

**Industry Feedback Responses
Design-Build Agreement Documents
I-80 50th Street to I-480 Project - CN 22855**

Instructions: List one question per row, and number each row. Specifically reference the relevant document, section, and page number and include exact language within the question unless it is a general question.

No.	Document	Section	Comment	NDOT Response
1	Design-Build Agreement	Recitals, C, p.1	NDOT is requested to revise the clause to state that contracts are awarded on a "best value" basis rather than "lowest responsible bidder," consistent with NRS 39-2816(4). This revision will align the contract language with statutory authority and avoid potential inconsistency in procurement interpretation.	See updated Agreement Documents to be released with the Draft RFP for revised language.
2	Design-Build Agreement	1.2&1.3, p.2	1.3 overlaps with 1.2 and adds new requirements in the event of a contract document conflict, creating ambiguity in the event of conflict. Suggest deleting 1.3 because 1.2 governs in event of conflict.	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
3	Design-Build Agreement	1.6, p.3	<p>As drafted, the Design-Builder bears full risk if a Department-approved ATC cannot be implemented due to failure to obtain third-party approvals, with no adjustment to price or time. This assigns risk for approvals that are outside the Design-Builder's control, particularly where the Design-Builder lacks privity or leverage with third parties (e.g., railroads, utilities, local agencies).</p> <p>We recommend adding limited relief where (i) the ATC is approved by the Department, (ii) the Design-Builder uses commercially reasonable efforts to obtain required third-party approvals, and (iii) such approvals are denied for reasons beyond the Design-Builder's control. In those cases, the impact should be treated as a change.</p>	NDOT declines to make this suggested change. In the rare event that an ATC would require approval of a third party, the ATC will be conditionally approved by NDOT and the Design Builder will be responsible for obtaining the approval from the third-party.
4	Design-Build Agreement	1.6, p.3	<p>As drafted, the Department can direct changes to incorporate (i) ATCs submitted by unsuccessful proposers and (ii) the Design -Builder's ATCs that were approved by the Department for inclusion into its Proposal but were not incorporated into the Design-Builder's Proposal.</p> <p>As Designer of Record we recommend adding change rights for any design change directive.</p>	NDOT agrees that this section will be modified. Incorporation of the ATCs will occur prior to the Agreement being executed. Any inclusion of an unsuccessful Proposer's ATCs or ATCs that were approved by NDOT but not incorporated into the Proposal will be negotiated after selection of the apparent best value Proposer but before execution of the Agreement. There is no need for a Change Order during this period, as the Agreement hasn't been executed.
5	Design-Build Agreement	1.7, p.3	1.6 requires Design-Builder to revert to the Base Technical Concept if an ATC cannot be implemented; however, the Base Technical Concept is expressly non-binding, non-reliance, and not warranted as to accuracy, completeness, constructability, or feasibility under 1.7. This creates uncertainty as to whether it represents a viable fallback design, particularly where third-party approvals may be required but have not been obtained or verified. As drafted, Design-Builder bears the risk of both an unimplementable ATC and a Base Technical Concept that is not feasible or approvable, resulting in stacked, unquantifiable risk. Consider clarifying that the Base Technical Concept (or portions of it) is reasonably feasible for implementation, including that required third-party approvals are reasonably obtainable, or providing limited relief where it cannot be implemented due to factors outside Design-Builder's control, including third-party approvals or undisclosed conditions not reasonably identifiable at bid.	The ATC requirements are currently being evaluated. NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.

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6	Design-Build Agreement	1.3, 1.9, 1.11, p.2, p.4, p.5	These clauses appear to be duplicative regarding the incorporated specifications. Suggest deleting 1.3 to reduce ambiguity. 1.9 and 1.11 give best guidance regarding their incorporation and regarding how a change in standard should be applied to the project.	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
7	Design-Build Agreement	1.12, p.5	Suggest changing "clear and convincing" to "preponderance of the evidence" as that's the burden of proof applicable to civil matters.	NDOT declines to make this suggested change.
8	Design-Build Agreement	2, p.5	The definition includes Design-Builder-Related Entities and how it applies to this section. Suggest removing Design-Builder-Related Entities. A non-signatory to this agreement can not make representations in this agreement or attest to Design-Builder's legal authority.	The Design-Builder-Related Entities language is currently being evaluated. NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
9	Design-Build Agreement	3.2.1, p.6	Please confirm that the acronym "DBT" included, but not defined in, the document, refers to "Design-Build Team".	See updated Agreement Documents to be released with the Draft RFP for revised language.
10	Design-Build Agreement	3.4, p.8	Revise to clarify the amount the Department can withhold: "In addition to adjustments that the Department may make to the Requests for Monthly Payment, the Department may deduct from each Monthly Progress Payment and the Final Acceptance Payment 'reasonable amounts necessary to protect the Department against'. "	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
11	Design-Build Agreement	4.2.2.4, p.9	Under Condition #4, NDOT is requested to replace "insurance policies" with "certificates of insurance," consistent with standard industry practice. Requiring full policies is unnecessary and may delay compliance without providing additional benefit to the Department.	See updated Agreement Documents to be released with the Draft RFP for revised language.
12	Design-Build Agreement	4.2.3, p.10	Please clarify that "construction" as noted in Section 4.2.3 (NTP 2), excludes potholing, geotechnical investigations incidental to design, mobilization, site security, and establishment of staging/storage areas. This clarification aligns with typical Design-Build phasing and avoids unintended restrictions during preconstruction activities.	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.

