



ARIZONA DEPARTMENT OF TRANSPORTATION

**PUBLIC PRIVATE PARTNERSHIP (P3)
DESIGN-BUILD-MAINTAIN AGREEMENT
REQUEST FOR PROPOSALS**

For

**202 MA 054 H882701C
SR 202L (SOUTH MOUNTAIN FREEWAY)
I-10 (MARICOPA FREEWAY) – I-10 (PAPAGO FREEWAY)**

**VOLUME I
INSTRUCTIONS TO PROPOSERS**

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INSTRUCTIONS TO PROPOSERS

(Request for Proposals: SR 202L (South Mountain Freeway))

SECTION 1.0 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This Request for Proposals (“RFP”) is issued by the Arizona Department of Transportation (“ADOT”), an agency of the State of Arizona, to seek competitive detailed proposals (individually, a “Proposal” and collectively, “Proposals”) from private entities (“Proposers”) for a Design-Build-Maintain Agreement (“DBM Agreement”).

The DBM Agreement shall provide that the entity identified in the successful Proposal (“Developer”) shall develop, design, construct, and maintain certain capital improvements consisting of a section of Loop 202 within the Maricopa County regional freeway and highway system, otherwise known as the South Mountain Freeway Project (the “Project”), as further described in Section 1.3. ADOT is using the design-build-maintain project delivery methodology to reduce the cost, expedite completion of the Project, and assure the quality of the Project. The form of the DBM Agreement is included in Volume II of the RFP.

ADOT is issuing the RFP to those Proposers shortlisted for the Project based on ADOT’s evaluation of statements of qualifications (“SOQs”) delivered to ADOT on December 10, 2014, in response to the Request for Qualifications for the Project issued on October 15, 2014 (as amended, the “RFQ”). Only the shortlisted Proposers are eligible to submit proposals for the design-build-maintain services for the Project.

Proposers must comply with these Instructions to Proposers (“ITP”) during the procurement and in their responses to the RFP. Proposers shall take the Project goals identified in Section 1.4 into consideration in drafting their Proposals.

The RFP requires each Proposer to be prepared to act as Developer for the Project if the Proposer is selected to enter into the DBM Agreement.

1.2 Request for Proposals

1.2.1 Documents in the Request for Proposals

The RFP consists of the following volumes and any other documents that may be issued by Addendum, as such documents may be amended and supplemented:

- (a) Volume I – this ITP (including exhibits and forms);
- (b) Volume II – the Contract Documents;
- (c) Volume III – the Reference Information Documents.

Refer to Section 1.2.1 of the DBM Agreement for a list of the Contract Documents, as well as their respective order of precedence. See Volume III for a list and copies of the Reference Information Documents. The Reference Information Documents will be updated periodically throughout this procurement.

The Reference Information Documents are included in the RFP for the purpose of providing information that is in ADOT's possession to Proposers. ADOT has not determined whether the Reference Information Documents are accurate, complete or pertinent, or of any value to Proposers. Except as may be provided otherwise in the DBM Agreement, ADOT makes no representation, warranty or guarantee as to, and shall not be responsible for, the accuracy, completeness, or pertinence of the Reference Information Documents, and, in addition, shall not be responsible for any conclusions drawn therefrom.

Volumes I, II and III, and additions and amendments thereto, will be provided to Proposers in an electronic format.

1.2.2 Definitions and Acronyms; Section References

Refer to Exhibit 1 to this ITP for the meaning of various capitalized terms and acronyms used in this ITP, and refer to Exhibit 1 of the DBM Agreement for the meaning of capitalized terms and acronyms used in the Contract Documents. For definitions of initially capitalized terms and acronyms used in this ITP but not defined in Exhibit 1 to this ITP, see Exhibit 1 of the DBM Agreement.

Unless otherwise indicated, all references to Sections in this ITP are to the Section numbers of this ITP.

1.3 Project Description and Basic Configuration

The Project has been identified as a needed element in regional transportation planning efforts for the past 30 years. The Project will complete the Loop 202 from I-10 (Maricopa Freeway) (milepost MP 54.31) to I-10 (Papago Freeway) (MP 75.91), a distance of approximately 22 miles, in the southwestern quadrant of the Phoenix metropolitan area. It will begin at its eastern terminus with the existing system traffic interchange between I-10 (Maricopa Freeway) and Loop 202 (Santan Freeway). From this point, it will travel westward on the Pecos Road alignment for approximately 8 miles before heading northwest for approximately 5 miles to a point near the existing Elliot Road and 59th Avenue intersection. The freeway will head northward for approximately 9 miles, crossing the Salt River, and reach its western terminus at a new system traffic interchange with I-10 (Papago Freeway) near 59th Avenue. The new system traffic interchange will include a direct high-occupancy vehicle (DHOV) ramp connection to and from the east on I-10. The design of the system traffic interchange at I-10 must be coordinated with the light rail corridor planned for I-10. The Project design also must be coordinated with the potential future State Route 30.

ADOT estimates based upon current design development, that a total of 377 parcels will be acquired to complete the Project. Right of way ("ROW") costs are the single largest cost to the Project, and ADOT is seeking Proposer innovation that results in opportunities to minimize ROW costs and provide timely completion of the Project.

For a more detailed description of the Project and the Basic Configuration, please see Section GP 110.01 of the Technical Provisions, including TP Attachment 110-1.

1.4 Project Goals

ADOT's Legacy Vision is "Creating a transportation system for Arizona that improves the quality of life." ADOT's Mission is "To provide a safe, efficient, cost effective transportation system" in accordance with the values of Accountability, Integrity, and Respect. Consistent with ADOT's Legacy Vision, Mission, and Values, ADOT has established a set of goals for the Project. All these goals are considered to be equal in value and importance to the Project, reflecting ADOT's view of a successful Project.

(a) Improve safety of the regional transportation system and implement an effective project safety program throughout the life-cycle of the Project;

(b) Secure quality design and construction to optimize the operational life-cycle performance of the Project;

(c) Challenge and motivate Proposers to identify cost savings through efficiency and innovation and deliver the Project under budget;

(d) Successfully accelerate delivery of the Project through the use of the alternative delivery P3 process;

(e) Maximize value of ADOT's financial resources and pursue sustainable funding solutions; and

(f) Maintain excellent public and Stakeholder relations through an effective outreach program and efficient maintenance of traffic.

1.5 Project Status

The status of the Work being completed for the Project by ADOT is summarized as follows.

1.5.1 Environmental Status

On April 26, 2013, a notice of availability for the South Mountain Freeway Draft Environmental Impact Statement (DEIS) was published in the Federal Register. This notice began a 90-day public comment period. During the comment period, a public hearing was held on May 21, 2013, at the Phoenix Convention Center; numerous other community outreach events were also held. The public comment period ended on July 24, 2013.

At the same time as the DEIS publication, the study team also submitted the Initial Location/Design Concept Report to ADOT technical groups and agency Stakeholders. The design plans included in the Initial L/DCR represent preliminary engineering level design plans. The Final Location/Design Concept Report is included in the Reference Information Documents.

On September 26, 2014, the project team released the Final Environmental Impact Statement (FEIS) for a 60-day public review period. On November 28, 2014, the project team released an "Errata" as an addendum to the FEIS. The FEIS and Errata incorporate analysis and conclusions presented in the DEIS for the proposed action, public comments and responses on the DEIS, and new information that became available after public release of the DEIS. Each comment received on the DEIS is accompanied by a response in Volume III of the FEIS or in the Errata.

Following the FEIS and Errata review period, the project team considered comments received and prepared a record of decision (ROD). FHWA issued the ROD for the Project on March 5, 2015. The ROD is included in the Reference Information Documents and is available at <http://azdot.gov/projects/phoenix-metro-area/loop-202-south-mountain-freeway/overview>. On March 13, 2015, FHWA published notice of final federal agency action for the Project and of the deadline for filing for judicial review, at 80 Fed. Reg. 13461 (Mar. 13, 2015). The federal statute of limitations for filing legal action to challenge the ROD expires August 10, 2015.

1.5.2 Preliminary Engineering Status

ADOT has prepared preliminary engineering documentation for the Project, representing the Schematic Design. This documentation is included in the Reference Information Documents.

1.5.3 Survey Status

ADOT has performed a preliminary topographic survey of the Project corridor. This survey information is included in the Reference Information Documents. Additional miscellaneous survey information may also be added to the Reference Information Documents in the course of this procurement.

1.5.4 Right of Way (ROW) Acquisition

ADOT estimates, based upon current design development, that a total of 373 parcels will be acquired to complete the Project. The estimated parcels include 98 commercial/industrial properties of varying significance and relocation durations, 76 vacant or agricultural properties and 199 residential properties. Total acquisition is estimated to exceed 1800 acres. ADOT currently owns approximately 35% of the parcels, representing over 40% of the estimated acreage.

ADOT has prepared ROW maps for the Project setting forth ADOT's Schematic ROW. The ROW maps are included in the Reference Information Documents.

Under the terms of the DBM Agreement, as of the effective Date of the DBM Agreement Developer will take responsibility for professional ROW acquisition and relocation services for all remaining ROW for which ADOT has not yet concluded acquisition and relocation activities, except for Retained Parcels. ROW costs are the single largest risk to the Project, and ADOT is seeking Proposer innovation that results in opportunities to minimize ROW costs. Savings in projected ROW acquisition, relocation and demolition costs from Proposer innovations are a factor in the pricing score, as further described in Section 5.6.1.

ADOT is advancing ROW acquisition prior to the Effective Date of the DBM Agreement. With issuance of the ROD, ADOT has commenced pursuing acquisitions of approximately 250 currently identifiable parcels, which are primarily, but not exclusively, total acquisitions. These include several parcels where the time to relocate may be lengthy. These also include acquisitions of single family residential total parcels (see the definition of "Retained Parcels"). ADOT will provide Proposers with approximately weekly updates, by email, on the status of these parcel acquisitions, relocations and demolitions prior to the Proposal Due Date. The status and updates thereto will be set

1 forth in the Acquisition/Relocation Status Report contained in the Reference Information
2 Documents.

3 ADOT will retain the responsibility to acquire and effect relocations, demolition and any
4 necessary hazardous materials remediation for certain parcels (see the definition of the
5 “Retained Parcels”) after the Effective Date of the DBM Agreement. The
6 Acquisition/Relocation Status Report contained in the Reference Information
7 Documents identifies parcels that will be treated as Retained Parcels. The identification
8 of the Retained Parcels is subject to change, but ADOT anticipates that it will set the
9 final list of Retained Parcels and notify the Proposers of the final list by the date set forth
10 in Section 1.7. The updates to the Acquisition/Relocation Status Report will include the
11 status of the acquisition process for the Retained Parcels and estimated outside dates
12 when access to the Retained Parcels for construction is expected to be available.
13 Relief will be available to the extent set forth in the DBM Agreement if ADOT is unable
14 to provide access to Retained Parcels for construction, with demolition and hazardous
15 materials remediation (if any) completed, by deadlines set forth in the DBM Agreement.

16 Except for the Retained Parcels, the Developer will be responsible for performing, and
17 for the cost of, ROW acquisition services and relocation assistance services, as well as
18 for demolition and any necessary hazardous material remediation, for all parcels to the
19 extent these activities have not been completed by ADOT as of the Effective Date of the
20 DBM Agreement. On the Effective Date, these parcels will be handed over to the
21 Developer for completion of ROW acquisition services, relocation assistance services,
22 demolition of improvements and hazardous materials remediation (if any). At or about
23 this time, ADOT will also provide to the Developer a copy of ADOT’s related documents
24 and work product.

25 ADOT will be responsible for eminent domain activities with the Developer’s support.
26 For Schematic ROW, ADOT will pay the purchase price, including any severance
27 damages, and relocation assistance costs of the relocating parties.

28 ADOT believes that the Schematic ROW is sufficient to construct and maintain the
29 Project and meet all the requirements of the Basic Configuration and Technical
30 Provisions, with the possible exception that locations outside the Schematic ROW may
31 be necessary to provide access to certain utilities and pump stations. These known
32 possible exceptions are identified in Exhibit 16 to the DBM Agreement, or will be
33 identified by the Setting Date, and will be the Developer’s responsibility and risk to
34 resolve. If, however, other situations are identified where it is not possible to meet the
35 requirements of the Basic Configuration within the Schematic ROW, or where it is not
36 physically possible, including through commercially reasonable design modifications, to
37 provide replacement access to pre-existing third party facilities without acquiring
38 additional ROW (excluding Replacement Utility Property Interests), then such ROW will
39 be designated in the DBM Agreement as ADOT Additional Property. For such ADOT
40 Additional Property, ADOT will pay the purchase price, including any severance
41 damages, and relocation assistance costs of the relocating parties. Developer shall
42 bear all costs to acquire all other ROW outside the Schematic ROW unless required
43 due to an ADOT-Directed Change.

1 The DBM Agreement and Section DR 470 of the Technical Provisions provide further
2 details regarding the ROW acquisition process and the responsibilities of the Developer
3 in this process.

4 **1.5.5 Status of Utility Adjustments**

5 ADOT has performed a level B subsurface utility engineering investigation of the
6 Project. ADOT has included or will include the information from this investigation, along
7 with other information collected, in the Reference Information Documents. ADOT is
8 currently advancing coordination activities through discussions and planning workshops
9 with Utility Companies. ADOT is also seeking to enter into MOUs or Utility Agreements
10 with the Utility Companies associated with the Project. ADOT will include the MOUs
11 and Utility Agreements in the Reference Information Documents if and when they
12 become available. ADOT does not represent or warrant that it will obtain MOUs or
13 Utility Agreements from any or all Utility Companies. ADOT will also include in the
14 Reference Information Documents documentation of discussion items at coordination
15 meetings with Utility Companies.

16 | ADOT is retaining responsibility to relocate high tension power lines and poles owned
17 by the Salt River Project and two high tension power lines and poles owned by the
18 Western Area Power Administration. Descriptions of these relocations and expected
19 time to complete each of them are set forth in Section 430.3.4 of the Technical
20 Provisions. The Reference Information Documents include information on where these
21 poles are currently located and where they will be repositioned. No Project design may
22 require relocation of these poles to any other position.

23 | Developer will be responsible for all other utility relocations required for the Project as
24 set forth in the DBM Agreement. The DBM Agreement sets forth the allocation of
25 responsibility for the cost to acquire replacement utility property interests where the
26 utility is not legally obligated to pay for such interests.

27 **1.5.6 Railroad Status**

28 ADOT has coordinated with Union Pacific Railroad ("UPRR") regarding work at its
29 railroad crossing within the Project limits. Plan sheets detailing design and work to be
30 performed on the railroad ROW have been prepared for this railroad crossing, and have
31 been preliminarily approved by UPRR. These plan sheets are included in the
32 Reference Information Documents. The Developer will not be obligated to use or adopt
33 these designs, but will bear the risk of obtaining UPRR approval of alternate designs.
34 Developer will be responsible for taking over coordination efforts with UPRR and design
35 of the railroad crossing, for finalizing agreements with UPRR, and for meeting all the
36 terms and conditions of the agreements. ADOT will be a signatory to such agreements
37 if required by UPRR, subject to delegation of ADOT's obligations thereunder to the
38 Developer.

39 **1.5.7 Existing Record Plans**

40 Record plans for selected existing roadway/highway facilities in the Project area are
41 listed and included in the Reference Information Documents.

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Anticipated Permits and Approvals Needed

Permit	Agency	Status
Section 404 of the CWA permit	USACE	Preliminary Jurisdictional Delineations approved March 2014 by USACE. Will be applied for and secured by the Developer.
Section 401 of the CWA certification	ADEQ	Will be applied for and secured by the Developer.
Section 402 (AZPDES) of the CWA permit	ADEQ	Will be applied for and secured by the Developer.
Interstate System Access Change Request	FHWA	Final approval received April 9, 2015.
Application for earthmoving permit, demolition, and dust control plan	Maricopa County	Will be applied for and secured by the Developer.
Federal land re-appropriations	BLM	Concurrence received from BLM in July 2013 related to use of leased BLM land for the future freeway.
Construction-related permits and clearances for all of the above (potentially)	Various	Will be applied for and secured by the Developer.
Utility relocation or new location	Various	ADOT encroachment permit required for each relocation or new location
Asbestos testing and remediation permit	Maricopa County	NESHAP Notification. Will be applied for and secured by the Developer.
Asbestos remediation permit	Maricopa County	County dust permit. Will be applied for and secured by the Developer.
Intergovernmental agreement	City of Phoenix	Project Master Maintenance Agreement. ADOT will provide.
Intergovernmental agreement	City of Phoenix	Local Street Turnback. ADOT will provide.

ADOT completed preliminary jurisdictional delineations in support of future coordination related to the Section 404 of the Clean Water Act permit with the U.S. Army Corps of Engineers ("USACE"), Section 401 Water Quality Certification with the Arizona Department of Environmental Quality ("ADEQ"), and Section 402 of the Clean Water Act permit with ADEQ. The Developer will be responsible for submittal of the final design and any design modifications to each of the regulatory agencies and obtaining their approval thereof and of any change in permit terms and conditions.

1.6 Scope of Work

1.6.1 General Scope of Developer's Obligations

Developer's scope of Work is set forth in detail in the Contract Documents. In general, it will include the following:

- 1 (a) Establish colocated Project office;
- 2 (b) Design and construction of all Project components;
- 3 (c) Management of the Project design, construction and maintenance;
- 4 (d) Certain Project-related public involvement activities and support;
- 5 (e) Coordination with Stakeholders, other contractors, Utility Companies, and
- 6 railroads;
- 7 (f) Design quality;
- 8 (g) Construction quality, inspection and testing;
- 9 (h) Environmental mitigation as outlined in the approved project scope;
- 10 (i) Environmental permitting and other necessary governmental approvals
- 11 not obtained by ADOT;
- 12 (j) Additional environmental investigations, monitoring, and investigation
- 13 associated with or resulting from the Developer's activities;
- 14 (k) Preparation and implementation of a transportation management plan,
- 15 and maintenance and protection of traffic throughout construction, including both
- 16 temporary and permanent access to properties;
- 17 (l) Project safety and security;
- 18 (m) Preliminary and final engineering, such as surveys and geotechnical
- 19 investigations;
- 20 (n) Management and remediation of harmful and hazardous materials, except
- 21 spills from third party vehicles;
- 22 (o) Drainage and erosion control;
- 23 (p) Construction waste disposal and handling;
- 24 (q) Required clearances, licenses, and permits for Work, Work sites, and
- 25 Project Specific Locations, etc., both on- and off-site;
- 26 (r) Ancillary works, such as temporary fencing, relocation of drainage, Work
- 27 sites, and temporary works;
- 28 (s) Material location, acquisition, permits, and transportation;
- 29 (t) Professional ROW acquisition and relocation services for all parcels
- 30 (including temporary construction easements), other than those for the Retained
- 31 Parcels;
- 32 (u) Utility coordination and (as required) relocation, protection of existing
- 33 utilities, and acquisition of replacement utility property interests (as required), including
- 34 paying or reimbursing Utilities with prior rights for their design, construction and other
- 35 costs incurred from and after the Effective Date to prepare for and undertake relocations
- 36 and acquisitions of replacement utility property interests;
- 37 (v) Site clearance;

- 1 (w) Routine maintenance and capital asset replacement of the Project during
2 the contract period ending 30 years after Project substantial completion;
- 3 (x) Maintenance quality;
- 4 (y) Traffic management and control required in connection with maintenance
5 services;
- 6 (z) Insurance and bonding; and
- 7 (aa) Providing Utility service facilities for the Project and paying certain costs of
8 Utility service for the Project, as set forth in Section 2.2.3 of the DBM Agreement.

9 | After Substantial Completion and Final Acceptance of the Project, the Developer will not
10 be responsible for operating, maintaining or the cost of electricity for Intelligent
11 Transportation Systems (except for maintenance of certain specific components as
12 described in Section MR 400.2.12 of the Technical Provisions), traffic management
13 unrelated to the Developer's maintenance activities, traffic signal operations,
14 arrangements for police services or freeway service patrol, emergency and incident
15 response (except repair of damage to the Project from incidents or actions to respond to
16 and clear incidents), or maintenance of improvements to surface streets outside the
17 Project's control of access lines (which will be handed over to the City of Phoenix). The
18 Developer will, however, be responsible for specified maintenance of crossroads that
19 are within the Project's control of access lines, as more particularly set forth in the
20 Technical Provisions and the Project Master Maintenance Agreement that ADOT will be
21 entering into with the City of Phoenix. Maintenance of the pedestrian bridge will be
22 shared between ADOT and the City of Phoenix; ADOT will delegate to Developer
23 ADOT's pedestrian bridge maintenance obligations. For more details, see the
24 definitions of Maintenance Service Limits and the Third-Party Agreements. Also see
25 Section MR 400 of the Technical Provisions.

26 **1.6.2 Significant Project Challenges**

27 | The Project presents significant challenges; among them are the following:

- 28 • Acquiring commercial and industrial properties in a timely manner
- 29 • Managing traffic during construction of I-10 system traffic interchange, Pecos
30 Road section, and 59th Avenue section
- 31 • Relocating or avoiding private utilities including high-power overhead lines,
32 telecommunication lines, gas lines, and water and sewer lines
- 33 • Relocating or avoiding active water wells
- 34 • Implementing environmental commitments and mitigation measures
- 35 • Coordinating the design of the Project with the future SR 30 project, the Avenida
36 Rio Salado/Broadway Road Alternative project and the future Valley Metro I-10
37 light rail project
- 38 • Implementing a visible public outreach program
- 39 • Providing long-term comprehensive maintenance for the Project.

1.6.3 Notices to Proceed, Sequencing of Work and Substantial Completion

Work under the DBM Agreement will proceed as authorized by notices to proceed (“NTP”) that ADOT will issue under the DBM Agreement.

