

***BUNDLE 508 I-5: ELKHEAD RD. –
OR126: KNOWLES CR. (EKC)
DESIGN-BUILD PROJECT***

REQUEST FOR QUALIFICATIONS

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1.0 Introduction and General Information - This Request for Qualifications (RFQ) seeking a limited number of qualified Proposers, covers the design, construction, and other identified activities for this Project as described in the **RFQ Special Provisions**, Subsection 1.3.

Statements of Qualifications (SOQ) will only be accepted from Proposers intending to provide complete services required under the Contract. Responses from individual engineering, construction, or consultant firms not offering to provide all required services will not be accepted.

The Contract will be a fixed price, Design-Build Contract.

1.1 Acronyms - This RFQ includes acronyms as indicated below:

BOLI	Bureau of Labor and Industries
CFR	Code of Federal Regulations
DB	Design-Build
DBE	Disadvantaged Business Enterprise
FHWA	Federal Highway Administration, United States Department of Transportation
JV	Joint Venture
LLP	Limited Liability Partnership
MFTP	ODOT Manual of Field Test Procedures
MWESB	Minority, Women and Emerging Small Business
NFTMAG	ODOT NonField Tested Materials Acceptance Guide
NTP	Notice To Proceed
ODOT	Oregon Department of Transportation
OJT	On-the-Job Training
OAR	Oregon Administrative Rule
ORS	Oregon Revised Statute
PM	Project Manager
PWR	Prevailing Wage Rates
QA	Quality Assurance
QC	Quality Control
QPL	ODOT Qualified Products List
RFP	Request for Proposals
RFQ	Request for Qualifications
SOQ	Statement of Qualifications
USC	United States Code

1.2 Definitions - This RFQ includes specific defined terms as indicated below:

Addenda/Addendum – A written instruction issued by Agency adding, deleting, or making material changes to the provisions of the RFQ after the date the RFQ is advertised, or to previously issued Addenda.

Agency – The State of Oregon, acting by and through the Oregon Department of Transportation (ODOT).

Associate – An employee, executive, director, Key Personnel, or proposed consultant or subcontractor of Design-Builder, or any immediate family member of the foregoing.

Authorities – Regulatory agencies, courts, and Federal, State, and local political subdivisions with jurisdiction over the activity, the Entity, the workers, the Work, the Project, a particular Work Location or materials development source, or the Project Site.

Award – Written notification to the Proposer that the Proposer has been awarded a Contract.

BAFO – See “Proposal Revision”.

Best Value – A selection method utilizing both price and quality evaluation factors.

Business Day – Any Calendar Day, beginning and ending at midnight, between Monday and Friday, inclusive, excluding State-recognized holidays.

Calendar Day – Any day shown on the calendar, beginning and ending at midnight.

Clarifications – A written or oral exchange of information that takes place between a Proposer and Agency after the receipt of all SOQs during the evaluation process. The purpose of Clarifications is to address minor ambiguities, omissions, errors, or mistakes and clerical revisions in an SOQ.

Context Sensitive and Sustainable Solutions (CS³) – Solutions that (a) reflect social values (community values; cultural, aesthetic, and historic resources; and diversity); (b) maintain safety and mobility; and (c) support economic prosperity. “Sustainable solutions” are those that achieve responsible stewardship of the natural environment and optimize long-term performance.

Contract – The written agreement between Agency and Design-Builder, including all contract documents, describing the Work to be completed and defining the rights and obligations of Agency and Design-Builder.

Contract Amount – The total amount to be paid for the Work to be performed under the Contract, as it may be adjusted from time to time to account for modifications to work required by Agency or adjustments provided for by Contract.

Deficiency – A material failure of an SOQ to meet Agency’s requirements or a combination of Significant Weaknesses in an SOQ that increases the risk of unsuccessful Contract performance to a level unacceptable to Agency.

Design-Build – A contracting method that combines into a single Contract the design, construction, and Quality Management, all in accordance with all Contract requirements.

Design-Builder – The Entity selected pursuant to the RFP that enters into the Contract with Agency to design and construct the Project.

Design Professional – (a) An architect who is registered and holds a valid certificate in the practice of architecture in the state of Oregon; (b) an engineer who is registered and holds a valid certificate in the practice of engineering in the State of Oregon; (c) a surveyor who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon; (d) an architect who is registered and holds a valid certificate in the practice of landscape architecture in the state of Oregon; and (e) other professional persons required under Oregon Law to be registered and hold a valid certificate in order to perform Design Services or other Work called for under the Contract.

Design Services – (a) Development of all Programmatic Plans required under the Contract; (b) performance of all necessary pre-design and construction and utility relocation engineering, including but not limited to those tasks identified as Design Services in the Design-Build Agreement; (c) development and delivery of all design documents; (d) mobilization and demobilization relating to the performance of Design Services; (e) identification of, and compliance with, applicable Laws, Standards, administrative processing requirements, and permit processing requirements; (f) performance of all necessary geotechnical investigation and data analysis pertaining to site conditions; (g) performance of all Materials and Equipment testing and inspection necessary to confirm quality and conformance to required specifications; (h) implementation of all aspects of the safety and quality programs and Programmatic Plans related to Design Services; (i) acquisition of all necessary permits not obtained by Agency, filing of all required documents with Authorities, and payment of all associated fees, including application, filing, plan review, and appeal fees; (j) performance of all ROW services; and (k) performance of all other design and design-related activities required or reasonably implied under the terms of the Contract, or otherwise reasonably necessary to deliver the Project in accordance with all Contract requirements.

Designer – A Principal Participant, Subcontractor, or in-house Design Professional who leads Design-Builder’s design team in performing the Design Services.

Entity – A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or non-profit unincorporated association, business trust, joint venture (JV), or any other person with legal capacity to contract, or a government or governmental subdivision.

Environmentally Sensitive Waterways – A waterway (river, stream, etc.) requiring the preparation of a biological assessment, environmental assessment, or environmental impact statement and conditions or construction activities involving wetlands, endangered species and/or water quality issues.

Final Acceptance – Written confirmation by Agency that the Project has been completed in accordance with the Contract, with the exception of latent defects and warranty obligations, if any, and has been accepted.

Highway – Every road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of the State, open, used, or intended for use by vehicular traffic.

Independent Assurance – Independent evaluation and confirmation of all the sampling and testing procedures, equipment calibration, and qualifications of personnel.

Key Personnel – Persons and Entities specifically identified in the Contract as responsible for performing certain functions during the term of the Contract on behalf of Design-Builder.

Laws or Legal Requirements – Statutes, regulations, rules, ordinances, codes, permits, opinions, orders, judgments, and decrees issued by Authorities.

Lead Principal Participant – The Principal Participant that is designated by the Proposer as having the lead responsibility for managing Design-Builder's organization.

Major Subcontractor – Subcontractors identified anywhere in the text of the SOQ.

Notice of Intent to Award – Written notification issued by Agency identifying the apparent Best Value Proposer selected for Award of the Contract.

Notice to Proceed (NTP) – Written notice authorizing Design-Builder to begin performance of the Work.

Payment Bond – The approved security furnished by Design-Builder's Surety as a guaranty of Design-Builder's performance of its obligation to pay promptly in full all sums due for materials, equipment, and labor furnished to complete the Work.

Performance Bond – The approved security furnished by Design-Builder's Surety as a guaranty of Design-Builder's performance of the Contract.

Principal Participant – The following Entities: (a) each partner or joint venture member of the Proposer or Design-Builder, and (b) each Entity holding (directly or indirectly) a 15% or greater interest in the Proposer or Design-Builder.

Programmatic Plans – The Safety Plan, Public Information Plan, Quality Plan, and all other plans identified as such in the Contract that describe programs or processes to be followed in performing the Contract, other than construction drawings, means or methods.

Project – The sum of all Work to be performed under the Contract.

Project Site – The physical location within the confines of which construction and related activities are to be performed, including authorized State-controlled contiguous storage and staging areas.

Proposal – The written offer submitted by a Proposer in response to an RFP, consisting of the Quality Proposal and Price Proposal, to do the stated Work in the manner indicated and at the price quoted.

Proposal Revision (Best and Final Offer or BAFO) – A change to a Proposal made after the solicitation closing date at the request of, or as allowed by, Agency as a result of discussions.

Proposal Security – A Proposal bond, cashier’s check, irrevocable letter of credit issued by an insured institution, or certified check submitted with a Proposal to assure that the Proposer will enter into the Contract if the Proposal is accepted.

Proposer – The Entity submitting a Proposal in response to a Request for Proposals.

Public Works Bond – The statutory bond required under ORS 270C.836 that must be filed with the Construction Contractors Board before starting work on a contract or subcontract for a public works project.

Quality Assurance – The planned and systematic oversight actions by Agency to provide itself confidence that Design-Builder is performing Quality Control in accordance with the Quality Plan. Oversight actions include, but are not limited to, design monitoring, auditing, spot-checking, and participation in the review of the design; and construction monitoring, auditing, spot inspections, Verification Sampling and Testing at production sites and the Project Site, and Independent Assurance.