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13	Design-Build Agreement	5.2, p.11	Revise to clarify that the Design-Builder is only responsible for recovery costs to the extent delays are within its control. As drafted, the provision could require the Design-Builder to accelerate at its own expense regardless of cause. The clarification aligns the clause with Section 17 and ensures non-Design-Builder delays are addressed through the Change Order process rather than absorbed by the Design-Builder: "...Upon the Department's acceptance or non-objection, the Design-Builder shall perform the Work in accordance with the Recovery Schedule 'at its own cost, except to the extent the underlying delay is not caused by the Design-Builder,' unless otherwise provided by Change Order. ..."; "If Design-Builder fails to provide an acceptable Recovery Schedule within thirty (30) Calendar Days after the Department's notice to do so, the Department may withhold all subsequent Monthly Progress Payments until an acceptable Recovery Schedule is approved. 'Notwithstanding the foregoing, to the extent any delay is not caused by the Design-Builder, the Design-Builder shall be entitled to appropriate time and/or cost relief in accordance with Section 17 (Change Orders).' Neither the preparation, submittal, nor approval of a Recovery Schedule shall entitle Design-Builder to any time extension, Agreement Price adjustment, or other compensation, 'except as expressly provided under Section 17 (Change Orders).'"	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
14	Design-Build Agreement	6.1.2, p.11	NDOT is requested to replace "prevent" with "minimize" and clarify that obligations apply to impacts "arising from the Work on the Site." Design-Builder cannot guarantee prevention of damage or injury, and the current language creates uninsurable risk exposure.	NDOT declines to make this suggested change. The current Agreement language contains a "reasonable precautions" clarifier.
15	Design-Build Agreement	7.3.1, p.13	NDOT is requested to revise this section to allow reasonable reliance on Department-provided information and provide relief for material errors or omissions. As drafted, the clause shifts all risk to the Design-Builder, which may result in increased pricing and reduced competition.	RID and Base Technical Concept requirements are currently being evaluated. NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
16	Design-Build Agreement	9.1, p.16	NDOT is requested to clarify that Design-Builder is responsible for managing and correcting nonconforming work, but not required to formally report its own nonconforming work in a manner that creates unintended warranty or statute of limitations implications.	NDOT declines to make this suggested change. The self-reporting and correction of Non-Conforming Work is mandatory.

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17	Design-Build Agreement	9.3, p.16	NDOT is requested to revise Section 9.3 to align with the mutual waiver of consequential damages and to include an objective standard for determining reimbursement. As drafted, subsection (a) allows recovery of amounts "deemed appropriate," which introduces unilateral discretion and could include damages otherwise waived. We propose limiting reimbursement to direct, verifiable costs and/or pre-established pricing, and clarifying that consequential damages remain waived.	NDOT declines to make this suggested change.
18	Design-Build Agreement	10.1, p.17	NDOT is requested to revise this provision to reflect that Design-Builder cannot secure property rights through eminent domain and should not bear responsibility for obtaining temporary ROW beyond commercially reasonable efforts.	NDOT agrees that the Design-Builder cannot utilize eminent domain to secure access. However, securing temporary ROW is intended to be a Design-Builder obligation. NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
19	Design-Build Agreement	10.4.1(2), p.19	Revise to align the investigation period with actual site access and limit the waiver to conditions reasonably discoverable during that time. As drafted, the clause imposes a complete waiver during NTP1, when full access to the site will not be available. The clarification preserves responsibility for reasonably identifiable conditions while allowing relief for utilities that could not be identified or were inaccurately shown. "The Design-Builder shall coordinate, complete, and report on utility investigation work within a maximum of one hundred twenty (120) Calendar Days of NTP 1', or such agreed-upon later date as the Design-Builder has been provided reasonable access to the Project site necessary to perform such investigation '. The Design-Builder shall prepare a report that identifies any differing utility conditions from those shown on the Utility Disposition Documents that the Design-Builder requests to claim as changed conditions. Failure to comply with this requirement shall waive the Design-Builder's right to claim differing conditions encountered during the work', but only to the extent such differing conditions were reasonably discoverable during the investigation period [A]t the end of the allowable investigation period, the Design-Builder shall assume all responsibility for utilities within the Project limits or that otherwise may affect or be affected by the Work', except for utilities that were not reasonably discoverable or were inaccurately identified in the Utility Disposition Documents, ' excepting, however, any action or inaction by parties other than the Design-Builder responsible for undertaking the disposition of the utilities identified in the Utility Disposition Documents, as updated by the Design-Builder as a result of the Design-Builder investigation."	The utility investigation period is currently being evaluated. NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
20	Design-Build Agreement	12.1.1, p.21	NDOT is requested to replace "assure" and "ensure" with "require" or "cause to comply," as Design-Builder can enforce contractual obligations downstream but cannot guarantee third-party compliance.	See updated Agreement Documents to be released with the Draft RFP for revised language.

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21	Design-Build Agreement	12.1.2.1, p.21	In addition to the trade contractor standards, NDOT is requested to also include the industry standard of care for design and professional engineering services, such as: "...similar scope and scale, and, for design and professional engineering services, the standard of care ordinarily exercised by members of the applicable professional discipline practicing under the same or similar circumstances at the same time and in the same locality. ... "	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
22	Design-Build Agreement	12.3, p.22	NDOT is requested to replace "assure" and "ensure" with "require" or "cause to comply," as Design-Builder can enforce contractual obligations downstream but cannot guarantee third-party compliance.	See updated Agreement Documents to be released with the Draft RFP for revised language.
23	Design-Build Agreement	12.5, p.22-23	Stipulation (b) should also include exempt authorized leave (eg FMLA, ADA, etc) and suspensions of the work from the Department.	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
24	Design-Build Agreement	14, p.23	The specs do not indicate that policies must be provided. The word policy should be struck from this sentence: "Failure of the Department to review, approve, or reject any certificate, policy, or endorsement in whole or in part shall not waive or modify the insurance requirement of this Agreement."	See updated Agreement Documents to be released with the Draft RFP for revised language.
25	Design-Build Agreement	14.2, p.24	NDOT is requested to replace "ensure" with "require" or "cause to comply," as Design-Builder can enforce contractual obligations downstream but cannot guarantee third-party compliance. Additionally, subcontractor insurance obligations should be limited to the extent applicable to each subcontractor's scope of work (e.g., professional liability requirements should apply only where design services are performed).	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
26	Design-Build Agreement	14.2, p.24	NDOT is requested to remove "agents" from the definition of Indemnified Parties to avoid extending indemnity obligations to undefined third parties beyond those with a direct contractual relationship.	NDOT declines to make this suggested change.
27	Design-Build Agreement	15.1, p.24	NDOT is requested to replace the term "prevent" with "minimize" (or "use reasonable efforts to prevent") with respect to damage, loss, or theft. Revising this language to a reasonable standard aligns with industry practice and avoids unnecessary risk pricing.	NDOT declines to make this suggested change. The current Agreement language contains both "appropriate security" and "reasonable precautions" qualifiers.
28	Design-Build Agreement	16.1, p.25	NDOT is requested to replace "assure" and "ensure" with "require" or "cause to comply," as Design-Builder can enforce contractual obligations downstream but cannot guarantee third-party compliance.	See updated Agreement Documents to be released with the Draft RFP for revised language.
29	Design-Build Agreement	16.2, p.25	To ensure this clause doesn't conflict with Section 21, add the following to the end of the first paragraph: "... or fraud, 'provided that all such liability shall be subject to the limitation of liability set forth in Section 21.' "	See updated Agreement Documents to be released with the Draft RFP for revised language.
30	Design-Build Agreement	16.3, p.25	To the extent the definition of "Work" includes design services, as is common in design-build agreements, the applicable standard of care may not be achievable or insurable. Please clarify the intended definition of "Work," which we understand to be set forth in Exhibit 1 of the Agreement (pg. 32) and may differ from the definition used in the specifications.	See updated Agreement Documents to be released with the Draft RFP for revised language.

