

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

REQUEST FOR PROPOSALS

**IN RELATION TO THE
PENNDOT PATHWAYS MAJOR BRIDGE P3 INITIATIVE**

INSTRUCTIONS TO PROPOSERS

RFP SOLICITATION NO. 5321R01

DATED: DECEMBER 15, 2021

ADDENDUM NO. 1: JANUARY 6, 2022

ADDENDUM NO. 2: JANUARY 10, 2022

PDA PROPOSAL DUE DATE: JANUARY 19, 2022



**Keystone Building
400 North Street
Harrisburg, PA 17120**

TABLE OF CONTENTS

	Page
1. INTRODUCTION AND GENERAL PROVISIONS.....	1
1.1 Introduction.....	1
1.2 PennDOT Pathways Major Bridge P3 Initiative.....	1
1.3 Request for Proposals	2
1.3.1 Procurement Overview	2
1.3.2 Responsibility and Liability.....	2
1.3.3 RFP Documents	2
1.3.4 Procurement Schedule	2
1.4 Scope of Work	3
1.4.1 PDA Work	3
1.4.2 Package Work.....	3
1.5 Funding and Financing	3
1.5.1 Public Funding.....	3
1.5.2 Private Financing	3
1.5.3 PABs and Conduit Issuer.....	4
1.6 Tolling; Tolling Infrastructure	4
1.7 Stakeholders; Public Outreach and Community Engagement	4
1.7.1 Stakeholders.....	4
1.7.2 Public Outreach and Community Engagement.....	5
1.8 Environmental Review Process	5
1.9 Compliance with ITP	5
1.10 Communication Protocols.....	6
1.10.1 Authorized PennDOT Representative.....	6
1.10.2 Authorized Representative.....	6
1.10.3 Rules of Contact.....	6
1.11 Non-Collusion; Equitable Treatment; Lobbying; Title VI Assurances	9
1.11.1 Non-Collusion.....	9
1.11.2 Certification Regarding Use of Contract Funds for Lobbying	9
1.11.3 Title VI Assurances	9
1.12 Restrictions on Participation	9
1.12.1 Conflicts of Interest	9
1.12.2 Potential Conflicts of Interest	10
1.12.3 Requests for Conflicts Determination.....	11
1.13 Restrictions on Proposer Team	12
1.13.1 Licensing Requirements	12
1.13.2 Participation on More Than One Team	12
1.14 Changes in Proposer’s Organization and Key Personnel.....	12
1.14.1 Changes in Proposer’s Organization.....	12
1.14.2 Key Personnel Included in a PDA Proposal	13
1.15 Reference Information Documents and Proposers’ Diligence.....	14
1.15.1 Reference Information Documents	14

	1.15.2	Disclaimer Related to RIDs	14
	1.15.3	Reliance on Manuals and Publications	15
1.16		Federal, State, and Local Requirements	15
	1.16.1	FHWA Major Projects	15
	1.16.2	Participation of Disadvantaged Business Enterprise	15
	1.16.3	Equal Employment (EEO) Requirements	16
	1.16.4	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	16
	1.16.5	Prevailing Wage.....	17
	1.16.6	Buy America Requirements.....	17
	1.16.7	Public Funding.....	17
	1.16.8	Qualifications.....	17
1.17		Site Tour	18
2.		RFP PROCESS	18
	2.1.1	Communications with Proposers and One-on-One Meeting(s)	18
	2.1.2	Submission of PDA Proposals.....	18
	2.1.3	Apparent Best Value Proposer Selection.....	18
	2.1.4	Finalization of the PDA and Effective Date	18
2.2		Issuance of this ITP and Addenda	19
	2.2.1	RFP Issuance	19
	2.2.2	Issuance of Addenda to this ITP	19
2.3		Pre-Proposal Requests for Information.....	19
2.4		Questions, Comments, other Requests for Clarification, and Responses Regarding the RFP Documents	19
2.5		Pre-Proposal Meetings.....	22
	2.5.1	Meetings Generally.....	22
	2.5.2	Informational Meetings.....	22
	2.5.3	One-on-One Meeting(s).....	22
2.6		Additional Constraints	23
2.7		Pre-Proposal Submittals.....	24
2.8		Requests for Records	24
3.		GENERAL REQUIREMENTS FOR PDA WORK AND FINANCIAL PROPOSAL RESPONSE	25
3.1		General Submittal Requirements	25
	3.1.1	PDA Proposal Due Date and Delivery Instructions.....	25
	3.1.2	Signatures Required.....	25
	3.1.3	Certified Copies	25
	3.1.4	PDA Proposal File Format.....	26
	3.1.5	Consequences of Failure to Follow General Submittal Requirements	26
	3.1.6	Language and Currency	26
	3.1.7	Proposal Validity Period.....	27
3.2		Content, Format, and Organization.....	27

3.2.1	Format.....	27
3.2.2	Organization	27
3.2.3	Administrative and Legal Information.....	28
3.2.4	Technical Proposal.....	28
3.2.5	Financial Proposal.....	29
3.3	Administrative and Legal Information Submittal Requirements	29
3.4	Technical Proposal Submittal Requirements	29
3.5	Qualifications Within PDA Proposal.....	29
3.6	Modifications, Withdrawals, and Late Submittals.....	29
3.6.1	Modifications to a PDA Proposal	29
3.6.2	Withdrawal of PDA Proposals.....	30
3.6.3	Late PDA Proposals.....	30
3.7	Proposal Security	30
3.7.1	Delivery of Proposal Security.....	30
3.7.2	Forfeiture of Proposal Security.....	31
3.7.3	Proposal Security Forfeiture as Liquidated Damages.....	32
3.7.4	Return of Proposal Security.....	32
3.7.5	Performance Security for PDA Work.....	33
4.	PDA PROPOSAL EVALUATION PROCESS.....	33
4.1	Overview.....	33
4.2	Responsiveness and Pass/Fail Review.....	33
4.2.1	General.....	33
4.2.2	Responsiveness	33
4.2.3	Administrative and Legal Information – Pass/Fail	33
4.2.4	Financial Proposal – Pass/Fail	34
4.3	PDA Proposal Scoring.....	35
4.4	PDA Proposal Evaluation	35
4.5	Administrative and Legal Information Use	36
4.6	Technical Proposal Evaluation	36
4.6.1	PDA Work	37
4.6.2	First Package Work.....	39
4.7	Financial Proposal Evaluation	41
4.8	PDA Proposal Commitments.....	45
4.9	Other Evaluation Considerations	46
4.10	Determination of Apparent Best Value Proposer	46
4.10.1	Communications	46
4.10.2	PDA Proposal Revisions.....	46
4.10.3	Determination of Apparent Best Value Proposer	46
4.11	Ownership of PDA Proposal Work Product and Reimbursement Payment	47
4.11.1	Payment of PennDOT Reimbursement.....	47
4.11.2	Payment of Reimbursement in the Event of Certain Failures to Reach Effective Date	47

4.11.3	Reimbursement Payment in the Event of Cancellation Prior to PDA	
	Proposal Due Date	48
4.11.4	Proposal Work Product.....	48
4.11.5	Costs Not Reimbursable	49
4.11.6	Audit	49
5.	FINALIZATION OF THE PDA AND CLOSING	49
5.1	Executing the PDA	49
5.2	Withdrawal of Apparent Best Value Proposer Status.....	52
6.	PROTEST PROCEDURES	52
6.1	Protests and Claims against PennDOT	53
6.2	Claims against Non-Commonwealth Entities	53
7.	PENNDOT RESERVED RIGHTS.....	53

Appendices

Appendix 1 Definitions and Acronyms 1-1
Appendix 2 Procurement Schedule.....2-1
Appendix 3 Summary and Order of Proposal Contents.....3-1
Appendix 4 Administrative and Legal Information Instructions4-1
Appendix 5 Technical Proposal Instructions5-1
Appendix 6 Financial Proposal Instructions6-1
Appendix 7 PDA Proposal Forms.....7-1

Forms

Form A PDA Proposal Letter..... A-1
Form B Non-Collusion Affidavit.....B-1
Form C Conflict of Interest Disclosure Statement.....C-1
Form D Financial Proposal Form..... D-1
Form E DBE PledgeE-1
Form F Equal Employment Opportunity Certification..... F-1
Form G Proposal Security G-1
Form G-1 Proposal Bond..... G-1-1
Form G-2 Form of Letter of Credit (Proposal)..... G-2-1
Form H Certification Regarding Use of Contract Funds for Lobbying H-1
Form I RFC Template..... I-1
Form J Form of Stipend AgreementJ-1
Form K Federal Debarment Certification K-1
Form L CertificationL-1
Form M Title VI AssurancesM-1
Form N DBE Form N-1

1. INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

The Pennsylvania Department of Transportation (“**PennDOT**”), on behalf of the Commonwealth of Pennsylvania (the “**Commonwealth**”), is soliciting proposals (each a “**PDA Proposal**”) from Shortlisted Proposers (defined below) seeking to enter into a Pre-Development Agreement (the “**Pre-Development Agreement**” or “**PDA**”), through which an Affiliate of the Equity Member(s) (defined below) of the Proposer (the “**PDA Entity**”) performs certain PDA Work (defined below). The PDA is intended to result in two or more Public-Private Transportation Partnership Agreements (each, a “**Project Agreement**” and collectively, the “**Project Agreements**”) to be executed between PennDOT and to-be-formed Affiliates of the PDA Entity (each, a “**Development Entity**”), utilizing a design, build, finance, and maintain delivery method to deliver two or more “bridge packages” (each, a “**Package**”) to the Commonwealth. Each Package will be comprised of select Bridges (as defined in the PDA) and associated infrastructure, including tolling infrastructure, within the broader portfolio of nine bridges across the Commonwealth (the delivery of such Packages being collectively the “**Project**”) under PennDOT’s Pathways Major Bridge P3 Initiative (the “**Program**”).

The Request for Proposals in relation to the PennDOT Pathways Major Bridge P3 Initiative (the “**Request for Proposals**” or “**RFP**”) and these Instructions to Proposers (inclusive of all appendices and forms, the “**Instructions to Proposers**” or “**ITP**”) are the second step in a two-phase procurement. PennDOT issued a Request for Qualifications on June 28, 2021, as amended by certain addenda issued during the Request for Qualifications response period (the “**Request for Qualifications**” or “**RFQ**”), seeking Statements of Qualifications (each a “**SOQ**”). On September 20, 2021, the Commonwealth announced three respondents to the RFQ had been shortlisted as qualified and eligible to respond to the RFP (each a “**Shortlisted Proposer**” and collectively, the “**Shortlisted Proposers**”). Only Shortlisted Proposers are eligible to submit a PDA Proposal in response to the RFP as a “**Proposer**”. The RFP is comprised of this ITP and the PDA Documents.

This ITP is being issued by PennDOT in accordance with Act 88 of 2012, 74 Pa. C.S. §§ 9101-9124 (the “**P3 Law**”) and other applicable provisions of federal and Commonwealth law as well as the Implementation Manual and Guidelines as relates to P3 projects contemplated under the P3 Law and as approved for use on January 9, 2013, as last amended on December 4, 2019 (the “**Implementation Manual**”).

1.2 PennDOT Pathways Major Bridge P3 Initiative

The Project is a component of the Program, itself part of PennDOT’s ongoing work to explore sustainable transportation funding options in response to a growing highway and bridge funding gap in the Commonwealth. The Program aims to provide travelers, residents, and businesses with high-quality transportation infrastructure via alternative funding to address the near- and long-term needs of certain of the Commonwealth’s bridges and associated highway infrastructure.

PennDOT has identified the following specific goals for the Program:

- accelerate the renewal of major bridges to ensure public safety;
- avoid time and financial impacts of travel diversion resulting from bridge restrictions and closures due to bridge condition;
- help offset gas tax revenue losses, as identified by the Commonwealth Transportation Advisory Committee and exacerbated by the coronavirus pandemic;

- ensure users (including out-of-state traffic) contribute fairly to the replacement or rehabilitation of the Bridges based on usage; and
- create a sustainable funding model for the Commonwealth’s major bridges, including the Bridges.

1.3 Request for Proposals

1.3.1 Procurement Overview

Proposers and submitted PDA Proposals must comply with the requirements of this ITP, the P3 Law and other Applicable Law. By submitting a PDA Proposal, the Proposer agrees to the terms, conditions, and requirements contained in this ITP, the P3 Law, the Implementation Manual, and other Applicable Law.

PennDOT intends to execute the PDA with the Proposer that submits a responsive PDA Proposal that, upon evaluation using the criteria set forth in this ITP, meets the standards set by PennDOT, and provides the best value to, and is in the best interest of, the Commonwealth (the “**Apparent Best Value Proposer**”).

1.3.2 Responsibility and Liability

The Proposer will be solely responsible for:

- investigating and analyzing the Project, as more fully described in [Section 1.15](#);
- preparing its PDA Proposal; and
- complying with all requirements of this ITP.

1.3.3 RFP Documents

The RFP consists of the documents described below and any other documents that may be issued by addendum (each, an “**Addendum**” and collectively, or a group thereof, “**Addenda**”) (in each case, as such documents may be revised, amended, supplemented, or otherwise modified):

- this ITP (including all Appendices and forms attached hereto);
- the form of PDA (including all Exhibits attached to the form of PDA);
- the form of PDA Work Requirements (which will also be an Exhibit to the PDA); and
- the Project Agreement Term Sheet (which will also be an Exhibit to the PDA).

1.3.4 Procurement Schedule

A detailed schedule of the RFP Process is set out in the procurement schedule in [Appendix 2 \(Procurement Schedule\)](#) (the “**Procurement Schedule**”). All dates set out in the Procurement Schedule and elsewhere in this ITP are subject to change, in PennDOT’s sole discretion.

1.4 Scope of Work

1.4.1 PDA Work

The PDA Entity formed by the Equity Members of the Apparent Best Value Proposer will be expected to manage the successful preliminary development of each of the Bridges and to prepare, propose, and finalize the Packages for the Project and otherwise perform the scope of work as set forth under the PDA, including submission of Package Proposals to PennDOT for approval to proceed with implementation (the “**PDA Work**”).

1.4.2 Package Work

The PDA shall set forth conditions precedent to PennDOT’s approval of each Package.

For each Package, following the grant of all required approvals under the PDA, PennDOT and the applicable Development Entity will enter into a Project Agreement for each Package, which shall be drafted in strict accordance with the terms and commercial intent of the Project Agreement Term Sheet set forth in Exhibit 8 to the PDA. By submitting its PDA Proposal, each Proposer commits to the terms and conditions set forth in the Project Agreement Term Sheet as applicable to each Project Agreement. Additional requirements and parameters regarding negotiation of each Project Agreement are set forth in the PDA.

Under each Project Agreement, the applicable Development Entity will be responsible for the final design, construction, financing, maintenance, and handback of that Package, as such work is defined under the Project Agreement (for purposes of this ITP, the “**Package Work**”).

PennDOT requires that the First Package to be delivered reaches Financial Close by December 31, 2022. Each Package must comply with the PDA Work Requirements.

1.5 Funding and Financing

1.5.1 Public Funding

No public funds are expected to be provided by PennDOT to the PDA Entity for the PDA Work. The PDA Entity will be responsible for funding all costs of the PDA Work for which it is responsible under the PDA. The PDA Entity will be reimbursed for its PDA Work costs at financial close of each of the respective Packages, as set forth in greater detail in the PDA.

The user fees collected on the Bridges will be PennDOT’s primary source for funding availability payments to the Development Entities under the Project Agreements. In the event that actual user fees are insufficient to fully fund availability payments under a given Project Agreement in any given period, PennDOT anticipates utilizing federal and Commonwealth funds to satisfy PennDOT’s payment obligations under the Project Agreements.

1.5.2 Private Financing

The PDA Entity and, ultimately, the Development Entities (as relates to each Package) will be responsible for obtaining any necessary private financing for the Project, which will include any financing necessary in connection with costs related to the PDA Work and costs related to the Package Work under each Project Agreement. The PDA Entity may, but will not be required to, finance the cost of the PDA Work (and, for avoidance of doubt, shall not be responsible for financing costs for PDA-related costs with respect to which PennDOT has specifically agreed to be responsible under the PDA). Each Development Entity’s private

financing may include any number of sources including debt and equity investments by the Equity Members or their Affiliates.

In anticipation that the Development Entity may wish to use federal programs as part of its private financing, PennDOT intends to facilitate access to federal financing tools such as the USDOT TIFIA program credit assistance and Private Activity Bonds (“PABs”). PennDOT intends to pursue the potential availability and use of both TIFIA and PABs, and intends to assist each Development Entity in obtaining, or obtaining approval for, any available, eligible TIFIA or PABs financing.

The PDA Entity’s and each Development Entity’s debt shall be non-recourse to the Commonwealth and any agency thereof, including PennDOT.

1.5.3 PABs and Conduit Issuer

If the Development Entity’s debt financing includes PABs, then the Pennsylvania Economic Development Financing Authority will serve as the issuer of the PABs. The PDA Entity and Development Entity shall be solely responsible for obtaining ratings, bond counsel opinions, credit enhancement (as applicable), and an underwriting commitment or placement of the PABs, as well as satisfying any conditions placed on the use of the allocation by USDOT and complying with Applicable Law. PennDOT anticipates submitting an application to USDOT for an allocation of volume cap to use PABs to finance the Project.

1.6 Tolling; Tolling Infrastructure

PennDOT intends that, pursuant to the terms of the applicable Project Agreement and as part of the Package Work, the applicable Development Entity will construct, finance and maintain the Tolling Civil Infrastructure necessary for preparing the applicable portion of the Project for acceptance by PennDOT, including the toll gantry structures, toll buildings and cabinets, toll building HVAC, toll building security access control system, power connections, and duct bank work.

The Development Entity will ultimately be responsible for the final design and construction of the Tolling Civil Infrastructure for acceptance by PennDOT. Following acceptance, PTC and its designees will install toll collection sensors and equipment at the site and will be responsible for the maintenance of the toll collection sensors and equipment. The Development Entity will be responsible for the maintenance of the Tolling Civil Infrastructure. PennDOT will be responsible for setting toll rates and PennDOT and/or PTC as its designee will be responsible for managing and operating the toll collection equipment.

1.7 Stakeholders; Public Outreach and Community Engagement

1.7.1 Stakeholders

The Project will necessitate coordination with governmental agencies and other stakeholders within and outside the Commonwealth that may include, but not be limited to:

- (a) PTC;
- (b) PA Department of Conservation & Natural Resources;
- (c) PA Department of Community and Economic Development;
- (d) PA Department of Environmental Protection;
- (e) PA Historic and Museum Commission;
- (f) PA Fish & Boat Commission;
- (g) PA Game Commission;
- (h) PA Public Utility Commission;

- (i) FHWA;
- (j) US Army Corps of Engineers;
- (k) Environmental Protection Agency;
- (l) US Fish & Wildlife Service;
- (m) PA Association of Conservation Districts;
- (n) US Coast Guard;
- (o) US DOL/Office of Federal Contract Compliance Program; and
- (p) other agencies, as needed.

Except to the extent described otherwise in this ITP, it is anticipated that the PDA Entity and the Development Entities (as applicable) will play an active role in coordinating and/or leading the work with all relevant government agencies and stakeholders, with PennDOT providing assistance and cooperation in such efforts.

1.7.2 Public Outreach and Community Engagement

Upon execution of the PDA, the PDA Entity will be responsible for robust community engagement efforts in close collaboration and partnership with PennDOT. The PDA Entity will coordinate with PennDOT to facilitate an early and ongoing collaborative dialogue to engage local communities in the development process through exceptional customer service and responsive correspondence. The PDA Entity, working with PennDOT, will be responsible for stakeholder outreach, including, but not limited to, meetings and events to inform and collaborate with stakeholders, communities, and property owners. The PDA Entity shall focus efforts on public information and involvement with the goal of maintaining an open and honest dialogue with all stakeholders.

1.8 Environmental Review Process

PennDOT and the United States Department of Transportation Federal Highway Administration (“**Federal Highway Administration**” or “**FHWA**”) shall retain control and responsibility for the National Environmental Policy Act of 1969 (“**National Environmental Policy Act**” or “**NEPA**”) process for each Package in accordance with the procedures set forth under the PDA.

PennDOT, in coordination with FHWA, is in varying stages as relates to the environmental posture of each Bridge as relates to NEPA. Further information as relates to each Bridge can be found in the RIDs. PennDOT makes no commitments as to any alternative under evaluation in any Bridge NEPA processes, including the no-build alternative, until a Record of Decision has been published.

Each Proposer shall familiarize itself with the environmental- and NEPA-related requirements, terms, and conditions set forth in the PDA, and take such requirements, terms, and conditions into full consideration in preparing its PDA Proposal. In preparing its PDA Proposal, each Proposer may use the Project boundaries established by the NEPA limits of disturbance (LOD) set forth in the RIDs.

1.9 Compliance with ITP

Proposers must comply, and ensure that each Proposer Team Member complies, with this ITP throughout the RFP Process. Failure by a Proposer or a Proposer Team Member to comply with any of the terms of this ITP may result in:

- (a) disqualification of such Proposer, Proposer Team Member, or all such parties from the RFP Process; and

- (b) a draw by PennDOT on such Proposer's Proposal Security (as defined in Section 3.7.1(a)), but only under the circumstances described in Section 3.7.2.

1.10 Communication Protocols

1.10.1 Authorized PennDOT Representative

PennDOT's Issuing Office has designated the following individual to be its authorized representative for the procurement (the "**Authorized PennDOT Representative**"):

Michael Bonini, Director
Public-Private Transportation Partnerships Office
Pennsylvania Department of Transportation
400 North Street - 6th Floor
Harrisburg, PA 17120
Email: RA-PDP3MAJORBRIDGES@pa.gov

From time to time during the RFP Process, the Issuing Office may designate another representative to carry out some or all of PennDOT's obligations pertaining to the Project. If the Authorized PennDOT Representative is replaced at any time during the RFP Process, the Issuing Office will notify the Proposers.

1.10.2 Authorized Representative

- (a) Each Proposer has previously designated its authorized representative for the RFP Process (the "**Authorized Representative**") pursuant to the Communications Protocol.
- (b) If a Proposer changes its Authorized Representative, the Proposer shall provide the Issuing Office in writing with the same contact information requested in Section 1.10.2(a) for the new Authorized Representative.
- (c) Each Proposer is responsible for ensuring that the name and contact information for its Authorized Representative is accurate and current at all times during the RFP Process.
- (d) Failure by a Proposer to follow the requirements set forth in this Section 1.10.2 may result in such Proposer failing to receive important communications from PennDOT. PennDOT is not responsible for any such failure.

1.10.3 Rules of Contact

- (a) No Improper Influence

Proposers and Proposer Team Members are expected to conduct themselves with professional integrity and to refrain from all lobbying activities related to the Project, this ITP, or the RFP Process. Any substantiated allegation that a Proposer; any Proposer Team Member; or any Constituent of any such entity has engaged in prohibited communications or attempted to unduly influence the selection process may be cause for PennDOT to (i) disqualify the Proposer and cause the Proposer to forfeit its Proposal Security pursuant to Section 3.7.2, or (ii) disqualify the Proposer's or any Major Team Member's (as applicable) Constituent from participating with the Proposer, in each case, in the sole discretion of PennDOT.

(b) Additional Rules of Conduct

The following rules of contact shall apply during the RFP Process, effective as of the date of shortlisting notification until the execution of the PDA. These rules are designed to promote a fair and competitive procurement process. Additional rules or modifications to these rules may be issued by the Issuing Office in connection with the RFP Process and in this ITP. For the avoidance of doubt, contact includes face-to-face, telephone, texting, social media, facsimile, electronic media, or formal written communication, either directly or indirectly by any Constituent of the Proposer.

The specific rules of contact are as follows:

- (i) No Proposer or any Proposer Team Members may communicate with another Proposer or any of its Proposer Team Members about the RFP or either team's PDA Proposal, including preparation thereof;
- (ii) PennDOT shall be the sole Commonwealth contact for this procurement, including the RFP Process. Proposers shall correspond with PennDOT regarding the RFP only through their respective Authorized Representatives (PennDOT's designated representative shall be the Authorized PennDOT Representative);
- (iii) Commencing with the issuance of this ITP and continuing until expiry of the Procurement Term, no Proposer or representative thereof shall have any *ex parte* communications regarding the RFP, the PDA, the Project Agreements, its PDA Proposal submission, or the procurement described herein with:
 - (A) any PennDOT personnel;
 - (B) any Commonwealth staff; and
 - (C) any other Commonwealth Constituents, including those retained for, or otherwise involved with, the procurement, including but not limited to those entities and persons identified in Section 1.12.1,

except for communications expressly permitted by the RFP or otherwise as approved in writing in advance by the Authorized PennDOT Representative, given in his or her sole discretion.

The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, the RFP Documents or the RFP Process or otherwise limit participation in public meetings related to this ITP;

- (iv) Except as may be coordinated pursuant to (c)(iv) below, Proposers shall not contact the following identified stakeholders regarding the Project, including Constituents of the entities listed below:
 - (A) any political subdivision of the Commonwealth or local government body or locality within the Commonwealth that, in each case, may have an interest in the Project, including specifically those Stakeholders identified in Section 1.7.1;
 - (B) any office within USDOT, including FHWA, the Build America Bureau and the Office of the Secretary for any office within USDOT;

- (C) U.S. Army Corps of Engineers;
 - (D) environmental, regulatory and permitting agencies, including specifically the U.S. Environmental Protection Agency and the U.S. Fish & Wildlife Service;
 - (E) PA Association of Conservation Districts;
 - (F) Utility Owners and other utility providers; and
 - (G) railroads.
- (v) To the extent not prohibited by Applicable Law or regulation, in the event that a Proposer or a Proposer Team Member is presented with (a) a request for documents by any administrative agency or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process and, in the case of a Proposer Team Member that is an accounting firm, the applicable professional standards of the American Institute of Certified Public Accountants, Public Company Accounting Oversight Board or state boards of accountancy or obligations thereunder or (b) a subpoena *duces tecum* regarding any RFP Documents which may be in its possession, Proposer or a Proposer Team Member shall immediately give notice to PennDOT and with the understanding that PennDOT shall have the opportunity, at PennDOT's expense, to contest such process by any means available to it before such records or documents are submitted to a court or other third party, provided, however, that Proposer or such Proposer Team Member shall not be obligated to withhold such delivery beyond that time as may be ordered or requested by the court or administrative agency, unless the subpoena or request is quashed or the time to produce it otherwise extended. If a protective order or the receipt of a waiver hereunder has not been obtained, or if prior notice is not permitted by Applicable Law or regulation or is not otherwise practicable, and Proposer or such Proposer Team Member are, on the advice of counsel, compelled or reasonably required pursuant to customary regulatory procedures to disclose any RFP Documents, Proposer or such Proposer Team Member are permitted to disclose that portion of the RFP Documents that its counsel advises that it is compelled or reasonably required pursuant to customary regulatory procedures to disclose. Proposers shall cooperate with PennDOT in any action brought by PennDOT to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the RFP Documents.

(c) Consequences; Sources; Disclaimer

- (i) Any Proposer engaging in communications that PennDOT determines in its sole discretion to be prohibited by this ITP may be disqualified from further participation in this procurement.
- (ii) Any official information and all official correspondence regarding the Project will be disseminated from the Issuing Office.
- (iii) PennDOT will not be responsible for, and Proposers and its Proposer Team Members may not rely on, any oral or written exchange or any other information or exchange that occurs outside the official process specified herein.

- (iv) PennDOT will provide any necessary coordination during the RFP Process with such entities in order that, among other things, the procurement is implemented in a fair, competitive and transparent manner and with uniform information.

1.11 Non-Collusion; Equitable Treatment; Lobbying; Title VI Assurances

1.11.1 Non-Collusion

Each Proposer and Major Team Member shall submit Form B (*Non-Collusion Affidavit*), certifying that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the PDA Proposal.

1.11.2 Certification Regarding Use of Contract Funds for Lobbying

Each Proposer and Proposer Team Member must submit as part of its Technical Proposal the certificate set out in Form H (*Certification Regarding Use of Contract Funds for Lobbying*).

1.11.3 Title VI Assurances

Each Proposer must submit as part of its Technical Proposal the certificate set out in Form M (*Title VI Assurances*).

1.12 Restrictions on Participation

1.12.1 Conflicts of Interest

No firm that is ineligible for Commonwealth or PennDOT contracts may participate as a member of any Proposer Team. Any questions regarding eligibility should be directed to the Issuing Office.

Proposers are required to abide by federal and state law, including, but not limited to, federal organizational conflict of interest laws and rules (found in 23 C.F.R. Part 636, 2 C.F.R. § 200.112, 23 C.F.R. § 1.33 and 23 C.F.R. Part 172), the laws and rules relating to the National Environmental Policy Act, the State Adverse Interest Act (71 P.S. §§ 776.1 – 776.8), and the P3 Law (74 Pa. C.S. § 9120 (discussing the State Adverse Interest Act as it pertains to P3 projects)). Proposers are advised that PennDOT’s restrictions from participating in this ITP are in addition to any applicable federal and Commonwealth law, including federal organizational conflict of interest laws and the laws relating to NEPA. Such laws will also apply to the Proposer Teams and may preclude certain firms or their respective entities from participating on a Proposer Team. The Proposer and all Proposer Team Members shall deliver, together with the PDA Proposal, a true and complete Form C (*Conflict of Interest Disclosure Statement*).

PennDOT has determined that the following firms and their affiliates would present a conflict of interest or the appearance of a conflict of interest in the event of their participation on a Proposer Team. Accordingly, Proposers are prohibited from teaming with, receiving any advice from, or discussing any aspect of the Project or the procurement of the Project with:

- WSP USA Inc.;
- KPMG, LLP;
- Ballard Spahr LLP;
- Love and Long, LLP;
- Ahmad Zaffarese LLC;
- CDM Smith;

- HDR Engineering, Inc.;
- Gannett Fleming;
- McCormick Taylor, Inc.
- Johnson, Mirmiran & Thompson, Inc.;
- RIG Consulting, Inc.;
- NTM Engineering, Inc.;
- Susquehanna Civil, Inc.;
- ATCS, P.L.C.;
- Century Engineering, Inc.; and
- Affiliates (such term to include parent companies, subsidiary companies, entities under common ownership, joint venture members and partners, and other financially liable parties for an entity) of any of the above.

By submitting its response to this ITP, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to the Issuing Office that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflict. If an organizational conflict of interest that the Proposer knew or should have known about but failed to disclose is determined to exist during the RFP Process or any time prior thereto, PennDOT may disqualify the Proposer. If an organizational conflict of interest exists that the Proposer knew or should have known about but failed to disclose and the Proposer has entered into the PDA as PDA Entity, PennDOT may terminate the PDA for a PDA Entity Default (as defined in the PDA). In any case, PennDOT reserves all legal rights and remedies.

