prior to the Proposal due date identified in Section 1.5.1 and time specified in Section 1.5.2. Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to the time designated in Section 1.5.2 on the Proposal due date identified in Section 1.5.1. The Proposer agrees that its Proposal will remain valid for one hundred (120) calendar days following the Proposal due date identified in Section 1.5.1. In the event a Proposer withdraws all or any part of its Proposal within one hundred (120) calendar days following the Proposal due date identified in Section 1.5.1 without written consent of the Department, the Proposer shall forfeit its Proposal Security.

2.8.4 Public Opening of Proposals

Technical and Price Proposals shall be submitted by the dates listed in Section 1.5.1. After review and scoring of the Technical Proposal, the Price Proposal will be opened publicly at 2:00 P.M. local time in the Bidder's Room (B1.11.01) in the Department's Transportation Administration Center located at 800 Bay Road, Dover Delaware. Each Price Proposal will be assigned a point value (or score) in accordance with ITP Section 6.1.3. The apparent successful Proposer will be determined as the Proposer with the highest Total Score.

2.8.5 Late Proposals

The Department will not consider any late Proposals. Proposals received after the time for submittal of Proposals, or delivered to the wrong location, will be returned to the Proposer.

2.9 EXAMINATION OF THE SCOPE OF SERVICES PACKAGE AND WORK SITE

The Proposer shall carefully examine the Site of the proposed Work, including Material pits, staging areas and access to the site, and the complete Scope of Services Package, including Reference Documents, before submitting a Proposal.

The Department-furnished information does not abrogate the Proposer's responsibility for further verifications and inquiries as the Proposer may deem to necessary properly address Geotechnical issues, or permanent and temporary Utility appurtenances in the preparation of the Proposal.

The submission of a Proposal shall carry with it the presumption that the Proposer has made such examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract. The Proposer must so certify in the Form of Proposal (see Appendix C) in order for the Proposal to be valid.

3.0 PROPOSAL REQUIREMENTS

3.1 LEGAL AUTHORITY

3.1.1 Opinion of Counsel

The Proposal shall include an opinion of counsel on Form OC (see Appendix C), for the purpose of providing assurance to the Department regarding the formation of the Proposer and, if applicable, its JV members and partners and its ability to execute and deliver the Contract if awarded. The opinion may be provided by in-house counsel or by an outside law firm. See Appendix A.

3.1.2 Contract Execution

Concurrently with execution of the Contract, an updated opinion of counsel shall be provided on Form OC (see Appendix C) stating that the Contract has been validly executed and delivered.

3.1.3 Licensing Requirements

Proposers shall be licensed as required by applicable federal and state laws, rules, and regulations including, but not limited to, the Delaware Code. Evidence of proper licensing shall be required to be provided prior to execution of the Contract by the selected Proposer.

3.2 CURRENCY

The Pricing Information shall be priced in United States dollars (US$) currency only.

3.3 PROPOSAL SECURITY

3.3.1 Requirements

A Proposal Security (see Appendix C) must accompany each Price Proposal that is submitted for the Project. The Proposal Security must be presented in the form of a check (certified or treasurers), a postal money order, or a bond. (See Appendix B, Section B2.3.)

3.3.2 Return of Proposal Security

Any Proposal Security presented in the form of a check (certified or treasurers) or postal money order, except those of the apparent successful Proposer and the apparent "next" successful Proposer, will be returned immediately following the announcement of the award. The retained security of the Proposer that is not awarded the Contract, if presented in the form of a check, will be returned within ten working days following the execution of the Contract. The retained security of the successful Proposer, if presented in the form of a check, will be returned after satisfactory payment and performance bonds have been furnished and the Contract has been

executed. The Department may cash any check or postal money order provided as a security, and in such event will deliver cash or cash equivalent to the Proposer instead of returning the original check.

Security presented in the form of a bond will be returned only upon the request of the unsuccessful Proposers after execution of the Contract.

3.3.3 Surety Requirements

Any Proposal Security provided in accordance with this Section 3.3 shall be issued by a Surety listed on the United States (US) Department of Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register or by a insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide. No surety or insurance company shall write a Proposal Security which is in excess of the amount indicated as approved for it by the US Department of the Treasury Financial Management Service list of approved bonding companies. In addition, any insurance company not on the US Department of Treasury Financial Management Service list of approved bonding companies shall write Proposal Securities exceeding ten percent of the policyholder's surplus as shown in the A.M. Best's Key Rating Guide. In addition, any Proposal Security written for the Project shall be written by a surety or insurance company that is currently licensed to do business in the State of Delaware.

