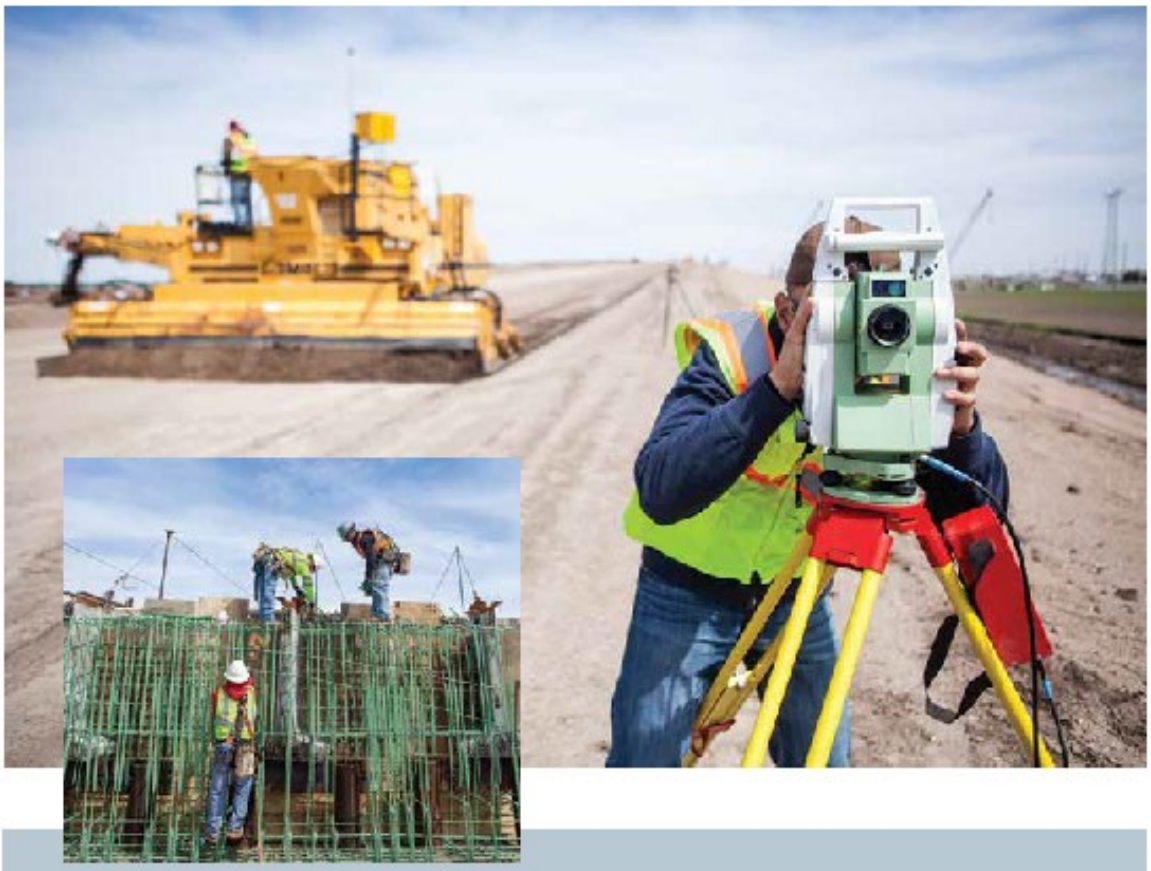
Guidelines for

Accelerated Project Delivery



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Preface

General Introduction

The Design/Build (D/B) and Construction Manager/General Contractor (CM/GC) project delivery methods are two new tools that NDOT is authorized to use in meeting the needs of the state's transportation program. These methods may not be appropriate for all projects, but when the right projects are selected, D/B or CM/GC may offer significant benefits for NDOT and the public.

The information presented in these Guidelines provides a framework for using the D/B or CM/GC project delivery method. The procedures presented do not have to be followed to the letter, but illustrate approaches that have been proven successful and can be adapted as appropriate for each specific project. Commonly asked questions are presented and answered in the context of NDOT's traditional Design/Bid/Build (D/B/B) project delivery method versus D/B or CM/GC project delivery methods.

These Guidelines are written comprehensively to provide anyone interested in D/B or CM/GC contracting in NDOT with an understanding of the general policies and recommended procedures for their use. However, the recommendations will need to be tailored to project decision-makers, who must correctly identify, assess, fund, and develop projects, balancing the benefits and risks of D/B or CM/GC contracting. It may be useful to project team members who will be involved in the final processes.

These Guidelines are the product of an accumulation of experience and understanding of public contracting using the D/B and CM/GC project delivery methods and the multitude of issues surrounding each method. The process described in these Guidelines substantially accomplishes the objectives of NDOT, but continuous improvements are expected.

The decision to use the D/B or CM/GC project delivery method is not made instantaneously, but rather through a series of key decisions weighing risks and benefits. These Guidelines provide insight to those risks and the decisions that must be made to be successful in developing a project scope and contract documents using the D/B or CM/GC project delivery methods.

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Acronyms

Unless otherwise specified, wherever the acronyms listed below are used in this Guideline, they shall have the meaning set forth below.

APDM	Accelerated Project Delivery Method
ATC	Alternative Technical Concept
CM/GC	Construction Manager / General Contractor
CPM	Critical Path Method Schedule
D/B	Design/Build
D/B/B	Design/Bid/Build
DBE	Disadvantaged Business Enterprise
EMR	Experience Modifier Rate
ERC	Evaluation and Recommendation Committee
FA	Financial Advisors
FC	Financial Committee
FHWA	Federal Highway Administration
GMP	Guaranteed Maximum Price
GPs	General Provisions
ICE	Independent Cost Estimator
IR	Industry Review
ITP	Instructions to Proposers
ITS	Intelligent Transportation System
NDOT	Nebraska Department of Transportation
NEPA	National Environmental Policy Act
OPCC	Opinion of Probable Construction Cost
OVT	Owner Verification Testing

PAGs	Procurement Advisory Groups
QA/QC	Quality Assurance and Quality Control
RFP	Request for Proposal
RFQ	Request for Qualification
RIDs	Reference Information Documents
ROW	right-of-way
SC	Selection Committee
SOQ	Statement of Qualifications
SPs	Special Provisions
TA	Technical Advisors
TC	Technical Committee
TMP	Target Maximum Price
TPs	Technical Provisions
USACE	U.S. Army Corps of Engineers
VAP	Value Added Proposal

Definitions

Unless otherwise specified, wherever the following capitalized terms listed are used in these Guidelines, they shall have the following meanings.

Accelerated Project Delivery Method (APDM)	Alternative Project Delivery Methods available for use by NDOT consisting of D/B and CM/GC methods.
Addendum or Addenda	Supplemental additions, deletions, and modifications to the provisions of the RFQ or RFP after the release date of the RFQ or RFP.
Descriptive Rating	A descriptive term with which specific qualitative characteristics are associated for use by NDOT during the evaluation of an SOQ or proposal. Prior to the evaluation process, NDOT will assign numerical scores or score ranges to correspond with each Descriptive Rating.
Affiliate	Includes parent companies, subsidiary companies, and partners of the proposing entity and other potentially financially liable parties for that entity.
Alternative Technical Concept (ATC)	Suggested changes, submitted by proposing teams, to the contracting agency's supplied basic configurations, project scope, design, or construction criteria. These proposed changes must provide a solution that is equal to or better than the requirements in the RFP. If the ATC is acceptable to the contracting agency, the concept may be incorporated as part of the proposing team's technical and price submittal. ATCs provide flexibility to the proposers to enable them to enhance innovation and achieve greater efficiency.
Base Configuration	Provides for a constraint on the Design/Builder's ability to deviate from a particular design and also establishes a design benchmark for payment to be made to the Design/Builder if the owner's assumed configuration that was the basis for its price estimate proves to be impossible to build. D/B proposers have the right to assume that the Base Configuration and the design contained in the contract drawings are feasible and represent a reasonable engineering approach to the project.
Best Value	The selection method for award of a contract based on the combination of qualitative non-price elements and quantitative cost/price elements.

Conflict of Interest Policy	NDOT policy governing organizational conflicts of interest. The existing NDOT Conflict of Interest Policy does not address personal conflicts of interest.
Contract Documents	All documents that, when combined, form the basis of the contract, including all pre-tender, tender, and contractual documentation.
Contract Terms and Conditions (Agreement)	The rights and obligations of the contracting parties, once a contract is executed. These include general conditions that are common to a variety of NDOT contracts, as well as special conditions that are specific to an individual contract. (Examples of special conditions include contract change conditions, payment conditions, price variation clauses, and penalties.)
Department	The Nebraska Department of Transportation (NDOT).
Design/Bid/Build (D/B/B)	The traditional method of project delivery in which the agency or owner contracts with separate entities for the design and the construction of a project.
Design/Build (D/B)	A project delivery method in which the design and construction services are contracted by a single entity known as the Design/Builder or D/B contractor.
Design/Builder	The entity with which the agency or owner has contracted to perform the D/B work effort for a project.
Estimated Contract Value	The estimated total price of a D/B contract that includes both design and construction as well as other items for which the D/B contractor may be responsible such as utility relocation or ROW.
Evaluation and Recommendation Committee (ERC)	The selected NDOT staff that will serve as the official scoring body to evaluate and rank SOQ and proposal submittals.
General Conditions	The conditions included in the contract that establish the minimum performance requirements for the proposer.
Guidelines	The information contained in this NDOT manual that establishes the framework for either D/B or CM/GC procurement. Guidelines are recommended, except for those identified in this manual as required.
Industry Review (IR)	A review period of the procurement documents during which the draft documents are provided to the shortlisted firms for their review and comment. This process allows NDOT to make any necessary changes to the draft documents without using the Addendum process before the final procurement documents are released for bidding purposes.

Instructions to Proposers (ITP)	The documents, including exhibits and forms, included in the RFP containing directions for the preparation and submittal of information by the proposers in response to the RFP.
Key Individuals or Key Personnel	Those personnel categories designated by NDOT, for which individuals identified by proposers in an SOQ or proposal may not be changed without NDOT approval. The credentials of these personnel will be evaluated and considered in the selection process.
Liquidated Damages	An amount determined by the owner during the formation of a contract, to compensate the owner for a specific breach of the contract (for example, late performance). Liquidated Damages are based on estimates of potential actual damages and are not punitive.
NDOT Director	The NDOT staff member that serves as the head of NDOT.
NDOT Agreements Engineer	The NDOT staff member that serves as the lead procurement officer on the specific project under procurement.
Oral Presentations	An in-person formal meeting between the proposer and Owner, at which the proposer may provide clarifying information and/or respond to specific questions formulated by NDOT, to assist NDOT in its final scoring and ranking of SOQs or proposals.
Owner	The Nebraska Department of Transportation.
Policy	The definite course or method of action selected by NDOT to guide and/or constrain decisions regarding the state's use of APDMs.
Potential Conflict of Interest Disclosure Statement	A form provided by NDOT to be used by proposers and prospective proposers to identify any known or perceived conflict of interest, and the course of action proposed to mitigate the conflict.
Price Proposal	The financial or cost proposal submitted by a proposer in response to the request as identified in the ITPs in the RFPs.
Procurement Advisory Groups (PAGs)	A select group of personnel identified by the SC, consisting of either in-house NDOT staff or consultants, that will be available to assist the ERC during the entire procurement evaluation process. Members of this group will perform duties as identified in the SOQ Evaluation Manual and RFP Evaluation Manual <u>but are not authorized</u> to perform any scoring of SOQs or proposals.

Project Manager	The Design/Builder's designated individual responsible for the overall design, construction, quality, and contract administration for the project. Also could refer to NDOT's employee with responsibility for administering the D/B contract.
Proposal	The documents submitted by a proposer in response to the RFP.
Proposer	The entity submitting a proposal for the project in response to the RFP.
Reference Information Documents (RIDs)	The set of documents assembled by NDOT and included in the RFPs to provide definition and insight into the project. These documents may include: 1) environmental reports, 2) geotechnical information and data, 3) ROW information, 4) utility information, and 5) any other information NDOT considers to be relevant to project definition. These documents are provided to the proposer for reference purposes only and may not be relied upon. Selected procurement documents must notify proposers that using these documents for the preparation of a proposal is solely at their risk.
Request for Proposals (RFP)	The set of documents identifying the project and the work effort to be performed and materials to be furnished, in response to which a proposal may be submitted by a proposer. The RFP includes the ITP, Contract Documents, Technical Provisions, and RIDs. The RFP is issued only to proposers that have been shortlisted following SOQ review and evaluation process.
Request for Qualifications (RFQ)	The solicitation by NDOT as part of a procurement, of SOQs, which will be evaluated for the purpose of identifying a consultant or contractor in a qualification-based selection or a predetermined number of highest ranked firms or teams to be subsequently provided with a RFP. The identified highest ranked firms or teams are collectively referred to as being shortlisted or on the shortlist.
Right-of-Way (ROW)	The parcels of land necessary to construct and operate the planned facility.
Selection Committee (SC)	The NDOT staff members that will oversee and facilitate the evaluation process for the procurement.
Statement of Qualifications (SOQ)	The submission made by a proposer in response to an RFQ, including all clarifications thereto submitted in response to requests by NDOT.
SOQ Evaluation Manual	The NDOT manual that establishes the methodology and criteria for the evaluation of the proposer's submittal to NDOT in response to the RFQ.

Special Terms and Conditions or Special Provisions (SPs)	The detailed standard rules that will apply to the proposer that enters into a contract with NDOT, forming an integral part of the final agreement or contract.
Standard Specification	The current NDOT standards for construction.
State	The State of Nebraska.
Stipend	A payment made to an unsuccessful proposer in exchange for ownership of the work product included in their proposal and all intellectual property rights associated therewith. These payments are only made to shortlisted proposers who submit responsive proposals.
Technical Proposal	The submittal prepared by a proposer that outlines their concepts, ideas, processes, and approaches to deliver a specific project.
Technical Provisions (TPs)	The technical requirements and criteria developed by NDOT for a specific project, which will serve as the bases for the final design and construction.
Transmittal Letter	The formal letter, prepared by the proposer, which transmits the SOQ or proposal to NDOT for consideration and evaluation.
Value Added Proposal (VAP)	The proposer's concept or idea that is not included in the scope of work, and that will enhance the performance of the selected element without changing the technical requirements or adding additional cost (for example, improved life cycle features).
Work Product Agreement Form	A written agreement between the proposer and NDOT that gives NDOT ownership of said proposer's proposal and any concepts or ideas contained in the proposal, in exchange for the Stipend.

Section 1 Conflict of Interest Policy for Design/Build and Construction Manager/General Contractor

1.1 Introduction

The Nebraska Department of Transportation (NDOT or the Department) strives to maintain the highest ethical standards, and requires strict adherence to the Conflict of Interest Policy regarding organizational conflict of interest when employing Design/Build (D/B) and Construction Manager/General Contractor (CM/GC) project delivery methods. This Policy applies to firms that may seek to enter into D/B or CM/GC contracts with the Department (prospective proposers and proposers).

This Policy does not address personal conflicts of interest on the part of NDOT selection team members; state laws and procedures governing improper business practices and personal conflicts of interest apply to NDOT selection team members. This includes the Nebraska Disclosure Statute at Sections 49.1499.02 and .03. However, this policy does include a Potential Conflict of Interest Disclosure Statement for NDOT selection team members (Attachment 1-1), which must be completed by participating NDOT employees and NDOT's consultants and advisors with regard to a particular project, and which must be approved by NDOT's Procurement Manager before such NDOT employees, consultants, and/or advisors may participate in the procurement process for an NDOT D/B or CM/GC procurement.

Title 23 Code of Federal Regulations (CFR) Part 636.103 defines an organizational conflict of interest as follows:

> Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

As used in this excerpt, person means a natural person (i.e., a human being) or an artificial person (i.e., a legal entity treated as having the same legal rights as a human being, including the rights to own property, enter into contracts, and sue and be sued, including for example, corporations, partnerships, and associations.)

The goals of the NDOT Conflict of Interest Policy are:

- Protect the integrity and fairness of all aspects of a D/B or CM/GC project, including development, planning, procurement, design, and construction;
- Avoid circumstances where a consultant or proposer obtains, or appears to obtain, an unfair competitive advantage as a result of other work performed, and thereby prevent circumstances that might invite protests in response to NDOT's selection process; and,
- Provide guidance to consultants and proposers, and prospective consultants and proposers, so they may make informed business decisions concerning opportunities to provide support services to NDOT regarding a potential D/B and/or CM/GC project versus opportunities to propose in response to the subsequent D/B or CM/GC Request for Proposal (RFP) after the final NDOT decision is made regarding project delivery method.

1.2 Statutory Authority

Requests for Qualifications (RFQs) and RFPs for services related to potential D/B and CM/GC projects must clearly communicate the requirement for proposers to comply with all applicable state laws related to procurement and ethics, including the Nebraska Disclosure Statute at Sections 49-1499.02 and .03, and including Nebraska Legislative Bill 960, which states in Section 10:

> The department may hire an engineering or architectural consultant to assist the department with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the department to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired, and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Nebraska Legislative Bill 960 also states in Section 13(2) that:

> A person or organization hired by the Department under section 10 of this act shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

Solicitations for consultants and/or advisors to support the Department during a D/B or CM/GC procurement process should clearly and conspicuously indicate that firms selected to provide such support services will be precluded from: proposing to provide design or construction services for the resultant D/B or CM/CG project; participating as a subcontractor proposing in pursuit of that resultant project; providing technical, legal, or financial advice to prospective proposers or proposers; or directly discussing any aspect of the D/B or CM/GC RFQ or RFP with any prospective proposer or proposer.

For federal-aid projects and in certain other circumstances, NDOT must comply with the Federal Highway Administration's (FHWA's) organizational conflict of interest rules found in 23 CFR Part 636, Subpart A, including 23 CFR Part 636.116.

1.3 Prohibited Proposers and Participants on Proposer Teams

Entities to which any of the following conditions A through G apply may not be permitted to participate as a proposer or as a member of a proposer team and may not assist nor advise, neither any proposer nor proposer team member in connection with the relevant project. Entities to which any of the following conditions are known by NDOT to apply for a particular project must be identified in the Statement of Qualifications (SOQ) and repeated or updated in the RFP. It is not NDOT's intent to unduly restrict firms' ability to pursue competitive opportunities with the Department, and while the applicability of any of the listed conditions to a firm with regard to a specific project will preclude that firm from pursuit of that specific project, it will not preclude their pursuit of other NDOT projects. Further, the Department views these prohibitions as being only applicable to first tier consultants and advisors, typically prime contractors, that are privy to NDOT deliberations and discussions that affect the procurement process, and not necessarily applicable to second tier or lower tier consultants and advisors, typically subcontractors, that prepare and provide materials for NDOT use and consideration in the procurement process. Lastly, NDOT reserves the right, in its sole discretion, to make the

final determination regarding whether a particular circumstance precludes a firm from pursuit of a particular D/B or CM/GC project.

A. Serving as a consultant or advisor to NDOT with regard to the Department's planning, development, or management of a procurement for a specific D/B or CM/GC project. (Note that subconsultants to such consultants or advisors, depending on work performed, would typically not be prohibited.)

B. Assisting the sponsors in the management of a specific D/B or CM/GC project, including the preparation of RFQ language, RFP language, or RFQ or RFP evaluation criteria.

C. Conducting preliminary design services for a specific project such as geometric layouts, bridge-type selection, or preliminary bridge design.

D. Performing design work related to a specific project for other stakeholders.

E. Performing environmental studies related to the National Environmental Policy Act (NEPA) and other federal permits.

F. Performing work on a previous contract that specifically excludes them from participating as a proposer or a participant in a proposer team.

G. Serving under contract with any other entity or stakeholder to perform oversight on a specific project.

H. Obtaining information that is not publicly available related to a specific project or its procurement from, or having a material discussion regarding a specific project or its procurement with, any person or entity with an organizational conflict of interest including but not limited to the consultants and advisors who have provided technical support regarding the specific project for any such person or entity.

Prospective proposers and proposers must undertake reasonable due diligence, including necessary conflict searches, to determine whether new actual, potential, or perceived conflicts of interest arise. Due diligence should extend to investigation of past relationships with other entities and, if applicable, to officers or directors thereof. If a prospective proposer or proposer becomes aware of an actual, potential, or perceived conflict of interest at any time during its participation in a project, it must promptly disclose the matter to NDOT.

1.4 Requirements for Respondents that Have Identified Potential Conflict of Interest

Entities who may have potential conflicts of interest in relation to a specific project and who wish to participate as a proposer or join a proposer team pursuing that specific project must:

A. Conform to applicable federal and state conflict of interest rules and regulations.

B. Disclose all relevant facts relating to past, present, or planned interest(s) of the proposer team (including the proposer and its subconsultants and/or subcontractors) which may result in, or could be viewed as, an organizational conflict of interest in connection with the specific project including present or planned contractual or employment relationships with any current employee of the Department.

C. Disclose all of the work performed in relation to the specific project, and if so directed by NDOT, provide all records of such work performed so that all information can be

evaluated and, if necessary, made available to all potential proposers for the specific project.

D. Ensure that the entity's contract with any related entity to perform services related to the specific project has expired or has been terminated.

E. In cases where the potential member of a proposer team is affiliated with an entity with an organizational conflict of interest, describe how the entities in question would avoid conflicts of interest during the procurement process.

On review of the information provided as previously described, the Department will determine, in its sole discretion, if an unfair competitive advantage exists that would preclude the entity from participating on a proposer team.

1.5 Other Potential Conflicts of Interest

Because other conflicts of interest may exist in addition to those identified herein, each prospective proposer or proposer must require its team members to identify potential conflicts of interest or any real or perceived competitive advantage relative to the specific project (for example, an employee changing companies, mergers or acquisitions of firms, property ownership, business arrangements, or financial interests). If an organizational conflict of interest is discovered, the prospective proposer or proposer must make an immediate and full written disclosure to the Department that includes descriptions of the conflict or advantage, and the actions the prospective proposer or proposer has taken or intends to take to avoid or mitigate such conflict or advantage. Such disclosures must be received by the Department on or before the deadlines identified in the relevant RFQ and/or RFP. In response to such disclosures, the Department will render determinations regarding the eligibility of the potentially conflicted firm(s) to participate in the proposer's team.

If a conflict of interest applies to an individual, the conflict of interest and prohibition with respect to the individual will not apply to the individual's new place of employment, unless the new employer is an affiliate of the employee's previous employer. If the new employer is not an affiliate of the previous employer and is otherwise eligible to perform services for NDOT pursuant to these guidelines and applicable law, the new employer will remain eligible despite the employment of the individual, but mitigation measures may be required of the new employer with respect to the employee.

1.6 Failure to Comply with Policy

If an entity fails to comply with NDOT's rules, including failure to comply with any mitigation measures imposed under the guidelines, or otherwise fails to disclose an actual, potential, or perceived conflict of interest, NDOT may, in its sole discretion:

- Preclude and/or disqualify the entity and its affiliates, including any member of the team which an NDOT D/B or CM/GC project is being pursued, from participation in the planning, procurement, design, construction, and/or development of the particular project, including any competitive process associated therewith;
- Require the entity and its affiliates, including any other entity with which an NDOT D/B or CM/GC project is being pursued, to implement mitigation measures;
- Terminate the entity and its affiliates from any contract with NDOT for the planning, procurement, design, construction, and/or development of a particular project; and/or,

- Pursue any and all other rights and remedies available at law, in equity or set forth in any relevant RFQs or RFPs, which rights and remedies shall include the right to seek any and all direct or indirect costs and damages resulting from the entity's failure to comply with this policy, including, but not limited to, costs resulting from third-party challenges to the procurement or NDOT's re-procurement of the affected project.

If, at any time during the procurement process, the Department discovers a conflict of interest or potential advantage, other than those identified herein and not previously identified by the affected proposer, the Department may, at its sole discretion, disqualify the affected proposer or cancel the procurement, or if said discovery occurs after the conclusion of the procurement process, terminate the D/B or CM/GC contract.

The Department recognizes that prospective proposers and proposers must maintain business relationships with other public and private sector entities to continue as viable businesses. The Department will consider this while evaluating the appropriateness of proposed measures to mitigate potential conflicts. The Department would seek to disqualify proposers only in those cases where a potential conflict cannot be adequately mitigated.

1.7 Potential Conflict of Interest Disclosure Statement – Proposers

Proposers and members of the proposer team must complete the Disclosure of Potential Conflict of Interest Statement provided as Attachment 1-2 (*Potential Conflict of Interest Disclosure Statement – Proposer*) and submit it along with an associated SOQ and proposal. If a proposer determines a potential conflict of interest exists, it must disclose the conflict to the Department; however, such a disclosure will not necessarily preclude a proposer for further consideration with regard to the relevant project. To be considered further, proposers that have determined a potential conflict of interest exists must propose measures to avoid, neutralize, or mitigate all potential conflicts. To avoid any unfair taint of the selection process, the Potential Conflict of Interest Disclosure Statement must be submitted in a separate envelope or package from the corresponding SOQ or proposal, and it will not be provided to the Selection Committee (SC) members. The Department will review the disclosure and the appropriateness of the proposed mitigation measures to determine if the proposer is eligible to participate in the procurement notwithstanding the potential conflict. Resolution of the conflict of interest is ultimately at the sole discretion of the Department. The Department reserves the right to void a proposer's having been shortlisted or cancel the procurement if said proposer failed to disclose a potential conflict, which it knew or should have known about, or if the proposer provided information on the disclosure form that is false or misleading.

