



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

October 2, 2012

MEMORANDUM TO: AGC-DOT Joint Cooperative Committee Members
FROM: Victor Barbour, PE
SUBJECT: September 20 Minutes for the Joint Cooperative Committee Meeting

The Joint Cooperative Committee of the AGC-DOT met at 10:00 a.m. on September 20, 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:

Kevin Burns	Ron Hancock	Bryan Long	Rodger Rochelle
Terry Canales	Mike Hindt	Mike Manning	Natalie Roskam
Mark Foster	Berry Jenkins	Graham T. Moore	Trent Sherrill
Randy Garris	Daniel Keel	Jon Nance	Lamar Sylvester
Ricky Greene	Don Lee	Donnie Oldham	Paul Worley
Brad Goodson	Bob Lofling	Ellis Powell	

AGENDA AND DISCUSSION ITEMS

Financial Update

Mark Foster

Mr. Foster reported on the revenue forecast. He noted that the fuel tax was capped at 32.5 cents, and the revenue from the gas tax is currently on budget. Car sales are increasing. The gas tax revenue model will need to be reviewed based on the increased fuel efficiency of the general fleet. Based on the current revenue forecast, there are no expected changes in the project letting forecast; however, projects may move slightly to balance the lettings.

Mr. Foster reviewed the impacts of MAP-21. A continuing resolution is expected to pass to extend the federal allocation through March 17, 2013. MAP-21 was supposed to add 1.4% to transportation funding, but that increase was removed from the final legislation. This lost 1.4% funding represents \$550 million across the country and \$15 million for North Carolina.

Mr. Foster addressed a question regarding bond rating. He noted that that Fitch lowered its view of strength of the Federal GARVEE program. Mr. Foster did not think this lower rating would negatively affect projects.

The Department has two projects in consideration for the TIFIA low cost federal borrowing program: the I-77 HOT lanes in Charlotte and Mid-Currituck Bridge.

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The Colorado Department of Transportation is bringing their executive team to North Carolina to review how we do business in regards to cash management, prioritization and other project planning tools implemented in the past few years.

Letting Projections

Randy Garris

Mr. Garris reported on the letting projections. He noted that the major projects over \$20 million totaled \$1.3 billion in the next year. The total spending projected for the next year was just over \$2 billion. The second-year express design build projects are not reflected in these totals. The projects shown in October 2013 may be moved to further balance the lettings.

Legislative and Congressional Update

Beau Memory

Mr. Memory reported that in both chambers at least 52 new members are coming into the North Carolina General Assembly. Most of the first term representatives will be in the House. Both Transportation Committee Chairmen have retired. Most of the Transportation Committee in the House will not be returning. While the Senate transportation leadership is mostly unchanged, the dynamic will change because the new leadership on transportation in the House will only have served for one term. The gas tax cap is scheduled to end on July 1, 2013.

In this past biennium, the transportation project prioritization process and the reform to the Board of Transportation was codified. The next biennium will focus on revenue generation with taxes and tolls.

Mr. Memory noted that many of the candidates have strong ideas regarding how roads should be engineered. Mr. Jenkins reminded the committee that they can reach out to candidates and members to educate and be a resource for the new members.

Mr. Memory responded to a question regarding tolling on I-95. Legislation passed which placed a two-year moratorium on tolls on I-95. An I-95 economic impact study will report findings in the spring of 2013. Other interstates are being considered for tolling other than just I-95; however, tolling does not work everywhere to cover the cost of construction. Tolling must be targeted for congested areas.

The Department did a good job of educating about tolling and toll rates, but next time there needs to be more conversation about the road maintenance and congestion management. Trucking associations at the national level are against tolling.

Revisions to Prequalification Renewals

Terry Canales

Ms. Canales reported on a streamlined prequalification renewal process. An AGC-DOT subcommittee met to categorize the work code list into five key work codes for Grading, Structures, Asphalt Paving, Concrete Paving and ITS. Several sub work codes are listed under each key work code. For renewal, the contractor will have to submit information regarding the key work code and the sub work codes will automatically be included in the determination of the key work code every 3 years.