(a) An initial notice to proceed (“NTP 1”) will authorize Developer to:

(i) mobilize, including establishing the collocated office;

(ii) prepare or continue preparing the component parts, plans and documentation of the Project Management Plan relevant to the D&C Work, including (A) a Quality Management Plan (General Requirements, Professional Services and Construction Work components), and (B) a Public Involvement Plan;

(iii) prepare the ROW Activity Plan, Environmental Management Plan, Safety Management Plan and Transportation Management Plan;

(iv) prepare a detailed, resource and cost loaded Project Baseline Schedule;

(v) prepare the Segments Limit Map;

(vi) prepare the Submittal Schedule;

(vii) prepare a Schedule of Values for pre-NTP 2 Design Work;

(viii) prepare the final DBE Utilization Plan;

(ix) prepare the final OJT Utilization Plan;

(x) enter the Project ROW owned or in the possession of ADOT in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, provided that Developer (A) shall not conduct any ground-disturbing activities in the Center Segment, and (B) shall not conduct any ground-disturbing activities within or outside other areas of the Schematic ROW until ADOT has completed its cultural resource investigations and has received and approved, as provided in the Technical Provisions, the Environmental Management Plan, Public Involvement Plan, Safety Management Plan, Site Documentation, Storm Water Pollution Prevention Plan, and Noxious Species Control Plan;

(xi) commence ROW Services (but only after ADOT approves the ROW Activity Plan);

(xii) commence negotiating with the Union Pacific Railroad;

(xiii) commence negotiating Utility Agreements with Utility Companies;

(xiv) at Developer’s option, commence Design Work, provided that (A) ADOT will not pay for or commence review of Design Documents until Developer satisfies specific conditions precedent set forth in the DBM Agreement, and (B) ADOT’s payment for Design Work prior to NTP 2 is subject to a cap of \$15,000,000; and

(xv) prepare the Existing Conditions Site Documentation in accordance with applicable requirements set forth in the Technical Provisions;

(xvi) prepare the bat survey in accordance with applicable requirements set forth in the Technical Provisions; and

(xvii) Prepare the ITS Inventory in accordance with applicable requirements set forth in the Technical Provisions.

(b) A second notice to proceed (“NTP 2”) will authorize Developer to proceed with design, construction and all other Work required to deliver the Project, except construction and other ground-disturbing activities (which include potholing and boring) in the Center Segment. If NTP 2 is issued prior to June 15, 2016, the authority to perform Construction Work prior to such date will be limited to the construction-related activities authorized by NTP 1 and Utility Adjustment Work and drainage work that in each case is within or adjacent to existing public roadways not located in the Center Segment.

(c) A third notice to proceed (“NTP 3”) will authorize Developer to proceed with construction and other ground-disturbing activities in the Center Segment, the timing of which will be in ADOT’s discretion.

(d) A fourth notice to proceed (“Maintenance NTP”) will authorize Developer to commence Maintenance Services for the Project, at Substantial Completion.

Developer will have the right and responsibility to decide on the sequencing and schedule of design and construction work, subject to Project constraints such as when ROW becomes available for construction, satisfaction of specific conditions and requirements before Developer may commence construction in any particular portion of the Project, maintenance of traffic obligations, the Maximum Allowable Cumulative Draw under the DBM Agreement, and, in the case of the Center Segment, issuance of NTP 3.

ADOT will certify Substantial Completion for the Project as a whole. Certification of Substantial Completion will not be available for segments or phases.

1.6.4 Project Limits

The limits of the design and construction work for the Project are as shown on the Schematic Design. Developer also will be obligated to perform certain design and construction work outside such Project limits, such as signage installations, ITS, drainage and irrigation, as more particularly set forth in the Technical Provisions. The Project’s maintenance limits are also shown on the Schematic Design, and are subject to change in accordance with Developer’s Schematic Design and the Contract Documents.

1.7 Procurement Schedule

The following represents the current schedule for the procurement.

<u>EVENT</u>	<u>DATE AND TIME</u>
Issue official Request for Proposals	June 12, 2015
Deadline for Proposers to submit first round of questions regarding RFP, as described in <u>Section 2.3.1</u>	June 22, 2015 11:59 pm (Mountain Standard Time)

<u>EVENT</u>	<u>DATE AND TIME</u>
Deadline to submit Preliminary ATCs, per <u>Section 3.3</u>	June 22, 2015 11:59 pm (Mountain Standard Time)
ADOT DBE/OJT workshop	June 17, 2015
First one-on-one meetings with Proposers regarding RFP	June 30 – July 2, 2015
Estimated date by which ADOT will provide feedback to Proposers regarding Preliminary ATCs, per <u>Section 3.3</u>	July 8, 2015
Deadline for ADOT to receive Stipend Agreements from Proposers	July 14, 2015 4:00 pm (Mountain Standard Time)
Estimated date by which ADOT will issue Addendum #1 to RFP	July 21, 2015
Deadline for Proposers to submit second round of questions regarding Addendum #1 to RFP, as described in <u>Section 2.3.1</u>	August 5, 2015 11:59 pm (Mountain Standard Time)
Deadline to submit ATCs	August 5, 2015 2:00 pm (Mountain Standard Time)
Second one-on-one meetings with Proposers regarding (a) ATCs and (b) Addendum #1 to RFP	August 11-13, 2015
Estimated date by which ADOT will issue notice to Proposers of preliminary determinations regarding ATCs	August 28, 2015
Estimated date by which ADOT will issue Addendum #2 to RFP	September 2, 2015
Deadline for Proposers to submit Pre-Proposal Submittals per <u>Section 2.4</u> for: (1) requesting changes in organization; (2) requesting changes in Key Personnel; and (3) requesting approval of credit reducing D&C Price for evaluation purposes due to avoidance of Schematic ROW parcels	September 2, 2015 11:59 pm (Mountain Standard Time)
Third one-on-one meetings with Proposers regarding ATCs preliminarily approved	September 9 – 10, 2015

<u>EVENT</u>	<u>DATE AND TIME</u>
with conditions or preliminarily rejected by ADOT	
Deadline for Proposers to submit revised ATCs that address any ADOT conditions to approval or other comments on ATCs originally submitted by the August 5, 2015 deadline	September 14, 2015 3:00 pm (Mountain Standard Time)
Estimated date by which ADOT will issue final list of Retained Parcels	September 15, 2015
Estimated date by which ADOT will issue Addendum #3 to RFP related to maintenance terms and conditions	September 15, 2015
Deadline for Proposers to submit third round of questions regarding Addendum #2 and Addendum #3 to RFP, as described in <u>Section 2.3.1</u>	September 18, 2015 11:59 pm (Mountain Standard Time)
Estimated date by which ADOT will issue (a) notice to Proposers of final determinations regarding ATCs and (b) interim list of the then-prevailing wage rates	September 21, 2015
Fourth one-on-one meetings with Proposers regarding Addendum #2 and Addendum #3 to RFP	September 22-23, 2015
Estimated date by which ADOT will issue Addendum #4 to RFP	October 2, 2015
Deadline for Proposers to submit last round of questions regarding RFP, as described in <u>Section 2.3.1</u> .	Three Business Days after date of issuance of Addendum #4 11:59 pm (Mountain Standard Time)
Estimated date by which ADOT will issue responses to requests for: (1) changes in organization; (2) changes in Key Personnel; and (3) approval of credit reducing D&C Price for evaluation purposes due to avoidance of Schematic ROW parcels	October 6, 2015
Estimated date by which ADOT will issue last responses to timely questions	October 16, 2015

<u>EVENT</u>	<u>DATE AND TIME</u>
regarding any Addenda to RFP	
Estimated date by which ADOT will issue Addendum #5 to RFP, including identifying status of Project ROW and Utilities	October 16, 2015
Estimated date by which ADOT will issue notification regarding resubmittal of Pre-Proposal Submittals (other than ATCs and only if applicable in respect of such other Pre-Proposal Submittals)	October 16, 2015
ADOT will issue Addendum #6 informing Proposers of prevailing wage rates determination to be incorporated into DBM Agreement	Seven days before Proposal Due Date
Proposal Due Date	November 2, 2015 2:00 pm (Mountain Standard Time)
Anticipated date of Conditional Award	January 11, 2016
Execution and delivery of DBM Agreement and other Closing Documents	30 days after the date of Conditional Award

Where the RFP provides a deadline or due date for submission of documents, correspondence or other materials to ADOT, the document will only be considered timely if ADOT receives the document by the date and, if applicable, time identified. All dates and times set forth above and elsewhere in the RFP are subject to change, in ADOT's sole discretion, by written notice to Proposers.

1.8 General Provisions Regarding Proposals

1.8.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including (a) a Technical Proposal, (b) Financial Proposal and (c) a Price Proposal. The instructions and requirements for the Technical Proposal, Financial Proposal and Price Proposal are set forth in Exhibits 2, 3 and 4, respectively. Exhibit 5 contains all required Proposal forms. Exhibit 6 contains a checklist showing the required contents of the entire Proposal. The Proposal shall be organized in the order listed in Exhibit 6, and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms (Exhibit 5) in the format specified or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions may result in ADOT's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.8.2 Inclusion of Proposal in Contract Documents

Portions of the successful Proposal, including commitments made therein, will become part of the Contract Documents, as specified in the DBM Agreement. All other information is for evaluation purposes only and will not become part of the Contract Documents.

1.8.3 Commitments in the Proposal

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

1.8.4 Ownership of Proposal

Subject to the exceptions specified herein and in the Public Records Act, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, and other graphic and visual aids submitted to ADOT during this procurement process, whether included in the Proposal or otherwise submitted, become public records of the State of Arizona upon delivery to ADOT, and will not be returned to the submitting parties. See also Sections 2.6 and 6.3 and Exhibit 9.

1.9 Available Public Funds

1.9.1 For Capital Costs

The Project is programmed in the ADOT Five-Year Transportation Facilities Construction Program. As such, funding for the Project has been built into ADOT's financial plan for the Project and by federal statute and State Transportation Board policy, the Project for the five-year period must be fully funded within available revenues.

As of April 1, 2015, ADOT has a remaining program budget of approximately \$1.8 billion (nominal) for the remaining ROW acquisition, design, and construction of the Project. To date, study activities have included project planning and pre-development work, including environmental analysis and documentation, preliminary engineering, geotechnical investigation, utility investigation, ROW acquisition, public outreach, administrative costs and other activities.

Project costs will be funded through a combination of Regional Area Road Fund (RARF) revenues, Highway User Revenue Fund (HURF) revenues, and federal funds dedicated to the Maricopa County region and ADOT. To facilitate acceleration of the Project, ADOT will also utilize some combination of financing mechanisms, including but not limited to its RARF credit, HURF credit, and Grant Anticipation Notes which leverage future federal funds. No Proposer-provided financing is required.

~~ADOT has established~~ Developer shall propose a Maximum Allowable Cumulative Draw for the DBM Agreement, to be set forth in column C of Form M-2 and, if acceptable to ADOT, in Exhibit 6 to the DBM Agreement ~~and in column D of Form M-2~~. Except with respect to price increases due to Relief Events or if ADOT otherwise agrees in its sole discretion, under no circumstances will ADOT make payments to the Developer for

capital costs that at any given time cumulate to more than the then applicable Maximum Allowable Cumulative Draw.

Form M-2 also sets forth an indicative cash flow schedule that reflects ADOT's current estimation of the cash flows it has available for design and construction work. ADOT may have flexibility to adjust the indicative cash flows through moving amounts budgeted for Project ROW acquisition and contingencies within the programmed funding for the Project into the cash flows for design and construction. Proposers are advised, however, that ADOT's ability and willingness to enter into the DBM Agreement depends in part on the degree to which Proposer's Maximum Allowable Cumulative Draw conforms to ADOT's indicative cash flow schedule.

1.9.2 For Maintenance Costs

ADOT expects to fund payments of the Maintenance Price for Routine Maintenance under the DBM Agreement from a combination of MAG's share of state HURF revenues, RARF funds available for litter and landscaping, and funds appropriated from time to time by the Arizona legislature to ADOT for routine maintenance. In addition, ADOT expects to fund payments of the Maintenance Price for Capital Asset Replacement Work from MAG's share of federal and state HURF revenues allocated to major projects.

1.10 Federal Requirements

1.10.1 General Obligations

Proposers are advised that federal funds have been and will be used to fund a portion of the Project costs. Therefore the procurement process and the Contract Documents must comply with applicable federal laws, regulations and policies. These include federal nondiscrimination requirements (Title VI of the Civil Rights Act of 1964, as amended), Disadvantaged Business Enterprise ("DBE") requirements (Title 49 Code of Federal Regulations Part 26, as amended), Small Business requirements (15 United States Code sections 631 *et seq.*), Buy America requirements (23 United States Code section 313, 23 Code of Federal Regulations 635.410), the Uniform Relocation Assistance and Real Property Acquisition Act (42 United States Code, Chapter 61), and Davis-Bacon wage rates. Details as to the extent and applicability of Federal requirements to the entire Project are set forth in this ITP and the DBM Agreement and its exhibits. ADOT reserves the right to modify the RFP to address any concerns, conditions or requirements of federal agencies, including FHWA. Proposers will be notified by Addendum of any such modifications.

ADOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

1.10.2 DBE Policy

ADOT shall not discriminate on the basis of race, color, national origin, handicap/disability, age or sex in the award and performance of any U.S. Department of

Transportation (“USDOT”)-assisted contract or in the administration of 49 CFR Part 26. This Project is subject to USDOT DBE provisions as set forth under 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.

1.10.3 DBE Participation Goals

ADOT has determined that Disadvantaged Business Enterprise (“DBE”) requirements apply to the design and construction of the Project, and has adopted a DBE Program to provide DBEs opportunities to participate in the business activities of ADOT as service providers, vendors, contractors, subcontractors, advisors, and consultants. ADOT has adopted the definition of DBE set forth in 49 CFR § 26.5.

ADOT has preliminarily established goals for DBE utilization (“DBE Goals”) for professional services, construction work and Capital Asset Replacement Work on the Project. DBE Goals for the Project are calculated and shall be credited in relation to the portion of the total Price allocated to the components of the Work as listed below:

- Professional Services DBE Goal – 16.6345% of the total D&C Price allocated to Professional Services
- Construction DBE Goal – 10.93% of the total D&C Price allocated to Construction Work
- Capital Asset Replacement Work DBE Goal – 6.08% of the total price for each Capital Asset Replacement Work interval

1.10.4 DBE Requirements and Good Faith Efforts

Developer will be required to meet each DBE Goal or make Good Faith Efforts to do so.

Proposer’s DBE compliance obligations shall be governed by the DBE Special Provisions attached as Exhibit 7 to the DBM Agreement. Proposers must familiarize themselves with all applicable federal DBE regulations, including Title 49 CFR Part 26, ADOT’s DBE Program Plan, as well as applicable requirements set forth in the DBM Agreement to help ensure compliance with all federal DBE regulations. For further information and overview of ADOT’s DBE program, Proposers are referred to ADOT’s DBE Program Plan adopted pursuant to 49 CFR Part 26, which can be found at http://azdot.gov/docs/default-source/beco-library/adot_fhwa_dbe_plan.pdf?sfvrsn=4.

As set forth in Section 4.2.7 of Exhibit 2, each Proposer shall submit with its Technical Proposal, without revision, a signed Form H-1 (Exhibit 5), DBE Assurance & Project Goal Declaration, acknowledging the Proposer’s commitment to comply fully with ADOT DBE Program and U.S. DOT and Design-Build provisions as set forth under Title 49 CFR Part 26. The information on this form must also indicate that the Proposer is committing to meet the DBE Goals or to exercise and provide demonstrable evidence to ADOT’s satisfaction that it will exercise Good Faith Efforts to do so in accordance with 49 CFR Part 26.53. Failure to provide this declaration shall render a Proposal non-responsive.

1 If the Proposer indicates on Form H-1 a reasonable belief that Good Faith Efforts will
2 produce DBE participation below any of the DBE Goals ADOT has established for the
3 Project, then its Technical Proposal also must include documentation of Good Faith
4 Efforts undertaken prior to Proposal submission (in addition to discussion thereof in the
5 Preliminary DBE Utilization Plan). Documentation of pre-Proposal Good Faith Efforts is
6 in addition to the obligations of the Developer under the Contract Documents to provide
7 continuing information and documentation that demonstrates its Good Faith Efforts to
8 meet the DBE Goals and, if applicable, why it may be unable to meet them. The efforts
9 employed must be those that one could reasonably expect a contractor to take if the
10 contractor were actively and aggressively trying to obtain DBE participation sufficient to
11 meet the DBE Goals. Mere pro forma efforts are not Good Faith Efforts to meet the
12 DBE Goals. (See 49 CFR Part 26, Appendix A.)

13 Proposers are referred to ADOT's "Good Faith Efforts Guidelines" included in the
14 Reference Information Documents for assistance in completing and submitting Good
15 Faith Efforts documentation. The Good Faith Efforts Guidelines and Section 15.01 of
16 the DBE Special Provisions represent what ADOT considers to be good industry
17 practices and standards for Good Faith Efforts implementation and documentation.
18 Please note, however, that completion and submission of all of the information
19 contained in the guidelines is not a guarantee that Good Faith Efforts will be approved.
20 ADOT will consider the quality, quantity, and intensity of the different kinds of efforts that
21 the Proposer has made, based on the DBE Special Provisions.

22 Only DBE firms certified in the State of Arizona Unified Certification Program (AZUCP)
23 prior to the DBE starting work on the Project shall count toward attaining the DBE
24 Goals. Proposers and the Developer, as part of their Good Faith Efforts to meet the
25 DBE Goals, may expand their search to a reasonably wider geographic area, including
26 other states, provided that all out of state DBEs submit applications to ADOT to become
27 certified in Arizona prior to beginning any work on the Project for DBE credit.

28 A Proposer may not require that a DBE firm provide quotes, proposals or commitments
29 to its team or any member of its team to the exclusion of other proposing teams;
30 provided that if the Proposer's SOQ identified an employee of a DBE firm as filling a
31 Key Personnel position for the Proposer, then the Proposer may require that such
32 employee not participate with other Proposers.

33 **1.10.5 Preliminary DBE Utilization Plan**

34 Proposers must submit in the Technical Proposal a Preliminary DBE Utilization Plan
35 outlining how Proposer will meet or exceed or make continuing Good Faith Efforts to
36 meet or exceed the DBE Goals. The Preliminary DBE Utilization Plan must include how
37 the Proposer plans to recruit, manage, provide oversight and monitoring, and report
38 DBE utilization to ADOT for the Project. See Exhibit 2, Section 4.2.7.2 for the required
39 components/sections that must be included of the Preliminary DBE Utilization Plan and
40 for related forms. Proposers shall include a DBE/OJT Outreach and Compliance
41 Manager on their teams to manage the implementation of the DBE Utilization Plan. The
42 efficacy and quality of each Proposer's Preliminary DBE Utilization Plan will be
43 evaluated as described in Section 5.4.1.2(g).

1 Within 30 days after issuance of NTP 1, Developer shall revise and convert its
2 Preliminary DBE Utilization Plan into a more detailed, final DBE Utilization Plan and
3 submit it to ADOT for review and approval in its good faith discretion. Issuance of NTP
4 2 is conditioned on first obtaining such ADOT approval.

5 The selected Proposer will also be required to provide DBE affidavits in the form
6 required by ADOT as DBE subcontractors are identified, in accordance with the DBE
7 Special Provisions and the approved DBE Utilization Plan. Failure to submit the
8 required documentation within the specified timeframe in the DBM Agreement will be
9 cause to deny credit for any work performed by a DBE firm prior to ADOT's approval,
10 and to delay approval of Developer's monthly progress payment.

11 **1.10.6 Participation by Small Business Concerns**

12 49 Code of Federal Regulations Part 26.39 also requires that ADOT's DBE Program
13 include an element to incorporate contracting requirements to facilitate participation by
14 Small Business Concerns (SBCs) in contract procurements. SBCs are for-profit
15 businesses registered to do business in Arizona and that meet the Small Business
16 Administration size standards for average annual revenue criteria for its primary North
17 American Industry Classification System code.

18 While the SBC component of the DBE Program does not require utilization goals on
19 projects, ADOT strongly encourages Proposers to utilize small businesses on their
20 contracts that are registered in AZ UTRACS, in addition to DBEs meeting the
21 certification requirement. Visit AZ UTRACS at [//adot.dbesystem.com/](http://adot.dbesystem.com/) to search for
22 certified DBEs and registered SBCs that can be used on the Project. SBC utilization on
23 the Project must also be tracked and reported to ADOT on a monthly basis along with
24 required DBE outreach efforts and utilization.

25 **1.10.7 On the Job Training Policy**

26 This Project is subject to Federal OJT participation provisions as set forth under FHWA-
27 1273 Required Contract Provisions Federal-Aid Construction Contracts, 23 U.S.C §140
28 (a) and 23 C.F.R. §230.111. The primary objective of these requirements is to train and
29 upgrade minorities, women, veterans and disadvantaged individuals to reach journey
30 level status in various construction trade job classifications. This training requirement is
31 not intended and shall not be used to discriminate against any applicant for training,
32 whether a member of a minority group or not. Firms responding to this RFP must
33 acknowledge such requirements and commit to fully comply with the OJT Special
34 Provisions that are Exhibit 8 to the DBM Agreement and ADOT's OJT Trainee
35 participation goals for the Project.

36 **1.10.8 OJT Participation Goals**

37 The ADOT OJT participation goals for the Construction Work on the Project (the "OJT
38 Goals") are:

- 39 • Minimum of 142,800 OJT Trainee hours on the Project
- 40 • Minimum of 51 OJT Trainees must each complete at least 2,000 hours solely on
41 the Project in the same trade or work classification

- Minimum of ten OJT Trainees must complete hours on the Project necessary to achieve journey-level status (minimum of 2,000 hours must be completed by these OJT Trainees solely on the Project)

Some of the same individual OJT Trainees can be used to satisfy each of the OJT Goals.

The number of OJT trainees shall be distributed among work classifications on the basis of the Developer's need and the availability of journey persons in the various classifications. The Developer will be credited for each OJT Trainee employed on the Project in an ADOT or State approved apprenticeship or OJT program.

1.10.9 Preliminary OJT Utilization Plan

Proposers must submit in their Technical Proposals a Preliminary OJT Utilization Plan outlining how Proposer will meet or exceed or make continuing Good Faith Efforts to meet or exceed the OJT Goals throughout the Work. See Exhibit 2, Section 4.2.7.6 for the required components/sections that must be included of the Preliminary OJT Utilization Plan and for related forms.

The efficacy and quality of each Proposer's Preliminary OJT Utilization Plan will be evaluated as described in Section 5.4.1.2(g).

Within 30 days after issuance of NTP 1, Developer shall revise and convert its Preliminary OJT Utilization Plan into a more detailed, final OJT Utilization Plan and submit it to ADOT for review and approval in its good faith discretion. Issuance of NTP 2 is conditioned on first obtaining such ADOT approval.

1.10.10 Prevailing Wages

The Davis-Bacon prevailing wage rates will be set seven days before the Proposal Due Date, as required by federal regulations. ADOT will provide Proposers notice on that date of the prevailing wage rate determination, and such determination will be included in the DBM Agreement. Approximately 45 days before the Proposal Due Date, ADOT will provide Proposers, as a courtesy, a list of the prevailing wage rates in effect as of that date; but such rates are subject to change.

1.11 Insurance Requirements

Proposers should review carefully the minimum insurance requirements set forth in Article 11 and Exhibit 12 of the DBM Agreement. Each Proposer shall take these minimum requirements into account in developing its Proposal.

