



VOLUME I – INSTRUCTIONS TO PROPOSERS

REQUEST FOR PROPOSALS

FOR

PHASE 1 OF THE

I-495 & I-270 PUBLIC-PRIVATE PARTNERSHIP PROGRAM

THROUGH A

PHASE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

among

the Maryland Transportation Authority and

the Maryland Department of Transportation, including the State Highway Administration

KEY DATES	
EVENT	DATE
Issuance of Draft RFP to Proposers	July 24, 2020
Issuance of Final RFP to Proposers	December 18, 2020
Predevelopment Work Proposal Due Date	2 P.M. Eastern Time, December 23, 2020
Financial Proposal Due Date	2 P.M. Eastern Time, January 8, 2021
Anticipated notification of Selected Proposers	February 1, 2021

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1. INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This document comprises the Instructions to Proposers ("**ITP**"), Volume I of the Request for Proposals (or RFP), as may be amended, issued by the State of Maryland (the "**State**") acting by and through the Maryland Transportation Authority, an agency of the State ("**MDTA**") and the Maryland Department of Transportation, a principal department of the State including the State Highway Administration ("**MDOT**"), to seek competitive detailed Proposals for (i) the completion of Predevelopment Work (as defined Section 1.3 (Scope of Work)) under a Phase P3 Agreement (in the form set forth in Volume II (Phase Documents) of this RFP, the "**Phase P3 Agreement**") for Phase 1 of the I-495 & I-270 P3 Program (the "**P3 Program**") and (ii) the delivery, in partnership with MDOT and MDTA, of the Section Work through the Section P3 Agreements for Phase 1. This ITP is being issued by MDOT in accordance with State Finance and Procurement ("**SF&P**") Article Title 10A of the Annotated Code of Maryland (the "**Act**") and Chapter 6 of Subtitle 7 of Title 11 of the Code of Maryland Regulations and Chapter 17 of Subtitle 1 of Title 11 of the Code of Maryland Regulations (together the "**P3 Regulations**"). A link to the online location of the P3 Regulations can be found on PCS.

MDOT and MDTA issued a Request for Qualifications on February 7, 2020, as amended by the addenda posted on eMaryland Marketplace Advantage during the RFQ response period (the "**RFQ**"), seeking Statements of Qualifications (each an "**SOQ**"). On July 17, 2020, the State announced four (4) Respondents to the RFQ had been shortlisted as qualified and eligible to respond to this RFP. Only those Respondents who submitted an SOQ in response to the RFQ and were shortlisted under the RFQ for Phase 1 are eligible to submit Proposals in response to this RFP.

1.2 Request for Proposals

(a) Introduction

MDOT is seeking Proposals from those Respondents who were shortlisted in accordance with the RFQ (the "**Proposers**"). This RFP seeks a developer (the "**Phase Developer**") to undertake the Predevelopment Work pursuant to the Phase P3 Agreement and, in partnership with MDOT and MDTA, deliver the Section Work (as defined in Section 1.3 (Scope of Work)) through the Section P3 Agreements (as defined in Section 1.3 (Scope of Work)) for I-495 from the vicinity of the George Washington Memorial Parkway in Virginia, across and including the American Legion Bridge (or ALB), to its interchange with I-270 and for I-270 from its interchange with I-495 to its interchange with I-70 ("**Phase 1**" or "**Phase**"). With respect to Phase 1, I-495 from the vicinity of the George Washington Memorial Parkway to I-270 ("**Phase South A**") and I-270 from I-495 to I-370 ("**Phase South B**," and together with Phase South A, "**Phase South**") shall be developed and delivered first.

The Proposers and their respective Proposals must comply with the requirements of this RFP, the Act, the P3 Regulations, and other Applicable Law. By submitting a Proposal, the Proposer agrees to the terms, conditions, and requirements contained in this RFP, the Act, the P3 Regulations, and other Applicable Law. Further, any questions, issues, or disputes relating to this RFP shall be governed by State law.

Upon the State Board of Public Works' ("**BPW**") approval, MDOT and MDTA intend to execute the Phase P3 Agreement with the Proposer who submits a responsive Proposal that, upon evaluation using the criteria set forth in this ITP, meets the standards set by

MDOT and MDTA, and provides the best value to, and is in the best interest of, the State (the "**Selected Proposer**").

(b) Responsibility and Liability

The Proposer will be solely responsible for:

- (i) investigating and analyzing Phase 1, as more fully described in Section 1.19 (*Reference Information Documents and Proposers' Diligence*);
- (ii) preparing its Proposal; and
- (iii) complying with all requirements of this RFP.

(c) RFP Documents

- (i) This RFP consists of the documents described below and any other documents that may be issued by addenda ("**Addenda**") (in each case, as such documents may be revised, amended, supplemented, or otherwise modified):
 - (A) this ITP (including all Appendices and forms attached to this ITP);
 - (B) the form of Phase P3 Agreement (including all Exhibits attached to the Phase P3 Agreement) set out in Volume II (*Phase Documents*);
 - (C) the form of Predevelopment Work Requirements (which will also be an Exhibit to the Phase P3 Agreement) set out in Volume II: (*Phase Documents*); and
 - (D) the Section P3 Agreement Term Sheet set out in Volume II (*Phase Documents*).
- (ii) For the purposes of this RFP, if there are any conflicts or inconsistencies among the terms and conditions of any of the documents comprising this RFP, the following shall apply:
 - (A) with respect to matters of interpretation related to the RFP Process, this ITP shall prevail over the documents in any other part of this RFP;
 - (B) with respect to matters of interpretation related to the Predevelopment Work or the Phase P3 Agreement, the Phase P3 Agreement shall prevail over the documents in any other part of this RFP; and
 - (C) with respect to matters of interpretation related to the Section Work or the Section P3 Agreement Term Sheet, the Section P3 Agreement Term Sheet shall prevail over the documents in any other part of this RFP.

(d) Solicitation Schedule

A detailed schedule of the RFP Process is set out in the Solicitation Schedule in Appendix 2 (*Solicitation Schedule*) (the "**Solicitation Schedule**"). All dates set out in the Solicitation Schedule and elsewhere in this RFP are subject to change, in MDOT's sole discretion.

(e) Key Assumptions for the Proposals

On the basis that certain information will not be available on or before the Financial Proposal Due Date, MDOT has developed certain Key Assumptions as set out in Exhibit 18 (*Key Assumptions*) of the Phase P3 Agreement, and the Proposers may develop their Proposals on the basis of such Key Assumptions. The Phase P3 Agreement provides for certain relief for the Phase Developer with respect to certain commitments under the Phase P3 Agreement should any of the Key Assumptions change.

1.3 **Scope of Work**

The Selected Proposer will be expected to manage the successful preliminary development of Phase 1 consistent with the requirements of this RFP. Upon BPW approval of the Phase P3 Agreement, the Selected Proposer for Phase 1 will enter into the Phase P3 Agreement as the Phase Developer. The Phase Developer will be responsible for the predevelopment work, as set out under the Phase P3 Agreement (the "**Predevelopment Work**"), and for the process leading to execution of each Section P3 Agreement.

After MDOT approval of a Committed Section Proposal for each section of Phase 1, and with BPW approval, MDOT and MDTA intend to enter into a Section P3 Agreement (the terms of which are provided in the Section P3 Agreement Term Sheet) for such section (the "**Section P3 Agreement**") with an entity controlled and established by the Phase Developer (the "**Section Developer**").

The Phase Developer will be required to establish a separate legal entity to enter into a Section P3 Agreement as the Section Developer for each section of Phase 1. At the time of execution of the Section P3 Agreement, each Section Developer may have additional equity investors (the "**Additional Section Equity Investors**") beyond the Phase Developer and the Equity Members.

Until three (3) years after the final section of Phase 1 to be delivered has reached Substantial Completion (i) the Phase Developer will be required to retain at least 51 % of the equity ownership in each Section Developer and (ii) the Equity Members shall be required to retain control of the Phase Developer and each Section Developer.

Together, the Phase Developer, Equity Members, and any Additional Section Equity Investors of the Section Developer will be required to retain for each section, 100% of the equity ownership in the applicable Section Developer until three (3) years after that section has reached Substantial Completion.

For each section of Phase 1, the relevant Section Developer will be responsible for the final design, construction, financing, tolling, operation, maintenance, and handback of that section, as such work is defined under the Section P3 Agreement (the "**Section Work**").

MDOT requires that the first section of Phase 1 to be delivered must include the ALB, and that such section reaches Financial Close by not later than October 31, 2022. The limits of each section in Phase 1 must comply with the requirements of Section 1.5 of the Predevelopment Work Requirements.

MDOT and MDTA will be parties to the Phase P3 Agreement and each Section P3 Agreement.

1.4 **Roles of MDOT and MDTA**

- (a) As a reporting agency under the Act, MDOT will be the primary State entity named in the Phase P3 Agreement and the Section P3 Agreements as responsible for the rights and obligations under the P3 Program related to solicitation and program management.

- (b) MDTA will be named in the Phase P3 Agreement and the Section P3 Agreements as responsible for rights and obligations under the P3 Program which (i) are related to the setting and collection of tolls and fees on users of any portion of the P3 Program; or (ii) by law, may only be exercised by the MDTA Board or MDTA Executive Director.
- (c) Pursuant to § 4-312 of the Transportation Article of the Annotated Code of Maryland, MDTA is the only State entity with the authority to set and fix tolls for State transportation facilities projects. To facilitate the P3 Program, MDOT, including MDOT State Highway Administration ("**MDOT SHA**"), and MDTA have entered into an Interagency Agreement dated April 25, 2019 (the "**IAA**") which can be found on PCS. As part of this IAA, MDOT SHA will provide the day-to-day support in the solicitation and delivery of the P3 Program, including acting as MDTA's agent for purposes of this RFP. All rights and obligations of MDTA under the Phase P3 Agreement and the Section P3 Agreements, other than those responsibilities set out in Section 1.4(b), will be exercised or performed exclusively by MDOT on behalf of MDTA.
- (d) MDTA's designation of the P3 Program as a transportation facilities project (pursuant to MDTA Board Resolution 18-04 approved on November 29, 2018) is conditional on the execution of a lease agreement between MDTA and MDOT. The lease agreement relating to, as a minimum, Phase South shall be submitted to BPW for approval at the same time as the Phase P3 Agreement is submitted for BPW approval, and executed promptly thereafter.

1.5 **Capital Beltway Accord**

Phase 1 will require work to be carried out south of the ALB in Virginia. MDOT and the Virginia Department of Transportation ("**VDOT**") have announced a partnership at the ALB to address regional congestion and an intention to enter into a bi-state accord regarding the coordination of these works within Virginia (the "**Capital Beltway Accord**"). MDOT requires that the first section of Phase 1 to be delivered must include the ALB, and that such section reaches Financial Close by not later than October 31, 2022.

MDOT is in the process of negotiating the Capital Beltway Accord with VDOT and will provide regular updates to the Proposers. The Capital Beltway Accord will, amongst other things, detail the division of capital costs and toll revenues between MDOT and VDOT for I-495 between the George Washington Memorial Parkway and River Road.

1.6 **Funding and Financing**

(a) Public Funding

No public funds are expected to be provided by MDOT or MDTA to the Phase Developer or any Section Developer for Phase 1.

(b) Private Financing

The Section Developer's private financing may include any number of sources including private debt and private equity investments.

In anticipation that the Section Developer may wish to use federal programs as part of its private financing, MDOT intends to facilitate access to federal financing tools such as the USDOT TIFIA Program credit assistance and USDOT tax-exempt Private Activity Bonds (or PABs). MDOT intends to pursue the potential availability and use of both TIFIA

and PABs, and intends to assist each Section Developer in obtaining, or obtaining approval for, any available, eligible TIFIA or PABs financing.

The Phase Developer's and each Section Developer's debt shall be non-recourse to the State, MDTA, and MDOT.

(c) PABs and Conduit Issuer

If the Section Developer's private debt financing includes PABs, then the Maryland Economic Development Corporation ("**MEDCO**") will serve as the issuer of the PABs. The Phase Developer and Section Developer shall be solely responsible for obtaining ratings, bond counsel opinions, credit enhancement (as applicable), and an underwriting commitment or placement of the PABs, as well as satisfying any conditions placed on the use of the allocation by USDOT and complying with Applicable Law. MDOT has not yet applied for a PABs allocation for the P3 Program.

1.7 Tolling Authority and Remittance of Toll Revenue

It is anticipated that any toll charged to users of the Priced Managed Lanes will be variable and calculated dynamically by each Section Developer within a toll rate range set by the MDTA Board. The Section Developer will be responsible for setting the toll rates applicable to transponder transactions within this toll rate range and subject to certain other restrictions as will be set out in an appendix to the Tolling Services Agreement¹, which shall exclude certain Exempt Vehicles and, if the lanes are operating as High Occupancy Toll lanes, HOVs from tolling.

The Section Developer shall be responsible for installing, operating, and maintaining the ETTM Systems in accordance with requirements set out in the Predevelopment Work Requirements and any other parts of this RFP. MDTA will perform certain tolling services as set out in the Tolling Services Agreement, including toll collection processing (based on information from the Section Developer's ETTM Systems), account administration, and toll violations processing pursuant to the Tolling Services Agreement.

For each tolled vehicle that uses the Priced Managed Lanes and for which valid transaction information provided to MDTA by the relevant Section Developer, MDTA will remit to the relevant Section Developer an amount determined based on the *E-ZPass*® toll amount due and payable by each such vehicle (irrespective of whether such vehicle actually uses an *E-ZPass* or another toll collection method) in accordance with the terms of the MDTA Notes (as further described in [Section 1.8 \(MDTA Notes\)](#)). MDTA is a member of the *E-ZPass* Interagency Group and is governed by its electronic toll payment protocols. MDTA back office and collection costs (chargeable per transaction) will be deducted from the amount due and payable to the Section Developer prior to remittance in accordance with the Tolling Services Agreement.

1.8 MDTA Notes

MDTA will establish a new master trust indenture for the P3 Program and issue limited recourse toll revenue bonds thereunder for each section of each phase of the P3 Program ("**MDTA Notes**"). The MDTA Notes will be purchased directly by the relevant Section Developer at Financial Close of the relevant section in a private placement that is exempt from registration under federal securities laws. Each Section Developer will purchase the MDTA Notes using equity provided by its shareholders and debt raised from the Section Developer's Lenders.

¹ **Note to Proposers:** See Tolling Services Agreement Term Sheet.

Interest on the MDTA Notes is expected to be taxable to the extent provided under Applicable Law.

The MDTA Notes issued at Financial Close of the relevant section will be repaid by MDTA, in accordance with the new trust indenture, from and secured solely by the toll revenues generated by the relevant section, and such toll revenues shall not be pledged to any other creditor or section of any phase. Following receipt by MDTA of toll revenues relating to the P3 Program, MDTA shall apply these amounts: (i) first to pay MDTA back office and collection costs; (ii) second into a debt service payment account held by the trustee (the "**Debt Service Payment Account**") for the payment of principal and interest on the MDTA Notes; and (iii) third into an operating reserve account held by the trustee (the "**Operating Reserve Account**"). Amounts in the Operating Reserve Payment Account shall be used to make payments of certain residual amounts to the Section Developer (the "**Section Developer Toll Payment**"), which shall be an amount equal to the *E-ZPass* toll amount applicable to each valid transaction submitted to MDTA less (i) an MDTA transaction fee based on certain MDTA back office and collection costs and less (ii) any principal and interest due on the MDTA Notes, subject to certain other adjustments set out in the MDTA Notes. The Section Developer shall not be entitled to amounts in the Operating Reserve Account in excess of the Section Developer Toll Payment.

Non-payment of principal and interest on the MDTA Notes will be a MDOT Default under the Section P3 Agreement (subject to a customary cure period), unless such non-payment is caused by a shortfall in funds in the Debt Service Payment Account. Non-payment of the Section Developer Toll Payment due under the MDTA Notes will be a MDOT Default under the Section P3 Agreement (subject to a customary cure period), including when such non-payment is caused by a shortfall in funds in the Operating Reserve Account.

The Section Developer may pledge its right to receive the payments of principal and interest on the MDTA Notes (together with the Section Developer's right to receive the Section Developer Toll Payment) to its Lenders.

MDTA will use the MDTA Notes' proceeds (a) to fund certain costs of the relevant section for which MDTA or MDOT are responsible (such costs to be determined prior to Financial Close of the relevant section) or (b) as directed by MDOT.

1.9 **Opportunity MDOT and Community Benefits**

MDOT has established a comprehensive, innovative program to empower its citizens for economic growth – Opportunity MDOT – in which the Phase Developer and each Section Developer will be required to participate throughout the term of the Phase P3 Agreement and Section P3 Agreements, respectively.

The Phase Developer is required to plan for and execute policies, programs, and activities that will support Opportunity MDOT in the following:

- facilitate the building and expansion of small, minority, disadvantaged, and veteran-owned business participation in the Predevelopment Work and Section Work, including professional activities and solutions. Professional activities and solutions include financial, business, legal, and technology services; logistics; and communications, advertising, and marketing solutions; and
- identify and respond to the developmental and training needs of the State's workforce that focus on maximizing opportunities for economic success and long-term career development.

Further, MDOT will abide by community benefits agreement(s) which the Phase Developer and each Section Developer will actively participate in and deliver. The Phase Developer shall engage in the development of each written community benefits agreement for Phase 1. Each agreement shall outline the necessary steps and requirements for successful:

- integration of the local trades and unions in the delivery of the Predevelopment Work;
- measurement and reporting of employment goals for local socially and economically disadvantaged State citizens;
- assistance from affected local community in the agreement's execution and monitoring; and
- balance of local trades deployment with Disadvantaged Business Enterprise ("**DBE**"), and other small, minority, disadvantaged, and veteran-owned business participation in the Predevelopment Work and Section Work.

1.10 **Public Outreach and Community Engagement**

Upon execution of the Phase P3 Agreement the Phase Developer will be responsible for robust community engagement efforts in close collaboration and partnership with MDOT. The Phase Developer will coordinate with MDOT and MDTA to facilitate an early and ongoing collaborative dialogue to engage local communities in the development process through exceptional customer service and responsive correspondence. The Phase Developer, working with MDOT, will be responsible for stakeholder outreach, including, but not limited to, meetings and events to inform and collaborate with stakeholders, communities, and property owners.

The Phase Developer shall focus efforts on public information and involvement with the goal of maintaining an open and honest dialogue with all stakeholders.

1.11 **Regional Transit Service Improvements**

Specific transit service improvements to be developed as part of the Phase P3 Agreement will be identified in coordination with Frederick and Montgomery counties and MDOT through memoranda of understanding. Section Developer obligations related to the specific transit service improvements shall be included as part of the Section P3 Agreements. The transit service improvements included in the Section P3 Agreements must provide tangible, quantifiable benefits to Phase 1; be rationally related, ancillary, and incidental to the transportation facilities project (as defined in § 4-101 of Title 4 of the Transportation Article of the Annotated Code of Maryland, as amended); be consistent with the financial constraints of Phase 1 or each section; and be legally permissible under State and federal law.

The transit service improvements are anticipated to be limited to capital costs and shall be delivered without State funds. MDOT has provided a Key Assumption in relation to the Transit Services Improvements for the purpose of preparing the Proposals.

1.12 **Environmental Review Process**

(a) I-495 & I-270 Managed Lanes Study

MDOT, in coordination with United States Department of Transportation Federal Highway Administration ("**FHWA**"), is preparing an Environmental Impact Statement for the I-495 & I-270 Managed Lanes Study (the "**MLS**") in accordance with the National Environmental Policy Act of 1969 ("**NEPA**"). The limits for the MLS extend along I-495 from the vicinity of the George Washington Memorial Parkway, including improvements

to the ALB, to west of MD 5 and along I-270 from I-495 to north of I-370, including the I-270 East Spur and I-270 West Spur.

Six (6) build alternatives have been retained for further consideration under the Draft Environmental Impact Statement ("**DEIS**"), which was released on July 10, 2020. These alternatives are listed in Section 2.6 of the DEIS and are being further evaluated to better understand and identify the extent of the footprint needed to construct the improvements and the associated environmental impacts of each alternative. The no build and one lane alternatives are presented for comparison with the other build alternatives.

The alternatives development process and the results of the traffic, environmental, engineering, and financial analyses as well analysis regarding the potential effects of each alternative on the environmental resources within the study area is documented in the DEIS and supporting technical studies. The DEIS and supporting technical reports, including information regarding the anticipated Limits of Disturbance are included in the Reference Information Documents.

A preferred alternative is expected to be selected by the end of 2020 or in early 2021.

The P3 solicitation milestones are being aligned with the MLS schedule to maximize efficiency in the delivery of congestion relief in the study area while ensuring the integrity of the NEPA process, consistent with the United States Code of Federal Regulations ("**CFR**") in 23 CFR § 636.109.

The Proposer is informed that no commitment will be made by MDOT as to any alternative under evaluation in the NEPA process, including the no-build alternative until a Record of Decision has been published. In the event that Priced Managed Lanes are not part of the recommended preferred alternative, this solicitation will not proceed.

(b) Further Environmental Review

The I-270 Pre-NEPA Activities began in Summer 2019 and are expected to end in 2021 with the publication of a pre-NEPA report detailing the activities conducted during this time period prior to initiating the NEPA process. The limits of the I-270 Pre-NEPA Activities extend along I-270 from I-370 to I-70 ("**Phase North**"). The effort is anticipated to advance into a NEPA study which is expected to take approximately two (2) years to complete once initiated.

The Proposer is informed that no commitment will be made by MDOT as to any alternative that may be evaluated in the NEPA process, including the no-build alternative. To the extent that the outcome of the NEPA study concludes that Priced Managed Lanes are not the preferred alternative for Phase North, Phase North shall be removed from Phase 1.

1.13 Compliance with this ITP

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

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

- (b) a draw by MDOT on such Proposer's Proposal Security (as defined in Section 3.7(a)(i) (*Proposal Security*)), but only under the circumstances described in Section 3.7(b) (*Forfeiture of Proposal Security*).

1.14 **Communication Protocols**

- (a) Solicitation Manager

The Solicitation Manager is the following individual:

Catherine Agostino
MDOT State Highway Administration
I-495 & I-270 P3 Office
601 N. Calvert Street
Baltimore, Maryland 21202
E-mail address: p3solicitation@mdot.maryland.gov
Mailing Address:
707 N. Calvert Street
P-601
Baltimore, MD 21202

From time to time during the solicitation process, the Solicitation Manager may designate another representative to carry out some or all of the Solicitation Manager's obligations pertaining to Phase 1. If the Solicitation Manager is replaced at any time during the RFP Process, MDOT will notify the Proposers.

- (b) Proposer Representative

- (i) Each Proposer shall designate one (1) individual to be its authorized representative for the RFP Process (the "**Proposer Representative**") and notify the Solicitation Manager in writing within ten (10) Business Days of the issuance of the first Draft RFP of the name, company, title, mailing address, e-mail address, business phone number, and cell phone number of such individual.
- (ii) If a Proposer changes its Proposer Representative, the Proposer shall provide the Solicitation Manager in writing with the same contact information requested in Section 1.14(b)(i) for the new Proposer Representative.
- (iii) Each Proposer is responsible for ensuring that the name and contact information for its Proposer Representative is accurate and current at all times during the RFP Process.
- (iv) Failure by a Proposer to follow the requirements set forth in this Section 1.14(b) may result in such Proposer failing to receive important communications from MDOT. MDOT is not responsible for any such failure.

- (c) Rules of Contact

- (i) No Improper Influence

Proposers and Proposer Team Members are expected to conduct themselves with professional integrity and to refrain from all lobbying activities related to the P3 Program, this RFP, or the RFP Process. Any substantiated allegation that a Proposer; any Proposer Team Member; or any employee, member, agent, consultant, advisor, representative, promoter, or advocate of any such entity has

engaged in prohibited communications or attempted to unduly influence the selection process may be cause for MDOT to (A) disqualify the Proposer and cause the Proposer to forfeit its Proposal Security pursuant to Section 3.7(b) (Forfeiture of Proposal Security), or (B) disqualify the Proposer's, any Equity Member's, or any Major Non-Equity Member's (as applicable) employee, member, agent, consultant, advisor, representative, promoter, or advocate from participating with the Proposer, in each case, in the sole discretion of MDOT.

(ii) Project Control Suite (PCS)

Unless specifically authorized elsewhere in this ITP, the Solicitation Manager shall be MDOT's sole point of contact and source of information for Proposers throughout the RFP Process. To that end, all notices, submissions, approvals, and other communications described in this RFP from a Proposer to MDOT, or from MDOT to a Proposer, shall be in writing and delivered through PCS with a confirmation email to the Solicitation Manager, except as expressly permitted or required to be given orally (in person or by telephone), in hard copy, or otherwise, in each case, as designated by MDOT (in this RFP or through a subsequent written communication).

Instructions for using PCS were included with the shortlist notification letter.

(iii) Additional Rules of Conduct

The following rules of contact shall apply during this solicitation, effective as of the date of shortlisting notification until the execution of the Phase P3 Agreement for Phase 1. These rules are designed to promote a fair and competitive solicitation process. Additional rules or modifications to these rules may be issued by the Solicitation Manager in connection with the RFP Process and in this RFP. For the avoidance of doubt, contact includes face-to-face, telephone, facsimile, electronic media, or formal written communication, either directly or indirectly by an agent, representative, promoter, or advocate of the Proposer.

The specific rules of contact are as follows:

- (A) Section 11-205 of the SF&P Article, Annotated Code of Maryland prohibits and penalizes collusion;
- (B) after notification of shortlisting, no Proposer nor any of its Proposer Team Members may communicate with another Proposer or its Proposer Team Members with regard to this RFP or either Proposer Team's Proposal; provided, however, that subcontractors that are shared between two (2) or more Proposer Teams may communicate with their respective team members so long as those Proposers establish reasonable protocols to ensure that the subcontractor will not act as a conduit of information between the Proposer Teams (contact among Proposer Teams is allowed during informational meetings organized by the Solicitation Manager);
- (C) Proposers shall correspond with MDOT regarding this RFP only through the Solicitation Manager;
- (D) commencing with the issuance of this RFP and continuing until the earliest of (i) award and execution of the Phase P3 Agreement, (ii) rejection of all Proposals by MDOT, or (iii) cancellation of the solicitation, no Proposer nor

representative thereof shall have any *ex parte* communications regarding this solicitation with:

- (aa) any member of MDOT;
 - (bb) any member of MDTA, except with respect to feedback from Proposers on MDTA's letters dated November 5, 2020, and December 18, 2020, setting out MDTA's preliminary staff proposal regarding toll rates, which may be provided to MDTA as set out in such letter; and
 - (cc) any staff, advisors, contractors, or consultants of MDOT or MDTA involved with the solicitation (including those referenced in Section 1.16 (Restrictions from Participation)), except for communications expressly permitted by the RFP Process;
- (E) MDOT shall not be responsible for, and Proposers may not rely on, any oral or written exchange or any other information or exchange that occurs outside the official process specified herein; and

without limiting the generality of the foregoing, during the RFP Process,

- (F) Proposers shall not contact any USDOT project or program office, or any representative or consultant of USDOT regarding the TIFIA or PABs application process, credit decisions, form of term sheet, form of credit agreement, other matter relating to any MDOT application for TIFIA credit assistance for any section of Phase 1 or any other phase of the P3 Program; any requests for a PABs allocation for any section of Phase 1 or any other phase of the P3 Program; any SEP-14 or SEP-15 or other applications that may be submitted to USDOT; or any other matter related to this P3 Program unless otherwise instructed by MDOT.
- (G) Except as expressly provided in Section 2.1(b)(vi) (Third Party and Utility Owner Meetings), Proposers shall not contact the following identified stakeholders, third parties, and Utility Owners regarding this solicitation, including employees, representatives, members, consultants, contractors, and advisors of the entities listed below:
- (aa) MDOT SHA,
 - (bb) Montgomery County,
 - (cc) Frederick County,
 - (dd) City of Frederick,
 - (ee) City of Rockville,
 - (ff) City of Gaithersburg,
 - (gg) FHWA,
 - (hh) VDOT,
 - (ii) Frederick County Board of Education,

- (jj) Montgomery County Board of Education,
- (kk) Maryland National Park and Planning Commission,
- (ll) National Capital Planning Commission,
- (mm) National Park Service,
- (nn) MEDCO,
- (oo) WMATA,
- (pp) MDOT MTA (MARC),
- (qq) U.S. Army Corps of Engineers,
- (rr) District of Columbia Water and Sewer Authority,
- (ss) Utility Owners (including AT&T, CenturyLink Communications LLC, City of Rockville DPW, Comcast, FiberLight, LLC, Montgomery Co DOT Fiber, PEPCO Transmission, Potomac Electric Power Company (PEPCO), TransCanada – Columbia Pipeline, Verizon, Washington Gas, Washington Suburban Sanitary Commission, Zayo Group, City Frederick DPW, Colombia Gas, Colonial Pipeline, Lumos Networks, Potomac Edison/First Energy, and Williams Transco), and
- (tt) railroads (including CSX).

The Solicitation Manager will provide an opportunity for any necessary coordination regarding Phase 1-specific requirements during the RFP Process with such entities in order that, among other things, the solicitation be implemented in a fair, competitive, and transparent manner.

Any Proposer Team Member may contact certain third parties and Utility Owners regarding their normal day-to-day permitting processes that are not specific to Phase 1 at any time during the RFP Process.

The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the solicitation or limit participation in public meetings or formal Proposer meetings with MDOT related to this solicitation.

Any Proposer or Proposer Team that engages in communications determined to be prohibited or improper, at the sole discretion of MDOT, may be disqualified by MDOT in its absolute discretion.

1.15 **Non-Collusion; Equitable Treatment; Lobbying**

(a) Non-Collusion

As part of its Predevelopment Work Proposal, each Proposer, Equity Member, and Major Non-Equity Member shall submit a Form C (*Proposal Affidavit*) and Form E (*Non-Collusion Affidavit*), certifying that it has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the Proposal.

(b) Certification Regarding Use of Contract Funds for Lobbying

Each Proposer, Equity Member, and Major Non-Equity Member must submit as part of its Predevelopment Work Proposal the certificate set out in Form K (Use of Contract Funds for Lobbying Certification).

1.16 **Restrictions from Participation**

The State Ethics Commission administers the provisions of the Maryland Public Ethics Law, found in Title 5 of the General Provisions Article of the Annotated Code of Maryland, which contains various restrictions on participating in State contracts. No firm that is ineligible for State contracts thereunder may participate as a member of the Proposer Team. Any questions regarding eligibility should be directed to the State Ethics Commission.

Proposers are advised to consult the requirements of § 13-212.1 of the SF&P Article of the Annotated Code of Maryland prohibiting an individual who assists an executive unit in the drafting of specifications, or a person that employs the individual during the period of assistance, from submitting or assisting with a Proposal. Proposers are directed to the requirements of 23 CFR § 636.116 regarding organizational conflicts of interest. In furtherance thereof, and consistent with COMAR 21.05.08.08, if a Proposer Team Member knew or reasonably could have been expected to know of an actual or potential conflict of interest before or after award of any contract awarded following the procedures outlined in this ITP, and did not disclose it or misrepresented relevant information to the Solicitation Manager, the State may terminate the contract for default, institute proceedings to debar the contractor from further State contracts, or pursue other remedies as may be permitted by law or the contract. Accordingly, all Proposer Team Members shall deliver, together with the Proposal, a true and complete Form F (Conflict of Interest Affidavit and Disclosure (Maryland)).

MDOT has determined that the following firms and their affiliates would present a conflict of interest or the appearance of a conflict of interest in the event of their participation on a Proposer Team. Accordingly, such participation could lead to the Proposer being disqualified:

- Ames & Gough Insurance/Risk Management, Inc.
- Applied Archaeology and History Associates, Inc.
- Ashurst, LLP
- ATCS, P.L.C.
- Athavale, Lystad & Associates, Inc.
- B Reese Advisory LLC
- Blackwater Environmental Group
- Blue Heron Environmental Services
- Capital Project Strategies, LLC
- CDM Smith, Inc.
- Chesapeake Environmental Management, Inc.
- Clary Consulting Company
- Coastal Resources, Inc.
- Davenport & Company, LLC
- Diversified Property Services, Inc.
- Dovetail Cultural Resources Group
- Dranref, LLC d/b/a Business Transformation Group
- E2CR, Inc.
- Edwards Utility Mapping Corp.
- Environmental Research Group, LLC
- Ernst & Young Infrastructure Advisors, LLC
- Fenner Consulting, LLC
- Harris Miller & Hanson Inc.
- Infrastructure Technologies, LLC
- iSee, LLC
- KFH Group, Inc.
- Louis Berger Services
- Louis Berger US, Inc.
- Mahan Rykiel Associates, Inc.
- McCormick Taylor, Inc.
- McGuire Woods, LLP
- McKennon Shelton Henn, LLP

- Mercado Consultants, Inc.
- Navarro & Wright Consulting Engineers, Inc.
- NMP Engineering Consultants, Inc.
- Northeast Engineering, Inc.
- PFM Financial Advisors, LLC
- PRR, Inc.
- Pulsar Advertising, Inc.
- RAM Corporation, Inc.
- Remline Corporation
- RJM Engineering, Inc.
- RK&K, LLP
- Rossi Transportation Group, Inc.
- RS&H Inc.
- Southeastern Institute of Research, Inc.
- T3 Design Corporation
- Texas A&M Transportation Institute
- TransCore LLC
- Venable LLP
- Wilson T. Ballard
- Whitman, Requardt & Associates, LLP
- WSP USA, Inc.

Proposers are also advised that MDOT's restrictions from participating in this RFP are in addition to any applicable federal and State law, including federal organizational conflict of interest laws and the laws relating to NEPA. Such laws will also apply to the Proposer Teams and may preclude certain firms or their respective entities from participating on a Proposer Team. By submitting its response to this RFP, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer must make an immediate and full written disclosure to the Solicitation Manager that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflict. If an organizational conflict of interest that the Proposer knew or should have known about but failed to disclose is determined to exist during the RFP Process, MDOT may disqualify the Proposer. If an organizational conflict of interest exists that the Proposer knew or should have known about but failed to disclose and the Proposer has entered into the Phase P3 Agreement as Phase Developer, MDOT may terminate the Phase P3 Agreement for a Phase Developer Default (as defined in the Phase P3 Agreement). In either case, MDOT reserves all legal rights and remedies.

1.17 **Restrictions on Proposer Team**

(a) Licensing Requirements

Prior to execution of the Phase P3 Agreement, all Proposer Team Members of the Selected Proposer's team and the Phase Developer must be qualified to do business in the State and Virginia, and must have obtained all required licenses, including any professional engineer registrations.

(b) Participation on More Than One Team

Equity Members and Major Non-Equity Members are prohibited from participating, in any capacity, on more than one (1) Proposer Team for Phase 1 during the course of the solicitation for Phase 1.

If a Proposer is not selected as the Phase Developer, any member of the unsuccessful Proposer Team is not prohibited from participating on the Phase Developer's team following execution of, and subject to the terms of, the Phase P3 Agreement.

Any Proposer or Proposer Team Member that fails to comply with the prohibition contained in this Section 1.17(b) may be disqualified from further participation at the sole discretion of MDOT as a Proposer or member of a Proposer Team for Phase 1.

(c) Toll Systems Integrator and Toll Systems Operator

MDOT intends that the ETM Systems' design, construction, integration, and testing prior to final completion of a section of Phase 1, and subsequent operation and maintenance of such equipment shall be the Section Developer's responsibility.

To ensure best value, one of the goals for this solicitation is to promote appropriate competition among Toll Systems Integrators and Toll Systems Operators. Therefore, except as an Equity Member or Major Non-Equity Member, MDOT will not permit exclusivity arrangements between a Toll Systems Integrator or Toll Systems Operator and a Proposer for the provision of the ETM Systems' design, construction, integration, testing, operation, or maintenance in order to maximize competition throughout the solicitation.

In advance of the submission of a Committed Section Proposal to complete the first section of Phase 1, the Toll System Integrator and Toll System Operator to be used with respect to Phase 1 must be pre-approved by MDOT in accordance with the terms of Section 24.7 the Predevelopment Work Requirements. If a Proposer enters into an exclusive arrangement with a Toll Systems Integrator or Toll Systems Operator prior to MDOT's approval, the Proposer may be disqualified from consideration at MDOT's sole discretion. Additional information is provided in the Phase P3 Agreement.

(d) Public Relations Firm

MDOT intends that the Phase Developer will be actively involved with community outreach and public engagement efforts.

To ensure the best value, one of the goals for this solicitation is to promote appropriate competition among firms offering public relations services. Therefore, MDOT will not permit exclusivity arrangements between a public relations firm offering public relations services and a Proposer for the provision of community outreach and engagement services.

If a Proposer enters into an exclusive arrangement with a firm offering public relations services prior to MDOT's approval, the Proposer may be disqualified from consideration at MDOT's sole discretion.

1.18 Changes in Proposer's Organization and Key Personnel

(a) Changes in Proposer's Organization

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by MDOT, the Proposer's organization and Proposer's team as identified in the SOQ must remain intact for the duration of the solicitation process (i.e., until the execution of the Phase P3 Agreement) and following the solicitation process, in accordance with the requirements set out in the Phase P3 Agreement.

If a Proposer wishes to make changes in an Equity Member or Major Non-Equity Member identified in its SOQ including, without limitation, additions, deletions, reorganizations, changes in equity ownership interests, or role changes in or of any of the foregoing, the Proposer shall submit to the Solicitation Manager a written request for its approval of the change as soon as possible but in no event later than the date and time set forth in the Solicitation Schedule for submission of Pre-Proposal Submittals (as defined in Section

2.6 (Pre-Proposal Submittals)). Any such request shall be addressed to the Solicitation Manager and submitted via the file upload tool accessed through PCS, accompanied by the information specified for such entities or individuals in the RFQ and this ITP. If a request is made to change any Equity Member or Major Non-Equity Member identified in its SOQ, the Proposer shall submit such information as may be required by MDOT to demonstrate that the changed team is just as or better qualified than the team being replaced, as determined in MDOT's sole judgment.

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

MDOT will use reasonable efforts to respond to the submittal by the Proposer within ten (10) Business Days after receipt thereof.

Except as provided herein, a Proposer may not request approval of any changes in any Equity Member or Major Non-Equity Member identified in its SOQ after the deadline set forth in the Solicitation Schedule for submission of Pre-Proposal Submittals. Between the deadline set forth in the Solicitation Schedule for submission of Pre-Proposal Submittals and the Effective Date, MDOT will consider (in its absolute discretion) requests by a Proposer to make changes in the Proposer's organization based only on unusual circumstances beyond the Proposer's control.

(b) Key Personnel Included in a Proposal

In order for a Proposer to remain qualified to submit a Proposal after it has been placed on the shortlist, unless otherwise approved in writing by MDOT, the Proposer's Key Personnel as identified in the SOQ must remain intact for the duration of the solicitation process (i.e., until execution of the Phase P3 Agreement) and thereafter in accordance with the requirements set out in the Phase P3 Agreement.

If a Proposer wishes to make changes in the Key Personnel identified in its SOQ, the Proposer shall submit to the Solicitation Manager a written request for MDOT's approval of the change as soon as possible but in no event later than the date and time set forth in the Solicitation Schedule for submission of Pre-Proposal Submittals. Any such request shall be addressed to the Solicitation Manager and submitted via the file upload tool accessed through PCS, accompanied by the information specified for such individuals in the RFQ and this RFP. If a request is made to allow replacement of any Key Personnel identified in its SOQ, the Proposer shall submit such written information as may be required by MDOT to demonstrate that the proposed replacement key personnel is just as or better qualified than the person being replaced, as determined in MDOT's sole judgment.

MDOT is under no obligation to approve such requests, and may approve or disapprove in writing a portion of the request or the entire request, provided that, if a change to the Proposer's Key Personnel is required due to circumstances beyond the Proposer's control (such as death, disability, suspension of employment, or termination), MDOT shall exercise reasonable discretion in the consideration and approval of such request. MDOT will evaluate the qualifications provided by the Proposer and advise as to whether any such request is approved.

MDOT will use reasonable efforts to respond to the submittal by the Proposer within ten (10) Business Days after receipt thereof.

Except as provided herein and in the Phase P3 Agreement, a Proposer may not make any changes in any Key Personnel identified in its SOQ after the deadline set forth in the Solicitation Schedule for submission of Pre-Proposal Submittals. Between the deadline set forth in the Solicitation Schedule for submission of Pre-Proposal Submittals and the Effective Date, MDOT will consider (in its absolute discretion) requests by a Proposer to make changes in the Proposer's Key Personnel based only on unusual circumstances beyond the Proposer's control.

1.19 **Reference Information Documents and Proposers' Diligence**

(a) Reference Information Documents

MDOT has assembled Reference Information Documents and made them available upon issuance of this RFP on PCS. MDOT will only provide Reference Information Documents through PCS.

The Reference Information Documents are provided for reference purposes only.

