

R-2248E Financial Expectations Synopsis

December 23, 2009

In response to comments and questions received from multiple industries and the discussions held at the Industry Forum on December 3, 2009, this synopsis represents the Department's current expectations in regards to the potential finance requirements for this project. In fact, this synopsis should be considered an update to the Industry Forum presentations posted on the web. This synopsis is not contractually binding but rather serves to provide additional information to prospective Design-Build Teams. Comments on this synopsis are encouraged and welcome and should be submitted to the Department through the email address, designbuild @ncdot.gov.

Availability of Payments

The Department of Transportation's schedule of funding availability for this project is as follows:

SFY	July 1	October 1	January 1	April 1	Total
2011	9.7	5.6	4.2	8.4	27.9
2012	8.4	4.2	4.2	11.1	27.9
2013	12.5	5.6	5.6	7.0	30.7
2014	9.7	5.6	5.6	5.6	26.5
2015	9.7	4.2	4.2	2.8	20.9
2016	5.1	2.2	0.8	0.8	8.9
2017	0.9	0.8	0.8	0.8	3.3
2018	0.9	0.8	0.8	0.8	3.3
2019	0.9	0.8	0.8	0.8	3.3
2020	0.9	0.8	0.8	0.8	3.3
Total					156.0

All figures in the above table are presented in \$ Millions. The payment schedule will be cumulative such that any funds not expended during any given quarter will be added to the next quarter's availability of funds. This cumulative effect will continue to subsequent quarters.

Any acceleration of progress beyond the above availability of payments will be made at the Design-Build Team's expense and risk. Payment for the work covered by this contract will be limited by both the Design-Build Team's progress and the above table.

In the event that the Design-Build Team's Price Proposal is below the total of the payments shown above, the payment schedule above will be amended by eliminating the latest payments shown above until the total of payments is equal to the Design-Build Team's Price Proposal.

Target Maximum Price

The tentative target maximum price is \$156 Million for this contract. This price shall include any necessary finance costs incurred by the Design-Build Team. This price is considered a “soft” maximum price in that the Department desires for the price to be under the Maximum Price; however, the Department will deem responsive any Price Proposal that is either (1) below the target maximum price or (2) above the target maximum price, but after adjustment for Technical Score, results in an Adjusted Price less than the target maximum price. In the event that a Design-Build Team’s Price Proposal is above this range and is deemed non-responsive, this determination will not preclude that Design-Build Team from submitting a Price Proposal for any Best and Final Offer RFP that the Department may elect to issue.

Payments for Contract Price Adjustments and Alterations in the Contract

The Department has reserved contingency funding to provide payment for fuel price adjustments, asphalt binder adjustments, alterations in the contract made by the Engineer, and any additional payments due to the Contractor in accordance with Article 104-8 of the Standard Specifications for Roads and Structures. These contingency funds are independent of the above payment schedule. Payments for fuel price adjustments, asphalt binder adjustments, alterations in the contract, and any additional payments due to the Contractor in accordance with Article 104-8 of the Standard Specifications for Roads and Structures will be paid for by the Department with each partial payment and consistent with the Design-Build Team’s progress related to these items and in accordance with the appropriate specifications contained in this RFP and the 2006 Standard Specifications for Roads and Structures.

Completion Date

The Department recognizes that the amount of finance needed to complete this work is dependent upon the time to the complete construction. The Department has tentatively set the Completion Date for the construction of this project as August 1, 2015, and this schedule includes an allowance of 11 months for all permitting activities which must be complete prior to beginning construction. To pursue a higher Technical Score, the Design-Build Team may elect to propose an earlier completion date which will then be contractually binding; however, the weight of the schedule evaluation will be less than that for other typical Design-Build projects (< 20% of total score). The Date of Availability for this contract will be the day after the contract is executed by the Department, said date being is contingent upon whether or not third-party financing is utilized by the Design-build Team.

The schedule of available payments has been established to mimic this completion date. Therefore, the payments made to the Design-Build Team will be limited by both the progress of the work and the schedule of payments above.

Project Finance

The Department has established a target maximum price and a maximum schedule of payments as identified in the Schedule of Payments Project Special Provision. This schedule of payments has been established in concert with the contract completion date. As such, depending on the Design-Build Team's Price Proposal and Progress schedule, a variable amount of financing may be required of the Design-Build Team.

To provide this financing to accommodate the schedule of payments, the Design-Build Team may elect to provide self-finance through their corporate structure(s), may elect to utilize a project specific escrow or trust account to facilitate third party financing, may elect to secure financing in some other manner, or a combination thereof.