1.12.2 Potential Conflicts of Interest

As a general matter, any person or firm previously under contract with the Commonwealth in connection with the Project (including, without limitation, the preparation of preliminary plans, planning reports, or other project development products for the Project) may be able to participate on a Proposer Team if such person or firm (a) was approved by PennDOT for such participation prior to selection of the Shortlisted Proposers in accordance with Sections 6.3.3 and 6.3.4 of the RFQ; or (b) otherwise first submits a written request, accompanied by an opinion of legal counsel explaining that a conflict of interest does not exist and seeking a determination of no conflict from PennDOT.

PennDOT will review requests for conflicts of interest determinations received from Proposers and the specific details to determine whether a conflict of interest exists or where the appearance of a conflict of interest exists with respect to PennDOT’s current and past contractor relationships. As a general matter, PennDOT will look to see whether any unfair advantage has been or will be gained by looking at the following example scenarios:

- (i) where a contractor has influenced the specifications or statement of work for the PDA or Project;
- (ii) where the contractor’s prior work product afforded an opportunity for the contractor to make or influence findings with respect to the PDA or Project;
- (iii) where the contractor would be in a position to evaluate its own work product as part of the PDA or Project; and
- (iv) whether the contractor received confidential information as part of work/services performed for PennDOT (or otherwise) which provide the contractor with an unfair

competitive advantage to obtain the PDA/Project Agreement or another contract with PennDOT.

The above scenarios are provided as examples only. PennDOT may review other circumstances relating to individual conflicts determination requests.

1.12.3 Requests for Conflicts Determination

No person or firm required to obtain PennDOT's prior approval for participation pursuant to Section 1.12.2(b) may participate on a Proposer Team following submission of any such request until that person or firm receives written confirmation from PennDOT that they may participate, or may conditionally participate on a Proposer Team. PennDOT may elect, in its sole discretion to place conditions upon any such determination of no conflict to assure compliance with applicable state and federal law and the policy set forth in this Section 1.12.3, and to serve the best interests of the procurement and the Project. PennDOT will use good faith efforts to provide its response to a Proposer's request promptly following receipt. Proposers should submit their request to PennDOT in the Proposer's Correspondence folder in the Project Portal and provide notification of this request submission to the following email address: RA-PDP3MAJORBRIDGES@pa.gov.

Upon written request, PennDOT may grant exceptions to this policy only where PennDOT determines that the person's or firm's involvement does not violate federal or state law, is in the best interest of the public and does not constitute an unfair advantage. Proposers seeking such exception shall submit such written request as soon as possible because PennDOT shall not extend the PDA Proposal Due Date or be responsible for any inability or failure to respond to any such request prior to the PDA Proposal Due Date.

As part of any conflicts determination requests, Proposers shall provide information concerning any potential or apparent organizational conflicts of interest and disclose all relevant facts concerning any past, present, or currently planned interests that may present an organizational conflict of interest. The Proposer shall state how its interests or those of any of its team members, consultants, contractors, or subcontractors, including the interests of any chief executives, directors, or Key Personnel thereof, may result in, or could be viewed as, an organizational conflict of interest. At a minimum, the relevant information must include detailed information about the scope of services provided to PennDOT, identification of the contract or basis for having provided such services, the names of the persons involved in providing such services (as relates to the Proposer), and the dates within which such services were performed (if not ongoing). The Proposer shall also expressly state how such prospective team member's interests or those of any of its team members, consultants, contractors or subcontractors, including the interests of any chief executives, directors or Key Personnel thereof, may result in, or could be viewed as, a conflict of interest.

By continuing to participate in the Project procurement pursuant to its submitted SOQ and by submitting a Proposal, each Proposer agrees that, if an organizational conflict of interest is discovered with respect to any Proposer Team Member included in or involved with the preparation of the SOQ or Proposal at any time following their respective submissions, the Proposer must make an immediate and full written disclosure to PennDOT that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest that the Proposer knew or should have known about but failed to disclose is determined to exist during the procurement, PennDOT may, at its sole discretion, disqualify the Proposer. If the Proposer or its Constituents receive written communication from PennDOT for conditional participation in the procurement for the Program and the Proposer or its Constituents do not abide by the conditions placed by PennDOT, PennDOT may, at its sole discretion, disqualify the Proposer. If an organizational conflict of interest that the Proposer knew or should have known about, but failed to disclose, is discovered by PennDOT and the Proposer subsequently enters

into the PDA and the any Project Agreement, PennDOT may, at its sole discretion, terminate the PDA and any Project Agreement. If the Proposer or its Constituents receive written communication from PennDOT for conditional participation in the procurement for the Program and PennDOT discovers the Proposer or its Constituents did not abide by the conditions placed by PennDOT and the Proposer entered into the PDA and any Project Agreement, PennDOT may, at its sole discretion, terminate the PDA and any Project Agreement. In any case, PennDOT reserves all legal rights and remedies.

1.13 Restrictions on Proposer Team

1.13.1 Licensing Requirements

Prior to execution of the PDA, all Proposer Team Members, including the Key Personnel, Required Personnel, and all other staff working on behalf of the Apparent Best Value Proposer's team and the PDA Entity must be qualified to do business in the Commonwealth, and each must have obtained all required licenses, including any professional engineer registrations (unless an earlier date for such qualification or license is required under the procurement documents, in which case such requirement shall be applicable).

The Lead Construction Contractor (or if a consortium, partnership or other form of joint venture, each member of the Lead Construction Contractor) that is performing construction activities must (a) be a prequalified contractor no later than the date that Proposals are due, as required by 67 Pa. Code § 457.15(c); (b) be prequalified, pursuant to 67 Pa. Code Ch. 457 (i) to perform structure "S" or "S1" and "T" work types; or (ii) as a "General Highway Contractor"; and (c) have "unlimited financial capacity". If a member of the consortium, partnership, or other form of joint venture that constitutes the Lead Construction Contractor is performing non-construction activities such as design or engineering, there is no prequalification requirement. The limitation allowing no more than three participants as set forth in 67 Pa. Code § 457.15(a) as relates to any Lead Construction Contractor that is a consortium, partnership or other form of joint venture shall not apply to this Project.

1.13.2 Participation on More Than One Team

Major Team Members are prohibited from participating, in any capacity, on more than one Proposer Team during the RFP Process.

If a Proposer is not selected as the PDA Entity, any member of an unsuccessful Proposer Team is not prohibited from participating on the PDA Entity's team or the Development Entity's team following execution of the PDA or applicable Project Agreement, in each case subject to the terms of this ITP, the PDA, and the Project Agreement, as may be applicable.

Any Proposer or Proposer Team Member that fails to comply with the prohibition contained in this [Section 1.13.2](#) may be disqualified from further participation in this procurement, including the RFP Process, at the sole discretion of PennDOT as a Proposer or member of a Proposer Team for the Project.

1.14 Changes in Proposer's Organization and Key Personnel

1.14.1 Changes in Proposer's Organization

In order for a Proposer to remain qualified to submit a PDA Proposal after it has been placed on the shortlist, unless otherwise approved in writing by PennDOT, the Proposer's organization and Proposer's team as identified in its SOQ must remain intact for the duration of the RFP Process (i.e., until the execution of the PDA). During the RFP Process, PennDOT anticipates that the Proposer's organization and Proposer's team will remain intact, unless PennDOT has approved a change in Proposer's organization pursuant to this

Section 1.14.1. Following the RFP Process, the Proposer’s organization and Proposer’s team must remain intact in accordance with the requirements set out in the PDA.

A Proposer may not request approval of any changes in any Major Team Member identified in its SOQ after the deadline set forth in the Procurement Schedule for submission of Pre-Proposal Submittals (as defined in Section 2.7).

If a Proposer wishes to make changes in a Major Team Member identified in its SOQ including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests, or role changes in or of any of the foregoing, the Proposer shall submit to the Issuing Office a written request for its approval of the change as soon as possible, but in no event later than the date and time set forth in the Procurement Schedule for submission of Pre-Proposal Submittals. Any such request shall be addressed to the Issuing Office and submitted in the Proposer’s Correspondence folder through the Project Portal with email notification to RA-PDP3MAJORBRIDGES@pa.gov, accompanied by the information specified for such entities or individuals in the RFQ and this ITP.

If a Proposer requests PennDOT’s approval to change any Major Team Member identified in its SOQ, such Proposer shall submit such information as may be required by PennDOT to demonstrate that the changed team has qualifications, capability, and experience that are equal to or better than the Major Team Member being replaced.

PennDOT will evaluate the qualifications provided by the Proposer and advise in PennDOT’s sole discretion as to whether any such request is approved. PennDOT is under no obligation to approve such requests and may approve or disapprove, in writing, a portion of the request or the entire request.

PennDOT will use reasonable efforts to respond to the submittal by the Proposer within ten Business Days after receipt thereof.

1.14.2 Key Personnel Included in a PDA Proposal

In order for a Proposer to remain qualified to submit a PDA Proposal after it has been placed on the shortlist, unless otherwise approved in writing by PennDOT, the Proposer’s Key Personnel as identified in the SOQ must remain intact for the duration of the procurement (i.e., until execution of the PDA) and thereafter in accordance with the requirements set out in the PDA. PennDOT will consider requests by a Proposer to make changes to the Proposer’s Key Personnel based on circumstances beyond the Proposer’s control (i.e., retirement, death, disability, incapacity, or voluntary or involuntary termination of employment).

If a Proposer wishes to make changes in the Key Personnel identified in its SOQ, the Proposer shall submit to the Issuing Office a written request for PennDOT’s approval of the change as soon as possible but in no event later than the date and time set forth in the Procurement Schedule for submission of Pre-Proposal Submittals. Any such request shall be addressed to the Issuing Office and submitted in the Proposer’s Correspondence folder through the Project Portal with email notification to RA-PDP3MAJORBRIDGES@pa.gov, accompanied by the information specified for such individuals in the RFQ and this ITP.

If a Proposer requests approval to replace any Key Personnel identified in its SOQ, such Proposer shall submit such written information as may be required by PennDOT to demonstrate that the proposed replacement key personnel has qualifications, capability, and experience that are equal to or better than the person being replaced.

PennDOT will evaluate the qualifications provided by the Proposer and advise in PennDOT's sole discretion as to whether any such request is approved. PennDOT is under no obligation to approve such requests, and may approve or disapprove in writing a portion of the request or the entire request.

PennDOT will use reasonable efforts to respond to the submittal by the Proposer within ten Business Days after receipt thereof.

1.15 Reference Information Documents and Proposers' Diligence

1.15.1 Reference Information Documents

PennDOT has assembled the RIDs and made an initial set of RIDs available upon issuance of this ITP through the Project Portal. Additional RIDs will be made available through the Project Portal over the course of the draft RFP process.

1.15.2 Disclaimer Related to RIDs

The RIDs are provided for reference purposes only.

Except to the extent expressly provided under the PDA or a Project Agreement, neither the PDA Entity nor any Development Entity, nor any person or entity on any Proposer Team Member (or subcontractor or subconsultant under any Project Agreement), is entitled to rely on the RIDs as accurately describing existing conditions, presenting design, engineering, operating, or maintenance solutions or other directions, means, or methods for complying with the requirements of the PDA, governmental approvals, or Applicable Law.

Each Proposer acknowledges that, except to the extent expressly provided in the PDA or a Project Agreement:

- (a) PennDOT makes no representation or warranty with respect to the relevance, completeness, accuracy, or fitness for any purpose of any of the information contained in the RIDs or that such information conforms with the requirements of the PDA, the Project Agreements, governmental approvals, or Applicable Law;
- (b) Neither PennDOT nor any of its Constituents will have any liability to the Proposer, any Proposer Team Member, any PDA Entity or any Development Entities, and will not be entitled to any extension of time, relief from obligations, or compensation, with respect to:
 - (i) any inaccuracy, omission, lack of fitness for any purpose, or inadequacy of any kind whatsoever in the RIDs;
 - (ii) any failure to make available to the Proposer any materials, documents, drawings, plans, or other information relating to the Project as part of the RIDs; or
 - (iii) any causes of action, claims, or losses whatsoever suffered by Proposer, any Proposer Team Member, the PDA Entity, and the Development Entities by reason of any use of the information contained in, or any action or forbearance in reliance on, the RIDs; and
- (c) Each Proposer is obligated to conduct studies, analyses, and investigations as permitted under this ITP and as it deems advisable to verify and supplement information in the RIDs or otherwise as may be required to prepare its PDA Proposal or in the performance of its obligations if such Proposer enters into the PDA as the PDA Entity. Any use of information in the RIDs in preparing

a PDA Proposal or in performance of PDA Work, without verification or supplement, is entirely at the Proposer and PDA Entity's own risk (as applicable).

1.15.3 Reliance on Manuals and Publications

By submitting a PDA Proposal in response to the RFP, each Proposer agrees that general industry or general government manuals and publications may be revised, changed, added to or replaced from time to time by the agencies or organizations that issue such manuals and publications. PennDOT shall have no obligation to notify any Proposer or PDA Entity regarding any such revisions, changes, additions or replacements. The Proposer and PDA Entity shall independently maintain awareness of such changes as they are published or made public.

1.16 Federal, State, and Local Requirements

1.16.1 FHWA Major Projects

The Project meets the definition of a "Major Project" under 23 U.S.C. § 106(h), and accordingly requires the preparation and submission of a Project Management Plan and Finance Plan, with annual updates, by PennDOT to the FHWA concerning the Project. The PDA and the Project Agreements will include certain obligations of the PDA Entity and the Development Entity concerning assistance in the preparation of such plans and annual updates.

1.16.2 Participation of Disadvantaged Business Enterprise

Given PennDOT's expectations set forth in Section 1.16.7, and notwithstanding expected eligibility for the use of federal-aid funds for Packages under the Project Agreements, PennDOT has determined that the federal Disadvantaged Business Enterprise requirements set forth in Title 49 of the Code of Federal Regulations Part 26 shall apply to the Project, including the PDA Work. "Disadvantaged Business Enterprises" or "DBEs" are defined as small, for-profit business that are listed at www.paucp.com by the Pennsylvania Unified Certification Program as having satisfied the DBE certification requirements. PennDOT has established the DBE contract goal for the PDA Work set forth in subsection (a) below and intends to establish DBE goals for each Project. PennDOT will require of the PDA Entity and each Development Entity (as applicable): (i) certain DBE-related assurances, and (ii) compliance with or a GFE (as defined below) to comply with the DBE goal applicable to such entity and certain DBE requirements set forth in the PDA and the Project Agreements (as applicable), including those set forth in PDA Exhibit 13, Part I.

(a) DBE Contract Goals

The DBE contract goal for the PDA Work will be 13.05% of the PDA Work. Proposer shall include Proposer's executed Form E (DBE Pledge) with its Administrative and Legal Information submission.

Within five calendar days of the PDA Proposal Due Date, the Proposer must submit the DBE Form set forth in Form N and DBE-signed acknowledgements for each DBE firm proposed to be awarded a Project subcontract. Each such DBE firm must also submit the DBE Form set forth in Form N. The DBE Forms must include the applicable NAICS code(s) (which applicable NAICS codes can be found at www.paucp.com) for each DBE firm proposed to be awarded a Project subcontract, the type and scope of work that the DBE firm will perform, and the dollar amount for the applicable contract. Failure to submit DBE Forms, including all GFE (as defined below) documentation, as and when required under this subsection (a) may result in rejection of a PDA Proposal.

Where the DBE goal established by PennDOT for the PDA Work is not met, the Proposer must demonstrate a good faith effort to meet the established DBE goal (i.e. that the efforts made were those that a Proposer seeking to meet the DBE goal established by PennDOT would make, given all relevant circumstances) (a “GFE”).

If Proposer intends to claim a GFE has been made, Proposer shall include with its DBE Form: (i) a notation on the DBE Form that a GFE is being submitted for consideration; and (ii) copies of each DBE and non-DBE subcontractor quote for any subcontract where a non-DBE subcontractor was selected over a DBE subcontractor, which materials demonstrate that the DBE’s quote was not lower than or comparable to the non-DBE subcontractor quote.

During the PDA phase for each Package, PennDOT will establish a DBE goal for the applicable Package, as set forth under the PDA.

1.16.3 Equal Employment (EEO) Requirements

- (a) **Transportation Education.** For the purposes of getting students interested in the transportation field and community outreach, the PDA Entity and each Development Entity shall be required to assure educational outreach is conducted in at least one school district in surrounding counties with a significant “environmental justice” population or community as determined by NEPA analyses per Bridge location.
- (b) **Community, Economic and Workforce Development.** For the purposes of supporting local communities and developing local workforces to enhance economic growth in the areas surrounding each Bridge location, the PDA Entity and Development Entities shall be required to engage with local community organizations, schools, unions, and CareerLinks to recruit for current and future Project training and job opportunities on the projects and provide educational outreach on careers in the transportation field.

1.16.4 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

- (a) The Proposer’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Specifications” set out in Exhibit 13 (*Federal and State Requirements*) to the PDA.
- (b) The goals and timetables for minority and female participation are set out in Exhibit 13 (*Federal and State Requirements*) to the PDA.
- (c) The PDA Entity or the Development Entity (as applicable) shall provide written notification to PennDOT within ten working days of award of any construction subcontract in excess of \$10,000 at any tier for PDA Work under the PDA or Package Work under the Project Agreement resulting from this procurement. The notification shall list:
 - (i) the name, address, and telephone number of the subcontractor;
 - (ii) the employer identification number of the subcontractor;
 - (iii) the estimated dollar amount of the subcontract;
 - (iv) the estimated starting and completion dates of the subcontract; and

- (v) the geographical area in which the subcontract is to be performed.
- (d) As used in this notice, and in the PDA, the “Covered Area” is identified in Exhibit 13 (*Federal and State Requirements*) to the PDA.
- (e) The Development Entity, construction contractors and subcontractors at any tier shall be required to satisfy the reporting requirements of FHWA 1273.

1.16.5 Prevailing Wage

Prevailing wage requirements under the federal Davis Bacon Act and the Pennsylvania Prevailing Wage Act, as applicable, will apply to the PDA Entity and the Development Entities.

1.16.6 Buy America Requirements

While the requirements of 23 C.F.R. 635.410 (Buy America requirements) are not expected to apply to the PDA Work, if the PDA Entity wishes to begin purchasing any materials for the Package Work, it will be required to (i) obtain prior PennDOT approval, and (ii) certify its compliance with 23 C.F.R. 635.410.

1.16.7 Public Funding

Proposers should be aware that, except with respect to those sources of funds, if any, that are available for payments required to be made by PennDOT under the Project Agreements that as a matter of law are not subject to appropriations, PennDOT’s obligations to provide funding under the Project Agreements will be subject to the appropriation of funds for such purposes by the General Assembly of the Commonwealth (including funds available pursuant to executive authorization in accordance with appropriations theretofore made by the General Assembly of the Commonwealth) and the certification of the availability of such funds by the Commonwealth’s Office of the Budget pursuant to 74 Pa. C.S. § 9121-9122.

For avoidance of doubt, no public funds are expected to be provided directly by PennDOT to the PDA Entity as compensation for the PDA Work. The PDA Entity will be responsible to fund all costs of the PDA Work. The PDA Entity will be reimbursed for PDA Work costs at financial close of the Packages (PDA Work will be compensated under the Project Agreements and not under the PDA).

1.16.8 Qualifications

- (a) Prior to the PDA Proposal Due Date, the Proposer shall certify to PennDOT that as of such date:
 - (i) the Lead Construction Contractor or, to the extent that the Lead Construction Contractor is a consortium, partnership, or other form of joint venture, each member of the Lead Construction Contractor performing any of the D&C Work is pursuant to 67 Pa. Code Ch. 457: (A) prequalified to (x) to perform structure “S” or “S1” and “T” work types; or (y) as a “General Highway Contractor”; and (B) has “unlimited financial capacity”; and
 - (ii) With respect to any Lead Construction Contractor that is a consortium, partnership or other form of joint venture, the limitations (A) allowing no more than three participants as set forth in 67 Pa. Code § 457.15(a) as well as (B) requiring each member of the Lead Construction Contractor performing any of the D&C Work to be capable of performing at least 50% of the original contract price of the member’s portion of the D&C Work as provided in 67 Pa. Code § 457.15(c), shall each not apply to this Project.

1.17 Site Tour

PennDOT will not be conducting site tours pursuant to this ITP. PennDOT has performed certain site investigation work prior to issuing this ITP and material relating to the site investigations carried out by PennDOT has been included in the RIDs.

2. RFP PROCESS

The following is a general summary of the key steps involved in the RFP Process, which are described in greater detail in the subsequent sections of this ITP, and in the Procurement Schedule.

2.1.1 Communications with Proposers and One-on-One Meeting(s)

(a) Proposers' Submittal of Requests for Clarification

Proposers may submit Requests for Clarification (each a “**Request for Clarification**” or “**RFC**”) in accordance with Section 2.4.

(b) Informational Meetings

PennDOT may hold group informational meetings with all Proposers as described in Section 2.5.1.

(c) One-on-One Meeting(s)

PennDOT contemplates conducting one or more meetings (each, a “**One-on-One Meeting**”) between PennDOT and each Proposer as described in Section 2.5.3.

(d) Third Party and Utility Owner Meetings

PennDOT does not intend to arrange meetings between Proposers and third parties (including Utility Owners) during the RFP Process.

2.1.2 Submission of PDA Proposals

Each Proposer shall submit its PDA Proposal no later than the PDA Proposal Due Date, in accordance with Article 3 of this ITP.

2.1.3 Apparent Best Value Proposer Selection

The Apparent Best Value Proposer will be determined in accordance with the evaluation process set out in Article 4 of this ITP.

2.1.4 Finalization of the PDA and Effective Date

Following selection of the Apparent Best Value Proposer, it is anticipated by PennDOT that the Apparent Best Value Proposer and PennDOT will finalize, execute, and deliver the PDA, and achieve the Effective Date in accordance with Article 5 of this ITP.

2.2 Issuance of this ITP and Addenda

2.2.1 RFP Issuance

- (a) PennDOT will issue each Draft RFP, the Final RFP, any Addenda, and all notices and other documents related to the Project to Proposers solely in electronic format via the Project Portal.
- (b) Proposers are solely responsible for monitoring the Project Portal, and for receiving and reviewing all documents provided through such site.

2.2.2 Issuance of Addenda to this ITP

Under its reserved rights listed in [Article 7](#), PennDOT may revise, modify, or change this ITP and RFP Process at any time before the PDA Proposal Due Date by issuing one or more Addenda. Any Addenda will be posted on the Project Portal. It is the Proposer's responsibility to periodically check the Project Portal for any new information or Addenda to this ITP. If PennDOT determines that any Addendum significantly impacts this ITP, PennDOT may change the PDA Proposal Due Date at its sole discretion. The announcement of such new date will be included in the Addendum. In addition, if the last date for Proposers to submit RFCs regarding this ITP has occurred or has changed, the Addendum will indicate the latest date for submittal of any RFCs concerning the Addendum.

Each Proposer shall acknowledge in its PDA Proposal Letter (see [Form A \(PDA Proposal Letter\)](#)) receipt and review of this ITP, any Addenda, and RFC responses. PennDOT does not anticipate issuing any Addenda later than 15 Business Days prior to the PDA Proposal Due Date. If PennDOT finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the PDA Proposal Due Date determined necessary by PennDOT.

2.3 Pre-Proposal Requests for Information

PennDOT may issue requests for information prior to the PDA Proposal Due Date to obtain information from Proposers on any matter relating to this ITP. If a Proposer believes information it provides in response to the request contains confidential or proprietary information, it may mark such response as "confidential." The Issuing Office may, in its sole discretion, assess the confidentiality or proprietary nature of information in the interest of maintaining a fair process or complying with Applicable Law. If the Issuing Office deems that a response provided by a Proposer is not confidential or proprietary in nature, the Issuing Office will inform the Proposer and may allow the Proposer, within a time period set by PennDOT, to withdraw the response or modify the response.

2.4 Questions, Comments, other Requests for Clarification, and Responses Regarding the RFP Documents

Proposers shall be responsible for reviewing the draft RFP Documents made available to Proposers by PennDOT prior to the PDA Proposal Due Date, and for requesting written clarification or interpretation of any perceived discrepancy, deficiency, ambiguity, error, or omission contained therein, or of any provision which the Proposer fails to understand. Failure of the Proposer to examine and inform itself shall be at its sole risk, and no relief for any discrepancy, deficiency, ambiguity, error, or omission will be provided by PennDOT.

Proposers shall submit questions, comments and requests for written clarification (or to propose correction of errors) regarding the Project and the RFP Documents, in each case as RFCs in accordance with this

Section 2.4. Proposers may submit RFCs regarding the RFP Documents at any time prior to the applicable deadlines set forth in the Procurement Schedule. If a Proposer wishes to discuss any RFCs during a One-on-One Meeting, such RFCs need to be submitted by the deadline for submitting an agenda for such One-on-One Meeting, as indicated in this ITP or otherwise clarified in writing by PennDOT. All RFCs must be submitted through the Proposer’s Correspondence folder through the Project Portal with email notification to RA-PDP3MAJORBRIDGES@pa.gov.

PennDOT will only consider RFCs regarding the RFP Documents that are submitted by a Proposer’s Authorized Representative to the Issuing Office in accordance with the procedures set forth in this ITP. No telephone or oral requests will be considered. No requests for additional information or clarification to any Person other than the Issuing Office through the process set out in this ITP will be considered.

Responses will be uploaded to the Project Portal.

All RFCs must:

- (a) be submitted using Form I (*RFC Template*) as provided in Microsoft® Word format via the Project Portal to the Issuing Office and with the file name to begin “PennDOT Pathways Major Bridge P3 Initiative – RFP_Comments–[Proposer_Name]–Nos._[x]_to_[x]”;
- (b) be sequentially numbered;
- (c) identify the document (i.e., ITP, PDA, Project Agreement Term Sheet, PDA Work Requirements, etc.);
- (d) identify the relevant section number (e.g., Technical Provisions, Section [x], page [x]);
- (e) identify the comment/question as either “Technical,” “Legal,” “Commercial,” “Procurement” or “Financial” (Discipline);
- (f) be in English;
- (g) not identify directly or indirectly the Proposer’s identity in the body of the question; and
- (h) indicate whether the question is a Category 1, 2, 3 or 4 question as described below.

Proposers may also, at their option, elect to submit with their RFCs revised drafting, redline, or similar markup of the applicable document as part of their questions/comments via the file upload function of the Project Portal. Wholesale revisions, rather than edits, may be disregarded by PennDOT.

Excepting technical RFCs and Category 4 RFCs (discussed below), Proposers will be limited to 150 total RFCs (i.e., questions, comments and requests for written clarification and not separate submissions) for the first draft of the RFP Documents; provided that if PennDOT requests an RFC from the Proposers, such RFC will not count towards the cap. Category 4 RFCs that provide corrections of typographical errors, incorrect cross references or internal inconsistencies within or among this ITP and the PDA Documents will be excluded from the 150 questions/comments/requests limitation. In addition, Proposers will be limited to 75 total RFCs categorized as “Technical”, which are expected to primarily focus on the draft of the PDA Work Requirements and any other technical related questions for each draft of the RFP Documents.

For the second draft of the RFP Documents, Proposers may only submit Category 1 and 2 RFCs and will be limited to 50 total RFCs (i.e., questions, comments and requests for written clarification and not separate submissions); provided that if PennDOT requests an RFC from the Proposers, such RFC will not count towards the cap.

If a question has more than one subpart, each subpart will be considered a separate RFC. PennDOT may disregard any questions received in excess of the specified limits. PennDOT may, in its sole discretion, change the maximum number of comments/questions/requests for future drafts of, or amendments or addenda to, the RFP.

As used above,

- “Category 1” means a potential “go/no-go” issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a PDA Proposal;
- “Category 2” means an issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a PDA Proposal;
- “Category 3” means an issue or clarification that is minor in nature and that is not likely to affect the Proposer’s approach to a PDA Proposal; and
- “Category 4” means corrections of typographical errors, incorrect cross references or internal inconsistencies within or among this ITP and the PDA Documents.

PennDOT will not accept RFCs marked as “confidential,” “proprietary,” or otherwise intended to protect the response to the submitting Proposer or preclude PennDOT from publicly responding to the RFC.

Proposers may submit separately, but with the RFCs, up to three white papers, not to exceed five pages in total, in connection with each iteration of the draft RFP and the Final RFP; provided that if PennDOT requests a white paper from the Proposers, such white paper will not count towards the cap. The potential topics of the white paper are limited to the Proposer’s Category 1 questions. White papers must be submitted in writing in Microsoft® Word format, with the subject line and file name to begin “PennDOT Pathways Major Bridge P3 Initiative – White_Paper – (short topic) – [Proposer Name].” If a Proposer wishes to submit a white paper, such white paper must be submitted along with the Proposer’s questions for such subsequent drafts of the RFP by the dates set forth in the Procurement Schedule. If Proposers submit a white paper, then the Category 1 question should refer to the white paper and topic, and not synopsise or advance the topic of the white paper in a manner inconsistent with or in addition to what is addressed in the white paper. In addition, PennDOT may elect to request white papers from the Proposers and such white paper shall not count towards the cap of three white papers.

PennDOT may elect, in its sole discretion, not to respond to any such RFCs. PennDOT will not respond to any white paper, but instead review the white paper(s) in connection with any response to the RFCs that PennDOT elects to offer. Further, PennDOT’s responses to RFCs will in no event be deemed part of this ITP and will not be relevant in interpreting the PDA Documents, except to the extent that they are included as part of the Final RFP or an Addendum. RFCs and responses (if any) will be posted on the Project Portal. PennDOT intends to provide responses to comments and questions PennDOT deems to be general in nature, material, or not otherwise adequately addressed in the RFP, within a reasonable time following receipt.

PennDOT may rephrase questions as it deems appropriate and may consolidate similar questions. PennDOT may also create and answer questions independent of the Proposers. PennDOT contemplates issuing multiple sets of responses at different times during the RFP Process. PennDOT may, in its sole discretion, change the maximum number of comments/questions for future RFP versions by Addendum.

The last set of responses will be issued no later than the applicable date specified in the Procurement Schedule.

2.5 Pre-Proposal Meetings

2.5.1 Meetings Generally

All meetings, including informational meetings and any One-on-One Meetings, may be held as PennDOT, in its sole discretion, determines to convene them. These may be group meetings, web-based meetings or telephone calls. These may likewise be held either in person, or by telephonic or electronic means, or a hybrid of the foregoing. If held telephonically or electronically, the meeting will permit interactive communication amongst all Proposers and PennDOT.

