

**LOUISIANA DEPARTMENT OF  
TRANSPORTATION AND  
DEVELOPMENT**

**DESIGN-BUILD MANUAL**



Table of Contents

|  | <b>Page</b> |
|--|-------------|
| <b>1.0 CHAPTER ONE - OVERVIEW .....</b>                                      | <b>4</b>    |
| 1.1 USE.....   | 4           |
| 1.2 TERMS AND DEFINITIONS.....   | 4           |
| <b>2.0 CHAPTER 2 - THE DESIGN-BUILD DECISION .....</b>                       | <b>5</b>    |
| 2.1 PROJECT SELECTION .....  | 5           |
| 2.2 DEPARTMENT APPROVAL .....  | 8           |
| 2.3 LEGISLATIVE APPROVAL .....   | 9           |
| 2.4 FEDERAL CONCURRENCE .....  | 9           |
| <b>3.0 CHAPTER 3 - DESIGN-BUILD MANAGEMENT AND TRAINING.....</b>             | <b>11</b>   |
| 3.1 THE DEPARTMENT'S DESIGN-BUILD PROCUREMENT MANAGEMENT TEAM .....          | 11          |
| 3.2 THE DEPARTMENT'S PROJECT MANAGER .....                                   | 12          |
| 3.3 DESIGN-BUILD ORIENTATION AND TRAINING .....                              | 13          |
| <b>4.0 CHAPTER 4 - PROCUREMENT STRATEGY .....</b>                            | <b>15</b>   |
| 4.1 PROJECT SCOPE .....  | 15          |
| 4.2 STAKEHOLDER IDENTIFICATION .....   | 16          |
| 4.3 PROJECT GOALS.....   | 16          |
| 4.4 RISK IDENTIFICATION, ASSESSMENT, AND ALLOCATION.....                     | 17          |
| 4.5 OPTIONS AND CHALLENGES TO DESIGN-BUILD CONTRACTING .....                 | 19          |
| 4.6 PROJECT APPROACHES .....   | 21          |
| 4.7 IDENTIFICATION OF EVALUATION FACTORS.....                                | 22          |
| 4.8 OVERVIEW OF THE PROCUREMENT PROCESS.....                                 | 23          |
| 4.9 PROCUREMENT STRATEGY DOCUMENTATION.....                                  | 23          |
| <b>5.0 CHAPTER 5 - NOTICE OF INTENT AND REQUEST FOR QUALIFICATIONS .....</b> | <b>25</b>   |
| 5.1 CONFIDENTIALITY.....   | 25          |
| 5.2 NOTICE OF INTENT .....   | 27          |
| 5.3 REQUEST FOR QUALIFICATIONS .....   | 27          |
| 5.3.1 Purpose.....   | 28          |
| 5.3.2 Standard Request for Qualifications Terms and Conditions .....         | 28          |
| 5.3.3 Evaluation Factors .....   | 29          |

|       |  |    |
|-------|--|----|
| 5.3.4 | Request for Qualifications Preparation .....   | 31 |
| 5.4   | REQUEST FOR QUALIFICATIONS APPROVALS .....   | 32 |
| 6.0   | CHAPTER 6 - ISSUING THE REQUEST FOR QUALIFICATIONS AND STATEMENT OF QUALIFICATIONS EVALUATION AND SHORT-LISTING..... | 33 |
| 6.1   | ISSUING THE REQUEST FOR QUALIFICATIONS .....   | 33 |
| 6.2   | PROPOSER QUESTIONS AND ANSWERS .....   | 33 |
| 6.3   | REQUEST FOR QUALIFICATIONS ADDENDUM.....   | 34 |
| 6.4   | INFORMATIONAL MEETINGS.....  | 34 |
| 6.5   | EVALUATION AND SHORT-LIST PLAN .....   | 36 |
| 6.6   | EVALUATING AND SHORT-LISTING THE PROPOSERS.....  | 36 |
| 6.6.1 | Design-Build Qualifications Evaluation Committee.....  | 36 |
| 6.6.2 | Statement of Qualifications Evaluations.....   | 37 |
| 6.6.3 | Requests for Clarifications.....   | 39 |
| 6.6.4 | Short-List.....  | 39 |
| 6.6.5 | Statement of Qualifications Protests .....   | 40 |
| 7.0   | CHAPTER 7 - REQUEST FOR PROPOSALS AND DESIGN-BUILD CONTRACT DOCUMENTS.....   | 41 |
| 7.1   | REQUEST FOR PROPOSALS .....  | 41 |
| 7.2   | INSTRUCTION TO PROPOSERS .....   | 41 |
| 7.2.1 | Evaluation Factors .....   | 42 |
| 7.3   | CONTRACT DOCUMENTS.....  | 44 |
| 7.4   | REFERENCE DOCUMENTS .....  | 44 |
| 7.5   | REQUEST FOR PROPOSALS PREPARATION .....  | 45 |
| 7.6   | REQUEST FOR PROPOSALS APPROVALS/CONCURRENCE.....   | 45 |
| 8.0   | CHAPTER 8 - ISSUING THE REQUEST FOR PROPOSALS AND PROPOSAL EVALUATION AND SELECTION.....                             | 46 |
| 8.1   | DRAFT REQUEST FOR PROPOSALS.....   | 46 |
| 8.2   | ISSUANCE OF REQUEST FOR PROPOSALS.....   | 47 |
| 8.3   | PROPOSER QUESTIONS AND ANSWERS .....   | 47 |
| 8.4   | REQUEST FOR PROPOSALS ADDENDUM.....  | 48 |
| 8.5   | INFORMATIONAL MEETINGS.....  | 49 |
| 8.5.1 | Group Meetings.....  | 49 |
| 8.5.2 | One-on-One Meetings.....   | 50 |

## Louisiana Department of Transportation and Development

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|              |  |           |
|--------------|--|-----------|
| <b>8.6</b>   | <b>TECHNICAL CONCEPT REVIEWS AND ALTERNATE TECHNICAL CONCEPTS.....</b> | <b>50</b> |
| <b>8.6.1</b> | <b>Technical Concept Reviews.....</b>                                  | <b>51</b> |
| <b>8.6.2</b> | <b>Alternate Technical Concepts.....</b>                               | <b>51</b> |
| <b>8.7</b>   | <b>EVALUATION AND SELECTION PLAN.....</b>                              | <b>52</b> |
| <b>8.8</b>   | <b>EVALUATING THE SUCCESSFUL PROPOSER.....</b>                         | <b>52</b> |
| <b>8.8.1</b> | <b>Proposal Review Committee.....</b>                                  | <b>52</b> |
| <b>8.8.2</b> | <b>Proposal Evaluations.....</b>                                       | <b>53</b> |
| <b>8.8.3</b> | <b>Requests for Clarifications.....</b>                                | <b>55</b> |
| <b>8.8.4</b> | <b>Proposer Presentations and Interviews.....</b>                      | <b>56</b> |
| <b>8.8.5</b> | <b>Technical Score.....</b>  | <b>56</b> |
| <b>8.8.6</b> | <b>Lump Sum Price Proposal Opening.....</b>                            | <b>57</b> |
| <b>8.8.7</b> | <b>Proposal Protests.....</b>  | <b>58</b> |
| <b>8.9</b>   | <b>AWARD AND EXECUTION OF THE DESIGN-BUILD CONTRACT.....</b>           | <b>58</b> |
| <b>8.10</b>  | <b>DE-BRIEFS.....</b>  | <b>59</b> |

### **EXHIBITS:**

|           |  |
|-----------|--|
| Exhibit A | Design-Build Project Overview  |
| Exhibit B | Terms and Definitions  |
| Exhibit C | Amendment #2 Design-Build to the Louisiana Federal-Aid Highway Program<br>Stewardship Agreement 2007 |
| Exhibit D | Design-Build Orientation and Training  |
| Exhibit E | Procurement Strategy Session   |
| Exhibit F | Example Confidentiality and Non-Disclosure Statement and Example Notice of<br>Intent                 |
| Exhibit G | Example Request for Qualifications and Example Evaluation and Short-List Plan                        |
| Exhibit H | Example Instructions to Proposers and Example Evaluation and Selection Plan                          |
| Exhibit I | Example Evaluation Workbook  |
| Exhibit J | Example Part 1 Design-Build Agreement  |
| Exhibit K | Example Part 2 Design-Build Section 100  |

## **1.0 CHAPTER ONE - OVERVIEW**

This Design-Build Manual (DB Manual) was commissioned by the Office of the Secretary, and is intended to document the Louisiana Department of Transportation and Development's (the LA DOTD) procedures and practices for determining the eligibility of a project for the Design-Build (DB) method of project delivery, and the subsequent procedures established by the LA DOTD to procure the DB contract for the project. The DB procedures and practices identified in this DB Manual are based upon state and federal laws and regulations, as well as best practices recognized nationally in the DB industry and lessons learned locally on previous DB projects that the LA DOTD has executed. It is the intent of the LA DOTD that DB projects are developed in accordance with this DB Manual.

### **1.1 Use**

This DB Manual was commissioned for the use of LA DOTD staff directly involved in the development and procurement of DB projects. This DB Manual will likely also be used by other LA DOTD staff that are indirectly involved with DB projects to some extent, to aid in the understanding of the DB project delivery method.

The goals of this Design-Build Manual include the following:

- A) Allow the LA DOTD to reduce to writing the procedures and practices for DB project delivery, clarifying those procedures and practices to both internal and external stakeholders and creating a more transparent process;
- B) Preserve the LA DOTD's ability to engage in the use of the DB project delivery method, while maintaining high standards for integrity and quality in procurement and project development;
- C) Ensure that the LA DOTD's DB procedures and practices are coordinated to the extent practicable with current standard procedures and practices, while recognizing that DB projects may have some differences from "traditional" projects; and
- D) Create an environment that will allow, to the maximum extent possible, innovation on appropriate projects.

### **1.2 Terms and Definitions**

The terms and definitions that are used throughout this DB Manual can be found in Exhibit B - Terms and Definitions.

**2.0 CHAPTER 2 - SELECTING A PROJECT FOR DESIGN-BUILD PROJECT DELIVERY**

A project may be designated as a DB project by the Louisiana State Legislature, by the Secretary, or by project staff. Additionally, each year the Chief Engineer and Project Delivery Engineer will evaluate the LA DOTD's program to determine if there are candidate projects for the DB project delivery method. However, regardless of how a project has been designated as a DB project, the project must still be approved by the House and Senate Transportation, Highways, and Public Works Committees.

Since each project that is designated for DB is subject to the approval of the House and Senate Transportation, Highways, and Public Works Committees, any project that is considered should undergo analysis of certain factors that will assist the LA DOTD in determining whether the project is a good candidate for DB. While there is no "equation" or "formula" into which numbers are plugged and a score results indicating whether a project is eligible or not eligible for DB, there are certain factors that national best practices indicate are helpful in making the DB decision.

**2.1 Project Selection**

The LA DOTD's Project Manager will be responsible for organizing a Project Selection Committee to determine if a project is appropriate for the DB project delivery method. The Project Selection Committee will be chaired by the LA DOTD's Project Manager, and will include the following members:

- A) The Transportation Planning Administrator;
- B) The Chief Construction Division Engineer;
- C) The Project Development Administrator;
- D) District Administrator (for the appropriate district);
- E) Environmental Administrator;
- F) Program Manager;
- G) The Contracts Services Administrator;
- H) A representative from the Project Finance Committee; and
- I) If federal funds are to be involved, a representative of the Federal Highway Administration (ex officio).

This Project Selection should typically occur when a project is in Stage 2 of the LADOTD's Project Delivery Process, unless circumstances dictate otherwise.

Generally, the selection of a project for DB project delivery involves the three overarching criteria of "schedule," "price," and/or "creativity" or "innovation," along with the other criteria stated below. However, these criteria can be further refined as follows:

### **Schedule**

Are there time constraints associated with delivery of the project? Typically, DB allows delivery of a project more quickly than if that same project were delivered utilizing a traditional, design-bid-build delivery method. This time savings is generally recognized as occurring during the overlap in the design and construction phases, and the elimination in the need to complete a 100% Plan, Specification, and Estimate (PS&E) package prior to bidding the work for construction. Additionally, because one entity (the Design-Builder) is responsible for the coordination of all of the designers, subcontractors, and suppliers on the project, the possibility of conflicts between multiple contractors and suppliers on a site, or conflicts arising between the constructor and designer, are the responsibility of the Design-Builder, eliminating another common point of delay on traditional, design-bid-build projects.

### **Price**

Due to funding constraints, does the project need greater cost certainty in the contract price? Because two of the frequent causes of change orders in traditional, design-bid-build projects are eliminated in DB (i.e., design interface and coordination with multiple contractors and/or suppliers at the site), DB contracts often see less cost escalation than traditional, design-bid-build contracts. Further, national best practices have demonstrated that in DB projects the Design-Builder is best suited to mitigate certain risks, dependent on the project. Design-Build allows the owner to contractually allocate the risk to the Design-Builder, where appropriate. Of course, in turn, the Design-Builder builds the cost of the risk mitigation into its price, but on many occasions it has proven to be a cost effective method for the owner to allocate and mitigate a project risk.

### **Creativity/Innovation**

Does the project offer the opportunity for creativity and/or innovation in design solutions or construction means or methods? This will typically apply to projects that are complex in nature. However, the LA DOTD should not limit what it considers a "complex" project – a complex project may include a project that is a technically complex bridge structure or a project that has a particularly complex environmental issue, whether related to site conditions/constraints or to NEPA mitigations. Additionally, acknowledging this criteria will require the LA DOTD, stakeholders, and Proposers to accept that on appropriate projects, procurements that utilize performance criteria rather than prescriptive criteria to define the evaluation objectives and factors would be necessary. Whether this type of procurement would be palatable to the public and stakeholders would be a consideration in this criteria.

**Other Criteria**

Other criteria to consider when determining whether a project is appropriate for DB project delivery may include any or all of the following:

- A) Definitiveness of the Scope – Has the scope of the project been adequately and consistently defined? This is distinct from the "creativity/innovation" criteria above in that the scope may be defined, however, the solution to the scope may not be defined. For example, the scope may be a "structure crossing the Mississippi River" at a particular location. The nature of the structure (i.e., the creativity/innovation) may not be defined other than by performance parameters.
- B) Availability of Design-Builders – Is there a sufficient pool of designers and contractors available to propose on a project of the value and complexity proposed and to be delivered within the proposed schedule?
- C) LA DOTD's Capability – Is there sufficient capability within the LA DOTD, including a LA DOTD's Project Manager and/or LA DOTD's Construction Manager (CM) with the appropriate skill set, to manage the project? Is it necessary to engage consultant assistance?
- D) Status of Right-of-Way Acquisition – The acquisition of Right-of-Way (ROW) is always a great source of risk on public projects. As such, consideration should be given to the status of the acquisition of any property necessary for the construction of the project. If parcels remain to be acquired, what are the estimated dates for acquisition? Some agencies have successfully shifted some ROW acquisition activities to the Design-Builder, allowing the Design-Builder to prioritize the acquisition schedule and necessary parcels. Any shift of ROW services to the Design-Builder must be in compliance with appropriate state and federal law and the LA DOTD's Acquisition of Right-of-Way and Relocation Assistance policy and procedures, and requires that the Design-Builder submit a written ROW acquisition and relocation plan to the LA DOTD for approval. The activities shifted to the Design-Builder could include appraisals, appraisal reviews, extending offers on behalf of the LA DOTD, and conducting negotiations on behalf of the LA DOTD. However, the property would be acquired by the LA DOTD and any expropriations activities would be the responsibility of the LA DOTD.
- E) Environmental Issues – Environmental mitigation measures and hazardous materials mitigation should be included in the DB contract. Also, where environmental documentation or permits must be obtained, the project planning process can be delayed. An issue unique to a procurement that utilizes funding from the Federal Highway Administration (FHWA) is to remember that the procurement documents must inform the proposers of the general status of the National Environmental Policy Act (NEPA) status, generally, it is the policy of the LA DOTD to complete the NEPA process prior to award of the DB contract.
- F) Utilities and Railroads – Are there a significant number of utilities or a railroad affecting the project? One way to mitigate the risk of utility relocations or

railroad work is to assign the work directly to the Design-Builder to manage, eliminating a coordination point. This requires up front work by the LA DOTD through utility agreements or agreement with the railroad, but can eliminate delay during the project if the groundwork is laid ahead of time.

- G) Flexibility – Like "Definitiveness of Scope" ((A), above), Flexibility ties in with the "Creativity/Innovation" criteria. While on any given project there may be elements of the project that may have a prescribed solutions, DB projects generally are those best suited to some degree of freedom for the Design-Builder to determine the solutions to the challenges. A project wherein every problem has a prescribed solution is probably not well-suited for DB, unless the criteria of schedule and price far outweigh the criteria for creativity/innovation.
- H) Current Project Status – Has the project progressed past the point that significant design has already occurred? If so, it may not be in the LA DOTD's best interest to pay for a Design-Builder to "re-engineer" the project. Conversely, if the LA DOTD intends to have the Design-Builder utilize the engineering that the LA DOTD has already completed, the LA DOTD will lose some of the benefits of creativity, innovation, and flexibility that DB brings to the table. The loss of those benefits may be outweighed by the "Schedule" and "Price" criteria, but each should be weighed individually when making the DB decision.
- I) Award Method – How will the contract be awarded? Will price be more or less important than the technical proposal? Will the price and the technical proposal be equally important? The award method has come increasingly under scrutiny, and appropriately should be justified when justifying the DB decision. Low price does not necessarily always have to be the award method, but it should always be clear to the proposers and the public why the LA DOTD awarded the contract the way it did and how the award was made. The basic award methods to consider are as follows:
  - 1) Low price;
  - 2) Price and technical proposal "equally" important;
  - 3) Technical proposal more important than price;
  - 4) Stipulated price, best technical proposal; and
  - 5) Any of the above with Alternate Technical Concepts.

## **2.2 Louisiana Department of Transportation and Development Approval**

The analysis following Section 2.1 that is conducted justifying the use of DB for a certain project or program of projects can be the basis for a project selection recommendation memorandum. The project selection recommendation memorandum must be submitted to the Chief Engineer, for the concurrence of the Secretary.

**Section 2.2 Tasks**

- Draft project selection recommendation memo
- Submit project selection recommendation memo to the Chief Engineer for approval
- Submit the project selection recommendation memo to the Secretary for concurrence

**Section 2.2 Deliverables**

- Project selection recommendation memo

**2.3 Legislative Approval**

Under L.R.S. 48:250.2, the LA DOTD must submit any project selected for DB to the House and Senate Transportation, Highways, and Public Works Committees for approval. The analysis following Section 2.1 that is conducted justifying the use of DB for a certain project or program of projects and the subsequent Chief Engineer recommendation memorandum can be utilized by the Secretary in his or her presentation to the Louisiana State Legislature pursuant to L.R.S. 48:250.2. It is important to note that while the Secretary will seek the approval of the House and Senate Transportation, Highway, and Public Works Committees at this time in order to proceed with project development, it is likely that he or she will continue to brief and update the committee regarding a project after its approval as that project develops and progresses.

**2.4 Federal Concurrence and Approval**

Under Title 23 of the Code of Federal Regulations (CFR) Parts 635 and 636 and Amendment #2 Design-Build to the Louisiana Federal-Aid Highway Program Stewardship Agreement 2007 (Stewardship Agreement), there are a number of required federal concurrences and approvals that the LA DOTD must receive from the FHWA before proceeding with a DB project. The concurrences and approvals specific to the procurement process are addressed in this DB Manual.

The first concurrence required from the FHWA is concurrence prior to issuance of the Request for Qualifications (RFQ) on a project receiving federal funding. This concurrence is in accordance with the Stewardship Agreement. (*See Exhibit C - Amendment #2 Design-Build to the Louisiana Federal-Aid Highway Program Stewardship Agreement 2007.*)

In accordance with 23 CFR 635.112 and 636.109, for a project that is receiving federal funding, the LA DOTD must receive prior FHWA concurrence and approval prior to issuing the Request for Proposals (RFP). Ideally, the RFP will be issued after the NEPA process has been completed. In that instance, the FHWA's concurrence and approval of the RFP constitutes the FHWA's project authorization as well as the FHWA's approval of the LA DOTD's request to release the RFP.