1.8 Continuing Obligations Regarding Conflict of Interest

Prospective proposers and proposers pursuing a particular D/B or CM/GC project shall arrange their affairs so as to prevent conflicts of interest from arising. Conflict of interest guidelines and policies shall continue to be monitored and enforced throughout the procurement process and during the term of the resultant D/B or CM/GC contract. If an organizational conflict of interest is discovered at any time during the procurement process, the proposer will make an immediate and full written disclosure to the Department that includes a description of the action that the proposer has taken or intends to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and the proposer was aware of an organizational conflict of interest prior to submitting a Potential Conflict of Interest Disclosure Statement and did not disclose the conflict, the Department may remove the proposer from further participation

in the procurement. Continuing obligations regarding organizational conflicts of interest must be identified to prospective proposers and proposers in RFQs and RFPs.

Attachment 1-1

Potential Conflict Of Interest Disclosure Statement –Selection Team Participant

I,_____ as a participant in the preparation of the Request for Qualifications (RFQ) and/or Request for Proposal (RFP), and/or development of associated evaluation criteria, and/or in agreeing to participate in the selection process by reviewing and evaluating Statements of Qualifications and/or proposals (the Procurement Process), for the design and construction or design support and potential subsequent construction of the
_____ (the Project), make the following representations:

A. Except as set forth in this Disclosure Statement, neither I nor any member of my immediate family has a direct or indirect financial interest in any entity participating in any proposal with regard to the Project;

B. Except as set forth in this Disclosure Statement, no business or organization with which I am associated has a direct or indirect financial interest in any entity participating in any proposal with regard to the Project;

C. Except as set forth in this Disclosure Statement, no member of my immediate family or other person, business, or organization with which I am associated is negotiating or has an arrangement concerning prospective employment relating to any entity participating in any proposal with regard to the Project;

D. Except as set forth in this Disclosure Statement, neither I nor any member of my immediate family is involved in discussions with any business participating in any proposal with regard to the Project;

E. I will not solicit or accept, directly or indirectly, any gratuities, unwarranted privileges or exemptions, favors or anything of value from any firm under consideration for the D/B or CM/GC contract associated with the Project, and I recognize that doing so may be contrary to statutes, ordinances, and rules governing or applicable to NDOT or may otherwise be a violation of law; and,

F. In the event that the circumstances under which I made this Disclosure Statement change such that a revised response pertaining to items A through E must be provided, I will promptly contact the NDOT Planning and Project Development Engineer and prepare a revised Disclosure Statement.

Further, I hereby affirm that I have disclosed any potential conflicts of interest where indicated below on this Conflict of Interest Disclosure Statement, or alternately, I hereby certify that to the best of my knowledge, I do not have a conflict of interest, either real or apparent, as a result of a direct or indirect financial interest on my part or that of any member of my immediate family, nor of my employer, partner(s), or joint venture members, in any firm under consideration for the D/B or CM/GC contract associated with the Project.

Further, I acknowledge that NDOT may require revisions to the management plan described in Section II below of this disclosure statement prior to approving it and that NDOT has the right, in its sole discretion, to limit or prohibit my involvement in the Project as a result of the potential conflicts of interest described in Section I below of this disclosure statement.

This Agreement is subject to the laws of the State of Nebraska and applicable rules and regulations.

☐ No Conflict of Interest to Disclose

☐ Conflict of Interest and Mitigation Identified (Attach additional pages as necessary)

Signed: _____ Date: _____

Printed or Typed Name and Title: _____

Representing: _____

Section I – Description of Potential Conflicts of Interest

Section II – Plan for Mitigating or Managing Potential Conflicts of Interest

Approved by the Nebraska Department of Transportation

Signed:_____ Date:_____ , 20___

Name and Title:_____

Attachment 1-2

Potential Conflict of Interest Disclosure Statement – Proposer

I, _____, as an authorized representative of the proposer or prospective proposer, or as a member of the proposer's or prospective proposer's team, identified below, pursuing the

_____

Design/Build (D/B) or Construction Manager/General Contractor (CM/GC) contract (the Project), hereby affirm that I have disclosed any potential organizational conflicts of interest where indicated below on this Conflict of Interest Disclosure Statement, or alternately, I hereby certify that to the best of my knowledge, that the proposer or prospective proposer identified below does not have a conflict of interest, either real or apparent, as a result of any contractual relationships, work performed previously or currently being performed, or any personal relationships.

This Agreement is subject to the laws of the State of Nebraska and applicable rules and regulations.

☐ No Conflict of Interest to Disclose

☐ Conflict of Interest and Mitigation Identified (Attach additional pages as necessary)

Signed: _____ Date: _____

Printed or Typed Name and Title: _____

Representing: _____

Proposer Team Name: _____

Description of Potential Conflicts of Interest

Plan for Mitigating or Managing Potential Conflicts of Interest

Approved by the Nebraska Department of Transportation

Signed:_____ Date:_____ , 20___

Name and Title:_____

Section 2 Design/Build and Construction Manager/General Contractor Project Selection Guidelines

2.1 Introduction

The decision to use an Accelerated Project Delivery Method (APDM) such as D/B or CM/GC, depends on the simultaneous consideration of multiple, project-specific characteristics. There are no absolute tests that drive the decision one way or another and different project characteristics can affect the decision-making process in greater or lesser measures depending on circumstances of the project. These Project Selection Guidelines (Guidelines) are to be used to help NDOT staff in their decision-making processes; the Guidelines are not strict rules.

These Guidelines are organized by project characteristics. Attachment 2-1 (*Project Selection Guidelines*) that corresponds to the Guidelines is provided at the end of this Section. In the matrix, the applicability of Design/Bid/Build (D/B/B), CM/GC, and D/B is evaluated for individual project characteristics; reinforcing the need for holistically considering the applicability of different project delivery methods rather than looking to a few characteristics as tests to absolutely drive the decision.

2.2 Primary Project Delivery Objective

After the scope is defined and a preliminary risk assessment is performed, the fundamental project characteristics need to be examined. These include NDOT control of detailed design, completion schedule, early cost and schedule certainty, overall cost, reduced NDOT staff involvement, and technical innovation. Each of these is described in the following paragraphs. (See *Section 7* for details regarding Risk Assessment.)

NDOT Control of Detailed Design – To the extent that, for a particular project, NDOT considers it necessary, or would prefer to maintain a high degree of control during final design, D/B/B or CM/GC will be considered; D/B is not a suitable method under such circumstances. An example might be rehabilitation of a bridge originally designed by NDOT. In that case, NDOT might want control over specific elements to be replaced and/or upgraded.

Completion Schedule – The overall project delivery schedule is typically the primary reason for using D/B or CM/GC project delivery. D/B and CM/GC methods may accelerate project delivery relative to D/B/B, due to the partial overlap of design and construction with D/B and to the avoidance of the procurement process for a construction contractor with CM/GC. The degree to which a particular project would be feasible to implement with more concurrent activities may affect the potential magnitude of schedule acceleration with D/B or CM/GC. Note that while overall project duration may decrease, construction duration may remain essentially unchanged. In addition to schedule compression because of concurrent activities, construction duration may be shortened by efficiencies that result from the designer and construction contractor working together in the D/B and CM/GC methods.

If acceleration of project completion is the reason to select D/B project delivery, there are outside constraints that could affect project delivery (such as, environmental permits, extensive right-of-way (ROW) acquisition,, and complex third party agreements). It is possible that delays in the D/B addressing these constraints could eliminate any potential schedule advantage from

the D/B method. In such cases, consider one or more separate contracts to address these issues outside of the D/B contract and preserve the schedule compression potential of the D/B method; if this is not possible, the project is most likely not an appropriate candidate for D/B project delivery.

Questions to ask related to whether D/B project delivery can save time relative to D/B/B include:

- Must the work begin or end by a specific date?
- Is the available time unusually short?
- Are work windows a significant issue?
- Are certain seasons or dates critical?
- Are traffic detour and/or closure periods limited?

If the answer to these questions is yes, the project is most likely an appropriate candidate for D/B.

Early Cost and Schedule Certainty – If it is necessary and/or desirable to have cost or schedule certainty early in the project, D/B project delivery would be the most advantageous method. Conversely, both D/B/B and CM/GC do not provide cost or schedule certainty until after completion of final design or later.

Overall Cost – There is no universally accepted cost advantage associated with project delivery using D/B/B versus CM/GC or D/B. Lowest cost might be attained with any one of these methods, depending on specifics of the project and the quality of project management.

Reduced NDOT Staff Involvement – For reasons such as a large volume of project activity placing extraordinary workload demands on existing staff, inability to bring aboard additional staff due to a hiring freeze, or limited available staff resources with a particular skill set, NDOT may prefer to reduce the level of staff involvement in a particular project. Regardless of the reason, D/B project delivery allows NDOT to reduce the level of staff involvement, relative to both D/B/B and CM/GC.

For D/B project delivery, be aware that scope definition and proposer selection require a greater Owner effort up front and have a greater affect on project success than in D/B/B or CM/GC project delivery. To offset any NDOT staff concerns, a consultant can be used to supplement NDOT staff throughout the delivery of the project. It is important to note that the decision to use D/B project delivery will not rest solely on availability of NDOT staff.

Technical Innovation – Technical innovation is typically constrained by the prescriptive nature of D/B/B project delivery and stimulated by the flexible nature of D/B project delivery. CM/GC project delivery may foster technical innovation depending on the engagement level and cooperation level between the design team and the construction team, and the prime/sub relationship in the CM/GC team of the construction contractor and the technology provider.

2.3 Status of Funding

Another fundamental consideration in selecting the most advantageous project delivery method is the status of project funding.

Project is Programmed and Funding is Committed – Having all project funding in place does not favor any of the three project delivery methods available to NDOT. However, it is essential for using D/B because the NDOT funding obligation is part of the D/B contract.

Project is Programmed but Funding is Not Fully Committed – Partial funding, while unsuitable for D/B project delivery, is sufficient for initiating D/B/B or possibly CM/GC project delivery.

Project is Not Programmed – In the absence of construction funding, there may still be funding available to complete design, and if NDOT has a high level of confidence in the project ultimately proceeding, it may be desirable to pursue a design contract, following a D/B/B project delivery strategy.

2.4 Project Size

The size or estimated cost of a project will be considered when determining the most advantageous project delivery method. The following size-related factors should be gauged to determine the best project delivery method.

- Projects with large estimated costs usually offer the greatest overall potential benefits from D/B and CM/GC due to the potential of innovative design or construction alternatives. However, larger projects may present a greater risk. At the same time, larger projects may limit the number of potential proposers because of the resources required to deliver such projects.
- D/B may be the only project delivery method available on large projects due to availability of NDOT staff.
- Smaller projects may present opportunities for specific benefits from D/B, such as specialty work or Intelligent Transportation System (ITS) projects. The use of D/B or CM/GC contracting on smaller projects with lower risks may still achieve the benefits of compressed project schedule and lower contracting costs. Additionally, smaller firms can compete and gain experience with the D/B and CM/GC project delivery methods.

2.5 Project Complexity

Projects that are complicated present more coordination challenges and potential for design and/or construction innovation, and therefore more potential benefits from a D/B or CM/GC approach. A Best Value solution is often a direct function of the compatibility between the contractor's capabilities and the features of the design. Projects for which the answer to the following questions is yes may be best addressed through D/B or CM/GC contracting, where unique solutions, based on the specific characteristics, can be proposed.

- Will construction phasing be a major issue? (D/B and CM/GC)
- Does the site present unique or unusual conditions? (D/B/B and CM/GC)
- Are specialty skills needed for design or construction? (D/B)
- Does the project include emerging technology? (D/B)
- Will extensive temporary facilities be required? (D/B and CM/GC)

2.6 Project Permitting Status

Securing of permits and approvals is a critical step in preparing to employ D/B project delivery, but it can be performed after initiating design when using D/B/B or CM/GC methods. Due to the time required to obtain environmental permits or U.S. Army Corps of Engineers (USACE)

approval, neither D/B nor CM/GC should be considered if the environmental or USACE permit processes have not been started. If these processes are nearing completion, D/B and CM/GC are most likely viable project delivery methods for the given project.

2.7 Public ENDOTsement

A project that is well received by the public may be delivered using any of the three project delivery methods available to NDOT. The greater the controversy surrounding a project, the less suitable APDM would be for that project.

2.8 Project Types and Other Characteristics

When evaluating potential projects for D/B or CM/GC contracting, NDOT will consider the following example project characteristics to help identify likely candidates.

- Projects for which changes are anticipated during construction such as urban projects with high potential for unforeseen utility issues (these projects may be better suited for CM/GC).
- Projects that require minimum ROW acquisition and utility relocation; to avoid potential associated delays (these projects may be better suited for D/B).
- Projects that would have a well-defined scope for all parties (design and construction); this applies only to D/B and is required by the nature of the D/B project delivery process.
- Projects that have room for innovation in the design and/or construction effort are able to take advantage of the flexibility offered by D/B project delivery.
- Projects with low risk of unforeseen conditions that might offset or eliminate potential D/B or CM/GC schedule acceleration.
- Projects with low possibility for significant change during all phases of the work; CM/GC, and to a lesser extent D/B/B, are better able to deal with changes than D/B (these projects may be better suited for CM/GC than D/B). The level of possibility can be evaluated during the risk assessment which is done during the procurement phase.

Examples of projects that may be good D/B contracting candidates include the following:

- Major bridge projects (although these are good D/B/B and CM/GC candidates as well).
- ITS projects.
- Interchange improvements with innovative design such as diverging diamond or system interchanges.
- Buildings, including office buildings, rest areas, welcome stations, and pedestrian overpasses (although these are good D/B/B and CM/GC candidates as well).
- Interstate widening projects (although these are good D/B/B and CM/GC candidates as well).

Examples of projects that may be good CM/GC contracting candidates (while also being good D/B/B candidates) may include projects that meet the following criteria:

- Major roadway or bridge rehabilitation or repair.

- Urban construction or reconstruction with major utilities, ROW, or other major unknown factors.

2.9 Summary: Why Consider Design/Build?

The objective of D/B contracting is to deliver projects better, faster, and with fewer Department resources than required by the conventional D/B/B method. This objective is likely to be achieved however, only if certain characteristics are considered in the project selection process. The primary questions to ask are:

- Can significant time savings be realized through concurrent design and construction activities?
- Will higher quality products be realized from designs tailored to contractor capability?
- Do constraints of availability of NDOT staff affect the candidate project's schedule?
- Will there be less affect on the public with the use of expedited construction processes?

If the answer to these questions is yes, the project is most likely a good D/B candidate.

2.10 Summary: Why Consider Construction Manager/General Contractor?

The objective of CM/GC is to deliver projects better and faster than the conventional D/B/B method. Achievement of these objectives depends on careful consideration of the project scope in the project delivery selection process. Helpful questions to ask include:

- Does the scope suggest that construction phasing issues might be reduced by integrating constructability considerations provided by the CM into the design process?
- Is the scope complex or does it include new technology; the construction and implementation of which would benefit from the early participation of the CM in the design process?

If the answer to these questions is yes, the project is most likely a good CM/GC candidate.

Weigh the project goals, potential benefits, and probable risks carefully, and use all of the information provided in these Guidelines to determine if D/B or CM/GC APDMs offer the best approach to successfully delivering a particular project. In this process, examine candidate projects for unusual or unique requirements that could be better addressed by using D/B or CM/GC project delivery; examples include severe ROW limitations, extensive traffic handling, narrow construction windows, and time sensitive staging.

Attachment 2-1
Project Selection Guidelines

Delivery Method is Compatible with the Characteristic	
Delivery Method May Be Compatible with the Characteristic	
Delivery Method is Not Compatible with the Characteristic	

Project Characteristics	Likely Candidate for Delivery as		
	D/B/B	CM/GC	D/B
Primary project delivery objective			
NDOT control of detailed design			
Completion schedule			
Cost			
Early cost and schedule certainty			
Reduced NDOT staff involvement			
Technical innovation			
Funding			
Programmed and funding committed			
Programmed but full funding not committed			
Not programmed			
Project size			
Greater than $50 million			
$10 million to $49 million			
Less than $10 million			
ITS projects			
Project complexity			
Numerous primary features (road, bridges, ITS)			

Project Characteristics	Likely Candidate for Delivery as		
	D/B/B	CM/GC	D/B
Closely interrelated features			
Constrained construction phasing			
Unique or unusual site conditions			
Specialized skills need for design or construction			
Emerging technology included			
Extensive temporary features required			
Project permitting status			
All approvals received or no impacts			
Nearing completion of NEPA/USACE approvals			
Environmental/USACE permits not started			
Public eNDOTsement of project			
Supported			
Controversial			
Other project characteristics			
Minimum ROW or utility relocation			
Well defined scope			
Projects with changes expected during construction			
Project types			
Major bridge projects			
ITS Projects			
Interchange improvements			
Interstate widening			
Buildings, rest areas, pedestrian overpasses			

Project Characteristics	Likely Candidate for Delivery as		
	D/B/B	CM/GC	D/B
Roadway/bridge rehab or repair			
Urban construction with major utilities/ROW needs			
Mill and resurfacing			

Notes:
D/B/B = Design/Bid/Build, CM/GC = Construction Manager/General Contractor, D/B = Design/Build, NDOT = Nebraska Department of Transportation, ITS = Intelligent Transportation System, NEPA = National Environmental Policy Act, USACE = U.S. Army Corps of Engineers, ROW = right-of-way

Section 3 Design/Build Procedures

3.1 Procurement Methodology

Employing D/B project delivery is significantly different from traditional D/B/B project delivery in several ways; the two most important differences are the method of proposer selection and the degree of owner involvement after proposer selection. Unlike the separate, sequential contracts for design and construction found in D/B/B, a Design/Builder is selected based on a combination of qualifications and price, commonly referred to as Best Value, to perform both the design and construction roles. Also, unlike D/B/B in which the owner actively participates in the design process and reviews and approves a series of increasingly detailed levels of design, the owner does not actively participate in the design process in D/B project delivery. Both of these differences underscore the criticality of the owner having a clear understanding from the outset of its project goals and preparing procurement documents that will serve those goals, such as schedule acceleration, technology innovation, minimizing traffic impacts during construction, or minimizing impacts on environmentally sensitive sites.

Procedures for CM/GC procurement are included in Section 8 (*CM/GC Procedures*).

Nebraska Revised Statutes 39-2808 to 39-2823 govern NDOT with regard to application of APDM to NDOT projects.[1]

The following general policies are the basis of the NDOT D/B procedures:

- NDOT will establish project specific goals early in the project development process. D/B procurement will not proceed without consensus and formal acceptance of shared project goals among key NDOT staff responsible for project success.
- NDOT will follow a two-step procurement process that combines an RFQ and an RFP. Attachment 3-1 (*Design/Build Procurement Flowchart*) provides a general overview of the RFQ process followed by the RFP process culminating in a contact award.
- Prospective D/B proposers will be qualified through the RFQ process.
- NDOT will shortlist at least two, but typically no more than three, firms or teams that are the most qualified based on their SOQs. Pursuant to Nebraska Revised Statutes 39-2813(4), if only one SOQ is received, NDOT may continue or cancel the procurement. Only shortlisted firms or teams will be provided with an RFP and invited to propose. NDOT will not review or consider alternative proposals or proposals with options, except as provided in the RFP Alternative Technical Concept (ATC) and Value Added Proposal (VAP) processes.
- NDOT will select the Design/Builder through a competitive, sealed, two-envelope proposal method using Best Value selection criteria. One envelope shall contain the Design/Builder's Price Proposal and the other their Technical Proposal.
- Barring extenuating circumstances, NDOT would award the D/B contract to the responsive and responsible proposer offering a proposal that meets the criteria established by NDOT and that is determined by NDOT to provide the Best Value through evaluation based upon the criteria set forth in the RFP.

[1] http://nebraskalegislature.gov/laws/statutes.php?statute=39-2808

3.2 Formulation of Request for Qualifications

The objective of the RFQ process is to determine the qualifications of the proposer teams so that only the best qualified proposers are shortlisted to receive an RFP and to submit detailed proposals. NDOT's standard pre-qualification process will not apply to D/B contractors; NDOT will rely solely on the RFQ process to identify the most qualified proposers. The RFQ will focus primarily on the capabilities, experience, and past performance of the proposer team and Key Personnel regarding specific issues pertinent to the particular D/B project, as well as team organization, Quality Assurance and Quality Control (QA/QC) approach, current safety record, and financial capacity. The RFQ will include, at a minimum, the following eight sections:

- Introduction: Outline of general information pertaining to the project, including but not limited to, goals and objectives of the project, and roles and responsibilities.
- Background Information: General overview of the project including the proposed procurement schedule.
- Required Content for SOQs: Minimum requirements of the proposer, Key Personnel, and project approach.
- Evaluation Process: Evaluation process and procedures, scoring elements and weights, and notification process.
- SOQ Submittal Requirements: Standard submittal information and formatting requirements.
- Protest Procedures and Public Records Act: Information regarding applicable protest procedures.
- Debriefing Meetings: General information regarding debriefing process.
- NDOT Reserved Rights: List of rights being retained by NDOT concerning the procurement.

The information requested in the RFQ considers the proposer's SOQ preparation costs and is limited to the information necessary to shortlist the proposers. The RFQ will not generally request a proposer's project approach and understanding; this information is included in the RFP after shortlisting.

The RFQ will not request more experience on the part of Key Personnel than is necessary. Doing so is unlikely to result in a better SOQ and may meaningfully reduce the number of individuals available for the project. Note that Key Individuals identified in an SOQ may not be changed after selection without written approval by NDOT. Therefore, required proposal team experience requested in the RFQ should be tied to the Key Personnel rather than corporate history. The RFQ will identify the ideal type of experience needed to obtain a maximum score in the evaluation.

A detailed description of the individual sub-sections contained under each section listed above can be found in Appendix A (*Typical Example of RFQ Document*).

In response to the RFQ, all proposers may submit an SOQ; providing required information identified in the RFQ to NDOT for evaluation and scoring as outlined in Section 4 (*Design/Build Statement of Qualifications Evaluation Guidelines*).

3.3 Formulation of Request for Proposals

Formulation of the RFP Package is a significant effort for a D/B procurement. The RFP Package defines the desired project outcome and ensures that the required information is incorporated. This section describes special staff needs, necessary document reviews, and NDOT's anticipated approach for developing the major components.

On completion of the shortlisting process by NDOT, an RFP will be provided to only the shortlisted proposers. The RFP will be divided into four main parts:

- Part 1: Instructions to Proposers (ITP)
- Part 2: Contract Terms and Conditions (Agreement)
- Part 3: Technical Provisions (TPs)
- Part 4: Reference Information Documents (RIDs)

3.3.1 Instructions to Proposers

The ITP provides a significant amount of detail on the project and NDOT's expected outcomes. The ITP includes a project statement that contains information about the scope and nature of the project, as well as the NDOT budget for the project. The primary purpose of the ITP is to outline the expected outcomes and specific requirements for the project, as well as specific requirements for the proposers' final proposals regarding their technical approach to executing the project and their proposed cost to do so. The ITP will request information regarding specific design and construction actions, intended final products, construction staging, traffic control, and project management. In addition, NDOT may request descriptions or design development of specific project elements to a specified level, to demonstrate the intent of the proposers. The ITP will call for other items, such as safety plans and public information plans, to be outlined in the proposal and submitted after contract award.

A detailed example of what may be included in an ITP can be found in Appendix B (*Typical Example of RFP ITP Document*).

3.3.1.1 Questions and Responses Regarding the Request for Proposal

The ITP will contain specific guidelines and directions to proposers that address the following:

- Proposers shall be responsible for reviewing the RFP and any Addenda issued by NDOT prior to the 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 that proposer does not understand.
- Comments or questions regarding the RFP, including requests for clarification and requests to correct errors, shall be submitted by hard copy, facsimile, or other electronic transmission; no telephone or oral requests will be considered.
- Responses to comments or questions will be in writing and will be delivered to all proposers, with the exception of those questions identified by a proposer, and agreed by NDOT, as containing confidential or proprietary information relating to proposer's proposal and/or ATCs.
- NDOT may convene pre-proposal meetings with proposers.

- NDOT reserves the right, in its sole discretion, to revise, modify, or change the RFP and/or procurement process at any time before the proposal due date through the issuance of Addendums. If necessary the amendment may extend the due date.
- NDOT D/B related procedures will be available to proposers, in hard copy and/or electronically, in one or more publically accessible locations.

3.3.1.2 Stipend

Due to the substantial amount of design work that is required, the development of a D/B proposal is substantially more costly than the development of separate design proposals and construction bids under the D/B/B project delivery method. To encourage the development of well-prepared D/B proposals, NDOT may partially compensate D/B proposers for their proposal materials, by paying proposers for their proposal work product (these payments are referred to as Stipends). Firms or teams that are issued an RFP and that submit a responsive proposal (as defined in the ITP) but are ultimately not selected would be eligible to be partially compensated by means of the Stipend. The Best Value selected proposer, known at that point as the Design/Builder, would not receive any Stipend.

Stipend payments for work product contained in the proposal secure ownership of the intellectual property rights associated with the design materials in the proposal. This allows NDOT to use these design materials as it sees fit, including sharing them with the selected Design/Builder for potential incorporation into their plans. A proposer may elect to decline to accept the payment for work product, and thereby retain ownership of the intellectual property rights associated with their proposal materials; such action is typically intended to protect information that the unsuccessful proposer considers proprietary.