2.5.2 Informational Meetings

PennDOT may hold joint informational meetings with all Proposers at any time prior to the PDA Proposal Due Date. PennDOT will provide written notice of any such informational meetings to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting. Each Proposer shall attend informational meetings with appropriate members of its proposed Proposer Team, and, if required by PennDOT, senior representatives of proposed Proposer Team Members identified by PennDOT. Representatives and advisors of PennDOT, and other stakeholders may attend and participate in informational meetings.

2.5.3 One-on-One Meeting(s)

PennDOT intends to conduct one or more One-on-One Meetings with each Proposer on the dates set forth in the Procurement Schedule to discuss issues and clarifications regarding the Project and the Project-related documents or communications provided by PennDOT or the Proposer, including RFCs submitted by the subject Proposer in accordance with [Section 2.4](#).

Each One-on-One Meeting will be held at a time and location as determined by PennDOT in its sole discretion. One-on-One Meeting(s) may be conducted virtually. PennDOT shall notify each Proposer in writing of the scheduled time, place, date and duration of any One-on-One Meeting. Proposers shall confirm their attendance and identify all participants from Proposer whether attending in person or by phone within five days of receiving this notice.

Proposers will choose the topics for discussion and prepare a detailed meeting agenda, which will be submitted by the deadline set forth in the Procurement Schedule. Meeting agendas must include the topics, schedule, appropriate RFC references, and an attendee list to allow PennDOT to identify the appropriate decision-makers and support personnel to participate in the One-on-One Meeting and ensure each attends at the appropriate time in accordance with the meeting schedule. PennDOT may hold additional One-on-One Meetings as it deems necessary in its sole discretion. Proposer participation at all One-on-One Meeting(s) shall be mandatory.

Representatives of USDOT including FHWA, advisors of PennDOT, and other stakeholders may attend and participate in One-on-One Meeting(s).

The One-on-One Meeting(s) are subject to the following rules:

- The One-on-One Meeting is intended to provide Proposers with a better understanding of the Project and the Project-related documents or communications provided by PennDOT.
- PennDOT may raise its own questions and issues for discussion at any One-on-One Meeting.
- During a One-on-One Meeting, Proposers may ask questions, and PennDOT may provide responses; provided, however, that any responses provided by PennDOT during such One-on-One Meeting may not be relied upon by the subject Proposer. Nothing stated at any One-on-One Meeting will modify this ITP unless it is incorporated as part of the Final RFP Documents or an Addendum.
- PennDOT, except as provided in this ITP, will not discuss with any Proposer any information submitted by any other Proposer as part of this procurement (including other PDA Proposals or other Proposers' innovative technical and financial solutions) other than the Proposer's own PDA Proposal.
- At PennDOT's sole discretion, PennDOT may set mandatory agenda items for a One-on-One Meeting. PennDOT shall endeavor to provide notice of any mandatory agenda items not less than three days before the relevant meeting.
- PennDOT reserves the right to limit the subject matter of a One-on-One Meeting as it, in its sole discretion, deems appropriate.
- Proposers shall not seek to obtain commitments from PennDOT in a One-on-One Meeting or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of any One-on-One Meeting is intended to provide any Proposer with access to information that is not similarly available to other Proposers. Material information about the Project or procurement that PennDOT reveals or discusses in response to questions raised in a One-on-One Meeting may, except as provided in this ITP, be revealed to the other Proposers by PennDOT, in its sole discretion, if PennDOT believes such disclosure is necessary in the interest of maintaining a fair procurement process or complying with Applicable Law.
- The discussions or any statements made by either party in a One-on-One Meeting shall not be binding on such entity.
- No part of the evaluation of PDA Proposals will be based on the conduct or discussions that occur during a One-on-One Meeting.

2.6 Additional Constraints

Proposers must not prepare for submission to PennDOT, and PennDOT will not accept, any meeting minutes or notes of any kind from any One-on-One Meeting. Recording of any One-on-One Meeting is not allowed and a Proposer who does so may be subject to sanctions, including being barred from any future One-on-One Meeting. For the avoidance of doubt, Proposers may take notes at One-on-One Meetings for their own records and internal use.

2.7 Pre-Proposal Submittals

Each Proposer must submit the following items prior to submission of its PDA Proposal in accordance with the times and dates set out in the Procurement Schedule (“**Pre-Proposal Submittals**”):

- pursuant to Section 1.14, changes in the Proposer’s organization and changes in Key Personnel (if applicable); and
- any other submittal requested by PennDOT from Proposers prior to the PDA Proposal Due Date.

The applicable deadlines for submission of the Pre-Proposal Submittals, and the last date for PennDOT to respond, are set forth in the Procurement Schedule. Proposers are encouraged to submit Pre-Proposal Submittals at any time prior to the deadlines set forth in this ITP, and PennDOT will endeavor to respond to the Pre-Proposal Submittals within the time periods set forth in this ITP; provided, however, that the time period for PennDOT’s response may be extended at PennDOT’s sole discretion based on the number and complexity of the Pre-Proposal Submittals in receipt at any one time. PennDOT may, in its sole discretion, respond to Pre-Proposal Submittals in whatever order it chooses in order to expedite reviews.

Any submissions required in this ITP from Proposers prior to the PDA Proposal Due Date, including Pre-Proposal Submittals, shall be submitted in the Proposer’s Correspondence folder through the Project Portal with email notification to RA-PDP3MAJORBRIDGES@pa.gov.

2.8 Requests for Records

The Pennsylvania Right-to-Know Law, 65 P.S. § 67.101 et seq. and Section 9111 of the P3 law, 74 Pa. C.S. § 9111, applies to this ITP. If a Proposer submits information in its PDA Proposal or in the other documents submitted in relation to this ITP that it believes contains confidential commercial information, confidential financial information, or trade secrets, the Proposer must do the following:

- (a) clearly mark all confidential commercial information, confidential financial information, or trade secrets as such information is submitted, and include a cover sheet identifying each section and page which has been so marked;
- (b) with respect to each such section and page, include a signed written statement with its PDA Proposal justifying the Proposer’s determination that the identified information is protected and why such information, upon request, should not be disclosed pursuant to a request for records; and
- (c) defend any action seeking release of the records it believes should not be disclosed; and indemnify and hold harmless the Commonwealth, PennDOT, and any of their respective officers, employees, contractors, or consultants, from any judgments awarded against the Commonwealth or PennDOT in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the Procurement Term and subsequent execution of the PDA and Project Agreements. In submitting its PDA Proposal, the Proposer agrees that this indemnification survives as long as the protected records are in possession of the Commonwealth or PennDOT.

Notwithstanding the foregoing, the Proposers are advised that, upon request from a third party for information the Proposer has provided, the Issuing Office will be required to make an independent determination regarding whether the information may be disclosed pursuant to Applicable Law.

In no event will PennDOT, nor any of its officers, employees, contractors, or consultants, be liable to a Proposer, a Major Team Member, or any other member of a Proposer Team for the disclosure of all or a portion of any information or materials submitted in connection with this ITP.

3. GENERAL REQUIREMENTS FOR PDA WORK AND FINANCIAL PROPOSAL RESPONSE

3.1 General Submittal Requirements

Each PDA Proposal shall include Administrative and Legal Information, a Technical Proposal and a Financial Proposal, in separate electronic files uploaded to the Project Portal. The Administrative and Legal Information submission must meet the requirements of [Section 3.2.3](#) and [Appendix 4 \(Administrative and Legal Information Instructions\)](#). The Technical Proposal must meet the requirements set forth in [Section 4.6](#) and [Appendix 5 \(Technical Proposal Instructions\)](#) and the Financial Proposal must meet the requirements set forth in [Section 4.7](#) and [Appendix 6 \(Financial Proposal Instructions\)](#).

Each PDA Proposal shall contain concise written material and (if applicable) drawings enabling a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the PDA Proposal. Legibility, clarity, and completeness of the Administrative and Legal Information, the Technical Proposal, and Financial Proposal are essential.

Certain additional requirements for PDA Proposal submissions are provided below.

3.1.1 PDA Proposal Due Date and Delivery Instructions

The PDA Proposals shall be submitted electronically to the Issuing Office via the Project Portal by the PDA Proposal Due Date, with the applicable components of the PDA Proposal uploaded separately in the appropriate folders created for each Proposer.

Promptly after the entirety of the PDA Proposal has been uploaded to the Project Portal, the Authorized Representative must notify the Issuing Office via email of such submission. Acknowledgement of receipt of PDA Proposals will be evidenced by the issuance of an email receipt by the Issuing Office to the email address of the Authorized Representative. The acknowledgement of receipt of PDA Proposals by PennDOT does not represent a confirmation that files are complete or have been successfully accessed by PennDOT.

The Issuing Office will not accept facsimile, e-mail, or any other form of electronic or non-electronic submission of PDA Proposals other than through the Project Portal.

3.1.2 Signatures Required

Proposers must provide Electronic Signatures on submitted PDA Proposals and forms requiring a signature. Without limiting the foregoing, the PDA Proposal Letter ([Form A \(PDA Proposal Letter\)](#)) shall have Electronic Signatures by the Proposer and all Equity Members; and shall be accompanied by evidence of signatory authorization as specified in [Form A \(PDA Proposal Letter\)](#).

3.1.3 Certified Copies

Where certified copies of the Proposal Security are required, the PDA Proposal shall mark the document with the words “Certified True Copy” and have the mark oversigned by the Authorized Representative in blue ink. The over-signature can be undertaken by graphic reproduction.

3.1.4 PDA Proposal File Format

(a) Electronic PDA Proposal Submission Format

A Proposer must submit its entire PDA Proposal in separate, individually labeled volumes as follows:

“[Proposer] – Response to the Request for Proposals in relation to the PennDOT Pathways Major Bridge P3 Initiative – [Volume No.]”

Proposers shall adhere to the following organization of volumes in preparing and submitting its Proposal. Volume I is the Administrative and Legal Information. Volume II is the Technical Proposal. Volume III is the Financial Proposal. For additional information regarding Proposal organization refer to Section 3.2.2 of this ITP.

(b) Proposal Security Submission

The package constituting the Proposal Security shall be clearly labeled with the name and return mailing address of the Proposer, and additionally labeled as follows:

“[Proposer] – Proposal Security for the Response to the Request for Proposals in relation to the PennDOT Pathways Major Bridge P3 Initiative”

Proposal Security shall be delivered by hand or express mail courier to the Issuing Office. The Proposer shall notify PennDOT via email at least 24 hours in advance with the expected date and time of Proposal Security delivery. The Issuing Office will not accept facsimile or e-mail submission of the Proposal Security. The delivery address is:

Michael Bonini, Director
Public-Private Transportation Partnerships Office
Pennsylvania Department of Transportation
400 North Street - 6th Floor
Harrisburg, PA 17120

Acknowledgement of receipt of Proposal Security will be evidenced by the transmittal of an email by the Issuing Office confirming receipt.

3.1.5 Consequences of Failure to Follow General Submittal Requirements

Failure to use the appropriate Project Portal folders or to follow other delivery instructions of this Section 3.1 may result in rejection of the PDA Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the PDA Proposal, which result from any inadvertent opening if PennDOT determines that the Proposer did not follow the instructions set forth in this ITP.

3.1.6 Language and Currency

PDA Proposals shall be submitted exclusively in the English language inclusive of English units of measure, and cost terms in United States of America dollar denominations. Pricing must indicate the base year (e.g., 2021 dollars, year-of-expenditure dollars) unless the base year is prescribed by this ITP.

3.1.7 Proposal Validity Period

PDA Proposals shall initially be valid for a period of 270 days after the PDA Proposal Due Date (the “**Proposal Validity Period**”). No Proposer shall withdraw its PDA Proposal within the Proposal Validity Period, unless notified by PennDOT that (i) no PDA will be executed by PennDOT pursuant to this ITP; (ii) PennDOT has executed the PDA with another Proposer and has received the executed PDA and other required documents; or (iii) PennDOT does not intend to award the Project to that Proposer. Any Proposer may elect to extend the validity of its PDA Proposal beyond the time periods set forth above; provided that such Proposer will, as a condition to PennDOT’s acceptance thereof, provide an amended or replacement Proposal Security providing coverage for a term extending five days beyond the extended Proposal Validity Period.

3.2 Content, Format, and Organization

3.2.1 Format

PDA Proposals shall comply with the following formatting requirements:

- (a) An 8-1/2” x 11” sized-equivalent white background is required for typed submissions, except that the use of 11” x 17” sized-equivalent white background format for tables, graphics, charts (including organizational charts), and maps is acceptable in the main body of the PDA Proposal, and an 11 by 17-inch format is required for any drawings, except that any design drawings may not exceed 36 by maximum 40 inches format if included in the PDA Proposal (and such design drawings shall be submitted electronically in Adobe Portable Document Format (.pdf) and in MicroStation format). Any such design drawings shall be provided at a scale that is readable and such scale shall be shown on the drawings. Each 11 by 17-inch page will be considered one page. The schedule submissions for the Preliminary PDA Work Schedule and the Preliminary Baseline Project Schedule for the First Package that will be submitted in accordance with Section 3.4 must be prepared using software compatible with ASTA, in accordance with the PDA Work Requirements.
- (b) Each volume of the PDA Proposal must be divided into sections that are sequentially numbered.
- (c) Lines may be single-spaced with the type font size being no smaller than 11-point, except with respect to tables, graphs, charts (including organizational charts), and maps, for which the type font size being no smaller than 10-point.
- (d) No page limit applies to appendices, dividers, exhibits, and tables of contents; however, PennDOT does not commit to review any information in appendices and exhibits other than those required to be provided, and the PDA Proposal evaluation process will focus on the body of the PDA Proposal and any required appendices and exhibits.

3.2.2 Organization

A list showing the required contents and order of the entire PDA Proposal is found in Appendix 3 (*Summary and Order of Proposal Contents*). The PDA Proposal shall be (a) organized in such order and clearly indexed in accordance with Appendix 3 (*Summary and Order of Proposal Contents*), and (b) prepared by each Proposer to reflect inclusion and order of the Administrative and Legal Information, the Technical Proposal and Financial Proposal. Each part of the PDA Proposal shall be clearly titled and shall be submitted without reservations, qualifications, conditions, or assumptions set forth therein. Any failure to provide all the information and all completed forms in the order and format specified, or submittal of a

PDA Proposal subject to any reservations, qualifications, conditions, or assumptions, may result in PennDOT’s rejection of the PDA Proposal or giving it a lower rating. All blank spaces in the PDA Proposal forms must be filled in as appropriate. No changes (other than formatting changes and minor grammatical changes) shall be made in the PDA Proposal forms by the Proposer.

The name of each electronic submission “.pdf” file must comply with the requirements set forth in Section 3.1.4. The electronic submissions must be organized to correspond to the Section requirements set forth in Appendix 3 (Summary and Order of Proposal Contents). Proposers may elect to submit single indexed “.pdf” submissions for each of Volume I (Administrative and Legal Information), Volume II (Technical Proposal), and Volume III (Financial Proposal), or provide a series of discrete “.pdf” files, formatted to correspond to the Section requirements set forth in Appendix 3 (Summary and Order of Proposal Contents). If Proposer elects to provide a series of discrete “.pdf” files, file names and order must follow the organization set forth in the table in Appendix 3 (Summary and Order of Proposal Contents).¹

3.2.3 Administrative and Legal Information

The Administrative and Legal Information submission shall be contained in one volume, as more fully described in Appendix 4 (Administrative and Legal Information Instructions).

The Administrative and Legal Information submission (including any tables, graphics, charts, drawings, and documents) described in Section 3.2.1 shall be sequentially numbered and clearly addressed to the Issuing Office as provided herein, and labeled:

“[Proposer] – Administrative and Legal Information for the
PennDOT Pathways Major Bridge P3 Initiative – Volume I”

Proposers shall provide one electronic submission of the Administrative and Legal Information including all the required attachments and forms. Any attachments must be clearly labeled as accompanying the Administrative and Legal Information. The electronic submissions shall be in a searchable .pdf format; provided, however, that corporate, partnership, joint venture, and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements, and limited liability company operating agreements) need not be submitted in searchable .pdf format. None of the submitted electronic files shall be locked to prevent copying or printing. Proposers must submit Volume I (Administrative and Legal Information) in an unencrypted (not password protected) format.

3.2.4 Technical Proposal

The Technical Proposal shall be contained in one volume, as more fully described in 7(p)Appendix 5 (Technical Proposal Instructions). The Technical Proposal shall not exceed the page limitation set forth in Article 2 of 7(p)Appendix 5 (Technical Proposal Instructions). Any pages exceeding this limit will not be considered.

The Technical Proposal (including any tables, graphics, charts, drawings, and documents) described in Section 3.2.1 shall be sequentially numbered and clearly addressed to the Issuing Office as provided herein, and labeled:

“[Proposer] – Technical Proposal for the
PennDOT Pathways Major Bridge P3 Initiative – Volume II”

¹ PennDOT to confirm preference given the SOQ review.

Proposers shall provide one electronic submission of the Technical Proposal including all the required attachments and forms. Any attachments must be clearly labeled as accompanying the Technical Proposal. The electronic submissions shall be in a searchable .pdf format; provided, however, that corporate, partnership, joint venture, and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements, and limited liability company operating agreements) need not be submitted in searchable .pdf format. None of the submitted electronic files shall be locked to prevent copying or printing. Proposers must submit Volume II (Technical Proposal) in an unencrypted (not password protected) format.

3.2.5 Financial Proposal

Except as expressly provided otherwise, one electronic submission of the Financial Proposal response (with the exception of the Proposal Security which shall be submitted in accordance with Section 2.1(a) of Appendix 6 (*Financial Proposal Instructions*)), together with the financial capacity information in searchable Adobe Portable Document Format or Microsoft® Excel (as applicable), shall be delivered to the Issuing Office via the Project Portal. The submissions shall be labeled:

“[Proposer] – Financial Proposal for the
PennDOT Pathways Major Bridge P3 Initiative – Volume III”

Proposers may elect to submit Volume III (Financial Proposal) in an encrypted (password protected) format, provided no non-standard software is required to access it. Proposers that elect to protect their Volume III (Financial Proposal) submission must inform the Issuing Office via e-mail with the password used to protect the electronic submissions prior to the PDA Proposal Due Date, and failure to provide a valid password prior to the PDA Proposal Due Date or the use of non-standard software shall be deemed a failure to deliver the Financial Proposal on time.

3.3 Administrative and Legal Information Submittal Requirements

Each Proposer’s Administrative and Legal Information submission shall satisfy the requirements set forth in Appendix 4 (*Administrative and Legal Information Instructions*), and include all information and forms required thereunder. The Administrative and Legal Information submission will be evaluated exclusively on a pass/fail basis under Section 4.2.3.

3.4 Technical Proposal Submittal Requirements

Each Technical Proposal shall describe the Proposer’s approach to the PDA Work and First Package Work by responding to the evaluation criteria of PennDOT set out in Section 4.6 below. Each Technical Proposal shall also satisfy the requirements set forth in 7(p)Appendix 5 (*Technical Proposal Instructions*).

3.5 Qualifications Within PDA Proposal

The PDA Proposal may not include any qualifications, conditions, exceptions to, or deviations from the requirements of this ITP.

3.6 Modifications, Withdrawals, and Late Submittals

3.6.1 Modifications to a PDA Proposal

After submission of its PDA Proposal but before the PDA Proposal Due Date, a Proposer may modify its PDA Proposal by deleting its then-submitted PDA Proposal Submission from the PDA Proposal submittal

upload folder within Project Portal and resubmitting its modified PDA Proposal in its entirety via upload to the Project Portal. Promptly after the entirety of the modified PDA Proposal has been uploaded to the Project Portal, the Authorized Representative must notify the Issuing Office via email of such resubmission. Any modified PDA Proposal shall conform in all respects to the applicable requirements for submission and contents of a PDA Proposal set forth in this ITP.

3.6.2 Withdrawal of PDA Proposals

A Proposer may withdraw its PDA Proposal at any time prior to the PDA Proposal Due Date by deleting its submitted PDA Proposal from the PDA Proposal submittal upload folder within the Project Portal. A withdrawal of a PDA Proposal will not prejudice the right of a Proposer to file a new PDA Proposal provided that the relevant component of the PDA Proposal is received prior to the PDA Proposal Due Date. A withdrawal of a PDA Proposal in accordance with this Section 3.6.2 prior to the PDA Proposal Due Date shall not result in the forfeiture of the Proposal Security.

No PDA Proposal may be withdrawn on or after the PDA Proposal Due Date and any attempt to do so without PennDOT's written consent will result in a forfeiture of the Proposer's Proposal Security as liquidated damages in accordance with Section 3.7.2.

3.6.3 Late PDA Proposals

PennDOT will not consider any late PDA Proposals. PDA Proposals and modifications not requested by PennDOT received after the PDA Proposal Due Date will be rejected and purged electronically unopened without consideration or evaluation. Proposers are solely responsible for assuring that the Issuing Office receives their electronic PDA Proposal submissions by the PDA Proposal Due Date, and PennDOT shall not be responsible for delays in delivery caused by weather, technical difficulties, and other occurrences beyond the control of PennDOT.

3.7 Proposal Security

3.7.1 Delivery of Proposal Security

- (a) As security for its commitment to enter into the PDA in accordance with the requirements of this ITP and its PDA Proposal commitments, each Proposer shall submit to PennDOT security in the form of Form G-1 (Form of Proposal Bond) or Form G-2 (Form of Letter of Credit (Proposal)) (in each case, the "**Proposal Security**").
- (b) The Proposer shall provide as part of its Financial Proposal one original of the Proposal Security and one certified copy of the Proposal Security enclosed in a single envelope labeled in accordance with Section 3.1.4(b). The original of the Proposal Security shall be stamped "original" in the single envelope with the three certified copies. The Issuing Office will not accept facsimile or e-mail submission of the Proposal Security.
- (c) The Proposer shall provide Proposal Security in an aggregate amount equal to \$5,000,000. The Proposer may submit one or more Proposal Bond(s) in the form of Form G-1 (Form of Proposal Bond) or Proposal Letter(s) of Credit in the form of Form G-2 (Form of Letter of Credit (Proposal)), or any combination thereof, as its Proposal Security; provided that the amount of all such Proposal Security shall equal \$5,000,000 in the aggregate.
- (d) The Proposal Security must be issued by an Eligible Security Issuer, and the Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal

Security is an Eligible Security Issuer. If, at any time following the Proposer's submission of its Proposal Security to PennDOT, any issuer ceases to be an Eligible Security Issuer, the Proposer shall promptly notify PennDOT in writing via email of such change, and within 15 days of such notice, the Proposer shall deliver to PennDOT new Proposal Security from a replacement Eligible Security Issuer. Upon PennDOT's receipt of such replacement Proposal Security, PennDOT shall promptly return the replaced Proposal Security to the Proposer. PennDOT shall have the right to draw on any Proposal Security (and to hold the resultant funds in escrow during the Proposal Validity Period) in the event that any Proposal Security is not promptly replaced in accordance with this Section.

3.7.2 Forfeiture of Proposal Security

Each Proposer understands and agrees that PennDOT will be entitled to draw on its Proposal Security in its entirety if:

- (a) after the PDA Proposal Due Date, the Proposer withdraws, repudiates, or otherwise indicates in writing that it will not meet one or more commitments made in its PDA Proposal (without PennDOT's written consent);
- (b) PennDOT disqualifies the Proposer pursuant to Sections 1.10.3(a) or 1.10.3(b);
- (c) any Proposal Security is not promptly replaced as described in Section 3.7.1(d).
- (d) following notification by PennDOT to the Proposer that such Proposer is the Apparent Best Value Proposer, if any of the following occur:
 - (i) the Apparent Best Value Proposer fails to negotiate in good faith as expressly described in Section 5.1;
 - (ii) the Effective Date does not occur by to the Effective Date Deadline set forth in the Procurement Schedule, unless that failure is directly attributable to one or more of the circumstances set forth in clauses (A) through (H) below, and those circumstances are not caused in whole or in part by the acts, omissions, negligence, fault, recklessness, or willful misconduct of the Apparent Best Value Proposer:
 - (A) PennDOT's insistence upon terms or conditions for any documents that are inconsistent with this ITP and the form of PDA included in this ITP (excepting for any request(s) by PennDOT for the incorporation of Proposal Work Product from any unsuccessful Proposer(s) into the PDA Documents pursuant to Section 5.1(c)(v), with respect to which the Apparent Best Value Proposer unreasonably withholds approval or fails to accommodate in good faith);
 - (B) PennDOT's cancellation of this procurement or decision not to execute the PDA with the Apparent Best Value Proposer and to end negotiations after the Apparent Best Value Proposer has engaged in good faith negotiations;
 - (C) failure of any PennDOT or Commonwealth approval required under Section 5.1(f) to be granted;
 - (D) PennDOT's failure to provide any other deliverable PennDOT is required to deliver to the PDA Entity as a condition precedent to the Effective Date;

- (E) an unresolved pending protest filed pursuant to Article 6 (unless PennDOT has elected to undertake execution of the PDA irrespective of such protest, in which case, this Section 3.7.2(d)(ii)(E) shall not apply);
- (F) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Governmental Entity of competent jurisdiction under Applicable Law that would prohibit execution of the PDA or materially prohibit performance by PennDOT or the PDA Entity under the PDA;
- (G) any action or failure to act by PennDOT or the Commonwealth in violation of law or any contract provision under which it is obligated and with respect to which the subject Proposer or the PDA Entity is an express beneficiary; or
- (H) PennDOT's failure to comply with any other conditions required by the P3 Law necessary for execution of the PDA.

For purposes of this Section 3.7.2, the Proposer's obligation to achieve the Effective Date under the PDA shall be satisfied when the Proposer has executed and delivered to PennDOT the PDA, and any other documents required under this ITP. Each Proposer, by submittal of its PDA Proposal, shall be deemed to have agreed to the foregoing.

3.7.3 Proposal Security Forfeiture as Liquidated Damages

The Proposers acknowledge and agree that the Proposal Security payable pursuant to Section 3.7.2 is in the nature of liquidated damages (and not a penalty) and represents a genuine and reasonable estimate of the loss that will be suffered by PennDOT as a result of any event detailed in Section 3.7.2, and is fair and reasonable to compensate PennDOT for losses it will incur as a result of such an event, including:

- (a) additional costs of administering the procurement of the Project; and
- (b) delay to the delivery of the Project, and loss of competition and potential best value to the general public.

3.7.4 Return of Proposal Security

- (a) PennDOT will retain the Proposal Security of each Proposer until the earliest to occur of the following:
 - (i) expiry of the Procurement Term;
 - (ii) the expiration of such Proposer's Proposal Validity Period (as it may have been extended in accordance with this ITP); and
 - (iii) the Effective Date.
- (b) Following the occurrence of any of the events specified in Section 3.7.4(a), PennDOT will return the one original and three certified copies of the Proposal Security of each Proposer within 15 days, except any Proposal Security drawn by PennDOT in accordance with the terms of this ITP; provided that PennDOT may elect, in its sole discretion, to return any Proposer's Proposal Security at an earlier date.

3.7.5 Performance Security for PDA Work

As a condition precedent to the Effective Date, the Apparent Best Value Proposer will be required to deliver the PDA Performance Security in an aggregate amount equal to \$10,000,000. PDA Performance Security requirements are detailed in Article 5 of the PDA.

4. PDA PROPOSAL EVALUATION PROCESS

4.1 Overview

PennDOT's intent is to create a fair and uniform basis for the evaluation of the PDA Proposals in compliance with all Applicable Laws governing the RFP Process.

The PDA Proposal evaluation process will include the following series of steps: (a) determination of whether a PDA Proposal is responsive and a review of each PDA Proposal for pass/fail criteria, (b) evaluation of the Administrative and Legal Information, the Technical Proposal, and the Financial Proposal, and (c) determination of the Apparent Best Value Proposer. The Apparent Best Value Proposer will then be determined in accordance with Section 4.10.3.

The details of the evaluation and selection process are set forth more fully in this Article 4.

4.2 Responsiveness and Pass/Fail Review

4.2.1 General

PennDOT will review the PDA Proposal submitted by a Proposer (a) for the responsiveness of the PDA Proposal to the requirements set forth in this ITP; (b) for conformance to the ITP instructions regarding organization and format; (c) for minor nonconformities, irregularities, and apparent clerical mistakes; and (d) based on the pass/fail criteria set forth below.

Those PDA Proposals not responsive to this ITP or which do not pass the pass/fail criteria, may be excluded from further consideration, and the Proposer will be so advised. PennDOT may also exclude from consideration any Proposer whose PDA Proposal contains a material misrepresentation.

A Proposer must obtain a "pass" on all pass/fail items under Sections 4.2.3 and 4.2.4 in order for its PDA Proposal to be further evaluated as set forth in this Article 4.

4.2.2 Responsiveness

If the PDA Proposal does not (a) fully comply with the instructions and requirements contained in this ITP, including the exhibits and forms; and (b) contain all Proposer information, certifications, signed statements and documents, and forms required by this ITP, it may be considered non-responsive and rejected.

4.2.3 Administrative and Legal Information – Pass/Fail

The Administrative and Legal Information will be evaluated based on the following pass/fail criteria:

- (a) Proposer has delivered a properly executed PDA Proposal Letter (Form A (PDA Proposal Letter));
- (b) Proposer has delivered a properly completed and executed Non-Collusion Affidavit (Form B (Non-Collusion Affidavit)) and such form does not identify any material adverse information;

- (c) Proposer has delivered a properly completed and executed Conflict of Interest Disclosure Statement (Form C (*Conflict of Interest Disclosure Statement*)) and such form does not identify any material adverse information;
- (d) Proposer and each Proposer Team Member have delivered a properly completed and executed Equal Employment Opportunity Certification (Form F (*Equal Employment Opportunity Certification*)).
- (e) (i) the organizational documents demonstrate that each member of the Proposer has, or (ii) in the case of a single purpose entity to be formally established upon announcement of the Apparent Best Value Proposer, such entity will have, legal capacity to undertake the work required by the PDA Documents, including appropriate provisions for management and decision-making within the organization as well as for continuation of the Proposer in the event of bankruptcy or withdrawal of any of its members, and are otherwise consistent with Project requirements (see Form A (*PDA Proposal Letter*));
- (f) (i) the Proposer Team, including Major Team Members and Key Personnel listed in the Proposer's SOQ, has not changed since the Proposer's submission of the SOQ; or (ii) the Proposer has previously advised PennDOT of a change in accordance with Section 1.14; PennDOT has consented to such change; and the PDA Proposal includes a true and correct copy of PennDOT's written consent thereto;
- (g) Proposer and any other entity required under this ITP to submit Form L (*Certification*) has submitted Form L (*Certification*) without any qualifications; and
- (h) Proposer has either satisfied the DBE goal for the PDA Work set forth in Section 1.16.2(a) or demonstrated that a GFE to satisfy such DBE goal has been made.