If the RFP is issued prior the completion of the NEPA process, the FHWA's concurrence and approval only constitutes FHWA's indication that the LA DOTD's activities comply with federal requirements and does not constitute project authorization or obligation of federal funds as well

## **Louisiana Department of Transportation and Development**

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as FHWA's approval of the LA DOTD's request to issue the RFP. Prior to the completion of NEPA, FHWA's concurrence and approval of the RFP do not constitute project authorization.

The LA DOTD must also receive FHWA concurrence in the award of the DB Contract, in accordance with 23 CFR 635.114 and 636.109.

### 3.0 CHAPTER 3 - DESIGN-BUILD MANAGEMENT AND TRAINING

A DB procurement will be more successful if responsibility is assigned to a group of individuals who become well versed in the concepts of DB generally and DB procurement and contracting specifically. Continuity of personnel will also be important to the success of the program. For example, staff with technical capabilities who assist in the drafting of performance specifications will also be valuable during the evaluation of proposals and during the implementation of the project because of their familiarity of the subject matter as well as the contract documents for contract administration purposes.

#### 3.1 The Louisiana Department of Transportation and Development's Design-Build Procurement Management Team

The LA DOTD's DB Procurement Management Team will be lead by the Contract Services Administrator. The Contract Services Administrator will assign members to the DB Procurement Management Team as appropriate depending on the project, but generally the Contract Services Administrator may be assisted by any of the following people:

- A) The LA DOTD's Consultant Contract Administrator;
- B) The LA DOTD's Project Control Engineer Administrator;
- C) A specifications engineer (either an LA DOTD or consultant engineer who will assist with drafting technical provisions and compiling technical documents for inclusion in the procurement documents);
- D) The LA DOTD's Project Manager; and
- E) Legal counsel.

Any of the members of the DB Procurement Management Team may be replaced, as needed, with a designee identified by the Secretary.

The DB Procurement Management Team is responsible for controlling and maintaining the integrity of the entire procurement process, from start to finish. The membership of the DB Procurement Management Team will consist of members that are not involved in either the DB Qualifications Evaluation Committee (*see* Section 7.6.1) and the Proposal Review Committee (*see* Section 9.8.1), with the exception of the LA DOTD's Project Manager. The reason for the exception to this rule is that the LA DOTD's Project Manager is integrally important to providing and coordinating the technical information with the DB Procurement Management Team for the preparation of the procurement documents, and serves as a liaison to the rest of the LA DOTD's technical personnel in technical activities related to procurement document preparation.

The Design-Build Procurement Management Team substantially performs the following functions:

- 1) Not only maintains strict confidentiality with regard to its functions within the evaluation process but also is the primary group responsible for

- managing and monitoring the entire process for confidentiality, integrity, and procurement sensitivity;
- 2) Ensures that all participants in the procurement process sign a certification of confidentiality and non-disclosure and statements concerning conflicts of interest. If apparent conflicts are disclosed the resolution process for the conflicts will be determined by the Executive Counsel;
  - 3) Maintains during the entirety of the procurement a procurement file, including, but not limited to, all relevant procurement documents, final solicitation documents, and any original signed documents pertaining to the procurement, including contracts;
  - 4) Drafts, and compiles information to be included in, the procurement documents, including the Notice of Intent (NOI), RFQ, and RFP;
  - 5) Serves as the single-point-of-contact for all communications with the proposers, both prior to and after receipt of Statements of Qualifications (SOQ) and prior to and after receipt of Proposals;
  - 6) Provides orientation sessions on the evaluation process for the members of the DB Qualifications Evaluation Committee and Proposal Review Committee prior to start of evaluations;
  - 7) Facilitates the DB Qualifications Evaluation Committee and Proposal Review Committee throughout the entire process;
  - 8) Receives and safeguards all SOQs and Proposals and all related evaluation information. Lump Sum Price Proposals are kept sealed in a secure location;
  - 9) Reviews each SOQ and Technical Proposal for responsiveness to the RFQ and RFP, respectively. The Procurement Management Team ensures that an SOQ and a Proposal is in the required format and ready for evaluation;
  - 10) Prepares the SOQs and Technical Proposals for evaluation and evaluation worksheets for the DB Qualifications Evaluation Committee and Proposal Review Committee, respectively; and
  - 11) Coordinates the notification of technical scores, conducts the public opening of the Lump Sum Price Proposals, facilitates the award and execution of the DB Contract, and assists the LA DOTD's Project Manager with any requested de-briefs.

### **3.2 The Louisiana Department of Transportation and Development's Project Manager**

One of the first acts that will need to be formally taken for the project will be to formally designate the project manager for the project. In accordance with L.R.S. 48:250.3, the Chief Engineer, with concurrence of the Secretary, assigns the project manager to the project. Since the LA DOTD's Project Manager will be integral to moving the project forward even at these early stages of the project and procurement development, it will be critical for this assignment to

be made early. It should be anticipated that for the majority of DB projects, this person will be spending a significant amount of his or her time on the project, so finding a person who has enough time to take on a project of the magnitude to be expected will be critical.

***Section 3.2 Tasks***

- Draft Chief Engineer LA DOTD's Project Manager assignment memorandum, for Secretary concurrence
- Submit Project Manager assignment memorandum to the Chief Engineer for approval
- Submit Project Manager assignment memorandum to the Secretary for concurrence

***Section 3.2 Deliverables***

- Chief Engineer memorandum assigning the LA DOTD's Project Manager, for concurrence by the Secretary

**3.3 Design-Build Orientation and Training**

The LA DOTD's DB Procurement Management Team and any other staff involved in the DB project, as well as stakeholder and consultant staff retained to assist the LA DOTD with the development of the project, should be trained in the concepts of DB. The DB orientation and training should cover the following topics:

- A) The unique relationship between the LA DOTD and the Design-Builder;
- B) Comparison of Design-Build to design-bid-build;
- C) Reasons for utilizing Design-Build;
- D) Timing of procurement strategy;
- E) Overview of the procurement and contract documents; and
- F) Specifications and other technical provisions.

The DB orientation and training will be conducted by the DB Procurement Management Team and, after the initial training, will be conducted yearly to refresh LA DOTD personnel on any updates pertaining to the DB process as used by the LA DOTD. Anyone new to the LA DOTD's DB process will need to undergo the DB orientation and training in a special session with the DB Procurement Management Team prior to participating in a DB procurement.

An example of a DB orientation and training Microsoft Power Point® presentation is attached to this DB Manual at Exhibit D – Design-Build Orientation and Training.

***Section 3.3 Tasks***

- Conduct initial Design-Build orientation and training
- Conduct yearly DB orientation and training refreshers on updates to LA DOTD's DB process

- Conduct DB orientation and training of personnel new to the LA DOTD's DB process prior to participation in a DB procurement

***Section 3.3 Deliverables***

- Prepare Design-Build orientation and training Microsoft Power Point<sup>®</sup> presentation
- Prepare DB orientation and training Microsoft Power Point<sup>®</sup> presentation updates, as necessary

#### **4.0 CHAPTER 4 - PROCUREMENT STRATEGY**

Once the DB decision has been made, and early in the stages of a project's initial planning, the LA DOTD should include a Procurement Strategy Session as a part of the project's development. The Procurement Strategy Session will be facilitated by the DB Procurement Management Team and should include LA DOTD staff involved in the project, as well as certain stakeholder representatives who may bring particular insight to the table. The timing of the Procurement Strategy Session is particularly important in that some of the decisions made will drive the level of Preliminary Engineering (PE) to be completed prior to procurement of the Design-Builder, how utility relocation work will be allocated between utilities and the Design-Builder, and whether the Design-Builder will assume any risk for ROW acquisition, to name a few issues. Making these types of strategic decisions early will prevent the LA DOTD from conducting unnecessary work that will be "re-engineered" or "re-worked" by the Design-Builder and allows the Design-Builder to become involved in the project as early as possible to the benefit of the parties.

The Procurement Strategy Session will be conducted by the DB Procurement Management Team, with assistance from the LA DOTD's Project Manager. The Chief Engineer will determine the attendees for the Procurement Strategy Session, based on the recommendation of the DB Procurement Management Team.

A general outline of the topics of the Procurement Strategy Session are below, and an example of a Procurement Strategy Session Microsoft Power Point<sup>®</sup> presentation is attached to this DB Manual at Exhibit E – Procurement Strategy Session. In addition to the topics outlined below, if time permits, a site visit may be included as a part of the Procurement Strategy Session. The site visit would allow the attendees of the Procurement Strategy Session to familiarize themselves with the environment in which the project will be constructed, and may add perspective to the attendees regarding certain risks or challenges that the projects may face.

#### **4.1 Project Scope**

The first topic for the Procurement Strategy Session will be to outline the project's scope. This topic will be covered by the LA DOTD's Project Manager, and would generally cover the following items:

- A) Status of preliminary design/Preliminary Engineering;
- B) Type and status of environmental documentation, permitting, and environmental mitigation, if necessary;
- C) General overview of utility identification and anticipated number of relocations;
- D) Anticipated number and complexity of Right-of-Way acquisitions;
- E) Identification of the project footprint; and
- F) Other major issues, such as major river crossings, Maintenance of Traffic (MOT), surveying, safety, major adjacent projects, adjacent affected landowners or airports, etc.

This may be the first time that some of the attendees are hearing some of the information, so the presenter should feel free to share details, as the details will assist in making some of the strategic decisions later in the Procurement Strategy Session. However, since the Procurement Strategy Session occurs early in the project planning, where certain details may be unknown, it is acceptable to acknowledge this, as it may facilitate the discussion whether it may be to the LA DOTD's and Design-Builder's benefit to shift a particular scope item to the Design-Builder.

#### **4.2 Stakeholder Identification**

Identification of the stakeholders for the project is included in the Procurement Strategy Session because stakeholder support of a project is key to its ultimate success. Whether the stakeholder has an "approval" role (such as a funding or regulatory agency) or is a "public face" of a project (like a neighborhood group), knowing the stakeholders' issues, and addressing those issues during the project, can be accomplished through the DB contract. Some examples of stakeholders that the LA DOTD may encounter on its DB projects are as follows:

- A) The Federal Highway Administration;
- B) Railroads;
- C) Utilities;
- D) Cities;
- E) Parishes;
- F) The United States Army Corps of Engineers;
- G) The Environmental Protection Agency;
- H) The United States Coast Guard;
- I) Wildlife and fisheries agencies;
- J) Businesses and landowners;
- K) The Louisiana Department of Environmental Quality; and
- L) Neighborhood communities.

Since DB is a different way of doing business, stakeholders as well as the LA DOTD may have to adjust their standard operating procedures. Early involvement of stakeholders, especially those responsible for approvals, will help to identify and streamline any adjustments that will need to be made to their internal procedures for DB.

#### **4.3 Project Goals**

Project goals are set early in the project planning process and are key to the procurement strategy. The project goals guide project decisions, and should be clear and well-defined. If the LA DOTD has preferences for the project, the goals are one place to express these preferences, although any technical requirements should also be articulated in the design criteria and/or specifications to ensure that the Design-Builder will be contractually bound by the LA DOTD's preferences.

Project goals are essentially broken into three main categories, which generally correspond to the three main criteria that drive the Project Selection process: time, price, and quality.

**Time**

Time goals are frequently driven by major milestone dates, such as Notice to Proceed (NTP), opening to traffic, final acceptance, and completion of major pieces of the work.

**Price**

The ultimate price goal is typically to deliver the project within a stated price or within budget. Other price-related goals may include certain life cycle costs or funding or financing goals.

**Quality/Technical/Production**

Goals related to the quality or technical or production aspects of a project tend to be more wide-ranging, but are nonetheless important to the success of the project. Some examples of quality/technical/production goals from other projects are enumerated below:

- A) Build a safe, reliable, durable, and maintainable project;
- B) Provide a design life of 50 years;
- C) Serve as a catalyst for economic recovery and future growth;
- D) Remain sensitive to stakeholders throughout design and construction;
- E) Include a long-term warranty; and
- F) Minimize disruption to residents, business, and the traveling public during construction.

Quality/technical/production goals may include some more aspirational factors, as well as some more concrete goals. However, when taken together, all of the goals should help the proposers to understand the LA DOTD's overarching desires for the outcome of the project.

**4.4 Risk Identification, Assessment, and Allocation**

An important step to project planning and procurement strategy, and one frequently overlooked by public agencies, is a formal risk analysis process. Identifying project risks up front through a formal process, assessing the likelihood of those risks, and subsequently allocating the risks to the party best able to manage and mitigate the risk will aid in the reduction of overall project costs and contract disputes. Additionally, identification of higher-risk areas will help the LA DOTD to focus its efforts during project planning and preliminary design. For example, while a rule of thumb for PE efforts for the project generally may be 20% to 30%, in an area determined to be higher risk, the LA DOTD may decide to take the level of engineering to a higher level to reduce the risk to the LA DOTD and the Design-Builder.

Many different risk analysis methods have been created for infrastructure projects. A relatively straightforward risk identification, assessment, and allocation is spelled out below that can be used on large and small projects. The risk identification, assessment, and allocation set forth in this DB Manual contemplates the use of the Risk Matrix and Risk Worksheet, both found in Exhibit E – Procurement Strategy Session.

### **Step 1**

The first step is to identify the risks for the project. While the Risk Worksheet will have many "standard" project risks already listed, part of the purpose of the Procurement Strategy Session will be to brainstorm risks unique to the particular project at hand. All risks should be listed, regardless of the likelihood of occurrence. Some risks frequently found on projects are as follows:

- A) Archeological finds;
- B) Community opposition;
- C) Environmental approvals;
- D) Exceeding project budget;
- E) Geotechnical conditions;
- F) Hazardous materials;
- G) Maintenance of traffic;
- H) Railroad coordination;
- I) Right-of-Way acquisition; and
- J) Utility relocation.

Each risk should be noted as a risk that would impact budget, schedule, or both.

### **Step 2**

After identifying the project's risks, the next step is to assess the likelihood of occurrence of each risk over the course of the entire contract, including any warranty periods. The probability of occurrence should be rated from a "1" (low) to a "3" (high).

### **Step 3**

The next step is to determine the impact that the occurrence of a certain risk will have on the project. If the occurrence of a risk will have a highly detrimental impact to the project, the rating would be a "3." If the occurrence of a risk would only have a minor impact to the project, it would be rated a "1."

### **Step 4**

An overall risk rating is then determined by simply multiplying the probability rating (Step 2) by the impact rating (Step 3), resulting in a risk range of "1" to "9."

### **Step 5**

The final step is analyzing which risks have received moderate or high risk ratings during Step 4 (i.e., ratings of "4" to "6" would be considered moderate; ratings of "7" or higher would be considered high). Risks with risk ratings of moderate or high should be afforded particular

attention as to allocation and mitigation. Risks with low risk ratings would typically be attended to with standard contract terms and conditions, unless there are special circumstances warranting different arrangements.

The risks that have received a moderate or high risk rating should be allocated to the party that can best manage the risk to the benefit of all of the parties. This may be the LA DOTD, the Design-Builder, or a third party. Mitigation measures should also begin to be identified, such as specific contract provisions, additional PE, or third-party agreements.

#### **4.5 Options and Challenges to Design-Build Contracting**

The main challenge to remember with DB is that it is not traditional, design-bid-build procurement and contracting. That difference starts with the laws authorizing its use, at both the state and federal level. At the state level, L.R.S. 48:250.2 and 48:250.3 set forth very specific guidelines for DB procurements. At the federal level, 23 CFR Part 636 provides even more detail as to the options for DB procurement.

Some of the other DB contracting options to take into consideration are listed below:

A) Award Method

The award method should have been determined during the Project Selection process, however, to briefly re-cap the discussion, the determination must be made how the DB contract will be awarded. The basic options are as follows:

- 1) Low price;
- 2) Price and technical proposal "equally" important;
- 3) Technical proposal more important than price;
- 4) Stipulated price, best technical proposal; and
- 5) Any of the above with Alternate Technical Concepts.

B) Sensitivity Analysis

If any award method other than low price is chosen for the project, then a sensitivity analysis must be conducted to determine the weighting between the technical proposal and price (if the technical proposal is more important than price) and the break points between the various rating factors. This information will be included in the RFP, and is critically important to both the LA DOTD and the proposers.

C) Short-Listing

In accordance with current state law, the LA DOTD may short-list the most highly qualified firms after receipt of the SOQs and prior to release of the RFP. However, if the LA DOTD is planning on short-listing, it should determine the number during the Procurement Strategy Session and indicate the number of firms that will be on the Short-List in the RFQ. Under state law, there is no limit on the number of entities to be included on the short-list, although if fewer

than three responses are received in response to the RFQ, the Secretary would need to approve proceeding with the procurement. If federal funds are involved, federal regulation states that the short-list cannot exceed five unless the LA DOTD determines that it is in the LA DOTD's interest and consistent with the LA DOTD's purpose and objects of two-phase DB contracting to exceed a short-list of five.

D) Draft Request for Proposals

One nationally recognized best practice is to release a "draft" version of the RFP to the short-listed proposers for a review and comment period in advance of the "final" RFP. This allows the proposers to comment on some of the LA DOTD's ideas in the RFP without prejudice, and allows the LA DOTD to change the terms and conditions of the RFP prior to release of the final document based on this feedback. The typical "draft" RFP period is approximately one month (three weeks review by the proposers and one week to update the "final" RFP by the LA DOTD).

E) Technical Concepts Review and/or Alternate Technical Concepts

Technical Concepts Reviews and Alternate Technical Concepts (ATC) are similar processes that occur prior to the proposal due date, but allow proposers to confidentially present ideas to the LA DOTD.

Technical Concept Reviews allow proposers to present potential solutions to the LA DOTD prior to the proposal due date to inquire as to whether the proposed solution is within the parameters (i.e., responsive to) the RFP. The LA DOTD is limited to "yes" or "no" responses. If the proposer is given a "yes" response, it may proceed with its solution. If a proposer is given a "no" response, it runs the risk of being found non-responsive when it submits its proposal. However, if the LA DOTD is presented with a proposed solution that is currently outside the parameters of the RFP, the LA DOTD may issue an addendum to the RFP to open up the RFP to allow such a solution. But, the addendum cannot reveal the proposed solution, since that may be considered technical leveling or technical transfusion. Technical leveling and technical transfusion are prohibited activities any time the LA DOTD interacts with a proposer. Technical leveling would occur when one proposer is coached to improve its proposal up to the level of other proposals, typically through successive rounds of discussions. Technical transfusion would occur if information from one proposer is disclosed to a competitor.

Similar to Technical Concepts Review, an ATC is also a proposed solution presented to the LA DOTD by a proposer prior to the proposal due date. However, under the ATC process, the proposer is allowed to submit proposed solutions that are outside the parameters of the RFP. The LA DOTD then determines whether it will accept such proposed solutions in spite of the fact that they are not within the parameters of the RFP. If so accepted, then the ATC may be submitted with the proposer's proposal.

F) Stipends

Under both state and federal law, the LA DOTD may award a stipend to the unsuccessful proposers that submit responsive proposals for a DB procurement. The amount of the stipend must be stated in the RFP, and should be in an amount commensurate with the complexity of the project. Similarly, the process that will be used by the LA DOTD to distribute the stipend must be identified in the RFP. If a project will be a "not-to-exceed" DB project, the stipend discussion will need to include consideration of what will be included in the definition of a "responsive" proposal for the purpose of receipt of a stipend.

G) Project Budget Re-Analysis

As the project has progressed from first being identified in the Project Selection process and now to the Procurement Strategy Session, it will be beneficial to ensure that the project budget has remained consistent with the scope of the project, especially if the project scope has changed or been altered in any way during project development. A re-analysis of the LA DOTD's project budget will be conducted to review the reliability of the budget given the current scope of the project.

#### **4.6 Project Approaches**

Specific project approaches tend to be more technical in nature, and it will be during this discussion that many of the LA DOTD's technical staff will drive more of the discussion. A basic list of topics to cover is enumerated below, however, it will be necessary to have appropriate staff in attendance in order to make some fruitful determinations in these topic areas.

- A) Preliminary Engineering;
- B) Prescriptive versus performance-based specifications;
- C) Quality program;
- D) Design review process;
- E) Public relations;
- F) Partnering and dispute resolution options/method/procedure;
- G) Incentive fees;
- H) Warranties;
- I) Utility relocations;
- J) Right-of-Way acquisition;
- K) Coordination on marine issues, including the Army Corps of Engineers;
- L) Railroad coordination; and
- M) Insurance.

