

***INTERSTATE 5
McKENZIE RIVER TO GOSHEN GRADE
DESIGN-BUILD PROJECT***

REQUEST FOR QUALIFICATIONS

TABLE OF CONTENTS

1.0 INTRODUCTION AND GENERAL INFORMATION 1

1.1 ABBREVIATIONS AND DEFINITIONS..... 1

1.1.1 Abbreviations..... 1

1.1.2 Definitions 2

1.2 PROJECT GOALS..... 5

1.3 ROLE OF THE AGENCY 6

1.4 PROJECT DESCRIPTION, DESIGN BUILDER RESPONSIBILITIES, AND PROJECT STATUS 6

1.5 PROJECT SCHEDULE 6

1.6 CONTRACT TYPE..... 7

1.7 PAYMENT AND LIQUIDATED DAMAGES 7

1.8 GOVERNING LAW 7

1.9 QUALITY ASSURANCE/QUALITY CONTROL 7

1.10 INSURANCE, BONDING, LICENSING, AND SECURITIES..... 7

1.11 RULES OF CONTACT..... 8

1.12 PROPOSER QUESTIONS..... 9

1.13 REQUEST FOR QUALIFICATIONS ADDENDA..... 9

1.14 NOTIFICATION OF FIRMS ON THE SHORT-LIST..... 9

1.15 COSTS 9

1.16 INELIGIBLE FIRMS 9

1.17 PRE-STATEMENT OF QUALIFICATION INFORMATIONAL MEETINGS 10

1.18 ORGANIZATIONAL CONFLICT AND CONFIDENTIALITY REQUIREMENTS..... 10

1.18.1 Organization 10

1.18.2 Confidentiality 10

1.18.3 Minimum Requirements 11

1.19 PROPOSAL STIPEND 11

1.20 PREQUALIFICATION: REGISTRATION TO CONDUCT BUSINESS IN OREGON..... 11

1.21 EXEMPTION FROM COMPETITIVE BIDDING 11

1.22 FEDERAL REQUIRED PROVISIONS..... 11

2.0 PROCUREMENT PROCESS..... 11

2.1 OVERALL PROCUREMENT PROCESS..... 11

2.1.1 Request For Qualifications Step 12

2.1.2 Request For Proposals Step 12

2.2 PROCUREMENT SCHEDULE..... 13

3.0 EVALUATION PROCESS FOR THE STATEMENTS OF QUALIFICATIONS..... 14

3.1 EVALUATION OBJECTIVES..... 14

3.2 REVIEW AND EVALUATION OF THE STATEMENTS OF QUALIFICATIONS 14

3.3 EVALUATION FACTORS FOR THE REQUEST FOR QUALIFICATIONS/ STATEMENT OF QUALIFICATIONS..... 14

3.3.1 Pass/Fail Evaluation Factors 14

3.3.2 Quality Evaluation Factors 15

3.4 REQUESTS FOR CLARIFICATION..... 16

3.5 DETERMINATION OF THE SHORT-LIST..... 17

4.0 STATEMENTS OF QUALIFICATIONS SUBMITTAL REQUIREMENTS..... 17

4.1 DATE AND TIME OF RECEIPT 17

4.2 SUBMITTAL ADDRESS 17

4.3 CONTENT OF STATEMENTS OF QUALIFICATIONS 17

 4.3.1 Cover Letter 18

 4.3.2 Evaluation Factor Objectives and Requirements 18

5.0 PROTESTS AND REQUESTS FOR CHANGES 26

 5.1 WRITTEN PROTESTS ONLY 26

 5.2 REQUEST FOR CHANGE AND PROTESTS 26

 5.2.1 Requests for Change to RFQ Terms 26

 5.2.2 Protests of RFQ Terms 26

 5.3 PROTEST OF REQUEST FOR QUALIFICATIONS SHORT-LIST 27

6.0 AGENCY RIGHTS AND DISCLAIMERS 27

 6.1 AGENCY RIGHTS 27

 6.2 AGENCY DISCLAIMERS 28

7.0 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM, MWESB ENTERPRISE PROGRAM AND EQUAL EMPLOYMENT OPPORTUNITY 29

 7.1 POLICIES 29

 7.2 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION GOAL 29

 7.3 MWESB ENTERPRISE PARTICIPATION GOAL 29

 7.4 EQUAL EMPLOYMENT OPPORTUNITY 29

8.0 COMPLIANCE WITH APPLICABLE LAWS 29

APPENDICES

APPENDIX A - PROJECT DESCRIPTION, DESIGN BUILDER RESPONSIBILITIES AND PROJECT STATUS

APPENDIX B - FORMAT AND ORGANIZATION FOR STATEMENT OF QUALIFICATIONS

APPENDIX C - FORMS

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 the I-5: McKenzie River to Goshen Grade Project.

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.

This project has been determined to be Environmental Class 2, Categorical Exclusion and the Project falls under the OTIA III Programmatic Agreements and requires utilization of the OTIA III bridge program environmental performance standards. The environmental process is ongoing and is expected to be completed by the Design-Builder prior to start of construction. The Design-Builder shall complete Part 3, Project Environmental Classification, of the Project Prospectus prior to first construction activity on project. The Project Prospectus, with a draft Part 3, shall be provided with RFP. The final Project scope will include environmental permitting, environmental clearances, and any mitigation that is required by the environmental process.

1.1 ABBREVIATIONS AND DEFINITIONS

This RFQ includes abbreviations and specific defined terms as indicated below.

1.1.1 Abbreviations

AA	Affirmative Action
CFR	Code of Federal Regulations
DB	Design-Build
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
FHWA	Federal Highway Administration, United States Department of Transportation
IA	Independent Assurance
ITP	Instructions To Proposers
JV	Joint Venture
LLC	Limited Liability Company
MP	Mile Post
N/A	Not Applicable
NTP	Notice To Proceed
OAR	Oregon Administrative Rules
ODOT	Oregon Department of Transportation
OJT	On-the-Job Training
ORS	Oregon Revised Statutes
PI	Public Information
PM	Project Manager
PSI	Preliminary Site Investigation
QA	Quality Assurance
QC	Quality Control
RFP	Request for Proposals
RFQ	Request for Qualifications
R/W	Right(s)-of-Way
SOQ	Statement of Qualifications
USC	United States Code

US DOT United States Department of Transportation

1.1.2 Definitions

“Addenda/Addendum” means supplemental additions, deletions, and modifications to the provisions of the RFQ after the Advertisement date of the RFQ.

“Advertisement” means a public announcement inviting prospective Proposers to obtain an RFQ and submit an SOQ. The Advertisement will include a brief description of the Work proposed to be the subject of the procurement, with an announcement where the RFQ may be obtained, the terms and conditions under which SOQs will be received, and such other matters as the Agency may deem advisable to include therein.

“Agency” means the State of Oregon, acting by and through the Oregon Department of Transportation (ODOT).

“Associate” means (a) Any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, Design-Builder or a Principal Participant; and (b) any Person for which ten percent (10%) or more of the equity interest in such Person is held directly or indirectly by Design-Builder, a Principal Participant, or an Associate of Design-Builder under part (a) of this definition.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities; pursuant to contract; pursuant to court-ordered trusteeship, guardianship, or judgment; by equity ownership interest; or other legal authority.

