

TERMS AND CONDITIONS

TC SECTION 2
BIDDING REQUIREMENTS AND CONDITIONS FOR COMPETITIVE SEALED
PROPOSALS (DESIGN-BUILD)

TC-2.03 VALUE ENGINEERING CHANGE PROPOSALS

DELETE: This entire section.

ADD: Value Engineering proposals will not be entertained on this project.

TC-2.06 PARTNERING

DELETE: This entire section.

INSERT: The following:

Partnering on this project will be mandatory. The partnership will be structured to draw on the strengths of each organization through open communication, teamwork and cooperative action to identify and achieve mutual goals. The objective is to create an atmosphere of trust and honest dialogue among all stakeholders. This partnership will not change the legal relationship of the parties to the Contract nor relieve any party from any of the terms of the Contract.

The Administration's Assistant District Engineer of Construction, the Project Design Engineer and the Design-Builder Team's management representative will organize a partnering project team. Persons recommended being on the team and guidelines for partnering are included in the Partnering Field Guide at www.mdqi.org.

The kick-off workshop meeting will be held soon after execution of the Contract. All stakeholders will attend the kick-off workshop to develop and commit to the Partnering Charter and Issue Resolution process. Follow-up meetings will be held monthly by the Design-Build Team (DBT) and the Administration, with other stakeholders attending as needed.

Measuring the partnering on the project is a key element to its success. All stakeholders will participate in the process. The Partnering Project Rating form will be completed monthly and then entered into the Administration's Partnering Data Base. Summaries of the ratings will then be shared with the team. The Administration's and DBT's management team will review the partnering ratings and intervene if necessary on a monthly basis.

All cost of partnering meetings shall be shared equally between the DBT and the Administration.

TC 2.07 REQUEST FOR PROPOSALS (RFP)

The Request for Proposals- Technical Proposal / Price Proposal for this Project is structured to provide the best overall value for the Administration and the citizens of Maryland. This Contract is a Lump Sum, design-build contract procured using the "Competitive Sealed Proposals" procurement method as defined in the Code of Maryland Regulations (COMAR) 21.05.03. The intent of the Administration is to award the Contract to the Proposer that submits the Proposal that is determined to be the most advantageous to the State considering the evaluation factors set forth in the RFP.

Selection by the "Competitive Sealed Proposals" approach is a combination of the submitted Price Proposal and the submitted Technical Proposal rating as determined by the Administration's Evaluation Committee. The submitted Price Proposal will NOT be considered until the rating for all Technical Proposals has been completed. Proposal Price must be submitted using the Proposal Form included in this RFP.

The RFP will include a maximum price for the project. Price Proposal received with a price greater than this amount shall be considered **non-responsive**. Technical Proposals received with a scope less than the limits outlined in the RFP and shown on the access and maximum limit of disturbance plans shall be considered **non-responsive**.

Proposal Price must be submitted using the Proposal Form included in this RFP.

The Maximum price is the Administration's budget for this contract and has been valued at **\$xxx,xxx,xxx**. Price Proposals cannot exceed the Maximum price under any circumstances. The Maximum price has been defined in this RFP as a sum of all individual bid items contained in the schedule of prices, and all other lump sum items

2.07.01 Design-Build Concept

The Administration is soliciting Technical Proposals and Price Proposals for the design and construction of the Upper Little Patuxent Stream Restoration. This project is located in Howard County, Maryland. The basis of payment for this work will be "lump sum" which price shall include all costs associated with design and construction of the project in accordance with the requirements of this RFP.

The use of the term "Contractor" or "Design-Builder or DBT" within the Contract Documents furnished by the Administration shall be taken to mean Design-Build (D/B) Contractor. These terms are interchangeable.

The use of the term "Designer" or "Design-Build Engineer," within the Contract Documents furnished by the Administration, shall be taken to mean the Engineer working for the Design-Build Contractor. The use of the term "Engineer," within the Contract Documents furnished by the Administration, shall be as defined in Section GP-1.03 of the General Provisions for Construction Contracts.

2.07.01.1 Restrictions on Participation in Design-Build Contracts:

An individual or entity that has received monetary compensation as the lead or prime design consultant under a contract with the Administration to develop the Access and Maximum Limit of Disturbance Plans and/or have been retained to perform construction phase services on behalf of the state, or a person or entity that employs such an individual or entity, or regardless of design phase responsibilities has received in excess of \$500,000.00 for services performed, may not submit a technical proposal or a price proposal for this procurement and is not a responsible bidder under COMAR 21.06.01.01. The technical proposal or price proposal from such an individual or entity will be rejected pursuant to COMAR 21.06.01.01 and COMAR 21.06.02.03.

The following is a list of consultants and/or subconsultants that have received monetary compensation under a contract with the Administration as the prime consultant to develop the Access and Maximum Limit of Disturbance Plans, have been retained by the Administration to perform construction phase services on the behalf of the state for this procurement, or have received payment in excess of \$500,000.00. SHA makes no representations regarding the completeness of the list:

- A. Coastal Resources, Inc.
- B. McCormick Taylor, Inc.
- C. Findling, Inc.
- D. Indam, Inc.

In addition, the State Ethics Commission administers the provisions of the State Ethics Law, including § 15-508 of the State Government Article that contains various restrictions on participating in State procurements. Any questions regarding eligibility must be appealed to the Commission.

No official or employee of the State of Maryland, as defined under State Government Article, §15-202, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the Consultant or an entity that is a subcontractor on this contract.

No official or employee of the Maryland Department of Transportation (MDOT), during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof, regardless of whether they participated in matters relating to this contract while in the employ of the MDOT.

No Design-Build Team may use any persons meeting the above restrictions in any capacity, key staff or otherwise, on this Design-Build Contract. It is the responsibility of the Design-Build Team to identify any potential ethics issues concerning its former MDOT employees and seek an opinion from the State Ethics Commission regarding any potential conflicts of interest. The Design-

Build Team shall provide certification in its cover letter that it is in compliance with the general conditions prohibiting a former MDOT employee from working on this contract for one year after leaving MDOT and is in compliance with State Ethics Laws prohibiting work on a matter in which a former MDOT employee participated significantly as a State Employee for the duration of this contract.

2.07.02 Project Description

The project consists of the design and construction of a stream restoration along the Little Patuxent River in Howard County, Maryland. The contract limits include approximately 3,800 feet of stream restoration along the Little Patuxent River; and approximately an additional 600 feet of stream restoration along a tributary to the Little Patuxent River.

The design must be completed by the DBT to ensure all project requirements are met within the right of way. The completion of the project documents shall be performed by the DBT and approved by the Administration, subject to language included elsewhere in this Request for Proposal.

The current status of aspects of the project is as outlined hereafter.