4.2.4 Financial Proposal – Pass/Fail

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

- (a) the Proposer has delivered Proposal Security in the form of a complete, properly-executed bond or letter of credit that complies with the requirements of Section 2.1(a) of Appendix 6 (*Financial Proposal Instructions*);
- (b) the Financial Proposal contains each of the materials, submittals, forms, certifications, and other documents required by and completed in accordance with Appendix 6 (*Financial Proposal Instructions*);
- (c) the Financial Proposal demonstrates that there have been no material adverse changes in the financial condition, liabilities, corporate form, or market capitalization of any Equity Member since the date of the submission of the Proposer's SOQ that have an impact on the ability of such Equity Member to fulfil its obligations as set forth in the Proposer's Administrative and Legal Information, Technical Proposal, and Financial Proposal, which have not been mitigated to the reasonable satisfaction of PennDOT; and
- (d) the Financial Proposal includes:
 - (i) Proposal Equity IRR that is not greater than the maximum value identified in Section 4.7(a);

- (ii) Development Entity Closing Fee that is not greater than the maximum value identified in Section 4.7(b)
- (iii) Pre-Development Cost Cap that are not greater than the maximum values identified in Section 4.7(c);
- (iv) D&C General Conditions Cost Percentage is not greater than the maximum value identified in Section 4.7(d);
- (v) D&C Markup Percentage is not greater than the maximum value identified in Section 4.7(e);
- (vi) Maintenance Work General Conditions Cost Percentage is not greater than the maximum value identified in Section 4.7(f); and
- (vii) committed funding by the PDA Entity for the PDA Work in an amount equal to the Pre-Development Cost Cap bid by such Proposer as identified in Section 4.7(g). The funding commitment should be evidenced in a letter from a financial officer, board of directors or other individual or committee who has the authority to approve such funding commitments.

4.3 PDA Proposal Scoring

Each responsive PDA Proposal passing all of the “pass/fail” requirements set forth Sections 4.2.3 and 4.2.4 will be evaluated and scored according to the criteria set forth herein. The maximum available score for a PDA Proposal will be 1,000 points, with points allocated as described below. Once PennDOT has scored the PDA Proposals in accordance with this ITP, the Proposer with the highest score will be determined to be the Apparent Best Value Proposer.

Evaluation Criteria	Maximum Score
Technical Proposal	700
Financial Proposal	300
Total	1,000

4.4 PDA Proposal Evaluation

PennDOT anticipates utilizing one or more evaluation and scoring committees to review and evaluate the PDA Proposals in accordance with the evaluation criteria.

After completion of, or concurrently with, the responsibility, responsiveness, and pass/fail review, the Administrative and Legal Information submissions, the Technical Proposals, and the Financial Proposals will be evaluated as set forth in Sections 4.6 and 4.7.

PennDOT may use and consider, in its sole discretion, any information provided in the PDA Proposal, as deemed appropriate by PennDOT, to assist in the evaluation of each criterion. The evaluation process will include appropriate procedures and safeguards to ensure that evaluation and scoring committee recommendations will be transparent and not be affected by bias.

At various times during the deliberations, the Issuing Office may request additional information or clarification from a Proposer, or may request the Proposer to verify or certify certain aspects of its PDA

Proposal. The scope, length, and topics to be addressed in any such clarification response shall be prescribed by the Issuing Office.

PennDOT may contact firm and personnel references supplied by the Proposer as well as other potential references not listed, including internal personnel of PennDOT. If language interpretation is required, the Proposer must note such requirement in its PDA Proposal. PennDOT will determine in its sole discretion whether such language interpretation can be accommodated.

4.5 Administrative and Legal Information Use

PennDOT may use and consider, in its sole discretion, any information provided by any Proposer in the Administrative and Legal Information as deemed appropriate by PennDOT to assist in the evaluation of each of the Technical Proposal and the Financial Proposal of such Proposer.

4.6 Technical Proposal Evaluation

The Technical Proposals will be evaluated based on the criteria described in this Section 4.6. The criteria (set out in Sections 4.6.1 and Section 4.6.2) will be combined by adding their point values as set forth below, with the sum of the criteria point values equaling the Technical Proposal score.

Each Technical Proposal shall comprehensively address the program objectives of:

- (a) Schedule Acceleration. Accelerate the renewal of major bridges to ensure public safety, with a focus of delivering as many Bridges as feasibly possible as part of the First Package, with a required Financial Close for the First Package by December 2022.
- (b) User Experience. Avoid or mitigate time and financial impacts to the traveling public for a positive user experience.
- (c) Value and Affordability. Provide value to the Commonwealth that enables a sustainable funding model for the Commonwealth's major bridges.
- (d) Partnership. Partner effectively to achieve a collaborative approach to pre-development and delivery of all Packages.
- (e) Opportunities. Optimize subcontracting opportunities for a wide range of firms, including DBE firms.

Technical Proposal Score

Technical Proposal score will be calculated as the sum of: [a] + [b] + [c] + [d] + [e] + [f] + [g] + [h] + [i] + [j]

Table 4.6: Technical Proposal Evaluation Criteria and Point Values

Criteria	Point Value
<i>PDA Work (400 points)</i>	
Introduction to Proposer’s High-Level Approach to Pre-Development and Packaging	[a] 65 points based on Proposer’s high level approach to packaging the Bridges as described in <u>Section 4.6.1(a)</u>
Preliminary PDA Work Schedule	[b] 60 points based on the schedule for the completion of the PDA Work as described in <u>Section 4.6.1(b)</u>
Preliminary PDA Organization	[c] 60 points based on Proposer’s organizational structure during the PDA Work period as described in <u>Section 4.6.1(c)</u>
Approach to D&C Work Pricing and Maintenance Work Pricing for Packages	[d] 55 points based on the Proposer’s approach to pricing for each Package as described in <u>Section 4.6.1(d)</u>
Approach to PDA Partnering and Collaboration	[e] 55 points based on the Proposer’s partnering approach as described in <u>Section 4.6.1(e)</u>
Preliminary PDA Quality Management Plan	[f] 55 points based on the Proposer’s approach to quality as described in <u>Section 4.6.1(f)</u>
Approach to PDA Reporting	[g] 50 points based on the Proposer’s approach to reporting as described in <u>Section 4.6.1(g)</u>
<i>First Package Work (300 points)</i>	
First Package Approach, Schedule, and Organizational Strategy	[h] 100 points based on the Proposer’s preliminary approach, schedule and organizational strategy for the Development Entity for the First Package as described in <u>Section 4.6.2(a)</u>
Approach to D&C Work for the First Package	[i] 100 points based on the Proposer’s approach to the D&C Work for the First Package as described in <u>Section 4.6.2(b)</u>
Preliminary Versions of PDA Work Submittals for the First Package	[j] 100 points based on the preliminary versions of certain elements of the technical portion of the First Package as described in <u>Section 4.6.2(c)</u>

4.6.1 PDA Work (400 points)

(a) Introduction to Proposer’s High-Level Approach to Pre-Development and Packaging (65 points)

(i) ***High-Level Timeline and Approach to Pre-Development and Packaging.*** Provide the Proposer’s preliminary high-level timeline for the entire Program and describe the overall

approach to packaging and delivering all nine Bridges, with a focus on ensuring the efficient delivery of all nine Bridges across every Package in an expedited manner.

- (ii) ***Strategies for a Consistent Approach to Packaging.*** Provide a narrative outlining the Proposer’s key strategies to ensure consistency of approach and management across all Packages.
- (iii) ***Approach to Risk Mitigation During Pre-Development and Across All Packages.*** Provide a narrative outlining the anticipated programmatic risks for the Program and the Proposer’s strategies for conducting appropriate due diligence and mitigating those risks across all Packages, including relevant stakeholder engagement and public outreach.
- (iv) ***Approach to Subcontracting during Pre-Development and Across All Packages.*** Provide a narrative outlining the Proposer’s contracting approach and outreach strategies to make an effort to foster small business participation and to include DBEs for the PDA Work and across all Packages.

(b) Preliminary PDA Work Schedule (60 points).

Provide a preliminary version of the “PDA Work Schedule” defined in Section 2.6.1 of the PDA Work Requirements and prepared in accordance with the requirements thereof (the “Preliminary PDA Work Schedule”). Please provide this using software compatible with ASTA, in accordance with the PDA Work Requirements, as well as in .pdf format.

(c) Preliminary PDA Organization (60 points).

Provide a preliminary roster and organizational chart of the PDA Entity’s staff performing the PDA Work including roles, in alignment with the expectations outlined in Section 2.1.1 of the PDA Work Requirements. Provide a narrative description of the organizational structure including roles, responsibilities, and personnel/staffing to be provided to ensure the PDA Work will be completed within the schedule and defined milestones set forth herein and in the PDA.

(d) Approach to D&C Work Pricing and Maintenance Work Pricing for Packages (55 points).

Describe the Proposer’s approach to achieving a firm, fixed price (D&C Work and the net present value, of the Maintenance Work) and costs for each Package in accordance with Sections 12 and 13 of the PDA Work Requirements. This should include preliminary methodologies for the development of a D&C Costing Model and a Maintenance Costing Model and should highlight the Proposer’s strategies for facilitating transparent and collaborative costing processes.

(e) Approach to PDA Partnering and Collaboration (55 points).

Describe the Proposer’s partnering approach, including the potential benefits and risks of the approach, and how that will facilitate PennDOT’s understanding and management of Project risks and opportunities during the term of the PDA. Provide two relevant examples of P3 projects in the United States or Canada (one during D&C and one during maintenance) that, if managed unsuccessfully, would have risked project viability. Describe how the Proposer previously has employed the planned partnering approach effectively or how the lessons learned from those critical experiences have informed its approach to the Project.

(f) Preliminary PDA Quality Management Plan (55 points).

Provide a preliminary PDA Quality Management Plan that outlines how the Proposer will provide quality assurance and quality control during the PDA period, in accordance with the expectations outlined in Section 2.8 of the PDA Work Requirements.

(g) Approach to PDA Reporting (50 points).

Describe the Proposer’s approach to reporting, including systems and sample reporting formats for weekly and monthly reports, in alignment with the expectations outlined in Section 2.5.3 of the PDA Work Requirements.

4.6.2 First Package Work (300 Points)

(a) First Package Approach, Schedule, and Organizational Strategy (100 points).

- (i) ***Preliminary Approach for the First Package.*** Describe the Proposer’s overall approach to the First Package, including a preliminary approach and rationale for including specific Bridges in the First Package (the “**First Package Bridges**”). By submitting the First Package Bridges, the Proposer commits to including the First Package Bridges as part of the First Package subject to the terms and conditions of the PDA.
- (ii) ***Preliminary Baseline Project Schedule for the First Package.*** Provide a Preliminary Baseline Project Schedule for the First Package in accordance with the expectations outlined in Section 2.6.3 of the PDA Work Requirements, excepting that the following requirements of Section 2.6.3 of the PDA Work Requirements shall not be requirements of the Preliminary Baseline Project Schedule submitted under this Section 4.6.2(a)(ii): (a) the requirement that schedule activities not exceed 21 days in duration; and (b) the requirement that schedule activities be cost- and resource-loaded. Please provide the Preliminary Baseline Project Schedule using software compatible with ASTA, in accordance with the PDA Work Requirements, as well as in .pdf format. Provide a narrative description of the preliminary schedule strategy for the First Package.
- (iii) ***Preliminary Organizational Strategy for the First Package.*** Provide a preliminary roster and organizational chart for the Development Entity for the First Package, in alignment with the expectations in Section 2.1.2 of the PDA Work Requirements. Provide a narrative description of the preliminary organizational strategy for the First Package, including preliminary strategies and approaches for:
 - (A) achieving the self-performance requirements for the First Package; and
 - (B) overall subcontracting strategy for the First Package, including but not limited to design, construction, and maintenance.

(b) Approach to D&C Work for the First Package (100 points).

Describe the Proposer’s approaches to the D&C Work for the First Package. Include a narrative that demonstrates an understanding of the various Bridge types, type of work needed, geographic conditions and other challenges of the Bridges that may be included in the First Package and, at a minimum, addressing the following key elements:

- (i) describe approaches to introducing innovative D&C methods for the First Package;
- (ii) describe the approach to demolition for the First Package, including but not limited to, an overall approach for demolition of a two girder multi-span continuous steel bridge, a sketch of the critical stage of demolition and a detailed engineering approach to ensure critical stage of demolition satisfies key structural considerations;
- (iii) describe the approach to construction staging for the First Package;
- (iv) describe the approach to evaluating bridge designs provided in the RIDs for Bridges considered for the First Package, including the approach to determining whether bridge type, span arrangement, superstructure and substructure designs are considered efficient;
- (v) describe the approach to achieve 100-year Bridge service life. Specifically, describe the approach for the following components of each Bridge envisioned for the First Package: (A) deck, (B) expansion joints, (C) superstructure and (D) substructure;
- (vi) describe the approach to ensure conformance to D&C specifications for the First Package; and
- (vii) provide a table listing the top three structural design, top three roadway design, and top three geotechnical design challenges for each potential Bridge in the First Package.

(c) Preliminary Versions of PDA Work Submittals for the First Package (100 points).

Provide preliminary versions of the following submittals that would be finalized during the PDA Work for the First Package in accordance with the PDA Work Requirements:

- (i) ***Preliminary Risk Management Plan for First Package.*** Provide the Proposer’s approach to risk mitigation for the First Package, including the approach to identification, management, mitigation, and allocation of risks in alignment with the expectations outlined in Section 2.4 of the PDA Work Requirements. This should include a preliminary risk matrix in accordance with the expectations outlined in Section 2.4 of the PDA Work Requirements.
- (ii) ***Preliminary Safety and Security Plan for First Package.*** Provide a preliminary Safety and Security Plan that outlines the Proposer’s approach to managing safety and maintaining safe practices for all activities, in alignment with the expectations outlined in Section 2.9.2 of the PDA Work Requirements.
- (iii) ***Preliminary Public Information and Communications Plan for First Package.*** Provide a preliminary Public Information and Communications Plan that outlines the Proposer’s approach to robust public outreach and community engagement efforts in close collaboration and partnership with PennDOT, in alignment with the expectations outlined in Section 2.10.2 of the PDA Work Requirements.
- (iv) ***Preliminary Plan for Maintenance Work and Handback Requirements for First Package.*** Provide a preliminary plan for Maintenance Work and Handback Requirements that outlines the Proposer’s approach to planning for the Maintenance Work and Handback Requirements, in alignment with the expectations outlined in Section 10 of the PDA Work Requirements.

4.7 Financial Proposal Evaluation

The Financial Proposals will be evaluated based on the criteria described in this Section 4.7. The criteria (set out in this Section 4.7) will be combined by adding their point values as set forth below, with the sum of the criteria point values equaling the Financial Proposal score.

No aspect of the Financial Proposal may be subject to any assumptions, qualifications, or conditions (only to the extent that any relief is granted under the PDA), and PennDOT may not award a point value to any part of the Financial Proposal that is so qualified.

The Financial Proposal may also include information found in Volume I (Administrative and Legal Information) that is pertinent to the Financial Proposal and information related to the financial cost-benefit implications and commitments of its most significant Technical Proposal commitments (to the extent that such commitments go further than the minimum requirements for the PDA Work set out in the PDA), provided that such information shall not be considered for the purpose of determining the Financial Proposal score.

<p>Financial Proposal Score</p> <p>Financial Proposal score will be calculated as the sum of: [a] + [b] + [c] + [d] + [e] + [f] + [g]</p>
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Table 4.7: Financial Proposal Evaluation Criteria and Point Values

Criteria	Point Value
Proposal Equity IRR (for each Package)	[a] 30 points based on the calculation in accordance with <u>Section 4.7(a)</u>
Development Entity Closing Fee (for each Package)	[b] 15 points based on the calculation in accordance with <u>Section 4.7(b)</u>
Pre-Development Cost Cap (aggregate for Project)	[c] 40 points based on the calculation in accordance with <u>Section 4.7(c)</u>
D&C General Conditions Cost Percentage (for each Package)	[d] 75 points based on the calculation in accordance with <u>Section 4.7(d)</u>
D&C Markup Percentage (for each Package)	[e] 100 points based on the calculation in accordance with <u>Section 4.7(e)</u>
Maintenance Work General Conditions Cost Percentage (for each Package)	[f] 25 points based on the calculation in accordance with <u>Section 4.7(f)</u>
Indicative Financing Plan	[g] 15 points based on the calculation in accordance with <u>Section 4.7(g)</u>

Proposers should review Section 2.2 of Appendix 6 (*Financial Proposal Instructions*) and applicable definitions with respect to the Financial Proposal Evaluation criteria.

(a) Proposal Equity IRR (30 Points).

The Proposal Equity IRR may not exceed 12%.

The “**Lowest Proposal Equity IRR**” means the lowest Proposal Equity IRR submitted by any of the Proposers.

The Proposal Equity IRR point value will be determined as follows: 30 points x (12% - Proposer’s Proposal Equity IRR) / (12% - Lowest Proposal Equity IRR).

(b) Development Entity Closing Fee (15 Points).

The Development Entity Closing Fee may not exceed 2%.

The “**Lowest Development Entity Closing Fee**” means the lowest Development Entity Closing Fee submitted by any of the Proposers.

The Development Entity Closing Fee point value will be determined as follows: 15 points x (2% - Proposer’s Development Entity Closing Fee) / (2% - Lowest Development Entity Closing Fee).

(c) Pre-Development Cost Cap (40 Points).

The Pre-Development Cost Cap for the Project may not exceed \$40,000,000 but must be greater than \$0.

The “**Lowest Pre-Development Cost Cap**” means the lowest Pre-Development Cost Cap (Aggregate for Project) submitted by any of the Proposers.

The Pre-Development Cost Cap point value will be determined as follows: 40 points x Lowest Pre-Development Cost Cap / Proposer’s Pre-Development Cost Cap.

(d) D&C General Conditions Cost Percentage (75 Points).

The “**D&C General Conditions Cost Percentage**” means the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs, D&C Markup Costs, and any mutually agreed D&C Work cost contingencies) for each Package on account of D&C General Conditions Costs in the D&C Costing Model required under Section 12 of the PDA Work Requirements.

D&C General Conditions Costs means direct project overhead costs, without contingencies, incurred for supervision and administration of the D&C Work inclusive of all self-performed and subcontracted D&C Work (refer to the definition of D&C General Conditions Costs for further details).

The D&C General Conditions Cost Percentage may not exceed 25%.

The “**Lowest D&C General Conditions Cost Percentage**” means the lowest D&C General Conditions Cost Percentage submitted by any of the Proposers.

The “**D&C General Conditions Adjustment Factor**” will be based on a qualitative examination and evaluation of the D&C General Conditions Cost Percentage as well as a one page narrative from the

Proposer explaining their rationale for the D&C General Conditions Cost Percentage to ascertain if the D&C General Conditions Cost Percentage is fair and realistic, not unreasonably low, and competitive in PennDOT’s sole discretion.

Level of Unreasonableness	D&C General Conditions Adjustment Factor	Characteristics
None	100%	Fair and realistic, comparable with other similar projects, representative of market conditions, and follows good industry practices.
Minor	90%	Slightly unfair and/or unrealistic, somewhat disproportionate with other similar projects, slightly incongruent of market conditions, and somewhat misaligned with good industry practices.
Moderate	75%	Unfair and/or unrealistic, disproportionate with other similar projects, divergent from market conditions, and misaligned with good industry practices.
Significant	50%	Completely unfair and unrealistic, too low to be considered appropriate, not comparable with other similar projects, unrepresentative of market conditions, and does not follow good industry practices.

The D&C General Conditions Cost Percentage point value will be determined as follows: (75 points x D&C General Conditions Adjustment Factor) x (25% - Proposer’s D&C General Conditions Cost Percentage) / (25% - Lowest D&C General Conditions Cost Percentage).

(e) D&C Markup Percentage (100 Points).

The “**D&C Markup Percentage**” will be the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs, D&C Markup Costs, and any mutually agreed D&C Work cost contingencies) for each Package on account of D&C Markup Costs in the D&C Costing Model required under Section 12 of the PDA Work Requirements.

“**D&C Markup Costs**” means general and administrative indirect overhead costs and profit applied to self-performed and subcontracted D&C Work for each Package. D&C Markup Costs shall include all markups applied to all D&C Work cost categories, including labor, equipment, materials, and subcontract costs.

The D&C Markup Percentage may not exceed 20%.

The “**Lowest D&C Markup Percentage**” means the lowest D&C Markup Percentage submitted by any of the Proposers.

The “**D&C Markup Adjustment Factor**” will be based on a qualitative examination and evaluation of the D&C Markup Percentage as well as a one page narrative from the Proposer explaining their rationale for the D&C Markup Percentage to ascertain if the D&C Markup Percentage is fair and realistic, not unreasonably low, and competitive in PennDOT’s sole discretion.

Level of Unreasonableness	D&C Markup Adjustment Factor	Characteristics
None	100%	Fair and realistic, comparable with other similar projects, representative of market conditions, and follows good industry practices.
Minor	90%	Slightly unfair and/or unrealistic, somewhat disproportionate with other similar projects, slightly incongruent of market conditions, and somewhat misaligned with good industry practices.
Moderate	75%	Unfair and/or unrealistic, disproportionate with other similar projects, divergent from market conditions, and misaligned with good industry practices.
Significant	50%	Completely unfair and unrealistic, too low to be considered appropriate, not comparable with other similar projects, unrepresentative of market conditions, and does not follow good industry practices.

The D&C Markup Percentage point value will be determined as follows: (100 points x D&C Markup Adjustment Factor) x (20% - Proposer’s D&C Markup Percentage) / (20% - Lowest D&C Markup Percentage).

(f) Maintenance Work General Conditions Cost Percentage (25 Points).

The “**Maintenance Work General Conditions Cost Percentage**” will be the maximum percentage that may be applied to the Maintenance Costs (excluding any mutually agreed Maintenance Work cost contingencies) for each Package on account of Maintenance Work General Conditions Costs in the Maintenance Costing Model required under Section 13 of the PDA Work Requirements.

Maintenance Work General Conditions Costs means direct project overhead costs incurred for any contracted/subcontract for Maintenance Work (refer to the definition of Maintenance Work General Conditions Costs for further details).

The Maintenance Work General Conditions Cost Percentage may not exceed 25%.

The “**Lowest Maintenance Work General Conditions Cost Percentage**” means the lowest Maintenance Work General Conditions Cost Percentage submitted by any of the Proposers.

The “**Maintenance Work General Conditions Adjustment Factor**” will be based on a qualitative examination and evaluation of the Maintenance Work General Conditions Cost Percentage as well a one page narrative from the Proposer explaining their rationale for the Maintenance Work General Conditions Cost Percentage to ascertain if the Maintenance Work General Conditions Cost Percentage is fair and realistic, not unreasonably low, and competitive in PennDOT’s sole discretion.

Level of Unreasonableness	Maintenance Work General Conditions Adjustment Factor	Characteristics
None	100%	Fair and realistic, comparable with other similar projects, representative of market conditions, and follows good industry practices.
Minor	90%	Slightly unfair and/or unrealistic, somewhat disproportionate with other similar projects, slightly incongruent of market conditions, and somewhat misaligned with good industry practices.
Moderate	75%	Unfair and/or unrealistic, disproportionate with other similar projects, divergent from market conditions, and misaligned with good industry practices.
Significant	50%	Completely unfair and unrealistic, too low to be considered appropriate, not comparable with other similar projects, unrepresentative of market conditions, and does not follow good industry practices.

The Maintenance Work General Conditions Cost Percentage point value will be determined as follows: (25 points x Maintenance Work General Conditions Adjustment Factor) x (25% - Proposer’s Maintenance Work General Conditions Cost Percentage) / (25% - Lowest Maintenance Work General Conditions Cost Percentage).

(g) Indicative Financing Plan (15 Points).

Proposers shall submit an explanation of its approach to securing committed financing for the First Package not to exceed three pages, which shall include: (A) a detailed timeline and process for securing all financing commitments prior to submitting a Package Proposal for the First Package; (B) a timeline of key financing related milestones between Package Proposal submission and the target financial close date for the First Package in December 2022; (C) a detailed description of the interplay between key financing and technical related workstreams during the PDA phase for the First Package; (D) an overview of the debt competition process to be undertaken by Proposer; and (E) the optimal sources of debt financing, any anticipated deliverables or requirements of PennDOT that will be required to secure such debt financing, and how this debt structure provides best value for money to PennDOT.

Proposer may be awarded higher points for submitting an indicative financial model for the First Package, including estimated availability payments over a 30-year maintenance period following the Substantial Completion date of the First Package. Note that the submission of an indicative financial model is not mandatory and any figures or metrics reflected in the indicative financial model (if submitted by Proposer) will not be binding.

4.8 PDA Proposal Commitments

Each PDA Proposal will be evaluated based on the level of commitment provided by the Proposer. Tentative or vague commitments will be given less weight than definite or precise commitments. For example, phrases such as “we may” or “we are considering” will be given less consideration in the evaluation process since they do not indicate a firm commitment but may have some value to the extent

that they demonstrate the Proposer’s understanding of the PDA Work or approach. Phrases such as “we will” or “we shall” indicate a firm commitment.

Any commitment related to the amounts specified under Section 4.7 will be deemed to be a firm, binding commitment of the Proposer independent of the language used to describe such commitment in the PDA Proposal.

Each PDA Proposal shall be considered commitments for which the Proposer will be held responsible in accordance with the terms of the PDA, and PennDOT will document such proposal commitments in the finalization of the PDA as relates to the Apparent Best Value Proposer.

4.9 Other Evaluation Considerations

PennDOT, in its sole discretion, may waive minor nonconformities, irregularities, and apparent clerical mistakes; and may offer a Proposer the opportunity to clarify its PDA Proposal or request revisions to all PDA Proposals, in each case, in accordance with Section 4.10.2. The provisions of this Section 4.9 are not intended to, and shall not, limit in any manner any of the rights reserved by PennDOT under Article 7.

4.10 Determination of Apparent Best Value Proposer

4.10.1 Communications

PennDOT may engage in communications with the Proposers after receipt of PDA Proposals, allowing Proposers to provide clarifications to their PDA Proposals or otherwise address issues that might prevent the PDA Proposal from being selected. This process will be initiated by delivery of a written request from the Issuing Office to the Proposer identifying the information needed, and a date and time by which the information must be provided. The Proposer shall provide the requested information in writing uploaded to the designated Project Portal folder by the date and time indicated. If the requested information is not timely received, the Proposer’s ratings may be adversely affected and the PDA Proposal may be declared unacceptable.

4.10.2 PDA Proposal Revisions

PennDOT may in its sole discretion request a PDA Proposal revision from all Proposers to provide Proposers an opportunity to revise their PDA Proposals, including correction of any weaknesses, minor nonconformity, irregularity, and apparent clerical mistake identified to the Proposers by PennDOT following initial evaluation of the PDA Proposals. The request for PDA Proposal revision will set forth a deadline, as determined by PennDOT, by which the Proposers must revise their PDA Proposals. Upon receipt of the PDA Proposal revisions, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise ratings as appropriate.

4.10.3 Determination of Apparent Best Value Proposer

Once the pass/fail and then (for those that pass) substantive evaluation of the Administrative and Legal Information, the Technical Proposal and the Financial Proposal has been completed, the evaluation and scoring committee will determine which Proposer’s submittal provides the Commonwealth with the best value. Award may be made to a Proposer even if the Proposer’s score on any individual volume is not the highest. The evaluation and scoring committee will utilize their technical and financial judgment and discretion to make a final recommendation of the submittal that provides the Commonwealth with the best value, considering all scores, relative weightings, qualitative evaluations, and other factors set forth in this ITP.

Once the evaluation and scoring committee has completed its evaluation and recommendation of the PDA Proposal that provides the best value to the Commonwealth, the PennDOT Secretary will authorize the notification of the Apparent Best Value Proposer and the commencement of the finalization of the PDA Documents with such Proposer pursuant to this Section 4.10.3.

Once the PennDOT Secretary has authorized the notification of the Apparent Best Value Proposer in accordance with the preceding paragraph, PennDOT shall notify the Apparent Best Value Proposer and proceed to finalization of the PDA in accordance with Section 5.1.

If selected by PennDOT as the Apparent Best Value Proposer, the Proposer may form a separate entity to act as the PDA Entity; provided, however, that the Equity Members identified in the PDA Proposal must directly or indirectly hold equity ownership in the PDA Entity such that the ownership of the PDA Entity will not constitute a “Change in Ownership” (as such term is defined under the PDA) in relation to the ownership structure submitted as part of the PDA Proposal. Until such PDA Entity is formed and enters into the PDA, the Proposer shall remain responsible for negotiating and finalizing the PDA in accordance with this ITP.

4.11 Ownership of PDA Proposal Work Product and Reimbursement Payment

Except as may be specified in the Stipend Agreement, all documents submitted by the Proposer during the RFP Process shall become the property of PennDOT and will not be returned to the Proposer. Additionally, if the Proposer agrees to accept the reimbursement payment offered by PennDOT, as specified herein, PennDOT shall have the rights to use concepts, ideas, and other information contained in the PDA Proposal in accordance with the terms and conditions set forth in the Stipend Agreement.

4.11.1 Payment of PennDOT Reimbursement

In the event that (a) PennDOT selects another Proposer as Apparent Best Value Proposer; or (b) PennDOT cancels the procurement between the PDA Proposal Due Date and the selection of the Apparent Best Value Proposer, a reimbursement in the amount of up to \$300,000 for the value of the Proposer’s Proposal Work Product, with certification of expenditures in that amount, will be paid to each unsuccessful Proposer that (i) is not selected as the Apparent Best Value Proposer and (ii) submits a responsive and timely PDA Proposal in accordance with the requirements of this ITP, including an executed Stipend Agreement, in the form of Form J (Stipend Agreement) in exchange for PennDOT’s ownership of the Proposer’s Proposal Work Product and ideas within.

PennDOT may decide to reimburse an unsuccessful Proposer that submits a PDA Proposal that is not responsive in accordance with the requirements of this ITP but otherwise meets the requirements listed in the above paragraph upon receipt of a written request from such unsuccessful Proposer. In such event, PennDOT will determine the amount payable, in its sole discretion, to the unsuccessful Proposer, not to exceed the value set forth above.

Any reimbursement will be payable pursuant to the terms and conditions of a Stipend Agreement. No reimbursement will be paid unless the Proposer executes by Electronic Signature and delivers the Stipend Agreement with its Administrative and Legal Information submission.