#### **4.7 Identification of Evaluation Factors**

While it may seem early to begin to identify the evaluation factors for the project, it is those factors that drive a significant amount of the drafting of the procurement documents. As such, the Procurement Strategy Session is the right time to begin the discussion of the evaluation factors.

The evaluation factors should focus specifically on information pertinent to the project that will help the LA DOTD differentiate between the proposers that will propose. The LA DOTD should not ask for information that will be ignored by the LA DOTD or that will be time-consuming or "busy work" for the proposers, especially if it will not be useful in distinguishing between the proposers. However, if the information is complex but truly useful to the evaluation of the most advantageous proposer, the LA DOTD should not shy away from soliciting that information.

Because of the inherent differences between the RFQ and the RFP, the nature of the information solicited during the two phases is significantly different. One similarity is that at both phases the proposers' submissions must undergo a responsiveness review to ensure that each proposer has submitted a document that appropriately responds to the RFQ or RFP, dependent upon the phase of the procurement. The responsiveness review is conducted by the DB Procurement Management Team and only reviews whether the proposer responded to all parts of the RFQ or RFP, as appropriate, not the quality of the proposer's response. The quality of the proposer's response is the purview of the rating committee.

#### **Request for Qualifications**

The RFQ is seeking the qualifications information from the proposers and, as such, should not have evaluation factors that seek substantial technical information. Thus, the RFQ evaluation factors typically involve the following areas pertaining to the qualifications of the proposer or its personnel:

- A) Legal and organizational structure and relationships;
- B) Bonding capacity;
- C) Past experience of the proposer and the firms that make up the proposer;
- D) Past experience of certain of the key managers; and
- E) Record of past performance, including past litigation, claims, debarments, etc.

Information evaluated during the RFQ phase is not re-evaluated during the RFP phase, unless a material change has occurred. Additionally, evaluation factors that include legal information, bonding (financial) information, and past experience of key managers (other than those evaluated during the RFQ phase) will often be utilized during both the RFQ and RFP phases.

#### **Request for Proposals**

In addition to price, the LA DOTD will seek more technical information in response to the RFP phase of the procurement. Again, the evaluation factors should reflect the complexities of the project, and should be tailored to ask the proposers for information that will be useful to the LA DOTD in differentiating the proposers. Overarching RFP evaluation factors typically include the following areas:

- A) Final legal documentation regarding the organizational structure and

- relationships;
- B) Bonding commitments;
- C) Management approaches to quality, design management, and construction management;
- D) Additional key personnel experience; and
- E) Proposed technical solutions, such as pavement design or structural design solutions.

#### **4.8 Overview of the Procurement Process**

An overview of all of the steps available to the DB procurement process should be discussed and the desired steps in the procurement process should be identified. The typical steps in a DB procurement include the following:

- A) Notice of Intent;
- B) Group informational/one-on-one meetings (optional);
- C) Request for Qualifications;
- D) Statement of Qualification evaluation;
- E) Short-listing;
- F) Draft Request for Proposals;
- G) Request for Proposals;
- H) Technical concepts review/Alternate Technical Concepts (optional);
- I) Proposal evaluation;
- J) Presentations/interviews with Proposers that submit Proposals;
- K) Selection;
- L) Award;
- M) Contract execution/Notice to Proceed.

While some of the steps are not optional because they are statutorily prescribed, such as the NOI having a current ten-day advertisement requirement, some steps are not required but are a national best practice, and so are at the desire of the LA DOTD, such as the draft RFP. Thus, the optional steps should only be used as the LA DOTD's schedule dictates. At the end of this exercise, a procurement schedule should be roughly laid out in order to demonstrate to the attendees the anticipated length of the procurement.

#### **4.9 Procurement Strategy Documentation**

The results of the Procurement Strategy Session are compiled by the DB Procurement Management Team, in the format of formal minutes that memorialize the recommendations made by the group for the procurement. These minutes become a part of the formal procurement file maintained by the DB Procurement Management Team.

As the RFQ and RFP documents are drafted by the DB Procurement Management Team, the recommendations formalized in the minutes will be incorporated into the documents and, if approved by the Chief Engineer, carried forward into the final documents.

***Section 4.0 Tasks***

- Draft memorandum to Chief Engineer recommending attendees at the Procurement Strategy Session for Chief Engineer's approval
- Secure location for Procurement Strategy Session
- Prepare Procurement Strategy Session Microsoft Power Point® presentation
- Conduct Procurement Strategy Session
- Draft Procurement Strategy Session minutes

***Section 4.0 Deliverables***

- Memorandum to Chief Engineer recommending attendees at the Procurement Strategy Session
- Procurement Strategy Session Microsoft Power Point® presentation
- Procurement Strategy Session minutes

## **5.0 CHAPTER 5 - CONFIDENTIALITY OF DOCUMENTS**

Prior to discussing any documents pertinent to the procurement process, the overarching issue of confidentiality warrants special attention. The validity of the procurement process in its entirety, from the release of the initial procurement documents through the execution of the ultimate DB Contract, is dependent on the confidentiality of the process. The integrity of any contracting process is critical to the fairness (and the appearance of fairness) and the confidence that the proposers, the stakeholders, and the public have in the LA DOTD. Therefore, the activities of the DB Procurement Management Team and the evaluators must be held in the strictest confidence and all information provided by the proposers or generated during the evaluations must be safeguarded. This heightened level of sensitivity to maintaining confidentiality over the procurement process commences the day that the NOI is published.

### **5.1 Participant Confidentiality**

Each participant in the procurement process, whether he or she is a member of the DB Procurement Management Team or a member of one of the evaluation teams or selection committees to be discussed later in this DB Manual, will be required to sign a Confidentiality and Non-Disclosure Statement, which is attached to this DB Manual at Exhibit F - Example Confidentiality and Non-Disclosure Statement and Example NOI.

In an effort to maintain the confidentiality of the process and open and fair competition, all attempts at communication to anyone in the LA DOTD related to the procurement must be directed to the Contract Services Administrator, the lead of the DB Procurement Management Team. It is essential that this single-point-of-contact be maintained for the LA DOTD so that all proposers receive the same information related to the procurement, thereby minimizing the risk that one proposer will receive different information or that the playing field will be "unleveled" among the proposers.

### **5.2 Confidentiality of Documents**

Once proposers submit procurement documents at any phase of the procurement, those documents will be stored in a secured area, and access to the documents will be managed by the DB Procurement Management Team. Only the DB Procurement Management Team and evaluators of the submitted procurement documents will have access to the documents until such time that the documents are made public after execution of the DB Contract - the documents will not be made accessible to the general public, competing proposers, or other employees of the LA DOTD not evaluating the submitted procurement documents. In addition, any working papers containing procurement sensitive information of the DB Procurement Management Team and evaluators, including notes, will be maintained in the secure area.

Additionally, the DB Procurement Management Team may set additional confidentiality procedures on an as-needed basis for individual procurements as warranted by particular circumstances.

***Section 5.0 Tasks***

- Prepare Confidentiality and Non-Disclosure Statements for all participants in the procurement process
- Determine if additional confidentiality rules are necessary for the procurement
- At each phase of the procurement, secure a location for the proposers' submitted procurement documents and establish rules for accessing the procurement documents

***Section 5.0 Deliverables***

- Confidentiality and Non-Disclosure Statements

## **6.0 CHAPTER 6 - NOTICE OF INTENT AND REQUEST FOR QUALIFICATIONS**

Two of the procurement documents required under L.R.S. 48:250.3 are the Notice of Intent (NOI) and the Request for Qualifications (RFQ), both of which serve to work as part of the process to funnel the field of potential proposers from a broad, open field to a more narrow field of the most highly qualified proposers for a particular project.

### **6.1 Notice of Intent**

The NOI is the public announcement that solicits Letters of Interest (LOI) from interested proposers (or, potential members of proposer teams). Submission of an LOI ensures that the firm that submits the LOI will receive a copy of the RFQ and will be invited to any informational meetings scheduled for the project.

As per L.R.S. 48:250.3, the NOI must be advertised on the LA DOTD's Internet Web page for a minimum of ten days prior to the deadline for receipt of the LOIs. The NOI may be advertised in additional media or publications if the number of responses received is inadequate.

The NOI is required to contain a brief description of the project, provide the potential proposers' enough information to determine their interest in the project, and the appropriate guidance for the potential proposers to submit an LOI. Additionally, it is a best practice for the LOI to include information that facilitates the formation of proposer teams and that establishes any ground rules pertaining to communications or personal or organizational conflicts of interest, under either federal or state law, that may affect the project. An example of an NOI is included at Exhibit F - Example Confidentiality and Non-Disclosure Statement and Example NOI, and contains at a minimum the information that should be included in any NOI prepared for a DB project.

#### ***Section 5.2 Tasks***

- Draft Notice of Intent
- Publish Notice of Intent
- Receive and log Letters of Interest

#### ***Section 5.2 Deliverables***

- Notice of Intent
- Log of Letters of Interest

### **6.2 Request for Qualifications**

Under Louisiana's current DB law, the LA DOTD is required to carry out a two-step procurement process. The first step in that two-step process is a Request for Qualifications, or RFQ. The RFQ is also a statutorily prescribed procurement document, as per L.R.S. 250.3.

### **6.2.1 Purpose**

The preparation of a proposal for a DB project requires significantly more resources and monetary investment from proposers than a bid on a traditional design-bid-build project. However, proposers are typically willing to make these investments if they believe they have a reasonable likelihood of success in a procurement.

The primary purpose of the RFQ is to determine a short-list of proposers most qualified to submit a proposal in response to the Request for Proposals (RFP), which will be discussed more fully in Chapters 8 and 9. Although the LA DOTD may have an urge to begin to seek technical information from proposers at this stage of the procurement, in reality at this stage of the procurement the project will rarely be defined to a point that will allow proposers to intelligently articulate technical solutions to issues on the project. The RFQ is better left to seeking qualifications information and some limited questions seeking to clarify the proposers' broad and basic understanding of the project and its general risks and requirements. This approach is consistent with both Louisiana's DB law, as well as the FHWA's DB regulation.

### **6.2.2 Standard Request for Qualifications Terms and Conditions**

The general format and content of the RFQ can be fairly standardized from project-to-project, since at this early first phase of the two-step procurement process, the RFQ will always serve the same purpose: to short-list the most highly qualified firms for the purpose of submitting proposals in response to the RFP.

Under the Louisiana DB law, the RFQ is required to identify all information to be submitted by the proposers, standard response forms, and criteria that will be used to determine the qualifications of the proposers. In addition, best practices indicate that the following topics should also be included in the RFQ:

- 1) General information, including, project goals, roles of the LA DOTD versus the successful Design-Builder, project schedule, rules of contact, conflicts of interest, and stipends;
- 2) An overview of the procurement process, including the procurement schedule;
- 3) An explanation of the evaluation process, including identification of the request for clarifications process and of how the short-list will be identified;
- 4) Detail of how the SOQs are to be submitted (as per the Louisiana DB law), including, date, time, and place of receipt; page limit, general format, and number of copies; and the evaluation factors and the objective for each evaluation factor;
- 5) The protest procedure; and
- 6) Any additional legal rights, warranties, or disclaimers or other language determined to be necessary on a project-by-project basis.

In addition to the topics listed above which are addressed in the main body of the RFQ, appendices should be used to convey the following information:

- a) Appendix A - A detailed description of the project and the scope of work anticipated to be included under the DB contract.
- b) Appendix B - An outline of the format of the SOQ, as well as all other submittal requirements such as font size, page size, pagination, and line spacing.
- c) Appendix C - A compilation of the forms to be submitted with the SOQ.

### **6.2.3 Evaluation Factors**

Evaluation factors are typically either "pass/fail" evaluation factors or "technical" evaluation factors, which are rated on a basis other than "pass/fail."

#### **6.2.3.1 Pass/Fail Evaluation Factors**

The pass/fail evaluation factors usually include the following:

A) **Legal Pass/Fail Evaluation Factor**

The Legal Pass/Fail Evaluation Factor generally looks at the legal make-up of the proposer (if it is a Joint Venture), licensing status with both the Louisiana State Licensing Board for Contractors and the Louisiana Professional Engineering and Land Surveying Board, debarment/disqualification status, and lobbying and other certifications.

B) **Financial Pass/Fail Evaluation Factor**

The Financial Pass/Fail Evaluation Factor includes a statement from the proposer's surety indicating the surety's willingness (or, a Joint Venture of sureties) to provide the performance and payment bonds to the proposer for the project and, if necessary for a particular project, review of financial statements of the proposer and any third-party guarantors and the financial strength of the proposer.

#### **6.2.3.2 Technical Evaluation Factors**

The technical evaluation factors in the Request for Qualifications often include the following:

A) **Organization and Key Managers Technical Evaluation Factor**

The Organization and Key Managers Technical Evaluation Factor includes identification of specific key personnel that the proposer will commit to the project if selected and the resumes and references for those key personnel, as well as their proposed roles and the division of work and responsibilities among those key personnel. The key personnel identified during the RFQ phase must

carry over to the RFP phase, and will be neither re-evaluated, nor will they be open for changes between the phases.

B) Experience of the Firms Technical Evaluation Factor

The Experience of the Firms Technical Evaluation Factor includes identification of specific past projects that the proposer (or, if the proposer is a Joint Venture, its members) has completed that are similar to the project being proposed on. The LA DOTD may also seek experience of the lead designer and major or specialty subcontractors, depending on the type or size of the project.

C) Past Performance Technical Evaluation Factor

The Past Performance Technical Evaluation Factor frequently includes review of the proposer's history of major litigation, claims, disputes, arbitration proceedings, assessments of stipulated damages, terminations for cause, disqualifications, or other disciplinary actions. Proposers are required to provide references from the owners that took action, so that reference calls may be made in order to make correct determinations as to the nature of the action.

Under the federal regulations, if a proposer does not have a record of past performance or its record of past performance is not available, the proposer may not be evaluated either favorably or unfavorably. *See* Section 4.4.2.5(B)(1) of the Example Request for Qualifications included in Exhibit G - Example Request for Qualifications and Example Evaluation and Short-List Plan for additional information on this issue. Evaluators should note that a proposer intentionally withholding past performance information is different than a proposer not having a record of past performance or a proposer with a record of past performance that is not available for a particular purpose, and those instances should not be treated similarly.

D) Project Understanding Technical Evaluation Factor

The Project Understanding Technical Evaluation Factor allows the proposer to articulate its knowledge of the specific project issues, concerns, and risks at this early phase of the procurement. This evaluation factor is an opportunity for proposers that have done their "homework" on the project to distinguish themselves early in the procurement, and can be particularly helpful on projects that have complex issues.

Each evaluation factor must list both the factor and the specific "submission requirements" for the factor so that every proposer knows exactly what to submit to the LA DOTD in its SOQ. This is critical in order to maintain a level playing field among the proposers. It is also a best practice for the LA DOTD to identify specific objectives underlying each evaluation factor (in addition to the overall project goals discussed at Section 4.3). The evaluation factor objectives help the proposers understand the LA DOTD's major concerns as they pertain to a specific area within the project, and coupled with the project goals, the goals and objectives provide the proposers with a great source of information as to the LA DOTD's priorities for each project.

Finally, information that has been evaluated during the RFQ/SOQ phase should not be re-evaluated during the RFP/Proposal phase. However, information that builds upon information that was originally submitted during the RFQ/SOQ phase may be evaluated during the

RFP/Proposal phase. One example of this is key personnel. It is critical for the LA DOTD to evaluate certain key personnel - typically the Principal-in-Charge, Project Manager, Design Manager, and Construction Manager - during the RFQ/SOQ phase. The reason it is critical for the evaluation certain key personnel during the RFQ/SOQ phase is that the qualifications of those key personnel are essential to the successful management of the project, and the LA DOTD would be remiss short-listing proposers without seeking this information. But, because DB projects are limited in information at the RFQ/SOQ phase, it would be unrealistic and unfair to expect the proposers to identify the remainder of their key personnel, especially when a clear picture of the project, and therefor a clear picture of the proposers' potential roles and responsibilities, does not yet exist. For that reason, it is reasonable to have the proposers wait to fill out the remainder of their key personnel until the RFP/Proposal phase, when there are more "knowns" in the project.

See Section 1.9 of the Example Instructions to Proposers included in Exhibit H - Example Instructions to Proposers and Example Evaluation and Selection Plan for the process for changes to key personnel during the procurement process.

#### **6.2.4 Request for Qualifications Preparation**

The Request for Qualifications will be prepared by the DB Procurement Management Team, with input by the LA DOTD's Project Manager.

The preparation of the RFQ will require coordination within the LA DOTD, as well as the Federal Highway Administration, if federal funds are used. If other stakeholders are integral to the project, their involvement in the RFQ preparation will also need to be taken into account. The RFQ preparation time and procurement schedule will need to consider the involvement of all of these parties and any time necessary for third-party review and comment resolution prior to the RFQ being final and ready for release to the entities that have submitted LOIs.

In preparing the RFQ, remain heedful to not ask for more information than is necessary to achieve the LA DOTD's project goals and objectives (*see* Sections 4.2 and 6.2.3.2). Asking for more information than is necessary only increases the cost of SOQ preparation by the proposers and increases the burden on the LA DOTD of due diligence review of the submitted information. Remember, the LA DOTD is under an obligation to review thoroughly all information that it requests. Focusing only on information that differentiates proposers will assist the LA DOTD in keeping the information requested to a minimum.

Another item that must be addressed in the RFQ is the number of proposers that will be included in the short-list. *See* Section 4.5(C).

Additionally, if the amount of the stipend and the process by which the stipend will be distributed is known at the time the RFQ is issued, it would be helpful to Proposers to identify this information in the RFQ, although under both state and federal requirements the stipend information is not required to be distributed until the RFP. So, if the stipend amount and distribution process has not been established at the time the RFQ is released, it may be stated in the RFP and still meet legal requirements.

***Section 6.2 Tasks***

- Prepare Request for Qualifications
- Determine maximum number for short-list

***Section 6.2 Deliverables***

- Request for Qualifications

**6.3 Request for Qualifications Concurrence and Approvals**

Prior to release, the RFQ must be approved by the Chief Engineer. Additionally, enough time must be allowed to give sufficient time for FHWA review and concurrence of the RFQ prior to its release.

***Section 6.3 Tasks***

- Chief Engineer approval
- Federal Highway Administration concurrence

***Section 6.3 Deliverables***

- Chief Engineer approval memorandum
- Federal Highway Administration concurrence memorandum

## **7.0 CHAPTER 7 - ISSUING THE REQUEST FOR QUALIFICATIONS AND STATEMENT OF QUALIFICATIONS EVALUATION AND SHORT-LISTING**

In a procurement, the procedure that is followed is equally as important as the documents that are prepared. In Section 6.0, the preparation of the NOI and RFQ documents were discussed. In this Section 7.0, the procedure for releasing the RFQ and evaluating the SOQ that is submitted by the proposers in response to the RFQ is detailed.

### **7.1 Issuing the Request for Qualifications**

The RFQ will be issued by the DB Procurement Management Team and is only released to entities that have submitted LOIs. The purpose of issuing the RFQ only to entities that have submitted an LOI is for purposes of practical control. This way, if the LA DOTD subsequently issues an addendum, it is only responsible for ensuring the addendum reaches those entities on its controlled list.

An example RFQ is included at Exhibit G - Example RFQ and Example Evaluation and Short-List Plan.

#### ***Section 7.1 Tasks***

- Issuance of the RFQ to entities that submitted Letters of Interest

### **7.2 Proposer Questions and Answers**

For a reasonable time prior to the submission of SOQs, proposers should have the opportunity to submit questions regarding the RFQ specifically or the procurement process or project generally.

Any question received must be responded to in writing and released to all proposers, without indicating which proposer submitted the question. It is the responsibility of the DB Procurement Management Team to compile, log, and track the proposer questions as they are submitted. It is also the responsibility of the DB Procurement Management Team to coordinate with appropriate LA DOTD personnel to respond to each proposer question submitted, as necessary. Finally, the DB Procurement Management Team will coordinate the release of the responses to proposer questions. This means that all the questions and answers will be sent to all of the entities that submitted LOIs.

If response by the LA DOTD to a certain question necessitates a change to the RFQ documents, the questions and answers will be released with a corresponding addendum revising the RFQ. Frequently, there are multiple rounds of question and answer documents for a single RFQ.

Additionally, it is a best practice to answer the questions in the chronological order received. The purpose of doing so is to prevent confusion among proposers as to whether their questions were received by the LA DOTD and to minimize follow-up correspondence by the proposers.