3.3.4 Rights Reserved

Each Proposer understands and agrees, by submitting its Proposal, that the Department reserves the right to reject any and all Proposals, or part of any Proposal, and that the Proposal may not be withdrawn for a period of 120 calendar days subsequent to the Proposal due date identified in Section 1.5.1 without written consent of the Department.

Each Proposer further understands and agrees that if it should withdraw any part or all of its Proposal within 120 calendar days after the Proposal due date identified in Section 1.5.1 without the consent of the Department; should refuse or be unable to enter into the Contract; should refuse or be unable to furnish adequate and acceptable performance and payment bonds; should refuse or be unable to furnish adequate and acceptable insurance, as provided herein; or should refuse or be unable to furnish the Proposal Information (see Appendix A) or all Pricing Information specified (see Appendix B), it shall forfeit its Proposal Security.

The Proposer understands that any material alteration of documents specified in this Section 3.3 or any of the material contained on the Proposal Security (see Appendix C), other than that requested, will render the Proposal non-responsive and non-compliant.

3.4 ESCROWED PROPOSAL DOCUMENTS

3.4.1 Delivery of Escrowed Proposal Documents

The Proposer shall assemble and deliver certain documentation (the Escrowed Proposal Documents) containing information regarding the Proposer's assumptions made in calculating the Price Proposal, including assumptions regarding the scope of the Work, existing site conditions, and meeting all the requirements of Part 2 - DB Section 110.

The Proposer shall submit its Escrowed Proposal Documents in hard copy and, wherever possible, also provide electronic copies. The Escrowed Proposal Documents shall also include detailed information from all Subcontractors identified in the Proposal and any other potential Subcontractors that provided data upon which the Proposal is based. Each Proposer shall deliver its Escrowed Proposal Documents, together with two executed originals of the escrow instructions (Form EPD, Appendix C of this ITP), into escrow not later than five (5) business days following the Price Proposal due date identified in Section 1.5.1. The Proposer shall deliver a third executed original of the escrow instructions to the Department at the address specified in Section 1.5.2.

3.4.2 Review of Escrowed Proposal Documents

A Representative of the Department and the Proposer shall review the Escrowed Proposal Documents prior to Contract execution to determine whether they are complete. Said representatives shall also organize the Escrowed Proposal Documents, labeling each page so that it is obvious that the page is a part of the Escrowed Proposal Documents and to enable a person reviewing the page out of context to determine where it can be found within the Escrowed Proposal Documents. Said representatives shall compile an index listing each document included in the Escrowed Proposal Documents and briefly describing the document and its location in the Escrowed Proposal Documents. The Department retains the right to possess a copy of the index. If, following the initial organization, the Department determines that the Escrowed Proposal Documents are incomplete, the Department may require the Proposer to supply data to make the Escrowed Proposal Documents complete. Failure by the Proposer to supply complete Escrowed Proposal Documents shall render the Proposer non-responsive.

Following award of the Contract, the Escrowed Proposal Documents of the successful Proposer will be available for joint review as specified in Part 2 - DB Section 110.

3.4.3 Return of Escrowed Proposal Documents

The Escrowed Proposal Documents submitted by unsuccessful Proposers will be returned to them after the Contract has been executed and delivered, after the Department rejects all of the Proposals, or after the Department terminates this procurement.

3.4.4 The Delaware Department of Transportation's Acknowledgment

The Department acknowledges that each Proposer considers that the Escrowed Proposal Documents constitute trade secrets or proprietary information. This acknowledgment is based upon the Department's understanding that the information contained in the Escrowed Proposal Documents is not known outside each Proposer's business, is known only to a limited extent and by a limited number of employees of the Proposer, is safeguarded while in the Proposer's possession, and may be valuable to the Proposer's construction strategies, assumptions, and intended means, methods, and techniques of design and construction. Except as set forth in the Contract or as required by applicable law, the Department acknowledges that the Escrowed Proposal Documents will at no time become the property of the Department.