4.11.2 Payment of Reimbursement in the Event of Certain Failures to Reach Effective Date

In the event that a Proposer is selected as the Apparent Best Value Proposer and the Effective Date is not achieved, and such failure is directly attributable to any events identified in Section 3.7.2(d)(ii)(A)-(H) (subject to the limitations set forth therein), PennDOT will pay a reimbursement in an amount of up to

\$300,000 for the value of the Proposal Work Product, with certification of expenditures in that amount, to the Apparent Best Value Proposer in exchange for PennDOT's ownership of the Apparent Best Value Proposer's Proposal Work Product and the ideas within.

Any reimbursement will be payable pursuant to the terms and conditions of a Stipend Agreement. No reimbursement payment will be made unless the Apparent Best Value Proposer executes by Electronic Signature and delivers the Stipend Agreement with its Administrative and Legal Information.

4.11.3 Reimbursement Payment in the Event of Cancellation Prior to PDA Proposal Due Date

In the event that the procurement is cancelled prior to the PDA Proposal Due Date, Proposers will be provided with the opportunity, at their option, of attending an interview, and delivering to PennDOT the Proposal Work Product from their PDA Proposal preparations to date. There is no specific format required for such Proposal Work Product. If (i) a Proposer chooses to attend an interview, delivers its Proposal Work Product, and signs a modified Stipend Agreement (to be provided by PennDOT), and (ii) PennDOT agrees to accept such Proposal Work Product, PennDOT shall pay to such Proposer an amount that PennDOT, in its sole discretion, deems to be appropriate consideration for the value of the Proposal Work Product. Such amount shall not exceed \$300,000. No portion of the reimbursement amount will be paid in the event a Proposer chooses not to attend the interview or chooses not to deliver its Proposal Work Product.

4.11.4 Proposal Work Product

In consideration for PennDOT's agreement to make payment as provided in the Stipend Agreement, without any further compensation or consideration to the Proposer, each Proposer agrees that PennDOT shall have ownership over (a) all ideas and Proposal Work Product in its PDA Proposal (with the exception of Proprietary Intellectual Property); and (b) all other Proposal Work Product (with the exception of Proprietary Intellectual Property) that is not required to be returned to the Proposer under this ITP (including written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of the Proposer) received by PennDOT during the procurement. In addition, by accepting reimbursement under the Stipend Agreement, each Proposer waives any and all claims against PennDOT for use of all Proposal Work Product received from the Proposer.

With respect to Proprietary Intellectual Property, the Proposer shall (on behalf of itself and each Proposer Team Member) grant PennDOT an irrevocable, non-exclusive, perpetual, transferrable, sublicensable, royalty-free license to use such Proprietary Intellectual Property in accordance with Form J (*Stipend Agreement*).

PennDOT will have the right to disclose to the Apparent Best Value Proposer the contents of unsuccessful PDA Proposals from Proposers that have executed and delivered a Stipend Agreement after notification of the Apparent Best Value Proposer, and the PDA Documents may incorporate the above-described Proposal Work Product, ideas, or concepts based thereon. Upon the Proposer's receipt of payment hereunder, this right shall extend to allow PennDOT to use such Proposal Work Product, ideas, and concepts in the performance of PennDOT's functions. A Proposer's acceptance of the reimbursement shall operate as a release and waiver by the Proposer of any and all claims challenging the RFP Process, award, or cancellation of the RFP Process.

4.11.5 Costs Not Reimbursable

Any and all costs of preparing the PDA Proposal and any costs incurred at any time before award and execution of the PDA, including costs incurred for any interviews, costs associated with post-selection deliverables, and costs relating to the Effective Date and finance process, shall be borne by the Proposer, except for any reimbursement paid to Proposers in accordance with this Section 4.11.

4.11.6 Audit

PennDOT may, in its sole discretion, audit the costs incurred by any Proposer in preparing its PDA Proposal in order to verify the reimbursement amount payable to such Proposer. Should PennDOT elect to audit, PennDOT (or its designees) shall have access to all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred. Failure of the Proposer or its Proposer Team Members to maintain and retain records reasonably sufficient to allow PennDOT to verify all or a portion of the claim or to permit PennDOT access to the books and records of the Proposer and its Proposer Team Members shall constitute a waiver of the right to be paid a reimbursement and shall bar any recovery thereunder.

5. FINALIZATION OF THE PDA AND CLOSING

5.1 Executing the PDA

- (a) After being notified that it is the Apparent Best Value Proposer, PennDOT and the Apparent Best Value Proposer will finalize the PDA without further negotiation or amendment, except as may be permitted pursuant to this Section 5.1.
- (b) PennDOT may, however, and in its sole discretion, initiate limited negotiations as described herein after such date.
- (c) By submitting its PDA Proposal, each Proposer commits to enter into good faith negotiations with PennDOT to finalize the PDA in the form included as part of the RFP Documents, without any revisions except with respect to the following:
 - (i) minor changes, additions, and modifications necessary to create a complete and legally binding contract;
 - (ii) additions or modifications to those provisions that require information regarding the Apparent Best Value Proposer's corporate and financing structure, provided that such additions or modifications are consistent with the terms of the form of PDA and this ITP, in PennDOT's reasonable discretion;
 - (iii) additions or modifications required in order to incorporate terms or concepts provided in the PDA Proposal submitted by the Apparent Best Value Proposer that have been approved or required by PennDOT for inclusion in the PDA;
 - (iv) additions or modifications required to complete the schedules, exhibits, appendices, or forms in the PDA; and
 - (v) incorporation into the PDA of Proposal Work Product from unsuccessful Proposers who have submitted a Stipend Agreement in accordance with Section 4.11 of this ITP.

- (d) Notwithstanding Section 5.1(c), PennDOT may (in accordance with the P3 Law) agree to negotiate certain terms of the PDA with the Apparent Best Value Proposer. Any decision as to whether or when to commence such negotiations is at PennDOT's sole discretion.
- (e) The Apparent Best Value Proposer will be deemed to have failed to engage in good faith negotiations with PennDOT and shall forfeit its Proposal Security if the Apparent Best Value Proposer:
 - (i) fails to attend or actively participate in reasonably scheduled negotiation meetings with PennDOT; or
 - (ii) insists upon terms or conditions for any documents to be negotiated or provided by the Apparent Best Value Proposer under this ITP (including the PDA Documents) that are inconsistent with this ITP.
- (f) Once the PDA has been finalized between PennDOT and the PDA Entity, it will be submitted for approval by the PennDOT Secretary, PennDOT's Office of Chief Counsel, the Office of General Counsel, the Pennsylvania Attorney General (as to form and legality pursuant to and as required under the act of October 15, 1980 (P.L. 950, No. 164), as amended, known as the Commonwealth Attorneys Act), and Comptroller Operations. PennDOT will use reasonable efforts to keep the Apparent Best Value Proposer updated as to the status of approval of the PDA by the Commonwealth required signatories listed above.
- (g) The Effective Date shall occur no later than the Effective Date Deadline. PennDOT may extend the Effective Date Deadline by written notice to the Apparent Best Value Proposer but may not extend the Effective Date beyond the Proposal Validity Period described in Section 3.1.7 without mutual agreement by the Apparent Best Value Proposer. If the Apparent Best Value Proposer fails to satisfy all conditions to the execution of the PDA and fails to execute the PDA prior to the Effective Date Deadline (unless as a direct result of PennDOT's failure to satisfy any of the condition to execution of the PDA for which PennDOT is responsible under this ITP or the PDA), PennDOT may revoke its selection of the Apparent Best Value Proposer, draw on the Apparent Best Value Proposer's Proposal Security as and to the extent set out in Section 3.7.2, and may take any other action described in Article 7.
- (h) As part of the finalization of the PDA, PennDOT and the PDA Entity shall complete all conditions set forth below:
 - (i) All PennDOT and Commonwealth approvals regarding the award of the PDA to the PDA Entity and the finalized PDA form, as required under Section 5.1(f), have been granted and remain in full force and effect.
 - (ii) PDA Entity has provided PennDOT with legal opinions consistent with general P3 market practice and customary for a transaction of this nature addressed to PennDOT, from the PDA Entity's legal counsel, as to, among other things:
 - (A) the organization, existence, and good standing and qualification to do business in the Commonwealth, of the PDA Entity and any Equity Members;
 - (B) the due authorization and signing of the PDA;
 - (C) the enforceability of the PDA against the PDA Entity; and

- (D) confirmation that the PDA does not violate any Applicable Law or any of PDA Entity's organizational documents.
- (iii) If not provided with the PDA Proposal:
- (A) If PDA Entity or any Equity Member is a corporation or includes a corporation as a joint venture member, partner, or member, provide articles of incorporation and bylaws for the PDA Entity and any such Equity Member and each corporation certified by an appropriate individual.
 - (B) If PDA Entity or any Equity Member is a consortium or joint venture, or includes a joint venture as a joint venture member, partner, or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for PDA Entity and any such Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation, and bylaws for a corporation, certificate of formation and operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual.
 - (C) If PDA Entity or any Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner, or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for PDA Entity and any such Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, or certificate of formation and operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual.

If an Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation, and organizational documents of the fund manager shall satisfy the requirements for such Equity Member's organizational documents under this Section 5.1(h)(iii).

The PDA Entity's partnership agreement, limited liability company operating agreement, or joint venture agreement, as applicable, must include an express provision satisfactory to PennDOT stating that, in the event of a dispute between or among joint venture members, partners, members, or shareholders, no joint venture member, partner, member, or shareholder, shall be entitled to stop, hinder, or delay work on the Project.

- (iv) Confirmation of PDA Entity's (A) EIN, (B) registration with the Pennsylvania Department of Revenue, (C) registered agent for service of process in the Commonwealth, and (D) if required by Applicable Law, Pennsylvania business license obtained from the applicable clerks of the Court of Common Pleas.
- (v) The PDA Entity has delivered to PennDOT any performance security (for the avoidance of doubt to include any payment and performance bonds and/or letters of credit), in form and substance as required under the PDA.

- (vi) The PDA Entity has delivered to PennDOT a bringdown of the Key Personnel and Major Team Member commitments set forth in this ITP dated as of the Effective Date.
 - (vii) The PDA Entity has obtained and delivered to PennDOT pro forma or exemplar “specimen” copies of insurance policies and all endorsements thereto that conform to all the terms specified herein with bindable proposals from insurers in a binder evidencing that all insurances required under the PDA will be in place as of the Effective Date.
 - (viii) The PDA Entity has provided PennDOT with acceptable evidence that the Key Personnel, and all other staff working on behalf of the PDA Entity are properly licensed to carry out their respective scopes of work under the PDA.
 - (ix) The PDA Entity has delivered to PennDOT an executed copy of Form H (*Certification Regarding Use of Contract Funds for Lobbying*).
 - (x) The PDA Entity has delivered to PennDOT an executed copy of Form L (*Certification*).
 - (xi) The PDA Entity has delivered to PennDOT an executed copy of Form M (*Title VI Assurances*).
 - (xii) Satisfaction of any other conditions to execution of the PDA set forth under the P3 Law, the Implementation Manual, or other Applicable Law.
- (i) This ITP permits a Proposer to identify and form an entity other than the Proposer to enter into the PDA as the PDA Entity. However, if the entity identified as the proposed PDA Entity in the PDA Proposal is not formed as required by this ITP or fails to comply with the requirements set forth in this ITP, the entities that signed the PDA Proposal shall have the joint and several obligation to enter into the PDA themselves. The business form of the PDA Entity and any entities that will have joint and several liability under the PDA or that will provide a performance guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, certificate of formation, bylaws, or equivalent documents) must be consistent with the requirements of the PDA Documents and provide for continuation of the PDA Entity in the event of bankruptcy or withdrawal of any of its members.
 - (j) Further, PennDOT may initiate negotiations with a Proposer other than the Apparent Best Value Proposer if: (i) negotiations with the Apparent Best Value Proposer are unsuccessful, or (ii) the Apparent Best Value Proposer does not provide sufficient information or timely feedback to finalize the PDA in accordance with the Procurement Schedule.

5.2 Withdrawal of Apparent Best Value Proposer Status

Pursuant to Article 7, PennDOT may formally end negotiations with the Proposer selected as the Apparent Best Value Proposer and revoke its status as Apparent Best Value Proposer.

6. PROTEST PROCEDURES

This Article 6 sets forth the exclusive remedies for protests and claims related to the selection of a PDA Proposal available with respect to this ITP.

6.1 Protests and Claims against PennDOT

Pursuant to 74 Pa. C.S. § 9109(m), Proposers must file any protest or claim against PennDOT in accordance with the procedures set forth in 62 Pa. C.S. Ch. 17, including 62 Pa. C.S. § 1711.1(b) (Filing of Protest).

6.2 Claims against Non-Commonwealth Entities

Pursuant to 74 Pa. C.S. § 9109(n), Proposers may file a claim against a public entity other than a Commonwealth agency in a court of common pleas where that entity is located.

7. PENNDOT RESERVED RIGHTS

In connection with this procurement and consistent with Act 88 of 2012, as amended, as well as the Implementation Manual, PennDOT reserves to itself all rights (which rights shall be exercisable by PennDOT in its sole discretion) available to it under the P3 Law, Implementation Manual and Applicable Law, including without limitation, and with or without cause, the right at any time to:

- (a) modify the procurement including procurement documentation to address Applicable Law and/or the best interests of PennDOT or the Commonwealth;
- (b) develop the Project in any manner that it deems necessary or desirable, including modifying the scope of the Project;
- (c) modify all dates set or projected in this ITP;
- (d) reject any and all submittals, responses, and PDA Proposals or request revisions to PDA Proposals to all Proposers;
- (e) terminate evaluation of any and all submittals, responses, and PDA Proposals, at any time;
- (f) negotiate with a Proposer other than the Apparent Best Value Proposer if negotiations with the Apparent Best Value Proposer are unsuccessful;
- (g) require confirmation of information furnished by a Proposer and require additional information from a Proposer concerning its PDA Proposal, including requiring additional evidence of qualifications to perform the work described in this ITP, including holding meetings and exchanging correspondence with the Proposers to seek an improved understanding of the PDA Proposals (it being understood that if any such meetings are held, all Proposers submitting responsive PDA Proposals will be afforded an opportunity to participate in an individual Proposer meeting);
- (h) add or delete responsibilities from the information and scope of work contained in this ITP;
- (i) issue Addenda, supplements, and modifications to this ITP from time to time and at any time;
- (j) revise and modify the evaluation factors or otherwise revise or expand the evaluation methodology for the PDA Proposals by issuing an Addendum at any time before the PDA Proposal Due Date;
- (k) cancel this ITP in whole or in part at any time prior to the execution of the PDA, without incurring any cost obligations, other than honoring any agreed upon compensation or stipends to PDA Proposers and having no further obligation thereafter;

- (l) issue a new RFP after withdrawal of the original RFP;
- (m) appoint evaluation and scoring committees to review PDA Proposals, make recommendations, and seek the assistance of outside experts and consultants in PDA Proposal evaluation;
- (n) establish protocols for remedying minor deficiencies within a specified period of time in a PDA Proposal;
- (o) disqualify any Proposer under this ITP or a subsequent RFP for violating any rules or requirements of the procurement set forth in this ITP or in any other communication from PennDOT or its outside experts or consultants;
- (p) determine whether to issue a notice to proceed after execution of the PDA or any Project Agreement;
- (q) determine whether to pursue TIFIA credit approval on behalf of any Private Entity;
- (r) determine whether to seek an allocation for PABs on behalf of any Private Entity;
- (s) develop, finance, design, construct, operate, or maintain (or any combination of the foregoing), itself or through another Governmental Entity or Governmental Entities, or with a third party of PennDOT's choice, some or all of the Project itself;
- (t) disclose information contained in any PDA Proposal to the public as governed by Applicable Law, order of any court having jurisdiction, or by this ITP (or both);
- (u) exercise any other right reserved or afforded to PennDOT under this ITP, or Applicable Law or in equity;
- (v) disqualify any Private Entity for any conflict of interest, including a violation of the State Adverse Interest Act, or other conduct or behavior manifesting a lack of responsibility;
- (w) make independent calculations with respect to numbers and calculations submitted in any PDA Proposal for purposes of its evaluation;
- (x) seek or obtain information, and consider such information, from any source, including the evaluators' personal experiences or knowledge, that, in each case, has the potential to improve the understanding and evaluation of the PDA Proposals;
- (y) waive deficiencies in any Proposal and review a non-conforming Proposal, or permit clarifications or supplements to any Proposal;
- (z) accept changes to a PDA Proposal after submission;
- (aa) disqualify any Proposer that changes any submittal, response, or otherwise modifies its PDA Proposal after submission without PennDOT's prior, written approval;
- (bb) adjust the terms of, or not pursue, financing for the Project on behalf of Private Entities;
- (cc) reject PDA Proposals from Proposers where any member of Proposer's team has failed to perform timely or satisfactorily any prior contract with PennDOT;

- (dd) exercise its discretion in relation to the matters that are the subject of this ITP as it considers necessary or expedient in light of all circumstances prevailing at the time that PennDOT considers relevant;
- (ee) modify electronic document file names;
- (ff) suspend or terminate negotiations at any time, recommence negotiations with the Apparent Best Value Proposer after negotiations have been suspended, elect not to commence PDA negotiations with any responding Proposer, or engage in negotiations with other than the highest ranked Proposer;
- (gg) approve or disapprove changes in the Key Personnel identified in the SOQ;
- (hh) approve or disapprove changes in the Proposer's organization;
- (ii) offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties), if applicable; and
- (jj) select a no-build alternative with respect to any Bridge and reduce the scope of the Project accordingly.

This ITP does not commit or bind PennDOT to enter into any contract or proceed with the procurement described herein.

In no event shall PennDOT be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as the PDA has been authorized and executed by PennDOT, and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of PennDOT to the Proposers during the RFP Process, which obligations are expressly set forth in this ITP. In submitting a PDA Proposal in response to the RFP, the Proposer is specifically acknowledging these disclaimers.

Except as expressly set forth in Section 4.11, or otherwise as set forth in this ITP, should the RFP Process or negotiations be suspended, discontinued or terminated, the PDA Private Entities, including specifically Proposers, shall have no rights of recourse to PennDOT or any other Governmental Entity or public entity, or any of their respective Constituents, including for reimbursement of any Private Entity review fee(s) or costs associated, directly or indirectly, with the PDA Proposal development or presentations. PennDOT assumes no obligations, responsibilities, or liabilities, fiscal or otherwise, for any such costs, incurred or alleged to have been incurred, by parties considering a response to or responding to this ITP. As among PennDOT, any other Governmental Entity or public entity, and any of their respective Constituents, and Proposer, all of such costs shall be borne solely by each Proposer.

Appendix 1

Definitions and Acronyms

Definitions of capitalized terms used and not otherwise defined in this ITP are set out in Exhibit 1 (Definitions) to the PDA.

C.F.R.	Code of Federal Regulations	PTC	Pennsylvania Turnpike Commission
D&C	Design and construction	RFC	Request for Clarifications
DBE	Disadvantaged Business Enterprise	RFP	Request for Proposals
EIS	Environmental Impact Statement	RFQ	Request for Qualifications
FHWA	Federal Highway Administration	RID	Reference Information Document
ITP	Instructions to Proposers	SOQ	Statement of qualifications
NEPA	National Environmental Policy Act	TIFIA	Transportation Infrastructure Finance and Innovation Act of 1998, codified at 23 U.S.C. §§ 601 et. seq., as amended and as it may be amended from time to time.
P3	Public-private partnership	TMP	Transportation management plan
PABs	Private activity bonds	U.S.	United States of America
PDA	Pre-Development Agreement	USDOT	United States Department of Transportation
PennDOT	Pennsylvania Department of Transportation		

“**Addenda**” or “**Addendum**” is defined in Section 1.3.3.

“**Administrative and Legal Information**” means the part of the PDA Proposal described in Appendix 4 (Administrative and Legal Information Instructions).

“**Apparent Best Value Proposer**” is defined in Section 1.3.1.

“**ASTA**” has the meaning assigned to such term in the Pre-Development Agreement.

“**Authorized PennDOT Representative**” is defined in Section 1.10.1.

“**Authorized Representative**” is defined in Section 1.10.2(a).

“**Committed Investment**” means (a) any form of direct investment by Equity Members, including the purchase of equity shares in the Development Entity; (b) any bona fide indebtedness of the Development Entity for funds borrowed that: (i) is held by any Equity Member and (ii) is subordinated in priority of

payment and security to all debt held by Persons who are not Equity Members; or (c) an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming the Development Entity as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition.

“**Commonwealth**” is defined in Section 1.1.

“**Communications Protocol**” means the Communications Protocol dated September 20, 2021 delivered by PennDOT to the Shortlisted Proposers.

“**D&C Cost**” means the design and construction cost included in each Package Proposal, including right-of-way costs.

“**D&C General Conditions Adjustment Factor**” is described in Section 4.7(d).

“**D&C General Conditions Cost Percentage**” is described in Section 4.7(d).

“**D&C General Conditions Costs**” means direct project overhead costs, incurred on the contract for supervision and administration of the overall contract. For the avoidance of doubt, D&C General Conditions Costs shall not include contingencies and shall include the following items:

- (a) bonds, all types;
- (b) non-payroll insurance;
- (c) licenses, permits, and fees;
- (d) staffing including, but not limited to, oversight, supervision, administration, management, and safety;
- (e) site security;
- (f) subsistence (covers any expenses for staff outside of the travel, lodging, relocation, per diem);
- (g) travel;
- (h) lodging;
- (i) relocation/housing expenses;
- (j) per diem;
- (k) vehicles for project oversight including, but not limited to, registrations, fuel, maintenance, and insurance;
- (l) technology and communications;
- (m) project safety expense;

- (n) temporary facilities including, but not limited to, rent, security and access control, utilities, office equipment, office expenses, furniture, insurance, and taxes;
- (o) temporary staging areas, fuel depots, and storage yards; and
- (p) miscellaneous including certifications for staff required for the work, and incidentals.

For the avoidance of doubt, D&C General Conditions Costs exclude day-to-day Development Entity overhead expenses (i.e., SPV costs). Development Entity overhead or SPV costs prior to the Final Acceptance Date will be in addition to the D&C General Conditions Costs.

“**D&C Markup Adjustment Factor**” is defined in Section 4.7(e).

“**D&C Markup Percentage**” is defined in Section 4.7(e).

“**DBFM Term Sheet**” means the “Project Agreement Term Sheet” attached as an exhibit to the PDA.

“**Development Entity Closing Fee**” means the amount, if any, of the closing fee expected to be paid to the applicable Development Entity in connection with Financial Close of a Package. The Development Entity Closing Fee shall be calculated as the percentage bid under Section 4.7(b) multiplied by the amount of Committed Investment for the Package reaching financial close and shall be paid out of the financing raised for such Package. The Development Entity Closing Fee is a success fee payable to the Development Entity for achieving financial close of a Package and is not intended to reimburse any specific predevelopment costs incurred prior to financial close of a Package. The Development Entity Closing Fee is not defined as an Allowed Cost.

“**Disadvantaged Business Enterprise**” or “**DBE**” is defined in Section 1.16.

“**Dollars**” or “**\$**” means the lawful money of the United States of America.

“**Draft RFP**” means the draft Requests for Proposals for the Project issued by the Commonwealth in accordance with the Procurement Schedule.

“**Effective Date**” means the effective date of the PDA.

“**Effective Date Deadline**” is defined in Appendix 2.

“**Electronic Signature**” means a scan of an original blue ink signature, an encrypted digital signature, or electronic signature.

“**Environmental Impact Statement**” means a document that is prepared for a transportation project in accordance with the National Environmental Policy Act of 1969 or NEPA. For the Project, the NEPA process requires that a draft EIS, final EIS and Record of Decision be prepared in accordance with 23 C.F.R. 771.123 – 125 for each study.

“**Equity Commitment Documents**” is described in Section 2.1.(b) of Appendix 6 (*Financial Proposal Instructions*).

“**Federal Highway Administration**” or “**FHWA**” is defined in Section 1.8.

“**Final RFP**” means the last RFP for the Project issued by PennDOT in accordance with the Procurement Schedule.

“**Finance Plan**” is defined in Section 1.16.1.

“**Financial Proposal**” means the part of the PDA Proposal described in Appendix 6 (Financial Proposal Instructions).

“**Financing Manager**” means the member of the Proposer Team who is responsible for the development of the finance plan and associated debt and equity commitment.

“**First Package**” means the first Package to be delivered by PDA Entity’s affiliated Development Entity in accordance with this Agreement under a Project Agreement.

“**First Package Bridges**” is defined in Section 4.6.2(a)(i).

“**First Package Work**” means Package Work to be completed for the First Package under a Project Agreement.

“**GFE**” is defined in Section 1.16.2(a).

“**Governmental Entity**” means the government of the United States of America, the Commonwealth, the cities and counties within the Commonwealth, and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission, or other authority exercising executive, legislative, judicial, regulatory, administrative, or taxing functions of, or pertaining to, the government of the United States of America, the Commonwealth, the cities or counties within the Commonwealth.

“**Guarantor**” means an entity, typically related or the parent company, that intends to provide financial support or guarantees on behalf of the Development Entity in favor of PennDOT.

“**Implementation Manual**” is defined in Section 1.1.

“**Independent Quality Firm**” means an entity that is (a) retained by a Development Entity or Lead Construction Contractor, but independent of such Development Entity’s and Lead Construction Contractor’s design, engineering, or construction organization, and (b) not an Affiliate of a Development Entity or Lead Construction Contractor, any joint venture or consortium member of such Development Entity or Lead Construction Contractor, or of any other entity within such Development Entity’s or Lead Construction Contractor’s organization.

“**Instructions to Proposers**” or “**ITP**” is defined in Section 1.1.

“**Issuing Office**” means the Office of Public-Private Transportation Partnerships of the Pennsylvania Department of Transportation. For the purposes of this ITP, the designated point of contact for the Issuing Office is the Authorized PennDOT Representative.

“**Lead Construction Contractor**” means the entity with primary responsibility for work related to design and construction, and other technical development work with respect to the PDA Work, including design management.

“Lead Engineering Firm” means the entity, whether a single entity or a joint venture (incorporated or unincorporated), partnership or limited liability company, primarily responsible for the creation of the design and engineering of the Project.

“Lowest D&C General Conditions Cost Percentage” is defined in Section 4.7(d).

“Lowest D&C Markup Percentage” is defined in Section 4.7(e).

“Lowest Development Entity Closing Fee” is defined in Section 4.7(b).

“Lowest Maintenance Work General Conditions Cost Percentage” is defined in Section 4.7(f).

“Lowest Pre-Development Cost Cap” is defined in Section 4.7(c).

“Lowest Proposal Equity IRR” is defined in Section 4.7(a).

“Maintenance Costs ” means the cost associated with Maintenance Work included in each Package Proposal.

“Maintenance Work” means maintenance, repair, reconstruction, rehabilitation, restoration, renewal, or replacement of any worn-out, obsolete, deficient, damaged, or under-performing portion of any Package or related infrastructure under a Project Agreement that is not routine maintenance.

“Maintenance Work General Conditions Adjustment Factor” is described in Section 4.7(f).

“Maintenance Work General Conditions Cost Percentage” is described in Section 4.7(f).

“Maintenance Work General Conditions Costs” means direct project overhead costs incurred for any contracted/subcontracted for Maintenance Work. For the avoidance of doubt, Maintenance Work General Conditions Costs shall include the following items required for subcontracted Maintenance Work for each section:

- (a) bonds, all types;
- (b) non-payroll insurance;
- (c) subsistence (covers any expenses for staff outside of the travel, lodging, relocation, per diem);
- (d) travel;
- (e) lodging;
- (f) per diem;
- (g) project oversight, supervision, and administration;
- (h) vehicles for project oversight, supervision, administration, and management including, but not limited to, registrations, fuel, maintenance, and insurance;

- (i) technology and communications, including, but not limited to, phones, computers, internet connections, radios, and tablets;
- (j) temporary facilities including, but not limited to, rent, security and access control, utilities, office equipment, office expenses, furniture, insurance, and taxes;
- (k) temporary staging areas, fuel depots, laydown areas, and storage yards; and
- (l) miscellaneous including certifications for staff required for the work, and incidentals.

For the avoidance of doubt, Maintenance Work General Conditions Costs exclude day-to-day Development Entity overhead expenses (i.e., SPV costs). Development Entity overhead or SPV costs following the Final Acceptance Date will be in addition to the Maintenance Work General Conditions Costs.

“Major Non-Equity Team Member” means any Major Team Member other than Equity Members and the fund general partner(s) of any Equity Member(s).

“Major Team Member” means each of the following: (a) Equity Member; (b) if an Equity Member is an investment fund, the fund’s general partner(s); (c) Lead Construction Contractor; (d) Lead Engineering Firm; (e) Nominated Subconsultant (if any); (f) Nominated Subcontractor (if any); and (g) at least one Independent Quality Firm, that employs the proposed Quality Assurance Manager.

“National Environmental Policy Act” or **“NEPA”** is defined in Section 1.8.

“Nominated Subconsultant” means any subconsultant to the Lead Engineering Firm identified by name in a Proposer’s SOQ (and which is not otherwise captured by paragraphs (a) to (d) of the definition of Major Team Member).

“Nominated Subcontractor” means any subcontractor to the Lead Construction Contractor identified by name in a Proposer’s SOQ (and which is not otherwise captured by paragraphs (a) to (d) of the definition of Major Team Member).

“One-on-One Meeting” is defined in Section 2.1.1(c).

“P3 Law” is defined in Section 1.1.

“Package” is defined in Section 1.1.

“Package Work” is defined in Section 1.4.2.

“PDA Documents” means the draft PDA, including (a) the draft PDA Work Requirements and (b) the DBFM Term Sheet.

“PDA Entity’s Project Manager” means the PDA Entity project manager as submitted by the Proposer as part of its SOQ.

“PDA Proposal” is defined in Section 1.1.

“PDA Proposal Due Date” means the date and time by which the Administrative and Legal Information, the Technical Proposal, and the Financial Proposal must be submitted as shown in the Procurement Schedule.

“**PDA Proposal Letter**” means a letter submitted by the Proposer with its PDA Proposal in the form of Form A (PDA Proposal Letter).

“**PDA Work**” is defined in Section 1.4.1.

“**PDA Work Requirements**” means the requirements for the PDA Work set out in Exhibit 6 (*PDA Work Requirements*) of the PDA, as may be amended from time to time, as part of this procurement.

“**PennDOT**” is defined in Section 1.1.

“**PennDOT Secretary**” is means the Secretary of PennDOT.

“**Pennsylvania Department of Transportation**” is defined in Section 1.1.

“**Pre-Development Agreement**” or “**PDA**” is defined in Section 1.1.

