The Guidelines set forth in this document are intended to be followed to the fullest extent possible. It is recognized that guidelines cannot provide entirely complete and practical guidance applicable to all situations and cannot replace experience and sound judgment. As such, deviations from these Guidelines may, in some cases, be unavoidable or otherwise justifiable.

Revisions

These Guidelines will be periodically revised or updated as appropriate or necessary in order to meet the Department’s mission and Program goals. Revisions to the guidelines may only be made at the direction of the Pioneer Program Director, in consultation with the Department Director.

Procedure for Guideline Revisions

For edits or updates, contact the Project Management Division at (775) 888-7321. Additionally, all updates will be available on the NDOT website, which should be visited regularly for updated information.

Temporary Revisions:

Temporary revisions will be issued by Project Management Division to reflect updated/revised procedures. These will be reflected on dated errata sheet(s) posted on the Department’s website.

Scheduled Revisions:

In October of each year, the Pioneer Program Director, Pioneer Program Manager, Deputy Attorney General, Agreement Services, and Financial Management Division will review the guidelines and errata sheets to determine if a revised edition of the guideline is required. New editions will incorporate all errata sheets.
ACKNOWLEDGMENTS

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APPENDIX F .......................................................... Project Delivery Selection Approach (PDSA) Tool
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The Nevada Department of Transportation (herein referred to as “NDOT” or the “Department”) is responsible for the planning, construction, operation, and maintenance of the Nevada State (State) highway system, which as of this date consists of approximately 5,400 miles of highways and 1,000 bridges. The Department is continually seeking innovative programs and funding solutions to meet the growing transportation needs of Nevadans. Through the Pioneer Program, the Department will explore and develop innovative ways, including the use of public-private partnership (herein referred to as “PPP”), design-build (herein referred to as “DB”), design-build-finance (herein referred to as “DBF”), and construction manager at risk (herein referred to as CMAR), to finance and deliver Nevada’s transportation projects (each herein referred to as a “Project”). These alternative delivery methods may be received through solicited or unsolicited (Chapter 4) Proposals. These partnerships have the potential to fund and deliver Projects faster and provide greater value to Nevada residents. This newest initiative embodies the Department’s mission to provide a better transportation system for Nevada through our unified and dedicated efforts. In short, these Guidelines address the DB/DBF, PPP, and CMAR delivery methods.

As part of the Pioneer Program development, the Department met with and presented information to the Governor Gibbon’s Public-Private Partnership Advisory Panel. The Advisory Panel included representatives from the Legislature, local governments, business leaders, and the Nevada Taxpayers Association. On April 10, 2008, and May 15, 2008, the Advisory Panel and the Board, respectively, passed resolutions giving their support to the Pioneer Program, its organizational structure, the use of PPPs to provide alternative funding and financing sources, as well as a means to expedite needed Projects.

The Pioneer Program is consistent with the legislative authority for the development, construction, improvement, and/or maintenance of transportation facilities through receipt of unsolicited or solicited Proposals for the various alternative delivery methods. These Guidelines include information and processes that are essential for the Pioneer Program implementation and for the consistent delivery of Projects. The Department will use these Guidelines to develop new approaches to the delivery of Projects to Nevadans.

These Guidelines are not legislatively mandated but are intended to provide internal guidance on the delivery of unsolicited or solicited Proposals for the various alternative delivery methods under the Pioneer Program. In no event shall any failure by the Department to follow the processes and approaches set forth in these Guidelines give recourse to any individual or entity. The Department recognizes that each Project is unique and that certain procedures and approaches set forth in these Guidelines may not apply in all circumstances. Therefore, it is intended that the Department retain
flexibility to best tailor an implementation approach and procurement to the needs of a particular Project.

These Guidelines may be periodically revised or updated as appropriate or necessary in order to meet the Department’s mission and Pioneer Program goals. Revisions to these Guidelines may only be made at the direction of the Pioneer Program Director, in consultation with the Department Director. The Project Management Division is responsible for approved edits and updates to this document in consultation with Administrative Services and the Legal Division.
CHAPTER 1: PIONEER PROGRAM OVERVIEW
SECTION 1.1  INTRODUCTION

The Pioneer Program represents a concerted effort by the Department to lead the way in the incorporation of innovation in transportation project delivery. Through the Pioneer Program, the Department will explore various contracting methods, technologies, business practices, and financing mechanisms to meet Nevada’s needs. The particular focus of the Pioneer Program will be to vet opportunities for and implementation of desirable unsolicited or solicited Proposals for the various alternative delivery methods.

The Department developed these Guidelines to facilitate the implementation of the Pioneer Program, to build on the lessons learned from other states, and to address Nevada’s unique needs and challenges. The Pioneer Program will focus on identifying and utilizing alternative funding sources in addition to innovative Project delivery methods. Other Project delivery methods that may be considered by the Pioneer Program in the future depend on the passage of enabling legislation. Department staff can find examples of various reports, forms, and letters on the Department’s internal Project Management SharePoint website.
SECTION 1.2  PIONEER PROGRAM PURPOSE AND GOALS

In 2007, the Department began to develop a formalized program to seek innovative Project delivery alternatives and funding from private entities to assist in the delivery and financing of State infrastructure. The Pioneer Program is one of many tools available to the Department to fulfill the Department’s mission and goals and the State legislature’s intent of supporting transportation infrastructure. It is established to complement and further leverage available State transportation funding.

These Guidelines are intended to provide a framework, general process, and structure for the implementation of unsolicited or solicited Proposals for the various alternative delivery methods under the Pioneer Program. The Department recognizes that each Project is unique and that certain procedures and approaches set forth in these Guidelines may not apply in all circumstances. Therefore, it is intended that the Department retain flexibility to best tailor an implementation approach and procurement to the specific needs of a particular Project. Ultimately, it is intended that each procurement process implemented under the Pioneer Program be fair, transparent, and reliable. Each procurement process is to encourage and support a climate for private sector innovation and investment in transportation projects in a manner that provides value and benefit to the State.

The Department will maintain appropriate stewardship over the use of public property and will continue to perform the necessary due diligence to protect the State’s interests. The Department will continue to evaluate Projects as it currently does when it utilizes traditional construction lettings and funding sources (such as gasoline and other tax-supported methods and other funding sources), taking into account the unique characteristics of innovative project delivery and finance. However, the alternative delivery methods available under the Pioneer Program will provide the Department with additional options to develop Projects.

These Guidelines will be used by the Department to provide general guidance on the Department’s efforts to identify, procure, and implement Projects that are desirable for delivery under the Pioneer Program. The screening processes set forth in these Guidelines are designed to match the most appropriate delivery method for each candidate Project. Through the utilization of alternative financing and/or alternative delivery methods, the Pioneer Program can achieve some or all of the following:

♦ Greater partnership opportunities between the public and private sectors
♦ More choices in funding and delivery methods
♦ Accelerated Project delivery
♦ Greater and/or earlier cost certainty
♦ Minimized public cost and investment, including better leveraging of limited public funds
♦ Improved life-cycle costs and/or quality
♦ Less congested freeways and roads
♦ Greater mobility
♦ More efficient local and regional connectivity
♦ Reduced and more consistent travel times
♦ Improved goods movement
♦ Improved quality of life
♦ More sustainable and livable communities
♦ Conservation of fuel
♦ Improved air quality (e.g., a reduction in greenhouse gases) and other environmental benefits
♦ Enhanced safety attributes
♦ Other public purposes and benefits arising from the Project
SECTION 1.3 SELECTING A PROJECT DELIVERY METHOD

1.3.1 What is a Project Delivery Method?

Project delivery involves the steps and processes required to implement a Project from inception to final completion. This includes environmental clearance, right-of-way (ROW) acquisition, and design and construction of the Project. Project delivery may also include financing, operations, maintenance, and assistance with environmental clearance.

1.3.2 Traditional Delivery Method

Project delivery has traditionally entailed the almost exclusive use of the design-bid-build (DBB) system. Under DBB, contractors competitively bid projects based on completed plans and specifications provided by the Department. The Department then evaluates the bids received, awards the contract to the lowest responsible and responsive bidder, uses prescriptive or method specifications for construction, and retains significant responsibility and risk for quality, cost, and time performance.

1.3.3 Alternative Delivery Method

This section explores use of the following methods as alternatives to the traditional DBB approach to Project delivery:

- Design-Build (DB);
- Design-Build-Finance (DBF);
- Public-Private Partnerships (PPP); and
- Construction Manager at Risk (CMAR).

Guidance is provided on the use of each of these methods to help staff:

- Understand how these methods differ from DBB;
- Understand procedures unique to these methods of delivery;
- Integrate procedures for these alternative methods into existing Department processes; and
♦ Develop a consistent approach to developing, procuring, and overseeing Projects delivered using these methods.

These Guidelines are intended to be general enough to accommodate varying Project types, sizes, and procurement requirements, yet still have sufficient substance to serve as a valuable tool for both novice and experienced practitioners of these alternative methods.

1.3.4 Selecting a Delivery Method

No one project delivery system is appropriate for every type of Project. Choosing the right method for a particular Project depends upon specific Project characteristics and the goals and objectives identified for that Project, as well as considerations of Department program delivery objectives and the impacts of a given Project delivery method on the resources managed by the Department. The Project Delivery Selection Approach (PDSA) presented in Appendix F and described in Section 1.6.1 is a guide to help determine which delivery method(s), other than PPP, is appropriate for a given project. The Project identification process for a PPP is described separately in Chapter 4.

The Pioneer Program Manager, with the input of other appropriate divisions, will complete PDSA during the identification phase when assessing the suitability of a particular delivery method. In most cases, this will be the DBB method. In that event, no further reference to the information contained in this section is necessary.

However, if the PDSA suggests that the Project is better suited for one of the alternative methods provided for in these Guidelines, this section presents guidance, specific to each delivery method to be considered, related to:

♦ Identifying Project goals and developing Project scope;
♦ Preparing solicitation documents;
♦ Selecting the successful bidder or proposer;
♦ Preparing contract documents; and
♦ Administering and overseeing the design and/or construction of the project.
SECTION 1.4 DELIVERY METHODS AND LEGISLATIVE AUTHORITY

Pursuant to Nevada Revised Statutes (NRS) Chapter 408, the Department currently has the authority to use the following delivery methods for design and construction of transportation projects: DBB, DB, DBF, and unsolicited PPP Proposals. Pursuant to NRS Chapter 338, the Department also has authority to use the CMAR delivery method through June 30, 2013, after which new legislation would need to be provided to continue use of the CMAR delivery method. The solicited PPP delivery method is not yet legislatively-approved but may be authorized in the future. This section provides an overview of these delivery methods.

1.4.1 Design-Bid-Build (DBB)

Most of today’s infrastructure has been built utilizing a DBB delivery mechanism. With this delivery approach, the owner designs the Project in-house or retains service providers to design the Project. Then the Project is competitively bid and awarded to the lowest responsive and responsible bidder. With DBB, the owner retains primary responsibility for most design and construction risks (in the form of cost overruns and schedule risks) as well as operational and maintenance risks. The owner also retains the responsibility for identifying the necessary funding to pay for the capital costs of the Project or to support Project financing.

Advantages of DBB include the following.

❖ The process facilitates competition among bidders, often resulting in lower Project costs.
❖ The Department controls the design.
❖ ROW and utilities are managed during design.
❖ The process is well understood within the Department and by industry.

Disadvantages of DBB include the following.

❖ There are limited opportunities to transfer of risk to the private sector.
❖ Cost overruns and change orders because of design and contractor errors can cause the final price to escalate.
❖ Schedule delays occur due to design revisions and contractor delays.
❖ The Department has responsibility for design and constructability risks.
♦ The contractor has no input during the design phase and little opportunity for innovation.

♦ The Department is often caught in the middle between the designer and contractor in the event of claims of defective design and construction defects.

♦ Secure public funding is required upfront.

1.4.2 Design-Build (DB)/Design Build Finance (DBF)

Chapter 3 of these Guidelines addresses procurement and implementation of DB/DBF Projects, pursuant to NRS 408.3875 through 408.3887, inclusive, which authorize DB contracts “between the Department and a Design-Builder in which the Design-Builder agrees to design and construct a Project.” A Project is defined as “a Project for the construction, reconstruction, or improvement of a highway.” In order to enter into a DB, the estimated cost of the Project must exceed $10,000,000 and contracting with a Design-Builder will enable the Department to:

♦ Design and construct the Project at a cost that is significantly lower than the cost that the Department would incur to design and construct the Project using a different method;

♦ Design and construct the Project in a shorter time than would be required to complete the Project using a different method, if exigent circumstances require that the Project be designed and constructed within a short time; or

♦ Ensure that the design and construction of the Project is properly coordinated, if the Project is unique, highly technical, and complex in nature.

However, the Department may, once in each fiscal year, contract with a Design-Builder for the design and construction of a Project where the estimated cost of which is at least $5,000,000 but less than $10,000,000 if the Department makes the determinations otherwise required pursuant to the above criteria.

The Project estimated cost is the anticipated cost of all activities to develop and deliver the Project. These may include costs associated with Department’s internal design, ROW acquisition, service provider procurement (design and construction support), and construction costs.
1.4.2.1 Design-Build (DB)

Under the DB delivery method, the Department procures design and construction services in a single contract, and the Design Service Provider is typically a member of the DB team, either as an equity owner of the DB team or as a subcontractor. DB transfers significant design and construction risk to the Design-Builder. The Department retains the responsibility for locating the necessary funding to pay for the capital costs of the Project or to support project financing.

Advantages of DB include the following.

♦ One entity, the DB team, is responsible for delivery of the entire Project.
♦ Project design and construction has greater cost and schedule certainty.
♦ Material design and construction risks are transferred from the Department to the DB team, resulting in less likelihood of change orders.
♦ Construction can begin prior to the final design being completed, which results in a faster Project delivery.
♦ The DB contractor participates in the design phase, which improves constructability, reduces errors, and encourages innovation.
♦ The contractor has an incentive to consider constructability and identify innovation and value engineering opportunities.

Disadvantages of DB include the following.

♦ The Department has less control over the final design.
♦ Special attention to risk allocation is required due to the complexity of the contract.
♦ Administrative costs of a DB procurement are greater than DBB.
♦ Best value selection may not result in lowest project cost.
♦ Secure public funding is required upfront.

1.4.2.2 Design-Build-Finance (DBF)

DBF is similar to DB, except DBF allows the Department to pay for the Project over a term that extends beyond the facility’s construction period (often times 5 to 8 years). Under this method, the Design-Builder finances the construction based on a
promise by the Department to make a series of payments. DBF allows public infrastructure projects to be expedited rather than waiting for all of the funds to be accumulated. Public agencies may utilize bond offerings to accomplish much the same objective. Payments required under a DBF are sometimes subject to prior appropriations and do not have the same financial reporting implications as a bond offering.

Advantages of DBF include the following.

♦ The delivery method is similar to DB as it relates to design and construction.
♦ Because the Design-Builder finances the Project, the Project may be implemented sooner than if the Department had to wait to secure full funding upfront through traditional sources.
♦ DBF may allow the Department to use programmed funds across additional projects.

Disadvantages of DBF include the following.

♦ The delivery method is similar to DB as it relates to design and construction
♦ Administrative costs of a DBF procurement are greater than DBB.
♦ Cost of capital may be higher than Department’s cost of capital and must be balanced by the benefits of acceleration and leverage.

1.4.3 Unsolicited Proposals

The Legislature recognizes that safe and efficient highway transportation is a matter of importance to all the people of the State of Nevada and that an adequate highway system is a vital part of the national defense. As a result, it has placed a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, control, and protect the highways and roads for present and future use (NRS 408.100(4)). In 2003, the Nevada State Legislature adopted statutes related to the development of transportation facilities by private entities. These statutory provisions (NRS 408.5471 through 408.549, inclusive) authorize Unsolicited Proposals, which may be in the form of DB/DBF and PPPs, in which the private sector may assume a greater role in the development, financing, design, construction, operation, and/or maintenance of a transportation facility. On April 20, 2010, the Nevada State Legislature amended Chapter 408 of the NAC to add regulations related to competitive procurements initiated by Unsolicited Proposals. These regulations are set forth in NAC 408.650 to 408.698, inclusive.
Pursuant to NRS 408.5473, the Department has the authority to authorize a person to develop, construct, improve, maintain, or operate, or any combination thereof, a transportation facility. A transportation facility is defined as:

*A road, railroad, bridge, tunnel, overpass, airport, mass transit facility, parking facility for vehicles or similar commercial facility used for the support of or the transportation of persons or goods, including, without limitation, any other property that is needed to operate the facility. The defined term does not include a toll bridge or toll road.* (NRS 408.5471)

The statutes set forth the conditions under which the Department may enter into and carry out certain procedural and contractual requirements related to the receipt and review of Unsolicited Proposals. NRS 408.548(1) states that if the Department receives an Unsolicited Proposal regarding a transportation facility pursuant to NRS 408.5475 and the Department determines pursuant to the provisions of subsection 1 of NRS 408.5483 that the transportation facility serves a public purpose, then the Department may request other persons to submit Proposals to develop, construct, improve, maintain, or operate, or any combination thereof, the transportation facility.

An Unsolicited Proposal is a request by an entity for a Project that is not the subject of a procurement issued by the Department to develop a transportation facility. The Department will accept and review Unsolicited Proposals upon submission of an Unsolicited Proposal and the appropriate fee. If an Unsolicited Proposal meets the statutory requirements, the Proposal will also be submitted to the affected local governments for review as required by statute. If the Project is deemed to be a viable Project by the Department and one which the Department wishes to pursue, then the Department may, but is not required to, solicit for competing Proposals. Alternatively, the Department is also statutorily permitted to negotiate on a sole source basis with the entity that submitted the Unsolicited Proposal; however, it is anticipated that, in most instances, the Department will solicit competing Proposals.

Chapter 4 of these Guidelines addresses the general manner in which the Department will assess, procure, and implement Unsolicited Proposal Projects consistent with the relevant statutory requirements and Regulations.

### 1.4.4 Construction Manager at Risk (CMAR)

This method involves selection of a general contractor with suitable experience to serve as a construction manager (Construction Manager) to assist the owner and Design Service Provider in the design of a Project during preconstruction services and to perform construction of the Project after it is designed. The CMAR may include a team involving a general contractor and subcontractors with specialty trades of particular interest to a specific Project.
Pursuant to NRS Chapter 338, the Department also has authority to use the CMAR delivery method through June 30, 2017, after which date new legislation would need to be provided to continue use of the CMAR delivery method. As applicable, all CMAR-delivered Projects are also to be administrated in accordance with established FHWA full oversight requirements and guidance. In the case of federally-funded local government projects delivered under CMAR, the Department assume FHWA’s responsibilities and oversight as described in these guidelines and in accordance with FHWA/NDOT Stewardship Agreement (January 2008).

The CMAR delivery method has aspects similar to traditional DBB project delivery in that there are still two distinct phases, the pre-construction/design phase and the construction phase. There is a contract for construction services that is separate from the contract for pre-construction services. However, for CMAR delivery, the Construction Manager is obtained early in the design phase to allow the Construction Manager to offer expertise with regard to schedule, budget, innovation, and constructability, as well as identification, evaluation, and mitigation of risk.

CMAR is a beneficial method of Project delivery when there is a need for accelerated delivery; the design is complex with several design options; and/or there is a high coordination requirement with external agencies that make cost and schedule a concern.

As a final consideration, the Department must have adequate staff to support the CMAR delivery method.

Advantages of the CMAR delivery method include the following.

♦ Important design decisions affecting time, materials, means, and methods are made with input from the Construction Manager.
♦ Project delivery can be accelerated over DBB.
♦ Project cost is more certain than DBB.
♦ Construction impacts to the public can be minimized.
♦ Innovation is encouraged.
♦ Allows owner control of design decisions.
♦ Higher quality projects may be realized through early collaboration between the Construction Manager and Design Service Provider.
♦ Partnership opportunities among the Department, engineering service providers, and the Construction Manager are provided.
♦ The Construction Manager becomes a partner with the Department in assessing and mitigating risk.
Disadvantages of the CMAR delivery method include the following.

♦ Public funding must be secured upfront.
♦ Qualification-based selection (QBS) may not result in the lowest Project cost.

The cost and time savings received through the CMAR delivery method is obtained by leveraging the Construction Manager’s input throughout the design and construction phases. During design, the Construction Manager’s influence on design decisions through the reviewing of plans aids in making timely decisions regarding materials, constructability, and phasing, while helping to eliminate errors and ambiguities, which reduces the probability of change orders and requests for substitute materials that lead to the risk of Project delays. The success of the CMAR project delivery method relies on the teamwork of the Department and the Construction Manager in developing innovative cost-effective solutions to problems.

Schedule and cost savings can also be realized when the phasing of construction and/or the early procurement of materials is evaluated with the Construction Manager. For instance, once design has progressed and has been completed for a portion of the Project (e.g., utility relocations), an independent and severable contract may be bid and a contract entered into prior to completion of the entire design package. This release of early work packages may allow delivery of the overall Project earlier than had a conventional delivery method been used. Additionally, reaching agreement and authorizing the Construction Manager to procure materials prior to completion of design can be beneficial to secure an item with a long-lead time or to secure an item where its market costs are expected to rise, thus providing more certainty in Project cost.

Ultimately, the Department enters into negotiations with the Construction Manager for a contract to construct the public work or the portion thereof for the public body for:

♦ The cost of the work, plus a fee, with a guaranteed maximum price (GMP);
♦ A fixed price; or
♦ A fixed price plus reimbursement for overhead and other costs and expenses related to the construction of the public work or portion thereof.

These payment and pricing requirements are all in accordance with NRS 338.1696.

As defined in Chapter 5, the Department’s preference is to assign the Construction Manager all quantity risk, institute a risk reserve sum under the sole discretion of the Department, and implement the cost of the work, plus a fee, with a GMP contract type. For the purposes of clarity, a GMP is defined as the guarantee of the pricing submitted
by the Construction Manager and established once the Department, the Design Service Provider, and the Construction Manager agree that the Project has been designed to a sufficient level of detail to allow for an accurate Project bid. Whether these prices are lump sum or quantity based, the pricing is guaranteed in accordance with the requirements of the construction documents and the Construction Contract.

If the Department reaches an agreeable payment and pricing approach in accordance with NRS 338.1696 with the Construction Manager, a Construction Contract may be awarded.
SECTION 1.5 PIONEER PROGRAM ORGANIZATIONAL STRUCTURE

In the establishment of the Pioneer Program, the Department identified the need for a strategic organizational structure that would work within its existing framework while allowing flexibility of resources, both in number and in expertise. The organizational structure of the Pioneer Program provides flexibility for managing more than one Project and/or Project type concurrently without placing unnecessary hardship on existing Department resources. The structure also allows flexibility in staffing the various stages of Project development and implementation. For example, a design and inspection team composed of many areas of expertise within the Department may be required during Project development and implementation while a much smaller group would be adequate during the maintenance and operations phases.

The Department may seek participation in the Pioneer Program of local, State, and federal stakeholders. The Pioneer Program Manager will ensure that the appropriate internal departmental representatives integrate external stakeholders, such as affected local stakeholders, the Federal Highway Administration (FHWA), the State Attorney General’s Office, the State Controller’s Office, and the State Treasurer’s Office, into the procurement and evaluation processes, as and when appropriate. Such participants may also assist in identifying Pioneer Program candidate Projects, contract provisions, and implementation strategies to ensure that those most impacted and those with regulatory responsibility contribute in providing recommendations for the betterment of the State transportation system.