#### ***Section 7.2 Tasks***

- Review proposer questions and assign to LA DOTD personnel for response
- Prepare question and answer document

- Send questions and answers to entities that submitted LOIs

### ***Section 7.2. Deliverables***

- Question and answer document

## **7.3 Request for Qualifications Addendum**

Addenda may need to be issued to the RFQ, as anticipated by the LA DOTD to provide information not originally available at the RFQ release date, or to correct errors discovered by the LA DOTD in the RFQ, or, as indicated in Section 7.2, in response to questions received from proposers. These are all normal and reasonable purposes for addenda and should not alarm anyone. However, the need for a high number of addenda to an RFQ may be indicative of either poor quality checks prior to the RFQ's release or of insufficient project development prior to the RFQ release, and the LA DOTD should evaluate any RFQ that result in a high number of addenda for the reasons why.

Addenda will be prepared by the DB Procurement Management Team and will be subject to the approval of the Chief Engineer, who approved the original RFQ. Addenda will be released the same way as the questions and answers: this means that addenda would be sent to all of the entities that submitted LOIs.

### ***Section 7.3 Tasks***

- Draft addenda
- Chief Engineer approval
- Send addenda to entities that submitted LOIs

### ***Section 7.3 Deliverables***

- Addenda
- Chief Engineer approval memorandum

## **7.4 Group Informational Meetings**

During the RFQ/SOQ phase, it is standard for group informational meeting to be held with proposers early in the procurement to share information regarding the project and the procurement itself. At the RFQ/SOQ phase, this group informational meeting also can be used by the proposers to arrange teams. Additionally, if facilitated in a way that conveys open and fair competition among the proposers, the group informational meeting can represent an opportunity by the LA DOTD to demonstrate its commitment to trust with the proposers.

The group informational meeting can address a range of topics, including the following:

- A) Orientation to the LA DOTD's Design-Build process;
- B) Scope of the project, especially areas of high risk or complexity;
- C) Timing of availability of specific project information, for example, any geotechnical information that the LA DOTD may make available;

- D) Any special environmental or community mitigation requirements;
- E) The procurement and project schedules;
- F) An overview of the procurement process; and
- G) Federal requirements, including Disadvantaged Business Enterprise (DBE) goals, if any.

The group informational meeting should preferably be held in a location in proximity to the project site, to facilitate any potential proposers visiting the site before or after the meeting. The group informational meeting is a joint effort between the DB Procurement Management Team and the LA DOTD's Project Manager, with the DB Procurement Management Team leading the agenda items pertaining to the procurement and the LA DOTD's Project Manager leading the agenda items pertaining to the technical issues facing the project. A Microsoft Power Point® presentation or other project information should be provided, and an attendance record maintained.

At the end of the group informational meeting, time should be allowed for a question and answer period. While the LA DOTD is free to answer the questions during the question and answer period, if the answer is unknown to a certain question or if a question is answered incorrectly, it is the LA DOTD's duty to provide a correct response to the question to all proposers. For that purpose, a transcript should be made of the entire group informational meeting and the questions and answers should be compiled and released in the same fashion as a traditional question and answer document (*see* Section 7.2) in order to maintain a level playing field among the proposers. In the past, video taping has been tried for this same purpose, and has not been effective, as the sound quality on the video tapes has been poor and inadequate to create a record for any subsequent use.

It should be noted that any relevant stakeholders, including the FHWA for federally-funded projects, should be invited to the group informational meeting.

***Section 7.4 Tasks***

- Secure group informational meeting space
- Prepare group informational meeting Microsoft Power Point® presentation (or other presentation materials)
- Prepare group informational meeting agenda
- Prepare group informational meeting sign-in sheet
- Hire court reporter
- Review transcript and compile question and answer document
- Send questions and answers to entities that submitted LOIs

***Section 7.4 Deliverables***

- Microsoft Power Point® presentation (or other presentation materials)
- Group informational meeting agenda
- Group informational meeting sign-in sheet

- Question and answer document

## **7.5 Evaluation and Short-List Plan**

The Evaluation and Short-List Plan (E&SL Plan) is the LA DOTD's internal document that details the step-by-step procedure for the evaluation process of the SOQs submitted by the proposers in response to the RFQ through to the announcement of the short-list. The E&SL Plan's step-by-step detail addresses specifically each of the committees and teams involved in the evaluations of the SOQs and their roles and responsibilities. The document is tied directly to the RFQ, but provides the detail of the process necessary to direct the members of the committees and teams to carry forth the process correctly.

The E&SL Plan is critical to promote open and fair competition and to maintain a level playing field among the proposers. The evaluation process itself is set up to ensure that all proposers are treated consistently in order to avoid any perception of favoritism in the process. Prior to any deviation from the E&SL Plan, the LA DOTD's counsel should be consulted. An example E&SL Plan is included at Exhibit G - Example RFQ and Example E&SL Plan.

### ***Section 6.5 Tasks***

- Draft the Evaluation and Short-List Plan

### ***Section 6.5 Deliverables***

- Evaluation and Short-List Plan

## **7.6 Evaluating and Short-Listing the Proposers**

As noted above in Section 7.5, the evaluations of the SOQs must be disciplined and follow the process set forth in the E&SL Plan. As also discussed at Section 5.1, the strictest confidentiality must be maintained during the evaluation process to promote trust between the LA DOTD and the proposers.

### **7.6.1 Design-Build Qualifications Evaluation Committee**

In accordance with L.R.S 48:250.3, the Chief Engineer, with concurrence of the Secretary, establishes the DB Qualifications Evaluation Committee to evaluate the SOQs. The members of the DB Qualifications Evaluation Committee should be LA DOTD personnel who are uniquely qualified to review the SOQs for a particular project. For federally-funded projects, the FHWA should also be included on the DB Qualifications Evaluation committee as an ex officio member.

Each of the members of the DB Qualifications Evaluation Committee will be required to sign the Confidentiality and Non-Disclosure Agreement discussed in Section 5.1 as well as a Conflict of Interest Affidavit, requiring the member to disclose any real or perceived personal conflicts of interest with any of the proposers. The use of the Conflict of Interest Affidavit serves to provide assurance to the LA DOTD and the proposers that the LA DOTD personnel evaluating the proposals do not have conflicts of interest and will treat all proposers fairly.

If necessary, and in accordance with L.R.S. 48:250.3, if the DB Qualifications Evaluation Committee requires assistance in the evaluation of the SOQs, additional LA DOTD personnel may be used. One way to accomplish this may be to break out the additional LA DOTD personnel into Evaluation Teams. Those Evaluation Teams would each take one or more of the evaluation factors to review. However, in order to provide a consistent evaluation of each of the factors and to maintain a level playing field among the proposers, if an Evaluation Team will be used to evaluate one evaluation factor, then Evaluation Teams should be used to evaluate all evaluation factors.

***Section 7.6.1 Tasks***

- Establish Design-Build Qualifications Evaluation Committee and determine if Evaluation Teams will be used
- Prepare Design-Build Qualifications Evaluation Committee appointment and concurrence memorandum for Chief Engineer and Secretary signature
- Prepare Conflict of Interest Affidavit and have Design-Build Qualifications Evaluation Committee members sign the affidavit
- Have Design-Build Qualifications Evaluation Committee members sign Confidentiality and Non-Disclosure Statements (as already prepared as per Section 5.1)

***Section 7.6.1 Deliverables***

- Design-Build Qualifications Evaluation Committee appointment and concurrence memorandum
- Conflict of Interest Affidavit

**7.6.2 Statement of Qualifications Evaluations**

The evaluations must be put on the schedules of the members of the DB Qualifications Evaluation Committee well in advance in order to ensure the availability of the members to complete the evaluations in a timely fashion. If one of the members of the DB Qualifications Evaluation Committee proves to be unavailable for all or a portion of the evaluations, that member should be replaced with someone who is available.

The DB Procurement Management Team will commence the evaluation process with an evaluation orientation, which will inform the members of the DB Qualifications Evaluation Committee of the particulars of the project and the details of the procurement process, including the SOQ evaluation factors and the rating process. All of the members of the DB Qualifications Evaluation Committee are required to attend this evaluation orientation.

The DB Procurement Management Team is also responsible to prepare evaluation worksheets for use by the DB Qualifications Evaluation Committee during the evaluation of the SOQs. These evaluation worksheets should set forth the exact requirements as set forth in the RFQ, and can help to streamline and facilitate each evaluator's review of each SOQ. The evaluation worksheets should be handed out to the members of the DB Qualifications Evaluation Committee at the evaluation orientation and should remain confidential for the duration of the procurement process.

In accordance with L.R.S. 48:250.3, if fewer than three SOQs are received in response to the RFQ, the Secretary must approve proceeding with the DB process. So, the first function after receipt of the SOQs is to ensure that at least three SOQs have been received. If not, the DB Procurement Management Team must meet with the Secretary to determine if the DB process will progress. If not, the procurement must be formally cancelled through a written notice to the proposers that submitted SOQs.

Finally, the DB Procurement Management Team is responsible for the responsiveness review of each SOQ upon its receipt from the proposers on the SOQ due date. The responsiveness review is only a check of whether a proposer has submitted all of the required "pieces" of the SOQ. The responsiveness review is not a review by the DB Procurement Management Team as to their opinion of the quality of the SOQ. The opinion of the quality of the SOQ is a role reserved strictly for the DB Qualifications Evaluation Committee. The DB Procurement Management Team's role is to simply ensure that the SOQs are ready for review, and the DB Procurement Management Team should ensure to not overstep its bounds. The responsiveness review can be greatly simplified by the creation of a responsiveness checklist - a checklist of all of the submission requirements from the RFQ. This will streamline and facilitate the DB Procurement Management Team's responsiveness review time.

### ***Section 7.6.2 Tasks***

- Set appointment notice for Statement of Qualifications evaluations on Design-Build Qualifications Evaluation Committee and Design-Build Procurement Management Team schedules
- Reserve space for the Design-Build Qualifications Evaluation Committee for Statement of Qualifications evaluations
- Determine if Design-Build process will proceed (only if fewer than three Statements of Qualifications are received) and prepare either a procurement cancellation notice (no-go) or an approval memorandum for the Secretary's signature
- Prepare evaluation orientation Microsoft Power Point® presentation
- Prepare evaluation worksheets
- Prepare Statement of Qualification responsiveness checklist
- Reserve/identify secure space/location for storage of SOQs and DB Qualifications Evaluation Committee evaluation materials

### ***Section 7.6.2 Deliverables***

- Cancellation notice (no-go) or approval memorandum (only if fewer than three Statements of Qualifications received)
- Microsoft Power Point® evaluation orientation presentation
- Evaluation worksheets
- Statement of Qualification responsiveness checklist

### **7.6.3 Requests for Clarifications**

At certain times, it may prove to be difficult for the DB Qualifications Evaluation Committee to continue on with its evaluations because a proposer has submitted an SOQ that contains an error, omission, ambiguity, or weakness. In those instances, at the sole discretion of the DB Qualifications Evaluation Committee, the committee may determine it would like to submit a request for clarification to a proposer. A request for clarification must be agreed upon and submitted by the DB Qualifications Evaluation Committee as a whole. The purpose for this is because, at times, one evaluator may have missed or not understood a certain portion of an SOQ, but when discussed with the DB Qualifications Evaluation Committee in its entirety, the need for the request for clarification is eliminated.

As per the requirement that the Contract Services Administrator, as the lead of the DB Procurement Management Team, be the single-point-of-contact for the LA DOTD for the procurement, all requests for clarification must be submitted to the DB Procurement Management Team to be sent to the proposer. Typically, a request for clarification should not require more than 24 hours for a response since it is only a correction of an error, omission ambiguity, or weakness. If a proposer requires longer than 24 hours to respond to a request for clarification, this is likely indicative of the fact that the request rises beyond a request for clarification and should not be asked.

Once the response is received by the DB Procurement Management Team, the team will review the response for responsiveness and deliver the response to the DB Qualifications Evaluation Committee for its evaluation.

#### ***Section 7.6.3 Tasks***

- Draft requests for clarification
- Review responses to requests for clarification for responsiveness and distribute to the Design-Build Qualifications Evaluation Committee

#### ***Section 7.6.3 Deliverables***

- Requests for clarification

### **7.6.4 Short-List**

After the evaluations of the SOQs have been completed, the DB Qualifications Evaluation Committee presents its short-list to the Chief Engineer for recommendation to the Secretary (in accordance with L.R.S. 48:250.3). Once the Secretary concurs in the recommendation of the short-list, the proposers that submitted SOQs must be notified of the short-list. This notification commences the protest period. Currently L.R.S. 48:250.3 does not set a maximum for the short-list, but does indicate that if there are fewer than three SOQs received, then the Secretary or designee must approve proceeding with the procurement.

#### ***Section 7.6.4 Tasks***

- Draft memorandum presenting short-list to the Chief Engineer for recommendation to the Secretary
- Draft short-list notification to the proposers

***Section 7.6.4 Deliverables***

- Short-list presentation memorandum to the Chief Engineer for recommendation to the Secretary
- Short-list notification to the proposers

**7.6.5 Statement of Qualifications Protests**

The RFQ sets forth a protest procedure for the RFQ/SOQ phase of the procurement, which is a mandatory administrative remedy which must be followed prior to any judicial recourse during this phase. If contacted regarding a protest, contact counsel with any questions to ensure that procedure is followed and to preserve the LA DOTD's rights for any future judicial action.

## **8.0 CHAPTER 8 - REQUEST FOR PROPOSALS AND DESIGN-BUILD CONTRACT DOCUMENTS**

As per L.R.S. 48:250.3, the second phase in the "two-phase" DB procurement is the Request for Proposals (RFP)/proposal phase.

### **8.1 Request for Proposals**

The RFP is divided into three main sections, and the drafting and compilation of the document will be substantially completed by the DB Procurement Management Team. In a DB project, a significant portion of the LA DOTD's resources will go into the creation of the RFP document and subsequent evaluation of the proposals submitted in response to the RFP. The three main sections of the RFP are as follows:

- A) Instructions to Proposers;
- B) Contract Documents; and
- C) Reference Documents.

Each of these three sections is discussed in more detail below.

The purpose of the RFP is to solicit proposals that will allow the LA DOTD to determine which proposer will provide the best combination of technical and price factors to deliver the project. The RFP should not attempt to solve problems for the proposers (unlike a design-bid-build Invitation for Bids), but should rather identify problems and provide the proposers the parameters within which to solve the identified problems. Since the RFP is the document that will eventually govern the management of the project, it is essential to the success of the project, and therefore should be the focus of the LA DOTD during its preparation.

### **8.2 Instruction to Proposers**

The Instructions to Proposers (ITP) sets forth the rules, process, and procedures that the proposers must follow in the submission of their proposals. The ITP includes three appendices, as follows:

- A) Appendix A - Appendix A includes the detailed instructions for the submission of the Technical Proposal;
- B) Appendix B - Appendix B includes the detailed instructions for the submission of the Lump Sum Price Proposal, including a determination of the timing of the submission of the Lump Sum Price Proposal. Traditionally, the Lump Sum Price Proposal is submitted at the same time as the Technical Proposal. On certain occasions, if circumstances dictate (such as where a procurement schedule has been constrained) there may be cause for delaying the receipt of the Lump Sum Price Proposal. However, under no circumstances should the receipt of the Lump Sum Price Proposal be delayed later than the determination of the proposers' Technical Scores; and

- C) Appendix C - Appendix C includes the standard forms required for the proposal, both the Technical Proposal and Lump Sum Price Proposal.

Like the RFQ, the general format and content of the ITP can be fairly standardized from project-to-project. This standardization will again assist in the preparation of the proposals and the resulting evaluation by the LA DOTD. Further, consistency can also be attributed to the fact that under the Louisiana DB law, the RFP is generally required to request the following information:

- 1) Design strategy and preliminary design concepts;
- 2) Construction sequencing; and
- 3) Techniques, materials, and methods.

An example ITP is included at Exhibit H - Example ITP and Example Evaluation and Selection Plan.

## **8.2.1 Evaluation Factors**

Evaluation factors are typically either "pass/fail" evaluation factors or "technical" evaluation factors, which are rated on a basis other than "pass/fail."

### **8.2.1.1 Pass/Fail Evaluation Factors**

The pass/fail evaluation factors usually include the following:

- A) Legal Pass/Fail Evaluation Factor

The Legal Pass/Fail Evaluation Factor generally updates any documentation regarding the legal make-up of the proposer (if it is a Joint Venture), licensing status with both the Louisiana State Licensing Board for Contractors and the Louisiana Professional Engineering and Land Surveying Board, debarment/disqualification status, and lobbying and other certifications. If the project is a federal-aid project, at the RFP/proposal phase, the DBE program is also now included, since the goal will have been identified for the project.

- B) Financial Pass/Fail Evaluation Factor

The Financial Pass/Fail Evaluation Factor requires confirmation from the proposer's surety indicating the surety's willingness (or, a Joint Venture of sureties) to provide the performance and payment bonds to the proposer for the project and, if necessary for a particular project, review of financial statements of the proposer and any third-party guarantors that they can support the cash flow necessary for the project.

### **8.2.1.2 Technical Evaluation Factors**

The technical evaluation factors in the Request for Proposals often include the following:

- A) Management Approach Technical Evaluation Factor

The Management Approach Technical Evaluation Factor includes an overview

of the proposer's quality plan, design management plan, construction management plan, and construction sequencing.

B) Technical Solutions Technical Evaluation Factor

The Technical Solutions Technical Evaluation Factor will identify certain technical areas on the specific project, such as, structures, pavement, maintenance of traffic, or other areas of technical concern, and seek each proposer's preliminary design strategies and concepts as well as techniques, materials, and methods to solve those identified areas.

C) Key Personnel and Experience Technical Evaluation Factor

The Key Personnel and Experience Technical Evaluation Factor includes identification of specific key personnel that the proposer will commit to the project if selected and the resumes and references for those key personnel, as well as their proposed roles and the division of work and responsibilities among those key personnel. The key personnel identified during the RFQ phase must carry over to the RFP phase, and will be neither re-evaluated, nor will they be open for changes between the phases.

Like the RFQ/SOQ phase, each evaluation factor must list both the factor and the specific "submission requirements" for each factor so that every proposer knows exactly what to submit to the LA DOTD in its proposal. Again, this is critical in order to maintain a level playing field among the proposers. It is also a best practice for the LA DOTD to identify specific objectives underlying each evaluation factor (in addition to the overall project goals discussed at Section 4.3). The evaluation factor objectives help the proposers understand the LA DOTD's major concerns as they pertain to a specific area within the project, and coupled with the project goals, the goals and objectives provide the proposers with a great source of information as to the LA DOTD's priorities for each project.

As stated earlier under Section 6.2.3.2, information that has been evaluated during the RFQ/SOQ phase should not be re-evaluated during the RFP/proposal phase. However, information that builds upon information that was originally submitted during the RFQ/SOQ phase may be evaluated during the RFP/proposal phase. One example of this is key personnel. It is critical for the LA DOTD to evaluate certain key personnel - typically the Principal-in-Charge, Project Manager, Design Manager, and Construction Manager - during the RFQ/SOQ phase. The reason it is critical for the evaluation certain key personnel during the RFQ/SOQ phase is that the qualifications of those key personnel are essential to the successful management of the project, and the LA DOTD would be remiss short-listing proposers without seeking this information. But, because DB projects are limited in information at the RFQ/SOQ phase, it would be unrealistic and unfair to expect the proposers to identify the remainder of their key personnel, especially when a clear picture of the project, and therefore a clear picture of the proposers' potential roles and responsibilities, does not yet exist. For that reason, it is reasonable to have the proposers wait to fill out the remainder of their key personnel until the RFP/proposal phase, when there are more "knowns" in the project.