“**Pre-Proposal Submittal**” is defined in Section 2.7.

“**Preliminary Baseline Project Schedule**” is the preliminary version of the Baseline Project Schedule defined in Section 2.6.3 of the PDA Work Requirements.

“**Preliminary PDA Work Schedule**” is defined in Section 2.6.1 of the PDA Work Requirements.

“**Private Activity Bonds**” refers to Private Activity Bonds under Section 142 of the Internal Revenue Code as amended by Section 11143 of Title XI of SAFETEA-LU to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds (PABs) may be issued.

“**Private Entity**” means a person, entity, group or organization that is not the federal government, the Commonwealth or a Pennsylvania municipal authority.

“**Procurement Schedule**” is defined in Appendix 2 (Procurement Schedule).

“**Procurement Term**” means the term of the procurement for the Project’s PDA Entity, commencing upon issuance of the RFQ and ending at the earliest of (a) award and execution of the PDA on the Effective Date, (b) the date on which PennDOT rejects all PDA Proposals, and (c) the date on which PennDOT has notified the Proposers in writing that no PDA will be executed and that the procurement has been canceled.

“**Program**” is defined in Section 1.1.

“**Project**” is defined in Section 1.1.

“**Project Agreement**” is defined in Section 1.1.

“**Project Financing**” means the total non-recourse Development Entity debt (senior and subordinated) and equity investment raised for a given Package. “**Proposal Bond**” means the bond provided by the PDA Entity in accordance with Section 3.7 and in the form of Form G-1 (Form of Proposal Bond).

“**Proposal Equity IRR**” means the Equity IRR submitted by a Proposer in response to the RFP as required under Section 2.2(a) of 7(p)Appendix 6 (Financial Proposal Instructions).

“**Proposal Letter of Credit**” means the letter of credit provided by the PDA Entity in accordance with Section 3.7 and in the form of Form G-2 (*Form of Letter of Credit (Proposal)*).

“**Proposal Security**” is defined in Section 3.7.1(a).

“**Proposal Validity Period**” is defined in Section 3.1.7.

“**Proposal Work Product**” is defined in Section 2(c) of Form J (*Stipend Agreement*).

“**Proposer**” is defined in Section 1.1.

“**Proposer Team**” means the entities and individuals that are named as part of the Proposer’s PDA Proposal, including the Proposer’s Major Team Members and Key Personnel. A reference to a “**Proposer Team Member**” is a reference to each of the entities and individuals comprising the Proposer Team.

“**Proprietary Intellectual Property**” is defined in Section 2(d) of Form J (*Stipend Agreement*).

“**Public-Private Transportation Partnership Agreement**” has the meaning given in the P3 Law.

“**Quality Assurance Manager**” means the party employed by an Independent Quality Firm that is responsible for performance of the quality assurance aspects of overall Project design and construction.

“**Requests for Clarification**” means any written comments submitted to PennDOT using Form I (*RFC Template*) following the procedure outlined in Section 2.4.

“**Request for Proposals**” is defined in Section 1.1.

“**Request for Qualifications**” is defined in Section 1.1.

“**RFP Documents**” means the documents set forth and described in Section 1.3.3.

“**RFP Process**” means the procurement process to determine the Apparent Best Value Proposer to develop and deliver the Project, commencing with the issuance of this ITP and terminating upon the Effective Date or the date that PennDOT notifies the Proposers that the procurement for the Project has been terminated, whichever occurs first, and includes the various steps described in this ITP.

“**Shortlisted Proposer**” is defined in Section 1.1.

“**State Adverse Interest Act**” is defined in Section 1.12.1.

“**Statement of Qualifications**” is defined in Section 1.1.

“**Stipend Agreement**” means the Stipend Agreement attached as Form J (*Form of Stipend Agreement*).

“**Substantial Completion**” has the meaning assigned to such term in the Project Agreement Term Sheet.

“**Technical Proposal**” means the part of the PDA Proposal described in (p)Appendix 5 (*Technical Proposal Instructions*).

“Tolling Civil Infrastructure” means all tolling infrastructure necessary for preparing the site for acceptance by PennDOT, which includes the toll gantry structures, toll buildings and cabinets, toll building HVAC, toll building security access control system, site power connections and site duct bank work.

Appendix 2

Procurement Schedule

Event	Date and Time
Issuance of first Draft RFP (ITP and PDA)	September 30, 2021
Issuance of first Draft RFP (Project Agreement Term Sheet)	October 15, 2021
Issuance of first Draft RFP (PDA Work Requirements)	October 21, 2021
Deadline for (i) One-on-One Meeting agenda and (ii) any RFCs and white papers Proposer wishes to discuss in One-on-One Meeting	October 26, 2021 3 P.M. Eastern Time
One-on-One Meetings	Week of November 1, 2021
Issuance of second Draft RFP and responses to RFCs and white papers	November 15, 2021
Deadline for (i) One-on-One Meeting agenda and (ii) final RFCs and white papers from Proposers	November 29, 2021 3 P.M. Eastern Time
One-on-One Meetings	Week of December 6, 2021
Deadline for Pre-Proposal Submittals related to change in organization and Key Personnel	December 8, 2021 2 P.M. Eastern Time
Final RFP and responses to RFCs and white papers	December 15, 2021
PDA Proposal Due Date	January 19, 2022 2 P.M. Eastern Time
Anticipated notification of Apparent Best Value Proposer	February 23, 2022
Effective Date Deadline	March 2022
Financial Close Deadline for the First Package	December 2022

Appendix 3

Summary and Order of Proposal Contents

Proposal Component	Form	ITP Cross- Reference	Page Limits
Volume I. Administrative and Legal Information			
Section 1. Administrative Information			
Proposal Letter	<u>Form A</u>	<u>Appendix 4, Section 2.1(b)</u>	N/A
Authorization Documents	N/A	<u>Appendix 4, Section 2.1(b)</u>	N/A
Executive Summary	N/A	<u>Appendix 4, Section 2.1(c)</u>	3 pages
Pre-Proposal Submittals	N/A	<u>Appendix 4, Section 2.1(e)</u>	N/A
Non-Collusion Affidavit	<u>Form B</u>	<u>Appendix 4, Section 2.1(f)(i)</u>	N/A
Conflict of Interest Disclosure Statement	<u>Form C</u>	<u>Appendix 4, Section 2.1(f)(ii)</u>	N/A
DBE Pledge	<u>Form E</u>	<u>Appendix 4, Section 2.1(f)(iii)</u>	N/A
Equal Employment Opportunity Certificate	<u>Form F</u>	<u>Appendix 4, Section 2.1(f)(iv)</u>	N/A
Lobbying Certification	<u>Form H</u>	<u>Appendix 4, Section 2.1(f)((v))</u>	N/A
Stipend Agreement	<u>Form J</u>	<u>Appendix 4, Section 2.1(f)(vi)</u>	N/A
Federal Debarment Certification	<u>Form K</u>	<u>Appendix 4, Section 2.1(f)(vii)</u>	N/A
Certification	<u>Form L</u>	<u>Appendix 4, Section 2.1(f)(viii)(A)</u>	N/A
Legal Information	N/A	<u>Appendix 4, Section 2.1(f)(viii)(B)</u>	N/A
Title VI Assurances	<u>Form M</u>	<u>Appendix 4, Section 2.1(f)(ix)</u>	N/A
Confidential Contents Index	N/A	<u>Appendix 4, Section 2.1(g)</u>	N/A
List of Proposer Team Members	N/A	<u>Appendix 4, Section 2.1(h)</u>	N/A
Section 2 Appendices			
Copies of Organization Documents	N/A	<u>Appendix 4, Section 2.1(b)</u>	N/A

Proposal Component	Form	ITP Cross- Reference	Page Limits
Proposer Teaming Agreement or Key Terms	N/A	<u>Appendix 4</u> , Section 2.1(b)	N/A
Letter accepting joint and several liability, if applicable	N/A	<u>Appendix 4</u> , Section 2.1(b)	N/A
Volume II. Technical Proposal			
Section 1 Technical Proposal General Information			
Technical Proposal Checklist	N/A	<u>Appendix 5</u> , Section 3.1	N/A
Section 2 PDA Work Criteria			
Introduction to Proposer’s High-Level Approach to Predevelopment and Packaging	N/A	<u>Appendix 5</u> , Section 3.2	5 pages
Preliminary PDA Work Schedule	N/A	<u>Appendix 5</u> , Section 3.2	N/A
Preliminary PDA Organization	N/A	<u>Appendix 5</u> , Section 3.2	5 pages
Approach to D&C Work Pricing and Maintenance Work Pricing for Packages	N/A	<u>Appendix 5</u> , Section 3.2	4 pages
Approach to PDA Partnering and Collaboration	N/A	<u>Appendix 5</u> , Section 3.2	4 pages
Preliminary PDA Quality Management Plan	N/A	<u>Appendix 5</u> , Section 3.2	N/A
Approach to PDA Reporting	N/A	<u>Appendix 5</u> , Section v	3 pages
Section 3 First Package Work Criteria			
First Package Approach, Schedule, and Organizational Strategy	N/A	<u>Appendix 5</u> , Section 3.3	8 pages (N/A for the Preliminary Baseline Project Schedule for First Package)
Approach to D&C for the First Package	N/A	<u>Appendix 5</u> , Section 3.3	30 pages

Proposal Component	Form	ITP Cross- Reference	Page Limits
Preliminary Versions of PDA Work Submittals for the First Package	N/A	<u>Appendix 5</u> , Section 3.3	N/A
Volume III. Financial Proposal			
Section 1. General Information			
Proposal Security	<u>Form G-1</u> , <u>Form G-2</u> , or both	<u>Appendix 6</u> , Section 2.1(a)	N/A
Equity Commitment Documents	N/A	<u>Appendix 6</u> , Section 2.1(b)	N/A
Section 2. Financial Proposal Submittals			
Proposal Equity IRR	<u>Form D</u>	<u>Appendix 6</u> , Section 2.2(a)	N/A
Development Entity Closing Fee	<u>Form D</u>	<u>Appendix 6</u> , Section 2.2((b))	N/A
Pre-Development Cost Cap	<u>Form D</u>	<u>Appendix 6</u> , Section 2.2(c)	N/A
D&C General Conditions Cost Percentage	<u>Form D</u>	<u>Appendix 6</u> , Section 2.2((d))	N/A for Form; 1 page for narrative
D&C Markup Percentage	<u>Form D</u>	<u>Appendix 6</u> , Section 2.2((e))	N/A for Form; 1 page for narrative
Maintenance Work General Conditions Cost Percentage	<u>Form D</u>	<u>Appendix 6</u> , Section 2.2((f))	N/A for Form; 1 page for narrative
Section 3. Indicative Financial Plan			
Indicative Financing Plan for the First Package	N/A	<u>Appendix 6</u> , Section 2.3	3 pages

Appendix 4

Administrative and Legal Information Instructions

1. GENERAL INSTRUCTIONS

This Appendix 4 (Administrative and Legal Information Instructions) describes the required information and submission format regarding the Administrative and Legal Information. Proposers shall submit the administrative and legal information required by this Appendix 4 (Administrative and Legal Information Instructions), separated and labeled appropriately. The Administrative and Legal Information shall be limited to the page limitations (if any) specified for that submittal.

Proposers are to provide all information set out in this Appendix 4 (Administrative and Legal Information Instructions). Proposers must provide the following information in their Administrative and Legal Information volume in the order specified in this index. No part of the Administrative and Legal Information should contain the Proposer's proposed costs or any financial information.

2. CONTENTS OF ADMINISTRATIVE AND LEGAL INFORMATION

Each Proposer must include in its Administrative and Legal Information the documents/information listed in this Appendix 4 (Administrative and Legal Information Instructions), unless the provision of such documents/information is stated to be at Proposer's election. Documents comprising Volume I (Administrative and Legal Information) of the PDA Proposal must be submitted electronically, and organized and sequenced according to the Sections listed below. Further details regarding the Administrative and Legal Information submittal requirements are provided in the remaining Sections of this Appendix 4 (Administrative and Legal Information Instructions).

2.1. Administrative and Legal Information (Section 1)

(a) Administrative and Legal Information Checklist

A copy of the checklist for the Administrative and Legal Information submission provided in Appendix 3 (Summary and Order of Proposal Contents) must be included in the Administrative and Legal Information submission, indicating Proposer's use of such checklist to ensure all contents of the Administrative and Legal Information submission, Technical Proposal, and Financial Proposal are provided in its PDA Proposal. The Proposer shall not amend the order nor change the contents of the checklist.

(b) PDA Proposal Letter

The Administrative and Legal Information shall include a completed and executed PDA Proposal Letter (Form A (PDA Proposal Letter)). The Proposer shall attach to the PDA Proposal Letter evidence of authorization to execute and deliver the PDA Proposal, the PDA, and all other documents required to be executed by the Proposer or the PDA Entity in connection with the PDA and award of the PDA. If the Administrative and Legal Information contemplates formation of a separate legal entity, the evidence of authorization may be in the form of a single document authorizing a nominated and identified representative to execute documents on behalf of each Equity Member and the Proposer.

The Proposer shall certify in its PDA Proposal Letter that it has read, accepts, and is able to obtain the insurances set forth in Exhibit 10 (*Required Insurance for PDA Work*) to the PDA.

(c) Executive Summary

The Proposer shall provide an executive summary, not to exceed three pages in length, written in a non-technical style that contains sufficient information to familiarize reviewers with the Proposer's approach to the PDA Work and the First Package Work and its ability to satisfy the financial, legal, and technical requirements of the PDA.

Each Proposer shall attach to the Executive Summary the following two organization charts:

- (i) a table indicating the roles of the Major Team Members and their shares of ownership of any joint venture or other entities; and
- (ii) a table showing the relationship between any of the Major Team Members and Guarantors.

These charts will not be counted towards the page limit for the Executive Summary.

(d) Proposer Information, Certifications, and Documents

If a form required hereunder calls for execution or information concerning a Major Team Member that is a consortium, partnership, or joint venture, the form must be provided for the consortium, partnership, or joint venture and the individual members of the consortium, partnership, or joint venture; provided, however, that execution of the form, if required, on behalf of the consortium, partnership, or joint venture need only be by an authorized signatory of the consortium, partnership, or joint venture.

The Administrative and Legal Information submission shall include copies of organizational documentation and other organizational and legal deliverables for the Proposer, PDA Entity, and Equity Members as required under Appendix 1 to the PDA Proposal Letter. Such documentation shall be provided in an appendix to Volume I (Administrative and Legal Information).

If the Proposer is a consortium, partnership, or any other form of joint venture, the Administrative and Legal Information submission shall contain an executed teaming agreement or, if the entities making up the Proposer have not executed a teaming agreement, a summary of the key terms of the anticipated agreement.

If the PDA Entity is to be a consortium, partnership, or any other form of a joint venture, or an association that is not a legal entity, the Administrative and Legal Information submission shall contain a letter signed by each Equity Member identified in the Technical Proposal indicating it will accept joint and several liability for the PDA Entity's obligations under the PDA. If the PDA Entity is not a consortium, partnership, or any other form of a joint venture, or an association that is not a legal entity, such a letter shall not be required.

(e) Pre-Proposal Submittals

The Proposer shall include a copy of PennDOT's approval letter provided under Section 2.7 for any approved Pre-Proposal Submittals.

(f) PDA Proposal Forms

(i) ***Non-Collusion Affidavit***

The Administrative and Legal Information submission shall include Form B (*Non-Collusion Affidavit*), certifying that the PDA Proposal is not the result of, and has not been influenced by, collusion. Form B (*Non-Collusion Affidavit*) shall be executed with an Electronic Signature by each Proposer on its behalf and by each of the Equity Members separately on its own behalf.

(ii) ***Conflict of Interest Disclosure Statement***

Each Proposer, on behalf of itself and all Proposer Team Members, shall voluntarily disclose to PennDOT, in writing, any fact that may provide it with an unfair competitive advantage, or potential or actual conflict of interest. The Administrative and Legal Information shall include Form C (*Conflict of Interest Disclosure Statement*) executed with an Electronic Signature by the Proposer, on behalf of itself, all Proposer Team Members, describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest. Each Proposer, on behalf of itself and all Proposer Team Members, shall complete and deliver an executed Form C (*Conflict of Interest Disclosure Statement*) even if the Proposer, on behalf of itself and all Proposer Team Members, has nothing to disclose, in which case, the Proposer shall so indicate on Form C (*Conflict of Interest Disclosure Statement*).

(iii) ***DBE Pledge***

The Administrative and Legal Information submission shall include Proposer's executed Form E (*DBE Pledge*).

(iv) ***Certification Regarding Equal Employment Opportunity***

The Administrative and Legal Information submission shall include Form F (*Equal Employment Opportunity Certification*), regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports. Form F (*Equal Employment Opportunity Certification*) shall be provided by all Proposer Team Members.

(v) ***Certification Regarding Use of Contract Funds for Lobbying***

The Administrative and Legal Information submission shall include executed copies of Form H (*Certification Regarding Use of Contract Funds for Lobbying*), regarding use of contract funds for lobbying. Form H (*Certification Regarding Use of Contract Funds for Lobbying*) shall be executed with an Electronic Signature by the authorized signatory of the entity executing such form.

(vi) ***Stipend Agreement***

The Administrative and Legal Information submission shall include an executed Form J (*Form of Stipend Agreement*) from the Proposer if the Proposer wishes to be eligible for a reimbursement payment. Form J (*Form of Stipend Agreement*) shall be executed with an Electronic Signature by the authorized signatory of the Proposer.

(vii) ***Federal Debarment Certification***

The Administrative and Legal Information submission shall include Form K (*Federal Debarment Certification*) from the Proposer. Form K (*Federal Debarment Certification*) shall be executed by the authorized signatory of the Proposer.

(viii) ***Legal Information and Certification***

(A) Legal Certification

The Administrative and Legal Information submission shall include the legal information required under subsection (B) (*Legal Information*) below and Form L (*Certification*). Form L (*Certification*) must be executed with an Electronic Signature by the Proposer, each Proposer Team Member, and each Guarantor.

(B) Legal Information

The following information regarding legal issues affecting the Proposer Team shall be submitted:

(a) Legal Issues

Identify and explain any significant anticipated federal or Commonwealth legal issues relating to the Proposer, any Equity Members, and any Major Non-Equity Team Members that must be resolved in order to develop and deliver the Project, and perform its obligations under the PDA and a Project Agreement (if applicable).

(b) Legal Liabilities

Provide a list and a brief description of all instances during the last five years involving transportation projects and those projects identified in Proposer's SOQ which the Proposer, any Equity Member, any Major Non-Equity Team Member, or any Affiliate (as defined in Form L (*Certification*)) of the foregoing was (a) determined, pursuant to a determination in a court of law, arbitration proceeding, or other dispute resolution proceeding, to be liable for a material breach of contract, or (b) terminated for cause. For each instance, identify an owner's representative, and

provide accurate contact information including address, telephone number, and e-mail address, if available.

(c) Legal Proceedings

Provide a list and a brief description (including the resolution) of: (a) each arbitration, litigation, dispute review board, and other formal dispute resolution proceeding occurring during the last five years related to a transportation project; and (b) those projects identified in Proposer's SOQ involving a claim or dispute, meeting all of the following:

- (i) is between the project owner; and the Proposer, any Equity Member, any Major Non-Equity Team Member, or any Affiliate (as defined in Form L (Certification)) of the foregoing; and
- (ii) involves an amount in excess of the smaller of (1) 2% of the original contract value or (2) \$500,000 on projects with a contract value in excess of \$25 million. Include items that were subject to arbitration, litigation, dispute review board, or other formal dispute resolution proceedings even if settled without completion of the proceeding.

With respect to the information requested in this Section 2.1(f)(vii), failure to fully disclose this information, conditional or qualified submissions (i.e., "to our knowledge," "to the extent of available information," "such information is not readily available," "such information is not maintained in the manner requested," etc.) to requests or questions posed, incomplete or inaccurate submissions, or non-responsive submissions, or failure to provide information enabling PennDOT to contact owner representatives may, in the sole discretion of PennDOT, lead to a determination that the Proposer is not responsible.

(ix) ***Title VI Assurances***

The Administrative and Legal Information submission shall include executed a copy of Form M (Title VI Assurances).

(g) Confidential Contents Index

The Administrative and Legal Information submission shall contain an index that sets forth the specific items (and the location by section and page number of each item within the Administrative and Legal Information submission, Technical Proposal, and Financial Proposal) that the Proposer deems confidential, a trade secret, or proprietary information protected by Applicable Law. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for PennDOT to treat the entire PDA Proposal as public information. Notwithstanding the foregoing, the list required under this Section 2.1(g) is intended to provide input to PennDOT as to the confidential nature of a Proposer's PDA Proposal, but in no event shall such list be binding on PennDOT, determinative of any issue relating to confidentiality, or override or modify the provisions

of the Right-to-Know Law, other Applicable Law, or PennDOT's responsibilities thereunder.

(h) List of Proposer Team Members

The Proposer shall provide a list of all firms that have been included in the PDA Proposal as Proposer Team Members.

Appendix 5

Technical Proposal Instructions

1. GENERAL INSTRUCTIONS

This Appendix 5 (Technical Proposal Instructions) describes the submission format for the Technical Proposal and outlines the required information that will comprise a Technical Proposal.

Each Proposer must submit the information required by this Appendix 5 (Technical Proposal Instructions) in the organization and format specified herein. Each component of the Technical Proposal must be clearly divided, titled, and identified within Volume II (Technical Proposal) of the Proposal.

All forms named herein are found in this ITP. All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

Evidence of signatory authority must be provided for all individuals signing forms and letters in the Proposal. Attach such evidence of signatory authority to the relevant form; however, evidence of signatory authority need only be provided once in the Proposal for each authorized signatory. Similar authorization must be provided for all other signatories.

2. FORMAT

The Technical Proposal shall be limited to the individual page limits indicated in 3.2 and 3.3 of this Appendix 5 (Technical Proposal Instructions) and in the format described by Section 3.2 of the ITP.

3. CONTENTS OF TECHNICAL PROPOSAL

Each Proposer must include in its Technical Proposal the documents/information listed in Sections 3.1 through 3.3 of this Appendix 5 (Technical Proposal Instructions), unless the provision of such documents/information is stated to be at Proposer's election. Documents comprising Volume II (Technical Proposal) of the Proposal must be submitted electronically, and organized and sequenced according to the Sections listed below. Further details regarding the Technical Proposal submittal requirements are provided in the remaining Sections of this Appendix 5 (Technical Proposal Instructions).

3.1. Technical Proposal General Information (Section 1)

Technical Proposal Checklist. A copy of the checklist for the Technical Proposal provided in Appendix 3 (Summary and Order of Proposal Contents) must be included in the Technical Proposal, indicating Proposer's use of such checklist to ensure all contents of the Technical Proposal and Financial Proposal are provided. The Proposer shall not amend the order nor change the contents of the checklist.

3.2. PDA Work Criteria (Section 2)

The Proposer shall provide its response to Section 4.6.1 in this PDA Work Criteria (Section 2). The Proposer's response shall follow the page limits listed in the table below.

PDA Work	Page Limit
Introduction to Proposer’s High-Level Approach to Pre-Development and Packaging	5 pages
Preliminary PDA Work Schedule	N/A
Preliminary PDA Organization	5 pages
Approach to D&C Work Pricing and Maintenance Work Pricing for Packages	4 pages
Approach to PDA Partnering and Collaboration	4 pages
Preliminary PDA Quality Management Plan	N/A
Approach to PDA Reporting	3 pages

3.3. First Package Work Criteria (Section 3)

The Proposer shall provide its response to Section 4.6.2 in this First Package Work Criteria (Section 3). The Proposer’s response shall follow the page limits listed in the table below.

Package Work	Page Limit
First Package Approach, Schedule, and Organizational Strategy	8 pages (N/A for the Preliminary Baseline Project Schedule for First Package)
Approach to D&C Work for the First Package	30 pages
Preliminary Versions of PDA Work Submittals for the First Package	N/A

Appendix 6

Financial Proposal Instructions

This Appendix 6 (*Financial Proposal Instructions*) describes the submission format for Financial Proposals and outlines the required information that will comprise a Financial Proposal.

Each Proposer must submit the information required by this Appendix 6 (*Financial Proposal Instructions*) in the organization and format specified herein. Each component of the Financial Proposal must be clearly divided, titled, and identified within Volume III of the Proposal.

All forms named herein are found in this ITP. All blank spaces in the PDA Proposal forms must be filled in as appropriate. No substantive change shall be made in the PDA Proposal forms.

1. **FORMAT OF FINANCIAL PROPOSAL; INTERPRETATION MATTERS**

All financial information provided in the Financial Proposal must be in Dollar currency only and all amounts must be clearly identified as real or nominal Dollars, as indicated in the applicable form.

If there are any differences between the sum of individual line amounts and totals, the individual line amounts will prevail.

2. **CONTENTS OF FINANCIAL PROPOSAL**

All parts of the Proposal that indicate financial terms are to be included only in the Financial Proposal.

Each Proposer must include in its Financial Proposal the documents/information listed in Section 2.1 of this Appendix 6 (*Financial Proposal Instructions*), unless the provision of such documents/information is stated to be at the Proposer's election. Further details regarding the Financial Proposal submittal requirements are provided in the remaining Sections of this Appendix 6 (*Financial Proposal Instructions*).

2.1. **General Information (Section 1)**

(a) Proposal Security

The Financial Proposal must contain the Proposal Bond (Form G-1) (*Form of Proposal Bond*) or original Proposal Letter of Credit (Form G-2) (*Form of Letter of Credit (Proposal)*) comprising the Proposal Security, which must comply with the requirements set forth in Section 3.7. The Proposal Security originals must be delivered in a sealed envelope. The envelope must be labeled: "PROPOSAL SECURITY ORIGINAL."

(b) Equity Commitment Documents

The Financial Proposal shall include the following as evidence of the Equity Members' commitment to provide their committed equity investments to fund the PDA Work (collectively, the "Equity Commitment Documents"):

- (i) Each Equity Member shall identify the exact funding source for its committed equity investment and demonstrate that all necessary funds will be readily available for the anticipated date of the start of the PDA Work (for example, Chief Financial Officer certification of fund availability). Depending on who will be the contributor of equity, include:
 - (A) In cases where the equity is contributed by an investment fund, please identify: (1) the date the fund was established; (2) the total amount raised in the investment fund; (3) the total amounts of undrawn and immediately available funds which are committed to be invested in the Project; and (4) documentation evidencing the availability of funds described in (3) (e.g., confirmation from the fund administrator of undrawn and available funds); and (5) the fund managers and general characteristics of the fund investors.
 - (B) In cases where the Equity Member intends to contribute equity through use of internal resources (e.g., a corporate entity supplying its own capital), please identify: (1) where and how the equity commitment will be sourced; and (2) the total amounts of funds available to be invested in the Project.
- (ii) Written documentation of action taken by each Equity Member's board (or any other relevant corporate or governance body from which authorization is required), authorizing such Equity Member to submit the Financial Proposal as a member of the relevant Proposer. Such documentation may include board resolutions, investment committee resolutions, officer's certifications, executed copies of or detailed term sheets for any contribution agreements or shareholder/member agreements that includes the detailed terms and conditions describing how and when the committed equity investment will be provided by the Equity Members.
- (iii) A description of the percentage, form and timing of the total committed equity investment to be made by each Equity Member and each Equity Member's investment horizon. Describe any future equity transfers anticipated by any Equity Member. To the extent committed equity investments or distributions/repayments will be made at different times by/to different Equity Members, details regarding the nature and timing of such arrangements, as well as the investment profile and return shall be provided for each Equity Member.

2.2. Financial Proposal Submittals (Section 2)

(a) Proposal Equity IRR

The Financial Proposal shall specify the Proposer's Proposal Equity IRR by completing Section 1 of Form D (*Financial Proposal Form*). The Proposal Equity IRR will be the maximum Equity IRR that can be submitted as part of a Package Proposal in the Initial Base Case Financial Model for each Package, as further specified in the PDA.

Proposal Equity IRR should be submitted as a percentage to the tenth of a percentage point (e.g. 1.5%, not 1.49%). Proposals shall confirm that the Proposal Equity IRR is consistent with the calculation methodology provided within the definition of Equity IRR in the PDA.

(b) Development Entity Closing Fee

The Financial Proposal shall specify the Proposer's Development Entity Closing Fee that will apply to each Package by completing Section 2 of Form D (*Financial Proposal Form*). The Development Entity Closing Fee should be submitted as a percentage to the tenth of a percentage point (e.g. 1.5%, not 1.49%).

(c) Pre-Development Cost Cap

The Financial Proposal shall specify the Proposer's Pre-Development Cost Cap for the Project (all Packages) by completing Section 3 of Form D (*Financial Proposal Form*).

The Pre-Development Cost Cap for the Project is the maximum Allowed Costs that may be reimbursed to the PDA Entity or Development Entity for the Project (all Packages). For the avoidance of doubt, Allowed Costs relate to costs incurred for the performance of the PDA Work from execution of the PDA to execution of the Project Agreement.

Pre-Development Cost Cap amounts should, in each case, be all-inclusive of any Allowed Costs (which excludes Development Entity Closing Fee) anticipated to be reimbursed to the PDA Entity.

Pre-Development Cost Cap must be submitted as a nominal Dollar amount in ten thousand Dollar increments and will not be adjusted based on when Financial Close occurs.

(d) D&C General Conditions Cost Percentage

The Financial Proposal shall specify the Proposer's D&C General Conditions Cost Percentage for the Project by completing Section 4 of Form D (*Financial Proposal Form*).

The D&C General Conditions Cost Percentage will be the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs and D&C Markup Costs) for each Package.

The D&C General Conditions Cost Percentage should be submitted as a percentage to the tenth of a percentage point (e.g., 11.5%, not 11.49%).

Proposals shall confirm that the D&C General Conditions Cost Percentage shall cover all items outlined within the definition of D&C General Conditions Costs.

Proposer shall provide a one page narrative explaining the rationale for the D&C General Conditions Cost Percentage.

(e) D&C Markup Percentage

The Financial Proposal shall specify the Proposer's D&C Markup Percentage for the Project by completing Section 5 of Form D (*Financial Proposal Form*).

The D&C Markup Percentage will be the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs and D&C Markup Costs) for each Package.

The D&C Markup Percentage should be submitted as a percentage to the tenth of a percentage point (e.g., 11.5%, not 11.49%).

Proposer shall provide a one page narrative explaining the rationale for the D&C Markup Percentage.

(f) Maintenance Work General Conditions Cost Percentage

The Financial Proposal shall specify the Proposer's Maintenance Work General Conditions Cost Percentage for the Project by completing Section 6 of Form D (*Financial Proposal Form*).