Mr. Ellis mentioned that the categories could be used for an initial qualification and renewals would be automatic if the contractor had completed work with the Department in the past three years. Ms. Canales noted that there were issues regarding pulling information out of the database. The requalification is in the Administrative Code. Suggested "Active" status and "Inactive" status.

The committee agreed to begin the new key work code system in the meantime.

Davis-Bacon Wage Rate Survey

Ron Hancock

Mr. Hancock reported that the results of the Department wage rate survey was submitted to U.S. Department of Labor (DOL). The DOL is requiring a recalculation of rates which separates rates for rural and metro areas even when the statistical analysis showed no difference in the rate populations. The DOL, also, requested that the wage rate surveys be linked to individual projects. The Department is requesting that DOL evaluate the value of this information.

Industry Feedback on Express Design Build Projects

Roger Rochelle

Mr. Rochelle reported on the industry feedback for year one Express Design Build program. The key was getting all the personnel and environmental agencies onsite to scope the 200 bridges in about three to four months. There were 68 private engineering firms and 40 prime contractors submit in some capacity participating in year one. Of those participants, 65 private engineering firms and 35 prime contractors were short listed on at least one project or team. Out of the short listed participants, there were 12 prime contractors awarded projects out of 17 possible contracts and 11 different lead designers. There were 40 private engineering firms awarded in some capacity.

Mr. Rochelle noted that feedback for the year two program which involves 120 bridges in 7 divisions. Overall the approach was well received. There was interest in providing an RFP that allows flexibilities like an RFP for a two span bridge could allow for a one span bridge. There are some challenges regarding implementation; however, there is discussion regarding allowing bidders to provide an alternate bid (one span) and allow the bidder to take responsibility for the change in foundation lengths.

An increase in the stipend for the more complex projects was requested. The Department asked if one advertisement and statement of qualifications followed by staggered RFP's worked well. It was difficult to assemble multiple statements of qualifications if there was one prime contractor bidding in multiple divisions with multiple lead engineering firms. The suggestion was to require only one statement of qualification per team as defined as one firm and one prime contractor. Another suggestion which would appear to be more difficult to implement is requiring the statement of qualifications to be submitted by each firm and each contractor. This would no longer evaluation the team, but the individual companies.

Draft Policy on Public/Private Participation Projects

Roger Rochelle

Mr. Rochelle provided the committee a draft of the public private participation projects. The policy regarding unsolicited Public/Private Participation proposals is to not accept them and any language regarding unsolicited proposals has been removed from the draft policy. Innovative finance or accelerated finance can bring benefit to the public. The enabling legislation does not allow for negotiation for finance of the project. Once there is a solid bid, the terms and details do need to be worked out after the fact, and language in the policy addresses this. The credibility of the financial proposal needs to be reviewed. The Department will have two teams that will separate the technical proposal and the financial proposal review. There is a concern about concessionaires bidding out the work and trading out the teams and language restricting teams replacing contractors will address this concern. This draft is going to the Board at the end of the month.

SASHTO 2013 Grove Park Inn, Asheville 8/25-8/28

Reviewed with contractors that SASHTO is in August.

Proposed Federal Rulemaking on DBE Program

Terry Canales

Ms. Canales announced that the disparity is being advertised this month. Ms. Canales summarized the proposed changes to the DBE program in 49 CFR Part 26. The proposed rule under 2687 expanded the

Department's capability of removing DBEs from the program. Under 26.88, suspension of certification would allow the DBEs on the job to be counted, but not to be used on a new project. Under 26.51, the DBEs who are not a prime or to count on a goal is proposed to no longer count as race neutral participation. The proposed rule would change the good faith submittal from being required 6 days after the bid versus the day of the bid. The proposed rules provide more structured guidance on replacements of DBEs, provide DBE subcontracts, and no longer counting high expense materials supplied by a "middle man" DBE. The proposed rule usually takes about a year to publish as a final rule.