In the event that third party finance is utilized, the Department will not be a party to any agreement, contract, or other binding document with the third party financier. However, the Department will consider acknowledging the existence of a third party finance relationship provided the acknowledgement does not require the Department to be a party to any agreement and that the acknowledgement does not violate §143B-426.40A.

Assignment of Claims

Pursuant to §143B-426.40A and a modified version of Article 107-2 of the Standard Specifications for Roads and Structures, no assignment of claims against the Department can be made. This prohibition includes the assignment of any future receivables.

Closure of Third Party Financing

If the Design-Build Team elects to utilize third-party financing to accommodate the schedule of available payments, the execution of the contract by the Department will be contingent upon successful closure of the third party financing. An allowance of 90 days from Notice of Award will be granted for achieving closure of all third party financing.

Bid, Payment, and Performance Bonds

The bid bonds will be required to be in full effect until such time that the Design-Build Team achieves closure on all third party financing and submittal of payment and performance bonds, or 120 days from bid opening, whichever is less. Successful closure of all third party financing will be a condition of the bid bond and the inability to obtain said closure may be cause for forfeiture of the bid bond.

The payment and performance bonds will be due within 14 days after Notice of Award is received by the Design-Build Team. The submittal date for these bonds will be relaxed to 90 days from Notice of Award in the event that the Design-Build Team elects to utilize third party financing. The payment and performance bonds will remain in full effect until the end of the standard Twelve Month Guarantee as is required on all Department construction projects. The form of these bonds will be posted at:

http://ncdot.gov/doh/preconstruct/altern/design_build/R2248E/R2248E.html

Finance Plan

A finance plan shall be submitted concurrently with, but in a separate sealed parcel, from the Technical Proposal and Price Proposal. The Finance Plan will not be evaluated by the Technical review Committee that will evaluate the Technical Proposals. Instead, the Finance Plan will be reviewed on a pass/fail basis by the Department's Chief Financial Officer and his duly authorized representative(s). The Department will reserve the right to request and receive additional information regarding this Financial Plan at any time.

In the event that a Design-Build Team's Finance Plan receives a failing evaluation and the Price Proposal is subsequently deemed non-responsive as a result, this determination will not preclude that Design-Build Team from submitting a Price Proposal for any Best and Final Offer RFP that the Department may elect to issue.

The Finance Plan will require either a preliminary or final Letter of Commitment from all third party financiers that the Design-Build Team may elect to utilize.

Partial Payment Requests and Invoice Procedures

Until such time that the Final Payment is made, partial payments will be made in accordance with the Standard Specifications for Roads and Structures and as may be amended by special provision.

All partial payments will be subject to the limitations of the payment schedule contained in the Schedule of Payments Project Special Provision. In the event that any request for partial payment contains an amount exceeding that cumulative amount available as detailed in the Schedule of Payments Project Special Provision, the partial payment will be reduced by the amount the sum of the cumulative payments to date and the current request for partial payment are in excess of the cumulative cash available at the time of the request for partial payment. Any such reduction may then be included in the next request for partial payment.

After payment of the Final Payment (at final acceptance of the construction work), payments will be made quarterly upon invoice by the Contractor. These invoices shall in the amount so designated in the schedule of payments contained in the Schedule of Payments Project Special Provision. The Department will allow a third party financier to submit invoices on the Contractor's behalf if so requested in writing by the Contractor.

Project Specific Escrow or Trust Account

If requested in writing by the Contractor, the Department will make payments to a project specific escrow or trust account, provided the escrow account is in the name of the legal entity with which the Department has entered into this contract. All costs associated with such an escrow account shall be fully borne by the Contractor. The intention to utilize such an account shall be included in the Finance Plan submitted with the Technical and Price Proposals.

The request to establish the project specific escrow or trust account shall be made by submitting four copies of the escrow or trust account agreement to the State Contract Officer. Forms for such an agreement are available from the Department upon request.

Retainage

No retainage of future payments will be withheld except as otherwise permitted by the Standard Specifications for Roads and Structures, and as may be amended through the Division One Standard Special Provision. Partial payments will be considered irrevocable and payment of such will constitute the Engineer's acknowledgement that the work covered by the partial payment has been completed. Partial payments made, however, will not relieve the Contractor to correct material or workmanship deficiencies nor relieve the Contractor of any obligation due under the Twelve Month Guarantee or and additional warranty or guarantee pledged by the Contractor in its Technical Proposal. Partial payments made will also not relieve any professional liability of any design firm or any other member of the Design-Build Team.