(b) Disclaimer Related to Reference Information Documents

Except to the extent expressly provided under the Phase P3 Agreement or a Section P3 Agreement, neither the Phase Developer nor any Section Developer is entitled to rely on the Reference Information Documents as accurately describing existing conditions, presenting design, engineering, operating, or maintenance solutions or other directions, means, or methods for complying with the requirements of the Phase P3 Agreement, governmental approvals, or Applicable Law.

Each Proposer acknowledges that, except to the extent expressly provided in the Phase P3 Agreement or a Section P3 Agreement:

- (i) each of MDOT and MDTA makes no representation or warranty with respect to the completeness, accuracy, or fitness for any purpose of any of the information contained in the Reference Information Documents or that such information conforms with the requirements of the Phase P3 Agreement, governmental approvals, or Applicable Law; and
- (ii) neither MDOT, MDTA, nor any of their respective officers, employees, contractors, or consultants will have any liability to the Proposer, and the Phase Developer and Section Developers will not be entitled to any extension of time, relief from obligations, or compensation with respect to:
 - (A) any inaccuracy, omission, lack of fitness for any purpose, or inadequacy of any kind whatsoever in the Reference Information Documents;
 - (B) any failure to make available to the Proposer any materials, documents, drawings, plans, or other information relating to Phase 1 as part of the Reference Information Documents; or
 - (C) any causes of action, claims, or losses whatsoever suffered by any Proposer Team Member by reason of any use of the information contained in, or any action or forbearance in reliance on, the Reference Information Documents.

Further, with respect to the MDOT concept designs, (i) no representation is made that the MDOT concept designs comply with the requirements of this RFP or with the

Predevelopment Work Requirements; (ii) the Proposers are not obligated to adopt MDOT concept designs; and (iii) the Proposers shall use or not use the MDOT concept designs at their sole risk and remain solely responsible and liable for any design without regard to anything contained in MDOT's concept designs.

(c) Examination of Reference Information Documents

Each Proposer shall be solely responsible for:

- (i) examining, with appropriate care and diligence, the Reference Information Documents and any other documents or information provided by MDOT; and
- (ii) informing itself with respect to any and all circumstances that may in any way affect the nature of its Proposal or the performance of its obligations if such Proposer enters into the Phase P3 Agreement as the Phase Developer.

1.20 **Federal, State, and Local Requirements**

The Phase Developer and Section Developer shall meet all applicable state, federal, and local requirements, including requirements that are applicable to projects classified as "Major Projects" by FHWA.

(a) FHWA Major Projects

The I-495 & I-270 Managed Lane Study meets the definition of a "Major Project" under 23 U.S.C. § 106(h), and accordingly requires the preparation and submission of a Project Management Plan and Finance Plan, with annual updates, by MDOT to the FHWA concerning the MLS project. The Phase P3 Agreement and the Section P3 Agreements will include certain obligations of the Phase Developer and the Section Developer concerning assistance in the preparation of such plans and annual updates.

(b) Participation of Small, Minority, Disadvantaged, and Women-Owned Businesses

Depending on the funding source, phase of Phase 1, or nature of the Predevelopment Work, there are different small, disadvantaged, minority, and women-owned business programs that may apply to Phase 1. Projects that receive federal funds must comply with the DBE Program requirements of 49 CFR Part 26. Projects that do not receive federal funds or to which federal DBE requirements do not apply will be required to comply with the State Minority Business Enterprise ("**MBE**") program, in accordance with § 10A-403 of the SF&P Article of the Annotated Code of Maryland, to the extent it is practicable and legally permissible.

MDOT is responsible for administering the DBE and MBE programs consistent with federal and State requirements. This includes (i) employing race-neutral efforts and programs to reduce barriers and level the playing field for the participation of small, disadvantaged, minority, and women-owned businesses; (ii) setting DBE or MBE goals on a project-by-project basis; and (iii) monitoring program compliance and the participation of DBE or MBE firms, where appropriate, during the course of Phase 1.

It is anticipated that federal funds will be used to pay or reimburse the costs of the Predevelopment Work. Therefore, for the Predevelopment Work, Proposers are advised that MDOT has established 26 percent as the DBE participation goal.

In addition, DBE or MBE participation goals will be set for each section of Phase 1 during the predevelopment process as required under Applicable Law.

A directory of current certified MBE/SBE/DBE firms can be viewed at https://mbe.mdot.maryland.gov/directory/search_select.asp.

By submitting its Proposal, the Proposer agrees to meet the established DBE participation goals for the Predevelopment Work during the term of the Phase P3 Agreement, as well as requiring the Section Developer to meet the DBE participation goals or MBE participation goals/subgoals that may be established under the Section P3 Agreement.

If unable to meet an established goal, the Selected Proposer must request and obtain a waiver after demonstrating good faith efforts to meet the goals. The Selected Proposer should review the good faith efforts requirements set forth in 49 CFR Part 26, Appendix A. The waiver process is more fully set forth in Form H-7 (*MDOT DBE Form E – Good Faith Efforts Guidance and Documentation*), and the MDOT MBE and DBE Program Manuals, which can be found at:

http://www.mdot.maryland.gov/newMDOT/MBE/Resources_Information/Resources_Information.html.

Further, Proposers are prohibited from requiring DBE or MBE firms to commit exclusively to work as a subcontractor for the Proposer or any other member of the Proposer Team.

Forms relating to the participation of DBE and MBE firms are contained in Forms H. Proposers shall include with their Proposal, the following:

- Form H-1 (*Proposer's Acknowledgement of DBE and MBE Program Requirements*),
- Form H-2 (*MDOT DBE Form Package Submission Federally-Funded Contracts Proposer's Affirmation*),
- Form H-3 (*MDOT DBE Form A – Federally-Funded Contracts Certified DBE Utilization and Fair Solicitation Affidavit*), and
- Form H-4 (*MDOT DBE Form B – Federally Funded Contracts DBE Participation Schedule*), which DBE Participation Schedule shall be applicable to the first 180 days from the Effective Date of the Phase P3 Agreement.

Submission of Form H-1, Form H-2, Form H-3, and Form H-4 are required at the time of submission of the Financial Proposal.

For purposes of Form H-3 and Form H-4, the term "total contract value" means the total value of the work under the Phase P3 Agreement for the first 180 days following the Effective Date.

The Selected Proposer shall submit Form H-5, Form H-6, and Form H-7 within five (5) Business Days of being notified that it is the Selected Proposer.

Additional MDOT DBE/MBE participation forms will be required to be submitted pursuant to the Phase P3 Agreement and in connection with the submission of a Committed Section Proposal. In particular, the Phase Developer will be required to meet the requirements set forth in Sections 19.9(a)(vii)(B) and (C) of the Phase P3 Agreement by the dates set forth in such Sections.

The MDOT DBE/MBE participation forms are subject to revision by MDOT and the schedule for submission of those forms is subject to change or modification by MDOT.

- (c) Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)
 - (i) The Proposer's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set out in Exhibit 16 (*Federal and State Requirements*) to the Phase P3 Agreement.
 - (ii) The goals and timetables for minority and female participation are set out in Exhibit 16 (*Federal and State Requirements*) to the Phase P3 Agreement.
 - (iii) The Phase Developer or Section Developer shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list:
 - (A) the name, address, and telephone number of the subcontractor;
 - (B) the employer identification number of the subcontractor;
 - (C) the estimated dollar amount of the subcontract;
 - (D) the estimated starting and completion dates of the subcontract; and
 - (E) the geographical area in which the subcontract is to be performed.
 - (iv) As used in this notice, and in the Phase P3 Agreement, the "Covered Area" is identified in Exhibit 16 (*Federal and State Requirements*) to the Phase P3 Agreement.
- (d) Prevailing Wage and Living Wage

Prevailing Wage and Living Wage requirements will apply to the Phase Developer and the Section Developers to the extent required under Applicable Law.
- (e) Buy America Requirements

While the requirements of 23 CFR 635.410 (Buy America requirements) are not expected to apply to the Predevelopment Work, if the Phase Developer wishes to begin purchasing any materials for the Section Work, it will be required to (i) obtain prior MDOT approval and (ii) certify its compliance with 23 CFR 635.410.

1.21 **Site Tour**

MDOT will not be conducting site tours pursuant to this RFP. However, Proposers may access the site in connection with their Proposal subject to any applicable access restrictions and obtaining any permits required under Applicable Law. MDOT has performed certain site investigation work prior to issuing this RFP and material relating to the site investigations carried out by MDOT has been included in the Reference Information Documents.

2. **RFP PROCESS**

2.1 **Summary of the RFP Process**

The following is a general summary of the key steps involved in the RFP Process, which are described in greater detail in the subsequent Sections of this ITP, and in a detailed schedule which is provided in the Solicitation Schedule:

(a) Issuance of Draft RFPs, the Final RFP, and any Addenda

Each Draft RFP, the Final RFP, and any Addenda will be issued in accordance with Section 2.2 (*Issuance of this RFP and Addenda*).

(b) Communications with Proposers, One-on-One Meetings, and the IDP

(i) Proposers' Submittal of Questions and Comments Regarding the RFP

Proposers may submit Requests for Clarification (or RFCs) in accordance with Section 2.4 (*Comments and Responses Regarding this RFP*). MDOT may respond to such RFCs through updated drafts of the Draft RFP, the Final RFP, and any Addenda.

(ii) Informational Meetings

MDOT may hold group informational meetings amongst MDOT and all Proposers as described in Section 2.5(a) (*Informational Meetings*).

(iii) Kick-Off Meeting

In accordance with the Solicitation Schedule, MDOT will meet collectively with all Proposers for a kick-off meeting (the "**Kick-Off Meeting**") to describe the RFP Process and the Innovative Dialogue Process (the "**IDP**") as described in Section 2.5(b) (*Kick-Off Meeting*).

(iv) One-on-One Meetings

MDOT contemplates conducting meetings between MDOT and each Proposer as described in Section 2.5(c) (*One-on-One Meetings*) (the "**One-on-One Meetings**").

(v) IDP Work Sessions

MDOT contemplates conducting confidential IDP Work Sessions (as defined in Section 2.7(f)(i) (*General*)) between MDOT and each Proposer as described in Section 2.7(f) (*IDP Work Sessions*).

(vi) Third Party and Utility Owner Meetings

MDOT may arrange for meetings between Proposers and third parties (including Utility Owners). If arranged, each Proposer will have the opportunity to meet with each third party individually.

(c) Submission of Proposals

Each Proposer shall submit its Predevelopment Work Proposal no later than the Predevelopment Work Proposal Due Date (except for Forms H-1 through H-4 (*DBE Forms*) which shall be submitted by the Financial Proposal Due Date) and its Financial Proposal no later than the Financial Proposal Due Date (except for the parts of the Financial Proposal expressly identified in this ITP as required to be submitted by the Predevelopment Work Proposal Due Date), in accordance with Article 3 (*General Requirements for Predevelopment Work and Financial Proposals*) and this ITP.

(d) Selected Proposer Selection

The Selected Proposer will be determined in accordance with the evaluation process set out in Article 4 (*Proposal Evaluation Process*) and this ITP.

(e) Finalization of the Phase P3 Agreement and Effective Date

After the Selected Proposer, MDTA, and MDOT finalize the Phase P3 Agreement, MDTA will submit it for approval by the MDTA Board. Subsequently MDOT and MDTA will submit the Phase P3 Agreement for review and comment in accordance with SF&P Article § 10A-203 of the Annotated Code of Maryland, and for approval by BPW and by FHWA. Once approved, the Selected Proposer, MDTA, and MDOT will execute and deliver the Phase P3 Agreement, and achieve the Effective Date in accordance with Article 5 (*Finalization of the Phase P3 Agreement and Closing*) of this ITP and Article 5 (*Conditions Precedent to MDOT and MDTA Signing this Agreement*) of the Phase P3 Agreement.

2.2 Issuance of this RFP and Addenda

(a) RFP Issuance

- (i) MDOT will issue each Draft RFP, the Final RFP, any Addenda, and all notices and other documents related to Phase 1 to Proposers solely in electronic format via PCS.
- (ii) Proposers are solely responsible for monitoring PCS, and for receiving and reviewing all documents provided through such site.

(b) Issuance of Addenda to this RFP

MDOT reserves the right to revise, modify, or change this RFP and solicitation process at any time before the Financial Proposal Due Date (or, if best and final offers ("**BAFOs**") are requested, prior to the due date for BAFOs) by issuing one or more Addenda. Any Addenda will be posted on the PCS, and Proposers will be notified of the issuance of such Addenda. If MDOT determines that any Addendum significantly impacts this RFP, MDOT may change the Predevelopment Work Proposal Due Date or Financial Proposal Due Date at its sole discretion. The announcement of such new date will be included in the Addendum. In addition, if the last date for Proposers to submit RFCs regarding this RFP has occurred or has changed, the Addendum will indicate the latest date for submittal of any RFCs concerning the Addendum.

Each Proposer shall acknowledge in its Predevelopment Work Proposal Letter (see Form A-1) and Financial Proposal Letter (see Form A-2) receipt and review of this RFP, any Addenda, and RFC responses. Failure to acknowledge such receipt may cause a Proposal to be deemed non-responsive and be rejected. MDOT reserves the right to hold group meetings or telephone calls with Proposers, and One-on-One Meetings or telephone calls with each Proposer to discuss any Addenda. MDOT does not anticipate issuing any

Addenda later than ten (10) Business Days prior to the Financial Proposal Due Date. However, if the need arises, MDOT reserves the right to issue Addenda after such date. If MDOT finds it necessary to issue an Addendum after such date, then any relevant processes or response times necessitated by the Addendum will be set forth in a cover letter to that specific Addendum, including any extension to the Predevelopment Work Proposal Due Date or the Financial Proposal Due Date determined necessary by MDOT.

2.3 **Pre-Proposal Requests for Information**

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

2.4 **Comments and Responses Regarding this RFP**

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

Proposers shall submit comments and requests for written clarification as Requests for Clarification in accordance with this [Section 2.4](#). Proposers may submit RFCs on the RFP at any time prior to the applicable deadlines set out in the Solicitation Schedule. If a Proposer wishes to discuss any RFCs during a One-on-One Meeting, such RFCs need to be submitted by the deadline for submitting an agenda for the relevant One-on-One Meeting.

MDOT reserves the right not to respond to any such RFCs. Further, MDOT's responses to RFCs will in no event be deemed part of this RFP and will not be relevant in interpreting the Phase Documents, except to the extent that they are included as part of the Final RFP or an Addendum.

MDOT will only consider comments regarding this RFP, including RFCs and requests to correct errors, that are submitted by a Proposer Representative to the Solicitation Manager. No telephone or oral requests will be considered. No requests for additional information or clarification to any Person other than the Solicitation Manager through the process set out in this RFP will be considered.

Responses will be provided to the Proposer Representative.

RFCs shall be submitted using [Form L \(RFC Template\)](#) as provided in Microsoft Word format via PCS to the Solicitation Manager and shall:

- (a) be sequentially numbered;
- (b) be conspicuously marked as "confidential" with justification, if a Proposer believes a comment contains confidential or proprietary information (including that the question

itself is confidential) in accordance with Section 2.8 (*Ownership of Proposal and Applicability of Public Information Act*);

- (c) identify the document (i.e., ITP, Phase P3 Agreement, Section P3 Agreement Term Sheet, Predevelopment Work Requirements, etc.);
- (d) identify the relevant section number and page number or, if it is a general question, indicate so;
- (e) identify the comment/question as either "Technical," "O&M," "Legal," "Commercial," "Tolling," "Solicitation," or "Financial" (**Discipline**);
- (f) not identify the Proposer's identity in the body of the question; and
- (g) indicate whether the question is a Category A, B, C, or D question as described below.

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

As used above,

- "Category A" means a potential "go/no-go" issue that, if not resolved in a manner acceptable to the Proposer, will likely preclude the Proposer from submitting a Proposal.
- "Category B" means a major issue that, if not resolved in a manner acceptable to the Proposer, is material or, taken together with other Category B issues, may preclude the Proposer from submitting a Proposal.
- "Category C" means an issue that may be a material issue, but is not at the level of a Category A and Category B issue.
- "Category D" means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

For this RFP, RFCs and the responses, if any, will be posted on PCS, except to the extent that the Solicitation Manager intends to respond individually to those RFCs that a Proposer has deemed to contain confidential or proprietary information.

The Solicitation Manager reserves the right to assess the confidentiality or proprietary nature of information in the interest of maintaining a fair process or complying with Applicable Law. If the Solicitation Manager deems that the Request for Clarification is not confidential or proprietary in nature, the Solicitation Manager will inform the Proposer in advance of disclosure and may allow the Proposer to withdraw the Request for Clarification. If a Proposer fails to respond to MDOT within the time period identified by MDOT at the time of such notification, such failure shall be deemed to allow MDOT to answer the question non-confidentially. MDOT may rephrase questions as it deems appropriate and may consolidate similar questions. MDOT may also create and answer questions independent of the Proposers.

MDOT contemplates issuing multiple sets of responses at different times during the solicitation process.

2.5 **Pre-Proposal Meetings**

- (a) Informational Meetings

MDOT may hold joint informational meetings with all Proposers at any time prior to the Predevelopment Work Proposal Due Date. Informational meetings may be held either in person, or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication amongst all Proposers and MDOT. MDOT will provide written notice of any such informational meetings to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting. Each Proposer shall attend informational meetings with appropriate members of its proposed Proposer Team, and, if required by MDOT, senior representatives of proposed Proposer Team Members identified by MDOT. Representatives of MDTA, advisors of MDOT and MDTA, and other stakeholders may attend and participate in informational meetings.

(b) Kick-Off Meeting

In accordance with the Solicitation Schedule, MDOT will meet collectively with all Proposers for a Kick-Off Meeting. The Kick-Off Meeting will include an IDP introduction presentation by MDOT followed by one-on-one discussions and clarifications related to the RFP Process and IDP with each of the Proposers. The one-on-one discussions will be limited to one (1) hour. Schedules for the one-on-one discussions will be drawn randomly. The Kick-Off Meeting and following discussions may be held either in person, or by telephonic or electronic means, as determined by MDOT.

The Kick-Off Meeting and associated presentation will describe the RFP Process and IDP, and provide instruction to Proposers to aid in the successful selection and development of innovative technical and financial solutions from preliminary ideas to fully developed, responsive, and compliant Proposals.

At the one-on-one discussions following the Kick-Off Meeting, Proposers should also be prepared to discuss (i) any preliminary comments that they have on the solicitation process and schedule, One-on-One Meetings, and RFCs, (ii) any questions or comments about the IDP, and (iii) the impact that the COVID-19 pandemic has had on their business and the industry, and challenges that it may introduce to the solicitation and delivery of Phase 1.

Proposers will be encouraged to ask questions at the one-on-one meetings as needed to gain a clear understanding of the RFP Process and the IDP.

(c) One-on-One Meetings

MDOT intends to conduct One-on-One Meetings with each Proposer on the dates set forth in the Solicitation Schedule to discuss issues and clarifications regarding Phase 1 and Phase 1-related documents or communications provided by MDOT or the Proposer (including this RFP). Such meetings will be held at a time and place to be determined by MDOT (in its absolute discretion). MDOT reserves the right to disclose to all Proposers any responses MDOT or MDTA provide to issues raised during the One-on-One Meetings if MDOT believes such disclosure is necessary in the interest of maintaining a fair process or complying with Applicable Law. Participation at such meetings by Proposers shall be mandatory. Representatives of MDTA, USDOT including FHWA, advisors of MDOT and MDTA, and other stakeholders may attend and participate in One-on-One Meetings.

The One-on-One Meetings are subject to the following rules:

- The One-on-One Meetings are intended to provide Proposers with a better understanding of Phase 1 and Phase 1-related documents or communications provided by MDOT.
- MDOT and MDTA, except as provided in this ITP, will not discuss with any Proposer any information submitted by a Proposer as part of this solicitation (including other Proposals or other Proposers' innovative technical and financial solutions) other than its own.
- Proposers shall not seek to obtain commitments from MDOT or MDTA in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.
- No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers.
- The discussions or any statements made by either party in One-on-One Meetings shall not be binding on such entity.
- No part of the evaluation of Proposals will be based on the conduct or discussions that occur during One-on-One Meetings.

The One-on-One Meetings may be held either in person, or by telephonic or electronic means, as determined by MDOT.

During One-on-One Meetings, Proposers may ask questions, and MDOT and MDTA may provide responses. However, any responses provided by MDOT or MDTA during One-on-One Meetings may not be relied upon except to the extent that responses are reflected as part of the Final RFP or an Addendum.

Proposers will choose the topics for discussion and prepare a detailed meeting agenda, which will be submitted by the deadline set forth in the Solicitation Schedule. Meeting agendas must include the topics, schedule, appropriate RFC references, and an attendee list to allow MDOT to identify the appropriate decision-makers and support personnel to participate in the meeting and ensure each attends at the appropriate time in accordance with the meeting schedule.

At MDOT's discretion, MDOT may set mandatory agenda items for the One-on-One Meetings. MDOT shall endeavor to provide notice of any mandatory agenda items not less than five (5) days before the relevant meeting. Proposers may designate part of each One-on-One Meeting as an IDP Work Session, in which case Section 2.7(f) (IDP Work Sessions) shall apply. Proposers must clearly identify which portion of the One-on-One Meeting will be designated as an IDP Work Session within its meeting agenda.

(d) IDP Work Sessions

MDOT shall arrange IDP Work Sessions with the Proposers in accordance with Section 2.7(f) (IDP Work Sessions) to discuss the IDP and Proposers' IDP Submittals (as defined in to Section 2.7(e) (IDP Submittals)).

2.6 Pre-Proposal Submittals

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

- pursuant to Section 1.18 (*Changes in the Proposer's Organization and Key Personnel*) regarding changes in the Proposer's organization and changes in Key Personnel (if applicable);
- pursuant to Section 2.7 (*Innovative Dialogue Process*) regarding any IDP Submittal pursuant to Section 2.7(e)(iv) (*IDP Submittals to MDOT*); and
- any other submittal requested by MDOT from Proposers prior to the Financial Proposal Due Date.

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

Any submissions required in this RFP from Proposers prior to the Financial Proposal Due Date, including Pre-Proposal Submittals, shall be sent for the attention of the Solicitation Manager via the PCS file upload tool.

2.7 **Innovative Dialogue Process**

(a) Introduction

MDOT has incorporated a process to foster creativity and innovation in the development and delivery of Phase 1. The IDP set forth in this ITP establishes the framework for this interactive process, wherein MDOT and the Proposers will engage in confidential, continual, collaborative dialogue for the purpose of cultivating innovative ideas; and discussing risks, opportunities, and the Proposer's approach to Phase 1.

The IDP allows for broad discussion regarding innovative technical or financial solutions that may be applicable across the full breadth of the P3 delivery components (and may include discussion regarding the Proposer's approach to Phase 1).

(b) Purpose

The purpose of the IDP is to:

- (i) provide a process for the Proposers to gain acceptance from MDOT for deviations from the Phase Documents to allow their innovative technical or financial solutions to be compliant with the requirements defined therein;
- (ii) allow Proposers to have flexibility in developing their preliminary designs and innovative technical and financial solutions, while not compromising the requirements set forth in the Phase Documents, as determined by MDOT;
- (iii) enable MDOT and MDTA to review, on a confidential basis, each Proposer's preliminary innovative technical and financial solutions (which may include the Proposer's approach to Phase 1) and, through a continuous, confidential, collaborative dialogue, provide feedback on such innovative technical and financial solutions and clarify any misinterpretations or ambiguities in this RFP

relating to such innovative technical and financial solutions before the Proposers' final submission of their Proposals;

- (iv) ensure each Proposer and MDOT fully understand, mutually endorse, and commit to the successful implementation of each innovative technical and financial solution deemed to have met the threshold requirements for a determination that the innovative technical or financial solution (as relevant) is acceptable for inclusion in such Proposer's Predevelopment Work Proposal and Financial Proposal; and
- (v) achieve best value for the State.

(c) Scope of IDP

The IDP is intended to encourage innovation across the full breadth of the P3 delivery components (and may include discussion regarding the Proposer's approach to Phase 1). In order to promote innovation that a Proposer may not be incentivized to develop for its Proposal if such development was only possible through the typical RFC Process, the IDP shall be carried out confidentially and MDOT may permit pre-approved amendments to the Phase Documents for a Proposer to enable the implementation of its innovative technical or financial solution. However, the IDP shall not be used for general RFP drafting recommendations, clarifications, or questions that (in MDOT's absolute discretion) are not innovative or related to the Proposer's approach to Phase 1, and fall outside the intended scope of the IDP. General RFP drafting recommendations, clarifications, or questions shall be submitted through the RFC Process. MDOT shall determine, at its absolute discretion, whether or not an IDP Submittal is acceptable for consideration through the IDP.

Each IDP Submittal should explain why the innovative technical or financial solution presented should be advanced through the IDP and not through the RFC Process. Any innovative technical or financial solutions will only be eligible for consideration if (in MDOT's absolute discretion) the proposed innovative technical or financial solution will result in performance, quality and value that is equal to or better than that which would be achieved in the absence of such innovative technical or financial solution.

If the Proposer is unsure whether a concept is consistent with the requirements of this RFP or if that concept would be considered an innovative technical or financial solution by MDOT, MDOT recommends that the Proposer submit such concept for review as part of an IDP Submittal and MDOT shall notify the Proposer if such concept may not be progressed through the IDP in accordance with Section 2.7(e)(v) (*MDOT's Response to an IDP Submittal*).

(d) Communication Protocols

- (i) All notices, submissions, approvals, and other communications submitted in connection with the IDP, whether by a Proposer or MDOT, shall be in writing and uploaded to PCS with an email notification sent to the Solicitation Manager.
- (ii) Each Proposer shall correspond with MDOT regarding the IDP only through its Proposer Representative and shall direct all communications to the Solicitation Manager.
- (iii) MDOT will not be responsible for any oral exchange nor any other information or exchange that occurs outside the official process specified herein.

(e) IDP Submittals

Prior to a Proposer's IDP Work Session, such Proposer shall provide an IDP submittal in accordance with this Section 2.7(e) (the "**IDP Submittal**").

(i) IDP Procedures

The procedures described in this Section 2.7(e) are intended to:

- (A) allow the Proposer to develop the IDP Submittals in a logical and phased approach with periodic input from MDOT during the RFP Process; and
- (B) enable MDOT and MDTA to (aa) review on a confidential basis the potential risks and benefits posed by the innovations and, if applicable, revisions to the Phase Documents and (bb) if applicable, determine whether or not to allow the recommended revisions to the Phase Documents in a manner that would make the innovative technical and financial solutions consistent with the Phase Documents, as may be revised.

(ii) IDP Submittal Contents

Content of IDP Submittals shall include all necessary elements for MDOT to evaluate the innovative technical or financial solution proposed. Each Proposer shall include the following in its IDP Submittal:

- (A) a completed Form P-1 (*Form of IDP Submittal*);
- (B) an index of documents and drawings included in the IDP Submittal;
- (C) the form of feedback requested by the Proposer from the following:
 - (aa) oral feedback, or
 - (bb) written response in accordance with Section 2.7(e)(v);
- (D) a narrative description of the proposed innovative technical or financial solution, in accordance with Form P-2 (*IDP Narrative Submittal Requirements*);
- (E) any technical innovations, design drawings, and supporting reference documents, in accordance with Form P-3 (*Technical Innovation Submittal Requirements*);
- (F) estimated change in costs, pricing, or other financial consequence of implementing the innovative technical or financial solution if implemented;
- (G) estimated change in the time required to reach Financial Close or Substantial Completion of any relevant section resulting from implementing the proposed innovative technical or financial solution;
- (H) if the implementation of an innovative technical or financial solution requires a change to the Phase Documents, a redlined version of such documents permitting the Proposer's RTC, as outlined in Section 2.7(e)(iii);

- (I) any other documents and information requested by MDOT to aid in the evaluation;
- (J) in advance of each IDP Work Session, a proposed meeting agenda; and
- (K) the Proposer's Electronic Signature.

(iii) Requests to Change

As part of its IDP Submittal, each Proposer shall include (A) any requests to MDOT to revise the Phase Documents in a manner that would make an innovative technical or financial solution that is not compliant with the then current Phase Documents compliant if the Phase Documents were revised; and (B) supporting information to show how incorporation of such innovative technical or financial solution would benefit MDOT or MDTA, and to otherwise justify such a revision (such request and supporting information, the "**RTC**").

RTCs shall be limited to recommended language changes to the Phase Documents conveying the Proposer's recommendations to allow for the Proposer's innovative technical and financial solutions to be incorporated. The IDP shall not be used for general RFP drafting recommendations, clarifications, or questions. General RFP drafting recommendations, clarifications, or questions shall be submitted through the RFC Process.

(iv) IDP Submittals to MDOT

Each IDP Submittal and its contents shall be submitted at the sole discretion of the Proposer at any time prior to the deadline set forth in the Solicitation Schedule, provided that during the RFP Process MDOT may request that all proposers submit an IDP Submittal addressing a specified issue.

(v) MDOT's Response to an IDP Submittal

Following receipt of an IDP Submittal, MDOT will first evaluate whether the innovation presented in the IDP Submittal is within the scope of the IDP set out in Section 2.7(c) (Scope of IDP). If MDOT determines that the IDP Submittal is not within the intended scope of the IDP then MDOT shall promptly notify the Proposer and the Proposer shall elect to either (A) withdraw the IDP Submittal or (B) resubmit the concept through the RFC Process. Such withdrawal by a Proposer shall not prejudice MDOT's right to make amendments or clarifications to this RFP arising from such IDP Submittal.

If MDOT determines that the IDP Submittal is within the intended scope of the IDP and the Proposer has indicated in the IDP Submittal that it wishes to discuss it with MDOT, the IDP Submittal may be discussed at the next scheduled One-on-One Meeting (which such portion of the meeting being specified as an IDP Work Session) or the Proposer and MDOT may agree on another date to schedule an IDP Work Session and discuss the IDP Submittal. If the Proposer wishes to discuss an IDP Submittal during a scheduled One-on-One Meeting, then it must submit such IDP Submittal by the deadline set out in the Solicitation Schedule for the applicable One-on-One Meeting.

If the IDP Submittal requests a written response, MDOT will endeavor to respond to an IDP Submittal within twenty-one (21) days of the submittal; provided,

however, that MDOT's response may be extended in MDOT's sole discretion based on the number and complexity of submissions received from Proposers at any particular time.

MDOT's written response will be one of the following:

- Deficient: The IDP Submittal does not fully comply with MDOT's underlying goals and objectives for Phase 1 and may not be included in the Proposer's Proposal. MDOT does not intend to permit the Proposer to revise the Phase Documents based on the RTCs included in such IDP Submittal.
- Acceptable: The IDP Submittal does comply with MDOT's underlying goals and objectives for Phase 1 and may be included in the Proposer's Proposal. MDOT will accept the RTCs contained within the IDP Submittal and the RTCs shall be deemed to be incorporated into the Phase Documents only if the innovative technical or financial solution presented in such IDP Submittal is contained within the Proposal submitted by the Proposer. No IDP Submittal which requires an assumption as to the preferred alternative under the MLS NEPA process will be deemed "acceptable" prior to the identification of MDOT's recommended preferred alternative.
- Conditional Acceptance: The IDP Submittal (A) is not acceptable in its present form, (B) requires further development with MDOT during the performance of the Predevelopment Work, or (C) cannot be accepted by MDOT prior to the Predevelopment Work Proposal Due Date. Such IDP Submittal may be accepted, in MDOT's sole discretion, upon (A) the satisfaction of certain identified conditions, (B) the inclusion of certain clarifications or modifications, or (C) the development of additional details to MDOT's satisfaction during the Predevelopment Work. Conditionally accepted IDP Submittals may be included in the Proposer's Proposal.
- Additional Information: MDOT needs further information in order to make a decision on the IDP Submittal. MDOT may request additional information regarding any IDP Submittal at any time in writing or through one of the IDP Work Sessions and will respond to each Proposer regarding all properly submitted IDP Submittals.
- Global Acceptance: MDOT may revise this RFP in a manner that would make a Proposal containing the innovative technical or financial solution described in the IDP Submittal responsive to the Phase Documents and make the revisions available to all Proposers if the IDP Submittal provided does not actually include an innovative technical or financial solution but rather a clarification.
- Not in IDP Scope: The IDP Submittal does not contain an innovative technical or financial solution or otherwise falls outside the scope of the IDP.

Acceptance or conditional acceptance of an IDP Submittal in no way implies that the innovative technical or financial solutions contained within the IDP Submittal will receive a favorable review. The Proposals will be evaluated with regard to the

evaluation criteria found in this RFP, regardless of whether or not innovative technical or financial solutions are included.

Except for incorporating accepted IDP Submittals through RTCs, the Predevelopment Work Proposal and Financial Proposal may not otherwise contain exceptions to, or deviations from, the Phase Documents of this RFP, or other documents incorporated into this RFP or the Phase P3 Agreement by reference.

Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit innovative technical and financial solutions was offered to all Proposers, and waives any right to object to the IDP as well as to MDOT's determinations regarding acceptability of innovative technical and financial solutions pursuant to any IDP Submittal.

MDOT's rejection of a pre-Proposal submission of an IDP Submittal will not entitle the Proposer to an extension of the Predevelopment Work Proposal Due Date or the Financial Proposal Due Date or the date by which the innovative technical and financial solutions are due; provided, however, that the foregoing shall not limit MDOT's absolute and sole right to modify the Predevelopment Work Proposal Due Date, the Financial Proposal Due Date, or any other date in connection with this solicitation.

(vi) Incorporation into the Phase Documents

If MDOT determines, in its sole discretion, that it accepts an innovative technical or financial solution submitted, it will confirm the language of the RTC submitted with such innovative technical or financial solution. Such confirmation may or may not exactly match the language changes requested by the Proposer in its IDP Submittal. MDOT will use reasonable efforts to maintain the purpose and intent of the language proposed in the Proposer's RTCs to allow for the Proposer's innovative technical or financial solutions to be incorporated.

Acceptance of an innovative technical or financial solution will constitute a change in the specific Phase Document associated with the accepted innovative technical or financial solution for that specific Proposer. Each Proposer will be responsible for ensuring that its Proposal complies with the Phase Documents for that specific Proposer, as modified by acceptance of the innovative technical or financial solution. In its Proposal, the Proposer must specifically state whether any accepted RTCs are included and describe how the innovative technical or financial solution is used and provide cross-references to other elements of the Proposal that are affected by the innovative technical or financial solution.

Following notification of the Selected Proposer, the innovative technical and financial solutions that were pre-accepted by MDOT and incorporated in the Proposal by the Selected Proposer shall be included in the Phase Documents. If MDOT responded to any innovative technical or financial solution by stating that such innovative technical or financial solution would be acceptable if certain conditions were met, those conditions will become part of the Phase Documents. The Phase Documents will be conformed after notification of the Selected Proposer, but prior to execution of the Phase P3 Agreement, to reflect the innovative technical and financial solutions, including any MDOT conditions thereto.

(vii) Potential Innovations

In connection with the process set forth in this Section 2.7(e), the Proposer may also submit potential innovations for discussion prior to submitting any IDP Submittal. These potential innovations should include enough information so that MDOT may provide sufficient feedback for the Proposer to determine whether to continue the IDP and prepare IDP Submittals related to the potential innovations; such information may include a list of potential innovations, and supplemental conceptual drawings and documents. The potential innovations must be provided at least ten (10) days prior to the applicable One-on-One Meeting or IDP Work Session. MDOT will only provide verbal feedback on potential innovations submitted. The submission by Proposer of potential innovations for discussion and feedback from MDOT will not relieve the Proposer of the requirements to present a formal IDP Submittal in accordance with this Section 2.7 should the Proposer wish to include an approved IDP Submittal in its Proposal.

(f) IDP Work Sessions

(i) General

MDOT plans to meet separately with each of the Proposers in confidential work sessions, which may be scheduled as part of any One-on-One Meeting on the dates set forth in the Solicitation Schedule or on any other date as may be agreed between MDOT and the relevant Proposer, for the sole purpose of discussing IDP Submittals received in advance of each meeting (each an "**IDP Work Session**"). Proposers will choose the topics for discussion and prepare the meeting agenda, which must be submitted at least ten (10) days prior to the applicable IDP Work Session (or, for IDP Work Sessions to be held during any One-on-One Meeting, by the deadline set out in the Solicitation Schedule). Meeting agendas must include the topics and schedule to allow MDOT to identify the appropriate decision-makers and support personnel to participate in the meeting and ensure each is available at the appropriate time in accordance with the meeting schedule. Any IDP Submittal to be discussed at any IDP Work Session must also be submitted to MDOT on or before the deadline for providing the agenda.

At MDOT's discretion, MDOT may add agenda items to the Proposer's agenda. MDOT shall endeavor to provide notice of any agenda items it wishes to add to the agenda not less than three (3) days before the relevant meeting.

(ii) IDP Work Session Rules

The following rules shall apply to each IDP Work Session:

- (A) No decisions regarding this RFP will be made by MDOT in an IDP Work Session; and no statement by MDOT, MDTA, nor any of their respective officers, employees, contractors, or consultants, at any IDP Work Session or included in any written record or summary of any such meeting will provide, or may be construed as, a waiver to, or any modification to, this ITP or any other part of this RFP and may not be relied on by any Proposer unless it is deemed to be incorporated into the Phase Documents through an accepted RTC.
- (B) Any statement made at an IDP Work Session by MDOT, MDTA, or any of their respective officers, employees, contractors, or consultants, may not and shall not be deemed or considered to be an indication of a preference, acceptance, or a rejection by MDOT or MDTA of anything said or done, or

any information presented by a Proposer. No part of the evaluation of Proposals will be based on the conduct or discussions that occur during an IDP Work Session. No negotiations will take place during these meetings.

- (C) Information presented by a Proposer during an IDP Work Session shall generally be treated as confidential information, subject to this RFP and Applicable Law. MDOT will not discuss with any Proposer any Proposer's comments on this RFP, Proposal, IDP Submittal, or RTC other than its own. However, notwithstanding the foregoing, MDOT reserves the right to disclose to all Proposers any issues of general applicability raised during any IDP Work Session. Further, under no circumstances will MDOT or MDTA be responsible or liable to a Proposer or any other party as a result of disclosing any of the Proposer's IDP Submittal materials, whether disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of MDOT or MDTA, or any of their respective officers, employees, contractors, or consultants.
- (D) Additional requirements (e.g., limitations on number of attendees and time of meeting) and other information relating to specific IDP Work Sessions may be provided by MDOT prior to any such meeting.

(g) Confidentiality

Subject to the provisions of this RFP and other Applicable Law, and except as otherwise provided in Sections 2.7(e)(vi) (*Incorporation into the Phase Documents*) and 2.7(f)(i) (*General*), MDOT shall maintain the confidentiality of the innovative technical and financial solutions and all communications regarding the innovative technical and financial solutions until the earlier of (i) cancellation of the solicitation without selection of a Selected Proposer, (ii) the Effective Date, (iii) payment of a reimbursement payment to the Proposer in accordance with Section 4.11 (*Ownership of Proposal Work Product and Reimbursement Payment*), or (iv) such other date as may be prescribed under Applicable Law, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under Applicable Law and this Section 2.7(g). By submitting a Proposal and a Stipend Agreement, the Proposer agrees, if it is not selected as the Selected Proposer, to disclosure of its Proposal Work Product (including IDP Submittals and materials) to the Selected Proposer. The foregoing shall not preclude MDOT from exercising any rights with respect to IDP Submittals and materials, as set forth in this Section 2.7, including the right to modify this RFP following submission of an IDP Submittal to address issues raised by or arising out of an innovative technical or financial solution, which modification(s) may render such innovative technical or financial solution moot or no longer applicable.

Innovative technical and financial solutions from unsuccessful Proposers who have submitted a Stipend Agreement in accordance with Section 4.11 (*Ownership of Proposal Work Product and Reimbursement Payment*) may be presented by MDOT to the Selected Proposer for possible incorporation into the Phase Documents prior to the submission of the Phase P3 Agreement for review and comment in accordance with SF&P Article § 10A-203 of the Annotated Code of Maryland. In addition, following execution of the Phase P3 Agreement and agreement by an unsuccessful Proposer to accept the reimbursement payment under Section 4.11 (*Ownership of Proposal Work Product and Reimbursement Payment*), innovative technical and financial solutions from such unsuccessful Proposer may be presented by MDOT to the Phase Developer or any Section Developer.

2.8 Applicability of Public Information Act

The Maryland Public Information Act ("**PIA**"), §§ 4-101, et seq. of the General Provisions Article of the Annotated Code of Maryland applies to documents submitted to the Solicitation Manager in relation to this RFP.