Quality Control – The total of all activities performed by Design-Builder to ensure that the Work meets all Contract requirements, including documentation of all Quality Control activities. For design, this includes, but is not limited to, procedures for evaluating, establishing, monitoring, and maintaining design quality; design review, including reviews of plans and specifications for constructability, conformance to applicable Design Professional standards of practice, and compliance with the Laws and other Contract requirements. For construction, this includes, but is not limited to, procedures for materials handling and construction quality; inspection, sampling and testing of materials, source development and aggregate production plants, fabrication and production of manufactured products, materials certification; calibration and maintenance of equipment; production process control; and monitoring of environmental compliance.

Quality Plan – Design-Builder’s Programmatic Plan for (a) implementing the overall Quality Program and associated activities; (b) meeting or exceeding the Contract’s quality requirements; and (c) coordinating Design-Builder’s quality management activities with those of Agency.

Quality Program – Design-Builder’s overall quality program and associated activities including quality management, the Contract’s quality requirements, and the Quality Plan.

Request For Proposals (RFP) – The document, including all documents incorporated by reference therein through which Agency requests the submittal of Proposals. “Request for Proposals” is equivalent to the term “Solicitation Document” as defined in OAR 731-005-0430(35).

Request For Qualifications (RFQ) – The document through which Agency requests the submittal of Statements of Qualification (SOQs) by Entities interested in the Project.

Review and Comment – Agency’s reviews, observations, and/or inspections based solely on information provided by Design-Builder (not based on any independent investigation or inquiry by Agency) and Agency’s written response resulting from such Agency actions. Review and Comment does not constitute Acceptance, and shall not be construed to waive

or excuse Contract obligations or relieve Design-Builder of any aspect of its obligation to perform the Contract according to its terms.

Short-List – Entities that Agency determines are the most highly qualified among those responding to an RFQ that will be invited to submit Proposals in response to the RFP.

Significant Weakness – A flaw in the SOQ that appreciably increases the risk of unsuccessful Contract performance. (See "Weakness")

Stakeholder – The Stakeholders for the Project may include the following: (a) the State of Oregon (acting primarily through Agency), including its agencies and departments; (b) FHWA, for federal-aid projects and projects on or affecting the Dwight D. Eisenhower National System of Interstate and Defense Highways or the National Highway System (NHS); (c) other states and/or multi-state Authorities directly affected by or cooperating with the development of the Project; (d) federal and State regulatory and permitting agencies having jurisdiction over portions of the Work or Project Site; (e) Native American Tribes and tribal members of Oregon affected by the Project; (f) Counties, cities, towns, and villages within Oregon directly affected by the Project; (g) other public or private Entities impacted or potentially impacted by the Project, such as political subdivisions, Utility owners, transit systems, and railroads; and (h) other Entities specifically identified by Agency.

State – The state of Oregon.

Statement of Qualifications – The written response to an RFQ submitted by an Entity describing the Entity's qualifications for performing certain Work to be performed under a Contract to be Awarded through the ensuing RFP solicitation process.

Subcontractor – Any Entity with whom Design-Builder contracts to perform a portion of the Work, with the exception of suppliers, vendors, and delivery/transport services.

Surety –The entity that issues the performance and payment bonds or any other required bonds.

Utility – A line, facility, or system for producing, transmitting, or distributing communications, power, electricity, heat, gas, oil, water, steam, waste, or storm water not connected with highway drainage, or any other similar commodity which directly or indirectly serves the public. The term may also mean the utility company, district, or cooperative owning and operating such facilities, including any wholly-owned or controlled subsidiary.

Verification Sampling and Testing – Sampling and testing performed to validate the quality of the material or product.

Weakness – A flaw in the SOQ that increases the risk of unsuccessful Contract performance. (See "Significant Weakness")

Work – The design, construction, and quality management, which collectively include the furnishing of all materials, equipment, tools, labor, services, and incidentals necessary to successfully complete any individual Contract item or the entire Contract, and the carrying out of duties and obligations imposed by the Contract.

1.3 Project Description - This Project combines or bundles several projects as described in the **RFQ Special Provisions**, Subsection 1.3.

Unless otherwise stated in the **RFQ Special Provisions**, a Documented Categorical Exclusion (DCE) for the Project will be prepared by Agency, and will be completed prior to Design-Builder NTP. Design-Builder shall review the design approved through the DCE. Proposals shall contain no elements that would require development of a new DCE. The final Project scope will include environmental permitting, environmental clearances, and any mitigation that is required by the environmental process which will be completed by Design-Builder.

If additional project information is available, it will be located at the ODOT Major Projects Branch, Advanced Contracting Unit website:

http://www.oregon.gov/ODOT/HWY/OPD/DB_Home.shtml .

1.4 Project Goals - The following are Agency's goals for the Project:

- (a) Minimize impacts to freight mobility within Oregon by placing a high priority on maintenance of traffic and public safety.
- (b) Implement the Project in a manner sensitive to the communities and landscape (CS³), and achieve enhanced environmental performance and comprehensive environmental compliance.
- (c) Stimulate Oregon's economy by maximizing Oregon business participation in delivering the Project.
- (d) Maximize use of women-owned and minority business enterprises.
- (e) Proactively engage communities and Stakeholders in execution of the Project from planning to construction.
- (f) Develop and implement an effective Quality Program.
- (g) Achieve rapid initiation and timely completion of construction.
- (h) Provide cost-effective solutions and cost-containment methodologies.
- (i) Increase Work Zone safety with engineering improvements and enhanced awareness through training, education, and public information.
- (j) Minimize life-cycle cost of the product.
- (k) Issue NTP to the successful Design-Builder by the date identified in the **RFQ Special Provisions**, Subsection 1.8.
- (l) Any additional project goals will be identified in the RFQ Special Provisions.

1.5 Procurement Process - This procurement will use a Best Value process. The intent of Agency is to Award the Contract to the Proposer that provides the Proposal with the best combination of price and quality.

The procurement process will include the following two steps:

- (a) Request for Qualifications (determination of the Short-List).
- (b) Request for Proposals (selection of Design-Builder from responsible Proposers on the Short-List that submit responsive Proposals).

Evaluation of the SOQs and Proposals will be based on information submitted in the SOQs and Proposals or otherwise available to Agency.

Pass/fail and quality evaluation factors will be utilized in both the RFQ and RFP phases.

The selection of Design-Builder for the Contract will be based on both pass/fail factors and a combined evaluation of quality and price factors.

1.5.1 RFQ Step - SOQ submitted in response to this RFQ must include a response to each pass/fail and quality evaluation factor. The Short-List of Proposers that will be invited to submit Proposals will be determined based on evaluation of pass/fail and quality factors set forth herein.

At the end of the SOQ evaluations, Agency will determine the Short-List. Proposers on the Short-List will then be invited to submit Proposals. SOQ scores will not carry-over to the RFP step.

Proposers are solely responsible for all costs and expenses of any nature associated with responding to this RFQ, attending briefing(s), providing supplemental information, and all subsequent costs and expenses (if selected for the Short-List).

1.5.2 RFP Step - The RFP will provide further specific instructions on what to submit, the evaluation factors, the objectives and requirements for evaluation, and the RFP evaluation scoring guidelines.

Information to be submitted in the Proposal will include, but not be limited to, the following:

- (a) Legal documents demonstrating the Proposer's ability to enter into a Contract with Agency.
- (b) Proposal Security.
- (c) Specified certifications and representations.
- (d) A letter of intent from Surety (ies) for payment and performance bonds.
- (e) The Proposer's organization including identification of Major Subcontractors and qualifications of nominated technical Key Personnel.

(f) A description of the Proposer's management approach for Quality, safety, design, construction, and Environmental Compliance, including Baseline Progress Schedule.

(g) The Proposer's technical approach.

(h) Specified design documents and conceptual diagrams and sketches, including baseline concept plans.

(i) The Price Proposal.

While price is an important factor in the RFP phase of the procurement, quality is also a significant factor in determining the success of the Project. The RFP requirements and evaluation and selection criteria are being designed to provide a comprehensive evaluation of quality that, when combined with price according to relative weights to be determined by Agency, will result in the selection of the Best Value Design-Builder for this Project. Agency will perform an assessment of the price and the quality factors and select Design-Builder representing the best value to the State of Oregon.

The weights of price versus quality in the selection will be set forth in the RFP.

In Agency's sole discretion, it may use one-on-one meetings, oral presentations, or a Best and Final Offer (BAFO) process as part of the RFP phase of the procurement.