1.5.1 Pioneer Program Roles and Responsibilities

It is the intent of the Department to utilize existing personnel to the fullest extent possible and to hire outside service providers and/or vendors as necessary to plan for and implement the Pioneer Program and Pioneer Program Projects.

1.5.1.1 Pioneer Program Director

The Deputy Director/Chief Engineer or his/her designee serves as the Pioneer Program Director and oversees the development and implementation of the Pioneer Program, reporting all Pioneer Program and Project activities to the Department Director. The Program Director role requires tracking directives required for the Pioneer Program, liaising with other public agencies regarding the Pioneer Program and Projects in the Program, ensuring compliance with current statutes and
regulations, as well as maintaining knowledge of other agency items affecting the
Pioneer Program. The Pioneer Program Director oversees the Pioneer Program
public relations, stakeholder coordination, and informational outreach to the public
and local, State, and federal authorities.

As projects are identified for consideration for the Pioneer Program, the Pioneer
Program Director reviews all recommendations during various review processes.
During the development phase of a Project, key decisions filter through to the
Pioneer Program Director and the Board for review and approval to ensure that the
intent of the Program and the intended direction of the Department are being met.

1.5.1.2 Pioneer Program Manager

The Department’s Project Management Chief serves as the Pioneer Program
Manager under the direction of the Pioneer Program Director. The Pioneer Program
Manager’s responsibilities include addressing the needs of each Project to
accomplish Project goals, ensuring compliance with procedures established for the
Pioneer Program, and ensuring that appropriate coordination with other agencies
and stakeholders is taking place. As part of his/her duties, the Pioneer Program
Manager assigns a Project Manager to all Pioneer Program Projects and other
candidate Projects. The Project Manager leads all Project activities. The Pioneer
Program Manager also reviews Project reports provided by the Project Managers
and provides recommendations for advancing Projects to the Pioneer Program
Director. The Pioneer Program Manager provides reports to the Pioneer Program
Director on the Program and on Projects within the Pioneer Program.

♦ Ensures the integrity of the established procedures within these
guidelines.
♦ Provides recommendations regarding Project development and
contract terms and conditions to the Pioneer Program Director and/or
the Selection Official.

1.5.1.3 Project Manager

The Project Manager, designated by the Pioneer Program Manager, is responsible
for scope, budget, schedule, and quality process of a Pioneer Program Project. The
Project Manager coordinates, manages, and oversees a specific Pioneer Program
Project through selection, procurement, contract execution, and implementation to
maintain consistency in the approach and to provide valuable Project knowledge
throughout the entire process. As there may be more than one Project being
considered for the Pioneer Program at any given time, there may be more than one
Project Manager, each assigned a different Project, under the direction of the
Pioneer Program Manager. The Project Manager is responsible for assembling and managing the teams required for carrying out the assigned Project through the various Project phases. The Project Manager is also responsible for reporting typical Project items, such as budget, scope, schedule, staffing requirements, and other issues, to the Pioneer Program Manager.

1.5.1.4 Project Team

A Project team is generally comprised of Department technical staff and are assembled and led by the Project Manager once a Project has been approved for Pioneer Program Delivery. Composition, roles, and responsibilities of Project teams may vary for a given delivery method and are defined under each Project delivery method within these Guidelines.

1.5.1.5 Service Providers

The Department may retain individuals or firms to provide services to assist the Department as it deems appropriate with the Pioneer Program and Pioneer Program Projects. Technical, legal, and financial service providers under contract directly with the Department or through a sub-service provider agreement can provide the resources and expertise necessary to efficiently and effectively implement the Pioneer Program.
SECTION 1.6  PIONEER PROGRAM REQUIREMENTS AND PROJECT DELIVERY METHOD SELECTION

The Pioneer Program consists of a process of determining Projects that are viable candidates for innovative delivery and, as applicable, selecting qualified and experienced private entities who can demonstrate the capability to successfully design, build, finance, construct, operate and/or maintain a Project or undertake the rehabilitation or expansion of an existing facility. All Projects must be consistent with and must be incorporated into the Department’s Statewide Transportation Plan and the Statewide Transportation Improvement Program (STIP). The Department will only consider Proposers that have proven experience, financial resources, and professional expertise to deliver high-quality, economically-feasible Projects.

1.6.1 Identification Phase: Selecting the Most Appropriate Project Delivery Method

The intent of this section is to provide a process to assist the Department in its selection of an appropriate project delivery method for solicited projects. The PDSA evaluates a Project’s suitability to be delivered under the DBB, DB/DBF, or CMAR delivery method. The Project identification process for Unsolicited Proposals is described in Section 4.4.

The primary objectives of this section are to:

♦ Present a structured approach to assist Department staff in making Project delivery method recommendations;

♦ Assist the Department in determining if there is a dominant or obvious choice of a Project delivery method for the Project being evaluated; and

♦ Provide a Project delivery method recommendation based on a consensus opinion by the Project Delivery Selection Committee (PDSC).

The Department’s process for the evaluating and selecting a Project delivery method is shown on Figure 1-1. The Department reserves the right to streamline, modify, and shorten this process, including omitting or combining steps, if the Department determines that doing so is in the best interests of the State and the Department. These procedures may be changed from time to time at the Department’s discretion.
As noted, the process for selection and evaluation of a Project is outlined in the PDSA (Appendix F). The PDSA includes all of the generic forms and questions for use by the Department when recommending the most appropriate Project delivery method. The Project Manager and Pioneer Program Manager are responsible for filling out the PDSA and the Project Delivery Method Recommendation Form. This recommendation is forwarded to the Pioneer Program Director and Department Director for a final determination on a delivery method. The following sections offer a general overview of each step outlined in the PDSA.

Figure 1-1: Project Delivery Identification Phase Process
1.6.1.1 Establishing the Project Delivery Selection Committee (PDSC)

The Project Manager and Pioneer Program Manager establish and lead a PDSC in conducting the evaluation and selection of the most suitable delivery method for a Project. The PDSC generally consists of the Project Manager, Pioneer Program Manager, appropriate Department senior management (e.g., Department Division Heads or Assistant Division Heads), and any outside agency directly related to the Project.

The timeframe for the Project delivery selection process is established at the sole discretion of the Pioneer Program Manager and is based on the Department’s workload and availability of resources.

1.6.1.2 Understanding the Project

The Project Manager, with assistance from the Project Management Team (PMT) (defined below) and other Department staff as necessary, is to research and understand the various elements of the Project being evaluated. The Project Manager must consider various Project-specific elements in order to provide the PDSC the necessary information to appropriately apply the PDSA. These elements could include:

- Project Location
- Project Sponsor
- Project Description, including Purpose and Need
- Estimated Project Cost Range (Total)
- NEPA Status
- ROW Status
- Desired Project Delivery Date (Yr. and Qtr.): Start of construction and substantial completion of construction
- Major Project Features: Pavement, bridge, sound barriers, etc.
- Project Scope/Project Status
1.6.1.3 Defining the Project Goals, Challenges, and Opportunities

The Project Manager, with assistance from the PMT and the Department staff as necessary and input from the Pioneer Program Director and other significant stakeholders as necessary, must clearly define and agree on measurable Project goals, challenges, and opportunities in which the PDSC will use to appropriately apply the PDSA. Clear and concise Project goals are critical to the success of any Project. However, when the Department decides to use an alternative delivery method, articulation of Project goals takes on even greater importance as these goals set the foundation for the entire Project development process.

As described, identification of these goals is just an initial step in a process that extends throughout the life of the Project. Adherence to these steps helps to ensure continuity in the selection process through the application of common parameters to drive subsequent decision-making processes.

1.6.1.3.1 Establishing Project Goals

Project goals may address schedule, quality, risk allocation, scope, cost/financial considerations, or other Project-specific issues. In this respect, these goals would correlate to the perceived benefits of using a particular delivery method. Typically, a Project’s goals can be defined in five to ten items.

Examples of general Project goals could include the following:

Schedule:

- Minimize project delivery time on a phase or the entire project in a desire to reach guaranteed maximum price in six months.
- Reach substantial completion by (month, year).
Cost:

♦ Minimize project cost.
♦ Maximize project budget.
♦ Complete the project on budget.

Quality:

♦ Meet or exceed maintenance of traffic requirements.
  o Maintain x lanes of traffic in each direction at all times during construction except for bridge replacements as noted below.
  o Limit road shut down to one consecutive 72-hour period through the duration of project.
♦ Provide the lowest life-cycle costs.

Note: Goals should be consistent with environmental documents when applicable.

Examples of DB-oriented Project goals could include the following:

Schedule Issues:

♦ Substantial Completion (Final Acceptance) by (date/event)
♦ Substantial Completion (Final Acceptance) within ____ days of Notice to Proceed

Cost/Financial:

♦ Cost not to exceed $____
♦ Maintenance costs not to exceed $____
♦ Payment to the service provider to be paid over ____ years
♦ Borrowing cost not to exceed ____%

Quality/Innovation:

♦ Design life of ____ years
♦ Warranty of ____ years
Minimize disruption to residents, businesses, and the traveling public during construction

Provide aesthetic solution to minimize visual impact

Scope:

Available funding to build ______

Available funding to build ______ lane miles

Risk Allocation:

Shift ___ risks to Design-Builder

However, the more specific the Project Manager can define a Project’s goals, the greater an opportunity there is for the PDSC to apply the PDSA and better define the Project’s intent related to Project delivery. Examples of specific Project goals for a recent Department project are as follows for reference.

Minimize conflict of the work effort with the adjacent contractor, while achieving seamless construction from the vantage point of the public between the Department’s Project and the RTC’s Moana Lane Widening Project.

Minimize delays and impacts to the traveling public, local residents, and local businesses, while maintaining pedestrian movement at all times during construction.

Establish open, timely, and accurate communication and coordination with the public and the Project stakeholders through the Department.

Reach a fair and reasonable Construction GMP in order to award a Construction Contract on October 8, 2012 or earlier so as to achieve seamless construction from the vantage point of the public between this Project and the RTC’s Moana Lane Widening Project.

Achieve the Project schedule of completing work within one (1) concurrent construction season and achieve substantial completion no later than July 1, 2013.

Build a professional and collaborative Project team.

Strive to achieve zero (0) change orders on the Project.

1.6.1.3.2 Ranking Goals in Order of Importance

Optimizing all of the established Project goals is rarely possible on a single Project. Tradeoffs are often necessary to ensure that the primary goal is achievable. Reaching a consensus on the relative importance of individual
Project goals assists the Project Manager in making an informed decision regarding risk management strategies intended to increase the likelihood of achieving the primary Project goal, even at the expense of secondary goals.

1.6.1.3.3 Communicating Goals

Developing and ranking Project goals focuses the efforts of developing procurement documents that clearly communicate the Department’s expectations to interested Proposers. Announcing these goals in the procurement documents allows Proposers to respond with concepts tailored to meet or exceed these expectations.

1.6.1.3.4 Adhering to Goals

To assist the Project Manager in establishing the most applicable Project goals, the Project Manager should also define the greatest challenges and opportunities related to achieving the established Project goals. As outlined in the PDSA, the Project Manager, with the assistance of the PMT and Department Staff as necessary, is to ask the following two questions in order to define Project-specific challenges and opportunities.

♦ What challenges hinder achieving Project goals?
♦ What opportunities enhance achieving Project goals?

Once set, Project goals are not to be changed except in response to unusual conditions or changed circumstances and only with approval of the Project Manager. Holding to these goals means that once the Proposer has been selected and the Project is underway, the Department administers the contract in a manner consistent with these goals. Project success is best measured by meeting or exceeding these goals.

1.6.1.4 Evaluation the Appropriateness of a Delivery Method

Five screening criteria have been developed to determine the appropriateness of applying an alternative delivery method. Each criterion is listed as follows:

♦ Cost Impacts
♦ Schedule Impacts
♦ Opportunity to Manage Risk
♦ Complexity of Design and Construction Phasing

♦ Opportunity for Innovation

The following offers a brief overview of each criterion to be considered in selecting an appropriate project delivery method.

♦ **Cost Impacts:** This criterion considers aspects of Project cost and must be evaluated with respect to previously defined budget goals of the Project, e.g., the ability of the given delivery method to handle budget restrictions, identify early and precise cost estimates, and control of all Project costs, not just construction. In other words, this criterion assesses the abilities of each delivery method in terms of cost estimating and Project budget control.

♦ **Schedule Impacts:** This criterion considers aspects of Project schedule including the ability to shorten the schedule and the opportunity to control and prevent time growth. In other words, this criterion addresses the abilities of each delivery method in terms of schedule compression and control.

♦ **Opportunity to Manage Risk:** Every Project has some level of risk during various phases of its Project development, and each delivery method handles risks differently in their ability to identify, quantify, and mitigate risks. The most effective approach to manage and allocate risks is to assign Project risks to the parties in the best position to manage them.

♦ **Complexity of Design and Construction Phasing:** This criterion considers aspects of a Project that are unique or more complex than normally encountered. The factors may be associated with the unique Project scope, goals, and objectives specified by the Department. Complexity may occur in the uniqueness of design, maintenance of traffic, phasing of the Project, constructability, location of the Project, unknowns, etc.

♦ **Opportunity for Innovation:** This criterion considers the opportunity for encouraging and integrating innovation for new designs, products, technologies, Project approaches, and construction techniques to achieve the Project’s goals.

The PDSA provides a list of typical advantages and disadvantages associated with each delivery method to be considered when evaluating a delivery method’s appropriateness for a specific Project. Based on an understanding of the delivery...
method’s advantages and disadvantages as well as the Project’s goals, challenges, opportunities, risks, and complexities, the PDSC forms a consensus opinion of the most appropriate delivery method for each of the five criteria. If the selected delivery method is anticipated to be DB/DBF, the Project Manager, with the assistance of the PMT, shall further evaluate the Project for statutory requirements and cost, schedule, and complexity considerations as described in Section 3.3.2.

1.6.1.5 Compiling the Results and Recommending a Delivery Method

The Project Manager summarizes the reasons for the selection of the specific delivery method preference and offers the justification for arriving at a recommended delivery method preference. The Project Manager, with the assistance of the PMT and Department staff as necessary, documents (based on instructions in the PDSA) the recommended delivery method using the attached Project Delivery Method Recommendation Form in the PDSA and applicable backup (e.g., DB/DBF Project statutory requirements and cost, schedule, and complexity considerations as described in Section 3.3.2) for the recommended delivery method under the Pioneer Program.

1.6.1.6 Project Delivery Selection Approvals

1.6.1.6.1 Pioneer Program Director

The Project Manager submits the delivery method recommendation and applicable backup to the Pioneer Program Manager. The Pioneer Program Manager considers factors such as program-level considerations, the number of projects to be delivered under a given method at a given time, the capacity of Department staffing to support Project procurement and execution, FHWA input, current market conditions, and other factors when reviewing the recommendation.

The Pioneer Program Manager then submits this information to the Attorney General’s Office (as necessary) for review and comment. The Pioneer Program Manager revises the submittal based on the comments received before providing the submittal to the Pioneer Program Director for his/her approval.

The Pioneer Program Director reviews and either approves or rejects the Project for the recommended delivery method under the Pioneer Program. If the Pioneer Program Director rejects the delivery method recommendation, then the Project Manager notifies the Project Sponsor of this decision in writing.
1.6.1.6.2 FHWA

If the Pioneer Program Director approves the Project, the Project Manager and the Pioneer Program Manager obtain FHWA review and approval of required federal actions in accordance with all federal requirements for the given delivery method. For DB/DBF Projects, FHWA approval is required pursuant to 23 CFR 635.104 and 23 CFR 635.204 (see Section 2.4.6 and 2.4.7 for further details). For CMAR Projects, FHWA approval is required if the project falls under FHWA full oversight.

Once the Project is approved by FHWA, or if FHWA approval is not required, the Department advances the Project to the solicitation phase of the chosen delivery method.

1.6.1.6.3 Nevada State Board of Transportation

For DB/DBF Projects only, the following Board approval is required if the Project is approved by the Department Director and by FHWA:

♦ The Project Manager will prepare a draft recommendation letter ("Board Memo") to the Board following NRS 408.3881(1). The Project Manager will forward this letter to the Attorney General’s Office, the Pioneer Program Manager, and the Pioneer Program Director for review and comment. The Project Manager will then revise the memo based on the comments received before providing the final recommendation letter to the Department Director for his/her signature. The Department Director will follow the Department’s standard processes for submitting the recommendation to the Board. Pursuant to NRS 408.3881(2), the meeting will be advertised in a newspaper of general circulation in the State.

1.6.2 Procurement

Proposers may include any person, corporation, limited liability company, partnership, joint venture, or other private business entity that, as of the execution date of any public-private partnership agreement (PPA), design-build/design-build-finance agreement (DB/DBF Agreement), or CMAR contract, is authorized to do business in the State.

Chapter 2 of these guidelines describes the general procurement and selection process for each of the alternative delivery methods. Chapter 3 of these Guidelines generally describes the process for DB/DBF Projects. Chapter 4 of these Guidelines generally describes the format in which to submit Unsolicited Proposals for review and evaluation.
by the Department. Chapter 5 of these Guidelines generally describes the process for CMAR Projects.

In each case, the evaluation and selection process shall be conducted in accordance with applicable State and federal laws and in consideration of these Guidelines (with such adjustments as are determined to be necessary or desirable by the Department for a particular Project). The procurement process will be conducted in a transparent manner to advance the interest of Nevadans and the traveling public.

### 1.6.3 Financing

Where Project financing is included in the scope of a particular Project, Proposers are encouraged to utilize private financing methods. Proposed financing arrangements may include the issuance of debt, bonds, or other securities or obligations; the investment of equity; the use of federal and State loans, grants, and funding programs; public funds; and/or the imposition of User Fees or other charges.

For Unsolicited Proposal Projects, Proposals may minimize and/or leverage the use of public funds or the creation of State-supported debt or pledges. However, the Department understands that public funds and subsidies will still be required as is the case in many PPP Projects.

### 1.6.4 Ownership

The Department’s property interest in its ROW varies due to a significant amount of lands in the State being owned by the federal government. Therefore, the Department may only hold an easement right with regard to some of its ROW. The underlying fee title may be owned by one or more federal agencies, other local agencies, or a private entity. Nonetheless, the rights that may be granted to a Private Partner for a Project to finance, develop, operate, and/or maintain a facility shall not include a transfer of the State’s fee title or ownership rights.

No Project under the Pioneer Program will be “sold” to a Private Partner, but an operating agreement, license, right of entry, permit, or similar rights may be provided to a Private Partner. All Projects will be and remain public facilities for public use. The State, through the Department, will retain its real property ownership interest in all Projects. Upon completion of any construction and acceptance, all Projects that are highway projects will be considered part of the State’s highway system.
1.6.5 Agreements

1.6.5.1 DB/DBF Agreements

The Department may enter into DB/DBF Agreements under the Pioneer Program through solicited DB/DBF procurements. The terms of the DB/DBF Agreements will depend on the Project’s characteristics, the Department’s goals for the Project, and the delivery method employed. For each DB/DBF Project, the DB/DBF Agreement must address the rights, duties, and obligations of all parties with respect to the Project. As appropriate, a DB/DBF Agreement may contain provisions including, but not limited to, responsibilities for design, utilities, and rail relocations; ROW acquisition; environmental approvals and mitigation; construction; financing; business terms; financial obligations; performance measures; oversight and compliance mechanisms; and terms for reimbursement to State agencies for services rendered during the development, design, and construction. The DB/DBF Project processes are discussed in Chapter 3 of these Guidelines.

1.6.5.2 Public-Private Agreements (PPAs)

Through the Unsolicited Proposal process, the Department may enter into a variety of PPAs under the Pioneer Program, including, but not limited to, separate design and construction contracts, Pre-Development Agreements (PDAs), DB/DBF Agreements, design-build-operate-maintain (DBOM) contracts, design-build-finance-operate (DBFO) contracts, design-build-finance (DBF) contracts, operate-maintain (O&M) contracts and concession agreements. The Department may enter into a single contract or multiple contracts as necessary to advance a Project. The terms of the PPA will depend on the Project characteristics, the Department’s goals for the Project, State and or federal regulations, and the delivery method employed. For each Project, the PPA must address the rights, duties, and obligations of all parties with respect to the Project. As appropriate, a PPA may contain provisions including, but not limited to, responsibilities for design, utilities, and rail relocations; ROW acquisition; environmental approvals and mitigation; construction; financing; operation; maintenance; business terms; financial obligations; dates for termination and return of the Project to the State (e.g., handback requirements); performance measures; oversight and compliance mechanisms; and terms for reimbursement to State agencies for services rendered during the development, design, construction, operation and maintenance of the Project. The Unsolicited Proposal processes are discussed in Chapter 4 of these Guidelines.
1.6.5.3 CMAR Agreements

The Department may enter into CMAR agreements (i.e., a Pre-construction Services Agreement and Construction Contract) under the Pioneer Program through solicited CMAR procurements. The terms of the CMAR agreements will depend on the Project’s characteristics and the Department’s goals for the Project. For each CMAR Project, the CMAR agreement must address the rights, duties, and obligations of all parties with respect to the Project. As appropriate, a CMAR Agreement may contain provisions including, but not limited to, responsibilities for design, utilities, and rail relocations; ROW acquisition; environmental approvals and mitigation; construction; financing; business terms; financial obligations; performance measures; oversight and compliance mechanisms; and terms for reimbursement to State agencies for services rendered during the pre-construction and construction phases of a Project. The CMAR Project processes are discussed in Chapter 5 of these Guidelines.
SECTION 1.7  RESERVATION OF RIGHTS

The Department reserves all rights at law, in equity, and as set forth in the Procurement Documents for a particular Project, as applicable. The Department reserves, without limitation, the right, at any time:

♦ To modify or cancel procurements;
♦ To modify procurement schedules;
♦ To reject any and all Proposals;
♦ To reject an Unsolicited Proposal;
♦ To advertise the Project as proposed in the Unsolicited Proposal;
♦ To make any modifications to an Unsolicited Proposal;
♦ To require the entity that submitted the Unsolicited Proposal to submit in response to a Request for Information (RFI), Request for Qualifications (RFQ), and/or Request for Proposals (RFP);
♦ To terminate evaluations of any and all Proposals;
♦ To suspend, discontinue, or terminate Project negotiations with any Proposer;
♦ To request or obtain additional information from any Proposer;
♦ To issue addenda or to cancel a procurement process; or
♦ To terminate the screening process if at any time the Department determines that the proposed Project is not a good candidate for further analysis or development.

The Department also reserves the right to revise, supplement, or withdraw all or any part of these Guidelines.
CHAPTER 2: OVERVIEW OF ALTERNATIVE DELIVERY METHOD PROCUREMENT AND SELECTION PROCESSES
SECTION 2.1 INTRODUCTION

The Department follows different procurement and selection processes to acquire services in support of the recommended Project delivery method. Those processes are described in the following sections.

The Department uses two types of procurement processes, a single-phase and a two-phase procurement process.

- Single-phase Procurement Process: A procurement process in which Proposals are submitted in response to a single RFP. Shortlisting of Proposers (through an initial RFQ process) is not used.
- Two-phase Procurement Process: A procurement process in which the first phase consists of a shortlisting of Proposers who provide a Statement of Qualifications (SOQ) in response to a RFQ with a second phase consisting of a submission of Proposals in response to an RFP.