If a Proposer submits information in its Proposal or in the other documents submitted in relation to this RFP that it believes contains confidential commercial information, confidential financial information, or trade secrets, and that the Proposer believes would not be subject to disclosure under the PIA, the Proposer must do the following:

- (a) clearly mark all confidential commercial information, confidential financial information, or trade secrets as such information is submitted, and include a cover sheet identifying each section and page which has been so marked;
- (b) with respect to each such section and page, include a statement with its Proposal (or with respect to Section 6.5 (*Making Information on Protests Available*), its Protest) justifying the Proposer's determination that the identified information is protected and why such information, upon request, should not be disclosed pursuant to the PIA; and
- (c) defend any action seeking release of the records it believes should not be disclosed; and indemnify and hold harmless the State, MDOT, MDTA, and any of their respective officers, employees, contractors, or consultants, from any judgments awarded against the State, MDOT, or MDTA in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the cancellation or termination of this solicitation or award, and subsequent execution of the Phase P3 Agreement and Section P3 Agreements. In submitting its Proposal, the Proposer agrees that this indemnification survives as long as the protected records are in possession of the State, MDOT, or MDTA.

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

In no event will MDOT, MDTA, nor any of their respective officers, employees, contractors, or consultants, be liable to a Proposer, an Equity Member, a Major Non-Equity Member, or any other member of a Proposer Team for the disclosure of all or a portion of any information or materials submitted in connection with this RFP.

3. **GENERAL REQUIREMENTS FOR PREDEVELOPMENT WORK AND FINANCIAL PROPOSALS**

3.1 **General Submittal Requirements**

Each Proposal shall include a Predevelopment Work Proposal and a Financial Proposal, in separate folders on PCS. The Predevelopment Work Proposal must meet the requirements set forth in Section 3.2 (Predevelopment Work Proposal Submittal Requirements) and Appendix 4 (Predevelopment Work Proposal Instructions) and the Financial Proposal must meet the requirements set forth in Section 3.3 (Financial Proposal Submittal Requirements) and Appendix 5 (Financial Proposal Instructions).

Certain additional requirements for Proposal submissions are provided below.

(a) **Proposal Due Dates and Delivery Instructions**

The Predevelopment Work Proposals and the Financial Proposals shall be delivered to the Solicitation Manager via PCS by the applicable date and time set forth in the Solicitation Schedule (provided that Forms H-1 through H-4 (DBE Forms) shall be submitted by the Financial Proposal Due Date, and certain parts of the Financial Proposal, as expressly identified in this ITP, must be submitted by the Predevelopment Work Proposal Due Date), with the applicable components of the Proposal uploaded separately in the appropriate folders created for each Proposer.

Acknowledgement of receipt of the Predevelopment Work Proposals and the Financial Proposals will be evidenced by the issuance of email receipts by the Solicitation Manager or her designee to the email address of the Proposer Representative. Neither the acknowledgement of receipt of the Predevelopment Work Proposal or the Financial Proposal, nor the acknowledgement of receipt of passwords represents a confirmation that files are complete or have been successfully accessed by MDOT.

(b) **Signatures Required**

The Predevelopment Work Proposal Letter (Form A-1) and the Financial Proposal Letter (Form A-2) shall have Electronic Signatures by the Proposer and all Equity Members. The Predevelopment Work Proposal Letter and the Financial Proposal Letter shall be accompanied by evidence of signatory authorization as specified in Form A-1 (Predevelopment Work Proposal Letter) and Form A-2 (Financial Proposal Letter), respectively.

(c) **Certified Copies**

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

(d) **Proposal File Format**

(i) **Electronic Proposal Submission**

Each electronic submission file constituting the Proposal including discrete ".pdf" files shall include a cover page individually and clearly labeled with the name, e-mail address, and phone number(s) of the Proposer Representative, and be additionally labeled as follows:

"Response to the Request for Proposals for Phase 1 of the I-495 & I-270 Public-Private Partnership Program through a Phase Public-Private Partnership Agreement"

Proposals shall be submitted electronically to the Solicitation Manager via PCS. The Solicitation Manager will not accept facsimile, e-mail, or any other form of electronic or non-electronic submission of Proposals, except through PCS.

(ii) Proposal Security Submission

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

"Response to the Request for Proposals for Phase 1 of the I-495 & I-270 Public-Private Partnership Program through a Phase Public-Private Partnership Agreement"

Proposal Security shall be delivered by hand or express mail courier to the Solicitation Manager during working hours (8:30 A.M. – 5 P.M. Eastern Time) by the Financial Proposal Due Date. The Solicitation Manager will not accept facsimile or e-mail submission of the Proposal Security. The delivery address is:

MDOT State Highway Administration
I-495 & I-270 P3 Office
601 N. Calvert Street
Baltimore, Maryland 21202
Attention: Catherine Agostino

At least twenty-four (24) hours prior to delivery of the Proposal Security to MDOT, the Proposer must submit to the Solicitation Manager details of its delivery of the Proposal Security, including its method of delivery, expected date and time of delivery, any tracking number(s), and any additional information which may assist the Solicitation Manager in receiving the Proposal Security.

Acknowledgement of receipt of Proposal Security will be evidenced by the issuance of a receipt by the Solicitation Manager or her designee.

(e) Consequences of Failure to Follow General Submittal Requirements

Failure to use the appropriate PCS folders or to follow other delivery instructions of this Section 3.1 may result in rejection of the Proposal. The Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if MDOT determines that the Proposer did not follow the instructions set out in this ITP. It is the Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the time due will be rejected without consideration or evaluation.

(f) Language and Currency

All correspondence and information regarding this RFP, including the Pre-Proposal Submittals, clarifications, and proposed innovative technical and financial solutions provided through Proposals and the IDP are to be in the English language. If any original documents required for the Proposal are in any other language, the Proposer shall

provide a certified English translation, which shall take precedence in the event of conflict with the original language.

All required pricing, revenue, and cost information shall be provided in Dollars only. Pricing must indicate the base year (e.g., 2020 dollars, year-of-expenditure dollars) unless the base year is prescribed by the ITP.

(g) **Proposal Validity Period**

Proposals shall initially be valid for a period of 180 days after the Financial Proposal Due Date (the "**Proposal Validity Period**"). No Proposer shall withdraw its Proposal within the initial 180-day period, unless notified by MDOT that (i) no Phase P3 Agreement will be executed by MDOT and MDTA pursuant to this RFP; or (ii) MDOT and MDTA have executed the Phase P3 Agreement with another Proposer, and have received the executed Phase P3 Agreement and other required documents. Any Proposer may elect to extend the validity of its Proposal beyond the time periods set forth above.

This solicitation shall remain in effect until the earlier of (i) the Effective Date under the Phase P3 Agreement and (ii) the date on which MDOT has notified the Proposers in writing that no Phase P3 Agreement will be executed and that the solicitation has been canceled, even if the 180-day Proposal Validity Period has expired.

(h) **No Toll Rate Information**

Proposers shall not include any toll rate information in their Predevelopment Work Proposal or Financial Proposal.

3.2 **Predevelopment Work Proposal Submittal Requirements**

Each Predevelopment Work Proposal shall explain the Proposer's approach to Phase 1 and the Predevelopment Work by (a) responding to the evaluation criteria and objectives of MDOT set out in Sections 3.2(a) through 3.2(e) below (each a "**Primary Evaluation Criteria**"); and (b) providing the information requested, and responding to the questions and instructions set out herein. Each Predevelopment Work Proposal shall also meet the requirements set forth in Appendix 4 (*Predevelopment Work Proposal Instructions*).

Each Predevelopment Work Proposal shall respond to Sections 3.2(a) through 3.2(e) under separate Sections within the Predevelopment Work Proposal as described in Appendix 4 (*Predevelopment Work Proposal Instructions*), and each Section shall not cross refer to other Sections. Sections will be separated from each other by section divider pages, which shall only be labeled "[Proposer Name]: [Appropriate Section Header]" on a blank page and which will not count towards page limits.

Responses to the Primary Evaluation Criteria shall contain concise narrative descriptions, graphic illustrations, drawings, schedule charts, plans, and specifications that will enable MDOT to clearly understand and evaluate the capabilities of the Proposer Team and the benefits of its proposed approach. In its responses, the Proposer should clearly describe any innovative approaches that the Proposer Team will utilize to advance the specific goal. Proposers should discuss their approach to the entire Phase 1 in a comprehensive manner for all Primary Evaluation Criteria unless otherwise stated, but it is anticipated that more detail will be provided for Phase South A and the first section of Phase 1 given the Fall 2022 milestone for Financial Close.

(a) **Delivery Certainty - CRITICAL**

MDOT is seeking a long-term, collaborative partner with an approach to Predevelopment Work that ensures certainty and efficiency in the delivery of improvements for travelers using Phase 1, including by maximizing the limits of Phase South to be delivered with the first section.

- (i) Provide the Proposer's approach to performing the Predevelopment Work through Financial Close of the first section within Phase 1 to maximize value, manage the State's exposure to risk, and evaluate the relative impact of solutions across all goals. – **CRITICAL**
- (ii) Describe the Proposer's partnering approach, including the potential benefits and risks of the approach, and how that will facilitate MDOT's understanding and management of project risks and opportunities throughout the life of the predevelopment, implementation, and operating agreements. Provide examples of two relevant experiences that, if managed unsuccessfully, would have risked project viability. Describe one such experience that the Proposer has experienced during construction and one during operations, and how the Proposer previously has employed the planned partnering approach effectively or how the lessons learned from those critical experiences have informed its approach to Phase 1. Provide quantitative information related to the cost and schedule impacts related to those events and which parties bore the responsibilities for the solutions. – **CRITICAL**
- (iii) Provide a comprehensive section sequencing approach, detailing the limits of each section of Phase South (which must comply with the requirements of Section 1.5 of the Predevelopment Work Requirements) and timing for the Predevelopment Work to reach Financial Close for each section as defined by the Proposer. Include a summary schedule for the Predevelopment Work and the construction of Phase South through to operation in the narrative response to this Section 3.2(a)(iii). A detailed schedule for the Predevelopment Work and the construction of Phase South through to operation shall be included as an Appendix of the Predevelopment Work Proposal and will be evaluated in connection with this criterion. MDOT expects that a greater level of detail will be provided for Phase South A than for Phase South B. – **SIGNIFICANT**
- (iv) Discuss how the Proposer will provide quality assurance and quality control of the Predevelopment Work. Discuss its methodology to identify, eliminate, minimize, and mitigate risk to the State during the Predevelopment Work, and ensure that all requirements of the Predevelopment Work are incorporated and communicated in the section technical proposal developed by the Proposer for the Section P3 Agreements. – **SIGNIFICANT**
- (v) Discuss how the Proposer will ensure consistency and interoperability across the entire Phase 1 and with the parties having future operations and maintenance responsibilities to ensure timely and quality implementation and achievement of long-term performance requirements. – **IMPORTANT**
- (vi) Describe the organizational structure of the Proposer including roles, responsibilities, and personnel/staffing to be provided to ensure the Predevelopment Work will be completed within the schedule and defined milestones. – **IMPORTANT**

(b) **Minimize Impacts - SIGNIFICANT**

MDOT values developing improvements in a manner that is responsible to the community and the environment. MDOT values a partner that will work with all stakeholders, including but not limited to local jurisdictions, property owners, Utility Owners, Maryland-National Capital Park and Planning Commission, Maryland Department of Environment, etc., to avoid and minimize right-of-way, community, Utility, stream, wetlands, waterways, cultural, noise, air quality, and parkland impacts; and mitigate for impacts when not avoidable and to the extent practicable. MDOT values exceptional customer service and an approach which will ensure an excellent user experience and deliver premium transportation alternatives.

- (i) Provide a robust public involvement and communications approach to support MDOT's effort to collaborate with, inform, and educate all stakeholders as part of the Predevelopment Work of Phase 1 and ensure this collaboration and communication continues with the Section Work. – **CRITICAL**
- (ii) Describe the Proposer's approach to provide an excellent user experience and minimize customer service issues for travelers on the Priced Managed Lanes. Include in the Proposer's response a discussion on how the Proposer will ensure tolling system interoperability across Phase 1, how the Proposer will deliver consolidated trip data, images, and optical character recognition for trips within Phase 1, including the quality management processes that will be utilized to ensure the accuracy of this data, and how the Proposer will meet or exceed required key performance indicators (KPI) for tolling (as set out in Table 25-6 (Operating Period Performance) of the Predevelopment Work Requirements) including any relevant past performance to demonstrate that your approach will be successful. - **CRITICAL**
- (iii) Provide a comprehensive approach to further avoid and minimize impacts to right-of-way during the Predevelopment Work, how the Proposer will ensure further avoidance and minimization is included in the Section Work and how the Proposer will ensure any necessary right-of-way is obtained with minimal reliance on eminent domain. – **SIGNIFICANT**
- (iv) Describe the Proposer's approach to adhere to the commitments in a NEPA environmental decision document related to Phase 1, how the Proposer will further avoid and minimize impacts to environmental resources, and how the Proposer will minimize risk in acquiring, modifying, and coordinating all permits and other governmental approvals, including third party agreements, necessary to advance the Section Work through the Predevelopment Work. – **SIGNIFICANT**
- (v) Describe the Proposer's approach to avoiding and minimizing impacts to existing Utility Owners' facilities, and coordinating with Utility Owners, including developing Utility agreements during the Predevelopment Work. Explain how the Proposer will ensure avoidance, minimization, and coordination with the Utility Owners are completed before and during the Section Work to ensure the Section Work is not delayed. – **IMPORTANT**
- (vi) Provide the Proposer's approach to develop improvements that will be sustainable and minimize future impacts to the public, to the users of the Priced Managed Lanes and the users of the GP Lanes, to the environment, and to operations and maintenance. How will the Proposer ensure that the Section Work will provide the necessary quality to minimize future maintenance work with a focus on both the Priced Managed Lanes and the GP Lanes and associated assets to be handed back

to MDOT or other parties at the conclusion of the section construction? – **IMPORTANT**

(c) **Maximizing Value to the State - SIGNIFICANT**

MDOT values an agreement which will best ensure that MDOT can deliver the improvements for the full limits of the P3 Program while not requiring any Maryland Funding and maximizing available funding that can be applied to deliver other sections and phases.

- (i) Discuss the Proposer's approach to developing a solution for each section that meets MDOT's goals in an open, competitive, and transparent cost estimating environment that will assure MDOT is receiving maximum value for each Section P3 Agreement. Discussion should include revenue forecasting, construction pricing, financing, and operations and maintenance pricing and level of design plans, specifications, and other key assumptions. – **CRITICAL**
- (ii) Provide a sample estimate for Class 1 Excavation and Maintenance of Traffic showing how the Proposer will break down direct costs such as labor, equipment, material, trucking, small tools, and supplies, etc., as well as the approach to applying indirect costs and markup associated with the items and any other detailed costs used to develop a fully loaded cost. The costs and markups provided should be illustrative concepts and will not be considered binding or "contractual." The purpose of this sample estimate is to demonstrate that the Proposer's approach to estimating/bidding is open and transparent and will be evaluated for structure of the breakdown rather than costs proposed. The sample estimate shall be excluded from the page limit but will be evaluated in connection with this criterion. – **IMPORTANT**
- (iii) Discuss the Proposer's approach to developing a (sub)contractor selection plan that will allow for competitive pricing from quality (sub)contractors for work that will not be performed by members of the Proposer. How will the Proposer demonstrate (sub)contractor prices are competitive? The Proposer's response must include an explanation of its approach to the selection of a quality Toll Systems Integrator and Toll Systems Operator while also ensuring competitive pricing. – **IMPORTANT**
- (iv) Provide the Proposer's approach to developing, testing, and implementing a tolling strategy that incorporates value to customers. Value includes but is not limited to travel time reliability, facility condition, and long-term operation and maintenance of the Priced Managed Lanes. – **IMPORTANT**

(d) **Opportunity MDOT/Community Benefits - IMPORTANT**

MDOT values a partner that will engage and utilize small, minority, disadvantaged, and veteran-owned businesses and develop and utilize local workforce to the maximum extent practicable to provide opportunities for existing local businesses and residents. MDOT is looking for a partner that will maximize these opportunities in every component of the Predevelopment Work and during the lifespan of the Section Work.

- (i) Describe the Proposer's approach to develop and utilize local workforce to the maximum extent practicable to provide opportunities for local residents both in the Predevelopment Work and the Section Work. – **CRITICAL**

- (ii) Describe the Proposer's comprehensive approach to engage and utilize small, minority, disadvantaged, and veteran-owned local businesses both in the Predevelopment Work and the Section Work. – **SIGNIFICANT**
- (iii) Discuss how the Proposer will work with local contractors and labor unions to develop and maximize community benefits and opportunities for local participation on the Predevelopment Work and Section Work. – **SIGNIFICANT**
- (iv) Describe how the Proposer will ensure compliance, monitoring, and reporting with MBE/DBE goals and on-the-job-training as applicable during the Predevelopment Work and Section Work. – **IMPORTANT**

(e) **Congestion Relief - IMPORTANT**

MDOT is seeking to develop and deliver improvements for travelers of I-495 and I-270 that address congestion, improve trip reliability, and enhance multi-modal mobility and connectivity.

- (i) How will the Proposer ensure the development of regional transit service improvements that complement the Priced Managed Lanes and provide travelers in the corridor the ability to utilize other travel options? How will the Proposer maximize the implementation of regional transit services improvements in the Section Work to provide opportunities for alternative travel? – **CRITICAL**
- (ii) Discuss the Proposer's comprehensive approach to ensure that congestion relief is maximized for those in the GP Lanes over the term of the Section P3 Agreements while ensuring a reliable trip will be provided for those who choose to utilize the Priced Managed Lanes. – **SIGNIFICANT**
- (iii) Discuss how the Proposer will develop a transportation management plan ("**TMP**") during the Predevelopment Work to minimize and mitigate for traffic impacts to the corridor and local system during the implementation of the Section Work. How will the Proposer ensure that this TMP is implemented by the Section Developer? How will the Proposer ensure interface protocols and coordination of schedules and maintenance of traffic with various elements of Phase 1 and adjacent projects, including but not limited to I-495 NEXT, other sections, and other future phase developer(s)? – **IMPORTANT**

3.3 **Financial Proposal Submittal Requirements**

Each Financial Proposal shall meet the requirements set forth in Appendix 5 (*Financial Proposal Instructions*).

3.4 **Requirements to Submit a Responsive Proposal**

The Proposal may not include any qualifications, conditions, exceptions to, or deviations from the requirements of this RFP, except as contained in accepted IDP Submittals. If the Proposal does not fully comply with the instructions and requirements contained in this ITP, including the exhibits and forms, it may be considered non-responsive and rejected.

Such rejection will not result in the forfeiture of the Proposer's Proposal Security.

3.5 **Content, Format, and Organization**

(a) **Format**

One (1) electronic submission each of Volume I and Volume II shall be provided to MDOT as specified in this Article 3, provided that the Proposal Security shall be submitted in accordance with Section 3.1(d)(ii) (*Proposal Security Submission*). Proposers must provide Electronic Signatures on submitted Proposals and forms requiring a signature. Each Proposal shall contain concise written material and (if applicable) drawings enabling a clear understanding and evaluation of the capabilities of the Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of the Predevelopment Work Proposal and Financial Proposal are essential. No page limit applies to appendices, dividers, exhibits, and tables of contents; however, MDOT does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An 8 ½ by 11-inch format (no less than ½ inch margins) is required for typed submissions and an 11 by 17-inch format is required for any drawings, except that any design drawings may not exceed 36 by maximum 120 inches format if included in the Proposal (and such design drawings shall be submitted electronically in Adobe Portable Document Format (.pdf) format and in MicroStation format). Any such design drawings shall be provided at a scale that is readable and such scale shall be shown on the drawings. The detailed schedule submission for the Predevelopment Work and the construction of Phase South that will be submitted in accordance with Section 3.2(a)(iii) (*Delivery Certainty*) shall include the electronic files (.xer) necessary to view and analyze the schedule in Primavera P6 (or any updated version of Primavera in general utilization by industry at the Predevelopment Work Proposal Due Date).

The contents of the Proposals must be submitted electronically and be sequentially numbered. Lines may be single-spaced with the type font size being no smaller than twelve-point, except with respect to tables, graphs, charts (including organizational charts), and maps, for which the type font size being no smaller than nine-point. The use of 11 by 17-inch format for tables, graphics, charts (including organizational charts), and maps is acceptable in the main body of the Proposal. Each 11 by 17-inch page will be considered one page.

(b) Organization

A list showing the required contents and order of the entire Proposal is found in Appendix 3 (*Summary and Order of Proposal Contents*). The Proposal shall be (i) organized in such order and clearly indexed in accordance with Appendix 3 (*Summary and Order of Proposal Contents*), and (ii) prepared by each Proposer to reflect inclusion and order of the Predevelopment Work Proposal and Financial Proposal. Each part of the Proposal shall be clearly titled and shall be submitted without reservations, qualifications, conditions, or assumptions set forth therein. Any failure to provide all the information and all completed forms in the order and format specified, or submittal of a Proposal subject to any reservations, qualifications, conditions, or assumptions, may result in MDOT's rejection of the Proposal or giving it a lower rating. All blank spaces in the Proposal forms must be filled in as appropriate. No change shall be made in the Proposal forms by the Proposer.

The name of each electronic submission ".pdf" file shall include either Volume I or Volume II with the Proposer's name. The electronic submissions must be organized to correspond to the Section requirements set forth in Appendix 3 (*Summary and Order of Proposal Contents*). Proposers may elect to submit single indexed ".pdf" submissions for each of Volume I and Volume II, or provide a series of discrete ".pdf" files, formatted to correspond to the Section requirements set forth in Appendix 3 (*Summary and Order of*

Proposal Contents). If Proposer elects to provide a series of discrete ".pdf" files, file names and order must follow the organization set forth in the table in Appendix 3 (*Summary and Order of Proposal Contents*).

(c) [Reserved]

(d) Predevelopment Work Proposal

The Predevelopment Work Proposal shall be contained in one volume, as more fully described in Appendix 4 (*Predevelopment Work Proposal Instructions*). The Predevelopment Work Proposal shall not exceed the page limitation set forth in Article 2 of Appendix 4 (*Predevelopment Work Proposal Instructions*). Any pages exceeding this limit will not be considered.

The Predevelopment Work Proposal (including any tables, graphics, charts, drawings, and documents) described in Section 3.5(a) (*Format*) shall be sequentially numbered and clearly addressed to the Solicitation Manager as provided herein, and labeled "[Proposer Name]: Predevelopment Work Proposal for Phase 1 of the I-495 & I-270 P3 Program." Any attachments must be clearly labeled as accompanying the Predevelopment Work Proposal.

Proposers shall provide one (1) electronic submission of the Predevelopment Work Proposal including all the required attachments and forms. The electronic submissions shall be in a searchable .pdf format or Microsoft Excel (as applicable); provided, however, that corporate, partnership, joint venture, and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements, and limited liability company operating agreements) need not be submitted in searchable .pdf format. None of the submitted electronic files shall be locked to prevent copying or printing. Proposers must submit Volume I in an unencrypted (not password protected) format.

(e) Financial Proposal

Except as expressly provided otherwise, one (1) electronic submission of the Financial Proposal (with the exception of the Proposal Security which shall be submitted in accordance with Section 2.4 of Appendix 5 (*Financial Proposal Instructions*)), together with the financial capacity information in searchable Adobe Portable Document Format or Microsoft Excel (as applicable), shall be delivered to the Solicitation Manager via PCS. The submissions shall be labeled "[Proposer Name]: Financial Proposal for Phase 1 of the I-495 & I-270 P3 Program." Proposers may elect to submit Volume II in an encrypted (password protected) format, provided no non-standard software is required to access it. Proposers that elect to protect their Volume II submission must inform the Solicitation Manager via e-mail with the password used to protect the electronic submissions prior to the Financial Proposal Due Date (except with respect to the Financial Proposal information required to be submitted under Section 2.1(b) through Section 2.1(d) of Appendix 5 (*Financial Proposal Instructions*) for which the password will be required prior to the Predevelopment Work Proposal Due Date), and failure to provide a valid password by the applicable date and time, or the use of non-standard software shall be deemed a failure to deliver the Financial Proposal on time.

3.6 **Modifications, Withdrawals, and Late Submittals**

(a) Modifications to a Proposal

After submission of its Predevelopment Work Proposal but before the Predevelopment Work Proposal Due Date, a Proposer may modify its Predevelopment Work Proposal in writing by submitting such modified Predevelopment Work Proposal to the Solicitation Manager via PCS with an email confirmation. After submission of its Financial Proposal but before the Financial Proposal Due Date, a Proposer may modify its Financial Proposal in writing by submitting such modified Financial Proposal to the Solicitation Manager via PCS with an email confirmation. The modification shall conform in all respects to the applicable requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Predevelopment Work Proposal or Financial Proposal, and shall specifically state that the modification supersedes the previous Predevelopment Work Proposal or Financial Proposal, and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so MDOT can accurately identify the final Predevelopment Work Proposal or Financial Proposal. The modification must contain complete Proposal sections, complete pages, or complete forms as described in Appendix 4 (Predevelopment Work Proposal Instructions) and Appendix 5 (Financial Proposal Instructions). Line item changes will not be accepted.

(b) Withdrawal of Proposals

A Proposer may withdraw its Proposal at any time prior to the Financial Proposal Due Date by means of a written request signed by its Proposer Representative. Such written request shall be delivered electronically via e-mail to the Solicitation Manager. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Predevelopment Work Proposal or Financial Proposal provided that the relevant component of the Proposal is received prior to the applicable date and time set forth in the Solicitation Schedule. A withdrawal of a Proposal in accordance with this Section 3.6(b) prior to the Financial Proposal Due Date shall not result in the forfeiture of the Proposal Security.

No Proposal may be withdrawn on or after the Financial Proposal Due Date and any attempt to do so without MDOT's written consent will result in a forfeiture of the Proposer's Proposal Security as liquidated damages in accordance with Section 3.7(b) (Forfeiture of Proposal Security).

(c) Late Proposals

MDOT will not consider any late Proposals. Proposals and modifications not requested by MDOT received after the applicable date and time set forth in the Solicitation Schedule for submission of the relevant part of the Predevelopment Work Proposal and Financial Proposal will be rejected and purged electronically unopened without consideration or evaluation. Proposers are solely responsible for assuring that the Solicitation Manager receives their electronic Proposal submissions by the applicable date and time set forth in the Solicitation Schedule. MDOT shall not be responsible for any delays in delivery beyond the control of MDOT.

3.7 **Proposal Security** Delivery of Proposal Security

- (i) As security for its commitment to enter into the Phase P3 Agreement in accordance with the requirements of this RFP and its Proposal commitments, each Proposer shall submit to MDOT security in the form of Form J-1 (Proposal Bond) or Form J-2 (Form of Letter of Credit (Proposal)) (in each case, the "**Proposal Security**").

- (ii) The Proposer shall provide as part of its Financial Proposal one (1) original of the Proposal Security and three (3) certified copies of the Proposal Security enclosed in a single envelope labeled "[Proposer Name]: Proposal Security for Phase 1 of the I-495 & I-270 P3 Program." The original of the Proposal Security shall be stamped "original" in the single envelope with the three (3) certified. The Solicitation Manager will not accept facsimile or e-mail submission of the Proposal Security.
- (iii) The Proposer shall provide Proposal Security in an aggregate amount equal to \$5 million. The Proposer may submit more than one (1) payment bond in the form of Form J-1 (Proposal Bond) or letter of credit in the form of Form J-2 (Form of Letter of Credit (Proposal)) as its Proposal Security; provided that the amount of all such Proposal Security will equal \$5 million in the aggregate.
- (iv) The Proposal Security must be issued by an Eligible Security Issuer, and the Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. If, at any time following the Proposer's submission of its Proposal Security to MDOT, any issuer ceases to be an Eligible Security Issuer (or is determined by MDOT not to be an Eligible Security Issuer), the Proposer shall promptly notify MDOT in writing via email of such change (or, if applicable, MDOT shall notify the Proposer), and within fifteen (15) days of such notice, the Proposer shall deliver to MDOT new Proposal Security from a replacement Eligible Security Issuer. Upon MDOT's receipt of such replacement Proposal Security, MDOT shall promptly return the replaced Proposal Security to the Proposer.

(b) Forfeiture of Proposal Security

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

- (i) if the Proposer withdraws, repudiates, or otherwise indicates in writing that it will not meet one or more commitments made in its Proposal (without MDOT's written consent);
- (ii) if MDOT disqualifies the Proposer pursuant to Sections 1.14(c)(i) (No Improper Influence) or (iii) (Additional Rules of Conduct);
- (iii) following notification by MDOT to the Proposer that such Proposer is the Selected Proposer and any of the following occur:
 - (A) the Selected Proposer fails to negotiate in good faith as expressly described in Sections 5.1(c) through (f) (Finalization of Phase P3 Agreement and Closing);
 - (B) [reserved];
 - (C) the Effective Date does not occur within ten (10) Business Days after the MDOT Secretary, MDTA Board, and BPW have each approved the Phase P3 Agreement (the "**Effective Date Deadline**," as the same may be extended pursuant to Section 5.1 (Executing the Phase P3 Agreement)), unless that failure is directly attributable to one or more of the circumstances set forth in clauses (aa) through (jj) below, and those circumstances are not caused in whole or in part by the acts, omissions,

negligence, fault, recklessness, or willful misconduct of the Selected Proposer:

- (aa) MDOT's insistence upon terms or conditions for any documents that are inconsistent with this ITP and the form of Phase P3 Agreement included in this RFP;
- (bb) MDOT's cancellation of the solicitation or decision not to execute the Phase P3 Agreement with the Selected Proposer and to end negotiations after the Selected Proposer has engaged in good faith negotiations;
- (cc) the MDOT Secretary's failure to approve the Phase P3 Agreement;
- (dd) MDTA Board's failure to approve the Phase P3 Agreement;
- (ee) BPW's failure to approve the Phase P3 Agreement;
- (ff) MDOT or MDTA's failure to execute the Phase P3 Agreement within ten (10) Business Days after approval of the Phase P3 Agreement has been received from the MDOT Secretary, MDTA Board, and BPW;
- (gg) MDOT or MDTA's failure to provide any other deliverable MDOT or MDTA (as applicable) is required to deliver to the Phase Developer as a condition precedent to the Effective Date;
- (hh) an unresolved pending protest filed pursuant to Article 6 (Protest Procedures) (unless MDOT and MDTA have elected to undertake execution of the Phase P3 Agreement irrespective of such protest, in which case, this Section (hh) shall not apply);
- (ii) the issuance of any preliminary or permanent injunction or temporary restraining order or other similar order, legal restraint or prohibition by a Governmental Entity of competent jurisdiction under Applicable Law that would prohibit execution of the Phase P3 Agreement or materially prohibit performance by MDOT, MDTA or the Phase Developer under the Phase P3 Agreement; or
- (jj) MDOT or MDTA's failure to comply with any other conditions required by the Act necessary for execution of the Phase P3 Agreement.

MDOT will use reasonable efforts to keep the Selected Proposer updated as to the status of approval of the Phase P3 Agreement by the MDOT Secretary, the MDTA Board and BPW.

For purposes of this Section 3.7(b), the Proposer's obligation to achieve the Effective Date under the Phase P3 Agreement shall be satisfied when the Proposer has executed and delivered to MDOT the Phase P3 Agreement, including the documents described in Article 5 (*Conditions Precedent to MDOT and MDTA Signing this Agreement*) of the Phase P3 Agreement, and any other documents required under this ITP. Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the foregoing.

(c) Proposal Security Forfeiture as Liquidated Damages

The Proposers acknowledge and agree that the Proposal Security payable pursuant to Section 3.7(b) is in the nature of liquidated damages (and not a penalty) and represents a genuine and reasonable estimate of the loss that will be suffered by MDOT as a result of any event detailed in Section 3.7(b), and is fair and reasonable to compensate MDOT for losses it will incur as a result of such an event, including:

- (i) additional costs of administering the solicitation of the P3 Program; and
 - (ii) delay to the delivery of the P3 Program, and loss of competition and potential best value to the general public.
- (d) Return of Proposal Security
- (i) MDOT will retain the Proposal Security of each Proposer until the earliest to occur of the following:
 - (A) the Effective Date has been achieved;
 - (B) MDOT has terminated the RFP Process and canceled this RFP; and
 - (C) the expiration of such Proposer's Proposal Validity Period (as it may have been extended in accordance with this ITP).
 - (ii) Following the occurrence of any of the events specified in Section 3.7(d)(i), MDOT will return the one (1) original and three (3) certified copies of the Proposal Security of each Proposer within fifteen (15) days, except any Proposal Security drawn by MDOT in accordance with the terms of this ITP; provided that MDOT may elect, in its sole discretion, to return any Proposer's Proposal Security at an earlier date.
- (e) Performance Security for Predevelopment Work

As a condition precedent to the Effective Date of the Phase P3 Agreement, the Selected Proposer will be required to deliver the performance security set out in the Phase P3 Agreement.

4. **PROPOSAL EVALUATION PROCESS**

4.1 **Overview**

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

The Proposal evaluation process will include the following series of steps: (a) a determination of whether the Proposer is responsible as required by the Act, (b) a determination of whether a Proposal is responsive and a review of each Proposal for pass/fail criteria, (c) evaluation of the Predevelopment Work Proposal and the Financial Proposal, and (d) determination of the Selected Proposer. The Selected Proposer will then be determined in accordance with Section 4.10(e) (Determination of Selected Proposer). Further, the process may include a trade-off analysis, a request for BAFOs, the establishment of a Competitive Range (as defined in Section 4.10(b) (Competitive Range)), and a negotiations phase with the Selected Proposer.

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

4.2 **Responsibility Review**

(a) Responsibility of the Proposer

SF&P Articles § 10A-202(c) and (d) of the Annotated Code of Maryland state the following regarding "responsibility":

- (i) For any private entity that responds to the public notice of solicitation, a reporting agency shall make a responsibility determination.
- (ii) If a private entity is composed of multiple subentities or partners, the reporting agency shall make a responsibility determination for each subentity or partner owning 20% or more of the entity.

(b) Further, SF&P § 10A-101(h) states that "Responsibility determination" means the determination by a reporting agency that a private entity that responds to a solicitation for a public-private partnership:

- (i) has the capacity in all respects to perform fully the requirements of a public-private partnership agreement; and
- (ii) possesses the integrity and reliability that will ensure good faith performance.

If MDOT determines that the Proposer is not responsible, the Proposer will be ineligible for selection for award.

4.3 **Responsiveness and Pass/Fail Review**

(a) General

As part of the pass/fail review in this Section 4.3, MDOT will review the Proposal submitted by a Proposer (i) for the responsiveness of the Proposal to the requirements set forth in this ITP; (ii) for conformance to the ITP instructions regarding organization and format; (iii) for minor nonconformities, irregularities, and apparent clerical mistakes; and (iv) based on the pass/fail criteria set forth below.

Any Proposal that fails to pass on any of the pass/fail portions of the evaluation will not be eligible for recommendation for award and will be considered unresponsive.

MDOT may request written clarifications, confirmations, or corrections from a Proposer regarding minor nonconformities, irregularities, and apparent clerical mistakes. MDOT may, in its sole discretion, disregard or waive minor nonconformities, irregularities, and apparent clerical mistakes.

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

In order for its Predevelopment Work Proposal to be further evaluated as set forth in this Article 4, a Proposer must obtain a "pass" on all pass/fail items under Section 4.3(b) (*Predevelopment Work Proposal – Pass/Fail*), except that MDOT may commence further evaluation of the Predevelopment Work Proposal pending submittal of Forms H-1 through H-4 (*DBE forms*) required by Appendix 4 (*Predevelopment Work Proposal Instructions*) not later than the Financial Proposal Due Date. In order for its Financial Proposal to be further evaluated as set forth in this Article 4, a Proposal must obtain a "pass" on all pass/fail items under Section 4.3(c) (*Financial Proposal- Pass/Fail*).

(b) Predevelopment Work Proposal – Pass/Fail

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

- (i) the Predevelopment Work Proposal contains all Proposer information, certifications, signed statements and documents, and forms required by Appendix 4 (*Predevelopment Work Proposal Instructions*), and does not identify any material adverse change to any member of the Proposer Team since the Proposer's submission of the SOQ that is not acceptable to MDOT;
- (ii) (A) the Proposer Team, including Major Non-Equity Members, Equity Members, and Key Personnel listed in the Proposer's SOQ, has not changed since the Proposer's submission of the SOQ; or (B) the Proposer has previously advised MDOT of a change in accordance with Section 1.18 (*Changes in Proposer's Organization and Key Personnel*); MDOT has consented to such change; and the Proposal includes a true and correct copy of MDOT's written consent thereto;
- (iii) neither the Proposer nor any other entity that has submitted Form C (*Proposal Affidavit*) in accordance with this ITP (including their respective affiliates) is currently disqualified, removed, debarred, or suspended from performing or bidding on work for the U.S. federal government, any state, or territory of the U.S., or any State or local government; and
- (iv) the Predevelopment Work Proposal contains no information related to the Financial Proposal criteria.

(c) Financial Proposal – Pass/Fail

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

- (i) the Proposer has delivered Proposal Security in the form of a complete, properly-executed bond or letter of credit that complies with the requirements of Section 2.4 of Appendix 5 (Financial Proposal Instructions);
- (ii) the Financial Proposal contains each of the materials, submittals, forms, certifications, and other documents required by and completed in accordance with Appendix 5 (Financial Proposal Instructions);
- (iii) the Financial Proposal demonstrates that there have been no material adverse changes in the financial condition, liabilities, corporate form, or market capitalization of any Equity Member since the date of the submission of the Proposer's SOQ, that have an impact on the ability of such Equity Member to fulfil its obligations as set forth in the Proposer's Predevelopment Work Proposal and Financial Proposal, which have not been mitigated to the reasonable satisfaction of MDOT; and
- (iv) the Financial Proposal includes Proposal Equity IRR, Developer Closing Fee Percentage, Predevelopment Cost Cap, D&C General Conditions Cost Percentage, Contractor Markup Percentage, and Renewal Work General Conditions Cost Percentage in amounts that are not greater than the maximum values identified in Sections 4.7(a), 4.7(b), and 4.7(d)-(g), and, if the Proposal includes Development Rights Fees, the aggregate amount of the Development Rights Fees is not greater than the maximum value identified in Section 4.7(c).

4.4 **Organization of Evaluation Committees**

For each Proposer that is deemed responsible, and each Proposal that is deemed responsive and meets all pass/fail criteria, MDOT will review and evaluate such Proposal in accordance with this Section 4.4, provided that MDOT may commence its review and evaluation of the Predevelopment Work Proposal in accordance with this Section 4.4 between the Predevelopment Work Proposal Due Date and the Financial Proposal Due Date, provided that the Proposal is responsive and meets all the pass/fail criteria with respect to the parts of the Proposal required to be submitted by the Predevelopment Work Proposal Due Date.

MDOT anticipates utilizing one or more evaluation teams and an evaluation committee to review and evaluate the Proposals in accordance with the evaluation criteria. MDOT will assemble evaluation teams and an evaluation committee. The evaluation teams and evaluation committee will review the Proposals to verify that all requirements of this RFP have been met and to evaluate the Proposal based on the evaluation criteria.

Each evaluation team will be given Volume I of the Proposal or portions thereof for the rating of each evaluation criterion as applicable. Volume II of the Proposal will be provided only to the evaluation team reviewing and evaluating the Proposer's Financial Proposal. Confidential information will be reviewed in accordance with Section 2.8 (Ownership of Proposal and Applicability of Public Information Act). Once initial evaluations are completed by the evaluation teams, the evaluation committee shall first complete the final Predevelopment Work Proposal evaluation ratings and then complete the final Financial Proposal evaluations for each Proposal. The evaluation committee will then determine its recommendation for Selected Proposer and provide its recommendation as to the Selected Proposer to the selection committee for review. The selection committee will validate the evaluation committee's recommendation and proceed as set forth in Section 4.10(e) (Determination of Selected Proposer).

Once the Proposal evaluations are complete, MDOT shall notify the Selected Proposer.

At various times during the deliberations, the Solicitation Manager may request additional information or clarification from a Proposer, or may request the Proposer to verify or certify certain aspects of its Proposal. The scope, length, and topics to be addressed in any such clarification response shall be prescribed by the Solicitation Manager.

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

4.5 **Proposal Evaluation**

After completion of, or concurrently with, the responsibility, responsiveness, and pass/fail review, the Predevelopment Work Proposals and the Financial Proposals will be evaluated as set forth in Section 4.4 (*Organization of Evaluation Committees*).

MDOT's goal is to create a fair and uniform basis to evaluate the Proposals in compliance with all applicable legal requirements governing the RFP Process. Proposals will be evaluated according to the criteria described in Sections 3.2 (*Predevelopment Work Proposal Submittal Requirements*) and 4.7 (*Financial Proposal Evaluation*).

MDOT reserves the right to use and consider any information provided in the Proposal, as deemed appropriate by MDOT, to assist in the evaluation of each criterion.

The evaluation process will include appropriate procedures and safeguards to ensure that evaluation committee recommendations will be transparent and not be affected by bias.

4.6 **Predevelopment Work Proposal Evaluation**

The Predevelopment Work Proposals will be qualitatively evaluated based on the criteria described in the Primary Evaluation Criteria set out in Sections 3.2(a) to 3.2(e). The evaluation committee will review each Primary Evaluation Criteria and determine an overall rating for each Predevelopment Work Proposal.