1.5.3 Proposal Stipend - Stipends in the amount set forth in the **RFQ Special Provisions**, Subsection 1.5.3, will be paid to those responsible Proposers on the Short-List who submit Proposals in response to the RFP and are not chosen as the successful Proposer but whose Proposal is responsive and has received a rating of pass on all "pass/fail" criteria and a quality score of at least "41%" of the available points for any quality evaluation factor, and at least "21%" of the available points for each evaluation sub-factor. In consideration for the offer of payment of this stipend, Agency will receive all rights and ownership of the information contained in the Proposal. No stipend, in any amount, will be paid to Proposers who do not submit a Proposal that meets the foregoing requirements or whose Proposal is determined to be non-responsive, or to Proposers who do not attend mandatory pre-proposal joint or one-on-one meetings or mandatory oral presentations (if required).

1.5.4 Insurance, Bonding, Licensing, and Securities - Design-Builder shall provide the types of insurance specified in the RFP, including professional liability insurance covering Design Services performed or required to be performed by or under the direction of a Design Professional.

Proposal Security will be required in the amount of 10% of the Proposal price. Design-Builder will be required to provide performance and payment bonds and/or other security acceptable to Agency that cover both Design Services and construction Work as provided in the RFP. Design-Builder will be required to have on file with the Construction Contractors Board the Public Works Bond, and to confirm that its Subcontractors have such bonds on file before performing any construction activities or entering onto the Project Site.

Prior to Contract execution, the selected Design-Builder and its sub-consultants and Subcontractors participating in this procurement and/or the Contract must obtain all

licenses and permits and take all necessary steps to conduct business in Oregon consistent with its Laws. Design-Builder may be required to provide a number of other financial commitments, including commitments from its parent company and other guarantors, if any.

1.6 Letter of Interest - Each Proposer intending to submit an SOQ must submit a Letter of Interest to Agency's Single Point of Contact as specified in the **RFQ Special Provisions**, Subsection 1.6, indicating its intent to submit an SOQ and its desire to be considered for the Project. An authorized representative of the Proposer's organization shall sign the letter. All Letters of Interest must be received no later than the date and time specified in the **RFQ Special Provisions**, Subsection 1.8. Submittal of this Letter of Interest is mandatory and the Agency will not accept SOQs of Proposers who do not submit a Letter of Interest by the due date and time specified.

1.7 Constructability Review - The Agency may elect to hold a Constructability Review Meeting (attendance optional) after release of the RFQ to solicit comments and input from the contracting community on proposed construction options as part of this project. The invitation to participate in the review will be posted on the Agency website at: http://www.oregon.gov/ODOT/CS/OPO/construction/constructability_reviews.shtml,

Agency anticipates that participants will include both internal Agency staff and external members of the contracting community. Participants will be provided with review materials prior to the meeting and will be asked to provide written comments on the review materials and information presented at the meeting no later than five Business Days after the Constructability Review meeting. The information gathered from the review process will assist Agency in the development of the project-specific requirements to be contained in the RFP. The information received will be part of the procurement process and will not be disclosed by Agency until issuance of the Notice of Intent to Award (as provided in ORS 279C.410), at which time the information will be subject to disclosure except as to any information that is subject to a trade secret or other exemption from disclosure under the Oregon Public Records Law (see Subsection 7.8) or protected from disclosure under other applicable law.

1.8 Procurement Schedule - The schedule for the Project will be identified in the **RFQ Special Provisions, Subsection 1.8**, and is subject to change at the discretion of Agency. The final schedule for the Project will be stated in the RFP and will include solicitation and award protest periods.

1.9 Design-Builder Responsibilities in Design, Construction, and Quality Management - Design-Builder shall be responsible for furnishing all labor, material, plant, equipment, services and support facilities for the following (this list is not intended to be all-inclusive):

- (a) Design and construction of all Project components, including utility relocations.
- (b) Project design and construction management.
- (c) Project-related Public Information activities.
- (d) Coordination with Project stakeholders, other contractors, and utility owners.

- (e)** Design Quality.
- (f)** Construction Quality.
- (g)** Environmental permitting, resource agency consultations, mitigation and compliance monitoring.
- (h)** Additional environmental investigations, documentation, and monitoring associated with or resulting from Design-Builder's actions.
- (i)** Maintenance and protection of traffic and access to properties (both temporary and permanent access).
- (j)** Project safety and security.
- (k)** Preliminary Engineering (PE), such as surveys and geotechnical investigations, not provided by Agency.
- (l)** Harmful and hazardous materials remediation (design and construction).
- (m)** Drainage and erosion control.
- (n)** Construction waste disposal and handling.
- (o)** Acquisition of required clearances, licenses, construction easements, and permits for Design-Builder's Work, Work sites, and storage areas, on or off site.
- (p)** Ancillary Work, such as access roads, driveways, temporary fencing, relocation of drainage, Work sites, and temporary works.
- (q)** Location, acquisition, permits, and transportation for material.
- (r)** Coordination and relocation of utilities and municipal drainage facilities (when required).
- (s)** Site clearance and restoration.
- (t)** Administration of the Project during the Contract period.
- (u)** Implementation and Administration of MWESB policy for Project design and construction Work, as applicable.

Design-Builder will be required to plan, implement, and maintain a Quality Plan for the Work. The Quality Plan will detail how Design-Builder will establish and operate its quality program management structure, independent from design and construction production, and document its procedures pertaining to all aspects of the work listed below. The Quality Plan will be established and maintained by Design-Builder such that it provides an agency-auditable system that assures Design-Builder complies with all Contract requirements pertaining to at least the following general areas of the DB Work:

- **Contract administration** (DBE, subcontracts, certified payrolls, etc.)
- **Project Progress** (Project schedule maintenance and reporting, schedule revisions, as-constructed schedule upkeep, etc.)
- **Contract payments** (verify and certify pay requests accurately reflect completed work and that completed work quality and quantity is substantiated with required material certifications, test results, and inspection records, payments to subcontractors and suppliers etc.)
- **Environmental issues** (permit requirements and education, mitigation requirements, environmental construction compliance, etc.)
- **Design requirements** (design standards, procedures, reviews, changes after RFC, required design documents, as-constructed drawings, etc.)
- **Construction inspection** (procedures, protocols, staffing, assignments, reports, documentation)
- **Field-tested and non-field tested materials** (procedures, protocols, documentation in accordance with agency's MFTP, NFTMAG, QPL, and Project specifications)

The Quality Plan (QP) (structure and procedures) provides organization and management for the performance and Quality functions necessary in the above areas of work, as well as requiring DB auditing to assess and assure performance.

The QP must provide information and documented procedures and protocol on all relevant Work aspects, including but not limited to the following:

- Staffing and communication organization chart, personnel, certifications, duties
- Design checking, formal design reviews, changes to plans
- Field inspection, records and documentation, non-compliance, resolutions
- Management of field-tested materials, Quality records, documentation management, communications with Agency Quality Assurance
- Management of non-field tested materials, certifications, documentation management
- Changes to approved designs prior to or during construction
- Tracking planned and completed to date quantities
- Project progress, Project schedules and updates, progress payment requests
- Safety, traffic management, DBE, subcontractor and labor compliance issues
- Change Management - Changes during both design and construction
- Non-Conformance - Process for handling non-conformances in both design and construction work
- Audit Process - Process for handling both internal and external audits for design and construction
- Adjustments – Escalation/De-Escalations, Statistical Analysis of materials
- Bonus payments, price reductions
- Documentation controls and Project contract administration

- All other areas Agency or Design-Builder determines are necessary to provide a satisfactory and appropriate method of assuring that Project quality meets the requirements of the Contract

Agency may perform inspections and audits of Design-Builder's management, design, construction, and work products, and performance of the Quality Plan.

1.10 Role of Agency - During the various phases of the Project, Agency is responsible for the following activities:

- (a) Obtaining the appropriate environmental clearances except those specifically assigned to Design-Builder;
- (b) Overall program administration;
- (c) Preparation of the RFQ and RFP, evaluation of SOQs and Proposals, determination of the Short-List and selection of Design-Builder;
- (d) Contract procurement and administration;
- (e) Quality Assurance oversight and auditing of Design-Builder design and construction;
- (f) Providing all information and data included in the RFP;
- (g) Land acquisition for rights-of-way and easements except for those specifically assigned to Design-Builder; and
- (h) Review and Comment, Final Acceptance of the Work, and payment for the Work performed.

As permitted by law and at Agency's sole discretion, it may use its consultants in fulfilling the responsibilities noted in this Subsection 1.10.

2.0 Communications

2.1 Rules of Contact - The following rules of contact shall apply during the Contract procurement for the Project. The rules are designed to promote a fair, unbiased, legally defensible procurement process. Agency's Single Point of Contact ("Agency's Contact"), together with address, phone number, fax number, and e-mail address, identified in the **RFQ Special Provisions**, Subsection 2.1, is the single source of information regarding the Contract procurement.

The selection process began upon the date of issuance of this RFQ, and is anticipated to be completed with the execution of the Contract on the date specified in the **RFQ Special Provisions**, Subsection 1.8. These rules of contact are now in effect. The specific rules are as follows:

- (a) After submittal of SOQs, no Proposer or any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the Project or the SOQs, except that a Proposer may communicate with a Subcontractor that is on both

its team and another Proposer's team, as long as the Subcontractor's work level does not exceed the level of participation deemed an organizational conflict of interest under Subsection 7.3, and so long as those Proposers establish a documented, auditable protocol to ensure that the Subcontractor will not act as a conduit of information between the teams. (Communications of a general nature among Proposers and team members are allowed during Agency-sponsored workshops and meetings.)