The Maintenance Work General Conditions Cost Percentage will be the maximum percentage that may be applied to the Maintenance Work for each Package.

The Maintenance Work General Conditions Cost Percentage should be submitted as a percentage to the tenth of a percentage point (e.g., 11.5%, not 11.49%).

Proposals shall confirm that the Maintenance Work General Conditions Cost Percentage shall cover all items outlined within the definition of Maintenance Work General Conditions Costs.

Proposer shall provide a one page narrative explaining the rationale for the Maintenance Work General Conditions Cost Percentage.

2.3. **Indicative Financial Plan (Section 3)**

The Proposer shall set out its approach to securing committed financing for the First Package as described in Section 4.7(g) (not to exceed three pages).

Appendix 7

PDA Proposal Forms

PDA Forms (attached hereto)

Form A – PDA Proposal Letter
Form B – Non-Collusion Affidavit
Form C – Conflict of Interest Disclosure Statement
Form D – Financial Proposal Form
Form E – DBE Pledge
Form F – Equal Employment Opportunity Certification
Form G – Proposal Security
Form G-1 – Form of Proposal Bond
Form G-2 – Form of Letter of Credit (Proposal)
Form H – Certification Regarding Use of Contract Funds For Lobbying
Form I – RFC Template
Form J – Form of Stipend Agreement
Form K – Federal Debarment Certification
Form L – Certification
Form M – Title VI Assurances
Form N – DBE Form

FORM A

PDA PROPOSAL LETTER

PENNDOT PATHWAYS MAJOR BRIDGE P3 INITIATIVE
INSTRUCTIONS TO PROPOSERS

Proposer: _____

PDA Proposal Due Date: January 19, 2022

The undersigned (“Proposer”) submits this Proposal (this “Proposal”) in response to that certain Request for Proposals in relation to the PennDOT Pathways Major Bridge P3 Initiative (as amended, the “RFP”) issued by the Commonwealth of Pennsylvania (the “Commonwealth”) acting by and through the Pennsylvania Department of Transportation, a principal department of the Commonwealth (“PennDOT”), dated December 15, 2021, for the PennDOT Pathways Major Bridge P3 Initiative pursuant to a Pre-Development Agreement (the “PDA”), as more specifically described herein and in the documents provided with the RFP (the “RFP Documents”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for PennDOT supplying this Proposer, at our request, with the RFP Documents and agreeing to examine and consider this Proposal, the undersigned undertake[s] [jointly and severally]²:

- (a) subject to Section 3.6.2 of the ITP, to keep this Proposal open for acceptance for 270 days after the PDA Proposal Due Date, without unilaterally varying or amending its terms and without any member of Proposer or partner (if Proposer is a partnership or a joint venture) withdrawing, or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium/organization on whose behalf this Proposal is submitted, without first obtaining the prior written consent of PennDOT; and
- (b) if the Proposer is selected as the Apparent Best Value Proposer, to provide security (including bonds, insurance, and letters of credit) for the due performance of the PDA as stipulated in the PDA and the RFP.

If PennDOT properly draws on Proposer’s Proposal Security in accordance with the terms, and subject to the conditions of the RFP Documents, and the surety or other financial institution providing the Proposal Security refuses to honor PennDOT’s proper draw thereon, by its signature(s) below, each undersigned undertakes, on behalf of the Proposer’s Equity Members, and by such signature, the Proposer’s Equity Members each assume, joint and several liability, to PennDOT for the entire stated amount (in the case of a Proposal Letter of Credit) or penal sum (in the case of a Proposal Bond) of the Proposal Security.

If selected by PennDOT as the Apparent Best Value Proposer, the Proposer agrees to do the following or to cause the entity created by the Apparent Best Value Proposer to enter into the PDA (the “PDA Entity”) to do the following: (a) enter into the PDA in accordance with Section 5.1 of the ITP; and (b) perform its obligations as set forth in the ITP (while the same governs) and the PDA, including compliance with all commitments contained in this Proposal.

² ***If Proposer is a consortium, partnership or other form of joint venture, leave the words “jointly and severally,” otherwise delete.***

By submitting this Proposal, the Proposer certifies that it has read, accepts, and is able to obtain the insurances set forth in Exhibit 10 (*Required Insurance for PDA Work*) to the PDA as required.

[Enclosed, and by this reference incorporated herein, is the Proposal. Proposer acknowledges receipt of the following Addenda:

Addendum No. __ issued _____, 2021
[list other addenda]]

The Proposer certifies that its Proposal is submitted without reservation, qualification, assumptions, or conditions. The Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on the Project Portal for the Project, any Addenda, and responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the PDA Entity; that it has carefully checked all the words, figures, and statements in this Proposal; that it has conducted a reasonable investigation in preparing this Proposal; and that it has notified PennDOT in writing of any deficiencies or errors in, or omissions from, any RFP Documents or other documents provided by PennDOT and all such internal inconsistencies, errors, or omissions have been resolved satisfactorily, and of any unusual site conditions observed prior to the date hereof.

The Proposer represents that all statements made in the SOQ previously delivered to PennDOT (as amended and resubmitted) are true, correct, and accurate as of the date hereof, except as otherwise specified in this Proposal and Proposal forms (including, for the avoidance of doubt, the Proposer’s legal structure submitted under Volume 1.2 of the SOQ, the Key Personnel qualifications and commitments submitted under Volumes 2.3 and 2.4 of the SOQ, and all information regarding Major Team Members submitted on Form B (*Information Regarding Major Team Members*) to the SOQ). The Proposer agrees that such SOQ, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein. Further, the Proposer represents that its Proposal remains valid and binding, and that all representations and certifications in its Proposal remain true, correct, and accurate, as of the date of the submittal of this Proposal.

The Proposer acknowledges PennDOT’s reserved rights, including the right not to award the PDA.

The Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP Process will be borne solely by the Proposer, except any for reimbursement payment that PennDOT may make to a Proposer in accordance with the Stipend Agreement and ITP Section 4.11. [The Proposer acknowledges that it has executed the Stipend Agreement and, in doing so, has irrevocably elected to accept the stipend offered for such Proposal Work Product.]³

Subject to the Proposer’s rights under the P3 Law and the Right-to-Know Law, the Proposer consents to PennDOT’s disclosure of its Proposal, to any Persons after award and execution of the PDA by PennDOT. The Proposer acknowledges and agrees to the disclosure terms of the ITP. The Proposer expressly waives any right to contest such disclosures.

Proposer agrees that PennDOT shall not be responsible for any errors, omissions, inaccuracies, inconsistencies or incomplete statements in this Proposal.

³ The Proposer may delete this sentence if it does not wish to submit a Stipend Agreement and be reimbursed for its work product.

This Proposal shall be governed by and construed in all respects according to the laws of the Commonwealth of Pennsylvania.

Proposer's business address:

(No.)	(Street)	(Floor or Suite)
-------	----------	------------------

(City)	(State or Province)	(ZIP or Postal Code)	(Country)
--------	---------------------	----------------------	-----------

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from following pages]

1. Sample signature block for corporation or limited liability company:

[Insert the Proposer's name]

By: _____

Print Name: _____

Title: _____

[List equity members of corporation or limited liability company]

2. Sample signature block for consortium, partnership or any other form of joint venture:

[Insert the Proposer's name]

By: [Insert general partner's or member's name]

By: _____

Print Name: _____

Title: _____

[Add signatures of additional general partners or members as appropriate]

[List limited partners, if any]

3. Sample signature block for attorney in fact:

[Insert the Proposer's name]

By: _____

Print Name: _____

Attorney in Fact

[Attach documented power of attorney document, executed by Proposer entity or by each equity member/(joint venture) partner of Proposer]

Major Team Members Joinder to PDA Proposal Letter

Under penalty of perjury, each of the undersigned, certifies on behalf of the entity for which he or she signs that:

- (a) the Proposer's Authorized Representative named above is authorized by the relevant entity to sign this letter on behalf of the Proposer;
- (b) the representations, certifications, statements, disclosures, authorizations and commitments made, and information contained, in the Proposal in respect of such entity have been authorized by such entity, and is or are correct, complete and not misleading;
- (c) All statements made in the SOQ previously delivered to PennDOT (as amended and resubmitted) in respect of such entity are true, correct, and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms (including, for the avoidance of doubt, any relevant portions of the legal structure submitted under Volume 1.2 of the SOQ, any relevant Key Personnel qualifications and commitments submitted under Volumes 2.3 and 2.4 of the SOQ, and all information regarding such entity submitted on Form B (*Information Regarding Major Team Members*) to the SOQ); and
- (d) he or she is authorized to act on behalf of the entity for which he or she signs and acknowledges that PennDOT is relying on his or her representation to this effect.

[Role of team member]:^{4,5}

[insert entity name]

By: _____

Printed Name: [insert name]

Title: [insert title]

⁴ For any Major Team Member that is a joint venture, include signature by each joint venture member.

⁵ Signature block to be repeated for each Major Team Member.

Appendix 1

Additional Information to be Provided with PDA Proposal Letter

- (a) If the Proposer is a corporation, enter the commonwealth/state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the commonwealth/state or country of formation, in addition to any business address. If the Proposer is a limited liability company, enter the commonwealth/state or country of organization, in addition to any business address.
- (b) If any changes have been made with respect to the Proposer's legal structure submitted under Volume 1.2 of the SOQ (excepting for any changes thereto previously approved in writing by PennDOT pursuant to Section 3.6 of the RFQ and/or Section 1.14 of the RFP, in which case Proposer shall include with its PDA Proposal Letter a true and correct copy of PennDOT's written consent thereto), provide an updated legal structure and explanation thereof in accordance with the requirements of Volume 1.2 of the SOQ.
- (c) If any changes have been made with respect to the information regarding Major Team Members submitted on Form B (*Information Regarding Major Team Members*) to the SOQ or any Major Team Members have been added or removed from the Proposer's legal structure since submission of the Proposer's SOQ, except where such forms have previously been submitted to and approved by PennDOT pursuant to Section 3.6 of the RFQ and/or Section 1.14 of the RFP, update and/or supplement (as applicable) the Form B (*Information Regarding Major Team Members*) submittals provided to PennDOT under Volume 1.3 of the SOQ as may be necessary to ensure PennDOT's receipt of a true, correct, and accurate Form B (*Information Regarding Major Team Members*) to the SOQ for each Major Team Member as of the date hereof.
- (d) As concerns the organizational documents of the Proposer/PDA Entity and Equity Members:
 1. If Proposer/PDA Entity/Equity Member is a corporation or includes a corporation as a joint venture member, partner, or member, provide articles of incorporation and bylaws for the Proposer/PDA Entity/Equity Member and each corporation certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to the Effective Date as required by the ITP.
 2. If Proposer/PDA Entity/Equity Member is a partnership or includes a partnership as a joint venture member, partner, or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/PDA Entity/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, certificate of formation and operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to the Effective Date as required by the ITP.
 3. If Proposer/PDA Entity/Equity Member is a consortium or joint venture, or includes a joint venture as a joint venture member, partner, or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for Proposer/PDA Entity/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, certificate of formation

and operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, so state and indicate that these documents will be provided prior to the Effective Date as required by the ITP.

4. If Proposer/PDA Entity/Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner, or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for Proposer/PDA Entity/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, or certificate of formation and operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual. Attach evidence to the PDA Proposal Letter, with respect to the Proposal, and to each letter required under the PDA Proposal Letter that the person signing has authority to do so. If any entity is not yet formed, so state and indicate that these documents will be provided prior to the Effective Date as required by the ITP. For purposes of clarity, the Proposer may append to the PDA Proposal Letter a letter from each person signing the Proposal that such person has the authority to do so, which shall suffice for the purposes of the requirements set forth in this Section 4. If any entity is not yet formed, so state and indicate that these documents will be provided prior to the Effective Date as required by the ITP.
5. If an Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation, and organizational documents of the fund manager shall satisfy the requirements for organizational documents under this subsection (d).

For purposes of this subsection (d), the term “organizational documentation” with respect to an Equity Member shall mean such entity’s certificate of formation/articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; provided, further, that such entity shall provide its partnership agreement/operating agreement/bylaws/equivalent joint venture or investment fund internal governing organizational documentation prior to the Effective Date as required by the ITP.

- (e) With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If Proposer is a consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If Proposer is a consortium, joint venture, or a partnership, the Proposal must be executed by all consortium or joint venture members or all general partners.
- (f) The PDA Entity’s partnership agreement, limited liability company operating agreement, bylaws, charter, or joint venture agreement, as applicable, must include an express provision satisfactory to PennDOT stating that, in the event of a dispute between or among joint venture members, partners,

members, or shareholders, no joint venture member, partner, member, or shareholder, shall be entitled to stop, hinder, or delay work on the Project. Each Proposer should submit the applicable agreement to PennDOT and identify on a cover page where in the agreement the provision can be found. If any entity is not yet formed, so state and indicate that such entity will be formed and that organizational documents will be provided to PennDOT prior to the Effective Date as required by the ITP.

FORM B

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

I state that I am _____ (*Title*) of _____ (*Name of Firm*) and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and, officers. I am the person responsible in my firm for the amounts, percentages and other figures presented in this PDA Proposal.

I state that:

- (1) The Proposal has been arrived at independently and without consultation, communication or agreement with any other Proposer or potential Proposer.
- (2) This Proposal has not been disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before the selection of the Apparent Best Value Proposer.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from submitting a PDA Proposal or to submit any noncompetitive PDA Proposal or other form of complementary PDA Proposal.
- (4) The PDA Proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive PDA Proposal.
- (5) _____ (*Name of Firm*) its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

I state that _____ (*Name of Firm*) understands and acknowledges that the above representations are material and important, and will be relied on by the Pennsylvania Department of Transportation in awarding the PDA for which the PDA Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Pennsylvania Department of Transportation of the true facts relating to the submission of this PDA Proposal.

(Signature)

(Signatory's Name)

(Signatory's Title)

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____ 20____

My Commission Expires _____

Notary Public

FORM C

CONFLICT OF INTEREST DISCLOSURE STATEMENT

INSTRUCTIONS:

- (a) Submit one copy of Form C (*Conflict of Interest Disclosure Statement*), completed by the Proposer.
- (b) Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of all Proposer Team Members.

NAME OF PROPOSER: _____ (the “Proposer”)

The Proposer’s attention is directed to Section 1.12.1 of the ITP regarding organizational conflicts of interest and the restrictions applicable to such conflicts. Proposers are advised that certain firms will not be allowed to participate on any Proposer’s team for the Project because of their work with PennDOT in connection with the Pathways Major Bridge Initiative P3 Project (the “Project”) procurement. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the ITP.

1. Required Disclosure of Conflicts

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer’s team (including the Proposer, Major Team Members, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and other Key Personnel for the Project) which may result, or could be viewed as, an organizational conflict of interest in connection with this ITP.

For any facts relating to past, present, or planned interest(s) of the Proposer’s team (including the Proposer, Major Team Members, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and other Key Personnel for the Project) which may result, or could be viewed as, an organizational conflict of interest in connection with this ITP, the Proposer shall disclose (a) any current contractual relationships with PennDOT, (b) any past, present, or planned contractual or employment relationships with any officer or employee of PennDOT, and (c) any other circumstances that might be considered to create a financial interest in the contract by any PennDOT member, officer or employee. The Proposer shall also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the individuals or entities involved in preparing the RFP. The Proposer shall also disclose contractual relationships (i.e. joint ventures) with any of the individuals or entities involved in preparing the RFP, as well as relationships wherein such individual or entity is a contractor or consultant (or subcontractor or subconsultant) to the Proposer or a member of the Proposer’s team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations. Any organizational conflicts of interest that have already been submitted to PennDOT in connection with the Proposer’s SOQ and previously approved or cleared by PennDOT do not have to be included on this form so long as the facts as presented previously remain true.

FORM D

FINANCIAL PROPOSAL FORM

Proposer Name: _____ (the “Proposer”)

Date: _____

The Proposer hereby offers this Financial Proposal pursuant to 7(p)Appendix 6 (*Final Proposal Instructions*) of the ITP.

1. **Proposal Equity IRR (for each Package)**

_____ % (*percentage, to the tenth of a percentage point*)

2. **Development Entity Closing Fee (for each Package)**

_____ % (*percentage, to the tenth of a percentage point*)

3. **Pre-Development Cost Cap (Aggregate for Project)**

\$ _____

4. **D&C General Conditions Cost Percentage (for each Package)**

_____ % (*percentage, to the tenth of a percentage point*)

5. **D&C Markup Percentage (for each Package)**

_____ % (*percentage, to the tenth of a percentage point*)

6. **Maintenance Work General Conditions Cost Percentage (for each Package)**

_____ % (*percentage, to the tenth of a percentage point*)

(Signature of Authorized Representative)

(Name and Title of Authorized Representative)

FORM E
DBE PLEDGE

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for participation by Disadvantaged Business Enterprises is established for the PDA Work.

DBE

13.05%

DBE Pledge

By signing the PDA Proposal, the Proposer certifies that it is committed to (1) make and document good faith efforts to utilize DBEs towards the DBE participation goal, track utilization, ensure that the commitment is attained, provide proof of attainment through documented payments to DBEs for work, set forth above in the PDA Work, and (2) in compiling Package Proposals, make and document good faith efforts to utilize DBEs for the Package Work as required under the PDA.

By signing the PDA Proposal, the Proposer certifies that it is committed to make and document good faith efforts to solicit and utilize firms owned and controlled by socially and economically disadvantaged individuals certified as Disadvantaged Business Enterprises (DBEs) to meet the established PDA DBE participation goal set forth above and the DBE goal(s) that will be established by PennDOT for the Project Agreements.

[Signature]

[Name]

[Title]

FORM F

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The undersigned certifies on behalf of _____, that:

_____ (Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It will develop and will file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs). *[Note: Check this box only if the member of the Proposer Team is not yet formed and is subject to 41 C.F.R. Part 60-2]*

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114, or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity Section described in Executive Orders 10925, 11114, or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts which are subject to the equal opportunity section. Contracts that are exempt from the equal opportunity Section are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Equity Members, or Major Non-Equity Team Members who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

FORM G
PROPOSAL SECURITY

[see attached]

FORM G-1

FORM OF PROPOSAL BOND

Bond No. _____

We, _____, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the State indicated on the attached page are held and firmly bound unto the Pennsylvania Department of Transportation (“PennDOT”), for the sum of \$5,000,000⁶ (the “Bonded Sum”) for the payment of which Bonded Sum, the Principal and the Surety(ies) bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted its Proposal to deliver the Project through a pre-development public-private partnership agreement (the “PDA”), which Proposal is incorporated herein by this reference and has been submitted pursuant to the Request for Proposals in relation to the PennDOT Pathways Major Bridge P3 Initiative dated as of December 15, 2021 (as amended or supplemented, the “RFP”), in accordance with the Instructions to Proposers (“ITP”) included in the RFP (initially capitalized terms not otherwise defined herein shall have the meaning set forth in the ITP);

NOW, THEREFORE:

1. The condition of this bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to PennDOT as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the “Co-Sureties”) of notice of such forfeiture from PennDOT:
 - (a) Principal’s receipt of written notice from PennDOT that either (i) no PDA for the Project will be awarded by PennDOT pursuant to the RFP, or (ii) PennDOT has awarded the PDA for the Project, has received the executed PDA and other required documents, and does not intend to award the PDA to Principal;
 - (b) except as expressly provided otherwise in the RFP or agreed to by PennDOT in writing, Principal’s performance of its obligations to achieve the Effective Date by the applicable deadline, as such deadline may be extended in accordance with the RFP; or
 - (c) if PennDOT has not previously delivered notice of forfeiture hereunder, failure of PennDOT to notify Principal that it is the Apparent Best Value Proposer within 270 days after the PDA Proposal Due Date.

2. The Principal and the Surety or Co-Sureties hereby agree to pay to PennDOT the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten (10) days of receipt of a written notice from PennDOT to the Surety and Co-Sureties confirming the occurrence of any of the following events:
 - (a) Principal in writing withdraws, repudiates, or otherwise indicates in writing that it will not meet any commitments made in its Proposal, without PennDOT’s consent;

⁶ **Note to Proposers:** The Proposer may provide multiple Proposal Bonds/Letters of Credit in order to arrive at the aggregate security amount of \$5,000,000.

- (b) PennDOT disqualifies the Proposer pursuant to Sections 1.10.3(a) or Section 1.10.3(b) of the ITP;
- (c) following notification from PennDOT that it is the Apparent Best Value Proposer, Principal fails to negotiate in good faith as expressly defined in Article 5 of the ITP; or
- (d) following notification from PennDOT that the Principal is the Apparent Best Value Proposer, the Effective Date does not occur by the Effective Date Deadline set forth under the ITP, unless that failure is directly attributable to one or more of the circumstances set forth in clauses (A) through (H) of Section 3.7.2(d)(ii) of the ITP, and those circumstances are not caused in whole or in part by the P3 Law, omissions, negligence, fault, recklessness, or willful misconduct of the Principal.

Principal agrees and acknowledges that such liquidated damages are reasonable in order to compensate PennDOT for damages it will incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to actual potential damages that PennDOT would incur as a result of Principal's failure to satisfy the obligations under the RFP to which Principal agreed when submitting its Proposal, and do not constitute a penalty. Principal agrees to such liquidated damages in order to fix and limit Principal's costs and to avoid later disputes over what amounts of damages are properly chargeable to Principal.

3. The following terms and conditions shall apply with respect to this bond:

- (a) This Proposal Bond shall not be subject to forfeiture in the event that PennDOT disqualifies the Proposal based on a determination that it is non-responsive or non-compliant.
- (b) If suit is brought on this bond by PennDOT and judgment is recovered, Principal and Surety or Co-Sureties shall pay all costs incurred by PennDOT in bringing such suit, including, without limitation, reasonable attorneys' fees and costs as determined by the court.
- (c) The Surety or Co-Sureties executing this instrument hereby agree that their obligation shall not be impaired by any extension(s) of the time for acceptance of the Proposal that the Principal may grant to PennDOT, notice of which extension(s) to the Surety or Co-Sureties being hereby waived; provided that such waiver of notice shall apply only with respect to extensions aggregating not more than ninety (90) days in addition to the period originally allowed for acceptance of the Proposal.
- (d) Correspondence, notices, or claims relating to this bond shall be sent to the following Surety's authorized representative and address:

[insert address]

If there are Co-Sureties, the Co-Sureties agree to empower the above authorized representative with the authority to act on behalf of all of the Co-Sureties with respect to this bond, so that PennDOT will have no obligation to deal with multiple sureties hereunder. The above authorized representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to PennDOT designating a single new authorized representative, signed by all of the Co-Sureties.

SIGNED and SEALED this ____ day of _____, 2021.

By: _____ Principal

By: _____ Co-Surety

By: _____ Attorney in Fact

By: _____ Co-Surety

By: _____ Attorney in Fact

By: _____ Co-Surety

By: _____ Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME

SURETY ADDRESS

INCORPORATED IN

FORM G-2

FORM OF LETTER OF CREDIT (PROPOSAL)

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER:	[•]
PLACE FOR PRESENTATION OF DRAFT IN PROGRESS:	(Name and Address of Bank/Branch)
APPLICANT:	[•]
BENEFICIARY:	PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
	[ADDRESS]
LETTER OF CREDIT NUMBER:	[•]
PLACE AND DATE OF ISSUE:	[•]
AMOUNT:	[•]

Issuer hereby issues this Irrevocable Standby Letter of Credit (this “**Letter of Credit**”) in favor of the Pennsylvania Department of Transportation for any sum or sums up to [•] **United States Dollars (\$•)**⁷ (each amount, the “**Stated Amount**”), available by draft at sight drawn on Issuer.

Any draft under this Letter of Credit shall:

- (a) identify this Letter of Credit by the name of Issuer, the Letter of Credit number, amount, and place and date of issue; and
- (b) be accompanied by a certificate, executed by an authorized signatory of the Beneficiary, stating that the person signing the certificate is an authorized signatory of the Beneficiary and that the Beneficiary is entitled to draw on this Letter of Credit.

This Letter of Credit shall be honored by Issuer if presented at [*provider to identify Bank/Branch—Name & Address*] on or before the “Expiration Date” (defined below).

The obligations of Issuer under this Letter of Credit are primary obligations to Beneficiary and shall not be affected by the performance or non-performance by [*Name of Applicant*] under any agreement with Beneficiary or by any bankruptcy, insolvency, or other similar proceeding initiated by or against [*Name of Applicant*].

⁷ **Note to Proposers:** The Proposer may provide multiple Proposal Bonds/Letters of Credit in order to arrive at the aggregate security amount of \$5,000,000.

[Name of Applicant] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw on this Letter of Credit.

The “**Expiration Date**” of this Letter of Credit shall mean the date which is the earlier of:

- (a) close of business on the date that is 270 days after the PDA Proposal Due Date (the “**Stated Expiry Date**”); or
- (b) the date on which the Beneficiary delivers a signed notice of termination of this Letter of Credit to the bank and returns the original Standby Letter of Credit and any amendments, if applicable.

This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [•] are acceptable (each such drawing, a “**Fax Drawing**”) provided, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer’s receipt of such Fax Drawing by calling Issuer at telephone number [•]. Issuer will acknowledge Beneficiary’s presentment by email to the email address provided to Issuer in the Fax Drawing.

If the Beneficiary presents a Fax Drawing under this Letter of Credit, the Beneficiary does not need to present the original of any drawing documents to the Issuer, and if the Issuer receives any such original drawing documents they will not be examined by the Issuer. In the event of a full or final drawing, the original Standby Letter of Credit must be returned to the Issuer by overnight courier.

To the extent not inconsistent with the express provisions of this Letter of Credit, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 (“**ISP98**”), as interpreted under the laws of the Commonwealth of Pennsylvania, and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

With respect to any suit, action, or proceeding relating to this Letter of Credit (“**Proceedings**”), we irrevocably:

- (a) submit to the exclusive jurisdiction of any court of Pennsylvania and any federal courts in Philadelphia, Pennsylvania; and
- (b) waive any objection which we may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum, and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us.

Issuer:

By:

Name: [•]

Title: [•]

(Authorized Signatory of Issuer)

FORM H

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

The undersigned certifies, on behalf of [*Proposer / Equity Member / Proposer Team Member*], to the best of his or her knowledge and belief, that:

- (a) no federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and
- (b) if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its PDA Proposal.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.

[•]

Name: [•]

Title: [•]

Entity Making Certification: [•]

Date: [•]

FORM I
RFC TEMPLATE

(Please complete using this Microsoft® Word template)

Proposer: _____

Date: _____

Authorized Representative: _____

RFP RFC Submission No. []⁸

Comments on RFP dated [_____] , 2021⁹

No.	Document	Section #	Page #	Discipline	Category (1,2,3,4)	Comment or Question
1.						
2.						
3.						

In accordance with Section 2.4, RFCs shall:

- (a) be sequentially numbered;
- (b) identify the document (i.e., ITP, PDA, Project Agreement Term Sheet, PDA Work Requirements, etc.);
- (c) identify the relevant section number;
- (d) identify the comment/question as either “Technical,” “Legal,” “Commercial,” “Procurement” or “Financial” (**Discipline**);
- (e) not identify the Proposer’s identity in the body of the question; and
- (f) indicate whether the question is a Category 1, 2, 3 or 4 question as described below.

⁸ Sequentially number each set of RFP comments or questions submitted.

⁹ The Proposers should specify on which RFP they are commenting by including the relevant RFP release date.

Proposers may, at their option, elect to submit with their RFCs revised drafting, redline, or similar markup of the applicable document as part of their questions/comments via the file upload function of Project Portal.

Categories:

“Category 1” means a potential “go/no-go” issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a PDA Proposal;

“Category 2” means an issue that, if not resolved in an acceptable fashion, will significantly affect value for money or, taken together with the entirety of other issues, may preclude the Proposer from submitting a PDA Proposal; and

“Category 3” means an issue or clarification that is minor in nature and that is not likely to affect the Proposer’s approach to a PDA Proposal.

“Category 4” means corrections of typographical errors, incorrect cross references or internal inconsistencies within or among this ITP and the PDA Documents.

FORM J

FORM OF STIPEND AGREEMENT

STIPEND AGREEMENT

THIS STIPEND AGREEMENT (this “**Agreement**”) is made and entered into as of the _____ day of _____, 2022, by and among the Commonwealth of Pennsylvania (the “**Commonwealth**”), Pennsylvania Department of Transportation, (“**PennDOT**”), and _____, a _____ (“**Proposer**”).

Background

- (a) On December 15, 2021, PennDOT issued a Request for Proposals in relation to the PennDOT Pathways Major Bridge P3 Initiative (“**RFP**”) seeking a PDA Entity to design, construct, finance, and maintain the Project through a Pre-Development Agreement (the “**PDA**”) for the Project and subsequent Public-Private Transportation Partnership Agreements (“**Project Agreements**”).
- (b) The RFP requires each Proposer who wishes to execute and deliver a Stipend Agreement to PennDOT to do so as part of its PDA Proposal.

NOW, THEREFORE, Proposer on its behalf and on behalf of all members on the Proposer Team hereby agrees as follows:

1. DEFINITIONS

All capitalized terms and acronyms used but not defined in this Agreement have the respective meanings set forth in the Instructions to Proposers (“**IIP**”) included in the RFP.

2. PROPOSAL WORK PRODUCT

- (a) By executing this Stipend Agreement, Proposer has irrevocably elected to accept payment of a stipend from PennDOT subject to the terms hereof and as set forth in the RFP.
- (b) PennDOT hereby retains Proposer to actively participate in good faith in the RFP Process, and prepare and submit, in response to the RFP, a PDA Proposal that conforms in all material respects to the requirements of the RFP, as determined by PennDOT, is timely received by PennDOT, and satisfies the provisions of [Section 3\(a\)](#) below.
- (c) All work performed by or on behalf of the Proposer Team included in its PDA Proposal or otherwise submitted to PennDOT at any time during the RFP Process (and the products of such work) pursuant to 74 Pa.C.S. § 9112 shall be considered work-made-for-hire, as that term is defined in Section 101 of Title 17 of the U.S. Code, and all Proposal Work Product (as defined below) with the exception of Proprietary Intellectual Property (defined below) shall become the property of PennDOT without restriction or limitation on its use. Neither Proposer nor any of the Proposer Team, its members, contractors, advisors, consultants or agents shall copyright any of the material developed under this Agreement. PennDOT hereby grants to Proposer a revocable, non-exclusive, and (without PennDOT’s prior written consent) non-transferable, non-sub-licensable license to use, solely in connection with the RFP Process and solely for the duration thereof, the Proposal Work Product. The

term “**Proposal Work Product**” shall mean a Proposer’s submittals, documents, records, and intellectual property included in Proposer’s PDA Proposal or otherwise submitted to PennDOT at any time during the RFP Process (including, but not limited to, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids).