Each Predevelopment Work Proposal will be given an adjectival rating with respect to each Primary Evaluation Criteria and an overall adjectival rating. The following adjectival ratings shall be used in both the qualitative evaluations of each Primary Evaluation Criteria and the overall rating of the Predevelopment Work Proposal:

- **Exceptional** - The Proposer has demonstrated a complete understanding of the subject matter, and the Proposal advances the applicable goals and objectives of MDOT set out in this RFP to an exceptional level. The Proposal communicates an outstanding commitment to partnering, quality, and innovation by a highly skilled team in all aspects of the Predevelopment Work. The Proposal outlines a strong approach to mitigating project specific risks and inspires confidence that all Predevelopment Work and Phase P3 Agreement requirements will be met or exceeded. The Proposal contains significant strengths and essentially no weaknesses, if any.
- **Good** - The Proposer has demonstrated a strong understanding of the subject matter, and the Proposal advances the applicable goals and objectives of MDOT set out in this RFP to a high level. The Proposal communicates a commitment to partnering, quality, and innovation by an experienced team in all aspects of the Predevelopment Work. The Proposal defines an approach to mitigating project specific risks with little risk that the Proposer would fail to meet the requirements of the Predevelopment Work and Phase P3

Agreement. The Proposal contains strengths that outweigh weaknesses that are minor and correctable without cost or schedule impact to the Predevelopment Work.

- **Acceptable** - The Proposer has demonstrated an adequate understanding of the subject matter, and the Proposal meets the applicable goals and objectives of MDOT set out in this RFP. The Proposal communicates a commitment to partnering, quality, and innovation by a qualified team for the Predevelopment Work. Phase 1 specific risks have been identified, and the Proposer has a reasonable probability of successfully completing the requirements of the Predevelopment Work and Phase P3 Agreement. The Proposal contains strengths that are offset by weaknesses that are correctable with minor cost or schedule impact to the Predevelopment Work.
- **Unacceptable** - The Proposer has not demonstrated an understanding of the subject matter, and the Proposal presents an approach which does not address the applicable goals and objectives of MDOT set out in this RFP. The Proposal fails to meet stated requirements or lacks essential information. The commitment to quality and innovation is not adequate, with Predevelopment Work performed by unqualified or unproven teams. Specific risks are not addressed, and the Proposal generates little confidence that the Predevelopment Work and Phase P3 Agreement requirements can be met. The Proposal contains deficiencies that are not correctable without significant cost or schedule impact to the Predevelopment Work or a major revision to the Proposal.

Ratings of Exceptional, Good, and Acceptable may also contain a plus (+) or a minus (-) to further differentiate the strengths or limitations of a Proposal and more clearly differentiate the Proposals.

The Primary Evaluation Criteria, and the submittal and sub-criteria applicable to each Primary Evaluation Criteria described in Sections 3.2(a) to 3.2(e), has each been assigned relative importance by MDOT. Relative importance is defined as:

- (a) Critical,
- (b) Significant and
- (c) Important.

Sections 3.2(a) to 3.2(e) list the Primary Evaluation Criteria in descending order of importance. The submittals and sub-criteria applicable to each Primary Evaluation Criteria in descending order of importance below the relevant Primary Evaluation Criteria.

The criteria are weighted based on relative importance as follows:

"Critical" has approximately three (3) times the relative importance as Important; and

"Significant" has approximately two (2) times the relative importance as Important.

Each of the five (5) Primary Evaluation Criteria will be evaluated based on the Proposers response to that Primary Evaluation Criteria, including all submittals and sub-criteria described under the relevant Section for that Primary Evaluation Criteria. Information referenced from other Sections of the Proposal will not be considered.

If any Predevelopment Work Proposal receives a rating of Unacceptable for any Primary Evaluation Criterion, the entire Proposal shall not be eligible for award.

MDOT reserves the right to use and consider any information provided in the Proposal as deemed appropriate by MDOT to assist in the evaluation of each Primary Evaluation Criterion and sub-criterion.

4.7 Financial Proposal Evaluation

The Financial Proposals will be evaluated based on the criteria described in this [Section 4.7](#). The seven (7) criteria (set out in [Sections 4.7\(a\)](#) through [\(g\)](#)) will be combined by adding their point values as set forth below, with the sum of the criteria point values equaling the Financial Proposal evaluation score.

No aspect of the Financial Proposal (including the Development Rights Fee) may be subject to any assumptions, qualifications, or conditions (except for the Key Assumptions, and only to the extent that any relief is granted under the Phase P3 Agreement), and MDOT may not award a point value to any part of the Financial Proposal that is so qualified. No aspect of the Financial Proposal (including the Development Rights Fee) may be subject to a qualification that a conditionally accepted IDP shall be accepted, and any assumption by the Proposer that a conditionally accepted IDP shall ultimately be accepted shall be at the Proposer's sole risk.

Financial Proposal Score
Financial proposal score will be calculated as the sum of [a] + [b] + [c] + [d] + [e] + [f] + [g]

Table 4.7: Financial Proposal Evaluation Criteria and Point Value

Criteria	Point Value
Proposal Equity IRR	[a] points based on Proposal Equity IRR calculated in accordance with Section 4.7(a)
Developer Closing Fee Percentage	[b] points based on Developer Closing Fee Percentage calculated in accordance with Section 4.7(b)
Development Rights Fees	[c] points per million Dollars of Development Rights Fees
Predevelopment Cost Cap	[d] points based on the Predevelopment Cost Cap calculated in accordance with Section 4.7(d)
D&C General Conditions Cost Percentage	[e] points based on D&C General Conditions Cost Percentage calculated in accordance with Section 4.7(e)
Contractor Markup Percentage	[f] points based on Contractor Markup Percentage calculated in accordance with Section 4.7(f)
Renewal Work General Conditions Cost Percentage	[g] points based on Renewal Work General Conditions Cost Percentage calculated in accordance with Section 4.7(g)

(a) Proposal Equity IRR

The Proposal Equity IRR will be assigned a point value of [a] for the purposes of the Financial Proposal evaluation according to [Table 4.8](#). For Proposal Equity IRRs in-

between levels shown in [Table 4.8](#), a point value will be determined using linear interpolation. Proposers should review the definition of Proposal Equity IRR (i.e., pre-tax, without any planned or unplanned refinancing or increase to leverage over the term of the agreement) and [Section 2.2\(a\)](#) of [Appendix 5](#) (*Predevelopment Work Instructions*) for further information and to ensure they are submitting the appropriate value.

The Proposal may not include a Proposal Equity IRR in an amount greater 17.00%.

Table 4.8: Proposal Equity IRR point values

Proposal Equity IRR	Point Value
Less than 10.0%	457
10.0%	457
11.0%	350
12.0%	266
13.0%	196
14.0%	127
15.0%	76
16.0%	35
17.0%	0
Greater than 17.0%	Not Allowed

(b) Developer Closing Fee Percentage

The Developer Closing Fee Percentage will be assigned a point value of [b] for the purposes of the Financial Proposal evaluation according to the following formula:

$$\text{Developer Closing Fee Percentage Points} = (1.0\% - (\text{Developer Closing Fee Percentage})) * 4000$$

The Proposal may not include a Developer Closing Fee Percentage greater than 1.0%.

Proposers should review [Section 2.2\(b\)](#) of [Appendix 5](#) (*Financial Proposal Instructions*) for further information.

(c) Development Rights Fees

The aggregate of the Development Rights Fees will be assigned a point value [c] for the purposes of the Financial Proposal evaluation at a rate of 1 point per million Dollars of Development Rights Fee. The aggregate of the Development Rights Fees included in the Proposal may not exceed \$145 million.

Proposers should review [Section 2.2\(c\)](#) of [Appendix 5](#) (*Financial Proposal Instructions*) for further information. Proposers should also note that, if they require the benefit of:

- (i) the provisions set out in Section 53 of the Section P3 Agreement Term Sheet that permit an adjustment to the Base Case Gross Revenue (as defined in the Section P3 Agreement Term Sheet) in the event that the Alternative Equity IRR for any Section of Phase South A is less than the Proposal Equity IRR; or
- (ii) Section 11.1(e) (*Development of Section P3 Agreement and Section Technical Provisions*) of the Phase P3 Agreement,

then they may not include a Development Rights Fee in their Proposal.

(d) Predevelopment Cost Cap

The Predevelopment Cost Cap will be assigned a point value of [d] for the purposes of the Financial Proposal evaluation according to the following formula:

$$\text{Predevelopment Cost Cap Points} = \frac{(\$100,000,000 - (\text{the Predevelopment Cost Cap}))}{\$1,000,000}$$

The Predevelopment Cost Cap included in the Proposal may not exceed \$100,000,000.

Proposers should review Section 2.2(d) of Appendix 5 (*Financial Proposal Instructions*) for further information.

(e) D&C General Conditions Cost Percentage

The D&C General Conditions Cost Percentage will be the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs and Contractor Markup Costs) for each section of the Phase on account of D&C General Conditions Costs in the D&C Costing Model required in Section 1.20.2 of the Predevelopment Work Requirements.

The D&C General Conditions Cost Percentage will be assigned a point value [e] for the purposes of the Financial Proposal evaluation according to the following formula:

$$\begin{aligned} \text{D\&C General Conditions Cost Percentage Points} \\ = (14.5\% - (\text{D\&C General Conditions Cost Percentage})) * 3000 \end{aligned}$$

The Proposal may not include a D&C General Conditions Cost Percentage in an amount greater than 14.5%.

Proposers should review the definitions of D&C General Conditions Cost Percentage and D&C General Conditions Costs, and Section 2.2(e) of Appendix 5 (*Financial Proposal Instructions*) for further information and to ensure they are submitting the appropriate value.

(f) Contractor Markup Percentage

The Contractor Markup Percentage will be the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs and Contractor Markup Costs) for each section of the Phase on account of Contractor Markup Costs in the D&C Costing Model required in Section 1.20.2 of the Predevelopment Work Requirements.

The Contractor Markup Percentage will be assigned a point value [f] for the purposes of the Financial Proposal evaluation according to the following formula:

$$\text{Contractor Markup Percentage Points} = (19.5\% - (\text{Contractor Markup Percentage})) * 3000$$

The Proposal may not include a Contractor Markup Percentage in an amount greater than 19.5%.

Proposers should review the definition of Contractor Markup Costs and Contractor Markup Percentage, and Section 2.2(f) of Appendix 5 (*Financial Proposal Instructions*) for further information and to ensure they are submitting the appropriate value.

(g) Renewal Work General Conditions Cost Percentage

The Renewal Work General Conditions Cost Percentage will be the maximum percentage that may be applied to the Renewal Work Costs for each section of the Phase on account of Renewal Work General Conditions Costs in the O&M Costing Model required in Section 1.21.2 of the Predevelopment Work Requirements.

The Renewal Work General Conditions Cost Percentage will be assigned a point value [g] for the purposes of the Financial Proposal evaluation according to the following formula:

$$\begin{aligned} & \text{Renewal Work General Conditions Cost Percentage Points} \\ & = (14.5\% - (\text{Renewal Work General Conditions Cost Percentage})) * 200 \end{aligned}$$

The Proposal may not include a Renewal Work General Conditions Cost Percentage in an amount greater than 14.5%.

Proposers should review the definition of Renewal Work General Conditions Costs, Renewal Work Costs, and Renewal Work General Conditions Cost Percentage as well as the definition of each of the component costs allowable within the Renewal Work General Conditions Costs, and Section 2.2(g) of Appendix 5 (Financial Proposal Instructions), for further information and to ensure they are submitting the appropriate value.

4.8 Proposal Commitments

Each Proposal will be evaluated based on the level of commitment provided by the Proposer. Tentative or vague commitments will be given less weight than definite or precise commitments. For example, phrases such as "we may" or "we are considering" will be given less consideration in the evaluation process since they do not indicate a firm commitment but may have some value to the extent that they demonstrate the Proposer's understanding of the Predevelopment Work or approach. Phrases such as "we will" or "we shall" indicate a firm commitment. Any commitment related to the amounts specified under Section 4.7 (Financial Proposal Evaluation) and submitted in Form G (Financial Proposal Form) will be deemed to be a firm, binding commitment of the Proposer independent of the language used to describe such commitment in the Proposal.

Each Proposal shall be considered commitments for which the Proposer will be held responsible in accordance with the terms of the Phase P3 Agreement.

4.9 Other Evaluation Considerations

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

4.10 Establishment of the Competitive Range, Requests for Best and Final Offers, and Determination of Selected Proposer

(a) Communications

MDOT may engage in communications with the Proposers after receipt of Proposals, allowing Proposers to provide clarifications to their Proposals or otherwise address issues that might prevent the Proposal from being placed in the Competitive Range. This process will be initiated by delivery of a written request from MDOT to the Proposer

identifying the information needed, and a date and time by which the information must be provided. The Proposer shall provide the requested information in writing by the date and time indicated. If the requested information is not timely received, the Proposer's ratings may be adversely affected and the Proposal may be declared unacceptable.

MDOT may waive minor nonconformities, irregularities, and apparent clerical mistakes.

(b) Competitive Range

The term "**Competitive Range**" means a list of the Proposals, based on Predevelopment Work Proposal ratings and evaluations of Financial Proposals, that are judged by MDOT to be reasonably eligible of being selected for award.

Proposals that will be included in the Competitive Range include any Proposal that:

- (i) passes the pass/fail evaluation factors (after review of supplemental information or clarification provided by the Proposer in response to a MDOT request); and
- (ii) included a Predevelopment Work Proposal that, after the initial evaluation, is rated at least "Acceptable-" for all Primary Evaluation Criteria.

MDOT will determine the Competitive Range after a careful analysis of the Predevelopment Work Proposals and Financial Proposals.

(c) Discussions

MDOT reserves the right to make an award without Discussions. However, MDOT may, at its sole discretion, conduct Discussions (that are written or oral exchanges) with the Proposers in the Competitive Range.

(i) Purpose

If MDOT decides to engage in Discussions, the areas of Discussion may include the following:

- (A) attempting to resolve any uncertainties and obtaining any significant additional understanding concerning the Proposal;
- (B) resolving any suspected mistakes by calling them to the attention of the Proposers as specifically as possible without disclosing information concerning other competing Proposals or evaluation process;
- (C) providing the Proposers a reasonable opportunity to submit any other supplemental information to their Proposals; and
- (D) facilitating execution of a contract that is most advantageous to the State.

(ii) Procedures

The following specific procedures will apply to Discussions:

- (A) Discussions will only be conducted with Proposers in the Competitive Range. If Discussions are held, they will be held with all Proposers in the Competitive Range;

- (B) information disclosed by Proposers in the Competitive Range during Discussions will not be made public until after execution of the Phase P3 Agreement;
- (C) Discussions may be written or oral, and more than one (1) round of Discussions may be conducted; and
- (D) no disclosure will be made of any information derived from a Proposal of, or from discussions with, another Proposer.

(iii) Prohibited Contact

During Discussions, MDOT personnel involved in Phase 1 shall not engage in the following conduct:

- (A) revealing a Proposer's approach to the Predevelopment Work, including unique technology, innovative and unique uses of commercial items, or any information that would compromise a Proposer's intellectual property to another Proposer;
- (B) revealing any details of a Proposer's Financial Proposal without that Proposer's permission;
- (C) revealing the names of individuals providing reference information about a Proposer's past performance; or
- (D) revealing selection information in violation of MDOT's procurement policies and the laws of the State.

(d) Proposal Revisions

Although MDOT reserves the right to hold Discussions and request proposal revisions and BAFOs when in the best interest of the State, MDOT is under no obligation to do so. MDOT may make its selection and award based on the initial Proposals as submitted.

At the conclusion of Discussions (if held), MDOT may request a proposal revision or BAFOs from all Proposers in the Competitive Range to provide Proposers an opportunity to revise their Proposals, including correction of any weaknesses, minor nonconformity, irregularity, and apparent clerical mistake identified to the Proposers by MDOT following initial evaluation of the Proposals. The request for proposal revision or BAFOs will allow adequate time, as determined by MDOT, for the Proposers to revise their Proposals. Upon receipt of the proposal revisions or BAFOs, the process of evaluation will be repeated. The process will consider the revised information and re-evaluate and revise ratings as appropriate. All terms and conditions of this ITP applicable to Proposals shall also be applicable to BAFOs, except as otherwise specified in the request for BAFOs.

MDOT may require more than one series of proposal revision submissions followed by a request for a BAFO submission, but only if MDOT makes a written determination that it is in the State's best interest to conduct additional Discussions following receipt of proposal revisions or to change MDOT's requirements and require another BAFO submission.

(e) Determination of Selected Proposer

Once the evaluation of the Predevelopment Work Proposal and the Financial Proposal has been completed, the evaluation committee, using a trade-off analysis between the Predevelopment Work Proposal evaluation and the Financial Proposal evaluation, will determine which Proposer's submittal is most advantageous to the State. **When determining which Proposer's submittal is most advantageous to the State, the relative importance of the Predevelopment Work Proposal and the Financial Proposal will be considered approximately equal.** Award may be made to the Proposer with the higher Financial Proposal score even if its Predevelopment Work Proposal rating is not the highest rated or to the Proposer with the higher Predevelopment Work Proposal rating even if its Financial Proposal score is not the highest. In performing this trade-off analysis, the evaluation committee will consider the facts and circumstances of the solicitation and utilize its technical and financial judgment and discretion in considering strengths, weaknesses, and deficiencies of each Proposal to determine a recommendation of the Proposal that is most advantageous to the State. This recommendation will then be presented to the selection committee, who will utilize their technical and financial judgment and discretion to make a final determination of most advantageous to the State considering all factors set forth in this RFP.

Once the evaluation committee has completed the above trade-off analysis of each Proposal, the selection committee shall (i) validate the evaluation committee's recommendation of the most advantageous Proposal to the State, and authorize the notification of the Selected Proposer and the commencement of the finalization of the Phase Documents with such Proposer pursuant to this Section 4.10(e); (ii) replace the Selected Proposer (but not the ratings) along with providing the necessary justification for the modification; or (iii) remand the recommendation back to the evaluation committee for further review and consideration.

If the MDOT Secretary and MDTA Executive Director do not believe that the negotiations with the Selected Proposer will be successful, MDOT and MDTA may suspend or cease negotiations with the Selected Proposer and commence negotiations with another Proposer or terminate the solicitation process.

If selected by MDOT and MDTA as the Selected Proposer, the Proposer may form a separate entity to act as the Phase Developer; provided, however, that such entity is formed by and comprised solely of the Equity Members identified in the Proposal. Until such Phase Developer is formed and enters into the Phase P3 Agreement, the Proposer shall remain responsible for negotiating and finalizing the Phase P3 Agreement in accordance with this ITP.

4.11 **Ownership of Proposal Work Product and Reimbursement Payment**

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

(a) **Payment of MDOT Reimbursement**

A reimbursement in the amount of up to \$500,000 for the value of the Proposal Work Product, with certification of expenditures in that amount, will be paid to each unsuccessful Proposer that (i) is responsible, (ii) submits a responsive and timely Proposal in accordance with the requirements of this ITP, (iii) is not selected as the

Selected Proposer, and (iv) executes the Stipend Agreement, in the form of Form N (Stipend Agreement) in exchange for MDOT and MDTA's ownership of the Proposer's Proposal Work Product and ideas within.

MDOT may decide to pay a reimbursement to an unsuccessful Proposer that submits a Proposal that is not responsive in accordance with the requirements of this ITP but otherwise meets the requirements listed in (i) through (iv) of the above paragraph. In such event, MDOT reserves the right to determine the amount payable, in its sole discretion, to the unsuccessful Proposer, not to exceed \$500,000, for the value of the Proposal Work Product.

Any reimbursement will be payable pursuant to the terms and conditions of a Stipend Agreement. No reimbursement will be paid unless the Proposer executes by Electronic Signature and delivers the Stipend Agreement with its Predevelopment Work Proposal.

(b) Payment of Reimbursement in the Event of Certain Failures to Reach Effective Date

In the event the Effective Date is not achieved and such failure is directly attributable to (i) any events identified in Section 3.7(b)(iii)(C) or (ii) MDOT's or MDTA's failure to satisfy any of the conditions set out in Article 5 (*Conditions Precedent to MDOT and MDTA Signing this Agreement*) of the Phase P3 Agreement for which MDOT or MDTA is responsible, MDOT will pay a reimbursement in an amount of up to \$500,000 for the value of the Proposal Work Product, with certification of expenditures in that amount, to the Selected Proposer in exchange for MDOT and MDTA's ownership of the Selected Proposer's Proposal Work Product and the ideas within.

Any reimbursement will be payable pursuant to the terms and conditions of a Stipend Agreement. No reimbursement payment will be made unless the Selected Proposer executes by Electronic Signature and delivers the Stipend Agreement with its Predevelopment Work Proposal.

(c) Reimbursement Payment in the Event of Cancellation Prior to Financial Proposal Due Date

In the event that the solicitation is cancelled prior to the Financial Proposal Due Date, Proposers will be provided with the opportunity, at their option, of attending an interview, and delivering to MDOT and MDTA the Proposal Work Product from their Proposal preparations to date. There is no specific format required for such Proposal Work Product. If (i) a Proposer chooses to attend an interview, delivers its Proposal Work Product, and signs a modified Stipend Agreement (to be provided by MDOT), and (ii) MDOT agrees to accept such Proposal Work Product, MDOT shall pay to such Proposer an amount that MDOT, in its sole discretion, deems to be appropriate consideration for the value of the Proposal Work Product. Such amount shall not exceed \$500,000. No portion of the reimbursement amount will be paid in the event a Proposer chooses not to attend the interview or chooses not to deliver its Proposal Work Product.

(d) Proposal Work Product

In consideration for MDOT's agreement to make payment as provided in the Stipend Agreement, without any further compensation or consideration to the Proposer, each Proposer agrees that MDOT and MDTA shall have ownership over (i) all ideas and Proposal Work Product in its Proposal (with the exception of Proprietary Intellectual Property); and (ii) all other Proposal Work Product (with the exception of Proprietary Intellectual Property) that is not required to be returned to the Proposer under this RFP

(including the IDP innovative technical and financial solutions, written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of the Proposer) received by MDOT or MDTA during the solicitation. In addition, by accepting reimbursement under the Stipend Agreement, each Proposer waives any and all claims against MDOT and MDTA for their use of all Proposal Work Product received from the Proposer.

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

In accordance with Section 2.7(g) (*Confidentiality*), MDOT will have the right to inform the Selected Proposer regarding the contents of the unsuccessful Proposals after notification of the Selected Proposer, and the Phase Documents may incorporate the above-described Proposal Work Product, ideas, or concepts based thereon. Upon the Proposer's receipt of payment hereunder, this right shall extend to allow MDOT and MDTA to use such Proposal Work Product, ideas, and concepts in the performance of their functions. A Proposer's acceptance of the reimbursement shall operate as a release and waiver by the Proposer of any and all claims challenging the solicitation process, award, or cancellation of the solicitation process.

(e) Costs Not Reimbursable

Any and all costs of preparing the Proposal and any costs incurred at any time before award and execution of the Phase P3 Agreement, including costs incurred for any interviews, costs associated with post-selection deliverables, and costs relating to the Effective Date and finance process, shall be borne by the Proposer, except for any reimbursement paid to Proposers in accordance with this Section 4.11.

(f) Audit

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

5. **FINALIZATION OF THE PHASE P3 AGREEMENT AND CLOSING**

5.1 **Executing the Phase P3 Agreement**

- (a) After being notified that it is the Selected Proposer, MDOT, MDTA, and the Selected Proposer will finalize the Phase P3 Agreement without further negotiation or amendment, except as may be permitted pursuant to this Section 5.1.
- (b) However, MDOT and MDTA, in their sole discretion, may initiate limited negotiations as described herein after such date.
- (c) By submitting its Proposal, each Proposer commits to enter into good faith negotiations with MDOT and MDTA to finalize the Phase P3 Agreement included in this RFP, without any revisions except with respect to the following:
 - (i) minor changes, additions, and modifications necessary to create a complete and legally binding contract;
 - (ii) additions or modifications to those provisions that require information regarding the Selected Proposer's corporate and financing structure, provided that such additions or modifications are consistent with the terms of the form of Phase P3 Agreement and this ITP, in MDOT's reasonable discretion;
 - (iii) additions or modifications required in order to incorporate terms or concepts, including IDP Submittals provided through the IDP, provided in the Proposal submitted by the Selected Proposer that have been approved or required by MDOT for inclusion in the Phase P3 Agreement;
 - (iv) additions or modifications required to complete the schedules, exhibits, appendices, or forms in the Phase P3 Agreement; and
 - (v) incorporation of innovative technical and financial solutions provided through the IDP or other Proposal Work Product from unsuccessful Proposers who have submitted a Stipend Agreement in accordance with Section 4.11 (*Ownership of Proposal Work Product and Reimbursement Agreement*) into the Phase P3 Agreement.
- (d) Notwithstanding Section 5.1(c), MDOT may (in accordance with the Act) agree to negotiate certain terms of the Phase P3 Agreement with the Selected Proposer, including incorporation of an unsuccessful Proposers' Proposal Work Product. Any decision as to whether or when to commence such negotiations is at MDOT's sole discretion.
- (e) The Selected Proposer will be deemed to have failed to engage in good faith negotiations with MDOT and MDTA and shall forfeit its Proposal Security if the Selected Proposer:
 - (i) fails to attend or actively participate in reasonably scheduled negotiation meetings with MDOT or MDTA; or
 - (ii) insists upon terms or conditions for any documents to be negotiated or provided by the Selected Proposer under this ITP (Phase Documents) that are inconsistent with this RFP.
- (f) Failure by a Selected Proposer to agree to inclusion of innovative technical or financial solutions from unsuccessful Proposers or other Proposal Work Product from unsuccessful

Proposers shall not be deemed a failure to engage in good faith negotiations that will entitle MDOT to draw upon the Proposal Security.

- (g) The Proposer also agrees that if notified that it is the Selected Proposer, it will submit, within five (5) Business Days, Forms H-5, H-6, and H-7 in accordance Section 1.20(b) (*Participation of Small, Minority, Disadvantaged, and Women-Owned Businesses*).
- (h) Once the Phase P3 Agreement has been finalized among MDOT, MDTA, and the Phase Developer, it will be submitted for review in accordance with SF&P Article § 10A-203 of the Annotated Code of Maryland. Subsequently, the Phase P3 Agreement will be submitted for approval by the MDOT Secretary, MDTA Board, BPW, and FHWA. The Effective Date will occur no later than the Effective Date Deadline. MDOT may extend the deadline for the Effective Date by written notice to the Selected Proposer but may not extend the Effective Date beyond the Proposal Validity Period described in Section 3.1(g) (*Proposal Validity Period*) without mutual agreement by the Selected Proposer. If the Selected Proposer fails to achieve the execution of the Phase P3 Agreement prior to the Effective Date Deadline (unless as a direct result of MDOT's or MDTA's failure to satisfy any of the conditions set out in Article 5 (*Conditions Precedent to MDOT and MDTA Signing this Agreement*) of the Phase P3 Agreement for which MDOT or MDTA is responsible), MDOT may revoke its selection of the Selected Proposer, draw on the Selected Proposer's Proposal Security as and to the extent set out in Section 3.7(b) (*Forfeiture of Proposal Security*), and may take any other action described in Article 7 (*MDOT and MDTA Reserved Rights*).
- (i) As part of the finalization of the Phase P3 Agreement, MDOT, MDTA, and the Phase Developer shall complete all conditions set out in Article 5 (*Conditions Precedent to MDOT and MDTA Signing this Agreement*) of the Phase P3 Agreement.
- (j) This RFP permits a Proposer to identify and form an entity other than the Proposer to enter into the Phase P3 Agreement as the Phase Developer. However, if the entity identified as the proposed Phase Developer in the Proposal is not formed as required by this RFP or fails to comply with the requirements set forth in this RFP, the entities that signed the Proposal shall have the joint and several obligation to enter into the Phase P3 Agreement themselves. The business form of the Phase Developer and any entities that will have joint and several liability under the Phase P3 Agreement or that will provide a performance guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of incorporation, bylaws, or equivalent documents) must be consistent with the requirements of the Phase Documents and provide for continuation of the Phase Developer in the event of bankruptcy or withdrawal of any of its members.
- (k) Further, MDOT may initiate negotiations with a Proposer other than the Selected Proposer if: (i) negotiations with the Selected Proposer are unsuccessful or (ii) the Selected Proposer does not provide sufficient information or timely feedback to finalize the Phase P3 Agreement in accordance with the Solicitation Schedule.

5.2 **Withdrawal of Selected Proposer Status**

Pursuant to Article 7 (*MDOT and MDTA Reserved Rights*), MDOT may formally end negotiations with the Proposer selected as the Selected Proposer and revoke its status as Selected Proposer. In such case, MDOT reserves the right, and shall be entitled, to:

- (a) reject all Proposals;

- (b) issue a request for Proposal revisions to all Proposers; or
- (c) proceed with the Proposal of another Proposer to negotiate and finalize (or attempt to negotiate and finalize) a Phase P3 Agreement with that Proposer in accordance with Section 5.1 (*Executing the Phase P3 Agreement*).

6. **PROTEST PROCEDURES**

6.1 **Definitions**

For purposes of this Article 6, the following terms are defined below:

- (a) **"Contracting Officer"** means the I-495 and I-270 P3 Program Director.
- (b) **"Interested Party"** means a Proposer that may be aggrieved by the solicitation, failure to be selected as the Selected Proposer, or a Protest.
- (c) **"Protest"** means a complaint relating to this RFP or the subsequent award of the Phase P3 Agreement.
- (d) **"Protester"** means an Interested Party who files a Protest as set forth herein.

6.2 **Form and Filing**

To expedite handling of Protests, the envelope should be labeled "Protest" and be addressed to the Contracting Officer at the Solicitation Manager's mailing address indicated in Section 1.14(a) (Solicitation Manager). The Protest shall be written and include as a minimum the following:

- (a) the name and address of the Protester;
- (b) appropriate identification of the solicitation (i.e. "Phase 1 of the I-495 & I-270 P3 Program RFP"), and, if the Phase P3 Agreement has been awarded, its number if known;
- (c) a detailed legal and factual written statement of reasons for the Protest;
- (d) supporting exhibits, evidence, or documents to substantiate the reasons for the Protest; and
- (e) the relief requested.

6.3 **Time for Filing**

- (a) A Protest based upon alleged improprieties in the Final RFP shall be filed no later than ten (10) days prior to the Financial Proposal Due Date (unless an Addendum is issued within such fifteen (15) day period, in which case such Protests shall be filed no later than 2:00 p.m. on the fifth (5th) day after receipt of such Addendum).
- (b) An unsuccessful Proposer that submitted a Proposal may request a debrief with MDOT within three (3) days after notification of not being selected as the Selected Proposer. Upon written request, the Solicitation Manager may provide a debrief to such Proposer.
- (c) A Protest shall be submitted by a Proposer within five (5) days after notification of not being selected as the Selected Proposer if a debrief is not requested by the Proposer, or within five (5) days after a debrief has occurred with MDOT or within five (5) days after notification that MDOT will not hold a debrief with such Proposer.
- (d) In cases other than those covered in this Section 6.3, Protests shall be filed not later than five (5) days after the basis for Protest is known or should have been known, whichever is earlier.

- (e) The term "filed" as used in this Section 6.3 means receipt by the Contracting Officer at the mailing address specified in Section 1.14(a) (*Solicitation Manager*). Protesters are cautioned that Protests shall be delivered on or before the date and time specified in Section 6.3(a) to the Contracting Officer. Protests submitted electronically will not be considered. A Protest received by the Contracting Officer after the time limits prescribed in this Section 6.3 may not be considered.
- (f) A Protest is received when it is received at the location and within the time limits specified herein.

6.4 **Requested Information Time for Filing**

Any additional information or substantiation requested by the Contracting Officer shall be submitted within five (5) days after receipt of notification or such other time as the Contracting Officer may specify in order to expedite consideration of the Protest. Failure of any Protester to comply with a request for information or substantiation by the Contracting Officer may result in a resolution of the Protest without consideration of any response to the request that is not timely filed.

6.5 **Making Information on Protests Available**

Upon written request, the Contracting Officer shall make available to any Interested Party information submitted by the Protester that bears on the substance of the Protest except when information is confidential, or otherwise is permitted or required to be withheld by law. Protesters who wish to keep information submitted by them confidential shall so request by specifically identifying the information within documents in accordance with Sections 2.8(a) and (b) (*Ownership of Proposal and Applicability of Public Information Act*).

6.6 **Negotiation with Protester and Interested Parties**

The Contracting Officer may conduct discussions and, if appropriate, negotiations with the Protester or any other Interested Party, and may resolve the Protest by agreement with the Protester and any one or more Interested Parties. The agreement shall be in writing and shall be subject to the approval of the Office of the Attorney General of Maryland.

6.7 **Decision by the Contracting Officer**

- (a) A decision on a Protest shall be made by the Contracting Officer in writing as expeditiously as possible after receiving all relevant, requested information.
- (b) The decision of the Contracting Officer shall be reviewed by the appropriate legal counsel.
- (c) The decision shall include:
 - (i) a description of the controversy;
 - (ii) a statement of the decision, with supporting material; and
 - (iii) if the Protest is not sustained, a paragraph substantially as follows:

"This is the final decision of the Contracting Officer. This decision may be appealed to the MDOT Secretary or his designee. If you decide to take such an appeal, you must file written notice of appeal to the Secretary within five (5) days from the date you receive this decision."

- (d) The Contracting Officer shall furnish a copy of the decision to the Protester and all other Interested Parties, by certified mail, return receipt requested, or by any other method that provides evidence of its receipt.

6.8 Time for Filing Appeal

- (a) Protesters are required to seek resolution regarding the basis for their Protests initially with the Contracting Officer. Within the time frames set forth in Section 6.3 (Time for Filing), an Interested Party may file an appeal with the MDOT Secretary no later than 2:00 p.m. on the fifth (5th) day after receipt of notice of the final decision of the Contracting Officer.
- (b) An appeal received by the MDOT Secretary after the time prescribed in Section 6.8(a) may not be considered unless it was timely received or was sent by registered or certified mail not later than the third (3rd) day before the final date for filing an appeal as specified in Section 6.8(a). A date affixed by postage meter will not be considered as evidence of the actual mailing date. The only acceptable evidence to establish the date of mailing shall be the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. If the postmark is illegible, the appeal shall be deemed to have been filed when received by the MDOT Secretary.

6.9 Request for Hearing

Protestors may request a hearing before the MDOT Secretary at the time an appeal is timely filed. A Protester shall, upon timely request, have the right to present oral statements, call and cross-examine witnesses, and present evidence; and to have the proceeding recorded. Discovery will not be permitted in connection with the proceeding. The MDOT Secretary may additionally request written submissions.

6.10 Right to Proceed with Solicitation and Phase P3 Agreement

MDOT reserves the right to proceed with the solicitation and Phase P3 Agreement in the face of a Protest as long as the MDOT Secretary makes a determination that proceeding without delay is necessary to protect substantial State interests.

6.11 Right to Legal Remedies

Following the receipt of the decision of the MDOT Secretary, which shall be considered the final agency action, the Protester may pursue any available judicial remedies provided for under State law.

7. **MDOT AND MDTA RESERVED RIGHTS**

In connection with this solicitation, each of MDOT and MDTA reserves to itself all rights (which rights shall be exercisable by MDOT or MDTA in its sole discretion) available to it under the Act, P3 Regulations, and Applicable Law, including without limitation, and with or without cause, the right to:

- (a) modify the solicitation process to address Applicable Law or the best interests of MDOT, MDTA, and the State;
- (b) revise the scope, type, structure, and specific terms of this RFP;
- (c) modify the scope of Phase 1 or any subsequent phases during the solicitation process;
- (d) develop Phase 1, including any portion thereof, in any manner that it, in its sole discretion, deems necessary;
- (e) cancel this RFP in whole or in part at any time prior to the execution by MDOT and MDTA of a Phase P3 Agreement, without incurring any cost obligations or liabilities, except as otherwise provided in Section 4.11 (*Ownership of Proposal Work Product and Reimbursement Payment*);
- (f) issue a new request for proposals after withdrawal of this RFP;
- (g) terminate this solicitation and commence a new solicitation for part or all of Phase 1;
- (h) not select any Proposer responding to this RFP;
- (i) reject any and all submittals, responses, and Proposals received at any time;
- (j) modify all dates set or projected in this RFP;
- (k) terminate evaluations of Proposals received at any time;
- (l) issue Addenda, supplements, and modifications to this RFP;
- (m) appoint evaluation teams and committees to review Proposals, make recommendations, and seek the assistance of outside experts in Proposal evaluation;
- (n) suspend or terminate negotiations at any time, recommence negotiations with the Selected Proposer after negotiations have been suspended, elect not to commence Phase P3 Agreement negotiations with any responding Proposer, or engage in negotiations with other than the highest ranked Proposer;
- (o) modify the solicitation process (with appropriate notice to Proposers);
- (p) require confirmation of information furnished by a Proposer, require additional information from a Proposer concerning its Proposal, and require additional evidence of qualifications to perform the work described in this RFP;
- (q) seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP;
- (r) add or delete Proposer responsibilities from the information contained in this RFP;

- (s) waive minor nonconformities, irregularities, and apparent clerical mistakes in a Proposal resulting in a non-conforming Proposal, or permit clarifications or supplements by a Proposer to correct minor nonconformities, irregularities, and apparent clerical mistakes;
- (t) waive or permit corrections to data submitted with any response to this RFP until such time as MDOT declares in writing that a particular stage or phase of its review of the responses to this RFP has been completed and closed;
- (u) disclose information contained in a Proposal to the public as described herein or in the Predevelopment Work Proposal Letter or Financial Proposal Letter;
- (v) approve or disapprove changes in the Key Personnel identified in the SOQ;
- (w) approve or disapprove changes in the Proposer's organization;
- (x) consider information relating to a Proposer or Proposal based on information outside of the Proposal available to the evaluators, including the evaluators' personal experiences or knowledge;
- (y) request BAFOs as specified herein;
- (z) offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties), if applicable;
- (aa) not issue a notice to proceed after execution of the Phase P3 Agreement;
- (bb) disqualify any Proposer that changes its submittal without MDOT's approval;
- (cc) disqualify any Proposer under this RFP or during the evaluation period for violating any rules or requirements of the solicitation set forth in this RFP, or in any other communication from MDOT;
- (dd) determine a Competitive Range and conduct discussions with Proposers in the Competitive Range;
- (ee) add to the list of Proposers any Respondent that submitted an SOQ in order to replace a previous Proposer that withdraws or is disqualified from participation in this solicitation;
- (ff) develop some or all of Phase 1 itself; and
- (gg) exercise any other right reserved or afforded to MDOT or MDTA under this RFP, the Act, P3 Regulations, or other Applicable Law.

This RFP does not commit or bind MDOT or MDTA to enter into any contract or proceed with the solicitation described herein. Except as expressly set forth in Section 4.11 (Ownership of Proposal Work Product and Reimbursement Payment), MDOT and MDTA assume no obligations, responsibilities, or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to or responding to this RFP. All of such costs shall be borne solely by each Proposer.

In no event shall MDOT or MDTA be bound by, or liable for, any obligations with respect to Phase 1 until such time (if at all) as the Phase P3 Agreement has been authorized and executed by MDOT and MDTA, and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not

apply to the obligations of MDOT and MDTA to the Proposers during the solicitation process, which obligations are expressly set forth in this RFP. In submitting a Proposal in response to this RFP, the Proposer is specifically acknowledging these disclaimers.

APPENDIX 1

Definitions

Definitions of capitalized terms used and not otherwise defined in this ITP are set out in Exhibit 1 (*Definitions*) to the Phase P3 Agreement.

"**Act**" is defined in Section 1.1 (*Introduction*).

"**Addenda**" or "**Addendum**" is defined in Section 1.2(c)(i) (*RFP Documents*).

"**Additional Section Equity Investors**" is defined in Section 1.3 (*Scope of Work*).

"**Allowed Costs**" is defined in Exhibit 1 to the Phase P3 Agreement.

"**Alternative Equity IRR**" is defined in Exhibit 1 to the Phase P3 Agreement.

"**American Legion Bridge**" or "**ALB**" means the American Legion Memorial Bridge spanning the Potomac River on I-495.

"**Applicable Law**" means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process), or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity which is applicable to Phase 1, the RFP Process, or any Proposal.

"**ARDS**" is defined in Section 1.12(a) (*I-495 & I-270 Managed Lanes Study*).

"**Associated Company**" means, with respect to a relevant company, a company which is a subsidiary, a holding company, or a company that is a subsidiary of the ultimate holding company of that relevant company, and in the case of the Section Developer, includes each of the Section Developer Equity Members.

"**BAFO**" is defined in Section 2.2(b) (*Issuance of Addenda to this RFP*).

"**BPW**" is defined in Section 1.2(a) (*Introduction*).

"**Business Day**" means any day that is not a Saturday, a Sunday, a State public holiday, or a federal public holiday.