2.07.02.1 Survey

A contour surface model and topographic base map were prepared from a topographic field survey of the site. Detailed topographic survey encompassed an area approximately 200 feet wide centered on the Little Patuxent River and extending from a point roughly parallel to Horned Owl Court to a point roughly parallel to the cul-de-sac at the end of Windflower Drive. This information is available in electronic format on ProjectWise. All surveys were performed in the Maryland State Plane Grid, NAD 83/91 and NAVD 88. The DBT must obtain all additional survey data necessary for their design, construction, and verification of surface model for all design activities.

2.07.02.2 Plans

The Access and Maximum Limit of Disturbance Plan for stream construction has been prepared in Microstation V8. Files are available in electronic format on ProjectWise. The Administration has performed a topographic survey. Results of the survey are included on ProjectWise.

2.07.02.3 Cross-Sections

Field-surveyed cross-sections were not taken.

2.07.02.4 Geotechnical

The Administration has obtained soils borings at selected locations along the project corridor and performed laboratory testing of the samples. The boring logs and laboratory test data are included on ProjectWise.

These studies were performed with reasonable care and recorded in good faith. The Administration considers the information Engineering Data and will stand behind its accuracy at the location it was taken. The Administration assumes no responsibility in respect to the sufficiency of the studies for design. The Contractor will need to perform additional geotechnical testing and analysis to complete the project. The Design-Build Team is responsible for performing a complete geotechnical program including additional borings, sampling, in-situ and laboratory testing, analysis, and design, as necessary to complete design and construction.

2.07.02.5 Utilities

All utility data of which the Administration is aware is reflected on the survey information. The Administration has had a utility designating service locate underground utilities which identified the existence of the utility at its horizontal location. Inaccuracies in information regarding the locations of an underground utility based on utility designation information shall be considered material only if the utility's actual centerline location is more than three (3) feet distant from the horizontal centerline location shown in that information, without regard to vertical location. Additional utilities may be present in the area. The DBT is responsible for obtaining all information that will be required to complete the stream restoration design and construction. The Administration has conferred with the utility companies with facilities in this area concerning the potential impact of this stream restoration construction.

2.07.02.6 Right of Way

All right of way will be cleared before Notice to Proceed is given. The DBT may revise the details of the project to alter the limits of construction or disturbance, subject to environmental constraints, and the Administration's approval but all construction must be contained within the Right of Way.

The DBT will be responsible for acquiring, at its expense: all other rights in land needed for construction staging, yarding, construction, or otherwise; and, all applicable permits or permit modifications for such changes.

2.07.02.7 Permits

The following permits and/or approvals are anticipated to be required for this project:

A) State MDSPGP-4 (MDE) and Nationwide #27 (USACE)

Permits for wetland and waterway impacts are required for this project. The Administration has obtained conditional permits for wetland, waterway and floodplain impacts from MDE and USACE for the areas within the Limit of Disturbance (LOD) as shown on the Access and Maximum Limit of Disturbance Plans.

Wetlands and waterways were identified and delineated within the project area. Surveyed boundaries of waterways, wetlands, and 25-foot wetland buffers are depicted on the Access and Maximum Limit of Disturbance Plans, and will be provided to the Design-Build Team in electronic format as part of the Project Files.

Prior to performing any work on the project, the Design-Build Team shall be responsible for installing temporary orange construction fence and prohibitive signage around the wetland and waterways areas within the immediate work area, as described in the Special Provisions. Impacts to all delineated resources have been minimized. Due to minimal impact, no Environmental Monitor is anticipated at this time. However, if proposed design results in additional impact, an Environmental Monitor may be required by the Administration or Permits.

The DBT is responsible for obtaining all permit modifications related to their design and shall submit for pre-approval to the Environmental Programs Division prior to submitting to MDE. The Design-Build Team is responsible for supplying all information needed in order to obtain approval and authorization from the regulatory agencies.

The Design-Build Team shall be responsible for addressing any comments or issues the regulatory agencies and/or Administration may have, including those pertaining to avoidance and minimization measures. It is not the responsibility of, nor guaranteed by, the Administration that approval or authorization will be granted by the regulatory agencies. Any resultant delays or changes to schedules or costs, whether direct, indirect or consequential, arising out of changes to the approved permit will be the responsibility of the DBT.

B) Stormwater Management Waiver

The project has a Waiver of Stormwater Management under Section 3.3.A of the Stormwater Management Guidelines for State and Federal Projects.

- C) NPDES Stormwater Construction Activity General Permit, and the Notice of Intent (NOI)

The Administration has submitted an application for the NPDES Stormwater Construction Activity General Permit, and the Notice of Intent (NOI) is anticipated to be obtained prior to NTP. The Design-Build Team is responsible for the preparation of final Erosion and Sediment Control Plans and obtaining final Erosion and Sediment Control and NPDES approvals as needed.

- D) Forest Conservation Act Approval:

The DBT will be responsible for obtaining Forest Conservation Act (FCA) Approval based on the final design plans. The Design-Build Team is responsible for the complete process of preparing the documentation for these approvals and submitting this information to SHA- Landscape Operations Division for approval prior to submitting to DNR. The DBT is also responsible for the obtaining any subsequent modifications from DNR. The Administration will provide the required FCA mitigation for the area within the LOD as shown on the Access and Maximum Limit of Disturbance Plan. The DBT is responsible for any additional impact mitigation at no cost to the Administration.

The Administration will provide an approved Forest Stand Delineation based on the Access and Maximum Limits of Disturbance Plans.

Any resultant delays or changes to schedules or costs, whether direct, indirect or consequential, arising out of changes will be the responsibility of the DBT.

The Administration has not obtained the following permits:

- A. Water Appropriations permits (from MDE)
- B. Fish collection permit for capturing and relocation fish with sampling equipment (from DNR)
- C. Wildlife collection permits for capturing and relocation wildlife (from DNR)
- D. The DBT is responsible for all other approvals, permits, permit modifications, and licenses, and shall pay all charges, fees and taxes, and give notices when necessary or appropriate for the implementation of the Project beyond those obtained by the Administration. These include but are not limited to approvals for on or off-site staging, stockpiling areas, disposal sites and borrows pits.

As necessary, the DBT is responsible for obtaining the above permits and/or approvals. Any resultant delays or changes to schedules or costs, whether direct,

indirect or consequential, arising out of changes to the approved permit will be the responsibility of the DBT.

2.07.03 RFP Package

The following materials are being provided to all prospective bidders:

A. One copy of this RFP.

The following materials are being provided in electronic format on ProjectWise. This material is considered Engineering Data and the Administration will stand behind its accuracy unless otherwise specified in the contract documents.