1.12 Qualification to Do Business

As of the Effective Date, Developer and the Major Non-Equity Members must be qualified to do business in the State.

1.13 Required Licenses

To the extent that the laws of the State of Arizona require the Developer and each Equity Member, Major Non-Equity Member, Key Professional Services Firm, other identified Subcontractors and Key Personnel to hold a license, registration or other credential to design, develop, construct or maintain the Project, Proposer shall provide evidence in the Proposal that all such firms and Key Personnel either (a) have all such

licenses, registrations and credentials or (b) have submitted applications for all such licenses, registrations and credentials and are licensed or registered, comparable to an Arizona license or registration, in some state or foreign jurisdiction at the time of Proposal submittal. Proposer will be required to provide evidence at the time of DBM Agreement award that all such firms and Key Personnel have all such licenses, registrations and credentials required by Arizona law. Such evidence shall include any information on the revocation or suspension of any license, registration or credential. Proposers are referred to Arizona Revised Statutes, Title 32, Chapter 1 - Architects, Assayers, Engineers, Geologists, Landscape Architects, and Land Surveyors; Arizona Revised Statutes, Title 32, Chapter 10 - Contractors; Arizona Revised Statutes, Title 32, Chapter 36 – Appraisers; and Arizona Revised Statutes, Title 32, Chapter 20 – Real Estate Brokers and Salespersons.

Licensing information is available from:

Registrar of Contractors
3838 N. Central Ave., Suite 400
Phoenix, AZ 85012-1906
Phone: (602) 542-1525
Fax: (602) 542-1599

Board of Technical Registration
1110 W. Washington Street, Suite 240
Phoenix, AZ 85007
Phone: (602) 364-4930
Fax: (602) 364-4931

Arizona Board of Appraisal
15 S. 15th Ave., Suite 103A
Phoenix, AZ 85007
Phone: (602) 542-1558
Fax: (602) 542-1598

Arizona Department of Real Estate
2910 N. 44th Street, #100
Phoenix, AZ 85018
Phone: (602) 771-7799

Any firms or personnel not so licensed, registered or credentialed at the time of award of the DBM Agreement shall be subject to all legal penalties imposed by law, including but not limited to any appropriate disciplinary action by the Registrar of Contractors, Board of Technical Registration, Board of Appraisal and Department of Real Estate.

Failure to obtain proper and adequate licenses, registrations and credentials for award of the DBM Agreement will, in ADOT's sole discretion, constitute a failure to execute the DBM Agreement and result in the forfeiture of the security of the Proposer.

SECTION 2.0 PROCUREMENT PROCESS

2.1 Procurement Method

ADOT is issuing the RFP in accordance with the provisions of Arizona Revised Statutes (“ARS”) Title 28, Chapter 22, Article 1 and other applicable provisions of law.

ADOT will award the DBM Agreement (if at all) to the responsible Proposer offering a Proposal meeting the high standards set by ADOT and which is determined by ADOT, through evaluation based upon the criteria set forth in the RFP in accordance with the foregoing law, to provide the best value to ADOT and to be in the best interest of the State of Arizona.

ADOT will accept Proposals for the Project only from those Proposers ADOT has shortlisted for the procurement based on their responses to the RFQ.

ADOT will not review or consider alternative proposals.

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

The RFP will be posted on ADOT’s public website for the Project. In addition, the RFP will be issued to shortlisted Proposers in electronic format.

ADOT will also issue Addenda to this RFP, confidential Reference Information Documents and other procurement related information to shortlisted Proposers in electronic format.

2.2.1 Authorized Representative

ADOT has designated the following individual to be its authorized representative for the procurement (the “Authorized Representative”):

**Rimpal Shah, Procurement Manager
Arizona Department of Transportation
Contracts and Specifications Section
1651 W. Jackson, MD 121F
Phoenix, Arizona 85007-3212**

e-mail: SMFProcurement@azdot.gov

Please note that the email address is different from that used during the RFQ period and industry review period.

From time to time during the procurement process, ADOT may designate, by notice to the Proposers, another Authorized Representative or representatives to communicate with Proposers on behalf of ADOT in connection with the procurement. ADOT’s Authorized Representative will serve as the sole point of contact with ADOT during the procurement, except during one-on-one meetings or as provided otherwise in Section 2.2.3(c).

2.2.2 Identification of Proposer Designated Representative

Each Proposer shall have one or two designated representatives who is/are authorized to receive documents, communications or notices and to communicate with ADOT on behalf of the Proposer in connection with the procurement. Proposer’s designated

representative shall initially be the person identified in the SOQ as the single point of contact for the Proposer. If a Proposer changes or adds to its initially designated representative subsequent to its submission of its SOQ, Proposer shall provide ADOT's Authorized Representative with the name and address of such new designated representative(s). Failure to identify a designated representative in writing may result in a Proposer failing to receive important communications from ADOT. ADOT is not responsible for any such failure.

2.2.3 Rules of Contact

ADOT is the single source of information regarding the procurement of the DBM Agreement. The procurement process began on the date of issuance of the RFQ, and is anticipated to be completed with the award of the DBM Agreement.

From the date of issuance of the RFQ on October 15, 2014 until approximately April 7, 2015, the communication process as set forth in the RFQ was applicable to this procurement. Between approximately April 7, 2015 and the issuance date of the official RFP set forth in Section 1.7, the communication process applicable to this procurement was governed by a South Mountain Freeway Project Communication Protocol Agreement executed by the Proposers. Starting on the issuance date of the official RFP set forth in Section 1.7, and ending on the earliest of (i) execution and delivery of the DBM Agreement, (ii) rejection of all Proposals by ADOT or (iii) cancellation of the RFP, the rules of contact set forth below shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, facsimile, electronic-mail (e-mail), or formal written communication, either directly or indirectly by an agent, representative, promoter, or advocate of a Proposer.

The specific rules of contact are as follows:

(a) No Proposer nor any of its team members may communicate with another Proposer or its team members with regard to the RFP or either team's Proposal, except that:

(i) Subcontractors that are shared between two or more Proposer teams (where neither this RFP nor the Conflict of Interest Policy set forth in Attachment 1 to the RFQ precludes the Subcontractor from being on more than one Proposer team) may communicate with their respective team members so long as those Proposers establish a protocol to ensure that the Subcontractor will not act as a conduit of information between the teams; and

(ii) this prohibition does not apply to public discussions regarding the RFP at any ADOT-sponsored workshops and meetings.

(b) Each Proposer's designated representative(s) shall be responsible for all communications between the Proposer and ADOT, and such designated representative(s) shall correspond with ADOT regarding the RFP only through ADOT's Authorized Representative. All such communications shall be in writing. ADOT will make reasonable efforts to promptly acknowledge receipt of Proposer correspondence, notices or other communications with ADOT's Authorized Representative. This rule of contact does not apply to communications at one-on-one meetings or in any other forum established pursuant to this RFP.

1 (c) Except in a forum established pursuant to this RFP, the Proposers shall
2 not contact (i) ADOT employees or advisors other than ADOT's Authorized
3 Representative, or (ii) any other person who will evaluate the Proposals regarding the
4 Project or this procurement. The foregoing restriction does not, however, preclude or
5 restrict direct communications between ADOT Risk Management and Proposers or their
6 insurance advisors for the sole purpose of ascertaining and fulfilling ADOT's insurance
7 requirements for encroachment permits during the Proposal period.

8 (d) Except in a forum established pursuant to this RFP, the Proposers shall
9 not contact employees of those parties identified under Section 7.1. The foregoing
10 restriction does not, however, preclude or restrict communications with regard to
11 matters unrelated to the Project and this procurement.

12 (e) Except as set forth in clause (i) or (ii) below, Proposers shall not contact
13 any of the Stakeholders regarding the Project, including employees, representatives,
14 members and consultants of the Stakeholders, without ADOT's advance written
15 approval, which ADOT may grant or withhold in its sole discretion. For clarity, this
16 restriction applies to (and Stakeholders include) the U.S. Army Corps of Engineers, the
17 Bureau of Land Management, all single family residential property owners and lessees
18 along the Project corridor, and all property owners of the Gila River Indian Community
19 or Salt River Pima-Maricopa Indian Community. To obtain ADOT's written approval, a
20 Proposer shall submit to ADOT a written request to contact the Stakeholder no later
21 than five Business Days before the proposed initial contact date. This written request
22 must include the Stakeholder's name, proposed contact date and purpose of contact.

23 After receiving ADOT's written approval to contact a Stakeholder, Proposers
24 shall submit to ADOT written notices of all meetings with the Stakeholder. Except for
25 follow-up meetings, Proposer shall submit the meeting notice to ADOT no later than
26 three Business Days before the scheduled meeting date, and the meeting notice shall
27 include the Stakeholder's name, the date, time and location of the meeting, a list of
28 anticipated attendees, and an agenda. For follow-up meetings, Proposer shall submit
29 the meeting notice to ADOT no later than one Business Day after the meeting takes
30 place, and the meeting notice shall include the Stakeholder's name, the date, time and
31 location of the meeting, the attendees, and a certification that the meeting was a follow-
32 up meeting. For this purpose, a "follow-up meeting" means a meeting with the
33 Stakeholder that includes no agenda items different from or in addition to the agenda
34 disclosed to ADOT for the initial meeting.

35 In certain cases, ADOT's written approval to contact a Stakeholder may include
36 conditions or instructions with which Proposers shall comply when contacting the
37 Stakeholder.

38 Notwithstanding the foregoing, no advance written approval from ADOT is
39 required for Proposer meetings with:

40 (i) Utility Companies, UPRR, the City of Phoenix and permitting
41 agencies (except ADOT permitting offices, the U.S. Army Corps of Engineers and
42 Bureau of Land Management), so long as the Proposer submits to ADOT written notices
43 of all meetings (including follow-up meetings) with these Stakeholders in accordance
44 with this Section 2.2.3(e); and

(ii) private property owners and lessees along the Project corridor, except for single family residential property owners and lessees and property owners of the Gila River Indian Community or Salt River Pima-Maricopa Indian Community, to perform due diligence and discuss aspects of the Proposer's Proposal, including discussing temporary construction easements, staging areas, and waste and borrow sites. As to Proposer discussions with all private property owners or lessees along the Project corridor, including (if ADOT approves) single family residential property owners and property owners of the Gila River Indian Community or Salt River Pima-Maricopa Indian Community, the following requirements shall apply:

(A) the Proposer shall not discuss other Proposers or their Proposals, negotiate exclusive arrangements to the detriment of other Proposers or otherwise seek an unfair competitive advantage;

(B) if the property is eligible for condemnation by ADOT under the terms of the as-issued DBM Agreement, the Proposer shall provide written notice to ADOT of the name of the private property owner and any lessee, the topic of the proposed discussion and the date of the proposed discussion no later than five Business Days in advance of each such meeting;

(C) the Proposer must disclose to the property owner and any lessee that Proposer does not work for ADOT;

(D) if the property is outside the Schematic ROW and eligible for condemnation by ADOT under the terms of the as-issued DBM Agreement, the Proposer must clearly inform the property owner and any lessee that the Proposer's interest is conceptual and that no decision has been made on whether the property will be necessary for the Project; and

(E) Proposers shall not attempt to obtain from such property owners or lessees rights of entry during the procurement.

If a Proposer fails to timely comply with any notice requirement set forth in this Section 2.2.3(e) (including clauses (i) and (ii)), ADOT may require that the Proposer cancel or reschedule the corresponding Stakeholder meeting, in which case the Proposer shall cancel or reschedule the meeting.

(f) If so requested by a Proposer, or at ADOT's election, ADOT may assist the Proposer in its coordination efforts with Stakeholders in order to, among other things, facilitate communications, encourage Stakeholder cooperation in the exchange of information, and help the procurement to proceed in a fair, competitive and transparent manner and with uniform information. Without limiting the foregoing an ADOT representative may join Proposers at meetings they schedule with Stakeholders, subject to availability. If ADOT elects to attend a meeting, ADOT will so notify the Proposer. No Proposer shall use such ADOT participation to seek advice from ADOT regarding design solutions, risk analysis, or interpretation of information, or to engage in any other conduct that would give the Proposer an unfair competitive advantage.

(g) Any Proposer engaging in prohibited communications may be disqualified at the sole discretion of ADOT.

(h) Any official information regarding the Project, or regarding a Proposer's ATCs, other Pre-Proposal Submittals or other confidential information, will be disseminated from ADOT via email or other electronic format.

(i) ADOT will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein. Proposer bears all risk of failure by any Stakeholder to maintain the confidentiality of its communications with Proposer or of information Proposer delivers to any Stakeholder; ADOT does not guarantee such confidentiality.

No correspondence or information from ADOT or anyone representing ADOT regarding the RFP or the Proposal process in general shall have any effect unless it is in compliance with clause (h) above.

2.2.4 Language Requirement

All correspondence regarding the RFP, Alternative Technical Concepts ("ATCs"), Proposals, and Contract Documents are to be in the English language and U.S. customary units. If any original documents required for the Proposal are in any other language, Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Responses Process, and Addenda

2.3.1 Questions and Responses Regarding the RFP and Addenda

In order to facilitate the procurement, Proposers may submit comments, questions, and requests for clarification. Proposer submissions of comments, questions and requests for clarification, and ADOT responses, will be governed by this Section 2.3.1. To the extent responses are provided, they will not be considered part of the Contract Documents, nor will they be relevant in interpreting the Contract Documents, except as they may clarify provisions otherwise considered ambiguous.

Proposers shall be responsible for reviewing the RFP and any Addenda issued by ADOT prior to the Proposal Due Date, and for requesting written clarification or interpretation of any perceived mistake, discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision that Proposer fails to understand. Failure of Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by ADOT.

ADOT will only consider a comment, question or request for clarification that:

- (a) concerns the RFP or procurement process;
- (b) is submitted by a shortlisted Proposer's designated representative;
- (c) is submitted in writing using a completed Exhibit 7 in Microsoft Word format;
- (d) is sequentially numbered with the Proposer's other comments, questions and requests for clarification;
- (e) identifies the document (i.e., this ITP, the DBM Agreement, the Technical Provisions, etc.) to which it relates;

(f) identifies the relevant section number and page number (e.g., Sec. 5.2.1, p. 52) to which it relates or, if it is a general question, so indicates;

(g) includes in quotations the text of the subject provision, unless to do so is impractical due to the length of the provision or the nature of the comment, question or request;

(h) does not disclose the Proposer's identity in the body of the comment, question or request for clarification;

(i) indicates in good faith in Exhibit 7 whether the question is a Category 1, 2, 3 or 4 question, as defined in Exhibit 7;

(j) is within the applicable limit on the number of comments, questions and requests for clarification set forth below;

(k) is submitted to the Authorized Representative via email; and

(l) is actually received by the Authorized Representative prior to the applicable last date and time specified in Section 1.7 or such later date and/or time as may be specified in any Addendum.

Except with respect to one-on-one meetings, no oral comments, questions, or requests for clarification, including those communicated by phone, will be accepted or considered. No comments, questions, or requests for clarification to any other ADOT office, consultant, or employee, or to the FHWA, MAG or other agency, will be considered (see Section 7).

Proposers will be limited to 75 comments, questions and requests for clarifications per RFP version issued, including the final RFP and Addenda; provided, however, that this limit will be increased one time to 100 comments, questions and requests for clarification in response to issuance of Addendum #2. If a comment or question has more than one subpart, each subpart will be considered a separate comment or question. Corrections of typographical errors, incorrect cross references or internal inconsistencies within the Request for Proposals will be excluded from the limitation on the number of comments and questions.

The comments and questions and, if applicable, ADOT's responses will be in writing and will be delivered to all Proposers by email, except that (a) ADOT may choose not to respond in writing to comments and questions during the draft RFP stage and (b) ADOT intends to respond individually to those comments and questions identified by a Proposer or deemed by ADOT as containing confidential or proprietary information relating to Proposer's Proposal or ATCs. ADOT reserves the right to disagree with a Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable law. Under such circumstances, ADOT will inform Proposer and may allow Proposer to withdraw the comment or question, rephrase it, or have it answered non-confidentially or, if ADOT determines that it is appropriate to provide a general response, ADOT will modify the comment or question to remove information that ADOT determines is confidential.

ADOT may rephrase comments, questions and requests for clarification as it deems appropriate, and may consolidate comments, questions, and requests for clarification

concerning the same or similar subject. ADOT contemplates issuing multiple sets of responses at different times during the procurement process. Except for responses to comments and questions relating to Addenda, the last set of responses will be issued no later than the date specified in Section 1.7. A consolidated, final set of questions and answers will be compiled and distributed prior to the Proposal Due Date.

This Section 2.3.1 does not apply to requests for changes in the Proposer's organization or Key Personnel.

2.3.2 Addenda

ADOT reserves the right, in its sole discretion, to revise, modify or change the RFP and/or procurement process at any time before the Proposal Due Date (or, if ADOT requests Proposal Revisions pursuant to Section 5.9, prior to the due date for Proposal Revisions). ADOT will implement any such revisions through issuance of Addenda to the RFP. Addenda will be distributed to Proposers in electronic format, and Proposers will be notified of the issuance of such Addenda. Each Addendum will include an updated list of the Reference Information Documents. If any Addendum significantly impacts the RFP, as determined in ADOT's sole discretion, ADOT may change the Proposal Due Date. ADOT will announce such new date in the Addendum. In addition, if the last date for Proposers to submit questions regarding the RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any clarification requests permitted concerning the Addendum.

Proposer shall acknowledge in its Proposal Letter (Form A) receipt of all Addenda and question and answer responses. Failure to acknowledge such receipt may cause the Proposal to be deemed non-responsive and be rejected. ADOT reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Addendum or response to requests for clarifications. ADOT does not anticipate issuing any Addenda later than five Business Days prior to the Proposal Due Date. However, if the need arises, ADOT reserves the right to issue Addenda after such date. If ADOT finds it necessary to issue an Addendum after such date, then any relevant processes, response times and extension of the Proposal Due Date necessitated by the Addendum will be set forth in that Addendum.

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required for:

(a) Requested changes in a Proposer's organization (as provided in Section 2.10);

(b) Requested changes in Key Personnel (as provided in Section 2.10);

(c) Any Preliminary ATCs and ATCs that a Proposer wishes to be considered (as provided in Sections 3.3 and 3.4);

(d) Request for ADOT approval of credits reducing D&C Price for evaluation purposes due to avoidance of Schematic ROW parcels (as provided in Section 5.6.1); and

(e) Acceptance of the stipend offer, by submitting the Stipend Agreement (as provided in Section 6.3).

Further information regarding the content and page limits for Pre-Proposal Submittals is set forth in Exhibit 6.

Proposers shall submit Pre-Proposal Submittals to the Authorized Representative in accordance with the submittal requirements set forth in the ITP section describing the applicable Pre-Proposal Submittal.

2.5 Pre-Proposal Meetings

2.5.1 Informational Meetings

ADOT may hold joint informational meetings with all Proposers at any time prior to the Proposal Due Date. Informational meetings may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication between all Proposers and ADOT. Written notice of any informational meetings will be sent to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

If any informational meeting is held, each Proposer shall attend with appropriate members of its proposed key management personnel, and if required by ADOT, senior representatives of proposed team members identified by ADOT.

Without limiting the foregoing, Proposers are required to attend and actively participate in one DBE and small business networking/bid outreach workshop event related to the Project coordinated and scheduled by ADOT's Business Engagement & Compliance Office (BECO). The event will take place on June 17, 2015 from 8:00 am to noon (Mountain Standard Time) at Rio Salado College, First Floor Multi-Purpose Room, 2323 W. 14th Street, Tempe, AZ.

2.5.2 One-on-One Meetings

ADOT intends to conduct one-on-one meetings with each Proposer on the dates set forth in Section 1.7, and on such other dates designated by ADOT in writing to the Proposers, to discuss issues and clarifications regarding the RFP and Proposer's ATCs. ADOT reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that ADOT determines, in its sole discretion, such disclosure would impair the confidentiality of an ATC or would reveal a Proposer's confidential business strategies. Participation at such meetings by the Proposers shall be mandatory. FHWA and other Stakeholders may also participate in the ADOT-Proposer one-on-one meetings.

The one-on-one meetings are subject to the following:

(a) the meetings are intended to provide Proposers with a better understanding of the RFP and to provide ADOT with a better understanding of Proposer concerns;

(b) ADOT will not discuss with any Proposer any Proposal or ATC other than its own;

(c) Proposers shall not seek to obtain commitments from ADOT in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer;

(d) nothing said in the meetings by ADOT or the Proposer will constitute a commitment or will be binding;

(e) no aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers; and

(f) no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing rules, and each Proposer will be required to identify all participants from the Proposer whether attending in person or by phone.

The number of individual representatives of the Proposer attending any one-on-one meeting is limited to 12, unless ADOT otherwise approves in writing.

Not later than four days before each one-on-one meeting with a Proposer, the Proposer shall deliver to ADOT its agenda for the one-on-one meeting and any request for attendance by ADOT technical, insurance, risk management or other specialized staff.

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions and ADOT may provide responses. However, any responses provided by ADOT during one-on-one meetings may not be relied upon unless questions were submitted in writing and ADOT provided written responses in accordance with Section 2.3.1 and then only to the extent expressly set forth in the DBM Agreement. The questions and ADOT's responses will be provided in writing to all Proposers, except to the extent such questions are deemed by ADOT to contain confidential or proprietary information relating to a particular Proposer's Proposal or ATCs.

2.5.4 Statements at Meetings

Nothing stated at any pre-proposal meeting or included in a written record or summary of a meeting will modify the ITP or any other part of the RFP unless it is incorporated in an Addendum issued pursuant to Section 2.3.2.

2.6 Confidentiality and Public Disclosure of Proposal Materials

2.6.1 Public Records

Subject to the provisions of the DBM Agreement regarding ownership of Detailed Pricing Documents, all written documents, correspondence, exhibits, photographs, reports, printed material, tapes, electronic disks, and other graphic and visual aids submitted to ADOT during this procurement, including as part of the response to this RFP, become the public records of ADOT upon receipt and are subject to the Arizona Revised Statutes, Section 28-7707 and the Public Records Act. Proposers should familiarize themselves with the provisions of the Arizona Revised Statutes, Section 28-7707 and the Public Records Act. None of the aforementioned materials will be returned to the submitting parties.