3.5 SIGNATURES REQUIRED

The Proposal Certification (see Appendix C) and the Lump Sum Price Proposal Cover Sheet (Form

PP, Appendix C to this ITP) shall be signed by all parties or Person(s) constituting the Proposer (i.e., by authorized representatives of all JV members or general partners, if the Proposer is a JV or partnership). If any signatures are provided pursuant to a power of attorney, the original or a certified copy of the power of attorney shall be provided, together with evidence of authorization.

3.6 NUMBERS OF DOCUMENTS

3.6.1 Executive Summary

Eight copies of the Executive Summary shall be provided.

3.6.2 Proposal Security

One original of the Proposal Security (see Appendix C) shall be provided, with three certified copies.

3.6.3 Technical Proposal

One original and seven certified copies of the Technical Proposal, including the Supplemental Selection Information, (see Appendix A) shall be provided for each submission.

3.6.4 Lump Sum Price Proposal

One original and three certified copies of the lump sum Price Proposal, including any Supplemental Pricing Information, (see Appendix B) shall be provided.

3.6.5 Cost of Preparing Proposal

The cost of preparing the Proposal and any costs incurred at any time before or during the Proposal process, including costs incurred for any interviews, shall be borne by the Proposer, except for any costs paid in accordance with Section 2.7.

3.6.6 Obligation to Award

The Department is under no obligation to award the Contract to the Proposer submitting the lowest priced Proposal, to award to the apparent successful Proposer, or to award the Contract at all.

3.6.7 Additional Submittals Prior to Contract Execution

In addition to the copies submitted pursuant to Sections 3.6.3 and 3.6.4, the selected Proposer shall submit one original and three certified copies of the Technical Proposal (excluding Supplemental Selection Information) (see Appendix A) and the Lump Sum Price Proposal (including Supplemental Pricing Information) (see Appendix B) to the Department prior to execution for inclusion in the Contract.

3.7 RESOURCE AVAILABILITY

The Department is concerned that the resources in terms of people, equipment, Material, and

supplies planned to be used on the Contract (if awarded to the Proposer) be available and not also be committed to other projects. The Proposer shall affirmatively state that, if the Proposer is awarded the Contract, the resources shown or indicated in the Proposal will be available, to the extent within Proposer's control. The Proposer shall affirmatively commit to undertake all reasonable efforts to provide all the key personnel identified in its Proposal on a full time basis for the periods necessary to fulfill their responsibilities. Proposer's statement regarding availability of personnel shall also include design personnel. See Form CR (Appendix C).

4.0 PRE-PROPOSAL MEETINGS

4.1 INFORMATIONAL MEETINGS

The Department will hold a joint informational meetings with all Proposers at the issuance of the RFP as identified in Section 1.5.1. This meeting will be ***mandatory***.

The Department may hold informational meetings with individual Proposers at any time prior to the Proposal due date specified in Section 1.5.1. If individual informational meetings are offered to any Proposer, they will be offered to all Proposers.

4.2 ATTENDEES

When any informational meeting is held, the Proposer is expected to attend with appropriate members of its proposed key personnel and, if required by the Department, senior representatives of the proposed Designer and the proposed QC Engineer.

4.3 QUESTIONS AND RESPONSES

Questions asked by any Proposer at any joint informational meeting where a response is expected will be recorded and the question and response will be provided in writing to all Proposers without attribution.

Questions asked by a Proposer at any individual meetings will be recorded and the question and response will be provided in writing only to the Proposer asking the question.

5.0 CONTRACT AWARD AND EXECUTION

5.1 CONTRACT AWARD

Unless all Proposals are rejected or this procurement is cancelled, the Contract shall be awarded to the responsive Proposer offering a fully compliant Proposal that, after evaluation of the pass/fail and technical evaluation factors, results in the highest Total Score.

Within 15 working days after the Department notifies the selected Proposer that the Department will award the Contract to the Proposer, the selected Proposer shall deliver to the Department one original and three certified copies of the following:

A) Volumes 1 through 5 of the Technical Proposal in the format specified in Appendix A, Table A, to this ITP. (See Section 3.6.7);
B) The Lump Sum Price Proposal, including the Supplemental Pricing Information, if any, in the format specified in Appendix B to this ITP. (See Section 3.6.7);

C) Required Payment and Performance Bonds. (Appendix C to this ITP);
D) Insurance certificates;
E) Full details of who will sign the Contract, if executed, and evidence as to the authority, power, and capacity of said individuals to bind the Proposer to a Contract;
F) Updated opinion of counsel on Form OC (see Appendix C to this ITP) with regard to Contract; and
G) Evidence that the Designer and any Subcontractors performing design and/or construction Work are properly licensed as required by applicable federal and state laws, rules, and regulations including, but not limited to, the Delaware Code, if not previously provided.