- (d) With respect to any Proposal Work Product that incorporates Proprietary Intellectual Property, the Proposer represents and warrants that it has the right to grant PennDOT an irrevocable, non-exclusive, perpetual, transferable, sublicensable, royalty-free license to use such Proprietary Intellectual Property for the purposes specified herein. The Proposer hereby grants (on behalf of itself and its Proposer Team Members) such license to PennDOT effective upon the Proposer’s acceptance of payment hereunder. The foregoing shall not be deemed a requirement for the Proposer to provide a license for off-the-shelf software or patented rights in previously existing proprietary technology to PennDOT. “**Proprietary Intellectual Property**” means Intellectual Property created, used, applied or reduced to practice in connection with the Project or the PDA Work that derives commercial value from its protection as a trade secret under Applicable Law or from its protection under patent or copyright Laws. Nothing in this [Section 2\(c\)](#) shall limit the Proposer’s right to use its Proprietary Intellectual Property in any manner it chooses.
- (e) In consideration for PennDOT’s agreement to make payment hereunder, Proposer agrees that PennDOT shall be entitled to use all Proposal Work Product in connection with the RFP, the PDA, any Project Agreements, the Project, and any other PennDOT or Commonwealth projects, such usage to be royalty-free and without any further permission from, or notification, compensation, or consideration to the Proposer or any members, contractors, advisors, consultants or agents of the Proposer Team. For the avoidance of doubt, such use may, at PennDOT’s sole discretion, include the disclosure of such Proposal Work Product to the Apparent Best Value Proposer, if applicable.
- (f) The rights and obligations of PennDOT and Proposer under this Agreement, shall irrevocably vest upon the date that the Proposal Work Product payment is made by PennDOT to Proposer pursuant to [Section 3](#) of this Agreement.

3. COMPENSATION AND PAYMENT

- (a) Compensation payable to Proposer for the Proposal Work Product described herein shall be an amount up to \$300,000 for the value of the Proposal Work Product, with certification of expenditures in that amount, if either (i) PennDOT has selected another proposer as Apparent Best Value Proposer; or (ii) PennDOT cancelled the procurement between the PDA Proposal Due Date and the selection of the Apparent Best Value Proposer, provided that (A) Proposer submitted a timely and responsive PDA Proposal in accordance with the requirements of the ITP; and (B) Proposer submits to PennDOT an Invoice, Transfer of Work Product, and Release of Claims and all required attachments in accordance with Section 3(d) hereof (which shall be subject to PennDOT’s review, concurrence, and audit pursuant to Section 3(e) hereof) within 10 business days of its receipt of notification from PennDOT of the applicable event set forth in clause (i) or (ii) of this [Section 3\(a\)](#); or
- (b) Compensation payable to Proposer for the Proposal Work Product described herein shall be an amount up to \$300,000 for the value of the Proposal Work Product, with certification

of expenditures in that amount, if the Proposer was selected as the Apparent Best Value Proposer and execution of the PDA was not achieved; provided that such failure is directly attributable to one or more of the circumstances set forth in clauses (A) through (H) of Section 3.7.2(d)(ii) of the ITP and those circumstances are not caused in whole or in part by the P3 Law, omissions, negligence, fault, recklessness, or willful misconduct of the Apparent Best Value Proposer, and provided further that Proposer submits to PennDOT an Invoice, Transfer of Work Product, and Release of Claims and all required attachments in accordance with Section 3(d) hereof (which shall be subject to PennDOT's review, concurrence, and audit pursuant to Section 3(e) hereof) within 10 business days of its receipt of notification from PennDOT of the earliest to occur of: (i) notice from PennDOT that Proposer will no longer be awarded the PDA, (ii) the date of notice by PennDOT that PennDOT has executed the PDA with another party, or (iii) the date of notice by PennDOT that it has cancelled the procurement;

- (c) For any Proposer not meeting the criteria identified in Section 3(a) above, PennDOT may pay compensation to Proposer, in an amount to be determined by PennDOT, for the Proposal Work Product described herein subject to the following conditions:
 - (i) If the procurement is cancelled prior to the PDA Proposal Due Date, Proposers will be provided the opportunity, at their option, of attending an interview and delivering to PennDOT the Proposal Work Product of their Proposal preparations to date. There is no specific format required for such Proposal Work Product. If (A) a Proposer chooses to attend an interview, delivers its Proposal Work Product, and signs a modified Stipend Agreement (to be provided by PennDOT), and (B) PennDOT agrees to accept such Proposal Work Product, PennDOT shall pay to such Proposer an amount that PennDOT deems to be appropriate consideration for the Proposal Work Product. Such amount shall not exceed \$300,000. No portion of the stipend amount will be paid in the event a Proposer chooses not to attend the interview or chooses not to deliver its Proposal Work Product; and
 - (ii) Any amount paid under this Section 3(c) will not exceed \$300,000 for the value of the Proposal Work Product.
 - (iii) Any Proposer wishing to apply for a stipend under this Section 3(c) shall so notify PennDOT within 10 business days of its receipt of notification from PennDOT that it was not entitled to compensation under Section 3(a) above.
- (d) Any Proposer request for payment pursuant to Sections 3(a), 3(b), or 3(c) hereof shall be in the form of the Invoice, Transfer of Work Product, and Release of Claims set forth in Exhibit 1 to this Agreement and shall include supporting documentation for the costs associated with the Proposal Work Product for which payment is requested.
- (e) PennDOT may, in its sole discretion, audit the costs incurred by any Proposer in preparing its Proposal in order to verify the reimbursement amount payable. Should PennDOT elect to audit, PennDOT (or its designee) shall have access to all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred. Failure of the Proposer or its Proposer Team Members to maintain and retain sufficient records to allow PennDOT to verify all or a portion of the claim or to permit PennDOT access to the books

and records of the Proposer and its Proposer Team Members shall constitute a waiver of the right to be paid a reimbursement and shall bar any recovery hereunder.

- (f) If PennDOT awards the PDA to Proposer, neither Proposer nor a PDA Entity formed by the Proposer will be entitled to compensation hereunder except as provided in Section 3(b), above.
- (g) Any payment of compensation owing hereunder will be made within 90 days of the later to occur of: (i) PennDOT's receipt of an Invoice, Transfer of Work Product, and Release of Claims in the form of Exhibit 1 to this Agreement, with certification of expenditures of the amount claimed thereunder, and satisfaction by the Proposer of any applicable conditions set forth in the RFP; and (ii) either PennDOT's execution of the PDA with the Apparent Best Value Proposer or PennDOT's decision not to award. Such Invoice, Transfer of Work Product, and Release of Claims may not be submitted until one business day after the earlier to occur of (A) posting of the notice of award, and (B) cancellation of the RFP.
- (h) Proposer shall be solely responsible for distributing and paying any portion of the payments received from PennDOT under this Agreement to members of the Proposer Team, and PennDOT assumes no liability with respect thereof.

4. WAIVER

The Proposer acknowledges and agrees that by invoicing PennDOT in accordance with Article 3, the Proposer without further action or notice:

- (a) irrevocably waives in full all rights to protest the selection by PennDOT of a PDA Entity;
- (b) fully, unconditionally, and irrevocably releases PennDOT from any and all claims and causes of action arising out of the procurement of the Project or the selection of a PDA Entity, and/or any other aspect of the procurement of the Project, whether known or unknown; and
- (c) any and all claims against PennDOT for their use of all Proposal Work Product and ideas received from the Proposer.

5. INDEMNITIES

Proposer agrees that it will indemnify, defend, and hold harmless PennDOT and all of PennDOT's board members, officers, agents, representatives, employees, successors and assigns from any claim, loss, damage, cost, judgment, fee, penalty, charge, or expenses (including reasonable and documented attorneys' fees and costs) asserted, incurred, suffered or awarded as a result of or that relate to any third-party claims, suits, actions, allegations or proceedings arising out of or caused by any acts, actions, negligence, omissions, fault, willful misconduct, violation of law or breach of contract by Proposer, its Equity Members, Major Team Members, other team members or their respective agents, employees, or representatives arising out of or relating to the Proposal Work Product, whether direct or indirect, and whether to any person or property to which PennDOT or said parties may be subject. The foregoing indemnity shall survive the expiration or termination of this Stipend Agreement and shall expressly apply to and include all third-party claims, suits, actions or allegations of infringement, confidential information, domestic or foreign patent rights, copyrights, intellectual property rights, moral rights, trade secrets, proprietary rights, licensing rights and unauthorized use.

Proposer's obligation to indemnify, defend, and pay for the defense or, at PennDOT's option, to participate and associate with PennDOT in defense of any claim and any related settlement negotiations, shall be triggered by PennDOT's notice of claim for indemnification to Proposer. Only a final and unappealable adjudication or judgment specifically finding sole negligence or willful misconduct of PennDOT or any of its board members, officers, agents, representatives or employees shall excuse performance of this provision. Proposer shall pay all costs and fees related to this obligation and its enforcement by PennDOT. PennDOT's failure to promptly notify Proposer of a claim shall not release Proposer of the above duty to defend so long as such failure to promptly notify does not prejudice Proposer.

6. AUTHORITY TO ENTER INTO THIS AGREEMENT.

By executing this Agreement, Proposer specifically represents and warrants that it has the authority to convey to PennDOT the Proposal Work Product, including, but not limited to, any rights that might have been vested in team members, subcontractors, consultants or anyone else who may have contributed to the development of the Proposal Work Product, free and clear of all liens, claims and encumbrances.

7. RIGHT-TO-KNOW LAW AND P3 RECORDS LAW

The Right-to-Know Law (as defined under the ITP) and 74 Pa. C.S. § 9111 apply to information provided by Proposer under this Stipend Agreement. The requirements of the ITP shall apply to any information provided by Proposer under this Stipend Agreement, and in the event PennDOT receives a request under the Right-to-Know Law for information related to this Stipend Agreement, the procedures and rights of each party set forth in the ITP shall apply.

8. COMPLIANCE WITH LAWS

- (a) Proposer shall comply with all federal, Commonwealth, and local laws, ordinances, rules, and regulations applicable to the work performed or paid for under this Agreement and covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Applicable Laws, ordinances, rules, and regulations as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- (b) The Proposer agrees (i) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (ii) to include a provision similar to that contained in subsection (i) in any subcontract except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this Section 7(b).

9. ASSIGNMENT

Proposer shall not assign this Agreement without PennDOT's prior written consent. Any such assignment of this Agreement without such consent shall be null and void.

10. MISCELLANEOUS

- (a) Proposer and PennDOT agree that Proposer, the members on the Proposer Team, and their respective employees are not agents of PennDOT as a result of this Agreement.
- (b) If Proposer is a consortium, partnership, or other form of joint venture, each member of such consortium, partnership, or other form of joint venture shall be jointly and severally liable under this Agreement.
- (c) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend and include the singular. All words used in any gender shall extend to and include all genders.
- (d) This Agreement, together with the RFP, as amended from time to time, the provisions of which are incorporated herein by reference, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFP, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written, between the parties hereto.
- (e) It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the Commonwealth, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.
- (f) If PennDOT is the prevailing party with respect to a substantial portion of its claim in any judicial proceeding to resolve a dispute between the parties arising out of or connected with this Agreement, the Proposer shall pay to PennDOT upon demand all attorneys' fees, expenses and costs, expert and consultant fees, and other costs incurred by PennDOT for or in connection with such proceeding (including all such fees, expenses, and costs on appeal).
- (g) This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (h) The parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of this Stipend Agreement shall be the Commonwealth Court of Pennsylvania sitting in the City of Harrisburg, Pennsylvania.
- (i) The Proposer may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
Fax No: (717) 787-9138

- (j) Proposer and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with PennDOT or the Commonwealth, as set forth in Public Official and Employee Ethics Act, codified at 65 Pa. C.S. § 1101 et seq., and 62 Pa. C.S. § 2301 et seq. If Proposer is not familiar with these ethical requirements, it should refer any questions to the Pennsylvania State Ethics Commission, or visit the Pennsylvania State Ethics Commission website at <http://www.ethics.state.pa.us/portal/server.pt/community/home/8992>. If Proposer or its agents violate any applicable ethical standards, the Proposer may be subject to penalties under applicable laws.
- (k) During the term of this Stipend Agreement, the Proposer understands and agrees that, pursuant to federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 C. F. R. § 35.101 et seq., no individual with a disability shall, on the basis of the disability, be excluded from participation in this Stipend Agreement or from activities provided for under this Stipend Agreement. As a condition of accepting and executing this agreement, the Proposer agrees to comply with the “General Prohibitions Against Discrimination,” 28 C. F. R. § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act that are applicable to the benefits, services, programs, and activities provided by the Commonwealth through contracts with outside contractors. The Proposer shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth as a result of the Proposer’s failure to comply with the provisions of this clause (k).
- (l) PennDOT’s exposure to liability (other than Workers’ Compensation Liability) is governed by the dictates of Act 1978-152, as amended, commonly known as the Sovereign Immunity Tort Claims Act. Under said Act, sovereign immunity was reaffirmed but waived in nine (9) specific areas of liability. Eligible claims or suits against PennDOT, its officials or employees within the waived areas may be settled up to \$250,000, each person and/or \$1,000,000, each occurrence. PennDOT has established a tort claims self-insurance program to handle these claims or suits that is administered by the Department of General Services in close relationship with the Pennsylvania Office of the Attorney General.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

[If the Proposer is a corporation or limited liability company, this Agreement shall be executed by an authorized signing officer(s) of such entity. If the Proposer is a consortium, partnership, or other form of joint venture, each member of such consortium, partnership, or other form of joint venture shall be required to individually sign this Agreement on behalf of the Proposer and such member]

(Name of Proposer)

By _____
(Signature) (Printed Name)

(Title) (Date)

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Secretary or designee DATE

APPROVED AS TO LEGALITY AND FORM

BY _____
for Chief Counsel Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date

BY _____
Comptroller Operations Date

EXHIBIT 1 TO STIPEND AGREEMENT

(INVOICE, TRANSFER OF WORK PRODUCT, AND RELEASE OF CLAIMS)

Reference is made to that Instructions to Proposers related to the Request for Proposals in relation to the PennDOT Pathways Major Bridge P3 Initiative (“**Project**”) issued on December 15, 2021 (as amended, the “**ITP**”) by the Pennsylvania Department of Transportation (“**PennDOT**”).

Reference is also made to that certain Stipend Agreement (the “**Stipend Agreement**”) dated as of _____, 2022, by and between PennDOT and [_____] (**Proposer**).

Capitalized terms used, but not defined, herein shall have the meanings ascribed in the Stipend Agreement.

[Proposer to select, as appropriate, from the three paragraphs below]

[Pursuant to Section 3.1(a) of the Stipend Agreement, Proposer hereby requests payment of \$[_____], reflecting the lesser of (a) \$300,000 and (b) the full amount of Proposer’s actual, reasonable and documented out-of-pocket development costs actually incurred and paid by such Proposer with respect to preparing Proposer’s PDA Proposal. Attached to this Invoice, Transfer of Work Product, and Release of Claims are supporting documentation for such costs. Proposer represents and warrants to PennDOT that Proposer is eligible for payment pursuant to Section 3.1(a) of the Stipend Agreement. Proposer represents and warrants to PennDOT that (i) Proposer submitted to PennDOT a timely and responsive Proposal by the PDA Proposal Due Date in accordance with the terms and conditions of the ITP; and (ii) Proposer is eligible for payment pursuant to Section 3.1(a) of the Stipend Agreement.]

OR

[Pursuant to Section 3.1(b) of the Stipend Agreement, Proposer hereby requests payment of \$[_____], reflecting the lesser of (a) \$300,000 and (b) the full amount of Proposer’s actual, reasonable and documented out-of-pocket development costs actually incurred and paid by such Proposer with respect to preparing Proposer’s PDA Proposal. Attached to this Invoice, Transfer of Work Product, and Release of Claims are supporting documentation for out-of-pocket development costs actually incurred and paid by such Proposer with respect to preparing Proposer’s PDA Proposal. Proposer represents and warrants to PennDOT that (i) Proposer submitted to PennDOT a timely and responsive Proposal by the PDA Proposal Due Date in accordance with the terms and conditions of the ITP; and (ii) Proposer is eligible for payment pursuant to Section 3.1(b) of the Stipend Agreement.]

OR

[Pursuant to Section 3.1(c)(ii) of the Stipend Agreement, PennDOT has agreed to make a payment of \$[_____] representing PennDOT’s determination as to appropriate consideration for certain Proposal Work Product of the Proposer.]

Proposer acknowledges that submission of this Invoice, Transfer of Work Product, and Release of Claims, and payment by PennDOT of any amount in response to this Invoice, Transfer of Work Product, and Release of Claims, is in all respects subject to the terms and conditions of the ITP and Stipend Agreement.

The undersigned certifies and agrees on behalf of Proposer, its Major Team Members and all other members of the Proposer Team, that:

[check ALL of the following boxes]

- It has reviewed the provisions set forth in the ITP, the Stipend Agreement, and this Invoice, Transfer of Work Product, and Release of Claims, and expressly recognizes and agrees to be bound by the provisions set forth herein.
- It (a) has received and agreed to an offer from PennDOT for the payment of a stipend in an amount, under certain circumstances, and subject to the terms and conditions of the Stipend Agreement and the ITP, and (b) is eligible to receive all or a portion of the total amount available for a stipend from PennDOT for Proposal Work Product received by PennDOT pursuant to the Stipend Agreement and the ITP.
- It has reviewed the provisions set forth in the ITP, the Stipend Agreement, and this Invoice, Transfer of Work Product, and Release of Claims, and hereby, upon receipt of the amount of the stipend as prescribed under the Stipend Agreement and Section 4.10 of the ITP, (a) grants to PennDOT full ownership of and right to use all Proposal Work Product (as such term is defined under the Stipend Agreement) royalty-free and without restriction or any further permission from, or notification, compensation, or consideration to the Proposer or any members, contractors, advisors, consultants or agents of the Proposer; (b) irrevocably waives in full all rights to protest the selection by PennDOT of a PDA Entity and/or any other aspect of the procurement of the Project; (c) fully, unconditionally, and irrevocably releases PennDOT from any and all claims and causes of action arising out of the procurement of the Project or the selection of a PDA Entity, and/or any other aspect of the procurement of the Project, whether known or unknown, and (d) fully, unconditionally and irrevocably releases and waives any and all claims against PennDOT for their use of all Proposal Work Product and ideas received from the Proposer.
- By executing this Invoice, Transfer of Work Product, and Release of Claims, Proposer specifically represents and warrants that it has the authority to convey to PennDOT the Proposal Work Product, including, but not limited to, any rights that might have been vested in team members, subcontractors, consultants or anyone else who may have contributed to the development of the Proposal Work Product, free and clear of all liens, claims and encumbrances.

Upon Proposer's receipt of any stipend amount, and in consideration thereof, PennDOT shall own all Proposal Work Product (as such term is defined under the Stipend Agreement) without any further compensation or consideration payable to Proposer. The foregoing rights of PennDOT shall not apply to Proprietary Intellectual Property.

PROPOSER: _____

By: _____

Name: _____

Title: _____

FORM K

FEDERAL DEBARMENT CERTIFICATION

[To be signed by the Proposer]

By signing and submitting its Proposal, the Proposer and its contractors (at all tiers) shall be deemed to have signed and delivered the following certification:

1. The undersigned certifies to the best of its knowledge and belief that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) have not within a 3-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; (ii) violation of federal or state/Commonwealth antitrust statutes (including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging); (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, or obstruction of justice; or (iv) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects its present responsibility;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state/Commonwealth, or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
 - (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state/Commonwealth, or local) terminated for cause or default.
2. Where the Proposer or a contractor is unable to certify to any of the statements in this certification, the Proposer or contractor shall attach a certification to its Proposal stating that it is unable to provide the certification and explaining the reasons for such inability.

FORM L
CERTIFICATION

INSTRUCTIONS:

- (1) Submit one copy of Form L related to the Proposer Team generally.
- (2) Submit one copy of Form L for each Major Team Member (other than the Independent Quality Firm). Members of a joint venture acting as Lead Construction Contractor shall submit separate copies of Form L.

Name of Proposer: _____

Name of Major Team Member: _____

- (a) Has the firm or any affiliate* or any current officer, director or employee thereof, been indicted or convicted of any crime related to bidding (i.e., fraud, bribery, collusion, conspiracy, antitrust, etc.) or a crime involving moral turpitude or business honesty or integrity in any jurisdiction or other contract related crimes or violations or any other felony or serious misdemeanor within the past ten years?

Yes No

If yes, please explain:

- (b) Has the firm or any affiliate* ever had any business license or professional license suspended or revoked within the past ten years?

Yes No

If yes, please explain:

- (c) Has the firm or any affiliate* ever had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust within the past ten years?

Yes No

If yes, please explain:

- (d) Has the firm or any affiliate* ever been or is it currently the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency within the past ten years?

Yes No

If yes, please explain:

(e) Has the firm or any affiliate* ever sought protection under any provision of any bankruptcy act within the past ten years?

Yes No

If yes, please explain:

(f) Has the firm or any affiliate* ever been disqualified, removed, debarred or suspended from performing work for the United States federal government, the Commonwealth or any other state or territory of the United States, or any governmental entity, instrumentality or authority within the past ten years?

Yes No

If yes, please explain:

(g) Has the firm or any affiliate* ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or other material misrepresentation to a public entity within the past ten years?

Yes No

If yes, as to each such inquiry, state the name of the public agency, the date of the inquiry, the grounds on which the public agency based the inquiry, and the result of the inquiry.

(h) Has any construction project performed or managed by the firm or, to the knowledge of the undersigned, any affiliate* involved repeated or multiple failures to comply with safety rules, regulations, or requirements within the past ten years?

Yes No

If yes, please identify the team members and the projects, provide an explanation of the circumstances, and provide owner contact information including telephone numbers.

(i) Has the firm or any affiliate* been found, adjudicated or determined by any federal or state court or agency (including, but not limited to, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and any applicable Pennsylvania governmental agency) to have violated any laws or Executive Orders relating to employment discrimination or affirmative action within the past ten years, including but not limited to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Sections 2000 *et seq.*); the Equal Pay Act (29 U.S.C. Section 206(d)); and any applicable or similar Pennsylvania law?

Yes No

If yes, please explain:

(j) Has the firm or any affiliate* been found, adjudicated, or determined by any state court, state administrative agency, including, but not limited to, the Pennsylvania Department of Labor, federal court or federal agency, to have violated or failed to comply with any law or regulation of the United States or any state within the past ten years governing prevailing wages (including but not

limited to payment for health and welfare, pension, vacation, travel time, subsistence, apprenticeship or other training, or other fringe benefits) or overtime compensation?

Yes No

If yes, please explain:

- (k) Has the firm or any affiliate* been involved in any arbitration, litigation, dispute review board or other formal dispute resolution proceeding involving a transportation project occurring in the past ten years where the amount in dispute is in excess of the lesser of (a) 2% of the original contract value (for projects in excess of \$100 million) or (b) if contract value in excess of \$250 million, \$500,000?

Yes No

If yes, please provide a brief description (including the resolution) of each qualifying arbitration, litigation, dispute review board or other dispute resolution proceeding. For each instance, identify an owner's representative with a current telephone and fax number and email address.

- (l) Does the firm or any affiliate* have any tax liabilities to the Commonwealth of Pennsylvania or any governmental entity, instrumentality or authority or other Commonwealth obligations or has the firm or any affiliate* filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is the firm or any affiliate* subject to a duly approved deferred payment plan if such liabilities exist?

Yes No

If yes, please explain:

- (m) With respect to each of Questions (a) through (l) above, if not previously answered or included in a prior response on this form, is any proceeding, claim, matter, suit, indictment, etc. currently pending against the firm that could result in the firm being found liable, guilty or in violation of the matters referenced in Questions (a) through (l) above and/or subject to debarment, suspension, removal or disqualification by the United States federal government, the Commonwealth or any other state or territory of the United States, or any governmental entity, instrumentality or authority of the Commonwealth or any other state or territory?

Yes No

If yes, please explain and provide the information requested as to such similar items set forth in Questions (a) through (l) above.

* The term "Affiliates" includes presently existing parent companies at any tier, subsidiary companies at any tier, entities under common ownership, joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Team Member as a joint venture or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Team Member), and other financially liable or responsible parties for the entity, that (a) within the past five years have engaged in business or investment in the U.S. or Canada, or (b) have been involved, directly or indirectly, in the debt or equity financing, credit assistance, design, construction, management or maintenance of any project listed by a Proposer in response to this RFP.

Under penalty of perjury, I certify that the foregoing is true and correct, and that I am the firm's Authorized Representative:

By: _____

Print Name: _____

Title: _____

Date: _____

FORM M

TITLE VI ASSURANCES

**The United States Department of Transportation (USDOT)
Standard Title VI/Non-Discrimination Assurances
DOT Order No. 1050.2A**

The Subrecipient (herein referred to as the “Recipient”), **hereby agrees that**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through its various operating administrations and bureaus, which include but are not limited to, the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Office of the Secretary, National Highway Traffic Safety Administration, and Federal Motor Carrier Safety Administration (FMCSA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964); and
- 49 C.F.R. part 303 (FMCSA’s Title VI/Nondiscrimination Regulation).

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including, but not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic and Safety Administration, and the FMCSA. ””

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted program that is the subject of this Agreement.

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the federally-assisted transportation program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

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

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

- b. the period during which the Recipient retains ownership or possession of the property.
- 9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
- 10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the federal agencies' access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the federal agencies. You must keep records, reports, and submit the material for review upon request to the federal agencies, or their designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the federally-assisted program. This ASSURANCE is binding on the Commonwealth of Pennsylvania, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the federally-assisted program. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation (U.S. DOT), through its various operating administrations and bureaus, which include but are not limited to, the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), Office of the Secretary, National Highway Traffic Safety Administration, and Federal Motor Carrier Safety Administration (FMCSA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA, to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the U.S. DOT, through its various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Commonwealth of Pennsylvania, Department of Transportation will accept title to the lands and maintain the project constructed thereon in accordance with the Legislative Authority applicable under this Agreement, the Regulations for the Administration of the federally-assisted program, and the policies and procedures prescribed by the U.S. Department of Transportation's various operating administrations and bureaus, which include but are not limited to, the FHWA, FTA, FAA, Office of the Secretary, National Highway Traffic Safety Administration, and FMCSA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Commonwealth of Pennsylvania, Department of Transportation, all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the Commonwealth of Pennsylvania, Department of Transportation and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Commonwealth of Pennsylvania, Department of Transportation, its successors and assigns.

The Commonwealth of Pennsylvania, Department of Transportation, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) the Commonwealth of Pennsylvania, Department of Transportation will use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Commonwealth of Pennsylvania, Department of Transportation pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 1. in the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania, Department of Transportation will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania, Department of Transportation will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Commonwealth of Pennsylvania, Department of Transportation and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the Commonwealth of Pennsylvania, Department of Transportation pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania, Department of Transportation will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Commonwealth of Pennsylvania, Department of Transportation will there upon revert to and vest in and become the absolute property of the Commonwealth of Pennsylvania, Department of Transportation and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, (ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

FORM N
DBE FORM
[SEE ATTACHED]



DBE PARTICIPATION FOR FEDERALLY FUNDED SERVICE AGREEMENTS

Form ___ of ___

Complete this form for each DBE who will perform on the project.

BID/CONTRACT NUMBER	DBE GOAL %
FIRM NAME OF BIDDER/OFFEROR	

COMPLETE THIS SECTION FOR DBE FIRM

DBE FIRM NAME	
ADDRESS	
CONTACT PERSON	PHONE NUMBER
DESCRIPTION OF WORK TO BE PERFORMED BY THE DBE	
DBE PERFORMING AS (CHECK ONLY ONE): <input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Service Provider <input type="checkbox"/> Trucking Firm <input type="checkbox"/> Supplier	
<i>If supplier you must check one of the following:</i> <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer <input type="checkbox"/> Transaction Expeditor/Broker	
NAICS CODE(S)	% OF TOTAL PRIME BID COMMITTED TO DBE FIRM

I am a DBE certified by the Pennsylvania Unified Certification Program with the NAICS code noted above. I hereby certify that I intend to enter into a subcontract for this project if the bidder/offeror is successful.

Signature of DBE: _____ Date: _____
(Signature and Title of Company Official) *(mm/dd/yyyy)*

I hereby certify, on behalf of, and intending to bind, the bidder/offeror, that the information contained herein is true and correct to the best of my knowledge.

Signature of Bidder/Offeror: _____ Date: _____
(Signature and Title of Company Official) *(mm/dd/yyyy)*

PENNDOT USE ONLY

Approved Disapproved

Signature of Reviewer: _____ Date: _____
(mm/dd/yyyy)

Instructions for Completion of EO-385, DBE Participation for Federally Funded Service Agreements

General Information

Bid/Contract Number: Indicate the bid/contract number for which the form is being completed.

DBE Goal %: Indicate the DBE goal established for the contract.

Firm Name of Bidder/Offeror: Indicate the name of your firm.

DBE Information

1. For each DBE firm you are committing to use on the contract you must provide the following:
 - a. **DBE FIRM NAME:** Indicate the name of the DBE firm be committed to for the project.
 - b. **ADDRESS:** Provide the address information (street, city, and state) for the DBE firm.
 - c. **CONTACT PERSON:** Identify the contact person for the DBE firm.
 - d. **PHONE NUMBER:** Provide a phone number for the DBE firm.
 - e. **DESCRIPTION OF WORK TO BE PERFORMED BY THE DBE:** Provide a detailed narrative description of the work to be performed by the DBE on the contract.
 - f. **DBE PERFORMING AS:** Indicate a DBE's role on the project for counting purposes. Refer to the 'DBE Requirements Appendix' for more detailed information regarding DBE crediting potential.
 - g. **NAICS:** Provide the North American Industry Classification System (NAICS) code(s) that correspond(s) to the work to be performed by the DBE firm.
 - h. **% OF TOTAL PRIME BID COMMITTED TO DBE FIRM:** Indicate the percentage of the total bid to be contractually allocated to the DBE firm.

2. Once the form is complete it needs to be signed and dated by an authorized official of the DBE firm as acknowledgement that they intend to work on the project if the bidder/offeror is successful.

3. Once the form has been signed and dated by the DBE firm, the bidder/offeror must sign and date certifying that information on the form is true and accurate.

Should you have any questions or concerns in completing this report you may contact the Bureau of Equal Opportunity for guidance. The Bureau can be reached via the email resource account, PennDOTDBEGoal@pa.gov or via telephone at 717-787-5891.