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31	Design-Build Agreement	17.2-17.3, p.26-27	Propose adding additional Relief Events consistent with industry day discussion and Specs 107.17(1)(b), including: Force Majeure Event, damage or injuries caused by acts of war, Governmental Entities or Third Parties, and damage caused by traveling public.	The number and description of Relief Events is currently being evaluated. NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
32	Design-Build Agreement	18.1, p.28	Clarify "not exceeding five (5) Business Days (cumulatively)" is per suspension or entire project.	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
33	Design-Build Agreement	19.1.1, p.30	NDOT is requested to clarify whether the term "false" in Item #12 is intended to apply only to statements that are knowingly false. If so, please revise the provision to include "knowingly" before "false" to align with standard legal practice and avoid unintended strict liability.	See updated Agreement Documents to be released with the Draft RFP for revised language.
34	Design-Build Agreement	19.1.4, p.32	Revise first sentence to clarify that any offset rights are limited to amounts arising under this Agreement and cannot be applied across other projects or contracts between the parties: "Notwithstanding whether there exists any Design-Builder event of default, the Department may deduct and offset the amount of any demand for payment of money or damages 'arising under this Agreement' from the Design-Builder to the Department then due and owing to the Department and not otherwise subject to dispute by the Design-Builder from and against any amounts the Department may owe to the Design-Builder pursuant to this Agreement", and the Department shall have no right of setoff against any other contract or project between the parties. "	See updated Agreement Documents to be released with the Draft RFP for revised language.
35	Design-Build Agreement	20, p.37	This section references Design-Build Specification Section 108.08 (Liquidated Damages); however, that section appears to be deleted in the proposed specifications, and the current draft does not otherwise address liquidated damages. Please clarify the applicable liquidated damages provision and confirm where the governing terms and amounts will be set forth.	Liquidated Damage Amounts will be determined in the updated Agreement Documents to be released with the Draft RFP.
36	Design-Build Agreement	21.1, p.37	Please define "gross negligence" (as referenced in #3) in the agreement.	See updated Agreement Documents to be released with the Draft RFP for revised language.
37	Design-Build Agreement	21.2, p.38	NDOT is requested to clarify whether the intent of Section 21.2 is for the waiver of consequential damages to apply mutually to both parties. While the first sentence is drafted as mutual, the second sentence appears to apply only to the Design-Builder. If mutuality is intended, please revise the second sentence accordingly to ensure consistent and balanced risk allocation by changing "The Design-Builder agrees" to "Both parties agree".	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
38	Design-Build Agreement	22.1, pg 38	NDOT is requested to change "arising out of, relating to, or resulting from" to "to the extent caused by".	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.

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39	Design-Build Agreement	25.2, p.40	Propose revising the sentence authorizing Utility Owners to have inspection/audit rights to limit inspection rights to design documents to verify compliance, as there is no contractual or necessary basis to permit the Utility Owners full audit and inspection rights: "The Design-Builder shall grant to Utility Owners and their respective authorized representatives reasonable access to review and inspect design documents for the limited purpose of verifying compliance with applicable utility-related contractual requirements or Utility Agreement requirements."	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
40	Design-Build Agreement	25.5, p.42	NDOT is requested to clarify whether Section 25.5 is intended to prohibit the Design-Builder from retaining any rights to use Project materials for marketing. Please consider revising this section to include a limited exception allowing the Design-Builder to use non-confidential Project information and materials for marketing purposes. This revision would align with standard industry practice while preserving the Department's ownership rights.	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
41	Design-Build Agreement	26.6.1, p.44	Delete duplicate sentence: "Each Party may also designate technical representatives..."	See updated Agreement Documents to be released with the Draft RFP for revised language.
42	Design-Build Agreement	21.2 & 26.4, p.38, p.43	Delete one of the duplicated Mutual Waiver of Consequential Damages clauses.	See updated Agreement Documents to be released with the Draft RFP for revised language.
43	Design-Build Agreement	26.20, p.47	As drafted, this provision allows the Department to withhold payment in the event of insufficient appropriations, without clearly addressing the resulting status of the Agreement or the Design-Builder's entitlement to compensation for work performed. To provide clarity and proper risk allocation, we recommend revising this section to provide that, in the event sufficient appropriations are not received, the Agreement will be terminated in accordance with Section 19.4.1 (Termination for Convenience). This will ensure an orderly wind-down of the Project and appropriate compensation to the Design-Builder for work performed and reasonable termination costs.	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
44	Design-Build Agreement	Exhibit 1, p.11	NDOT is requested to clarify whether the duplicated definition of "Design-Builder" in Exhibit 1 is intentional. If not, please consider removing one of the duplicate definitions to avoid potential ambiguity or conflicting interpretations.	See updated Agreement Documents to be released with the Draft RFP for revised language.
45	Design-Build Agreement	Exhibit 1, p.14	Good Industry Practice – It appears this standard may be applying to both trade work and professional services. "Good Industry Practice" may be interpreted as a higher and less defined obligation, which introduces unnecessary risk and pricing uncertainty without corresponding benefit to the Department. Consider clarifying by separating design and engineering services and referencing the applicable professional standard of care for those services.	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.