The RFP must state the amount of the Stipend and must include a copy of the Work Product Agreement Form. The amount of the Stipend will be commensurate with the value of the work and the number of shortlisted firms or teams. The amount of the Stipend will be proportional to the estimated price of the D/B contract for the project and generally consistent with the following guidelines:

Table 3.3-1. Stipend Guidelines

Estimated Contract Value (ECV)	Payment for Work Product (Stipend)
$5 million to $50 million	0.0025 x ECV
Over $50 million	$125,000 + 0.001 x (ECV - $50 million)

The amount of the Stipend may be increased for very complex projects that may require more upfront design work to prepare a competitively priced proposal. Payment of the Stipend will be made within 30 days of NDOT's receipt an invoice following the award of the contract or a decision not to award. Proposers will have an option to not request payment for their work product. In this case, the information contained in the proposal or discussed with NDOT remains proprietary.

Should NDOT cancel the procurement after issuance of the RFP but prior to receipt of proposals, NDOT may pay a reduced Stipend to all proposers. The amount of the reduced Stipend to be paid will be determined by NDOT.

Should NDOT cancel the procurement after proposals are received but prior to selection, all responsive proposers may receive the payment for work product as defined in the RFP.

Under no circumstances will the State of Nebraska, NDOT, or any official or employee of the State or NDOT be liable for or reimburse any costs incurred by a proposer, successful or unsuccessful, in developing a proposal unless otherwise noted in the RFP. In the event the D/B procurement process is terminated for any reason prior to issuance of the RFP, neither the State of Nebraska, NDOT, nor any official or employee of the State or NDOT shall be responsible for any stipend, partial or in full, or for any costs incurred by proposers in developing their proposals.

3.3.1.3 Proposer's Innovation

In the D/B process, proposer's innovation is a key element for consideration by NDOT. Innovation can be achieved under two concepts:

- ATCs
- VAPs

ATCs are ideas or concepts that relate directly to the scope of work provided in the RFP. An example of a potential ATC can be seen in the following: NDOT provides proposer's with the concept alignment, this concept alignment shows the use of retaining wall along the approach to the overhead structure; however, the proposer determines that embankment can be used thereby saving the cost of the retaining structures while maintaining the proposed ROW—this would be considered a proposer's ATC.

VAPs are ideas that are not required by the scope of work provided in the RFP and that add value without increasing cost. An example of a potential VAP can be seen in the following: NDOT informs proposer's that a 2-year warranty is required on all lighting components; however, the proposer determines that by selecting a certain LED element for the lights an extended 5-year warranty can be secured—this extended warranty would be considered a proposer's VAP.

3.3.1.4 Alternative Technical Concepts

ATCs are proposer's ideas or concepts by which an element of the scope of work identified in the RFP might be accomplished to reduce cost, accelerate delivery, and/or improve quality of the competed project. ATCs provide flexibility to the proposers to enhance innovation and achieve efficiency. ATCs are confidential elements of the proposal process. ATCs are scored and are intended to be an additional means by which proposers may differentiate themselves from their competitors in the selection process.

The use of ATCs is encouraged under the current FHWA D/B rules and NDOT will typically use the ATC provision in all its D/B project procurements. The use of ATCs on D/B federal-aid projects is allowed under 23 CFR 636.209(b).

ATCs may consist of suggested changes to NDOT's supplied basic configurations, project scope, design, or construction criteria. These proposed changes provide a solution that is equal to or better than the requirements in the RFP. If the ATC is acceptable to NDOT and NDOT has communicated its approval in writing, the concept may be incorporated as part of the proposing team's technical and price submittal.

ATCs have been shown to be cost effective on large D/B projects with significant scope and where the contracting agency believes that the Best Value selection may depend on the degree of innovation in the technical solutions offered by the proposers.

3.3.1.4.1 Value Added Proposals

VAPs are proposer's enhancements to the project, which are not included in the scope of work identified in the RFP that would add value through improved durability or other quality metric without additional cost to NDOT. VAPs are confidential elements of the proposal process. VAPs are scored and are intended to be an additional means by which proposers may differentiate themselves from their competitors in the selection process.

An NDOT D/B RFP may include a provision for project VAPs, with a specified number of years of additional service life and/or other details as to what is to be covered. As a general rule, routine maintenance is not intended to be covered by a VAP. Standard value added clauses may need to be modified to fit specific project needs.

3.3.2 Contract Terms and Conditions

The RFP must include a copy of the proposed D/B Agreement, including any contract terms and conditions that are subject to further negotiation. The proposed Agreement must include general provisions, special provisions, and a description of risk transfer associated with the project.

3.3.2.1 General Provisions and Special Provisions

General Provisions (GPs), sometimes referred to as General Conditions, are the contract terms and conditions that are used in multiple contracts, either as generic terms and conditions that apply to all contracts of a given type for a given owner, or to all contracts of a large, multi-contract project or program. Special Provisions (SPs), sometimes referred to as Special Terms and Conditions, are those contract provisions that are not universally applicable and that refer solely to the individual project. For purposes of NDOT D/B contracts, GPs and SPs will be adopted based on NDOT's current D/B/B contract GPs. Many of these provisions will come directly from NDOT's standard specifications. The RFP will define which sections of the standard specification will be included in the GPs that apply to the D/B contract

3.3.2.2 Risk Responsibility Allocation Chart

For each D/B project, NDOT will determine how far to carry the preliminary design. The development of a risk allocation matrix is a crucial part of making this determination.

Early in the project development process, the NDOT project team will identify potential risks associated with the project. These risks will then be assigned to NDOT or the Design/Builder. The risk allocation matrix will be used throughout the development and implementation of the project. The matrix will not only govern which party is responsible for a given risk but will help the project team determine how far to advance each technical element within the preliminary design during development of the RFP. The risk allocation matrix should be revisited and updated throughout the life of the procurement process as additional information becomes available.

The risk allocation matrix will vary from project to project to address the unique characteristics of each. See Section 7 (*Risk Management Guidelines for Design/Build and Construction Manager/General Contractor*) for more information on developing the risk allocation matrix for a project.

3.3.2.3 Design/Builder Progress Payments

NDOT projects delivered using D/B will employ a progress-based payment methodology, similar to that employed on D/B/B projects. Following execution of the contract or agreement and prior to work being performed on the project, the Design/Builder will submit a cost-loaded Critical Path Method (CPM) schedule to NDOT for review and approval. If NDOT included a Cash Flow Schedule in the RFP, the Design/Builder shall ensure that their cost-loaded CPM schedule conforms to the cash flow schedule. Once the CPM schedule is approved, it will serve as the basis for making monthly progress payments. A schedule of pay items will be developed from the cost-loaded CPM schedule that will serve as support for the monthly invoicing. Each month the Design/Builder will estimate the percent complete for each CPM schedule activity and multiply that percentage by the amount for that activity in the cost-loaded CPM schedule to determine the extended costs. The Design/Builder will assign those extended costs to the pay items in the schedule of pay items and produce an invoice for NDOT to process. The invoice will be submitted to NDOT's District representative. In the event the cash loaded CPM schedule changes in excess of 2 weeks, the Design/Builder will submit a revised cost-loaded CPM schedule with the invoice. The invoice will be reviewed and must be approved by NDOT staff prior to payment. Every effort will be made to pay the invoice within 30 days, up to the maximum amount allowed under the NDOT's Cash Flow Schedule.

3.3.2.4 Incentives

Contract incentives can be used to motivate attainment of project goals, such as schedule acceleration. Projects that are suitable candidates for schedule acceleration incentives are those with critical completion dates, significant road user delay costs, and/or local community or local business impacts. Projects that are not suitable candidates for schedule acceleration incentives are ones with open-to-traffic constraints, such as weekends to accommodate seasonal traffic or special events, and projects with third-party coordination concerns, such as for utility relocations.

Incentives are paid if they are included in the contract and the Design/Builder meets the completion and/or open-to-traffic dates specified in the contract. The amount of the incentives, both per day and total amount available, must be specified in the contract. The amount of incentives per day will be based on road user delay costs with the total incentive amount limited to a maximum of 5 percent of the estimated construction costs. For these incentives, estimated construction cost only is used as the basis to determine a fixed amount to be included in the contract because incentives should be related to cost of construction only, not design or other costs that may be included in the Estimated Contract Value. Liquidated damages may apply if the Design/Builder fails to meet required schedule dates, regardless of the use of incentives.

3.3.3 Technical Provisions

For the Technical Provisions (TPs), it is NDOT's goal that a performance approach be used whenever practicable. Use of prescriptive requirements, although allowed, will be minimized as the prescriptive nature of the terms may reduce the proposers' potential for innovation in their proposals.

3.3.3.1 Performance versus Prescriptive Requirements

In addition to schedule acceleration and technological innovation, an additional benefit of D/B project delivery is the flexibility afforded to the Design/Builder. This flexibility must be considered reasonable and responsible by the owner. Such flexibility is maximized by using

performance-driven requirements wherever possible and limiting the use of prescriptive requirements to those project elements for which a prescriptive requirement is demonstrably essential. Examples of requirements that are justifiably prescriptive include dimensional requirements such as lane widths, number of lanes, overhead bridge minimum clearances, and technological interfaces, such as for existing ITS variable message signs, wayside cameras, and traffic detection circuits.

3.3.3.2 Base Configuration

The Base Configuration consists of the mandatory design requirements or technical requirements for the project, consistent with the information presented in the environmental documentation. These include the project endpoints, alignment centerline (with permissible deviation defined), number of lanes, intersecting roadways with which interchanges are to be built, overcrossings and undercrossings, and dimensional requirements as previously mentioned, such as lane widths, shoulder widths, and minimum overhead clearances. Where appropriate, standards may be referenced rather than calling out individual dimensional requirements.

3.3.4 Reference Information Documents

RIDs may include environmental documents and decisions, old contract plans or as-built plans, reports, condition surveys, utilities plans, agreements, other contracts, photographs, old boring logs, correspondence, and meeting minutes. RIDs will be used to provide information that may be useful or of interest to the proposers in preparing their proposals and in implementing the contract. The RFP and contract will clearly state that RIDs are provided to the proposers for use at their own risk and come without NDOT warranties, except as specifically provided for in the contract documents. The proposers will need to verify the accuracy of any information contained in the RID. RIDs are not to be confused with RFP technical requirements.

3.3.5 Request for Proposal Evaluation Process

In response to the RFP, all shortlisted proposers will be invited to submit a Technical Proposal and a Price Proposal, providing required information identified in the RFP ITP to NDOT for evaluation and scoring as outlined in Section 5 (*Design/Build Proposal Evaluation Guidelines*). In accordance with Nebraska Revised Statutes 39-2814(8), the RFP must include the criteria for evaluation of proposals and the relative weight of each criterion. The criteria must include, but are not limited to, price, construction experience, design experience, and financial, personnel, and equipment resources available to implement the project. The relative weight applied to any criterion will be based on the characteristics of each individual project, except that price must receive a relative weight of at least 50 percent.

3.4 Industry Review Period

When possible, NDOT's procurement process will allow for an Industry Review (IR) period. The IR period occurs prior to release of the final RFP documents to the shortlisted proposers. NDOT will distribute draft RFP documents to the shortlisted proposers, seeking feedback and comments on the planned transfer and assignment of contractual and technical risk being proposed on the project. Further discussion on risk and risk transfer can be found in Section 7 (*Risk Management Guidelines for Design/Build and Construction Manager/General Contractor*).

The greatest advantage of using an IR period in the D/B procurement process can be seen when changes to the RFP documents are needed. Because the final RFP has yet to be issued, only a draft version of the RFP is provided to the proposers; therefore changes to the RFP can be performed without the need of Addendums. However, for any changes to the RFP that are needed after its final release, procurement rules dictate that those changes and/or modifications will need to be implemented by use of the Addendum process.

3.4.1 Industry Review Process

The following highlights the steps and timelines of the IR process:

- **Step 1:** NDOT issues a draft version of the D/B Agreement; this can be in the form of the actual agreement or a Term Sheet describing the risk transfer associated with the project. In addition to the contractual risk transfer, NDOT may include a draft version of the TPs that describe the risk transfer of technical elements planned for the project.
- **Step 2:** NDOT will provide a period of time, generally 10 to 14 days, for the proposers to review the draft materials and formulate opinions regarding the risk associated with the upcoming procurement.
- **Step 3:** The proposers will then prepare written questions and submit them to NDOT for consideration. NDOT will limit the number of questions depending on project size. This limitation will focus the proposers to identify those questions of greatest concern. These questions will set the agenda for the upcoming meetings that will occur in the next step.
- **Step 4:** NDOT may hold individual meetings with each proposer to discuss their questions and reasons behind the questions. The discussion that occurs during the IR individual meetings will be considered non-binding, allowing for open discussion. Questions and responses will be documented and shared with all shortlisted proposers, without identifying the proposer that raised the concern or question.
- **Step 5:** After all IR period individual meetings have been conducted, NDOT will consider the feedback from the proposers and determine if the risk allocation needs adjustment or modification. Because each proposer may have a different opinion regarding the risk transfer, this is a critical step in the formulation of the RFP document.
- **Step 6:** At the conclusion of Step 5, NDOT will revise the RFP documents as appropriate and issue their modified documents in the form of redline mark-ups to proposers for further consideration. Proposers will be allowed 10 days for review and comment.

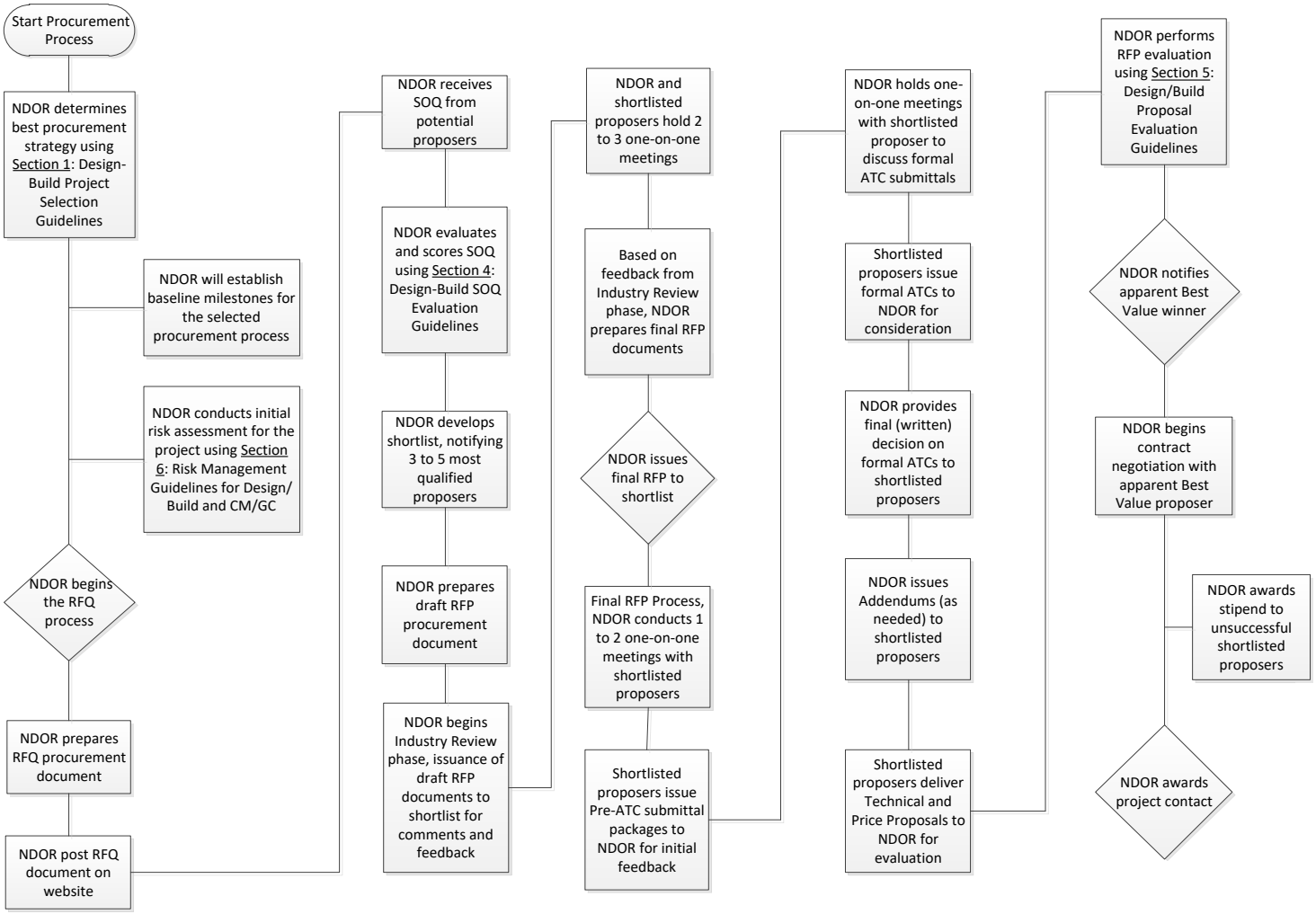
The following guidelines will be used when determining the number of IR period individual meetings:

- For D/B projects, with a construction value below $50 million—one to two rounds of IR period individual meetings.
- For D/B projects, with a construction value of more than $50 million—two to three rounds of IR period individual meetings.

3.4.2 Evaluation Processes

For procedures for evaluating SOQs see Section 4 (*Design/Build Statement of Qualifications Evaluation Guidelines*). For procedures for evaluating proposals see Section 5 (*Design/Build Proposal Evaluation Guidelines*).

Attachment 3-1
Design/Build Procurement Process Flowchart



Section 4 Design/Build Statement of Qualifications Evaluation Guidelines

4.1 Pre-Statement of Qualifications Submittal Meeting

A public pre-SOQ submittal meeting may be held to discuss issues related to the procurement process, to discuss the goals of the D/B contract, and to provide details of the project. These meetings typically are not mandatory. If a pre-SOQ submittal meeting is held, the notice must clearly state whether or not attendance is mandatory.

During the pre-SOQ submittal meeting, NDOT will discuss the overall procurement and selection process, provide a general explanation of the proposed contract terms and expected outcomes, and describe project specific elements, both administrative and technical. This will provide potential proposers with a better understanding of the project and NDOT's expectations.

The pre-SOQ submittal meeting would typically be held no sooner than 10 days after advertisement of the D/B project RFQ and no later than 10 days prior to the SOQ submittal date. NDOT should keep in mind the complexity of project when setting the actual pre-SOQ submittal meeting date, providing proposers with adequate time to prepare for the pre-SOQ submittal meeting or sufficient time after the pre-SOQ submittal meeting to prepare their SOQ submittals.

4.2 Statement of Qualifications Evaluation Introduction

The D/B SOQ evaluation process described in these Guidelines is intended to ensure consistency and fairness in NDOT's evaluation of the SOQs and shortlisting of the proposers eligible to receive an RFP.

The D/B SOQ evaluation process is intended to ensure SOQs are evaluated according to the responsiveness requirements, pass/fail criteria, and qualitative evaluation factors set forth in the RFQ (collectively, the Evaluation Criteria), and to facilitate NDOT's selection of shortlisted proposers so that the procurement of the project proceeds on schedule.

See Attachment 4-1 for the *Statement of Qualifications Evaluation Flowchart*.

4.3 Evaluation Organization

Security will be of utmost importance in protecting the confidentiality of the SOQs and the evaluation process. The following information applies to a typical D/B selection process.

Depending on the size and complexity of the project, NDOT's organizational structure for the SOQ evaluation process may consists of up to three tiers:

- SC;
- Evaluation and Recommendation Committee (ERC); and,
- Procurement Advisory Groups (PAGs).

The SOQ evaluation process is led by NDOT's SC. The SC will consist of one or both Deputy Directors, the Roadway Design Division head, the Construction Division head, and the Materials

and Research Division head. The SC will make the final shortlisting determination based, in part, on input from the ERC.

The ERC is made up of NDOT staff members, which may be the same personnel who will subsequently participate in the Technical Committee and Financial Committee for evaluation of Proposals. The ERC members will evaluate and perform the official scoring of the SOQs against the pre-set evaluation criteria and furnish to the SC their recommendations with respect to the SOQs. The ERC may include other agency stakeholders at the discretion of NDOT.

The PAGs are made up of non-scoring NDOT staff members (not assigned to the ERC) and outside consultants, as NDOT determines appropriate, with technical and legal expertise. These individuals will perform advisory and support roles only, performing research and answering technical and legal questions for the ERC and SC, and will not make recommendations with respect to the SOQs' performance against the evaluation criteria, Descriptive Ratings, or shortlisting determinations.

Outside of the three groups previously described, there could be a number of other participants in the SOQ evaluation process who would support the overall process (for example, NDOT Agreements Engineer and/or staff, staff from FHWA, and other public agency stakeholders).

Detailed descriptions of the roles and responsibilities of the participants in the SOQ evaluation process are provided in the following sections.

4.3.1 Role of the Selection Committee

The SC's responsibilities include the following:

- Ensure timely progress of and compliance with the SOQ evaluation process.
- In consultation with the legal staff, provide direction if participants in the SOQ evaluation process have questions or encounter issues relating to the evaluation of SOQs or the SOQ evaluation process in general.
- Coordinate with the NDOT Agreements Engineer to transmit clarification letters and other NDOT correspondence to proposers.
- Establish the maximum points the SOQs may achieve for each qualitative evaluation factor, the relative weightings for the qualitative evaluation sub-factors, and the relative weighting of each Descriptive Rating, in accordance with guidelines provided in this Section 4.
- Refer matters regarding actual, potential, or perceived conflicts of interest to the individual or unit in NDOT responsible for resolution of conflicts of interest.
- Make final determinations with respect to each SOQ's responsiveness to the RFQ requirements and performance against the pass/fail criteria.
- Make the final shortlisting decision.
- Ensure written documentation of the SOQ evaluation process is properly maintained, and destroy documents that are not required to be maintained.
- If the SC determines it appropriate, the SC may elect to deviate from any procedure prescribed in these Guidelines, provided the deviation does not otherwise constitute a violation of applicable law. The SC shall consult with the legal staff as to whether any

proposed deviation constitutes such violation. Any change or modification should be documented in the SC's documentation regarding the final shortlisting determination.

4.3.2 Role of the Evaluation and Recommendation Committee

The responsibilities of the ERC members include the following:

- Review the RFQ and a SOQ Evaluation Manual prior to reviewing any SOQ.
- If a PAG is used, review the PAG's summary of findings based on the PAG's responsiveness and pass/fail review of SOQs.
- Prepare for and participate in the meeting, where the PAG presents to the ERC the PAG's summary of findings from the responsiveness and pass/fail review of SOQs.
- Based on the PAG's presentation, draft a memorandum documenting the ERC's recommendations as to the responsiveness and pass/fail status of the SOQ for each proposer. The ERC should consult each SOQ to the extent necessary to complete this memorandum.
- Individually review each proposer's SOQ against the qualitative evaluation factors using a separate qualitative evaluation worksheet, and meet as a committee to draft clarification questions for each proposer, if needed.
- Prepare for and participate in the ERC consensus meeting, and draft consensus (or majority) comments using a qualitative rating form for each qualitative evaluation factor and for each SOQ.
- Based on the ERC's consensus (or majority) comments, use a qualitative evaluation score sheet to calculate the final score for each proposer and identify the proposers that the ERC recommends for shortlisting based on the final scores.
- Prepare documentation regarding the ERC's shortlisting recommendation.
- Participate in any oral presentations if held and if requested by the SC.

If deemed necessary to complete its responsibilities set forth in the Guidelines, at the discretion of the SC or ERC chair, the ERC may be sequestered at a location that promotes confidentiality while maintaining collaboration within the ERC. The SC or ERC chair, as applicable, will select the location.

4.3.2.1 Evaluation and Recommendation Committee Evaluation and Scoring Materials

To create a consistent evaluation and documentation of the ERC activities, several documents may need to be developed. These manuals and worksheets would serve as a permanent record of the evaluation process and outcome of the evaluation and shortlisting process. The following manuals and worksheets, if used, will need to be formulated prior to the proposer's submittal of the SOQ to NDOT for consideration. After development of these documents for NDOT's first D/B procurement, they may be used as standard templates for subsequent procurements, and modified if necessary for specific, individual procurements.

- The SOQ Evaluation Manual: The manual should include: 1) The SOQ organization including ERC members by name and department or agency; 2) copies of the confidentiality and disclosure agreement that must be executed by all members of the ERC and PAG; 3) the specific roles and duties of the ERC and PAG members; 4) an evaluation schedule including location and time of ERC consensus meeting; and 5) the

Descriptive Rating structure including examples of factors to consider for each Descriptive Rating.

- Responsiveness and Pass/Fail Worksheet: This worksheet should include both legal and technical criteria, as defined in the ITP, which must be included in the proposer's SOQ. Failure of a proposer to include the required information may be grounds to consider their SOQ non-responsive.
- Project and Key Personnel Reference Interview Questionnaires: Prior to evaluating the SOQs, NDOT may develop a script to be used when conducting phone interviews to check and verify the information contained in the SOQ by the proposers on the project and Key Personnel. Having a pre-set script will ensure that during each reference check, the questions are consistent and contain the same type of information.
- Qualitative Evaluation Worksheet: To record individual assessments of the proposer's SOQ, each member of the ERC should use a qualitative evaluation worksheet to record their assessment of the proposer's SOQ strengths and weaknesses. These worksheets will then be used by the ERC member during consensus meeting.
- Qualitative Rating Form: To record the outcome of the ERC consensus meeting, the qualitative rating form will be used to record the agreed upon ERC assessment of the proposer's strengths and weaknesses; this will also provide justification for the consensus Descriptive Rating being assigned to each evaluation criteria.