NCDOT Connect Website

Berry Jenkins

Mr. Jenkins noted two observations. It caught a lot of people by surprise that there was a change in the website and it was not as user friendly or intuitive as expected. Mr. Jenkins suggested that the Department develop a tutorial or webinar for how to use the website.

Rail Program

Paul Worley

Mr. Worley reported on the rail program and supplied a handout detailing the latest project plan.

Environmental Program

Don Lee

Mr. Lee reported that typically the fall of the year is when DENR does their audits. This time during the DENR audits, there may be stormwater personnel reviewing the erosion control measures and stormwater mitigation. Design build projects need to be sure your plans are current with the operations.

Mr. Nance mentioned in the last engineering meeting with getting too many NOVs. The Department has asked that communication and expectations are the same between the contractor and the Department. On the design build and grading projects, the Department is going to be interested in how the fill is brought up to grade and how erosion control and surface drainage is handled in the interim.

Mr. Jenkins at the last design build project meeting discussions we collectively have not done as good a job communicating as partners as we could: the contractors, engineering firms, NCDOT, and the resource agencies. He gave an example of how there is a routine of reviewing the project with a water quality representative and solved many of their issues regarding being dinged on projects.

Next Meeting Date

The next meeting is scheduled for November 15, 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.

Central Let Bidders Requalification Streamline Proposal

The Contractual Services Unit has met with the Construction Unit in an effort to better streamline the process to re-qualify Central-Let Bidders every three years. We are proposing to create five categories of prequalification, each with its respective key work code. If a firm demonstrates sufficient equipment/experience to re-qualify for the key work code, they will be automatically approved for the other work codes listed in that category, unless otherwise noted. The idea is that if a firm has shown proficiency in the key work code, the other work codes in that category are of a similar nature that a firm could also perform those work codes. Several work codes will fall into more than one of these categories.

The five identified categories and their respective work codes are:

Grading:

Key work code: 225 Roadway Grading & Excavation

- 50 Hauling (Non-Asphalt)
- 200 Clearing and Grubbing
- 1651 Selective Vegetation Removal
- 210 Building Removal and Demolition
- 1601 Stream Restoration and Construction
- 310 Pipe Installation
- 840 Minor Drainage Structures (Drop Inlets, Catch Basins, etc.)
- 830 Brick Masonry Construction
- 866 Fence Installation
- 1105 Work Zone Traffic Control Devices
- 1110 Work Zone Signs
- 1605 Temporary Silt Fence
- 1630 Silt Detention Device (Silt Basin)
- 1670 Landscape Planting
- 1660-7 Mowing

Structures:

Key work code: 422 Concrete Structures (Bridges)

- 421 Concrete Structures (Box Culverts)
- 423 Grooving Bridge Floors
- 425 Reinforcing Steel (Placing & Tying)
- 1072 Welding
- 460 Concrete Barrier Bridge Rail
- 80 Noise Walls
- 3010 Retaining Walls (Cantilever)
- 3015 Retaining Walls (MSE)
- 825 Incidental Concrete Construction
- 848 Sidewalk, Driveways and Wheelchair Ramps

- 712 Sawing and Sealing Joints
- 713 Diamond Grinding
- 1105 Work Zone Traffic Control Devices
- 1110 Work Zone Signs

Asphalt Paving:

Key work code: 610 Asphalt Paving

- 654 Asphalt Pavement Repair
- 55 Hauling (Asphalt)
- 657 Crack and Joint Seal (Asphalt Pavement)
- 660 Asphalt Surface Treatment
- 60 Asphalt/Concrete Saw Cutting
- 607 Milling Asphalt Pavements
- 665 Milled Rumble Strips
- 825 Incidental Concrete Construction
- 846 Curb and Gutter/Shoulder Berm Gutter
- 848 Sidewalk, Driveways and Wheelchair Ramps
- 1105 Work Zone Traffic Control Devices
- 1110 Work Zone Signs

Concrete Paving:

Key work code: 710 Concrete Paving

- 711 Concrete Pavement Repair
- 712 Sawing and Sealing Joints
- 713 Diamond Grinding
- 665 Milled Rumble Strips
- 60 Asphalt/Concrete Saw Cutting
- 1105 Work Zone Traffic Control Devices
- 1110 Work Zone Signs

