



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

May 17, 2012

MEMORANDUM TO: AGC-DOT Joint Cooperative Committee Members
FROM: Victor Barbour, PE
SUBJECT: May 17, 2012 Minutes for the Joint Cooperative Committee Meeting

The Joint Cooperative Committee of the AGC-DOT met at 10:00 a.m. on May 17, 2012 in the Chief Engineer's Conference Room at the NCDOT Equipment and Maintenance Facility on Beryl Road in Raleigh with the following in attendance:

Philip Bickham	Berry Jenkins	Mike Manning	Burt Tasaico
Kevin Burns	Drew Johnson	Jeff Mullins	Trent Sherrill
Terry Canales	Don Lee	Ellis Powell	Lamar Sylvester
Ken Cates	Bob Lofling	Mike Robinson	Ricky Vick
Randy Garris	Bryan Long	Natalie Roskam	Paul Worley
Ricky Greene	Mike Long	Rodger Rochelle	Sam Young
Ron Hancock			

AGENDA AND DISCUSSION ITEMS

Financial/Legislative/Congressional Update

Burt Tasaico

Mr. Tasaico informed the committee that overall fuel consumption has reduced by 2% in the last year due to more fuel efficient cars and less driving. Previous years had seen a steady 1-2% increase in fuel consumption. This reduction equates to a \$4 million loss for 10 million gallons, and at 175 million gallons, the results in a loss of \$70 million which is less than 1% of total budget. The budget had assumed a motor fuel tax rate higher of 39.7 cents than the 37.6 cents that actually occurred. There will be an adjustment of the fuel tax rate on July 1, and it is projected to be 37.75 cents. There are no plans to change the Department's business plan. Some of the impact of the revenue loss is recovered by project awards at lower than anticipated bid prices. On May 1, the Transportation Subcommittee submitted a budget proposal which included the projected fuel consumption decrease and capping the gas tax at 37.5 cents. The Governor, also, submitted a separate proposal. There is no projection on how either proposal or a further reduction in revenue will impact FY2013 projects.

Federal funding provided by the Re-Authorization Bill expired in 2009, and the continuation resolution is set to expire on June 30. The House and Senate have separate proposals currently, and they must name committees in order to hash out the differences. It is expected for a bill to be passed to continue the Re-Authorization Bill through September 2013. Currently, the bill authorizes \$40 billion in expenditures

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
TECHNICAL SERVICES DIVISION
1516 MAIL SERVICE CENTER
RALEIGH NC 27699-1516

TELEPHONE: 919-707-2900
FAX: 919-715-5361

WEBSITE: WWW.NCDOT.ORG

LOCATION:
TRANSPORTATION BUILDING
FIRST FLOOR ROOM 102
1 SOUTH WILMINGTON STREET
RALEIGH NC

to states; however, only \$32 billion is generated so bailed out by the US General Fund is needed. As a result, this year, 5% of the federal revenue has been cut, or \$50 million, and another 5% cut is expected in 2013. The Federal gas tax produces 90% of the DOT revenue budget.

Letting Projections

Randy Garris

Mr. Garris announced the project letting projection for May 2012 to April 2013 totals \$1.7 billion. Fifteen projects account for \$1 billion. There are three major bridge projects on the 12 month let list, in Divisions 1, 6, and 13, totaling \$73.5 million. There are 72 traditional bridge replacement projects and 21 '17BP' type projects.

Rail Program Implementation

Paul Worley

Mr. Worley notified the committee that there will be a Contractor Engagement Conference on August 3 at the McKimmon Center in Raleigh. Prequalification Code 5090, dealing with grading on main line railroads, is "good to go." The Department is encouraging contractors to apply early for any applicable prequalification codes through the website. "Sehsr.biz" (pronounced "Caesar") is a site that will go live in June, providing contractors with information on PIP (Piedmont Improvement Program) contracts, schedules, and information on doing business with the Department.

Davis-Bacon Wage Rate Survey

Ron Hancock

Mr. Hancock extended the survey by 30 days to collect more data, and participation has gone from 75 to 120 contractors. There are over 7,000 entries in the survey, and it is projected to take 3 to 4 weeks to analyze the data and formulate new rates. Completion of analysis is anticipated to be mid-June, and new wage rate requests will be sent to the Department of Labor. New rates will hopefully be posted by mid-September. The last DOL posting had 13 regions and this survey used only 6 regions. There are 51 standard classifications in the survey, and the final results will be between 45 and 51 final classifications. Some jobs, however, may require special classifications due to non-typical work.

Structural Bearing Plate Issues Update

Ron Hancock/Mike Robinson

Mr. Robinson explained that there are two DOT approved vendors who manufacture bearings which no longer meet specifications. They used processes that allowed the shim to shift when being coated, resulting in poor coating on some portions of the bearing, or they were not load testing the bearings as required by the state. There are 26 projects that are currently active or under warranty that used these bearings. Two of them have not been reviewed because access has not been provided. The bearings have been inspected to analyze replacement. No bearings have been identified as needing to be replaced. Some bearings have the steel shim exposed, and those will be required to be repaired with an approved material. The process for repairing the shims is relatively simple, and can be accomplished using a spray on material. All vendors are now to go through a qualification process before July 2012 to be able to supply bearings. A Materials and Tests representative will be going to the manufacturing facilities to inspect manufacturing processes as well as quality control procedures.

Turnpike Project Status

Rodger Rochelle

Mr. Rochelle reported on the status of Turnpike projects. The Monroe Bypass appeal was vacated at lower court. Turnpike is working with the Federal Highway Administration to find the best future approach. No work has stopped. The Design Build Unit is rebalancing workloads, and the proposal for the Garden Parkway will be delayed 45-60 days. September 10 is the date at which a challenging entity must have submitted a challenge to these projects.

DBE Trucking Presence on Project

Ricky Vick

Mr. Vick discussed the DBE provision stipulation that states “The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.” He expressed concern that all hauling performed on days where at least one truck owned and operated by the contracted DBE was not on site will not be considered towards the DBE goal for the project, despite the fact that other DBE trucking sources were subcontracted by the original DBE contractor. He did not see where the language in the contract states a truck owned by the contracted DBE must be on the site at all times.