“Clarifications” means 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.

“Construction Subcontractor” means a subcontractor retained by the Design-Builder that is involved in the actual construction of the Project.

“Contract” means the written agreement between the Agency and the Design Builder, including all Contract Documents, describing the Work to be completed and defining the rights and obligations of the Agency and the Design Builder.

“Contract Amount” means 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 Change Orders.

“Contract Documents” means the documents listed in Article 11.1 of the Design-Build Agreement, as well as all documents incorporated by reference into the Agreement.

“Deficiency” means a material failure of an SOQ to meet the Agency’s requirements or a combination of significant Weaknesses in an SOQ that, in the sole judgment of Agency, increases the risk of unsuccessful Contract performance to an unacceptable level.

Oregon Department of Transportation

“Design-Build” means a contracting method that combines into a single contract the design, construction, construction engineering, inspection, and Quality Control (QC) testing requirements for a project, all in accordance with design criteria and specifications established in the Contract.

“Design-Builder” means the Person selected pursuant to the RFP that enters into the Contract with the Agency to design and construct the I-5: McKenzie River to Goshen Grade Project..

“Designer” means a Principal Participant, Specialty Subcontractor, or in-house designer who leads the Design Builder’s design team in performing the Design Services.

“Design Professional” means: 1) An architect who is registered and holds a valid certificate in the practice of architecture in the State of Oregon; 2) An, engineer who is registered and holds a valid certificate in the practice of engineering in the State of Oregon; 3) A surveyor who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon; and 4) Such other professional person or entity otherwise registered and holding a valid certificate to provide professional design services in the State of Oregon that are required to complete the Project under this Contract.

“Director” means the Director of the Oregon Department of Transportation.

“Disadvantaged Business Enterprise (DBE)” means a for-profit small business concern as defined in 49 Code of Federal Regulations (CFR) Part 26.

“Environmentally Sensitive Waterways” means 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” means written confirmation by the 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.

“Independent Assurance” means unbiased and independent evaluation and confirmation of all the sampling and testing procedures, Equipment calibration, and qualifications of personnel.

“Lead Principal Participant” means the Principal Participant that is designated by the Proposer as having the lead responsibility for managing the Design-Builder’s organization.

“MWESB” means a Minority Business Enterprise (MBE), Women Business Enterprise (WBE), and/or Emerging Business Enterprise (ESB) as certified by the State of Oregon Office of Minority, Women and Emerging Small Business.

“Person” means any individual or entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company (LLC), or partnership, or any other entity possessing the legal capacity to contract.

“Principal Participant” means any of the following entities:

- A) The Design Builder (or Proposer);
- B) An individual firm, all general partners, or JV member of the Design Builder (or Proposer); or

- C) An entity holding (directly or indirectly) a 15% or greater interest in the Design Builder (or Proposer).

“Professional Services” mean services related to the preparation of plans, Design-Builder Specifications, and other submittals specified in the Contract Documents and required by law to be performed by licensed Design Professionals, as well as services provided by or under the direction of licensed Design Professionals in performance of the Contract.

“Project” means the sum of all Work to be performed under the Contract.

“Project Quality Manager” means a competent individual designated by Design-Builder, with overall responsibility for development and management of the Design-Builder’s Quality Plan, under the authority of the Design-Builder’s corporate management or JV Board.

“Proposal” means the written offer by the Proposer, including the Quality Proposal and Price Proposal, to do stated Work in the manner indicated and at the price quoted.

“Proposal Security” means a Proposal bond, cashier’s check, or certified check submitted with a Proposal to assure that the Proposer will enter into the Contract if the Proposal is accepted.

“Proposer” means an entity submitting a Proposal in response to a Request for Qualifications or Request for Proposals

“Quality Assurance (QA)” means planned and systematic oversight actions by the Agency to provide itself confidence that the 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 (IA).

“Quality Control (QC)” means the total of all activities performed by the Design Builder and its Design Professionals, Subcontractors, and materials producers and manufacturers to ensure that the Work meets Contract requirements. For design, this includes, but is not limited to, procedures for evaluating, establishing, monitoring and maintaining design quality; Design Review, including reviews for constructability; and review and approval of Working Plans. 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 Control also includes documentation of all design and construction QC activities.

“Quality Plan” means the Design-Builder’s plan for implementing the Design-Builder’s overall quality program and associated activities, including Design Builder Quality Control and the Contract’s quality requirements, and necessary interfaces with Agency Quality Assurance activities.

“Quality Program” means the overall quality program and associated activities including Design Builder Quality Control, the Contract’s quality requirements, and the Design Builder’s Quality Plan.

“Region” means one of five geographical subdivisions of the State of Oregon used to designate or identify the location of the proposed Work.

“Request For Proposals” means the document, including all documents referenced therein and all appendices attached thereto, through which the Agency requests the submittal of a Proposal.

“Request For Qualifications” means the document, including all documents referenced therein and all appendices attached thereto, through which the Agency requests the submittal of Statements of Qualification by firms interested in the Project.

“Review and Comment” means the Agency’s reviews, observations, and/or inspections based solely on information provided by the Design Builder (not based on any independent investigation or inquiry by the Agency) and the 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” means the list of those Proposers that have submitted SOQs that the Agency determines, through evaluation of the SOQs, are the most highly qualified Proposers and will be invited to submit Proposals in response to the RFP.

“Specialty Subcontractor” means those consultants or subcontractors identified by Proposer/Design-Builder to perform Work critical to the success of the Project such as the Designer, QC Engineer, or subcontractor for bridges, retaining structures, pavement, landscaping, or other specialty Work.

“Statement of Qualifications (SOQ)” means the information prepared and submitted by a Proposer in response to this RFQ.

“Third Notification” means the completion by Design-Builder of all of its Contract obligations with the exception of Warranty obligations, including without limitation completion of all minor corrective Work, Final Trimming and Clean-up, demobilization, and delivery to Agency of all required submittals under the Contract, including all unexpired manufacturers’ warranties and guarantees for Materials and Equipment installed on the Project, each of which shall recite that they are enforceable by the Agency. Third Notification is often called “final completion”.

“Verification Sampling and Testing” means sampling and testing performed to validate the quality of the product.

“Weakness” means a flaw in the SOQ that, in the sole discretion of Agency, increases the risk of unsuccessful Contract performance. A significant Weakness in the SOQ is a flaw that, in the sole discretion of Agency, appreciably increases the risk of unsuccessful Contract performance.

“Work” means the furnishing of all design, 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.

1.2 PROJECT GOALS

The following are the Agency’s goals for the Project:

- A) Minimize impacts to freight mobility within the State 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), 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; and
- I) Issue NTP to the successful Design-Builder by November 22, 2005.

1.3 ROLE OF THE AGENCY

During the various phases of the Project, the Agency and/or the Agency's Representative is responsible for the following activities:

- A) Obtaining the appropriate environmental clearances except those specifically assigned to the 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 the Design-Builder;
- D) Contract procurement and administration;
- E) Quality Assurance oversight and auditing of Design-Builder design and construction;
- F) Independent Assurance;
- G) Providing all information and data included in the RFP;
- H) Land acquisition for Rights-of-Way and permanent easements; and
- I) Review and Comment, Final Acceptance of the Work, and payment for the Work performed.