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46	Division 100 Specs	105.07(4), p.14	Revise to align with the standard specification approach by applying the obligation to all contractors performing work within the Project limits, rather than assigning a shared project risk solely to the Design-Builder: " Each contractor and the Design-Builder shall assume all liability ... "	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
47	Division 100 Specs	106.07 (no page)	From NDOT standard specs 106.07, confirm whether Buy America is required for this project. If it is, this provision will need to be added back at p.22.	Build America/Buy America is required on this Project. Those provisions will be contained in the Applicable Laws Exhibit (Exhibit 4-B)
48	Division 100 Specs	108.03(12), p.41	Revise to clarify that Design-Builder's acceptance of risk does not eliminate its right to relief where expressly provided in the Agreement. As drafted, the provision could be interpreted to waive all claims, which conflicts with the Agreement and Spec's Change Order and relief framework. Add the following at the end of this sentence: "... except as expressly provided in the Agreement Documents. "	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
49	Division 100 Specs	108.04(4), p.41	There is a typo - (3) should be revised to (30)	See updated Agreement Documents to be released with the Draft RFP for revised language.
50	Division 100 Specs	109.05(2)(c), p.45	There is a typo - 1.b and 1.c should be revised to 2.b and 2.c	See updated Agreement Documents to be released with the Draft RFP for revised language.
51	Division 100 Specs	109.05(2)(a)(1), 109.05(2)(a)(2), 109.05(2)(d), p.45	There is a typo - 6., 7., and 8., should be revised to 2.f, 2.g, 2.h, and 2.i	See updated Agreement Documents to be released with the Draft RFP for revised language.
52	Division 100 Specs	109.05(2)(f)(x), p.45	There is a typo - (7), (8), and (9) should be revised to (vii), (viii), and (ix)	See updated Agreement Documents to be released with the Draft RFP for revised language.
53	Division 100 Specs	112.02(3), p.51	Revise mobilization fee as follows to follow the Department's standard practice: 25% of mobilization fee upon issuance of NTP2, 50% upon 5% completion, and 100% upon 10% completion	NDOT will consider the comment. See updated Agreement Documents to be released with the Draft RFP for any changes.
54	Technical Provision	1.2.1, p.1-2	Consider revising "be an employee of the Design-Builder" to "be an employee of the Design-Build Team (including major participants)" to reflect typical Design-Build delivery structures. This change would allow qualified personnel from joint venture partners or key subcontractors to serve in these roles while maintaining accountability.	NDOT will consider the comment. See the RFQ for any changes.
55	Technical Provision	1.2.2 and 2.3.1.1, p.1-4, p.2-16	The Quality Manager requirements require the individual to "work for the Design-Builder under the direct supervision of an executive officer and shall be independent of the Project Manager". Request to clarify it is acceptable for this individual to be a subcontractor or subconsultant employee that directly reports to the an executive officer of the Design-Builder independent of the Project Manager to reflect typical Design-Build delivery structures. This change would allow qualified personnel from joint venture partners or key subcontractors to serve in these roles while maintaining accountability.	NDOT will consider the comment. See the RFQ for any changes.