Rail Prequalification

Terry Canales

Ms. Canales stated Norfolk-Southern has sent the Department their safety and prequalification requirements, and they are mostly in line with existing standards. The biggest difference in safety requirements is that they request all OSHA citations over the past three years, whereas currently only repeat citations are required. Norfolk-Southern, also, requires the number of restricted work days and medical treatments/injuries that go beyond typical first aid. Norfolk-Southern asks for existence of hazard assessment processes and corresponding documentation and for any existence of policies and procedures for environmental protection such as spill cleanup and waste disposal. For prequalification of contractors to work on new rail projects, the Department is requesting the contractor provide at least 2 Interstate or US Highway improvement projects or 2 rail projects within the last 5 years in an effort to compare the rail traffic with highway traffic. Projects must be above \$4 million. Concern was expressed over requiring experience with rail flagger operations within the last five years.

Prequalification Information

Ellis Powell

Mr. Powell explained that the current prequalification process has become an administrative burden. It was recommended that a subcommittee analyze what parts of the prequalification process are necessary. Contractors are told to use a computer program to prequalify, but there is no process set up where someone who does not have the experience requirements can appeal the prequalified rejection.

Draft Public/Private Partnership Policy

Rodger Rochelle

Mr. Rochelle introduced a new draft of the Public/Private Partnership Policy. The original policy required the Department to accept unsolicited proposals. The current revision to the policy says the Department will not accept unsolicited proposals. The draft distributed shows changes that accommodate the I-77 P3 project. The change to the policy requires the Department to review a financial proposal (including a pre-bid) in addition to a technical proposal. “Firewalls” will be put in place regarding the pre-bids, where a separate financial review committee will review the financial proposal, while a technical committee reviews the technical proposal. A person cannot serve on both committees, and no sharing of information will take place between each committee. Another change emphasizes that the Department is not trying to negotiate a final construction price, and that once a bid is submitted it is “locked in.” P3 projects are to be used when no other funding is available, or when “innovative financing” is available.

Next Meeting Date

The next meeting is scheduled for July 26, 2012 at 10:00 a.m. in the Chief Engineer's Conference Room at the NCDOT Equipment and Maintenance Facility on Beryl Road in Raleigh.

12 Month Let List Totals in Millions



*The number on the bar chart represents the number of projects included in each let category. The number of bridges affected appears in the legend.

MAJOR PROJECTS > \$30 MILLION (MAY 2012- APRIL 2013)

6/19/2012	I-3819A	34192.2.1.GV3	IMS-040-2(145)152	IREDELL	12	STATESVILLE - I-40/I-77 INTERCHANGE INCLUDING I-40 FROM WEST OF SR 2003 (RADIO RD.) TO WEST OF SR-2158 (OLD MOCKSVILLE RD.) AND I-77 FROM SOUTH OF I-40 TO SOUTH OF SR-2171 (JANE SOWER RD.)	\$ 90,100,000
6/19/2012	R-2554A	34461.3.4	State Funded	WAYNE	4	US 70 (GOLDSBORO BYPASS) FROM WEST OF NC 581 TO SR 1300 (SALEM CHURCH RD.)	\$ 70,500,000
7/17/2012	R-4902	39929.3.1	IMNH-F-485(6)	MECKLENBURG	10	I-485 FROM US 5271(JOHNSTON ROAD) TO I-77 SOUTH OF CHARLOTTE	\$ 80,500,000
7/17/2012	R-3307	34528.3.1	STPNHF-0070(132)	CARTERET	2	US 70 FROM THE EXISTING FOUR LANES AT RADIO ISLAND TO US 70 NORTH OF SR-1429 (OLGA RD.)	\$ 74,000,000
8/21/2012	U-2412B U-2524AE	34802.3.4 34820.3.23	STPDA-4121(7)	GULLFORD	7	SR-4228 (WICKERY CHAPEL RD) TO SR-1424 (HILLTOP RD); GREENSBORO- WESTERN LOOP INTERCHANGE AT HIGH POINT RD.	\$ 59,500,000
8/21/2012	U-2800	34858.3.3	STP-2601(1)	FORSYTH	9	KERNERSVILLE-SR 2601 (MACY GROVE ROAD) FROM INDUSTRIAL PARK DRIVE TO SR 1005 (OLD US 421/OLD GREENSBORO RD.)	\$ 35,300,000
9/18/2012	U-3810	35801.3.1	STP-1406(7)	ONSLOW	3	JACKSONVILLE - SR 1406 (PINEY GREEN ROAD) FROM US 17 TO NC 2 IN JACKSONVILLE	\$ 45,600,000
9/18/2012	U-2925	34892.2.3	STP-0918(16)	FORSYTH	9	WINSTON-SALEM- SALEM CREEK CONNECTOR FROM SR-4326 (RAMS DRIVE) TO SR-4325 (MARTIN LUTHER KING DRIVE)	\$ 81,000,000
10/16/2012	U-4444AB U-4444B	36492.3.4 36492.3.2	STP-0210(23)	CUMBERLAND	6	FAYETTEVILLE - NC 210 (MURCHISON ROAD) FROM SR 1613 (HONEYCUTT RD.) TO BUTNER RD.; NC 210 FROM BUTNER RD. TO NORTH OF NC 24-87-210 (BRAGG BLVD) IN SPRING LAKE	\$ 34,400,000
10/16/2012	R-2303A	34416.3.3	State Funded	CUMBERLAND	6	NC24 FROM WEST OF SR 1009 (MAXWELL RD./CLINTON RD.) IN CUMBERLAND CO. TO SR 1853 (JOHN NUNNERY RD.)	\$ 34,400,000
11/20/2012	I-5311 I-5338	46265.3.1	IMS-0440(13)	WAKE	5	I-440/US 64 FROM I-40 (EXIT 301) TO NORTH OF US 64-264 (KNIGHTDALE BYPASS): FROM SR 1319 (JONES-FRANKLAND ROAD) TO EAST OF I-440/US 64 (EXIT 301)	\$ 157,600,000
11/20/2012	R-3421C	34542.3.5	HPPNHS-0220(65)	RICHMOND	8	US220 BYPASS FROM SOUTHWEST OF SR 1304 (HARRINGTON RD.) TO FUTURE US220 BUSINESS/US220 BYPASS INTERCHANGE SOUTH OF ELLERBE	\$ 59,700,000
12/18/2012	R-2707AB	34497.3.4	NHF-0074(142)	CLEVELAND	12	US 74 (SHELBY BYPASS) FROM WEST OF SR 1161 (PLEASANT RIDGE RD.) TO WEST OF SR 1314 (HOYLE RD.)	\$ 30,600,000
1/15/2013	U-0209B	34749.3.GV3	NHFSTP-0074(137)	MECKLENBURG	10	CHARLOTTE - US 74 (INDEPENDENCE BOULEVARD), FROM NC 24-27 (ALBEMARLE RD.) TO EAST OF (WALLACE LANE)	\$ 54,800,000
3/19/2013	R-2303B	34416.3.4	State Funded	SAMPSON	3	NC 24 FROM SR 1853 (JOHN NUNNERY ROAD) IN CUMBERLAND COUNTY TO SR 1404 (DOWDY ROAD) IN SAMPSON COUNTY	\$ 48,800,000
4/16/2013	R-2246B	34408.3.5	State Funded	CABARRUS	10	GEORGE LILES PARKWAY - FROM SR 1304 (ROBERTA ROAD) TO SR 1431 (WEDDINGTON ROAD)	\$ 44,500,000