2.6.2 Disclosure Consent and Waiver

By submitting an ATC or a Proposal to ADOT in response to the RFP, each Proposer:

(a) consents to the disclosures described in this ITP, including the disclosures in this Section 2.6 and all other disclosures required by any law relating to the confidentiality or disclosure of information, including Arizona Revised Statutes, Section 28-7707 and the Public Records Act;

(b) expressly waives any right to contest, impede, prevent or delay such disclosure, or to initiate any proceeding that may have the effect of impeding, preventing or delaying such disclosure; and

(c) agrees to assist ADOT in complying with these disclosure requirements if it is selected as the Preferred Proposer; and

(d) agrees that in no event shall ADOT or any of its agents, representatives, consultants, directors, officers, or employees be responsible or liable to the Proposer or any other party as a result of the disclosure of all or a portion of the Proposal or other materials submitted under this RFP, whether the disclosure is deemed required by law or by an order of court or occurs through inadvertence, mistake or negligence on the part of ADOT or its agents, representatives, consultants, directors, officers, or employees.

2.6.3 Observers During Evaluation

Proposers are advised that observers from federal or other agencies, including representatives of local agencies and municipalities, may observe or participate in the Proposal evaluation process and will have the opportunity to review the Proposals after the Proposal Due Date. ADOT has agreed to allow FHWA officials and their outside advisors to oversee the procurement process, which includes access to the Financial Proposals. Outside observers will be required to sign ADOT's standard confidentiality agreement; provided that FHWA officials may elect to be governed by FHWA confidentiality regulations and policies.

2.6.4 Public Disclosure of Documents

ADOT, in its sole discretion, may publicly disclose:

(a) at any time, the RFP, including Reference Information Documents and any Addenda;

(b) at any time, comments and questions from Proposers (without identifying the source) and responses by ADOT, except comments and questions identified by a Proposer or deemed by ADOT as containing confidential or proprietary information relating to Proposer's Proposal or ATCs;

(c) at any time, the information contained in the Executive Summary (described in Exhibit 2, Section 3.1), as provided in Arizona Revised Statutes section 28-7707B;

(d) at any time after the award of the DBM Agreement, the bottom line pricing from each Proposer for design and construction, for maintenance, and in total; and

(e) at any time after the award of the DBM Agreement and conclusion of any protest or other challenge to the award, each Proposal, with the exception of the following unless disclosure is ordered by a court:

- (i) non-public financial statements of privately held entities; and
- (ii) any information in the Proposal that is exempt from disclosure under the Public Records Act and that the Proposer previously designated in accordance with Section 2.6.5.

2.6.5 Disclosure Process for Public Records Requests

In accordance with A.R.S. Section 28-7707(B), ADOT will not release any part of the Pre-Proposal Submittals or Proposal, other than the Executive Summary, before final award of the DBM Agreement and the conclusion of any protest or other challenge unless an administrative or judicial order requires release. After ADOT awards the DBM Agreement and after any protest or other challenges have concluded, ADOT will release Proposals in accordance with the Public Records Act. ADOT may, however, redact or withhold information exempt from disclosure under the Public Records Act, such as trade secrets and proprietary information in proposals, but only if the Proposer has complied with A.R.S. Section 28-7707(A) and any other applicable law.

If Proposer believes information in a Pre-Proposal Submittal or the Proposal constitutes trade secrets, proprietary information or other information that is excepted from disclosure under the Public Records Act, Proposer shall be solely responsible for specifically and conspicuously designating that information as “CONFIDENTIAL”. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim. Proposers shall not place any such designation on Form J or the Executive Summary; and any such designation shall have no effect. Such a designation placed on the Price Proposal of the Proposer that receives the award of the DBM Agreement shall have no effect. Blanket, all-inclusive identifications by designation of whole pages or sections as containing trade secrets, or confidential commercial, financial or proprietary information, shall not be permitted and shall be deemed invalid. The specific trade secrets, or confidential commercial, financial or proprietary information, must be clearly identified as such.

The Proposer is solely responsible for determining, and must secure its own legal counsel concerning, the applicability of A.R.S. Section 28-7707 (including what may or may not constitute a “trade secret”), the Public Records Act and other laws to the Proposer’s own circumstances. ADOT is not required to adopt the Proposer’s interpretations and assertions.

If ADOT receives a request for public disclosure of materials marked “CONFIDENTIAL,” ADOT will use reasonable efforts to notify Proposer of the request and give Proposer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Arizona Public Records Act or A.R.S. Section 28-7707 within the time period specified in the notice issued by ADOT and allowed under the Arizona Public Records Act. Under no circumstances, however, will ADOT be responsible or liable to Proposer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of ADOT or its officers, employees, contractors or consultants.

1 | If any proceeding or litigation is brought concerning the disclosure of any material
2 | submitted by Proposer to ADOT, ADOT will defend against disclosure so long as ADOT
3 | believes that A.R.S. Section 28-7707 applies to protect the material from disclosure.

4 | If any proceeding or litigation is brought concerning the disclosure of any material
5 | submitted by Proposer to ADOT, and ADOT believes that A.R.S. Section 28-7707 does
6 | not apply to protect the material from disclosure, then ADOT's sole involvement will be
7 | as a stakeholder retaining the material until otherwise ordered by a court or such other
8 | authority having jurisdiction with respect thereto, and Proposer shall be fully responsible
9 | for otherwise prosecuting or defending any action concerning the materials at its sole
10 | cost and risk; provided, however, that ADOT reserves the right, in its discretion, to
11 | intervene or participate in the litigation in such manner as it deems necessary or
12 | desirable.

13 | Nothing contained in this Section 2.6.5 shall modify or amend requirements and
14 | obligations imposed on ADOT by the Public Records Act or other applicable Law, and
15 | the provisions of the Public Records Act or other Laws shall control in the event of a
16 | conflict between the procedures described above and the applicable Law. Each
17 | Proposer is advised to contact legal counsel concerning such Law and its application to
18 | Proposer.

19 | By submitting a Pre-Proposal Submittal or Proposal to ADOT in response to this RFP,
20 | the Proposer acknowledges that ADOT may provide any portion or all of the documents
21 | to its legal counsel for the purpose of obtaining legal advice. Submission of a Pre-
22 | Proposal Submittal or Proposal constitutes consent to, and expressly waives any right
23 | to contest, this limited disclosure.

24 | **2.7 Examination of RFP and Site Access**

25 | **2.7.1 Examination of RFP**

26 | Each Proposer shall be solely responsible for examining, with appropriate care and
27 | diligence, the RFP, including Reference Information Documents and any Addenda, and
28 | material ADOT provides in electronic format, and for informing itself with respect to any
29 | and all conditions that may in any way affect the amount or nature of its Proposal, or the
30 | performance of Developer's obligations under the Contract Documents. Each Proposer
31 | shall also be responsible for monitoring its email for information concerning the RFP
32 | and the procurement. The Proposal Letter (Form A) shall include an acknowledgment
33 | that Proposer has received and reviewed all materials provided. Failure of Proposer to
34 | so examine and inform itself shall be at its sole risk, and ADOT will provide no relief for
35 | any error or omission.

36 | Each Proposer is responsible for conducting such investigations as it deems
37 | appropriate in connection with its Proposal, regarding the condition of existing facilities
38 | and Site conditions, including Hazardous Materials, and permanent and temporary
39 | Utility appurtenances, keeping in mind the provisions in the DBM Agreement regarding
40 | assumption of liability by Proposer. Proposer's receipt of ADOT-furnished information
41 | does not relieve Proposer of such responsibility.

42 | The submission of a Proposal shall be considered prima facie evidence that Proposer
43 | has made the above-described examination and is satisfied as to the conditions to be

encountered in performing the Work, and as to the requirements of the Contract Documents.

2.7.2 Site Access

Pursuant to Arizona Administrative Code, Title 17, Chapter 3, Article 5, Proposers may apply for an encroachment permit allowing access to portions of the Schematic ROW owned by or in the possession of the State for purposes of inspecting in-place assets and determining Site conditions through investigations, through the Proposal Due Date, provided that the conditions of the permit are met. The application may include multiple parcels but must specifically identify, by parcel, the activities to be conducted, equipment to be used and the like. This work may include surveys and site investigations, such as geotechnical, Hazardous Materials and Utilities investigations (including potholing), except any ground-disturbing activities in the Center Segment. ADOT may impose conditions and restrictions to assure entry and investigations are not harmful, and may deny access to the Center Segment and other environmentally sensitive parcels. Exhibit 8 is the standard Application for ADOT Encroachment Permit.

After NTP 1 has been issued, the selected Proposer will be allowed access to the Project Right of Way that ADOT owns or holds the right of possession, in accordance with the process described in the DBM Agreement, in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and utilities investigations, and to engage in the other activities referenced in the Contract Documents that are allowed prior to NTP 2.

2.8 Errors

If any mistake, error, or ambiguity is identified by Proposer at any time during the procurement process in any of the documents supplied by ADOT, Proposer shall notify ADOT of the recommended correction in writing in accordance with Section 2.3.1.

2.9 Non-Collusion

Neither Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form F).

2.10 Changes in Proposer's Organization or Key Personnel

Proposers are advised that, in order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by ADOT, Proposer's organization and Key Personnel as identified in the SOQ must remain intact for the duration of the procurement process through award of the DBM Agreement. Accordingly, following submittal of the SOQs, the following actions may not be undertaken without ADOT's prior written consent:

- (a) Deletion or substitution of a Proposer team member identified in its SOQ;
- (b) Deletion or substitution of Key Personnel identified in its SOQ;
- (c) Deletion or substitution of an Equity Member identified in its SOQ, or any other entity identified in its SOQ that will bear financial responsibility or liability for the performance of the Proposer or Developer; and

(d) Other changes, direct or indirect, in the equity ownership or team membership of a Proposer as identified in its SOQ.

Should a Proposer wish to make such a change, it shall notify ADOT and request its consent in writing and shall provide, for any new or substitute entity or personnel, the same information required under the RFQ for such entity or personnel had it, he or she been part of the Proposer team as of the SOQ submission (including, without limitation, legal, financial, qualifications/ experience, and other information). If a Proposer wishes to delete an entity or change Key Personnel, the Proposer shall provide ADOT with information establishing that the Proposer remains qualified for shortlisting as contemplated under the RFQ, including meeting the pass/fail and technical evaluation criteria. Any such request shall be addressed to ADOT at the address set forth in Section 2.2.1. For a change in Key Personnel, the request shall be accompanied by Form G, which shall include three references for each proposed individual, and a resume (maximum of two pages) of each proposed individual.

Except as provided herein or in the Contract Documents, a Proposer may not request or make any changes in the team members or Key Personnel identified in its SOQ after the applicable last date and time set forth in Section 1.7. Between the applicable date set forth in Section 1.7 and execution of the DBM Agreement, ADOT will consider requests by Proposers to make changes in Proposers' organization or Key Personnel based only on unusual circumstances beyond Proposer's control.

If the Preferred Proposer requests any such change, or any change in any other team members or personnel identified in its Proposal, after evaluation of Proposals and before execution of the DBM Agreement, it shall submit such information as may be required by ADOT to demonstrate that the proposed deletions, substitutions and changes meet the RFP criteria (pass/fail and technical) and would not change the outcome of the Proposal rankings.

Proposer shall submit an original and five additional hard copies of each request package plus one identical electronic copy; however, ADOT will require only one original and two copies of financial statements, which may be submitted in a separate sealed envelope. Proposer shall deliver such submission to ADOT's Authorized Representative at the address set forth in Section 2.2.1.

ADOT intends to respond to requests for changes within the time period reflected in Section 1.7. ADOT is under no obligation to approve requests for changes in the Proposer's organization, Key Personnel or other identified personnel, and may approve or disapprove in writing a portion of the request or the entire request in its sole discretion. Any such change made without the written consent of ADOT may, at ADOT's sole discretion, result in the Proposer being disqualified.

2.11 Non-Exclusive Relationships with ROW Consultants

Many qualified consultants with ROW acquisition and relocation service experience are or have been under contract with ADOT to assist ADOT with ROW acquisition and relocation services for the Project. ADOT has granted such ROW consulting firms organizational conflict of interest waivers to allow such firms to team with Proposers. Such waivers are subject to two terms and conditions affecting Proposers:

- 1 • The firm shall not release or disclose to any Proposer or team member of any
2 Proposer any information that the firm has received or will receive from ADOT or
3 that the firm has generated or will generate for ADOT under any contract with
4 ADOT, past or present, until it is released by ADOT to all Proposers. This
5 includes survey, title, valuation and similar information; and
- 6 • The firm that is or has been under contract with ADOT may not engage with any
7 such proposer on an exclusive basis.

8 In order to further effectuate these terms and conditions, Proposers are advised as
9 follows:

10 (a) To ensure a fair procurement process, Proposers are forbidden from
11 entering into exclusive teaming arrangements with consultants for ROW acquisition and
12 relocation services, regardless of whether currently under contract with ADOT; provided
13 that if the Proposer's SOQ identified an employee of such a ROW consulting firm as
14 filling a Key Personnel position for the Proposer, then the Proposer may require that
15 such employee not participate with other Proposers. The market for qualified
16 consultants with ROW acquisition and relocation service experience is small enough in
17 relation to the amount of ROW acquisition work for the Project that exclusive teaming
18 arrangements between such consultants and Proposers would give Proposers in
19 exclusive arrangements a distinct and unfair advantage over other Proposers.

20 (b) Proposers are forbidden from requesting, soliciting or obtaining from such
21 firms any information that the firm has received or will receive from ADOT or that the
22 firm has generated or will generate for ADOT under any contract with ADOT, past or
23 present, respecting the Project, until ADOT discloses such information to all Proposers.
24 As indicated in Section 1.5.4 above, ADOT will be sending emails to the shortlisted
25 Proposers updating the ROW acquisition and relocation data and information during the
26 course of this procurement, so that this information becomes available to all Proposers
27 contemporaneously.

28 Each Proposer must include in its Proposal Letter (Form A) a certification that it has
29 adhered to the foregoing prohibitions. Failure to so certify, or violation of either
30 prohibition, may disqualify the Proposal from further consideration, in ADOT's sole
31 discretion. Such disqualification will result in the forfeiture of Proposer's Proposal
32 Security.

33 ADOT will not assign its contracts with its ROW consultants; the Developer will be
34 responsible for obtaining subcontracts with any such ROW consultants it wishes to
35 engage.

SECTION 3.0 ALTERNATIVE TECHNICAL CONCEPTS

3.1 Alternative Technical Concepts

Sections 3.1 through 3.8 set forth a process for pre-Proposal review of ATCs conflicting with the requirements for design, construction and maintenance of the Project, or otherwise requiring a modification of the Technical Provisions. This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing ADOT to consider Proposer ATCs in making the selection decision, to avoid delays and potential conflicts in the design associated with deferring reviews of ATCs to the post-award period, and, ultimately, to obtain the most value for the public.

ATCs eligible for consideration hereunder shall be limited to those deviations from the technical requirements of the as-issued Contract Documents that result in quality and performance (which phrase, as used in this Section 3.0, includes reliability and utility) of the end product that is equal to or better than the quality and performance of the end product absent the deviation, as determined by ADOT in its sole discretion. A concept is not eligible for consideration as an ATC if, in ADOT's sole judgment, it is premised upon or would require or result in:

(a) a reduction in the Basic Configuration or other scope of work set forth in the as-issued Contract Documents, provided that a reduction in the Schematic ROW will not render a concept ineligible for consideration as an ATC;

(b) a reduction in quantities without achieving equal or better quality and performance;

(c) a reduction in quality or performance;

(d) major changes to the environmental documents, including the NEPA Approvals, such as the need for a supplemental environmental impact statement;

(e) the addition of a separate ADOT project to the DBM Agreement (such as expansion of the scope of the Project to include additional roadways);

(f) a Change in Law; or

(g) an increase in the amount of time required for Substantial Completion of the Work beyond the deadline set forth in Form Q.

Any ATC that has been pre-approved may be included in the Proposal, subject to the conditions set forth herein.

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or if that concept would be considered an ATC by ADOT, ADOT recommends that Proposer submit such concept for review as a Preliminary ATC.

3.2 ATC Risk Allocations

3.2.1 Conditions of ATC Approval

If Developer does not comply with one or more ADOT conditions of pre-approval for an ATC, then:

(a) Developer will be obligated to develop the Project in accordance with the original requirements of the RFP and the Contract Documents and with existing third party approvals without regard to the ATC;

(b) Developer will not be entitled to a Supplemental Agreement for additional compensation or time under the DBM Agreement; and

(c) if applicable, ADOT will be entitled to a reduction in the D&C Price, Maintenance Price and deadline for Substantial Completion.

3.2.2 Third Party Approvals

If implementation of an ATC approved by ADOT will require approval by a third party (e.g., a governmental authority), Proposer shall have full responsibility for, and, except as expressly provided otherwise in the DBM Agreement, shall bear the full risk of, obtaining any such approvals after award of the DBM Agreement; provided, however, that ADOT shall retain its role as liaison with any governmental authorities as more particularly described in the Contract Documents, as applicable. Without limiting the foregoing, and subject to Section 3.1(d), ATCs that, if implemented, would require further environmental evaluation of the Project, such as a re-evaluation of the environmental impact statement, or would require new or modified Governmental Approvals, may be allowed in ADOT's sole discretion, provided that Developer will bear the schedule and cost risk associated with such additional environmental evaluation or new or modified Governmental Approvals.

If Developer is not able to obtain any third party approval, including any new or modified Governmental Approvals, necessary to implement the ATC, then:

(a) Developer will be obligated to develop the Project in accordance with the original requirements of the RFP and the Contract Documents and with existing third party approvals without regard to the ATC;

(b) except as expressly provided otherwise in the DBM Agreement, Developer will not be entitled to a Supplemental Agreement for additional compensation or time under the DBM Agreement; and

(c) if applicable, ADOT will be entitled to a reduction in the D&C Price, Maintenance Price and deadline for Substantial Completion.

3.2.3 Additional ROW Acquisitions

If an ATC approved by ADOT requires additional ROW, then:

(a) Developer will be responsible for all related costs, including acquisition prices, severance damages, (including cost-to-cure damages), relocation costs and demolition costs, and will not be entitled to any Supplemental Agreement for any cost associated with the acquisition of such ROW;

(b) Developer will not be entitled to any Supplemental Agreement for additional time or money as a result of any delay associated with the acquisition of such ROW, except any delay risk for ADOT-Caused Delay as set forth in the DBM Agreement; and

(c) except as expressly provided otherwise in the DBM Agreement, Developer will not be entitled to any Supplemental Agreement for time or money as a result of Site conditions (i.e., Hazardous Materials, Differing Site Conditions, geotechnical issues, archeological and paleontological resources, species, Utilities, etc.) on such additional ROW.

3.3 Preliminary ATCs

At its option, Proposer may submit preliminary ATCs ("Preliminary ATC") between the date of issuance of this RFP until the applicable last date and time for submittal of Preliminary ATCs identified in Section 1.7. Preliminary ATCs shall present a preliminary concept (in drawings or diagrams where applicable) and a brief narrative of the ATC and its benefits sufficient to provide an understanding of the ATC. The Preliminary ATC must be no more than 2 pages each on 8½" x 11" and/or 11" x 17" paper. Each Proposer may submit up to 20 Preliminary ATCs. Proposers shall submit one original and five additional hard copies of each Preliminary ATC, plus one electronic copy in a read-only, searchable format in Adobe Acrobat (.pdf) format on CD(s), DVD(s) or USB flash drive(s), with design drawings in Adobe Acrobat (.pdf) format and in Bentley MicroStation format. This limit of 20 Preliminary ATCs does not apply to fully developed ATCs submitted pursuant to Section 3.4.

ADOT will review each Preliminary ATC and inform each Proposer submitting Preliminary ATCs as to whether ADOT will consider a formal ATC based on the Preliminary ATC. ADOT may also inform Proposers as to whether a Preliminary ATC takes advantage of any ambiguity, conflict, error, omission or mistake in the RFP, including Technical Provisions or other documents incorporated into the Technical Provisions by reference, in which case ADOT will not consider the Preliminary ATC and will revise the RFP to correct the ambiguity, conflict, error, omission or mistake.

ADOT in no way warrants that a favorable response to a Preliminary ATC will translate into a favorable response to an ATC submittal. Likewise, a favorable response to a Preliminary ATC submittal is not sufficient to include the ATC in a Technical Proposal.

A Preliminary ATC is not a prerequisite to submitting an ATC under the RFP.

3.4 Submission of ATCs

3.4.1 ATC Submission Deadlines and Review Periods

At its option, Proposer may submit ATCs for review to ADOT's Authorized Representative specified in Section 2.2.1 until the applicable last date and time for submittal of ATCs identified in Section 1.7. Proposers are encouraged to submit ATCs at any time prior to the stated deadlines.

ADOT intends to respond to the ATC submissions within the time period reflected in Section 1.7; provided, however, that this time period for ADOT's response may be extended in ADOT's sole discretion based on the number and complexity of the ATC submissions and other Pre-Proposal Submittals in receipt at any one time. ADOT reserves the right to respond to ATC submissions in whatever order it chooses in order to expedite reviews, but does not intend to use this reservation to discriminate in favor of any one Proposer over any other Proposer. Proposers are encouraged to also

1 indicate in their ATC submissions their preferred prioritization of their submitted ATCs
2 for ADOT review, but ADOT shall not be bound by such prioritization.

3 **3.4.2 ATC Submittal Requirements**

4 | ATC submissions shall be submitted in writing. Proposers shall submit one original and
5 ten hard copies of each ATC, plus one electronic copy in a read-only, searchable format
6 in Adobe Acrobat (.pdf) format on CD(s), DVD(s) or USB flash drive(s), with design
7 drawings in Adobe Acrobat (.pdf) format and in Bentley MicroStation format.