ITS:

Key work code: 1700 Traffic Signals and ITS

- 1730 Utility Installation/Removal: Fiber Optic Cable
- 1407 Wood Pole Installation
- 1740 Metal Pole Installation
- 1105 Work Zone Traffic Control Devices
- 1110 Work Zone Signs

In addition to the above recommendations, the following work codes will be merged together. They are of a similar nature and the Department no longer feels they need to remain as separate work codes:

Drainage:

- 310 Pipe Culvert/Storm Drainage Installation
- 320 Structural Plate Pipe
- 330 Welded Steel Pipe
- 815 Subsurface Drainage (Shoulder Drain, Under Drain, etc.)

New work code: 310 Pipe Installation

Utilities:

- 1510 Water Line Installation
- 1520 Sanitary Sewer Installation

New work code: 1510 Water/Sewer Line Installation

Chemical Stabilization:

- 501 Lime Treated Soil
- 540 Cement Treated Base Course
- 542 Soil-Cement Base

New work code: 501 Chemical Soil Stabilization

Saw Cutting:

- 60 Asphalt Saw Cutting
- 65 Concrete Saw Cutting

New work code: 60 Asphalt/Concrete Saw Cutting

Signals/ITS:

- 1700 Traffic Signals and ITS
- 1701 ITS and Signal System Integration

New work code: 1700 Traffic Signals and ITS

The following work code is being deleted. The work involved with this work code is already covered under other existing work codes:

- 854 Roadway Concrete Barrier

Express Design-Build Bridge Replacement Projects Year One Summary

Background

In August 2011, the Transportation Program Management Unit (TPMU) received a list of 203 bridges across the 14 Divisions to be contracted in State Fiscal Year 2012 utilizing the Design-Build project delivery method. To further expedite the delivery of these contracts, the Department developed a new subset of Design-Build now referred to as Express Design-Build. This delivery method aimed to expedite procurement, attract a broad spectrum of contractors and private engineering and services firms, minimize the procurement investment and risk to these contractors and firms, and provide for equitable and competitive procurements.

On October 2, 2011, the Board of Transportation adopted a revised Design-Build Policy and Procedures document to enable the Express Design-Build approach.

Project Development

The Transportation Program Management Unit (TPMU) strived to serve as a “one-stop shop”, coordinating NEPA, data collection, contract development, and procurement for these bridge projects.

With the focus and assistance from multiple preconstruction units, Division personnel, and technical services units, TPMU personnel provided technical leadership and extensive internal and external coordination to expedite numerous concurrent activities including:

- Preliminary hydraulic design reports
- Surveys
- Right-of-Way abstracts
- Geotechnical borings
- Estimated foundation types and lengths
- Archaeological and Historical screenings and surveys
- Speed investigation reports
- Funding establishment
- Bicycle and pedestrian accommodations
- Municipal agreements
- Photographs
- Bridge inspection reports
- Jurisdictional features delineations
- FEMA models
- LIDAR data
- Detour routes
- Quantities and cost estimates

In addition to the data collection efforts, scoping meetings were conducted in the field at each of the roughly 200 bridge sites. These scoping meetings included preconstruction personnel, Division personnel, and numerous representatives from the various permitting and regulatory agencies, as well as representatives from local municipalities as appropriate.

These scoping meetings began in September 2011 and were aggressively completed by November 2011. After each set of Division bridges were scoped, data sheets were completed as part of the NEPA documentation. As a result of the scoping meetings, the disposition of each bridge was determined, resulting in adjustments to preliminary bridge type, conversion of some bridges to culverts, and the elimination or deferral of 41 of the sites.

Often the agency coordination continued beyond the scoping meetings to assemble technical review groups responsible for local, state and federal regulations, Section 7 Consultations for threatened and endangered species, Section 106 efforts for historic and cultural properties, Section 6(f) efforts for Land and Water Conservation Fund and other site specific coordination.