(b) Contact between the Proposers and Agency (questions and responses to questions) shall only be through Agency's Contact and Proposers' designated representative.

(c) The Proposers shall not contact Agency employees, including department heads, members of the evaluation teams or selection committee, or any official who will evaluate SOQs regarding the Project, except through the process identified above.

(d) Except for specific information regarding only the Stakeholders' direct interests or involvement in the Project, the Proposers shall not contact Stakeholder staff regarding the Project. Stakeholder staff includes employees of Agency, Count(y)(ies), and cities located in the applicable Count(y)(ies).

(e) Proposers shall not contact Native American Tribes ("Tribes") directly without authorization from Agency. All formal consultation with Tribes will be conducted by Agency.

(f) Any contact determined to be improper, at the sole discretion of Agency, may result in disqualification of a Proposer or its rejection as not responsible.

(g) In order to facilitate the efficient flow of information during the procurement process, Agency will post information on the Project website and utilize E-mail alerts and notifications; however, any official contact regarding the Project will be disseminated from Agency in writing on Agency letterhead and signed by Agency's Contact.

(h) Agency will not be bound by any oral communication or any other information or contact that occurs outside the official communication process specified herein.

2.2 Proposer Questions - Agency will consider questions submitted in writing by Proposers regarding the RFQ, including requests for clarification of RFQ provisions. All such requests must be submitted in writing in the format shown on Form RFQ-C to Agency's Contact at the address shown in the **RFQ Special Provisions**, Subsection 2.1.

Include an electronic copy of the questions on Form RFQ-C on CD-ROM, or by e-mail with the written request. Only written requests to the above addressee will be considered. No oral requests will be considered. No requests for additional information or clarification submitted to any other Agency office, consultant, employee, or the Federal Highway Administration (FHWA) will be considered.

Only requests received by the date specified in the **RFQ Special Provisions**, Subsection 1.8, will be addressed. Questions will not be accepted by phone. Only e-mailed, mailed, or faxed inquiries (confirmed by mail by the requesting Proposer) will be accepted.

Questions must include the requestor's name, address, e-mail address, telephone and fax numbers, and the Proposer he/she represents.

Responses to questions will be issued without attribution and posted on the Project web site. An e-mail notification announcing the close of the question/clarification submittal period will be sent to all known recipients of this RFQ not later than ten (10) Calendar Days prior to the SOQ due date specified in the **RFQ Special Provisions**, Subsection 1.8.

2.3 Addenda - If necessary, Agency will issue Addenda to modify conditions or requirements of this RFQ to recipients of this RFQ not later than seven (7) Calendar Days prior to the SOQ due date (or if within seven (7) Calendar Days prior to the SOQ due date, the SOQ due date shall be revised to accommodate such minimum seven (7) Calendar-Day period).

3.0 Statements of Qualifications Submittal Requirements

3.1 Date and Time of Receipt - All SOQs must be received no later than the date and time specified in the **RFQ Special Provisions**, Subsection 1.8. The SOQs must be enclosed in sealed containers and clearly identified and marked as follows:

“Procurement Sensitive”

Bundle No: _____
Project: _____
STATEMENT OF QUALIFICATIONS
Due Date/Time: _____

Late submittals will not be considered, and will be returned unopened to the address indicated on the cover of the package.

3.2 Submittal Address – SOQs shall be delivered to Agency’s Contact at the address specified in the **RFQ Special Provisions**, Subsection 2.1.

Each Proposer shall be responsible for ensuring that its SOQ is delivered to Agency at the time and place specified herein, and for obtaining a written receipt appropriate to the means of delivery from Agency.

3.3 SOQ Organization, Formatting, Number of Copies, and Page Count - The SOQ shall be accompanied by a cover letter and the Acknowledgement of Receipt and organized into the following seven (7) separate sections and three (3) appendices properly identified and referenced:

- Section 1 – Cover Letter and Acknowledgement of Receipt
- Section 2 – Legal
- Section 3 – Financial
- Section 4 – Experience of the Firms
- Section 5 – Past Performance
- Section 6 – Backlog/Capacity
- Section 7 – Project Understanding
- Appendix A – Legal Documents

Appendix B – Company Brochures

Appendix C – Awards, Citations, and Commendations

The SOQ shall be limited to no more than 52 pages in Sections 1 through 7 of the SOQ, including required forms, but exclusive of dividers, appendices, and Form COI submittals. If an SOQ contains more than 52 pages, only material on the first 52 pages will be considered. It is suggested that Proposers number the pages of their SOQs.

The SOQ shall be provided electronically in Adobe .pdf format. Additionally, one (1) original and nine (9) copies of the SOQ and appendices shall be provided. The signed original copy (signed in blue ink) shall be identified as the original on the cover(s) and marked as "Copy 1 of 10 Copies." Each copy shall be identified on the cover(s) as "Copy X of 10 Copies."

The sections and appendices shall consist of loose-leaf pages, not including cover sheet(s), tabs, indices, appendices, and Project reference forms. The seven (7) sections shall be placed together in a 3-ring binder or by other forms of binding. Plain report covers are acceptable, but are not required. Due to the ease of unintentional disassembly, binder clips, and other forms of paper clips are not acceptable. Color printing is allowed but not encouraged.

Text shall be in a standard font, a minimum of twelve (12) points in height, single-spaced, for the substantive text. Pages shall be 8-1/2 by 11 inch recycled 20# white bond paper with simple lettered/numbered dividers for each section/subsection. Single sided pages shall be used. Foldouts not exceeding 11 by 17 inches are permitted. Each foldout shall count as two pages against the page limit. Any page or partial page with substantive text, graphics, or charts, including résumés, will be counted as one page. Proposers may use their discretion for the font size of other materials (e.g., graphics and charts). Number each page in each section consecutively (i.e., 1-1, 1-2; 2-1, 2-2; 3-1, 3-2). Center page numbers at the bottom of each page.

Proposers should make every effort to present information clearly and concisely. Documentation that is difficult to read may be rejected and may lead to disqualification.

The information shall be easily reproducible by normal black and white photocopying machines. Color photographs, renderings, and brochures (if provided) shall be adequately bound and suitably protected for handling and circulation during review and evaluation.

Statements of Qualifications shall become the property of Agency. Copies of each SOQ will be retained after the SOQ evaluation process for the Project files.

See Section 9.0 for an overview of the format of the organization of the SOQ.

3.4 Content of Statements Of Qualifications - This section describes the specific information that must be included in the SOQ. Required forms for the SOQ are listed in Section 9.0. Any material modification to the forms may result in the SOQ being declared non-responsive.

Proposers should provide brief, concise information that addresses the objectives and the requirements of the Project consistent with the evaluation factors described in this Section. Lengthy narratives containing extraneous information are discouraged.

Proposers are responsible for verifying that the contact names and telephone numbers provided on the reference forms and résumé materials are correct, and that the contacts listed will be available and in a position to confirm the data being supplied. If Agency is unable to reach a contact, the Proposer may be notified by telephone, fax, or e-mail and allowed 24 hours to provide an alternate contact. If Agency is still unable to verify the information submitted for evaluation, the information will not be scored.

If the Proposer submits information in its SOQ that constitutes trade secret information under either ORS 192.501(2) or ORS 646.461(4) and it wishes to protect that information from disclosure, the Proposer must follow the process defined in Section 7.8.

Include a cover sheet with the SOQ identifying each section and page which has been so marked, together with an explanation of the Proposer's basis for determining that the designated information qualifies as a trade secret under Oregon law.

In drafting SOQ responses, Proposers should be guided by the Project goals in Subsection 1.4 and the objectives listed in Subsections 3.4.2 through 3.4.8. An objective is stated for each evaluation factor to provide Proposers the expectations of Agency. The requirements for each evaluation factor and the information to be submitted are listed and described in detail. The SOQ evaluation scores of Subsection 4.3 will be based on how well the SOQ responds to the requirements and meets or exceeds the Project goals and the objectives for each of the evaluation factors.

3.4.1 Cover Letter - The Proposer shall provide a one-page letter indicating its desire to be considered for the Project and stating the official names and roles of all Principal Participants, the Designer, Project Quality Manager, and Major Subcontractors. The Proposer shall identify a single point of contact for the Proposer and the address and telephone and fax numbers and e-mail address to which communications should be directed. An authorized representative of the Proposer's organization shall sign the letter. If the Proposer is not yet a legal Entity or is a joint venture or general partnership, authorized representatives of all Principal Participants shall sign the letter, in which case each Principal Participant shall sign on behalf of both the Proposer and the Principal Participant itself and shall thereby bind both the Proposer and the Principal Participant to be jointly and severally liable under the cover letter, the SOQ and other submittals. With the submission of the Cover Letter, the Proposer, acting through its authorized representatives, has read and understands, and agrees to be bound by and comply with all RFQ instructions. The requirements for joint and several liability shall also apply to the RFP and Contract execution stages for this Project.