8 | ATC submissions shall include:

9 (a) a cover sheet identifying Proposer, stating “Loop 202, South Mountain
10 Freeway – Confidential ATCs” and clearly identifying the submittal as a request for
11 review of an ATC under this ITP. If a Proposer does not clearly designate its submittal
12 as an ATC, the submission will not be treated as an ATC by ADOT;

13 (b) a sequential ATC number identifying the Proposer and the ATC number
14 (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with
15 unique sequential numbers);

16 (c) a conspicuous designation of the ATC, on its cover sheet, as either
17 “Major” or “Minor”, based on the Proposer’s own determination of which ATCs are most
18 important to the Proposer;

19 (d) a narrative description and conceptual drawings of the configuration of the
20 ATC or other appropriate descriptive and technical information;

21 (e) the locations where, and an explanation of how, the ATC will be used on
22 the Project;

23 (f) any changes in roadway operation requirements associated with the ATC,
24 including ease of operations;

25 (g) any changes in routine or capital maintenance requirements associated
26 with the ATC, including ease of maintenance;

27 (h) any changes in the maintenance transition requirements associated with
28 the ATC;

29 (i) any changes in the anticipated life of the components and items
30 comprising or affected by the ATC;

31 (j) any reduction in the time period necessary to design and construct the
32 Project resulting from implementing the ATC, including, as appropriate, a description of
33 method and commitments;

34 (k) references to requirements of the RFP that are inconsistent with the
35 proposed ATC, an explanation of the nature of the deviations from said requirements,
36 and a request for approval of such deviations;

37 (l) an analysis justifying use of the ATC, including explanations of (i) why the
38 deviations, if any, from the requirements of the RFP should be allowed, and (ii) how the
39 ATC is equal or better in quality and performance as compared to the requirements of
40 the Contract Documents, as applicable;

(m) if and what Schematic ROW parcels or partial parcels that are not yet acquired will be avoided in whole or in part as a result of the ATC, including, if applicable, the information and documentation set forth in Section 5.6.1;

(n) if and what additional ROW will be required to implement the ATC;

(o) a preliminary analysis on the need for additional environmental analysis and the potential impacts on environmental permitting and clearances, the surrounding community, safety, design, construction, operations and maintenance;

(p) a preliminary traffic operational analysis quantifying potential impacts of the ATC on vehicular traffic (both during and after construction) if the ATC proposes modifications to network configuration, interchange or intersection design, or signal timing, as set forth in the Technical Provisions, which analysis shall include (i) the proposed modifications to the traffic demand inputs included in the Reference Information Documents, (ii) supportive schematic drawings of the proposed revisions to the AM and PM peak period volumes, and (iii) the rationale for those revisions;

(q) a detailed, quantified estimate of the impact of the ATC on the D&C Price and Maintenance Price should the ATC be approved and implemented;

(r) an estimate of any additional life-cycle costs or life-cycle cost savings to ADOT (other than those captured within the D&C Price and Maintenance Price) and third parties associated with implementation of the ATC, including costs of Project operations;

(s) a description of added or reduced risks to ADOT or third parties associated with implementing the ATC;

(t) if the ATC includes a technique, application, method, means or material that has not been used by ADOT in the past or for which there is no ADOT specification, a technical specification addressing the technique, application, method, means or material, as applicable; and

(u) a description of other projects (if any) where the ATC has been used, the degree of success or failure of such usage, and names and contact information including phone numbers and e-mail addresses for project owner representatives that can confirm such statements.

3.5 ADOT Responses to Proposed ATCs

ADOT may request additional information regarding proposed ATCs at any time. ADOT will respond to an ATC after it has received all required and requested information regarding such ATC.

ADOT's responses will be limited to one of the following statements:

(a) the ATC is acceptable for inclusion in the Proposal;

(b) the ATC is not acceptable for inclusion in the Proposal;

(c) the ATC is not acceptable in its present form, but may be acceptable upon the satisfaction, in ADOT's sole discretion, of certain identified conditions that must be met or clarifications or modifications that must be made. Such conditions may include that ADOT accepts the ATC in part and rejects the ATC in part;

(d) the submittal does not qualify as an ATC but may be included in Proposer's Proposal because it appears to conform to the RFP requirements; provided, however, that should it turn out that the concept as incorporated into the Proposal does not conform to the RFP requirements, ADOT reserves the right to require compliance with the RFP and Contract Documents (without regard to ADOT's response to the submittal), in which event the Proposer will not be entitled to modify its Proposal and Developer shall not be entitled to a Supplemental Agreement for additional compensation or a time extension under the DBM Agreement; or

(e) the submittal does not qualify as an ATC and may not be included in the Proposer's Proposal.

Each Proposer will have the opportunity, at its election, to discuss its proposed ATCs at the second one-on-one meeting. If a Proposer chooses to request discussion of such ATCs at the second scheduled one-on-one meeting, the Proposer shall deliver to ADOT, no later than two Business Days before the meeting, a written agenda regarding the ATCs it wishes to discuss. Thereafter, ADOT will make a preliminary determination on whether to accept and approve an ATC for submission. Each Proposer will then have an opportunity at the third scheduled one-on-one meeting to further discuss the ATCs that were preliminarily given conditional approval or were rejected. If a Proposer chooses to request discussion of such ATCs at the third scheduled one-on-one meeting, the Proposer shall deliver to ADOT, no later than two Business Days before the meeting, a written agenda regarding the ATCs it wishes to discuss. In addition, each Proposer will have the opportunity to submit to ADOT, by the deadline set forth in Section 1.7, revised ATCs that address ADOT's conditions to approval or other comments on ATCs originally submitted by the August 5, 2015 deadline set forth in Section 1.7. For clarity, ADOT will not accept or review any submittal delivered to ADOT after August 5, 2015 that ADOT determines contains a new ATC unrelated to ADOT's prior conditions to approval or other comments. After the deadline for revised ATCs, ADOT will provide a final determination regarding the ATCs included on Proposer's meeting agenda and discussed during the meeting or that are the subject of revised ATCs submitted by the deadline set forth in Section 1.7. Preliminary determinations for the ATCs not included on the Proposer agenda, or shown on the Proposer agenda but not discussed by the Proposer in the third scheduled one-on-one meeting, and not the subject of a revised ATC, will be deemed final.

ADOT's approval of an ATC is limited to the specific Proposer and the deviations from the requirements of the Contract Documents that the Proposer expressly identifies as deviations in the narrative of the proposed ATC and for which the Proposer expressly requests and obtains approval in ADOT's approval letter. Proposers will be responsible for ensuring that the ATCs submitted with the Proposal comply with the requirements of the RFP, as modified by approval of the ATC. All other requirements and conditions of the Contract Documents remain in full force and effect and must be satisfied by the Proposer.

Proposers may elect not to include in their Proposals ATCs that ADOT previously approved. Instructions for inclusion in the Proposal of approved ATCs are set forth in Section 4.1 of Exhibit 2.

Each Proposer, by submitting its Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers, and waives any right to object to ADOT's determinations regarding acceptability of ATCs and any ATC price adjustments made in accordance with Section 3.7 and Section 5.6.

Neither acceptance nor rejection by ADOT of an ATC will entitle Proposer to an extension of the Proposal Due Date or the date that the ATCs are due; provided, however, that the foregoing shall not limit ADOT's absolute and sole right to modify the Proposal Due Date or any other date in connection with this procurement.

ADOT anticipates that its comments provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to its ATCs. If, however, a Proposer wishes additional clarifications regarding necessary changes, Proposer may provide a written request for clarifications under Section 2.3.1, in each case subject to the deadlines set forth in Section 1.7.

3.6 Correction of Ambiguities and Errors

If ADOT determines, based on a proposed ATC or otherwise, that the RFP, including Technical Provisions or other documents incorporated into the Technical Provisions by reference, contains an ambiguity, conflict, error, omission or mistake, ADOT reserves the right to modify the RFP to correct the ambiguity, conflict, error, omission or mistake, regardless of any impact on a proposed ATC.

3.7 Proposal Price Adjustments for ATCs

If ADOT determines that implementation of the ATC will decrease overall project costs but will result in an increase in ADOT's costs, ADOT will provide in the ATC approval letter the amount of such increased ADOT costs as estimated by ADOT. If the Proposer includes the ATC in its Proposal, then such amount shall be an ATC cost adjustment and shall be added to the D&C Price and Maintenance Price, as applicable, for evaluation purposes only, in accordance with Section 5.6.

For credits available for ATCs that avoid acquisitions of parcels or portions of parcels within the boundaries of the Schematic ROW, please see Section 5.6.1.

3.8 Incorporation of ATCs in DBM Agreement Documents

Following Conditional Award, the ATCs that were pre-approved by ADOT and incorporated in the Proposal by the successful Proposer shall be included in the Contract Documents. If ADOT responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Contract Documents. The Contract Documents will be conformed after Conditional Award, but prior to execution of the DBM Agreement, to reflect the ATCs, including any ADOT conditions thereto.

Prior to execution of the DBM Agreement, ATCs from unsuccessful Proposers who have delivered signed Stipend Agreements accepting the stipend offer under Section 6.3 may, in ADOT's sole discretion, be presented to the selected Developer for possible incorporation in the Contract Documents during negotiation of the final terms of the DBM Agreement pursuant to Section 5.11. Notwithstanding the foregoing, in the event ADOT establishes a competitive range of the most highly ranked Proposals based on

1 initial scoring, ADOT will not disclose the ATC of a Proposer in the competitive range to
2 any other Proposer in the competitive range prior to execution of the DBM Agreement.

3 | In addition, following execution of the DBM Agreement and payment to the eligible,
4 unsuccessful Proposers of a stipend under Section 6.3, ATCs from unsuccessful
5 Proposers who have accepted the stipend offer may, in ADOT's sole discretion, be
6 presented to the selected Developer as an ADOT-Directed Change in accordance with
7 the DBM Agreement.

8 **3.9 Confidentiality of ATCs**

9 **3.9.1 Proposer Duty of Confidentiality**

10 Proposer shall not make any public announcement or disclosure to third parties
11 concerning any ATC until after pre-approval (including conditional pre-approval) has
12 been obtained from ADOT. Following pre-approval (including conditional pre-approval),
13 if a Proposer wishes to make any such announcement or disclosure, it must first notify
14 ADOT in writing of its intent to take such action, including details as to date and
15 participants, and obtain ADOT's prior written consent, in its sole discretion, to do so.

16 **3.9.2 ADOT Duty of Confidentiality**

17 | Subject to Section 3.8 and 3.9.3, the Public Records Act and other applicable law,
18 ADOT will maintain the confidentiality of ATCs and all communications regarding ATCs
19 until the first to occur of:

20 (a) execution of the DBM Agreement and payment of stipends to all
21 unsuccessful Proposers that accepted the stipend offer and are eligible to receive the
22 stipend;

23 (b) cancellation of the procurement without selection of a Preferred Proposer;
24 or

25 (c) such other date as may be prescribed under the Public Records Act or
26 other applicable Law or by court order.

27 | At such time, all confidentiality rights of Proposers shall be of no further force and effect
28 except as otherwise allowed under the Public Records Act, applicable law, and
29 Sections 2.6 and 6.3 and the Stipend Agreement.

30 **3.9.3 Exceptions**

31 | By accepting the offer of a stipend and submitting a Proposal, Proposer agrees to
32 disclosure of its work product (including its ATCs and its Technical Proposal):

33 (a) to the Preferred Proposer after Conditional Award, if the Proposer is not
34 selected as the Preferred Proposer and is not in the "competitive range" (see 23 CFR §
35 636.405) (if any); and

36 (b) to the Developer after execution of the DBM Agreement and payment of
37 stipends to all unsuccessful Proposers eligible to receive the stipend.

38 The confidentiality provisions of Section 3.9.2 shall not preclude ADOT from exercising
39 any of its rights with respect to ATCs, as set forth in Section 3.0, including the right to

- 1 modify the RFP following submission of an ATC to address issues raised by or arising
2 out of an ATC.
- 3 ADOT's receipt of an ATC incorporating a concept (such as an alternative design
4 solution or a value engineering proposition) that ADOT concurrently or previously
5 considered or received separately from Proposer ATCs shall not be treated as a
6 confidential concept. The fact that ADOT receives such a concept as an ATC shall not
7 prohibit ADOT from amending the RFP to allow all Proposers to adopt such concept.
8

**SECTION 4.0 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND
ACCEPTANCE OF DELIVERY BY ADOT**

4.1 General Proposal Submittal Requirements

Each Proposal shall include the Proposal Security in the form of Form K-1 or K-2, and a Technical Proposal, a Financial Proposal and a Price Proposal meeting the requirements set forth in Exhibits 2, 3, 4 and 6, respectively.

4.1.1 Proposal Due Date, Time and Location

All Proposals must be received no later than 2:00 pm (Mountain Standard Time) on the Proposal Due Date specified in Section 1.7. All Proposals shall be delivered in person, courier or by mail using the U.S. Postal Service to the following address:

ARIZONA DEPARTMENT OF TRANSPORTATION

CONTRACTS AND SPECIFICATIONS SECTION

2739 E. WASHINGTON STREET

PHOENIX, AZ 85034-1422

ATTENTION: RIMPAL SHAH, PROCUREMENT MANAGER

4.1.2 Signatures Required

The Proposal Letter (Form A) shall be signed in blue ink by all Equity Members, and shall be accompanied by evidence of signatory authorization as specified in Form A.

4.1.3 Certified Copies

Where certified copies of the Proposal are required, Proposer shall mark the document or cover with the words "Certified True Copy" and have the mark oversigned by the Proposer's designated representative(s). Such signature may be done directly or through authorized graphic reproduction of such individual's signature. For certified copies of the Price Proposal, only the envelopes containing the certified copies shall be marked and signed.

4.1.4 Conflict Between Electronic and Paper Copies of Proposal

If there is a conflict between paper and electronic copies of the Proposal, the paper copy shall control and take precedence.

4.1.5 Consequences of Failure to Follow Requirements

Proposers are solely responsible for assuring that ADOT receives their Proposals by the specified Proposal Due Date and time at the address listed above. ADOT shall not be responsible for delays in delivery caused by weather, difficulties experienced by couriers or delivery services, misrouting of packages by courier or delivery services, improper, incorrect, or incomplete addressing of deliveries and other occurrences beyond the control of ADOT. Any Proposal submitted after the Proposal Due Date and time will be rejected without opening, consideration, or evaluation and will be returned, unopened, to the sender.

Failure to use sealed containers or to properly identify the Proposal as required in Exhibit 6 may result in disqualification of the Proposal. Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which

1 result from any inadvertent early opening if ADOT determines that Proposer did not
2 follow the requirements in Exhibit 6.

3 **4.1.6 Requirement to Submit Responsive, Compliant Proposal**

4 | If a Proposal is deemed non-responsive or non-compliant, ADOT may reject the
5 Proposal and disqualify it from further consideration, as set forth in Section 5.3.5.

6 **4.1.7 Format and Organization**

7 | Proposer shall submit the Proposal in the format and organization and according to all
8 other requirements set forth in Exhibit 6.

9 | The Proposal shall contain concise written material and drawings enabling a clear
10 understanding and evaluation of the capabilities of Proposer and the characteristics and
11 benefits of the Proposal. Legibility, clarity, and completeness of the Proposal are
12 essential. Documentation that is difficult to read or evaluate may be rejected and may
13 lead to disqualification.

14 | ADOT does not commit to review any information in Proposal appendices, forms and
15 exhibits other than those required or expressly permitted to be provided, and the
16 Proposal evaluation process will focus on the body of the Proposal and any required
17 and expressly permitted appendices, forms and exhibits.

18 **4.2 Currency**

19 | All required pricing, financial and cost information shall be provided in United States
20 dollars (US\$) currency only, subject to the provisions of Exhibit 3 regarding financial
21 statements that are not available in U.S. dollars.

22 **4.3 Modifications, Withdrawals and Late Submittals**

23 **4.3.1 Modifications to a Proposal**

24 | A Proposer may modify its Proposal in writing prior to the specified time on the Proposal
25 Due Date set forth in Section 1.7. The modification shall conform in all respects to the
26 requirements for submission of the applicable component of the Proposal.
27 Modifications shall be clearly delineated as such on the face of the document to prevent
28 confusion with the original components of the Proposal and shall specifically state that
29 the modification supersedes the previous components of the Proposal and all previous
30 modifications, if any. If multiple modifications are submitted, they shall be sequentially
31 numbered so ADOT can accurately identify the final Proposal. The modification must
32 contain complete Proposal sections, complete pages or complete forms as described in
33 Exhibits 2, 3 and 4. ADOT will not accept line item changes. ADOT will not accept
34 delivery of modifications via facsimile or other electronic transmission.

35 **4.3.2 Withdrawal and Validity of Proposals**

36 | Proposer may withdraw its Proposal at any time prior to the time due on the Proposal
37 Due Date by means of a written request signed by the Proposer's designated
38 representative. Such written request shall be delivered to the address in Section 2.2.1.
39 A withdrawal of a Technical Proposal, Financial Proposal or a Price Proposal prior to
40 the Proposal Due Date will not prejudice the right of a Proposer to file a new Technical
41 Proposal, Financial Proposal or Price Proposal, as applicable, provided that it is

received by the time due on the Proposal Due Date. No Proposal may be withdrawn after the time due on the Proposal Due Date and any attempt to do so will result in a draw by ADOT upon the Proposal Security.

Proposals shall be valid for a period of ~~135~~180 days after the Proposal Due Date. Except as set forth in the previous paragraph, no Proposer shall withdraw its Proposal prior to expiration of the 135-day period, unless notified by ADOT that (a) no DBM Agreement for the Project will be awarded by ADOT pursuant to the RFP, (b) ADOT has awarded the DBM Agreement to another Proposer and has received the executed DBM Agreement and other required documents, (c) ADOT does not intend to award the DBM Agreement to the Proposer; or (d) such Proposer is not the Preferred Proposer or next highest ranking Proposer. If the next highest ranking Proposer is notified during the ~~135~~180-day period that it is selected for negotiations, such Proposer shall extend the validity of its Proposal for the period until ~~180~~210 days after the Proposal Due Date.

Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the time periods set forth above.

4.3.3 Late Proposals and Proposal Modifications

ADOT will not consider any late Proposals. ADOT also will not consider modifications not requested by ADOT received after the Proposal Due Date or after any earlier corresponding deadline for submission specified in Section 1.7. Such documents will be returned to the Proposer without consideration or evaluation.

4.4 Proposal Security

To secure the obligations of Proposer under this ITP, the Proposal shall include either a Proposal Bond or a Proposal Letter of Credit in the face amount of \$50 million.

4.4.1 Form of Proposal Bond

If Proposer elects to provide a Proposal Bond, it must be:

(a) in the form of Form K-1 (with such non-material alterations to the form as ADOT may agree to in writing, in its sole discretion, prior to the Proposal Date); and

(b) issued by a Surety that is, as of 30 days before provision of the Proposal Bond, (i) licensed and authorized to do business in the State, (ii) listed on the U.S. Department of the Treasury's "Listing and Approved Sureties" (found at www.fms.treas.gov/c570/c570.html), and (iii) rated "A" or higher by at least two nationally-recognized rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's) or rated at least A minus (A-) or better and VIII or better according to A.M. Best and Company's Financial Strength Rating and Financial Size Category.

Proposer shall attach to each Proposal Bond evidence of the Surety's current licensing, listing and rating as described above.

4.4.2 Form of Proposal Letter of Credit

If Proposer elects to provide a Proposal Letter of Credit, it must be:

(a) in the form of Form K-2 (with such non-material alterations to the form as ADOT may agree to in writing, in its sole discretion, prior to the Proposal Date); and

(b) issued by bank or financial institution that currently has (i) a long-term, unsecured debt rating of not less than “A-/A3” from one of the major national rating agencies (Fitch Ratings, Moody’s Investor Service and Standard & Poor’s) and (ii) an office in the United States at which the Proposal Letter of Credit can be presented for payment (including, if elected by Proposer, to be an electronic or “paperless” letter of credit, by facsimile or by electronic means).

Proposer shall attach to each Proposal Letter of Credit (or present with each electronic or “paperless” letter of credit) evidence of the issuer’s long-term unsecured debt rating current as of 30 days before provision of the Proposal Letter of Credit. Proposers may submit more than one Proposal Letter of Credit in the form provided in Form K-2, provided that the Proposal Letters of Credit total \$50 million in the aggregate.

4.4.3 Duration of Proposal Security

Each Proposal Security will be valid until the Contract Documents have been fully executed, after which the Proposal Security for each unsuccessful Proposer, except those Proposal Securities which have been forfeited, will expire. The Proposal Security for the successful Proposer shall expire at such time as Proposer has satisfied all conditions of execution and award set forth in Section 6.1. If the next highest ranking Proposer is notified during the ~~135~~180-day period after the Proposal Due Date that it is selected for negotiations, such Proposer shall obtain an extension of its Proposal Security for the period until ~~180~~210 days after the Proposal Due Date.

4.4.4 Forfeiture of Proposal Security

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the provisions of this Section 4.4.4.

The Proposal Security shall be subject to forfeiture or draw if:

(a) There occurs any event described in Section 2.11, 7.1, 7.2 or 7.3;

(b) Proposer withdraws, repudiates or otherwise reneges on all or any part of its Proposal or the commitments therein;

(c) Proposer is selected as the Preferred Proposer, but fails to negotiate in good faith with ADOT as set forth in Section 5.11;

(d) Proposer is selected as the Preferred Proposer but fails to provide access to, or participate in the review of, the Detailed Pricing Documents, or both, as set forth in Section 5.12.4; or

(e) Proposer is selected as the Preferred Proposer but fails to satisfy the conditions to final award of the DBM Agreement that are the responsibility of the Preferred Proposer to satisfy, including, without limitation, failure to provide the Closing Documents required under, or satisfy the conditions set forth in, Sections 6.1 and 6.1.1, unless such failure is directly attributable to:

(i) ADOT’s failure to provide timely responses to Post-Selection Deliverables in accordance with Section 5.12.3;

(ii) ADOT's cancellation of the procurement or decision not to close with the Preferred Proposer and to end negotiations after the Preferred Proposer has engaged in good faith negotiations, including elections made under Section 5.11(b) or (d), without cause by the Preferred Proposer;

(iii) ADOT's failure to execute the DBM Agreement within five Business Days after the Preferred Proposer's satisfaction of all conditions thereto and the Developer's execution and delivery of the Closing Documents to ADOT;

(iv) ADOT's failure to provide any other deliverable ADOT is required to deliver to Developer as a condition precedent to final award, where such failure is not caused in whole or in part by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Preferred Proposer;

(v) Absence of concurrence in the award by FHWA, where such absence is not caused in whole or in part by the acts, omissions, negligence, fault, recklessness or willful misconduct of the Preferred Proposer; or

(vi) an unresolved pending protest of the Conditional Award filed pursuant to Section 8.1 (unless ADOT has elected, in its sole discretion, to undertake final award irrespective of such protest, in which case, this clause (vi) shall not apply).

Forfeiture of or draw on the Proposal Security in accordance with this Section 4.4.4 will constitute liquidated damages. By submitting its Proposal, the Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate ADOT for damages it will incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal. Such damages include potential cost to ADOT for the Work higher than Proposer's pricing, potential harm to the credibility and reputation of the Project and ADOT's transportation improvement program with policy makers and with the general public, delays to the Project, and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Proposal, Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that ADOT would incur as a result of Proposer's failure to satisfy the obligations under the RFP to which Proposer agreed when submitting its Proposal, and do not constitute a penalty. By submitting its Proposal, Proposer agrees to such liquidated damages in order to fix and limit Proposer's costs and to avoid later disputes over what amounts of damages are properly chargeable to Proposer.

4.5 Acceptance of Delivery by ADOT

ADOT will acknowledge receipt of each Proposal timely delivered to ADOT by issuing a receipt stating the date and time the Proposal is received.