### 8.3 Contract Documents

After award of the DB contract, the ITP falls away (because the ITP documents pertain to the procurement of the DB contract and have no further relevance to the project) and the Contract Documents become the DB contract for the project. The Contract Documents are made up of the six following parts:

- A) Part 1 - Design-Build Agreement - The DB Agreement is the signatory document, and is typically signed at least in triplicate. It should be remembered that an originally signed copy must also be prepared for every parish affected by the project, so add additional copies for every parish that the project goes through. *See Exhibit J - Example Design-Build Agreement for a template DB Agreement and appendices;*
- B) Part 2 - Design-Build Section 100 - The DB Section 100 is a modification of Section 100 of the LA DOTD's Standard Specification for Roads and Bridges for purposes of DB, including identifying the risks, roles, and responsibilities of the LA DOTD and Design-Builder; design management; and design and construction Quality Control (QC), among other things. *See Exhibit K - Example Design-Build Section 100 for the template of the DB Section 100 documents;*
- C) Part 3 - Design Requirements and Performance Specifications - The Design Requirements and Performance Specifications are tailored to fit the needs of each specific project, and are focused on the end performance results, rather than the prescriptive "how tos" of a standard specification;
- D) Part 4 - Request for Proposals Plans - The RFP Plans are any plans pertaining to the project that have been completed to date, including Preliminary Engineering (PE);
- E) Part 5 - Engineering Data - The Engineering Data is raw data that is warranted by the LA DOTD, such as traffic counts or geotechnical information, which the Design-Builder will be able to contractually rely on for purposes of the project;
- F) Part 6 - Design-Builder's Proposal - After award of the DB contract, the Design-Builder's Proposal is incorporated fully into the DB contract.

### 8.4 Reference Documents

Reference Documents are documents that may assist the proposers in preparation of their proposals, but that contain information that the LA DOTD cannot warrant as accurate. Reference Documents include documents from other projects or entities other than the LA DOTD. At award of the DB contract, like the ITP, the Reference Documents fall away from the Contract Documents and do not become a part of the DB contract.

## **8.5 Request for Proposals Preparation**

The Request for Proposals will be prepared by the DB Procurement Management Team, with input by the LA DOTD's Project Manager.

The preparation of the RFP will require coordination within the LA DOTD, as well as the Federal Highway Administration, if federal funds are used. If other stakeholders are integral to the project, their involvement in the RFP preparation will also need to be taken into account. The RFP preparation time and procurement schedule will need to take into account the involvement of all of these parties and any time necessary for third-party review and comment resolution prior to the RFP being final and ready for release to the short-list.

In preparing the RFP, remain heedful to not ask for more information than is necessary to achieve the LA DOTD's project goals and objectives (*see* Sections 4.2 and 8.2.1.2). Asking for more information than is necessary only increases the cost of proposal preparation by the proposers and increases the burden on the LA DOTD of due diligence review of the submitted information. Remember, the LA DOTD is under an obligation to review thoroughly all information that it requests. Focusing only on information that differentiates proposers will assist the LA DOTD in keeping the information requested to a minimum.

### ***Section 8.5 Tasks***

- Prepare Request for Proposals

### ***Section 8.5 Deliverables***

- Request for Proposals

## **8.6 Request for Proposals Approvals/Concurrence**

The RFP must be approved prior to release by the Chief Engineer.

If the project is a federal-aid project, the RFP must also receive concurrence and approval from the FHWA prior to release, so sufficient time for FHWA coordination should be included in the procurement schedule. It should be noted that in compliance with 23 C.F.R. 635.112 and 636.109, there are certain requirements regarding the timing of release of the RFP and the National Environmental Policy Act (NEPA) process. If the RFP will be released prior to the completion of the NEPA process (for projects that include federal funding), consult with counsel and the FHWA to ensure that appropriate steps are being taken to reserve the LA DOTD's eligibility under federal regulation.

### ***Section 8.6 Tasks***

- Prepare Chief Engineer approval memorandum
- Federal Highway Administration coordination and concurrence, for federal-aid projects

### ***Section 8.6 Deliverables***

- Chief Engineer approval memorandum
- Federal Highway Administration concurrence and approval memorandum

## **9.0 CHAPTER 9 - ISSUING THE REQUEST FOR PROPOSALS AND PROPOSAL EVALUATION AND SELECTION**

Just as was discussed in relation to the evaluation of SOQs, the procedure for evaluating the proposals is equally as important as the preparation of the RFP documents when it comes to the procurement process. The process and procedures that are used during the issuance of the RFP and subsequent proposal evaluation are set forth in this Section 9.0.

### **9.1 Draft Request for Proposals**

For some projects, schedule permitting, it may be desirable to the LA DOTD to provide a draft RFP to the short-list for review and comment prior to the release of the final RFP. This is considered a best practice, and provides the following benefits to the LA DOTD:

- A) Allows the proposers to identify any terms of the RFP that would be "deal killers" prior to release of the final RFP document, allowing the LA DOTD to reconsider and potentially revise those particular terms and conditions;
- B) Allows the LA DOTD to incorporate any good comments or ideas that the proposers submit in response to the draft RFP;
- C) Provides an additional QC check of the RFP documents prior to their final release;
- D) Allows the proposers additional preparation time for their proposals, typically resulting in higher quality proposals;
- E) Is a method for the LA DOTD to release a draft of the RFP document to the short-list of Proposers prior to receiving NEPA clearance. This is in lieu of proceeding with a final RFP with FHWA concurrence and approval prior to completion of NEPA, in that the draft RFP is not a final document issuance by the LA DOTD and still retains flexibility to respond to the NEPA process, but does provide information to the Proposers for their comment; and
- F) Further encourages communication and trust between the LA DOTD and proposers in the procurement process.

The draft RFP will be released by the DB Procurement Management Team to the short-list.

The short-list may submit their comments on the draft RFP in writing or the LA DOTD may opt to hold individual meetings with each proposer on the short-list to receive its comments on the draft RFP. Either way, it is the LA DOTD's discretion whether to incorporate each individual comment.

If the LA DOTD receives written comments, the written comments should be compiled into a single document, with an indication whether the comment was incorporated into the final RFP. The written comments should not be attributed to the proposer making the comment, and should be released along with the final RFP to assist the short-list with understanding the changes made between the draft and the final RFPs.

If the LA DOTD conducts individual meetings in order to receive the comments from the proposers on the short-list, a transcript should be made of the individual meetings to ensure that a record exists of all of the recommended changes from each of the proposers.

***Section 9.1 Tasks***

- Release draft Request for Proposals to short-list for comment
- Receive and review comments from short-list in either written format or during meetings with individual proposers
- If meetings with individual proposers are held, schedule meeting times and secure meeting location and retain court report
- If written comments are received from short-list, compile master comment document for release with final Request for Proposals
- Incorporate comments into final Request for Proposals

***Section 9.1 Deliverables***

- Written comment compilation (if written comments are solicited)

**9.2 Issuance of Request for Proposals**

The final RFP will be issued by the DB Procurement Management Team to the short-list.

The final RFP should be issued to allow enough time for proposers to fairly produce a good and responsive proposal. It should be remembered that to respond to the RFP, the proposers are not just preparing a Lump Sum Price Proposal, but also preparing some level of design and technical solutions as well as other written responses to the Technical Proposal requirements.

***Section 9.2 Tasks***

- Send final RFP to short-list

**9.3 Proposer Questions and Answers**

For a reasonable time prior to the submission of proposals, proposers should have the opportunity to submit questions regarding the RFP specifically or the procurement process or project generally.

Any question received must be responded to in writing and released to all proposers, without indicating which proposer submitted the question. It is the responsibility of the DB Procurement Management Team to compile, log, and track the proposer questions as they are submitted. It is also the responsibility of the DB Procurement Management Team to coordinate with appropriate LA DOTD personnel to respond to each proposer question submitted, as necessary. Finally, the DB Procurement Management Team will coordinate the release of the responses to proposer questions. This means that all the questions and answers will be sent to all of the proposers on the short-list.

If response by the LA DOTD to a certain question necessitates a change to the RFP documents, the questions and answers should be released with a corresponding addendum revising the RFP.

Frequently, there are multiple rounds of question and answer documents for a single RFP.

Additionally, it is a best practice to answer the questions in the chronological order received. The purpose of doing so is to prevent confusion among proposers as to whether their questions were received by the LA DOTD and to minimize follow-up correspondence by the proposers.

***Section 9.3 Tasks***

- Review proposer questions and assign to LA DOTD personnel for response
- Prepare question and answer document
- Send questions and answers to the short-list

***Section 9.3 Deliverables***

- Question and answer document

**9.4 Request for Proposals Addendum**

Addenda may need to be issued to the RFP, as anticipated by the LA DOTD to provide information not originally available at the RFP release date, or to correct errors discovered by the LA DOTD in the RFP, or, as indicated in Section 9.3, in response to questions received from proposers. These are all normal and reasonable purposes for addenda and should not alarm anyone. However, the need for a high number of addenda to an RFP may be indicative of either poor quality checks prior to the document's release or of insufficient project development prior to the RFP release, and the LA DOTD should evaluate any RFP that results in a high number of addenda for the reasons why.

Addenda will be prepared by the DB Procurement Management Team and will be subject to the approval of the Chief Engineer, who approved the original RFP. Additionally, on federal-aid projects, any addenda that result in a major change to the RFP will require approval of the FHWA. Minor addenda do not require pre-approval of the FHWA.

Addenda will be released the same way as the questions and answers: this means that addenda will be sent to all of the proposers on the short-list.

***Section 9.4 Tasks***

- Draft addenda
- Chief Engineer approval
- FHWA approval for major addenda, for federal-aid projects
- Send addenda to the short-list

***Section 9.4 Deliverables***

- Addenda
- Chief Engineer approval memorandum
- Federal Highway Administration approval memorandum

## 9.5 Informational Meetings

During the RFP/proposal phase, it will likely be beneficial for some informational meetings to be held with proposers to disseminate information regarding the project and the procurement itself and to allow the proposers to seek information from the LA DOTD. During the RFP/proposal phase, the informational meetings can take one of two forms: group meetings or one-on-one meetings.

### 9.5.1 Group Meetings

Group meetings will be more general in nature, and serve more as project and procurement updates, with the DB Procurement Management Team and LA DOTD's Project Manager sharing duties of running the meetings. At the end of the group meeting, time should be allowed for a question and answer period. While the LA DOTD is free to answer the questions during the question and answer period, if the answer is unknown or if a question is answered incorrectly, it is the LA DOTD's duty to provide a correct response to the question to all proposers. For that purpose, a transcript should be made of the entire group meeting and the questions and answers should be compiled and released in the same fashion as a traditional question and answer document (*see* Section 9.3) in order to maintain a level playing field among the proposers. In the past, video taping has been tried for this same purpose, and has not been effective, as the sound quality on the video tapes has been poor and inadequate to create a record for any subsequent use.

#### *Section 9.5.1 Tasks*

- Secure group meeting space
- Prepare group meeting Microsoft Power Point<sup>®</sup> presentation (or other presentation materials)
- Prepare group meeting agenda
- Prepare group meeting sign-in sheet
- Hire court reporter
- Review transcript and compile question and answer document
- Send questions and answers to short-list

#### *Section 9.5.1 Deliverables*

- Microsoft Power Point<sup>®</sup> presentation (or other presentation materials)
- Group meeting agenda
- Group meeting sign-in sheet
- Question and answer document

### **9.5.2 One-on-One Meetings**

One-on-one meetings are specific in nature, geared toward the individual proposer's specific issues. In these meetings, the individual proposer is responsible for proposing the agenda for the meeting, and the LA DOTD only adds agenda items that it needs to address.

Since the individual proposer will submit its agenda in advance, it is the LA DOTD's responsibility to have personnel on hand who will be able to address the agenda issues that the proposer has identified. However, the LA DOTD should not bring too many people to the one-on-one meetings. The purpose of the meetings is to respond to each proposer's agenda items, not to overwhelm the proposers or for the LA DOTD to "take over" the meeting. If the LA DOTD personnel are unable to answer a question raised at the one-on-one meeting, they should not try to answer the question, because a wrong answer can be detrimental to the proposer's preparation of its proposal. If the LA DOTD personnel commit to trying to find the answer for that particular proposer, then it is incumbent upon that LA DOTD personnel to follow-up and find the answer. The response should be submitted to the Contract Services Administrator who, as the lead of the DB Procurement Management Team, is the single-point-of-contact for the proposers and will be able to provide the correct response to the proposer.

While the interactions that occur during the one-on-one meetings are confidential, a transcript should be made of each one-on-one meeting and retained as a record of the meetings. In the past, video taping has been tried for this same purpose, and has not been effective, as the sound quality on the video tapes has been poor and inadequate to create a record for any subsequent use.

#### ***Section 9.5.2 Tasks***

- Secure one-on-one meeting spaces
- Procure one-on-one meeting agendas from the proposers
- Prepare one-on-one meeting sign-in sheets
- Hire court reporter
- Review transcripts for accuracy

#### ***Section 9.5.2 Deliverables***

- One-on-one meeting sign-in sheets

### **9.6 Technical Concept Reviews and Alternate Technical Concepts**

Regardless of the LA DOTD's attempts to provide clear technical parameters for the project, there may be a desire on the part of the proposers to clarify the requirements of the RFP. Two mechanisms that may be used by the LA DOTD are technical concept reviews or Alternate Technical Concepts (ATC).

### **9.6.1 Technical Concept Reviews**

The technical concept review process allows a proposer to submit, in writing, an idea related to its Technical Proposal to the LA DOTD for review prior to submission of the final proposal. The proposer's submission of the technical concept review allows the proposer to solicit the LA DOTD's opinion as to whether the idea falls within or outside the current technical parameters as they are set forth in the RFP. In responding to the proposer's technical concept review submission, the LA DOTD would only respond affirmatively or negatively as to whether the submission is currently within the parameters of the Technical Proposal.

The technical concept review process must be kept confidential, as sharing any of this information would compromise the development of the proposer's proposal. However, if a proposer submits a technical concept that is not currently inside the parameters of the RFP, but the LA DOTD would like to expand the RFP requirements to allow the technical concept, the LA DOTD could issue an RFP addendum to do so. But, the LA DOTD would have to be extremely careful to issue the addendum in such a way as to not reveal the technical concept that was submitted, since doing so would compromise open and fair competition against the proposer that originally submitted the technical concept.

### **9.6.2 Alternate Technical Concepts**

Alternate Technical Concepts are similar to technical concept reviews in that they do allow proposers to submit information to the LA DOTD for review and comment prior to submission of the proposer's final proposal. However, the purpose of the ATC is different. The purpose of the ATC is to seek exemption for a specific technical solution from the current technical parameters of the RFP. The LA DOTD reviews the suggested alternate solution and determines whether or not it would accept such an alternative. If yes, then the proposer is allowed to submit the ATC as a part of its proposal. If no, then the ATC is rejected.

The LA DOTD should keep in mind that under the current FHWA regulations, if an ATC process is used, a Special Experimental Project-14 (SEP-14) application was submitted to the FHWA's headquarters for approval of the LA DOTD's ATC process for the DB program. Approval was granted by the FHWA on October 28, 2009, and allows a proposer to submit an approved ATC in lieu of the baseline RFP requirements. Additionally, the FHWA requires that after contract award for each project that utilizes the ATC process, the LA DOTD must submit an evaluation of one to two pages describing the number of proposers, the number of approved ATCs, a short description of the different ATCs, and an evaluation of the effectiveness of the process in generating innovation and competition.

#### ***Section 9.6.2. Tasks***

- Prepare ATC evaluation report upon award of the DB contract
- Submit ATC evaluation report to the FHWA

**Section 9.6.2 Deliverables**

- ATC evaluation report

**9.7 Evaluation and Selection Plan**

The Evaluation and Selection Plan (E&S Plan) is the LA DOTD's internal document that details the step-by-step procedure for the evaluation process of the proposals submitted by the proposers in response to the RFP through to the award of the DB contract. The E&S Plan's step-by-step detail addresses specifically each of the committees and teams involved in the evaluations of the proposals and their roles and responsibilities. The document is tied directly to the RFP, but provides the detail of the process necessary to direct the members of the committees and teams to carry forth the process correctly.

The E&S Plan is critical to promote open and fair competition and to maintain a level playing field among the proposers. The evaluation process itself is set up to ensure that all proposers are treated consistently in order to avoid any perception of favoritism in the process. Prior to any deviation from the E&S Plan, the LA DOTD's counsel should be consulted. An example E&S Plan is included at Exhibit H - Example ITP and Example E&S Plan.

**Section 9.7 Tasks**

- Draft the Evaluation and Selection Plan

**Section 9.7 Deliverables**

- Evaluation and Selection Plan

**9.8 Evaluating the Successful Proposer**

As noted above in Section 9.7, the evaluations of the proposals must be disciplined and follow the process set forth in the E&S Plan. As also discussed at Section 5.1, the strictest confidentiality must be maintained during the evaluation process to promote trust between the LA DOTD and the proposers.

**9.8.1 Proposal Review Committee**

In accordance with L.R.S 48:250.3, the Chief Engineer, with concurrence of the Secretary, establishes the Proposal Review Committee to evaluate the proposals. The members of the Proposal Review Committee should be LA DOTD personnel who are uniquely qualified to review the proposals for a particular project, and who have not served on the DB Qualifications Evaluation Committee. The LA DOTD's Project Manager must serve as the Chair of the Proposal Review Committee. For federally-funded projects, the FHWA should be included on the Proposal Review Committee as an ex officio member.

Each of the members of the Proposal Review Committee will be required to sign the Confidentiality and Non-Disclosure Agreement discussed in Section 5.1 as well as a Conflict of Interest Affidavit, requiring the member to disclose any real or perceived personal conflicts of

interest with any of the proposers. The use of the Conflict of Interest Affidavit serves to provide assurance to the LA DOTD and the proposers that the LA DOTD personnel evaluating the proposals do not have conflicts of interest and will treat all proposers fairly.

If necessary, and in accordance with L.R.S. 48:250.3, if the Proposal Review Committee requires assistance in the evaluation of the proposals, additional LA DOTD personnel and nationally recognized DB experts may be used to assist the Proposal Review Committee. One way to accomplish this may be to break out the additional LA DOTD personnel and other experts into Evaluation Teams. Those Evaluation Teams would each take one or more of the evaluation factors to review. However, in order to provide a consistent evaluation of each of the factors and to maintain a level playing field among the proposers, if an Evaluation Team will be used to evaluate one evaluation factor, then Evaluation Teams must be used to evaluate all evaluation factors.

#### ***Section 9.8.1 Tasks***

- Establish the Proposal Review Committee and determine if Evaluation Teams will be used
- Prepare Proposal Review Committee appointment and concurrence memorandum for Chief Engineer and Secretary signature
- Prepare Conflict of Interest Affidavit and have Proposal Review Committee members sign the affidavit
- Have Proposal Review Committee members sign Confidentiality and Non-Disclosure Statements (as already prepared as per Section 5.1)

#### ***Section 9.8.1 Deliverables***

- Proposal Review Committee appointment and concurrence memorandum
- Conflict of Interest Affidavit

### **9.8.2 Proposal Evaluations**

The proposal evaluations must be put on the schedules of the members of the Proposal Review Committee well in advance in order to ensure the availability of the members to complete the evaluations in a timely fashion. If one of the members of the Proposal Review Committee proves to be unavailable for all or any portion of the evaluations, that member should be replaced with someone who is available.

The DB Procurement Management Team will commence the evaluation process with an evaluation orientation, which will inform the members of the Proposal Review Committee of the particulars of the project and the details of the procurement process, including the proposal evaluation factors and the rating process. All of the members of the Proposal Review Committee are required to attend this evaluation orientation.

The DB Procurement Management Team is also responsible to prepare evaluation worksheets for use by the Proposal Review Committee during the evaluation of the proposals. These evaluation worksheets should set forth the exact requirements as set forth in the RFP, and can help to streamline and facilitate each evaluator's review of each proposal. The evaluation worksheets

should be handed out to the members of the Proposal Review Committee at the evaluation orientation and should remain confidential for the duration of the procurement process.

Finally, the DB Procurement Management Team is responsible for the responsiveness review of each proposal upon its receipt from the proposers on the proposal due date. The responsiveness review is only a check of whether a proposer has submitted all of the required "pieces" of the proposal. The responsiveness review is not a review by the DB Procurement Management Team as to their opinion of the quality of the proposal. The opinion of the quality of the proposal is a role reserved strictly for the Proposal Review Committee. The DB Procurement Management Team's role is to simply ensure that the proposals are ready for review, and the DB Procurement Management Team should ensure to not overstep its bounds. The responsiveness review can be greatly simplified by the creation of a responsiveness checklist - a checklist of all of the submission requirements from the RFP. This will streamline and facilitate the DB Procurement Management Team's responsiveness review time.

The steps of the evaluation process are briefly and generally outlined below. However, each procurement is unique and proposers should look to a specific RFP to determine the specific steps being utilized by the LA DOTD for that specific procurement.