TOTAL COST ESTIMATE PROJECTS EXCEED \$30 MIL \$1,001,300,000

LARGE BRIDGE PROJECTS > \$10 MILLION

6/19/2012	B-4589	33791.3.1	BRSTP-17(41)	PASQUOTANK	1	BRIDGES 1 & 2 OVER KNOBBS CREEK ON US17/158	\$ 11,200,000
8/21/2012	B-4028	33395.2.2	BRSTP-0011(9)	BLADEN	6	Bridges 12, 18, & 42 OVER CAPE FEAR RIVER & OVERFLOW ON NC11	\$ 14,200,000
8/21/2012	B-4091 B-4949	33449.2.2 40107.3.1	BRSTP-301(12) BRNHS-095-2(103)40	CUMBERLAND	6	I-95 BUSINESS LOOP & US301 - BRIDGE 85 OVER CAPE FEAR RIVER SR 1738 & SR 1741 IN FAYETTEVILLE AND BRIDGE 61 OVER CROSS CREEK ON I-95 BUS/US301	\$ 21,000,000
8/21/2012	B-5178	42549.3.1	BRIMS-026-1(80)1	BUNCOMBE	13	BRIDGES 235 & 238 OVER SR 3421 (POND RD.) AND HOMINY CREEK ON I-26	\$ 14,200,000
2/29/2013	B-4712	37912.3.1	BRZ-1316(18)	BLADEN	6	BRIDGE 188 AND 189 OVER THE CAPE FEAR RIVER ON SR 1316	\$ 12,900,000

TOTAL COST ESTIMATE LARGE BRIDGE PROJECTS > 10 MIL \$ 73,500,000

Joint Cooperative Committee
May 2012
STP BRIDGE REPLACEMENT PROJECTS BETWEEN MAY 2012 AND APRIL 2013
STP BRIDGE PRESERVATION PROJECTS
BR - BRIDGES, etc. affected by 17 DIVISION EXPRESS DB PROJECTS