As permitted by law and at the Agency's sole discretion, it may use its consultants in fulfilling the responsibilities noted in this [Section 1.3](#).

1.4 PROJECT DESCRIPTION, DESIGN BUILDER RESPONSIBILITIES, AND PROJECT STATUS

See Appendix A.

1.5 PROJECT SCHEDULE

The anticipated time of Contract execution is the date specified in [Section 2.2](#), with Third Notification by November 6, 2007.

See Section 2.2 for procurement schedule.

1.6 CONTRACT TYPE

The Contract will be a fixed price, DB Contract.

1.7 PAYMENT AND LIQUIDATED DAMAGES

The Contract will provide for periodic payments with a 2.5% retention. The final 2.5% of the Contract Amount will be paid upon Final Acceptance of the Project. The form of retention will be specified in the RFP.

The Contract will provide for liquidated damages relating to failure to meet the specified completion dates.

1.8 GOVERNING LAW

The laws of the State of Oregon will govern the procurement process unless in conflict with federal procurement rules. In case of conflict, federal rules will apply. Oregon State law will govern the Contract.

1.9 QUALITY ASSURANCE/QUALITY CONTROL

The Design-Builder will be required to plan, implement, and provide a Quality Plan for the Work.

The DB's Quality Plan will cover both the design and construction aspects of the Work. The Quality Plan will describe procedures and protocols including but not limited to the following areas:

- The proposed Quality Plan staffing and communications organization chart and personnel;
- Design checking and formal design review;
- Field Inspection, records and resolution of non-compliance issues;
- Management of field-tested materials, QC records, and notifications to Agency QA;
- Management of non-field tested materials;
- Changes to approved design prior to construction;
- Tracking planned and completed to-date quantities;
- Project progress, Project schedules and updates, and progress payment requests,;
- Safety, traffic management, DBE and labor compliance issues;
- Documentation controls and Project contract administration.
- All other areas the Agency or the Design-Builder determines are necessary to provide a satisfactory and appropriate method of assuring Project quality meets the requirements of the Contract.

The Agency will review the Design-Builder's Quality Plan to evaluate whether it meets guidelines and minimum requirements established by the Agency, but Agency's review of the Quality Plan will not constitute Agency agreement that it meets these criteria. The Design-Builder shall be fully responsible for the quality and workmanship of the Work performed.

The Agency may perform quality inspections and audits of the Design-Builder's management, design, construction, and maintenance activities; the Design-Builder's QC procedures, the quality of materials and fabricated products; and the quality of the final product.

1.10 INSURANCE, BONDING, LICENSING, AND SECURITIES

The Design-Builder shall provide the types of insurance specified in the RFP, including professional liability insurance covering both design and construction Work 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. The Design-Builder will be required to provide performance and payment bonds and/or other security acceptable to the Agency that cover both design services and construction work as provided in the RFP.

Prior to Contract execution, the selected Design-Builder and its subconsultants 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 the State of Oregon consistent with the laws of the State of Oregon. The Design-Builder may be required to provide a number of other financial commitments, including commitments from its parent company and other guarantors, if any.

1.11 RULES OF CONTACT

The following rules of contact shall apply during the Contract procurement for the I-5: McKenzie River to Goshen Grade Project. The rules are designed to promote a fair, unbiased, legally defensible procurement process. The Agency 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 Section 2.2. 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 Section 1.18.1.A, 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 is allowed during Agency sponsored workshops and meetings.);
- B) Contact between the Proposers and the Agency (questions and responses to questions) shall only be through the Agency's and Proposers' designated representatives;
- 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 I-5: McKenzie River to Goshen Grade 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 I-5: McKenzie River to Goshen Grade Project. Stakeholder staff include employees of the Agency, Lane County, City of Eugene, City of Springfield, and Central Oregon Pacific Railroad (C.O.P.R.);
- E) Any contact determined to be improper, at the sole discretion of the Agency, may result in disqualification of a Proposer or its rejection as not responsible;
- F) 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 I-5: McKenzie River to Goshen Grade Project will be disseminated from the Agency in writing on Agency letterhead and signed by the Agency designated representative; and

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

1.12 PROPOSER QUESTIONS

The 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 (Appendix C) to the Agency Design-Build Consultant:

Attn: Mike Murphy
Parsons Brinckerhoff Quade & Douglas, Inc.
200 Hawthorne Avenue SE
Suite D-450
Salem, OR 97301-5289
Fax 503-315-5598
murphymic@pbworld.com

Include an electronic copy of the questions on Form RFQ-C (Appendix C) on floppy disk, 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 to any other Agency office, consultant, employee, or the Federal Highway Administration (FHWA) will be considered.

Only requests received by 1:00 p.m. (Pacific Daylight Time) on the date specified in Section 2.2 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, telephone and fax numbers, and the Proposer he/she represents.

A response to questions will be issued without attribution and posted on the Project Web site. An E-mail notification will be sent to all known recipients of this RFQ not later than 10 days prior to the SOQ due date specified in Section 2.2.

1.13 REQUEST FOR QUALIFICATIONS ADDENDA

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

1.14 NOTIFICATION OF FIRMS ON THE SHORT-LIST

Each Proposer will be notified in writing whether or not it has been selected for the Short-List. Notifications may be expected not later than the date specified in Section 2.2.

1.15 COSTS

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).

1.16 INELIGIBLE FIRMS

The Proposer is responsible for being aware of and complying with the requirements of 23 CFR 636.116 and Exhibit 1 and for including a full disclosure of all potential organizational conflicts of interest as

defined therein in its SOQ. In addition, any firm that is ineligible as of the SOQ due date specified in Section 2.2 through any state or federal action is ineligible to participate on any Design-Build Team.

1.17 PRE-STATEMENT OF QUALIFICATION INFORMATIONAL MEETINGS

A pre-SOQ informational meeting for this Project will be held at 11:00 am on June 14, 2005, at the Transportation Building, Room 122, 355 Capitol St. NE, Salem, OR 97301. Attendance by at least one member of a Proposer team at the pre-SOQ informational meeting is mandatory.

1.18 ORGANIZATIONAL CONFLICT AND CONFIDENTIALITY REQUIREMENTS

1.18.1 Organization

In addition to the conditions in Section 1.16, each of the following circumstances shall be deemed an organizational conflict of interest disqualifying the affected Proposers:

- A) Participation by any of the following Persons on more than one Proposer's team: a Principal Participant, Designer, subconsultant responsible for performing a major portion of the design, or subcontractor responsible for performing a major portion of the construction; or
- B) Participation of an Associate of any Person identified in clause A) above on another Proposer's team;

Firms serving solely as a QC Engineer, environmental coordinator, or Public Involvement (PI)/community relations coordinator may be on multiple teams, unless disqualified in some other way.