Failure to comply with the above may result in cancellation of the notice of award and forfeiture of the Proposal Security.

Refer to Contract Documents Part 1 Appendix A - Agreement for a sample of the Agreement that the selected Proposer will be required to sign. The selected Proposer shall not make any additions to, deletions from or changes in the required Agreement, but shall submit a letter providing the information necessary to complete the appropriate blanks in the form. After receiving the completed Contract from the Department, the selected Proposer shall sign the form and attach exhibits.

At the time of the return of the executed Contract, the successful Proposer shall furnish a Payment Bond and a Performance Bond on the form provided by the Department. The surety must be acceptable to the Department.

5.2 EXECUTION OF CONTRACT

The successful Proposer will be required to execute four originals of the Contract and to comply in all respects with the statutory provisions relating to the Contract within 20 calendar days of the date of the delivery of the Contract Documents by the Department. In case of failure or refusal on the part of the successful Proposer to deliver the duly executed Contract to the Department within the 20 calendar day period herein mentioned, the amount of the Proposal Security may be forfeited and paid to the Department.

If the Contract is not executed by the Department within 15 calendar days following receipt from the successful Proposer of the signed Contract and appropriate and satisfactory payment and performance bonds, the Proposer shall have the right to withdraw the Proposal without penalty.

If the Department and the apparent successful Proposer fail to execute the Contract within the time periods identified above, the Department reserves the right to make award of the Contract to the "next" apparent successful Proposer, or the Work may be re-advertised and completed under a different contract or otherwise, as the Department may decide.

The Contract will be effective as of the date of final execution by the Department.

6.0 PROPOSAL EVALUATIONS

The Proposals shall be submitted in two separate parts as per the ITP, the written Technical Proposal (including the Supplemental Selection Information) and the Lump Sum Price Proposal (including any Supplemental Pricing Information). The information contained in the Technical Proposal will not be disclosed to the public or any other Proposer until after Contract execution.

The written Technical Proposal will be evaluated on the pass/fail and technical factors identified in the ITP. The Technical Review Committee will determine the pass/fail status and final total technical score of each Proposal before the public opening of the Lump Sum Price Proposals. The highest Total Score shall be determined by the following formula:

Final Total Score = (Price Proposal Score * .7) + (Final Technical Proposal Score * .3)

Scoring of Final Technical Proposals will be based on the maximum values noted for each factor listed in Section 6.1.2. Price Proposals scoring will be based on a comparison with the project budget as noted in section 6.1.3

The Department reserves the right to reject any or all Proposals, to waive technicalities, or to advertise for new Proposals, if in the judgment of the Department the best interests of the public will be promoted thereby.

Proposers are encouraged to keep in mind and address the Project goals identified in Section 1.1 in their Proposals.

6.1 EVALUATION FACTORS AND CRITERIA

Legal, Financial, and Responsiveness to ITP Requirements evaluation factors and elements will be evaluated on a pass/fail basis.

Final Technical Proposals will be scored on a quality basis while Price Proposals will be scored on a quantitative basis.

A Proposal must receive a pass on all pass/fail evaluation factors listed in Section 6.1.1 for the Proposal to be further evaluated and scored based on the technical evaluation factors identified in Section 6.1.2.

6.1.1 Pass/Fail Evaluation Factors

Each Proposal must achieve a rating of pass on any pass/fail evaluation factor listed in Sections 6.1.1.1 through 6.1.1.5 to receive further consideration. Failure to achieve a pass rating on any pass/fail evaluation factor after any clarifications (see Section 6.2) will result in the Proposal being declared non-responsive and the Proposer being disqualified.