TOTAL 12MLL MAY 2012 - APRIL 2013 = \$1,696,900,000

NCDOT's Piedmont Improvement Program - Anticipated Construction Projects

Last Update: 5/4/2012

Piedmont Improvement Program Component	TIP #	Project Description	Division	County	Railroad Milepost	Approximate Value	Target Advertisement Date	Mandatory Pre-Bid	Target Mandatory Pre-Bid Meeting Date	Contract Manager	Target Let Date	Target Construction Complete & Accepted
Track and Structures	P-5205	Gabham to Haw River Roadbed and Highway Railroad Trackwork (Norfolk Southern)	7	Alamance	NCRR H 23.5 - NCRR H25.5	\$4.5M	18-Dec-2012	Y	TBD	NCDOT	15-Jan-2013	Mar. 2015
	P-5206C	Railroad signals (Norfolk Southern)	7	Alamance	NCRR H 23.5 - NCRR H25.5	\$7.7M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD
	P-5208	Double Track from CP Haydock to CP Junker	10			\$2.3M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD
	P-5208A	Railroad roadbed from CP Haydock - CP Junker.	10	Cabarrus, Mecklenburg	NCRR 360.0 - NCRR 372.2	\$24.5M	21-May-2013	Y	TBD	NCDOT	16-Jul-2013	Dec. 2016
	P-5208B	Pharr Mill Road grade separation	10	Cabarrus	NCRR 361.5	\$6.1M	19-Mar-2013	N	N/A	NCDOT	16-Apr-2013	Jan. 2015
	P-5208D	Roberts Road Extension grade separation	10	Cabarrus	NCRR 363.7	\$4.5M	19-Mar-2013	N	N/A	NCDOT	16-Apr-2013	May. 2015
	P-5208E	PCSI-Cabwell Park Drive (H2J)	10	Cabarrus, Mecklenburg	N/A	\$4.8M	19-Mar-2013	N	N/A	NCDOT	16-Apr-2013	Mar. 2015
	P-5208F	PCSI-Cabwell Road grade separation (H2J)	10	Cabarrus	NCRR 365.2	\$3.1M	19-Mar-2013	N	N/A	NCDOT	16-Apr-2013	Nov. 2014
	P-5208H	Grier Road grade separation	10	Mecklenburg	NCRR 371.5	\$6.1M	19-Mar-2013	N	N/A	NCDOT	16-Apr-2013	Sep. 2015
	P-5208I	Railroad Trackwork (Norfolk Southern)	10	Cabarrus, Mecklenburg	NCRR 360.0 - NCRR 372.2	\$28.8M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD
	P-5208J	Railroad signals (Norfolk Southern)	10	Cabarrus, Mecklenburg	NCRR 360.0 - NCRR 372.2	\$9.8M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD
	P-5206	Double Track from CP Reid to CP North Kannapolis	9									
	P-5206A	Peeler Road grade separation and service roads.	9	Rowan	NCRR 338.2	\$10.0M	19-Feb-2013	N	N/A	NCDOT	19-Mar-2013	Nov. 2014
	P-5206B	Railroad roadbed from Reid to North Kannapolis Road Highway Work	9	Rowan	NCRR 337.1 - NCRR 347.8	\$19.8M	21-May-2013	Y	TBD	NCDOT	16-Jul-2013	Dec. 2016
	P-5206E	24th street grade separation	9	Rowan	NCRR 347.1	\$5.8M	19-Feb-2013	N	N/A	NCDOT	19-Mar-2013	Jun. 2014
	P-5206F	Railroad Trackwork (Norfolk Southern)	9	Rowan	NCRR 337.1 - NCRR 347.8	\$22.1M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD
	P-5206G	Railroad signals (Norfolk Southern)	9	Rowan	NCRR 337.1 - NCRR 347.8	\$8.6M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD
	C-4901	Double Track from CP Bowers to CP Lake	9									
	C-4901A	Railroad roadbed from Bowers to Lake	9	Davidson	NCRR 309.8 - NCRR 314.0	\$15.0M	23-Apr-2013	Y	TBD	NCDOT	18-Jun-2013	Oct. 2016
	C-4901B	Upper Lake Road grade separation	9	Davidson	NCRR 311.1	\$4.0M	19-Feb-2013	N	N/A	NCDOT	19-Mar-2013	Sep. 2014
C-4901C	Turner Road grade separation	9	Davidson	NCRR 313.1	\$4.5M	19-Feb-2013	N	N/A	NCDOT	19-Mar-2013	Oct. 2014	
C-4901D	Railroad Trackwork (Norfolk Southern)	9	Davidson	NCRR 309.8 - NCRR 314.0	\$10.4M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
C-4901E	Railroad signals (Norfolk Southern)	9	Davidson	NCRR 309.8 - NCRR 314.0	\$2.9M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
U-3459	Klunne Road Grade Separation	9	Rowan	NCRR 335.3	\$10.4M	18-Sep-2012	N	N/A	NCDOT	16-Oct-2012	Mar. 2015	
U-3459B	Main Line Curve realignment at Duke Roadbed	9	Rowan	NCRR 335.3	\$0.2M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
U-3459C	Main Line Curve realignment at Duke Roadbed	9	Davidson, Rowan	NCRR 327.3 - NCRR 327.9	\$1.9M	22-Jan-2013	Y	TBD	NCDOT	19-Feb-2013	Mar. 2014	
U-3459D	Main Line Curve realignment at Duke Track (NS)	9	Davidson, Rowan	NCRR 327.3 - NCRR 327.9	\$1.6M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
U-3459E	Main Line Curve realignment at Duke(NS)	9	Davidson, Rowan	NCRR 327.3 - NCRR 327.9	\$0.5M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
P-5204	McLeansville Rd	7	Gulford	NCRR H8.0	\$4.0M	20-May-2014	N	N/A	NCDOT	19-Jun-2014	Mar. 2016	
U-4716A	Siding from CP Chigg to CP Nelson & Hopson Road Grade Separation	5	Durham, Wake	NCRR H 63.2 - NCRR 69.0	\$7.0M	18-Sep-2012	Y	TBD	NCDOT	16-Oct-2012	Aug. 2014	
U-4716C	Railroad Trackwork (Norfolk Southern)	5	Durham, Wake	NCRR H 63.2 - NCRR 69.0	\$11.9M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
U-4716D	Railroad signals (Norfolk Southern)	5	Durham, Wake	NCRR H 63.2 - NCRR 69.0	\$4.0M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
U-4716E	Church Street Extension	5	Durham	NCRR H64.7 - NCRR H65.2	\$2.0M	TBD	N	N/A	NCDOT	TBD	TBD	
P-5201	Morrisville Parkway Grade Separation Railroad Roadbed and Highway work	5	Wake	GS = NCRR H69.6 NCRR H69.0 - H70.6	\$8.3M	17-Sep-2013	N	N/A	NCDOT	15-Oct-2013	Sep. 2016	
	Railroad Trackwork (Norfolk Southern)	5	Wake	GS = NCRR H69.6 NCRR H69.0 - H70.6	\$4.2M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
	Railroad signals (Norfolk Southern)	5	Wake	GS = NCRR H69.6 NCRR H69.0 - H70.6	\$0.5M	TBD	TBD	TBD	Norfolk Southern	TBD	TBD	
P-4405	Private Crossing Safety Initiative (PCSI)	5, 7, 9, 10	Alamance, Cabarrus, Guilford, Orange, Rowan, Wake	Various	\$1.3M	TBD	N	N/A	NCDOT Division POC	TBD	TBD	
P-5002	CRISP - NS/CSXT Main Line Grade Separation	10	Mecklenburg	Crossing NS 377.1 376.6 - NS 377.6 CSXT SF329.5-SF331.0	TBD	17-Sep-2013	Y	TBD	NCDOT	19-Nov-2013	Apr. 2017	

Prequalification of Rail Road Grading Contractors (PIP)

NCDOT currently has a work code for highway grading contractors, but given the complexity of working parallel to an active mainline track, the department has added some additional filters in qualifying grading contractors for the Rail work code for the Piedmont Improvement Program.

Add new work code 5090 under Rail – Railroad Right-of-Way Grading

Additional filters to those already in place for experience, equipment, etc:

- Within the last 5 years, the applicant must have been a prime contractor on at least two (2) Interstate or US Route Improvement Projects (i.e. widening, resurfacing), or a prime contractor on two (2) railroad roadbed projects parallel and adjacent to active main track on a Class I Railroad. NCDOT may also consider comparable experience on heavily travelled state routes and airport runway projects.
- The above projects must have been at least \$4 million in project cost.
- Within the last 5 years the applicant must have had at least one project (does not have to be one of the 2 above) that was within or over railroad right-of-way and involved a rail flagger.

We will be asking for project information so the projects can be checked out if any questions on the contractor arises during review.

North Carolina Department of Transportation

Public Private Partnerships Policy & Procedures



~~June 4~~ July 12, 2012, ~~2009~~

PUBLIC PRIVATE PARTNERSHIPS POLICY & PROCEDURES

PURPOSE

This document establishes the Department's process for soliciting, evaluating, selecting, procuring and administering contracts that include a partnership with one or more private entities that wish to develop, design, establish, enhance, finance, construct, operate, and/or maintain a transportation facility. The primary purpose of public private partnerships is to leverage public funds or other resources with private investment to accelerate, enhance, or otherwise improve the delivery, operation, or maintenance of public transportation infrastructure.

This policy is not intended to supercede or replace Department policies enabling private or public entities from funding transportation projects with no further financial interest upon completion of the project. These procedures are not intended to limit or otherwise apply to the Department's procurement of goods and services in the ordinary course of its operations. This policy document is independent of the policy adopted by the North Carolina Turnpike Authority.

SCOPE

This procedure affects all offices, departments, units, etc., associated with the planning, development, design, construction, operation or maintenance of roads, bridges, highways, or other Department of Transportation infrastructure.