The Proposer shall include the following affirmations in the cover letter:

(1) Proposer, acting through its authorized representatives, has read and understands, and agrees to be bound by and comply with all the RFQ instructions, terms and conditions, together with all Addenda, if any, issued.

(2) The Statement of Qualification was prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.

(3) Neither Proposer nor anyone representing the Proposer offered or gave any advantage, gratuity, bonus, discount, bribe or loan of any sort to the Agency or its agents, employees, or anyone representing the agency, or engaged in any other type of anti-competitive conduct at any time during this procurement.

(4) If awarded the Contract, Proposer shall utilize in performance of the Contract all resources indicated in its SOQ, including Major Subcontractors, Key Personnel and Key Design Professionals, to the extent within Proposer's control and through application of Proposer's best efforts.

(5) If awarded the Contract, Proposer shall make all Key Personnel, including Key Design Professionals, identified in its SOQ available at all times and places required under the terms of the Contract, and shall ensure that such Key Personnel devote all efforts necessary for all periods of time necessary or required under the terms of the Contract, to timely fulfill all Contract obligations.

(6) Proposer has the power and authority to enter into and perform the Contract to be awarded, and the Contract, when executed and delivered, shall be a valid and binding obligation enforceable according to its terms.

(7) Agency will not be liable for any expenses incurred by Proposer in preparing and submitting its SOQ or in participating in the SOQ evaluation / shortlist process.

The Proposer shall attach to the cover letter the Acknowledgment of Receipt acknowledging receipt of the RFQ, all Addenda and responses to questions, if any, issued by Agency.

3.4.2
Pass/Fail

Legal

(a) Objective -To identify legally-constituted Proposers able to submit Proposals and enter into the Contract and complete the Work that either have or commit to obtain all required licenses.

(b) Requirements and information to be submitted:

- (1)** Form L-1, Proposer's Organization Information, for the Proposer's organization;
- (2)** Form L-2, Principal Participant and Designer Certification, for each Principal Participant and the Designer covering the last five (5) years; and
- (3)** Form COI, Proposer/Major Subcontractor Conflict of Interest Disclosure, for the Proposer and Major Subcontractors.

If a JV or partnership include:

- (4) Identity of all Principal Participants of the Entity (Form L-1);
- (5) Percent equity share held by each member or partner (Lead Participant column of Form L-1); and
- (6) An express statement from each of the equity members or partners of the Entity as to their joint and several liabilities.

(c) Requirements and information to be provided in Appendix A to the SOQ:

- (1) Submit for each Principal Participant evidence indicating the authority of the Principal Participant's representative to sign for that Principal Participant; and
- (2) Submit for each Principal Participant evidence indicating the authority of the Proposer's designated point of contact to sign documents for and on behalf of the Proposer's organization.

Evidence of authority may be in the form of a corporate resolution, articles of incorporation or bylaws, or partnership agreement.

If a JV or partnership:

- (3) If the Proposer has already been legally constituted, provide full details of the organizational structure and supporting organization/formation documents including a copy, as applicable, of the JV agreement, partnership agreement or other organizational documents; and
- (4) If the Proposer has not yet been legally formed, provide a brief description of the proposed legal structure and draft copies of the anticipated organizational documents, including the following:
 - a. All significant terms of the JV or partnership agreements, including the rules relative to the administration of the JV or partnership, including dealing with deadlock situations;
 - b. Description of how the JV or partnership will operate administratively and technically; and
 - c. A memorandum of agreement or teaming agreement.

3.4.3

Financial

Pass/Fail

(a) **Objective** - To identify Proposers with demonstrated capability to undertake the financial responsibilities associated with the Project, including bonding and guaranties.

(b) **Requirements and information to be submitted** – Surety Letter(s):

- (1) Provide a letter from a Surety or insurance company indicating that the Proposer is capable of obtaining the required Proposal security, and performance and payment

bonds in the Contract Amount if awarded the Contract. The Contract Amount is not anticipated to exceed the amount stated in the **RFQ Special Provisions**, Subsection 3.4.3-(b)(1).

(2) The surety or insurance company submitting such letter must be on the list of surety or insurance companies authorized to do business in Oregon at the time of Award.

(3) The letter must specifically state that the Surety/insurance company has evaluated the Proposer's (and each Principal Participant's) backlog and work-in-progress in determining the Proposer's available bonding capacity, and the letter must expressly identify the Proposer's (and each Principal Participant's) amount of current backlog and available bonding capacity. Letters indicating "unlimited" bonding/security capability are not acceptable.

3.4.4 Experience - The objectives, requirements, and points available for this evaluation factor are defined in the **RFQ Special Provisions**, Subsection 3.4.4.

3.4.5 Past Performance - The points available for this evaluation factor are defined in the **RFQ Special Provisions**, Subsection 3.4.5.

(a) Objectives:

(1) To identify Proposers and identified Subcontractors that do not have a history of legal, financial, and project delivery problems that could adversely impact the Project generally;

(2) To identify Proposers with a record of safety and a commitment to safety that reflects the representations made in the SOQ;

(3) To identify Proposers with a record of meeting environmental compliance requirements; and

(4) To identify Proposers with a record of meeting workforce diversity participation requirements.

(b) Requirements and information to be submitted:

(1) Using Form PP-1, "Past Performance," provide the information requested in the bulleted subparagraphs below. If a Proposer has no record of relevant past performance, or if the information relative to a category is not available, enter a declarative statement to that effect on Form PP-1. If the record of relevant past performance does not exist and/or is not available, the Proposer shall receive a score of one half the number of points available for the factor above. Attach additional sheets to Form PP-1 as necessary to address corrective actions taken or considered by the Proposer. For each instance of litigation, claim, dispute proceeding, arbitration, assessment of liquidated damages, or termination or stop-work orders for cause or default, provide the owner's name and the name of its current representative (and current phone and fax numbers) who can be contacted for additional information. With respect to the information solicited in this Section, failure to provide this information, conditional or qualified submissions to requests or questions posed (i.e., "to our

knowledge," "to the extent of available information," "such information is not readily available," or "such information is not maintained in the manner requested"), or incomplete or inaccurate submissions may, in the sole discretion of Agency, lead to a lower evaluation score for this quality factor or result in a Deficiency that would cause Agency to declare the SOQ non-responsive.

a. Awards, Citations, and/or Commendations - List awards, citations and/or commendations for performance relevant to this Project received by any Principal Participant, Designer, or Major Subcontractor, within the last five (5) years. Describe the work for which award(s), citation(s), and/or commendation(s) were received. Copies of award(s), citation(s), and/or commendation(s) may be included in Appendix C of the SOQ. Emphasize award(s), citation(s), and/or commendation(s) received on projects of a similar size, type of work, and complexity as this Project.

b. Claims, Dispute Proceedings, Litigation, and Arbitration Proceedings - Provide a list of all claims, dispute proceedings, litigation, and arbitration proceedings involving amounts in excess of \$100,000 and related to performance in which any Principal Participant, Designer, or Major Subcontractor has been involved within the past three (3) years. Include all claims, dispute proceedings, litigation, and arbitration proceedings initiated by or against owners and federal, State, and local regulatory agencies. Indicate whether the claim, dispute proceeding, litigation, or arbitration proceeding was resolved against the Proposer or its insurers/sureties or resulted in reduction in compensation to the Proposer. Indicate any unresolved, outstanding claims, dispute proceedings, litigation, environmental enforcement, and arbitration proceedings.

c. Liquidated Damages - Describe any contract which resulted in assessment of liquidated damages against any Principal Participant within the past three (3) years. Describe the causes of the delays and the amounts assessed. Describe any outstanding damage claims by, or damages due and owing to, any owner/agency.

d. Termination or Stop-Work Orders for Cause or Default - Describe the conditions surrounding any contract (or portion thereof) entered into by any Principal Participant, Designer, or Major Contractor, within the past three (3) years that has been terminated or stopped for cause or default, or which required completion by another party. Describe the reasons for termination and the amounts involved.

e. Disciplinary Action - Indicate any disciplinary action taken against any Principal Participant, Designer, or Major Subcontractor within the past three (3) years by any governmental agency or licensing board, including suspension from the right to propose/bid or removal from any proposer/bidder list.

(2) Safety - Submit Form S, Safety Questionnaire, for each Principal Participant and Major Subcontractor.

(3) Environmental Compliance - Submit Form PP-2, Environmental Past Performance, for each Principal Participant and Construction Major Subcontractor. Limit Environmental Past Performance information to the office(s)/division(s) of the Entities that will be performing Work on the Project.

(4) Workforce Diversity Participation - Submit Form WD, Record of Past Workforce Diversity Performance for each Principal Participant reflecting the record of workforce diversity in their contracts for the past three (3) years. Limit workforce diversity to the office(s)/division(s) of the Entities that will be performing Work on the Project, and to projects in excess of \$10 Million, constructed value.