- A) The DB Procurement Management Team will prepare and conduct an evaluation and selection orientation for the Proposal Review Committee;
- B) The DB Procurement Management Team will receive the proposals and review the Technical Proposals for responsiveness and then prepare the Technical Proposals for evaluation;
- C) The DB Procurement Management Team will distribute the Technical Proposals to the Proposal Review Committee. Lump Sum Price Proposals, which are submitted in a separate sealed container, will be safeguarded and not opened or revealed to anyone until the public opening of the Lump Sum Price Proposals;
- D) The Proposal Review Committee members will review the Technical Proposals and submit requests for clarifications to the Proposal Review Committee as a whole for approval. If approved, the Proposal Review Committee forwards requests for clarifications to the DB Procurement Management Team at any time;
- E) The DB Procurement Management Team will issue requests for clarifications throughout the evaluation process, as required;
- F) The Proposal Review Committee will attend proposer presentations and interviews;
- G) After receipt of responses to requests for clarifications, if any, and attendance at proposer presentations and interviews, the Proposal Review Committee members will rate each pass/fail evaluation factor and rate and score each technical evaluation subfactor using their evaluation workbooks. *See Exhibit I - Example Evaluation Workbook* for an example of an evaluation workbook;
- H) After receipt of the evaluation workbooks from the Proposal Review Committee members, the Chair of the Proposal Review Committee will complete the

calculation of each proposer's technical evaluation factor scores and final total technical score;

- I) The DB Procurement Management Team will notify each proposer of the proposers' final pass/fail evaluation factor ratings, technical evaluation subfactor ratings and scores, technical evaluation factor scores, and final total technical score and conduct any confirmation meetings requested by proposers;
- J) The DB Procurement Management Team will conduct the public opening of the Lump Sum Price Proposals and determine the adjusted score of each proposal;
- K) The Lump Sum Price Proposals will be reviewed for responsiveness and reasonableness by a Price Evaluation Team. Lump Sum Price Proposals found to be nonresponsive or unreasonable in price will be removed from further consideration; and
- L) The results of the evaluation process will be submitted to the Secretary who will, in his or her sole determination, select the successful proposal or reject all proposals.

#### ***Section 9.8.2 Tasks***

- Set appointment notice for proposal evaluations on Proposal Review Committee and Design-Build Procurement Management Team schedules
- Reserve space for the Proposal Review Committee
- Prepare evaluation orientation Microsoft Power Point® presentation
- Prepare evaluation worksheets
- Prepare proposal responsiveness checklist
- Prepare evaluation workbooks
- Reserve/identify secure space/location for storage of proposals and Proposal Review Committee evaluation materials

#### ***Section 9.8.2 Deliverables***

- Microsoft Power Point® evaluation orientation presentation
- Evaluation worksheets
- Proposal responsiveness checklist
- Evaluation workbooks

### **9.8.3 Requests for Clarifications**

At certain times, it may prove to be difficult for the Proposal Review Committee to continue on with its evaluations because a proposer has submitted a proposal that contains an error, omission, ambiguity, or weakness. In those instances, at the sole discretion of the Proposal Review Committee, the committee may determine it would like to submit a request for clarification to a proposer. A request for clarification must be agreed upon and submitted by the Proposal Review

Committee as a whole. The purpose for this is because, at times, one evaluator may have missed or not understood a certain portion of a proposal, but when discussed with the Proposal Review Committee in its entirety, the need for the request for clarification is eliminated.

As per the requirement that the Contract Services Administrator, as the lead of the DB Procurement Management Team, be the single-point-of-contact for the LA DOTD for the procurement, all requests for clarification must be submitted to the DB Procurement Management Team to be sent to the proposer. Typically, a request for clarification should not require more than 24 hours for a response since it is only a correction of an error, omission ambiguity, or weakness. If a proposer requires longer than 24 hours to respond to a request for clarification, this is likely indicative of the fact that the request rises beyond a request for clarification and should not be asked.

Once the response is received by the DB Procurement Management Team, the team will review the response for responsiveness and deliver the response to the Proposal Review Committee for their evaluation.

***Section 9.8.3 Tasks***

- Draft requests for clarification
- Review responses to requests for clarification for responsiveness and distribute to the Proposal Review Committee

***Section 9.8.3 Deliverables***

- Requests for clarification

**9.8.4 Proposer Presentations and Interviews**

The LA DOTD may invite the individual proposers that submit proposals to provide presentations and/or attend interviews with the Proposal Review Committee. The presentations and/or interviews can only address the information contained in the proposers' Technical Proposals, and must specifically exclude any price or schedule information, since the public opening of the Lump Sum Price Proposal opening will not yet have occurred.

**9.8.5 Technical Score**

After each member of the Proposal Review Committee assigns a rating for each technical evaluation subfactor, a technical score will be determined for each member's technical evaluation subfactor using rating/scoring conversion table, which will be identified in the RFP. The members of the Proposal Review Committee will then submit their evaluation workbooks to the Chair of the Proposal Review Committee for calculation of each proposer's Technical Evaluation Factor scores and final total technical score.

After the Proposal Review Committee has determined the final total technical scores of each of the proposers, the DB Procurement Management Team will notify each of the proposers of all of the proposers' technical scores. Within a prescribed time period, a proposer may request a meeting with the LA DOTD to confirm its technical score, including review of the final rating and scoring of each member of the Proposal Review Committee. However, no detailed

information concerning information contained in another proposer's proposal will be discussed or provided to the requesting proposer at the meeting. All technical score confirmation meetings will be held prior to the opening of Lump Sum Price Proposals.

***Section 9.8.5 Tasks***

- Notify proposers of technical scores
- Set technical score confirmation meetings, if requested

***Section 9.8.5 Deliverables***

- Technical score notification letters

**9.8.6 Lump Sum Price Proposal Opening**

After the technical score confirmation time has expired, the Lump Sum Price Proposal may be opened at a public opening and the lowest adjusted score calculated. The lowest adjusted score is calculated according to the following formula set forth in L.R.S. 48:250.3:

**Adjusted Score = [(Lump Sum Price Proposal) + (Time Value)] ÷ Final Technical Proposal Technical Score.**

After calculation of the lowest adjusted score, just as with a low-bid procurement, the Lump Sum Price Proposals must be reviewed for responsiveness and reasonableness.

For the purposes of the responsiveness and reasonableness review, a small Price Evaluation Team should be assembled to expeditiously conduct the review. Any proposer found to have not submitted a responsive or reasonable Lump Sum Price Proposal could be found to be ineligible for award of the DB contract. It is the Price Evaluation Team's responsibility to document its findings in a memorandum to the DB Procurement Management Team prior to that team moving forward with the formal award of the DB contract.

***Section 9.8.6 Tasks***

- Identify Price Evaluation Team members
- Set appointment notice for Lump Sum Price Proposal evaluations for the Price Evaluation Team and DB Procurement Management Team schedules
- Schedule meeting space for Lump Sum Price Proposal opening
- Conduct Lump Sum Price Proposal opening
- Schedule space for the Price Evaluation Team
- Review Lump Sum Price Proposals for responsiveness and reasonableness
- Draft Lump Sum Price Proposal responsiveness and reasonableness memorandum
- Reserve/identify secure space/location for storage of Lump Sum Price Proposals and Price Evaluation Team evaluation materials

***Section 9.8.6 Deliverables***

- Lump Sum Price Proposal responsiveness and reasonableness memorandum

### **9.8.7 Proposal Protests**

The RFP sets forth a protest procedure for the RFP/proposal phase of the procurement, which is a mandatory administrative remedy which must be followed prior to any judicial recourse during this phase. If contacted regarding a protest, contact counsel with any questions to ensure that procedure is followed and to preserve the LA DOTD's rights for any future judicial action.

### **9.9 Award and Execution of the Design-Build Contract**

After the protest period has lapsed, the DB Procurement Management Team will send an award letter to the successful proposer notifying it of award of the DB contract. The letter typically includes one electronic copy of the entire completed set of the DB Contract Documents (with all of the "blanks" filled in) for the successful proposer's review. If the LA DOTD is planning a signing ceremony for the DB contract, this letter would set forth the particulars for the ceremony, inviting the successful proposer to attend.

For federally-funded jobs, a concurrence in the award, as well as a post award tabulation will need to be submitted to the FHWA. The post-award tabulation may include detailed pricing information if available, or lump sum price information if itemized pricing was not used.

As a reminder, the following documents will need to be received and reviewed by the DB Procurement Management Team prior to execution of the DB contract:

- A) Required payment and performance bonds;
- B) Insurance certificates;
- C) Full details of who will sign the DB contract and evidence as to the authority, power, and capacity of said individual(s) to bind the successful proposer to the DB contract;
- D) The proposer's Federal Internal Revenue Service Identification Number; and
- E) Evidence that the successful proposer, designer, and any subcontractors performing design and/or construction work are properly licensed, if not previously provided.

As stated earlier, it should be assumed that three original copies of the DB contract should be executed, plus one original for each parish in which the project will be conducted. After execution of the DB contract, a written Notice to Proceed should be provided to the Design-Builder prior to commencement of any work under the DB contract.

#### ***Section 9.9 Tasks***

- Draft award letter to successful proposer

- Draft and submit award concurrence letter to the FHWA
- Compile and submit post-award tabulation to the FHWA
- Schedule DB contract execution ceremony (if signing ceremony scheduled)
- Draft Notice to Proceed

***Section 9.9 Deliverables***

- Award letter to successful proposer
- Federal Highway Administration award concurrence letter
- Post-award tabulation
- Notice to Proceed

**9.10 De-Briefs**

After execution of the DB contract, the LA DOTD may offer de-briefings to the unsuccessful proposers. The unsuccessful proposers may or may not take the LA DOTD's offer. If any of the unsuccessful proposers request a de-briefing, the LA DOTD's Project Manager, as the Chair of the Proposal Review Committee should lead the de-briefing, with support from the DB Procurement Management Team. The de-briefing should focus on providing the unsuccessful proposer with information on both the strengths and weaknesses in the proposer's proposal, with a focus on how that particular proposer can improve in the next procurement. The de-briefings should occur as soon after DB contract execution as possible so that the information is still fresh in the mind of the LA DOTD's Project Manager.

While the information from the rating of all proposals is public at the point of the de-briefings, since the de-briefings occur after execution of the DB contract, the purpose of the de-briefing is not to spend time making a comparison between the unsuccessful proposer's proposal and other proposals. This activity should be avoided and is not constructive. It is more constructive for the LA DOTD's Project Manager to proactively review the evaluation worksheets of the Proposal Review Committee members and to summarize the documented strengths and weaknesses from those evaluation worksheets into a format that is concise and easy to follow for purposes of the de-brief. That will help to guide the discussion and provide the unsuccessful proposer with the constructive and organized de-brief which it deserves.

***Section 9.10 Tasks***

- Schedule de-briefs
- Prepare summary de-brief documents

*Section 9.10 Deliverables*

- Summary de-brief document

**LOUISIANA DEPARTMENT OF  
TRANSPORTATION AND  
DEVELOPMENT**

**DESIGN-BUILD MANUAL**

**EXHIBIT A – DESIGN-BUILD PROJECT  
OVERVIEW**



## **Project Background**

To date, the Louisiana Department of Transportation and Development (LA DOTD) has utilized the Design-Build (DB) project delivery method on the projects which are briefly detailed in the following pages.

### **John James Audubon Bridge Project**

#### **BRIEF PROJECT DESCRIPTION:**

The project begins at LA 10 on the west bank of the Mississippi River in Pointe Coupee Parish (including an interchange). The project terminates at US 61 on the east bank of the Mississippi River just south of St. Francisville in West Feliciana Parish (including an interchange). The project consists of the design and construction of the following elements:

- A) The cable-stayed main span structure;
- B) Pointe Coupee approaches;
- C) West Feliciana approaches;
- D) Miscellaneous roadway elements; and
- E) Associated aesthetics and landscaping.

#### **EVALUATION FACTORS:**

The evaluation factors, listed in descending order of importance, were as follows:

- A) Legal (pass/fail);
- B) Financial (pass/fail);
- C) Technical Solutions;
- D) Key Personnel and Experience;
- E) Management Approach; and
- F) Project Support.

Within the Technical Solutions Technical Evaluation Factor, the following subfactors all had the same importance:

- 1) Cable-stayed bridge design concept;
- 2) Approach structures and other bridges design concepts;
- 3) Drainage; and
- 4) Roadway geometric design concepts.

Within the Management Approach Technical Evaluation Factor, the following subfactors had a descending order of importance:

- a) Project Management Plan;

- b) Project Controls; and
- c) Organization.

**AWARD BASIS:**

The award of the DB contract was made on the statutory lowest adjusted score basis, where technical score was weighed more importantly than price.

**PROCUREMENT SCHEDULE:**

The Notice of Intent (NOI) was published on November 15, 2004, and the DB Contract was executed on April 14, 2006. In the case of this project, there were several intervening issues, including Hurricanes Katrina and Rita. Hurricane Katrina hit Louisiana approximately one week after release of the Scope of Services Package for the project, and Hurricane Rita approximately one month after that. While the hurricanes were not the only reasons that the procurement took the length of time that it did, they did serve to lengthen the time of the procurement due to difficulty on the part of the proposers to be able to convene to work on their proposals (getting people in to Louisiana was very difficult for several months after the hurricane events) and getting pricing on materials and labor became a virtual impossibility as the materials and labor pools were suddenly non-existent for the job. However, the LA DOTD had already anticipated that the procurement for this job would be a longer procurement due to the fact that the job was extremely complex (a cable-stayed bridge structure) as well as the first DB project that the LA DOTD was undertaking. So, the length of the procurement is not solely attributable to the hurricanes. Approximately only two months were added in to the procurement schedule due to the effects of the hurricanes.

**Interstate-12 Widening Design-Build Project**  
**O'Neal Lane Interchange to Walker**

**BRIEF PROJECT DESCRIPTION:**

The Interstate-12 (I-12) Widening DB Project begins at the O'Neal Lane Interchange in East Baton Rouge Parish and proceeds easterly into Livingston Parish towards Walker. The project was procured as a "not-to-exceed" DB-to-budget. With the tie-in to the six-lane section at O'Neal Lane as the starting point, proposals demonstrated the length of I-12 widening and rehabilitation toward the east that could be provided on a set not-to-exceed DB contract amount. The project consists of all or a portion of the design and construction of the following major elements:

- A) Interstate-12 mainline widening;
- B) O'Neal lane interchange (LA 3245);
- C) Amite River bridge;
- D) 4-H Road overpass (LA 1032);
- E) Range Avenue interchange (LA 3002);
- F) Pete's Highway (LA 16) bridge modification;

## Louisiana Department of Transportation and Development

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- G) Juban Road interchange (LA 1026); and
- H) Walker interchange (LA 447).

### EVALUATION FACTORS:

The evaluation factors, listed in descending order of importance, were as follows:

- A) Legal (pass/fail);
- B) Financial (pass/fail);
- C) Technical Solutions;
- D) Key Personnel and Experience; and
- E) Management Approach.

It should be noted that with the I-12 Widening DB Project, the LA DOTD opted to drop the Project Support Technical Evaluation Factor. The Project Support Technical Evaluation Factor would typically consider information such as public outreach, maintenance of traffic, or aesthetics. With this project, the LA DOTD made a determination it would prefer to include some of those topics with the Technical Solutions Technical Evaluation Factor. However, on some future projects, it may make sense for the LA DOTD to utilize a separate Project Support Technical Evaluation Factor again.

Within the Technical Solutions Technical Evaluation Factor, the first subfactor was significantly more important than the other subfactors. The remaining subfactors were of equal importance, with the exception of the last subfactor, which was less important:

- 1) Length of I-12 reconstruction that provides functional benefit to the motoring public with high quality design and construction relative to items (3), (4), and (5) below. Extended project length at the expense of quality design and construction will be rated low, and may possibly be rated as “unacceptable”;
- 2) Maintenance of traffic and traffic control;
- 3) Bridge design concepts;
- 4) Roadway geometry and pavement design; and
- 5) Miscellaneous project elements.

Within the Management Approach Technical Evaluation Factor, the following subfactors had a descending order of importance:

- a) Project management plan;
- b) Project controls; and
- c) Organization.

### AWARD BASIS:

The award of the DB contract was made on the statutory lowest adjusted score basis, where technical score was weighed more importantly than price. This was a not-to-exceed DB to budget project.

**PROCUREMENT SCHEDULE:**

The NOI was published on May 5, 2008, and the DB contract was executed in mid-December 2008. In the case of this procurement, it was able to be significantly more streamlined because the LA DOTD had template documents, it was a not-to-exceed DB to budget, and the nature of the project was significantly less complex as a freeway reconstruction project.

**Interstate-10 Widening Design-Build Project**

**BRIEF PROJECT DESCRIPTION:**

The project begins just southeast of the Siegen Lane interchange on Interstate-10 (I-10) in East Baton Rouge Parish and proceeds southeasterly toward the Highland Road interchange. The starting point of this project is a tie-in to the end of the full six-lane section at Siegen Lane. This project carries the proposed six-lane interstate section as close as possible to the Highland Road overpass. The six-lane widened interstate section transitions back to the existing four-lane interstate section at the northwest end of the Highland Road overpass bridge approach slabs. The project includes a dual exit ramp for eastbound traffic at the Highland Road interchange.

**EVALUATION FACTORS:**

The evaluation factors, listed in descending order of importance, were as follows:

- A) Legal (pass/fail);
- B) Financial (pass/fail);
- C) Technical Solutions;
- D) Key Personnel and Experience; and
- E) Management Approach.

Within the Technical Solutions Technical Evaluation Factor, the following subfactors were identified:

- 1) Kansas City Southern Railroad (KCS RR) overpass structure;
- 2) Maintenance of traffic and traffic control;
- 3) Wards Creek Diversion Canal bridge structure;
- 4) Roadway geometry and drainage;
- 5) Pavement design;
- 6) Added value; and
- 7) Miscellaneous project elements.

Within the Technical Solutions Technical Evaluation Factor, the importance of the subfactors for the Technical Solutions Technical Evaluation Factor for the I-10 Widening DB Project became a bit more complex, described as follows:

## Louisiana Department of Transportation and Development

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"The subfactor in [1] will be more important than the subfactor in [2]. The subfactors in [1] and [2] will be significantly more important than the other subfactors listed in [3] through [7]. The subfactors listed in [3] through [5] will be of equal importance and more important than the subfactors listed in [6] and [7]."

Within the Management Approach Technical Evaluation Factor, the following subfactors had a descending order of importance:

- a) Project management plan;
- b) Project controls; and
- c) Organization.

### AWARD BASIS:

The award of the DB contract was made on the statutory lowest adjusted score basis, where technical score was weighed more importantly than price. This was a not-to-exceed DB to budget project.

### PROCUREMENT SCHEDULE:

The NOI was published on January 13, 2009, and the DB contract was executed in January 2010. It should be noted that this procurement was subject to a protest and a lawsuit, both of which were favorably resolved for the LA DOTD. Additionally, the Louisiana State Legislature took a significant interest in this project and its procurement, making it the subject of a legislative hearing that took place on February 4, 2010. It was the additional attention that this project received that prompted the creation of the DB Task Force that met during the spring and summer of 2010.

### United States 90 Interchanges at Louisiana 85 Design-Build Project

#### BRIEF PROJECT DESCRIPTION:

The project begins approximately 4,000 feet north of Louisiana 85 (LA 85) along United States 90 (US 90) and ends approximately 4,000 feet south of LA 85 along US 90, and includes the following:

- A) A grade-separated interchange which is to replace the existing, at-grade US 90 intersection with LA 85;
- B) Two parallel overpasses, each consisting of two lanes with shoulders, and each capable of spanning future widening of LA 85 to a five-lane section, on US 90 over LA 85;
- C) Concrete barrier rail, guardrail or other necessary pier protection on/for the new US 90 overpasses;
- D) Modification of existing drainage facilities and associated structures and/or construction of new drainage facilities and associated structures to accommodate the new interchange and reconstructed service roads and their runoff; and
- E) Relocation of a microwave tower.

**EVALUATION FACTORS:**

The evaluation factors, listed in descending order of importance, were as follows:

- A) Legal (pass/fail);
- B) Financial (pass/fail);
- C) Technical Solutions;
- D) Key Personnel and Experience; and
- E) Management Approach.