4.3.3 Role of the Procurement Advisory Group

For procurements where a PAG is used, the responsibilities of members of the PAGs would include the following:

- Each member of the PAG will review the RFQ and a SOQ Evaluation Manual prior to reviewing the SOQs.
- Selected members of the PAG will log and assign tracking numbers to the SOQs.
- The PAG will perform the responsiveness and pass/fail review of each SOQ.
- The PAG will perform the project, personnel, and legal reference checks and complete the corresponding summary of findings.
- The PAG will assist the ERC with the qualitative evaluation of each proposer's SOQ by presenting the summary of findings that highlight the strengths and weaknesses of each SOQ against the qualitative evaluation factors.
- The PAG should have a chair who will: 1) ensure the timely progress of its team members' evaluations of the SOQs; 2) coordinate any meeting or re-evaluations within the time frames set forth in the Guidelines or as directed by the chair of the ERC or the SC; and 3) deliver to the ERC all written materials developed by their PAG as part of the SOQ evaluation process.
- The PAG chair should report the progress of its evaluation to the chair of the ERC at the end of each day that its PAG meets or at such other time or frequency as may be requested by the chair of the ERC.
- The PAG chair plus members of the ERC may participate in oral presentations, if held and if requested by the SC.

If deemed necessary to complete their responsibilities set forth in these Guidelines, at the discretion of the SC, the PAG may be separately sequestered at a location that promotes confidentiality while maintaining collaboration within the PAGs. The SC will select the location.

4.4 Statement of Qualifications Ratings

The ERC will evaluate each proposer's SOQ against the qualitative evaluation factors described in the RFQ and set forth in a qualitative evaluation worksheet. Based on these evaluations, the ERC will document on a separate Qualitative Rating Form for each qualitative evaluation factor, and for each proposer, the ERC's consensus (or majority) comments. The comments will include the respective proposer's strengths and weaknesses and one of four ERC-recommended ratings listed below.

The four ratings are intended to measure how well the proposers' qualifications meet or exceed the various qualitative evaluation factors, as follows:

- **Excellent (E):** The SOQ exceeds in a significant manner the stated requirements and objectives in a beneficial way, providing advantages, benefits, or added value to the project and provides a consistently outstanding level of quality and qualifications. There are essentially no weaknesses.
- **Good (G):** The SOQ comfortably meets the stated requirements and objectives, provides some advantages, benefits, or added value to the project and provides a generally better-than-acceptable level of quality and qualifications. There may be minor, but essentially insignificant weaknesses.
- **Acceptable (A):** The SOQ demonstrates an approach that meets the stated requirements and objectives, and provides an acceptable level of quality and qualifications. An Acceptable rating corresponds to a proposer merely meeting the minimum SOQ standards.
- **Poor (P):** The SOQ fails to meet the stated requirements and objectives, lacks essential information, or contains conflicting and/or unsupported information; the SOQ contains significant weaknesses or deficiencies and provides a poor level of quality and qualifications. Weaknesses or deficiencies are so major and/or extensive that they are not correctable or would require major revision of the SOQ.

To provide a common basis for selecting ratings, the qualitative evaluation worksheet should include examples of factors to consider for each rating.

In assigning ratings, the ERC may assign "+" or "-" (such as, Excellent -, Good +, and Acceptable +) to better differentiate within each rating. However, the ERC may not assign ratings of Poor - or Excellent +. Accordingly, there are 10 qualitative rating options available to the ERC and each has a numerical translation, set by the SC before the SOQs are received.

4.5 Statement of Qualifications Evaluation Criteria

The objective of the RFQ and SOQ step of the procurement is to shortlist proposers with the best legal, technical, financial, and management capability, capacity, and experience necessary to successfully undertake and complete the project. SOQs will be evaluated in three parts: 1) determination of responsiveness; 2) pass/fail evaluation, and 3) scored evaluation. The pass/fail criteria and scored criteria set by NDOT will be identified in the ITP of the RFQ.

4.5.1 Determination of Responsiveness

At a minimum, the following items may be required to be completed and included in an SOQ for it to be considered responsive:

- Transmittal Letter signed by a duly authorized official or representative of the proposer;
- Proposer information including the proposing entity, lead designer, lead construction contractor, and other major subcontractors; and,
- Certification of the accuracy of the information submitted in the SOQ signed by a duly authorized official or representative of the proposer.

4.5.2 Pass/Fail Evaluation Criteria

The pass/fail evaluation criteria will be tailored for the specific project, but should generally fall within the following categories. For an SOQ to achieve a passing rating, information provided in each of the following categories will need to meet or exceed the minimum requirements, as determined by NDOT for the project and as listed in the ITP of the RFQ.

- Legal: The objective will be to select proposers whose organization, legal structure, team members, and history demonstrates the proposer's ability to remain stable and viable for the duration of the project and be contractually bound to NDOT. Certifications regarding debarment, suspension, and other legal requirements must be provided using forms included in the ITP of the RFQ.
- Financial: The objective will be to select proposers whose team members possess the financial capacity to enter into a contract with NDOT and the resources to successfully complete the project. The proposer must provide its current balance sheet and recent annual operating statements and evidence of the lead construction contractor's ability to obtain bonding as specified in the ITP of the RFQ.
- Safety: The objective will be to identify those proposers that can demonstrate an acceptable safety record and safety program. The lead construction contractor must provide safety record information using the forms provided in the ITP of the RFQ.

4.5.3 Scored Evaluation Criteria

Once the pass/fail criteria have been evaluated, NDOT will enter into the evaluation process where proposers' SOQs will be scored using the ratings previously described. The scored evaluation criteria will be tailored for the specific project, but fall within the following guidelines. At a minimum, NDOT will include the following criteria:

- Relevance, breadth, and depth of firm/team experience: The objective will be to identify design and construction firms that demonstrate successful project experiences that are directly relevant to the project being procured, in terms of their scope, size, and complexity. Project experience that is more recent would be considered more favorably than comparable experience that is less recent.

  To achieve this measure, NDOT will identify relevant characteristics of the specific project being procured. These may include but are not limited to experience with: 1) specific types of transportation facilities; 2) highway and highway structures; 3) urban freeway or rural highway construction or reconstruction; 4) construction/reconstruction using innovative design, methods and/or materials; 5) construction in environmentally

sensitive areas; 6) community relations; and 7) ITS systems procurement, installation, and ITS systems.

- Relevance, breadth, and depth of Key Personnel experience: The objective will be to determine the extent to which the identified Key Personnel have demonstrated successful experience at a comparable level of responsibility and authority to that proposed for the project being procured, on one or more project(s) of scope, size, and complexity similar to the project being procured. Relevance of project experience for Key Personnel will be evaluated using the same project characteristics identified for proposer's team experience.

  To achieve this measure, NDOT will establish preferred requirements for each Key Personnel role identified by NDOT in the ITP of the RFQ. These preferred requirements may include but are not limited to: 1) overall number of years of experience; and 2) number of projects that the Key Personnel held a similar role on past projects. These preferred requirements will serve as target goals for evaluation purpose but should not be considered to be mandatory minimum requirements for a given position.

- In addition to the preferred requirements, proposers will be required to provide, at a minimum, three references for each of the Key Personnel identified in the SOQ.

NDOT may decide, based on the complexity and size of the project, to expand the criteria and include some evaluation criteria that demonstrate the proposer's understanding of the D/B process. It should be mentioned that during the RFQ phase, detailed descriptions of the following approaches will not be project specific but more general in nature, showing an understanding of the D/B process. To evaluate this understanding, the following criteria may be included:

- General management approach to D/B: The objective will be to identify those proposers that are able to demonstrate: 1) an understanding of and approach to how the D/B process works and how the proposer's organization will contribute to the success of the project and meet NDOT's project goals; and 2) an understanding of the risk sharing and the partnering relationship between the Design/Builder and NDOT.

- General approach to D/B quality: The objective will be to identify those proposers that are able to demonstrate an understanding of how to implement a quality management program for a D/B project. The general description of the proposer's quality approach should include: 1) QA/QC during design; 2) QA/QC during construction; 3) coordination between NDOT and the Design/Builder organization; and 4) coordination with other agencies.

- Experience working together on other projects: Describe whether, and if so how, the lead designer and lead construction contractor have worked together in the past, emphasizing D/B projects. Proposer should identify the projects along with a description of the project scope and size.

4.6 Optional Oral Presentations

NDOT may schedule interviews (Oral Presentations) with proposers, at the SC's sole discretion, to clarify information provided in the SOQs. If scheduled, the Oral Presentations will be part of the final evaluation process and occur prior to the ERC consensus meeting. The applicable guidelines for conducting Oral Presentations are:

- The SC will determine which participants in the SOQ evaluation process will participate in Oral Presentations, and the NDOT Agreements Engineer will notify those individuals accordingly.
- Proposer attendees should be limited: 1) on large and complex projects, no more than eight representatives per proposer team and 2) on small to medium projects, no more than five representatives per proposer team. These suggested limitations are presented as a general guideline; final determination of limitation should be determined by NDOT based on individual project scope, complexity, and size.
- Oral Presentations will be scheduled to last 30 to 60 minutes depending on the needs of the project.
- Formal presentations may or may not be required. At a minimum, Oral Presentations would consist of proposer responses to NDOT-developed questions seeking to clarify issues in the SOQs. Except for their SOQs, proposers will bring no exhibits, displays, or other documentation to the Oral Presentation except as specifically allowed by NDOT.
- If Oral Presentations are held, the SC may develop and transmit to the proposers prior to the Oral Presentations additional procedures for such Oral Presentations.
- Oral Presentations may be recorded by videotape or other means at NDOT's discretion.

4.7 Release of Information Regarding the Statement of Qualifications

Information regarding the contents of SOQs or the SOQ evaluation process may be released to parties outside of the SOQ evaluation process only if authorized by the SC.

All written materials generated by the participants in and as part of the SOQ evaluation process will be delivered to the NDOT Agreements Engineer before or immediately after the SC's shortlisting decision. On receiving the written materials, the NDOT Agreements Engineer will determine, for each document, whether it may be destroyed or must be retained for the final record of the SOQ evaluation process, in accordance with state law governing public records.

4.8 Notification and Debriefing

The NDOT Procurement Manager will notify proposers of the final shortlisting determination. Proposers that are not shortlisted will be notified in writing concurrently with or promptly after shortlisted proposers are notified.

After the shortlist is publicly announced, and at NDOT's discretion, the SC may coordinate with the NDOT Agreements Engineer to contact non-shortlisted proposers and offer them an opportunity to request a debriefing; the debriefing would be conducted by the SC and the ERC. The SC will establish the dates, times, durations, and locations for debriefings.

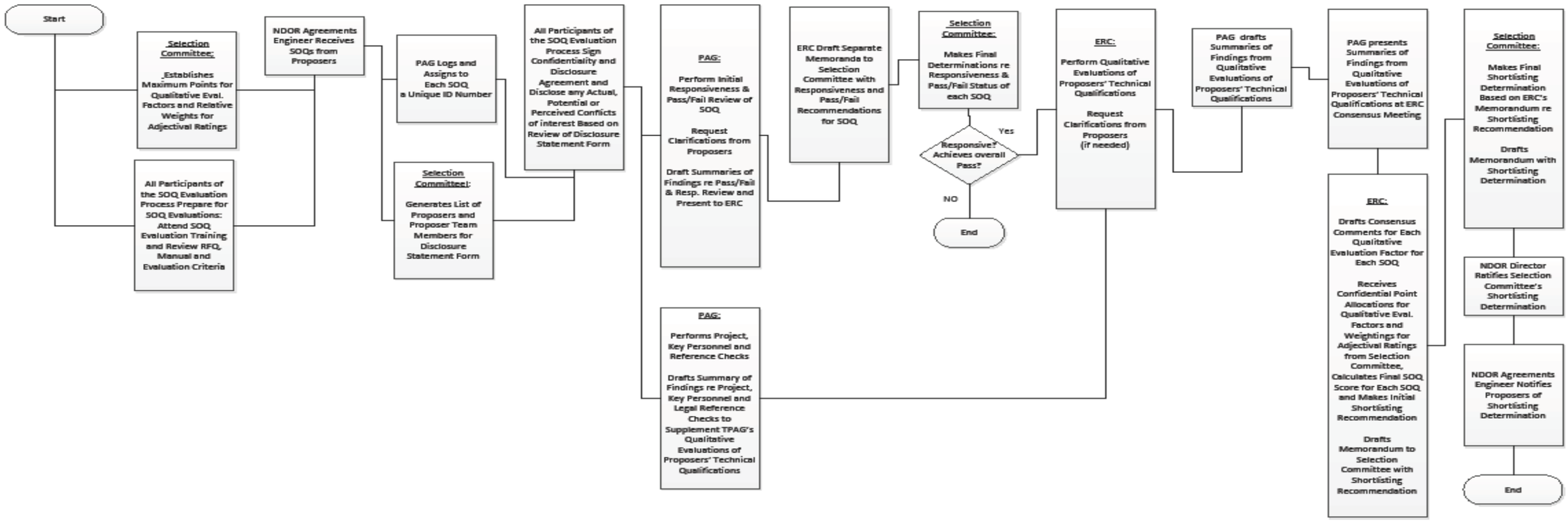
Debriefings will:

- Be limited to discussion of the unsuccessful proposer's SOQ and may not include discussion of any competing SOQ;
- Be factual and consistent with the evaluation of the unsuccessful proposer's SOQ; and

- Provide information on areas in which the unsuccessful proposer's SOQ had weaknesses or deficiencies, so as to benefit the unsuccessful proposer's future NDOT procurement efforts.

Attachment 4-1

Statement of Qualifications Evaluation Flowchart



Section 5 Design/Build Proposal Evaluation Guidelines

5.1 Overview of the Proposal Evaluation Process

At the conclusion of the SOQ evaluation and shortlisting process, up to three proposers will have been provided with RFPs and invited to submit proposals. Between the times the RFPs are released and proposals are due, a series of meetings will be held with all proposers to confirm all participants' understanding of the proposal process. These meetings will include a group meeting with all proposers to confirm proposers' understanding of the RFP and proposal process, and individual sessions between NDOT and each of the proposers to discuss ATCs and specific issues in the RFP. Both types of meetings are discussed further in Section 3 (*Design/Build Procedures*). SOQ evaluation results are not carried forward into the D/B proposal evaluation process and each shortlisted proposer starts the proposal process on equal footing.

Each proposal consists of two parts: a Technical Proposal and a Price Proposal. These two proposals are submitted to NDOT in separate, sealed envelopes. The Price Proposal envelope contains any updated financial information since the SOQ plus another sealed envelope that contains the proposer's Price Proposal or "bid", which will remain sealed until the evaluations of all of the Technical and Price Proposals have been completed.

The proposal evaluation process essentially consists of four steps:

1. Proposals are first screened for responsiveness and acceptability relative to pass/fail criteria. If a proposal is deemed non-responsive or does not meet pass/fail criteria, the reviewers may request – through formal communication protocols – additional information and/or clarification necessary to address and potentially correct the determination of non-responsiveness and/or evaluation relative to pass/fail criteria.
2. Technical Proposals that are deemed responsive and that meet the pass/fail criteria are then evaluated relative to scored criteria identified in the ITP; this is essential to process transparency. Scoring makes use of qualitative ratings and corresponding numerical scores determined beforehand by NDOT; note that proposals are evaluated relative to the criteria and are not compared to each other. As with the responsiveness and pass/fail screenings, reviewers may request additional information and/or clarification necessary to fairly evaluate the proposals. At the conclusion of the evaluation of the scored criteria, each proposal will have been assigned a Technical Score.
3. After the Technical Scores have been established, the Price Proposal envelopes are opened and the Price Proposals are evaluated. (Note that the Price Proposal includes a sealed envelope containing the Price Proposal.) Financial Scores are then calculated.
4. Once the Technical Scores and Financial Scores are established for all proposals, the Price Proposal envelopes are opened, and the combined Proposal Scores are calculated for all proposals and the Apparent Best Value proposer determined.

5.2 Proposal Evaluation Participants

The following information represents a potential framework for the organization of the Technical Committee (TC), Technical Advisors (TA), Financial Committee (FC), Financial Advisors (FA)

and other NDOT staff; the extent to which some or all of these groups are used is a function of the size and complexity of the individual project. An overview of the proposed organizational structure to be used during the RFP evaluation process is presented in Attachment 5-1 (*Proposal Evaluation Organization*).

- Participants assigned to the proposal evaluation process will be responsible to completely review the submitted proposals.
- The TA will support and assist the members of the TC in connection with their review and evaluation of the proposals and will provide comments on the strengths and weaknesses of the proposals with respect to the Evaluation Criteria.
- If a TC member or Technical Advisor has questions regarding the Evaluation Criteria, a clarification must be requested through the NDOT Agreements Engineer.
- During the evaluation process the Committee or Advisors are allowed to ask proposers for additional information and clarifications to enable them to gain a better understanding of the proposals; including obtaining information necessary to determine whether the proposal is responsive and meets the pass/fail evaluation criteria, and/or information needed to clarify ambiguities or inconsistencies in the proposals.
- Requests for information or clarifications must be made in writing, which will then be forwarded to the appropriate proposer by the NDOT Agreements Engineer.
- Each request for additional information or clarification, whether related to responsiveness, pass/fail criteria or otherwise, must specify a page limit and time period for delivery of such information, as determined by the requesting Committee.

5.2.1 NDOT Director

The NDOT Director's responsibility relative to D/B procurements consists of:

- Approve the SC membership for each Design/Build procurement. The NDOT Director may add members or replace members for an individual procurement.

5.2.2 Selection Committee

The SC is a standing entity, at any given time and at the discretion of the NDOT Director, comprised of one or both Deputy Directors, the Roadway Design Division head, the Construction Division head, and the Materials and Research Division head. The Agreements Engineer serves as a non-voting member of the SC and is responsible to assure adherence to the required procurement process. The responsibilities of the SC include:

- Designate the Chairpersons to lead the TC and FC.
- Approve the ratings and point recommendations of the TC, or request the TC reconsider its evaluations.
- Select the Apparent Best Value proposer based on the evaluation and scoring of the TC, through application of the formula set forth in the ITP, and direct staff to proceed with final contract negotiations.
- Notify those proposers that have not been selected as the Apparent Best Value proposer and coordinate with the Chairpersons of the TC and FC to schedule debriefing meetings, if desired

5.2.3 Project Manager

The Project Manager's responsibilities are outlined below.

- Prior to receipt of proposals the Project Manager, with the assistance of selected Advisors (as may be needed), will determine how qualitative scoring will be translated to numerical values for each individual Technical Proposal evaluation criterion. Documentation of such decisions will be finalized prior to commencement of the evaluation of the proposals and will be placed in a sealed, date-stamped envelope and retained by the Project Manager throughout the evaluation process. Only the Project Manager and selected Advisors (as may be needed), know the weightings and qualitative/numerical translation values. No other individuals will be authorized to access such information.
- Direct the NDOT Agreements Engineer to distribute each proposer's Technical Proposal and Price Proposal to the Technical Committee and Financial Committee, respectively.
- Direct the NDOT Agreements Engineer to collect Confidentiality and Disclosure Agreements and, if necessary, Disclosure Statement Forms from each participant.
- Upon receipt from the TC of the initial responsiveness and pass/fail assessments for all proposals, the Project Manager will issue requests for clarification and/or additional information, if necessary and as requested by the TC Chairperson.
- Upon receipt from the TC of the initial responsiveness and pass/fail assessments for all proposals, and if any proposal is found to be nonresponsive or to have earned a failed pass/fail score, the Project Manager will prepare a formal recommendation to the Agreements Engineer and SC, to disqualify such proposals.
- Upon receipt of the scoring worksheets for all proposals from the TC, present these findings with a recommendation to the SC for review and approval.
- After acceptance by the SC of the TC qualitative rating recommendations for all proposals, the Project Manager will apply the previously defined numerical values to the Technical qualitative ratings to determine each proposal's Technical Score.
- After The Technical Scores have been transmitted to the SC, open the Price Proposals and calculate Price Scores.

5.2.4 Technical Committee Chairperson

Responsibilities of the Chairperson of the TC are outlined below:

- Serve as a point of contact in the event a Committee Member or Advisor has questions or encounters issues relative to the evaluations, and forward such questions or issues to the Agreements Engineer or SC, as appropriate.
- Coordinate with the chairperson of the Technical Advisors and facilitate the participation of Advisors as necessary during the course of the evaluation and selection process.
- Be responsible for ensuring the timely progress of the evaluation, coordinating any consensus meeting(s) or re-evaluation(s) and ensuring that appropriate records of the evaluation are maintained.

- Take appropriate steps to arrange for substitution and/or supplementation of evaluation personnel if a Technical Committee Member or Advisor is unable to complete their responsibilities to the extent the TC Chairperson deems necessary or if additional Technical Committee Members or Advisors are necessary to properly evaluate the proposals.
- The TC Chairperson, with the assistance of selected TC Members and Advisors (as needed), will set out examples of information that would earn each of the defined qualitative ratings, otherwise known as “anchors”, to help establish a common baseline to be used in evaluating the Technical Proposal.
- Verify that each TC Member individually reviews and assesses each Technical Proposal using the Evaluation Criteria established for the project.

5.2.5 Technical Committee Members

Technical Committee Members’ responsibilities are outlined below:

- Review and adhere to the Evaluation Criteria and evaluation procedures set forth in the RFP and these Guidelines prior to evaluating the proposals.
- The TC will be made up of 5 or less NDOT staff members. If the SC determines that, due to Project size and complexity, 5 members are excessive, the number of members can be reduced as long as the total number of members on the Technical Committee remains an odd number.
- If a Technical Committee Member has any questions regarding the Evaluation Criteria, they may request clarification from their Committee Chairperson.
- In a sequestered and confidential environment, the TC will evaluate the Technical Proposals based on the 1) responsiveness requirements and pass/fail criteria and 2) Scored Evaluation Criteria applicable to the Technical Proposals.
- The TC will only evaluate and assign Descriptive Ratings to Technical Evaluation Criteria for each proposal; the TC will not assign numerical scores for any Technical Evaluation Criteria.

5.2.6 Financial Committee Chairperson

Responsibilities of the Chairperson of the FC are outlined below:

- Serve as a point of contact in the event a Committee Member or Advisor has questions or encounters issues relative to the evaluations, and forward such questions or issues to the Agreements Engineer or SC, as appropriate.
- Coordinate with the chairperson of the Financial Advisors and facilitate the participation of Advisors as necessary during the course of the evaluation and selection process.
- Be responsible for ensuring the timely progress of the evaluation, coordinating any consensus meeting(s) or re-evaluation(s) and ensuring that appropriate records of the evaluation are maintained.
- Take appropriate steps to arrange for substitution and/or supplementation of evaluation personnel if a Financial Committee Member or Advisor is unable to complete their responsibilities to the extent the FC Chairperson deems necessary or if additional

Financial Committee Members or Advisors are necessary to properly evaluate the proposals.

- The FC Chairperson, with the assistance of selected FC Members and Advisors (as needed), will set out examples of information that would correspond with earn each of the defined qualitative ratings, otherwise known as “anchors”, to help establish a common baseline to be used in evaluating the Price Proposal.
- Verify that each FC Member individually reviews and assesses each Price Proposal using the Evaluation Criteria established for the project.

5.2.7 Financial Committee Members

Financial Committee Members’ responsibilities are outlined below:

- Prior to evaluating the proposals, review the Evaluation Criteria and evaluation procedures set forth in the RFP and these Guidelines, and adhere to them during the evaluation process.
- The Committee will normally be made up of either 2 or 3 NDOT staff members.
- If a Committee Member has questions regarding the Evaluation Criteria, they may request clarification from the FC Chairperson.
- The FC will evaluate the Price Proposals in a sequestered and confidential environment based on the 1) responsiveness requirements and pass/fail criteria and 2) financial criteria applicable to the Price Proposal.
- After the Technical Scores have been transmitted by the TC to the SC, the FC Chairperson will open the Price Proposal envelopes, and apply the previously identified methodology to calculate the Price Score for each proposal.

5.2.8 Advisors

Depending upon the size and complexity of an individual project, or if otherwise deemed necessary by the SC, Agreements Engineer or Project Manager, Technical, Financial and/or Legal Advisors may be made available to assist the Technical Committee, Financial Committee and other NDOT staff during the evaluation process. When more than one advisor in a given discipline is participating in a given evaluation process, the Advisors may elect a chairperson to serve as their point of contact. The responsibilities of the Advisors while supporting the evaluation process are outlined below.

5.2.8.1 Technical Advisors

Technical Advisors may be available to assist the TC during the evaluation process. The TA may include consultant and/or agency personnel with expertise in specific fields relevant to the proposal, and will be available to TC on an as needed basis to support the evaluation of Technical Proposals. The responsibilities of the TA are described below.

If used, the TA will assess the responsiveness of each Technical Proposal, including the pass/fail criteria set forth in the RFP, and submit its findings and report recommended outcomes to the TC. If the TA collectively concludes that a proposal is nonresponsive to any of proposal requirements or does not meet the Pass/Fail Evaluation Criteria, the TA, through their Chairperson if applicable, shall promptly report that information to the Chairperson of the

Technical Committee. In addition, Advisors shall send any clarification requests or requests for additional information needed to perform their analysis of the proposals to the Chairperson of TA who will coordinate with the NDOT Agreements Engineer to send the request(s) for clarification or additional information to the affected proposer(s).