3.4.6 Backlog/Capacity - The points available for this evaluation factor are defined in the **RFQ Special Provisions**, Subsection 3.4.6.

(a) Objective - To identify Proposers with sufficient available capacity in excess of the value of this Project, considering current, committed, and potential workload and past level of contract activity, to successfully complete the design and construction of the Project.

(b) Requirements and information to be submitted:

(1) Submit Form B, Backlog Information, for each Principal Participant, Designer, Project Quality Manager (if an individual firm), and Major Subcontractor. Limit backlog information to the office(s)/division(s) of the Entities that will be performing Work on the Project.

(2) Submit Form R, Past Revenue, for each Principal Participant, Designer, Project Quality Manager, and Major Subcontractor. Limit revenue information to the office(s)/division(s) of the Entities that will be performing Work on the Project.

(3) Submit a plan that briefly describes the capacity of each Principal Participant, Designer, and Project Quality Manager to perform the Work on this Project. The plan should identify and deal with any and all capacity issues that might be reasonably expected to arise in the normal completion of the Project. Emphasize information regarding financial data, a wide array of resource issues, and experience with capacity expansion when dictated by project demands.

3.4.7 Project Understanding – The points available for this evaluation factor are defined in the **RFQ Special Provisions**, Subsection 3.4.7.

(a) Objectives:

(1) To identify those Proposers demonstrating an understanding of the management, technical, environmental, maintenance of traffic, and scheduling issues and risks, and the socio-economic impacts associated with the Project; and

(2) To identify those Proposers demonstrating an understanding of how the Design-Build process and the Proposer's organization will contribute to the success of the Project and meeting Agency's Project goals, and understanding of the risk sharing and the teaming relationship between Design-Builder and Agency.

(b) Requirements and information to be submitted:

(1) List and briefly describe the significant issues and risks facing the selected Proposer and/or Agency.

(2) Briefly describe how the Proposer will use its organization and the DB process to manage issues and challenges to ensure a successful Project and address issues identified in Proposer's response to Subsection 3.4.7(b)(1), considering Agency's Project goals listed in Subsection 1.4.

(3) Briefly describe how the Proposer will manage construction activity to be compatible with Agency provided corridor and mobility requirements, and how the Proposer will manage coordination with adjacent or nearby projects during the delivery of this Project.

3.4.8 Overall Statement of Qualifications (SOQ) – The total points available for this evaluation factor are defined in the **RFQ Special Provisions**, Subsection 3.4.8.

(a) Objective - To identify the SOQ that best and most effectively addresses the goals (as stated in Subsection 1.4) and the objectives (as stated in Subsections 3.4.2 through 3.4.7) stated in this RFQ. The objectives stated in this Subsection 3.4.8(a) apply to all requirements found in Subsection 3.4.8(b).

(b) Requirements and information to be submitted - The Statement of Qualifications as prepared and submitted in compliance with this RFQ:

(1) Clarity and completeness - Is the overall SOQ consistent and coherent? Does the SOQ comprehensively address all the requirements of the RFQ? Are all aspects of the Project acknowledged? Does the Proposer present its responses with precision and accuracy?

(2) Connectivity - Is the proposed organization connected in communications, ability, and experience? Does the experience of the Key Personnel track well with Project goals, objectives and requirements? Does the DB team track well with the RFQ requirements? Is the Proposer's and its DB team members' past performance reflected in its Key Personnel's experience? Have the Key Personnel worked together on previous projects? Have the Proposer and DB team members worked together on previous projects? Does the Proposer present an organization that can work with Agency in a cohesive and seamless way?

(3) Compatibility - Are the ideas, commitments, and qualifications presented in the SOQ congruous and consistent with the Proposer's experience, Project understanding, organization, and capacity, and are they appropriate for the Project when compared with the Project goals, as identified in Subsection 1.4 of this RFQ? Is the experience of the Proposer, its DB team, and Key Personnel demonstrated in Proposer's Project understanding? Is the capacity of the Proposer reflected in its proposed Key Personnel availability and are the other commitments of Key Personnel identified in the SOQ?

4.0 Evaluation Process

4.1 Evaluation Objectives - The objective of the RFQ step of the procurement is to create a Short-List of the most highly-qualified Proposers for this Project with the general capability (technical, financial, legal, and management), capacity, and experience necessary to

successfully undertake and complete the Work. Design-Builder will be required to plan, design, construct, manage, and control the Project, and to complete the Project on or ahead of schedule. Agency has set high performance standards for Design-Builder that are reflected in the quality evaluation factors of this RFQ and will be reflected in the RFP and the Contract. Specific objectives relating to each of the quality evaluation factors listed in Subsection 3.4 are included in Subsections 3.4.2 through 3.4.8 of this RFQ.

4.2 Responsiveness and Rejection of SOQs

(a) Substantial Compliance Required – Agency may in its discretion reject any SOQ that does not substantially comply with the requirements set forth in the RFQ, RFQ Special Provisions, and applicable public procurement procedures.

(b) Responsiveness:

(1) Agency has determined that failure to properly submit the following items will render the SOQ non-responsive:

(a) All documents listed in Subsections 3.4.2 and 3.4.3

(b) Acknowledgement of Receipt required under Subsection 3.3

(c) Cover Letter required under Subsection 3.4.1

(2) If a Proposal is entirely or predominately labeled as a “Trade Secret”, the Proposal may, in the sole discretion of Agency, be deemed non-responsive unless the improper designation of trade secret information is corrected within the time (if any) allowed by Agency (see Subsection 7.8)

(c) Unintentionally Incomplete or Omitted SOQ Responses – Unless Agency, in its discretion, determines that a submitted SOQ is not in substantial compliance with RFQ requirements as provided in Subsection 4.2(a), or has been deemed non-responsive by Agency under Subsection 4.2(b)(2), unintentionally incomplete, qualified, or omitted responses to RFQ, other than those required submittals listed in Subsection 4.2(b)(1), will be dealt with as a matter of SOQ scoring as opposed to responsiveness.

(d) Agency Right to Seek Clarification; Waiver – As permitted by Law, Agency may seek clarification of any response that, in Agency’s sole discretion, it deems necessary or advisable, and Agency may waive minor informalities and irregularities.

(e) Responses - All responses to Agency requests shall be in writing and submitted by certified mail, courier, e-mail or fax transmission. Mail or courier delivery service shall be to the address identified in the **RFQ Special Provisions**, Subsection 2.1.

The appropriate e-mail address and fax number will be provided with Agency’s request.

In addition to the electronic response requested above, Proposers must submit mailed follow-up responses to inquiries by Agency to the address indicated above by priority

mail/express delivery service within three (3) Business Days of the date of request from Agency, except as otherwise specified in writing by Agency.

If the Proposer does not provide a response within the time specified in the request from Agency, the SOQ shall be declared non-responsive.

Agency does not anticipate conducting interviews during the RFQ phase, but reserves the right to do so. If Agency elects to conduct interviews, the Proposers will be notified in writing.

In the event a material error is discovered in the RFQ during the SOQ evaluation process, Agency will issue an Addendum to all Proposers that have submitted SOQs requesting revised SOQs based upon the corrected RFQ.

4.3 Scoring Guidelines - If a Proposer passes all pass/fail evaluations, its SOQ will be further evaluated using the factors for quality scoring set forth in Subsections 3.4.4 through 3.4.8. If a SOQ fails any single pass/fail requirement, such failure will result in a Deficiency that will cause Agency to declare the SOQ non-responsive, the SOQ shall be assigned a score of "0," the quality factors will not be rated, and the Proposer will not be included on the Short-List.

After the pass/fail evaluation factors have been reviewed and determined for each SOQ, the quality evaluation factors of each SOQ that did not receive any "fails" will be reviewed to determine whether the SOQ meets the minimum qualifications as stated in this RFQ, and to document the strengths and limitations of the individual quality evaluation factors. Quality scores for each quality evaluation factor and the total quality score for the quality evaluation factors in the SOQ will be based on the following quality scoring guidelines:

UNACCEPTABLE - The Proposer has presented information relative to its qualifications that contains Significant Weaknesses, Deficiencies, or unacceptable quality. The SOQ fails to meet the stated objectives or requirements, or lacks essential information, or contains conflicting information. Weaknesses/Deficiencies are so major or extensive that either a major revision to the SOQ would be necessary or it cannot be made acceptable by correction. The score assigned is "0".

ACCEPTABLE - The Proposer has presented information relative to its qualifications that is considered to meet the stated objectives/requirements and has an acceptable level of quality. Weaknesses are minor and can be corrected.

The scoring for each quality evaluation factor will begin at one-half the number of points available for the factor as designated in Subsections 3.4.4 through 3.4.8. Based on how well the SOQ responds to the Project goals and objectives, points will be added or subtracted to determine the score for each quality evaluation factor.

The scores for each factor will be reviewed, compiled, and a total consensus quality score will be determined.