"**Capital Beltway Accord**" is defined in Section 1.5 (*Capital Beltway Accord*).

"**CFR**" is defined in Section 1.12(a) (*I-495 & I-270 Managed Lanes Study*).

"**COMAR**" means the Code of Maryland Regulations.

"**Competitive Range**" is defined in Section 4.10(b) (*Competitive Range*).

"**Construction PM**" means the construction project manager as submitted by the Proposer as part of its SOQ.

"**Contracting Officer**" is defined in Section 6.1 (*Definitions*).

"**Contractor Markup Costs**" means general and administrative indirect overhead costs and profit applied to self-performed and subcontracted D&C work for each section. Contractor Markup Costs shall

include all markups applied to all cost categories including labor, equipment, materials, and subcontract costs.

"Contractor Markup Percentage" is described in Section 2.2(f) of Appendix 5 (*Financial Proposal Instructions*).

"DBE" is defined in Section 1.9 (*Opportunity MDOT and Community Benefits and Community Engagement*).

"D&C" means design and construction.

"D&C Cost" means the design and construction cost included in each Committed Section Proposal, including right-of-way costs.

"D&C General Conditions Cost Percentage" is described in Section 2.2(e) of Appendix 5 (*Financial Proposal Instructions*).

"D&C General Conditions Costs" means direct project overhead costs, without contingencies, incurred for supervision and administration of the D&C work, inclusive of all self-performed and subcontracted D&C work. For the avoidance of doubt, D&C General Conditions Costs shall include the following items required for D&C work, excluding O&M work, for each section:

- bonds, all types;
- non-payroll insurance;
- licenses, permits, and fees;
- mobilization/demobilization, including all construction preparatory/dissolution operations which involve the movement of personnel and equipment to/from the Phase 1 site;
- material and equipment handling, transportation, and storage;
- subcontractor mobilization/demobilization, including all construction preparatory/dissolution operations that involve the movement of personnel and equipment to/from the Phase 1 site;
- staffing including, but not limited to, oversight, supervision, administration, management, and safety;
- site security;
- subsistence (covers any expenses for staff outside of the travel, lodging, relocation, per diem);
- travel;
- lodging;
- relocation/housing expenses;
- per diem;
- vehicles for project oversight including, but not limited to, registrations, fuel, maintenance, and insurance;
- technology and communications;
- project safety expense;
- temporary facilities including, but not limited to, rent, security and access control, utilities, office equipment, office expenses, furniture, insurance, and taxes;
- temporary staging areas, fuel depots, and storage yards; and
- miscellaneous including escalations, certifications for staff required for the work, and incidentals.

"DEIS" is defined in Section 1.12(a) (*I-495 & I-270 Managed Lanes Study*).

"Design PM" means the design project manager as submitted by the Proposer as part of its SOQ.

"Designer" means the member of the Proposer Team with primary responsibility for design and engineering delivered under the Predevelopment Work.

"Developer Closing Fee Percentage" means the percentage included by the Proposer in its Financial Proposal that will be multiplied by the total amount of Project Financing for each section of Phase 1 to determine the maximum closing fees that are permitted to be paid to the Phase Developer or Section Developer in connection with Financial Close of that section as described in Section 2.2(b) of Appendix 5 (Financial Proposal Instructions).

"Development Rights Fees" means the amounts included by the Proposer in its Proposal as the cash fee(s) to be paid to MDOT at Financial Close of each section in Phase South A (or in other circumstances as specified in the Phase P3 Agreement).

"Discussions" means the discussions described in 23 CFR 636.402.

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

"Draft RFP" means the draft Requests for Proposals for Phase 1 issued by the State in accordance with the Solicitation Schedule.

"Effective Date" means the effective date under the Phase P3 Agreement.

"Effective Date Deadline" is defined in Section 3.7(b)(iii)(C) (*Forfeiture of Proposal Security*).

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

"Element" means an individual structure, component, system, or subsystem of a section of Phase 1, which shall, when used in relation to the O&M work, include at a minimum a breakdown into those items described in the column headed "Element" in the Predevelopment Work Requirements.

"Eligible Security Issuer" means

- (a) with respect to a letter of credit, an approved bank or financial institution by the State Treasurer's Office with a long-term, unsecured debt ratings of not less than "A/A2" from one of the major national rating agencies (Fitch Ratings, Moody's Investor Service, and Standard & Poor's Ratings Group); and
- (b) with respect to a demand guarantee or any surety bond, an entity meeting the requirements of Applicable Law, licensed or authorized to do business in the State rated at least A by Standard and Poor's and "A" (excellent or above) according to A.M. Best's Financial Strength Rating and XII or better according to A.M. Best's Financial Size Rating,

that in each case is not an affiliate of the Proposer.

"eMaryland Marketplace Advantage" means the website: <https://emma.maryland.gov/>.

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

"Equity Funding Letter" is described in Section 2.1(c) of Appendix 5 (*Financial Proposal Instructions*).

"Equity Member" means each Person that is identified as holding (or after the execution of the Phase P3 Agreement will hold) an equity interest in the Proposer or Phase Developer as identified in the

relevant Proposer's SOQ (or, if applicable, under Section 1.18(b) (*Changes in the Proposer's Organization*)).²

"ETTM" means electronic toll and traffic management.

"ETTM Systems" has the meaning assigned to such term in the Tolling Services Agreement Term Sheet.

"Exempt Vehicles" has the meaning assigned to such term in the Tolling Services Agreement Term Sheet.

"E-ZPass InterAgency Group" or **"IAG"** means the E-ZPass InterAgency Group (IAG) which operates the largest, most successful toll interoperability network in the world. As of the date of this ITP, the IAG is comprised of 31 toll entity members (39 operating toll agencies) across 18 states. Maryland tolling is governed by the IAG adopted protocols – <https://e-zpassiag.com/>.

"FHWA" is defined in Section 1.12(a) (*I-495 & I-270 Managed Lanes Study*).

"Final RFP" means the last RFP for Phase 1 issued by MDOT in accordance with the Solicitation Schedule.

"Financial Close" has the meaning assigned to such term in the Section P3 Agreement Term Sheet.

"Financial Proposal" means the part of the Proposal described in Appendix 5 (*Financial Proposal Instructions*).

"Financial Proposal Due Date" means the date and time by which the Financial Proposal must be submitted as shown in the Solicitation Schedule.

"Financial Proposal Letter" means a letter submitted by the Proposer with its Financial Proposal in the form of Form A-2 (*Financial Proposal Letter*).

"GAAP" is defined in Section 2.1(d)(i) of Appendix 5 (*Financial Proposal Instructions*).

"Governmental Entity" means the government of the United States of America, the State and Commonwealth of Virginia, the cities and counties within the State and Commonwealth of Virginia and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission, or other authority exercising executive, legislative, judicial, regulatory, administrative, or taxing functions of, or pertaining to, the government of the United States of America, the State, the Commonwealth of Virginia, the cities or counties within the State, and the cities or counties within the Commonwealth of Virginia. "Governmental Entity" includes MDOT and MDTA acting in a regulatory or administrative capacity but does not include MDOT or MDTA acting in their capacity as party to the Phase P3 Agreement, the Section P3 Agreement, or any other agreement.

"GP Lanes" means the general purpose traffic lanes (in either or both directions) that are separate from the adjacent Priced Managed Lanes, open to all users, and not subject to tolls.

"Guarantor" means an entity, typically related or the parent company, that intends to provide financial support to an Equity Member to assist in developing and delivering Phase 1.

² **Note to Proposers:** The Equity Member is referred to as the "PD Equity Member" under the Phase P3 Agreement.

"Handback Requirements" means the requirements set forth in the Predevelopment Work Requirements.

"HOV" has the meaning assigned to such term in the Tolling Services Agreement Term Sheet.

"I-70" means Interstate Highway 70 from its intersection with I-695 to its intersection with US Route 15.

"I-270" means Interstate Highway 270 (Dwight D. Eisenhower Memorial Highway) from I-495 to I-70.

"I-270 East Spur" has the meaning given to that term in the Predevelopment Work Requirements.

"I-270 Pre-NEPA Activities" means those planning activities that include:

- (a) identifying the project's purpose and need;
- (b) developing a range of preliminary alternatives to advance into NEPA;
- (c) reviewing the existing and future traffic volumes, and existing environmental conditions; and
- (d) engaging the public in pre-NEPA planning activities.

"I-270 West Spur" has the meaning given to that term in the Predevelopment Work Requirements.

"I-370" means Interstate Highway 370 from I-270 to the western end of Maryland Route 200 (MD 200, Intercounty Connector).

"I-495" means Interstate Highway 495 (Capital Beltway) from the vicinity of George Washington Memorial Parkway of the Woodrow Wilson Bridge, across and including the ALB, to its interchange with I-270.

"IAA" is defined in Section 1.4(c) (*Roles of MDOT and MDTA*).

"IDP" is defined in Section 2.1(b)(iii) (*Kick-Off Meeting*).

"IDP Submittal" is defined in Section 2.7(e) (*IDP Submittals*).

"IDP Work Session" is defined in Section 2.7(f)(i) (*General*).

"IFRS" is defined in Section 2.1(d)(i) of Appendix 5 (*Financial Proposal Instructions*).

"Interested Party" is defined in Section 6.1 (*Definitions*).

"ITP" is defined in Section 1.1 (*Introduction*).

"Key Personnel" means the Phase Developer PM, Construction PM, Design PM, and Lead Finance Manager.

"Kick-Off Meeting" is defined in Section 2.1(b)(iii) (*Kick-Off Meeting*).

"Lead Contractor" means the member of the Proposer Team with primary responsibility for work related to design and construction, and other technical development work with respect to the Predevelopment Work, including design management.

"Lead Finance Manager" means the member of the Proposer Team who is responsible for the development of the finance plan and associated debt and equity commitment.

"Lead Project Developer" means the member of the Proposer Team with primary responsibility for leading the overall Predevelopment Work for Phase 1 and ensuring all requirements developed during the Predevelopment Work are incorporated into the Section P3 Agreements. The Lead Project Developer must have toll road operation and maintenance, and congestion management experience as well as project development experience. It is not required that the Lead Project Developer will be the same entity as the Phase Developer or the Section Developers.

"Lender" means any Person that:

- (a) provides Section Debt, together with their successors and assigns; or
- (b) is appointed by any Person referred to in clause (a) as its agent or trustee in connection with the Section Debt.

"Limits of Disturbance" means a boundary established during the NEPA process representing the maximum extent of impact to be created by the work.

"Major Non-Equity Member" means the member(s) of the Proposer Team identified in the SOQ as the Lead Contractor, Designer, and Lead Project Developer.

"Maryland Funding" means any State or local funding, whether received directly, via federal aid or otherwise. "Maryland Funding" does not include the use of TIFIA or PABs financing.

"MBE" is defined in Section 1.20(b) (*Participation of Small, Minority, Disadvantaged, and Women-Owned Businesses*).

"MDOT" is defined in Section 1.1 (*Introduction*).

"MDOT-Related Entities" means:

- (a) MDTA;
- (b) MDOT (including MDOT SHA); and
- (c) the State.

"MDOT SHA" is defined in Section 1.4(c) (*Roles of MDOT and MDTA*).

"MDTA" is defined in Section 1.1 (*Introduction*).

"MDTA Board" means the Chairman and members of the Maryland Transportation Authority Board.

"MDTA Notes" is defined in Section 1.8 (*MDTA Notes*).

"MEDCO" is defined in Section 1.6(c) (*PABs and Conduit Issuer*).

"MLS" is defined in Section 1.12(a) (*I-495 & I-270 Managed Lanes Study*).

"NEPA" is defined in Section 1.12(a) (*I-495 & I-270 Managed Lanes Study*).

"O&M" means operations and maintenance.

"One-on-One Meetings" is defined in Section 2.1(b)(iv) (*One-on-One Meetings*).

"Operating Reserve Account" is defined in Section 1.8 (*MDTA Notes*).

"Opportunity MDOT" is described in Section 1.9 (*Opportunity MDOT and Community Benefits*).

"P3" means public-private partnership.

"P3 Program" is defined in Section 1.1 (*Introduction*).

"P3 Regulations" is defined in Section 1.1 (*Introduction*).

"PCS" means the website: <https://495-270-p3-pcs.geoat.net/>.

"Person" means an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, or a governmental authority.

"Phase 1" or **"Phase"** is defined in Section 1.2(a) (*Introduction*).

"Phase Developer" is defined in Section 1.2(a) (*Introduction*).

"Phase Developer PM" means the Phase Developer project manager as submitted by the Proposer as part of its SOQ.

"Phase Documents" means those documents set forth in Volume II (*Phase Documents*).

"Phase North" is defined in Section 1.12(b) (*Furth Environmental Review*).

"Phase P3 Agreement" is defined in Section 1.1 (*Introduction*).

"Phase South" is defined in Section 1.2(a) (*Introduction*).

"Phase South A" is defined in Section 1.2(a) (*Introduction*).

"Phase South B" is defined in Section 1.2(a) (*Introduction*).

"PIA" is defined in Section 2.8 (*Ownership of Proposal and Applicability of Public Information Act*).

"Predevelopment Cost Cap" means the maximum aggregate amount of Allowed Costs to be reimbursed to the Phase Developer or Section Developer for the entirety of Phase South.

"Predevelopment Work" is defined in Section 1.3 (*Scope of Work*).

"Predevelopment Work Proposal" means the part of the Proposal described in Appendix 4 (*Predevelopment Work Proposal Instructions*).

"Predevelopment Work Proposal Due Date" means the date and time by which the Predevelopment Work Proposal (excluding Forms H-1 through H-4 (*DBE Forms*)) must be submitted as shown in the Solicitation Schedule.

"Predevelopment Work Proposal Letter" means a letter submitted by the Proposer with its Predevelopment Work Proposal in the form of Form A-1 (*Predevelopment Work Proposal Letter*).

"Predevelopment Work Requirements" means the requirements for the Predevelopment Work set out in Exhibit 6 (*Predevelopment Work Requirements*) of the Phase P3 Agreement and included in Volume II (*Phase Documents*), as amended from time to time.

"Pre-Proposal Submittal" is defined in Section 2.6 (*Pre-Proposal Submittals*).

"Priced Managed Lanes" means the toll lanes and the associated entry and exit ramps within the Permanent ROW that are separated from the adjacent GP Lanes.

"Primary Evaluation Criteria" is defined in Section 3.2 (*Predevelopment Work Proposal Submittal Requirements*).

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

"Project Financing" means the total non-recourse Section Developer debt (senior and subordinated) and Section Equity Investment raised for a given section.

"Proposal" means, together, the Predevelopment Work Proposal and Financial Proposal submitted to MDOT by a Proposer for Phase 1.

"Proposal Bond" means the bond provided by the Phase Developer in accordance with Section 3.7 (*Proposal Security*) and in the form of Form J-1 (*Proposal Bond*).

"Proposal Equity IRR" means the Alternative Equity IRR, submitted by a Proposer in response to the RFP.

"Proposal Security" is defined in Section 3.7(a)(i) (*Proposal Security*).

"Proposal Validity Period" is defined in Section 3.1(g) (*Proposal Validity Period*).

"Proposal Work Product" means a Proposer's submittals, documents, records, and intellectual property included in its Proposal or otherwise submitted to MDOT at any time during the RFP process (including as part of IDP).

"Proposer Representative" is defined in Section 1.14(b)(i) (*Proposer Representative*).

"Proposer Team" means the entities and individuals that are named as part of the Proposer's Proposal, including the Proposer's Equity Members, Major Non-Equity Members, and Key Personnel. A reference to a **"Proposer Team Member"** is a reference to each of the entities and individuals comprising the Proposer Team.

"Proposers" is defined in Section 1.2(a) (*Introduction*).

"Proprietary Intellectual Property" is defined in Section 2(d) of Form N (*Stipend Agreement*).

"Protest" is defined in Section 6.1 (*Definitions*).

"Protester" is defined in Section 6.1 (*Definitions*).

"Reference Information Documents" means all written information provided by MDOT or any of its employees, agents, officers, directors, representatives, or consultants prior to the Effective Date, including all contents of this solicitation's entry on eMaryland Marketplace Advantage and PCS.

"Refinancing" means:

- (a) any amendment, novation, supplement, or replacement of any Finance Document;
- (b) the issuance by the Section Developer of any indebtedness in addition to the initial Section Debt, secured or unsecured;
- (c) the exercise of any right, or the grant of any waiver or consent, under any Finance Document;
- (d) the disposition of any rights or interests in, or the creation of any rights of participation with respect to, any Finance Document or the creation or granting of any other form of benefit or interest in either a Finance Document or the contracts, revenues, or assets of the Section Developer whether by way of security or otherwise; or
- (e) any other arrangement put in place by the Section Developer or another Person which has an effect which is similar to any of clause (a) to (d) or which has the effect of limiting the Section Developer's or any Associated Company's ability to carry out any of clause (a) to (d).

"Renewal Work" is defined in the Predevelopment Work Requirements.

"Renewal Work Costs" means the portion of the O&M Costs (as defined in Section 1.21.1 of the Predevelopment Work Requirements) attributable to Renewal Work.

"Renewal Work General Conditions Cost Percentage" is described in Section 2.2(g) of Appendix 5 (*Financial Proposal Instructions*).

"Renewal Work General Conditions Costs" means direct project overhead costs incurred for any subcontract for Renewal Work. For the avoidance of doubt, Renewal Work General Conditions Costs shall include the following items required for subcontracted Renewal Work for each section:

- bonds, all types;
- non-payroll insurance;
- mobilization/demobilization including all O&M preparatory/dissolution operations that include the movement of personnel and equipment to/from the Phase 1 site;
- subsistence (covers any expenses for staff outside of the travel, lodging, relocation, per diem);
- travel;
- lodging;
- per diem;
- project oversight, supervision, and administration;
- vehicles for project oversight, supervision, administration, and management including, but not limited to, registrations, fuel, maintenance, and insurance;
- technology and communications, including, but not limited to, phones, computers, internet connections, radios, and tablets;
- temporary facilities including, but not limited to, rent, security and access control, utilities, office equipment, office expenses, furniture, insurance, and taxes;
- temporary staging areas, fuel depots, laydown areas, and storage yards; and
- miscellaneous including escalations, certifications for staff required for the work, and incidentals.

"Requests for Clarification" or **"RFC"** means any written comments submitted to MDOT using Form L (*RFC Template*) following the procedure outlined in Section 2.4 (*Comments and Responses Regarding this RFP*).

"Request for Proposals" or **"RFP"** means each request for Proposals comprising this Volume I (*Instructions to Proposers*) and Volume II (*Phase Documents*) issued by MDOT, as amended.

"Request for Qualification" or **"RFQ"** is defined in Section 1.1 (*Introduction*).

"Respondent" means any entity, company, consortium, team, or joint venture which submitted an SOQ in accordance with the RFQ.

"RFC Process" means the process described in Section 2.4 (*Comments and Responses Regarding this RFP*).

"RFP Process" means the solicitation process to determine the Selected Proposer to develop and deliver Phase 1, commencing with the issuance of this RFP and terminating upon the Effective Date or the date that MDOT notifies the Proposers that the solicitation for Phase 1 has been terminated, whichever occurs first, and includes the various steps described in this ITP.

"RTC" is defined in Section 2.7(e)(iii) (*Requests to Change*).

"SBE" means the Small Business Enterprise program.

"Section Debt" means in relation to any section, all outstanding obligations from time to time under the finance documents relating to that section.

"Section Developer" is defined in Section 1.3 (*Scope of Work*).

"Section Developer Equity Member" means each Person that directly holds an equity interest, legal or beneficial, in the Section Developer, including, on the Commercial Closing Date (as defined in the Section P3 Agreement Term Sheet), the Phase Developer.

"Section Developer Toll Payment" is defined in Section 1.8 (*MDTA Notes*).

"Section P3 Agreement" is defined in Section 1.3 (*Scope of Work*).

"Section P3 Agreement Term Sheet" means the term sheet of the Section P3 Agreement attached to this ITP, as may be amended from time to time.

"Section Work" is defined in Section 1.3 (*Scope of Work*).

"Selected Proposer" is defined in Section 1.2(a) (*Introduction*).

"SF&P" is defined in Section 1.1 (*Introduction*).

"Solicitation Manager" is defined in Section 1.14(a) (*Solicitation Manager*).

"Solicitation Schedule" is defined in Section 1.2(d) (*Solicitation Schedule*).

"State" is defined in Section 1.1 (*Introduction*).

"Statement of Qualifications" or **"SOQ"** is defined in Section 1.1 (*Introduction*).

"Stipend Agreement" means the Stipend Agreement attached as Form N (*Form of Stipend Agreement*).

"Substantial Completion" has the meaning assigned to such term in the Section P3 Agreement Term Sheet.

"TIFIA" means the Transportation Infrastructure Finance and Innovation Act of 1998, codified at 23 U.S.C. §§ 601 et. seq., as amended and as it may be amended from time to time.

"TMP" is defined in Section 3.2(e)(iii) (*Congestion Relief*).

"Tolling Services Agreement" means an agreement between MDTA and the relevant Section Developer outlining the roles, responsibilities, and performance of tolling services for the associated section of Phase 1, to be included as an exhibit to the Section P3 Agreement.

"Toll Systems Integrator" means any entity that may be engaged by a Section Developer to take primary responsibility for the design, construction, integration, supply, or testing of the toll system for the relevant section of Phase 1. This entity may be the same as the Toll Systems Operator.

"Toll Systems Operator" means any entity that may be engaged by a Section Developer to take primary responsibility for the operation or maintenance of the toll system for the relevant section of Phase 1. This entity may be the same as the Toll Systems Integrator.

"U.S." means the United States of America.

"USDOT" means the United States Department of Transportation.

"Utility" has the meaning assigned to such term in the Section P3 Agreement Term Sheet.

"Utility Owner" means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative Utilities, and municipalities and other governmental agencies).

"VDOT" is defined in Section 1.5 (*Capital Beltway Accord*).

APPENDIX 2

Solicitation Schedule

Event	Date and Time
Issuance of first Draft RFP	July 24, 2020
Date for Kick-Off Meeting	July 30, 2020
Deadline for (i) first round One-on-One Meeting agenda and (ii) any (A) RFCs and (B) IDP Submittals Proposer wishes to discuss in the first round One-on-One Meeting	August 3, 2020
First round One-on-One Meetings	August 10-14, 2020
Second Draft RFP released	September 4, 2020
Deadline for IDP Submittals Proposer wishes to discuss in the second round One-on-One Meeting	10 A.M. Eastern Time, September 8, 2020
Deadline for (i) second round One-on-One Meeting agenda and (ii) any RFCs Proposer wishes to discuss in the second round One-on-One Meeting	3 P.M. Eastern Time, September 11, 2020
Second round One-on-One Meetings	September 17-18, 2020
Third Draft RFP released	October 5, 2020
Deadline for (i) third round One-on-One Meeting agenda and (ii) any (A) RFCs and (B) IDP Submittals Proposer wishes to discuss in the third round One-on-One Meeting	10 A.M. Eastern Time, October 14, 2020
Third round One-on-One Meetings	October 19-23, 2020
Final IDP Submittal Deadline	November 6, 2020
Fourth Draft RFP released (including Draft Tolling Services Agreement Term Sheet)	November 20, 2020
Deadline for Pre-Proposal Submittals related to change in organization and Key Personnel	2 P.M. Eastern Time, November 25, 2020
Deadline for (i) fourth round One-on-One Meeting agenda and (ii) any RFCs Proposer wishes to discuss in the fourth round One-on-One Meeting	12 P.M. Eastern Time, November 30, 2020
Fourth round One-on-One Meetings	December 1-3, 2020
Final RFP released	December 18, 2020

Event	Date and Time
Deadline for RFCs related to the RFP or submission of the Predevelopment Work Proposal	2 P.M. Eastern Time December 21, 2020
Deadline for RFCs related to the submission of the Financial Proposal	2 P.M. Eastern Time December 22, 2020
Predevelopment Work Proposal Due Date	2 P.M. Eastern Time December 23, 2020
Financial Proposal Due Date	2 P.M. Eastern Time January 8, 2021
Anticipated notification of Selected Proposer	February 1, 2021
Anticipated Effective Date Deadline	April / May 2021

APPENDIX 3

Summary and Order of Proposal Contents

Proposal Component	Form	ITP Cross-Reference	Proposal Cross-Reference
Volume I. Predevelopment Work Proposal			
A. General Information			
Section 1. General Information			
Predevelopment Work Proposal Checklist	<u>Appendix 3</u>	<u>Appendix 4</u> , Section 3.1(a)	
Predevelopment Work Proposal Letter	<u>Form A-1</u>	<u>Appendix 4</u> , Section 3.1(b)	
Executive Summary	No forms provided	<u>Appendix 4</u> , Section 3.1(c)	
Authorization Documents	No forms provided	<u>Appendix 4</u> , Section 3.1(d)	
Pre-Proposal Submittals	No forms provided	<u>Appendix 4</u> , Section 3.1(e)	
(i) IDP Submittal List, (ii) Acceptance and Conditional Acceptance Letters, attaching the applicable IDP Submittal	No forms provided	<u>Appendix 4</u> , Section 3.1(f)	
Identification of Proposer and Equity Members	<u>Form B-1</u>	<u>Appendix 4</u> , Section 3.1(g)(i)	
Information About Proposer Organization	<u>Form B-2</u>	<u>Appendix 4</u> , Section 3.1(g)(i)	
Information About Major Participants	<u>Form B-3</u>	<u>Appendix 4</u> , Section 3.1(g)(i)	
Proposal Affidavit	<u>Form C</u>	<u>Appendix 4</u> , Section 3.1(g)(ii)	
Personnel Work Assignment Form and Commitment of Availability	<u>Form D</u>	<u>Appendix 4</u> , Section 3.1(g)(iii)	
Non-Collusion Affidavit	<u>Form E</u>	<u>Appendix 4</u> , Section 3.1(g)(iv)	
Conflict of Interest Affidavit and Disclosure (Maryland)	<u>Form F</u>	<u>Appendix 4</u> , Section 3.1(g)(v)	

Proposal Component	Form	ITP Cross-Reference	Proposal Cross-Reference
MDOT DBE Forms ³	<u>Form H-1</u> , <u>Form H-2</u> , <u>Form H-3</u> , <u>Form H-4</u>	<u>Appendix 4</u> , Section 3.1(g)(vi)	
Equal Employment Opportunity Certificate	<u>Form I</u>	<u>Appendix 4</u> , Section 3.1(g)(vii)	
Lobbying Certification	<u>Form K</u>	<u>Appendix 4</u> , Section 3.1(g)(viii)	
Drug and Alcohol-Free Workplace Certification	<u>Form M</u>	<u>Appendix 4</u> , Section 3.1(g)(ix)	
Stipend Agreement	<u>Form N</u>	<u>Appendix 4</u> , Section 3.1(g)(x)	
Federal Debarment Certification	<u>Form O</u>	<u>Appendix 4</u> , Section 3.1(g)(xi)	
Certification	<u>Form T</u>	<u>Appendix 4</u> , Section 3.1(g)(xii)	
Legal Information	No forms provided	<u>Appendix 4</u> , Section 3.1(g)(xii)	
Confidential Contents Index	No forms provided	<u>Appendix 4</u> , Section 3.1(h)	
B. Predevelopment Work Proposal Evaluation Submittals			
Section 2. Delivery Certainty	No forms provided	<u>Appendix 4</u> , Section 3.2	
Section 3. Minimize Impacts	No forms provided	<u>Appendix 4</u> , Section 3.3	
Section 4. Maximizing Value to the State	No forms provided	<u>Appendix 4</u> , Section 3.4	
Section 5. Opportunity MDOT / Community Benefits	No forms provided	<u>Appendix 4</u> , Section 3.5	
Section 6. Congestion Relief	No forms provided	<u>Appendix 4</u> , Section 3.6	
Volume 1 Appendices			
Copies of Organization Documents	No forms provided	<u>Appendix 4</u> , Section 3.1(d)	

³ **Note to Proposers:** Forms H-1 through H-4 are required to be submitted by the Financial Proposal Due Date.

Proposal Component	Form	ITP Cross-Reference	Proposal Cross-Reference
Proposer Teaming Agreement or Key Terms	No forms provided	<u>Appendix 4</u> , Section 3.1(d)	
Letter accepting joint and several liability, if applicable	No forms provided	<u>Appendix 4</u> , Section 3.1(d)	
Detailed schedule submission for the Predevelopment Work and the construction of Phase South	No forms provided	<u>Appendix 4</u> , Section 2(c)	
Additional Materials	No forms provided	<u>Appendix 4</u> , Section 3.7	
Volume II. Financial Proposal			
A. General Information			
Section 1. General Information⁴			
Financial Proposal Letter	<u>Form A-2</u>	<u>Appendix 5</u> , Section 2.3	
Confidential Contents Index	No forms are provided	<u>Appendix 5</u> , Section 2.1(b)	
Equity Funding Letter	No forms are provided	<u>Appendix 5</u> , Section 2.1(c)	
Financial Capacity Information	<u>Form Q</u> , <u>Form R</u>	<u>Appendix 5</u> , Section 2.1(d)	
B. Financial Proposal Evaluation Submittals			
Section 2. Financial Proposal Evaluation Submittals			
Confidential Contents Index	No forms are provided	<u>Appendix 5</u> , Section 2.1(b)	
Proposal Equity IRR	<u>Form G</u>	<u>Appendix 5</u> , Section 2.2(a)	
Developer Closing Fee Percentage	<u>Form G</u>	<u>Appendix 5</u> , Section 2.2(b)	
Development Rights Fees	<u>Form G</u>	<u>Appendix 5</u> , Section 2.2(c)	

⁴ **Note to Proposers:** With the exception of the Financial Proposal Letter, all information required under this Section 1 shall be provided by the Predevelopment Work Proposal Due Date.

Proposal Component	Form	ITP Cross-Reference	Proposal Cross-Reference
Predevelopment Cost Cap	<u>Form G</u>	<u>Appendix 5</u> , Section 2.2(d)	
D&C General Conditions Cost Percentage	<u>Form G</u>	<u>Appendix 5</u> , Section 2.2(e)	
Contractor Markup Percentage	<u>Form G</u>	<u>Appendix 5</u> , Section 2.2(f)	
Renewal Work General Conditions Cost Percentage	<u>Form G</u>	<u>Appendix 5</u> , Section 2.2(g)	
C. Hard Copy Submission			
Proposal Security	<u>Form J-1</u> , <u>Form J-2</u> , or both	<u>Appendix 5</u> , Section 2.4	

APPENDIX 4

Predevelopment Work Proposal Instructions

1. GENERAL INSTRUCTIONS

This Appendix 4 describes the submission format for the Predevelopment Work Proposals and outlines the required information that will comprise a Predevelopment Work Proposal.

Each Proposer must submit the information required by this Appendix 4 in the organization and format specified herein. Each component of the Predevelopment Work Proposal must be clearly divided, titled, and identified within Volume I of the Proposal.

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

Evidence of signatory authority must be provided for all individuals signing forms and letters in the Proposal. Attach such evidence of signatory authority to the relevant form; however, evidence of signatory authority need only be provided once in the Proposal for each authorized signatory. The Predevelopment Work Proposal shall include a Predevelopment Work Proposal Letter (Form A-1), which identifies requirements regarding evidence of signatory authorization for the Predevelopment Work Proposal Letter. Similar authorization must be provided for all other signatories.

2. FORMAT

The Predevelopment Work Proposal shall be limited to an aggregate of eighty-five (85) pages and in the format described by Section 3.5 (*Content, Format, and Organization*). The following items are excluded from the page limitation:

- (a) material required by Section 3.1 of this Appendix 4;
- (b) appendices and exhibits containing required forms, graphs, matrices, schematics, drawings, and other pertinent data (including materials submitted pursuant to Section 3.7 of this Appendix 4);
- (c) the detailed schedule for the Predevelopment Work and the construction of Phase South which must be submitted in accordance with Section 3.2(a)(iii) (*Delivery Certainty*), and which shall be limited to fifteen (15) pages;
- (d) the sample cost estimate that must be submitted in accordance with Section 3.2(c)(ii) (*Maximizing Value to the State*); and
- (e) divider pages, which shall have no text, graphics, or information other than a title indicating content of the following pages, team name, or logo.

3. CONTENTS OF PREDEVELOPMENT WORK PROPOSAL

Each Proposer must include in its Predevelopment Work Proposal the documents/information listed in Sections 3.1 through 3.6 of this Appendix 4, unless the provision of such documents/information is stated to be at Proposer's election. Documents comprising Volume I of the Proposal must be submitted electronically, and organized and sequenced according to the Sections listed below. Further details regarding the Predevelopment Work Proposal submittal requirements are provided in the remaining Sections of this Appendix 4.

3.1 **Predevelopment Work Proposal General Information (Section 1)**

(a) Predevelopment Work Proposal Checklist

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

(b) Predevelopment Work Proposal Letter

The Predevelopment Work Proposal shall include a completed and executed Predevelopment Work Proposal Letter (Form A-1). The Proposer shall attach to the Predevelopment Work Proposal Letter evidence of authorization to execute and deliver the Predevelopment Work Proposal, the Phase P3 Agreement, and all other documents required to be executed by the Proposer or the Phase Developer in connection with the Phase P3 Agreement and award of the Phase P3 Agreement. If the Predevelopment Work Proposal contemplates formation of a separate legal entity, the evidence of authorization may be in the form of a single document authorizing a nominated and identified representative to execute documents on behalf of each Equity Member and the Proposer.

The Proposer shall certify in its Predevelopment Work Proposal Letter that it has read, accepts, and is able to obtain the insurances set forth in Exhibit 10 (*Required Insurance for Predevelopment Work*) to the Phase P3 Agreement.

(c) Executive Summary

The Proposer shall provide an executive summary, not to exceed ten (10) pages in length, written in a non-technical style that contains sufficient information to familiarize reviewers with the Proposer's approach to the Predevelopment Work and its ability to satisfy the financial, legal, and technical requirements of the Phase P3 Agreement.

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

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

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

(d) Proposer Information, Certifications, and Documents

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

The Predevelopment Work Proposal shall include copies of organizational documentation described in Appendix 1 to the Predevelopment Work Proposal Letter for the Proposer, Phase Developer, and Equity Members, as well as other documentation required by Form B-2 (Information about Proposer Organization). Such documentation shall be provided in an appendix to Volume I. If any modification to the organizational documents for such entity is contemplated prior to award or, if the Proposer intends to form an affiliated entity to be the Phase Developer, the Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in Sections C through E of Appendix 1 to the Predevelopment Work Proposal Letter) for such proposed entity.

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

If the Phase Developer is to be a consortium, partnership, or any other form of a joint venture, or an association that is not a legal entity, the Predevelopment Work Proposal shall contain a letter signed by each Equity Member identified in the Predevelopment Work Proposal indicating it will accept joint and several liability for the Phase Developer's obligations under the Phase P3 Agreement. If the Phase Developer is not a consortium, partnership, or any other form of a joint venture, or an association that is not a legal entity, such a letter shall not be required.

(e) Pre-Proposal Submittals

The Proposer shall include a copy of MDOT's approval letter provided under Section 2.6 (Pre-Proposal Submittals) for any approved Pre-Proposal Submittals.

(f) Accepted and Conditionally Accepted IDP Submittals

If a Proposer wishes to include any accepted or conditionally accepted IDP Submittal within its Predevelopment Work Proposal, it must explain and summarize the IDP Submittal within the relevant section(s) of section 2 - 6 of the Predevelopment Work Proposal and explain why such IDP Submittal is responsive to the relevant Primary Evaluation Criteria under which it is included. If the Predevelopment Work Proposal includes IDP Submittals within section 2 - 6 of the Predevelopment Work Proposal, the Predevelopment Work Proposal shall also include (i) a list of all IDP Submittals referred to in section 2 - 6 of the Predevelopment Work Proposal which must identify which section(s) of the Predevelopment Work Proposal each IDP Submittal is referred to in; and (ii) copies of MDOT's acceptance or conditional acceptance letter(s) regarding such IDP Submittals provided under Section 2.7(e)(v) (MDOT's Response to an IDP Submittal), attaching the applicable IDP Submittal. MDOT shall evaluate accepted and conditionally accepted IDP Submittals in connection with its evaluation of the Predevelopment Work Proposal only to the extent that they are referred to in section 2 - 6 of the Predevelopment Work Proposal.

If the Predevelopment Work Proposal does not include any IDP Submittals, the Predevelopment Work Proposal shall include a statement to that effect.

(g) Proposal Forms

(i) Identification and Information about the Proposer Team

The Predevelopment Work Proposal shall include Form B-1 (*Identification of Proposer and Equity Members*), Form B-2 (*Information about Proposer Organization*), and Form B-3 (*Information about Major Non-Equity Members*).

- (A) Form B-1 (*Identification of Proposer and Equity Members*) shall include the names, contact information, role in organization, licensing information, and description of work (if applicable) for the Proposer and Equity Members.
- (B) Form B-2 (*Information about Proposer Organization*) shall include information about the Proposer, Phase Developer, and Equity Members.
- (C) Form B-3 (*Information about Major Non-Equity Members*) shall include information regarding each Major Non-Equity Member.

Form B-1 (*Identification of Proposer and Equity Members*), Form B-2 (*Information about Proposer Organization*), and Form B-3 (*Information about Major Non-Equity Members*) shall be executed with an Electronic Signature by the authorized signatory of the Proposer.

(ii) Proposal Affidavit

The Predevelopment Work Proposal shall include Form C (*Proposal Affidavit*) from the Proposer, each Major Non-Equity Member and each Equity Member. Form C (*Proposal Affidavit*) shall be executed with an Electronic Signature by each Proposer on its behalf and by each of the Major Non-Equity Members and Equity Members separately on its own behalf.

(iii) Personnel Work Assignment Form and Commitment of Availability

The Predevelopment Work Proposal shall include Form D (*Personnel Work Assignment Form and Commitment of Availability*). Form D (*Personnel Work Assignment Form and Commitment of Availability*) shall be executed with an Electronic Signature by the authorized signatory of the Proposer.

(iv) Non-Collusion Affidavit

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

(v) Conflict of Interest Affidavit and Disclosure (Maryland)

Each Proposer, on behalf of itself and all entities on the Proposer Team, shall voluntarily disclose to MDOT, in writing, any fact that may provide it with an unfair competitive advantage, or potential or actual conflict of interest. The Predevelopment Work Proposal shall include Form F (*Conflict of Interest Affidavit and Disclosure (Maryland)*) executed with an Electronic Signature by the Proposer, on behalf of itself and all entities on the Proposer Team, describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest. Each Proposer, on behalf of itself and all entities on the Proposer Team, shall complete and deliver an executed Form F (*Conflict*

of Interest Affidavit and Disclosure (Maryland)) even if the Proposer, on behalf of itself and all entities on the Proposer Team, has nothing to disclose, in which case, the Proposer shall so indicate on Form F (*Conflict of Interest Affidavit and Disclosure (Maryland)*).

(vi) MDOT DBE Forms

The Predevelopment Work Proposal shall include Form H-1 (*Proposer's Acknowledgement of DBE and MBE Program Requirements*), Form H-2 (*MDOT DBE Form Package Submission Federally-Funded Contracts Proposer's Affirmation*), Form H-3 (*MDOT DBE Form A – Federally-Funded Contracts Certified DBE Utilization and Fair Solicitation Affidavit*), and Form H-4 (*MDOT DBE Form B – Federally Funded Contracts DBE Participation Schedule*), which are required to be submitted by the Financial Proposal Due Date. The Proposer shall sign each Form H.

(vii) Certification Regarding Equal Employment Opportunity

The Predevelopment Work Proposal shall include Form I (*Equal Employment Opportunity Certification*), regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports. Form I (*Equal Employment Opportunity Certification*) shall be provided by each member of the Proposer Team.

(viii) Use of Contract Funds for Lobbying Certification

The Predevelopment Work Proposal shall include executed copies of Form K (*Use of Contract Funds for Lobbying Certification*), regarding use of contract funds for lobbying. One copy of Form K (*Use of Contract Funds for Lobbying Certification*) must be executed with an Electronic Signature by the Proposer, each Equity Member, and each Major Non-Equity Member.

(ix) Drug and Alcohol Free Workplace Certification

The Predevelopment Work Proposal shall include Form M (*Drug and Alcohol Free Workplace Certification*) from the Proposer and each Equity Member. Form M (*Drug and Alcohol Free Workplace Certification*) shall be executed with an Electronic Signature by each Proposer on its behalf and by each of the Equity Members separately on its own behalf.

(x) Stipend Agreement

The Predevelopment Work Proposal shall include Form N (*Stipend Agreement*) from the Proposer if the Proposer wishes to be eligible for a reimbursement payment. Form N (*Stipend Agreement*) shall be executed with an Electronic Signature by the authorized signatory of the Proposer.

(xi) Federal Debarment Certification

The Predevelopment Work Proposal shall include Form O (*Federal Debarment Certification*) from the Proposer. Form O (*Federal Debarment Certification*) shall be executed by the authorized signatory of the Proposer.