Within the Technical Solutions Technical Evaluation Factor, the following subfactors were identified:

- 1) Design concepts for US 90 overpass structures crossing LA 85;
- 2) Pavement design;
- 3) Roadway geometry and drainage;
- 4) Maintenance of traffic and traffic control;
- 5) Utility coordination;
- 6) Added value; and
- 7) Miscellaneous project elements.

Like the I-10 Widening DB Project, the importance of the subfactors within the Technical Solutions Technical Evaluation Factor was a bit more complex for the US 90 DB Project, described substantially as follows:

"The subfactors listed in [1] and [2] will be of equal importance and will be significantly more important than the other subfactors listed in [3] through [7]. The subfactors listed in [3] through [5] will be of equal importance and more important than the subfactors listed in [6] and [7]."

Within the Management Approach Technical Evaluation Factor, the following subfactors had a descending order of importance:

- a) Project management plan;
- b) Project controls; and
- c) Organization.

**AWARD BASIS:**

The award of the DB contract was made on the statutory lowest adjusted score basis, where technical score was weighed more importantly than price.

**PROCUREMENT SCHEDULE:**

The NOI was published on January 13, 2009, and the DB contract was executed in January 2010, following roughly the same schedule as the I-10 Widening DB Project, although this project was not subject to the same scrutiny as the I-10 Widening DB Project.

**Interstate-12 Widening Design-Build Project**  
**Amite River Bridge to Juban Road (WB) and**  
**Pete's Highway to Juban Road (EB)**

**BRIEF PROJECT DESCRIPTION:**

The project consists of the widening of the mainline of I-12 from four lanes to six lanes from the eastern terminus (eastbound and westbound lanes) of the "original" I-12 Widening DB Project (see above) proceeding eastward to the Juban Road interchange. The project consists of all or a portion of the design and construction of the following major elements:

- A) Interstate-12 mainline widening;
- B) 4-H Club Road overpass (LA 1032);
- C) Range Avenue interchange (LA 3002);
- D) Grey's Creek bridges; and
- E) Aesthetics and landscaping.

**EVALUATION FACTORS:**

The evaluation factors were as follows:

- A) Legal (pass/fail);
- B) Financial (pass/fail);
- C) Technical Solutions; and
- D) Management Approach.

As a reaction to the legislative hearing and lawsuit referenced in the I-10 Widening DB Project overview, the Key Personnel Technical Evaluation Factor was dropped from this procurement in an effort to streamline the evaluation process. Additionally, at the request of proposers, the Technical Evaluation Factors were assigned percentage weights in lieu of importance. As such, the Technical Solutions Technical Evaluation Factor was assigned a weight of 90%. The Management Approach Technical Evaluation Factor was assigned a weight of 10%.

Within the Technical Solutions Technical Evaluation Factor, the following subfactors were identified:

- 1) Maintenance of Traffic and Traffic Control Subfactor;
- 2) 4-H Club Road and Range Avenue Bridge Structures Subfactor;
- 3) Roadway Geometry and Drainage Subfactor;

## Louisiana Department of Transportation and Development

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- 4) Grey's Creek Bridge Structure; and
- 5) Project Coordination Subfactor.

Each Technical Solutions Technical Evaluation Subfactors (1) through (4) was assigned a weight of 25%. The subfactor (5) was rated on an "acceptable"/"unacceptable" basis only.

Again in the interest of streamlining the evaluation process in reaction to feedback on the I-10 Widening DB Project, the Management Approach Technical Evaluation Subfactors were revised for the first time and given equal weights of 33 1/3%:

- a) Design Management Subfactor;
- b) Construction Management Subfactor; and
- c) Organization Subfactor.

### AWARD BASIS:

The award of the DB contract was made on the statutory lowest adjusted score basis, where price was weighted more importantly than technical score. This was a not-to-exceed DB to budget project.

### PROCUREMENT SCHEDULE:

The NOI was published on July 29, 2009, and the DB contract was executed on April 28, 2010. It should be noted that approximately a month extension of the proposal due date was given to proposers after revisions were made to the procurement process based on the feedback that was driven by the I-10 Widening DB Project.

### Intelligent Transportation Systems

To date, the LA DOTD has successfully procured the following Intelligent Transportation Systems (ITS) projects utilizing the DB project delivery method.

#### *State Project Number 737-99-0799; Baton Rouge to New Orleans ITS - Phase 1*

This project affects Interstates-10 and -310 and United States 61 and 51 in Jefferson, St Charles, and St. John the Baptist Parishes. The NOI was advertised on November 26, 2007, and the DB contract was executed on June 23, 2008. The estimated DB contract value is \$10.465 million.

#### *State Project Number 737-99-0604; Baton Rouge to Lafayette ITS - TIM Phase 2*

This project includes Interstates-10 and -49 and United States 90 and 190 in Acadiana, Iberville, Lafayette, Pointe Coupee, St. Martin, St. Landry, and West Baton Rouge Parishes. The NOI was advertised on November 3, 2008, and the DB contract was executed on August 11, 2009. The estimated DB contract value is \$7.962 million.

#### *State Project Number 737-96-0058; Baton Rouge to New Orleans ITS - TIM Phase 3*

This project affects Interstates-10, -110, and -12 and United States 61 (US 61) in Ascension and East Baton Rouge Parishes. The NOI was advertised on January 15, 2010, and the DB contract is anticipated to be executed in April 2011. The estimated DB contract value is \$8.5 million.

**LOUISIANA DEPARTMENT OF  
TRANSPORTATION AND  
DEVELOPMENT**

**DESIGN-BUILD MANUAL**

**EXHIBIT B – TERMS AND DEFINITIONS**



## Louisiana Department of Transportation and Development

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The following terms and definitions are used throughout the Design-Build Manual.

**Addenda/Addendum** - Supplemental additions, deletions, and modifications to the provisions of the Request for Qualifications (RFQ) after the release date of the RFQ or Request for Proposals (RFP) after the release date of the RFP, as appropriate.

**Advertisement** - The public announcement in the form of the Notice of Intent (NOI) inviting prospective Proposers to obtain an RFQ and submit a Letter of Interest (LOI). The Advertisement includes a brief description of the Work proposed to be the subject of the procurement with an announcement where the RFQ may be obtained, the terms and conditions under which LOIs will be received, and such other matters as the LA DOTD deems advisable to include therein.

**Affiliate** - Any of the following:

- A) A Person which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the following:
  - 1) The Proposer; or
  - 2) Any other Principal Participant.
- B) An Affiliate may also be any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record, by the following:
  - 1) The Proposer; or
  - 2) Any Principal Participant; or
  - 3) Any Affiliate of the Proposer under part (A) of this definition.

For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.

**Amendment** - A formal alteration by addition, deletion, or modification of the terms of the executed Contract. Amendment is an umbrella term and includes Plan Changes, Change Orders, or Supplemental Agreements.

**Approval** - The LA DOTD’s written statement indicating that the subject Work complies with Contract requirements. Approvals will only be given for those submittals, activities, or Work specifically identified for “Approval” or “approval” in the Contract Documents.

**As-Built Plans** - Final Plans reflecting the Work as actually performed under the Contract.

**Award** - The decision of the LA DOTD to accept a responsive Proposal from a responsible Proposer for the Work identified in the RFP, subject to the execution and approval of a satisfactory Contract; provision of Payment, Performance, and, if used, Retainage Bonds to secure the payment and performance thereof; provision of such insurance as is required under the

## Louisiana Department of Transportation and Development

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Contract; and the satisfaction of such other conditions as may be specified or otherwise required by law.

**Baseline Progress Schedule** - The time-scaled, cost-loaded, and resource-loaded Critical Path network, updated from time to time in accordance with the Contract and depicting the Price Centers (PC) and subordinate activities and their respective prices (distributed over time), durations, sequences, and interrelationships that represent the Design-Builder's Work plans; the Design-Builder's Work Breakdown Structure (WBS) for designing, constructing, and completing the Project; and the total Lump Sum Contract Price, distributed over the period of the Contract.

**Basic Project Configuration** - The salient characteristics of the Project as defined and/or illustrated in the RFP, including any permitted deviations thereto contained in the Design-Builder's Proposal. Basic Project Configuration elements may include the following:

- A) The horizontal and vertical alignments;
- B) Number of intersections;
- C) Number of bridges;
- D) Number of lanes;
- E) The general location of the limits of the Project;
- F) The minimum vertical clearances; and
- G) The Right-of-Way limits.

**Calendar Day** – Every Day on the calendar, beginning and ending at midnight, Central time.

**Change Order** – A general term denoting changes to the DB Contract. Change Order as a general term includes Plan Changes.

**Chief Engineer** – The Chief Engineer of the Louisiana Department of Transportation and Development.

**Clarifications** - A written exchange of information initiated by the LA DOTD that takes place between a Proposer and the LA DOTD after the receipt of all Statements of Qualifications (SOQ) or Proposals, as appropriate, during the evaluation process. The purpose of Clarifications is to address ambiguities, omissions, errors or mistakes, and clerical revisions in an SOQ or Proposal.

**Construction Subcontractor** - A Subcontractor (or Affiliate) retained by the Design-Builder that is involved in the actual construction of the Project.

**Consultation and Written Comment** - The LA DOTD's reviews, observations, and/or inspections based solely on information submitted by the Design-Builder, as well as independent investigation or inquiry by the LA DOTD, and the LA DOTD's written responses resulting from such LA DOTD actions.

**Contract** - The written agreement between the LA DOTD and the Design-Builder setting forth the obligations of the parties thereunder, including, but not limited to, for the performance of the

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## Louisiana Department of Transportation and Development

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prescribed Work. The Contract includes the Advertisement; Contract Documents; the Design-Builder's Proposal (with the exception of the Proposal Bond); the Notice to Proceed (NTP); Payment, Performance, and Retainage Bonds; and any Supplemental Agreements, Amendments, and Change Orders that are required to complete the Work in an acceptable manner and Contract time, including authorized extensions thereof, all of which constitute one instrument.

**Contract Documents** – The Contract Documents include the DB Agreement, DB Section 100, Design Requirements and Performance Specifications, the RFP Plans, the Engineering Data, the Design-Builder's Proposal, and all provisions required by law to be inserted in the Contract whether actually inserted or not. Whenever separate publications and the LA DOTD's Standard Specifications are referenced in the Contract Documents, it is understood to mean the publications and Specifications, as amended, which are current on the Proposal due date, unless otherwise noted.

**Contract Price** – *See* Lump Sum Contract Price.

**Contract Time** – The number of working days or Calendar Days allowed for completion of the Contract, including authorized time extensions. When a calendar date of completion is shown in the Contract in lieu of a number working or Calendar Days, Work must be completed by that date, including authorized time extensions.

**Critical Path** - Each path shown on the Baseline Progress Schedule for which there is zero float.

**Day** - A Calendar Day, unless otherwise defined or modified.

**Deficiency** - A material failure of an SOQ or Proposal, as appropriate, to meet the LA DOTD's requirements or a combination of significant Weaknesses in an SOQ or Proposal that increases the risk of unsuccessful Contract performance to an unacceptable level.

**Design-Build** - A project delivery methodology by which the LA DOTD contracts with a Design-Builder which is responsible for delivering the Project design and construction.

**Design-Build Team** - *See* Design-Builder.

**Design-Builder** - The entity contractually responsible for delivering the Project design and construction.

**Design-Builder's Project Manager** - The Design-Builder's on-site designated representative and single point of contact for all aspects of the Work.

**Design Review** - A comprehensive and systematic examination of the design as specified in the Contract to verify that it is in conformance with the requirements of the Contract, as performed by the Design-Builder for all stages of the design except As-Built Plans, which is performed by the LA DOTD. During all stages of the design, except As-Built Plans, the LA DOTD will contribute to the review through Oversight, including, participation, auditing, and spot-checking.

**Designer** - A Principal Participant, Specialty Subcontractor, or in-house designer that furnishes or performs the design of the Project.

## Louisiana Department of Transportation and Development

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**Differing Site Condition** - Subsurface or latent physical conditions that are encountered at the Site and differ materially from the conditions indicated in the Contract. Also, unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the type of Work provided for in the Contract, provided in all cases that the Design-Builder had or should have no actual or constructive knowledge of such conditions as of the Proposal due date.

**Dispute** - A matter of Contract performance or Contract compensation, including granting of extensions of time, in which there is or may be disagreement between the Design-Builder and the LA DOTD and which may involve adjustment of or the addition of new Work to the Contract, extension of time for performance, and/or adjustments in compensation necessitated by the resolution of such disagreement.

**Extra Work** – Work not provided for in the Contract as awarded but found essential by the LA DOTD for satisfactory completion of the Contract within its intended scope.

**Federal Requirements** – The provisions required to be part of federal-aid construction contracts.

**Final Acceptance** - The acceptance of the Work by the LA DOTD's designated representative upon the completion of the Work as defined in the Contract and through Oversight and Design Acceptance of that Work by the LA DOTD. Final Acceptance does not relieve the Design-Builder's obligations pursuant to any guaranty or warranty under the terms of the Contract.

**Instructions To Proposers** - Those documents containing directions for the preparation and submittal of information by the Proposers in response to the RFP.

**Louisiana Department of Transportation and Development's Project Manager or LA DOTD's Project Manager**- The engineer representing the Department and having direct supervision of the administration and execution of the Contract.

**Lump Sum Contract Price** - The total lump sum amount paid for the Work to be performed under the DB Contract, as it may be adjusted from time to time to account for Change Orders. The Lump Sum Contract Price may also be known as the Contract Price.

**Notice to Proceed** - Written notice to the Design-Builder to proceed with Contract Work, including the date of beginning of Contract Time.

**Oversight** - Actions by the LA DOTD to satisfy itself that the Design-Builder is designing, constructing, and managing the Work in accordance with the Contract Documents. It includes actions identified in the Contract Documents by the terms QA, accept/acceptance, inspect/inspection, audit, ensure, certify, confirm, review, verify, or terms of similar import. The Louisiana Department of Transportation and Development's comments as a result of Oversight are conveyed to the Design-Builder through Consultation and Written Comment. Neither the activity of Oversight nor the lack of Consultation and Written Comment on the part of the LA DOTD will be construed to relieve the Design-Builder and its organization from the responsibility and costs for meeting all Contract and regulatory requirements.

## Louisiana Department of Transportation and Development

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**Partnering** - Those actions taken to include all parties with an appropriate and vested interest in the Project in the management of the Project, such that the Project is completed in the most efficient, timely, safe, and cost effective manner for the mutual benefit of all concerned. These actions include, but are not limited to, communication, organization, establishing goals, continuous improvement, problem identification, conflict resolution, and managing change. Interested parties may include, but are not limited to, the LA DOTD; the Design-Builder; Subcontractors; Suppliers of goods and services to the Project; the community within which the Project is constructed; the community served by the Project; federal, state, and local governments or other public agencies; and utilities.

**Payment/Performance/Retainage Bonds** - The approved form of security, executed by the Design-Builder and Surety, guaranteeing completion of duties under the Contract and Amendments, Supplemental Agreements, Change Orders, or Plan Changes thereto, and payment of all legal debts, including liens and monies due the LA DOTD, pertaining to the Contract.

**Performance Specification** - A specification that establishes Contract requirements in terms of design parameters and performance goals to be met. Performance Specifications also may include parameters for determining performance and corrective action to be taken.

**Periodic Payment Schedule** - The schedule submitted with the Design-Builder's Proposal (which schedule may be amended by Change Order) that will be the basis for the assessment of periodic payments for each PC.

**Person** - Any individual, firm, corporation, company, Limited Liability Company (LLC), Joint Venture (JV), or partnership.

**Plan Change** – Any alteration, deviation, addition, or omission as to the preexisting Contract. A Plan Change may also be referred to as an Amendment, Supplemental Agreement, or Change Order.

**Price Center** - A component of the Project for which the Design-Builder provides a Price Center Value (PCV) for all Work included in that component. A PC may be a major contract item or series of interrelated items as identified in the Lump Sum Price Proposal.

**Price Center Value** - That value allocated by the Design-Builder to a PC as set out in the Lump Sum Price Proposal.

**Price Reasonableness** - A price, in its nature and amount, that does not exceed that which would be incurred by a prudent person in the conduct of competitive business. What is reasonable depends upon a variety of considerations and circumstances, including the following:

- A) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the Proposer's business or the Contract performance;
- B) Generally accepted sound business practices and federal and state laws and regulations;

## Louisiana Department of Transportation and Development

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- C) The Proposer's responsibilities to the LA DOTD, other customers, the owners of the business, its employees, and the public at large;
- D) Any significant deviations from the Proposer's established practices;
- E) Comparisons of price information to the engineer's estimate and to the LA DOTD's historic costs for similar Work; and
- F) Comparisons of price information submitted by other Proposers.

**Principal Participant** - Any of the following entities:

- A) The Design-Builder;
- B) An individual firm, all general partners, or LLC or JV members of the Design-Builder; and/or
- C) All Persons and legal entities holding (directly or indirectly) a 15% or greater interest in the Design-Builder.

**Program Audit** - All planned and systematic actions by the LA DOTD and/or its designated Quality Assurance Consultant necessary to provide confidence that the DB QC team is effectively ensuring that all Work complies with the Contract requirements and that all material incorporated in the Work and all elements of the Work will perform satisfactorily for the purpose intended. Actions include, but are not limited to: design audits, checks, and reviews; construction audits, including, specification compliance reviews, document control, and working plan review; review of material Sampling and Testing results at production sites and the Project site; Fabrication audit of manufacturing/processing facilities and equipment; calibration of test equipment, and independent verification of materials if determined to be necessary.

Program Audit activities will be documented. Program Audit also includes issuance and tracking Non-Conformance Reports (NCR), assisting in the evaluation of Change Order requests, and research and evaluation of items as assigned by the LA DOTD's Project Manager.

**Progress Check Point** - A defined step towards the completion of Work within a PC identified in the Schedule of Progress Check Points (PCP). Progress Check Points are defined by the Design-Builder in its Proposal and are approved by the LA DOTD with acceptance of that Design-Builder's Proposal. Any changes to the PCPs after submission of the Design-Builder's Proposal are subject to the Approval of the LA DOTD's Project Manager, in his sole discretion.

**Project** - The improvements to be designed and constructed by the Design-Builder and all other Work product to be provided by the Design-Builder in accordance with the Contract Documents.

**Project Scope** - The brief description of the Work to be performed to design and construct the Project as contained in the Contract.

**Project Specifications** - Those Specifications developed by the Design-Builder to define and control the specific requirements, conditions, means, and methods to be used on the Project. Project Specifications will be based on the Contract requirements and must provide finished

## Louisiana Department of Transportation and Development

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products that meet or exceed the quality requirements of the Contract. Project Specifications are subject to the review and Consultation and Written Comment of the LA DOTD's Project Manager during Design Reviews.

**Proposal** - The offer (in response to the RFP) of the Proposer for the Work, when executed and submitted in the prescribed format and on the prescribed forms and including any Clarifications.

**Proposer** - A Person submitting an SOQ for the Project in response to this RFQ, and, if selected for the Short-List, an entity submitting a Proposal.

**Quality Assurance** – The independent and random verification conducted by the Design-Builder of its QC program.

**Quality Assurance/Quality Control Manager** - The individual employed by the QC Engineering Firm who is responsible for the overall QC program for the Project, including the quality of management, design, and construction.

**Quality Control** - The total of all activities performed by the QC Engineering Firm, Design-Builder, Designer, subcontractors, producers, or manufacturers to ensure that a product meets Contract requirements. Quality Control includes design reviews and checks; inspection of material handling and construction; calibration and maintenance of sampling and testing equipment; working plan review; document control; production process control; and any inspection, sampling, and testing done for these purposes. Quality Control also includes documentation of QC efforts.

**Quality Control Engineering Firm** - An independent engineering/testing firm employed by the Design-Builder responsible for administering and managing the construction QC inspection, sampling, and testing and verification. The QC Engineering Firm and any subcontractors or subconsultants thereto must not be owned or controlled by the Design-Builder, any Principal Participant of the Design-Builder, any Affiliate of any Principal Participant, any Construction Subcontractor, the Designer, a firm associated with or subsidiary to the Designer, or any design subcontractor or subconsultant of any tier to the Design-Builder.

**Quality Plan** - The plan that sets out the Design-Builder's means of complying with its obligations in relation to QC, which plan must be provided and maintained in accordance with the Contract following Consultation and Written Comment thereof by the LA DOTD's Project Manager.

**Quality Program** - The overall quality program and associated activities including the LA DOTD's QA, the Design-Builder's and/or the QC Engineering Firm's QC, the Contract quality requirements, and the Design-Builder's Quality Plan.