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56	Technical Provision	1.2.2 and 2.3.1.1, p.1-4, p.2-16	The draft documents have an inconsistency regarding the licensure requirements for the Quality Manager. Per Design-Build best practice, the overall Quality Manager role requirements focus on having a construction-focused quality professional responsible for integrated quality processes across design and construction, while a separate Design Quality Manager—who is a registered PE—provides direct oversight and review of the design scope. The previous RFQ was amended to be consistent with this approach. Request to clarify if NDOT will allow the overall Quality Manager position to be filled by a qualified construction quality professional (not required to be a PE), provided that a registered PE serves as the Design Quality Manager with direct responsibility for design quality oversight and compliance.	NDOT will consider the comment. See the RFQ for any changes.
57	Technical Provision	1.2.2 and 2.3.1.1, p.1-4, p.2-16	The Quality Manager experience requirements are 5 years minimum coordinating and managing quality programs on roadway and bridge projects in Section 1.2.2 and 5 years minimum coordinating and managing quality programs on expressway projects. Given the nature of the proposed project, likely solutions, and overall spectrum of services to be overseen by the Quality Manager throughout design and construction, request to clarify the requirement is consistent with the original RFQ and Section 1.2.2, and 5 years minimum coordinating and managing quality programs on roadway and bridge projects is acceptable.	NDOT will consider the comment. See the RFQ for any changes.
58	Technical Provision	1.4, p.1-6	Please clarify how the Project EDMS is expected to interface with NDOT systems such as ProjectWise and AASHTOWare Project, including data ownership, integration requirements, and whether NDOT will provide access or require Design-Builder-hosted solutions. Clarification will reduce duplication of systems and improve efficiency in document control and reporting.	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
59	Technical Provision	2.2.1.1, p.2-2	The DQM experience requirements are 10 years minimum on transportation projects which is significantly more than required for the overall Quality Manager which is an evaluated position. Request the experience requirements be modified to be consistent with the Quality Manager requirements such that the DQM has at least 5 years minimum experience actually performing and/or overseeing design quality control activities on roadway and bridge projects.	NDOT will consider the comment. See the RFQ for any changes.
60	Technical Provision	2.2.6.4, p.2-7	Consider changing "comments made by the Department shall be considered nonbinding." to "comments made by the Department shall be considered nonbinding, unless confirmed in writing. " This clarification will reduce ambiguity and rework risk while maintaining NDOT's intent regarding informal reviews.	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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61	Technical Provision	2.2.7, p.2-9	NDOT is requested to revise Section 2.2.7 to clarify that Design Documents are prepared under the supervision of the Design Manager (Engineer of Record), rather than the DQM. This change aligns with standard professional responsibility structures, where the Design Manager serves as the coordinating professional responsible for design.	NDOT will consider the comment. See the updated Agreement Documents for any changes.
62	Technical Provision	2.2.8 and 2.3.1.2, p.2-12, p.2-16	Please clarify the distinct roles and responsibilities between the Quality Manager (QM) and Construction Quality Manager (CQM), including authority, reporting structure, and independence requirements. Additional clarity will reduce duplication of effort and ensure efficient implementation of the Quality Management Program.	NDOT will consider the comment. See the RFQ for any changes.
63	Technical Provision	2.3.1.1, p.2-16	The Quality Manager requirements are listed and associated with the Construction Quality Control section of the document but the text and past representations from NDOT have addressed this role as being associated with quality of the overall team and project. Request to move language in Section 2.3.1.1 to Section 2.1 in a new subsection 2.1.3 to clearly define/reinforce this expectation that the Quality Manager is responsible for all of Quality Control.	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
64	Technical Provision	2.3.1.2, p.2-16	The CQM experience requirements are 15 year minimum on transportation projects and 10 year minimum on construction quality management on expressway projects, both of which is significantly more than required for the overall Quality Manager which is an evaluated position. Request the experience requirements be modified to be consistent with the Quality Manager requirements such that the CQM has at least 5 years experience actually performing and/or overseeing construction quality control operations on roadway and bridge project.	NDOT will consider the comment. See the RFQ for any changes.
65	Technical Provision	3.1.1.1, p.3-3	Consider revising the years of experience for the Project Scheduler from 10 years to 5 years. This revision would better align with current industry staffing availability and expand the proposer pool without reducing quality, as scheduling competency is more closely tied to relevant project experience than total years.	NDOT will consider the comment. See the RFQ for any changes.
66	Technical Provision	3.2.2.6, p.3-5	Consider striking paragraphs 3-6, as 5% of the contract value is effectively retainage. This is inconsistent with the Department's standard of practice.	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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67	Design Build Agreement (DBA)	21.1 Limitation of Liability	<p>The Limitation of Liability (LoL) aggregate amount is not explicitly defined as either a percentage of contract value or a dollar amount.</p> <p>For example item 21.1.1 exposes the Design-Builder (DB) to an undefined amount of costs that could be incurred by the Department.</p> <p>In principle the DB seeks a LoL that takes precedence/priority in the event of conflicting provisions, is an overall aggregate cap covering a broad range of liabilities including but not limited to liquidated damages (LDs) that has a clear definitive quantum of maximum damages (%/\$).</p> <p>The DB proposes 10% of the Proposal / Agreement Price.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
68	Design Build Agreement (DBA)	1.2 Order of Precedence	Please clarify what will be included in Exhibit 2.	Any Commitments above and beyond what is required per the RFP that is included in a Proposal.
69	Design Build Agreement (DBA)	21.2 Mutual Waiver of Consequential Damages	<p>The first sentence of 21.2 is broad.</p> <p>Suggestion: The DB would seek to have the definition of consequential and indirect damages be more specifically defined perhaps tied to the damages in the second sentence.</p> <p>The DB notes that the second sentence of 21.2 is not mutual and would seek to have the waiver be mutual.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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70	Design Build Agreement (DBA)	20 Liquidated Damages	<p>The DB notes that the LD amounts are not quantified.</p> <p>Suggestion: The DB also suggests that the daily LD amount be graduated such that it would be lower at the beginning of a delay and increasing at defined intervals if the delay continues.</p> <p>LD amounts should also include an overall cap that is included within the overall LoL, not in addition to the overall LoL. The LD cap suggested is 10% of the Proposal Price/Agreement Price.</p> <p>Additionally, whilst acknowledging that the Department will incur costs if the project duration is extended, the DB notes that significant costs are incurred daily (project running costs) by the DB to maintain the site and project team and that those costs can be tens of thousands of dollars per day (staff, subcontractors, site running costs, insurance, fuel, rental equipment, land leases, vehicles, site welfare). -</p> <p>The project running costs outlined above provide sufficient cause to motivate the DB to complete the work in accordance with the schedule and justify the removal of LDs from the DBA.</p>	The Liquidated Damages amount will be quantified in the Draft RFP Documents.
71	Design Build Agreement (DBA)	22.1 Indemnifications by Design-Builder	<p>The indemnity provisions as drafted present significant risk to the DB. The following represent some, but not all of the indemnity language concerns:</p> <p>22.1.1 The DB does not provide indemnification for breach of contract as there are other remedies throughout the DBA.</p> <p>22.1.5 Claims of inverse condemnation could arise from acts or omissions of the Department or its agents. The language as drafted leaves the DB liable for costs/damages even when the DB did not cause the damage.</p> <p>22.1.9 Regarding the indemnification of other contractors, the DB, the DB cannot provide an indemnity for the delay or losses of other contractors.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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72	Design Build Agreement (DBA)	5 Schedule Float	<p>Department-caused impacts can consume float with no consequences</p> <p>Suggestion: Consumption of float by Department Caused Delays shall not preclude Design Builder entitlement to additional time relief for subsequent qualifying impacts.</p> <p>A requirement for a risk-adjusted schedule prepared between NTP1 and NTP2 may be useful, particularly if there are seasonal restrictions on critical scopes of work (i.e. paving) that are effectively Suspensions. DB retains entitlement for payment for costs allocated to the Work not suspended</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
73	Design Build Agreement (DBA)	5.2 Submission of Recovery Schedule	<p>Recovery Schedule acceleration is mandatory and fully at the Design-Builder's cost, even when impacts are relief-eligible.</p> <p>This risk compounded by the Owner having the right to withhold "all subsequent Monthly Progress Payments" if the DB fails to submit an acceptable Recovery Schedule. There is also a concern with the "acceptable" Recovery Schedule being at the Owner's discretion.</p> <p>Additionally, there is a scenario where the only acceptable Recovery Schedule would require extraordinary efforts and costs to implement, the costs of which may not be recoverable until such a time as the disagreement is resolved.</p> <p>The Owner's rights in 5.2 also compound with the Owner's right to apply Liquidated Damages.</p> <p>Suggestion: Recovery Schedule measures attributable to Relief Events or Department Caused Delays shall be eligible for time and/or cost relief through Change Order, subject to Section 17. DB also suggests that the requirement to provide and recovery schedule be limited and be tied to being commercially reasonable.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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74	Design Build Agreement (DBA)	Exhibit 1 Float, Technical Specifications 3.1 Float Ownership Float, Float Ownership	<p>Ownership.</p> <p>The section indicates that float is a shared Project resource available to both the Department and Design-Builder on a first-come, first-served basis.</p> <p>The DB has a concern that there could be a circumstance where there is a relief event, or Change or some other event for which the Department has liability that could result in either the use of float or cause and overall extension of time.</p> <p>With the float being shared there is a risk that after the "event" that the DB may not be in the same position as it pertains to float after the event than prior to it.</p> <p>In this circumstance the DB would seek to have clarity that the total amount of float after the event would remain as if the event did not occur, including if there is an extension of time</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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75	Design-Build Division 100 Specifications	102.04.1; 102.04.3 Examination of Plans, Specifications, Special Provisions, and Site Work	<p>Differing Site Conditions</p> <p>102.04.1 indicates that the DB has "fully informed itself of "location and other conditions affecting the Work to be performed including the existence of poles, wires, pipes, ducts, conduits, and other facilities and structures of municipal and other public service corporations on, over or under the Site."</p> <p>102.04.3 states that the DB "shall be responsible to determine the nature, extent, and locations of subsurface explorations needed to obtain data and support subsequent analysis, design, and construction. The Design-Builder shall also be responsible for determining the adequacy of any subsurface exploration data provided by the Department to support its analyses, design, and construction and to supplement such data provided by the Department as the Design-Builder deems necessary."</p> <p>The DB is concerned that the requirements of the sections referenced above conflict with or limit the Relief Event entitlement described in DBA 17.3 "Differing Site Conditions". Being "fully informed" and "responsible to determine the " nature, extent, and locations of subsurface explorations needed to obtain data and support subsequent analysis, design, and construction" is a bar that is too high at the time of the RFP response submission.</p> <p>Suggestion: The DB should be entitled to rely on the geotechnical and other reports in the DBA. As drafted there is risk that the DBA could be interpreted differently due to 102.04.1 and 102.04.3 and limit the entitlement to the recovery contemplated under DBA 17.3.</p> <p>Suggestion: For the bridge rehabilitation scope, the DB suggests that the quantities be defined and that if quantities are in excess of what is defined that there be entitlement to a Relief Event.</p>	NDOT will consider the comment. Any conflicting language will be addressed. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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76	Design Build Agreement (DBA)	2.4, 2.5 Design-Builder Representations, Warranties, and Covenants	<p>There are inconsistencies regarding how hazardous materials are treated in the DBA. 17.3 Relief Events under the Differing Site Conditions row indicates that Unknown Hazardous materials is a Relief Event. However in Exhibit 1 the definition for Differing Site Conditions there are exclusions for hazardous materials.</p> <p>Suggestion: Discovery of hazardous materials should be a relief event. 2.5 suggest reword "Failure to investigate shall" to "Failure to investigate reasonably shall" to be consistent with 2.4 and incorporate a standard of care.</p>	See updated Agreement Documents to be released with the Draft RFP for revised language.
77	Design Build Agreement (DBA)	1.3 and 1.4 Conflicting Requirements	<p>Design-Builder absorbs the risk of differing provisions (which is common) and shall not exploit any error or omission. The impact is compounded when Design-Builder and NDOT approvers cannot agree on the 'right' solution, often based on opinion rather than technical merit, resulting in unnecessary delays.</p> <p>Suggestion: NDOT has sole discretion. If exercised in good faith and consistent with the purpose of the Agreement, prompt resolution to differing provisions should be possible.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
78	Design Build Agreement (DBA)	1.6, 1.7, and 7.3.1 Reliance on Base Technical Concept	<p>Design-Builder absorbs errors embedded in NDOT-provided concepts with virtually no reliance rights.</p> <p>Suggestion: Permit reliance for defined baseline data (e.g., ROW limits, lane counts, traffic volumes, geotechnical baseline, etc.)</p>	The Base Technical Concept requirements are currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
79	Design Build Agreement (DBA)	1.7 and 1.8 RIDs	<p>Design-Builder is not entitled to rely on the RIDs. Design-Builder acknowledges and agrees that it is obligated to conduct its own studies, analyses, and investigations to verify and supplement information in the RIDs, reports, explorations and subsurface conditions at the Site. Project includes significant repair and rehabilitation of bridges that cannot be quantified without reliable investigation data. Further exacerbated by MOT and limited closure durations. DB has indeterminable risk if "surprises" are found during construction that require re-design and approvals.</p> <p>Suggestion: Baseline scope for repair/rehab with rely upon RIDs. Consider bidders supplement with risk adjusted schedule/cost that becomes NDOTs contingency to apply against variance to baseline. Ideally paired with expedited approval process that encourages collaboration vs dispute.</p>	RID reliance is currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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80	Design Build Agreement (DBA)	3.2.1, 3.2.2, 3.2.3 Progress Payments	<p>Current method causes artificial distortion of the CPM just to align costs and cash flow.</p> <p>Suggestion: The Schedule of Values will be developed independently from the baseline CPM schedule using bid items and scope-based work packages, with the CPM schedule used solely to substantiate progress and manage project sequencing, not for cost loading or payment calculation.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
81	Design Build Agreement (DBA)	1.12, 7.1, 7.2, 7.3, 9.2, 9.3, 17.3, 5.2, 5.3, 3.4, Sole discretion	<p>Sole discretion is not subject to Dispute Resolution creating asymmetric risk, because they limit dispute rights and convert many issues from technical determinations into unilateral NDOT decisions.</p> <p>Suggestions:</p> <ul style="list-style-type: none"> - In the Department's sole discretion, exercised in good faith and consistent with the purposes of this Agreement - Any determination made in the Department's sole discretion shall be supported by a written explanation stating the factual and contractual basis for the determination - Where the Design-Builder demonstrates documented compliance with coordination, scheduling, and mitigation requirements, the event shall be presumed to qualify, unless the Department reasonably determines otherwise. - The exercise of sole discretion shall not preclude the Design-Builder's right to pursue dispute resolution under Section 23 on the basis that such discretion was exercised arbitrarily or inconsistently with the Agreement - Except in emergencies affecting immediate safety, the Department shall provide the Design-Builder a reasonable opportunity to cure or consult before exercising such discretion 	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
82	Design Build Agreement (DBA)	17.3, 7, and 5. Department Caused Delay	<p>Department review delays, revised comments, and iterative approvals can delay the Work but do not clearly qualify as compensable or time-relief events.</p> <p>Suggestion: Department Caused Delay includes failure to provide reviews, comments, approvals, or direction within the timeframes stated in the Agreement Documents, or issuance of revised comments that materially alter previously reviewed or conditionally approved design assumptions. Design revisions required by Department comments after intermediate acceptance shall constitute a Department Directed Change.</p>	See updated Agreement Documents to be released with the Draft RFP for revised language.