(xii) Legal Information and Certification

(A) Legal Certification

The Predevelopment Work Proposal shall include the legal information required under subsection (B) (Legal Information) below and Form T (Certification). Form T (Certification) must be executed with an Electronic Signature by the Proposer, each Equity Member, each Major Non-Equity Member, and each Guarantor.

(B) Legal Information

The following information regarding legal issues affecting the Proposer Team shall be submitted (provided that, if this information was included in the Proposer's SOQ and remains current, the Proposer may include a statement that the information in its SOQ is correct or provide details of any updates to the information that was included in its SOQ):

(aa) Legal Issues

Identify and explain any significant anticipated federal or State legal issues relating to the Proposer, any Equity Members, and any Major Non-Equity Members that must be resolved in order to develop and deliver Phase 1, and perform its obligations under the Phase P3 Agreement and a Section P3 Agreement (if applicable).

(bb) Legal Liabilities

Provide a list and a brief description of all instances during the last five (5) years involving transportation projects and those projects identified in Proposer's SOQ which the Proposer, any Equity Member, any Major Non-Equity Member, or any Affiliate (as defined in Form I (Certification)) of the foregoing was (a) determined, pursuant to a determination in a court of law, arbitration proceeding, or other dispute resolution proceeding, to be liable for a material breach of contract, or (b) terminated for cause. For each instance, identify an owner's representative, and provide accurate contact information including address, telephone number, and e-mail address, if available.

(cc) Legal Proceedings

Provide a list and a brief description (including the resolution) of: (a) each arbitration, litigation, dispute review board, and other formal dispute resolution proceeding occurring during the last five (5) years related to a transportation project; and (b) those projects identified in Proposer's SOQ involving a claim or dispute, meeting all of the following:

- (i) is between the project owner; and the Proposer, any Equity Member, any Major Non-Equity Member, or any Affiliate (as defined in Form I (Certification)) of the foregoing; and
- (ii) involves an amount in excess of the smaller of (1) 2% of the original contract value or (2) \$500,000 on projects with a contract value in excess of \$25 million. Include items that

were subject to arbitration, litigation, dispute review board, or other formal dispute resolution proceedings even if settled without completion of the proceeding.

With respect to the information requested in this Section 3.1(g)(xii) failure to fully disclose this information, conditional or qualified submissions (i.e., "to our knowledge," "to the extent of available information," "such information is not readily available," "such information is not maintained in the manner requested," etc.) to requests or questions posed, incomplete, or inaccurate submissions or non-responsive submissions, or failure to provide information enabling MDOT to contact owner representatives may, in the sole discretion of MDOT, lead to a determination that the Proposer is not responsible.

(h) **Confidential Contents Index**

The Predevelopment Work Proposal shall contain an index signed by the Proposer that sets forth the specific items (and the location by section and page number of each item within the Predevelopment Work Proposal) that the Proposer deems confidential, trade secret, or proprietary information protected by Applicable Law. Blanket designations that do not identify the specific information shall not be acceptable and may be cause for MDOT to treat the entire Predevelopment Work Proposal as public information. Notwithstanding the foregoing, the list required under this Section 3.1(h) is intended to provide input to MDOT as to the confidential nature of a Proposer's Proposal, but in no event shall such list be binding on MDOT, determinative of any issue relating to confidentiality, or override or modify the provisions of the Public Information Act, other Applicable Law, or MDOT's responsibilities thereunder.

3.2 Delivery Certainty (Section 2)

The Proposer shall provide its response to Section 3.2(a) (*Delivery Certainty*) in Section 2. The Proposer's response shall be limited to twenty-five (25) pages.

3.3 Minimize Impacts (Section 3)

The Proposer shall provide its response to Section 3.2(b) (*Minimize Impacts*) in Section 3. The Proposer's response shall be limited to twenty-five (25) pages.

3.4 Maximizing Value to the State (Section 4)

The Proposer shall provide its response to Section 3.2(c) (*Maximizing Value to the State*) in Section 4. The Proposer's response shall be limited to fifteen (15) pages.

3.5 Opportunity MDOT/Community Benefits (Section 5)

The Proposer shall provide its response to Section 3.2(d) (*Opportunity MDOT/Community Benefits*) in Section 5. The Proposer's response shall be limited to ten (10) pages.

3.6 Congestion Relief (Section 6)

The Proposer shall provide its response to Section 3.2(e) (*Congestion Relief*) in Section 6. The Proposer's response shall be limited to ten (10) pages.

3.7 Additional Materials

If Proposers wish to substantiate any representation or commitment set forth in sections 2 - 6 of their Predevelopment Work Proposals, they may do so by attaching additional information as an appendix, in which case it will be excluded from the page limitation. Any such information:

- (a) must be clearly referenced in the relevant section of the Predevelopment Work Proposal and the information itself must reference the relevant section of the Predevelopment Work Proposal to which it relates;
- (b) will only be reviewed for the purposes of substantiating the relevant representation or commitment to which the information relates; and
- (c) must be submitted in PDF or excel format.

APPENDIX 5

Financial Proposal Instructions

This Appendix 5 describes the submission format for Financial Proposals and outlines the required information that will comprise a Financial Proposal.

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

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

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

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

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

2. **CONTENTS OF FINANCIAL PROPOSAL**

All parts of the Proposal that relate to the Financial Proposal criteria may be included only in the Financial Proposal.

Each Proposer must include in its Financial Proposal the documents/information listed in Sections 2.1 through 2.4 of this Appendix 5, unless the provision of such documents/information is stated to be at the Proposer's election. Further details regarding the Financial Proposal submittal requirements are provided in the remaining Sections of this Appendix 5.

2.1 **General Information (Section 1)**

(a) [Reserved]

(b) Confidential Contents Indices

The Financial Proposal shall contain two (2) indices signed by the Proposer that set forth the specific items (and the location by section and page number of each item within the Financial Proposal) that the Proposer deems confidential, trade secret, or proprietary information protected by Applicable Law. The first confidential contents index shall (i) be submitted by the Predevelopment Work Proposal Due Date, (ii) be located in Volume II, Part A, Section 1 of the Financial Proposal, and (iii) relate to those items under Section 2.1(c) and 2.1(d) of this Appendix 5 that are required to be submitted by the Predevelopment Work Proposal Due Date. The second confidential contents index shall (i) be submitted by the Financial Proposal Due Date, (ii) be located in Volume II, Part B, Section 2 of the Financial Proposal, and (iii) relate to those items under Sections 2.2 through Section 2.4 of this Appendix 5 that are required to be submitted by the Financial Proposal Due Date.

Blanket designations that do not identify the specific information shall not be acceptable and may be cause for MDOT to treat the entire Financial Proposal as public information.

Notwithstanding the foregoing, the lists required under this Section 2.1(b) of this Appendix 5 are intended to provide input to MDOT as to the confidential nature of a Proposer's Proposal, but in no event shall such lists be binding on MDOT, determinative of any issue relating to confidentiality, or override or modify the provisions of the Public Information Act, other Applicable Law, or MDOT's responsibilities thereunder.

(c) Equity Funding Letter

The Proposers shall submit a separate "**Equity Funding Letter**" for each Equity Member by the Predevelopment Work Proposal Due Date. The Proposers shall demonstrate the extent to which the Equity Member(s), in aggregate, have ability to secure the necessary equity investments required for delivery of Phase 1.

Each Equity Funding Letter must comply with the requirements set forth below.

(i) Signatory

If the Equity Member is an investment fund, then the letter must be executed with an Electronic Signature by the fund's general partner(s). If the Equity Member intends to fund its equity commitment through use of internal resources (e.g., a corporate entity supplying its own capital), the letter must be executed with an Electronic Signature by the chief investment officer, chief financial officer, chief executive officer, or equivalent officer.

(ii) Approval Process

Provide an overview of the Equity Member's completed to-date and remaining approval process required to commit to and fund the required equity commitment for Phase 1. This section should identify and describe any required board, investment committee, or other formal approvals required; and include an indicative schedule for securing needed approvals, as applicable.

(iii) Phase South Financing Requirement

State the expected equity investment requirements necessary to successfully deliver each section of Phase South and the amount that will be provided by the Equity Member.

(iv) Funding Source

If the Equity Member is an investment fund, provide the name and both partnership and management structure of the investment fund that will provide the funds for the equity investment in Phase 1. An investment fund that is anticipated to be created but does not exist or has not achieved its initial closing as of the RFP submission date will not be considered.

If the Equity Member is any other type of entity, describe in detail where and how the Equity Member's equity investment will be sourced, and how management will approach competing allocation and capacity issues between several project opportunities the Equity Member may pursue simultaneously.

(v) Investment Capacity

Confirm that the Equity Member continues to have existing capacity to invest a total equity amount above \$500 million for the delivery of Phase 1. Note that this

amount should not be construed as an indication of an equity contribution requirement that will be included in the Section P3 Agreements, or an indication that the Section P3 Agreements will include any such requirement.

Provide supplemental information (as needed) to the financial statements of the Equity Member as evidence of its investment capacity for funding both Predevelopment Work performed by the Phase Developer and total equity investment requirements indicated in Section 2.1(c)(iii) for Phase 1. If the Proposer anticipates it to be necessary, provide a description of how the Equity Member plans to increase its investment capacity prior to financial close of each section to provide total equity contribution in amounts anticipated.

If the Equity Member is an investment fund, (A) provide information about capital amounts already committed or subscribed, remaining commitments yet to be called (with evidence and anticipated call schedule), allocation process for uncommitted funds, and whether a reserved allocation for Phase 1 has been established; and (B) provide evidence of the capital available in the form of a letter from the fund's administrator, bank, or equivalent specifying account balance(s).

(vi) Investment Criteria

Provide: (A) A declaration that, based on information available, Phase 1 is more than likely to meet the investment policy requirements for the Equity Member; and (B) confirmation of the expected investment horizon of the Equity Member.

(vii) Section 202 of the Act

Provide a statement acknowledging that equity transfers will be subject to the requirements of Section 202 of the Act.

(d) Financial Capacity Information

The Proposers shall clearly identify any differences between the financial capacity information submitted in the Financial Proposal and the information submitted in the SOQ.

The Financial Proposal shall include the following information, which shall be submitted by the Predevelopment Work Proposal Due Date, for all Equity Members (to the extent such entity does not intend to receive support from a Guarantor), and any Guarantor:

- (i) Audited financial statements (as a searchable PDF) for all periods subsequent to those included in the SOQs, audited by a certified public accountant in accordance with U.S. Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards ("**IFRS**").
- (ii) In addition, interim unaudited statements (as a searchable PDF) for the period since the most recent completed fiscal year for the above entities are to be provided.

The financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must meet the following requirements:

- (iii) Financial statement information must include:

- (A) opinion letter (auditor's report);
 - (B) balance sheet;
 - (C) income statement;
 - (D) statement of changes in cash flow; and
 - (E) footnotes, as available.
- (iv) Financial statements must meet the following requirements:
- (A) **GAAP/IFRS:** Financial statements must be prepared in accordance with U.S. GAAP or IFRS. If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.
 - (B) **Currency** - all amounts in the financial statements must be presented in their native reported currency.
 - (C) **Audited** - Fiscal year-end financial statements must be audited by an independent party qualified to render audit opinions (e.g. Certified Public Accountant). If audited financials are not available for the Proposer, an Equity Member, or a Guarantor, the Financial Proposal shall include unaudited financial statements for such entity, certified as true, correct, and accurate by the chief financial officer or treasurer of the entity.
- (v) Financial Officer's Certificate

The Respondent must submit a separate Form Q (*Financial Officer's Certificate*), completed in accordance with the instructions therein and with all annexes as required, for each Equity Member and each Guarantor thereof, executed with an Electronic Signature by the chief financial officer (or similar financial officer) of such entity by the Predevelopment Work Proposal Due Date. Each of the Equity Member and Guarantor entities must provide its own separate certificate. If, however, an Equity Member has a Guarantor, only one (1) consolidated certificate is required for such Guarantor and its guaranteed entity.

In addition to any material changes disclosed in the Financial Officer's certificate, Proposers shall be required to provide updated information following the Predevelopment Work Proposal Due Date about such entities as such information becomes available.

The information required under this Section 2.1(d) shall be submitted as separate files for each separate entity with a cover sheet identifying the name of the organization and its role in Proposer's organization. Financial statements shall be provided in searchable PDF format. Financial statements shall also be provided electronically using the excel template in Form R (*Financial Statements Template*).

2.2 Financial Proposal Evaluation Submittals (Section 2)

(a) Proposal Equity IRR

The Financial Proposal shall specify the Proposer's Proposal Equity IRR by completing Section 1 of Form G (*Financial Proposal Form*).

The Proposal Equity IRR will be the maximum Alternative Equity IRR that can be submitted as part of a Committed Section Proposal in the Initial Base Case Financial Model for each section of Phase 1, as further specified in the Phase P3 Agreement.

Proposal Equity IRR should be submitted as a percentage to the tenth of a percentage point (e.g. 11.5%, not 11.49%).

Proposals shall confirm that the Proposal Equity IRR is consistent with the calculation methodology provided within the definition of Alternative Equity IRR in the Phase P3 Agreement.

(b) Developer Closing Fee Percentage

The Financial Proposal shall specify the Proposer's Developer Closing Fee Percentage that will apply to each section of Phase 1 by completing Section 2 of Form G (*Financial Proposal Form*).

Under the Phase P3 Agreement, for each section of Phase 1, the Developer Closing Fee Percentage will be multiplied by the total amount of Project Financing for that section to determine the maximum aggregate cash closing fees that are permitted to be paid to the Phase Developer or Section Developer in connection with Financial Close of that section. These closing fees are in addition to the reimbursement of any Allowed Costs or Development Rights Fees for that section that are permitted under the Phase P3 Agreement.

The Developer Closing Fee Percentage should be submitted as a percentage to the tenth of a percentage point (e.g., 0.5%, not 0.55%).

(c) Development Rights Fees

The Financial Proposal shall specify the Proposer's Development Rights Fee for each section of Phase South A by completing Section 3 of Form G (*Financial Proposal Form*).

The Development Rights Fees are payable by the Phase Developer as consideration for the right to enter into exclusive negotiations with MDOT to develop Phase South A granted to the Phase Developer upon the execution of the Phase P3 Agreement. The Development Rights Fee for each section will be paid at Financial Close of that section and in other circumstances specified in the Phase P3 Agreement. The aggregate of the Development Rights Fees included in the Proposal may not exceed \$145 million.

The Development Rights Fees must be submitted as nominal Dollar amounts in ten thousand Dollar increments and will not be adjusted based on when Financial Close occurs.

(d) Predevelopment Cost Cap

The Financial Proposal shall specify the Proposer's Predevelopment Cost Cap for Phase South by completing Section 4 of Form G (*Financial Proposal Form*).

The Predevelopment Cost Cap for Phase South is the aggregate maximum Allowed Costs that may be reimbursed to the Phase Developer or Section Developer for the entirety of Phase South. This amount should be all-inclusive of all Allowed Costs anticipated to be

reimbursed to the Phase Developer and the Section Developer at Financial Close of each Section of Phase South. The Predevelopment Cost Cap included in the Proposal may not exceed \$100 million. The Proposer's Predevelopment Cost Cap included in the Proposal shall represent the Phase South Termination Cap to be included in the Phase P3 Agreement, provided that the Phase South Termination Cap shall be subject to a cap of \$50 million and if the Proposer's Predevelopment Cost Cap included in the Proposal exceeds \$50 million then the Phase South Termination Cap shall be equal to \$50 million.

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

(e) D&C General Conditions Cost Percentage

The Financial Proposal shall specify the Proposer's D&C General Conditions Cost Percentage for each section of Phase 1 by completing Section 5 of Form G (*Financial Proposal Form*).

The D&C General Conditions Cost Percentage will be the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs and Contractor Markup Costs) for each section of Phase 1 on account of D&C General Conditions Costs in the D&C Costing Model required in Section 1.20.2 of the Predevelopment Work Requirements.

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

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

(f) Contractor Markup Percentage

The Financial Proposal shall specify the amount of the Proposer's Contractor Markup Percentage for each section of Phase 1 by completing Section 6 of Form G (*Financial Proposal Form*).

The Proposal Contractor Markup Percentage will be the maximum percentage that may be applied to the D&C Costs (excluding D&C General Conditions Costs and Contractor Markup Costs) for each section of Phase 1 on account of Contractor Markup Costs in the D&C Costing Model required in Section 1.20.2 of the Predevelopment Work Requirements.

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

(g) Renewal Work General Conditions Cost Percentage applicable to Renewal Work Costs

The Financial Proposal shall specify the amount of the Proposer's Renewal Work General Conditions Cost Percentage for each section of Phase 1 by completing Section 7 of Form G (*Financial Proposal Form*).

The Proposal Renewal Work General Conditions Cost Percentage will be the maximum percentage that may be applied to Renewal Work Costs for each section of Phase 1 on account of Renewal Work General Conditions Costs in the O&M Costing Model required in Section 1.21.2 of the Predevelopment Work Requirements.

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

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

2.3 Financial Proposal Letter

The Financial Proposal shall include the Financial Proposal Letter (Form A-2). The Proposer shall attach to the Financial Proposal Letter evidence of authorization to execute and deliver the Financial Proposal. The Proposer shall check the box certifying whether previously submitted materials related to financial capacity information, material changes, and financial statements remain true, correct, and complete, and provide updated information if required. If Proposer is a consortium, partnership or any other form of joint venture, then the Equity Members of Proposer may each execute a single document authorizing a nominated and identified representative to execute documents on each of their behalf with respect to the Proposer.

2.4 Proposal Security

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

Form A-1

**MARYLAND TRANSPORTATION AUTHORITY AND MARYLAND DEPARTMENT OF
TRANSPORTATION
I-495 & I-270 P3 PROGRAM PHASE 1
INSTRUCTIONS TO PROPOSERS
PREDEVELOPMENT WORK PROPOSAL LETTER**

Proposer: [●]

Predevelopment Work Proposal Date: [●], 2020

The undersigned ("Proposer") submits this Predevelopment Work Proposal (this "Predevelopment Work Proposal") in response to that certain Request for Proposals (as amended, the "RFP") issued by the State of Maryland (the "State") acting by and through the Maryland Transportation Authority, an agency of the State ("MDTA") and the Maryland Department of Transportation, a principal department of the State including the State Highway Administration ("MDOT"), dated December 18, 2020, for Phase 1 ("Phase 1") of the I-495 & I-270 P3 Program ("P3 Program") pursuant to a public-private partnership agreement (the "Phase P3 Agreement"), as more specifically described herein and in the documents provided with the RFP, including the Reference Information Documents (the "RFP Documents"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for MDOT supplying this Proposer, at our request, with the RFP Documents and agreeing to examine and consider this Predevelopment Work Proposal, the undersigned undertake[s] [jointly and severally]⁵:

- (a) subject to Section 3.6(b) of the ITP, to keep this Predevelopment Work Proposal open for acceptance for 180 days after the Financial Proposal Due Date, without unilaterally varying or amending its terms and without any member of Proposer or partner (if Proposer is a partnership or a joint venture) withdrawing, or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Predevelopment Work Proposal is submitted, without first obtaining the prior written consent of MDOT; and
- (b) if the Proposer is selected as the Selected Proposer, to provide security (including bonds, insurance, and letters of credit) for the due performance of the Phase P3 Agreement as stipulated in the Phase P3 Agreement and the RFP.

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

If selected by MDOT and MDTA as the Selected Proposer, the Proposer agrees to do the following or to cause the entity created by the Selected Proposer to enter into the Phase P3 Agreement (the "Phase Developer") to do the following: (a) if requested by MDOT and MDTA, enter into good faith negotiations with MDOT and MDTA regarding the terms of the Phase P3 Agreement in accordance with Section 5.1 of the ITP (*Executing the Phase P3 Agreement*); (b) enter into the Phase P3 Agreement in accordance

⁵ ***If Proposer is a consortium, partnership or other form of joint venture, leave the words "jointly and severally," otherwise delete.***

with Section 5.1 of the ITP (*Executing the Phase P3 Agreement*); and (c) perform its obligations as set forth in the ITP (while the same governs) and the Phase P3 Agreement, including compliance with all commitments contained in this Predevelopment Work Proposal.

By submitting this Predevelopment Work Proposal, the Proposer certifies that it has read, accepts, and is able to obtain the insurances set forth in Exhibit 10 (*Required Insurance for Predevelopment Work*) to the Phase P3 Agreement as required.

The following individual(s) is/are authorized to enter into negotiations with MDOT and MDTA for, or on behalf of, the Proposer and Phase Developer in connection with the RFP, Phase 1, and the Phase P3 Agreement: **[insert names]**

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

Addendum [●] issued [●], 2020
[list other addenda]

The Proposer certifies that its Predevelopment Work Proposal is submitted without reservation, qualification, assumptions, or conditions. The Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on PCS for Phase 1, any Addenda, and responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the Phase Developer and do not contain internal inconsistencies, errors, or omissions; that it has carefully checked all the words, figures, and statements in this Predevelopment Work Proposal; that it has conducted a reasonable investigation in preparing this Predevelopment Work Proposal; and that it has notified MDOT in writing of any deficiencies or errors in, or omissions from, any RFP Documents or other documents provided by MDOT or MDTA, and of any unusual site conditions observed prior to the date hereof.

The Proposer represents that all statements made in the SOQ previously delivered to MDOT (as amended and resubmitted) are true, correct, and accurate as of the date hereof, except as otherwise specified in the enclosed Predevelopment Work Proposal and Predevelopment Work Proposal forms. The Proposer agrees that such SOQ, except as modified by the enclosed Predevelopment Work Proposal and Predevelopment Work Proposal forms, is incorporated as if fully set forth herein. Further, the Proposer represents that its Predevelopment Work Proposal remains valid and binding, and that all representations and certifications in its Predevelopment Work Proposal remain true, correct, and accurate, as of the date of the submittal of this Predevelopment Work Proposal.

The Proposer understands that MDOT is not bound to award the Phase P3 Agreement to the Proposer with the best Financial Proposal or to any Proposer.

The Proposer further understands that all costs and expenses incurred by it in preparing this Predevelopment Work Proposal and participating in the RFP Process will be borne solely by the Proposer, except any reimbursement payment that MDOT may make to a Proposer in accordance with the Stipend Agreement and ITP Section 4.11. [The Proposer acknowledges that it has executed the Stipend Agreement and, in doing so, has irrevocably elected to accept the stipend offered for such Proposal Work Product.]⁶

Subject to the Proposer's rights under the Public Information Act, the Proposer consents to MDOT or MDTA's disclosure of its Predevelopment Work Proposal, to any Persons after award and execution of

⁶ The Proposer may delete this sentence if it does not wish to submit a Stipend Agreement and be reimbursed for its work product.

the Phase P3 Agreement by MDOT and MDTA. The Proposer acknowledges and agrees to the disclosure terms of the ITP. The Proposer expressly waives any right to contest such disclosures.

The Proposer agrees that MDOT and MDTA will not be responsible for any errors, omissions, inaccuracies, inconsistencies, or incomplete statements in this Predevelopment Work Proposal.

This Predevelopment Work Proposal shall be governed by and construed in all respects according to the laws of Maryland.

Proposer's business address:

(No.)	(Street)	(Floor or Suite)	
(City)	(State or Province)	(ZIP or Postal Code)	(Country)

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from following pages]

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

[Insert the Proposer's name]

By: _____
Print Name: _____
Title: _____

[List equity members of corporation or limited liability company]

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

[Insert the Proposer's name]

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

By: _____
Print Name: _____
Title: _____

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

[List limited partners, if any]

5. Sample signature block for attorney in fact:

[Insert the Proposer's name]

By: _____
Print Name: _____
Attorney in Fact

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

Appendix 1

Additional Information to be Provided with Predevelopment Work Proposal Letter

- A If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation, in addition to any business address. If the Proposer is a limited liability company, enter the state or country of organization, in addition to any business address.
- B Provide a table showing the organization of the Phase Developer. The Phase Developer need not be organized at the time of submission of the Proposal. This table shall describe the role of the Equity Members and Major Non-Equity Members.
- C Describe in detail the legal structure of the Proposer/Phase Developer and Equity Members.
1. If Proposer/Phase Developer/Equity Member is a corporation or includes a corporation as a joint venture member, partner, or member, provide articles of incorporation and bylaws for the Proposer/Phase Developer/Equity Member and each corporation certified by an appropriate individual. If any entity is not yet formed, provide draft organizational documents.
 2. If Proposer/Phase Developer/Equity Member is a partnership or includes a partnership as a joint venture member, partner, or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer/Phase Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, provide draft organizational documents.
 3. If Proposer/Phase Developer/Equity Member is a consortium or joint venture, or includes a joint venture as a joint venture member, partner, or member, attach full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for Proposer/Phase Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation, and bylaws for a corporation, operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed, provide draft organizational documents.
 4. If Proposer/Phase Developer/Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner, or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation, and organizational documentation for Proposer/Phase Developer/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, or operating agreement for a limited liability company, and joint venture agreement for a joint venture) certified by an appropriate individual. Attach evidence to the Predevelopment Work Proposal Letter, with respect to the Predevelopment Work Proposal, and to each letter required under the Predevelopment Work Proposal Letter that the person signing has authority to do so. If any entity is not yet formed, provide draft organizational documents. For purposes of clarity, the Proposer may append to the Predevelopment Work Proposal Letter a letter from each person signing the Predevelopment Work Proposal that such person has the authority to do so, which shall suffice for the purposes of the requirements set forth in this Section C.4.

5. If an Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation, and organizational documents of the fund manager shall satisfy the requirements for organizational documents under this Section C.

For purposes of this Section C, the term "organizational documentation" with respect to an Equity Member shall mean such entity's certificate of formation/articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; provided, further, that such entity shall provide its partnership agreement/operating agreement/bylaws/equivalent joint venture or investment fund internal governing organizational documentation prior to the Effective Date.

- D With respect to authorization of execution and delivery of the Predevelopment Work Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If Proposer is a consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If Proposer is a consortium, joint venture, or a partnership, the Predevelopment Work Proposal must be executed by all consortium or joint venture members or all general partners.
- E The Phase Developer's partnership agreement, limited liability company operating agreement, charter, or joint venture agreement, as applicable, must include an express provision satisfactory to MDOT stating that, in the event of a dispute between or among joint venture members, partners, members, or shareholders, no joint venture member, partner, member, or shareholder, shall be entitled to stop, hinder, or delay work on Phase 1. Each Proposer should submit the applicable agreement to MDOT and identify on a cover page where in the agreement the provision can be found. If the Phase Developer is not yet formed, provide draft organizational documents and indicate where the provision is found.

Form A-2

**MARYLAND TRANSPORTATION AUTHORITY AND MARYLAND DEPARTMENT OF
TRANSPORTATION
I-495 & I-270 P3 PROGRAM PHASE 1
INSTRUCTIONS TO PROPOSERS
FINANCIAL PROPOSAL LETTER**

Proposer: [●]

Financial Proposal Date: [●], 2021

The undersigned ("Proposer") submits this Financial Proposal (this "Financial Proposal") in response to that certain Request for Proposals (as amended, the "RFP") issued by the State of Maryland (the "State") acting by and through the Maryland Transportation Authority, an agency of the State ("MDTA") and the Maryland Department of Transportation, a principal department of the State including the State Highway Administration ("MDOT"), dated December 18, 2020, for Phase 1 ("Phase 1") of the I-495 & I-270 P3 Program ("P3 Program") pursuant to a public-private partnership agreement (the "Phase P3 Agreement"), as more specifically described herein and in the documents provided with the RFP, including the Reference Information Documents (the "RFP Documents"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP and the RFP Documents.

Subject to the terms below, in consideration for MDOT supplying this Proposer, at our request, with the RFP Documents and agreeing to examine and consider this Financial Proposal, the undersigned undertake[s] [jointly and severally]⁷:

- (a) subject to Section 3.6(b) of the ITP, to keep this Financial Proposal open for acceptance for 180 days after the Financial Proposal Due Date, without unilaterally varying or amending its terms and without any member of Proposer or partner (if Proposer is a partnership or a joint venture) withdrawing, or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Financial Proposal is submitted, without first obtaining the prior written consent of MDOT; and
- (b) if the Proposer is selected as the Selected Proposer, to provide security (including bonds, insurance, and letters of credit) for the due performance of the Phase P3 Agreement as stipulated in the Phase P3 Agreement and the RFP.

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

If selected by MDOT and MDTA as the Selected Proposer, the Proposer agrees to do the following or to cause the entity created by the Selected Proposer to enter into the Phase P3 Agreement (the "Phase Developer") to do the following: (a) if requested by MDOT and MDTA, enter into good faith negotiations with MDOT and MDTA regarding the terms of the Phase P3 Agreement in accordance with Section 5.1 of the ITP (*Executing the Phase P3 Agreement*); (b) enter into the Phase P3 Agreement in accordance

⁷ ***If Proposer is a consortium, partnership or other form of joint venture, leave the words "jointly and severally," otherwise delete.***

with Section 5.1 of the ITP (*Executing the Phase P3 Agreement*); and (c) perform its obligations as set forth in the ITP (while the same governs) and the Phase P3 Agreement, including compliance with all commitments contained in this Financial Proposal.

[By submitting this Financial Proposal, the Proposer acknowledges and agrees that its Development Rights Fee is being provided at risk and may become payable by the Phase Developer at times other than at Financial Close of a section or at times when the Phase Developer is not able to recover such payment in whole or part from a Section Developer. The Proposer acknowledges that the Phase Developer's obligation to pay the Development Rights Fee may arise in circumstances when the Phase Developer has been unable to achieve Financial Close on a section for reasons beyond its reasonable control and the only circumstances in which the Development Rights Fee will not become payable by the Phase Developer or may be subject to adjustment are expressly set out in the Phase P3 Agreement.]⁸

The following individual(s) is/are authorized to enter into negotiations with MDOT and MDTA for, or on behalf of, the Proposer and Phase Developer in connection with the RFP, Phase 1, and the Phase P3 Agreement: **[insert names]**

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

Addendum [●] issued [●], 202[0]
[list other addenda]

The Proposer certifies that its Financial Proposal is submitted without reservation, qualification, assumptions, or conditions. The Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP Documents, has reviewed all materials posted on PCS for Phase 1, any Addenda, and responses to questions, and is satisfied that the RFP Documents provide sufficient detail regarding the obligations to be performed by the Phase Developer and do not contain internal inconsistencies, errors, or omissions; that it has carefully checked all the words, figures, and statements in this Financial Proposal; that it has conducted a reasonable investigation in preparing this Financial Proposal; and that it has notified MDOT in writing of any deficiencies or errors in, or omissions from, any RFP Documents or other documents provided by MDOT or MDTA, and of any unusual site conditions observed prior to the date hereof.

The Proposer represents that all statements made in the SOQ previously delivered to MDOT (as amended and resubmitted) are true, correct, and accurate as of the date hereof, except as otherwise specified in the enclosed Financial Proposal and Financial Proposal forms. The Proposer agrees that such SOQ, except as modified by the enclosed Financial Proposal and Financial Proposal forms, is incorporated as if fully set forth herein. Further, the Proposer represents that its Financial Proposal remains valid and binding, and that all representations and certifications in its Financial Proposal remain true, correct, and accurate, as of the date of the submittal of this Financial Proposal.

The Proposer certifies the following (mark one):

- ☐ (i) the Proposer's financial capacity information previously delivered to MDOT, as required by Appendix 5, Section 2.1(d), remains true, correct and complete as of the date hereof; (ii) there has been no material change to such information since it was previously delivered to MDOT; and (iii) no additional financial statements required under

⁸ To be included if the Proposer is proposing a Development Rights Fee.

Appendix 5, Section 2.1(d) have become available since the Proposer's submission of such information on or prior to the Predevelopment Work Proposal Due Date.

- (i) the Proposer's financial capacity information previously delivered to MDOT as required by Appendix 5, Section 2.1(d) has materially changed or additional financial statements required under Appendix 5, Section 2.1(d) have become available since Proposer's submission of such information on or prior to the Predevelopment Work Proposal Due Date; (ii) Proposer has included with this Financial Proposal submission updated financial capacity information regarding such material changes or additional financial statements; and (iii) Proposer certifies that the updated information or additional financial statements is/are true, correct, and complete as of the date hereof.

The Proposer understands that MDOT is not bound to award the Phase P3 Agreement to the Proposer with the best Financial Proposal or to any Proposer.

The Proposer further understands that all costs and expenses incurred by it in preparing this Financial Proposal and participating in the RFP Process will be borne solely by the Proposer, except any reimbursement payment that MDOT may make to a Proposer in accordance with the Stipend Agreement and ITP Section 4.11. [The Proposer acknowledges that it has executed the Stipend Agreement and, in doing so, has irrevocably elected to accept the stipend offered for such Proposal Work Product.]⁹

Subject to the Proposer's rights under the Public Information Act, the Proposer consents to MDOT or MDTA's disclosure of its Financial Proposal, to any Persons after award and execution of the Phase P3 Agreement by MDOT and MDTA. The Proposer acknowledges and agrees to the disclosure terms of the ITP. The Proposer expressly waives any right to contest such disclosures.

The Proposer agrees that MDOT and MDTA will not be responsible for any errors, omissions, inaccuracies, inconsistencies, or incomplete statements in this Financial Proposal.

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

Proposer's business address:

(No.)	(Street)	(Floor or Suite)	
(City)	(State or Province)	(ZIP or Postal Code)	(Country)

State or Country of Incorporation/Formation/Organization: _____

[insert appropriate signature block from following pages]

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

[Insert the Proposer's name]

⁹ The Proposer may delete this sentence if it does not wish to submit a Stipend Agreement and be reimbursed for its work product.

By: _____
Print Name: _____
Title: _____

[List equity members of corporation or limited liability company]

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

[Insert the Proposer's name]

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

By: _____
Print Name: _____
Title: _____

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

[List limited partners, if any]

8. Sample signature block for attorney in fact:

[Insert the Proposer's name]

By: _____
Print Name: _____
Attorney in Fact

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

ADDITIONAL INFORMATION TO BE PROVIDED WITH FINANCIAL PROPOSAL LETTER:

- A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.
- B. With respect to authorization of execution and delivery of the Financial Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a consortium or other form of joint venture, such evidence shall be in the form of a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If the Proposer is a consortium, joint venture or a partnership, the Financial Proposal must be executed by all consortium or joint venture members or all general partners, as applicable.

Form B-1

IDENTIFICATION OF PROPOSER AND EQUITY MEMBERS

Name of Entity and Contact Information (address, representative, phone, fax, e-mail)	Role of Entity in Proposer Organization	Contractor License (if applicable)	Equity Member's ownership percentage	Description of Work/Services To Be Performed By Entity (if applicable)

The above information is true, correct and accurate.
Executed [●], 2020.

(Signature)

(Name Printed)

(Title)

(Proposer)

Form B-2

INFORMATION ABOUT PROPOSER ORGANIZATION

1. Name of Proposer: _____
Name of Phase Developer: _____

2. Type of Entity:
Proposer [] Phase Developer []

3. Proposer's Address:

Telephone _____ Facsimile _____

4. How many years has Proposer, Phase Developer, and each Equity Member been in its current line of business and how many years has each entity been in business under its present name?

Name	No. of years in business	No. of years under present name

5. Under what other or former name(s) has Proposer, Phase Developer, and Equity Members operated?

Proposer: _____

_____	_____
_____	_____
_____	_____

6. Proposer shall review its SOQ previously submitted to MDOT and list below any Key Personnel and other key staff members and their relevant experience that have been approved by MDOT since the submission of the SOQ. Except as updated by the following information, Proposer's SOQ is hereby incorporated as if set forth in full and Proposer represents and warrants to MDOT and MDTA that the information set forth in the SOQ, except as set forth herein, is true, complete and accurate in all respects and does not contain any misleading or incorrect information or omit to state a material fact necessary in order to make the information not misleading. Attach separate sheets if necessary.

7. List all Maryland licenses held by Proposer, Phase Developer, and any Equity Member. Attach copies of all Maryland licenses. Attach a separate sheet if necessary.

I declare under penalty of perjury under the laws of the State of Maryland that the foregoing declaration is true, correct, and accurate.

(Signature)

(Name Printed)

(Title)

(Proposer)

Form B-3

INFORMATION ABOUT MAJOR NON-EQUITY MEMBERS

[This form will be used to provide information about any Major Non-Equity Member (excluding Equity Members)]

Proposer Name: _____

Name of Entity and Contact Information (address, representative, phone, fax, e-mail)	Address of Head Office	Contractor License (if applicable)	Description of Work/Services To Be Performed By Entity (if applicable)

If any Major Non-Equity Member identified above is a single purpose entity formed to respond to this RFP, complete the following matrix for each such single purpose entity:

Name of Major Non-Equity Member	Form of Entity (partnership, joint venture, LLC)	Entities with Ownership Interest	Percentage of Ownership Interest
Ex: Contractor AB, JV	Joint venture	Contractor A	60%
		Contractor B	40%

Add additional sheet(s) as necessary.

The undersigned Proposer hereby certifies that it has not entered into any substantive negotiations with Major Non-Equity Member resulting in an agreement to enter into any of the Phase Documents with respect to Phase 1, except for those listed above.

I declare under penalty of perjury under the laws of the State of Maryland that the foregoing declaration is true, correct, and accurate.

Executed _____, 2020.

(Signature)

(Name Printed)

(Title)

(Proposer)

Form C

PROPOSAL AFFIDAVIT

1. AUTHORITY

I HEREBY AFFIRM THAT:

I (print name) possess the legal authority to make this Affidavit.

2. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

- (a) The undersigned [Proposer][Major Non-Equity Member][Equity Member] (the "**Certifying Entity**") hereby certifies and agrees that the following information is correct: In preparing the Proposal on this project, the Certifying Entity has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- (b) "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination."
- (c) Without limiting any other provision of the Proposal, it is understood that, if the certification is false, such false certification constitutes grounds for MDOT to reject the Proposal submitted by the Proposer on this project, and terminate any contract awarded based on the Proposal.
- (d) As part of the Proposal, the Certifying Entity herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Certifying Entity discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken.
- (e) The Certifying Entity agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

3. AFFIRMATION REGARDING BRIBERY CONVICTIONS I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in § 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to, § 6-220 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any

conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

[●]

4. **AFFIRMATION REGARDING OTHER CONVICTIONS I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (a) been convicted under state or federal statute of:
 - (i) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (ii) fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;
- (b) been convicted of any criminal violation of a state or federal antitrust statute;
- (c) been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961 et seq., or the Mail Fraud Act, 18 U.S.C. §§ 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (d) been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (e) been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (f) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in Sections 4(a) to 4(e) above;
- (g) been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (h) been found in a final adjudicated decision to have violated the Commercial Non-discrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (i) admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in Sections 2, 3, and 4(a) to 4(h) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

[●]

5. **AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

[●]

6. **AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

- (a) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (b) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

[●]

7. **SUBCONTRACT AFFIRMATION I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

8. **AFFIRMATION REGARDING COLLUSION I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (a) agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Proposal that is being submitted; or
- (b) directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the Proposal.

9. **CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

10. **CONTINGENT FEES**

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the contract.

11. **CERTIFICATION REGARDING INVESTMENTS IN IRAN**

(a) The undersigned certifies that, in accordance with § 17-705 of the State Finance and Procurement Article of the Annotated Code of Maryland:

- (i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in § 17-702 of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (ii) it is not engaging in investment activities in Iran as described in § 17-702 of the State Finance and Procurement Article of the Annotated Code of Maryland.

(b) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

[●]

12. **CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)**

I FURTHER AFFIRM THAT:

The business has complied with the provisions of § 14-413 of the State Finance and Procurement Article of the Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

13. **ACKNOWLEDGEMENT**

(a) I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Solicitation Manager and may be distributed to units of:

- (i) the State of Maryland;
- (ii) counties or other subdivisions of the State of Maryland;

- (iii) other states; and
- (iv) the federal government.

(b) I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of the Proposal shall be construed to supersede, amend, modify, or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms, and covenants undertaken by the above business with respect to:

- (i) this Affidavit;
- (ii) the contract; and
- (iii) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: [●]

(print name of organization)

By: [●]

(print name of Authorized Representative and Affiant)

(signature of Authorized Representative and Affiant)

Form D

PERSONNEL WORK ASSIGNMENT FORM AND COMMITMENT OF AVAILABILITY

Name of Proposer: _____

Key Personnel Assignment	Name of Individual Assigned and Employer
Phase Developer PM	
Construction PM	
Design PM	
Lead Finance Manager	

Proposer's Name: _____ (the "Proposer")

Employer's Name: _____ (the "Employer") [*Note: duplicate as necessary to ensure all employers execute*]

COMMITMENT OF AVAILABILITY

Understanding MDOT's concern that the personnel resources specifically represented and listed in this Predevelopment Work Proposal actually be assigned to Phase 1 and not also be committed to other projects, Proposer and Employer commit that if Proposer is awarded the Phase P3 Agreement, to the extent with the Employer's control, the Employer's named Key Personnel and other individuals of Employer named in the Predevelopment Work Proposal will be committed, available, and active for the periods necessary to fulfill their responsibilities, as more fully set forth in the Phase Documents.