AUTHORITY

Session Law 2008-164

Session Law 2007-357

Session Law 2007-439

General Statute §136-18(39)

General Statute §136-28.1(l)

General Statute §136-28.1(m)

General Statute §143B-350(f)(12a)

BACKGROUND

Session Law 2006-230 first authorized the Department to enter into agreements with private entities to finance the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges, subject to the approval of the Board of Transportation. In the 2007 Legislative Session, this provision was revised to clarify that agreements may be made with private entities for transportation infrastructure projects, with priority given to highways, roads, streets and bridges. Session Law 2007-439 further requires that the Department report concurrently to the Board of Transportation and

to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on Transportation regarding any such proposed agreement. Session Law 2008-164 expanded the Department's authority to expressly permit the Department to enter into agreements to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines in this State. Furthermore, Session Law 2008-164 stipulates that any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to such an agreement entered shall comply with the competitive bidding requirements of Article 2 of Chapter 136 of the General Statutes.

Session Law 2007-439 specifically permits the use of Public Private Partnerships for two pilot projects for internet access at rest areas and two pilot projects for litter removal.

DEFINITIONS

- Competitive Negotiation: A process commonly used in the selection and procurement of design services for transportation projects. Competitive negotiation involves the selection of a Proposer or Proposers based on technical merit or qualifications with or without regard to cost, followed by a period of negotiation with the selected Proposer(s).
- Comprehensive Agreement: The assemblage of all contract documents and requirements, as defined below and incorporated by reference, the final finance arrangements, and other ancillary operating, financing, or encroachment agreements as may be executed by the Department and one or more private entities. The document may also be referred to as a Development Agreement or a Comprehensive Development Agreement. These agreements may include provisions for the permits, encroachment agreements, or lease of rights-of-way in, and airspace over and under, highways, public streets, rail or related facilities.
- Contract: The assemblage of all contractual documents and requirements that include the Request for Proposals, all addenda, a Proposal (both technical and financial), applicable NCDOT Standard Specifications and Drawings, and other documents as referenced in the Request for Proposals.
- Design-Build: A project delivery method that combines construction and preconstruction services into one contract that may be suitable for public private partnerships. Design-Build may combine into a single contract the preconstruction, construction, construction engineering, operation, maintenance, inspection requirements and testing requirements for a project.
- Design-Build Team: Any company, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice engineering, architecture, and construction contracting, as appropriate, in the State of North Carolina.

Interim Agreement:	An initial agreement that may be entered into by the Department and the successful Proposer upon completion of initial negotiations. This agreement typically defines the preconstruction activities and any compensation therefor that may be necessary to further the development of a Comprehensive Agreement.
Letter of Interest:	A written response that is solicited from potential Proposers through advertisements. It is often employed in pre-qualifying Proposers for specific services, based on their resources and experience, before issuing a Request for Proposals.
Project:	The project to be planned, developed, designed, <u>financed</u> , constructed, operated and/or maintained in accordance with the Contract.
Proposal:	The document submitted by a Proposer that may combine technical details, <u>financing approach</u> and costs in a negotiation or competitive negotiation procurement process. <u>A Proposal</u> or may be comprised of a separate Technical Proposal and Price Proposal in a competitive sealed bid procurement process.
Price Proposal:	The sealed "bid" in a competitive sealed bid procurement process that constitutes the Proposer's price to complete the activities required by the Request for Proposals and the Proposer's Technical Proposal. <u>The Price Proposal may also be a non-sealed component of a Financial Proposal.</u>
<u>Proposer:</u>	<u>An entity that has submitted a Statement of Qualifications, Proposal, or other submission in order to participate in the procurement of a public private partnership project.</u>
Request for Proposals:	A document that describes the procurement process, provides the scope of services and requirements for the project, and may be used by the Proposer to submit their Price Proposal. The Request for Proposals typically forms <u>or describes</u> the basis for the Contract and the Agreement.
Request for Qualifications:	A document issued by the Department that solicits Statements of Qualifications or Letters of Interest from Proposers.
Statements of Qualification:	A document that is requested from a potential Proposer that describes the Proposer's qualifications to perform certain types of work including previous experience, licenses, certifications, personnel, equipment, etc. The Statement of Qualifications may also contain or include specific examples of previous work or financial/bonding capacity of the Proposer.
Technical Proposal:	The proposal as set forth by the Proposer that conveys its design, construction approach, services proposed, schedule, or other items as required by the Request for Proposals in a competitive sealed bid procurement process. The Technical Proposal, <u>in whole or in part, may be is</u> made a part of the Contract <u>as stipulated in the RFP.</u>
Project Manager:	The Department staff member assigned to coordinate the development of a project's Request for Proposals and the review of the Proposer's submittals. The Department may also elect to utilize a General Engineering Consultant or other such technical expert to serve as the Project Manager.

PROJECT SELECTION

OVERSIGHT

An Oversight Committee will be maintained to guide the evaluation and selection of Public Private Partnership projects. The membership of the Oversight Committee will mimic that of the Design-Build Executive Committee and include such Executive Department Staff such as [representatives from the Office of the Secretary of Transportation and](#) the State Highway Administrator's office, [Chief Financial Officer](#), ~~Chief Engineer's Office~~, Administrator of the Technical Services Division, Preconstruction Branch Manager, ~~Design Branch Manager~~, ~~State~~ [Director of](#) Transportation Program Management ~~Engineer~~, etc. This Oversight Committee will also be responsible for general oversight of the Public Private Partnership Program, procedures, and performance measures.

APPLICABLE PROJECTS

The appropriate selection of projects for a Public Private Partnership is extremely important. Typically, Public Private Partnership projects may be considered if they fall into at least one of the following broad categories:

- 1) Projects where design and construction need to be expedited for the public good [and innovative delivery and/or finance/partnership can facilitate acceleration](#).
- 2) Projects affording opportunities for innovation in design, construction, operation, maintenance, or financing of the transportation infrastructure.
- 3) Unusual projects that do not lend themselves to normal design-bid-build [procedures, or design-build procedures with traditional funding readily available](#).
- 4) Projects where significant Department resources, which may include rights-of-way or air rights, are available to leverage with private investment.
- 5) Projects conducive to significant private investment.
- 6) Projects for which private investment would fulfill a critical financial need to complete the project.
- 7) Projects that may provide access to new private capital to deliver other critical transportation projects.
- 8) Projects need to be on local long range transportation plans and/or have demonstrated local support.
- 9) Projects for which a business case demonstrates that a Public Private Partnership can deliver the best value to the traveling public.

PROPOSAL SOLICITATION

The Department may solicit interested parties for participation in a Public Private Partnership for any project presuming the project selection criteria includes public need, technical and financial feasibility, transportation efficiency or efficacy, cost effectiveness, available resources, or project acceleration. The selection process must appreciate economy and potential savings to the public, but selection of the successful Proposer will also consider the quality and technical merit of the proposal.