Procurement Efforts

To increase industry participation and competition, the remaining 162 bridge sites (see attached map) were grouped into 17 contracts of small bridge bundles consisting of between 6 and 15 bridge sites apiece. To minimize the investment of the proposing Design-Build Teams, all 17 contracts were advertised at the same time. In this way, prospective Design-Build Teams were invited to submit a Statement of Qualifications that would cover all 17 contracts. Within those statements, the teams were asked to list those contracts, in priority order, for which they wished to be considered. The shortlists of Design-Build Teams were then determined for all 17 contracts concurrently.

Working with preconstruction and Division personnel, TPMU staff developed and modified specifications and scopes of work to produce the 17 Express Design-Build Industry Draft Requests for Proposals, conducted one-on-one question and answer sessions with each short-listed Design-Build Team for each contract, and then issued the Final Requests for Proposals in a staggered manner.

The contracts were advertised in mid-October of 2011, industry forums were conducted in late October 2011, and the shortlists were announced in early December 2011. The first draft of the first Request for Proposals was issued in December 2011 followed by roughly 85 individual one-on-one meetings with the Design-Build Teams, and culminating in staggered bid openings from February 2012 to July 2012.

Procurement Results

The procurement strategy resulted in broad and diversified interest from both contractors and private engineering and services firms. Large and small entities, as well as in-state and out-of-state contractors, submitted Statements of Qualifications.

Forty (40) different prime contractors submitted Statements of Qualifications. Within these Statements of Qualifications, sixty-eight (68) unique private engineering and services firms were represented, including twenty-eight (28) different lead design firms.

The shortlisting process resulted in a comparable mix of contractors and private firms, including thirty-five (35) of the forty (40) prime contractors, sixty-five (65) of the sixty-eight (68) private engineering and services firms, and twenty-four (24) of the twenty-eight (28) lead design firms.

The bid openings resulted in the award of contracts to Design-Build Teams that included twelve (12) different prime contractors, and forty (40) different private engineering and services firms, including eleven (11) lead design firms as well as numerous subcontractors.

Entity	Total Count	Short-listed	Awarded
Prime Contractors	40	35	12
Lead Designers	28	24	11
All PEFs (including Lead Designers)	68	65	40

Project Estimates and Bid Results

The bid results from the first year of this program are encouraging. It should be noted that these contracts include estimated quantities and the occurrence of cost overruns and underruns will be tracked to validate or modify the following comparisons.