Proposer's Name: _____

Signed: _____

Printed Name: _____

Title: _____

Date: _____

Form E

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

Each of the undersigned, being first duly sworn, deposes and says that:

- A _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Proposal.
- B The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company, or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any part of the Financial Proposal, or to fix any overhead, profit, or cost element (including the Development Rights Fee) included in the Proposal, or of that of any other Proposer, or to secure any advantage against MDOT, MDTA, or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository, or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.
- C Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the Agreement or rejection of all Proposals and cancellation of the RFP.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

(Organization)

(Organization)

Subscribed and sworn to before me this _____ day of _____, 2020.

Notary Public in and for said County and State

My commission expires: [_____]

[Duplicate or modify this form as necessary so that it accurately describes (i) the entity making the Proposal and so that it is signed by and on behalf of all partners, members, joint venture members, and (ii) Equity Members.]

Form F

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE (MARYLAND)

- (a) "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 State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- (b) "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a proposer, bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a proposal or offer is made.
- (c) The proposer, bidder, or offeror warrants that, except as disclosed in clause (d), below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- (d) The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain detail—attach additional sheets if necessary):
- (e) The Proposer agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Proposer shall immediately make a full disclosure in writing to the Solicitation Manager of all relevant facts and circumstances. This disclosure shall include a description of actions which the Proposer has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the Phase P3 Agreement has been awarded and performance of the Phase P3 Agreement has begun, the Phase Developer shall continue performance until notified by the Solicitation Manager of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____

(Authorized Representative and Affiant) (Proposer)

Form G

FINANCIAL PROPOSAL FORM

Proposer Name: _____ (the "Proposer")

Date: _____

The Proposer hereby offers this Financial Proposal pursuant to Appendix 5 of the ITP.

1. Proposal Equity IRR

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

2. Developer Closing Fee Percentage

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

3. Development Rights Fees

_____ (stated in nominal dollars)

Section¹⁰

Development Rights Fee (stated in nominal dollars)

1

[2]

Total

4. Predevelopment Cost Cap

_____ (stated in nominal dollars)

5. D&C General Conditions Cost Percentage

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

6. Contractor Markup Percentage

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

7. Renewal Work General Conditions Cost Percentage

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

¹⁰ Proposer to populate in accordance with the section(s) included in Proposal for Phase South A

(Signature of Authorized Representative)

(Name and Title of Authorized Representative)

Form H
MDOT DBE/MBE FORMS

[see attached]

Form H-1

PROPOSER'S ACKNOWLEDGEMENT OF DBE AND MBE PROGRAM REQUIREMENTS

THIS ACKNOWLEDGEMENT MUST BE PROVIDED BY THE FINANCIAL PROPOSAL DUE DATE. IF THIS ACKNOWLEDGEMENT IS NOT COMPLETED AND SUBMITTED AS REQUIRED, MDOT MAY DETERMINE THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.

In conjunction with the Proposal submitted in response to the RFP, I affirm and agree to the following:

1. I acknowledge that MDOT will establish Disadvantaged Business Enterprise (DBE) participation goals to the extent required by federal law and Minority Business Enterprise (MBE) participation goals/subgoals to the extent practicable and legally permissible.
2. I acknowledge that MDOT established DBE participation goals for the Predevelopment Work for Phase 1 during the term of the Phase P3 Agreement.
3. I acknowledge that MDOT anticipates establishing DBE participation goals for the design and construction work, and MBE participation goals/subgoals for the operation and maintenance work performed during the term of the relevant Section P3 Agreement after reviewing the DBE and MBE program requirements and determining the applicability of each program.
4. I acknowledge that MDOT has or will set DBE participation goals or MBE participation goals/subgoals, as applicable, based on the actual work to be performed and the availability of DBEs or MBEs to perform the work.
5. I commit to making a good faith effort to achieve the established DBE participation goals. I acknowledge that I must either (i) meet each DBE participation goal established by MDOT and MDTA, and document my commitments to the DBE firms, or (ii) if I am unable to meet a goal, request a waiver, and document my good faith efforts to meet that goal.
6. I understand that if I am notified that I am the Selected Proposer, I must submit all additional documentation as required by MDOT and MDTA within five (5) Business Days, or other time period specified by MDOT, of being notified of the Selected Proposer.
7. I hereby agree that if I am the Selected Proposer, I will review all forms and documentation required to be submitted in connection with the DBE Program, including all documentation of good faith efforts to obtain the participation of DBE firms. I further understand that all forms completed and executed by me or the Phase Developer regarding any established DBE goal, including commitments to the participation of specific DBE firms, will (i) become part of the Phase P3 Agreement; and (ii) bind the Phase Developer for compliance purposes as set forth in the Phase P3 Agreement. Nothing herein shall grant any rights of the Phase Developer under the Phase P3 Agreement to any of its subcontractors by virtue of the DBE forms executed by the Phase Developer, as being incorporated into the Phase P3 Agreement.
8. I understand that in the event that no federal funds are used to finance the Predevelopment Work, MDOT reserves the right to establish MBE goals under Title 14, subtitle 3 of the SF&P Article of the Annotated Code of Maryland, to the extent it is practicable and legally permissible to do so.
9. I understand that all forms completed and executed by the Section Developers regarding any established MBE or DBE goal, including commitments to the participation of specific MBE or DBE firms, will (i) become part of the applicable Section P3 Agreement; and (ii) bind the applicable Section Developer for compliance purposes as set forth in the applicable Section P3 Agreement.

Nothing herein shall grant any rights of the Section Developer under the applicable Section P3 Agreement to any of its subcontractors by virtue of the DBE forms executed by the applicable Section Developer, as being incorporated into the applicable Section P3 Agreement.

10. I acknowledge that if I fail to return each completed document within the required time as directed by MDOT, MDOT may determine that I am not eligible for award.
11. In the solicitation of quotations or offers, DBE and MBE firms shall be provided not less than the same information and amount of time to respond as are non-DBE and non-MBE firms.
12. The solicitation process shall be conducted in such a manner so as to otherwise not place DBE and MBE firms at a competitive disadvantage to non-DBE and non-MBE firms.

I solemnly affirm under the penalties of perjury that each of the affirmations, certifications, and acknowledgements contained herein are true to the best of my knowledge, information, and belief.

Proposer Name: _____

Proposer Address: _____

Signature: _____

Name: _____

Title: _____

FORM H-2 (PREDEVELOPMENT WORK)

MDOT DBE FORM PACKAGE SUBMISSION FEDERALLY-FUNDED CONTRACTS PROPOSER'S AFFIRMATION

THIS AFFIRMATION MUST BE PROVIDED BY THE FINANCIAL PROPOSAL DUE DATE. IF THIS AFFIRMATION IS NOT COMPLETED AND SUBMITTED AS REQUIRED, MDOT MAY DETERMINE THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.

I hereby affirm that I have reviewed all required DBE program forms and documentation, whether attached hereto or subsequently submitted in support hereof, including any and all affidavits and the DBE participation schedule. The attached DBE Form Package Submission includes:

- (a) Certified DBE Utilization and Fair Solicitation Affidavit (MDOT DBE Form A – Federally-Funded Contracts); and
- (b) DBE Participation Schedule (MDOT DBE Form B – Federally-Funded Contracts).

I understand that if I am notified that I am the Selected Proposer, I must obtain the following documentation and submit it within five (5) Business Days of receiving such notice:

- (1) Outreach Efforts Compliance Statement (MDOT DBE Form C - Federally-Funded Contracts);
- (2) Subcontractor Project Participation Statement (MDOT DBE Form D - Federally-Funded Contracts);
- (3) DBE Waiver Request Form E (if waiver was requested); and
- (4) any other documentation required by MDOT to ascertain the Proposer's compliance in connection with the certified DBE participation goal.

I further understand that all forms completed and executed by me or the Phase Developer regarding any established DBE goal, including commitments to the participation or specific DBE firms, as well as any waiver requests, will (i) become part of the Phase P3 Agreement and (ii) bind the Phase Developer for compliance purposes as set forth in the Phase P3 Agreement. Nothing herein shall grant any additional rights under the Phase P3 Agreement to the Phase Developer or any of its subcontractors by virtue of the DBE forms executed by the Phase Developer being incorporated into the Phase P3 Agreement.

I solemnly affirm under the penalties of perjury that the contents of the DBE program forms completed by me or the Phase Developer are true to the best of my knowledge, information, and belief.

Proposer Name:

Proposer Address:

Signature _____

Name: _____

Title: _____

FORM H-3 (PREDEVELOPMENT WORK)

MDOT DBE FORM A - FEDERALLY-FUNDED CONTRACTS CERTIFIED DBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

THIS AFFIDAVIT MUST BE PROVIDED BY THE FINANCIAL PROPOSAL DUE DATE. IF THIS AFFIDAVIT IS NOT COMPLETED AND SUBMITTED AS REQUIRED, MDOT MAY DETERMINE THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.

In connection with the Proposal submitted in response to the Request for Proposals for Phase 1 of the I-495 & I-270 through a Phase Public-Private Partnership Agreement, I affirm the following:

1. **DBE Participation (PLEASE CHECK ONLY ONE)**

☐ I will meet the overall certified DBE participation goal of 26 percent for the Predevelopment Work. I agree that this percentage of the total dollar amount of the Predevelopment Work for the DBE goal will be performed by certified DBE firms as set forth in the DBE Participation Schedule - Part 2 of the MDOT DBE Form B (Federally-Funded Contracts), as updated in accordance with the Phase P3 Agreement.

OR

☐ I conclude that I am unable to achieve the DBE participation goal for the Predevelopment Work. I hereby request a waiver, in whole or in part, of the goal. Within five (5) Business Days of being notified that I am the Selected Proposer, I will submit a written waiver request. For a partial waiver request, I agree that certified DBE firms will be used to accomplish the percentages of the total dollar amount of the Phase P3 Agreement as set forth in the DBE Participation Schedule - Part 2 of the MDOT DBE Form B (Federally-Funded Contracts).

2. **Additional DBE Documentation**

I understand that within five (5) Business Days of being notified that I am the Selected Proposer, I must submit the following documentation to MDOT:

- (a) Outreach Efforts Compliance Statement (MDOT DBE Form C – Federally-Funded Contracts);
- (b) DBE Subcontractor Project Participation Affidavit (MDOT DBE Form D – Federally-Funded Contracts);
- (c) Good Faith Efforts Guidance and Documentation (MDOT DBE Form E – Federally-Funded Contracts) (if waiver was requested); and
- (d) any other documentation required by MDOT to ascertain the Proposer's susceptibility of being selected for award in connection with the certified DBE participation goal in accordance with 49 CFR Part 26, Appendix A.

I acknowledge that if I fail to return each completed document (in paragraphs 2(a) through (d)) within the required time, MDOT may determine that the Proposer is not compliant and therefore not eligible for contract award or not susceptible of being selected for award. I further acknowledge that nothing contained herein or in any of the additional DBE Program Forms shall grant any rights of the Phase Developer under the Phase P3 Agreement to any of its subcontractors by virtue of the DBE forms executed being incorporated into the Phase P3 Agreement.

3. **Information Provided to DBE firms**

In the solicitation of subcontract quotations or offers, DBE firms were provided not less than the same information and amount of time to respond as were non-DBE firms.

4. **Products and Services Provided by DBE firms**

I hereby affirm that the DBEs are only providing those products and services for which they are MDOT certified.

I solemnly affirm under the penalties of perjury that the information in this affidavit is true to the best of my knowledge, information, and belief.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State, and Zip Code

Date

FORM H-4 (PREDEVELOPMENT WORK)

MDOT DBE FORM B - FEDERALLY-FUNDED CONTRACTS DBE PARTICIPATION SCHEDULE

PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE

PARTS 2 AND 3 MUST BE PROVIDED BY THE FINANCIAL PROPOSAL. IF PART 2 IS NOT COMPLETED AND SUBMITTED WITH THE PROPOSAL AS REQUIRED, MDOT MAY DETERMINE THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.

***** STOP *****

FORM INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS FORM

1. Please refer to the Maryland Department of Transportation (MDOT) DBE Directory at https://mbe.mdot.maryland.gov/directory/search_select.asp to determine if a firm is certified for the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit www.naics.com. Only those specific products and services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the DBE participation goal.
2. In order to be counted for purposes of achieving the DBE participation goal, the firm must be certified for that specific NAICS ("DBE" for Federally-funded projects designation after NAICS Code). **WARNING:** If the firm's NAICS Code is in graduated status, such services/products **will not be counted** for purposes of achieving the DBE participation goals. Graduated status is clearly identified in the MDOT Directory (such graduated codes are designated with the word graduated after the appropriate NAICS Code).
3. Examining the NAICS Code is the **first step** in determining whether a DBE firm is certified and eligible to receive DBE participation credit for the specific products/services to be supplied or performed under the contract. The **second step** is to determine whether a firm's Products/Services Description in the DBE Directory includes the products to be supplied and services to be performed that are being used to achieve the DBE participation goal.
4. If you have any questions as to whether a firm is MDOT DBE certified, or if it is certified to perform specific services or provide specific products, please call MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or send an email to mbe@mdot.state.md.us.
5. The Phase Developer's subcontractors are considered second-tier subcontractors. The following two conditions must be met before MDOT may approve a third-tier or lower-tier contracting agreement: (a) the Phase Developer must request in writing approval of each third-tier or lower-tier contract arrangement, and (b) the request must contain specifics as to why a third-tier or lower-tier contracting arrangement should be approved. These documents must be submitted with the bid/proposal in Part 2 of this DBE Participation Schedule.
6. For each DBE firm that is being used as supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the **amount of the subcontract for purposes of achieving the DBE participation goal**:
 - A. Is the firm certified as a broker of the products/supplies? If the answer is YES, please continue to Item C. If the answer is NO, please continue to Item B.
 - B. Is the firm certified as a supplier, wholesaler, regular dealer, or manufacturer of such products/supplies? If the answer is YES, continue to Item D. If the answer is NO, continue to Item C only if the DBE firm is certified to perform trucking/hauling services under NAICS Codes 484110, 484121, 484122, 484210, 484220, and 484230. If the answer is NO and the firm is not certified under these NAICS Codes, then no DBE participation credit will be given for the supply of these products.

- C. For purposes of achieving the DBE participation goal, you may count only the amount of any reasonable fee that the DBE firm will receive for the provision of such products/supplies - not the total subcontract amount or the value (or a percentage thereof) of such products and supplies. For Column 3 of the DBE Participation Schedule, please divide the amount of any reasonable fee that the DBE firm will receive for the provision of such products/services by the total contract value and insert the percentage in Line 3.1.
- D. Is the firm certified as a manufacturer (refer to the firm's NAICS Code and specific description of products/services) of the products/supplies to be provided? If the answer is NO, please continue to Item E. If the answer is YES, for purposes of achieving the DBE participation goal, you may count the total amount of the subcontract. For Column 3 of the DBE Participation Schedule, please divide the total amount of the subcontract by the total contract value and insert the percentage in Line 3.1.
- E. Is the firm certified as a supplier, wholesaler, or regular dealer? If the answer is YES and the DBE firm is furnishing and installing the materials and is certified to perform these services, please divide the total subcontract amount (including full value of supplies) by the total contract value and insert the percentage in Line 3.1. If the answer is YES and the DBE firm is only being used as a supplier, wholesaler, or regular dealer or is not certified to install the supplies/materials, for purposes of achieving the DBE participation goal, you may only count sixty percent (60%) of the value of the subcontract for these supplies/products (60% Rule). To apply the 60% Rule, first divide the amount of the subcontract for these supplies/products only (not installation) by the total contract value. Then, multiply the result by sixty percent (60%) and insert the percentage in Line 3.2.
7. For each DBE firm that is not being used as a supplier/wholesaler/regular dealer/broker/manufacturer, to calculate the amount of the subcontract for purposes of achieving the DBE participation goal, divide the total amount of the subcontract by the total contract value and insert the percentage in Line 3.1.
- Example:** \$2,500 (Total Subcontract Amount) ÷ \$10,000 (Total Contract Value) x 100 = 25%
8. Please note that for USDOT-funded projects, a DBE prime may count towards its DBE participation goal work performed by its own forces. Include information about the DBE prime in Part 2.
9. **WARNING:** The percentage of DBE participation, computed using the dollar amounts in Column 3 for all of the DBE firms listed in Part 2, MUST at least equal the DBE participation goal as set forth in MDOT DBE Form A – Federally-Funded Contracts for this solicitation. If the Selected Proposer is unable to achieve the DBE participation goals, then the Selected Proposer must request a waiver in Form A. You may wish to use the Goal Worksheet shown below to assist you in calculating the percentage and confirming that you have met the applicable DBE participation goal.

GOAL WORKSHEET	
Total DBE Firm Participation (Add percentages in Column 3 for all DBE firms listed in DBE Participation Schedule)	(A) _% ¹¹
The percentage amount in Box A above should be equal to the percentage amount in Box E below.	

¹¹ The cumulative DBE percentage in this column should meet the DBE participation goal for the Predevelopment Work for the initial 180 days following the Effective Date, unless the Phase Developer has obtained a waiver to the DBE participation goal from MDOT in accordance with Form A.

Add <i>Countable</i> Subcontract Amounts (see 6 through 8 of Instructions) for all DBE firms listed in DBE Participation Schedule, and insert in Box B	(B) \$ _ ¹²
Insert the Total Contract Amount in Box C	(C) \$ _ ¹³
Divide Box B by Box C and Insert in Box D	(D) =
Multiply Box D by 100 and insert in Box E	(E) = _ %

¹² The total countable subcontract amounts shall be equal to the aggregate value of the total countable subcontract amounts for the initial 180 days following the Effective Date.

¹³ The Total Contract Amount means the total value of the work under the Phase P3 Agreement for the first 180 days following the Effective Date.

PART 2 – DBE PARTICIPATION SCHEDULE

PARTS 2 AND 3 MUST BE PROVIDED BY THE FINANCIAL PROPOSAL DUE DATE. IF PART 2 IS NOT COMPLETED AND SUBMITTED WITH THE PROPOSAL AS REQUIRED, MDOT MAY DETERMINE THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.

Selected Proposer	Phase 1 of the I-495/I-270 P3 Program: Describe Scope of Work to be Completed by Selected Proposer

LIST INFORMATION FOR EACH CERTIFIED DBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE DBE PARTICIPATION GOAL.

NAME OF DBE SUBCONTRACTOR AND TIER	CERTIFICATION NO. AND DBE CLASSIFICATION	DBE CONTRACT VALUE AND PERCENTAGE OF PREDEVELOPMENT WORK ¹⁴
<div style="border: 1px solid black; padding: 5px; min-height: 150px;"> <div style="margin-bottom: 10px;">[insert name of DBE subcontractor]</div> <div> <input type="checkbox"/> Please check if DBE firm is a third-tier or lower tier contractor (if applicable). </div> </div>	<div style="border: 1px solid black; padding: 5px; min-height: 150px;"> <div style="margin-bottom: 10px;">Certification Number: _____</div> <div>(If dually certified, check only one box.)</div> <div style="margin-top: 10px;"> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned </div> </div>	<div style="border: 1px solid black; padding: 5px; min-height: 150px;"> <div style="margin-bottom: 10px;">(a) Dollar amounts of subcontract(s) with DBE subcontract: \$[•].¹⁵</div> <div style="margin-bottom: 10px;">(b) Total percentage to be paid to the DBE subcontractor as a percentage of the total contract value (excluding products/ services from suppliers, wholesalers, or regular dealers): [•]%¹⁶</div> <div style="margin-bottom: 10px;">(c) Total percentage to be paid to the DBE subcontractor for items of work where the DBE subcontractor is being used as a supplier, wholesaler, or regular dealer.¹⁷ <div style="margin-left: 20px;"> (i) Percentage as a percentage of the total contract value: [•]%. (ii) Percentage that can be counted towards the DBE participation goal by applying the 60% rule (see section 6(E) in Part 1 – Instructions): [•]%. </div> </div> </div>

¹⁴ The cumulative DBE percentage in this column should meet the DBE participation goal for the Predevelopment Work for the initial 180 days following the Effective Date, unless the Phase Developer has obtained a waiver to the DBE participation goal from MDOT in accordance with Form A.

¹⁵ Insert the total Dollar amount of the subcontract(s) with the DBE subcontractor expected to be accrued over the initial 180 days following the Effective Date.

¹⁶ Insert the total percentage amount of the total contract value (included in Box C of Part 1) for which the DBE subcontractor is responsible (excluding products/ services from suppliers, wholesalers or regular dealers). This percentage can be used for the purposes of calculating the DBE participation goal.

¹⁷ These percentages should be based on the value of the work expected to be completed in the initial 180 days following the Effective Date.

	<input type="checkbox"/> Other DBE Classification <hr/>	
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☐ Please check if Continuation Sheets are attached. Please add additional sheets as necessary.

CONTINUATION SHEET

PAGE of

Selected Proposer	Phase 1 of the I-495/I-270 P3 Program: Describe Scope of Work to be Completed by Selected Proposer

LIST INFORMATION FOR EACH CERTIFIED DBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE DBE PARTICIPATION GOAL.

NAME OF DBE SUBCONTRACTOR AND TIER	CERTIFICATION NO. AND DBE CLASSIFICATION	DBE CONTRACT VALUE AND PERCENTAGE OF PREDEVELOPMENT WORK¹⁸
<p>[insert name of DBE subcontractor]</p> <p><input type="checkbox"/> Please check if DBE firm is a third-tier or lower tier contractor (if applicable).</p>	<p>Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other DBE Classification</p>	<p>(a) Dollar amounts of subcontract(s) with DBE subcontract: \$[•].¹⁹</p> <p>(b) Total percentage to be paid to the DBE subcontractor as a percentage of the total contract value (excluding products/ services from suppliers, wholesalers, or regular dealers): [•]%²⁰</p> <p>(c) Total percentage to be paid to the DBE subcontractor for items of work where the DBE subcontractor is being used as a supplier, wholesaler, or regular dealer.²¹</p> <p>(i) Percentage as a percentage of the total contract value: [•]%. (ii) Percentage that can be counted towards the DBE participation goal by applying the 60% rule (see section 6(e) in Part 1 – Instructions): [•]%</p>

¹⁸ The cumulative DBE percentage in this column should meet the DBE participation goal for the Predevelopment Work for the initial 180 days following the Effective Date, unless the Phase Developer has obtained a waiver to the DBE participation goal from MDOT in accordance with Form A.

¹⁹ Insert the total Dollar amount of the subcontract(s) with the DBE subcontractor expected to be accrued over the initial 180 days following the Effective Date.

²⁰ Insert the total percentage amount of the total contract value (included in Box C of Part 1) for which the DBE subcontractor is responsible (excluding products/ services from suppliers, wholesalers or regular dealers). This percentage can be used for the purposes of calculating the DBE participation goal.

²¹ These percentages should be based on the value of the work expected to be completed in the initial 180 days following the Effective Date.

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PART 3 – CERTIFICATION FOR DBE PARTICIPATION SCHEDULE

PARTS 2 AND 3 MUST BE PROVIDED BY THE FINANCIAL PROPOSAL DUE DATE AS DIRECTED IN THE SOLICITATION.

[to be signed by Proposer]

I, the undersigned Proposer, hereby affirm that:

- (a) I have reviewed the Products and Services Description (specific product that a firm is certified to provide or areas of work that a firm is certified to perform) set forth in the MDOT DBE Directory for each of the DBE firms listed in Part 2 of this DBE Form B for purposes of achieving the DBE participation goal;
- (b) the DBE firms listed are only performing those products/services/areas of work for which they are certified; and
- (c) I have read and understand the form instructions set forth in Part 1 of this DBE Form B.

The undersigned Proposer hereby certifies and agrees that it has fully complied with 49 CFR Part 26 and Form FHWA-1273, which provide that, except as otherwise provided by law, a contractor may not identify a certified disadvantaged business enterprise in a bid or proposal and:

- (a) fail to request, receive, or otherwise obtain authorization from the certified disadvantaged business enterprise to identify the certified disadvantaged business enterprise in its bid or proposal;
- (b) fail to notify the certified disadvantaged business enterprise before execution of the contract of its inclusion of the bid or proposal;
- (c) fail to use the certified disadvantaged business enterprise in the performance of the contract; or
- (d) pay the certified disadvantaged business enterprise solely for the use of its name in the bid or proposal.

I solemnly affirm under the penalties of perjury that the contents of Parts 2 and 3 of MDOT DBE Form B are true to the best of my knowledge, information and belief.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State, and Zip Code

Date

FORM H-5 (PREDEVELOPMENT WORK)

**MDOT DBE FORM C – FEDERALLY-FUNDED CONTRACTS OUTREACH EFFORTS COMPLIANCE
STATEMENT**

In conjunction with the Proposal submitted in response to Solicitation No. _____, I state the following:

1. Proposer took the following efforts to identify subcontracting opportunities in these specific work categories :

2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified DBE firms for these subcontract opportunities.

3. Proposer made the following attempts to personally contact the solicited DBE firms:

4. Please Check One:

- ☐ This project does not involve bonding requirements.
- ☐ Proposer assisted DBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS)

5. Please Check One:

- ☐ Proposer did attend the pre-Proposal meeting/conference.
- ☐ No pre-Proposal meeting/conference was held.
- ☐ Proposer did not attend the pre-Proposal meeting/conference.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

FORM H-6 (PREDEVELOPMENT WORK)

**MDOT DBE FORM D – FEDERALLY-FUNDED CONTRACTS DBE SUBCONTRACTOR PROJECT
PARTICIPATION AFFIDAVIT**

IF THE SELECTED PROPOSER FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE SOLICITATION MANAGER MAY DETERMINE THAT THE PROPOSER IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD OR THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD. SUBMIT ONE FORM FOR EACH CERTIFIED DBE FIRM LISTED IN THE DBE PARTICIPATION SCHEDULE FOR THE PREDEVELOPMENT WORK FOR THE INITIAL 180 DAYS FOLLOWING THE EFFECTIVE DATE. PROPOSERS ARE HIGHLY ENCOURAGED TO SUBMIT FORM D PRIOR TO THE FIVE (5) DAY DEADLINE.

Provided that _____ (Phase _____ Developer's Name) is awarded the Phase P3 Agreement in conjunction with Solicitation No. _____, such Phase Developer will enter into a subcontract with _____ (Subcontractor's Name) committing to participation by the DBE firm _____ (DBE Name) with MDOT Certification Number _____ (if subcontractor previously listed is also the DBE firm, please restate name and provide DBE Certification Number) which will receive at least \$ _____ (total subcontract amount)²², being _____ % (total subcontract percentage) for performing the following products/services for the Predevelopment Work²³:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

I solemnly affirm under the penalties of perjury that the information provided in this DBE Subcontractor Project Participation Affidavit is true to the best of my knowledge, information, and belief. I acknowledge that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes.

²² Insert the total Dollar amount of the subcontract(s) with the DBE subcontractor expected to be accrued over the initial 180 days following the Effective Date.

²³ Insert the total percentage amount of the total contract value (included in Box C of Part 1 of Form H-4) for which the DBE subcontractor is responsible (excluding products/ services from suppliers, wholesalers or regular dealers). This percentage can be used for the purposes of calculating the DBE participation goal.

PHASE DEVELOPER	SUBCONTRACTOR (SECOND-TIER)	SUBCONTRACTOR (THIRD-TIER)
Signature of Representative: _____	Signature of Representative: _____	Signature of Representative: _____
Printed Name and Title: _____	Printed Name and Title: _____	Printed Name and Title: _____
Firm's Name: _____	Firm's Name: _____	Firm's Name: _____
Federal Identification Number: _____	Federal Identification Number: _____	Federal Identification Number: _____
Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____
Date: _____	Date: _____	Date: _____

IF DBE FIRM IS A THIRD-TIER SUBCONTRACTOR, THIS FORM MUST ALSO BE EXECUTED BY THE SECOND-TIER SUBCONTRACTOR THAT HAS THE SUBCONTRACT AGREEMENT WITH THE DBE FIRM.

FORM H-7 (PREDEVELOPMENT WORK)

MDOT DBE FORM E – GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION

PART 1 – GUIDANCE FOR DEMONSTRATING GOOD FAITH EFFORTS TO MEET DBE PARTICIPATION GOALS

1. GENERAL

In order to show that it has made good faith efforts to meet the DBE participation goal for the Phase P3 Agreement, the Selected Proposer must either:

- (a) meet the DBE Goal(s) and document its commitments for participation of DBE Firms; or
- (b) when it does not meet the DBE Goal, document its Good Faith Efforts to meet the goal.

2. DEFINITIONS

- (a) **"DBE Firms"** means certified DBE Firms. Certified DBE Firms can participate in the federal DBE Program.
- (b) **"DBE Goal(s)"** means the DBE participation goal specified in Section 1.20(b) (*Participation of Small, Minority, Disadvantaged, and Women-Owned Businesses*) of the ITP.
- (c) **"Good Faith Efforts"** has the meaning given to that term in 49 CFR Part 26 and 49 CFR Part 26 Appendix A.
- (d) **"Identified Firms"** means a list of the DBEs identified by MDOT during the goal setting process and listed in the federally-funded solicitation as available to perform the Identified Items of Work. It also may include additional DBEs identified by the Selected Proposer as available to perform the Identified Items of Work, such as DBEs certified or granted an expansion of services after the solicitation was issued. If the solicitation does not include a list of Identified Firms, this term refers to all of the DBE Firms the Selected Proposer identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.
- (e) **"Identified Items of Work"** means the bid items identified by MDOT during the goal setting process and listed in the solicitation as possible items of work for performance by DBE Firms. It may also include additional portions of items of work the Selected Proposer identified for performance by DBE Firms to increase the likelihood that the DBE Goal(s) will be achieved. If the solicitation does not include a list of Identified Items of Work, this term refers to all of the items of work the Selected Proposer identified as possible items of work for performance by DBE Firms and should include all reasonably identifiable work opportunities.

3. TYPES OF ACTIONS MDOT WILL CONSIDER

The Selected Proposer is responsible for making relevant portions of the Predevelopment Work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation.

The following is a list of the types of actions MDOT will consider as part of the Selected Proposer's Good Faith Efforts if the Selected Proposer fails to meet the DBE Goal. This list is not

intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

3.1 **Identify Bid Items as Work for DBE Firms**

(a) **Identified Items of Work in Solicitation**

- (i) If the solicitation provides a list of Identified Items of Work, the Selected Proposer shall make all reasonable efforts to solicit quotes from DBE Firms to perform that work.
- (ii) The Selected Proposer may, and is encouraged to, select additional items of work to be performed by DBE Firms to increase the likelihood that the DBE Goal will be achieved.

(b) **Identified Items of Work by the Selected Proposer**

- (i) If the solicitation does not include a list of Identified Items of Work, the Selected Proposer should reasonably identify sufficient items of work to be performed by DBE Firms.
- (ii) Where appropriate, the Selected Proposer should break out contract work items into economically feasible units to facilitate DBE participation, rather than perform these work items with their own forces. The ability or desire of the Selected Proposer to perform the work of a contract with its own organization does not relieve the Selected Proposer of the responsibility to make Good Faith Efforts.

3.2 **Identify DBE Firms to Solicit**

(a) **DBE Firms Identified in Solicitation**

- (i) If the solicitation provides a list of Identified DBE Firms, the Selected Proposer shall make all reasonable efforts to solicit those DBE Firms.
- (ii) The Selected Proposer may, and is encouraged to, search the DBE Directory to identify additional DBEs who may be available to perform the items of work, such as DBEs that were certified or granted an expansion of their services after the solicitation was issued.

(b) **DBE Firms Identified by the Selected Proposer**

- (i) If the solicitation does not include a list of Identified DBE Firms, the Selected Proposer should reasonably identify the DBE Firms that are available to perform the Identified Items of Work.
- (ii) Any DBE Firms identified as available by the Selected Proposer should be certified in the appropriate program.
- (iii) Any DBE Firms identified as available by the Selected Proposer should be certified to perform the Identified Items of Work.

3.3 **Solicit DBEs**

- (a) The Selected Proposer shall solicit all Identified Firms for all Identified Items of Work by providing written notice. The Selected Proposer shall:

- (i) provide the written solicitation at least ten (10) days prior to bid opening to allow sufficient time for the DBE Firms to respond;
- (ii) send the written solicitation by first-class mail, facsimile, or email using contact information in the DBE Directory, unless the Selected Proposer has a valid basis for using different contact information; and
- (iii) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the DBE, and other requirements of the contract to assist DBE Firms in responding.

This information may be provided by including hard copies in the written solicitation or by electronic means as described in Section 3.3(c) below.

- (b) "All" Identified Firms includes the DBEs listed in the solicitation and any DBE Firms that the Selected Proposer identified as potentially available to perform the Identified Items of Work, but it does not include DBE Firms who are no longer certified to perform the work as of the date the Selected Proposer provides written solicitations.
- (c) "Electronic Means" includes, for example, information provided via a website or file transfer protocol site containing the plans, specifications, and other requirements of the contract. If an interested DBE cannot access the information provided by electronic means, the Selected Proposer must make the information available in a manner that is accessible by the interested DBE.
- (d) Follow up on initial written solicitations by contacting DBEs to determine if they are interested. The follow up contact may be made:
 - (i) by telephone using the contact information in the DBE Directory, unless the Selected Proposer has a valid basis for using different contact information; or
 - (ii) in writing via a method that differs from the method used for the initial written solicitation.
- (e) In addition to the written solicitation set forth in Section 3.3(a) and the follow up required in Section 3.3(d) above, use all other reasonable and available means to solicit the interest of DBE Firms certified to perform the work of the contract. Examples of other means include:
 - (i) attending any pre-bid meetings at which DBE Firms could be informed of contracting and subcontracting opportunities;
 - (ii) advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website; and
 - (iii) effectively using the services of other organizations, as allowed on a case-by-case basis and authorized in the solicitation, to provide assistance in the recruitment and placement of DBE Firms.

3.4 **Negotiate with Interested DBE Firms**

The Selected Proposer must negotiate in good faith with interested DBE Firms.

- (a) Evidence of negotiation includes, without limitation, the following:
 - (i) the names, addresses, and telephone numbers of DBE Firms that were considered;
 - (ii) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
 - (iii) evidence as to why additional agreements could not be reached for DBE Firms to perform the work.
- (b) The Selected Proposer, using good business judgment, shall consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and shall take a firm's price and capabilities as well as contract goals into consideration.
- (c) The fact that there may be some additional costs involved in finding and using DBE Firms is not in itself sufficient reason for the Selected Proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Factors to take into consideration when determining whether a DBE Firm's quote is excessive or unreasonable include, without limitation, the following:
 - (i) the dollar difference between the DBE subcontractor's quote and the average of the other subcontractors' quotes received by the Selected Proposer;
 - (ii) the percentage difference between the DBE subcontractor's quote and the average of the other subcontractors' quotes received by the Selected Proposer;
 - (iii) the percentage that the DBE subcontractor's quote represents of the overall contract amount;
 - (iv) the number of DBE Firms that the Selected Proposer solicited for that portion of the work;
 - (v) whether the work described in the DBE and non-DBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
 - (vi) the number of quotes received by the Selected Proposer for that portion of the work.
- (d) The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
- (e) The Selected Proposer may not use its price for self-performing work as a basis for rejecting a DBE Firm's quote as excessive or unreasonable.
- (f) The average of the other subcontractors' quotes received by the Selected Proposer refers to the average of the quotes received from all subcontractors, except that there should be quotes from at least three subcontractors, and there must be at least one quote from a DBE and one quote from a non-DBE.
- (g) The Selected Proposer shall not reject a DBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified DBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Selected Proposer concludes is not acceptable, the Selected Proposer must provide a written detailed statement listing the reasons for this conclusion. The Selected Proposer must

also document the steps taken to verify the capabilities of the DBE and non-DBE Firms quoting similar work.

- (h) The factors to take into consideration when assessing the capabilities of a DBE Firm include the following:
 - (i) financial capability;
 - (ii) physical capacity to perform;
 - (iii) available personnel and equipment;
 - (iv) existing workload;
 - (v) experience performing the type of work;
 - (vi) conduct and performance in previous contracts; and
 - (vii) ability to meet reasonable contract requirements.
- (i) The DBE Firm's standing within its industry, membership in specific groups, organizations, or associations, and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the contract goal.

3.5 **Assisting Interested DBE Firms**

When appropriate under the circumstances, MDOT will consider whether the Selected Proposer:

- (a) made reasonable efforts to assist interested DBE Firms in obtaining the bonding, lines of credit, or insurance required by MDOT or the Selected Proposer; and
- (b) made reasonable efforts to assist interested DBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

4. **OTHER CONSIDERATIONS**

In making a determination of Good Faith Efforts MDOT may consider engineering estimates, catalogue prices, general market availability and availability of certified DBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified DBE and non-DBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

MDOT may take into account whether the Selected Proposer decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the solicitation. MDOT also may take into account the performance of other bidders/offerors in meeting the contract.

5. **DOCUMENTING GOOD FAITH EFFORTS**

The written documentation shall include the following:

5.1 **Items of Work**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified DBE Firms in order to increase the likelihood of achieving the stated DBE Goal(s), by completing Part 2 (*Certification Regarding Good Faith Efforts Documentation*) of Form H-7 (*MDOT DBE Form E – Good Faith Efforts Guidance and Documentation*).

5.2 **Outreach/Solicitation/Negotiation**

- (a) The record of the Selected Proposer's compliance with the outreach efforts prescribed by 49 CFR Part 26, Appendix A.
- (b) A detailed statement of the efforts made to contact and negotiate with DBE Firms including:
 - (i) the names, addresses, and telephone numbers of the DBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) (Complete Part 3 (*Identified Items of Work by the Selected Proposer*) of this Form H-6 and submit letters, fax cover sheets, and emails documenting solicitations); and
 - (ii) a description of the information provided to DBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

5.3 **Rejected DBE Firms**

- (a) For each DBE Firm that the Selected Proposer concludes is not acceptable or qualified, a detailed statement of the reasons for the Selected Proposer's conclusion, including the steps taken to verify the capabilities of the DBE and non-DBE firms quoting similar work.
- (b) For each certified DBE Firm that the Selected Proposer concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Selected Proposer's conclusion, including the quotes received from all DBE and non-DBE firms bidding on the same or comparable work. (Include copies of all quotes received.)
- (c) A list of DBE Firms contacted but found to be unavailable. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the DBE contractor or a statement from the Selected Proposer that the DBE contractor refused to sign the Minority Contractor Unavailability Certificate.

5.4 **Other Documentation**

- (a) Submit any other documentation requested by MDOT to ascertain the Selected Proposer's Good Faith Efforts.
- (b) Submit any other documentation the Selected Proposer believes will help MDOT ascertain its Good Faith Efforts.

PART 2 — CERTIFICATION REGARDING GOOD FAITH EFFORTS DOCUMENTATION

PAGE ____ OF ____

Selected Proposer	Project Description	Solicitation Number

PARTS 3, 4, AND 5 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST

I hereby request a waiver of:

- ☐ the DBE participation goal; or
- ☐ a portion of the pertinent DBE participation goal for this solicitation.

I affirm that I have reviewed Part 1 (*Guidance for Demonstrating Good Faith Efforts to Meet DBE Participation Goals*) of Form H-7 (*MDOT DBE Form E – Good Faith Efforts Guidance and Documentation*).

I further affirm under penalties of perjury that the contents of Parts 3, 4, and 5 of this form are true to the best of my knowledge, information, and belief.

Company Name

Address

City, State and Zip Code

Signature of Representative

Printed Name and Title

Date

PART 3 — IDENTIFIED ITEMS OF WORK PHASE DEVELOPER MADE AVAILABLE TO DBE FIRMS

PAGE ____ OF ____

Selected Proposer	Project Description	Solicitation Number

Identify those items of work that the Selected Proposer made available to DBE Firms.

This includes, where appropriate, those items the Selected Proposer identified and determined to subdivide into economically feasible units to facilitate the DBE participation. For each item listed, show the anticipated percentage of the total contract amount.

It is the Selected Proposer's responsibility to demonstrate that sufficient work to meet the goal was made available to DBE Firms, and the total percentage of the items of work identified for DBE participation equals or exceeds the percentage DBE goal set for the solicitation.

Note: If the solicitation includes a list of bid items identified during the goal setting process as possible items of work for performance by DBE Firms, the Selected Proposer should make all of those items of work available to DBE Firms or explain why that item was not made available. If the Selected Proposer selects additional items of work to make available to DBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the solicitation?	Does the Selected Proposer normally self-perform this work?	Was this work made available to DBE firms? If no, explain why?
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Please check if Additional Sheets are attached.

PART 4— IDENTIFIED DBE FIRMS AND RECORD OF SOLICITATIONS

PAGE ____ OF ____

Selected Proposer	Project Description	Solicitation Number

Identify the DBE Firms solicited to provide quotes for the Identified Items of Work made available for DBE participation. Include the name of the DBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the DBE provided a quote, and whether the DBE is being used to meet the DBE participation goal. DBE Firms used to meet the participation goal must be included on the DBE Participation Schedule.