1 **4.6 Costs Not Reimbursable**

2 The cost of preparing the Proposal and any costs incurred at any time before final
3 award and execution of the DBM Agreement, including costs incurred for any
4 interviews, and costs associated with Post-Selection Deliverables, shall be borne by
5 Proposer, except for any costs ADOT pays in accordance with Section 6.3.

SECTION 5.0 EVALUATION AND POST-SELECTION PROCESS

ADOT's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this procurement.

The Proposal evaluation process will include initial review of each Proposal for responsiveness to the requirements of the Request for Proposals and as to the pass-fail criteria, qualitative evaluation of the Technical Proposal, quantitative evaluation of the Price Proposal, and a Best Value and ranking determination. The process may, at ADOT's sole discretion, include a request for Proposal Revisions, the establishment of a "competitive range" (see 23 CFR § 636.405), and may include a limited negotiations phase with the selected Proposer(s). The evaluation and selection process is subject to modification by ADOT, in its sole discretion.

The details of the evaluation and selection process and evaluation criteria are set forth more fully in this Section 5.0.

5.1 Organization of the ADOT Proposal Evaluation Committees

ADOT's organizational structure for the Proposal evaluation process will consist primarily of three tiers, as follows:

- Tier 1 - Selection Official;
- Tier 2 - Evaluation and Recommendation Committees ("ERCs"); and
- Tier 3 - Procurement Advisory Groups ("PAGs").

The Selection Official will make the Best Value and ranking determination (subject to ratification by the ADOT State Engineer) based, in part, on input from two separate ERCs: the Financial Evaluation and Recommendation Committee ("FERC") and the Technical Evaluation and Recommendation Committee ("TERC").

The ERCs will evaluate the Proposals against the evaluation criteria set forth in Section 5.0 and furnish to the Selection Official recommendations with respect to the Proposals' performance against the responsiveness requirements (i.e., the submittal requirements regarding the contents and format of the Proposals), pass-fail criteria, and qualitative and quantitative evaluation factors.

Specifically, the FERC will evaluate and develop recommendations with respect to the Financial Proposal, and the TERC will evaluate and develop recommendations with respect to the Technical Proposal. After those recommendations are complete, the FERC will perform the quantitative evaluation of the Price Proposals. The recommendations for the Technical and Price Proposals will then be summed to produce recommended scores and rankings and submitted to the Selection Official.

The ERCs will perform their respective evaluations of the Proposals with assistance from two Procurement Advisory Groups ("PAGs"): the Financial Procurement Advisory Group ("FPAG") and the Technical Procurement Advisory Group ("TPAG"). The PAGs are made up of ADOT staff and consultants with technical, financial and legal expertise. These individuals will offer advice on the technical, financial and legal aspects of each Proposal. The primary responsibility of these advisors will be to assist the ERCs in making the educated and informed assessment of the individual strengths and weaknesses of the Proposals.

Outside the three tiers, described above, there are a number of other participants in the Proposal evaluation process who will support the overall process (i.e., the ADOT Authorized Representative and Legal Advisory Group (“LAG”)) or who may participate as observers (i.e., staff from the FHWA and other public agency Stakeholders). The responsibilities of the LAG will include providing advice and guidance on adherence to a fair evaluation process, and assisting the PAGs, ERCs and Selection Official with preparing written reports and summaries of findings and recommendations.

All evaluators and outside consultants and observers will be required to sign confidentiality statements and will be subject to ADOT conflict of interest control requirements.

5.2 Best Value Determination

The Best Value determination will be based on a 70-30 percentage weighting. The Price Score will represent 70 percent of the total score, and the Technical Score will represent 30 percent of the total score. The determination of apparent Best Value shall be based on the highest Total Proposal Score computed based on the following formula:

$$\text{Total Proposal Score (max. 100 points)} = \text{Price Score (max. 70 points)} + \text{Technical Score (max. 30 points)}$$

5.2.1 Price Score

The Price Score will be calculated using the following formula:

$$\text{Price Score} = (\text{Lowest Price Value} / \text{Price Value}) \times 70$$

Lowest Price Value = Lowest Price Value submitted by a Proposer as determined pursuant to Section 5.6.

Price Value = Proposer’s Price Value as determined pursuant to Section 5.6.

5.2.2 Technical Score

The Technical Score will be calculated based on the TERC’s total evaluation score for the Technical Proposal (maximum of 1000 points) as described in Section 5.4.2. The Technical Score will be calculated using the following formula:

$$\text{Technical Score} = (\text{Proposer’s total evaluation score} / \text{Highest total evaluation score}) \times 30$$

Proposer’s total evaluation score = Proposer’s TERC total evaluation score as determined pursuant to Section 5.4

Highest total evaluation score = Highest TERC total evaluation score for a Proposer as determined pursuant to Section 5.4

5.3 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals will be reviewed by the TPAG and TERC and the Financial Proposals will be reviewed by the FPAG and FERC (a) for conformance to the RFP instructions regarding organization and format and responsiveness to the requirements set forth in the RFP, and (b) against the responsiveness and pass/fail criteria set forth in Sections 5.3.1 and 5.3.2, respectively.

5.3.1 Responsiveness

ADOT will assess responsiveness on the basis of overall compliance with the requirements of the RFP. Proposals may be considered non-responsive or non-compliant for any of the following reasons:

(a) the Proposal includes any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, including conditions reserving the right to accept or reject an award or to accept, reject or renegotiate the DBM Agreement or Technical Provisions, except as contained in pre-approved ATCs (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval);

(b) the Proposal is submitted in paper form or electronic form other than that specified by ADOT, is not properly signed in every place where signature is required; is missing any required part or form, contains an incomplete form, is not in the format specified in the RFP, exceeds page limits, or otherwise does not meet any of the Proposal submittal requirements and instructions;

(c) the Proposal contains a material alteration, as determined by ADOT in its sole discretion, to any of the ITP forms or exhibits, including any limit on or other material alteration to the form of Proposal Security (Form K-1 or K-2). Alterations that have been approved in writing in advance by ADOT will not be considered material;

(d) Proposer fails to provide the Proposal Security as required under Section 4.4;

(e) ADOT determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite, or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, items not called for in the RFP, or unauthorized additions;

(f) multiple or alternate Proposals are submitted;

(g) the Proposal contains a material misrepresentation or fails to fully disclose required or requested information that ADOT deems to be material; or

(h) for any other reason the Proposal does not fully comply with the requirements, instructions and rules contained in this ITP, including the ITP exhibits.

5.3.2 Pass/Fail Criteria for Technical Proposals

Technical Proposals will be evaluated based on the following pass/fail criteria:

(a) the business form and organizational documents (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws, association agreements or equivalent documents) of Proposer, the proposed Developer and any entities that will have joint and several liability (i.e. joint venture members or partners) under the DBM Agreement or that will provide a performance guaranty are consistent with the requirements of the Project and Contract Documents and provide for continuation of Proposer (and Developer) in the event of bankruptcy or withdrawal of any of its members;

(b) the information, certifications, signed statements and documents as listed in Exhibit 2, Section 3.2 do not identify any material adverse information;

(c) the dates for Substantial Completion and Final Acceptance set forth on Form O are not later than ADOT's Last Allowable Date for Substantial Completion and ADOT's Last Allowable Date for Final Acceptance, as set forth on Form O;

(d) the Preliminary Project Baseline Schedule is consistent with the technical approach provided and Form O, and complies with the requirements listed in Exhibit 2, Section 4.1;

(e) the Technical Proposal contains the required materials as listed in Exhibit 2, Article 4.0;

(f) if Proposer anticipates execution of the DBM Agreement by a special purpose entity, Proposer has delivered either (i) pro formas of the special purpose entity organizational documents (i.e., certificate of formation/charter, bylaws/partnership agreement/operating agreement) or (ii) term sheets of such documents that will be used to establish the entity, in either case, should ADOT select it as the Preferred Proposer;

(g) the Equity Members, Major Non-Equity Members, Key Personnel and Guarantors listed in the Proposer's SOQ have not changed since the Proposer's submission of the SOQ, or the Proposer has previously sought and received ADOT's written letter consenting to a change shown in the Proposal, and the Proposal attaches a true and correct copy of such letter.

(h) Proposer has delivered written evidence, satisfactory to ADOT, in its sole discretion, from an insurance company(ies), broker(s), agent(s), or advisors(s) expressly indicating that Proposer (and Developer) will be able to obtain and maintain the insurance types and amounts required by the DBM Agreement and can do so under the terms, and subject to the conditions, specified in Exhibit 12 to the DBM Agreement. ADOT shall be satisfied if such insurance company(ies)', broker(s)', agent(s)', or advisor(s)' signatories to such written evidence explicitly state that it/they have read the Contract Documents and insurance requirements set forth therein and that the persons required to obtain insurance under the DBM Agreement have the capability of obtaining such insurance in the coverages and under the terms and conditions listed in the DBM Agreement;

(i) Proposer had delivered all the evidence of registrations, licenses and credentials and applications therefor required under Section 1.13;

(j) The Technical Proposal forms and documents do not identify any material adverse information; and

(k) Proposer's total evaluation score for its Technical Proposal is better than 700.

5.3.3 Pass/Fail Criteria for Financial Proposals

Financial Proposals will be evaluated based on the following pass/fail criteria.

(a) Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial data submitted in the SOQ, such that Proposer continues to have the financial

capacity to develop, design, construct and maintain a project of the nature and scope of the Project. Factors that will be considered in evaluating Proposer's financial capacity include the following:

- (i) Assets, liabilities and profitability;
- (ii) Capital structure;
- (iii) Liquidity position;
- (iv) Income and changes in cash flow statements; and
- (v) Other commitments and contingencies.

(b) If a Guaranty is necessary in order to satisfy the tangible net worth requirements in Section 10.4.6 of the as-issued DBM Agreement, then (i) the Proposal includes one or more Guarantor commitment letters in the form of Form T, and (ii) the financial condition and capabilities of Proposer's Guarantor(s) demonstrate financial capacity and ability of the proposed Guarantor(s) to satisfy such tangible net worth requirements and to guarantee performance of the Developer's obligations under the Contract Documents pursuant to the forms of Guaranty attached as Exhibits 11-1 and 11-2 to the DBM Agreement. Factors that will be considered in evaluating the financial capacity of the proposed Guarantor(s) include those listed in clause (a) above.

5.3.4 Pass/Fail Criteria for Price Proposals

Price Proposals will be evaluated based on the following pass/fail criteria.

(a) Proposer has provided a D&C Price, ATC Adjustments to Price (if applicable), Adjustments to D&C Price for NTP 3, Developer Draws/Cash Flow Tables for the D&C Price, and other required pricing information for the D&C Work, using the Form M series, that comply with the requirements of Exhibit 4, Section 3.1.

(b) Proposer has provided a Maintenance Price, separately stated for Routine Maintenance and Capital Asset Replacement Work, and other required pricing information for Maintenance Services, using the Form N series, that comply with the requirements of Exhibit 4, Section 3.2.

5.3.5 ADOT Rights to Request Clarifications, Exclude Proposals from Consideration, and Waive Mistakes

If a Proposal contains or omits information that may potentially result in a non-responsive or "fail" determination, then ADOT may, in its sole discretion, request additional or clarifying information from a Proposer prior to a final determination.

If a Proposal is deemed non-responsive or non-compliant, or fails to satisfy any of the pass/fail criteria, then ADOT may reject the Proposal and disqualify it from further evaluation and consideration for award, and the corresponding Proposer will be so advised. Such disqualification will not result in the forfeiture of the Proposer's Proposal Security.

ADOT reserves the right in its sole discretion to disregard or waive minor informalities, irregularities, nonconformities, discrepancies, omissions, and apparent clerical mistakes which, in each case, are unrelated to the substantive content of a Proposal.

5.4 Evaluation of Technical Proposal

Subject to Section 5.3.5, after completion of, or concurrently with, the pass/fail and responsiveness review of the Proposal, the Technical Proposal will be evaluated by the TPAG and TERC based on the factors set forth below. In addition, in evaluating the Technical Proposal against the evaluation factors, the TPAG and TERC will consider the extent to which the Technical Proposal meets the objectives stated below and includes any improvements over the requirements of the Contract Documents, such as additional benefits and/or value to ADOT and the public.

5.4.1 Technical Proposal Evaluation Factors and Weightings

Table 5-1 below sets forth the evaluation factors for the Technical Proposal, in descending order of importance, together with their corresponding weightings for scoring the Technical Proposal.

Table 5-1

Technical Proposal Evaluation Factors	Weighting
Technical Approach (Section 5.4.1.1)	40%
Project Delivery Approach (Section 5.4.1.2)	40%
Quality Management Approach (Section 5.4.1.3)	20%

Note that these evaluation factors are also the components of the Technical Proposal, the submittal requirements for which are described in Exhibit 2. Subfactors and their relative weighting are listed in Sections 5.4.1.1 through 5.4.1.3.

The evaluation factors will be evaluated and rated using the rating guidelines specified in Section 5.4.2, with special attention given to the objectives presented in Sections 5.4.1.1 through 5.4.1.4. These objectives describe the expectations of ADOT with regard to the work to be performed and the related information to be submitted in the Technical Proposal. Along with the Project goals identified in Section 1.4, these objectives will guide ADOT's assessment of the evaluation factors and subfactors.

5.4.1.1 Technical Approach

Objectives: Use innovative design, construction and comprehensive maintenance solutions that effectively deliver the Basic Configuration within the available budget and the completion milestones established for the Project, while minimizing: ROW acquisitions, demolitions and relocations, utility relocations, environmental impacts, and traffic impacts to the traveling public.

The Technical Approach evaluation subfactors (at both Group level and lower level) are as follows:

(a) Group 1: Design and Construction Concept Plans – Bridges and Structures

- Proposer's overall understanding of bridge and structural components of Project

- Proposer's solution for construction staging and sequencing for bridges and structures
 - Proposer's solution for reducing/minimizing impacts on roadway operations from future bridge maintenance and improvement
 - (b) Group 2: Design and Construction Concept Plans – Roadway
 - Proposer's overall understanding of general purpose and HOV lane configurations, shoulders, and exit and entrance ramp configurations
 - Proposer's solution for pavement design (including reasonableness of pavement design) and reducing impacts on roadway operations from future roadway maintenance, resurfacing and improvement
 - Proposer's overall understanding of the technical scope associated with local roadway work elements
 - (c) Group 3: Traffic Management and Control During Construction
 - Extent to which Proposer's approach to traffic management maintains access to adjacent roadways, properties and facilities throughout the construction phases while minimizing impacts to the traveling public
 - Extent to which Proposer's approach to construction staging and sequencing addresses divisions in the construction staging that are logical and provides sufficient details
 - Extent to which Proposer's approach to traffic management maintains and protects the right-of-way and environmentally sensitive areas
 - (d) Group 4: – Other Project Design Components
 - Proposer's solution for alignment earthwork and geotechnical impacts
 - Proposer's solution for addressing drainage elements along the Project corridor
 - Proposer's solution for Utility Adjustments and avoidance
 - Proposer's solution for railroad accommodation
 - Proposer's solution for addressing signing, delineations, pavement markings, signalization and lighting along the Project corridor
 - Proposer's solution for scheduling and phasing of the ITS and for maintaining ITS on I-10
 - Proposer's solution for addressing landscaping and aesthetic design elements along the Project corridor
- The groups are listed in descending order of importance; provided, however, that a subfactor within each group may have equal importance with the subfactors in the same group listed immediately above it.

See Exhibit 2 for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Technical Proposal.

5.4.1.2 Project Delivery Approach

Objectives: An organization that has a comprehensive and disciplined strategy, with clear lines of responsibility and experienced Key Personnel, for achieving high standards of quality in design, construction and maintenance that will: maintain a safe environment for the public; comply with applicable laws, permits and the Contract Documents; minimize disputes and claims; assure maintainability of the Project over a 30-year period; and provide for an effective communication with the public. :

The Project Delivery Approach evaluation subfactors (at both group level and lower level) are as follows:

(a) Group 1: Approach to Overall Project Management

- Proposer's overall approach to project management
- Extent to which Proposer demonstrates (1) an understanding of the Project's material risks and (2) a mitigation strategy that is rational and achievable
- Proposer's approach to integrating partnering techniques and empowering personnel to make decisions throughout all levels of Proposer's organization
- Proposer's approach to design management and interface with ADOT
- Proposer's approach to public information and interface with ADOT communications during the design and construction period

(b) Group 2: Project Schedule and Cost Control Management

- Proposer's Preliminary Project Baseline Schedule, including Substantial Completion and Final Acceptance dates, is reasonable and achievable
- Proposer's Preliminary Project Baseline Schedule (i) indicates constraints that are consistent with the constraints in the Contract Documents, and (ii) is representative of the complexity of the Project
- Proposer's proposed cost control management approach provides for accountability and aligns with the Preliminary Project Baseline Schedule

(c) Group 3: ROW Approach

- Extent to which the ROW approach will achieve effective and efficient ROW acquisitions, relocations and demolitions in compliance with all applicable laws regarding acquisition of parcels and relocation of parcel owners and occupants
- Extent to which the ROW approach will achieve effective and efficient coordination and cooperation with ADOT's ROW Division
- Extent to which the ROW approach sequences parcel acquisitions consistently with (a) the time periods available to ADOT under the Contract Documents for delivering construction access through condemnation proceedings and (b) Proposer's project schedule

- 1 • Consistency of the ROW approach with Proposer's Project design
- 2 (d) Group 4: Maintenance Approach
- 3 • Extent to which Proposer's maintenance approach will achieve compliance at
- 4 all times with all the maintenance performance standards and requirements in
- 5 the Contract Documents
- 6 • Extent to which Proposer's maintenance approach provides for efficient
- 7 transition of maintenance activities and asset handover from Developer to
- 8 ADOT at the end of the term of the DBM Agreement
- 9 • Extent to which Proposer's maintenance approach will protect the safety of
- 10 workers and the traveling public
- 11 (e) Group 5: Environmental Management Approach
- 12 • Proposer's solution for environmental management and compliance,
- 13 permitting and impact mitigation
- 14 • Extent to which Proposer's environmental management and compliance
- 15 approach is comprehensive and identifies environmental reevaluations (if
- 16 needed)
- 17 (f) Group 6: Safety Approach
- 18 • Extent to which Proposer's safety approach during construction is well
- 19 defined and meets appropriate standards.
- 20 (g) Group 7: Approach to DBE Utilization and OJT Utilization
- 21 • Efficacy and quality of Proposer's approach to DBE utilization in meeting or
- 22 exceeding the DBE Goals established for the Project. In evaluating efficacy
- 23 and quality, ADOT will examine the quantity, specificity,
- 24 comprehensiveness/intensity and feasibility of the different efforts that the
- 25 Proposer has made or will make to meet the DBE Goals and other DBE
- 26 objectives as detailed in the components listed in the Preliminary DBE
- 27 Utilization Plan and the DBE forms submitted; and
- 28 • Efficacy and quality of Proposer's approach to OJT utilization in meeting or
- 29 exceeding the OJT Goals established for the Project. In evaluating efficacy
- 30 and quality, ADOT will examine the quantity, specificity,
- 31 comprehensiveness/intensity and feasibility of the different efforts that the
- 32 Proposer has made or will make to meet the OJT Goals and other OJT
- 33 objectives as detailed in the components listed in the Preliminary OJT
- 34 Utilization Plan and the OJT forms submitted.
- 35 | The groups and subfactors under each group are listed in descending order of
- 36 importance; provided, however, that a group may have equal importance with the group
- 37 listed immediately above it, and a subfactor may have equal importance with the
- 38 subfactors in the same group listed immediately above it.
- 39 See Exhibit 2 for additional detail regarding the specific information concerning this
- 40 factor and its subfactors to be submitted as part of the Technical Proposal.

5.4.1.3 Quality Management Approach

Objectives: A comprehensive, systematic quality management approach that the Developer will implement throughout all stages of the Project, through the mobilization, Professional Services, construction and maintenance of the Project, to ensure that the work is executed with minimal requirements for corrective work.

The Quality Management Approach evaluation subfactors (at both group level and lower level) are as follows:

(a) Group 1: Quality Organization, Roles, and Responsibilities

- Efficacy of the quality management organization and approach in ensuring compliance with the requirements of the Contract Documents
- Extent to which the quality management staff will be functionally independent so that such individuals will have the authority to effect changes in the event of failure to comply with the Contract Documents
- Extent to which the quality management organization and approach will achieve an effective interface between and among the design quality, construction quality and maintenance quality functions

(b) Group 2: Professional Services Quality Management Approach

- Efficacy of the formal and informal processes for quality control and quality assurance for Professional Services
- Extent to which the Professional Services quality approach and personnel will achieve strong coordination and communication with ADOT during the performance of Professional Services, and a strong interface with ADOT oversight procedures
- Extent to which the Professional Services quality approach and personnel will achieve effective documentation and reporting of noncompliance, effective and timely corrective measures, and effective measures to prevent the recurrence of repeat noncompliance work

(c) Group 3: Construction Quality Management Approach

- Efficacy of the formal and informal processes for quality control and quality assurance during construction
- Extent to which the construction quality approach and personnel will achieve strong coordination and communication with ADOT during construction and a strong interface process with ADOT construction oversight procedures
- Extent to which the construction quality approach and personnel will achieve effective documentation and reporting of construction noncompliance, effective and timely corrective measures, and effective measures to prevent the recurrence of repeat noncompliance work

(d) Group 4: Maintenance Quality Management Approach

- Efficacy of the formal and informal processes for quality control and quality assurance during maintenance
- Extent to which the maintenance quality approach and personnel will achieve strong coordination and communication with ADOT during maintenance and a strong interface process with ADOT maintenance oversight procedures
- Extent to which the maintenance quality approach and personnel will achieve effective documentation and reporting of construction noncompliance, effective and timely corrective measures, and effective measures to prevent the recurrence of repeat noncompliance work

The groups listed are of equal importance. The subfactors under each group are listed in descending order of importance; provided, however, that a subfactor may have equal importance with the subfactors in the same group listed immediately above it.

See Exhibit 2 for additional detail regarding the specific information concerning this factor and its subfactors to be submitted as part of the Technical Proposal.

5.4.2 Technical Score

The TERC will review and evaluate the Technical Proposals with reference to the evaluation factors and subfactors specified in Section 5.4.1. During the evaluation, the TERC will assign an adjectival rating to each subfactor described in Section 5.4.1. The Selection Official will assign a numerical value to the adjectival rating options. The assigned adjectival ratings will then be converted to points by multiplying this numerical value by the weighting ADOT assigns to each subfactor. The points for each subfactor will be added to determine the Proposal's score for each of the corresponding evaluation factors. The score of each of the evaluation factors will then be added to arrive at the total evaluation score for the Technical Proposal, with 1000 maximum possible points. The Technical Score will then be calculated using the formula in Section 5.2.2.