5.2.8.2 Financial Advisors

FAs may be available to assist the FCs during the evaluation process. The FA may include consultant and/or agency personnel with expertise in specific fields relevant to the proposal, and will be available to FC on an as-needed basis to support the evaluation of Price Proposals. The responsibilities of the FA while supporting the FC are described below.

If used the FA will assess the responsiveness of each Price Proposal, including the pass/fail criteria set forth in the RFP, and submit its findings and report recommended outcomes to the FC. If the FA concludes that a proposal is nonresponsive to any of proposal requirements or does not meet the Pass/Fail Evaluation Criteria, the FA or its Chairperson, if applicable, shall promptly report that information to the Chairperson of the Financial Committee. In addition, Advisors shall send any clarification requests or requests for additional information needed to perform their analysis of the proposals to the Chairperson of FA, if applicable, or to the Chairperson of the FC who will coordinate with the NDOT Agreements Engineer to send the requests for clarification or additional information to proposers.

5.2.8.3 Legal Advisors

Legal Advisors may be assembled to support NDOT in-house counsel and the TC, FC, TA, FA, and other NDOT staff as appropriate and necessary to address issues or questions concerning the procedures set forth in the RFP or the evaluation process. Such Legal Advisors would be selected and made available at the discretion of the SC and in-house legal counsel.

5.3 Responsiveness and Pass/Fail Evaluation

If used for the procurement, Advisors will perform a responsiveness review of each Technical Proposal and Price Proposal by comparing each proposal to the requirements identified in the RFP. If Advisors are not used for the procurement, the Agreements Engineer may direct that the TC or FC perform the responsiveness review.

Responsiveness requirements include all administrative and format requirements identified in the RFP, such as timely delivery to NDOT, inclusion of all required forms and certifications, and application of wet signatures where required. NDOT, at its sole discretion and at the direction of the NDOT Director, may waive minor nonresponsive aspects of a proposal, such as the omission of a required signature.

Pass/Fail requirements include minimum experience, capabilities or capacity, such as years of experience of one or more proposed Key Personnel or bonding capacity commensurate with the size of the project. Failed Pass/Fail scores for some proposal elements may be reconsidered by allowing a proposer to revise their proposal to receive a passing score; the decision to allow a proposer to revise their submittal to receive a passing score is at NDOT's sole discretion and at the direction of the SC.

Once a Technical Proposal is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFP. Once a Technical Proposal receives a "Pass" score, the TA will pass their review findings to the TC for consideration. If the TC members agree with the

review findings of the TA, the Technical Proposals will then be eligible for TC to perform evaluation scoring.

Once a Price Proposal is found responsive, it will be evaluated for compliance with Pass/Fail criteria identified in the RFP. Once a Price Proposal receives a "Pass" score the FA will pass their review findings to the FC for consideration. If the FC members agree with the review findings of the FA, the FC will then open the Price Proposal containing the proposer's bid, which is submitted in a separate sealed envelope within the Price Proposal. Opening of the proposer's Price Proposal will not occur until all Technical and Price Proposals have be evaluated and scored by the TC and FC, respectively.

5.4 Technical Proposal Evaluation

The Technical Proposal Evaluation Process is as follows:

- TC Members will perform individual reviews of the Technical Proposals to identify strengths and weaknesses, and then meet as a group to develop a consensus qualitative technical score and recommendation.
- During the review of the Technical Proposals the TC members and TAs may capture their individual thoughts and evaluations of strengths and weaknesses of individual proposals using unofficial copies of the Evaluation Form.
- The official Evaluation Form must be completed by the TC Chairperson during one or more meetings of the TC to establish consensus regarding scoring of all proposals. The basis of the assessment of the TC, including the significant advantages, disadvantages and risks supporting the assigned qualitative ratings, must be documented. Reasoning for determinations of uncertain results or comments should also be documented. Evaluation statements should be as specific as practicable and not contain generalizations.
- To assist the TC in their evaluation of the Technical Proposals, qualitative score examples or "anchors" may have been developed by the TC Chairperson for each evaluation criteria. A Qualitative Evaluation Form should be completed for each individual evaluation criterion for each proposer. At the request of the TC and for their consideration, the TA may present their opinions of each proposal's strengths and weaknesses. The TC may consider the TA's opinions during the consensus meeting when assigning qualitative rankings.
- When the TC evaluation and consensus scoring of the Technical Proposals is complete, the TC qualitative scoring and recommendations will be presented to the SC through the Project Manager. The SC may accept the recommendation or request the TC to reconsider the recommendation.
- While the Technical Proposals are being evaluated, no Member or Advisor serving on or in support of the TC, TA or Legal Advisors will have access to the Price Proposals.

5.4.1 Technical Proposal Evaluation Progression

The following process outlines the steps needed to perform the Technical Proposal Evaluation:

- A Pass/Fail review of each Technical Proposal for responsiveness will be conducted by the TA. Results of the Pass/Fail review will then be provided to TC by means of a "Summary of Findings".

- At the completion of the Pass/Fail review the TC will begin their independent scored review of the Technical Proposals.
- Once TC members complete their independent review of the Technical Proposals, the TC shall score each Technical Proposal, indicating on the Qualitative Evaluation Form the basis for each of its qualitative ratings.
- TC Members will perform individual reviews of the Technical Proposals to identify strengths and weaknesses, and then meet as a group to develop consensus qualitative scores and a recommendation. The members of the TA, if requested by the TC, may be available for consultation during the TC consensus meeting discussions.
- The completed Technical Proposal Evaluation Worksheets used by the TC will be presented by the Project Manager to the SC for consideration.
- After acceptance of the TC ratings by the SC, the Project Manager will place all TC Technical Proposal Evaluation Worksheets in a sealed, time stamped envelope and hold for safekeeping until such time as the evaluation of the Price Proposals has been completed. No one with access to the contents of the Technical Proposal Evaluation Worksheets shall disclose their contents without the permission of the Project Manager and the TC Chairperson.

5.4.2 Qualitative Ratings

Each proposal will be evaluated in the context of the identified criteria in the RFP ITP. Sub-criteria may be developed by NDOT prior to receipt of proposals and incorporated into the evaluation process. For each proposal, Qualitative Ratings will be applied by the TC to each technical criterion, and sub-criterion if applicable, and by the FC to each financial criterion, and sub-criterion if applicable. The four Qualitative Ratings are defined as follows:

Excellent (E): The proposal exceeds in a significant manner stated requirements/objectives in a beneficial way providing advantages, benefits or added value to the Project, and provides a consistently outstanding level of quality. There are essentially no weaknesses.

Good (G): The proposal comfortably meets the stated requirements/objectives, providing some advantages, benefits or added value to the Project, and offers a generally better than acceptable quality.

Acceptable (A): The proposal has demonstrated an approach that is considered to meet stated requirements/objectives and has an acceptable level of quality. An Acceptable rating corresponds to a proposer merely meeting the minimum proposal standards.

Poor (P): The proposal contains significant weaknesses or deficiencies and/or unacceptable quality. The proposal fails to meet the stated objectives and/or requirements, and/or lacks essential information, and/or contains information that is conflicting and/or unsupported. Weaknesses or deficiencies are so major and/or extensive that a major revision to the proposal would be necessary and/or are not correctable.

The terms weakness and deficiency as used herein, means a flaw in the proposal that increases the risk of unsuccessful contract performance.

The following Table 5.4-1 is provided as an example to illustrate a potential distribution of weights for the different qualitative ratings:

Table 5.4-1. Qualitative Ratings: Example of Weighting

Qualitative Rating	Weight Conversion Factor
E	100%
E-	90%
G+	85%
G	80%
G-	75%
A+	70%
A	65%
A-	60%
P+	55%
P	50%

Note: Qualitative conversion factors are determined by the Project Manager

Once qualitative ratings are assigned to each criterion by the TC, the TC Chairperson will convert the ratings to a numbered point value for the purpose of arriving at an overall score rating for the Technical Proposal (the Technical Score). Point values associated with the qualitative ratings are established by NDOT for the specific project before proposals are submitted. These are held in confidence by the Members and may not be disclosed by anyone that has knowledge of such point values. A Technical Proposal Evaluation Scoring Worksheet will be used to document the Technical Score for each proposal.

5.4.3 Technical Score

The Technical Score will be calculated by the TC based on the TC evaluation of the Technical Proposal. 100 points will typically be used for the total Technical Proposal.

Final determination of the major evaluation categories will be driven by specific project needs as well as NDOT goals and objectives of the project. The major evaluation categories for the Technical Proposal should include the following at a minimum:

A. Technical Approach;

B. Project Delivery Approach; and

C. Quality Management Approach.

Within each major evaluation category subfactors may need to be determined and identified in the ITP. Normal practice and accepted industry standard is to <u>not</u> indicate any points or weights for the evaluation subfactor, but only indicate that each subfactor contained in the major category is listed in order of importance. When totaled under a major category, all subfactors shall not exceed the total points allowed for that individual major category.

The following Table 5.4-2 is provided as an example of how the Technical Proposal scoring may be determined.

Table 5.4-2. Technical Scoring Example

Evaluation Criteria	Scoring Pts		Proposer A		Proposer B		Proposer C	
			TC*	Pts*	TC*	Pts*	TC*	Pts*
Technical Approach	45							
Sub Criterion 1		20	E	20.00	G	16.00	E	20.00
Sub Criterion 2		15	G	12.00	E-	13.50	G	12.00
Sub Criterion 3		10	G	8.00	E	10.00	A	6.50
Project Delivery Approach	35							
Sub Criterion 1		15	G	12.00	E	15.00	G	12.00
Sub Criterion 2		15	E-	13.50	G	12.00	G+	12.75
Sub Criterion 3		5	A	3.25	G+	4.25	G	4.00
Quality Management Approach	20							
Sub Criterion 1		10	E	10.00	G	8.00	G	8.00
Sub Criterion 2		6	E	6.00	E-	5.40	G	4.80
Sub Criterion 3		4	G	3.20	G	3.20	G-	3.00
Total Technical Score	100	100	87.95		87.35		83.05	
Ranking			1st		2nd		3rd	

Notes:
1) Scoring Points are assigned to each Technical evaluation criteria prior to TC evaluation and ranking by the Project Manager
2) TC* qualitative rating assigned during the consensus meeting
3) Pts* are determined by multiplying the rating weight by the total points assigned to the sub criteria

5.4.4 Price Proposal Evaluation and Scoring

Price Proposals will be evaluated using qualitative scoring, to be performed by the Financial Committee in the same way described for Technical Proposals in Section 4.3.

5.4.5 Price Score

Individual Price Scores are determined at time the sealed Price Proposal is opened, after completion of the Technical Proposal evaluation and scoring process, and the Price Proposal evaluation and scoring process have been completed. Price scores are calculated by determining the ratio of the lowest price to each other price, and applying that ratio to the previously determined points available for price to the lowest price. The points available for price must be at least 50% of the total points available.

5.5 Apparent Best Value Determination Process

Using a Best Value Compilation Form the Project Manager will determine the Total Proposal Score for each Proposal by combining each Proposal's Technical Score and Price Score in accordance with the predetermined relative weights established for the project.

The Proposal with the highest Total Proposal Score is considered the Apparent Best Value Proposal.

Once the Project Manager has determined each Total Proposal Score and assigned rankings to the Proposals based on such Total Proposal Scores, the Project Manager will present the Apparent Best Value recommendation to the SC. The NDOT SC may:

1. Accept the Project Manager's recommendation,
2. Request the TC present an explanation of the evaluation process and potentially revisit portions of the evaluation, or
3. Reject the recommendations and cancel the procurement.

Upon acceptance of the evaluation results, the SC will issue, or will authorize the Agreements Engineer to issue, a Notice of Intent to Award to the Apparent Best Value proposer and commence finalization of the Contract Documents.

The following Table 5.5-1 illustrates how an Apparent Best Value proposer may be calculated and determined.

Table 5.5-1. Example Apparent Best Value Calculation and Ranking

	Total Technical Score	Bid Price Value	Technical Score	Price Score	Total Proposal Score	Apparent Best Value Ranking
Proposer A	87.95	$50.0 million	30.000	67.200	97.200	3rd
Proposer B	87.35	$49.5 million	29.795	67.879	97.674	2nd
Proposer C	83.05	$48.0 million	28.329	70.000	98.329	1st

Note:
1) For the example, we used 30% of the points for Technical and 70% for Price
2) Technical Score will be determined by – proposer's Tech Score / Highest Tech Score x 30
3) Price Score will be determined by – Lowest Bid Price / proposer's Bid Price x 70

5.6 Information Release

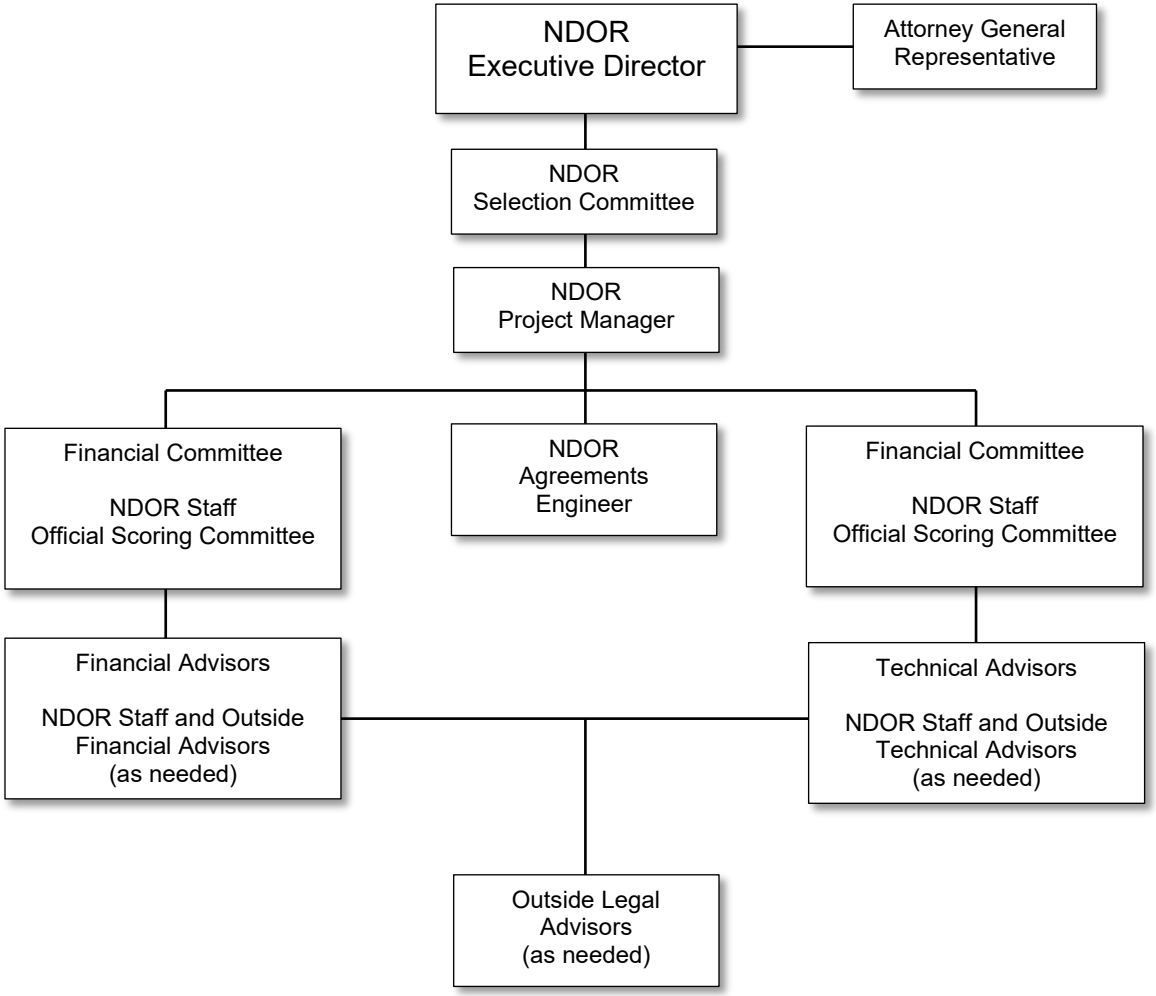
Information regarding the contents of proposals, the input of Advisors, the reviews/deliberations of the Technical Committees, recommendations to the SC, or other information relating to the evaluation process will be 1) released only to authorized persons and 2) made available only with the authorization of the Agreements Engineer or their designated representative.

5.7 Notification and Debriefing

All proposers submitting proposals will be notified in writing of the results of the evaluation process.

Those proposers that are not selected as the Best Value proposer will be contacted by the Project Manager, or their designee, and given the opportunity to request a debriefing, which may be conducted by a designee of the Project Manager at the discretion of NDOT. The Project Manager or their designee will coordinate with the Chairperson of the Technical Committee and/or Financial Committee to schedule such debriefings. Debriefing participants may include the Technical Committee Chairperson, legal counsel and/or any other person designated by the Project Manager. Only information pertaining to the proposal submitted by the proposer attending a debriefing will be shared with that proposer. Proposals submitted by other proposers will not be discussed.

Attachment 5-1
Proposal Evaluation Organization for Large Projects



Section 6 Design/Build Quality Assurance and Quality Control Policy

6.1 Goals of the Quality Assurance and Quality Control Plan

The Design/Builder shall develop and implement a QA/QC Plan that:

- Establishes comprehensive quality management procedures;
- Integrates the quality goals of both the design and construction elements of the project;
- Defines the minimum standards and procedures for quality management; and
- Assigns the responsibilities for specific quality management functions.

The description of the quality management program in this Section 6 is not intended to be all encompassing, but to give the Design/Builder and NDOT flexibility and a general framework, within which to design a program that best fits the needs of the project and both parties.

6.2 Quality Assurance and Quality Control Responsibilities

Design/Builder Responsibility. The Design/Builder shall be responsible for the design and construction quality of the project and for fully complying with the project's quality management program as defined in the QA/QC Plan. Maximizing project quality will require the daily attention and continued efforts of every worker who is involved with the design and construction of the project, from Notice to Proceed to Final Acceptance.

NDOT Responsibility. NDOT will perform Independent Quality Assurance activities in support of the Design/Builder's quality management program, performing quality management oversight and Owner Verification Testing activities on the project. NDOT reserves the right to conduct or hire an independent consultant to conduct the QA portion of the Design/Builder's Construction QA plan.

6.3 Quality Assurance and Quality Control Program

NDOT will set the requirements to which the Design/Builder must adhere in developing its QA/QC Program. These requirements include defining the quality control procedures for both design and construction of the project.

The Design/Builder would then use these requirements to develop QA/QC Plans for the project. The QA/QC Program must include two separate and distinct plans:

- a Design QA/QC Plan, and
- a Construction QA/QC Plan.

Each plan should separately identify QC activities and QA activities.

NDOT may approve or partially approve the QA/QC Plan and may request modifications to the QA/QC Plan as it deems necessary. The Design/Builder will not be allowed to start any design and/or construction until NDOT has approved the Design/Builder's QA/QC Plans for design and construction.

6.3.1 Quality Assurance and Quality Control Documentation

The Design/Builder will need to maintain a record of internal QA and QC activities for the project. The QA/QC Plan will address, at a minimum, the following:

- How the Design/Builder would provide QA and QC for both the design and construction elements of the Project, including but not limited to, design standards and checking procedures, sampling, testing, inspection, management control, change management, document control, communication requirements, and non-compliant work corrective action plans to ensure that the work conforms to the contract requirements;
- How the Design/Builder's QA/QC program—for both the design and construction elements—would be performed by a subcontractor, supplier, veNDOT, agent, or other entity with contractual obligations to complete design or construction elements of the Project;
- How the Design/Builder's design and construction QA/QC organizations function, including the expected minimum number of full-time equivalent employees with specific QA or QC responsibilities; and,
- The relationship and interface between and among the QA and QC organizations and the design and construction organizations to ensure that the decisions made by QA/QC personnel are not based upon the impact such decisions may have on the project's schedule, contractor's performance or project profitability.

QA/QC will be an integral part of each Work Package. As part of each application for payment that includes completed Work Packages, the Design/Builder's designated Quality Assurance Manager must certify that each Work Package has been completed in accordance with the D/B Contract, and that all required QA/QC tests, measurements, permits or other requirements have been completed and all non-conformance reports relative to the respective Work Package have been resolved. The Design/Builder must submit with each application for payment verifiable evidence from the D/B Design Manager of the QA/QC reviews, including any checklists, summary data, high-level/outline calculations or design checks, and evaluations of the work and the qualifications of the responsible personnel that completed the work, that the relevant QA or QC reviewer relied on to make his/her determination the work is complete and conforms to the requirements of the D/B Contract.

6.3.2 Design/Builder's Design Quality Assurance and Quality Control Plan

The objective of the Design QA/QC Plan is to place the responsibility for conducting Design QC reviews and performance of Design QA duties solely with the Design/Builder, yet allow the NDOT to fulfill its responsibilities of exercising due diligence in overseeing the design process and design products.

The Design QA/QC Plan will direct and assure that all investigations, reports, calculations, plans, and specifications are prepared in accordance with accepted design and engineering practices in the State of Nebraska and the Contract Documents.

The Design QA/QC Plan will outline:

- The Design/Builder's internal QC procedures to be followed by the Design QC personnel during project design; and

- The Design/Builder's internal QA procedures to be followed by the Design QA personnel during development and subsequent review of the design program.

The Design/Builder will need to submit the final Design QA/QC Plan to NDOT for review and approval, either independently or as an integral part of the Design/Builder's QA/QC Plan. NDOT will instruct the Design/Builder that beginning design before receiving approval of the Design QA/QC Plan from the NDOT will be at the Design/Builder's sole risk, and that NDOT reserves the right to withhold payment for work performed prior to NDOT's approval of the Design QA/QC Plan will be accepted. If the proposed Design QA/QC Plan is unacceptable to NDOT, the Design/Builder shall modify and resubmit the Plan as necessary to make it acceptable to NDOT. Once the QA/QC Plans are approved by NDOT, the Design/Builder shall not revise any portion without the prior written approval of NDOT.

6.3.2.1 Design Quality Assurance and Quality Control Plan Contents

The Design QA/QC Plan shall describe and include at least the following:

1. *Responsibilities.* Clear definition of the specific responsibilities of the design firm's internal Design QC functions and the internal Design QA duties.
2. *Design QC/Design QA Procedures*. The Design QC and Design QA procedures for the design plans; specifications; reports; calculations, and other construction documents, organized by engineering disciplines (such as structural, civil, and utilities). These procedures shall specify measures to ensure that appropriate quality requirements are specified and included in design documents and to control deviations from such requirements. The Design/Builder shall not deviate from such procedures unless the deviations have been previously approved by NDOT in writing.
3. *Independent Plan Checking*. The Design QC and Design QA procedures for ensuring independent checking of the preparation, verification, and back-checking of all plans, specifications, calculations, reports, and other submitted items. All critical structural design elements subject to failure shall include a set of independent calculations for checking purposes. Such checking shall be in accordance with accepted engineering practices of NDOT and the requirements of the Contract Documents. The checking engineers shall meet the qualification requirements indicated in RFP, and have equal or more relevant experience than the engineer(s) whose work is being checked.
4. *Procedures for Early Construction*. Specific Design QC and Design QA procedures for items planned for early construction, including specific procedures for verifying the final design and identification of any computer programs used for design.
5. *Identification of Design Personnel*. Clear identification of the designer and checker on the face of all final design documents. Plans, specifications, calculations, reports, and other documents shall be certified, signed, and dated by the engineer in responsible charge for that item or element of the project.
6. *Adequacy of Design*. Description of the level, frequency, and methods of checking the adequacy of the project design for all Design Documents.
7. *Coordination*. Procedures for coordinating the various design activities that are performed by different individuals or firms for related tasks. The coordination procedures shall include the review, approval, release, distribution, and revision of documents involving such parties. These procedures shall ensure that conflicts, omissions, or misalignments do not occur between drawings or between the drawings and the specifications.

8. Personnel Qualifications. Procedures to:
    - Ensure that the Design/Builder personnel are familiar with all the provisions of the Contract Documents concerning their respective responsibilities; and,
    - Verify the required education, training and certification (as appropriate) of personnel performing activities affecting or assessing the quality of the project design to ensure that such personnel achieve and maintain reasonable proficiency.
9. *Standards*. Procedures to ensure that the project design is performed according to the Design QA/QC Plan, generally accepted engineering practices of NDOT, and the Contract Documents.
10. *Documentation*. The specific responsibilities of personnel responsible for satisfying documentation requirements and procedures for meeting documentation requirements; for filing and retaining design criteria, reports, notes, calculations, plans, specifications, schematic drawings, and supporting materials needed during the final design; and for developing as-built records. The Design/Builder shall maintain, organize, and index all design documents using Project Wise and On Base for document management, and make copies available to NDOT upon request.
11. *Audits*. Procedures and schedules for the Design Quality Manager to audit the design firm's QC procedures.

6.3.2.2 Design Quality Personnel

The D/B Design Quality personnel positions shall be identified by the Design/Builder in the Design QA/QC Plan.