Note: If the solicitation includes a list of the DBE Firms identified during the goal setting process as potentially available to perform the items of work, the Selected Proposer should solicit all of those DBE Firms or explain why a specific DBE was not solicited. If the Selected Proposer identifies additional DBE Firms who may be available to perform Identified Items of Work, those additional DBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to DBE Firms must be attached to this form. If the Selected Proposer used a non-DBE or is self-performing the identified items of work, this Part 4 must be completed.

Name of Identified DBE Firm	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec' d	Quote Used	Reason Quote Rejected
Firm Name: _____		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: <input type="checkbox"/> Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Use Other DBE <input type="checkbox"/> Use Non-DBE <input type="checkbox"/> Self-performing

Name of Identified DBE Firm	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec' d	Quote Used	Reason Quote Rejected
Firm Name: _____		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: <input type="checkbox"/> Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Use Other DBE <input type="checkbox"/> Use Non-DBE <input type="checkbox"/> Self-performing

☐ Please check if Additional Sheets are attached.

PART 5— ADDITIONAL INFORMATION REGARDING REJECTED DBE QUOTES

PAGE ____ OF ____

Selected Proposer	Project Description	Solicitation Number

This form must be completed if Part 3 indicates that a DBE quote was rejected because the Selected Proposer is using a non-DBE or is self-performing the Identified Items of Work.

Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a non-DBE, and if applicable, state the name of the non-DBE. Also include the names of all DBE and non-DBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by DBE (Include spec/section number from bid)	Self-performing or Using Non-DBE (Provide name)	Amount of Non-DBE Quote	Name of Other Firms who Provided Quotes & Whether DBE or Non-DBE	Amount Quoted	Indicate Reason Why DBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

☐ Please check if Additional Sheets are attached.

Form I

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The undersigned certifies on behalf of _____, that:

_____ (Name of entity making certification)

[check one of the following boxes]

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

[check one of the following boxes]

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

Signature: _____

Title: _____

Date: _____

If not Proposer, relationship to Proposer: _____

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

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

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

MDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78. Sta. 252, 42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all Proposers that it will affirmatively ensure that any agreement entered into pursuant to this RFP, DBEs will be afforded full and fair opportunity to submit bids and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

APPENDIX A

During the performance of the Phase P3 Agreement, the Phase Developer, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The Phase Developer (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, MDOT, as they may be amended from time to time, which are herein incorporated by reference and made a part of the Phase P3 Agreement.
2. **Non-discrimination:** The Phase Developer, with regard to the work performed by it during the Phase P3 Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Phase Developer will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Phase P3 Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Phase Developer for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Phase Developer of the Phase Developer's obligations under the Phase P3 Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Phase Developer will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MDOT to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Phase Developer is in the exclusive possession of another who fails or refuses to furnish the information, the Phase Developer will so certify to MDOT, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Phase Developer's noncompliance with the Non-discrimination provisions of the Phase P3 Agreement, MDOT will impose such contract sanctions as it or MDOT may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the Phase Developer under the Phase P3 Agreement until the Phase Developer complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Phase Developer will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives

issued pursuant thereto. The Phase Developer will take action with respect to any subcontract or solicitation as MDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Phase Developer becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Phase Developer may request MDOT to enter into any litigation to protect the interests of MDOT. In addition, the Phase Developer may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of the Phase P3 Agreement, the Phase Developer, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

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

Form J
PROPOSAL SECURITY

[see attached]

Form J-1

PROPOSAL BOND

Bond No. _____

We, _____, as Principal and _____, as Surety or as Co-Sureties, each a corporation duly organized under the laws of the state indicated on the attached page are held and firmly bound unto the State of Maryland ("State"), for the sum of \$[•]²⁴ (the "Bonded Sum") for the payment of which Bonded Sum, the Principal and the Surety(ies) bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted its Proposal to deliver Phase 1 of the I-495 & I-270 P3 Program through a public-private partnership agreement (the "Phase P3 Agreement"), which Proposal is incorporated herein by this reference and has been submitted pursuant to the Request for Proposals dated as of December 18, 2020 (as amended or supplemented, the "RFP"), in accordance with the Instructions to Proposers ("ITP") included in the RFP (initially capitalized terms not otherwise defined herein shall have the meaning set forth in the ITP);

NOW, THEREFORE:

1. The condition of this bond is such that, upon occurrence of any of the following events, then this obligation shall be null and void; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to the State as liquidated damages and not as a penalty, upon receipt by Principal and Surety or by Principal and Sureties listed on the attached page (the "Co-Sureties") of notice of such forfeiture from MDOT:
 - (a) Principal's receipt of written notice from MDOT that either (i) no Phase P3 Agreement for Phase 1 will be awarded by MDOT pursuant to the RFP, or (ii) MDOT has awarded the Phase P3 Agreement for Phase 1, has received the executed Phase P3 Agreement and other required documents, and does not intend to award the Phase P3 Agreement to Principal;
 - (b) except as expressly provided otherwise in the RFP or agreed to by MDOT in writing, Principal's performance of its obligations to achieve the Effective Date by the applicable deadline, as such deadline may be extended in accordance with the RFP; or
 - (c) if MDOT has not previously delivered notice of forfeiture hereunder, failure of MDOT to notify Principal that it is the Selected Proposer within 180 days after the Financial Proposal Due Date.
2. The Principal and the Surety or Co-Sureties hereby agree to pay to the State the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten (10) days of receipt of a written notice from MDOT to the Surety and Co-Sureties confirming the occurrence of any of the following events:

²⁴ **Note to Proposers:** The Proposer may provide multiple Proposal Bonds/Letters of Credit in order to arrive at the aggregate security amount of \$5 million.

- (a) Principal in writing withdraws, repudiates, or otherwise indicates in writing that it will not meet any commitments made in its Proposal, without MDOT's consent;
- (b) MDOT disqualifies the Proposer pursuant to Sections 1.14(c)(i) (No Improper Influence) or (iii) (Additional Rules of Conduct) of the ITP;
- (c) following notification from MDOT that it is the Selected Proposer, Principal fails to negotiate in good faith as expressly defined in Article 5 (Finalization of the Phase P3 Agreement and Closing) of the ITP; or
- (d) following notification from MDOT that the Principal is the Selected Proposer, the Effective Date does not occur by the deadline specified in Section 3.7(b)(iii)(C) (Forfeiture of Proposal Security) of the ITP, unless that failure is directly attributable to one or more of the circumstances set forth in clauses (aa) through (jj) of Section 3.7(b)(iii)(C) (Forfeiture of Proposal Security) of the ITP, and those circumstances are not caused in whole or in part by the acts, omissions, negligence, fault, recklessness, or willful misconduct of the Principal.

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

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

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

[insert address]

If there are Co-Sureties, the Co-Sureties agree to empower the above authorized representative with the authority to act on behalf of all of the Co-Sureties with respect to this bond, so that MDOT will have no obligation to deal with multiple sureties hereunder. The above authorized representative may be changed only by delivery of written notice (by personal

delivery or by certified mail, return receipt requested) to MDOT designating a single new authorized representative, signed by all of the Co- Sureties.

SIGNED and SEALED this_____ day of_____, 2021

By: _____ Principal

By: _____ Co-Surety

By: _____ Attorney in Fact

By: _____ Co-Surety

By: _____ Attorney in Fact

By: _____ Co-Surety

By: _____ Attorney in Fact

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

CO-SURETIES

SURETY NAME SURETY ADDRESS INCORPORATED IN

Form J-2

FORM OF LETTER OF CREDIT (PROPOSAL)

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER: [●]

PLACE FOR PRESENTATION OF DRAFT IN (Name and Address of Bank/Branch—MUST be
PROGRESS: CITY OF NEW YORK, NEW YORK or BALTIMORE,
MARYLAND Bank/Branch)

APPLICANT: [●]

BENEFICIARY: THE MARYLAND DEPARTMENT OF
TRANSPORTATION

7201 Corporate Center Drive, Hanover, Maryland
21076

LETTER OF CREDIT NUMBER: [●]

PLACE AND DATE OF ISSUE: [●]

AMOUNT: \$[●]

Issuer hereby issues this Irrevocable Standby Letter of Credit (this "**Letter of Credit**") in favor of the Maryland Department of Transportation for any sum or sums up to [●] **United States Dollars (\$●)**²⁵ (each amount, the "**Stated Amount**"), available by draft at sight drawn on Issuer.

Any draft under this Letter of Credit shall:

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

This Letter of Credit shall be honored by Issuer if presented at [*CITY OF NEW YORK, NEW YORK or BALTIMORE, MARYLAND Bank/Branch—Name & Address*] on or before the "Expiration Date" (defined below).

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

²⁵ **Note to Proposers:** The Proposer may provide multiple Proposal Bonds/Letters of Credit in order to arrive at the aggregate security amount of \$5 million.

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

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

- (a) close of business on [●] (the "**Stated Expiry Date**")²⁶; or
- (b) the date on which the Beneficiary delivers a notice of termination of this Letter of Credit to the bank.

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

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

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

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

Issuer:

By:

Name: [●]

Title: [●]

(Authorized Signatory of Issuer)

²⁶ Insert date falling not earlier than 180 days after the Financial Proposal Due Date.

Form K

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

The undersigned Proposer _____, Equity Member _____, or Major Non-Equity Member _____, certifies on behalf of itself the following:

1. The undersigned certifies, to the best of its knowledge and belief, that:
 - (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Phase P3 Agreement or subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The undersigned shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

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

Date: _____

Firm/Entity: _____

Signature: _____

Title: _____

Form L
RFC TEMPLATE

(Please complete using this Microsoft Word template)

Proposer: _____

Date: _____

RFP RFC Submission No. []²⁷

Comments on RFP dated July 24, 2020²⁸

<u>No.</u>	<u>Document</u>	<u>Section #</u>	<u>Page #</u>	<u>Discipline</u>	<u>Category (A,B,C,D)</u>	<u>Confidential (Y/N) / Justification</u>	<u>Comment or Question</u>
1.							
2.							
3.							

In accordance with Section 2.4 (*Comments and Responses Regarding this RFP*), RFCs shall:

- (a) be sequentially numbered;
- (b) conspicuously marked as "confidential" with justification, if a Proposer believes a comment contains confidential or proprietary information (including that the question itself is confidential) in accordance with Section 2.8 (*Ownership of Proposal and Applicability of Public Information Act*);
- (c) identify the document (i.e., ITP, Phase P3 Agreement, Section P3 Agreement Term Sheet, Predevelopment Work Requirements, etc.);
- (d) identify the relevant section number and page number or, if it is a general question, indicate so;

²⁷ Sequentially number each set of RFP comments or questions submitted.

²⁸ The Proposers should specify on which RFP they are commenting by including the relevant RFP release date.

- (e) identify the comment/question as either "Technical," "O&M," "Legal," "Commercial," "Tolling," "Solicitation," or "Financial" **(Discipline)**;
- (f) not identify the Proposer's identity in the body of the question; and
- (g) indicate whether the question is a Category A, B, C, or D question as described below.

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

Categories:

"Category A" – means a potential "go/no-go" issue that, if not resolved in a manner acceptable to the Proposer, will likely preclude the Proposer from submitting a Proposal.

"Category B" – means a major issue that, if not resolved in a manner acceptable to the Proposer, is material or, taken together with other Category B issues, may preclude the Proposer from submitting a Proposal.

"Category C" – means an issue that may be a material issue, but is not at the level of a Category A and Category B issue.

"Category D" – means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc.

Form M

DRUG AND ALCOHOL FREE WORKPLACE CERTIFICATION

I CERTIFY THAT:

1. Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
2. By submission of its proposal, bid, or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) prohibit its employees from working under the influence of drugs or alcohol;
 - (d) not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) the dangers of drug and alcohol abuse in the workplace;
 - (ii) the business's policy of maintaining a drug and alcohol free workplace;
 - (iii) any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) the penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) provide all employees engaged in the performance of the contract with a copy of the statement required by Section (2)(b), above;
 - (h) notify its employees in the statement required by Section (2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) abide by the terms of the statement; and
 - (ii) notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

- (i) notify the Solicitation Manager within 10 days after receiving notice under Section 2(h)(ii), above, or otherwise receiving actual notice of a conviction;
 - (j) within 30 days after receiving notice under Section 2(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) take appropriate personnel action against an employee, up to and including termination; or
 - (ii) require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) make a good faith effort to maintain a drug and alcohol free workplace through implementation of Sections 2(a)—(j), above.
3. If the business is an individual, the individual shall certify and agree as set forth in Section 4, below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
4. I acknowledge and agree that:
- (a) the award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) the violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15; and
 - (c) the violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS CERTIFICATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____

(printed name of Authorized Representative and Affiant)

(signature of Authorized Representative and Affiant)

Form N

FORM OF STIPEND AGREEMENT

STIPEND AGREEMENT

(PHASE 1 OF THE I-495 & I-270 P3 PROGRAM)

THIS STIPEND AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 2021, by and among the State of Maryland (the "**State**") acting by and through the Maryland Department of Transportation, a principal department of the State ("**MDOT**"), and _____, a _____ ("**Proposer**"), with reference to the following facts:

- (a) On December 18, 2020, MDOT issued a Request for Proposals ("**RFP**") seeking a Phase Developer for a public-private partnership agreement (the "**Phase P3 Agreement**") for Phase 1 of the I-495 & I-270 P3 Program through a Public-Private Partnership Agreement, pursuant to §§ 10A-101, et seq. of the State Finance and Procurement Article of the Annotated Code of Maryland.
- (b) The RFP requires each Proposer who wishes to execute and deliver a Stipend Agreement to MDOT to do so by the Predevelopment Work Proposal Due Date.

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

1. DEFINITIONS

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

2. PROPOSAL WORK PRODUCT

- (a) MDOT hereby retains Proposer to prepare and submit, in response to the RFP, a Proposal that conforms in all material respects to the requirements of the RFP, as determined by MDOT, is timely received by MDOT, and satisfies the provisions of Section 3(a) below.
- (b) All work performed by Proposer and members on the Proposer Team pursuant to this Agreement shall be considered work-made-for-hire, as that term is defined in Section 101 of Title 17 of the US Code, and the Proposal Work Product (as defined below) with the exception of Proprietary Intellectual Property (defined below) shall become the property of MDOT and the Maryland Transportation Authority, an agency of the State ("**MDTA**") without restriction or limitation on its use. Neither Proposer nor any of the members on the Proposer Team shall copyright any of the material developed under this Agreement. However, MDOT and MDTA grant the Proposer and members of the Proposer Team an irrevocable, non-exclusive, perpetual, royalty-free license to use the Proposal Work Product.
- (c) Proposer agrees that all Proposal Work Product (with the exception of Proprietary Intellectual Property) is, upon receipt by MDOT, the property of MDOT and MDTA. The term "**Proposal Work Product**" shall mean a Proposer's submittals, documents,

records, and intellectual property included in its Proposal or otherwise submitted to MDOT at any time during the RFP process (including as part of IDP).

- (d) With respect to any Proposal Work Product that incorporates Proprietary Intellectual Property, the Proposer represents and warrants that it has the right to grant MDOT and MDTA an irrevocable, non-exclusive, perpetual, sublicensable, royalty-free license to use such Proprietary Intellectual Property for the purposes specified herein. The Proposer hereby grants (on behalf of itself and each Proposer Team Member) such license to MDOT and MDTA effective upon the Proposer's acceptance of payment hereunder. The foregoing shall not be deemed a requirement for the Proposer to provide a license for off-the-shelf software or patented rights in previously existing proprietary technology to MDOT or MDTA. **"Proprietary Intellectual Property"** means (i) intellectual property that is patented or copyrighted by any member of the Proposer Team or any third party under Applicable Law or (ii) if not patented or copyrighted, intellectual property of any member of the Proposer Team or any third party that is created, held, and managed as a trade secret and protected as a trade secret under Applicable Law, or confidential proprietary information of a Proposer Team Member. Nothing in this Section 2(d) shall limit the Proposer's right to use its Proprietary Intellectual Property in any manner it chooses.
- (e) In consideration for MDOT's agreement to make payment hereunder, Proposer agrees on its behalf and on behalf of the members of the Proposer Team that MDOT and MDTA shall be entitled to use all Proposal Work Product, without any further compensation or consideration to the Proposer and any member of the Proposer Team, in connection with the RFP and any requests for BAFOs, the Phase Documents, Phase 1, any other phase and any other projects by MDOT or MDTA.
- (f) MDOT acknowledges that the use of any of the Proposal Work Product by MDOT, MDTA, or the Phase Developer is at the sole risk of MDOT, MDTA, and the Phase Developer, as applicable, and shall in no way be deemed to confer liability on the unsuccessful Proposer or any member of the Proposer Team. Further, such Proposer provides no warranty that the Proposal Work Product is adequate to be used by MDOT, MDTA, or the Phase Developer in the development of Phase 1 or any other phase, and does not represent that any of the members of the Proposer Team will be available to MDOT, MDTA, or the Phase Developer with respect to the use of the Proposal Work Product.

3. **COMPENSATION AND PAYMENT**

- (a) Compensation payable to Proposer for the Proposal Work Product described herein shall be an amount up to \$500,000 for the value of the Proposal Work Product, with certification of expenditures in that amount, if the Proposer submitted a timely and responsive Proposal in accordance with the requirements of the ITP and was not awarded the Phase P3 Agreement; or
- (b) Compensation payable to Proposer for the Proposal Work Product described herein shall be an amount up to \$500,000 for the value of the Proposal Work Product, with certification of expenditures in that amount, if the Proposer was selected as the Selected Proposer and execution of the Phase P3 Agreement was not achieved; provided that such failure is directly attributable to (i) one or more of the circumstances set forth in clauses (aa) through (jj) of Section 3.7(b)(iii)(C) (Forfeiture of Proposal Security) of the ITP and those circumstances are not caused in whole or in part by the acts, omissions,

negligence, fault, recklessness, or willful misconduct of the Selected Proposer; or (ii) MDOT's or MDTA's failure to satisfy any of the conditions set out in Article 5 (*Conditions Precedent to MDOT and MDTA Signing this Agreement*) of the Phase P3 Agreement for which MDOT or MDTA is responsible;

- (c) MDOT may pay compensation to Proposer, in an amount to be determined by MDOT, for the Proposal Work Product described herein under the following conditions:
 - (i) For any Proposer not meeting the criteria identified in Section 3(a), above:
 - (A) Any amount paid under this Section 3(c)(i) will not exceed \$500,000 for the value of the Proposal Work Product.
 - (B) Any Proposer wishing to apply for a stipend under this Section 3(c)(i) shall so notify MDOT within ten (10) days of its receipt of notification that it was not entitled to compensation under Section 3(a), above.
 - (ii) If the solicitation is cancelled prior to the Financial Proposal Due Date, Proposers will be provided the opportunity, at their option, of attending an interview and delivering to MDOT the Proposal Work Product of their Proposal preparations to date. There is no specific format required for such Proposal Work Product. If (i) a Proposer chooses to attend an interview, delivers its Proposal Work Product, and signs a modified Stipend Agreement (to be provided by MDOT), and (ii) MDOT agrees to accept such Proposal Work Product, MDOT shall pay to such Proposer an amount that MDOT deems to be appropriate consideration for the Proposal Work Product. Such amount shall not exceed \$500,000. No portion of the stipend amount will be paid in the event a Proposer chooses not to attend the interview or chooses not to deliver its Proposal Work Product.
- (d) MDOT reserves the right to audit the costs incurred by any Proposer in preparing its Proposal in order to verify the reimbursement amount payable. Should MDOT elect to audit, MDOT (or its designee) shall have access to all books, records, documents, and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred. Failure of the Proposer or its Proposer Team Members to maintain and retain sufficient records to allow MDOT to verify all or a portion of the claim or to permit MDOT access to the books and records of the Proposer and its Proposer Team Members shall constitute a waiver of the right to be paid a reimbursement and shall bar any recovery thereunder.
- (e) If MDOT awards the Phase P3 Agreement to Proposer, neither Proposer nor a Phase Developer formed by the Proposer will be entitled to compensation hereunder except as provided in Section 3(b), above.
- (f) Any payment of compensation owing hereunder will be made within 90 days of the later to occur of: (i) receipt of a proper invoice submitted to MDOT, with certification of expenditures of the amount claimed in the invoice, under this Section 3(f), and satisfaction by the Proposer of any applicable conditions set forth in the RFP; and (ii) either MDOT and MDTA's execution of the Phase P3 Agreement with the Selected Proposer or MDOT's decision not to award. Such invoice may not be submitted until one Business Day after the earlier to occur of (i) posting of the notice of award and (ii) cancellation of the solicitation.

- (g) Proposer designates the following entity as the entity authorized to receive payment under this Agreement on behalf of the Proposer and members of the Proposer Team: [_____] ("**Proposal Work Product Payment Designee**"). Payment by MDOT to the Proposal Work Product Payment Designee shall be deemed payment by MDOT to the Proposer for the purposes of this Agreement. Further, the Proposal Work Product Payment Designee must be authorized to transact business in Maryland and be in good standing with the Department of Assessments and Taxation as a condition to receiving payment under this Agreement.
- (h) Proposer shall be solely responsible for distributing and paying any portion of the payments received from MDOT under this Agreement to members of the Proposer Team, and MDOT assumes no liability with respect thereof.

4. **WAIVER**

The Proposer acknowledges and agrees that by invoicing MDOT in accordance with Article 3 (Compensation and Payment), the Proposer without further action or notice:

- (a) irrevocably waives in full all rights to protest the selection by MDOT and MDTA of a Phase Developer;
- (b) fully, unconditionally, and irrevocably releases MDOT and MDTA from any and all claims and causes of action arising out of the solicitation of Phase 1 or the selection of a Phase Developer, whether known or unknown; and
- (c) any and all claims against MDOT and MDTA for their use of all Proposal Work Product and ideas received from the Proposer.

5. **INDEMNITIES**

- (a) Subject to the limitations contained in Section 5(b), Proposer shall indemnify, protect, and hold harmless MDOT and MDTA, and any of their respective officers, employees, contractors, or consultants from all claims, costs, expenses, liabilities, demands, or suits at law or equity arising in whole or in part from the negligence or willful misconduct of Proposer or any of its agents, officers, employees, representatives, or subcontractors; or breach of any of Proposer's obligations under this Agreement.
- (b) This indemnity shall not apply with respect to any claims, demands, or suits arising from use of the Proposal Work Product by MDOT and MDTA, or each entity's contractors, unless such claims, demands, or suits are a result of a breach of any of Proposer's obligations under this Agreement.

6. **COMPLIANCE WITH LAWS**

- (a) Proposer shall comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to the work performed or paid for under this Agreement and covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Applicable Laws, ordinances, rules, and regulations as they relate to work performed under this Agreement. Proposer agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.

- (b) The Proposer agrees (i) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (ii) to include a provision similar to that contained in subsection (i) in any subcontract except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this Section 6(b).

7. ASSIGNMENT

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

8. MISCELLANEOUS

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

- (h) This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland.

[Signature Pages to Follow]

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

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

(Name of Proposer)

By _____
(Signature) (Printed Name)

(Title) (Date)

MARYLAND DEPARTMENT OF TRANSPORTATION

By _____
(Signature) (Printed Name)

(Title) (Date)

[Add additional signature lines as needed]

Approved as to Form and Legal Sufficiency:

Assistant Attorney General

Form O

FEDERAL DEBARMENT CERTIFICATION

[To be signed by the Proposer]

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

1. The undersigned certifies to the best of its knowledge and belief that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) have not within a three year period preceding this Proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
 - (d) have not within a three year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
2. Where the Proposer or a contractor is unable to certify to any of the statements in this certification, the Proposer or contractor shall attach a certification to its proposal or bid, or shall submit it with the executed agreement, stating that it is unable to provide the certification and explaining the reasons for such inability.

Form P-1

FORM OF IDP SUBMITTAL

PROPOSER: _____

IDP SUBMITTAL NO: __

DATE: _____

SUBMITTAL TYPE

- ☐ Meeting Requested
- ☐ Review and Comment Only
- ☐ Supplemental Information

IDP SUBMITTAL REQUIREMENTS

1. A narrative description of the proposed innovative technical or financial solution, in accordance with Form P-2 (*IDP Submittal Narrative Requirements*);
2. For technical innovations, design drawings, and supporting reference documents in accordance with Form P-3 (*Technical Innovation Submittal Requirements*);
3. Estimated change in costs, pricing, or other financial consequence if the innovative technical or financial solution is implemented;
4. Estimated change in the time required to reach Financial Close or Substantial Completion of any relevant section resulting from implementing the proposed innovative technical or financial solution;
5. If the implementation of an innovative technical or financial solution requires a change to the Phase Documents, a redlined version of the Proposer's Request to Change (RTC) to allow for the Proposer's innovative technical or financial solutions to be incorporated;
6. Any other documents and information requested by the MDOT to aid in the evaluation;
7. An index of documents and drawings included in the IDP Submittal; and
8. Electronic Signatures.

Form P-2

IDP SUBMITTAL NARRATIVE REQUIREMENTS

RESPONDENT: _____

IDP SUBMITTAL NO: __

DATE: _____

1. The location(s) where, and an explanation of how, the proposed innovative technical or financial solution will be used on Phase 1;
2. A description of how and why the Proposer believes the innovative technical or financial solution deviates from the Phase Documents;
3. Information defining the anticipated risk to MDOT and the Proposer if the innovative technical or financial solution is implemented, and if the innovative technical or financial solution is not implemented;
4. Any changes in roadway or operations requirements associated with the proposed innovative technical or financial solution, including ease of operations;
5. A discussion of the impacts on safety associated with the innovation technical or financial solution;
6. Any changes in routine or capital maintenance requirements associated with the proposed innovative technical or financial solution, including ease of maintenance;
7. Any changes in Handback Requirements associated with the proposed innovative technical or financial solution;
8. Any changes in the anticipated design or service life of the item(s) comprising or affected by the proposed innovative technical or financial solution;
9. Any improvement to the constructability of Phase 1 or Phase 1 elements;
10. Analysis of potential impacts of the proposed innovative technical or financial solution on environmental approvals (including existing environmental approvals and an analysis of whether the Proposer believes an updated or supplemental EIS would or would not be required and why);
11. Discussion of additional right-of-way acquisition, if any, needed to implement the proposed innovative technical or financial solution;
12. Identification of the Limits of Disturbance to implement the proposed innovative technical or financial solution.
13. A description of other projects, if any, where the proposed innovative technical or financial solution has been used, the degree of success or failure of such usage, and names and contact information, including phone numbers and e-mail addresses, for project owner representatives that can confirm such descriptions.

Form P-3

TECHNICAL INNOVATION SUBMITTAL REQUIREMENTS

RESPONDENT: _____

IDP SUBMITTAL NO: __

DATE: _____

Content of technical IDP Submittals shall include all necessary elements for MDOT to evaluate the submittal.

The Proposers' technical innovations shall include any combination of planimetric drawings, plan-profile drawings, detail drawings, calculations, and reference documentation necessary to present the concept(s) proposed. Planimetric / plan-profile drawings shall be submitted on roll plots not larger than 36" x 72" with aerial background. Other drawings shall be submitted on standard plan sheets not larger than 24" x 36".

Drawings submitted shall clearly show the Proposer's innovative design together with its baseline design.

Drawings shall include all elements necessary to fully describe the innovative technical solution with all design guidelines and parameters to demonstrate conformance the Phase 1 requirements, as revised in any associated RTC proposed together with innovative technical solution. These may include, but may not be limited to, the following elements:

- Existing planimetric features
- Limits of proposed improvements, roadway limit and bridge limits
- Proposed right of way and Limits of Disturbance
- Proposed and existing Utilities
- Proposed lane configurations for Priced Managed Lanes and GP Lanes
- Existing and proposed typical sections
- Proposed interchange configurations
- Signing plan
- Traffic control concept
- Traffic simulation
- Tolling locations
- Priced Managed Lanes access points
- Pond siting
- Environmental elements, environmental impacts

- Relevant standard drawings
- Technical requirements
- Specifications
- Design criteria
- General notes

The elements to include in the IDP Submittal shall be tailored to unique characteristics of the innovative technical solution proposed. Where necessary, the IDP Submittal shall include:

- Other documents and information the Proposer deems necessary to support, supplement, or clarify the Proposer's innovative technical solution and baseline design.
- Documents and information requested by MDOT

FORM Q

FINANCIAL OFFICER'S CERTIFICATE

[Complete a separate Form Q for each Equity Member (and each Guarantor, if any)²⁹]

[If filled out by Equity Member]

I, [Name], the [Title] of [Name of Equity Member] (the "**Member**"), do hereby certify as of [Date]³⁰ that:

[If filled out by Guarantor of Equity Member]

I, [Name], the [Title] of [Name of Guarantor] (the "**Guarantor**") as guarantor of [Name of Equity Member] (the "**Member**"), do hereby certify as of [Date]³¹ that:

[Complete form below]

- (a) This certificate is being executed and delivered in connection with the Proposal submitted by [Proposer Name] (the "**Proposer**") in response to the Request for Proposals for Phase 1 of the I-495 & I-270 P3 Program through a Phase P3 Agreement, dated December 18, 2020 (the "**RFP**"), issued by the Maryland Transportation Authority and the Maryland Department of Transportation.
- (b) As to the matters herein set forth below, I either have personal knowledge or have obtained information from officers or employees of the [Member] [and the Guarantor] in whom I have confidence and whose duties require them to have personal knowledge thereof. I make the certifications herein to MDOT pursuant to the requirements of the RFP with the intent and understanding that they will be relied upon by MDOT as a basis for the evaluation of the Proposal contemplated by the RFP.
- (c) [**Guarantor Support:** It is the intention of the Guarantor to support the Member with the financial support needed by the Member to successfully satisfy its obligations in respect of Phase 1 if the Proposer were to become the Phase Developer.]³²
- (d) **Audited Financial Statements:** The audited financial statements provided by [the Member] [the Guarantor] in the Proposal for the fiscal years ended [____], [____], and [____] [and the interim financial statements for the following periods [____] and [____]] are complete and correct copies thereof. Where [the Member] [the Guarantor] has provided unaudited financial results, such financial results present fairly, in all material respects, the financial position and results of operations and cash flows of [the Member] [the Guarantor and its consolidated subsidiaries, including the Member,] as of such dates and for such periods. [The Member] [The Guarantor]

²⁹ Each of the Equity Members should provide its own separate certificate. If, however, any such firm is proposing a Guarantor, only one consolidated certificate is required for the Guarantor and its guaranteed entity. If a firm has no Guarantor, all references to "Guarantor" should be deleted from the certificate.

³⁰ Date must not be earlier than fourteen days prior to the Predevelopment Work Proposal Due Date.

³¹ Date must not be earlier than fourteen days prior to the Predevelopment Work Proposal Due Date.

³² Delete if there is no Guarantor and not applicable.

has no material contingent liabilities or unusual forward or long-term commitments not disclosed therein.³³

- (e) **Off-Balance Sheet Liabilities:** The [Member] [Guarantor] does not have any material off-balance sheet liabilities [other than as described in the financial statements referred to above] [other than the following: [_____]].
- (f) **Financial Information Summary:** Attached hereto as Annex A is a completed Company Information Summary relating to [the Member] [the Guarantor]. All the information provided in the attached Annex A is complete and correct to the best of my knowledge.
- (g) **Bankruptcy/insolvency proceedings:** [There has been no Insolvency Event relating to the Member [or Guarantor] or any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Member [or Guarantor] which has occurred within the most recent three fiscal years (whether or not such proceeding was ultimately dismissed).] [Attached hereto as Annex B is a detailed description of an Insolvency Event relating to [entity Name].]³⁴

For the purposes of this certification, "**Insolvency Event**" means any voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up or similar proceeding, under any applicable law, in any jurisdiction.

- (h) **Material Changes in Financial Condition:** [No material change in the financial condition of the Member [or Guarantor] has occurred or is projected to occur, as applicable (i) within the most recently completed three fiscal years that is not reflected in the its audited financial statements or (ii) since the date of its audited financial statements for its most recently completed fiscal year.] [Attached hereto as Annex C is a detailed description of material changes in the financial condition of [the Member][the Guarantor].]³⁵

Capitalized terms used but not defined herein shall have the meanings set forth in the RFP.

IN WITNESS WHEREOF, the undersigned is the [Chief Financial Officer, Treasurer or equivalent officer] of the entity to which this form relates, and has duly executed this certificate as of the date first written above.

Name (signature)

Name (printed)

³³ For entities that do not prepare audited financial statements, Proposers should submit a question to MDOT by the last day for RFCs indicated in the Solicitation Schedule, outlining proposed information that would provide similar support to audited financial statements to seek confirmation of its appropriateness by MDOT. Information Respondent considers confidential should be submitted in accordance with Section 2.8 of the RFP and will be subject to the limitations and conditions set forth therein.

³⁴ Complete the appropriate certification. Delete the sentence that is not applicable. Do not provide an Annex B if there is no Insolvency Event to disclose.

³⁵ Complete the appropriate certification. Delete the sentence that is not applicable. Do not provide an Annex C if there is no material change in financial condition to disclose. Further instructions regarding material changes are provided in Annex C.

Title

Entity

**Annex A to Financial Officer's Certificate
COMPANY INFORMATION SUMMARY**

Entity: _____

Designate whether Equity Member or Guarantor: _____

RATING AGENCY³⁶	CURRENT RATING	PREVIOUS RATING	DATE OF CHANGE IN RATING
[Rating agency name]			
[Debt of the [Member] [Guarantor] is not rated by any major credit rating agency.]			
[[Member][Guarantor] has no debt]			

³⁶ If applicable, list all credit ratings available for the company and provide a copy of the most recent credit report.

**Annex B to Financial Officer's Certificate
INSOLVENCY EVENT**

[EQUITY MEMBER TO PROVIDE DETAILS]

**Annex C to Financial Officer's Certificate
MATERIAL CHANGE IN FINANCIAL CONDITION**

[EQUITY MEMBER TO PROVIDE DETAILS]

INSTRUCTIONS TO RESPONDENTS REGARDING ANNEX C:

If applicable, this Annex C must include the following details regarding material changes in the Member or Guarantor's financial condition:

- (a) a description of each material change, actual and projected, and any related changes or disruptions in executive management;
- (b) actual and projected impacts on the affected entity's organizational and financial capacity, and its ability to remain engaged in this solicitation and submit a responsive proposal; and
- (c) a detailed description of any other projected impacts, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead, including the likelihood that the circumstances of the change or impacts thereof will continue during the term of Phase 1.

Estimates of the impact on revenues, expenses, and the change in equity must be provided separately for each material change. **References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes.** Where a material change will have a negative financial impact, the affected entity must describe measures that would be undertaken to insulate Phase 1 from any recent material changes and those currently in progress or reasonably anticipated in the future. If its financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a material change), the affected entity must describe measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Set forth below is a list of examples of what MDOT considers to be a material change in financial condition.

This list is intended to be indicative only. Any failure, as determined by MDOT, to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of Phase 1 development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses, and the change in equity shall be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. The affected entity shall also provide a discussion of measures that would be undertaken to insulate Phase 1 from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the fiscal periods between submission of the SOQ and most recent completed fiscal periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Representative material changes include the following:

- (a) an event of default or bankruptcy involving the affected entity or the parent company of the affected entity;
- (b) a downward change in the tangible net worth of 10% of equity holder equity;

- (c) a sale, merger, or acquisition exceeding 10% of the value of net assets prior to the sale, merger, or acquisition which in any way involves the affected entity or parent company of that affected entity;
- (d) a downward change in credit rating for the affected entity or parent company of the affected entity;
- (e) inability to meet material conditions of loan or debt covenants by the affected entity or parent company of the affected entity that has required or will require a waiver or modification of agreed financial ratios, coverage factors, or other loan stipulations, or additional credit support from shareholders or other third parties;
- (f) the affected entity in the same corporation, or the parent company of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding 5% of the then equity holder equity due to claims, changes in accounting, write-offs, or business restructuring; or (iii) implemented a restructuring/reduction in salaried personnel exceeding 10% of its workforce or involving the disposition of assets exceeding 10% of the then equity holder equity; and
- (g) other events known to the affected entity or parent company of the affected entity which represents a material change in financial condition since submission of the RFP or may be pending for the next reporting period.

FORM R
FINANCIAL STATEMENTS TEMPLATE

[see attached]

FORM T
CERTIFICATION

Proposer: _____

Name of Firm: _____

1. Has the firm or any of the firm's officers, directors, partners, controlling stockholders, or any of its employees directly involved in the firm's contracting activities including obtaining or performing contracts with public bodies been convicted of, or had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law?

☐ Yes ☐ No

If yes, please explain:

2. Has the firm or any of the firm's officers, directors, partners, controlling stockholders, or any of its employees directly involved in the firm's contracting activities including obtaining or performing contracts with public bodies:
- (a) Been convicted under state or federal statute of:
 - (i) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (ii) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
 - (b) Been convicted of any criminal violation of a state or federal antitrust statute;
 - (c) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
 - (d) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
 - (e) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
 - (f) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (a) through (e) above;

- (g) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (h) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (i) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in Question 1?

☐ Yes ☐ No

If yes, please explain:

3. Has the firm or any of the firm's officers, directors, partners, controlling stockholders, or any of its employees directly involved in the firm's contracting activities including obtaining or performing contracts with public bodies, ever been suspended or debarred (including being issued a limited denial of participation) by any public entity?

☐ Yes ☐ No

If yes, please explain:

4. With respect to each of Questions 1-3 above, if not previously answered or included in a prior response on this Form, is any proceeding, claim, matter, suit, indictment, etc. currently pending against the firm that could result in the firm or any Affiliate being found liable, guilty or in violation of the matters referenced in Questions 1-3 above?

☐ Yes ☐ No

If yes, please explain:

5. Has the firm been established or does it operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland?

☐ Yes ☐ No

If yes, please explain:

6. Has the firm knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction?

☐ Yes ☐ No

If yes, please explain:

7. Has the firm agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying statement of qualifications, proposal, bid or offer that is being submitted?

☐ Yes ☐ No

If yes, please explain:

8. Has the firm in any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the Respondent, bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying statement of qualifications, proposal, bid or offer is submitted?

☐ Yes ☐ No

If yes, please explain:

9. Is the firm a successor, assignee, subsidiary, or Affiliate of a suspended or debarred business?

☐ Yes ☐ No

If yes, please explain:

10. Except as validly contested, has the firm paid, or arranged for payment of, all taxes due the State of Maryland and filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement?

☐ Yes ☐ No

If no, please explain:

11. Has the firm employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the contract, or has the firm paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the contract?

☐ Yes ☐ No

If yes, please explain:

12. Is the firm (a) identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; or (b) engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland?

☐ Yes ☐ No

If yes, please explain:

13. Has the firm complied with the provisions of State Finance and Procurement Article, § 14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law?

☐ Yes ☐ No

If no, please explain:

14. Has the firm or any Affiliate³⁷ ever been determined not responsible in connection with the submission of bids or proposals to the State of Maryland or any of its departments, agencies or units within the past ten years?

☐ Yes ☐ No

If yes, please explain:

15. Has the firm or any Affiliate ever sought protection under any provision of any bankruptcy act within the past ten years?

☐ Yes ☐ No

If yes, please explain:

16. Has the firm or any Affiliate defaulted on a contract or been terminated for cause within the past ten years?

☐ Yes ☐ No

If yes, please explain:

17. Within the past ten years, has a government agency or other public entity requested or required enforcement of any of its rights under a surety agreement on the basis of the default of the firm or any Affiliate, or in lieu of declaring the firm or any Affiliate in default?

☐ Yes ☐ No

If yes, please explain:

18. Within the past ten years, has the firm or any Affiliate refused to testify or to answer any question concerning a bid or contract with any federal, state, or local government agency, any

³⁷ **NTD:** The term "Affiliate" means parent companies at any tier, subsidiary companies at any tier, entities under common ownership, and joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving the Proposer, any Equity Member or any Major Non-Equity Member as a joint venturer or partner and not to activities of other joint venturers or partners not involving the Proposer, any Equity Member or any Major Non-Equity Member), that (a) within the past five years have engaged in business or investment in North America or (b) have been involved, directly or indirectly, in the debt or equity financing, credit assistance, design, construction, management, operation or maintenance for any project identified in the Proposer's SOQ.

public authority or any other public entity when called before a grand jury or other committee, agency or forum which is empowered to compel the attendance of witnesses and examine them under oath, upon being advised that neither the person's statement nor any information or evidence derived from such statement will be used against that person in any subsequent criminal proceeding?

☐ Yes ☐ No

If yes, please explain:

Under penalty of perjury, I certify that the foregoing is true and correct to the best of my knowledge, information, and belief, and that I am the firm's Official Representative. I acknowledge that this Form may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Form is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Form shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the firm with respect to this Form.

By: _____

Print Name: _____

Title: _____

Firm: _____

Date: _____