B. Survey/Topographic Files

- Topographic files - mTO
- Text files - mTX
- Existing Contour files -mGRE
- Triangle files
- Environmental Features file –mEF
- Existing Surface files - .dtm

C. Utility Files

- Utility designation files

D. Right-of-Way

- Right-of-Entry Agreement

E. Permits and Approvals

- Conditional Wetland and Waterway Permits
- Forest Conservation Act Approval
- Notice of Intent (NOI)

F. Appendices

- Soil Survey Boring Logs
- Soils Laboratory Test Results

The following materials are being provided in electronic format on ProjectWise. This material is considered conceptual and the Administration makes no representation regarding its accuracy.

G. Access and Limit of Disturbance Plan

- Title Sheet – mGN-T
- Geometry Sheets – pGS01-03
- Existing Conditions Plan Sheets- mEX P 01-04
- Utility Plans
- Access Plan – p AC-P001

H. Design Files

- Horizontal Baseline - mHD
- Border files – xBL 001
- Erosion and Sediment Control file (LOD only) – mES
- Reports
- Geomorphic Assessment and Conceptual Design Report (.pdf file)
- Wetland Delineation Report
- Forest Stand Delineation Report

The following materials are being provided in electronic format on ProjectWise. This material is considered necessary for the Design-Build Team to submit a technical proposal, prepare a bid and/or finalize the design.

J. Reference Materials

- The Office of Structures (OOS) Manual for Hydrologic and Hydraulic Design
- Drainage Design Guidelines
- Geotextile Guidelines
- MDE Waterway Construction Guidelines
- State Forest Conservation Technical Manual

In general, the Microstation files included on the ProjectWise are in conformance with the MDSHA Microstation V8 CAD Standards Manual.

It is likely that most bidders will use plot drivers that differ from the drivers used to produce the provided plans. Some of the drawings screen existing features through level symbology color 250. The manipulation of the drawing files to produce any requirements (as found elsewhere in the Invitation for Bids) for as-built plans will be the responsibility of the selected DBT.

2.07.04 Description of Work

2.07.04.1 Engineering/Construction Services

The required engineering and construction services to be provided by the DBT will include, but not be limited to:

- Stream restoration design and construction.
- Structural design and construction for any and all structures specifically required for this project.
- Hydraulic analysis, design, construction and agency approval for specific structures. Landscape design and construction
- Erosion and sediment control (E&S) design, implementation and approvals (including final NPDES and MDE Erosion and Sediment Control approvals).
- Engineering studies and reports required to meet the contract or permit requirements or to address any comments from the Administration or other agencies related to meeting or modifying the contract or permit requirements.
- General coordination with Administration (includes obtaining required approvals).
- Additional data collection (includes surveying, geotechnical, etc.).
- Produce required deliverables.
- Environmental permit activities (including obtaining permits as described herein).
- Community relations.
- Maintenance of project site(s) including mowing, watering, and dust control.
- Obtaining all required permit modifications from the appropriate regulatory agencies for any additional impacts to roadside trees, wetlands, waters of the U.S., stormwater management, erosion and sediment control, or any other impacts not authorized by the original permits. Implementation of any required mitigation or remediation for additional

impacts not included in the permit or due to any non-compliance with the permit conditions.

- Any other items required to successfully complete the project.

TC 2.08 PROPOSAL SUBMISSION REQUIREMENTS

2.08.01 Responsibilities of the Bidders

2.08.01.1 Review of RFP and Plans

Before submitting a proposal, the Prospective Bidder is responsible for examining the RFP and materials furnished to each prospective DBT. The DBT is responsible for all site investigation and preliminary design necessary to submit proposals and accept responsibility that their technical and price proposal is sufficient to complete all design and construction.

2.08.01.2 Site Investigation

As of the issuance of this RFP, the Administration has advanced sufficiently in this Right of Way process to permit DBT's to inspect all of the project site. The DBT invited to submit a Price Proposal must first examine all of the project site that is under Administration control. Examination of all other areas must be arranged with the owner.

The Prospective Bidder is solely responsible for all site conditions discoverable from a reasonable site examination. A reasonable site examination includes all utility and/or geotechnical investigation that the Prospective Bidder determines is necessary to properly price the Work. If the Prospective Bidder determines, before submission of the proposals, that additional utility designation, geotechnical and/or subsurface investigation or analysis are necessary to properly price the Work it is the responsibility of the Prospective Bidder to perform such investigation and analysis at its expense. The Administration has performed a preliminary utility designation and geotechnical survey of the project site. The boring logs and test results have been included in the project files. The utility information is included in the data provided on ProjectWise. It is the Bidder's responsibility to verify that information as part of its utility and/or geotechnical investigation. The Technical Proposal and Price Proposal submission will be considered conclusive evidence that the Prospective Design-Build Team has determined that it has performed a reasonable site investigation to submit Technical Proposal and Price Proposal, necessary to design and construct the project.

All subsurface investigations performed by the Prospective Bidder, including sampling and laboratory testing, shall be performed by a Geotechnical firm experienced in subsurface investigations and in accordance with the 1988 AASHTO Manual on Subsurface Investigations, AASHTO Standards, the

Maryland State Highway Administration Standard Specifications for Subsurface Explorations, MSMT Standards, the Maryland State Highway Administration Book of Standards for Highway and Incidental Structures, and ASTM Standards. The Prospective Bidder shall be responsible for utility clearance and any traffic control required for his investigation. The Prospective Bidder shall submit all Maintenance of Traffic concepts related to site investigation to the SHA District 7 Traffic Division for approval. Any investigative methods that pose a safety threat to the traveling public shall not be used. The Prospective Bidder shall restore to its current condition, any area of the site disturbed by his site investigation operations. If the Prospective Bidder encounters any abnormal conditions that indicate the presence of hazardous materials or toxic waste during his site investigation, he shall immediately suspend work in the area and notify the Administration. A Geotechnical Engineer who is registered in the State of Maryland shall supervise all subsurface investigations conducted by the DBT.

2.08.01.3 Utility Coordination

Prior to submitting a Price Proposal, the Prospective Bidder must conduct utility research and coordination with all utility companies along with additional site research to determine:

- a. What utility relocation work is planned, what is the status and anticipated schedule impact of this work.
- b. What utility facilities actually exist within the project limits.
- c. What additional utility relocation work must be included in their design and impact to the schedule that will result from the DBT's activities.
- d. What permitting modifications result from additional utility relocations.

The Price Proposal must represent a thorough consideration of these elements.

2.08.01.4 Additional Surveys

The Prospective Bidder may require additional survey or topographic information (including utility locations). The DBT must account for these services within their project schedule and design submittals. It is the responsibility of the Prospective Bidder at its expense to obtain all additional information and the Administration accepts no responsibility for the lack of this information.

2.08.01.5 Duty to Notify if Errors Discovered

Bidders shall not take advantage of any error, omission, or discrepancy in the RFP or related materials, including all Project information. If a Bidder discovers such an error, omission or discrepancy, he shall immediately notify the Administration in writing; failure to do so notify shall constitute a waiver of any claim based upon such error, omission, or discrepancy. After such notification, the

Administration will confirm or modify the RFP in writing as the Administration determines may be necessary to fulfill the intent of the RFP.