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

It is a requirement of the Agency that Proposer organizations, including Principal Participants and Specialty Subcontractors, and key management personnel identified in the SOQ remain available for the duration of the procurement process and the subsequent Contract. A Proposer may propose substitutions for participants after the SOQ submittal; however, such changes will require written approval by the Agency, which approval may be granted or withheld in the Agency's sole discretion. Requests for changes must be made in writing no later than 30 calendar days prior to the due date for submittal of Proposals. Requests for changes in any of the Principal Participants, Designer, QC Engineer, other firms meeting criteria listed in Section 1.18.1 A), or Specialty Subcontractors will be particularly scrutinized. Requests for substitutions of key management personnel solely for the convenience of the Proposer/Design-Builder will be denied.

1.18.2 Confidentiality

The Proposer may be given access to records which are confidential under state laws solely for the purpose of performing the required services under the Contract. The Proposer, and at the option of Agency, the Proposer's employees, agents, subcontractors and subconsultants, shall be required to sign a nondisclosure statement prior to their receipt of such documents obligating each employee, agent, subcontractor, or subconsultant of the Proposer to comply with the limitations and provisions of the statement.

1.18.3 Minimum Requirements

The Proposer must meet all legal, financial, and SOQ responsiveness pass/fail requirements in Section 3.3.1 and not fall within any of the limiting categories specified in Section 6.1(M).

1.19 PROPOSAL STIPEND

The Agency will pay a stipend in the amount of \$110,000 to 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, the Agency will receive all rights and ownership of the information contained in the Proposal.

1.20 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 Oregon Revised Statutes (ORS) Section 279C.430 and Oregon Administrative Rules (OAR) Chapter 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 the state. 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.

1.21 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.

1.22 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 United States Code (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/tsspecs/davisbacon.htm>) for highway projects, On-the-Job Training (OJT), DBEs, “Buy America,” and Affirmative Action (AA) and Equal Employment Opportunity (EEO) requirements.

2.0 PROCUREMENT PROCESS

2.1 OVERALL PROCUREMENT PROCESS

The procurement will use a best value selection process. The intent of the 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); and
- B) Request For Proposals (selection of the 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 the Agency.

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

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

2.1.1 Request For Qualifications Step

Statements Of Qualifications 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, the Agency will determine the Short-List. Proposers on the Short-List will then be invited to provide Proposals. SOQ scores will not carry-over to the RFP step.

2.1.2 Request For Proposals 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.

Evaluation factors for the RFP will include, but not be limited to, the following:

- A) Pass/Fail:
 - 1) Legal (including compliance with state licensing requirements);
 - 2) Financial; and
 - 3) Responsiveness of Proposal
- B) Quality (these factors may also include sub factors):
 - 1) Experience and Qualifications;
 - 2) Management Approach;
 - 3) Technical Solutions; and
 - 4) Project Support
- C) Price.

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

- 1) Legal documents demonstrating the Proposer's ability to enter into a Contract with the Agency;
- 2) Proposal Security;
- 3) Specified certifications and representations;

Oregon Department of Transportation

- 4) A letter of intent from surety(ies) for payment and performance bonds;
- 5) A description of the Proposer's management approach, including schedule and organization;
- 6) The Proposer's technical approach;
- 7) The qualifications of nominated technical key personnel;
- 8) Specified design documents and conceptual diagrams and sketches, including concept plans for three (3) representative work locations from the eight (8) listed in Appendix A; and
- 9) 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 the Agency, will result in the selection of the best value Design-Builder for this project. The Agency will perform an assessment of the price and the quality factors and select the Design-Builder representing the best value to the state of Oregon.

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

2.2 PROCUREMENT SCHEDULE

The following represents the current schedule for the Project, subject to change at the discretion of the Agency. The final schedule for the Project will be stated in the RFP and will include solicitation and award protest periods.

Activity	Due Date
Issue Request For Qualifications	June 6, 2005
Pre-Statement Of Qualifications informational meeting	June 14, 2005
Final date for receipt of Proposers' questions and RFQ Requests for Change and Protests	June 17, 2005
Issue date for final Addendum and/or answers to Proposers' questions	June 24, 2005
Statement Of Qualifications due date	July 1, 2005
Short-List announced	July 22, 2005
Issue Request For Proposals	July 27, 2005
Proposal due date	September 21, 2005
Selection/Notice of Intent to Award	October 18, 2005
Contract execution/Award	November 29, 2005
Notice To Proceed	November 30, 2005

3.0 EVALUATION PROCESS FOR THE STATEMENTS OF QUALIFICATIONS

3.1 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. The Design-Builder will be required to plan, design, manage, and control the Project and to complete the Project on or ahead of schedule. The Agency has set high performance standards for the 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 Section 3.3 are included in Sections 4.3.2.1 through 4.3.2.7 of this RFQ.

3.2 REVIEW AND EVALUATION OF THE STATEMENTS OF QUALIFICATIONS

The information submitted in accordance with Section 4.0 will be evaluated in accordance with both the pass/fail factors listed in Section 3.3.1 and the factors for quality scoring for the RFQ provided in Section 3.3.2.

3.3 EVALUATION FACTORS FOR THE REQUEST FOR QUALIFICATIONS/ STATEMENT OF QUALIFICATIONS

This Section 3.3 outlines the evaluation factors for the RFQ phase of the procurement. The tentative evaluation factors for the RFP phase of the procurement are listed in Section 2.1.2.

The Agency has identified for this Project the following factors that it considers of particular importance.

3.3.1 Pass/Fail Evaluation Factors

The pass/fail evaluation factors are as follows:

- A) Legal: The Proposer has presented evidence showing its organization has the legal ability to enter into and perform the Contract to design and build the Project and comply with state licensing requirements;
- B) Financial: The Proposer has a demonstrated ability to provide required bonds and acceptable guaranties (if required); and
- C) Proposal responsiveness: The Proposer has substantially complied with the submittal requirements of this RFQ.

The pass/fail ratings for the above factors will be based on the following criteria:

- 1) Proper identification of all Principal Participants;
- 2) Demonstrated capability to enter into a contractual relationship with the Agency and a declaration of willingness to do so;
- 3) Demonstrated capability to provide required bonds and guaranties and meet other financial requirements of undertaking and completing the Work; and
- 4) Proper submittal of the required information per the requirements of the RFQ.

If a Proposer passes all pass/fail evaluations, its SOQ will be further evaluated using the factors for quality scoring set forth in Section 3.3.2. If a Proposal fails any single pass/fail requirement resulting in a

Deficiency, 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.