1. *D/B Quality Manager*: The Design/Builder shall designate a Quality Manager who will:
    - Be responsible for management and certifying that the Design Quality Assurance and Control program has been met;
    - Have no involvement with project scheduling or production activities; and
    - Reports to the Design/Builder's Project Manager.

    The Design/Builder shall not replace the Quality Manager without prior written approval by NDOT. Any request to replace the Quality Manager shall name a proposed replacement manager, include his/her qualifications, and include a statement that he/she will be available full-time within twenty working days of receipt of the NDOT's written approval of the replacement.
2. *D/B Design QA Staff*: The Design QA staff shall include senior experienced engineers to perform audits and quality assurance functions as defined by the Design/Builder's Design QA/QC Plan. An engineer shall be considered a Design QA engineer if he/she is a Registered Professional Engineer in Nebraska and has adequate relevant experience as detailed in the RFP.
3. *D/B Design QC Staff:* The Design QC staff shall include experienced engineers to perform detailed checks of all design calculations and review of construction plans as defined by the Design/Builder's Design QA/QC Plan. An engineer shall be considered a Design QC engineer if he/she is a Registered Professional Engineer in Nebraska and has adequate relevant experience as detailed in the RFP.

6.3.2.3 Design/Builder's Design Quality Control

The Design/Builder's Design Quality Control as outlined in the Design QA/QC Plan shall require:

- The preparation of all design elements under the direct supervision of a Nebraska Registered Professional Engineer;
- Performance of a complete check of all calculations and review of all drawings prepared by the D/B designer. The Design/Builder's designer may not perform the design QC activities for his or her own work, but may be designated as the design QC for the portion of the work that he/she was not directly been involved with; and
- Review of the D/B designer's approach when performing the project design, including processes, procedures, and documentation that were used.

Design QC Certification. The Design QC reviewer shall certify that the check of all calculations and review of all drawings has been performed and meets the requirements of the Design QA/QC Plan.

6.3.2.4 Design/Builder's Design Quality Assurance

The Design/Builder's Design Quality Assurance as outlined in the Design QA/QC Plan shall require:

- Performance of periodic checks of the Design QC process. The Design QA check shall include a general review of all plans, reports, calculations, specifications, and supporting materials incorporated into the Design Documents;
- Review of QC documentation to ensure that all QC checks were performed by engineers not directly involved with the design; and
- Performance of record, documentation, procedures, and process audits, verifying that all design work complies with the approved Design QA/QC Plan.

Design QA Certification. The D/B Quality Manager shall certify, prior to any design submittal to NDOT that the design has been through the Design QC and Design QA process and meets the Design QA/QC Plan standards.

6.3.3 NDOT Design Review Process

As part of the Design QA/QC Plan, NDOT will reserve the right to review as many design packages on the project as it deems necessary. After NDOT has performed a design package review, the Design/Builder shall address all comments and concerns raised by NDOT by revising the design and/or plans to demonstrate to NDOT's satisfaction that the revised design and/or plans complies with the D/B Contract requirements.

The D/B Design Manager shall oversee the performance of all the design and hold oversight review meetings. NDOT may participate in these oversight reviews. Under this procedure, the D/B Design Manager will provide NDOT with draft design plans for review and comment to confirm that the design work complies with the requirements of the D/B Contract.

Any review comments made by NDOT should be provided, in writing, to the Design/Builder. NDOT should provide timely reviews per the D/B Contract and (if and to the extent required) approvals of interim design submissions, drawings, specifications, and other design submittals consistent with the turnaround times set forth in Design/Builder's schedule, provided that NDOT has a set number of days after receipt of such submissions to act upon them.

In addition to contractual reviews, NDOT may conduct regular monthly progress meetings in which quality issues are reviewed, discussed, and addressed.

A typical flowchart showing the review process for Design/Builder's design process is provided as Attachment 6-1 (*Typical Design Review Process*).

6.3.3.1 Over-the-Shoulder Reviews

Over-the-shoulder reviews are informal examinations by NDOT of Design Documents during the project design process. Over-the-shoulder reviews will mainly assess whether the requirements and design criteria of the Contract Documents are being followed and whether the Design/Builder's Design QA and Design QC activities are being undertaken in accordance with the approved Design QA/QC Plan. The reviews may, at NDOT's discretion, include review of design drawings, electronic files, calculations, reports, specifications, geotechnical data, progress prints, computer images, draft documents, draft specifications and reports, other design documents, and any other relevant design information as requested by NDOT.

The intent of these reviews will be to check for concept, level of detail, design criteria, and fatal flaws. These reviews will not routinely include detailed calculation or drawing reviews, although NDOT will retain the right to perform detailed reviews of any item at any time. If mutually agreed upon between the parties, for specific review items, the over-the-shoulder review may consist of an exchange of electronic files between the Design/Builder's designer and NDOT.

6.3.3.2 Formal Design Reviews

Throughout the design process, the Design/Builder or NDOT may request formal design reviews/workshops to discuss and verify design progress and to assist the Design/Builder and/or its designer(s) in resolving design questions and issues.

Formal design reviews/workshops shall be conducted prior to each of the following mandatory submittals:

- *Preliminary Bridge Submittal* - The Design/Builder shall prepare and submit for NDOT review Preliminary Bridge submittal(s) in accordance with the requirements in the technical provisions of the RFP.
- *Preliminary (30%) Design Submittal* - The purpose of the Preliminary (30%) Design submittal is to obtain acceptance by the Design QC Manager of the Design/Builder's horizontal and vertical geometric design, bridge clearances, and limits of the project. NDOT will review for compliance.
- *Intermediate (65%) Design Submittal* - The purpose of the Intermediate (65%) Design submittal is to ensure that the design is progressing in accordance with the requirements of the Contract Documents, applicable law, and the governmental approvals. The Intermediate (65%) Design submittal shall also ensure that: 1) existing field conditions have been properly identified and addressed and 2) various design disciplines and elements of the project are being properly coordinated between the Design/Builder and persons responsible for adjacent work, appropriate landowners, utility owners, developers, railroads, and governmental agencies. The submittal shall consist of detailed construction drawings and specifications, including traffic control and sequencing plans, a completed drainage design, and supporting reports and calculations consistent with the Contract Documents. The Intermediate (65%) Design submittal shall fully address all comments made by the design quality reviewers and NDOT on the Preliminary (30%) Design submittal.

- *Final (100%) Design Submittal* - The Design/Builder shall submit the Final (100%) Design submittal to NDOT for review and comment. Construction packages for individual work elements can be organized such that the final document package can be assembled into a construction document that could be used to construct the entire work and/or could be used with minor revisions for as-built plans. When the Design/Builder has completed the Final Design of an item or element and wishes to obtain NDOT's approval to proceed with construction thereof, the D/B Quality Manager shall certify that: 1) the design meets all applicable requirements of the Contract Documents, applicable law, and the governmental approvals; 2) the design has been checked in accordance with the Design/Builder's approved Design QA/QC Plan; 3) the item or element is ready for construction; and 4) all required ROW has been secured, along with any and all approvals from governmental agencies, utility owners, and railroads (as needed). After certifying the above items 1 through 4, the Design/Builder may elect to go directly to the construction phase of any item or element at its own risk pending NDOT's review. The Design Quality Manager will conduct a formal review with NDOT of the Final (100%) Design submittal for said item or element. The Final (100%) Design submittal shall consist of complete Design Documents, fully addressing all of the Intermediate (65%) Design submittal review comments. All relevant documentation must be available for review, including the comments of the Design QA and Design QC staff reviewers, Design Quality Manager written certifications, copies NDOT's approval of deviations from design standards, and/or Design Exceptions (when necessary). In the event the Design/Builder has opted to move forward with construction, and the NDOT review reveals that design changes are needed, the Design/Builder shall accomplish such changes without further consideration for time or compensation.

  NDOT's concurrence with the Design Quality Manager's acceptance statement will not constitute approval of the design or subsequent construction, nor relieve the Design/Builder of its responsibility to meet the requirements hereof. Irrespective of whether NDOT provides the Design/Builder with the authority to begin construction on elements of the project prior to completion of the entire design, the Design/Builder shall bear the responsibility to ensure that construction meets the requirements of the Contract Documents, applicable law, and the governmental approvals.

  If NDOT determines that the Final Design Package does not meet the requirements of the Contract Documents, applicable law, and applicable governmental approvals, NDOT will notify the Design/Builder in writing of any specific deficiencies in the Final Design Package. Upon receipt of NDOT's comments, the Design/Builder shall correct such deficiencies and modify the Final Design Package and (if necessary) the construction.

The Design/Builder must maintain a written record of all formal design reviews, including at a minimum the following:

- A list of the participants in attendance;
- Description of the items covered and discussed;
- Identification of discrepancies and comments, and a report on corrective actions (both those taken and those planned); and,
- Identification of follow-up action items, due dates, the parties responsible for action items requiring resolution, and deadlines for resolution.

6.3.3.3 Release-for-Construction Plans

Release-for-Construction plans shall aid and facilitate design review by NDOT, and provide adequate information for safe, efficient, and high-quality construction. Release-for-Construction plans are intended to allow construction to begin on segments or elements of the project as the design progresses and before final design is complete. Release-for-Construction plans and submittals shall be submitted for NDOT review prior to starting construction of depicted segments or elements.

The Design/Builder may proceed with construction of certain elements or portions of the project in accordance with Release-for-Construction plan before the design of the entire project has been completed. NDOT will notify the Design/Builder in writing of its acceptance or rejection of the Release-for-Construction plan.

The Design/Builder will need to acknowledge and agree that it may not issue any Release-for-Construction plan until the Design Quality Manager has obtained approval of them from NDOT and applicable governmental entities, utilities, and railroads. Construction of any item, element, or phase covered by the Design Quality Manager's statement approving construction shall progress only to the extent covered by the Design Documents included in that approval, except as noted above in Section 3.3.2. Before progressing further with construction, the Design/Builder shall complete the next phase of design or complete the final design, and obtain NDOT's concurrence. Any subsequent phases of design to be released for construction shall be checked and approved by the Design Quality Manager in the same manner as indicated above for Formal Design submittal reviews.

NDOT's concurrence with the Design Quality Manager's acceptance statement will not constitute approval of the design or subsequent construction, nor relieve the Design/Builder of its responsibility to meet the requirements hereof. Irrespective of whether NDOT provides the Design/Builder with the authority to begin construction on elements of the project prior to completion of the entire design, the Design/Builder shall bear the responsibility to ensure that construction meets the requirements of the Contract Documents, applicable law, and the governmental approvals.

If NDOT determines that the Release-for-Construction plan does not meet the requirements of the Contract Documents, applicable law, and the governmental approvals, NDOT will notify the Design/Builder in writing of any specific deficiencies in the Release-for-Construction plan. Upon receipt of NDOT's comments, the Design/Builder shall correct such deficiencies and modify the Release-for-Construction plan and (if necessary) the construction.

6.3.3.4 Oversight Visits

Throughout the design process, NDOT may make oversight visits to discuss and verify design progress and ascertain the overall progress of the project with respect to the Design/Builder's Design QA/QC Plan. If, in the sole opinion of NDOT, the Design/Builder is not meeting the goals and objectives of the Design QA/QC Plan, the Design/Builder shall suspend all project work and NDOT will withhold payment until work elements are brought back into compliance with the Design QA/QC Plan.

6.3.4 Design/Builder's Construction Quality Assurance and Quality Control Plan

The objective of the Construction QA/QC Plan is to place the responsibility for conducting Construction QC inspection and testing and performance of Construction QA duties solely with

the Design/Builder, including coordination of NDOT's Construction Quality Assurance oversight and Owner's Verification Testing processes.

6.3.4.1 Construction Quality Assurance and Quality Control Plan Contents

The Design/Builder's Construction QA/QC Plan shall describe and include at least the following:

1. *Authority.* Clear definition of the authority and responsibility for administering the Design/Builder's Construction QA/QC program.
2. *Work Force Participation*. Methods and procedures to obtain active participation of the Design/Builder's work force in Construction QC activities to achieve a quality project.
3. *Reporting Forms*. Reporting forms to be used by the responsible Construction QC personnel.
4. *Staffing Plan*. A Construction QC organization and staffing plan that includes the period of time that each QC staff member will be on-site.
5. *Staffing Qualifications*. Resumes of the key staff members, and the experience, knowledge, and skill levels of the Construction QC staff.
6. *Procedures*. Procedures for inspecting, checking, and documenting the work completed and for the inspection, examinations, and measurements for each operation (such as demolition, clearing, drainage, grading, surfacing, and paving).
7. *Controlled Conditions*. Procedures to ensure that all activities affecting the quality of the project are accomplished under controlled conditions, using appropriate equipment for the task being performed.
8. *Personnel Standards*. Procedures to ensure that the personnel performing Construction QC activities meet or exceed all applicable standards of education, training, and certification.
9. *Critical Elements*. Procedures to ensure that critical elements of the project as identified by the contract, are not started or continued without on-site inspection and testing by Construction QC personnel and the appropriate NDOT staff.
10. *Conformance and Performance*. Specific procedures to ensure that all work conforms to the requirements of the Contract Documents, governmental approvals, applicable law, and the design documents, and that all materials, equipment, and elements of the project will perform satisfactorily for the purpose(s) intended.
11. *Compliance Criteria*. A requirement that all activities undertaken by or on behalf of the Design/Builder affecting the quality of the project shall be prescribed and accomplished by documented instructions, procedures, and appropriate drawings, all of which shall include quantitative and qualitative criteria to be used to determine compliance.
12. *Purchase Compliance*. Measures consistent with NDOT standards that ensure that purchased materials, equipment, and services conform to the Contract Documents, governmental approvals, applicable laws, rules, regulations, and the design documents (including measures for source evaluation and selection, provision of objective evidence of quality furnished by subcontractors and suppliers, inspection at the manufacture or veNDOT source, and examination of products upon delivery).
13. *Requests for Information (RFI) Procedures*. Procedures for processing RFIs to resolve discrepancies and/or questions in the Released-for-Construction plans so that all

changes are documented and approved by Design/Builder's design engineers and, as applicable, NDOT.

14. *Coordination*. A program for coordination of all inspections and testing with the inspections and tests of governmental entities, railroad(s), and utility owners.
15. *Adverse Conditions*. Procedures to ensure that conditions adverse to quality (such as failures, malfunctions, deficiencies, defective material and equipment, deviations, and other Nonconforming Work) are promptly identified and corrected; to ensure that the cause of the condition is determined and prompt corrective action taken to preclude repetition; and to document and report the identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken, to NDOT in writing and to appropriate levels of Design/Builder's management.
16. *Instrumentation*. Procedures and personnel to be used to assure that specified instrumentation is installed and monitored in accordance with applicable specifications.
17. *Certificates of Compliance*. The form and distribution of certificates of compliance.
18. *Construction Staking*. Procedures for checking and verifying the accuracy and adequacy of construction stakes, lines, and grades established by the Design/Builder.

6.3.4.2 Construction Quality Personnel

The D/B Construction Quality personnel positions shall be identified by the Design/Builder in the Construction QA/QC Plan.

1. *D/B Quality Manager*: The Design/Builder shall designate a Quality Manager who will:
    - Be responsible for management and certifying that Construction Quality Assurance and Control program has been met;
    - Have no involvement with project scheduling or production activities; and
    - Reports to the Design/Builder's Project Manager.

    The Design/Builder shall not replace the Quality Manager without prior written approval by NDOT. Any request to replace the Quality Manager shall name a proposed replacement manager, include his/her qualifications, and include a statement that he/she will be available full-time within twenty working days of receipt of the NDOT's written approval of the replacement.
2. *D/B Construction QC Staff:* Each person on the Design/Builder's and subcontractors' construction work force is considered to be a member of the Design/Builder's QC staff, as each and every one is responsible for the quality of the project. Personnel responsible for performing the quality control inspection shall be knowledgeable and receive training to perform their quality control duties. Personnel performing quality control inspection shall be knowledgeable and certified in the inspection methods and procedures.
3. *D/B Construction QA Staff*: The Design/Builder shall assign Construction QA personnel to perform material sampling/testing of all construction activities performed and materials incorporated into the project by any member of the Design/Builder's group. Personnel performing quality assurance sampling and testing shall be knowledgeable and certified in the testing and sampling methods and procedures.

6.3.4.3 Design/Builder's Construction Quality Control

The Design/Builder's Construction Quality Control as outlined in its Construction QA/QC Plan shall:

- Review the preparation of all Portland cement concrete and hot-mix asphaltic concrete mix designs by a Nebraska Registered Professional Engineer;
- Observe and preform daily field inspections of all project construction work and materials, and prepare a daily Construction QC report to document the inspections;
- Review sampling and testing of all materials during the crushing, screening, or manufacturing processes to ensure materials meet the specifications of the project; and,
- Review the D/B approach when performing the project construction including any processes, procedures, and documentation that were used.

Construction QC Documentation. The Design/Builder QC staff shall maintain construction workmanship and materials quality records of all inspections and tests performed per the approved Construction QA/QC Plan, and report results to allow timely and accurate decisions on workmanship and material quality issues.

6.3.4.4 Design/Builder's Construction Quality Assurance

Design/Builder's Construction Quality Assurance as outlined in the Construction QA/QC Plan shall:

- Have the authority to stop portions of project if the Construction QA/QC Plan is not being implemented correctly;
- Perform material sampling and testing on the project;
- Audit the Design/Builder's records, documentation, procedures, and processes to verify compliance with the approved Construction QA/QC Plan;
- Review and certify all Portland cement concrete and hot-mix asphaltic concrete mix designs;
- Perform spot checks on construction alignment and grades; and,
- Retain authority to order a cessation of portions of or the entire project when unsafe conditions occur.

Construction QA Certification. The D/B Quality Manager shall certify, that the construction has been through the Construction QC and Construction QA process and meets the Construction QA/QC Plan standards.

6.3.4.5 NDOT Quality Assurance Acceptance

NDOT may hire an independent consultant to verify that the Design/Builder is following the project's QA/QC plan. The Design/Builder shall furnish, upon request by the NDOT's consultant, all documentation related to inspection and materials testing. The NDOT's consultant will perform an independent verification sampling and testing to verify the results of the QA/QC testing. If the results of the verification testing do not confirm the Design/Builder's QA/QC testing results, the Design/Builder will provide documentation to explain reasons for the difference. If NDOT determines that the supporting documents does not satisfactorily explain

the difference, the verification test results will govern. In the event the difference cannot be explained, the Design/Builder and NDOT will perform Independent Assurance (side-by-side) testing to determine the cause of the difference. At each point in performance of the project at which specific inspection or approval by NDOT is required by the Contract Documents, governmental approvals, or applicable law, the Design/Builder shall not proceed further until NDOT has completed such inspection or approval or waived (in writing) its right to inspect or approve. If NDOT is not given adequate notice of and/or the opportunity for prior inspection of any work done or materials used, then NDOT may order that such work or materials be uncovered, removed, or restored at Design/Builder's expense, and the Design/Builder shall not be entitled to a time extension, even if the work proves to conform with the requirements of the Contract Documents, the governmental approvals, and applicable law after uncovering.

6.4 Typical Design/Build Quality Organization

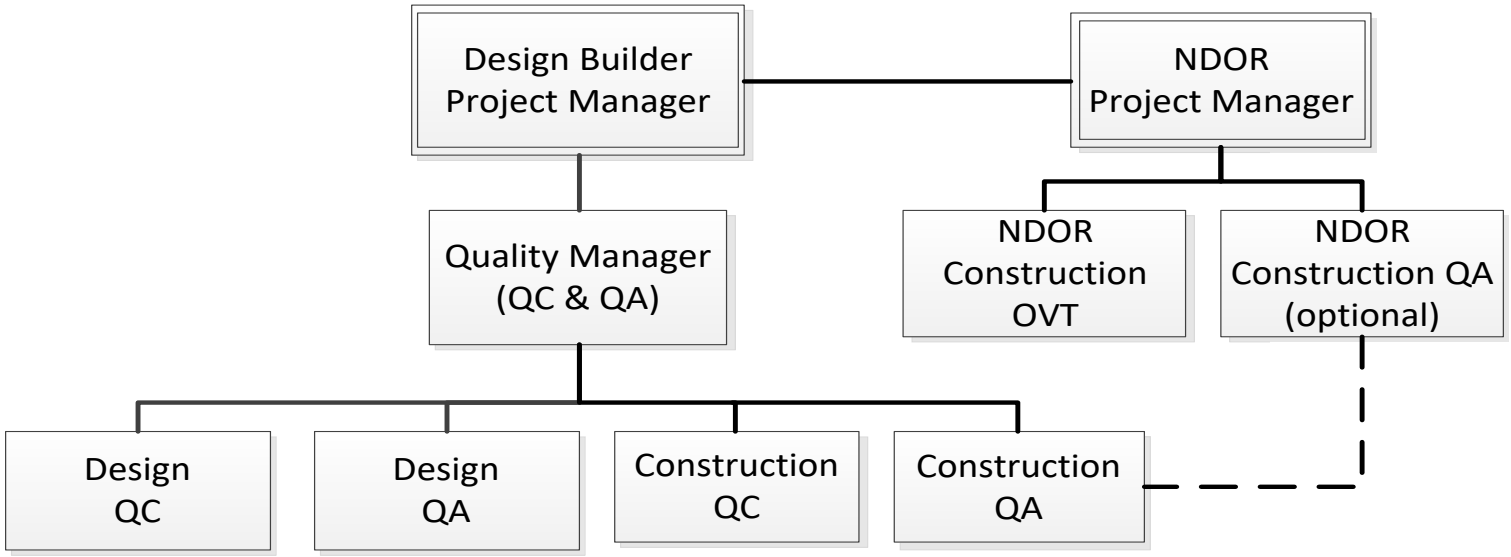
The Design/Builder's QA/QC Plan must include a description of its quality control and quality assurance organization, including the number of full-time equivalent employees with specific Quality Control and/or Quality Assurance responsibilities, and include an organization chart showing lines of authority and reporting responsibilities. The persons and organizations performing Quality Control and/or Quality Assurance functions shall have sufficient authority and organizational autonomy to identify quality problems and to recommend, initiate and verify implementation of solutions. Persons performing Quality Control and/or Quality Assurance functions shall be at an organizational level that ensures that they are not influenced by the impact of implementation of Quality Control and/or Quality Assurance measures on the project schedule or cost. To ensure the organizational independence, at the very least, the QA/QC will be established as a separate entity from the design and production organization and not reporting to the Project Manager. All Key Personnel performing Quality Control and/or Quality Assurance functions must be exclusively designated to such and cannot be assigned to perform conflicting duties.

Attachment 6-2 illustrates a typical Design/Builder's QA/QC organization.

Attachment 6-1
Typical Design Review Process

Attachment 6-2

Typical Design/Builder's Quality Assurance/Quality Control (QA/QC) Organization



All Key Personnel performing QA or QC functions should be exclusively assigned to such functions and should not be assigned to perform conflicting duties or production work.

Section 7 Risk Management Guidelines for Design/Build and Construction Manager/General Contractor

7.1 Introduction to Project Risk Management

This document provides information to project managers, project teams, and staff involved directly or indirectly with project risk management. It provides:

- Uniformity in project risk management activities.
- Techniques and tools for project risk management.
- Data requirements for risk analysis input and output.
- The project risk management role in overall project management.
- Guidance on how to proactively respond to risks.

Understanding project risks enables project teams to more effectively fulfill public service expectations. Assessing project risk and uncertainty informs decision-making in our project development and delivery mission. These decisions contribute to public safety and clarify project expectations. Informed project risk management adds value on many levels to every project we deliver.

Estimating the cost of transportation projects is a fundamental responsibility of NDOT and is directly affected by the risk management process. In recognition of the fundamental and strategic importance of cost estimating, these guidelines provide consistent practices across the agency to enhance methods for meeting this responsibility. Estimators must be shielded from pressures to prepare estimates that match any preconceived notions of what a project should cost. Estimators need to prepare estimates based on the scope of the project, the schedule of the project, and the bidding conditions that are anticipated.

Although risk management is an important part of all NDOT projects including those delivered using APDM, and all project risk management begins with internal NDOT meetings or workshops regardless of the project delivery method, the risk management process differs significantly between D/B and CM/GC. These different processes are described in Sections 2 and 3 of these procedures, respectively.

7.2 Design/Build Project Risk Management Process

Risk management, as an integral part of project management, occurs on a daily basis. With proactive risk management, we look at projects in a comprehensive manner, and assess and document risks and uncertainty. The essential steps for D/B risk management are provided below.

7.2.1 Risk Management Planning

Risk management planning is the systematic process of deciding how to approach, plan and execute risk management activities throughout the life of a project. It is intended to maximize

the beneficial outcome of opportunities and minimize or eliminate the consequences of adverse risk events.

Prior to preparing the procurement documents for a project, the NDOT project team may conduct an internal project risk analysis meeting, to develop the initial Risk Assessment and Allocation Matrix to be used in making the initial or conceptual level risk recommendation. This meeting may take the form of an all-day workshop but may be accomplished more informally by NDOT staff depending upon the size and complexity of the given project scope. After shortlisting of D/B teams, and during review of the draft RFP by the shortlisted teams, the initial risk allocation matrix may be updated based on feedback obtained from proposers through group and/or one-on-one meetings, or through a risk workshop. For each element of risk, the proposers would indicate whether they can accept the risk, require the allocation to be modified (typically by providing suggested contract language), or cannot accept the risk.

7.2.2 Assignment of Project Risk

Risk identification involves determining which risks might affect the project and documenting their characteristics in terms of magnitude of impacts and probability of occurring. Risk assignment involves identifying which party of parties will be responsible for each risk. Both types of information are included in the Risk Assessment and Allocation Matrix.