Based on statutory requirements of a particular delivery method, the Department can use the following selection processes:

- Qualifications-Based Selection (QBS): A selection process in which a list of Proposers is ranked, primarily based on experience, competency, qualifications, and approach to the services, and the Proposer selected is the top-ranked firm. Price/financial Proposals are not a relevant element of the evaluation.
- Best-Value Selection (BVS): A selection process in which Proposers are evaluated based on both financial and technical components, with an award made to the top-ranked firm based on a combination of financial and technical considerations.

In the single-phase procurement process, only an RFP is issued. Shortlisting may or may not occur. When shortlisting is used, an interview is used to determine the highest-ranked Proposer. Once all Proposers have been rated, the Department begins negotiations with the top-ranked Proposer. If the type of services required cannot be agreed upon at fair and reasonable price, the Department can proceed to negotiate with the next highest-ranked Proposer, and so forth, until an agreement can be reached or the procurement is terminated.

In the two-phase procurement process, first an RFQ is issued and a shortlist (three to five for design-build and two to five for CMAR) of top-ranked Proposers is established. The Department then issues an RFP to the shortlisted firms. A selection committee will review and rank the Proposers based on those technical factors set forth in the RFP. The Department then negotiates with the top-ranked Proposer to attempt to enter into an agreement with mutually agreeable terms. In the event the parties cannot reach such
an agreement, the Department may suspend or terminate negotiations with the top-ranked Proposer and begin negotiations with the next highest-ranked Proposer, and so forth, until an agreement can be reached or the procurement is terminated.

### 2.1.1 Qualifications-Based Selection (QBS)

The QBS process requires that Projects be advertised and Proposers ranked based on published, weighted criteria for experience, capability, availability, past performance, qualification, and approach to the services. This can be achieved through a single-phase or a two-phase procurement process.

### 2.1.2 Best-Value Selection (BVS)

The BVS process allows the Department to consider financial Proposals and other key factors (e.g., schedule, qualifications, quality, technical approach, design and construction, alternative technical concepts, safety, management approach, etc.) in the evaluation and selection process. The inclusion of such factors allows the Department to select a Proposer that best meets the Project’s needs and goals.

The Department will often use weighted criteria for BVS. With weighted criteria, Price/Financial Proposal is converted to a point score (minimum 30 percent of total points for the DB/DBF delivery method and maximum 20 percent for the CMAR delivery method). By specifying maximum point values in the RFP, the Department can directly convey its perceptions regarding the relative importance of the various evaluation criteria that will be used to judge Proposals. Proposers can then use those relative weights as a guide to determine where best to focus their attention and resources when developing their Proposal.

The weighted criteria allow flexibility in determining the relative importance of the Financial Proposal versus various other evaluation criteria. For example, if innovation is a Project goal, higher weights could be assigned to technical criteria than to the Financial Proposal. Alternatively, if the Department is faced with a tight budget, the Financial Proposal can be given the higher weight, encouraging technical approaches that will reduce costs/improve the Financial Proposal.

For many DB/DBF-related procurements, price/financial will be worth 50 percent or more of the overall score, and often 60 to 80 percent of the total score. However, there are numerous approaches to best-value evaluation and the determination of whether BVS should apply. Such decisions are intended to be a Project-specific decision made by the Selection Official through approval of the procurement documents.
Accepted BVS methodologies include the following:

♦ Allocating points or percentages to the Technical Proposal and Financial Proposal and translating dollars in the Financial Proposal into points (highest point total being the apparent best value Proposer).

♦ Allocating points or percentages to the Technical Proposal and Financial Proposal and translating points in the Technical Proposal into dollars and ending up with an overall dollar score (highest amount paid to Department or lowest cost or subsidy from Department being the apparent best value Proposer).

♦ Evaluating the Technical Proposal only on a pass/fail basis (e.g., compliant with technical and contractual requirements) and deciding the apparent best-value Proposer based on the Financial Proposal (a method used by the Virginia DOT).

♦ Evaluating the Technical Proposal on a points/percentage basis but only utilizing those scores if the Financial Proposals deviate by a certain amount or percentage.

♦ Using the “tradeoff” approach (often used in federal procurements, which focuses on whether an agency would pay more or accept less to get the benefits of the Technical Proposal).

Using a “most or best” Project approach whereby the Department will indicate its maximum budget (subsidy) and a minimum scope of work and then evaluate the Technical Proposal to deciding the apparent best value Proposer based on the extent to which a Proposer exceeds the minimum scope of work.
SECTION 2.2 PROCUREMENT MANAGEMENT ORGANIZATION

Once a Project has been approved for procurement for the Pioneer Program, the Project Manager assigned to the Project assembles and leads the Procurement Management Organization. The individuals assigned to this process vary depending on the delivery method and the Project (as described below). This section is organized to first list the common roles under all delivery methods and then the DB/DBF and CMAR-specific roles.

It should be noted that the Procurement Management Organization for Unsolicited Proposal Projects identifies similar organizational structure and roles with what is described in this section. However, the titles, descriptions, and responsibilities for these roles differ and are further described in Chapter 4.

For DB/DBF and CMAR projects, the Procurement Management Organization may include members from the following Department Divisions:

- Roadway Design;
- Structures;
- Environmental;
- Hydraulics;
- Utilities;
- ROW;
- Traffic/Safety;
- Intelligent Transportation Systems (ITS);
- Construction, Operations, and Maintenance;
- Pavement and Geotechnical;
- Public Information;
- Landscaping;
- Contract Compliance;
- Administrative Services; and/or
- Deputy Attorney General’s Office.
The Procurement Management Organization for a DB/DBF Project is responsible for the evaluation of Proposer submittals, including SOQs and Proposals. Figure 2-1 illustrates the Procurement Management Organization for a DB/DBF Project.

![Figure 2-1: Procurement Management Organization for a DB/DBF Project]
The Procurement Management Organization for a CMAR Project is responsible for the evaluation of Proposals submittals, shortlisting (as applicable), and interviewing. Figure 2-2 illustrates the Procurement Management Organization for a CMAR Project.

### 2.2.1 Common Delivery Method Roles

The following offers an overview of the role designations that are common to both DB/DBF and CMAR Projects.

#### 2.2.1.1 Selection Official

The Selection Official is to be the Department Director or his/her designee. The Selection Official is responsible throughout the evaluation process to ensure the integrity and impartiality of the evaluation of the SOQs and Proposals for DB/DBF
Projects and Proposals and interviews for CMAR Projects. He/she shall be responsible for either accepting or rejecting the recommendation of the Qualification Selection Committee (QSC)/Proposal Selection Committee (PSC) concerning the evaluation of the SOQs/Proposals for DB/DBF Projects or accepting or rejecting the recommendation of the Evaluation Panel concerning the evaluation of the Proposals and shortlisted Proposer interviews for CMAR Projects. The Selection Official cannot change rankings or results of an evaluation, but may only accept or reject recommendations or refer the SOQs/Proposals back to the applicable evaluation committee or panel for further consideration.

2.2.1.2 Project Manager

Throughout the evaluation and selection process under a DB/DBF Project, the Project Manager is responsible for supporting the Selection Official, the QSC, the PSC, the Project Administration Team (PAT), and the Technical Evaluation Committees (TECs), which are the Qualifications Evaluation Teams (QET) for the RFQ phase, and the Proposal Evaluation Teams (PETs) for the RFP phase.

For CMAR Projects, the Project Manager is responsible for supporting the Selection Official, the Evaluation Panel, and the PAT throughout the procurement process, including during the RFP, shortlisting, and interview phase of the procurement process.

2.2.1.3 Project Management Team (PMT)

The Project Management Team (PMT) typically consists of the Pioneer Program Manager, Assistant Chief of Project Management Division, a Project Manager, and/or service providers. The PMT is responsible for supporting the Project Manager in administering, implementing, and maintaining the integrity of the entire procurement and implementation process.

2.2.1.4 Project Administration Team (PAT)

The PAT shall be comprised of members of Agreement Services, the Department’s legal counsel, and may include a member of PMT. The PAT will serve as a point of contact in the event a team member has questions or encounters issues relative to the evaluation of an RFQ or RFP (as applicable for the selected delivery method). The PAT will be responsible for ensuring a timely progress of the evaluations, coordination, any consensus meeting(s) or re-evaluations(s), and ensuring appropriate records of the evaluations are prepared and maintained (e.g., preparation of consensus/debriefing comments). In addition, the PAT will be the owners and keepers of all procurement documents as applicable to the selected
delivery method, including SOQs, Proposals, and confidentiality statements for the entire procurement process. Conflicts/resolutions with the confidentiality statements must first be reviewed by the Attorney General’s Office and approved by the Selection Official.

### 2.2.1.5 Observers

Observers may participate during the procurement process to help ensure procurement policies outlined in the applicable Evaluation and Selection Plan are being followed. Observers will be appointed by the Pioneer Program Manager and may consist of representatives from the Department’s legal counsel, the FHWA, the Project Management Division, and Administrative Services. For CMAR Projects, Observers may also include construction industry-nominated representatives that are not involved with the Project, the RFP, or the procurement process.

Observers' participation in this evaluation and selection process is strictly limited to viewing the process, and Observers shall have no communications with members of any of the selection committees described below. If an Observer has a question or concern regarding any action of the evaluation and selection process, he/she shall privately discuss the matter with the PAT. Beyond this oversight, Observers do not have any specific responsibilities or functions within the evaluation and selection process.

### 2.2.1.6 Advisors/Service Providers

Outside technical, financial, risk, and legal advisors/service providers that are engaged for a particular Project or the Pioneer Program generally may assist and provide support to the Procurement Management Organization (and all of its constituent parts) in connection with the evaluation of SOQs and Proposals (as applicable the selected delivery method). Such support may include administrative support as well as technical, financial, and/or legal analyses and input. Advisors/service providers may be entitled to sit on any evaluation committee or panel (e.g., TEC, QSC, PSC, PET, or Evaluation Panel) based on the approval Pioneer Program Director.

### 2.2.2 Specific Delivery Method Roles

While many role designations related to the Procurement Management Organization can be applied to both DB/DBF and CMAR Projects (see above), there are differences in the roles of the various evaluation committees and panels for both DB/DBF and CMAR Projects.
2.2.2.1 DB/DBF Selection Committees

DB/DBF selection committees include the QSC and PSC. The QSC and PSC is typically comprised of Deputy Directors, Assistant Directors, Division Heads, and may include local entity representatives, though the needs of a particular Project may result in a different composition. The QSC will evaluate the SOQs against criteria established in the RFQ and set forth in the RFQ Evaluation and Selection Plan, with the assistance and support of the PAT and QETs. The PSC will evaluate the Proposals against criteria established in the RFP and set forth in the RFP Evaluation and Selection Plan, with the assistance and support of the PAT and Proposal Evaluation Teams (PETs).

2.2.2.2 DB/DBF Qualifications Evaluation Teams (QETs) and Proposal Evaluation Teams (PETs)

The QSC and PSC will be supported by QETs and PETs, respectively. For the RFQ phase, the QETs will generally be comprised of one or more TECs. For the RFP phase, the PETs will generally be comprised of one or more TECs that evaluate the Technical Proposal as well as a Price Proposal Committee (PPC).

2.2.2.3 DB/DBF Technical Evaluation Committees (TECs)

TECs will typically be comprised of Department staff having technical expertise applicable to the Project and may include representatives from the local entity. TECs, which can be composed of the same members or different members, will be available to assist the QSC and PSC during the evaluation processes. The TECs evaluate the SOQs/Technical Proposals based on the evaluation criteria contained in the RFQ/RFP, as applicable, and the related Evaluation and Selection Plan.

2.2.2.4 DB/DBF Price Proposal Committees (PPCs)

PPCs will typically be comprised of Department staff having financial expertise applicable to the Project and may include representatives from the local entity. PPCs, which can be composed of the same members or different members, will be available to assist the PSC during the RFP evaluation processes. The PPCs evaluate the Financial Proposals based on the evaluation criteria contained in the RFP and the Evaluation and Selection Plan.
2.2.2.5 CMAR Evaluation Panel

In accordance with NRS 338.1693, there are specific requirements for Evaluation Panel members under the CMAR evaluation and selection process. The Evaluation Panel(s) is typically comprised of Department staff and local public agency representatives, designated by the Project Manager, with the approval of the Pioneer Program Manager and/or Pioneer Program Director.¹ The Evaluation Panel is to include individuals with construction experience per NRS requirements. The Evaluation Panel evaluates all submitted Proposal and interviews against criteria established in the CMAR RFP and set forth in the CMAR RFP Evaluation and Selection Plan.

¹ NRS 338.1693 provides the Department with the option to appoint a separate panel to interview and rank the shortlisted Proposers. It is the Department’s current practice to use one Evaluation Panel to evaluate and rank both the Proposal and interview during the evaluation and selection process. Evaluation Panel roles and responsibilities described herein would remain the same if the Department were ever to appoint a second Evaluation Panel. A delineation of those roles and responsibilities would be clearly documented in the Project-specific CMAR RFP Evaluation and Selection Plan.
SECTION 2.3  OVERVIEW OF PROCUREMENT MANAGEMENT RESPONSIBILITIES & PROCEDURES

The following identifies the responsibilities of the Procurement Management Organization during the procurement process of a Pioneer Program Project. Typical communication and coordination procedures between the Procurement Management Organization members are also described in this section.

The responsibilities of each group vary depending on the delivery method and the Project. While there are a number of common responsibilities for both the DB/DBF and CMAR Projects, there are also many unique responsibilities specific to DB/DBF and CMAR Projects. The following section is organized to list common responsibilities first. DB/DBF and CMAR-specific review committee responsibilities are defined second. Each list provides only an overview of responsibilities, and a complete list with a more detailed description of responsibilities is included in the specific delivery method's Evaluation and Selection Plan.

It should be noted that the Procurement Management Organization for Unsolicited Proposal Projects identifies similar responsibilities with what is described in this section. However, the titles, descriptions, and responsibilities for these roles differ and are further described in Chapter 4.

All procurement activities are to be documented, with the rationale for decisions made, by the responsible party/parties.

2.3.1  Common Delivery Method Responsibilities

The following offers an overview of the role responsibilities that are common to both DB/DBF and CMAR Projects.

2.3.1.1 Selection Official

The Selection Official is responsible throughout the evaluation process to ensure the integrity and impartiality of the procurement process. In addition, the Selection Official:
Approves the Project evaluation process and plan for SOQs prior to the submittal thereof and for Proposals prior to the submittal thereof for all DB/DBF Projects. For CMAR Projects, the Selection Official must approve the Project evaluation process and plan for Proposals prior to the submittal thereof.

Is not to participate in the evaluation or the deliberations of the QSC, PSC, PAT, ET(s), Evaluation Panel, or other committees which may be created to review the SOQs/Proposals.

Is responsible for either accepting or rejecting the recommendation of the QSC/PSC (DB/DBF) or Evaluation Panel (CMAR) concerning the evaluation of the SOQs/Proposals. If the Selection Official rejects the recommendations of the applicable evaluation committee or panel, then the reasons for the rejection shall be provided, in writing, to the PAT. If the Selection Official rejects the scoring of the SOQs/Proposals, the Selection Official may direct the PAT to have the QSC/PSC (DB/DBF) or Evaluation Panel (CMAR) reevaluate the SOQs/Proposals.

Determines the participation levels of individuals that may have a potential conflict of interest, including ending or prohibiting an individual’s participation in the evaluation and selection process or imposing mitigation for such conflicts or relationships to ensure a fair evaluation and selection process.

Oversees the initial appointments and replacements of members of the Evaluation Panel and the PAT as well as the appointments of Observers and outside consultants.

May elect to cease negotiations with the selected Proposer or cease the entire evaluation and selection process at any time and for any reason.

### 2.3.1.2 Project Manager

The Project Manager is responsible for selecting the members of the applicable evaluation committee or panel, subject to initial approval of the Pioneer Program Manager and final approval of the Selection Official. In addition, the Project Manager:

Oversees the preparation of the evaluation process and plan for the RFQ and RFP processes, including development of evaluation criteria and subcriteria, the weightings of such evaluation criteria and subcriteria, and the QBS or BVS methodology for the Project.
♦ Oversees preparation of the RFQ and RFP (as applicable for the selected delivery method).
♦ Oversees development of Project details for inclusion in the RFQ and RFP (as applicable for the selected delivery method).
♦ Maintains, with the input from the PAT, a schedule for the evaluation and selection process.
♦ Oversees preparation of draft contract terms
♦ Oversees preparation of draft technical provisions using, as appropriate, performance criteria.
♦ Oversees the procurement of Service Providers/Advisors as needed.
♦ Selects additional members of the PAT. Note: The Administrative PAT member is assigned by Administration Services and the Deputy Attorney General PAT member is assigned by the Chief Deputy Attorney General.
♦ Ensures, with support from the PAT, that the appropriate facilities are available for reviewing the SOQ/Proposals, facilitating interviews, and conducting review committee and PAT meetings.
♦ Develops a Project Management Plan (PMP) per the requirements of the NDOT Project Management Guidelines.

For DB/DBF Projects, the Project Manager:

♦ Establishes members of the QSC for the RFQ process.
♦ Establishes members of the PSC for the RFP process.
♦ Establishes the ETs for the RFQ and RFP process, consisting of QETs for the RFQ process and the PETs for the RFP process. The QETs and PETs consist of TECs and PPCs.
♦ Recommends the final stipend value, if any, and seeks the Department Director’s approval.
♦ Oversees preparation of concept plans and specifications.

For CMAR Projects, the Project Manager:

♦ Is responsible for the initial appointments of the Evaluation Panel, subject to approval of the Selection Official. The Project Manager is also responsible for identifying replacement Evaluation Panel members as needed, subject to approval of the Selection Official.
♦ Establishes, with input from the Evaluation Panel, the appropriate interview and scoring approach that will be used by the Evaluation Panel when interviewing the shortlisted Proposers.

♦ Assists, with input from the Evaluation Panel, the PAT when determining the relevant information (e.g., interview approach and topics to be discussed) to be sent to the shortlisted Proposers in the invitation to interview.

♦ Creates, with input from the Evaluation Panel, the Project-specific questions and potential answers and/or the team challenge prompt(s) that the Evaluation Panel will ask during Proposer interviews. The Project Manager also assigns, with input from the Evaluation Panel, score weighting for the question and answer and/or team challenge portions of the interview prior to conducting the interviews.

### 2.3.1.3 Project Administration Team (PAT)

The PAT:

♦ Serves as the official Point of Contact (POC) between the Department and Proposers.

♦ Serves as a POC in the event a committee member has questions or encounters issues relative to the evaluation and selection or the overall procurement process.

♦ Is responsible for providing administrative support and oversight for the entire evaluation and selection process and offering assistance to the applicable evaluation committee or panel and the Selection Official as needed.

♦ Ensures the overall integrity of the procurement process and ensures the procurement is following State and federal regulations.

♦ Ensures that all parties involved with any aspect of the procurement execute required Confidentiality Agreements, if necessary. Administrative Services shall retain all executed Confidentiality Agreements.

♦ Ensures any potential conflicts of interest with regards to committee members and the evaluation of SOQs/Proposals are reviewed and approved by the Selection Official.

♦ As necessary, arbitrates conflicts among members. Should any changes in the members be required, the PAT shall notify the Project
Manager, whose responsibility it will be to identify new members, subject to the approval of the Selection Official.

♦ Coordinates and facilitates the participation of the team members as necessary during the course of the evaluation and selection process, including coordination and facilitation of Department staff and/or outside advisors/service providers as appropriate and necessary during the course of the evaluation and selection process.

♦ Ensures the timely progress of the evaluations, coordinating any consensus meeting(s) or re-evaluation(s), and ensures, through Administrative Services, the appropriate retention and storage of records for the procurement process.

♦ Maintains the integrity and impartiality of the evaluation of the SOQs and the Proposals throughout the evaluation and selection processes.

♦ Reviews all procurement documents by applying a pass/fail determination for all required responses, documents, and forms required by the procurement documents. The PAT also determines a Proposer’s responsiveness to all listed RFP requirements, reporting both results to the Selection Official.

♦ Coordinates with the applicable evaluation committee or panel concerning the time and place for each Proposer interview.

For CMAR Projects, the PAT:

♦ Supports the Project Manager and Evaluation Panel when determining the relevant information (e.g., interview approach and topics to be discussed) to be sent to the shortlisted Proposers in the invitation to interview. The PAT sends out this invitation to interview to all shortlisted Proposers.

♦ Makes available to the public the name of each Proposer.

2.3.2 Specific Delivery Method Responsibilities

While many responsibilities related of the Procurement Management Organization can be applied to both DB/DBF and CMAR Projects (see above), there are differences in the responsibilities of the various evaluation committees and panels for both DB/DBF and CMAR Projects.
2.3.2.1 DB/DBF Evaluation Teams (ETs): Qualifications Evaluation Team (QET) & Proposal Evaluation Team (PET)

♦ The ETs shall evaluate the SOQs and/or Proposals based on the Evaluation Criteria contained in the Evaluation and Selection Plan. The SOQs/Proposals shall not be compared to one another.

♦ Each ET member will review the evaluation criteria specified in the Evaluation and Selection Plan prior to assessing the SOQs/Proposals. If an ET member has any questions regarding a SOQ/Proposal or the evaluation criteria, a clarification shall be requested from the PAT, who may request clarification of the SOQ/Proposal from the applicable Proposer, if appropriate.

♦ Prior to the initial ET meeting, each ET member will review the relevant sections of the SOQs/Proposals. Each ET member may take individual notes to assist in developing the ETs’ consensus and recommendations.

♦ Each ET chairperson shall be responsible for ensuring the timely progress of the evaluation, coordinating any meeting(s) or re-evaluations, and ensuring that appropriate records of the evaluation are maintained.

♦ Each ET chairperson will report the progress of their evaluation to the PAT at the end of each day on which there is an ET meeting or at such other time as is requested by the PAT.

♦ If an ET determines that a SOQ/Proposal is nonresponsive, fails any pass/fail evaluation criterion or subcriterion, or deserves a qualitative rating of “Unacceptable” on any evaluation criterion or subcriterion, the ET shall report that information to the PAT as soon as practicable. The PAT will report that information to the Selection Official immediately.

♦ The ET members will be available to the QSC/PSC during the entire evaluation process, may provide written scoring recommendations and/or findings to the QSC/PSC, and may present the results of its evaluation, recommendations, and findings to the QSC/PSC.
2.3.2.2 DB/DBF Qualifications Selection Committee (QSC) and Proposal Selection Committee (PSC)

- Each member shall evaluate the SOQs/Proposals based on the evaluation criteria specified in the Evaluation and Selection Plan. SOQs/Proposals shall not be compared to one another.

- Each member will review the evaluation criteria specified in the Evaluation and Selection Plan prior to initial review and scoring of the SOQs/Proposals. If a member has any questions regarding the evaluation criteria or evaluation procedures, a clarification shall be requested from the PAT.

- Each member will review the assessments of their designated ET(s) prior to reaching a consensus scoring of the SOQs/Proposals. If a member has any questions regarding a committee assessment, a clarification shall be requested from the committee chairperson or PAT.

- Each QSC/PSC chairperson shall be responsible for ensuring the timely progress of the evaluation, coordinating any meeting(s) or re-evaluations, through the PAT, and ensuring that appropriate records of the evaluation are maintained, through Administrative Services.

- Each QSC/PSC chairperson will report the progress of their evaluation to the PAT at the end of each day on which there is an ET meeting or at such other time as is requested by the PAT.

- If a QSC/PSC determine that a SOQ/Proposal is nonresponsive, fails any pass/fail evaluation criterion or subcriterion, or deserves a qualitative rating of “Unacceptable” on any evaluation criterion or subcriterion, the ET shall report that information to the PAT as soon as practicable. The PAT will report that information to the Selection Official immediately.