**Reference Documents** - The documents provided with and so designated in the RFP. The Reference Documents, including plans contained therein and/or so designated, are not Contract Documents and were provided to the Proposers for informational purposes and for use in the Proposer's Proposal preparation, at the Proposer's discretion.

## Louisiana Department of Transportation and Development

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**Request for Proposals** - A written solicitation issued by the LA DOTD seeking Proposals to be used to identify the Proposer offering the best value to the LA DOTD. The RFP includes the Instructions To Proposers (ITP), Contract Documents, and Reference Documents. This document is issued only to Proposers that are on the Short-List.

**Request for Qualifications** - The written solicitation issued by the LA DOTD seeking SOQs to be used to identify and short-list the most highly qualified Proposers to receive the RFP for the Project.

**Schedule of Progress Check Points** - The schedule describing the PCPs and stipulating dates by which PCPs are to be achieved in order to maintain periodic payments in accordance with the Contract.

**Short-List** - The list of those Proposers that have submitted SOQs that the LA DOTD determines, through evaluation of the SOQs, are the most highly qualified Proposers and that will be invited to submit Proposals in response to a RFP.

**Stakeholder** - Any party that has a vested interest in the Project or authority to approve or control specific aspects of the Project or elements that will impact the outcome of the Project. This includes, but is not limited to, the LA DOTD, Federal Highway Administration (FHWA), local city and parish governments, permitting agencies, and utility companies and the associated staff members of these entities.

**Standard Specifications** – The Louisiana Specifications for Roads and Bridges 2006 Edition. The Standard Specifications are a Reference Document for the purposes Projects

**Statement of Qualifications** - The information prepared and submitted by a Proposer in response to the RFQ.

**Subcontractor** – An individual, partnership, corporation, or any other legal entity or any acceptable combination thereof, or JV or LLC, to which the Design-Builder sublets part of the Work. Any individual, partnership, corporation, or any other legal entity will not be considered to be a Subcontractor if it is a subsidiary which is wholly-owned or majority-owned by the Design-Builder or the Principal Participants of the Design-Builder, or an Affiliate of the Design-Builder, or affiliated or otherwise controlled by the Design-Builder or Principal Participants of the Design-Builder such that a true and independent Subcontractor-Design-Builder relationship reached by bidding or arms-length negotiation does not result therefrom.

**Supplemental Agreement** – A written agreement between the Design-Builder and the LA DOTD covering work not otherwise provided for, or revisions in or amendments to terms of the Contract, or Plan Changes, or conditions specifically prescribed in the Specifications as requiring Supplemental Agreements. Such Supplemental Agreement becomes part of the Contract when approved and properly executed.

**Surety** - The corporation, partnership, or individual, other than the Design-Builder, executing bonds furnished by the Design-Builder and obligating itself thereunder.

## Louisiana Department of Transportation and Development

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**Weakness** - A flaw in the SOQ or Proposal, as appropriate, that increases the risk of unsuccessful Contract performance. A significant Weakness in the SOQ or Proposal is a flaw that appreciably increases the risk of unsuccessful Contract performance.

**Work** – The labor, Materials, services, Equipment, and incidentals necessary for successful completion of the Project and the carrying out of all obligations imposed by the Contract prior to Final Acceptance and excluding any warranty or guaranty work included under the Contract.

# Louisiana Federal-Aid Highway Program Stewardship Agreement 2007

Amendment #2  
Design-Build

Developed in Partnership by the  
Federal Highway Administration and the  
Louisiana Department of Transportation and Development



**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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**Table of Contents**

|   |    |
|---|----|
| Introduction.....   | 3  |
| Definitions.....  | 4  |
| I. Construction and Contract Administration for Design-Build Projects ..... | 6  |
| 1. Delegation of Oversight Responsibilities .....                           | 6  |
| 2. Roles and Responsibilities of FHWA and LADOTD.....                       | 7  |
| a. Delegated (State Administered) Projects .....                            | 7  |
| b. Full Oversight Projects .....  | 8  |
| 3. Methods of Oversight .....   | 9  |
| a. Program Approval Actions .....   | 9  |
| b. Project Approval Actions.....  | 9  |
| c. Monitoring for Full Oversight Projects.....                              | 10 |
| d. Business Standards.....  | 13 |

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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**Introduction**

On December 10, 2002 in response to Section 1307 of TEA-21, FHWA published the final rule which established regulations for design-build contracting as 23 CFR Part 636. Subsequent modifications required by Section 1503 of SAFETEA-LU resulted in revisions published in a final rulemaking on August 14, 2007. Among the revisions made by SAFETEA-LU were the elimination of the dollar thresholds for "qualified" projects; and permission to release an RFP or award a design-build contract prior to completion of NEPA. SAFETEA-LU allows the States to use the design-build contracting method for any project they deem necessary. States are no longer required to submit Special Experimental Project Number 14 (SEP-14) request to use the design-build contracting method. Design-build procurement processes which deviate from the requirements of 23 CFR Part 636 may require an FHWA Headquarters' SEP-14 work plan and approval.

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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**Definitions**

**The following definitions apply to this Amendment:**

**Acceptance Program** – All factors that comprise the LADOTD determination of the quality of the product as specified in the contract requirements. These factors include verification sampling, testing, quality assurance, and inspection and may include results of quality control sampling and testing.

**Design-Build Contract** – Means an agreement that provides for design and construction of improvements by a contractor or private developer. The term encompasses design-build-maintain, design-build-operate, design-build-finance and other contracts that include services in addition to design and construction. Franchise and concession agreements are included in the term if they provide for the franchisee or concessionaire to develop the project which is the subject of the agreement.

**Design-Builder** – Means the entity contractually responsible for delivering the project's design and construction phases, and may include maintenance, operation and financing responsibilities.

**Final Design** – Means any design activities following preliminary design and expressly includes the preparation of final construction plan and detailed specifications for the performance of construction work.

**Independent Assurance Program** – Activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the acceptance program. Test procedures used in the acceptance program which are performed in the LADOTD's central laboratory would not be covered by an independent assurance program.

**Preliminary Design** – Defines the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental assessments, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design. Prior to completion of the NEPA review process, any such preliminary engineering and other activities and analyses must not materially affect the objective consideration of alternatives in the NEPA review process.

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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**Price Proposal** – Means the price submitted by the offeror to provide the required design and construction services.

**Proposal Modification** – Means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

**Quality Assurance** – All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality, including, Contractor Quality Control, Agency Acceptance, Agency Independence Assurance, Dispute Resolution, Laboratory Accreditation and Qualification, and personnel Qualification/Certification.

**Quality Control** – All design-builder’s operational techniques and activities that are performed or conducted to fulfill the contract requirements. The LADOTD and FHWA will formalize an agreement on a programmatic level for specific testing frequencies and levels for an acceptance program for design-build. Until such time that a programmatic design-build acceptance program is agreed to by the LADOTD and FHWA, the acceptance program for each design-build project will be reviewed and approved by the FHWA as a part of the design-build Request for Proposal development process.

**Request for Proposal (RFP)** – Means the document that describes the procurement process, forms the basis for the final proposals and may potentially become an element in the contract.

**Request for Qualifications (RFQ)** – Means the document issued by the LADOTD in Phase I of the two-phased selection process. It typically describes the project in enough detail to let potential offerors determine if they wish to compete and forms the basis for requesting qualifications submissions from which the most highly qualified offerors can be identified.

**Short Listing** – Means the narrowing of the field of offerors through the selection of the most qualified offerors who have responded to an RFQ.

**Technical Proposal** – Means that portion of a design-build proposal which contains design solutions and other qualitative factors that are provided in response to the RFP document.

**Verification Sampling and Testing** – Sampling and testing performed to validate the quality of the product for those quality characteristics that contain pay adjustment tables.

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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**I. Construction and Contract Administration for Design-Build Projects**

This section specifies the roles and responsibilities of FHWA and LADOTD on both full oversight and delegated design-build projects.

**1. Delegation of Oversight Responsibilities**

The following table defines oversight responsibilities for Federal-Aid funded Design-Build projects in Louisiana.

| <b>Design-build Projects</b>  | <b>Oversight Responsibility</b> |
|---|---------------------------------|
| <b>All Interstate Projects</b>  | <b>FHWA</b>                     |
| <b>All NHS (non-Interstate) Projects</b>  | <b>FHWA</b>                     |
| <b>Non-NHS and Locally Administered Projects</b>  | <b>LADOTD</b>                   |
| <b>All Major Projects (&gt;500 million). All routes.</b>  | <b>FHWA</b>                     |
| <b>All Bridges Projects on any route with and estimated construction cost &gt; \$ 50 million.</b> | <b>FHWA</b>                     |
| <b>All ITS Projects<br/>(see note 2 below)</b>  | <b>FHWA</b>                     |

Note 1: NHS-projects are defined by system, irrespective of Federal funding source.

Note 2: As defined by 23 CFR 940 an ITS project is any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of on or more ITS User Services as defined in the National ITS Architecture.

**Exceptions:**

1. State Administered projects (delegated) may be selected for full oversight by mutual agreement between FHWA and LADOTD. The selection will be agreed upon by the FHWA Assistant Division Administrator and the LADOTD Chief Engineer. Examples of projects which may be selected: Complex Emergency Relief projects, Major or complex bridge structure projects, or projects which involve a high degree of public controversy or environmental impacts.
2. A full oversight project may be delegated by mutual agreement between FHWA & LADOTD. The selection will be agreed upon by the FHWA Assistant Division Administrator and the LADOTD Chief Engineer. Examples of projects likely to be selected: NHS projects which do not affect traffic such as landscaping, rest area construction, fencing, signing, and enhancement projects.

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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**2. Roles and Responsibilities of FHWA and LADOTD**

**a. Delegated (State Administered) Projects**

**(1) LADOTD Project Responsibilities on Delegated Projects**

As a condition to accepting Federal-aid highway funds, LADOTD agrees to follow all applicable project and program requirements. In addition, as party to this agreement, LADOTD assumes project oversight responsibilities in accordance with the following:

NHS Projects Delegated to LADOTD

LADOTD assumes oversight responsibility for the design, plans, specifications, estimates, design exceptions, contract award, and inspection of all NHS projects which have been delegated to LADOTD as defined in Section II of the 2007 Stewardship Agreement. All NHS projects must comply with all Title 23 U.S.C. and non-Title 23 U.S.C. requirements.

Non-NHS Projects

LADOTD assumes oversight responsibility for the design, plans, specifications, contract award, and inspection of projects not on the NHS. Non-NHS projects are required to be designed, constructed, operated, and maintained in accordance with State law, regulations, directives, safety standards, design standards, and construction standards, in lieu of many Title 23 U.S.C. requirements. Title 23 U.S.C. requirements that are applicable to all Federal-aid projects include, but are not limited to transportation planning, procurement of professional services, Davis-Bacon wage rates, advertising for bids, award of contracts, use of convict produced materials, Buy America Act provisions and other requirements. All non-NHS projects must also comply with all non-Title 23 U.S.C. requirements.

Local Agency Projects

LADOTD is responsible for assuring that all local agency Federal-aid projects comply with all applicable Federal and State requirements. LADOTD is not relieved of this responsibility even though the project may be delegated to the local agency. In accordance with 23 CFR 1.11 and 635.105, LADOTD is responsible for ensuring that the local agency has adequate staffing, project delivery systems, and sufficient accounting control to administer the project. If it is determined that a local agency is not equipped to adequately administer the project then LADOTD will either administer the project or withhold

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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funding for the project until the local agency makes the necessary changes required to administer the project in accordance with State and Federal requirements.

**(2) FHWA Project Responsibilities on Delegated Projects**

For projects delegated to LADOTD, as defined in Section II of the 2007 Stewardship Agreement, FHWA retains authority for the following actions and approvals:

1. FMIS Transactions
  - a. Project Authorizations
  - b. Modifications to project agreements
  - c. Final vouchers
2. Waivers to Buy America requirements (FHWA Washington Headquarters (HQ) approval required as noted in Mr. Horne's July 3, 2003 memorandum).
3. SEP-14/SEP-15 method (FHWA HQ approval required for experimental contracting/project delivery methods).
4. Environmental approvals except those specifically delegated under Sections 6004 and 6005 of SAFETEA-LU.
5. Addition of access points to the Interstate Highway System.
6. Use of Interstate airspace for non-highway-related purposes.
7. Hardship acquisition and protective buying.
8. All non-Title 23 U.S.C. requirements including but not limited to:
  - a. National Environmental Policy Act (NEPA) of 1969
  - b. Section 4 (f) of the DOT Act of 1966
  - c. Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970

**b. Full Oversight Projects**

**(1) FHWA Project Responsibilities on Full Oversight Projects**

In addition to the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract Administration, the following responsibilities apply to design-build projects:

1. RFQ Review and Concurrence
2. RFP Review and Approval – RFP shall be consistent with applicable design build provisions on 23 CFR including those in Parts 636 Design-Build Contracting.
3. Alternate Technical Concepts Approval

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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4. Addenda Approval
5. Supplemental Agreement Approvals
6. Contract Concurrence in Award
7. Contract Change Order Approval

**3. Methods of Oversight**

**a. Program Approval Actions**

Approval actions remain as established in the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract Administration.

**b. Project Approval Actions**

In addition to the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract Administration, the following responsibilities apply to design-build projects:

1. FHWA will review and approve the RFQ for Construction Engineering and Inspection services associated with any design-build project to ensure the Construction Engineering and Inspection services scope of work, in particular, complies with the FHWA's expectations for the design-build acceptance program.
2. FHWA will concur with the issuance of the RFQ.
3. FHWA will review and approve Public Interest Findings for proprietary or patented items.
4. FHWA will approve the RFP prior to its release to the short-listed design-build entities. FHWA approval of the RFP document carries the same significance as PS&E approval.
5. FHWA will review and approve all Alternate Technical Concepts.
6. FHWA will approve all major addenda and proposal revisions prior to its issuance which results in major changes to the RFP.
7. FHWA will approve all supplemental agreements.
8. FHWA will concur in award.
9. FHWA will approve design exception requests.
10. FHWA will review and concur with all plan submittals (grade and drains, roadway, bridge structures, etc.) prior its release for construction.
11. FHWA will review and approve all Contract Change Orders.
12. On design-build projects where a RFP is approved by FHWA prior to the completion of the NEPA process:

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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- a. The RFP approval will only constitute the FHWA’s approval of the LADOTD request to release the RFP.
- b. FHWA will concur with the Contract Award.
- c. FHWA will concur with issuance of Notice to Proceed for preliminary design services.
- d. Once the NEPA process is completed, FHWA will review the preliminary design to ensure that any decision and commitment reached on the NEPA documents are implemented on the preliminary plans. FHWA approval will be needed if modifications are required on the preliminary plans. The procurement process will stop until the NEPA process is completed.
- e. After the completion of the NEPA process, FHWA authorization will be required to proceed with final design and construction.

**The following table defines approval actions on full oversight and state administered projects (delegated) in Louisiana.**

| PROJECT ACTIVITIES                         |                           | AGENCY RESPONSIBLE      |   |
|--|---------------------------|-------------------------|---|
|  |                           | Full Oversight Projects | State Administered Projects (Delegated) |
| Approval Actions                           | Reference Document        |                         |   |
| Concur on Request for Qualifications (RFQ) | 23 CFR 636                | FHWA                    | LADOTD                                  |
| Approve Request for Proposal (RFP or SOSP) | 23 CFR 635.112(i)(1), 636 | FHWA                    | LADOTD                                  |

RFP=Scope of Service Package (SOSP)

**c. Monitoring for Full Oversight Projects**

**1. FHWA Division Office will:**

In addition to the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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Administration, the following responsibilities apply to design-build projects:

- a. FHWA will participate in the Statement of Qualification Review as an observer to provide assistance on federal regulations during the process.
- b. FHWA will participate in Alternate Technical Concept reviews and Alternate Technical Concept review committee meetings during the process.
- c. FHWA will participate in the Technical Proposal Review and offeror selection as an observer to provide assistance on federal regulations during the process.
- d. FHWA will participate on over the shoulder reviews.
- e. On Major Design-Build Projects, FHWA will concur with the Initial Financial Plan prior to FHWA concurrence in the issuance of the RFP.
- f. FHWA assigned personnel will sign any required confidentiality agreement during the procurement process.

**2. LADOTD will:**

In addition to the 2007 Louisiana Federal-Aid Highway Program Stewardship Agreement, Section I – Construction Contract Administration, the following responsibilities apply to design-build projects:

- a. LADOTD will involve FHWA assigned personnel early and continuously during the development of the RFQ and RFP.
- b. LADOTD will invite FHWA assigned personnel to the Statement of Qualifications Review.
- c. LADOTD will perform a Value Engineering study on all Federal-aid highway projects on the National Highway System with an estimated cost of \$25 million or more prior to the release of the Request for Proposals.
- d. LADOTD will involve FHWA assigned personnel on the

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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Value Engineering Study and presentation.

- e. LADOTD will invite the FHWA assigned personnel to the Proposal Review Committee.
- f. LADOTD will request FHWA approval on Public Interest Findings for proprietary or patented items prior to the release of the RFP.
- g. LADOTD will request FHWA approval (via formal request) prior to releasing the Request for Proposal (RFP) document to the short-listed Design-Builders.
- h. LADOTD will distribute Alternate Technical Concept submissions to assigned FHWA personnel for review and approval and invite FHWA assigned personnel to Alternate Technical Concept reviews and committee meetings.
- i. LADOTD will request approval from FHWA Division Administrator prior to issuing addenda which result in major changes to the RFP. Minor addenda need not receive prior approval.
- j. LADOTD will submit a post-award tabulation of Proposal prices and proposer's evaluation scores with the Request for Concurrence in Award.
- k. LADOTD will provide FHWA with assurance that all Proposers have received all issued addenda prior the FHWA approval of the RFP.
- l. LADOTD will request FHWA approval of any plan submittals (grade and drains, roadway, bridge structures, etc) prior its release for construction.
- m. LADOTD will request FHWA concurrence for Initial Financial Plans on Major Design-Build Projects prior to issuance of a RFP.
- n. LADOTD will submit an Evaluation Report (1-2 pages) for those approved Alternate Technical Concepts (ATCs) that are used as the bases for price and technical proposals.

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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**d. Business Standards**

The time frames stated herein may be reduced in emergency or unusual situations as approved by the FHWA Division Administrator. Established timeframes assume early and continuous coordination. Early coordination during the RFQ and RFP development is strongly encouraged.

1. LADOTD will allow FHWA 10 business days, from receipt date, to review and concur with the issuance of the RFQ.
2. LADOTD will allow FHWA 15 business days, from receipt date, to review and/or approve the RFP.
3. LADOTD will E-mail Alternate Technical Concepts to the FHWA assigned personnel for review within two business days of receipt from a Proposer. LADOTD will allow FHWA 5 business days from receipt date, to review and/or approve ATCs.
4. LADOTD will allow FHWA 10 business days, from receipt date, to review and/or approve major addenda.
5. LADOTD will allow FHWA 10 business days, from receipt date, to review and/or concur in award.
6. LADOTD will allow FHWA 10 business days, from receipt date, to review and/or approve the submitted plans.
7. LADOTD will allow FHWA 10 business days, from receipt date, to review and/or concur with the Initial Financial Plans on Major Design-Build Projects.
8. LADOTD will submit the ATC's Evaluation Report to the FHWA Louisiana Division Office within 8 weeks of contract award.

**LOUISIANA  
FEDERAL-AID HIGHWAY PROGRAM  
STEWARDSHIP AGREEMENT**

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**Louisiana Stewardship Agreement  
Amendment #2  
Design-Build**

FHWA and LADOTD mutually agree to the delegations defined in this section of the Stewardship Agreement as allowed by Title 23 Section 106 and further agree to abide by the procedures, practices, and business standards outlined throughout this Stewardship Agreement.

It is further agreed that incremental changes may be made to this agreement with the concurrent approval of the Chief Engineer of the LADOTD and the Assistant Division Administrator of FHWA for Louisiana, while retaining the integrity of the overall Stewardship Agreement.

This agreement supplements the existing stewardship agreement dated 09/01/2007 between the FHWA and the LADOTD.

  
Charles W. Bolinger  
FHWA LA Division Administrator

  
Sherri H. LeBas  
Secretary  
Louisiana Department of  
Transportation and Development

Effective Date: 8/26/2011