The following recommended practices are not intended to be rigid requirements; these are flexible guidelines to be modified to meet the specific needs associated with each project.

Environmental Clearances: NDOT is typically responsible for complying with State and Federal requirements and will be the signatory on many documents, such as records of decision and permit applications. Although a Design/Builder may provide information to support a permit application, they cannot control the actions or timing of third party regulatory agencies. For most projects, NDOT will provide allowances for the required application time as the associated delay risks could be significant and could result in higher proposal prices.

Other permits required for construction trades or for temporary construction impacts of convenience are assigned to the Design/Builder.

Public Information: As the project owner, NDOT is typically responsible for the risk of project public eNDOTsement. This assignment of risk is based on NDOT having more directly relevant experience and greater expertise than a contractor in this area. Once the public has accepted a project, the Design/Builder should be tasked with the responsibility of developing and implementing a public participation program that provides ongoing information sharing and open communications.

Preliminary Plan: NDOT will develop a D/B project to only the minimum level necessary. Environmental requirements and risk definition may require NDOT to progress some portions of the design further than others. If the project is developed in too much detail, the opportunity to innovate and/or save time and possibly money may be reduced significantly or lost entirely.

Geotechnical: NDOT is ultimately responsible for risks associated with Changed and Differing Site Conditions. Accordingly, NDOT must establish a baseline for Design/Builders to use to develop their technical and price proposals. Preliminary geotechnical investigations will be conducted by NDOT and data provided to proposers. The requirements for geotechnical investigation to be performed by the Design/Builder may be defined by NDOT and included in the RFP technical requirements. If deemed appropriate by NDOT for a particular project, proposers may have an opportunity to request supplemental information during preparation of

their proposals. If no supplemental geotechnical information is offered by NDOT, each proposer will need to obtain any additional data required.

ROW: For small to mid-sized projects, ROW acquisitions required for the project should be complete, or imminent, prior to award of a D/B contract; this prevents the need for proposers to price the risk of delay and the risk of increased acquisition costs in their proposals. Separate from the required ROW identified as part of Preliminary Design, the Design/Builder may identify additional beneficial or necessary ROW needs. In response, NDOT would assess the value or need of obtaining additional ROW prior to proceeding with the acquisition process. Adjustments to the contract would be made depending upon whether the additional ROW is necessary and/or beneficial to complete the project. On larger contracts, it can be advantageous to defer purchase of ROW until the Best Value D/B proposal has been selected.

Inter-Agency Agreements: Agreements between and among NDOT and other government agencies, which are necessary for the completion of a project, will typically be obtained by NDOT prior to award of the D/B contract to ensure that all commitments and requirements of these agencies are known when the proposers prepare their proposals. It is important to be aware that there may be projects for which it is advantageous to make such agreements part of the Design/Builder's scope of work.

Utility/Railroads: For most projects, agreements with utility companies or railroads for relocation of their facilities will be obtained by NDOT prior to advertisement. However, there may be some instances in which it is advantageous to make such agreements part of the Design/Builder's scope of work. The arrangements for the actual construction work associated with such relocations will be coordinated by the Design/Builder to match their intended work program. When the construction work/coordination is allocated to the Design/Builder, it is imperative that the control of the work also lie with the Design/Builder.

Other Issues: For design-build contracting, NDOT will review and consider the risk associated with the following items early in the project development process:

- Permit requirements
- Utility relocations
- Funding
- QA/QC responsibilities
- Labor disputes
- Weather conditions
- Inflation
- Hazardous materials
- Third party involvement
- Third party claims
- Site conditions/Differing site conditions
- Contract changes
- Liquidated damages
- Performance schedule
- Contract terms
- Payment methodology
- Incentives/disincentives
- Bonding requirements
- Errors and Omissions Insurance
- Force majeure

- Schedule
- Incremental acceptance of work
- Liability for design
- Performance guarantees/warranties

Allocation of the risks inherent in highway projects will also define ownership and responsibility for each task of the project delivery process. On a standard D/B/B project, NDOT acts as both the owner and engineer. This owner/engineer role requires that NDOT own most of the risk for the success of the design. In D/B, the guiding principle should be one of assigning risk to the party (owner or Design/Builder) that can best manage the risk. One key question to be asked in risk allocation is, "*How much is NDOT willing to pay a Design/Builder to assume risk that NDOT typically owns*?" This question should be asked for each individual task to tailor the design-build contracting approach to each specific project. Project risk must be considered in all decisions related to developing the contract provisions.

7.2.3 Project Risk Allocation Matrix

On each D/B project, the NDOT project team must determine how far to advance the preliminary design. Based on the experiences of multiple public agencies with D/B projects and published viewpoints from the design-build industry, contractors and design consultants, there appears to be a national consensus that development of a risk allocation matrix is the key to making this determination.

Early in the project, the design team must begin to identify potential risks associated with the project and assign responsibility for each of these risks either to NDOT or to the Design/Builder. The project team must periodically revisit the risk assignments as more information becomes available about the project, and make modifications accordingly. NDOT staff must utilize the risk allocation matrix throughout development and implementation of the project. This matrix will not only document which party has been assigned responsibility for a given risk, but it will also help the project team determine how far to advance each technical element within the preliminary design during development of the RFP.

For reference, an example Design/Build risk allocation matrix is shown in Attachment 7-1 (*Design/Build Risk Allocation Matrix*). Such a matrix will need to be tailored to each individual project. The allocation of risk on this example matrix was determined based on general expectations of the construction and consulting industry. This example risk allocation matrix is not intended to be all-inclusive. The project team will have to carefully review all elements that could impact the specific project and tailor the matrix to fit the project. The matrix should be available for review throughout the entire RFP development process.

Note that a sample risk allocation matrix for CM/GC is not provided; this is because risk allocation in CM/GC is very much like that in D/B/B, whereby the owner carries most of the risks. One notable exception is regarding price risk after the maximum construction price has been negotiated and agreed, at which time such risk is assumed almost entirely by the CM/GC as opposed to being shared by the contractor and owner as in D/B/B project delivery.

7.3 Construction Manager/General Contractor Project Risk Management Process

CM/GC is an APDM in which the owner enters in to simultaneous contracts for both the design consultant and the contractor. Due to nature of CM/GC contracting, the risk management under CM/GC is substantially different from that with D/B. Under D/B, the risk assessment and

allocation is done during the RFP phase, allowing proposers to reflect the assignment of specific risk responsibilities in their proposals. Under a CM/GC procurement, the final risk allocation and transfer will be performed jointly during the design process, with the contractor working with the designer to:

- Reduce risk;
- Continuously update cost; and,
- Achieve a guaranteed maximum price at the end of design.

Because the CM/GC process reduces risk, the Guarantee Maximum Price (GMP) for construction is expected to be less than for conventional D/B/B projects.

7.3.1 Construction Manager/General Contractor Risk Analysis Workshops

During the design phase of the project, NDOT, the designer and the CM/GC will hold one or more Risk Workshops to discuss various elements of risk. The outcome of each risk analysis workshop will be the allocations of risks that will apply during the remaining design effort and during the construction services phase of the CM/GC Contract. The NDOT project team should plan for a limited number of half-day meetings to be held, during which risk philosophy, issues and allocation will be discussed by NDOT, the designer, the CM/GC and possibly other relevant stakeholders.

The risk workshops conducted during the CM/GC and D/B processes are similar, with both addressing as nearly a comprehensive a list of risk elements as possible, consistent with the specific project scope, project delivery method, and the extent to which design has been advanced at the time.

Input from the designer will be similar to that discussed with regard to the D/B process. However, with the CM/GC workshops, having the input from the contractor will provide an additional viewpoint regarding the impact of individual risks on the project. A process diagram that illustrates the potential timing of multiple Risk Workshops while using the CM/GC delivery method is provided in Attachment 7-2 (*CM/GC Risk Workshop Flowchart*).

Attachment 7-1
Design/Build Risk Allocation Matrix

Risk Element	Design/Bid/Build Process			Change	Design/Build Process	
Design Issues	Owner	Shared	Contractor		Owner	Design/Builder
Definition of Scope	X				X	
Project Definition	X				X	
Establishing Performance Requirement	X				X	
Preliminary survey/base map	X				X	
Geotech Investigation - Initial Borings based on Preliminary Design	X				X	
Geotech Investigation - Initial Borings based on proposal	X			→		X
Establish/Define initial subsurface conditions	X				X	
Initial project Geotechnical Analysis/Report based on Preliminary Design	X				X	
Proposal specific Geotechnical Analysis/Report	X			→		X
Plan conformance with regulations/RFP	X			→		X
Plan accuracy	X			→		X
Design Criteria	X				X	
Conformance to Design Criteria	X			→		X

Design Review Process	X			→		X
Design QC	X			→		X
Design QA	X			→		X
Owner Review Time	X				X	
Changes in Scope	X				X	
Constructability of Design	X			→		X
Contaminated Materials	X				X	

Risk Element	Design/Bid/Build Process			Change	Design/Build Process	
Local Agency, Utility, Railroad Issues	Owner	Shared	Contractor		Owner	Design/Builder
Identification of initial local agency impacts	X				X	
Obtaining Initial local agency permits	X				X	
Establishing initial local agency requirements	X				X	
Establishing final/actual local agency impacts	X			→		X
Modifications to existing local agency permits	X			→		X
Identification of initial utility impacts from Preliminary Design	X				X	
Establish initial Utility Locations / Conditions	X				X	
Defining required utility relocations from Preliminary Design	X				X	

Relocation of utilities prior to contract	X				X	
Relocation of utilities under agreement during contract			X			X
Modified agreement with private utility based on Final Design	X			→		X
Modified agreement with public utility based on Final Design	X			→		X
Damage to Utilities under Construction			X			X
Verification of Utility Locations/Conditions	X			→		X
Coordination with Utility Relocation Efforts during contract		X		→		X
Unforeseen delays - Utility/Third Party	X				X	
Utility/Third Party Delays resulting from proposal/mod design	X			→		X
Identification of RR impacts based on preliminary design	X				X	
Obtaining initial RR agreement based on preliminary design	X				X	
Coordinating with RR under agreement	X			→		X
Other work/Coordination		X		→		X
Third Party Agreements (Fed, Local, Private, etc.)	X				X	
Coordinating with Third Parties under agreement		X		→		X
Coordination/collection for third party betterments		X		→		X
Coordination with Other Projects		X		→		X
Coordination with Adjacent Property Owners		X		→		X

Risk Element	Design/Bid/Build Process			Change	Design/Build Process	
Construction	Owner	Shared	Contractor		Owner	Design/Builder
DBE compliance			X			X
Safety / Safety QA			X			X
Construction Quality/Workmanship			X			X
Schedule			X			X
Materials Quality			X			X
Materials documentation			X			X
Material availability			X			X
Initial performance requirements of QA Plan	X				X	
Final Construction/Materials QA/QC Plan	X			→		X
Construction/Materials QA	X			→		X
Construction QC			X			X
Construction QA Procedural compliance auditing	X				X	
Construction IA testing/inspection	X				X	
Construction Staking		X		→		X
Erosion Control		X		→		X

Spill Prevention		X		→		X
Accidents within work zone / liability			X			X
Third Party Damages			X			X
Operations and Maintenance During Construction			X			X
Maintenance under Construction - new features			X			X
Maintenance under Construction - exist. features			X			X
Maintenance of Traffic		X		→		X
Quantity/Cost of callbacks	X			→		X
Availability of callbacks	X				X	
Damage to Utilities under Construction			X			X
Falsework			X			X

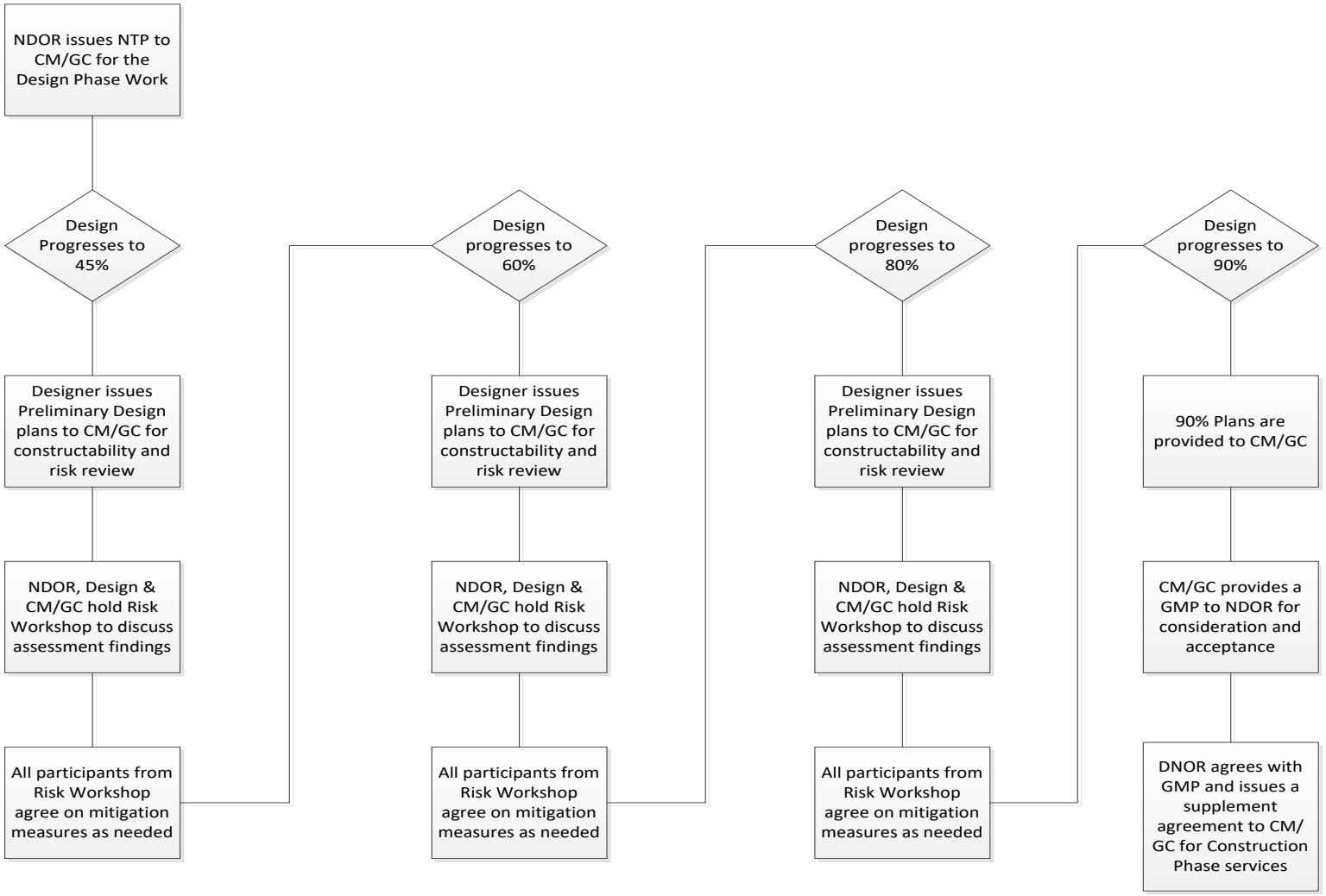
Risk Element	Design/Bid/Build Process			Change	Design/Build Process	
Construction	Owner	Shared	Contractor		Owner	Design/Builder
Shop Drawing			X			X
Equipment failure/breakdown			X			X
Work Methods			X			X
Early Construction / At Risk Construction		X		→		X

Community Relations	X				X	
Performance of defined mitigation measures	X			→		X
Warranty	X			→		X
Force Majeure / Acts of God						
Strikes/Labor Disputes - on site labor	X			→		X
Tornado/Earthquake	X				X	
Epidemic, terrorism, rebellion, war, riot, sabotage	X				X	
Archaeological, paleontological discovery **	X				X	
Suspension of any environmental approval **	X				X	
Changes in Law	X				X	
Lawsuit against project	X				X	
Storm/Flooding	X				X	
Fire or other physical damage	X				X	
Differing Site Conditions/Changed Conditions						
Changed Conditions	X				X	
Differing Site Conditions	X				X	

Completion and Warranty					
Establishment/definition of any risk pool	X			X	
Long term ownership / Final Responsibility	X			X	
Insurance			X		X

Note: ** Will ultimately roll over to Environmental

Attachment 7-2
Construction Manager/General Contractor Design Process and Risk Workshops Flowchart



Section 8 Construction Manager/General Contractor Procedures

8.1 Introduction

The CM/GC project delivery method is an integrated team approach to the planning, design, and construction of a project. The CM/GC method has been developed as a result of public owner demands to enhance quality of the design product, decrease cost, compress the delivery period and better plan for and manage risks. Primary characteristics of this delivery method include:

- Early participation of a contractor to provide input to the design team regarding construction phase considerations, such as constructability, cost implications of design decisions, construction phasing and materials issues.
- Compressed overall project delivery schedule due to elimination of the construction contract procurement cycle and enhanced contractor understanding of the design.
- A GMP or Target Maximum Price (TMP) for construction is negotiated between the CM/GC and NDOT at the conclusion of the design phase, providing NDOT with a high level of price certainty.

The CM/GC project delivery method consists of two phases, a design phase and a construction phase. During the design phase, the contractor acts as a consultant working with the Designer to offer constructability and pricing feedback on design options and can identify risks based on the contractor's established means and methods. This process also allows the owner to be an active participant during the design process and make informed decisions on design options based on the contractor's expertise.

When the design is nearing 90% complete, the construction manager then has an opportunity to negotiate on the project based on the design and schedule. If NDOT, based on feedback from Designer and Independent Cost Estimator (ICE), agree that the contractor has submitted a fair price, NDOT issues a construction contract and the CM/GC then becomes the general contractor.

8.2 Construction Manager/General Contractor Process

NDOT procurements using CM/GC project delivery, will include:

- Selecting a CM/GC through a 2-step process. The initial stage will be to issue an RFQ, evaluate SOQs submitted in response, and shortlist the most qualified firms based on team experience. The most qualified teams will be shortlisted and advance to the second step of the procurement process, the proposal. The proposal step may also include an interview. This procurement process is a competitive and qualifications-based procurement, complies with Nebraska statues, and is intended to provide NDOT with the best qualified CM/GC contractor to provide construction expertise and contract management input during the design phase, and to be contractually responsible for price, schedule and quality during construction phase.

- Concurrent with the procurement of the CM/GC, NDOT will select a Design Consultant (the Designer) through a separate, competitive, qualifications-based procurement to prepare the final design/construction documents.
- NDOT may also procure an ICE through a separate, competitive, qualifications-based procurement to perform an independent, bottom-up, construction cost estimate to validate the price eventually negotiated with the CM/GC.

The CM/GC provides preconstruction advice to NDOT and the Designer throughout the design process concerning constructability, pricing, scheduling, staging, methods, efficiency, material procurement strategies, risk identification/management, and other areas related to the construction of the project. The CM/GC is not allowed to proceed into construction unless and until NDOT agrees that the price provided, as part of a guarantee to complete the project, or a portion of the project, (and independently evaluated) is fair, reasonable and defendable. The CM/GC will engage in detailed discussions over key constructability issues, including phasing of the work, prevention of scope creep, access to the infrastructure, and traffic management, before the design is finalized, thereby reducing the risk of claims during construction.

The CM/GC construction contract will be similar to traditional D/B/B construction contracts. NDOT will establish either:

- A GMP that establishes the contract not-to-exceed amount, or
- A TMP that establishes a unit price contract.

The final GMP or TMP usually are based on design documents that are not less than ninety percent developed. Agreement on the final GMP or TMP initiates the second phase of the CM/GC contract. The work to start physical construction will be initiated once a final price is agreed by NDOT and the CM/GC.

8.3 Role of NDOT

NDOT remains primarily responsible for the success of a CM/GC project by selecting a project for CM/GC delivery, preparing the RFQs for the Designer and the ICE, preparing the RFQ and RFP for the CM/GC, defining the scope of the Preconstruction Services Contract to be executed by the CM/GC, and performing other project development work.

NDOT's role in the Preconstruction Phase is very similar to the NDOT's role in the traditional departmental development process, with the exception of contractor involvement. NDOT will be engaged in the negotiation of the GMP or TMP with the selected CM/GC as well as the contract allowances and assumptions.

NDOT will provide guidance to the team during both the Pre-Construction Phase and the Construction Phase. This can entail documenting background information on how the GMP or TMP was developed, the types of allowances, allowable mark-ups on supplemental agreements and pay item documentation.

NDOT's responsibilities will include:

- Provide leadership;
- Hold the Designer and CM/GC accountable;
- Review all potential Supplemental Agreements or Contract Modification Request forms; and

- Facilitate knowledge transfer of the process.

A typical CM/GC project organization chart is provided as Attachment 8-1 (*CM/GC Organization Chart*).

8.4 Role of the Construction Manager/General Contractor

The CM/GC's main objective is to interface with NDOT and the Designer during the Preconstruction Phase of the project. The CM/GC will be part of the team that reviews the plans for constructability and provides input on the sequence of construction. The CM/GC's technical experience, resources and approach (means and methods) will identify potential risks that can affect cost and schedule.

The CM/GC's candid discussions early in the design process allows the development of a clear, concise scope and validates NDOT's budget through compilation of a Cost Model that is frequently updated throughout the Preconstruction Phase until a GMP or TMP agreement is reached. The CM/GC will participate in value engineering type studies to abbreviate project schedule and reduce costs, without adversely affecting quality. The CM/GC's responsibility is to reconcile project quantities and develop a GMP or TMP for construction.

Other responsibilities may include, but are not limited to:

- Conducting a site investigation;
- Preparing construction estimates at various levels of design completion;
- Preparing a Construction Management Plan;
- Preparing a CPM project schedule for design and construction;
- Procuring long-lead time items (subject to NDOT approval);
- Permitting, subcontract preparation and packaging;
- Verifying design quantities; and
- Participating in risk analysis and risk mitigation sessions.

8.5 Role of the Designer

The project Designer or Design Consultant, hired and under contract to NDOT, works collaboratively with the CM/GC. For the Designer, there are many similarities between CM/GC and Design/Bid/Build project delivery methods. The same deliverables are required, with the exception that the Contractor is now engaged and is part of the process.

When NDOT accepts the GMP or TMP and a Notice of Award is issued for the construction phase, there is no change to the Design Consultant's contract. The Designer must complete and submit all deliverables in the final design scope of work. The Designer has the potential to be working on both design and post design tasks (i.e., construction phase support) for different elements of the project. Issues dealing with schedule slip during design are primarily the responsibility of the Designer, who must develop a plan to get the design process back on track.

The Designer also prepares a CPM schedule for design that the CM/GC incorporates into the Preconstruction Services schedule. The Designer, in consultation with the CM/GC, will provide a bottom-up style construction estimate, including risk assessment, to NDOT at various levels of

design completion. The following provides a minimum list of design completion targets that should be used in determining when construction estimates should be provided to NDOT:

- 30% design completion;
- 60% design completion;
- 75% design completion; and
- 90% design completion.

Per NDOT's Conflict of Interest Policy, the CM/GC shall not subcontract any portion of the contract to an entity that is, or has been, employed by the Designer in the design of the project.

8.6 Role of the Independent Cost Estimator

If utilized for the project, an ICE, hired and under contract to NDOT, would work independently of the Designer and CM/GC, to develop bottom up construction estimates for the project. The ICE estimates would be used by NDOT to compare and verify the construction estimates prepared by the Designer and CM/GC at various times during the design phase of the project.

8.7 Construction Manager/General Contractor Submittal Process

8.8 Construction Manager/General Contractor Request for Qualifications

NDOT will use a standard procurement process to select the CM/GC; the process will include the issuance of an RFQ. Each prospective proposer will submit an SOQ that will be evaluated against a predetermined set of evaluation criteria.

8.8.1.1 Request for Qualifications Technical Elements

CM/GC proposers will be required to provide detailed information to address specific project elements. The following outline provides a typical format for the RFQ, but NDOT is not limited to only these submittal requirements, and may tailor the RFQ based on the specific project requirements.

- Team Experience
- Project Experience
- Key Personnel
- Education and Experience
- Licensing and Certifications
- Safety Record
- Bonding Capacity

See Appendix C for a typical example of an RFQ for a CM/GC.

8.8.2 Construction Manager/General Contractor Request for Proposals

After the SOQs have been evaluated and the shortlisted contractors identified, NDOT will provide them with an RFP. Proposals received in response to the RFP will be evaluated against

a predetermined set of evaluation criteria. A draft example of a CM/GC RFP is provided in Appendix D (*Example of CM/GC RFP*).

8.8.2.1 Request for Proposal Technical Elements

CM/GC proposers will be required to provide detailed information to address specific project elements. The following outline provides a representative format for the RFP, but NDOT is not limited to only these submittal requirements, and may tailor the RFP based on the specific project requirements.

- General Management
- Management Approach
- Quality Control
- Project Controls
- Equal Employment Opportunity
- Subcontracting Plan
- Responsibilities of Subcontractors - Selection Plan
- DBE Utilization Plan
- Pre-Construction Phase
- Preconstruction Approach
- Approach for working with the Designer
- Risk Management
- Construction Phase
- Project Understanding
- Overall Construction Approach including Phasing
- Uninterrupted transportation services
- Innovative Approach
- Construction Safety Plan

See Appendix D for a typical example of a RFP for a CM/GC.