2.08.02 Pre-Submittal Requirements

2.08.02.1 Letter of Intent

A Letter of Intent (LOI), on official letterhead of the Design-Build Team, notifying the Administration whether or not the DB Team will provide the project at or below the maximum price as outlined must be delivered no later than **October 23, 2012 prior to 12 noon** (prevailing local time). The LOI must be delivered to the following location:

Ms. Norie Calvert, Director
Office of Procurement and Contracts
Fourth Floor, C-405
707 N. Calvert Street
Baltimore, Maryland 21202

The LOI must be signed by individual(s) authorized to represent the Major Participant firm(s) and the lead Constructor firm(s). A Major Participant is defined as the legal entity, firm or company, individually or as a party in a joint venture or limited liability company or some other legal entity, that will be signatory to the Design-Build Contract with the Administration. Major Participant(s) will be expected to accept joint and several liability for performance of the Design-Build Contract. Major Participants are not design subconsultants, construction subcontractors or any other subcontractors to the legal entity that signs the Design-Build Contract.

If the design-build contracting entity will be a joint venture, or some other entity involving multiple firms, all Major Participant firms involved must have an authorized representative sign the cover letter.

2.08.02.2 Communications During Proposal Preparation

The Procurement Officer's Designated in this RFP, or a representative hereafter designated in writing by the Procurement Officer, is the Administration's single contact and source of information for this procurement.

The following rules of contact shall apply during the Contract procurement process, which began upon the date of issuance of the RFQ and will be completed

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upon the earliest to occur of (1) execution of the Contract, (2) rejection of all Proposals or (3) cancellation of this procurement. These rules are designed to promote a fair, unbiased, and legally defensible procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication.

The specific rules of contact are as follows:

1. Section 11-205 of the State Finance and Procurement Article, Annotated Code of Maryland, prohibits and penalizes collusion in the State procurement process.
2. After submission of the Statement of Qualifications, neither a Proposer nor any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the PROJECT or the Proposals. However, a Proposer may communicate with a Subcontractor that is on both its team and another Proposer's team, provided that each Proposer has obtained a written certification from the Subcontractor that it will not act as a conduit of information between the teams.
3. Unless otherwise specifically authorized by the Procurement Officer, a Proposer may contact the Administration only through the Procurement Officer and only in writing (mail e-mail or facsimile), and not orally. The Proposer's contacts with the Administration shall be only through a single representative authorized to bind the Proposer.
4. The Procurement Officer normally will contact a Proposer in writing through the Proposer's designated representative.
5. Neither a Proposer nor its agents may contact Administration employees, including Administration heads, members of the evaluation committee(s) and any other person who will evaluate proposals, regarding the PROJECT, except through the process identified above.
6. Any contact by a Proposer determined to be improper may result in disqualification of the Proposer.
7. The Administration will not be responsible for or bound by: (1) any oral communication, or (2) any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the Procurement Officer.

All requests for additional information or clarification of the RFP and any other communication concerning this Project shall be submitted via e-mailed with return confirmation receipt. No verbal requests or personal visits will be honored. All written contacts shall be addressed to:

Ms. Sonal Sanghavi, Director

08/06/2012

*Office of Environmental Design
State Highway Administration
e-mail address: SHAPatuxent@sha.state.md.us*

Only e-mailed inquiries will be accepted. No requests for additional information or clarification to any other Administration office, consultant, or employee will be considered. The Administration will deliver copies of each question and response to all Proposers by e-mail. Each Proposer must acknowledge receipt of the e-mail communication. The Administration may rephrase questions as it deems appropriate and may consolidate similar questions. Multiple responses are anticipated. The last response will be posted not later than 7 days prior to the Proposal due date.

Only requests received by 4:00 p.m. EST on October 16, 2012 will be addressed. Questions will not be accepted by phone. Questions, only from the primary or secondary contact, must include the requestor's name, telephone number, e-mail address, and the Proposer he/she represents.

2.08.02.3 Addenda

Interpretations, clarifications or modifications to this RFP will be made by Addenda. Only interpretations, clarifications and answers to the questions included in Addenda or such writings shall be binding on the Administration.

2.08.02.4 Request for Information (RFI)

Responses to all RFI's not part of an addendum, will be provided through email and shall be considered contractually binding. The Administration will provide a comprehensive list of questions and answers to the Reduced Candidate List 7 days prior to the proposal due date.

2.08.02.5 Substitutions

Proposers are advised that, in order for a Proposer to remain qualified to submit a Proposal after it has been placed on the Reduced Candidate List, its organization, including all Principal Participants, Specialty Subcontractors, and key management personnel identified in the Statement Of Qualifications (SOQ), must remain intact for the duration of the procurement process. A Proposer may propose substitutions for participants after the SOQ submittal; however, such changes must be of equal or greater qualifications and will require written approval by the Administration, which approval may be granted or withheld in the Administration's sole discretion. Requests for changes must be made in writing no later than thirty (30) calendar days prior to the due date for submittal of Proposals.

2.08.02.6 Compliance with Applicable Law

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

2.08.03 Proposal Delivery Formalities

2.08.03.1 Organization of Proposal Submittals

Prospective bidders shall organize submittal of their Technical Proposal and Price Proposal to match the organization specified in this RFP.

a. Separate Proposal Packages

Proposal submissions shall consist of two separate sealed packages, a Technical Proposal as described in TC Section 2.09 and a Price Proposal as described in TC Section 2.10.

b. Technical Proposal

The Technical Proposal may be submitted in container(s) of the Prospective Bidder's choice provided that the material is neat, orderly, and incapable of inadvertent disassembly. Technical Proposal shall be submitted and bound using a three (3) ring binder with all pages are numbered consecutively. Each container shall be clearly marked as follows:

Prospective Bidder's Name

Technical Proposal

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Container ___ of ___

c. Price Proposal

The Price proposal shall be submitted on the Price Proposal Form supplied by the Administration and shall be delivered in a sealed envelope capable of holding 8½" x 11" documents without folding and clearly marked as follows:

Prospective Bidder's Name

Price Proposal

Upper Little Patuxent Stream Restoration - HO2065182

Container ___ of ___

d. Proposal Guaranty

The Proposal Guaranty shall be delivered with the Price Proposal in a sealed business-sized envelope clearly marked as follows:

Prospective Bidder's Name

Proposal Guaranty

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e. Location and deadline for submittal of Technical and Price Proposals

Technical Proposals and Price Proposals must be delivered no later than **October 30, 2012 prior to 12 noon** (prevailing local time). The proposal must be delivered to the following location:

Ms. Norie Calvert, Director
Office of Procurement and Contracts
Fourth Floor, C-405
707 N. Calvert Street
Baltimore, Maryland 21202

f. Number of Copies

One original and seven (7) copies of the complete Technical Proposal shall be submitted. A single original of the Proposal Guaranty and a single original of the Price Proposal shall be submitted.