6.1.1.1 Legal

The Legal evaluation factor includes the following:

A) A legal opinion provided on Form OC (see Appendix C to this ITP);
B) A properly executed Form of Proposal, (Appendix C of this ITP);
C) Prior to the execution of the Contract, provide proof of compliance with the requirements of Sections 2502 and 2503, Chapter 25, Title 30 of the Delaware Code. If the successful Proposer is a non-resident corporation, provide proof of compliance with the requirements of Subchapter XIV of Title 8 of the Delaware Code, and as further amended at the time of submittal;
D) For any Subcontractor performing construction Work, Prior to the execution of the Contract, provide proof of compliance with the requirements of Sections 2502 and 2503, Chapter 25, Title 30 of the Delaware Code. If the Subcontractor is a

non-resident corporation, provide proof of compliance with the requirements of Subchapter XIV of Title 8 of the Delaware Code, and as further amended at the time of submittal;

E) Completion and submittal of specified forms and documents; and
F) Compliance with Instructions to Proposers legal requirements.

The specific information to be submitted is identified in Appendix A, Sections A3.2 and A3.3, to this Instruction to Proposers.

6.1.1.2 Financial

Financial evidence must show the Proposer's sustained capability to meet the financial responsibilities of the Contract and updated evidence or reaffirmation of the Proposer's continuing capability to secure performance and payment bonds covering the specific terms of the Contract. (See Section A3.4 of Appendix A to this ITP and Part 2 - DB Section 100, DB Section 103-2 and Appendix 103A, Payment, Performance, and Retainage Bond Form.)

6.1.1.3 Responsiveness to Instructions to Proposers Requirements

All forms shown in Appendix C to this ITP shall be completed and all forms and information specified in Appendices A and B to this ITP shall be provided in the manner, format, and detail specified without alteration of the forms for the Proposal to be eligible to receive further consideration. Failure to comply with this requirement may result in the Proposal receiving a "fail" rating for responsiveness to ITP requirements and may result in the Proposal being declared non-responsive.

6.1.1.4 DBE Commitments

The Proposers shall describe the DBE commitments that have been made as of the Proposal Due Date and shall describe the efforts taken by the Proposer to ensure that the dollars committed to DBEs on the Project are representative of the available design and construction DBEs. The Department's DBE goals for this Project are specified in Contract Documents Part 2 - DB Section 102-15.

6.1.1.5 Minimum Technical Score

The Proposer must receive a minimum Technical Proposal score of 70.

6.1.2 Technical Proposal Evaluation Factors (100 Points)

The following are the technical evaluation factors to be considered by the Department in the scoring of the Final Technical Proposals with the maximum possible points noted in parenthesis:

A) Technical Solutions (60 points);
B) Key Personnel and Experience (15 points); and
C) Management Approach (25 points).

Within the above listed factors, the following are the subfactors the Department will consider during the evaluation with their respective maximum point total noted in parenthesis:

A) Technical Solutions (60 Points)

1) Design and Construction Concepts (25 points);
2) Maintainability, Inspectability, and Durability (20 points);
3) Quality of Schedule (10 points); and
4) Bridge Aesthetics and Public Involvement (5 Points).

B) Key Personnel and Experience (15 points)
1) Team Qualifications (15 points).

C) Management Approach (25 points)
1) Project Management and Quality Control Plans (10 points); and
2) Project Safety Plan (15 points).

Each individual on the Evaluation Committee will assign Raw Score values to each of the technical evaluation subfactors. Raw Score values will be expressed as percentage values on a scale of 0% to 100% for each subfactor being considered. At the end of the process, the average Raw Score for each subfactor will be determined and multiplied by the total possible points allocated for that item. The summation of points for all evaluation subfactors will represent the Technical Proposal Score for each Proposer.

Score Sheets to be used by the Evaluation Committee are included in ITP, Appendix C and include a description of the Department's intent for each subfactor and some of the considerations to be included in the determination of the Raw Scores. The order of the considerations included on the Score Sheets are not intended to suggest any relative importance for the respective evaluation subfactors.

The following Raw Score definitions shall apply:

0% - The Design-Build Proposal does not adequately address the considerations for the evaluation subfactor and/or the Proposal is marginally acceptable relative to the subfactor being considered.

70% - The Design-Build Proposal includes sufficient information to address the considerations for the evaluation subfactor and the Proposal is acceptable relative to the subfactor being considered. This score is indicative of an average solution and/or level of effort with respect to the subfactor being considered.

100% - The Design-Build Proposal includes all pertinent information regarding the evaluation subfactor in a manner that is easily understood and the Proposal is exceptional relative to the subfactor being considered. This score indicates that all practical means to address the intent of the evaluation subfactor have been included in the Proposal and that no apparent ambiguities exist.