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83	Design Build Agreement (DBA)	10.4.1(2) Utility discrepancies	<p>Failure to identify all utility discrepancies within 120 days of NTP1 permanently shifts risk to the Design-Builder, regardless of detectability. This does not permit enough time for design development and coordination with utilities before risk transfer. Depending on when the NTP1 date is there could be a conflict with winter weather.</p> <p>Suggestion: Extend investigation window and add exception for utilities not reasonably discoverable, including exception for material difference in actual vs theoretical locations. This concept may also apply to the bridge rehabilitation/repair scope where material discrepancies to the RIDs may not be discoverable until construction is underway and re-design becomes necessary due to no fault by D-B or NDOT.</p> <p>Previously unidentified utilities should fall under Differing Site Conditions and be a Relief Event.</p>	Utility requirements, including the investigation period, are currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
84	Design Build Agreement (DBA)	17.3 and 10.4.1(2) Utility Relief Event	<p>Utility delays are relief-eligible only if NDOT subjectively agrees the Design-Builder's position is "reasonable".</p> <p>Suggestion: Where the Design Builder documents timely coordination, reasonable scheduling, and a Utility Owner's failure to perform, the event shall be presumed a Utility Relief Event absent contrary evidence.</p>	Utility requirements, including the investigation period, are currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
85	Design Build Agreement (DBA)	17.3 Types of Relief Events	<p>Differing Site Conditions - Unidentified Utilities</p> <p>17.3 dates that Differing Site Conditions shall not include the discovery of previously unidentified utilities.</p> <p>Unidentified utilities represent a risk to the DB in terms of both time and money. Requiring the DB to have responsibility for unidentified utilities, and the associated cost and time of dealing with them represents a risk that is difficult to quantify, and is a risk that the Department should hold.</p> <p>Suggestion: DB suggests the unidentified utilities should be a specific relief event or alternatively the DB suggests that addressing the unidentified utility risk would be with a defined cash allowance.</p>	NDOT will hold all unidentified utility risk for this Project. See updated Agreement Documents to be released with the Draft RFP for revised language.
86	Design Build Agreement (DBA)	10.2.2, 10.3, and 18 Automatic Time relief for defined events	<p>Many NDOT or third-party driven events provide no guaranteed time relief unless discretionarily granted.</p> <p>Suggestion: Where access, utility relocation, or environmental suspension delays demonstrably affect the Critical Path and are not caused by the Design Builder, an automatic compensable time extension shall be granted.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.