2.08.03.2 Effect of Submitting Proposal

Signing of the Design-Build Proposal Submission Form and Price Proposal Form, and delivery of the Proposal represents (a) an offer by the bidder to perform the Work for the Price submitted within the time(s) specified in accordance with all provisions of this RFP and (b) the Prospective bidder's agreement to all the provisions of the RFP and Contract governing requirements and procedures applicable through execution of the Design – Build Contract. **The Technical Proposal will become part of the Design – Build Contract.**

By so signing the above referenced terms and by delivering the Proposals, the Prospective Bidder makes the following affirmative representations.

- a. The bidder has reviewed all documents and undertaken all investigations that could significantly impact the cost, timeliness, quality, or performance of the Work. Specifically, the bidder has (a) carefully examined the RFP and all documents included or referenced therein, (b) carefully examined all available reports and data related to subsurface conditions, (c) become familiar with all applicable federal, state and local laws and regulations, (d) visited the site and

made all reasonable visual investigations, and (e) correlated the information obtained from the above examinations and investigations.

- b. The bidder has given the Administration written notice of all errors, omissions, or discrepancies in the RFP in accordance with Section TC 2.08.01.
- c. The bidder has determined that the RFP are generally sufficient to convey an understanding of all terms and conditions that could significantly impact the cost, timeliness, quality, or performance of the Work.

2.08.03.3 Withdrawals and Resubmittals of Proposals

A bidder may withdraw Proposals after delivery, provided the request for such withdrawal is made in writing or in person before the date and time set for submission of Proposals. The bidder may revise and resubmit a Proposal so withdrawn before said date and time.

2.08.03.4 No Public Opening

There will be no public opening of Proposals. After the Proposal Date, all Proposals will be opened in the presence of two or more Administration employees and reviewed for completeness. A register of Proposals will be prepared that identifies each Proposer.

Neither the identity of any Proposer nor the register of Proposals will be publicly disclosed until after the Procurement Officer makes a determination recommending award of the Contract.

TC-2.09 TECHNICAL PROPOSALS

General: The Technical Proposal submittal shall contain concise narrative descriptions and graphic illustrations, drawings, charts, plans and specifications that will enable the Administration to clearly understand and evaluate the capabilities of the Design - Build team and the characteristics and benefits of the proposed technical solutions.

No Price Information: No price information of any kind shall be included in the Technical Proposal submittal.

Proposal Organization: Organization of the Technical Proposal shall comprise six parts, meet the specified page limitation, and correspond to the outline as follows:

- Cover Letter
- Project Technical Elements & Approach

- Environmental Permitting and Compliance Approach
- Project Management
- Project Schedule
- Legal and Financial Information

Format:

- Paper. The Technical Proposal submittal shall be submitted on 8.5"-by-11" paper printed back to back where practical. Charts, exhibits, and other illustrative and graphical information may be on 11"-by-17" paper, but must be folded to 8.5"-by-11", with the title block showing.
- Type Font and Margins. The type face of all narrative text shall be at least 12-point, either Arial or Times New Roman font, and all page margins must be at least ½" from sides and 1" from top and bottom. All pages shall be sequentially numbered not including the cover letter.
- Page Limits. The Technical Proposal submittal shall be limited to the number of pages defined below. No page limit will be imposed on the appendices, although the size of the appendix should be kept within reason.
- Finding tools, such as tables of contents and page dividers shall be utilized to make the submittals easily usable.

2.09.01 Cover Letter (Limit 2 Pages)

A Major Participant is defined as the legal entity, firm or company, individually or as a party in a joint venture or limited liability company or some other legal entity, that will be signatory to the Design – Build Contract with the Administration. Major Participant(s) will be expected to accept joint and several liability for performance of the Design – Build Contract. Major Participants are not design subconsultants, construction subcontractors or any other subcontractors to the legal entity that signs the Design – Build Contract. A cover letter, signed by all Major Participants must:

- A. Provide the names and the roles of all Major Participants and identify the lead design firm.
- B. Identify a single, primary point of contact for the Design-Build Team with address, phone number, fax number, cell phone number, and E-mail address where all communications from the Administration should be directed for the proposal and bidding phases and duration of the Contract. A secondary contact for the Design-Build team shall be included (with the above information) for use when the primary contact is not available. The primary and/or secondary contact must be available 24 hours a day for the duration of the design and construction activities and during normal business hours during the bidding phase. **The Administration prefers that the primary and secondary points of contact are**

key staff members that will be directly involved during the proposal development, pre-bidding phase, design and construction stages. In the event that the primary and secondary contact are not assuming their responsibility until after the bidding phase the Design-Build Team must identify the primary point of contact for the bidding phase. At least one of the key members must be involved in all phases.

- C. Include an affirmative declaration that to the best of each Major Participant's knowledge and belief, the information supplied by said Participant is true and accurate.
- D. Include a general authorization for the Administration to confirm all information contained in the Technical Proposal.
- E. The Design-Build Team is alerted to their responsibility to confirm that all Design-Build Team members, suppliers, etc. have received all addenda. The Design-Build Team is solely responsible to ensure that their team has the correct information.

2.09.02 Project Technical Elements & Approach (Limit 12 Pages)

Technical elements of the Scope of Work: In words, graphic illustrations and drawings, and technical data necessary for the Administration to evaluate, describe your project and what usable project improvements will be developed. Your discussion shall include how your proposed project improvements will address the following:

- A. Water Quality – Technical elements that improve the stream's physiochemical parameters.
- B. Geomorphology – Technical elements that improve the channel stability.
- C. Environmental Sensitivity – Technical elements that reduce impacts to environmental features and facilitate project permitting.
- D. Aquatic Resource Functions – Technical elements that maximize ecological lift.

Your discussion shall be guided not only by this RFP Section and the Scope of Work, but also by the guidelines, performance requirements, and design and construction criteria set forth throughout other parts of the RFP Documents.

2.09.03 Environmental Permitting and Compliance Approach (Limit 6 Pages)

Demonstrate an understanding in words necessary for the Administration to evaluate your approach to the following major environmental permitting elements:

- A. Approach to coordinating with various agencies to secure environmental permits.
- B. Approach to obtaining permit and approval modifications if required.
- C. Measures for ensuring compliance with requirements of the environmental approvals and laws relating to cultural and/or environmental resources.

- D. Measures for ensuring a proactive approach to maintaining/correcting effective Erosion and Sediment control devices.