3.3.2 Quality Evaluation Factors

The quality evaluation factors are as follows:

- A) Experience (30 Points): Demonstrated experience relevant to the size, complexity, and composition of the anticipated Project and the experience of the Principal Participants, Designer, QC Engineer, Environmental Compliance Manger and other subcontractors. Identification of each Principal Participant, the Designer, the QC Engineer, and other consultants and subcontractors; the proposed organization for the Project, including the split among Principal Participants; and disclosure of management key personnel and major subcontractors;
- B) Past Performance (30 Points): Demonstrated record of performance, including completion schedule; quality of work product; completion within contract price; claims history related to performance (including number of claims submitted that were ultimately disallowed or significantly reduced, number of disputes submitted to formal dispute resolution and disposition of such actions, and claims brought against the firm); record of terminations for cause and defaults; lawsuits related to alleged breach of contract and ultimate disposition thereof; disciplinary action, including suspension; safety record; environmental compliance record; client references; awards, citations, and commendations; record of DBE performance; and record of workforce diversity performance.
- C) Backlog/Capacity (20 Points): Current workload and/or future commitments of Principal Participants, the Designer, the QC Engineer, and other subcontractors, including projects presently being proposed that may impact the Proposer during the life of this Project;
- D) Project Understanding (30 Points): Knowledge and understanding of specific Project issues and risks and the challenges, benefits, and responsibilities associated with DB contracts including an explanation of how the Proposer will ensure success of the Work and this Project; and
- E) Overall Statement Of Qualifications (10 Points): Review of the Proposal as a whole for clarity and completeness; connectivity between design and construction and among the key personnel, Project understanding, and past performance; and compatibility of experience with Project understanding with the Proposer's organization with capacity.

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 that 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 which 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 Section 4.3.2. 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 and compiled by the Selection Team, who will determine the total consensus quality score.

A Proposer whose SOQ receives a score of “0” for one or more quality evaluation factors (as set forth above in subparagraph A through E) will not be eligible for inclusion on the Short-List.

3.4 REQUESTS FOR CLARIFICATION

If information submitted by the Proposer is not complete, the Agency, at its sole discretion, may notify the Proposer of the missing information and request a clarification electronically, giving the date by which the Proposer must respond. Responses shall be limited to the specific information requested by the Agency. Any insufficient statements or incomplete affidavits will be returned directly to the Proposer by the Agency with notations of the insufficiencies or omissions and with a request for submittal of corrected, supplemental, or missing documents.

The Agency may waive technical irregularities in the form of the SOQ of the Proposers that do not alter the quality or quantity of the information provided.

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 following address:

Attn: Robert Burns
Oregon Department of Transportation
680 Cottage Street
Salem, OR 97301

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

In addition to the electronic response requested above, Proposers must submit mailed follow-up responses to inquiries by the Agency to the address indicated above by priority mail/express delivery service within three business days of the date of request from the Agency except as otherwise specified in writing by the Agency.

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

The Agency does not anticipate conducting interviews during the RFQ phase, but reserves the right to do so. If the 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, the Agency will issue an Addendum to all Proposers that have submitted SOQs requesting revised SOQs based upon the corrected RFQ.

3.5 DETERMINATION OF THE SHORT-LIST

The Agency will establish a Short-List of the three most highly qualified Proposers and announce the Short-List by letter. The Agency will provide to each Proposer the summary of scores of all Proposers and the Evaluation Team Worksheets for their own SOQ evaluation.

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.

4.0 STATEMENTS OF QUALIFICATIONS SUBMITTAL REQUIREMENTS

4.1 DATE AND TIME OF RECEIPT

All SOQs must be received no later than 1:00 pm (Pacific Daylight Time) on the SOQ due date specified in Section 2.2. The SOQs must be clearly identified and marked “Confidential” and be enclosed in sealed containers. Late submittals will not be considered and will be returned unopened to the address indicated on the cover of the package.

4.2 SUBMITTAL ADDRESS

Attn: Robert Burns
Oregon Department of Transportation
680 Cottage Street
Salem, OR 97301

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

4.3 CONTENT OF STATEMENTS OF QUALIFICATIONS

This section describes the specific information that must be included in the SOQ. An outline of the required format for the SOQ is provided in Appendix B. Required forms for the SOQ are contained in Appendix C. 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 Section 3.3. 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 the 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 the 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 records under ORS 192.501(2) and that it wishes to protect from disclosure, the Proposer must do the following:

- A) Clearly mark each location of trade secret information within the SOQ with the following legend:

“This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

- B) 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

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

4.3.1 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 and the Designer, QC Engineer, subconsultants, and subcontractors meeting the criteria in Section 1.18.1 A), and Specialty Subcontractors. The Proposer shall identify a single point of contact for the Proposer and the address and telephone and fax numbers 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.

The Proposer shall attach the Acknowledgment of Receipt (Appendix C) of the RFQ, Addenda, and responses to questions, if any, issued by the Agency.

4.3.2 Evaluation Factor Objectives and Requirements

In drafting SOQ responses, Proposers should be guided by the Project goals in Section 1.2 and the objectives listed in Sections 4.3.2.1 through 4.3.2.7. An objective is stated for each evaluation factor to provide Proposers the expectations of the Agency. The requirements for each evaluation factor and the information to be submitted are listed and described in detail. The SOQ evaluation scores of Section 3.3 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.

4.3.2.1 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 provided in Section 1 of the SOQ:
 - 1) Form L-1 (Appendix C), Proposer’s Organization Information, for the Proposer’s organization; and
 - 2) Form L-2 (Appendix C), Principal Participant and Designer Certification, for each Principal Participant and the Designer covering the last five years.
- C) If a JV, LLC, or partnership include:
 - 1) Identity of the Lead Principal Participant of the entity, if any (Form L-1, Appendix C);

- 2) Percent equity share held by each member (Lead Participant column of Form L-1, Appendix C); and
 - 3) An express statement from each of the equity members of the entity as to their joint and several liabilities in accordance with Section 1.10.
- D) Requirements and information to be provided in Appendix A to the SOQ:
- 1) Submit a notarized power of attorney for each Principal Participant indicating the authority of the Principal Participant's representative to sign for that Principal Participant; and
 - 2) Submit a notarized power of attorney from each Principal Participant indicating the authority of the Proposer's designated point of contact to sign documents for and on behalf of the Proposer's organization.
- E) If a JV, LLC, or partnership:
- 1) 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, LLC operating agreement, or partnership agreement;
 - 2) If the Proposer has not yet been legally formed, provide a brief description of the proposed legal structure and draft copies of the anticipated legal documents, including the following:
 - a) All significant terms of the JV, LLC, or partnership agreements, including the rules relative to the administration of the JV, LLC, or partnership, including dealing with deadlock situations;
 - b) Description of how the JV, LLC, or partnership will operate administratively and technically; and
 - c) A memorandum of agreement or teaming agreement.

4.3.2.2 Financial

- 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;
 - 2) The surety or insurance company submitting such letter must be listed on Treasury Department Circular 570, and be on the list of surety or insurance companies authorized to do business in the State of 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 its bonding capacity and the letter must expressly identify the Proposer's (and each Principal Participant's) amount of current backlog and utilized bonding capacity; and
 - 4) Letters indicating "unlimited" bonding/security capability are not acceptable.
- C) The Contract amount is not anticipated to exceed \$55 million.