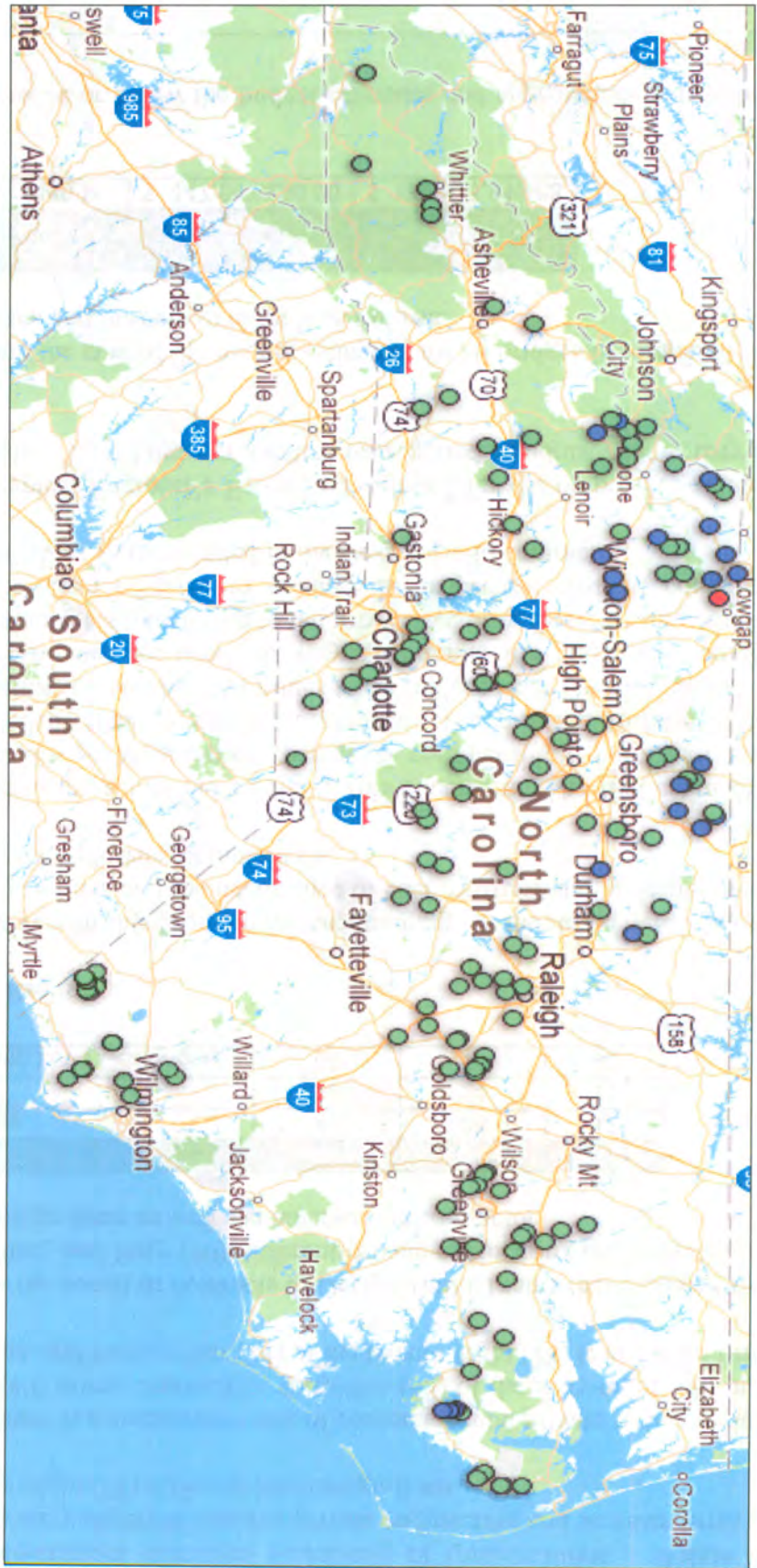
Two estimates are compared to the actual bid results in this document. The first estimate was developed by Division and Bridge Management personnel commensurate with their typical practice of estimating individual small bridge replacements. The primary purpose of these budget estimates was to finalize the number of bridges to be replaced per Division within their allocation. These budget estimates included, to varying extents, the anticipated costs for engineering and preconstruction costs transferred to the private sector in Design-Build contracts. These budget estimates were then adjusted to include the inspection costs if construction engineering and inspection services were included in the Design-Build contract.

The second estimate is the typical Engineer's Estimate developed for the purpose of validating and accepting or rejecting bids. These Engineer's Estimates required no adjustment as they are a direct comparator to bids.

Across the Year One program, the sum of the budget estimates for all bridges is compared to the sum of all Engineer's Estimates and the sum of all bids as follows:

Sum of Budget Estimates	Sum of Engineers Estimates	Sum of Bids
\$132 M - \$140 M	\$ 147,042,290.00	\$ 130,833,916.88

In the aggregate, the bids were at or below the budget estimates and approximately 11% below the Engineer's Estimates.



The blue circles ● are culverts, the green circles ● are bridges, the yellow circles ○ are possible culverts, the red circles ● are deleted structures, the blue balloons ● are additional culverts, the green balloons ● are additional bridges, and the yellow balloons ● are additional possible culverts.

North Carolina Department of Transportation

Public Private Partnerships Policy & Procedures



~~June 4~~ August 9, 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.

Session Law 2012-184 provides the Department with greater flexibility in regards to proposal, performance, and payment security requirements, as well as developer assignment, for one pilot project. This same session law provides the Department with the ability to fix, charge, revise, and collect tolls and to assign that ability to a third party developer for one pilot project. Session Law 2012-184 further requires that any projects with more than 18 months of post-construction capital cost payments to be approved by the Local Government Commission.