See ITP, Appendix A for Technical Proposal submittal requirements.

6.1.3 Price Proposal Evaluation

The Proposer shall submit a Lump Sum Price Proposal for all services in fulfillment of the requirements and within the constraints of this Scope of Services Package. The Price Proposal shall be prepared and submitted in accordance with Appendix B to this ITP. The Total Lump Sum Price shown in the Price Proposal shall be the Lump Sum Contract Price for the Project if

the Contract is awarded.

Specific information to be submitted is identified in Appendix B to this ITP. The Price Proposals will be evaluated by comparing the submitted proposal price with the defined project budget (See formula below).

Each Price Proposal shall specify the Total Lump Sum Price for the Work to be performed according to the Scope of Services Package. Each Price Proposal will be evaluated and scored based on the criteria set in Section 6.1.3.1. If all pass/fail evaluation factors are satisfied, the Department shall determine the highest Total Score by combining the weighted Final Technical Proposal Score with the weighted Price Proposal Score using the formula identified in Section 6.0. The Department reserves the right to reject any Proposal in which any of the prices are significantly unbalanced to the potential detriment of the Department.

The price shall be indicated in words. For example, "$1,234,567.89" indicated in words is "one million two hundred thirty-four thousand five hundred sixty-seven dollars and eighty-nine cents."

The Proposer's price shall not include any fraction of a cent.

Any Proposal may be deemed non-responsive which in any manner fails to conform to the conditions of the Scope of Services Package.

The Department may determine that the Price Proposal is non-responsive if the Department determines, in its sole discretion, that any of the following are applicable:

A) The Price Proposal is significantly unbalanced relative to the Scope of Work;
B) The Price Proposal does not provide all information in conformance with the Instructions to Proposers;
C) The Price Proposal contains a Proposal Periodic Payment Schedule that is significantly inconsistent with the Proposed Baseline Progress Schedule; and/or
D) The Price Proposal contains unreasonable prices on Form SP (see ITP, Appendix C).

6.1.3.1 Price Proposal Score

The score for the Price Proposal category shall be established as follows. Each Price Proposal shall receive a point score, positive or negative, based on the arithmetic difference between the submitted Lump Sum Price proposed and the budget ($150,000,000) established for the project. For every two million dollars difference from the established budget, the Proposer would receive one (1) point added to or subtracted from their Price Proposal Score. To minimize the potential for a tie between two Proposers with the Total Score, the Price Proposal Score will be carried to the necessary decimal places. Therefore, each Lump Sum Price should not be rounded. An example is provided for clarification purposes.

Example		
Proposer	Lump Sum Price	Price Proposal Score (In Points)

A	$143,500,410.50	6.49958950
B	$129,850,309.78	30.14969022
C	$157,684,420.46	-7.68442046

6.2 CLARIFICATIONS

The Proposer shall provide accurate and complete information to the Department. If information is not complete, the Department shall either declare the Proposal non-responsive or notify the Proposer that it will not be allowed to participate further in the procurement of this Project until all information required is provided. Any insufficient statements or incomplete affidavits will be returned directly to the Proposer by the Department with notations of the insufficiencies or omissions and with a request for Clarifications and/or submittal of corrected, additional, or missing documents. If a response is not provided prior to the deadline for submission of the response, the Proposal may be declared non-responsive.

The Department may waive technical irregularities in the form of the Proposal of the Proposer that do not alter the quality or quantity of the information provided.

The Department may, at its sole discretion, request Clarifications and/or corrected, additional, or missing information from Proposers during the Proposal evaluation and selection process.

All requests and responses shall be in writing by certified mail, courier, Electronic-mail (E-mail), or facsimile. Responses shall be in accordance with Section 2.2 and be limited to answering the specific information requested by the Department.

In the event a material error is discovered in the Scope of Services Package during the Proposal evaluation process, the Department will issue an Addendum to all Proposers that have submitted Proposals requesting revised Proposals based upon the corrected Scope of Services Package.

6.3 INTERVIEWS/PRESENTATIONS

The Department will meet with and receive presentations and conduct interviews with Proposers of their technical concepts. When presentations and interviews are conducted, the Proposer will be expected to attend with appropriate members of its proposed Key Personnel.