8.9 Construction Manager/General Contractor Preconstruction Scope of Work

An example of a CM/GC preconstruction scope of work is provided in Attachment 8-2 (*CM/GC Preconstruction Scope of Work Example*).

8.10 Construction Manager/General Contractor Selection Process

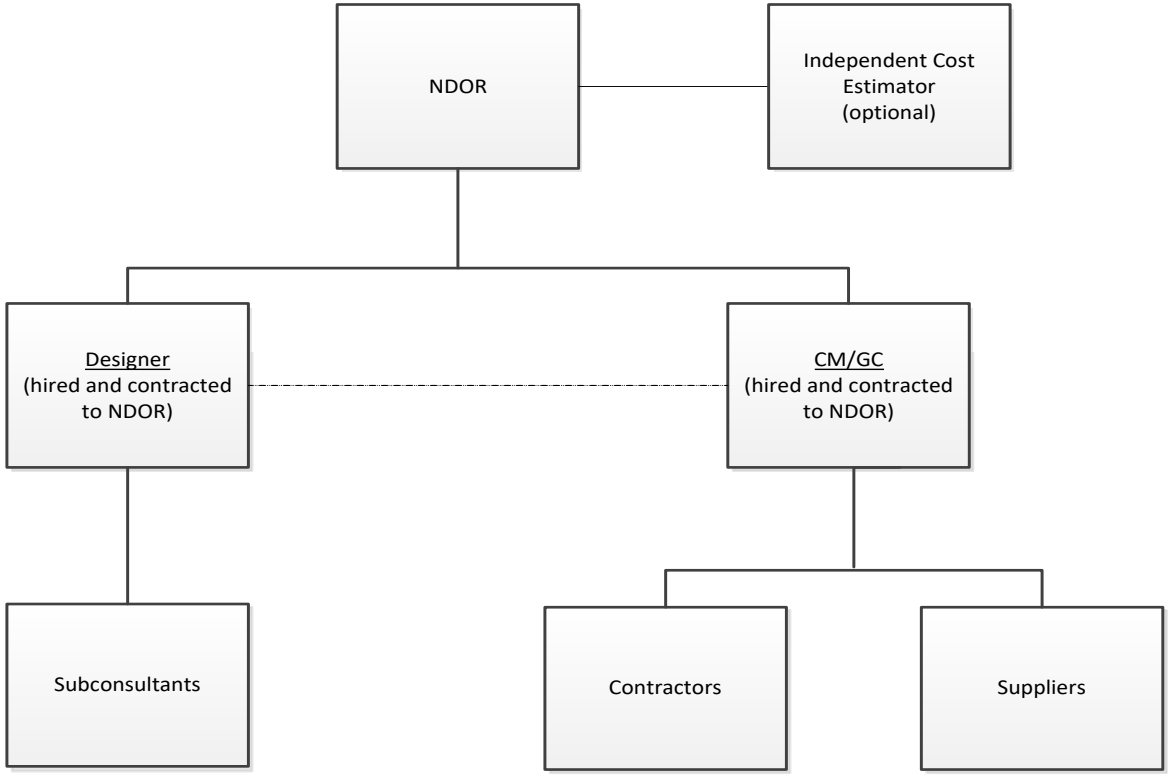
The CM/GC is selected based on qualifications, as defined in Section 2 above. This involves the submission of SOQs from contractors (joint ventures are permitted). The SOQs from the contractors are evaluated, scored and ranked thereby creating a shortlisting of qualified

contractors. Only the shortlisted contractors will be provided with an RFP and invited to submit proposals and possibly participate in oral interviews.

After completion of the SOQ evaluations, shortlisting, proposal evaluations, and interviews, NDOT will evaluate and rank the contractors, NDOT will negotiate with the highest ranked contractor from the SOQ submittals. If NDOT is unable to successfully negotiate a contract with the highest ranked contractor, then NDOT will negotiate with the next highest ranked contractor.

The CM/GC is selected based on demonstrated competency and qualifications. Section 9 of these guidelines describes each of the key steps in the selection process.

Attachment 8-1
Construction Manager/General Contractor Organization Chart



Attachment 8-2
Example Construction Manager/General Contractor (CM/GC) Pre-construction Scope of Work

Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in a CM/GC contract.

The official RFP will need to be tailored for the project specifics.

Example of a Typical Pre-construction Scope of Work

The CM/GC Contractor is being selected to join the Project Team for this Project. The CM/GC Contractor will be expected to provide the Project Team with construction expertise and technical experience, to assist in Project decision-making and ensure the technical, social and economic challenges are addressed, and provide input on items affecting construction schedule and costs.

Scope of Work (Pre-Construction Services)

The CM/GC Contractor shall consult with the Project Team during the design phase in order to develop, implement and maintain a spirit of cooperation and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and upon completion, the Project is deemed a success by all.

As part of the design team, the CM/GC Contractor will provide input on schedule, phasing, constructability, materials availability, cost, etc. throughout the design phase of the Project. The CM/GC Contractor tasks during the design phase include:

1. Provide a Project Manager and associated staff to consult with, advise, assist, and provide recommendations to NDOT and the design team on all aspects of the planning, design, and proposed construction, as requested by NDOT. This may require the CM/GC staff to be integrated at the designer's co-located facility.
2. Attend an initial Project workshop that includes the following agenda items:
    a. Introduction to the Project Team
    b. Introduction of the Project Stakeholders
    c. Project status, goals, objectives, funding, etc.
    d. Presentation of Project elements.
    e. Identify Project risks and provide input that will be used to develop a risk management plan.
    f. Question and answer session.
3. Participate in Project Team meetings with NDOT and the Design Consultant. It is anticipated that project team meetings will be held each week in _____.
4. Participate in formal milestone reviews meetings, which are anticipated to occur during at the 30%, 60%, and 90% design submissions. For each milestone review meeting, provide the following services:
    a. Participate in formal constructability, material, equipment and labor availability reviews. These formal reviews will focus on identifying revisions to improve clarity for bidding, identifying potential design revisions that would reduce construction costs, and identifying elements to improve the time performance of the Project.
    b. Participate in formal risk analysis workshops with NDOT and NDOT's Design Consultant. The focus of the risk analysis workshops will be to identify potential risks and to assign cost and schedule impacts to each risk in order to better define pricing and contingency.

   c. Assist NDOT and the Design Consultant with the selection process of design elements that assists in meeting Project goals
   d. Provide progressively refined Opinion of Probable Construction Cost estimates (OPCC) and participate in pricing reconciliation meetings for each work package.
   e. Prepare and submit a CPM schedule that supports each OPCC and bid.
   f. Provide written reports and recommendations of the conceptual drawings being prepared by NDOT and the Design Consultant, including conflicts and/or deficiencies noted.

5. Continually provide informal oversight and constructability reviews with the NDOT team on various specific elements of the Project and provide recommendations, including providing input on staging, sequencing, equipment storage, detour routes, traffic control, storm water management, accelerated bridge construction techniques, evaluation of bridge types, and materials that may be cost-effectively recycled during construction.
6. Identify any long lead items that may cause schedule impacts.
7. Develop and formulate a Subcontracting Plan to integrate subcontractors as needed to accomplish all construction work. Identify the proposed plan to meet Disadvantaged Business Enterprise (DBE) and veteran-owned small business contract goals for each separate and severable work package.
8. Help ensure that environmental commitments are implemented during construction including those from permits as applicable through review of design and permit applications. The Department will provide the CM/GC Contractor with anticipated timelines required to obtain the necessary environmental clearances and permits on this Project. Provide input on temporary construction or staging activities that may require additional environmental permits based on the proposed construction operations. Clearly reflect in the Baseline CPM Schedule the times required to obtain these clearances and permits. Identify time and cost impacts associated with schedule slippage and propose mitigation measures to minimize these impacts. Provide constructability feedback on mitigation measures proposed in the design plans.
9. Assist NDOT and Design Consultant in preparing the draft and final submissions of a Storm Water Pollution Prevention Plan as applicable to local jurisdictional requirements.
10. Develop, propose, and track innovations for Project construction. Document and track cost savings and schedule impacts associated with innovations in a written report to the NDOT.
11. Coordinate with Project stakeholders in conjunction with NDOT and the Design Consultant.

Scope of Work (Bid Validation Process)

When NDOT and the CM/GC Contractor agree that the Project has been designed to a sufficient level of detail to allow for a constructible and biddable Project or work package, the CM/GC Contractor will be given an opportunity to provide a bid to construct the Project. It is anticipated that the bid required on this project will be a unit price bid based on bid schedule as is used by NDOT in D/B/B contracting. However, NDOT's Project Manager and the CM/GC Contractor may also elect to utilize other contract payment provisions, including Lump Sum bids or a Guaranteed Maximum Price bid. When preparing to submit a bid for the work, perform the following tasks:

1. Participate in pre-bid plan workshop in order to review and provide final input on the Issue for Bid plans and specifications prepared by the Design Consultant.
2. Participate in the final risk workshop for the project or work package. Provide final input to NDOT regarding project risks and clarify risk assumptions and assignments in preparation for submitting a bid for the work.
3. Prepare and submit a Construction Service Cost proposal or bid (utilizing NDOT's bidding software) to NDOT for the project or work package, including a cost model narrative in accordance with the process outlined in the CM/GC Bid Validation Process document on NDOT's CM/GC website.
    a. Include with the bid a detailed baseline cost and resource loaded CPM Schedule to serve as the Project Baseline Schedule, which identifies all activities during construction. Schedule shall clearly identify milestones, showing the proposed start and finish dates and include a narrative that clearly describes the assumptions that were used to derive item prices (e.g., crew sizes, production rates, and other requirements outlined in Standard Specification _____).
    b. Include a narrative description about how the CM/GC Contractor will meet the Disadvantaged Business Enterprise (DBE) goal for the particular work package or the entire project. DBE participation goal will be established as early in the design process as possible.
    c. Include a narrative description of all other inclusions to, or exclusions from the bid, including all assumptions and clarifications that support the bid prices.
4. NDOT will review the CM/GC Contractor's bid using the process outlined in these CM/GC Procedures.
    a. Participate in the pricing reconciliation process, if needed, to reconcile differences.
    b. If NDOT successfully validates the CM/GC Contractor's bid, NDOT will accept the CM/GC Contractor's bid and NDOT will prepare a construction Contract based on the CM/GC Contractor's bid. The Contract amount will include funding for any provisional contingency items included in the contract. However, the CM/GC Contractor will not be entitled to payment for any provisional contingency items without justification and authorization from NDOT.
    c. If the prices are not acceptable, NDOT will enter into a process of risk identification that identifies price differences between the CM/GC Contractor and the ICE and/or EE. Following the resolution of these risk issues, the CM/GC Contractor will have the option to re-bid the project. NDOT has the option to accept the revised price or terminate the CM/GC professional/technical services contract without penalty or payment (except payment for pre-construction services) and procure the construction of the Project by some other method or re-advertise the CM/GC Contract. If there are multiple work packages on a project, the CM/GC contractor will be allowed to continue to perform construction services for previously awarded work packages, but NDOT will procure the construction of future work packages by another procurement method or by re-advertising the CM/GC Contract.
5. The CM/GC Contractor's bid will not be exceeded except as allowed for quantity over-runs or changed conditions as defined in the NDOT Standard Specifications. However,

when considering additional compensation for changed conditions, NDOT will consider the fact that the CM/GC Contractor participated in the design effort during the Preconstruction phase and therefore has a more thorough understanding of the assumptions and risks which should have been reflected in the bid or in the provisional contingency items.

Awarding Contracts for Severable Work Packages: If NDOT elects to progress this project using severable work packages, NDOT may require the CM/GC Contractor to submit a **GMP** or **TMP** prior to awarding a contract for a severable work package. A GMP or TMP is a good-faith estimate of construction costs that are covered in a subsequent OPCC(s) required to complete all work packages on a project. It is used by NDOT to confirm that the overall construction scope can be completed within the available project budget. A GMP or TMP is based on the assumptions and risks that are known at the time the estimated costs are submitted to NDOT. The CM/GC Contractor's GMP or TMP is supported by an estimating/cost model and narrative similar to OPCC estimates. When the CM/GC Contractor submits a GMP or TMP, NDOT assumes that the CM/GC Contractor intends to construct the overall project at or below the GMP or TMP, subject to documentable changes in bidding assumptions or scope that affects pricing. Exact timing for requesting a GMP or TMP from the CM/GC Contractor is evaluated on a project-by-project basis based on design progression and project risks.

Scope of Work (Construction Services)

If NDOT is able to successfully validate the CM/GC Contractor's bid and the CM/GC Contractor complies with DBE requirements and all other conditions of award, the CM/GC Contractor shall:

- Execute a contract with NDOT.
- Construct and manage all construction related contracts while meeting all Project requirements and Federal Contract requirements, as per NDOT Standard Specifications and the prepared bid package.
- Substantially complete the construction no later than specified in the contract.

Section 9 Construction Manager/General Contractor Selection Process Guidelines

9.1 Introduction

In accordance with Nebraska Revised Statutes 39-2817 through 39-2819, selection of a CM/GC contractor is a two-step process, by which SOQs will be accepted in response to an RFQ, and the most qualified construction manager – general contractors (contractors) will be shortlisted and invited to submit proposals in response to an RFP. Proposals will focus on the contractors' project understanding, approach to the Construction Manager role for the specific project, and approach to the construction of the specific project. Proposals may also include pricing information, such as labor rates and overhead rates applicable to the design phase, or unit costs for selected project materials during the construction phase. Proposal scores will be combined with SOQ and Evaluation Interview scores, to establish the final ranking for selection.

9.2 Confidentiality and Conflict of Interest

SOQs and proposals will be confidentially evaluated by an evaluation panel comprised of NDOT staff members. The evaluation panel members, and any other NDOT personnel present for any panel meetings and/or deliberations, must sign a Confidentiality Statement. Evaluation panel members must commit to maintain strict confidentiality and security regarding the contents of proposals and proceedings of the evaluation panel meetings before, during and after the evaluation process.

It is essential that the integrity and transparency of the evaluation and selection process be maintained to:

- Ensure that NDOT is selecting the most qualified CM/GC proposer;
- Avoid Contractor or public perception of favoritism or partiality in contract awards; and,
- Ensure that all submittals are given fair and equal consideration.

It is also essential that evaluation panel members must not participate in any evaluation process if they have an actual, potential or perceived conflict of interest, as described in Section 1 (*Conflict of Interest Policy for Design/Build and CM/GC*). Evaluation panel members who believe there is any actual, potential or perceived conflict of interest when serving on a panel shall notify the NDOT Agreements Engineer immediately and they will be excused from the panel.

9.3 Construction Manager/General Contractor Selection Process

The CM/GC selection process will follow the process identified below.

9.3.1 Request for Qualifications

The public aspect of a CM/GC procurement begins with the advertisement of an RFQ at least 30 days prior to the due date for SOQs. The RFQ must provide sufficient information about the project to enable construction managers to respond, and must identify the maximum number of construction managers the Department will shortlist as qualified and therefore eligible to receive

an RFP. Information sought through the CM/GC RFQ focuses primarily on past experience of the construction manager and their Key Personnel, their safety record, their bonding capacity, and other relevant historical and current information. See Appendix C for a typical example of a RFQ for a CM/GC.

9.3.2 Statement of Qualifications Evaluation and Scoring

The evaluation panel will have a process kickoff meeting with the NDOT Agreements Engineer. At this meeting, the NDOT Agreements Engineer would review the evaluation and selection procedures and schedule with the evaluation panel, and provide the panel members with instructions, documents for comments and scoring SOQ submittals, and a set of all solicitation documents. The NDOT Project Manager and/or key project members may meet with the evaluation panel at this time and provide a project overview.

Each evaluation panel member shall conduct an independent assessment of each contractor's SOQ and shall not discuss that evaluation with other selection panel members or persons outside the panel. While evaluation panel members will have different individual areas of expertise, each member is expected to independently score each SOQ in terms of how it addresses the requirements outlined in the RFQ.

After each member has reviewed and scored all of the SOQs, the scores and comments are submitted to the NDOT Agreements Engineer. The NDOT Agreements Engineer then compiles the scores for review at a meeting of the evaluation panel. At that meeting, the evaluation panel will discuss each SOQ. Any evaluation panel member may elect to amend any of their scores based on the discussion.

Scores are then recompiled and the standard deviation is calculated. If an evaluation panel member's SOQ score is more than 1.65 standard deviations from the mean score for a CM/GC SOQ, it is considered an outlier and the evaluation panel member's score for that contractor is excluded. The standard deviation will not be calculated and applied until discussion of all contractors has concluded and all panel members' SOQ scores are final.

9.3.3 Shortlisting

Based on the final SOQ scores, the SC will identify a shortlist of the most qualified contractors to receive RFPs and be invited to submit proposals. (See sample Scoring Matrix in Attachment 9-1.) The number of contractors to be shortlisted will have been identified in the RFQ. At least two contractors will be shortlisted, except that if only one contractor has responded to the RFQ, the SC may proceed or cancel the procurement.

9.3.4 Request for Proposals

Shortlisted construction managers will be provided with copies of the RFP. The RFP must include:

- A copy of the NDOT APDM Guidelines, or a publically accessible location at which they may be obtained, either in hard copy or electronic form;
- A copy of the proposed CM/GC Contract;
- Identification of bonding required by law or by the Department;

- A description of the scope of the project, the project site, the schedule and the estimated budget;
- The criteria that will be used for evaluation of proposals, and the relative weight of each criterion;
- A statement that the construction manager shall not be allowed to subcontract, assign, or otherwise dispose of any portion of the contract without the consent of the Department, and that in no case shall the construction manager be allowed to subcontract more than seventy percent of the work, excluding specialty items; and,
- Other information or requirements deemed appropriate by NDOT.

See Appendix D for a typical example of a RFP for a CM/GC.

9.3.5 Proposal Evaluation and Scoring

The evaluation panel will have a process kickoff meeting with the NDOT Agreements Engineer. At this meeting, the NDOT Agreements Engineer will review the evaluation and selection procedures and schedule with the evaluation panel, and provide the panel members with instructions, documents for comments and scoring proposals, and a set of all solicitation documents.

Each evaluation panel member shall conduct an independent assessment of each contractor's proposal and shall not discuss their evaluation with other selection panel members or persons outside the panel. While evaluation panel members will have different individual areas of expertise, each member is expected to independently score each proposal in terms of how it addresses the requirements outlined in the RFP.

After each member has reviewed and scored all of the proposals, the scores and comments are submitted to the NDOT Agreements Engineer. The NDOT Agreements Engineer then compiles the scores for a meeting of the evaluation panel. At this meeting, the evaluation panel will meet to discuss each proposal. Any evaluation panel member may elect to amend any of their scores based on the discussion.

Scores are then recompiled and the standard deviation is calculated. If an evaluation panel member's proposal score is more than 1.65 standard deviations from the mean score for a CM/GC proposal, it is considered an outlier and the evaluation panel member's score for that contractor is excluded. The standard deviation will not be calculated and applied until discussion of all contractors has concluded and all panel members' proposal scores are final.

9.3.6 Evaluation Interview

Oral Interviews may be conducted as part of the proposal evaluation process, at the discretion of the SC and if identified in the RFP. The duration and location of the interviews, number of contractors to be interviewed, and format of the interviews will have been detailed in the RFP.

If Evaluation Interviews are to be conducted, all shortlisted contractors that have submitted responsive proposals must be notified by letter of the date, time, location and format of the interview. Interviews should be conducted by the same evaluation panel members who conducted the proposal evaluations. Interviews will be conducted in random order at a NDOT office or facility. Each participating contractor will be given the opportunity to inspect the interview room ahead of time.

The evaluation panel will develop a list of questions about the project for the interview. The participating contractors will be asked a series of questions – some that apply to the specific project and that will be asked of all firms and some that apply only to a particular contractor's proposal. The NDOT Agreements Engineer will compile the questions developed for the interview. Time may be reserved at the end for the panel members to ask follow-up questions, if needed.

After oral interviews, the evaluation panel members will submit interview scores and comments to the NDOT Project Manager. The NDOT Project Manager and the evaluation panel members will then meet to discuss each interview and their interview scores. Any panel member may amend their initial interview score based on the discussion. After concluding the discussion, the panel member scores are provided to the NDOT Agreements Engineer for input into the scoring matrix. If an evaluation panel member's interview score is more than 1.65 standard deviations from the mean score for a contractor, it is considered an outlier and the member's interview score for that contractor is excluded.

After the SOQ, proposal, and Evaluation Interview scores have been finalized, the Agreements Engineer will compile the SOQ, proposal, and Evaluation Interview scores to establish a final combined score for each contractor. The final combined scores will establish the ranking of the contractors, which will be certified by the SC. After certification, the Agreements Engineer may attempt to negotiate a contract for preconstruction services, in accordance with Nebraska Revised Statutes 39-2819(5) and (6).

9.4 Execution of the Preconstruction Services Contract

Following selection, the selected CM/GC will prepare a budget for preconstruction services with hours, direct labor rates and burdens, overhead, profit and expenses anticipated. The NDOT Project Manager will verify the CM/GC's Preconstruction Phase scope of work and the Procurement Manager will review the budget and negotiate any changes required with the CM/GC. If NDOT and the CM/GC are unable to reach agreement on scope and budget, NDOT may terminate negotiations with the highest ranked firm and begin negotiations with the firm with the second highest ranked qualifications. Once agreement is reached on a budget for services to be provided during the Preconstruction Phase, the NDOT Agreements Engineer will assemble the final contract. The CM/GC contract will be reviewed by the NDOT Project Manager for accuracy and completeness. The NDOT Agreements Engineer will transmit the final contract to the CM/GC for execution. Once the contract is executed by the CM/GC and NDOT, the contract becomes effective. A copy of the executed contract, along with a Notice to Proceed letter, will be mailed and/or electronically transmitted to the CM/GC and distributed to appropriate NDOT personnel.

9.5 Construction Manager/General Contractor Debriefings

NDOT will provide unsuccessful prospective CM/GC contractors the opportunity for a debriefing to discuss the strengths and weaknesses of their SOQ submittal, proposal and Evaluation Interview session. Debriefings will not be scheduled to occur until after the CM/GC contract is finalized and executed.

9.6 Construction Manager/General Contractor Protest

Any interested party may protest the final CM/GC selection. The protest must be in writing and personally delivered or sent by certified mail, return receipt requested, to the NDOT Agreements

Engineer. The protest is barred if it is received by the NDOT Agreements Engineer more than seven calendar days after the NDOT announcement of the final CM/GC selection.

Attachment 9-1
Sample Construction Manager/General Contractor Statement of Qualifications, Proposal and Evaluation Interview Scoring Matrix

Note: Attachment 9-1 is for example only and is not intended to represent any specific Construction Manager/General Contractor (CM/GC) project.

Criteria	Max Potential Score	Evaluation Team Member 1	Evaluation Team Member 2	Evaluation Team Member 3	Evaluation Team Member 4	Evaluation Team Member 5	Evaluation Team Average
Statements of Qualifications (SOQs)							
Firm Experience	35						
Experience of Key Personnel	40						
Safety Record	10						
Bonding Capacity	10						
Miscellaneous	5						
SOQ Scores	100						
Mean SOQ Score							
1.65 X Standard Deviation							
Mean Plus 1.65 Standard Deviation							
Mean Minus 1.65 Standard Deviation							
SOQ Score (Out if out of range)							
SOQ Final Scores							

Criteria	Max Potential Score	Evaluation Team Member 1	Evaluation Team Member 2	Evaluation Team Member 3	Evaluation Team Member 4	Evaluation Team Member 5	Evaluation Team Average
Proposals							
General Management Approach	15						
Subcontracting Plan	15						
Pre-Construction Phase Approach	30						
Pricing (Pre-Construction Phase) (if used)	10						
Construction Phase Approach	20						
Pricing (Construction Phase) (if used)	10						
Proposal Scores	100						
Mean Proposal Score							
1.65 X Standard Deviation							
Mean Plus 1.65 Standard Deviation							
Mean Minus 1.65 Standard Deviation							
Proposal Score (Ou" if out of range)							
Proposal Final Scores							

Criteria	Max Potential Score	Evaluation Team Member 1	Evaluation Team Member 2	Evaluation Team Member 3	Evaluation Team Member 4	Evaluation Team Member 5	Evaluation Team Average
Evaluation Interviews (if used)							
Oral Interview Scores	25						
Mean Interview Score							
1.65 X Standard Deviation							
Mean Plus 1.65 Standard Deviation							
Mean Minus 1.65 Standard Deviation							
Interview Score (Out if out of range)							
Interview Final Scores							
Overall Scores	225						

Appendix A Typical Example of Request for Qualifications (RFQ) Document

Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFQ.

The official RFQ will need to be tailored for the project specifics.

Appendix B Typical Example of Request for Proposal (RFP) Instructions to Proposers (ITP) Document

Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFP.

The official RFP will need to be tailored for the project specifics.

Appendix C Typical Example of a Construction Manager/General Contractor (CM/GC) Request for Qualifications (RFQ) Document

Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFQ.

The official RFQ will need to be tailored for the project specifics.

Appendix D Typical Example of a Construction Manager/General Contractor (CM/GC) Request for Proposal (RFP) Document

Note to Reader

The following example documents should be used only as a guideline, illustrating the typical information that should be contained in the official RFP.

The official RFP will need to be tailored for the project specifics.

Appendix D Typical Example of a Construction Manager/General Contractor (CM/GC) Request for Proposal (RFP) Document