4.3.2.3 Experience

- A) Objective:
- 1) To identify and short-list the best qualified Proposers, based on demonstrated experience, expertise, and capacity in and record of producing quality work on projects similar in nature to this Project;
 - 2) To identify Proposers that have the following:
 - a) The experience in successfully managing, designing, and constructing projects of the size and complexity of this Project, containing the same type of work (bridge replacement and bridge repair). There is a preference for projects with multiple work locations, for projects adjacent to other active work zones, for projects with bridges over Environmentally Sensitive Waterway(s), for projects requiring maintenance of flow of traffic minimizing delays, and either projects completed ahead of schedule or performed under compressed timelines;
 - b) Superior record of completing contracts on time and within budget. There is a preference for contracts that are completed ahead of schedule and under budget;
 - c) Experience in successfully managing (a) maintenance of flow of traffic minimizing delays, and (b) public information on projects of the size, type of work, and complexity of this Project. Emphasize projects with similar traffic management challenges as this Project;
 - d) Demonstrated experience with environmental issues in successfully:
 - Addressing environmental issues encountered in project permitting and implementing permit requirements;
 - Planning and working within Environmentally Sensitive Waterways;
 - Maintaining environmental compliance during design and construction; and
 - Implementing environmental protection and mitigation measures; and
 - e) Record of managing contracts to minimize delays, claims, dispute proceedings, litigation, and arbitration;

- 3) To identify Proposers that have the ability to manage all aspects of the Contract in a timely and effective manner and to integrate the functioning of the different parts of their organizations internally and with the Agency in a cohesive and seamless manner; and
 - 4) To identify Proposers that have the technical and management experience and expertise to plan, organize, and execute the design and construction of projects of similar size, type of work, and complexity of this Project and assure the quality and safety of the Project.
- B) Requirements and information to be submitted (30 Points):
- 1) Using Form E-1 (Appendix C), Past Project Description, provide no more than ten (10) past project descriptions, with a minimum of two past projects per each Principal Participant and the Designer and additional past project descriptions from the QC Engineer, other team members meeting the criteria listed in Section 1.18.1 A) and Specialty Subcontractors highlighting experience in the last five (5) years relevant to the Project. Describe those projects having a scope, size, schedule, and challenges similar to those that the Proposer foresees for this Project.
 - 2) Using Form E-2 (Appendix C), Subcontractor Information, except for the designated Designer and QC Engineer (that have already been included in Forms L-1 and E-1, Appendix C), identify subcontractors (including consultants) the Proposer plans to use, to the extent they are known, indicating what portion of the Work each identified subcontractor is anticipated to undertake. Submit a maximum one-page summary of experience for each listed subcontractor, including consultants. Emphasize experience on projects of a similar size, type of work, and complexity as this Project.
 - 3) Company brochures may be included in Appendix B and will not count towards the page limit and will not be scored.
 - 4) Using Form E-3 (Appendix C), Proposed Key Personnel Information, provide requested information on Key Personnel. If more than one key position is filled by the same person, so indicate. Provide two references for the Project Manager nominee and at least one reference for all other Key Personnel. Indicate the name, position, company or agency and current phone and fax numbers for each reference. References shall be owners or clients for whom the Key Personnel have worked within the past five (5) years and shall not be current or past employers of the Key Personnel. Project Key Personnel are preferred to have experience on projects of a similar size, type of work, and complexity as this Project and shall meet the following qualifications:
 - **Project Manager:** Shall have demonstrated experience in construction and management of construction on highway projects with similar size, type of work, and complexity as the I-5: McKenzie River to Goshen Grade Project, including projects with bridges over Environmentally Sensitive Waterway(s), compressed timelines, and public information management issues. The Project Manager can only hold this Key Personnel position. Emphasize Design-Build experience and extensive project management experience.

- **Design Manager:** Shall be an Oregon-registered professional engineer who is an employee of the Designer. Shall have demonstrated experience in managing design for multi-disciplinary highway projects with similar scope and complexity of the I-5: McKenzie River to Goshen Grade Project. Emphasize experience with bridge replacement and bridge repair with bridges of similar size and type, including bridges over Environmentally Sensitive Waterways.
 - **Project Quality Manager:** Shall be an Oregon-registered professional engineer and have demonstrated experience in highway design and/or construction with at least five (5) years experience in quality assurance/quality control activities, including preparation and implementation of Quality Plans and procedures for design and/or construction. The Project Quality Manager can only hold this Key Personnel position. Emphasize experience with the Agency's quality control system and documentation and bridge construction.
- 5) Submit resumes following Form E-3 outlining Key Personnel experience and qualifications. Additional resumes for a substitute for each Key Personnel position may be submitted in the event the designated Key Personnel is unable to fill the position intended. Resumes shall be a maximum of one page each. Resumes should highlight the following information:
- Proposed role on Project and experience in area of responsibility;
 - History of employment with participant;
 - Experience in the management, design and/or construction of projects, especially any Design-Build projects; and
 - Project role, if any, in projects included in firm experience.

4.3.2.4 Past Performance

- A) Objective:
- 1) To identify Proposers with firms or personnel 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;
 - 4) To identify Proposers with a record of meeting DBE participation requirements; and
 - 5) To identify Proposers with a record of meeting workforce diversity participation requirements.
- B) Requirements and information to be submitted (30 points):
- 1) Using Form PP-1 (Appendix C), Past Performance, provide the information requested in 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 as designated in B) 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 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 4.3.2.4, 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,"), incomplete or inaccurate submissions, or non-responsive submissions may, in the sole discretion of the Agency, lead to a lower evaluation score for this quality factor or result in a Deficiency that would cause the Agency to declare the SOQ non-responsive.

- Awards, Citations, and/or Commendations: List awards, citations and/or commendations for performance relevant to this Project received by any Principal Participant, Designer, other firms meeting criteria of Section 1.18.1 A, and/or Specialty Subcontractors 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;
- 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 other firms meeting criteria in Section 1.18.1.A has been involved during 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;
- Liquidated Damages: Describe any contract which resulted in assessment of liquidated damages against any Principal Participant over 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;
- Termination for Cause or Default: Describe the conditions surrounding any contract (or portion thereof) entered into by any Principal Participant, Designer, or other firm meeting criteria listed in Section 1.18.1 A over the past three (3) years that has been

- terminated for cause or default or which required completion by another party. Describe the reasons for termination and the amounts involved; and
- Disciplinary Action: Indicate any disciplinary action taken against any Principal Participant, Designer, or other firm meeting the criteria in Section 1.18.1 A 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 (Appendix C), Safety Questionnaire, for each Principal Participant and Construction Subcontractor meeting criteria listed in Section 1.18.1.A);
 - 3) Environmental Compliance; Submit Form PP-2 (Appendix C), Environmental Past Performance, for each Principal Participant and Construction Subcontractor meeting criteria listed in Section 1.18.1 A). Limit Environmental Past Performance information to the office(s)/division(s) of the firms that will be performing Work on the Project; and
 - 4) Disadvantaged Business Enterprise Participation: Submit Form DBE (Appendix C), Record of Disadvantaged Business Enterprise Participation, for each Principal Participant and the Designer reflecting the record of DBE performance in their contracts for the past three years. Limit DBE information to the office(s)/division(s) of the firms that will be performing Work on the Project
 - 5) Workforce Diversity Participation: Submit Form Workforce Diversity (Appendix C), Record of workforce diversity participation for Principle Participant reflecting the record of workforce diversity in their construction contracts for the past three years. Limit workforce diversity to the office(s)/Division(s) of the firms that will be performing work on the project.