6.4 SELECTION DETERMINATION

The Department will award the Contract based on the highest Total Score. The limited time frame to complete the Project and the importance of quality in the completed Project require that the maximum possible flexibility be afforded the Design-Builder to plan, design, construct, and control the Project. The Department's procedures for the evaluation and selection of Proposals are structured to provide a comprehensive evaluation of quality that when combined with price will result in the selection of the appropriate Design-Builder.

The Department will rate the Proposals for pass/fail and technical capability. In determining the

successful Proposer, the Department will evaluate the technical evaluation factors and subfactors and assign an overall technical rating and score for each Proposer using the guidelines in Section 6.1.1 and 6.1.2. The Department will also determine whether the Lump Sum Price Proposals are responsive. The Lump Sum Price Proposal will then be scored on the criteria in Section 6.1.3.1. The value from the Price Proposal Score will be added to the Final Technical Score to equal the Total Score as specified in Section 6.0. The contract will be awarded to the Proposer with the highest Total Score.

The Department will not Award the Contract to any Proposer that receives a fail rating on any pass/fail evaluation factor (Section 6.1.1). The Department will not award the Contract to any Proposer that the Department determines has submitted a Proposal deemed non-responsive in any category. (Price Proposal or Technical Proposal).

6.5 PRE-AWARD MEETINGS

The Department may meet with the apparent successful Proposer prior to award at any time after selection.

7.0 PROTESTS

This Section sets forth the exclusive protest remedies available with respect to this RFP. Each Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies, and agrees that the decision on any protest, as provided herein, shall be final and conclusive. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposers. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFP, it shall indemnify, defend, and hold the Department and its directors, officers, officials, employees, agents, representatives, and consultants harmless from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of such Proposer's actions. The submission of an Proposal by a Proposer shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

7.1 WRITTEN PROTESTS ONLY

All protests must be in writing. Any protest not set forth in writing within the time limits specified in these procedures is null and void and shall not be considered.

The protestor shall have the burden of proving its protest by clear and convincing evidence. No hearing will be held on the protest, but it shall be decided on the basis of the written submissions by the Chief Engineer or his/her designee whose decision shall be final and conclusive.

7.2 PROTEST PROCEDURE

A Proposer may protest the results of the above-described evaluation and qualification process by filing a written notice of protest by hand delivery or courier to the Department's Chief Engineer with a copy to the Contract Services Project Manager. The protesting Proposer shall concurrently file a copy of its notice of protest with the other Proposers. The notice of protest shall specifically state the grounds of the protest.

A) Notice of protest of any decision to accept or disqualify an Proposal on responsiveness grounds must be filed within five calendar days after the earliest of notification of

non-responsiveness or the public opening of the Price Proposals. Notice of protest of the apparent successful Proposer must be filed within five calendar days after the public opening of the Price Proposals.

B) Within seven calendar days of the notice of protest, the protesting Proposer must file with the Department's Chief Engineer with a copy to the Department's Contract Services Project Manager, a detailed statement of the grounds, facts and legal authorities, including all documents and evidentiary statements, in support of the protest. The protesting Proposer shall concurrently deliver a copy of the detailed statement to all other Proposers. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Proposer shall have the burden to prove that the decision of the Department was arbitrary and capricious.

C) Failure to file a notice of protest or a detailed statement within the applicable period shall constitute an unconditional waiver of the right to protest the evaluation or qualification process and decisions thereunder, other than any protest based on facts not reasonably ascertainable as of such date.

D) Other Proposers may file by hand delivery or courier to the Department's Chief Engineer with a copy to the Department's Contract Services Project Manager, a statement in support of or in opposition to the protest. Such statement must be filed within seven calendar days after the protesting Proposer files its detailed statement of protest. The Department will promptly forward copies of any such statements to the protesting Proposer.

E) Unless otherwise required by law, no evidentiary hearing or oral argument shall be provided, except, in the sole and absolute discretion of the Chief Engineer , a hearing or argument may be permitted if necessary for protection of the public interest or an expressed, legally recognized interest of a Proposer or the Department. The Chief Engineer or his designee will issue a written decision regarding the protest within 30 calendar days after the Department receives the detailed statement of protest or any allowed (discretionary) evidentiary hearing or oral argument. Such decision shall be final and conclusive. The Chief Engineer or his designee will deliver the written decision to the protesting Proposer and copies to the other Proposers.