- The QSC/PSC will score each of the SOQs and/or Proposals based on the evaluation criteria specified in the Evaluation and Selection Plan. In doing so, the QSC/PSC will consider the qualitative evaluations and recommendations provided by the ETs. Generally, adjectival scoring will be used for qualitative evaluation criteria, with the adjectives later being translated to numerical values. All scoring by the QSC/PSC must be documented with appropriate narrative describing the rationale and justification for the scoring.

- The QSC/PSC may develop a shortlist (for RFQs) or a competitive range (for Proposals) based on its qualitative and quantitative evaluations, reject all SOQs/Proposals, or request in writing that the
ET(s) reevaluate the SOQs/Proposals. Such request shall be made in writing to the PAT.

♦ The QSC/PSC shall not change or alter the evaluation criteria, their weightings, or the numerical values of adjectives after SOQs/Proposals have been received.

♦ After reaching a consensus, the QSC/PSC will prepare a report for the Selection Official. The QSC/PSC will present their recommendations to the Selection Official for approval, rejection, or referral by the Selection Official for further evaluation.

### 2.3.2.3 CMAR Evaluation Panel

The Evaluation Panel:

♦ Supports the Project Manager in assigning score weighting for each evaluation factor listed in the RFP.

♦ Independently reviews and evaluates each section of a Proposal based on the Proposal evaluation factors.

♦ Convenes to evaluate collaboratively and develop a single consensus adjectival rating and consensus numeric (quantitative) score for each Proposal evaluation factor.

♦ Documents related consensus comments (strengths and weaknesses) for each Proposal evaluation factor.

♦ Establishes the ranking of the Proposers and prepares a report for the Selection Official, with the assistance of the PAT.

♦ May recommend which Proposers are selected for the shortlist based on its evaluations or that all Proposers be rejected.

♦ May re-evaluate the area(s) on which it could not arrive at a consensus, should the Evaluation Panel fail to reach a consensus.

♦ Supports the Project Manager in establishing the appropriate interview and scoring approach to be used when interviewing the shortlisted Proposers.

♦ Supports the Project Manager in creating the Project-specific questions and potential answers and/or the team challenge prompt(s) as well as assigning score weighting for each portion of the interview that will be
used by the Evaluation Panel when interviewing the shortlisted Proposers. The score weightings must be consistent with the weighting allocations set forth in the RFP.

♦ Supports the Project Manager and the PAT when determining the relevant information (e.g., interview approach and topics to be discussed) to be sent to the shortlisted Proposers in the invitation to interview.

♦ Convenes to evaluate collaboratively and develops a single consensus score and related consensus comments for each interview packet submitted in accordance with the interview evaluation factors.

♦ Reviews the RFP interview requirements, interview approach and scoring, the list of questions and potential answers, team challenge prompts, and Project goals.

♦ Independently evaluates and initially assesses each portion of the interview, specifically utilizing adjectival ratings.

♦ Convenes to evaluate collaboratively and develop a single consensus adjectival rating from which a numeric (quantitative) score is derived for the short presentation, question and answer session, and team challenge portions of the interview.

♦ Documents related consensus comments (strengths and weaknesses) for each Proposal.

♦ Establishes the final selection ranking of the shortlisted Proposers and prepares a report for the Selection Official, with the assistance of the PAT.
SECTION 2.4 PROCUREMENT AND SELECTION DOCUMENTS AND ACTIVITIES

The content and composition of procurement and selection documents varies depending on the delivery method and the Project. This section provides an overview of content to be included in these documents. For more specific information regarding composition of these documents for each delivery method, refer to appropriate chapters in these Guidelines. The Department Director or designated Selection Official is ultimately responsible for approval of all procurement documents and contract terms and conditions.

2.4.1 Request for Qualifications (RFQ)

The RFQ is used in the qualification step of the two-phase selection process. The RFQ is not used for a single-phase procurement process.

The RFQ asks interested proposing teams (Proposers) to submit a well defined package outlining historical information generally related to capabilities, experience, financial stability, and past performances on specific issues pertinent to the Project, Project team organization, key Project team members, and individual and team history. RFQs can also seek the Proposers’ preliminary thoughts on Project approach, risks, and scope of work. The goal of the RFQ is to select the top-ranked Proposers (three to five) based on their experience in specific areas that are important for the Project and their understanding of the Project. These shortlisted Proposers will be requested to compete in the second step of the selection process by preparing a Proposal in response to the RFP phase (described below).

The selection criteria used to evaluate the SOQ, a statement of qualifications submitted by the Proposer in response to the RFQ, must be clearly stated and should be as objective and measurable as practicable. For instance, RFQs often solicit information about the experience associated with projects that have already been completed by members of the Proposer’s team. Proposer experience must be tied to the key individuals, rather than corporate history. Many of the Proposers will list out-of-state work history. By providing a standardized reference form in the RFQ for Project experience, the information provided can be standardized and be more easily reviewed. Additional information, if any, about the Project and such other details and information that are determined desirable by the PMT can be included in the RFQ. The PMT will finalize the RFQ.
2.4.1.1 RFQ Components

The RFQ typically describes the Project and the scope of work, identifying the anticipated services, the status of the Project (e.g., preliminary design work, environmental status), the anticipated procurement and Project delivery schedule, anticipated milestones, location of work, personnel requirements, submittal requirements, and evaluation criteria.

The RFQ also identifies any documents that the Department will or may provide during the procurement process (e.g., plans, specifications, preliminary research documents).

The RFQ may also require submittal of certain financial information from the Proposer. The intent of financial qualification submittal requirements is to ensure that the Proposer has sufficient financial capacity to assume the responsibilities and obligations required to perform the Project scope. As noted, the Department may require the Proposer to submit evidence of insurance and, if and to the extent required by the particular Project and contractual arrangements, bonding or letters of credit, which may include performance, payment and/or operations and/or maintenance bonding or letters of credit. The Department may also require the submission of financial statements, including audited financial statements, and disclosure of material changes in the Proposer’s financial position during a specified period of time or reporting period identified in the RFQ.

The SOQ will be received by Agreement Services on behalf of the PMT. The Project Manager will establish the number of copies required based on the number of copies needed for the various evaluation committees to review the Proposals. The number of copies of the required submittals will be specified in the RFQ.

2.4.1.2 RFQ Evaluation and Selection Plan

The PMT will prepare a written RFQ Evaluation and Selection Plan so that all members of the QSC and QET will have a common basis for and understanding of the process and criteria used in evaluating the submitted SOQs. The objective is to utilize a disciplined, fair, and uniform basis for the evaluation. The RFQ Evaluation and Selection Plan will describe:

- The procurement process;
- The SOQ evaluation and selection organization, functions, general procedures, roles/responsibilities, and schedule;
- Evaluation criteria (from the RFQ);
- Evaluation factors; and
Evaluation process.

Evaluation criteria for the RFQ must be relevant to the Proposer’s ability to successfully execute the Project. Listed below are examples of potential RFQ evaluation factors, which will vary depending on the nature of the Project, delivery method, and Project scope. The weighting of these evaluation criteria will be determined by the PMT as set forth in the NRS and RFQ.

- Professional qualifications of the proposed team
- Experience of the proposed team
- Corporate experience with DB, DBF, PPP, etc., contracting
- Specialized design and/or construction capability for the key Project elements
- Specialized operations and/or maintenance capability for the key Project elements
- Performance history of the members of the Proposer team on recent, similar projects
- Safety programs and records of the Proposer team members
- Proposed management plan
- Ability to design and construct the Project
- Ability to operate and maintain the Project
- Ability to finance the Project
- The capacity to undertake the financial responsibilities associated with the DB/DBF Agreement, PPA, etc. and provide insurance and performance security (e.g., proposal, payment, and performance bonds, letters of credit, etc.)
- If the Project is a DBF or a PPP, an ability, experience, and understanding to execute a plan of finance for projects of similar scale and cost
- Ability to perform any required operations and/or maintenance and the associated experience of the Proposer team
- Conceptual approach to design and construct the Project
- Conceptual approach to operations and maintenance of the Project
- Conceptual approach to financing the Project
- Project understanding
♦ Scheduling and control systems to track and manage the Project
♦ Specialized expertise that reduces risk and assures quality of work
♦ Other criteria determined relevant by the Department

2.4.2 Statement of Qualifications (SOQ)

As a part of the SOQ, Proposers may be required to provide information related to the structure of the Proposer team, the background and experience of the Proposer, individual team members, and key personnel with developing, designing, constructing, financing, operating, and/or maintaining Projects comparable to the Project. The specific nature of experience, key personnel, and background sought will depend on the specific Project as well as the Project delivery mechanism used (e.g., the Proposer team for a DB/DBF procurement may differ from that of a PPP concession procurement).

Proposers may be required to submit, as part of the SOQ, a description of their conceptual approaches to some or all of (depending on the Project scope and delivery mechanism) the development, design, construction, financing, operating, and/or maintenance of the Project. The SOQ may include, among other things, the following:

♦ The Proposer’s view of the roles and responsibilities of the owner;
♦ The Proposer’s and third parties’ experience in connection with projects of a similar scope and nature as the Project (in terms of allocation of work or risk and implementation/delivery);
♦ A description of how certain requirements of the Project will be achieved;
♦ A list of the major risk issues and factors associated with the Project; and
♦ A description of the availability of Proposer’s resources for the Project.

The SOQ requirements may also include some or all of the following items:

♦ Point of Contact
♦ Proposer team
♦ Organizational chart
♦ Resumes of Proposed Key personnel, including Project Manager
♦ Example projects for Proposer Team’s Qualifications.
♦ General qualifications
♦ Work force analysis chart
2.4.2.1 Prescreen SOQs: Responsiveness and Pass/Fail

SOQs received by the specified deadline will be prescreened by the PAT for responsiveness and pass/fail items. This screening will determine whether the SOQ meets the form and time submittal requirements and includes the required information as specified in the RFQ. Such information may include:

- Evidence of ability to obtain performance security (e.g., performance and payment bonds, letters of credit, etc.) if required by the SOQ;
- Evidence of ability to obtain general liability insurance and professional indemnity insurance as required by the SOQ;
- Evidence that the Proposer and its key corporate members have not been found liable for breach of contract with respect to a previous project other than for a legitimate cause;
- Evidence that the respondent has not been disqualified from a contract award pursuant to NRS 338.017, 338.13895, or 408.333;
- Evidence that the Proposer possesses all relevant licenses and certifications with the State of Nevada; and
- Evidence of the Proposer’s legal structure.

At the PAT’s discretion, with the concurrence of the Selection Official, the PAT may waive any minor deficiencies in an SOQ, allow a Proposer to correct minor deficiencies in or clarify or supplement the SOQ, or reject an SOQ that does not pass the prescreening process. The PAT will report to the Selection Official regarding the results of the prescreening process.
2.4.2.2 Evaluate Qualifications and Short List

After the PAT’s pass/fail and responsiveness review, a substantive evaluation of the SOQ will take place. In certain circumstances, in the discretion of the Project Manager, the substantive evaluation may commence before completion of the pass/fail and responsiveness review (but without waiving the requirements of responsiveness or need to pass the pass/fail items).

The weighting of certain portions of the SOQ will be set forth in the RFQ and may be expressed in points (which, in the aggregate, total 100) or through relative weightings (e.g., a certain criteria or category of criteria are of more, equal or less importance with other evaluation criteria/categories).

If points are used, the RFQ may indicate that points are assigned to categories as a whole (e.g., Proposer structure and experience = X points; approach to development = Y points) or the points may be broken down by the specific criteria required by the SOQ (generally only points should be provided on a category basis). The general practice will be to either indicate in the RFQ the relative weighting of categories and/or criteria or to provide information on the category point’s value (and not provide point values for specific criteria). The evaluation process must be consistent with any allocation of points or weighting indicated in the RFQ. The total of all points will reflect the total score for the SOQ. The RFQ for a particular Project will set forth the evaluation methodology for the SOQs in detail. The evaluation criteria and weightings for the evaluation of Proposals will differ from the criteria set forth in the RFQ to evaluate SOQs. The rankings, scores, and evaluation of the SOQs will not carry over or be used in any way in the evaluation of the Proposals for such Project.

The QSC, with any assistance needed from the QETs, will evaluate the SOQs. The SOQ evaluations will be conducted in accordance with the SOQ Evaluation and Selection Plan. The ratings will be documented in a report of the evaluation. The QSC may, through the PAT, conduct discussions with a Proposer or seek clarification of ambiguities, omissions, errors, mistakes, or clerical revisions during the process.

After all SOQs have been evaluated, the PAT will notify, in writing, each Proposer who submitted an SOQ as to whether or not it has been shortlisted.

2.4.3 Request for Proposals (RFP)

If the Project involves federal aid, issuance of the RFP requires approval by the FHWA; therefore, the RFP-related activities described in this section may occur prior to, concurrently with, and/or following the RFQ-related activities. All of these activities must, however, be completed prior to finalizing and issuing the RFP.
Formulation of the RFP Package is a significant effort that ought not to be overlooked in Project scheduling or estimation. When establishing deadlines for Proposal submittal, the Project Manager, with the assistance of the Procurement Management Organization, must bear in mind the complexities of developing a responsive Proposal and the schedules of the committee members that may be involved in the procurement. Proposal preparation could require additional engineering investigations, research into public needs, preparation of design documents, and additional tasks not normally required on a traditional DBB project. Based on the needs of the Project and delivery method chosen, allowing 60 to 90 days or more (sometimes upwards of 6 months) for Proposal preparation may be necessary. The Project Manager, with the assistance of the Procurement Management Organization, must keep this timeframe in mind throughout the Project development process when targeting an overall Project completion date.

The RFP will identify the information to be used in evaluating the Proposers and the time for submittal. The RFP is advertised to all interested Proposers for a single-phase procurement process. The RFP is issued to the shortlisted Proposers only for a two-phase procurement process. The RFP will need to be tailored to the specific Project, Project scope, and delivery method and may include the following items depending on the chosen delivery method.

- Scope of work (which may include some or all of design, construction, operations, maintenance, and finance)
- Preliminary design, plans, and specifications (if design and construction is to be part of the scope of work).
- Submittal requirements for Technical Proposals and Financial Proposals
- Pricing forms or other forms related to pricing or financing of the Project
- Various required forms, including federal and State forms
- Statement of a desired contract completion date or days
- Proposal evaluation plan listing:
  - The technical, schedule, and price/financial evaluation criteria and their relative weightings
  - The qualifications-based evaluation factors and their relative weightings
- Description of what constitutes a non-responsive proposal
- A request for a specific date or number of days by which all design and construction work under the contract will be completed
♦ If design and construction are part of the scope of work, a statement as to what percentage of the Project must be constructed by the Proposer’s work force (15 percent is a minimum statutory amount required)

♦ A statement that the Proposer shall have overall responsibility to ensure the design and construction of the Project is completed in a satisfactory manner

♦ If a stipend is offered, a statement that the Proposer’s acceptance of the stipend is optional; however, if the Proposer accepts such stipend, it shall give the Department all rights to use of any and all ideas and concepts contained in its Proposal for the related Project or any other Project

♦ A detailed description of a communication protocol that must be followed by Proposers in communicating with the Department concerning the RFP

♦ Protest provisions

♦ Conditions to award

♦ Department-reserved rights

Any relevant questions concerning the Project identified in the RFP must be submitted by the Proposer in writing and will be responded to by the Department by the date specified.

### 2.4.3.1 RFP Proposal Components

Depending on the nature of the delivery method, Project, and Project scope, the Proposal components may differ. Additionally, the RFP may require Proposers to submit information different from or in addition to such information referenced in these Guidelines.

For instance, the Department may issue an RFP that requires the Proposers to provide a Proposal containing two components, a Technical Proposal and a Financial Proposal. Or the Department may require only one component based on experience, competency, qualifications, and approach to the services. The Department may also issue an RFP without first issuing an RFQ.

The following sections provide a general overview of the elements within each of the components described. For more specific information regarding composition of an RFP specific to each delivery method, refer to appropriate chapters in these Guidelines.
2.4.3.1.1 Technical Proposal

The Department may require the Proposer to provide such technical information regarding the Project scope of work and technical requirements as the PMT deems appropriate. Depending on the scope of work of the Project, such required information may include:

♦ Design elements and approach;
♦ Construction approach;
♦ Operations approach;
♦ Maintenance approach;
♦ Handback approach;
♦ Project management approach;
♦ Schedule;
♦ Phasing;
♦ Quality control and assurance approach; and
♦ Other information as is appropriate for the Project’s development, operations, and/or maintenance.

The intent of the Technical Proposal is to provide the Department with assurance that the Proposer selected has a sufficient understanding of the Project or desired service, has an approach that meets technical and contractual requirements, and has established that it has the ability to timely and efficiently deliver the Project or service in a quality manner in accordance with technical and contractual requirements. The Technical Proposal also often affords a Proposer the ability to demonstrate its quality, innovation, creativity, and commitment to exceed minimum technical and contractual requirements.

2.4.3.1.2 Financial Proposal

The type and extent of financial documents to be submitted as part of the Financial Proposal will depend on the Project delivery mechanism. The Financial Proposal may also require that the Proposer update the financial qualification information provided with the SOQ.

2.4.3.1.3 Where Financing is Involved

If the RFP and Project scope require the Proposer to finance any part of a Project, the Financial Proposal will generally require the submittal of a financial plan. In some cases, particularly those relating to PPP Projects involving longer
term financing and operations and maintenance phases, the RFP may also require submittal of a financial model.

The nature of the Project, the Project delivery method, and current market conditions will dictate the contents and level of detail of the financial plan and whether the Financial Proposal is fully or partially committed (e.g., binding and subject only to limited conditions) or whether more substantive conditions may be included by the Proposer. Generally, requirements for a financial plan may include that the Proposer:

♦ Identify the financial institution(s);
♦ Provide descriptions of senior debt finance, mezzanine debt finance, equity and quasi-equity finance (including subordinated debt or loan stock), and any other forms of finance;
♦ Identify investors, lead arrangers, lead managers and/or underwriting banks, and/or quasi-equity providers that have given indications/commitments;
♦ Describe the type and purpose of each funding source and facility;
♦ Describe the proposed steps and timeframes for reaching financial close; and
♦ Copies of commitments.

Proposers may be required to provide specific information for each separate bank, loan facility, or other debt instrument, such as commitments, amounts, terms and conditions attaching to the loan, drawdown schedule, capital repayment moratorium, repayment schedule and final maturity date, events of default, security required (including any guarantees), any reserve accounts, interest rate, any proposed hedging arrangements in respect of interest rates, average life of debt, credit ratings, due diligence, and timetables. The financial plan requirements will be detailed in the RFP documents.

Generally, requirements for a financial model submittal may include the following:

♦ Inputs (specific dates, periods, revenues, expenditures, contingencies and profit margins, macroeconomic assumptions, and inflation),
♦ Outputs (cash balances, returns on equity, cost of capital, net present value [NPV] of construction costs, and reserves),
♦ Calculations,
♦ Detailed back up information,
♦ A list of assumptions, and
Details of how the financial model operates.

The RFP will provide details regarding the Proposer’s submission of the financial plan and financial model portions of the Financial Proposal.

Where possible and financially feasible, the Department will seek Proposals that minimize the use of public funds as well as the creation of State-supported debt. If a Proposal includes public or private debt, then the RFP may require the Proposal, to the extent possible, to identify the amount of public funds and specify the Project-level approvals by the Department, other appropriate public entities, private lending institutions, and ratings agencies.

### 2.4.3.1.4 Qualification-based Proposal

The Department may require the Proposer to provide qualification-based information regarding the Project scope of work, Project approach, and past experience related to projects of similar size, scope, and construction complexity. Depending on the scope of work of the Project and desired approach for working within a Project team, such required information may include the following:

- Qualifications and experience of the Proposer firm;
- Qualifications and experience of key personnel;
- Availability of key personnel;
- Project approach;
- Communication approach;
- Project management approach;
- Schedule approach;
- Quality control and assurance approach;
- Past project innovation; and
- Other information as is appropriate for the Project’s development, team interaction, and past experience related to the Project.

The intent of the qualification-based information is to provide assurance that the Proposer selected has expertise and understanding of the Project and its roles within the specified delivery method. In addition, the Proposer presents an approach that meets the Project and contractual requirements and establishes that it has the ability to timely and efficiently work in a quality manner in accordance with Project and contractual requirements. This information often affords a Proposer the ability to demonstrate its past experience and commitment to exceed minimum Project and contractual requirements.
2.4.3.1.5 RFP Issuance

As described further below and in the appropriate chapters in these Guidelines, FHWA must approve the RFP as well as any addendums prior to release to the Proposers (FHWA’s Project authorization) if federal funding, TIFIA financing, or certain other federal actions are involved. Agreement Services will upload the RFP for all interested Proposers on its public website for a single-phase procurement process. Agreement Services will e-mail the RFP to the shortlisted Proposers or the RFP will be uploaded to a secure web based tool (i.e., SharePoint) for a two-phase procurement process.

2.4.3.1.6 RFP Evaluation and Selection Plan

The Project Manager will prepare a written, delivery-specific RFP Evaluation and Selection Plan so that all members of the applicable evaluation committees or panels have a common basis for and understanding of the process and criteria used in evaluating the submitted Proposals. The objective is to utilize a disciplined, fair, and uniform basis for the evaluation. The RFP Evaluation and Selection Plan will describe the following:

♦ The procurement process;
♦ The qualifications evaluation and selection organization, functions, and general procedures;
♦ Roles and responsibilities of the applicable evaluation committee or panel;
♦ Evaluation criteria (from the RFP);
♦ Evaluation factors; and
♦ Evaluation process.

For specific information regarding composition of the RFP Evaluation and Selection Plan for each delivery method, refer to appropriate chapters in these Guidelines.

2.4.4 Specific Delivery Method Procurement Approaches

While there are many common elements that apply to all delivery methods (see above), there are notable differences in procurement activities and documentation that relate specifically to the selected delivery method.
2.4.4.1 Industry Review (DB/DBF and PPP Projects)

Based on approval of the Selection Official, the Department may release a draft RFP to the shortlisted Proposers for industry review. An industry review would provide the Department with valuable feedback and help resolve potential issues with the RFP. Industry review is frequently used in alternative Project delivery and finance procurements and is generally very valuable in improving the quality of the procurement documents, the Proposals, and the overall procurement process. If the schedule allows for it, inclusion of an industry review process is encouraged.

The PMT may choose to hold an Industry Review Meeting(s) with the shortlisted Proposers. Those meetings may be held jointly or individually (one-on-one) to share information regarding the upcoming RFP with shortlisted Proposers and to obtain feedback, comments, and suggestions from such Proposers. The one-on-one meetings are generally confidential and there may be information/questions from a Proposer that are confidential and cannot be shared with others.

If the PMT elects to utilize industry review meetings during the draft RFP process, the PMT will prepare documents to be used in any Industry Review Meeting(s), including protocols and waivers addressing the industry review process. The industry review process would occur after shortlisting but before formal issuance of the RFP, and the process would be facilitated through the PAT.

The draft RFP will generally consist of draft instructions to Proposers, a draft contract, and draft technical provisions. The draft RFP contains a complete description of the Project and Project scope, the technical requirements applicable to the Project, the form of contract, RFP submittal requirements and evaluation criteria, the anticipated RFP schedule, and the methods for selecting a Proposer.

Proposers may wish to seek clarification on draft RFP requirements. Any non-confidential questions received, along with the Department’s response, may be made available to all firms that received the draft RFP. Alternatively, additional draft RFP versions or the final RFP can serve as the Department’s response to Proposer questions and comments in lieu of formal written responses.