The Department must provide, to the greatest extent possible, for the solicitation of competitive proposals prior to entering into a Private Public Partnership agreement. Furthermore, in accordance with Session Law 2008-164, any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to such an agreement shall comply with the competitive bidding requirements of Article 2 of this Chapter 136 of the General Statutes. [While finalization of details, such as Comprehensive Agreement terms and conditions, finance plans, lenders' agreements, etc. may occur following the determination of](#)

the successful Proposer and prior to the execution of a Comprehensive Agreement or other such contract, the cost and details of construction may not be negotiated except as is permitted in accordance with the Standard Specifications after contract award.

The Department is not required to respond in any manner to unsolicited proposals and shall not do so formally as a matter of policy. The Department does, however, encourage interested parties to suggest potential projects for Public Private Partnerships. If the Department elects to pursue a project, regardless of the manner in which it is suggested, the Department will issue a formal advertisement and/or Request for Proposals in accordance with this policy.

EVALUATION PROCESS

The Department may use a one-step or two-step process to evaluate Proposals and select a Proposer with which the Department intends to enter into an agreement to execute a project. The evaluation of Statements of Qualifications, Letters of Interest, and Proposals will be done by an Evaluation Committee selected on a project specific basis.

EVALUATION COMMITTEE

The Evaluation Committee is a critical element of the Proposer evaluation and selection process. The Evaluation Committee will be composed of at least five Department employees. To the greatest extent possible, the Evaluation Committee members should have significant NCDOT experience and a thorough understanding of Department procedures. These members will represent major areas of the project planning, design, construction, finance, and/or operation. The Evaluation Committee may also include third party representatives with legal, technical, financial, or otherwise specialized expertise. The Evaluation Committee will serve as a selection committee and is responsible for the evaluation of both (1) the Statements of Qualifications or Letters of Interest for the purpose of shortlisting and (2) the Proposals for the purpose of determining a committee consensus of the Proposal that addresses the price-cost and financing, as applicable, and performance that will provide the greatest overall benefit under the specified selection criteria. A confidentiality agreement will be signed by all members of the Evaluation Committee that limits their discussion on the Proposals to only those Department personnel or Proposer references that they deem necessary to assist in the evaluation.

In addition, other evaluation committees, such as a Financial Review Committee, may be used to review specific portions of a Proposal, provided the intent to use such committee(s) is outlined in the Request for Proposals. If a Technical Review Committee is used to review the Technical Proposals and a Financial Review Committee is used to review the Financial Proposals, then the review of the Financial Proposals and Technical Proposals may occur concurrently, but shall be done independently and the members of the Financial Review Committee shall not serve on any other review committee for that project. During their independent evaluation of the Proposals, sharing of information regarding the evaluation of the Proposals will be prohibited between the Financial Review and Technical Review Committees.

ONE-STEP PROCESS

The one-step process will include the distribution of a Request for Proposals. The evaluation of Proposals and the selection of the successful Proposer under a one-step process will be consistent with that of the second step of the two-step process as outlined below. Generally, a one-step process will be reserved for projects that are specialized in nature or do not require substantial investment to generate a Proposal.

TWO-STEP PROCESS

The two-step process entails the issuance of a Request for Qualifications (RFQ), the development of a short list of Proposers, the issuance of a Request for Proposals, and the determination of the successful Proposer.

REQUEST FOR QUALIFICATIONS

The Request for Qualifications will provide a general description of the work and the Proposers' responsibilities, and will include the prequalification requirements, any pre-Proposal conferences, Department point of contact, additional technical or financial qualifications desired, and the timeframe for Statements of Qualification or Letters of Interest to be submitted to the Department. Requirements in the Request for Qualifications shall be general and not require Proposers to provide technical evaluation or detailed scheduling of project specifics. Each project's Request for Qualifications should be modified to fit the unique needs of that project.

The Request for Qualifications will set forth basic evaluation criteria such as professional experience, technical competence, resources, staffing, management stability, legal contracting entity, organizational structure, and the financial capability and stability necessary to complete a project. The Request for Qualifications may also request other information deemed necessary by the Department.

The Request for Qualifications will include all weighted evaluation criteria to be used in assessing the Letters of Interest or Statements of Qualifications. The Evaluation Committee will review the responses to the Request for Qualifications and will identify those Proposers that are best suited for further consideration. This "shortlist" of Proposers will be invited to submit a conceptual or detailed Proposal in response to the Request for Proposals provided to them. The shortlist will typically consist of three Proposers but the Department may elect to shortlist as many as five Proposers.

At the Department's discretion, one additional Proposer may be designated by the Evaluation Committee as the shortlist alternate. In the event a shortlisted Proposer withdraws from further consideration on the project, the Department may invite the shortlist alternate to submit a Proposal. In this event, all previously shortlisted Teams-Proposers will be made aware of this invitation.

Unless specialized services are otherwise stipulated in the RFQ, the Department's standard pre-qualification requirements apply to each entity providing professional engineering services. Likewise, the standard contractor pre-qualification requirements apply to each contractor entity performing construction work within or utilized by the Proposer. Unless otherwise approved by the Department, each entity must be pre-qualified prior to the deadline for the submittal of the Statements of Qualification.

Any consultant engineers under contract, or previously under contract, with the Department to prepare preliminary plans, planning reports or other project development products for a project will not be allowed to participate in any capacity with the Proposer selected to complete that project. Exceptions to this policy may be granted by the Department, upon written request from the specific firm, if it is determined that the firm's involvement is in the best interest of the public and does not constitute an unfair advantage.

REQUEST FOR PROPOSALS

The Request for Proposals (RFP) document contains the directives and scope description for any given project. Any desired project elements, finance, design, construction, operations and maintenance ~~and construction~~ requirements, guiding documents, responsibilities of the Proposer, responsibilities of the

Department, payment or compensation terms, as applicable, and the procurement process to be used for Proposer selection are typically stipulated within this document.

A draft Request for Proposals may be distributed to the shortlisted Proposers. If so designated by the Department, one or more meetings will be afforded to each shortlisted Proposer to address any questions it may have about the project, the requirements of the Request for Proposals, or the selection process. The meetings will be conducted individually with each Proposer. As a result of these meetings, the Request for Proposals may be modified and a Final Request for Proposals issued to all shortlisted Proposers. Addenda to this Final Request for Proposals may be issued as needed to further refine the requirements of the Contract.