ADOT will determine and set the weightings for each subfactor and the numerical value for each adjectival rating option before Proposals are unsealed.

5.5 Evaluation of Financial Proposal

Financial Proposals will be evaluated only on a pass/fail basis according to Section 5.3.3.

5.6 Evaluation of Price Proposal

Subject to Section 5.3.4, after completion of, or concurrently with, the pass/fail and responsiveness review of the Proposal, the Price Proposal will be evaluated by the FPAG and FERC based on the factors set forth below. The FPAG and FERC will conduct "blind" reviews and evaluations of the Price Proposals to determine the Price Score of the Proposal in accordance with Section 5.2.1.

"Blind" reviews and evaluations means that, during their evaluations, (a) the evaluators of the Price Proposal will not know the evaluations made of the Technical Proposals or the Technical Scores that the Proposers have received; and (b) the evaluators of the Technical Proposals will not know the evaluations made of the Price Proposals or the

Price Score that the Proposers have received. The evaluation of the Price Proposal and calculation of the Price Score will be independent of any consideration of the Proposer's Technical Proposal and Financial Proposal.

The Price Value component of the Price Score will be determined from the pricing forms (Form M and N series) as follows:

Price Value = D&C Price + ATC Adjustments + Avoided Schematic ROW Adjustments + NTP 3 Adjustments + Factored Annual Maintenance Price

Where:

D&C Price = Proposer's Design & Construction Price (in ~~year-of expenditure~~2015 \$)

ATC Adjustments = Adjustments for ATCs indicating additional costs to ADOT as determined pursuant to Section 3.7 (in 2015 \$)

Avoided Schematic ROW Adjustments = Credits for avoided Schematic ROW as determined pursuant to Section 5.6.1 (in ~~year-of expenditure~~2015 \$)

NTP 3 Adjustments = Sum of per diem credits for possible NTP 3 advancement and costs due to NTP3 delay as determined pursuant to Section 5.6.2 (in ~~year-of expenditure~~2015 \$)

Factored Annual Maintenance Price = Adjusted sum of Proposer's Routine Maintenance Price and Proposer's Capital Asset Replacement Price per Form N-1

5.6.1 Avoided Schematic ROW Adjustments

Proposers are provided the opportunity, according to the following terms and conditions, to receive a credit reducing the D&C Price, for the sole purpose of determining the Price Value, due to Proposer commitments to avoid the need for ADOT to acquire Schematic ROW. To clarify, credits are not available for avoiding Utility Adjustments. References below to "parcel" or "partial parcel" mean those parcels and partial parcels within the boundaries of the Schematic ROW, excluding, however, parcels owned by or on behalf of the Gila River Indian Community or the United State Postal Service. References to "avoidance", "avoid" or "avoided" means that the parcel or partial parcel will not be needed or used for the Project or for Temporary Construction Easements.

5.6.1.1 Pre-Proposal Submittal of Avoided Schematic ROW

To be eligible for this credit, the Proposer must submit by the Pre-Proposal Submittal deadline set forth in Section 1.7:

- (a) a map depicting each parcel or partial parcel to be avoided in whole or in part;
- (b) a calculation for each such parcel or partial parcel of the approximate avoided square footage;
- (c) a description of the design elements or features that will be used to avoid in whole or in part the parcels or partial parcels.

5.6.1.2 Credit Determination

After it receives such Pre-Proposal Submittal, ADOT will inform the Proposer in writing, for each parcel or partial parcel, whether a credit will be given and the amount of the credit. ADOT may reject granting a credit if ADOT determines, in its sole discretion, that:

- (a) the design does not represent a credible means to actually avoid the parcel or partial parcel; or
- (b) the proposal is to avoid only a portion of, rather than the entirety, of a single family residential parcel.

5.6.1.3 Credit Calculation

ADOT will calculate the credit amount, if any, using its standard procedures and estimation techniques.

If ADOT has not already acquired the parcel or partial parcel, if ADOT has not already received acceptance of an offer to acquire the parcel or partial parcel, and if no displacee regarding the parcel or partial parcel has incurred material relocation costs for which ADOT is responsible as a result of ADOT's relocation notice, and has not otherwise materially changed its position in reliance on or in response to ADOT's relocation notice, then the credit amount will be the sum of: the following, estimated in 2015 \$:

- (a) ADOT's estimated value per sq. ft. of each avoided parcel or partial parcel. ADOT's initial estimate can be found in the Acquisition/Relocation Status Report contained in the Reference Information Documents; plus
- (b) ADOT's estimate of avoided severance damages (if any); minus
- (c) ADOT's estimate of the increased severance damages (if any) caused by the proposed ROW avoidance; plus
- (d) ADOT's estimate of avoided relocation costs (if any); plus
- (e) only for Retained Parcels, ADOT's estimate of avoided demolition costs.

If ADOT has already acquired the parcel or partial parcel, if ADOT has already received acceptance of an offer to acquire the parcel or partial parcel, or if any displacee regarding the parcel or partial parcel has incurred material relocation costs for which ADOT is responsible as a result of ADOT's relocation notice, or has otherwise materially changed its position in reliance on or in response to ADOT's relocation notice, then the credit amount will be ADOT's determination of the net proceeds, if any, it is likely to obtain from re-sale of the parcel or partial parcel as a remnant piece of vacant land.

In determining the Price Score, ADOT will treat the amount of the credit as if the cost savings occur in 2015.

5.6.1.4 ATC Submittal of Avoided Schematic ROW

If the Proposer proposes an ATC that will avoid parcels or partial parcels, in order to potentially receive a credit therefor, the Proposer shall include with the ATC the information and documentation set forth in Section 5.6.1.1. If ADOT approves the ATC, ADOT will then proceed with determination of the credit, if any, in accordance with this

Section 5.6.1 and include notice of the credit amount in the ATC approval letter or in a subsequent written notice to the Proposer.

5.6.1.5 Timeliness of Avoided Schematic ROW

Unless and until ADOT approves a credit, ADOT intends to proceed with ROW acquisition activities for the Project. Those activities may trigger either of the reasons for rejecting a credit under Sections 5.6.1.3(c) and (d) above. Accordingly, the opportunity for Proposers to receive credits is greatest earlier in the procurement period, and Proposers are therefore encouraged to make Pre-Proposal Submittals for such credits as soon as possible. Proposers are advised to check the weekly updates from ADOT to the Acquisition/Relocation Status Report contained in the Reference Information Documents for the status of ADOT's acquisition activities.

5.6.1.6 Suspension of ROW Activities Upon Approval of Credit

If and when ADOT approves a credit, it will suspend or, as appropriate, modify its ROW acquisition activities for the parcel or partial parcel to which the credit relates, until such time as all Proposers receiving a credit for the parcel or partial parcel either withdraw from this procurement or are not selected as the Preferred Proposer.

5.6.1.7 Incorporation of Avoided Schematic ROW in DBM Agreement

If the Proposer becomes the Preferred Proposer, then:

- (a) the avoided parcels or partial parcels will be included in Exhibit 2 to the DBM Agreement;
- (b) the executed DBM Agreement shall include Section 5.7.8, which provides that Developer at its sole cost and risk shall be responsible for obtaining third party approvals and completing the Final Design such that the avoided parcels or partial parcels need not be acquired; and
- (c) the executed DBM Agreement shall include Section 13.3.3.2, which provides that if the Developer ultimately cannot avoid a property for which the Proposer received credit, then the Developer must bear the costs of acquisition up to the amount of the credit received for the property plus 50% of any additional cost, and shall not be entitled to any additional time. These costs include the acquisition or condemnation price, severance damages, relocation costs and, if part of the prior credit, demolition costs.

5.6.2 NTP 3 Adjustments

NTP 3 will authorize construction and other ground-disturbing activities in the Center Segment. For purposes of scheduling delivery of the Center Segment, ADOT estimates that NTP 3 may be issued during the NTP 3 Window, and Proposers must therefore schedule their Construction Work and other ground-disturbing work in the Center Segment accordingly.

Because of the possibility that NTP 3 may be issued outside of the NTP 3 Window, Proposer is required to commit in its Proposal to (a) a per diem decrease in the D&C Price for each day NTP 3 is issued prior to the start date of the NTP 3 Window, up to a cap of 180 days before the start date of the NTP 3 Window, and (b) a per diem increase

in the D&C Price for each day NTP 3 is issued after the end date of the NTP3 Window, up to a cap of 180 days after the end date of the NTP 3 Window. For time savings or delays greater than the applicable 180-day period, the DBM Agreement will provide for equitable adjustment of the D&C Price via the procedures for a Supplemental Agreement. See Section 13.1.4 of the DBM Agreement for more details.

Proposers shall commit to these per diem amounts by stating them in Form M-1.4. Proposers may commit to any amount, including \$0, provided that they must commit to a single per diem amount for each 30-day interval in the 180-day period of time savings, and a single per diem amount for each 30-day interval in the 180-day period of time delays. The NTP 3 Adjustment will equal the greater of (a) \$0 or (b) an amount equal to the present value, in 2015 \$, of (the sum of the per diem amounts for time savings for 180 days, stated as a negative number) plus (the sum of the per diem amounts for time delays for 180 days).

5.7 Total Proposal Score and Recommendations

After completion of the evaluation of the Technical Proposal and the Price Proposal, the chairpersons of the TERC and FERC will determine the Total Proposal Score for each Proposal by adding the Proposal's Technical Score and Price Score as set forth in Section 5.2 and determine the recommendations for the rankings and the apparent Best Value.

5.8 Requests for Clarification

ADOT may, at any time, issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify any aspect of its Proposal. At its discretion, ADOT may also schedule interviews with one or more Proposers on a one-on-one basis, for the purpose of enhancing ADOT's understanding of the Proposals and obtaining clarifications of the terms contained in the Proposals. Any requests for clarification shall be in writing to the Proposer's designated representative. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by ADOT) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, ADOT.

Upon receipt of requested clarifications and additional information as described above, if any, the ERCs, with assistance from the appropriate PAGs, may re-evaluate the Proposals to factor in the clarifications and additional information.

5.9 Requests for Proposal Revisions

Depending on the quality of the Proposals, ADOT may, at any time after receipt of Proposals and prior to final award of the DBM Agreement or the disclosure of a Proposer's ATCs to another Proposer in a competitive range as determined by ADOT, whichever is earlier, determine that it is appropriate to request changes to responsive Proposals ("Proposal Revisions"). Before requesting any such Proposal Revisions ADOT will engage in separate discussions (either in writing or in person through one-on-one meetings) with each responsive Proposer, or with those responsive Proposers falling within a competitive range as determined by ADOT, and in accordance with the

procedures for proposal revisions described in 23 CFR Part 636.501 *et seq.* The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions requested, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term “Proposal,” as used in the RFP, shall mean the original responsive Proposal, as modified by the Proposal Revision.

Upon receipt of Proposal Revisions, the ERCs, with assistance from the appropriate PAGs, will re-evaluate the responsive Proposals (or, if applicable, the responsive Proposals falling within the competitive range) as revised, and will revise ratings and value estimates as appropriate following the process described above.

5.10 Recommendations to Selection Official on Rankings and Preferred Proposal; Final Decision

Once the ERC chairpersons have determined a Total Proposal Score for each Proposal and assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions), the ERCs will present their recommended rankings to the Selection Official, who will determine the apparent Best Value. ADOT will not rank Proposals that are deemed to be non-responsive or non-compliant or that fail any of the pass/fail criteria.

The Selection Official will review the Proposals and the recommendations and supporting information provided by the ERCs, and may accept or reject the recommendations. If the Selection Official rejects the recommendations, he may request that the ERCs reevaluate any or all Proposals or component parts thereof and reconsider the recommendations, with instructions on the issues to be re-evaluated, or he may cancel the procurement. The Selection Official, however, may not modify the final rankings provided by the ERCs.

If the Selection Official accepts the ERCs’ recommendation, the Selection Official will document the final Best Value and ranking determination in a memorandum to the State Engineer. This memorandum will briefly describe the basis for the Best Value and ranking determination, summarize the responsiveness and pass/fail determinations, and request that the State Engineer ratify the determinations.

Upon ratification, the Authorized Representative will notify Proposers of the decision on rankings, on the Preferred Proposer, and on intended award of the DBM Agreement. The decision of ADOT shall be final.

5.11 Finalization and Negotiation of Contract Documents

By submitting its Proposal, each Proposer commits to enter into the form of Contract Documents included in the RFP if it is the Preferred Proposer, without negotiation or variation, except to fill in blanks and include information that the form of DBM Agreement indicates or contemplates is required from the Proposal.

Upon ratification and notice to the Preferred Proposer, ADOT and the Preferred Proposer will proceed to finalize the Contract Documents.

ADOT may require limited negotiations with the Preferred Proposer to clarify any remaining issues regarding scope, schedule, aspects of the Proposal that will be

incorporated into the Contract Documents, and incorporation into the Contract Documents of the ATCs and/or other work product of unsuccessful Proposers that elected to submit a Stipend Agreement. Any decision to commence limited negotiations is at ADOT's sole discretion.

If ADOT elects to commence negotiations with a Proposer, such Proposer shall have an obligation to engage in good faith negotiations. Such Proposer will be deemed to have failed to engage in good faith negotiations with ADOT, and shall forfeit its Proposal Security as set forth in Section 4.4.4, if the Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with ADOT or insists upon terms or conditions for any documents to be negotiated or provided by Developer hereunder that are inconsistent with the Contract Documents as issued in the Request for Proposals or with such Proposer's Proposal. Such Proposer's refusal to include ATCs or other design innovations from unsuccessful Proposers, so long as made in good faith after genuine, serious consideration and negotiation of such ATCs and other design innovations, shall not be deemed a failure to engage in good faith negotiations.

If ADOT elects to negotiate various aspects of the Contract Documents with the Preferred Proposer but Contract Documents satisfactory to ADOT, in its sole discretion, cannot be negotiated with the Preferred Proposer, then ADOT will formally end negotiations with that Proposer and take action consistent with the direction provided by the Selection Official. Such action may include:

(a) requiring the Preferred Proposer to enter into the Contract Documents in the form included in the RFP, without variation except to fill in blanks and include information that the form of the DBM Agreement indicates or contemplates is required from the Proposal (e.g. ATCs);

(b) rejecting all Proposals;

(c) issuing a request for Proposal Revisions to Proposers, but only if the ATCs of one or more Proposers have not been revealed to the original Preferred Proposer; or

(d) proceeding to the next most highly ranked Proposal, and so on, to attempt to negotiate a DBM Agreement with that Proposer in accordance with this Section 5.11 and so on until ADOT successfully negotiates a DBM Agreement or elects, in its sole discretion, to terminate this procurement. If option (d) is selected, the Proposer that submitted the next most highly ranked Proposal, and so on, will be considered the Preferred Proposer.

5.12 Post-Selection Deliverables

5.12.1 Plan Submittals

During the period between Conditional Award and final award of the DBM Agreement, the selected Proposer may, but is not required to, submit all or portions of the Project Management Plan, final ROW Activity Plan, final Environmental Management Plan, final Safety Management Plan, final Transportation Management Plan, final DBE Utilization Plan and final OJT Utilization Plan for review, comment and possible pre-approval. ADOT encourages such early submittals, and will attempt to provide comments to any such submittals generally in accordance with the process and timelines set forth in the

DBM Agreement, but cannot guaranty that it will in fact undertake such review or provide comments or approval.

5.12.2 Documents to be Submitted Following Conditional Award

As a condition precedent to final award of the DBM Agreement, the successful Proposer shall deliver the following (the “Post-Selection Deliverables”) to ADOT within ten days after notification that it is the Preferred Proposer, unless otherwise noted:

(a) Detailed Pricing Documents as required by Section 5.12.4;

(b) Evidence of authority to transact business in the State of Arizona for all Equity Members and Major Non-Equity Members that will transact business in the State. Depending on the form of organization, such evidence may be in the form of (i) for a foreign corporation, an application to transact business and certificate of disclosure approved and filed by the Arizona Corporation Commission (“ACC”), or an affidavit evidencing publication of the filed application to transact business in Arizona, as required by A.R.S. Sections 10-1501, 10-1503, 10-11501 and 10-11503, along with a “certificate of good standing” or its equivalent from the ACC or the state of organization of the Equity Member or Major Non-Equity Member dated no earlier than 30 days prior to the Proposal Due Date; (ii) for a domestic corporation, articles of incorporation and certificate of disclosure filed by the Arizona Corporation Commission, along with a certificate of good standing from the ACC dated no earlier than 30 days prior to the Proposal Due Date; (iii) for a foreign limited liability company, a certificate of registration issued by the ACC as required by A.R.S. Section 29-802, along with a “certificate of good standing” or its equivalent from the ACC or the state of organization of the Equity Member or Major Non-Equity Member dated no earlier than 30 days prior to the Proposal Due Date; (iv) for a domestic limited liability company, articles of organization filed with the ACC, along with a certificate of good standing from the ACC dated no earlier than 30 days prior to the Proposal Due Date; or (v) other evidence acceptable to ADOT; and

(c) Drafts of the other deliverables identified in Section 6.1.2, for pre-approval by ADOT, and further drafts within five Business Days after receipt of ADOT’s comments on any such draft deliverables.

5.12.3 ADOT Comments on Post-Selection Deliverables

ADOT shall provide comments on any Post-Selection Deliverables required to be delivered to ADOT hereunder within ten Business Days after the date ADOT receives such deliverable. ADOT shall have five Business Days to review and respond to subsequent submittals of the deliverable.

5.12.4 Detailed Pricing Documents

(a) Within the timeframe stated in Section 5.12.2, Developer shall deliver to ADOT detailed pricing documents containing information regarding Proposer’s assumptions made in determining the scope of work and calculating the Proposal prices and meeting all requirements of Section 23.1 of the DBM Agreement (“Detailed Pricing Documents” or “DPDs”). The DPDs shall include detailed information from all Subcontractors identified in the Proposal and any other potential Subcontractors who provided data upon which the Proposal is based. The DPDs also shall include detailed,

1 separately stated pricing of insurance premiums for the insurance coverage required by
2 the DBM Agreement. The format and content of the DPDs shall allow ADOT to verify
3 the accuracy and completeness of the lump sum prices provided on the pricing forms.
4 The DPDs shall be in sealed containers labeled “[Proposer Name]: Detailed Pricing
5 Documents for the Loop 202 South Mountain Freeway Project.” ADOT and its advisors
6 shall have the right to review the DPDs for completeness and consistency with the
7 Proposal.

8 | (b) Representatives of ADOT (and/or its consultants) and the successful
9 Proposer shall review the DPDs prior to execution of the DBM Agreement to determine
10 whether they are complete and consistent with the Proposal. Such representatives
11 shall jointly organize the DPDs and develop and countersign a detailed index and
12 catalogue of their contents. The organization shall include labeling each page so that it
13 is obvious that each page is a part of the DPDs, and to enable a person reviewing the
14 page out of context to determine where it can be found within the DPDs. The index
15 shall list each document included in the DPDs and briefly describe the document and its
16 location in the DPDs. Completion of such review, organization and indexation shall be a
17 condition for the benefit of ADOT to award and execution of the DBM Agreement.
18 ADOT will have the right to retain a copy of the index. After the joint review, the DPDs
19 shall be kept in a locked, fireproof cabinet supplied by Developer and located at ADOT’s
20 project office with the key held only by Developer.

21 | (c) If, following the initial review and organization, ADOT determines that the
22 DPDs are incomplete, ADOT may, as a condition to final award, require the selected
23 Proposer to supply data to make the DPDs complete.

24 | (d) Following execution of the DBM Agreement, the DPDs will be available for
25 review as specified in DBM Agreement Section 23.1.1.

SECTION 6.0 FINAL AWARD AND EXECUTION; POST-EXECUTION ACTIONS

6.1 Terms and Procedures for Final Award, Execution and Delivery of DBM Agreement

6.1.1 Conditions Precedent to Final Award

The following are conditions precedent to ADOT's final award of the DBM Agreement:

- (a) successful completion of negotiations (if held);
- (b) review, organization and indexing of the DPDs in accordance with Section 5.12.4;
- (c) execution and delivery to ADOT of the Closing Documents by all parties other than ADOT;
- (d) any other conditions to award set forth in this ITP; and
- (e) concurrence in award by FHWA.

6.1.2 Documents to Be Delivered by Proposer with Executed DBM Agreement

The Preferred Proposer shall deliver to ADOT the documents listed below (collectively the "Closing Documents") as a condition to execution of the DBM Agreement by ADOT.

- (a) the required number of original sets of the DBM Agreement and other Contract Documents, fully executed by the Developer;
- (b) if not previously submitted, a copy of the final, executed organizational documents for Developer and, if Developer is a limited liability company, partnership or joint venture, for each member or partner of Developer. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal;
- (c) if the Developer is a joint venture, a letter, in form acceptable to ADOT, from each joint venturer stating that the joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligations of the Developer under the Contract Documents;
- (d) evidence of authority to transact business in the State of Arizona for all Equity Members and Major Non-Equity Members that will transact business in the State, as described in Section 5.12.2(b);
- (e) if one or more Guarantees are necessary in order to satisfy the tangible net worth requirements in Section 10.4.6 of the as-issued DBM Agreement, the proposed Guaranty or Guarantees, which shall be from Guarantor(s) acceptable to ADOT, in its sole discretion, and in the form included in Exhibits 13-1 and 13-2 of the DBM Agreement, as applicable.
- (f) evidence of approval of the final form, and of due authorization, execution, delivery and performance, of the DBM Agreement and other Contract Documents by Developer and, if Developer is a joint venture, by its joint venture members. Such evidence shall be in a form and substance satisfactory to ADOT. If Developer is a corporation, such evidence shall be in the form of a resolution of its governing body

certified by an appropriate officer of the corporation. If Developer is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If Developer is a limited liability company, such evidence shall be in the form of: (i) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, (ii) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (iii) if there is no managing member, a resolution from each member, certified by an appropriate officer of such member. If Developer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member.

(g) a written opinion from counsel for Developer, in substantially the form attached hereto as Form L (with such changes as agreed to by ADOT in its sole discretion). Counsel giving the opinion must be approved by ADOT and may be in-house or outside counsel; provided, however, that (i) the qualification to do business in Arizona and the enforceability opinion shall be provided by an attorney licensed in the State of Arizona, and (ii) the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the formation/organization of the entity for which the opinion is rendered unless such entity is formed or organized under the laws of the State of Delaware, in which case such opinion may be issued by an in-house or outside counsel not licensed in Delaware.