2.4.4.2 Pre-Proposal Meeting (CMAR Projects)

The Department may elect to hold a Pre-Proposal Meeting for all interested Proposers. The intent of the meeting is to introduce Proposers to the selected delivery method, offer an overall introduction to the Project as scoped, and enable the Department to answer questions about the Project and the process.
During the Pre-Proposal Meeting, it is the responsibility of the Project Manager to give a presentation about the selected delivery method and the scope of the Project. The Project-specific portion of the presentation must match what was said in the RFP and any reference documentation. Aerials, Project scope, stage of design when contracted, Project goals, and an overall picture of the Project will help the Proposers prepare their Proposals.

### 2.4.4.3 One-on-One Meetings (DB/DBF and PPP Projects)

One-on-one meetings with the shortlisted Proposers can be conducted and the results used to clarify the RFP and avoid any potential misinterpretation by the Proposers. The Department reserves the right to conduct one-on-one meetings with the Proposers to clarify any Alternative Technical Concepts (ATCs) submitted as well (described below).

The information presented in one-on-one meetings shall remain strictly confidential. Only clarifications on the procurement process or clarifications on specifications or directions in the RFP are made public. Prior to the one-on-one meeting, Design Build teams must submit in writing topics that they wish to discuss. A member of the PAT is required to be present during the meetings and will be consulted about what can and cannot be discussed during the one-on-one meetings to avoid the possibility of claims of impropriety or favoritism.

### 2.4.4.4 Alternative Technical Concept Reviews (Optional) (DB/DBF and PPP Projects)

For complex Projects or if Project conditions do not restrict the range of possible technical approaches, the RFP may encourage Proposers to submit ATCs for review by the Department during the Proposal preparation period. For Proposers, the opportunity to participate in this kind of pre-Proposal review process is beneficial because the feedback received will prevent any unnecessary expenditure of resources in developing a concept that does not meet the RFP requirements.

ATCs generally are deviations from the Project technical requirements that provide equal or better utility or function. Care must be taken when drafting the RFP documents to allow for innovation without requiring excessive ATC submissions.

All technical experts are required to sign a confidentiality agreement before reviewing or participating in any ATC discussion. ATCs are to remain confidential at all times.

ATCs can address different configurations, different design criteria, operation and maintenance (O&M) criteria, materials not previously used on Department projects,
and similar issues for which some flexibility from the Project technical provisions may exist. The RFP can allow submittal of any type of ATC or it can limit the type or number of ATCs (e.g., only allowing ATCs relating to pavement or which do not require further environmental assessment). A Proposer can suggest an ATC during the Proposal preparation period and, if accepted, can then decide to include the ATC in its Proposal as its “base proposal”. A Proposer is not required to use an approved ATC and may elect to not do so, instead proceeding with a Proposal that meets the requirements of the technical provisions without regard to the ATC.

ATCs can be rejected by the Department for any reason, approved, or conditionally approved, with the Proposer bearing the risk of satisfying the conditions.

No ATC may be approved without the Proposer's submission of a package containing the information required for such submissions in the RFP. Upon review and determination that an ATC is required, the Department will conduct a formal review to determine whether to reject the ATC, accept the ATC, or accept the ATC with specified conditions that the Proposer must meet before using the ATC.

A Proposer may ask questions during a scheduled one-on-one meeting seeking the Department's initial response to a given ATC; however, no formal response to such question may be provided other than a general conceptual response to the ATC, which may not be subsequently accepted by the Department upon its review of the ATC package. In either case, the confidentiality of the Proposer's concept must be protected, subject to applicable law and the ongoing right of the Department to correct any ambiguities, errors, or unintended provisions in the RFP (including those that may have led to the submittal of the ATC).

Allowing ATCs does not equate to automatic acceptance of the alternate approaches by the Department; however, the Project team and Selection Committee must be prepared to seriously consider the ATC and the benefits they may offer. To consider such Proposals, the Project team needs to carefully tailor evaluation factors related to technical criteria to ensure that both baseline and alternate solutions are equal to or better than the base conditions provided in the contract documents. ATCs shall be evaluated and rated with fairness and consistency.

All ATCs approved by technical experts shall be forwarded to the Proposal Evaluation teams along with a technical memorandum outlining any pertinent notes, special conditions, or items of interest concerning such ATC.

**2.4.4.5 Stipend (DB/DBF and PPP Projects)**

A decision by Proposers to submit an SOQ and Proposal may be influenced by whether a stipend is offered in addition to the details of the stipend, if any. A stipend is intended to encourage competition and result in higher quality Proposals, which in
turn more than outweighs the cost of offering a stipend. Stipends also result in innovative ideas from Proposals not selected. In such cases a stipend provided to the Design Builder allows the Department to ultimately negotiate the innovative idea into the Conformed Contract. Several states require that a stipend be offered precisely for this reason. The Project team shall determine whether a stipend will be offered to unsuccessful Proposers. The Project Manager will provide a recommendation regarding the use of a stipend, stipend range, or fixed stipend amount, if applicable, to the Department Director for a Project. The recommended stipend range or fixed amount may be based on the estimated Project cost but must not include the Department’s internal costs and contingencies. The estimated Project cost is based on 85 percentile (contingency estimating refer to the Project Manager Guidelines) or 85 percent confidence level of Project cost. The estimated range and amount can be adjusted, with adequate justifications, prior to release of final RFP.

Table 2-1 provides guidance for determining stipend ranges. However, a variety of factors must be considered when determining a stipend amount. Table 2-2 identifies some of these factors. When determining a stipend amount, Table 2-1 will generally be used to determine a base stipend range, and an appropriate amount can be determined based on the factors listed in Table 2-2. Stipend values for large DB/DBF or PPP projects may exceed $1 million, with some states offering upwards of $2.5 million on certain PPP projects.

### Table 2-1: Stipend Ranges

<table>
<thead>
<tr>
<th>Project Value</th>
<th>Percent Compensation range</th>
<th>Compensation range</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; $5M</td>
<td>(0.005 - 0.0040) * Estimate</td>
<td>&lt;$25K</td>
</tr>
<tr>
<td>$5M - $20M</td>
<td>(0.003 - 0.0035) * Estimate</td>
<td>$15K - $70K</td>
</tr>
<tr>
<td>$20M - $50M</td>
<td>(0.002 - 0.0030) * Estimate</td>
<td>$40K - $150K</td>
</tr>
<tr>
<td>$50M - $100M</td>
<td>(0.0015 - 0.002) * Estimate</td>
<td>$75K - $250K</td>
</tr>
<tr>
<td>&gt;$100 M</td>
<td>(0.0015 - 0.003) * Estimate</td>
<td>&gt;$150K</td>
</tr>
</tbody>
</table>

Any reimbursement made will be payable in the manner set forth in the RFP. As a general approach, such payment will ideally be payable no later than the execution date of the contract or financial close (if a DBF), whichever occurs later.
### Table 2-2: Factors that Influence Stipend Amounts

<table>
<thead>
<tr>
<th>Variable</th>
<th>Discussion</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Size</td>
<td>The cost of preparing a proposal is somewhat a function of the size of a project. However, there are considerable fixed costs that are not related to project size.</td>
<td>There is an inverse relationship between stipend amount and project size. The smaller the project, the larger the stipend is relative to the overall project size; i.e., small projects tend to have a larger percentage of project cost stipend versus a large project.</td>
</tr>
<tr>
<td>Technical Complexity</td>
<td>Projects that require technically complex solutions will require more work on the part of the proposer which increases the cost of preparing the proposal. RFPs requiring the Proposer to address complex technical issues will lead to a higher percentage stipend.</td>
<td>The more project risk which a proposer is asked to assume will lead to greater proposal costs since the proposer will need to develop approaches to mitigate these risks. These mitigation techniques may or may not be disclosed to the Department.</td>
</tr>
<tr>
<td>Financial Complexity</td>
<td>Projects that require financially complex solutions will require more work on the part of the proposer which increases the cost of preparing the proposal. RFPs requiring the Proposer to address complex financial issues will lead to a higher percentage stipend.</td>
<td>The more risk that is transferred to a Proposer will lead to a higher percentage stipend.</td>
</tr>
<tr>
<td>Risks Transferred</td>
<td></td>
<td>The more extensive the requirements of proposal, the higher the stipend should be as a percentage of project costs.</td>
</tr>
<tr>
<td>Information Required of Proposer</td>
<td>This is simply related to extent of information being requested in a proposal, including the number of volumes, etc. As a result, the Department needs to be careful that information it is requesting will be of value in making a decision or is required by the applicable statute.</td>
<td></td>
</tr>
<tr>
<td>Competition</td>
<td>If the field is considered insufficient by proposers relative to the variety of elements required to submit a proposal, some proposers may drop out of the competition, or may not even submit qualifications. In making a decision to submit a proposal a proposer has to weigh a number of factors including: Type of project, Probability of being awarded the project, Cost of preparing a submission, Size and type of project, Specific project requirements, Stipend amount, Current and projected workloads.</td>
<td>Larger stipends tend to encourage more proposers, leading to greater competition. Greater competition benefits the project both in terms of better pricing, more innovative technical solutions, and greater public confidence in the process.</td>
</tr>
<tr>
<td>Market</td>
<td>In tough construction markets when there is not a lot of work available, proposers will be more aggressive in project pursuits. This includes the willingness to accept lower stipends. Conversely, in good markets with lots of work proposers can afford to be choosier about the projects they pursue or don’t pursue.</td>
<td>In slower construction markets, the Department can offer lower stipends. In a robust construction market, the Department will need to offer higher stipends to foster adequate competition.</td>
</tr>
<tr>
<td>Quality of Proposers</td>
<td>All things being equal, larger stipends tend to generate better proposals. In essence stipends are sometimes viewed as supplemental funds which allow more resources to be expended on a proposal.</td>
<td>Higher stipends tend to lead to higher quality and more fully developed proposals.</td>
</tr>
</tbody>
</table>
2.4.5 Confidentiality and Security

It is important to understand that the evaluation and selection process is a competitive process. As such, the Department has the authority and obligation to keep certain information confidential during this competitive process.

Confidentiality is critical to the validity of the evaluation and selection process. All individuals involved in the procurement process for either the RFQ or RFP shall sign a “Confidentiality and Non-Disclosure Agreement,” No Conflict of Interest Statement. The Department is to store all Proposal documents in a secured (locked) room during non-working hours. The PAT and the applicable evaluation committee or panel must review documents in a common, secured area during the day. All evaluation notes and comments are to be documented in the same manner. Documents will not be accessible to the general public, to Proposers, or to the Department employees not involved in the evaluation and selection process.

As both the RFQ and RFP evaluation and selection processes are competitive in nature, the confidentiality agreement will apply to both selection processes as applicable to the selected delivery method. The PAT will be the point of contact for all outside correspondence, and the PAT will ensure confidentiality agreements are signed by all members of the Procurement Management Organization. Conflict of interest resolutions will be reviewed and approved by the Selection Official in consultation with Legal Division.

2.4.6 SEP-14

SEP-14 is an FHWA program that was established to enable use of “non-traditional contracting techniques which are competitive in nature but do not fully comply with the requirements in Title 23 CFR,” and the stated objective of SEP-14 is “to identify for trial evaluation and documentation, innovative contracting practices which have the potential to reduce life cycle costs to SHAs while maintaining product quality and an acceptable level of contractor profitability.”

(See http://www.fhwa.dot.gov/programadmin/contracts/021390.cfm)

The SEP-14 process involves filing a workplan with FHWA concerning the deviations, why they are a positive benefit to the Project and procurement, and how the Department will report and establish the benefits if approved and implemented. The approval of an SEP-14 workplan is a discretionary action by FHWA. The SEP-14 process requires time and planning, particularly if the deviations are perceived as potentially controversial or are major changes in federal regulations or policies. The need to seek an SEP-14 waiver must be assessed, identified, and considered very early in the procurement
development and ample time shall be afforded for the process in the procurement schedule.

DB Project procurement processes that deviate from the requirements of 23 CFR 636 will generally require an SEP-14 workplan and approval, though it is possible that the SEP-15 waiver process will apply to DB Projects as well. Note that DBF Projects are more likely to fall under the SEP-15 program, as noted below.

The Department and FHWA developed a SEP-14 workplan for the use of the CMAR delivery method on transportation projects. The CMAR Project procurement processes followed the approved SEP-14 application for an alternative contracting process. As of this edition of the Pioneer Program Guidelines, all CMAR projects are no longer administered under SEP-14, but are delivered under FHWA full oversight requirements in adherence to the FHWA/NDOT Stewardship Agreement (January 2008). With the approval of Moving Ahead with Progress for the 21st Century Act (MAP-21), the use of the CMAR delivery method for federally-funded projects no longer requires separate approval of programmatic or project-level SEP-14 applications.

2.4.7 SEP-15

Special Experimental Project Number 15 (SEP-15) is an FHWA program that was established to encourage tests and experimentation in the entire development process for transportation projects. SEP-15 is aimed specifically at increased project management flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams. FHWA plans to use the lessons learned from SEP-15 to develop more effective approaches to project planning, project development, finance, design, construction, maintenance, and operations. It is anticipated that these new approaches will allow the efficient delivery of transportation projects without impairing FHWA’s ability to carry out its stewardship responsibilities to protect both the environment and American taxpayers. SEP-15 addresses, but is not limited to, four major components of project delivery:

♦ Contracting,
♦ Compliance with environmental requirements,
♦ Right-of-way acquisition, and
♦ Project finance.

Elements of the transportation planning process may be involved as well.

The SEP-15 process is used if the Department wishes to deliver a PPP Project in a manner that is inconsistent with federal regulations, including the federal design-build rule (23 CFR Part 636), which also typically applies to PPP delivery. If a Project involves
private financing (including DBF), the Project will generally fall under the SEP-15 program, if applicable, instead of the SEP-14 program.

The SEP-15 process involves filing an application with FHWA concerning the deviations, why they are a positive benefit to the Project and procurement, and how the Department will report and establish the benefits if approved and implemented. The approval of an SEP-15 application is a discretionary action by FHWA. If approved, the Department and FHWA would enter into an Early Development Agreement (EDA) with respect to the “experimental” elements (deviations) that sets out the approval requirements and conditions (and constraints), as well as any ongoing reporting requirements.

The SEP-15 process requires time and planning, particularly if the deviations are perceived as potentially controversial or are major changes in federal regulations or policies. The need to seek an SEP-15 waiver must be assessed, identified, and considered very early in the procurement development and ample time shall be afforded for the process in the procurement schedule.
CHAPTER 3: DESIGN-BUILD (DB) AND DESIGN-BUILD-FINANCE (DBF) PROJECTS
SECTION 3.1 INTRODUCTION

The design-build (DB) and design-build-finance (DBF) processes are among the most innovative methods the Department is authorized to use for Project delivery. The methods are not appropriate for all Projects and there are legislative requirements that apply for selection of a Project for DB/DBF delivery method. However, when the right Project is selected, DB/DBF may offer significant benefits for the Department and the public.

DB is a method of Project delivery in which the Department executes a single contract with a Design-Builder for design and construction of a transportation facility. In this method of delivery, the Department’s role is focused more on describing the desired Project’s performance rather than on the means and methods of getting that performance. The Department’s staff must develop and define clear Project’s performance objectives and design concepts in order for the Design-Builder to propose a technical approach and lump sum fixed price to complete design and deliver the Project.

DB/DBF shifts the Department’s decision-making process normally associated with DBB Projects. In order to be successful, it is critical for the Department to adapt and efficiently and effectively make the necessary decisions crucial to the DB process. This will vary from Project to Project depending on the risk and responsibility allocation. These Guidelines provide general project items for consideration and are intended to help the Department through the DB/DBF decision making process. Project Management processes, roles and responsibilities of Project teams, and tasks associated with each phase of the DB/DBF delivery method are also defined.
SECTION 3.2 WHAT IS DESIGN-BUILD?

DB/DBF is an alternative project delivery system that combines both Project design and construction under one contract. The Design-Builder performs design, construction engineering, and construction according to design parameters, performance criteria, and other requirements established by the Department. DB/DBF has been implemented in the transportation industry in a variety of ways based on Project characteristics, agency goals, how State statutes are written, the procurement approach used, and how much responsibility is transferred to the Design-Builder for the design and other aspects of Project performance.

3.2.1 How is DB/DBF Different?

Under its standard DBB delivery approach, the Department prepares complete plans, specifications, and estimates (PS&E) to fully define Project requirements. These design documents are then used to procure construction contractors (typically on a low-bid basis) to build the Project in strict accordance with the Department’s design.

In contrast, under DB/DBF delivery, the Design-Builder, and not the Department or a Service Provider retained by the Department, is the Designer of Record responsible for the final Project design, in addition to construction of the Project in accordance with that design.

Use of DB/DBF method may fundamentally alter the traditional roles and responsibilities of the Department and Design-Builder, the contractual basis between these parties, and even some procurement and contracting terminology.

3.2.2 Roles and Responsibilities

With the Design-Builder assuming responsibility for final design, the focus of the Department personnel shifts from preparing 100 percent complete plans, specifications, and estimates to preparing detailed procurement documents that communicate the Department’s expectations regarding the Project’s physical components, basic configuration, operational requirements, and performance. After award of the DB/DBF Agreement, the Department then acts in an oversight role, performing “over-the-shoulder” design reviews as the Design-Builder prepares its final design. Note that the Design-Builder’s role as Designer of Record does not diminish the Department’s responsibility for ensuring that the final design complies with the technical criteria and performance requirements outlined in the procurement documents. However, in enforcing these contract requirements, Department personnel will refrain from directing,
completing, or otherwise actively controlling the Design-Builder’s engineering and design efforts.

The manner in which the Department administers a DB/DBF Agreement, particularly with regard to measurement and payment and quality assurance and quality control, may also differ from the standard approach taken on DBB projects. For example, if the DB/DBF Agreement were to delegate construction quality management to the Design-Builder, Department inspectors would then replace their traditional quality assurance responsibilities with more of a verification and acceptance role. Similarly, DB/DBF Agreements are generally awarded on a lump sum fixed price basis, which requires methods other than the standard measurement of quantities to determine progress and payment (e.g., use of cost-loaded CPM schedules).

### 3.2.3 Contractual Basis

With this change in roles and responsibilities also comes a change in the basis of the contract between the Department and the constructor. No longer are 100 percent complete plans and specifications the technical basis of the construction contract. Instead, the Department’s preliminary engineering and technical specifications Proposal form the technical basis of the DB/DBF Agreement, and the 100 percent complete plans and specifications are a required deliverable under this contract.

### 3.2.4 Benefits of DB/DBF

Although DB/DBF can be used to deliver almost any Project, best practice suggests that it provides the greatest benefit on Projects for which reduced schedule duration, increased constructability, need for earlier schedule or cost certainty, risk transfer, and/or enhanced innovation offset the potential risks and associated costs of transferring design responsibility and other roles traditionally held by the Department to the Design-Builder.

DB/DBF methodology has been used successfully on Projects for which:

- A compressed schedule is needed.
- Schedule certainty is needed.
- Early cost certainty is required.
- The Project scope can be adequately defined without 100 percent complete PS&E.
- Project quality can be defined through preliminary design and performance-based technical specifications.
♦ Opportunity for and benefits of innovation exists.
♦ Risk transfer brings benefits or value for money.
♦ For DBF Projects, where Design-Builder financing makes the Project feasible (or more feasible) and brings value for money.

Reasons for not using DB/DBF methodology to deliver a Project include the following:
♦ The Project schedule cannot be compressed or there is no benefit from compression.
♦ The design must be complete to obtain accurate pricing.
♦ The design must be complete to resolve permitting or other third party issues, and such permitting/third party issues cannot be adequately addressed otherwise.
♦ Third party issues are better managed by the Department, not the Design-Builder.
♦ The Project is too small to attract competition.
♦ The Project is simple and will not benefit from Design-Builder innovation.
♦ For DBF projects, where the cost of Design-Builder financing/capital is too high, is unnecessary or does not bring value for money

As a final consideration, the Department must have adequate staff to devote to a DB/DBF procurement. Development of the solicitation documents and evaluation of Proposals require a far more intensive effort under DB delivery than in a traditional procurement. Best practice also suggests that key Department personnel remain involved with the Project from its inception to completion of construction.

### 3.2.5 Overview of Delivery Process

Delivering a Project using DB/DBF contracting eliminates very few steps when compared to the typical DBB process. The same Project work tasks and products are required whether performed by the Department or the DB/DBF team. The timing, order, and level of task detail performed are what make DB/DBF contracting different from DBB. The DB/DBF process shifts some tasks and responsibility and significant Project risk from the Department to the DB/DBF team. The shift changes the order and development detail of the tasks and thus must be reflected in the process.

The overall Project development and DB/DBF team procurement and selection process varies little from Project to Project, but the individual tasks can vary markedly for each
Project. The most significant difference in the development of a Project using DB/DBF methodology versus using DBB methodology is in the documents developed by the Project team (described further below). Instead of final plans and specifications, the Project team is, for the most part, delivering a scope of work and technical specifications, which is the description of the scope and standards that apply and govern the final constructed Project.

The general DB/DBF process includes the following phases:

♦ Identification Phase: Project Delivery Selection Process (see Section 1.6.1),
♦ Solicitation Phase (Procurement Process),
♦ Evaluation Phase (Procurement Process),
♦ Award Phase (Procurement Process),
♦ Contract Administration Phase, and
♦ Project Closeout.

The identification phase is outlined in Section 1.6.1 of these Guidelines. If the Project Delivery Selection Committee (PDSC) determines that the Project is suitable for DB/DBF delivery, the Project will be evaluated for statutory requirements (see Section 3.3.2.1). Once the Project is approved for DB delivery, the procurement process can begin.

The procurement process used by the Department consists of two steps and is intended to result in a Proposal that represents the best value to the public. The first step is an RFQ process (see Chapter 2). Proposals are then solicited from the shortlisted Proposers through an RFP (see Chapter 2).

The final phase of the process involves implementation and administration of the DB/DBF Agreement. The Department will perform administrative functions as described by the Contract Provisions. The Design-Builder will perform design, construction, and typically quality control/quality assurance functions. The Department’s oversight of the quality control/quality assurance activities during contract execution assures that the products being developed by the Design-Builder are in conformance with the DB/DBF Agreement requirements.
The Department’s DB/DBF Project delivery process is shown in Figure 3-1.

Figure 3-1: DB/DBF Project Process
SECTION 3.3  DB/DBF PROJECT IDENTIFICATION

The intent of the identification process is to ensure a candidate Project is suitable and meets statutory requirements and other considerations for DB/DBF delivery method. As described in Chapter 1 and supplemented below for DB/DBF Projects, typically the Pioneer Program Manager assigns a Project Manager to evaluate a candidate Project for the most appropriate delivery method, which includes the DB/DBF procurement method. The Project Manager forms an internal team and oversees development of the Project baselines and preliminary data (e.g., preliminary schedule, scope, costs, and Project goals).

3.3.1 Identification Process

As noted, the Department’s process for the evaluation and selection of Projects is described in Section 1.6.1 of these Guidelines. The Department reserves the right to streamline, modify, and shorten the identification and selection process, including omitting or combining identification steps, if the Department determines that doing so is in the best interest of the State and the Department. These procedures may be changed from time to time at the Department’s discretion.