4.3.2.5 Backlog/Capacity

- 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 (20 points):
 - 1) Submit Form B (Appendix C), Backlog Information, for each Principal Participant, Designer, QC Engineer, and other firm meeting criteria in Section 1.18.1 A). Limit backlog information to the office(s)/division(s) of the firms that will be performing Work on the Project;
 - 2) Submit Form R (Appendix C), Past Revenue, for each Principal Participant, Designer, QC Engineer, and other firm meeting criteria in Section 1.18.1 A). Limit revenue information to the office(s)/division(s) of the firms that will be performing Work on the Project; and
 - 3) Submit a plan that briefly describes the capacity of any Principal Participant, Designer, QC Engineer, and other firm meeting criteria in Section 1.18.1(A), 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.

4.3.2.6 Project Understanding

- A) Objective:
- 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;
 - 2) To identify those Proposers demonstrating an understanding of how the DB process and the Proposer's organization will contribute to the success of the Project and meeting the Agency's Project goals, and understanding of the risk sharing and the teaming relationship between the Design-Builder and the Agency..
- B) Requirements and information to be submitted (30 points):
- 1) List and briefly describe the significant issues and risks facing the selected Proposer and/or the Agency; and
 - 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 Section 4.3.2.6 (B) (1), considering the Agency's Project goals listed in Section 1.2; and
 - 3) Briefly describe how the Proposer will address corridor management and coordination with adjacent projects during the delivery of this Project.

4.3.2.7 Overall Statement of Qualifications (SOQ)

- A) Objective. To identify the SOQ that best and most effectively addresses the goals (as stated in Section 1.2) and the objectives (as stated in Sections 4.3.2.1 through 4.3.2.6) stated in this RFQ. [The objectives stated in this Section 4.3.2.7(A) apply to all requirements found in Section 4.3.2.7(B):
- B) Requirements and information to be submitted: The Statement of Qualifications as prepared and submitted in compliance with this RFQ (10 Points):
- 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's 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 the 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 Section 1.2 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?"

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, solicitation protests, and Requests for Changes. Protests shall be submitted to the Office of Project Delivery Manager, 680 Cottage Street, Salem, OR 97301 (Protest Official). Any protest not set forth in writing within the time limits specified in this RFQ shall not be considered.

The Protest Official may, in his or her sole discretion, discuss the protest with the protestor. No hearing will be held on the protest, but it shall be decided, on the basis of the written submissions, by the Protest Official or designee. The Protest Official or designee shall issue a written decision regarding any protest.

5.2 REQUEST 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 the Protest Official. To be considered, the Request for Changes must be received by the Protest Official by the deadline specified in Section 2.2. 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 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 the Protest Official. To be considered, the protest must be received by the Protest Official by the deadline specified in Section 2.2. 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 REQUEST FOR QUALIFICATIONS 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. The Agency will provide the information specified in Section 3.5 to those Proposers excluded from the Short-List within three days of the notification and those Proposers shall have five business days following fax or E-mail transmittal of the information specified in Section 3.5 to submit a written protest to the Protest Official. The Agency will not consider a protest submitted after the deadline established in this section.

6.0 AGENCY RIGHTS AND DISCLAIMERS

6.1 AGENCY RIGHTS

The 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 this RFQ. The Agency reserves the right, in its sole and absolute discretion and without recourse by Proposers, 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, the Agency shall circulate an Addendum to all registered Proposers setting forth the changes to the evaluation criteria or methodology. The Agency may extend the SOQ due date if such changes are deemed by the 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) Disregard the SOQ from any team that changes its submitted SOQ without Agency written approval; and/or
- 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 the Agency (or State of Oregon);
 - 2) Default on the part of a Principal Participant or Designer under previous contracts with the Agency (or State of Oregon);
 - 3) Unsatisfactory performance by the Proposer, a Principal Participant, and/or Designer under previous contracts with the 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 Section 1.18, 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; 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 Agency might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded.

The RFQ does not commit the Agency to enter into a Contract, nor does it obligate the 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 the Agency.

In no event shall the 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 the Agency, has been executed and authorized by the 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, the 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 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM, MWESB ENTERPRISE PROGRAM AND EQUAL EMPLOYMENT OPPORTUNITY

7.1 POLICIES

The Agency shall 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 Part 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.

7.2 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION GOAL

A Disadvantaged Business Enterprise goal of fifteen percent (15%) of the total design and construction contract price has been established as of the date of the release of the RFQ for this Project, but the final goal percentage will be identified in the RFP. Although there will be a single DBE participation goal, the Design Builder should distribute the DBE participation equitably between design and construction activities.

7.3 MWESB ENTERPRISE PARTICIPATION GOAL

The Agency may require Minority Business Enterprise, Women Business Enterprise, and Emerging Business Enterprise (MWESB) participation on the Design-Build Contract. Details of the participation goals are being developed, and if implemented, will be detailed in the RFP.

7.4 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.

8.0 COMPLIANCE WITH APPLICABLE LAWS

In connection with this RFQ and the Contract, Proposers shall comply with all applicable laws in all aspects in connection with the procurement process of this Project and the performance of the Contract.

DRAFT POLICY

**CONFLICT OF INTEREST GUIDELINES
AND DISCLOSURE PROCESS**

**Oregon Department of Transportation
Conflict Of Interest Guidelines And Disclosure Process**

Background

The integrated nature of Design-Build creates the potential for conflicts of interest. Disclosure, evaluation, and management of these conflicts and of the appearance of conflicts, require attention to state and federal laws, in the contracting process. The Oregon Department of Transportation (ODOT) has crafted Conflict of Interest Guidelines (COI Guidelines) and a Disclosure Process. The COI Guidelines are intended to summarize the key governing standards of federal and state laws, include definitions of key terms, and describe the COI Disclosure Process.

Governing Standards

Both Oregon and federal laws govern disclosure and management of conflicts of interest in highway contracting processes.

Oregon State Standards

The current Oregon statutory framework addresses conflicts of interest in public contracting in a general way---by emphasizing the need for open and impartial procurement methods, or by narrowly prohibiting certain conflicts of interest involving public officials. No Oregon statute or rule comprehensively addresses conflicts of interest in the public contracting arena.

Two statutes establish Oregon’s general policies that apply to public contracts that are not public improvement contracts (such as contracts for architecture and engineering services or personal services).

ORS 279.005 “encourage[s] public contracting competition that supports openness and impartiality to the maximum extent possible,” while recognizing that the nature of effective and meaningful competition depends upon the service being procured.

ORS 279.007 requires such contracts to be “made under conditions that foster competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace,” including “[t]he way information on contracting opportunities is provided to suppliers.”

ORS chapter 244 prohibits conflicts of interest of public officials. Among the prohibitions are offering a public employee a pledge of future employment based on an understanding that the offer would influence the public employee’s official action or judgment.

ODOT’s COI Guidelines embody the intent of encouraging competition through openness, impartiality, and public disclosure of relevant information as described in ORS 279.005, ORS 279.007, and ORS Chapter 244.