The Request for Proposals will solicit conceptual or detailed Proposals and designate the required contents of responsive Proposals, which may include, but not be limited to, the following information:

- (1) Additional information regarding the Proposer's qualifications and demonstrated technical and financial competence.
- (2) A discussion on the feasibility of developing the project as proposed.
- (3) Environmental documentation (NEPA, permitting, etc.) responsibilities
- (4) Detailed engineering or architectural designs.
- (5) Project Schedule and the Proposer's ability to maintain progress.
- (6) A detailed financial plan, including costing methodology, cost proposals, and project financing approach.
- (7) Ongoing or long term operation and maintenance issues related to the infrastructure.
- (8) Any other information the Department deems relevant or necessary.

REQUEST FOR PROPOSALS CONTENTS

The contents of the RFP vary on a project specific basis. However, the RFP, as a minimum should address the items outlined below:

- (1) Estimated Procurement Schedule
- (2) Instructions on Proposal Completion, Submission and Execution
- (3) Department Point of Contact During Procurement Phase
- (4) Notification of any Pre-Proposal Conferences
- (5) Proposal Evaluation Criteria
- (6) Proposer Selection Process
- (7) DBE or MB/WB Goals and Reporting Requirements
- (8) Oral Presentation Requirements (as applicable)
- (9) Planning, Design and Other Preconstruction Services Required
- (10) Submittal Requirements
- (11) Permits (as applicable)
- (12) Construction Services Required
- ~~(12)~~(13) Operations and Maintenance Services Required
- ~~(13)~~(14) Third Party Involvement or Restrictions
- ~~(14)~~(15) Information or Services to be Provided by the Department
- ~~(15)~~(16) Professional Insurance and Bonding
- ~~(16)~~(17) Financing/pPayment/compensation terms, as applicable

SELECTION PROCESS

The selection process will generally consist of two phases. For a competitive ~~sealed-bid~~ procurement process, these phases will consist of complete evaluation of the Technical Proposals, and Financial Proposals, as applicable, followed by a determination of the most beneficial Proposal using a predetermined algorithm that combines Technical Score, Financial Score, as applicable, and Price. For a negotiation or competitive negotiation procurement process, the phases will consist of evaluation of the Proposals, followed by a period of negotiation.

PROPOSAL EVALUATION CRITERIA

The Request for Proposals will clearly outline the criteria to be used to evaluate the Proposals, regardless of procurement process. These criteria may include, but are not limited to:

- 1) Financial plan feasibility/credibility
- 2) Project schedule, milestones, and credibility thereof
- 3) Reasonableness of assumptions, including those related to ownership, legal liability, law enforcement, and operation and maintenance of the project
- 4) Financial exposure and benefit to the Department and the public
- 5) Forecasts
- 6) Compatibility with other existing or planned facilities
- 7) Compliance with DBE or MB/WB goals or good faith efforts
- 8) Proposer's demonstrated capabilities and past performance
- 9) Design features and approach
- 10) Construction approach
- 11) Operations and Maintenance approach
- 9)12) Financing approach
- 10)13) Likelihood of obtaining necessary third party approvals or support
- 11)14) Cost and pricing, including user fees and projected usage
- 12)15) Innovation in planning, development, design, construction, maintenance, or financing
- 13)16) Liability insurance provisions
- 14)17) Staffing and project coordination capabilities, including governmental liaison
- 15)18) Long term operations and maintenance considerations and life cycle costs
- 16)19) Traffic control
- 17)20) Safety records and plan
- 18)21) Quality control methods and/or project guarantees
- 19)22) Natural environment responsibility
- 20)23) Oral presentation (as applicable)

REVIEW OF PROPOSALS

The Evaluation Committee(s) will ~~first~~ determine whether the Proposals are responsive to the requirements of the Request for Proposals. If any of the Proposals are considered non-responsive, the Department will notify the Proposer of that fact.

Each Proposal found to be responsive will be evaluated by the Evaluation Committee(s). The Evaluation Committee(s) may be provided tools to assist in the evaluation of the Proposals. The Evaluation Committee(s) may solicit input from other Department employees, independent third party technical, legal and financial advisors, or Proposer references regarding specific information that may be needed outside their experience or expertise.

A Department employee will serve as a facilitator to assist in the evaluation process. The facilitator serves in an ex officio capacity and facilitates the Evaluation Committee's discussion. The facilitator may answer questions regarding the evaluation criteria and process as well as specific questions about Proposal contents. The role of the facilitator is to ensure that (1) the evaluation process occurs in a systematic and consistent manner, (2) false or irrelevant data is not used in the evaluation process, (3) to the greatest extent possible, the overall evaluations are properly valued as relates to the size and complexity of the project and (4) the Evaluation Committee(s) understands the confidential nature and outcome of its work.

Based on the evaluation process and evaluation criteria outlined in the Request for Proposals, the Evaluation Committee(s) will score or rank the Proposals.

Competitive ~~Sealed-Bid~~ Procurement Process

For projects using a competitive ~~sealed-bid~~ procurement process, the evaluation of the Technical Proposals will result in a consensus Technical Score (and/or Financial Score) for each Proposal and will be conducted in accordance with the Department's current Design-Build Policy and Procedures at the time of the project advertisement. For certain projects and if outlined in the RFP, the Department may use other recognized means of evaluating and scoring Proposals and combining ~~technical-Proposal~~ quality and-with price in the determination of the ~~most-beneficial~~best value Proposal.

Negotiated or Competitively Negotiated Procurement Process

For projects using a negotiated or competitively negotiated procurement process, the Evaluation Committee will rank the Proposals and will recommend for selection the Proposer whose Proposal offers the best value to the Department.

The Department will issue written notification to each Proposer regarding its rank and the rank order of Proposers will be made public.

NEGOTIATIONS

The Department may pursue a negotiated procurement process, competitive negotiations, or competitive ~~sealed-bidding~~ on select projects. The Request for Qualifications and/or Request for Proposals will outline the type of procurement to be used in the determination of the successful Proposer.

Competitive ~~Sealed-Bid~~ Procurement Process

For a competitive ~~sealed-bid~~ procurement process, no negotiations regarding construction costs will occur prior to contract award; however, --finalization of details, such as Comprehensive Agreement terms and conditions, finance plans, etc. may occur following the determination of the successful Proposer and prior to the execution of a contract, Comprehensive Agreement, lenders' agreements, or other such instruments. This provision in no way negates the Department's ability to pursue a Best and Final Offer as outlined in the Design-Build Policy and Procedures, issue addenda any time prior to contract award or enact alterations of work after contract award as allowed by the Department's Standard Specifications for Roads and Structures.