3.3.2 Project Evaluation

The purpose of the PDSA is to ensure that candidate Projects are suitable for delivery under the DB/DBF. If the Project is determined to be suitable for DB/DBF delivery, then the Project Manager will further evaluate the Project for statutory requirements and cost, schedule, and complexity considerations as described below. This evaluation will usually be included as backup for the recommendation described in Section 1.6.1.

3.3.2.1 Statutory Requirements

Pursuant to NRS 408.388, the Department may enter into a DB/DBF Agreement if the estimated total cost of the Project exceeds $10,000,000 and contracting with a DB team will enable the Department to:

♦ Design and construct the Project at a cost that is significantly lower than the cost that the Department would incur to design and construct the Project using a different method;
♦ Design and construct the Project in a shorter time than would be required to complete the Project using a different method, if exigent circumstances require that the Project be designed and constructed within a short time; or

♦ Ensure that the design and construction of the Project is properly coordinated, if the Project is unique, highly technical, and complex in nature.

However, the Department may, once in each fiscal year, contract with a DB team for the design and construction of a Project the estimated cost of which is at least $5,000,000 but less than $10,000,000 if the Department makes the determinations otherwise required pursuant to the above criteria.

The following information must be prepared by the Project Manager and Project team in accordance with the requirements listed in Section 1.6.1 in support of the statutory requirements.

### 3.3.2.2 Project Cost

Typically utilizing resources from within the Department, the Project Manager will prepare a cost estimate to determine the Project’s design and construction costs based on a DBB delivery method. The cost estimate will include engineering, outsourcing, utility relocation, right-of-way, permitting and mitigation and construction costs developed as though the Project Manager were bidding on the Project. To complete this task, the Project Manager must first develop a DBB Project Schedule as discussed below.

Once a DBB cost estimate has been developed, the Project Manager will prepare an estimate based on a DB/DBF project delivery method. The cost estimate will include engineering (internal and DB/DBF team), outsourcing (hiring service providers for DB/DBF procurement, construction support, etc.), utility relocation, right-of-way, permitting and mitigation, construction, anticipated additional costs or savings associated with allocation of Project risks, and anticipated savings in Project innovations. It is important that the cost estimate take into account the benefits and costs of greater risk shifting in DB/DBF than DBB so that the cost estimate is properly risk adjusted.

The DB/DBF cost estimate will account for any cost savings that result from shorter Project schedules, which are a characteristic of DB/DBF projects. Example cost savings for accelerated completion include: User costs, inflation costs, Department engineering costs, etc. When developing Project costs, the Project team may ask the following questions:
3.3.2.3 Project Schedule

Typically utilizing resources from within the Department, the Project Manager will prepare a DBB Project schedule and a DB/DBF Project schedule for the candidate Project (refer to the Project Management Guidelines for scheduling information). The Project schedules will account for major milestones and deliverables related to the anticipated design and construction of the Project including service provider procurement process. Both schedules will also identify any circumstances that require the Project to be designed and constructed in a short timeframe. The Project Manager will compare and report the timelines and duration for anticipated contract completion. When developing delivery timelines, the Project team ought to ask the following questions:

♦ Can significant time savings be realized through simultaneous design and construction activities?
♦ Must the work begin or end by a specific time?
♦ Is the available time unusually short?
♦ Will construction staging be a major issue?
♦ Are work windows or seasons a significant issue?
♦ Will there be less impact to the public with the use of expedited construction process?
♦ Can the Project be completed in the amount of time required using DB/DBF?
♦ Is there a benefit to greater schedule certainty?

3.3.2.4 Unique/Technical/Complex Projects

The Project team shall identify any Project characteristics that may be unique, technical, or complex and that would require extra care in the coordination of the
Project’s design and construction. Examples of unique, technical, and complex projects include:

- Projects that require specialized expertise in design and/or construction. Similarly, Projects whose components may limit the pool of qualified designers and/or contractors.
- Projects that include components that are non-typical for similar type Projects.
- Projects that require multiple staging and/or phasing plans.
- Projects where innovation is important and/or may have material impact on costs or schedule.
- Projects requiring construction activities in highly congested areas or sophisticated maintenance of traffic plans.
- Projects that include a number of primary features (road, bridge, traffic control system)
SECTION 3.4  DB/DBF PROJECT DEVELOPMENT CONSIDERATIONS

After the DB delivery method has been selected, it must be noted that preparing a Project for DB/DBF is a unique experience in that the effort involves creating documents much different than those employed in a traditional DBB project. It is important to have a clear understanding of the desired outcomes throughout the DB/DBF Project development stage in addition to clearly identifying and tracking the established Project goals (improve traffic flow, minimize traffic impacts during construction, minimize impacts to wetlands, short construction timeline, etc.) throughout development of the Project. If a fast track Project is the driving force, the level of development may be different than if a large amount of innovation is desired.

Internal coordination and commitment of staff to the process is important in DB Projects in order to produce a clear and concise scope of work. The Project success is dependent on having an effective plan of delivery and having Project team’s insight and input from the beginning.

The DB/DBF Project development typically involves the following steps:

♦ Assemble a Project team.
♦ Communicate Project goals.
♦ Allocate Project risks.
♦ Perform preliminary engineering.

3.4.1  Assembling the Project Team

Assemble a Project team to advance the financial, legal, contractual, and technical aspects of the Project. The Project Manager will initially focus on development of the RFQ and RFP package, while technical members of the Project team may focus on specific technical requirements. The ultimate size and makeup of the Project team will depend on Project requirements. Training team members to understand the adequate level of development of technical specifications and the interaction of the various elements may be necessary. This effort may be significant if the team has had limited exposure to the DB/DBF process.
Unlike the Department’s traditional Project delivery process, in which individual team members may not be active during all phases of a Project’s lifecycle, DB/DBF Projects benefit greatly from the continued involvement of key Department personnel from Project inception to Project completion. For example, the resident engineer may participate in the RFP development process to ensure that construction-phase issues are given the appropriate attention in both the RFP itself and in the evaluation and selection of the Design-Builder. Similarly, the engineers that participate in the preliminary design work and in preparation of the RFP would remain involved after contract award to oversee and review the Design-Builder’s design submittals.

3.4.1.1 Project Management Plan (PMP)

The Project manager must prepare a Project Management Plan (PMP) for the Procurement phase of the Project. The PMP must be endorsed by the Pioneer Program Director, Pioneer Program Manager, the Selection Official, and key Project team members of the Procurement Process. Refer to the latest version of the Project Manager Guidelines on how to prepare a PMP.

3.4.1.2 Service Provider Support for DB/DBF Procurement and Implementation

The Department may require service provider support in preparation and administration of DB/DBF Agreements. The Project Manager and the Project team, through Administrative Services, will work together to develop a preliminary scope of work, service provider man-hour/cost estimates/budgets, and a service provider procurement schedule. The Project Manager will submit this information to the Pioneer Program Manager for review and approval. The service provider cost estimate and procurement schedule will be used in preparation of Project cost and schedule estimates discussed in Section 3.3.2.2 and 3.3.2.3. The Pioneer Program Manager will follow Department’s standard processes to obtain the Department Director’s approval for service provider procurement. Potential service providers for DB/DBF Agreements may include technical, financial, legal, insurance, and traffic and revenue advisors.

3.4.2 Communicating Project Goals

Developing and ranking Project goals (as defined in Section 1.6.1 of these Guidelines) helps focus the efforts of developing solicitation documents that clearly communicate the Department’s expectations to interested Proposers. Announcing these goals in the solicitation documents will allow Proposers to respond with designs and technical concepts tailored to meet or exceed these expectations.
The best manner in which to reward Proposers for meeting the expressed goals in the RFP is through the use of a best-value procurement process. Best-value procurement allows consideration of both price/financial Proposals and other key non-price factors in the evaluation and selection process. The Project goals often correspond directly to the non-price/financial factors, creating a more transparent means of considering such goals in the Design-Builder selection process. See Chapter 2 for more information about best-value procurements.

3.4.3 Risk Analysis

Quantitative risk analysis must be performed for all DB/DBF Projects. Quantitative Risk Analysis is numerical modeling of the probability that a given Project risk will occur, the impact of such risk if it occurs and whether the Project will meet its cost and schedule objectives. Quantitative analysis is based on a simultaneous evaluation of the impacts of all identified and quantified risks. The result of risk analyses will assist the Project team in identifying actions in response to the Project risks, and concentrating on those risks of most significance. This analysis will also aid the Project team in assignment of Project risks (risk allocations).

3.4.4 Risk Allocation

Risk management is an inherently iterative process, and one which, particularly under DB/DBF delivery, can take on the added complexity of allocating risks traditionally held by the Department to the Design-Builder.

In general, risk is to be allocated to the party best able to manage and mitigate the adverse impacts of the risk. Whether this party is the Department, the Design-Builder, or others is entirely dependent upon Project-specific conditions and the willingness of the Department to potentially pay for the Design-Builder to assume responsibility for a high-risk item. The Project team must make a concerted effort to identify which, if any, of the possible Project risks can be transferred to the Design-Builder.

Note that when allocating risk, every attempt must be made to clearly assign responsibility to either the Department or the Design-Builder, as the concept of shared risk, although valid, can lead to disputes regarding responsibility.

If a risk cannot clearly be assigned to one party, an attempt must be made to subdivide the risk category into more discrete components that can be assigned to individual parties. For example, on the whole, local agency permitting is a risk area that will likely be shared between the Department and the Design-Builder. Breaking down risk areas in this manner will help the PMT define Design-Builder responsibilities when drafting the RFP package.
The risks described below are examples of those risks that are often considered transferable in whole or in part to the Design-Builder. As inappropriate risk transfer will result in higher costs to the Department, every effort must be made to carefully evaluate the party that is in the best position to manage such risks.

### 3.4.4.1 Design Issues

Under traditional DBB delivery, the Department acts as both the owner and the designer. In this role, the Department in effect guarantees the completeness and accuracy of the design and retains most, if not all, of the risk for the success of the design.

In DB/DBF, several design-related risks shift to the Design-Builder. Although the Department will continue to retain responsibility for defining the Project scope and design criteria, the Design-Builder, as Designer of Record, has ultimate responsibility for the accuracy of the plans, conformance with established standards and technical/contract requirements, and constructability.

Determining the appropriate level of design by the Department therefore requires a careful balancing of the needs, goals, and risks identified for the Project. Providing too much design can restrict innovation and increase design liability for the Department, whereas providing too little design may result in the Department not receiving what it wants or placing undue risk upon the Design-Builder.

Agencies experienced in DB/DBF often report higher levels of Project satisfaction with lower levels of preliminary design (with 10 percent to 30 percent often cited as a benchmark). However, this is not to say that the same level of preliminary design must be applied to every DB/DBF Project, or that every element within a single Project must be taken to the same level of design. Each Project, as well as each component of a single Project, must be examined to determine the extent of preliminary or conceptual design needed to clearly convey the Department’s performance expectations. For certain Project elements, defining performance requirements could require close to 100 percent design, whereas for others, very little design may suffice.

### 3.4.4.2 Environmental Studies, Permitting, and Compliance

Under the DB/DBF delivery process, the Department will continue to retain responsibility for obtaining the bulk of the environmental approvals required under the National Environmental Policy Act (NEPA). The preliminary engineering and environmental studies, definition of major Project features, selection of the preferred
alternative, and preparation of the appropriate environmental documents will therefore remain the Department’s responsibility, requiring little change to the Project Report and Environmental Document phase of the Department’s traditional design-bid-build process.

There may be some deviation from the Department’s traditional handling of environmental issues involving permit modifications or amendments necessitated by subsequent changes to, or refinement of, the original design by the Design-Builder. Responsibility for any such amendments must be transferred to the Design-Builder, including responsibility for any schedule and/or cost impacts incurred in awaiting a final approval by the sponsoring or regulatory agency.

In addition, responsibility for obtaining any other environmental clearances required outside of the NEPA process may also be shifted to the Design-Builder, particularly if they relate to more construction-specific permits and approvals, such as those required for soil disturbing operations. However, prior to shifting this risk to the Design-Builder, the Department must carefully consider the appropriate level of conceptual design needed to convey environmental conditions and mitigation requirements to the Design-Builder.

Typically, taking preliminary highway design to 10 percent to 30 percent is sufficient to provide enough detail to complete early action permit processes, demonstrate constructability, identify impacts and alternates, and minimize risk to both the Department and Design-Builder. If, however, the initial Environmental Assessment or Environmental Impact Statement suggests some high-risk elements (e.g., wetland mitigation), the Department may consider securing the necessary permits itself, in advance of the RFP, or providing a higher level of preliminary design and/or environmental studies to offset some of the risk to the Design-Builder.

### 3.4.4.3 Right-of-Way (ROW)

The Department will retain responsibility for obtaining ROW for most DB/DBF Projects. However, under certain circumstances (e.g., areas with high real estate costs), it may be advantageous for the Department to delay acquisition until the Design-Builder has selected a final design. In such cases, the Department will, at a minimum, delineate the existing ROW as part of its base data collection. Acquisition of any additional ROW deemed beneficial or necessary as a result of the Design-Builder’s final design could then be requested by the Design-Builder. The Department would be responsible for assessing the request, including whether the additional ROW remained within the scope of the environmental permits and potentially acquire the additional property. In such cases, the site conditions and the cost and schedule impacts associated with the additional ROW may be borne by the Design-Builder. The Department may also handle the acquisition of temporary construction easements it has identified but might transfer responsibility for acquiring
additional temporary easements to the Design-Builder. In either case, the Design-Builder would be responsible for any schedule or cost impacts associated with the acquisition of additional temporary easements.

### 3.4.4.4 Local Agencies, Utilities, and Railroads

The Department has a long-standing relationship with most local agencies, utilities, and railroads. As such, the Department may be in the best position to influence and obtain the required cooperation from these third party entities.

Where practicable, the Department will obtain the required agreements with these parties prior to its issuance of the RFP to avoid schedule impacts. If these have not been secured by the time of advertisement, the status of any outstanding agreements will be stated in the RFP.

In most cases, however, coordination with utilities and railroads will be included in the Design-Builder’s scope of work. Since design is not complete before a DB/DBF Agreement is entered into, significant coordination with utility owners is typically required and Project design, which is the responsibility of the Design-Builder, is a critical element of that coordination. Requiring that the Design-Builder pursue Project-specific master utility agreements and/or specific utility agreements relating to specific relocations may be beneficial. In such cases, the RFP would clearly indicate any related design criteria and requirements, the responsibilities of the Design-Builder and the allocation of schedule risk associated with utility coordination and delay.

### 3.4.4.5 Construction

Similar to traditional design-bid-build Projects, the Design-Builder will have responsibility for actual construction. However, under DB/DBF delivery, construction responsibilities may extend to quality control/quality assurance, surveying, maintenance of traffic, and similar activities traditionally performed by Department personnel. If such responsibilities are transferred to the Design-Builder, the Department would still maintain an active oversight role. The Department may also consider the use of Project warranties to help ensure that the Design-Builder upholds quality standards.

### 3.4.4.6 Unforeseen Conditions

Unexpected conditions (e.g., differing site conditions, hazardous materials, endangered species, etc.) that may arise during construction will usually remain the Department’s responsibility and will be treated as changed conditions; however, it is
common in DB/DBF projects to utilize narrower definitions of site-related conditions which entitle the Design-Build to obtain compensation or schedule change orders (thereby shifting risk in a greater manner than in the design-bid-build context).

Whether retaining or transferring this risk, the Department will continue to conduct initial site investigations, providing sufficient detail in the RFP to establish baseline conditions from which Design-Builders can develop their Proposals.

### 3.4.4.7 Public Relations

Gaining the public’s initial acceptance or endorsement of a Project will remain the Department’s responsibility. In conducting the initial public hearings, the Department will discuss any implications of using the DB/DBF delivery method, particularly if selection of the final Project alignment will remain open until after contract award and the Design-Build’s completion of the design phase of the Project.

Once the Project has gained the public’s favor, it may be appropriate for the Design-Build to assume more of a direct role in addressing public concerns regarding final design selections, maintenance of traffic, local business impacts, budget, schedule, and similar construction-related issues. If the Department does anticipate allocating such responsibility to the Design-Build, the RFP would outline the minimum requirements for staff that will be engaged on the Design-Build’s public outreach program.

Design-Build responsibilities for a public outreach might include the development of a community relations program; responding to inquiries or comments from residents, businesses, or other members of the public; public notifications of closures, shutdowns, or emergencies; and maintaining public contact records, telephone trees, websites, and signage throughout the Project to keep the public informed.

Even if public outreach responsibilities are allocated to the Design-Build, it is important for the Department to continue to preserve its relations with the public through an open and ongoing dialogue. Such discussions will be coordinated with those of the Design-Build to minimize the potential for sending mixed messages to the public.

### 3.4.5 Preliminary Engineering

Under DB/DBF Project delivery, the Design-Build assumes single point responsibility for both the design and construction of the Project. The Department, however, must still include sufficient preliminary design in the solicitation documents to minimize
uncertainty and reduce contingency amounts included in the Proposals submitted by prospective Design-Builders.

To develop the basic Project configuration for the solicitation documents, the Department must still perform preliminary engineering and design, similar to that required for a traditional design-bid-build Project. With design-build, however, the challenge is not to progress this design to a point that shifts design risk back to the Department or precludes any innovation and flexibility on the part of the Design-Builder, particularly if innovation is a stated goal of the Project.

To a large extent, the information needed to advance the environmental documents and ROW acquisition will drive the level of preliminary design needed. The risks identified during the risk management process will also indicate where the Department needs to focus its preliminary design efforts.

Some additional guidelines to help establish the appropriate level of preliminary engineering are as follows:

♦ Obtain the information needed to support the NEPA process.
♦ Collect base Project data, but, to the extent possible, reserve the analysis of this data for the Design-Builder. Interpretations, design recommendations, extrapolations and analysis must not be undertaken by the Department as they may result in retention of risk that otherwise could be transferred to the Design-Builder. Base data collection may include:
  o Preliminary survey and mapping to identify existing and future ROW limits and construction easements associated with the Department’s conceptual design;
  o Geotechnical investigations to define Project design criteria, refine the risk management plan, and establish a baseline for changed conditions;
  o Subsurface utility investigations (potholing) to locate and classify utilities;
  o Hydraulic and hydrologic analyses to determine flow requirements and any special issues of concern;
  o Traffic studies to provide the basis for traffic forecasts, noise studies, air quality studies, intersection channelization requirements, lane configurations, pavement designs, and maintenance and protection of traffic during construction;
  o Pavement and subgrade investigations for Projects with existing pavement structures; and
• Bridge condition surveys to determine adequacy of existing structures, if applicable.

♦ Define reasonable limits of ROW acquisition, but allow for some flexibility in the final alignment.

♦ Prepare and execute the appropriate agreements with local government/agencies, Utilities, and railroads to the extent possible and focus such agreements on applicable design criteria, review and response times and scope of work allocations between the Design-Builder and the affected entity.

♦ Progress roadway design to a 10 percent to 30 percent level of completion, focusing on:
  o Horizontal and vertical alignment;
  o Project limits and ROW;
  o Vertical clearances;
  o Locations of signal and Intelligent Transportation System (ITS) work; and
  o Interchange types and locations.
  o (Please note that if Project components need to be compatible with existing systems, such as ITS facilities, a higher level of design or specification may be necessary.)

♦ Progress design of structures to a point that allows specification of performance requirements. If possible, define the allowable types of structures, rather than require a specific type, which could hinder innovation.

In general, the preliminary engineering effort will identify the Project’s needs and objectives, but not prescribe solutions. For some Projects, the preliminary engineering studies may suggest the need for additional, more detailed investigations (e.g., subsurface utility, or pavement subgrade investigations) to minimize contingency costs related to major risks or unknowns. In most cases, the Project team will have to continually refine its risk allocation strategy as additional information becomes available.

### 3.4.5.1 Preliminary Survey and Mapping

Preliminary mapping provides survey control for the Project and a base map for initial Project development by the Project team and the Design-Builders. Obtain a minimum level of mapping information to define a basis for communication of the Project. The necessary level of site mapping must be adequate to provide support for a complete definition of the Project, development of the necessary conceptual
design, a basis for estimating the Project cost, and a basis for Design-Builders to develop concepts. The recommended survey and mapping tasks include:

- Establishing control throughout the Project.
- Stationing along the control lines to establish feature and design criteria locations.
- Existing cadastral information describing existing and future right-of-way.
- Construction easements associated with the Department’s conceptual design.
- Topographic information, such as contour lines and major site features to define the footprint of the Project as expected by the Department or as intended by the Design-Builders. This level of mapping also supports other data gathering investigations and provides the base map for delineating feature locations.

The effort of gathering survey and mapping information is less than is typically needed in the design-bid-build process. How much less is dependent on the Project type and site. Linear rehabilitation Projects may require less than geographically isolated mobility Projects such as interchanges. If the type, size, and/or location of Project concepts are highly dependent on precise information, more detailed information is necessary. Supplement the available data in critical areas with specific information identified during conceptual design. Examples of supplemental information include:

- Existing alignment geometry
- As-built data corrections
- Wetland delineation locations

In defining the limits of the surveying effort, it should be noted that the exact limits of the Project are not known during the Project development phases. Whenever possible, strive to obtain data beyond the limits identified in the Project development package.

3.4.5.2 Geotechnical Conditions

Preliminary geotechnical investigations will be conducted by the Department and generally only raw data is provided to the Proposers as part of the request for Proposals. Typically, no analysis, recommendations or extrapolations will be performed on the data gathered. For example, each DB/DBF team is generally responsible for interpreting core samples obtained by the Department during a
preliminary geotechnical investigation. For typical Projects, the Department includes a condition in the contract that states that the raw geotechnical data must be interpreted as the DB/DBF team sees fit. The requirements for further geotechnical investigation will be defined by the Department and included in the Scope of Work. The Proposers may have an opportunity to request supplemental information during preparation of their Proposal if deemed appropriate by the Department. If no supplemental program is offered by the Department, each Proposer will need to obtain any additional data required. Any required permits for additional testing and the cost associated with those additional tests will generally be the responsibility of the Proposers.

A Project team must consider the following when developing geotechnical information:

♦ Unknown geotechnical conditions can make it challenging to competitively price a DB/DBF Project. Allocating this area of risk to the Proposers may not be the best choice in all cases.

♦ The amount of time the Proposers have to formally develop the RFP is very short. The Department must do the time consuming base data collection whenever possible. After the initial Project scope, the Department must perform a preliminary geotechnical investigation.

♦ After the geotechnical investigation is completed, obtain field data in the approximate location of the Project’s major features. Perform preliminary geotechnical engineering analyses, as necessary, to address feasibility issues and to define Project design criteria such as foundation type constraints. This information will be used to:
  - Establish design parameters in the various supporting areas of typical highway Projects (for example, bridge foundation type, seismic design criteria, pavement design, excavation limits, and embankment design).
  - Set the basis for determination of changed conditions.
  - Establish a preliminary Project cost estimate.

♦ The geotechnical data must provide enough information to permit the Proposers to perform a preliminary assessment of geologic features and to address key engineering issues such as foundation type. Providing inadequate data to Proposers may require them to unnecessarily gather additional data, cause Proposers to resist geotechnical/differing site condition risk or result in the Proposers placing too high a risk premium in their pricing/financial Proposals. The Project team should attempt to minimize Proposal development
costs by gathering enough data to allow competitive price estimates by the Proposers.

♦ To equalize risk tolerance for competing Proposers, it may be prudent to require all prospective Proposers to design from a baseline geotechnical evaluation provided by Department. In a DB/DBF Agreement, the design responsibility and flexibility rests with the Design-Builder unless Department specifies more stringent or site-specific criteria.