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87	Design Build Agreement (DBA)	10 Environmental regulatory suspensions	<p>Work stoppages pending action by agencies may not qualify as Relief Events.</p> <p>Suggestion Classify regulatory standstills eligible Relief Events unless directly/solely caused by Design Builder noncompliance. Explicitly state that mitigation beyond original permit commitments constitutes a Department Directed Change.</p>	<p>The number and type of Relief Events are currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>
88	Design Build Agreement (DBA)	9.2 and 9.3 Acceptance of non-conforming work	<p>NDOT may unilaterally set deductions for accepted nonconforming work.</p> <p>Suggestion: Subject to dispute resolution under Section 23. Limit non safety nonconformance claims after a defined post acceptance period (e.g., 12–18 months).</p>	<p>NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>
89	Design Build Agreement (DBA)	6.1.3 Obligation to minimize impacts	<p>Suggest revise "minimize the effect on surrounding property and the public to the extent practicable" to "minimize the effect on surrounding property and the public to the extent commercially practicable"</p>	<p>NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>
90	Design Build Agreement (DBA)	8.3 Obligation to uncover Finished Work	<p>The sentence "Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by the Department (if applicable) or without inspection in accordance with Agreement Documents and/or Project Management Plan may be ordered uncovered, removed or restored at Design-Builder's cost and without an adjustment to the Agreement Price or any Completion Deadline or any other relief, even if the Work proves acceptable and conforming after uncovering" imposes an automatic forfeiture for otherwise compliant work.</p> <p>Suggestion: Strike sentence or revise to include "If such Work is found to be acceptable and conforming, the Design-Builder shall be entitled to an equitable adjustment for the reasonable and documented costs of uncovering and restoring the Work and for any demonstrable impact to the Critical Path, unless the Department demonstrates that it was materially prejudiced by the lack of prior notice".</p>	<p>NDOT declines to make the suggested change. This language refers to such Work that has a "hold point" identified in the Technical Provision. Any Work requiring a "hold point" will be specifically identified in the Technical Provisions. If the Design Builder moves past the "hold point" without first allowing NDOT to inspect the Work, the Design Builder bears full responsibility for all costs associated with removing and uncovering the Work.</p>
91	Design Build Agreement (DBA)	17.3 Types of Relief Events	<p>Department review delays, revised comments, and iterative approvals can delay the Work but do not clearly qualify as compensable or time-relief events.</p> <p>Suggestion: "Department Caused Delay includes failure to provide reviews, comments, approvals, or direction within the timeframes stated in the Agreement Documents, or issuance of revised comments that materially alter previously reviewed or conditionally approved design assumptions."</p>	<p>The number and type of Relief Events are currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>