(h) evidence of insurance required to be provided by Developer under the Contract Documents;

(i) evidence that Developer, its Equity Members, Major Non-Equity Members, Key Professional Services Firms and the Key Personnel hold all licenses, registrations and credentials required by the laws of the State of Arizona to design, construct and maintain the Project. Such evidence shall include any information on the revocation or suspension of any license, registration or credential;

(j) a D&C Performance Bond in the amount of \$250,000,000.00 in the form attached hereto as Exhibit 9-1 and a D&C Payment Bond in the amount of \$250,000,000.00 in the form attached hereto as Exhibit 9-2;

(i) each such bond shall be issued by a Surety (A) licensed and admitted as a surety or insurer in the State (approved by the Arizona Department of Insurance), (B) listed on the U.S. Department of the Treasury's "Listing and Approved Sureties" (found at www.fms.treas.gov/c570/c570.html), and (C) rated "A" or higher by at least two nationally-recognized rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's) or rated at least A minus (A-) or better and Class VIII or better according to A.M. Best and Company's Financial Strength Rating and Financial Size Category, or as otherwise approved by ADOT in its discretion;

(ii) the Preferred Proposer may elect to: (A) have the Developer procure such bonds directly, so that they are security for Developer's payment obligations to Subcontractors and laborers performing the D&C Work and Developer's performance obligations under the Contract Documents respecting

1 the D&C Work, or (B) deliver such bonds from the Lead Subcontractor and other
2 Subcontractor having a direct Subcontract with Developer for performance of any
3 portion of the D&C Work so that such bonds are security for payment to the
4 designated Persons supplying labor or materials and performance of the Lead
5 Subcontractor's or other such Subcontractor's obligations under its Subcontract
6 with Developer;

7 (iii) if Developer makes the election under clause (ii)(B) above, then:
8 (A) the Preferred Proposer shall also deliver as Closing Documents multiple
9 obligee riders, in the forms set forth in Exhibits 9-3 and 9-4 respectively, in which
10 ADOT is named as an additional obligee and all rights of Developer are
11 subordinated to ADOT; (B) the language of the bond forms set forth in Exhibits
12 9-1 and 9-2 shall be adjusted to reflect this election, but only as necessary to
13 identify the Subcontract for D&C Work as the bonded contract, to identify Lead
14 Subcontractor or other Subcontractor as the principal and to change the obligee
15 to Developer; and (C) such bonds shall otherwise conform to the requirements
16 set forth in this clause (j);

17 (iv) if Developer makes the election under clause (ii)(B) above and
18 there are two or more parties providing the bonds, then the aggregate sum of the
19 performance bonds shall equal \$250,000,000, the aggregate sum of the payment
20 bonds shall equal \$250,000,000, and the size of each bond shall be in proportion
21 to the scope and cost of the D&C Work to be provided under each bonded
22 Subcontract;

23 (k) for each of the Lead Engineering Firm, Lead Subcontractor and Lead
24 Maintenance Firm that is a single purpose entity formed for the Project, a written
25 certification executed by an authorized official setting forth the name and identity of
26 every person or entity that holds an ownership interest or right to an ownership interest
27 (including options, warrants and other rights to acquire ownership interests) therein and
28 certifying that such information is true and correct;

29 (l) executed Subcontracts with the Lead Subcontractor, Lead Engineering
30 Firm, Independent Quality Firm and Lead Maintenance Firm, or if a Subcontract with
31 any such Subcontractor has not been executed, detailed, binding term sheets or heads
32 of terms executed by each such Subcontractor and the party with whom it will enter into
33 the Subcontract outlining the key commercial terms. The same shall be consistent with
34 the key terms and conditions of the Contract Documents and the terms for Subcontracts
35 required under the DBM Agreement. If, however, Proposer unconditionally commits its
36 Developer in the Proposal to self-perform the Maintenance Services under the DBM
37 Agreement in an amount no less than 50% of the Maintenance Services (excluding
38 Capital Asset Replacement Work and Handback Requirements work), such amount to
39 be measured by the aggregate value of Maintenance Services over the term of the DBM
40 Agreement, as delineated in Form N-1), then the foregoing items relating to the Lead
41 Maintenance Firm will not be required;

42 (m) a completed Professional Services Subcontractor Request Form or
43 Construction Subcontractor Request Form, as applicable, in the forms set forth in
44 Exhibits 5-1 and 5-2 to the DBM Agreement, for the Lead Subcontractor, Lead

Engineering Firm, Independent Quality Firm and each other Subcontractor included in the Proposal that will provide Design Work or Construction Work but does not execute a Subcontract by the time of award;

(n) a written disclosure of any acquisitions of real property, loans or mortgages described in Section 5.6.7 of the DBM Agreement that occurred prior to the execution of the DBM Agreement; and

(o) any other requirements identified by ADOT during pre-award negotiations.

6.1.3 Final Award Procedures

Upon satisfaction of all the conditions set forth in Section 6.1.1 other than execution and delivery of the Contract Documents, ADOT may deliver execution sets of the Contract Documents to the Preferred Proposer, along with an additional number of execution sets as reasonably requested by the Preferred Proposer. The Preferred Proposer shall obtain all required signatures and deliver all the execution sets of the Contract Documents to ADOT within five Business Days after receipt. If Developer is a joint venture or a partnership, the Contract Documents must be executed by all joint venture members or general partners, as applicable.

Upon ADOT's receipt from the Preferred Proposer of all compliant, executed sets of the Contract Documents and the Preferred Proposer's satisfaction of all conditions precedent, ADOT may, in its discretion, execute the Contract Documents. ADOT will retain ADOT's sets of the Contract Documents and deliver the other executed sets to the Preferred Proposer. Final award shall be deemed to have occurred upon delivery of the fully executed sets to the Preferred Proposer.

If a procurement protest is brought under Section 8.1 within the applicable period set forth in Section 8.3, then ADOT, at its sole option and sole discretion, may elect to (a) move forward with execution and delivery of the Contract Documents, (b) delay their execution and delivery, or (c) terminate the procurement at no cost or penalty except, in such event, the Preferred Proposer may be entitled to payment of a stipend upon satisfaction of the conditions thereto as set forth in this ITP. In no event may ADOT delay Contract Document execution beyond the 135 calendar day Proposal validity period, as such period may be extended pursuant to Section 4.4.3, without mutual agreement by the Preferred Proposer.

6.2 Debriefings

All Proposers submitting Proposals will be notified in writing of the ranking results of the evaluation process. Proposers not selected for award may request a debriefing. If requested, debriefings shall be provided at the earliest feasible time after execution of the DBM Agreement. The debriefing shall be conducted by ADOT's Authorized Representative, who may be accompanied by other ADOT officials familiar with the rationale for the selection decision and DBM Agreement award.

Debriefings shall:

(a) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of a competing Proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and

(c) Provide information on areas in which the unsuccessful Proposer's Technical Proposal had weaknesses or deficiencies.

Debriefing may not include discussion or dissemination of the identities, thoughts, notes, or rankings of individual evaluators, but may include a summary of the rationale for the selection decision and DBM Agreement award.

6.3 Payment to Unsuccessful Proposers

Pursuant to Arizona Revised Statutes, Section 28-7704D, ADOT offers a stipend, as a stipulated payment for the Proposer's work product retained by ADOT, on the terms and conditions described herein and in the Stipend Agreement (Exhibit 10). No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3 and in the Stipend Agreement. The maximum stipend payment per eligible Proposer for this procurement is \$2,000,000.

To be eligible to receive a stipend payment under this Section 6.3, Proposer must deliver to ADOT, and ADOT must receive by not later than the date set forth in Section 1.7, two originals of a Stipend Agreement, exactly in the form set forth as Exhibit 10, executed by the Proposer's designated representative. If Proposer meets this requirement, ADOT will sign both originals of the Stipend Agreement and return one original to Proposer. The offer of a stipend under this Section 6.3 is deemed revoked if and when ADOT delivers notice cancelling this procurement, unless Proposer accepted the offer by executing and delivering to ADOT the two signed originals of the Stipend Agreement prior to the cancellation date.

ADOT does not require any Proposer to accept a stipend payment. Proposers may choose whether to submit a Stipend Agreement. In submitting an executed Stipend Agreement, each Proposer agrees that it will accept the stipend payment and that ADOT shall be entitled to ownership and use of all work product of Proposer and its team members contained in its Technical Proposal or generated by or on behalf of Proposer for the purpose of developing its Technical Proposal (including technologies, techniques, methods, processes, drawings, reports, plans, specifications, information, documents, concepts (including ATCs), data and information gathered and reports prepared from any surveys or site investigations by or on behalf of Proposer, and other materials in the Technical Proposal) (collectively the "Work Product"), in consideration for ADOT's agreement to make payment as provided in Exhibit 10, without any further compensation or consideration to Proposer.

All Proposers eligible to receive a stipend shall be required to submit to ADOT an invoice in the form attached to the Stipend Agreement, a transfer of rights, full release of claims and waiver of protest in the form attached to the Stipend Agreement, and all Work Product, in order to receive such payment. These requirements, together with the time period within which they must be delivered to ADOT and the date for payment by ADOT, are set forth in more detail in Exhibit 10.

Each Proposer that has timely executed and delivered to ADOT the Stipend Agreement (Exhibit 10) acknowledges that ADOT will have the right to inform the successful

1 Proposer regarding the contents of the other Technical Proposals after Conditional
2 Award, and that the Contract Documents may incorporate the Work Product. Upon
3 Proposer's receipt of the stipend payment, this right shall extend to allow ADOT to use
4 the Work Product in the performance of its functions. The use of any of the Work
5 Product by ADOT is at the sole risk and discretion of ADOT, and shall in no way be
6 deemed to confer liability on the unsuccessful Proposer.

SECTION 7.0 ORGANIZATIONAL CONFLICTS OF INTEREST

7.1 ADOT Consultants

ADOT has developed a project-specific conflict of interest policy for the Project respecting ADOT consultants and their affiliates. A copy of the current policy is provided as Attachment 1 to the RFQ. Proposers shall comply with this conflict of interest policy.

ADOT has engaged a number of consultants to assist and participate in the Project development stages, as well as assist ADOT during the procurement process for the Project. Proposer is prohibited from teaming with, receiving any advice or discussing (except discussing in a forum established pursuant to this RFP) any aspect relating to the Project or the procurement of the Project with any such consultants, including:

- CDM Smith, Inc.
- HDR Engineering, Inc.
- Jacobs Engineering, Inc.
- Nossaman LLP
- PFM, Inc.

ADOT may disqualify a Proposer, and refuse to enter into the DBM Agreement with the Preferred Proposer, if ADOT determines that:

(a) The Proposer has made impermissible contact with any of the ADOT consultants listed above with respect to this procurement and/or the DBM Agreement; or

(b) The Proposer includes any of the ADOT consultants listed above on the Proposer's team.

Any violation of the foregoing restrictions by the Preferred Proposer will, in ADOT's sole discretion, constitute a failure to execute the DBM Agreement and result in the forfeiture of the Proposer's Proposal Security.

7.2 ADOT Employees Involved In Procurement

Proposers are referred to Arizona laws that make it unlawful, and a class 2 misdemeanor, for Proposers or any member of a Proposer team to offer employment to an ADOT procurement officer, procurement employee or other ADOT employee having a significant procurement role with respect to the Project, or for any such ADOT officer or employee to have discussions concerning or accept any such employment. See Arizona Revised Statutes Sections 41-741, 41-753, 41-1231, 41-1233.01, 41-2501, 41-2503 and 41-2517.

Proposers are also referred to Arizona laws that entitle ADOT to cancel any contract, without penalty or further obligation, within three years after the contract is executed, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract for ADOT is or becomes, at any time the contract is in effect, an employee

1 or agent of the other party to the contract. See Arizona Revised Statutes, Title 38,
2 Chapter 3, Article 8, and, in particular, Section 38-511.

3 ADOT has adopted the following conflict of interest policies for ADOT officers and
4 employees pursuant to such Arizona laws:

- 5 • “PER-6.02 Conflict of Interest of Officers and Employees,” (eff. March 13,
6 2009).
- 7 • “Engineering Consultants Section, Contract Award and Administration Rules
8 & Procedures” (August 2010), section 1.10 (Standards of Conduct and
9 Conflict of Interest), items 1 through 6.

10 ADOT may disqualify a Proposer, and refuse to enter into the DBM Agreement with the
11 Preferred Proposer, if it or any member of the Proposer’s team violates Arizona Revised
12 Statutes Section 41-2517.C. Any such violation by the Preferred Proposer will, in
13 ADOT’s sole discretion, constitute a failure to execute the DBM Agreement and result in
14 the forfeiture of the Preferred Proposers’ Proposal Security. After award, ADOT may
15 cancel the DBM Agreement, without obligation or penalty, due to violation of Arizona
16 Revised Statutes Section 41-2517.C or in accordance with Arizona Revised Statutes
17 Section 38-511.

18 **7.3 Participation in More than One Proposer Organization**

19 ADOT may disqualify a Proposer, and refuse to enter into the DBM Agreement with the
20 Preferred Proposer, if any of its Equity Members or Major Non-Equity Members belongs
21 to more than one short-listed Proposer organization, or if any Affiliate of the Proposer or
22 any of its Equity Members or Major Non-Equity Members is a member of another short-
23 listed Proposer organization. Any such act by the Preferred Proposer will, in ADOT’s
24 sole discretion, constitute a failure to execute the DBM Agreement and result in the
25 forfeiture of the Preferred Proposer’s Proposal Security.

SECTION 8.0 PROTESTS

This Section 8.0 sets forth the exclusive protest remedies available with respect to the RFP and prescribes exclusive procedures for such protests.

8.1 Applicability and Deadlines

Protests are limited to the types of protests listed in Table 8-A.

Such protests may be filed only after Proposer has informally discussed the nature and basis of the protest with ADOT. The Proposer shall initiate such informal discussions by a written request for a one-on-one meeting delivered to the address specified in Section 2.2.1 no later than the applicable deadline to initiate informal discussions set forth in Table 8-A. The written request shall include an agenda for the proposed one-on-one meeting. ADOT will then set a date and time to discuss the nature and basis of the protest with the Proposer.

Protests must be filed by the applicable deadline for filing set forth in Table 8-A.

The Proposer's failure to observe any of the deadlines in Table 8-A shall constitute a waiver of the Proposer's right to the corresponding protest.

Table 8-A

Type of Protest	Deadline to Initial Informal Discussions	Deadline to File Protest
Allegations that the terms of the RFP are wholly ambiguous, contrary to legal requirements applicable to the procurement, or exceed ADOT's authority	Ten Business Days after issuance of the RFP	As soon as the basis for the protest is known, but no later than 30 days prior to the Proposal Due Date, unless the protest relates to an Addendum to the RFP, in which case the protest must be filed no later than five Business Days after the Addendum is issued (but in any event, prior to the Proposal Due Date)
A determination as to whether the protestant's Proposal is responsive to the requirements of the RFP or as to whether the protestant's Proposal passes the pass/fail criteria set forth in this ITP, as applicable	Three Business Days after issuance of the responsiveness or pass/fail determination at issue	No later than ten days after receipt of the notification of non-responsiveness

Conditional Award	Three Business Days after the earliest of (i) the date of Conditional Award and (ii) the public announcement of the Preferred Proposer	No later than ten days after the earliest of (i) the date of Conditional Award and (ii) the public announcement of the Preferred Proposer
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8.2 Content of Protest

Protests shall completely and succinctly state the grounds for protest, its legal authority, and its factual basis, and shall include all factual and legal documentation in sufficient detail to establish the merits of the protest. The protest shall also include the name and address of the protestor and the Project number (found on the cover page of this ITP). Statements shall be sworn and submitted under penalty of perjury.

8.3 Filing of Protest

Protests shall be filed by hand delivery to:

**Arizona Department of Transportation
State Engineer's Office
206 S. 17th Avenue, MD Rm. 102A
Phoenix, AZ 85007**

Proposer filing the protest shall concurrently submit a copy of the protest to the other Proposers, whose addresses may be obtained by contacting the ADOT Authorized Representative as provided in Section 2.2.1.

8.4 Comments from other Proposers

Other Proposers may file statements in support of or in opposition to the protest within five days of the filing of the protest. ADOT shall promptly forward copies of all such statements to the protestant. Any statements shall be sworn and submitted under penalty of perjury.

8.5 Burden of Proof

The protestant shall have the burden of proving its protest by clear and convincing evidence. ADOT may, in its sole discretion, discuss the protest with the protestant and other Proposers. No hearing will be held on the protest. The protest shall be decided on the basis of written submissions.

8.6 Decision on Protest

ADOT's State Engineer or designee (who has not been involved in evaluation) shall issue a written decision regarding the protest within 30 days after the filing of the detailed statement of protest. The written decision of ADOT's State Engineer or designee shall be final and non-appealable.

If necessary to address the issues raised in a protest, ADOT may, in its sole discretion, make appropriate revisions to the Request for Proposals by issuing Addenda.

8.7 Protestant's Payment of Costs; Attorneys' Fees

If a protest is denied, Proposer filing the protest shall be liable for ADOT's costs reasonably incurred to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by ADOT as a consequence of the protest.

Each Party hereby waives Arizona Revised Statutes section 12-341.01 and all benefits thereof. Each Party acknowledges that it understands the provisions and effect of such statute, has consulted with legal counsel regarding such waiver, and willingly grants such waiver.

8.8 Election of Remedies and Waiver of Stipend

Each Proposer, by submitting its Proposal, expressly recognizes and agrees that its filing of any protest, including any protest of a cancellation of the procurement, or its filing of any statement in support of another Proposer's protest, except a protest that is resolved through ADOT's issuance of an Addendum, constitutes an election of remedies and a complete waiver of all rights of such a Proposer to a stipend.

8.9 Rights and Obligations of Proposers

Each Proposer, by submitting its Proposal, expressly recognizes and agrees to the limitation on its rights to protest provided in this Section 8.0, and expressly waives all other rights and remedies that may be available to the Proposer under law, and agrees that the decision on the protest is final and conclusive. If a Proposer disregards, disputes, or does not follow the exclusive protest remedies provided in this Section 8.0, it shall indemnify and hold harmless ADOT and its officers, employees, agents, and consultants from and against all liabilities, fees and costs, including legal and consultant fees and costs, and damages incurred or suffered as a result of such Proposer's actions. Each Proposer, by submitting a Proposal, shall be deemed to have irrevocably and unconditionally agreed to this indemnity obligation.

SECTION 9.0 ADOT RIGHTS AND DISCLAIMERS

9.1 ADOT Rights

ADOT reserves to itself all rights (which rights shall be exercisable by ADOT in its sole discretion) available to it under applicable law, including without limitation, with or without cause, and with or without notice, the right to:

(a) develop the Project in any manner that it, in its sole discretion, deems necessary;

(b) accept or reject any or all of the Proposals, responses, supplemental information or data, other submittals, or any parts thereof, received from Proposers at any time;

(d) issue Addenda, supplements, and modifications to this RFP in whole or in part;

(e) cancel this RFP and procurement and commence a new procurement for part or all of the Project, without incurring any costs, obligations or liabilities, except as otherwise provided in Section 6.3;

(f) terminate evaluations of Proposals received at any time;

(g) negotiate with a Proposer without being bound by any provision in its Proposal or other submittal provided in connection with this procurement, and suspend or terminate negotiations at any time;

(h) elect not to commence or continue negotiations with any responding Proposer;

(i) if ADOT is unable to negotiate Contract Documents to its satisfaction with a Proposer, elect to negotiate in succession with the next highest rated Proposer(s), terminate this procurement and pursue other developments or solicitations relating to the Project, or exercise such other rights under applicable law, as ADOT deems appropriate;

(j) modify the procurement process (with appropriate notice to Proposers);

(k) waive or permit any Proposer's submittal of corrections, addenda and supplements to data previously provided in response to this RFP until such time as ADOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;

(l) require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its Proposal, and require additional evidence of technical and financial capability to perform the Developer's obligations under the Contract Documents;

(m) seek and obtain information or data, from any source, that may assist ADOT in evaluating the Proposals, and investigate the qualifications and Proposal of any Proposer;

(n) appoint evaluation committees to review and make recommendations regarding the Proposals, and seek the assistance of outside technical, financial and legal experts and consultants in connection with the Proposal evaluations;

- (o) hold meetings and conduct discussions and correspondence with one or more of the Proposers regarding their Proposals;
- (p) disclose information contained in a Proposal to the public as described in this RFP;
- (q) approve or disapprove additions, deletions or changes in the organization, firms and/or Key Personnel identified in the SOQ of any Proposer;
- (r) accept a Proposal other than that which requests the lowest public funds from ADOT;
- (s) waive informalities, irregularities, deficiencies and omissions in or in connection with Proposals; accept and review a non-conforming Proposal, or permit clarifications, modifications or supplements to any Proposal;
- (t) modify any dates set or projected in the RFP;
- (u) not issue a notice to proceed after execution of the Contract Documents;
- (v) disqualify any Proposer for violating any rules or requirements of the procurement set forth in this RFP, or in any other communication from ADOT in connection with this procurement;
- (w) exercise any other right reserved or afforded to ADOT under this RFP or applicable laws or regulations; and
- (x) add or modify ADOT's reserved rights in Addenda to this RFP.

9.2 ADOT Disclaimers

THE RFP DOES NOT COMMIT ADOT TO ENTER INTO A CONTRACT OR PROCEED WITH THE PROCUREMENT AS DESCRIBED HEREIN. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.3, ADOT AND THE STATE OF ARIZONA ASSUME NO OBLIGATIONS, RESPONSIBILITIES, OR LIABILITIES, FISCAL OR OTHERWISE, TO REIMBURSE ALL OR PART OF THE COSTS INCURRED OR ALLEGED TO HAVE BEEN INCURRED BY PARTIES CONSIDERING A RESPONSE TO OR RESPONDING TO THIS RFP. ALL SUCH COSTS SHALL BE BORNE SOLELY BY EACH PROPOSER.

FURTHER, PURSUANT TO ARIZONA REVISED STATUTES, SECTION 28-7705(H), THE DBM AGREEMENT WILL CONTAIN A PROVISION THAT IT IS SUBJECT TO ARIZONA REVISED STATUTES, TITLE 28, CHAPTER 20, ARTICLE 3, WHICH REFERS TO CERTAIN POWERS OF THE STATE TRANSPORTATION BOARD.

IN NO EVENT SHALL ADOT BE BOUND BY, OR LIABLE FOR, ANY OBLIGATIONS WITH RESPECT TO THE PROJECT UNTIL SUCH TIME (IF AT ALL) AS THE CONTRACT DOCUMENTS, IN FORM AND SUBSTANCE SATISFACTORY TO ADOT, HAVE BEEN AUTHORIZED AND EXECUTED BY ADOT AND, THEN, ONLY TO THE EXTENT SET FORTH THEREIN.

IN SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP, PROPOSER IS SPECIFICALLY ACKNOWLEDGING AND ACCEPTING THE FOREGOING DISCLAIMERS.