♦ If the Department performs preliminary geotechnical engineering evaluations or analyses, reference them as conclusions in the design criteria, not as recommendations to the Design-Builder.

3.4.5.3 Hydraulics

Perform hydrology (investigation/analysis) and/or hydraulic (design) investigations only if it is likely that Proposal concepts will require the information. The focus must be on establishing the design criteria for the Project. The criteria will define how hydrologic conditions (such as water surface levels, flow characteristics, scour potential, and allowable sediment deposition during construction) will be determined by the Design-Builder.

Define the hydrologic constraints in a manner that provides the Department adequate control over the results. If the criteria are ambiguous or can lead to significantly different hydraulic results, the initial hydrologic calculations may best be performed by the Department to set the basis for design for all Proposers. The results may be included in the RFP as minimum acceptable parameters.

Some Project areas may require a preliminary hydrologic analysis to provide base data to establish design criteria or to fulfill regulatory requirements. For example:

♦ Back water analysis for EA/EIS on Projects with water-crossing structures.
♦ Drainage data for site drainage design criteria.
♦ Existing drainage feature evaluation to determine existing conditions and necessary changes.
♦ Local agencies’ requirements, such as ordinances, requirements, and design criteria. If there are differences between local agency and Department design requirements, the design criteria need to indicate that the more restrictive requirements apply.
In summary, do the minimum required to meet the regulatory requirements, define the scope of work design criteria, and reduce the efforts necessary for Proposers to prepare their Proposals.

3.4.5.4 Traffic

Traffic study data is used to support a number of technical areas when developing the Project scope and definition. Accurate traffic data is necessary for:

♦ Forecasting demand
♦ Noise studies
♦ Air quality studies
♦ Intersection channelization
♦ Lane configuration determination
♦ Pavement designs
♦ Design guidelines based on tabulated traffic data values
♦ Effectiveness of operational elements of the Project (such as loop detection systems, video cameras, location and size of variable message signs, etc.)

The Department will perform some of the tasks described as part of the environmental process or allocate them to the Design-Builder. In either case, a baseline of data is necessary to set Project parameters as described by the conceptual design or in the design criteria.

In addition to the environmental and design processes, the construction phase of the Project relies on traffic data to determine appropriate means of traffic staging and control. This is typically an important concept to describe in the Proposals. Define the necessary parameters to establish the appropriate and/or acceptable means of maintaining traffic in the design criteria of the Scope of Work or the Special Provisions.

3.4.5.5 Noise

The NEPA process may require a noise study to describe Project impacts and required mitigation measures. Acquiring environmental approvals is the Department's responsibility and determining the noise impacts of the Project may be part of that process. Maintaining a balance between fulfilling regulatory
requirements, allocating risk, and losing innovation benefits requires modification to
a typical environmental process.

One means of accomplishing this balance involves using an assumed alignment,
rather than a final alignment configuration, for the noise study and environmental
applications. Calculate the impact to receivers based on an assumed alignment and
document the required mitigation based on the assumed parameters. Prepare the Noise Technical Report, which documents the allowable impact to receivers, the analysis assumptions (including profiles and alignments), and the required mitigation measures to gain NEPA approval.

Development of the Project concept ideally balances variations in the alignment, set
by the roadway geometric design criteria, with effects on required mitigation
measures. In the RFP, clearly define changes in the alignment that will require an
adjustment to the prescribed mitigation measures. If significant variability is allowed
in the design criteria, define the reapplication process and how the schedule and
cost risk will be allocated.

Make the Department’s noise analysis model available to Proposers in order to
maintain consistency of the Proposers’ conceptual designs. In situations where the
Proposers are allowed to deviate from Department’s conceptual design, include the
noise study as an attachment and provide scoring criteria during the RFP process to
assist them in making design decisions.

### 3.4.5.6 Utility Relocations

It is important to provide utility locations to the Proposers.

Utilities will already have an existing agreement with the Department or a local
agency. Prior to issuing the RFP, determine the location and condition of all utilities. In preliminary design, identify any utilities that will be impacted and, whenever possible, relocate them prior to the Design-Builder beginning work. As the DB/DBF Agreement may shift some risk to the Design-Builder for unidentified/misidentified utilities (by providing cost and/or schedule relief for only those utilities that meet a fairly narrow definition for “unidentified” or “misidentified”), reasonable data should be provided for the Proposers to assess and quantify these risks.

If relocation must be done in conjunction with the DB/DBF Agreement, give the
Design-Builder responsibility for and control of the relocation itself. Establishing a
cost for potential coordination delays can impact the overall price of a contract.

If the preliminary agreement with a utility (public or private) requires modification as
a result of the DB/DBF team’s final design, the risk and responsibility for this delay is
to rest with the DB/DBF team.
In urban environments, consider a full subsurface utility investigation if the conditions of the existing facilities could potentially impact the Project schedule.

3.4.5.7 Pavement Conditions

It is important to provide the Proposers with pavement condition reports and the structural composition of the existing pavements.

Provide a full pavement report, where possible, to the Proposers for all roadways within the Project limits, including all shoulders.

3.4.5.8 Materials (Product Warranty)

Product warranties may be used to ensure Project quality. Because many of the quality assurance/quality control processes traditionally done by the Department are being transferred to the Design-Builder, warranties can act as a means to ensure that high quality standards are being met. It is important to ensure that a very measurable performance measurement for all warranty items be defined in the RFP.

The Department Materials Division will provide the quality requirements for Project materials to the Project team. Material quality can be defined through prescriptive specifications, performance-based design criteria, QC/QA requirements, use of the Qualified Products List (QPL), and/or product warranties. Use of warranties on constructed products, such as pavements, requires significantly more consideration.

3.4.6 Project Scope and Technical Criteria

The Project team can use the information gathered through the preliminary engineering effort to finalize the Project scope and technical criteria package for inclusion in the RFP. In developing the scope and design criteria, the Project team must strive to use performance specifications where possible and in a manner consistent with the risk allocation strategy and goals established for the Project. Rather than focusing on how to do the work, performance specifications define the required results. Using performance specifications inherently recognizes that there may be more than one way to achieve the desired result. If properly written, they provide more flexibility and encourage more innovation and creativity than prescriptive specifications.
3.4.7 Design-Build Development - Additional Considerations

3.4.7.1 Programming DB/DBF

Budgetary authority must be in place for DB/DBF Projects prior to award of the contract. For federally funded Projects, typically Project funds can be programmed at issuance of the RFP or prior to award. The DB/DBF Project must be listed in the Annual Work Program as well as the Statewide Transportation Improvement Program (STIP). Design build Projects can be programmed using federal, state, local, and/or bond funds.

3.4.7.2 Value Engineering (VE)

On Federally funded DB/DBF Projects that are part of the National Highway System, value engineering must be performed if the estimated cost is greater than $25 million prior to the release of the RFP. To avoid scheduling delays and develop a well-defined scope of work, the Project manager will perform the VE at least one month prior to release of the Draft RFP. This study shall be performed prior to Project risk analysis and preferably in conjunction with risk analysis.
SECTION 3.5 DEVELOPING PROCUREMENT DOCUMENTS

A general description of the procurement and selection process can be found in Section 2. The following section discusses procurement documents specifically pertaining to DB/DBF Projects.

The RFQ and RFP are two separate documents created to conduct the two-phase Procurement process.

The RFQ will focus exclusively on the Proposer’s understanding of the Project and its qualifications and experience. The RFP is comprised of the form of DB/DBF Contract, the technical provisions as well as the instruction to Proposers regarding the Proposals (which include the selection process requirements and evaluation criteria).

The RFQ and RFP Packages contain a number of inter-related documents that completely describe the Project, the technical requirements for designing and constructing the Project, the methods for selecting the Design-Builder, and the means to administer the contract.

3.5.1 Proposal RFQ

A general description of RFQs can found in Chapter 2. The following section discusses RFQs specifically pertaining to DB/DBF Projects.

Information pertaining to DB/DBF Projects that must be included in the RFQ includes:

♦ A list of requirements set forth in NRS 408.3884 (obtain a performance and a payment bond; obtain insurance covering general liability and liability for errors and omissions; not have been found liable for a breach in of contract other than for a legitimate cause; not have been disqualified from being awarded a contract and ensure that the members of the DB/DBF team possess the licenses and certificates required to carry out the functions of their respective professions within the State of Nevada.

♦ A list of factors that the Department will use to evaluate Proposers who submit a final Proposal for the Project, including:
  o The relative weight to be assigned to each factor

♦ A statement that a DB/DBF team whose prime contractor holds a certificate of eligibility to receive a preference in bidding on public...
works must submit a copy of the certificate of eligibility with its proposal. (This is only for Projects that do not include Federal funds).

♦ A statement as to whether a proposing DB/DBF team selected as a finalist but not awarded the DB/DBF Agreement will be partially reimbursed (in the form of a stipend) for the cost of preparing a final Proposal and an estimate of the amount of partial reimbursement.

### 3.5.2 Industry Review (Optional)

Refer to Chapter 2 for information on industry review.

### 3.5.3 RFP

A general description of RFPs is found in Section 2. The following section discusses RFP’s specifically pertaining to DB/DBF Projects. In addition to the contents described in Section 2.4, the RFP solicitation will generally include the following items, as a minimum:

♦ Proposal A statement that the Financial Proposal must state the maximum amount the Department will pay for all work under the contract and the maximum amount that the Department will pay for professional services.

### 3.5.4 One on One Meetings (Optional)

Refer to Chapter 2 for information on one-on-one meetings.

### 3.5.5 Alternative Technical Concepts (ATCs) (Optional)

Refer to Chapter 2 for information on ATCs.

### 3.5.6 Award Criteria – Best Value

Best-value procurements allow the Department to consider price/financial Proposal and other key factors (e.g., cost, time, qualifications, quality, and design alternates) in the evaluation and selection process. The inclusion of such factors allows the Department
to select the DB/DBF team that best meets the Project’s needs and goals. The Department will often use the weighted criteria for a DB/DBF Best Value procurement. With weighted criteria, price is converted to a point score and set at minimum of 30 percent of total point score (NRS 408.3886(2)). See Chapter 2 for more information on best value procurements and evaluation criteria.

### 3.5.7 Disadvantaged Business Enterprise (DBE) and Subcontracting Goals

The Disadvantaged Business Enterprise (DBE) program encourages the formation and growth of DBEs by providing an equal opportunity for these firms to compete for and participate in the Department’s DB/DBF program. DBE goals are typically incorporated into standard Projects and may be required on Projects that utilize Federal funds. A DB/DBF Agreement can continue to incorporate DBE goals with some modifications to the standard requirements. These modifications would account for the difficulty Proposers may face in securing binding quotes from subcontractors based on the limited design that would be available at Proposal time. Many subcontractors (including DBEs) will not assume the risk of providing hard quotes based on incomplete or conceptual plans.

Because of this difficulty, DB/DBF procurement documents typically require Proposers to include in their Proposals a satisfactory plan/program for reaching the applicable targets (as opposed to demonstrating compliance with the targets themselves). After selection and award, the Department will conduct a DBE review that will require the Design-Builder to submit evidence that it is indeed carrying out its proposed plan. Typically DBE goals can be met using DBE firms on both the design and construction portions of the contract. Goals set on DB/DBF Agreements will be inclusive of both portions of the contract. Design- Builders that fail to meet their committed DBE goals on a contract are subject to sanctions for failing to meet these commitments.

Each proposed DB/DBF Project shall be reviewed for DBE subcontracting possibilities. The Project Manager must consult with the Department’s Contract Compliance Manager for evaluation and setting of percentage goals for the dollar value of the agreement.

The DBE firms listed by the Proposers must be certified with the Department’s Contract Compliance Section prior to the Proposers’ submission of final proposal.
3.5.8 Value Engineering Change Proposals (VECP)

The Department may add provisions addressing Value Engineering Change Proposals (VECP). The intent of these provisions is to share with the Proposer any substantial cost savings which may result from a VECP approved by the Department. The purpose is to encourage the use of the Proposer’s ingenuity and experience in arriving at alternative designs, methods, and procedures which result in a lower-cost approach to accomplish a prescribed function. The share of savings to the Department and to the Proposer will be specified in the RFP.

3.5.9 Incentives

A possible way to encourage superior performance is to tie incentives to a Proposer’s performance that exceeds Project goals. The incentives must focus on key areas of performance that are important to the Department or other stakeholders. Such areas could include schedule, quality, environmental compliance, public relations, and public and worker safety.

In developing incentive amounts, the Project team will keep in mind that the incentive amount must be attractive enough to entice the Design-Builder to achieve the desired result. The determination of this amount is rarely an exact calculation, and judgment is often necessary, particularly for areas having less tangible, or less quantifiable, benefits, such as improved public relations and environmental compliance. Incentive payments for other areas, such as early completion and safety, have more established (albeit still somewhat subjective) calculation techniques. For example, road user costs typically factor heavily in the determination of an incentive program for early completion. Similarly, user costs can also be used to generate incentives related to maintenance and protection of traffic, particularly if road or lane closures are contemplated. Safety incentive fees are generally related to reduced accident costs, with appropriate indices and indicators of impacts available from the insurance industry.

3.5.10 Limitations of Operations

Limitations of Operations outline what restriction must be met by the contractor during performance of the contract. Limitations of Operations have financial impacts to the Design Builder and must be reasonable and enforceable. They must be thorough in description, and are typically tied to Liquidated Damages for non-compliance. The construction division can assist in writing limitations and help in ensuring they are enforceable. The construction division will also set Liquidated Damage amounts based
on impacts. All Special Events in the project area should be included limiting the Design Builder’s impact to the traveling public during the event. It is the Department’s preference that impacts to the traveling public be minimized, as opposed to, allowing impacts to take place and charging the Design Builder Liquidated Damages. As Special Events approach, impacts and limitations should be discussed at project field meetings, to ensure minimization of impacts. The project manager can stop work if the Design Builder is not complying with the Limitations of Operations.

3.5.11 Insurance/Indemnity

The DB/DBF delivery method creates a single responsible entity in which the Department contracts for both Project design and construction services. By allowing the Design-Builder to optimize its work force, equipment and scheduling the DB/DBF concept opens up a new degree of flexibility for innovation. However, along with the increased flexibility, the Design-Builder must also assume greater responsibility and Project risk.

Regardless of whether the DB/DBF team is headed by a General Contractor, Engineering Firm or even a Joint-venture firm created specifically for the Project, the contractual arrangements and insurance coverage must be examined because of the additional responsibilities assumed under DB/DBF team approach. For example, General Contractors assume new risks associated with design responsibilities, while Engineer-lead Proposers assume new contractor-related risks including those related to warranties, guaranties and even strict liability.

As a result, the Department will carefully review the indemnity/liability clauses along with the insurance provisions of any Proposal with both the State’s legal and Risk Management Departments to ensure the provisions are drafted to take into account unique set of risks associated with DB/DBF Projects. DB/DBF Agreements must incorporate language which specifically addresses extended liability insurance, bonding, and warranty requirements to ensure that the finished product will be completed and perform as required within the Project specifications.
SECTION 3.6 RFP COMPOSITION

The RFP typically includes, among other items:

♦ Instructions to Proposers (ITP) regarding Proposal submittal requirements and the evaluation process by which the Department will select the winning proposal. The ITP is provided in the RFP for informational purposes only and will not become part of the contract.

♦ The general requirements for the project, describing the goals, objectives, and operational constraints for the project (e.g., environmental or third party issues)

♦ the DB/DBF form of contract;

♦ DB/DBF technical provisions (project scope, performance criteria, and preliminary design); and

♦ References to design manuals and standards.

Even though the Department will take design to only a conceptual level under DB/DBF delivery, the time and resources required to draft a DB/DBF RFP package may be similar to that needed to prepare a PS&E package on a more traditional project.

Key elements of the RFP are described below.

3.6.1 Instructions to Proposers

The RFP will include ITP, a standalone document that establishes the rules and procedures that Proposers must follow when preparing and submitting their Proposals. In addition, the ITP will define how the Department will review and evaluate the Proposals received to select the successful Proposer.

This document will typically include the following:

♦ Introduction,

♦ General Instructions,

♦ Technical Proposal Instructions,

♦ Financial Proposal Instructions, and

♦ Proposal Forms.
3.6.1.1 Introduction

The ITP will include a general introduction identifying the owner and location of the Project, the contents of the RFP package, and the function of the ITP.

3.6.1.2 General Instructions

The RFP will include general information and instructions to help Proposers prepare responsive Proposals. This information could include the following:

- Procurement schedule and process
- Project background, goals, and objectives
- Summary of RFP package
- Changes to Proposer’s organization since SOQ submittal (for a two-phase procurement)
- Proposal submittal requirements
- Explanation of the Proposal evaluation process, including evaluation factors and their relative importance, the evaluation method, and the selection process;
- DBE and EEO requirements
- Other pertinent provisions (e.g., protest procedures; State and Department rights and disclaimers); and
- Proposal forms

3.6.1.3 Technical Proposal Instructions

In their technical Proposals, Proposers describe how they intend to design and build the Project in accordance with the goals and requirements outlined in the Department’s RFP. Typical elements of a Design-Builder’s technical Proposal include the following:

- Preliminary plan sheets showing typical sections;
- Horizontal and vertical alignments;
- Structure locations and identifications;
- Roadway layout concepts;
To facilitate and expedite the Department’s review and evaluation of the Proposals submitted by Proposers, the RFP may define a specific format, including page limits and specific content requirements for each of the evaluation factors identified in the RFP.

### 3.6.1.4 Financial Proposal Instructions

The RFP shall include instructions on the required organization and format of the Financial Proposal to facilitate the Department’s review of the information provided. In contrast to a traditional design-bid-build Project, for which a pricing document may consist of a single bid form, pricing documents for a DB/DBF Project may be more complex, including, in addition to the lump sum price:

- A proposed payment schedule/maximum payment curve;
- A cost-loaded schedule;
- A breakdown of prices or schedule of values to facilitate price evaluation and contract administration;
- Scope of lump sum priced work;
- Contingency items or allowances; and
- For DBF Projects, the amount to be financed and the terms of repayment (including term of repayment, interest rate, etc.).

### 3.6.1.5 Proposal Forms

The use of specified forms provides Proposers with a standard format by which to submit certain information requested in the RFP. The standard format, in turn, facilitates the Department’s review of the information provided and also ensures that
all information or commitments required by the RFP are provided in the required form. In addition, certain forms are required for federal aid procurements.

Standard forms can be developed to address the following types of information typically sought in a RFP:

- Proposal cover letter
- Financial Proposal forms
- Bond forms (Proposal, performance, and payment)
- DBE Utilization Affidavit
- Key personnel (management, technical solutions, environmental, quality management, Project support, etc.)
- Named subcontractors
- Stipend Waiver

3.6.1.6 Alternative Technical Concepts (ATC)

The Project team may choose to include an ATC provision in the RFP. See Chapter 2 for more information about ATCs

An ATC provision may address the following:

- ATC Proposal submittal and review process;
- Required contents of an ATC Proposal; and
- Confidentiality guidelines (in the event information is proprietary).

When addressing the submittal and review process, the Project team might consider allowing Proposers to submit ATCs for pre-approval during the Proposal preparation period. Pre-approval would allow Proposers to concentrate on developing their Proposals around the accepted ATC.

The Project team may also wish to restrict the ATC process to only those Project components for which design flexibility is allowed and innovations are possible. This will help reduce the time and resources spent by the Department in reviewing ATCs that have little likelihood of acceptance.
3.6.1.7 Stipends

If the Department decides to award stipends to unsuccessful Proposers, the RFP must identify the amount, conditions under which it will be paid, and the process of distribution. See Chapter 2 for further information about stipends. The stipend provision may include the following:

- Department’s commitment to pay the stipend;
- The amount and timing of the stipend;
- Conditions to qualify for the stipend, such as:
  - Submission of a responsive Proposal
  - A minimum technical score
  - Agreement to grant Department ownership of intellectual property included in the Proposal
- Option for the Design-Builder to waive stipend in favor of retaining ownership of Proposal concepts.

3.6.2 Technical Provisions and DB/DBF Contracts

3.6.2.1 Revisions to Standard Specification and Special Provisions

In addition to outlining the procurement process and Proposal submittal requirements, the DB/DBF RFP package serves to communicate the Project scope, technical requirements, performance criteria, construction and quality management requirements, and other expectations the Department may have with respect to the Project. These aspects of the RFP form the basis of the DB/DBF Agreement itself, similar to the plans and specifications on a traditional design-bid-build Project. A DB/DBF Agreement results in significant changes to the Standard Specifications, particularly Division I, found in the Standard Template Documents.

Although specific contract provisions will vary from Project to Project, the nature of the DB/DBF delivery approach requires careful revision of existing Standard Specifications or the addition of unique special provisions for DB/DBF.

Standard Template Documents including Amendments to Standard Specifications can be found on the Department website. Proposers are able to download these
documents along with other components for the RFP. The following is a more detailed discussion of some key provisions.

### 3.6.2.2 Basic Project Configuration

Because the RFP does not provide the final design, it is necessary to include a basic Project configuration provision to establish the physical constraints or limits within which Proposers will develop their technical solutions for the design and construction of the Project.

Fundamental constraints typically included in a basic Project configuration provision include the following:

- **Project Boundaries:**
  - ROW plans that depict the limits of ROW or easements obtained or to be obtained by the Department
  - Environmental constraints (e.g., wetland protection)
  - Project limits
- **Horizontal and vertical alignment;**
- **Vertical clearance requirements;**
- **Critical Project components:**
  - Number of lanes
  - Interchanges
  - Ramps
  - Location of major structures
- **Other factors that may define the limits and constraints of the Project.**

The basic configuration provision will be an outgrowth of the Department’s preliminary engineering, risk management and allocation efforts. The Project team can therefore follow the guidelines related to the required level of preliminary engineering to establish the appropriate balance between controlling the base design, and creating opportunities for innovation.

Note that the basic configuration provision defines the Design-Builder’s contractual obligations with respect to design and construction constraints (in contrast to a Project description statement, which is provided to Proposers for informational purposes). The provision may therefore also address how the Proposer can request a change to the basic configuration both before the submittal of Proposals and after
contract award. The Department has the sole discretion to accept or decline the changes through a proper review and approval process.

After contract execution, the basic Project configuration defines the limits within which the Design-Builder can make changes in the information shown on the RFP plans without requesting a change order, and the limits within which the Department may order a change prior to the first design review without executing a change order.

The basic Project configuration also provides the basis for assessing eligibility for certain change orders. If it is necessary to change the basic configuration to meet the requirements of the contract documents or to construct a feasible Project, the Design-Builder may be eligible for a change order.

### 3.6.2.3 Differing Site Conditions

A differing site conditions provision applies to conditions encountered onsite that differ materially from those indicated in the contract. In traditional design-bid-build delivery, the Department typically retains full responsibility and risk for differing site conditions. Under the DB/DBF methodology, however, the responsibility for geotechnical site investigations, and thus the risk for differing site conditions, can be significantly assigned to the Design-Builder. When considering shifting responsibility for differing site conditions from the Department to the Design-Builder, the Project team shall carefully weigh the risks involved (e.g., higher costs) against the potential benefits to be gained (e.g., time savings).

Because the site information provided in a DB/DBF RFP may be substantially less than that which would be provided to bidders on a design-bid-build Project, the DB/DBF Contract must explicitly define the responsibilities and risks associated with site conditions.