A Proposer whose SOQ receives a score of "0" for one or more quality evaluation factors (as set forth above in Subsections 3.4.4 through 3.4.8 will not be eligible for inclusion on the Short-List.

4.4 Determination of the Short-List - Agency will establish a Short-List of the three (3) most highly-qualified Proposers and announce the Short-List by letter, and by posting on the Project website. Agency will provide to each Proposer the summary of scores of all Proposers and the evaluation worksheets for their own SOQ evaluation within three (3) Business Days of notification of the Short-List.

Agency may increase the number of Proposers on the Short-List, if in its sole discretion; it determines that the alignment of SOQ scores warrants a larger number. Agency may decrease the number of Proposers on the Short-List at any time it determines, in its sole discretion, that the number of qualified Proposers submitting responsive SOQs is less than three (3).

The contents of SOQs, with the exception of proprietary information to the extent protected under Oregon Law, will become public records upon issuance of Notice of Intent to Award.

5.0 Protests and Requests for Changes - This Section 5.0 sets forth the exclusive protest remedies available with respect to this RFQ.

5.1 Written Protests Only - All protests must be in writing, including protests of the RFQ Short-List selection, solicitation protests, and Requests for Changes. Protests shall be submitted to Agency's Contact at the address shown in the **RFQ Special Provisions**, Subsection 2.1. Any protest not set forth in writing within the time limits specified in the **RFQ Special Provisions**, Subsection 1.8, will not be considered.

Agency may, in its sole discretion, discuss the protest with the protestor. No hearing will be held on the protest. Agency will decide the protest on the basis of the written submissions, and will issue a written decision regarding any protest.

5.2 Requests for Change and Protests

5.2.1 Requests for Change to RFQ Terms - Any Proposer may submit a Request for Changes to the RFQ terms, in writing, to Agency's Contact at the address shown in the **RFQ Special Provisions**, Subsection 2.1. To be considered, the Request for Changes must be received by Agency by the deadline specified in the **RFQ Special Provisions**, Subsection 1.8. The Request for Changes shall include the reason for requested changes, supported by factual documentation and any proposed changes. The Request for Changes shall be marked "Solicitation RFQ Provision Request for Changes" and include the Project key number.

5.2.2 Protests of RFQ Terms - Any Proposer that believes the RFQ terms are unnecessarily restrictive or limit competition may submit a protest, in writing, to Agency's Contact at the address shown in the **RFQ Special Provisions**, Subsection 2.1. To be considered, the protest must be received by Agency by the deadline specified in the **RFQ Special Provisions**, Subsection 1.8. The protest shall include the legal and factual grounds for the protest, a description of the resulting prejudice to the Proposer if the protest is not granted, and a statement of the desired changes to the RFQ terms and conditions. The protest shall be marked "Solicitation RFQ Provision Protest" and include the Key Number.

5.3 Protest of Exclusion From Short-List - Those Proposers that submit an SOQ in response to the RFQ, but that are not selected for the Short-List, and that, therefore, are not eligible to submit a Proposal in response to the RFP, may protest exclusion from the Short-List. Agency will provide the information specified in Subsection 4.4 to those Proposers excluded from the Short-List within three (3) Business Days of the notification and those Proposers shall have five (5) Business Days following fax or e-mail transmittal of the information specified in Subsection 4.4 to submit a written protest to Agency. Agency will not consider a protest submitted after the deadline established in this Section.

6.0 Agency Rights and Disclaimers

6.1 Agency Rights - Agency 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 the RFQ. Agency reserves the right, in its sole and absolute discretion to take any of the following actions:

- (a) Reject any or all SOQs.
- (b) Issue a new RFQ.
- (c) Cancel, modify, or withdraw the RFQ.
- (d) Issue Addenda, supplements, and modifications to this RFQ.
- (e) Modify the RFQ process (with appropriate notice to Proposers).
- (f) Appoint a selection committee and evaluation teams to review SOQs and seek the assistance of outside technical experts in the SOQ evaluations.
- (g) Approve or disapprove the use of particular Subcontractors and/or substitutions and/or changes in SOQs.
- (h) Revise and modify, at any time before the SOQ due date, the factors it will consider in evaluating SOQs and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, Agency will provide an Addendum to all registered Proposers setting forth the changes to the evaluation criteria or methodology. Agency may extend the SOQ due date if such changes are deemed by Agency, in its sole discretion, to be material and substantive.
- (i) Hold meetings and exchange correspondence with the Proposers responding to this RFQ to seek an improved understanding and evaluation of the SOQs. If individual Proposer informational meetings are held, all Proposers submitting a responsive SOQ shall be afforded an opportunity to participate in an individual Proposer informational meeting.
- (j) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the SOQs.
- (k) Waive Weaknesses, informalities, and minor irregularities in SOQs.

(l) Reject the SOQ from any team that changes its SOQ after the submittal due date and time without following the procedures of this RFQ and without Agency written approval.

(m) Refuse to issue an RFQ to a prospective Proposer and refuse to receive or open an SOQ, once submitted, or reject an SOQ 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 with Agency (or State of Oregon).

(2) Default on the part of a Principal Participant or Designer under previous contracts with Agency (or State of Oregon).

(3) Unsatisfactory performance by the Proposer, a Principal Participant, and/or Designer under previous contracts with Agency (or State of Oregon).

(4) Issuance of a notice of debarment or suspension to the Proposer, a Principal Participant, and/or Designer.

(5) Submittal by the Proposer of more than one SOQ for the same Work under the Proposer's own name or under a different name.

(6) Existence of an Organizational Conflict of Interest under Subsection 7.3, or a finding of evidence of collusion between a prospective Proposer (or any Principal Participant or Designer) and other Proposer(s) (or Principal Participants or Designer) in the preparation of any SOQ, Proposal, or bid for any Agency construction project.

(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 Agency might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded.

The RFQ does not commit Agency to enter into a Contract, nor does it obligate Agency to pay for any costs incurred in preparation and submission of the SOQs or in anticipation of a Contract. By submitting an SOQ, a Proposer disclaims any right to be paid for such costs.

The execution and performance of a Contract pursuant to this RFQ and any subsequent RFP is contingent upon sufficient appropriations and authorizations being made by the Legislature of Oregon, or the Congress of the United States if federal funds are involved, for performance of a Contract between the successful Proposer and Agency.

In no event will Agency be bound by, or liable for, any obligations with respect to the Work or the Project until such time (if at all) as the Contract, in form and substance satisfactory to Agency, has been executed and authorized by Agency and approved by all required parties and, then only to the extent set forth therein.

6.2 Agency Disclaimers - In issuing this RFQ and undertaking the procurement process contemplated hereby, Agency specifically disclaims the following:

(a) Any obligation to Award or execute a Contract pursuant to this RFQ; and

(b) Any obligation to reimburse a Proposer for any costs it incurs under this procurement.

In submitting an SOQ in response to this RFQ, the Proposer is specifically acknowledging these disclaimers.

7.0 Applicable Laws and Administrative Rules

7.1 Governing Law - The Laws of the State of Oregon, and federal Laws (if applicable) will govern the procurement process. In case of a conflict, federal Law will govern.

7.2 Ineligible Proposers - Any Entity that is ineligible as of the SOQ due date specified in the **RFQ Special Provisions**, Subsection 1.8, through any State or federal action is ineligible to participate on any Design-Build team. Any Proposer affected by an Actual Organizational Conflict of Interest as of the SOQ due date for which no mitigation measures have been explained, or which cannot be mitigated, will be disqualified (refer to Subsection 7.3 below).

7.3 Organizational Conflict and Confidentiality Requirements - Proposers are responsible for being aware of and complying with the requirements of 23 CFR 636.116 and Agency's Conflict of Interest Guidelines and Disclosure Policy (see Form COI).

7.3.1 Organization - Each of the following circumstances shall be deemed an Organizational Conflict of Interest disqualifying affected Proposers:

(a) Participation by any of the following Entities on more than one Proposer's team: a Principal Participant, Designer, sub-consultant responsible for performing a major portion of the design, or Subcontractor responsible for performing a major portion of the construction.

(b) Participation of an Associate of any Entity identified in clause (a) above on another Proposer's team.

All Proposers affected by an Actual Conflict of Interest will be disqualified, even if the Entity or Associate causing the conflict is intended to have a different or lesser role than that described above.

7.3.2 Substitution - It is a requirement of Agency that Proposer's organization, including Principal Participants, Major Subcontractors, and Key Personnel identified in the SOQ remain available for the duration of the procurement process and the subsequent Contract. A Proposer may propose adding, deleting, or substituting participants after the SOQ submittal; however, such changes will require written approval by Agency, which approval may be granted or withheld in Agency's sole discretion. Requests for changes to Proposer's organization must be made in writing in a letter submitted to Agency prior to Agency's notification of the Short-List. Such letter must include the same information about the proposed Principal Participants, Major Subcontractors, and Key Personnel that was

originally required to be submitted in Subsection 3.4, including legal and financial information (pass/fail) and quality evaluation information.