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 component of an evaluated 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 Chief Engineer'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 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 or in some cases a Request for Qualifications. Otherwise, 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, key Proposer firms, contractors, and personnel to be identified, 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
- ~~(17)~~ Financing/pPayment/compensation terms, as applicable
- ~~(18)~~ Specific requirements, as to the Proposer firms, contractors, or personnel to be identified in a Proposal
- ~~(16)~~~~(19)~~ A description of any limitations regarding changes to any short-listed Proposer construction or design firms

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 or Statements of Qualifications if only a Request for Qualifications is used, 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, or Statements of Qualifications if only a Request for Qualifications is issued, 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 agreementAgreement, ~~comprehensive~~-Comprehensive development agreementAgreement, or other such ~~operating and finance~~-agreement with the Proposer with the highest ranked Proposal (or Statement of Qualification if only a Request for Qualifications is issued). 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 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.
- ~~11~~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.
- ~~12~~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.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

September 12, 2012

RE: Office of the Secretary, Disadvantaged Business Enterprise: Program Improvements (NPRM) Docket No. OST-2012-0147...Summary of....

Forms:

Personal Net Worth (PNW) Form and Related Requirements of 49 CFR 26.67

- Newly designed PNW statement
- Amend PNW statement must include all assets owned by the individual.
- Add statement on ability to accumulate substantial wealth and be less than \$1.32 million.
- Add language on losing presumption of economic disadvantage if stated over \$1 million on Adjusted Gross Income on Federal Tax return.
- Add language concerning transfers from the DBE owner to the applicant firm.
- Add language on spouse of an applicant owner should have to file a PNW statement if not involved in the company and access to spouses credit and capital if they are involved with the company.

Application Form

- Use of a revised form for both the DBE and ACDBE programs.

DBE Commitments/Awards and Payment Reporting Form

- Uniform report

Certification Provisions:

26.65 What rules govern business size determination

- Adjustment of statutory gross receipts cap to \$23.98 million
- Add language that the size standard that applies to a firm is the one appropriate to its primary industry classification.

26.67 What rules govern social and economic disadvantage

- New section added to (a)(2)(ii) on Appendix G and application form
- Added paragraph (a)(2)(iii)

- Added new language in (b) on potential of achieving wealth and under \$1.32 million
- Added new section (c) on Transfers within two years.

26.69 What rules govern determinations of ownership (revision of (a), (c)(1), and (i), add new paragraph (k).

- Added language in (a) on origin of all assets and how used in obtaining the firm.
- Add language to (c)(1) for proof of contribution of capital and if a loan the value of assets used as collateral.
- New paragraph (c)(2) on what insufficient contributions include.
- (c)(3) touches on language for a clearer standard in situations where non-disadvantaged individuals remain involved in the firm and addresses non-disadvantaged person's right to a DBE firm's profits.
- Submittal of additional proof to substantiate "real, substantial and continuing" by the initial contribution and any funding streams to the firm since its inception.
- New language in (i)(2) on signed document with the transfer of rights
- New section (i)(3) on marital assets.
- New section (k)(1-5) requires close and careful scrutiny to the ownership of the firm to ensure that it is owned and controlled in substance as well as in form...guard against an artificial arrangement.

26.71 What rules govern determinations concerning control

- Proposal of new language in (e)(1)(ii) regarding former employer or principal of a former employer.
- New section (e)(2) regarding non-disadvantaged individuals who once served as an employer or a principal of a former employer of any disadvantaged owner of the applicant or DBE firm. Unacceptable arrangements.
- Comments on (1). Should the language be stronger for non-disadvantaged owners who transfers ownership and remains involved with the firm.