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92	Design Build Agreement (DBA)	17.3 Types of Relief Events	<p>Many NDOT or third-party driven events provide no guaranteed time relief unless discretionarily granted.</p> <p>Suggestion: "Where access, utility relocation, or environmental suspension delays demonstrably affect the Critical Path and are not caused by the Design Builder, an automatic compensable time extension shall be granted."</p>	<p>The number and type of Relief Events are currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>
93	Design Build Agreement (DBA)	17.3 Types of Relief Events	<p>Utility delays are relief-eligible only if NDOT subjectively agrees the Design-Builder's position is "reasonable."</p> <p>Suggestion: Where the Design Builder documents timely coordination, reasonable scheduling, and a Utility Owner's failure to perform, the event shall be presumed a Utility Relief Event absent contrary evidence.</p>	<p>The number and type of Relief Events are currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>
94	Design Build Agreement (DBA)	17.3 Types of Relief Events	<p>Utility Delays</p> <p>The DB recognizes the Department's acknowledgement that delays occur when dealing with Utility companies and that entitlement to relief should be provided.</p> <p>Suggestion: The DB would seek to have a more defined set of entitlement triggers that are quantifiable and less subjective. Entitlement should not be subject to the sole determination of the Department.</p> <p>As an example the DB has worked with Owners on other projects to develop a cap on utility relocation costs where the costs are shared between the DB and the Owner at pre-defined levels with an absolute cap being provided above the shared cost level(s).</p>	<p>The number and type of Relief Events are currently being evaluated. NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>
95	Design Build Agreement (DBA)	19.1.4 Offset rights	<p>Department will not deduct disputed amounts from payments owed hereunder until the amount in dispute exceeds expected remaining payments under the Agreement, with payment pending resolution of the dispute.</p> <p>Suggestion: until the amount in dispute exceeds remaining contract balance</p>	<p>NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>
96	Design-Build Division 100 Specifications	109.04.1 Compensation for Changes in the Work - Design-Builder Responsibility for Quantity Risk	<p>In relation to "differing conditions" which is not a defined term, 109.04.1 reinforces the risk to the DB regarding site conditions, hazardous materials and unidentified utilities.</p> <p>In particular, the section states that the risks of differing conditions are the DB responsibility to the extent that they could have been identified through "reasonable design development, investigation...".</p> <p>Design development primary occurs following award of the project accordingly knowledge gained from design development would not be available at the time the Proposal/Agreement price is developed.</p>	<p>NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.</p>

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97	Design-Build Division 100 Specifications	108.03.1.e	<p>108.031.e - Confirm if the second last sentence is missing the word "is" missing between the words Department and not. The bolded word "is" has been inserted for illustrative purposes.</p> <p>"he extent that the Department is not afforded the opportunity to inspect such material or condition before it is disturbed.</p> <p>Confirm that Hazardous discovery is a Relief Event.</p>	See updated Agreement Documents to be released with the Draft RFP for revised language.
98	Design-Build Division 100 Specifications	108.03.2.a Relief Event Notice Requirements.	<p>With reference to 108.03.b, which requires that a Relief Event Notice be submitted withing 14 calendar days the DB has concerns that the extensive and detailed requirements for Relief Event Notice set out in 108.03.2.a may be too stringent to be practicable thereby resulting in a situation where the DB could be considered as failing to provide a contractually compliant Relief Event Noice.</p> <p>Depending on the Relief Event in question it may not be possible to quantify the cost and schedule impacts, provide a mitigation plan etc within the 14 day period. Due to the nature of the Relief Event the required information for the Relief Event Notice may not be known in 14 days and or may be impossible to quantify in the same 14 day period.</p> <p>Suggestion: The DB would seek to have requirements for the Notice relaxed and for the subsequent Request for Change Order (RCO) to include the necessary quantification (time/cost).</p>	See updated Agreement Documents to be released with the Draft RFP for revised language. A Relief Event Notice is only intended to put NDOT on Notice that a Request for Change Order may be submitted. The intent is to provide enough information for NDOT to evaluate the current conditions of the Project and be prepared for the a potential Request for Change Order.
99	Design Build Agreement (DBA)	26.2 All Payments Subject to Appropriations	<p>26.2 exposes the DB to the risk of non-payment for work that is in progress and or completed. The scenario arises where the DB has made payments for design, supply and installation of permanent materials, labor, project running costs, insurances. in the normal course of executing the Work.</p> <p>It appears that there is no remedy afforded to the DB if the funds are no appropriated.</p> <p>Suggestion: Please clarify the funding arrangements for the project.</p>	In the event of non-appropriation of funding for the Project, the Department would terminate for convenience and the Design-Build can avail themselves to those Agreement Provisions. Agreement language will be added to clarify this change.

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100	Design Build Agreement (DBA)	18, 19 Suspension, Default and Termination	<p>DBA does not afford rights to the DB to suspend or terminate the DBA. Following the a period of time the DB should have rights to terminate the DBA and have all costs incurred to date compensated. The DB should also have the right to terminate the DBA and rights to be compensated for all associated costs of the termination and for costs incurred to date if the Owner fails to pay the DB.</p> <p>The suspension section allows the Owner to not be liable to compensate the DB via a Department Directed Change if the suspension period is 5 days or less as there could be a suspension of 5 days at a critical time that causes a major delay to the project.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.
101	Design Build Agreement (DBA)	14 Insurance	<p>Please also refer to Design-Build Specifications 107.15</p> <p>Suggestion: Professional Liability (PL) insurance should be a requirement for NTP1 and NTP2. Insurable events can occur in either period. The PL insurance limit should be in order of \$5M.</p> <p>Other required insurance limits are lower than expected for projects of this size and complexity.</p>	NDOT will consider the comment. See the updated Agreement Documents to be released with the Draft RFP for any changes.