2.09.04 Project Management (Limit 8 Pages)

The Design - Build team shall substantiate its ability to accomplish the Work by explaining its approach to the following project management elements:

- A. Communication Management:** Approach to communications between Design-Build Team's designers, constructors and suppliers, between the DBT and the Administration and between the DBT and other project stakeholders. Discussion shall include the planning and coordination of Design – Builder submittals to the Administration. Provide means and methods for communicating with the public, both community officials and the general public.
- B. Change Management:** Approach to issues and changes in design, construction and permitting. Discussion shall include approach to issue resolution. Discussion shall include how the Design – Builder will advise and discuss with the Administration any potential changes in advance of any actual impact to the scope of work or the contract for which the Design – Builder believes the Administration is responsible. In addition, discuss how the design firm will be involved and have decision-making authority with respect to any changes to the “issued for construction” drawings, and for inclusion of such changes in a complete set of as-built drawings and specifications.
- C. Design and Construction Management:** Indicate your preliminary list of technical design submittals for Administration review, and your plan for developing and providing these submittals. The work packages shall be identified in the Design and Construction Schedule submitted in the Technical Proposal.

Identify your planned approach to defining and sequencing the execution of construction work packages, including planning and performing the construction of the following:

- 1) Staging, material delivery/storage and office utilization
- 2) Subcontractor plan to meet Project requirements.
- 3) Wage rate compliance
- 4) Site access Noise and dust control
- 5) Utility coordination and relocations, including any planned shut downs
- 6) Quality Assurance particularly related to critical elevations during construction
- 7) Sequencing of maintenance of stream flow

D. Safety and Health Management: Discuss your plan for safety management, including the safety of site visitors and the public.

2.09.05 Project Schedule (Limit 4 Pages)

A. Design and Construction Summary Schedule

Submit an integrated Design and Construction Summary Schedule and supporting narrative that logically details tasks and timing of the work effort and provide a realistic projection of project events and the expected dates. The following criteria should be met and information provided as part of the summary schedule:

- 1) The schedule for design and construction will be task oriented, indicating dates by which milestones are to be achieved. The proposer may use a critical path scheduling approach and the schedules be graphically represented.
- 2) The schedule is to be an integrated and networked multi-layered schedule of project tasks. It should identify project events and the expected dates. These dates should be based on the calendar dates as the starting point and the logical flow of dates provided by calculating the addition of duration of all tasks using typical schedule networking tools.
- 3) Each major task will be directly traceable to the requirements of the project.
- 4) All tasks/activities in the schedule will be logically linked together showing predecessor/successor relationships.
- 5) All critical path areas/dates or fast track areas will be clearly identified including any critical schedule dates indicated by the Administration in the schedule requirements of this RFP.
- 6) The proposer will submit a rationale explaining how the schedule will be achieved including, but not limited to, the associated time-of-year restrictions for the resources within the project limits.

The Design and Construction Summary Schedule should be a general representation of the Design-Build Team's approach to completing the entire project from notification of selection through design, construction, and Administration acceptance for maintenance. The number of tasks and the duration of each shall have no limit; however, the Design and Construction Summary Schedule should communicate the DBT's general staging of design and construction along with the major activities associated with each stage. The Design and Construction Summary Schedule should have clear tracks for design, technical, schedule, management, permits, construction, etc. and the relationship will be presented in a way that provides the Administration the confidence and

understanding that the project and its stages are structured to be executable within the timeframes provided and for the resources indicated.

The Design and Construction Summary Schedule completion date and critical date(s) cannot exceed the dates located elsewhere in this RFP. An earlier completion date, for either the contract completion or critical schedule date(s) indicated elsewhere in this RFP, which provides benefit to the Administration, will be given positive consideration in the technical evaluation. Upon execution of the contract, the DBT will be held to the critical schedule dates presented in its technical proposal for the calculation of any deductions including, but not limited to, liquidated damages and disincentives.

2.09.06 Legal & Financial Information (Limit 8 Pages, excluding copies of underlying team agreements)

The structure of the Legal and Financial information shall include:

- A. Design - Build Team Organization:** Briefly describe the proposed legal structure of the Design-Build Contractor and team, and provide copies of underlying agreement(s). Confidential price data may be excluded or eradicated from the organizational legal documents provided.
- B. Liability:** State whether Major Participant firm(s) who will be party to the prime design – build contract with the Administration will have joint and several liability, and how liability is being apportioned between other firms of the design- builder team. Provide documentation that you have met the requirements for Professional Liability Insurance including agreements between participants.
- C. Bonding Capability:** Provide evidence that the Design-Builder entity is capable of obtaining a Performance Bond and a Payment Bond in accordance with the requirements in Maryland’s July 2008 Standard Specifications for Construction and Materials, GP – Section 3 and appropriate for the upper range of a Project Classification I as defined in Maryland’s Standard Specifications for Construction and Materials, Section TC 2.01.

Such evidence shall take the form of a letter from a surety company indicating that such capacity is anticipated to be available for the contracting entity. Letters indicating “unlimited” bonding capacity are not acceptable. The surety company providing such letter must be rated at least A- by two nationally recognized credit rating agencies or at least A-VII by A.M. Best & Company. The letter should recognize the firm’s backlog and work in progress in relation to its bonding capacity.

TC-2.10 PRICE PROPOSAL

2.10.01 General

Price Proposals will be accepted only from those Proposers invited by the Administration in writing to submit a proposal.

The Maximum Price has been defined in this RFP as a sum of all individual bid items contained in the schedule of prices, and all other lump sum items. The Maximum Price shall include all engineering design, permitting, construction, labor, equipment, materials and all incidentals necessary to complete the design and construction of this project. In addition, a lump sum breakdown will be required as part of the Price Proposal submittal as defined in TC 7.10. The lump sum breakdown shall be submitted in a format of the Design-Build Teams (DBT) choice.

2.10.02 Contract Completion Incentive Procedure

N/A

2.10.03 Wetland and/or Waterway Impact Reduction Incentive

N/A

2.10.04 Limit of Disturbance Reduction Incentive

The Design-Build Team is advised upon final acceptance of Work and completion of as-built plans, the DBT will be provided additional compensation for any net reduction to the Limit of Disturbance in increments of 0.10 acre. This determination will be made by comparing the LOD in the Access and Maximum Limit of Disturbance Plans with the LOD in the as-builts. The incentive will be paid at \$15,000 per 0.10 acre saved, with a maximum compensation of \$45,000. See Special Provisions 308.01.04, Quality Assurance Ratings contained within this RFP for the contract requirements.

2.10.05 Erosion Sediment Control Incentive/Liquidated Damages Payment

The Design-Build Team is advised that both an incentive and a liquidated damage will be imposed on this contract related to their erosion sediment control and will be tied to the Quality Assurance Ratings. See Special Provisions 308.01.04, Quality Assurance Ratings contained within this RFP for the contract requirements.

2.10.06 Bid Irrevocable

The Contractor's bid prices are irrevocable for 180 days following receipt of the Price Proposal.

2.10.07 Proposal Guarantee

The Contractor's bid guarantee shall represent 5% of the bid amount in accordance with the provisions of GP 2.07.