If a Principal Participant is being added, deleted, or substituted, the Proposer must submit such additional information as may be required by Agency to demonstrate that the changed organization still meets the RFQ criteria. Agency will have three (3) Business Days to approve or reject in writing any such requested substitutions.

Requests for changes in any of the Principal Participants, Designer, Project Quality Manager, or Major Subcontractors will be particularly scrutinized. Requests for additions, deletions, or substitutions of Key Personnel solely for the convenience of the Proposer/Design-Builder will be denied.

7.3.3 Confidentiality - Design-Builder may be given access to records that are confidential under Oregon Law solely for the purpose of performing the required services under the Contract. Design-Builder, and at the option of Agency, Design-Builder's employees, agents and Subcontractors, shall be required to sign a nondisclosure agreement prior to their receipt of such documents obligating each employee, agent, and Subcontractor to comply with the limitations and provisions of the agreement.

7.3.4 Minimum Requirements - Proposers must meet all legal, financial, and SOQ responsiveness pass/fail requirements in Subsections 3.4.2 and 3.4.3, and not fall within any of the limiting categories specified in Subsection 6.1(m).

7.4 Prequalification: Registration to Conduct Business in Oregon - Submission of an SOQ in response to this RFQ is in lieu of a pre-qualification process as required by ORS 279C.430 and OAR 734, Division 10.

Oregon Revised Statutes 60.701 requires that foreign corporations be registered by the State of Oregon, Office of the Secretary of State, before conducting business in Oregon. A foreign corporation (see ORS 60.001) means a corporation-for-profit incorporated under a law other than the law of the State of Oregon. This registration must be accomplished prior to Contract execution.

7.5 Exemption From Competitive Bidding - Under current Oregon law, the use of procurement processes other than the conventional "low bid" model requires that the Director of the Oregon Department of Transportation grant an exemption for the Project, based on findings of fact.

7.6 Federal Required Provisions - This Project is anticipated to use federal funds. Approval from the FHWA is necessary for any non-traditional construction contracting technique that deviates from the competitive bidding provisions in 23 USC 112. This Project is anticipated to receive FHWA approval before release of the RFP. If federal funding is requested for the Project, the draft Contract included in the RFP will contain all federally required provisions, including but not limited to: federal wage rates (Davis-Bacon wage determinations' internet link <http://www.odot.state.or.us/tsspeccs/davisbacon.htm>) for highway projects, On-the-Job/ Apprenticeship Training (OJT), DBE/MWESB, "Buy America," and Affirmative Action and Equal Employment Opportunity requirements.

7.7 BOLI Required Provisions - Due to recent changes in Oregon law, the RFP and the Contract will be subject to and will contain certain Oregon Bureau of Labor and Industries (BOLI) requirements, including but not limited to the requirement to pay the higher of the federal Davis Bacon wage rates or the BOLI State wage rates. The draft Contract included in the RFP will contain the Prevailing Wage Rates for Contracts in Oregon subject to BOTH the State PWR Law and federal Davis-Bacon Act or an Internet Website link to those rates (internet Link http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_book.shtml).

7.8 Trade Secrets: Identification of Information - Proposers must identify information constituting trade secrets under either ORS 192.501(2) or ORS 646.461(4) included in the SOQ if they wish to protect such information from disclosure either (a) to other Proposers during the procurement process or (b) to the public as a public record. Proposers must designate trade secret information appearing in the text of the SOQ by including it within brackets and by including at the bottom of the SOQ page on which they appear the following legend: "This page contains information that constitutes a trade secret under [SELECT: ORS 192.501(2) or ORS 646.461(4)], and is not to be disclosed except in accordance with applicable Law."

Portions of SOQs constituting trade secrets will be returned to unsuccessful Proposers upon Contract execution.

The entire SOQ may not be labeled as a "Trade Secret"; to do so shall render the SOQ non-responsive.

7.9 Withdrawing a SOQ

7.9.1 By Written Notice - A Proposer may withdraw its SOQ prior to the SOQ due date by submitting written notice on Proposer's letterhead signed by an authorized representative. The notice must include the name and telephone number of the Proposer's representative that will be contacted to arrange for the Proposer to retrieve the withdrawn SOQ.

7.9.2 In Person - A Proposer may withdraw its SOQ in person prior to the SOQ due date upon presentation of identification and evidence of authorization to act for Proposer. If possible, Agency will return all SOQ materials at the time an in-person withdrawal is presented.

7.9.3 Subsequent Proposal Submittal Not Precluded - Withdrawal of a SOQ will not preclude a Proposer from subsequently submitting a new SOQ, so long as that new SOQ is properly submitted and received by the Agency prior to the SOQ due date and time.

8.0 Disadvantaged Business Enterprise Program, MWESB Enterprise Program and Equal Employment Opportunity

8.1 Policies - Agency will not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (US DOT) assisted contract or in the administration of 49 CFR 26. The Proposers shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this Project.

8.2 Disadvantaged Business Enterprise Utilization Goal and Aspirational Target - A Disadvantaged Business Enterprise utilization goal and an aspirational target have been established as of the date of the release of the RFQ for this Project and are identified in the **RFQ Special Provisions**, Subsection 8.2. The final aspirational target percentage will be identified in the RFP.

8.3 MWESB Enterprise Participation Aspirational Targets - Agency will include aspirational targets for Minority Business Enterprise, Women Business Enterprise, and Emerging Business Enterprise (MWESB) participation in the RFP.

8.4 Equal Employment Opportunity - In connection with this RFQ and the Contract, Proposers shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, and/or being physically challenged. Proposers shall take Affirmative Action to ensure that all applicants are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference. Such action shall include, but not be limited to, the following: layoff or termination; rates of pay or other forms of compensation; and employment, job assignment, upgrading, demotion, transfer recruitment/recruitment advertising, and selection for training, including apprenticeship, pre-apprenticeship, and/or OJT.

9.0 Checklist of SOQ Required Document and Form Submittal - The following table provides an overview of the format of the organization of the SOQ:

SOQ Section No.	Section Title and Required Information	RFQ Reference
Section 1	Cover Letter and Acknowledgement of Receipt (attached)	3.4.1
Section 2	Legal: A) Form L-1 B) Form L-2 C) Form COI (required from Proposer and Major Subcontractors) <u>If a JV. Or Partnership:</u> <ul style="list-style-type: none"> • Identity of Lead Principal Participant • Percent share of each Principal Participant, if known (if JV or partnership) • Express statement of joint and several liability (if JV) 	3.4.2 3.4.2(b)(1) 3.4.2(b)(2) 3.4.2(b)(3) 3.4.2(b)(4) 3.4.2(b)(5) 3.4.2(b)(6)
Section 3	Financial: <ul style="list-style-type: none"> • Surety Letters 	3.4.3 3.4.3(b)
Section 4	Experience of the Firms: <ul style="list-style-type: none"> • Form E-1 (maximum of 10) • Form E-2 	SP3.4.4 SP3.4.4(b)(1) SP3.4.4(b)(2)

SOQ Section No.	Section Title and Required Information	RFQ Reference
	<ul style="list-style-type: none"> • Form E-3 • Resumes 	SP3.4.4(b)(4) SP3.4.4(b)(5)
Section 5	Past Performance: <ul style="list-style-type: none"> • Form PP-1 for the following information including contact information: <ul style="list-style-type: none"> – Award, citation, and/or commendation information – Litigation, claims, dispute proceedings, and arbitration information – Liquidated damages information – Termination for cause information – Disciplinary action information • Form S • Form PP-2 • Form WD. 	3.4.5 3.4.5(b)(1) 3.4.5(b)(1)a. 3.4.5(b)(1)b. 3.4.5(b)(1)c. 3.4.5(b)(1)d. 3.4.5(b)(1)e. 3.4.5(b)(2) 3.4.5(b)(3) 3.4.5(b)(4)
Section 6	Backlog/Capacity: <ul style="list-style-type: none"> • Form B • Form R • Capacity Plan 	3.4.6 3.4.6(b)(1) 3.4.6(b)(2) 3.4.6(b)(3)
Section 7	Project Understanding: <ul style="list-style-type: none"> • List and written discussion of significant issues and risks facing selected Proposer and Agency • Description of how Proposer will use its organization and the DB process to ensure a successful Project • Description of how Proposer will address corridor management and coordination with adjacent projects 	3.4.7 3.4.7(b)(1) 3.4.7(b)(2) 3.4.7(b)(3)
Appendix A	Legal Documents: <ul style="list-style-type: none"> • Signatory authorities <u>If a JV or Partnership:</u> <ul style="list-style-type: none"> • Legal structure and supporting documents or description of proposed legal structure. 	3.4.2(c) 3.4.2(c)(1)(2) 3.4.2(c)(3)(4)
Appendix B	Company Brochures	SP3.4.4(b)(3)
Appendix C	Copies of Awards, Citations, and Commendations	3.4.5(b)(1)(a)