26.73 What are other rules affecting certification

- *No big changes...*

26.83 What procedures do recipients follow in making certification decisions

- (c)(i) added onsite to principal place of business and interview key personnel.
- Renumbered (c) (1-7) to (c)(i-viii). Some new statements under each section and a new section (viii) on 3 years of tax returns.
- (h)(1) removed statement on three years of certification.
- New section (h)(2) on certification renewals
- Added opening paragraph to (j).
- (j)(2-5) new sections on what else needs to be submitted annually in addition to the annual affidavit (i.e. current PNW, record of disadvantaged status, record of all payments, compensation, and most recent completed IRS tax return)

26.86 What rules govern recipients' denials of initial requests for certification

- *No big changes...*

26.87 What procedures does a recipient use to remove a DBE's eligibility

- Revision to (f)(3-5) and addition of (6) and (7) to expand the grounds on which we can decertify DBE firms.
- The NPRM also seeks comment on the relationship between decertification and suspension and debarment proceedings. Should suspension and debarment result in an automatic decertification, should it be a trigger causing recipients to evaluate the firm for decertification, or is there another approach that would make more sense.

26.88 Suspension of Certification – (New Section)

- This is a brand new section that seeks a middle ground between decertifying a firm if a big change (i.e. death of an owner) vs. keeping them as a DBE and obtaining new contracts until decided if firm is ok to be such.
- When a firm is in suspension it cannot receive new contracts as a DBE; however, its participation on a contract it has already received would continue to count toward DBE goals.

26.89 What is the process for certification appeals to the Department of Transportation

- Sections (3)(c) and (e) have some rewording and new statements on appealing to the USDOT.

Other Provisions:

26.1 What are the objectives of this part

- *No big changes...*

26.5 Definitions

- Added definitions to the list

26.11 What records do recipients keep and report

- Added new sections (d) and (e) pertaining to what records must be kept by the UCP and reporting to USDOT's OCR by May 31st of each year the percentage of DBE firms controlled by women; DBEs other than women; and

26.21 Who must have a DBE program

- *No big changes...*

26.45 How do recipients set overall goals

- *Redirect to Ken Weeden...*

26.49 How are overall goals established for transit vehicle manufactures

- *Need Transit input...*

26.51 What means do recipients use to meet overall goals

- Removed part of section (a) that says that race-neutral participation includes...”or even if there is a DBE goal, wins a subcontract from a prime contractor that did not

consider its DBE status in making the award (e.g. a prime contractor that uses a strict low bid system to award subcontract.)” In essence by removing this statement it prevents NCDOT from counting DBEs that are on the job “just because” vs those that are on the job to fulfill the goal.

26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals

- Reworded and expanded the section to include that the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
- Stated that we may allow an apparent successful bidder/offeror who does not meet the contract goal to submit this documentation within one day of your notification.
- Added that if we allow the day that we must require that the apparent successful bidder certify that all evidence of good faith efforts was created or generated before the time of the bid.
- Added a new section (f)(1)(ii) that entails that each prime contract must include that the contractor shall (A) utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains our written consent as provided in this paragraph (f); and (B) that, unless our consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
- Adds language to section (f) now labeled (g) that spells out what documentation is needed for a good faith effort should a DBE be terminated on the contract.
- Added language that each prime contract must have a provision about material breach of contract that may result in the termination of the contract, etc if the prime does not follow the requirements of the section (f).
- Added language about other remedies to the prime if the requirements in making a good faith effort is not followed.
- New section (k) added that we must require the contractor to provide a copy of all DBE subcontracts. We must ensure that all subcontracts to DBEs to supply labor or materials require that the subcontract and all lower tier subs be performed in accordance with the provisions.

26.55 How is DBE participation counted toward goals

- Added language to (d)(5) that discussed trucks equipped with drivers.
- New section (d)(6) that a DBE may lease trucks without drivers from a non-DBE truck leasing company.
- Added language to (e)(4) that talks about counting of material suppliers. The premise is that when a DBE is involved in supplying goods manufactured by a non-DBE, and the DBE does not play a traditional regular dealer/middleman role, should the materials count? Should just the fees and commissions count? (Think of those DBEs that supply binder and in essence most or all of the DBE goal can be met by buying the product and those who are in construction is at a disadvantage.)