2.10.08 Liquidated Damages

In the event a complete usable facility is not provided by the calendar date, a liquidated damage will be charged in accordance with the provisions of GP 8.09. The dollar amount of liquidated damages is stated on page 29 of 30 in the Proposal Form of the Invitation for Bids. The Administration will be the sole approving authority in determining when the project is considered a usable facility.

TC 2.11 EVALUATION OF PROPOSALS, BID OPENING AND SELECTION

2.11.01 Best Value Process

The Technical Proposal will be evaluated on the pass/fail and technical evaluation factors identified in TC Section 2.09. An evaluation committee (Committee) will determine the pass/fail status and overall technical rating of each Proposal. After evaluating the Price Proposal, the Committee will prepare a recommendation to the Procurement Officer indicating which Proposal is the most advantageous to the State (i.e., represents the best value). The Procurement Officer, together with the Selection Official designated by the Secretary of the Maryland Department of Transportation, will then assess the Committee's recommendation and make a final determination as to which Proposal is the most advantageous to the State considering the technical and price factors set forth in this document.

When determining which D-B Teams submittal is the most advantageous to the State, the Technical and Price Proposals are approximately equal in importance.

2.11.02 Evaluation of Technical Proposals

The following elements of the Technical Proposal will be evaluated and rated on their content, accuracy and presentation.

The following elements that will be used in the evaluation process are listed in the descending order of importance and most important overall.

- Water Quality – Technical elements that improve the stream's physiochemical parameters.
- Geomorphology – Technical elements that improve the channel stability.

- Environmental Sensitivity – Technical elements that reduce impacts to environmental features and facilitate project permitting.
- Aquatic Resource Functions – Technical elements that maximize ecological lift.

The following elements that will be used in the evaluation process are listed in the descending order of importance and second most important overall.

- Environmental Approach
- Project Management
- Project Schedule
- Legal and Financial Information

Legal & Financial Information will be evaluated on a Pass/Fail basis and will be based on the clarity and completeness of information provided, as well as the stability and collective capabilities of the Design - Build team relative to this Project to perform as an integrated team. Each Proposal must achieve a rating of “Pass” on any “Pass/Fail” factor listed in Section 2.09.06 to receive further consideration. Failure to achieve a “Pass” rating on any “Pass/Fail” factor will result in the Proposal being rated UNACCEPTABLE, the price proposal will not be rated and the Proposer will be disqualified.

2.11.02.1 Other

The pass/fail requirements include provision of all required forms included in the Proposal Package, properly completed and signed (if required).

2.11.02.2 Technical Proposal Evaluation Committee

The Administration will assemble an Evaluation Committee consisting of key staff from appropriate offices within the Administration. The Evaluation Teams will review the Technical Proposals to verify that all requirements of the RFP have been met, and to evaluate the proposals based on the evaluation factors.

2.11.02.3 Evaluation Process

Members of the Committee will evaluate elements of the Technical Proposals as listed in 2.11.02.

2.11.02.4 Evaluation Factors

The technical evaluation factors and the overall Technical Proposal will be rated by and adjectival (qualitative/descriptive) method. The following adjectival ratings shall be

used in evaluation of each technical evaluation factor and the overall technical rating of the Proposal:

EXCEPTIONAL – The Proposer has demonstrated an approach that is considered to significantly exceed stated objectives/requirements in beneficial way to the Administration. This rating indicates a consistently outstanding level of quality, with very little or no risk that this Proposer would fail to meet the requirements of the solicitation. There are essentially no Weaknesses as defined below.

GOOD – The Proposer has demonstrated an approach that is considered to exceed stated objectives/requirements. This rating indicates a generally better than acceptable quality, with little risk that this Proposer would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor.

ACCEPTABLE – The Proposer has demonstrated an approach that is considered to meet the stated objectives/requirements. This rating indicates an acceptable level of quality. The Proposer demonstrates a reasonable probability of success. Weaknesses are minor and can be corrected.

SUSCEPTIBLE TO BECOME ACCEPTABLE – The Proposer has demonstrated an approach that fails to meet stated criteria as there are weaknesses and/or deficiencies, but they are susceptible to correction through Discussions. The response is considered marginal in terms of the basic content and/or amount of information provided for evaluation, but overall the Proposer is capable of providing an acceptable or better Proposal.

UNACCEPTABLE – The Proposer has demonstrated an approach that indicates significant weaknesses/deficiencies and/or unacceptable quality. The Proposal fails to meet the stated criteria and/or lacks essential information and is conflicting and/or unproductive. There is no reasonable likelihood of success. Weaknesses/deficiencies are so major and/or extensive that a major revision to the Proposal would be necessary.

In assigning ratings the Administration may assign plus (+) or minus (-) suffix to further differentiate the strengths or limitations within a technical rating.

The term “weakness,” as used herein, means any flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance. The term “deficiency” means a material failure of a proposal to meet an RFP requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

2.11.03 Evaluation of Price Proposals

Price evaluations will be performed based on the Proposal Price as reflected in the Schedule of Prices, the Cost Breakdown as defined in TC Section 7.10, price accuracy, completeness and reasonableness.

Each Price Proposal shall specify the lump sum for which Work will be performed according to the RFP. In addition, a lump sum breakdown will be required as part of the Price Proposal submittal as defined in TC 7.10. The lump sum breakdown shall be submitted in a format of the Design-Build Teams choice.

The Administration reserves the right to reject any Proposal if it determines that the Price Proposal is unacceptable, including a determination that the Proposal is significantly unbalanced or front end loaded to the potential detriment of the Administration.

An unbalanced Proposal is considered to be one (a) which is front-loaded or (b) for which the line item amounts or amounts shown in the Cost Breakdown do not reflect reasonable actual costs plus a reasonable proportionate share of the Proposer's anticipated profit, overhead costs, and other indirect costs which are anticipated for the performance of the items in question.

A Price Proposal shall be deemed unacceptable if the Administration determines, in its sole discretion that it fails to conform to the conditions of the RFP in any manner. A Price Proposal may be unacceptable if it:

- A) Is significantly unbalanced relative to the scope of Work;
- B) Does not provide all information in conformance with the RFP, and/or
- C) Contains inaccurate, incomplete, and/or unreasonable prices on the Cost Breakdown

2.11.04 Communications

The Administration may engage in communications with the Proposers after receipt of Proposals, allowing Proposers to provide clarifications to their Proposals or otherwise to address issues that might prevent the Proposal from being placed in the Competitive Range. This process will be initiated by delivery of a written request from the Administration to the Proposer identifying the information needed and a date and time by which the information must be provided. The Proposer shall provide the requested information in writing by the date and time indicated. If the requested information is not timely received, the Proposer's ratings may be adversely affected and/or Proposal may be declared unacceptable.

The Administration may waive technical irregularities in the proposal of the Proposer that does not alter the quality or quantity of the information provided.