Federal Standards—Procurements Related To Design-Build and Design-Bid-Build Transactions

Pursuant to 23 USC § 112(b)(3), the Federal Highway Administration (FHWA) has promulgated administrative rules effective January 9, 2003, that affect federally funded Design-Build procurements and related procurements. These rules, which are in 23 Code of Federal Regulations (CFR) Parts 635 and 636, are used as the basis for ODOT’s guidelines on the subject and are summarized below. These rules specifically regulate both organizational and individual conflicts of interest. The federal rules define “organizational conflict of interest” as follows:

“*Organizational conflict of interest* means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.”¹

The ODOT COI Guidelines define “actual or potential organizational conflict of interest” for contracting firms as follows:

“An *actual or potential organizational conflict of interest* means that because of other activities or relationships with other persons, including associates of the firm, a firm...

- is unable or potentially unable to render impartial assistance or advice to ODOT,
- is or might be otherwise impaired in its objectivity in performing the contract work, or
- has or potentially has an unfair competitive advantage.”

The ODOT COI Guidelines define “associate” of the firm as follows:

“An *associate* of the firm is an employee, executive, director, key project personnel, or proposed consultant, contractor or subcontractor, or any immediate family member of the foregoing.”

The main rule on organizational conflicts of interest in Design-Build transactions is 23 CFR § 636.116. This rule affects not only Design-Build procurements, but also “any contract for engineering services, inspection or technical support in the administration of the Design-Build contract.” ODOT will apply this rule to all future Design-Build procurements. Following is a summary of this federal rule:

Generally, a consultant who assists the state in preparing an RFP document may not, subsequently, propose in response to the RFP. However, the state may determine that the consultant does not have a conflict of interest for a subsequent procurement, if the consultant furnished only “low-level” documents that were incorporated into the RFP and made available to all proposers, and did not assist the state in the development of instructions to proposers or evaluation criteria for the RFP.

ODOT’s COI Guidelines apply this summary to design-bid-build activities as well. “*Low-level*” documents are defined as program or project related documents, which provide a basic understanding of a specific aspect of the program or project. “Low-level” documents include any engineering or technical work completed prior to the environmental clearance in the National Environmental Policy Act (NEPA) process for Class 1 projects or the Design Approval stage in ODOT’s project delivery process for Class 2 & 3 projects, both milestones can reach up to the 30% design level. All work completed prior to these two milestones is considered preliminary design by FHWA and ODOT standards.

¹ 23 CFR § 636.103.

Illustrative examples of “low-level” documents include, but are not limited to: Engineering Baseline Reports, Environmental Baseline Reports, Environmental Impact Statements, Location Surveys, or Traffic Impact Studies.

These Design-Build regulations also apply to “improper business practices and personal conflicts of interest” of the Owner’s selection team members. 23 CFR § 636.117 indicates that Federal Acquisition Regulations (the “FARs”---specifically 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest) will apply to the state’s selection team members in the absence of relevant state laws and procedures. These regulations require government business to be “above reproach,” conducted “with complete impartiality and with preferential treatment for none” and with “the highest degree of public trust and an impeccable standard of conduct” to avoid “even the appearance of a conflict of interest.”

In design-bid-build transactions, where engineering services are procured separately from the construction services, ordinarily the consulting firm providing the engineering services is not eligible to bid on the construction work for the project. This understanding is based upon fairly broad provisions set forth in Section 1.33 of Title 23 of the Code of Federal Regulations. The relevant portions of the regulation provide as follows:

“...No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project.”

For purposes of this provision, the term “project” is defined as “An undertaking by a State highway department for highway construction, including preliminary engineering, acquisition of rights-of-way and actual construction, or for highway planning and research, or for any other work or activity to carry out the provisions of the Federal laws for the administration of Federal aid for highways.”² While the terms “engineer” and “engineering” are not defined in this regulation, the Brooks Act (governing the procurement of architectural and engineering services for federal projects) defines “architectural and engineering services” or A&E Services as follows:

- “(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;
- “(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and
- “(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering,

² 23 CFR § 1.2.

drawing reviews, preparation of operating and maintenance manuals, and other related services.” 40 USC § 1101(2).

Public disclosure of A&E Services or products is an important consideration in determining if an organizational conflict of interest exists. The ODOT definition for “*public disclosure*” is as follows: the A&E product or service is available for public review and analysis for a reasonable amount of time, typically at least thirty (30) calendar days.

COI Disclosure Process

The identification, assessment, and management of real or potential conflicts of interest is a joint task between ODOT and the private sector. It requires both parties to work together in an atmosphere of candor and accountability. As the owner, ODOT makes the final determination as to the adequacy of any COI management plan offered by the private sector.

ODOT’s COI determination is based on a number of factors such as:

- ✓ Situational Facts – description of the situation and all known facts specific to the actual or perceived COI
- ✓ Type of Work - specific product or service and contract(s) involved
- ✓ A&E Services - specific skill set applied
- ✓ Relationship to Management - specific interactions with ODOT decision-makers
- ✓ Public Disclosure - timing and availability of product or service

*It is important to understand that the specific facts disclosed in any COI situation will be unique to that situation. Therefore, the decisions and conclusions reached in one situation may or may not be directly applicable to another. For example, the definition of “**low-level**” documents does not isolate a firm producing them from a potential COI situation. The ultimate determination will take into account the other factors described above.*

Exhibit A: Proposer's Declaration - Conflict of Interest

Failure of Proposer to submit this form as part of the final proposal document will designate Proposer as Non-Responsive to this solicitation.

1. Is any Associate of this firm (see definition in ODOT COI Guidelines) a former employee or family member of an employee of ODOT?
2. Does any associate of the firm have a conflict of interest with regard to any member of the RFP selection team?
3. Did this firm, or any Associate of this firm, participate in preparing any part of the RFP or any documents or reports to which the RFP refers, including environmental baseline data and available engineering reports?
4. Does this firm, or any Associate of this firm, have any past, present or currently planned interests which are an actual or potential organizational conflict of interest (as defined in ODOT's COI Guidelines), with respect to performing the work for the ODOT under the present RFP?

If the answer to any of the above questions is "no," I have so stated. If the answer to any of the above questions is "yes," I have (a) furnished all relevant facts and (b) identified any actions that must be taken to avoid, neutralize, or mitigate such conflict of interest (e.g. communications barriers, restraint or restriction upon future contracting activities, or other precaution).

My signature certifies that, to the best of my knowledge, information and belief, and after thorough review of the firm's books and records and after reasonable inquiry with knowledgeable persons within the firm, this firm has no business or personal relationships with any other companies or persons that could be considered as a conflict of interest or potential conflict of interest to the ODOT, and that there are no principals, officers, agents, employees, or representatives of this firm that have any business or personal relationships with any other companies or persons that could be considered as a conflict of interest or a potential conflict of interest to the ODOT, pertaining to any and all work or services to be performed as a result of this request and any resulting contract with the ODOT, except as disclosed on the present form.

I hereby certify that I am authorized to sign as a Representative for the Firm:

Complete Legal Name

of Firm: _____

Order from Address: _____

Remit to Address: _____

Fed ID No.: _____

Signature: _____

Name (type/print): _____

Title: _____

Telephone: (____) _____

Fax No.: (____) _____

Date: _____

To receive consideration for award, this signature sheet must be returned to Purchasing & Contract Management along with, but physically not bound to, your proposal.