F) If the Chief Engineer or his designee concludes that the Proposer filing the protest has established a basis for protest, the Chief Engineer or his designee will determine what remedial steps, if any, are necessary or appropriate to address the issues raised in the protest. Such steps may include, without limitation, withdrawing or revising the decisions, issuing a new request for proposals or taking other appropriate actions.

7.3 PROTEST CONTENTS

All Protests shall include the following information:

A) The name and address of the Proposer;

B) The Contract number;

C) A detailed statement of the nature of the protest and the grounds on which the protest is made; and

D) All factual and legal documentation in sufficient detail to establish the merits of the protest. Evidentiary statements must be provided under penalty of perjury.

The protestor must demonstrate or establish a clear violation of a specific law or regulation. The Protest Official will not be obligated to postpone the Contract Award date or any other step in the execution process in order to allow a protestor an opportunity to correct a deficient protest or appeal unless otherwise required by law or regulation.

If the protest is denied, the protestor shall be liable for the Department's costs reasonably incurred in any action to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by the Department as a consequence of the protest. If the protest is granted, the Department shall not be liable for payment of the protestor's costs.

8.0 THE DEPARTMENT'S RIGHTS AND DISCLAIMERS

8.1 THE DEPARTMENT'S RIGHTS

The Department may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this Scope of Services Package. The Department reserves the right, in its sole and absolute discretion, to do any of the following:

A) Reject any or all Proposals;
B) Issue a new Scope of Services Package;
C) Cancel, modify, or withdraw the entire Scope of Services Package;
D) Issue addenda, supplements, and modifications to this Scope of Services Package;
E) Modify the Scope of Services Package process (with appropriate notice to Proposers);
F) Appoint a Technical Review Committee and evaluation teams to review Proposals and seek the assistance of outside technical experts in Proposal evaluation;
G) Approve or disapprove the use of subcontractors and/or substitutions and/or changes in SOQs;
H) Revise and modify, at any time before the Proposal due date identified in Section 1.5.1, the factors it will consider in evaluating Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Department shall circulate an addendum to all Proposers on the Short-List setting forth the changes to the evaluation criteria or methodology. The Department may extend the Proposal due date identified in Section 1.5.1 if such changes are deemed by the Department, in its sole discretion, to be material and substantive;
I) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;
J) Waive weaknesses, informalities, and minor technicalities in Proposals;
K) Disqualify any Proposer that changes its organization (as represented in its SOQ) without Department written Approval;
L) Hold the Proposals under consideration for a maximum of one hundred twenty (120) calendar days after the Proposal due date specified in Section 1.5.1 until the final Award is made; and/or
M) Refuse to issue a Scope of Services Package to a prospective Proposer, refuse to consider a Proposal, once submitted, and/or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following:
    1) Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts;
    2) Default on the part of a Principal Participant or Designer under previous contracts;
    3) Unsatisfactory performance of previous work by the Proposer, a Principal Participant, and/or a Designer;
    4) Issuance of a notice of debarment or suspension under Department or federal regulations to the Proposer, a Principal Participant, and/or a Designer;
    5) Submittal by the Proposer of more than one Proposal for the same Work under the

Proposer's own name or under a different name;

6) Evidence of collusion between a prospective Proposer (or any Principal Participant or Designer) and other Proposer(s) (or Principal Participants or Designers) in the preparation of an SOQ, proposal, or bid for any Department project; and/or
7) Uncompleted work or default on a contract in another jurisdiction for which the prospective Proposer or a Principal Participant is responsible, which in the judgment of the Department might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded.

This Scope of Services Package does not commit the Department to enter into a Contract, nor does it obligate the Department to pay for any costs incurred in preparation and submission of Proposal(s) or in anticipation of a Contract. By submitting a Proposal, a Proposer disclaims any right to be paid for such costs, except for any costs paid in accordance with Section 2.7 to this ITP.

8.2 THE DEPARTMENT'S DISCLAIMERS

In issuing this Scope of Services Package and undertaking the procurement process contemplated herein, the Department specifically disclaims the following:

A) Any liability or commitment to provide revenues to assist in carrying out any and all phases of the Project; and
B) Any obligation to reimburse a Proposer for any costs it incurs under this procurement, except for any costs paid in accordance with Section 2.7.

In submitting a Proposal in response to this Scope of Services Package, the Proposer is specifically acknowledging these disclaimers.