Negotiated Procurement Process

Under the negotiated procurement process, the Department will attempt to negotiate an ~~interim~~ Interim agreement, ~~comprehensive~~ Comprehensive development agreement, or other such ~~operating and finance~~ agreement with the Proposer with the highest ranked Proposal. Such negotiations may include modifications to the Proposal. If any such agreement cannot be successfully negotiated with the Proposer with the highest ranked Proposal to the satisfaction of the Department, or if, in the course of negotiations, the Department deems that the highest ranked Proposal will not provide the Department with the anticipated benefit, the Department will formally end negotiations with the Proposer and, in the Department's sole discretion, either:

- 1) Reject all Proposals
- 2) Modify the Request for Proposals and request a new submission of Proposals
- 3) Attempt to negotiate an agreement to the Proposer with the next highest ranked Proposal
- 4) Discontinue the project indefinitely

Competitively Negotiated Procurement Process

The use of a competitively negotiated procurement process will typically be divulged in the Request for Proposals; however, in the event that (1) multiple Proposers have provided Proposals that are deemed comparable in value by the Evaluation Committee, or (2) the Department deems that it is in the best interest of the Department or the public to do so, the Department may elect to competitively negotiate with two or more Proposers any time after the evaluations of the Proposals. Such negotiations may include modifications to the Proposals. The Department may competitively negotiate with all Proposers or with only those deemed by the Evaluation Committee to be within a competitive range.

AGREEMENTS

The Department may enter into one or more agreements with the successful Proposer. The agreements may be ~~interim~~ Interim Agreements, covering primarily project development or preconstruction activities, ~~comprehensive~~ Comprehensive development agreements, financing agreements, operating agreements, or any other agreement appropriate to the project.

The Department may seek policy, legal, financial, and/or technical advice as may be needed to successfully negotiate or execute the agreement(s).

The agreements may include, but not be limited to the following items:

- 1) Appropriation of responsibilities among parties
- 2) Allocation of risk among parties
- 3) Allocation of resources and costs among parties
- 4) Allocation of cost overruns
- 5) Penalties for non-performance
- 6) Incentives for performance
- 7) Invoicing and payment procedures
- 8) Bonding and insurance requirements
- 9) Limitations on user fees
- 10) Revenue sharing
- 11) Encroachment agreements
- 12) Environmental documentation (NEPA, permitting, etc.) requirements

- 13) Asset management requirements
- 14) Hand back provisions and expectations
- 15) Costs for third party constraints such as railroads and utility companies
- 16) Cooperation with other existing or planned facilities
- 17) Rights-of-Way dedicated and the Department's use of eminent domain
- 18) Planning, development, design, construction, operation and maintenance standards
- 19) Submittal requirements
- 20) Inspection requirements and rights
- 21) Terms of reimbursement for services provided by the Department
- 22) Maximum rate or return on investment
- 23) Default of contract provisions
- 24) Force Majeure
- 25) Liability for personal injury, facility repair and unknown hazardous waste remediation
- 26) Record retention and audit requirements
- 27) Submission and review of financial statements
- 28) Other requirements suitable to the type, size, complexity, and duration of the contract

Execution of the agreement(s) shall be subject to the concurrence of the Secretary of Transportation and the Board of Transportation. Execution of the Agreement(s) is also dependent on all necessary federal actions.

STIPEND

If applicable, the notice of a stipend and the amount of the stipend will be made available to all prospective Proposers. This stipend may be made as partial compensation for each unsuccessful shortlisted Proposer that submits a responsive Proposal [or as otherwise outlined in the Request for Proposals](#). The stipend will be determined on a project specific basis and will be based on both the project size and complexity. No additional compensation will be made by the Department for the development of Letters of Interest, Statements of Qualifications, Proposals, Negotiations, or any type of agreement.

PROTECTION AGAINST DISCLOSURE

All Statements of Qualifications, Letters of Interest and Proposals submitted to the Department become the property of the Department upon their submission and may be, except as provided by North Carolina law, subject to the Public Records Act. If a Proposer wishes to provide the Department with information that the Proposer believes constitutes a trade secret, proprietary information or other information exempt from disclosure, the Proposer shall specifically designate that information as such in its Proposal. Further, the Proposer shall identify the statute on which the confidential status is claimed as well as the specific material that the Proposer believes is confidential under that statute.

The Proposer's designation shall not be determinative of the trade secret, proprietary, or exempted nature of the information so designated as a matter of law.

RESERVATIONS

The Department reserves all rights available to it by law in administering these policies and procedures, including without limitation the right in its sole discretion to:

- 1) Withdraw a Request for Qualifications or a Request for Proposals at any time and either issue a [new request](#) or [suspend the solicitation indefinitely](#).

- 2) Reject any and all Statements of Qualifications, Letters of Interest or Proposals at any time.
- 3) Terminate evaluation of any and all Statements of Qualifications, Letters of Interest, or Proposals at any time.
- 4) Issue a Request for Qualifications and Request for Proposals for competing proposals for any project presented to the Department in the form of an Unsolicited Proposal.
- 5) Suspend, discontinue, or terminate negotiations with any Proposer at any time prior to the actual authorized execution of a final development agreement by all parties.
- 6) Negotiate with a Proposer or Proposers without being bound by any provision in its Proposal.
- 7) Negotiate with a Proposer to include in the development agreement any aspect of unsuccessful Proposals.
- 8) Request or obtain additional information about any Technical Proposal from any source at any time.
- 9) Modify or issue addenda to any Request for Qualifications or Request for Proposals at any time, including after review of competing Proposals.
- 10) Permit or request clarifications or supplements to Statements of Qualifications and Proposals, either for responsive or non-responsive Proposals.
- 11) Information provided to Proposers is done so for convenience and is without representation or warranty of any kind.
- ~~12)~~ 12) Enter into a contract with a Proposer with the next best value Proposal (or next highest ranked proposer) in the event that the Department cannot finalize a contract, including financial close as applicable, with the Proposer with the best value Proposal (or highest ranked Proposer) or the Proposer fails to satisfy all obligations to be performed prior to contract execution, including financial close as applicable, as described in the RFP.
- ~~13)~~ 13) Amend, supercede, or supplement any part of these Policy and Procedures, provided the amendment or supplement is clearly denoted in the Request for Qualifications or Request for Proposals as appropriate.