2.11.05 Competitive Range

The term “Competitive Range” means a list of the most highly rated Proposals, based on initial Technical Proposal ratings and evaluations of Price Proposals that are judged by the Procurement Officer to be reasonably susceptible of being selected for award. The Competitive Range is based on the rating of each Technical Proposal and evaluation of each Price Proposal against all evaluation criteria.

Proposals that would not be included in the Competitive Range and would be excluded from further consideration include:

- A) Any Proposal that, even after review of supplemental information or clarification provided by the Proposer in response to an Administration request does not pass the pass/fail evaluation factors;
- B) A Proposal that, after the initial evaluation, is rated lower than “SUSCEPTIBLE TO BECOME ACCEPTABLE” for any technical evaluation factor or subfactor; and/or

The Administration will determine the Competitive Range after a careful analysis of the Technical and Price Proposals. Proposals will not be excluded from further consideration if the Proposers have a reasonable chance of being placed in the Competitive Range if meaningful discussions are conducted and appropriate improvements is achieved.

2.11.06 Discussions

The Administration reserves the right to make an award without Discussions. However, the Administration may, at its sole discretion, conduct Discussions (that is written or oral exchanges) with the Proposers in the Competitive Range, with the intent of allowing the Proposers to revise their Proposals.

2.11.06.1 Purpose

If the Administration decides to engage in Discussions, the areas of Discussions may include the following:

- A) Advising the Proposers of weaknesses, significant weaknesses, and/or deficiencies in their Proposals (relative to the RFP);
- B) Attempting to resolve any uncertainties and obtaining any significant additional understanding concerning the Proposal;
- C) Resolving any suspected mistakes by calling them to the attention of the Proposers as specifically as possible without disclosing information concerning other competing Proposals or the evaluation process;

- D) Providing the Proposers a reasonable opportunity to submit any further technical or other supplemental information to their Proposals;
- E) Facilitating execution of a contract that is most advantageous to the State, taking into consideration the technical and price factors discussed above.

2.11.06.2 Procedures

The following specific procedures will apply to Discussions:

- A) Discussions will only be conducted with Proposers in the Competitive Range. If Discussions are held, they will be held with all Proposers in the Competitive Range;
- B) Information disclosed by Proposers in the Competitive Range during Discussions will not be made public until after execution of the Contract;
- C) Discussions may be written and/or oral, and more than one round of Discussions may be conducted; and
- D) No disclosure will be made of any information derived from a Proposal of, or from discussions with, another Proposer.

2.11.06.3 Prohibited Contact

During Discussions, Administration personnel involved in the acquisition shall not engage in the following conduct:

- A) Revealing a Proposer's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise a Proposer's intellectual property to another Proposer;
- B) Revealing a Proposer's price without that Proposer's permission. However, the Administration may inform a Proposer that its price is considered by the Administration to be unbalanced based upon the Scope of Work and may provide information regarding the analysis supporting that conclusion;
- C) Revealing the names of individuals providing references information about a Proposer's past performance; or
- D) Revealing selection information in violation of the Administration's procurement policies and the laws of the State.

2.11.07 Proposal Revisions

Although the Administration reserves the right to hold Discussions and request proposal revisions and Best and Final Offers (BAFO) when in the best interest of the State, the Administration is under no obligation to do so. The Administration may make its selection and award based on the initial Proposals as submitted.

At the conclusion of Discussions (if held), the Administration will request a proposal revision or BAFOs from all Proposers in the Competitive Range to provide Proposers an opportunity to revise their Proposals (both the Technical Proposal and Price Proposal), including correction of any weaknesses, minor irregularities, errors, and/or Deficiencies identified to the Proposers by the Administration following initial evaluation of the Proposals. The request for proposal revision or BAFOs will allow adequate time, as determined by the Administration, for the Proposers to revise their Proposals. Upon receipt of the proposal revisions or BAFOs, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise ratings as appropriate.

The Administration may require more than one series of proposal revision submissions followed by a request for a BAFO submission, but only if the Administration makes a written determination that it is in the State's best interest to conduct additional Discussions following receipt of proposal revisions or to change the Administration's requirements and require another BAFO submission.

2.11.08 Determination of Successful Proposer

In accordance with COMAR 21.05.03.03(F), award of the Contract based on a determination of the Proposal that is the most advantageous to the State, taking into consideration the technical and price factors discussed above, provides the best opportunity to obtain the right Design-Build Team to assure a successful Project.

In order to be considered for award of the Contract, a Proposal must pass all the pass/fail factors, receive at least an "ACCEPTABLE" on all technical evaluation factors except Environmental, and receive a "GOOD" rating or better on the Environmental technical evaluation factor.

Any Proposal that receives a rating of "UNACCEPTABLE" in one or more technical evaluation factors will receive an overall technical proposal rating of Unacceptable.

The technical proposal will become part of the contract documents and all concept ideas provided to the Administration are expected to be included in the price proposal, final plan, design and construction phases. The Administration or successful bidder may use ideas and approaches excluding proprietary or protected information.

NOTE: All materials, conferences, proposals and other matters related to this project shall remain confidential until the contract is executed with the successful DB Team. However, the Administration does reserve the right to use the knowledge of good ideas of one team in discussions with the successful Team.

TC-2.12 AWARD AND EXECUTION OF CONTRACT

All conditions of award and execution procedures will be in accordance with GP-Section 3 of the Specifications and Special Provision GP-Section 2.19 contained within this RFP.

The DBT will be given Notice to Proceed after Execution of the Contract has been completed. At this point, additional field investigation may continue and design work may proceed with payment to be made as outlined in TC Section 7.08.

The Administration will require that the successful bidder start design activities as soon as possible after notification of selection and prior to issuance of Award. The Administration requires this approach as an effort to maximize the available time for design and construction activities necessary to demolish the existing Van Dusen bridge over I-95 as required in this RFP. The Administration also recognizes the benefits to the public by providing an opportunity to accelerate project activities and project completion. It is reasonable that these design activities should not place the DBT at risk should the Administration not issue an Award and Notice to Proceed for events outside of the control of the DBT.

The Administration will diligently process contract documents and procedures to Award and execute the contract and to issue a Notice to Proceed within the shortest time frame possible. In the event that the Administration does not issue a Notice to Proceed to the successful bidder for reasons beyond the control of the bidder, the Administration will reimburse all actual documentable design costs incurred by the DBT after approval of the Bid Bond. To receive reimbursement, the DBT must submit all related work product including, but not limited to, design calculations, plans, surveys, boring data, updated electronic files, personnel time sheets and other materials to the Administration for its use.

Actual construction work may not begin until the additional requirements specified elsewhere in this RFP have been satisfied, including but not limited to receipt of erosion and sediment control plan approval, permits, design approval including appropriate maintenance of traffic approval, and pre-construction conference.