If the Department continues to retain some or all of the risk for differing site conditions, the provision may include the following elements:

- Definition of what is considered to be a differing site condition
- Design-Builder’s responsibility
- Department’s responsibility

If this risk is instead allocated to the Design-Builder, the provision may state that:

- The Department is not liable for any differing site conditions and will not grant extra costs or time extensions associated with the conditions encountered.
Information supplied by the Department (e.g., geotechnical report and similar information) is for reference only.

For either risk allocation strategy, best practice suggests limiting the site information provided in the RFP to the data collected, leaving the actual analysis and interpretation of this data to the Design-Builder. If the Project team feels that the inclusion of such analytical information would be beneficial, it may be placed in the reference documents, with specific disclaimers as to the Department’s liability.

### 3.6.2.4 Quality Management

On a traditional design-bid-build Project, the Department develops the design, specifies the materials to be used, and oversees the construction. Managing quality, during both the design and construction phases, has therefore traditionally been the Department’s responsibility.

The DB/DBF approach presents additional challenges and unique opportunities with regard to quality management. Use of the DB/DBF approach does not diminish the need to perform any of the traditional quality management tasks performed on a design-bid-build Project; however, the party performing these tasks may change. On a DB/DBF Project, the Department may choose to assign specific responsibilities to the Design-Builder, while retaining the rest for itself. It is also possible for a third party, retained by either the Department or the Design-Builder, to conduct some quality management tasks.

The exact quality management strategy used may therefore vary from Project to Project. As an extension of its risk analysis and risk allocation work, the Project team must consider which party can best meet the quality needs of a particular Project. The approach suggested below has been used by other highway agencies and represents a middle ground between transferring more responsibility for quality management to the Design-Builder, while retaining some oversight control for the Department.

With regard to design quality management, the quality control and quality assurance tasks (e.g., checking of calculations and quantities, review of specifications, etc.) that were previously performed by the Department on a traditional design-bid-build Project will be shifted to the Design-Builder. Department staff will then assume more of a quality assurance oversight role, in accepting design deliverables, approving design progress payments, approving the final construction as-builts, and performing similar design oversight activities.

In addition to clearly defining these roles and responsibilities, the RFP can also establish when any Department review of design submittals will occur. Advance knowledge of these design review checkpoints will allow the Design-Builder to...
account for these required reviews in its proposed Project schedule. Possible review points would be at the preliminary design phase (minimum 30 percent complete plans), final design review (100 percent plans), and possible intermediate points coinciding with the completion of certain design packages (e.g., roadway, bridge, drainage, etc.).

To increase the frequency with which the Department can provide design feedback outside of this formal review process, the RFP can also require or encourage the Proposer to request informal reviews to ensure that it is progressing the design in accordance with contract requirements. Such reviews are often called “over-the-shoulder” reviews to indicate that, unlike the formal review checkpoints, the design process will not stop to await comments from the Department.

In reviewing design deliverables, the Department’s review will generally be limited to ensuring that the Design-Builder’s design meets the objectives of the contract and is generally one of review and comment (and not approval). By providing too much control over design, the Department risks assuming more design liability for the Project and reducing the potential benefits of DB/DBF.

A similar change to traditional roles and responsibilities will occur with respect to construction quality management, as the Design-Builder will assume primary responsibility for construction quality control, including process control sampling and testing. QC tasks will typically be performed by the Design-Builder’s construction quality staff, with the Design-Builder’s Construction Quality Control Manager responsible for the Design-Builder’s QA program to ensure the standards of quality are being met. Department personnel will perform QA oversight and verification sampling and testing if the Design-Builder’s tests are used for acceptance, acceptance sampling and testing if the Design-Builder’s tests are not used for acceptance and independent assurance. The responsibility for acceptance testing shall be clearly defined in the RFP.

In developing the construction quality management provision, the Project team will clearly specify the following in the RFP:

♦ Design-Builder’s roles and responsibilities
♦ Department’s roles and responsibilities
♦ Sampling and testing methods
♦ Inspection method and frequency
♦ “Witness and hold” points
♦ Acceptance procedures
The Project team can place additional emphasis on quality by including a quality evaluation factor in the RFQ and/or RFP, particularly if using a best-value procurement process. The RFQ may require the submittal of qualifications related to key personnel that will be performing quality management tasks. The Department could then use the RFP to compete quality management plans submitted by prospective Proposers.

### 3.6.2.5 Design Submittal, Review, and Approval

Either as part of a design quality management provision or as a stand-alone provision, the RFP shall specify the submission, review, and, as applicable, approval process related to any designs prepared by the Proposer. At a minimum, the provision shall describe the following:

- **Review process**
  - Conformance to quality management plan
  - Conformance to contract requirements

- **Required design submissions**
  - Preliminary
  - Milestone (e.g., 30 percent, 60 percent, 90 percent design)
  - Feature of the work (e.g., foundation, pavement, bridge, etc.)
  - Complete design
  - As-built

Inclusion of such a provision may:

- Provide a checkpoint for both the Department and the Design-Builder to discover any defects in the design;
- Enhance communication between the parties; and
- Motivate the Design-Builder to develop a high-quality design so as to not delay construction.

The provisions must also address Department response times, resolution of Department comments, and any constraints on the number of concurrent submittals that a Design-Builder may submit.
3.6.2.6 Designer of Record

On a DB/DBF Project, the Design-Builder, and not the Department, is responsible for the details of design and coordination with construction. The Design-Builder’s engineer can therefore act as the Designer (or Engineer) of Record.

When the Design-Builder will serve as the Project’s Designer of Record, the RFP shall include a provision that defines the following:

- Minimum qualifications of the Designer of Record (e.g., experience, certifications, registration, etc.);
- Designer responsibilities related to:
  - Design (or review of design);
  - Managing and scheduling of design work to meet the construction schedule;
  - Adequacy and efficiency of design solutions and design documents; and
  - Construction oversight (to ensure that the Project is being constructed in accordance with this design);
- Requirements regarding professional liability insurance.

3.6.2.7 Environmental Permitting

On a DB/DBF Project, since the design is incomplete at the procurement stage, the Department has limited control in obtaining any environmental permits that require a more complete design and understanding of the final Project conditions. Because the Design-Builder has more control over the final Project design, the DB/DBF Agreement can be used to shift some permitting responsibilities from the Department to the Design-Builder. The RFP must be clear in identifying which party is responsible for acquiring which permits.

Permit conditions may also result in unexpected design and/or construction requirements that may be more costly or time consuming than anticipated in the Design-Builder’s Proposal. The RFP must therefore provide enough detail about environmental conditions and commitments and the general status of the permitting process to clearly convey the level of risk to be absorbed by the Design-Builder for environmental compliance issues.

The RFP may also stipulate, regardless of the operator named on the permit (i.e., the Department or the Design-Builder), that all environmental violation costs are the responsibility of the Design-Builder.
For Projects having extreme environmental sensitivity, the RFP may require the Design-Build to retain a qualified onsite inspector to ensure environmental compliance and to coordinate with the Department on environmental issues as they develop. Under a best-value procurement process, the Department may also structure the evaluation criteria to reward Proposers that offer approaches designed to reduce environmental impacts beyond that approved during the permitting process.

3.6.2.8 Right-of-Way (ROW)

For a traditional design-bid-build Project, the Department generally acquires all required ROW before construction begins. Under DB/DBF, however, the conceptual design performed by the Department may not support the identification and acquisition of all ROW required for the Project prior to issuance of the RFP.

When developing a ROW provision for inclusion in the RFP, the Project team may address the status of ROW acquisition and whether responsibility for any subsequent ROW acquisition will fall upon the Department or the Design-Builder.

Although the FHWA DB final rule does allow the Department to assign responsibility for ROW acquisition to the Design-Build, it is generally recommended that the Department continue to retain this responsibility for permanent ROW for the Project. The acquisition of additional properties desired by the Design-Builder shall typically be the responsibility and risk of the Design-Builder in terms of cost, schedule impact and site conditions and shall be subject to the Department’s approval. Acquisition of temporary construction easements, identified prior to the bidding process, will be obtained by the Department. Any Easements not identified in the RFP shall generally be the responsibility of the Design-Builder. The acquisition of additional easements desired by the Design-Builder shall typically be the responsibility and risk of the Design-Builder in terms of cost, schedule impact and site conditions and shall be subject to the Department’s approval.

When the Department retains responsibility for ROW, the associated provision may include:

- A statement that the ROW acquisition is complete or, if this is not yet the case, a statement that all necessary arrangements have been made for completion in the near future;
- ROW parcels that have or have not been purchased;
- The dates on which access to the ROW parcels shall be provided by the Department;
Responsibilities of the Department, particularly with regard to any Department-driven changes that affect ROW;

- Responsibility of the Design-Builder to make every effort to design the required facilities within the available ROW and to reimburse any additional cost due to the Design-Builder-driven changes that affect the ROW;

- Conditions for proposing and approving additional ROW purchase if the Design-Builder’s design cannot be constrained to the available ROW; and

- Process and responsibilities related to the extra cost and time that could be associated with additional ROW purchase.

If the Department chooses to shift ROW acquisition to the Design-Builder, the provision may include:

- A statement that the Design-Builder has risk and responsibility for ROW acquisition;

- The scope and current status of the required services (identification of any existing ROW, as well as parcels that need to be acquired by the Design-Builder);

- A statement requiring compliance with the Department’s Right-of-Way Manual and all relevant laws and regulations;

- Required submittals (e.g., title certificates);

- Payment method and schedule for acquisition cost and service fee; and

- How condemnation will be handled by the Department, including the applicable time periods that apply.

### 3.6.2.9 Utility Location/Relocation

As part of the risk identification and allocation process, the Project team must consider which party can best manage the risk associated with utility location/relocation.

When the Department decides to retain some or all this responsibility, the RFP shall state the accuracy of any information provided in the RFP related to existing utilities. Information generally used to describe existing utilities includes horizontal and vertical location, size, and type of material. The provision may also address the process for handling any unknown utilities encountered during construction.
If the Department instead decides to assign some or all of the risk of utility location and relocation to the Design-Builder, the provision may define:

- What constitutes an unidentified or misidentified utility;
- The Design-Builder’s responsibilities with regard to typical utility relocation tasks, such as:
  - Identifying existing utilities,
  - Contacting and reaching agreements with the utility owners or what happens in the event that reaching such agreements is delayed or not achieved,
  - Coordinating relocation,
  - Covering the costs for such relocation,
  - Information necessary to obtain federal reimbursement, and
  - Approach to betterments.
- A list of utilities to be relocated based on the best available information, along with a “use as reference only” statement;
- Rules, regulations, and reference documents regarding utility adjustment;
- Notification requirements of each utility owner for any service interruption;
- Process and responsibility for damages due to newly discovered utility items;
- Responsibilities for addressing utility owner delay and lack of cooperation; and
- Process of resolving conflicts with the utility owner.

If utilities are a complex, important or time sensitive issue on a Project, the Project team may consider requiring the Design-Builder to assign a utilities coordinator to work with the utility firms during design and construction. The coordinator would be responsible for verifying utility locations, obtaining permits, and overseeing any relocation work and adjustments.

### 3.6.2.10 Insurance

When developing a procurement strategy, the Project team should consult State Risk Management to assist in determining the types of insurance programs available and to evaluate the appropriate approach given a Project's specific needs, risks, and
complexities. Risk Management must be contacted early in RFP development process as insurance premiums can add significant costs to a Project budget. There are alternative insurance programs available that can help reduce costs while providing protection for the various parties involved in the Project.

Standard transportation construction Projects typically require several types of insurance coverage, including workers’ compensation, general liability, builder’s risk, umbrella or excess liability, and other coverages related to Project-specific risks (e.g., pollution liability, railroad protective liability, etc.).

On a DB/DBF Project, in addition to such coverage, the Project team must also consider the area of professional liability, or Errors and Omissions (E&O) insurance, as the Design-Builder, and not the Department or a Design Service Provider, is the Designer of Record. The professional liability insurance policy may be held in the name of the DB/DBF entity that enters into a contract with the Department. This means that the Design-Builder cannot rely on the insurance policy or policies of its designers to cover professional liability. This protects the Department from dealing with multiple insurance agencies and policies that may or may not cover the risks associated with a particular Project. Project-specific policies may be warranted for professional liability coverage and must be assessed.

The requirement to hold professional liability insurance in addition to the traditional mix of contractor’s insurance policies (e.g., workers’ compensation, general liability, umbrella or excess liability) is sufficient for most DB/DBF Projects. However, for larger, high-risk Projects, some owners have successfully used Owner-Controlled Insurance Programs (OCIP) and Contractor-Controlled Insurance Programs (CCIP) as a means to control risk exposure and potentially realize cost savings.

With a CIP (or “wrap-up” insurance), the interests of the owner, designer, contractor, and subcontractors are all covered under one insurance arrangement. Ideally, such an arrangement will eliminate conflicting insurance provisions, remove overlapping policies, and close coverage gaps. Insurance for a typical CIP on a DB/DBF Project includes the following coverages: general liability, builder’s risk, workers’ compensation, design errors and omissions, and excess, umbrella, and any other special coverages required. Explicitly excluded from most CIPs is coverage for automobile liability and contractor’s tools and equipment - the idea being that since contractors generally move such items from project to project, they are best insured separately.

If using an OCIP on a Project, the solicitation documents shall specifically set forth the following:

- The coverage provided;
- Limits of the coverage;
♦ Deductible amounts;
♦ Party responsible for deductibles; and
♦ Duration of insurance beyond the Project completion date.

If using a CCIP on a Project, it is incumbent on the Department to make sure that the contractor provides and maintains adequate insurance coverage.

If available at bid time, the Proposers may have access to the policies themselves to eliminate any concerns they may have regarding adequate limits and scope of coverage and gaps in insurance.

3.6.2.11 Order of Precedence (Escrowed Documents)

If a conflict arises on a traditional design-bid-build Project with respect to the contract documents, the Department’s standard document coordination clause (Section 105.04 of the Special Specifications) applies.

Design-build contracts, however, include several additional documents (e.g., RFP, DB/DBF Proposal, etc.), some of which are prepared by the Design-Builder. The RFP should therefore include a specific DB/DBF order-of-precedence clause to specify which documents take precedence over the others if a conflict exists. See also, Part 5, Section 105.04 of the Standard Template Documents. This clause may also clarify that the Proposal becomes the basis of the contract to the extent that it meets or exceeds the requirements of the other parts of the contract. If the Proposal offers higher quality or additional services than otherwise required in the RFP, then the Proposal standards are the benchmark or basis for contract requirements.

3.6.2.12 Payment Method

On a design-bid-build Project, the Resident Engineer determines payment for work by measuring quantities of work performed and multiplying the quantity measured by the unit price included in the contractor’s bid for that item.

With a few exceptions (e.g., hazardous material removal), work on a DB/DBF Project is generally priced on a lump sum basis, which requires methods other than the standard measurement of quantities to determine progress and payment. There may also be allowances used for certain specific items on a DB/DBF Project (where it is potentially difficult to price at the Proposal stage) and change orders can be priced on a time and materials, unit price or lump sum basis.

For smaller, less complex Projects, progress can be determined by mutual agreement between the Department and the Design-Builder of the physical percent
complete of each work item, based on a schedule of values included in the DesignBuilder’s Financial Proposal. In this case, the schedule of values is merely a tool for determining interim payments; any change in quantities from the original assumptions would not affect the lump sum price for the Project.

For larger, more complex Projects, progress and payment will be determined on the basis of a periodic payment schedule developed from a cost-loaded critical path method (CPM) schedule with periodic verification of progress by the Project Manager.

The payment provision must clearly define the scope of the total lump sum price. The lump sum typically includes compensation for all products and services specified in the RFP, the Proposal, and any changes made prior to contract award, including any ATCs or betterments accepted by the Department.

Payment may also be further limited through the use of a maximum payment curve, which limits the maximum payment during any particular contract period. A maximum payment curve may be proposed by a Proposer or dictated in the RFP (and later the contract) by the DB/DBF Agreement. Maximum payment curves can be helpful to match up the use of Project funds with the availability of those funds (which may be over a period of time and may not all be “in hand” upfront).

For certain types of work, unit prices and quantities may remain the most appropriate method for measuring progress and making payment, even on a DB/DBF Project. Such work would include high risk items (e.g., hazardous materials remediation) or work that is difficult to define during the procurement phase of the Project (e.g., relocation of utilities whose location or extent is not well defined). The use of quantities and unit prices would be a means to minimize the risk associated with such unknowns.

### 3.6.2.13 Progress Schedule

DB/DBF delivery adds complexities with regard to cost-loading and progress payments that will likely necessitate modifications to the Department’s standard Project scheduling provision.

For a DB/DBF Project, the scheduling provision may address how the schedule will be used as a basis for measuring progress for payment. For contracts that have separate payment plans for contingency/allowable items, the provision may also specify the associated measurement and payment procedure for such items.

In addition, the schedule may include a detailed set of design activities, along with the required logic to associate them with related construction activities, to ensure
that any disruptions to the design process can be tracked as potential delays to the completion of construction.

It is generally very important that a Project schedule be developed very early in the contract phase as incomplete or imprecise schedules can lead to significant problems and disputes in the event of later change orders. Consideration to including provisions in the RFP (e.g., draft 90-day and overall Project schedule submittals as part of the Proposal) and DB/DBF Contract (e.g., requiring approval of a Project schedule within 90 days or progress payments are suspended) to ensure that an acceptable, complete and comprehensive schedule is provided early in the Project design and construction work.

3.6.2.14 Project Acceptance

At Project completion, Department personnel will review the work to ensure that the desired quality and performance have been achieved in accordance with the RFP requirements. All work must be accepted for the Design-Builder to be eligible for full payment for the work performed.

In DB/DBF, the design must also be accepted for the Design-Builder to be eligible for full payment related to design services. Design acceptance occurs concurrently with construction acceptance, and is based upon the Design-Builder’s submission of the as-built plans.

The Project acceptance provision may address the following:

- Conditions of substantial completion;
- Procedures and required documents to request a substantial completion inspection;
- Basis of acceptance;
- Procedures and required documents to request a final completion inspection;
- Non-conforming work and punch lists;
- Notice of final acceptance; and
- Final payment including waiver, release, and invoice requirements.

3.6.2.15 Traffic Control

Based on the needs and goals established for a Project, traffic control during construction may be an important factor to the overall success of a Project.
reason, preliminary traffic control plans are often completed and evaluated as part of the Design-Builder selection process.

A traffic control provision may address the following:

♦ Submittal of a traffic management plan (or, if including a full plan with the Proposal would be premature, a partial plan or an outline of the Design-Builder’s overall approach to work zone management);

♦ Department’s review and evaluation of the plan (e.g., reviewed for minimum requirements or scored as part of the selection decision);

♦ Contents of traffic management plan:
  - Plan for during-construction temporary traffic flow
  - Plan for post-construction permanent traffic flow

♦ Traffic control analysis
  - Worksite and detour route
  - Simulation, traffic volume forecast

♦ Traffic control devices (e.g., permanent and temporary signing, pavement markings, ITS devices, etc.)

♦ Restrictions (peak hours, holidays, special events etc.)

♦ Any incentive strategies to minimize road user costs (e.g., lane rental provision)
  - Lane rental assesses the contractor daily or hourly rental fees for lanes, shoulders or any combination of lanes and shoulders that are taken out of service in order to minimize the impacts to the flow of traffic. This method is based on daily costs incurred by the Department and roadway user costs.
  - Liquidated damages for unpermitted closures

### 3.6.2.16 Public Relations

Although the Department will continue to take the lead on public outreach, it may delegate certain activities to the Design-Builder. Such tasks may include:

♦ Handling neighborhood complaints;

♦ Dealing with business owners;

♦ Attending and participating in public meetings;
Coordinating with community leaders;
- Maintaining a Project hotline; and
- Maintaining a Project website.

Delegating such responsibilities will help ensure that the Design-Builder is sensitive to the needs of the public, both when it is considering possible design solutions and coordinating construction.

If the risk analysis step suggests that public relations will be particularly sensitive for a given Project, the Project team may decide to include a public relations or involvement provision in the RFP. Such a provision would typically require the prospective Design-Builder’s to submit a public relations plan that would be evaluated and scored as part of the Design-Builder selection process.

### 3.6.3 DB/DBF Technical Criteria Package

The RFP includes a set of technical criteria that describe the requirements of the work under the DB/DBF Agreement. This criteria package typically includes a general Project description and scope, and specific sections dealing with design scope and criteria, construction requirements, and applicable performance criteria, and standards. Some DB/DBF RFPs have incorporated the concept of a basic configuration to define the Project scope (see Section 3.6.2.1 above).

When developing the design scope, the Project team must clearly specify both the design services required of the Design-Builder and the design criteria and requirements to which the Design-Builder is expected to conform.

Design services are any tasks that support the design of the facility. The services assigned to the Design-Builder will primarily depend on the risk allocation strategy selected for the Project. Design services that may be delegated to the Design-Builder include:

- Geotechnical investigations;
- Surveying;
- Permitting;
- Utility coordination/relocation;
- ROW acquisition;
- Preparation of engineering drawings, plans, and construction specifications, and as-built plans; and
- Design Quality Management.
Design requirements are the standards and regulations upon which the Design-BUILDER must base its design. These may include Department standards and design manuals (which may require modification for the Project to fit the DB/DBF delivery), AASHTO design guides, FHWA references, Project reports, and similar information. The Design-BUILDER must adhere to the specific design criteria for the different elements of the Project design; for example roadway design horizontal and vertical alignment criteria (design speed, clearances), and traffic management criteria (number of travel lanes), etc.

### 3.6.3.1 Construction Requirements

DB/DBF construction requirements are typically captured in the Standard Provisions and related special provisions of the RFP addressing contract administration requirements for construction plans, prerequisites to commencing construction, oversight, quality management, time management, changes, safety, traffic management, payment, substantial completion and final acceptance.

### 3.6.3.2 Technical Provisions

When developing specific technical provisions for a Project, particularly when using performance specifications, the Project team must keep the following general guidelines in mind.

- Contract provisions must focus more on defining the desired performance outcome, not the solution, means or methods to achieve it. For those Project components for which the Department is willing to grant design flexibility to the Design-BUILDER, the Project team must develop performance specifications to the extent possible. Less prescriptive specifications will encourage innovation and will shift design, construction and performance risk from the Department to the Design-BUILDER.
- For other Project elements, such as those that interface with existing systems (e.g., street lighting, traffic control systems) and those that will ultimately require routine maintenance and substitution of parts (e.g., signage, median barriers), prescriptive specifications may be more appropriate.
- The level of flexibility allowed in the specifications and the degree of specificity in the plans must be consistent with the risks identified for the Project and the allocation of these risks between the Department and the Design-BUILDER.
Performance specifications inherently mean that there may be more than one way to achieve the desired result. If properly written, they provide more flexibility and encourage more innovation and creativity than prescriptive specifications.

### 3.6.3.3 Elements of Performance Specifications

Typical Performance Specifications have the following four essential elements borrowed in part from the Construction Specifications Institute Project Resource Manual, Manual of Practice, Methods of Specifying (2005):

- **Attributes**: the critical elements of the work that are of importance to the owner; the means by which the performance characteristics are identified. For example, pavement structure attributes may be measured in terms of rideability (smoothness), durability, and skid resistance;

- **Performance Requirements**: a statement of the desired qualitative results, such as, a skid resistance of 45;

- **Design Requirements**: definitive statements of performance for a particular requirement, usually a statement of results desired at particular times in the life of the Project component (such statements or requirements should not be repeated in Part 3); and

- **Substantiation/Performance**: a statement of what is required and how and when actual performance/conformance will be measured or how predicted performance will be determined.

### 3.6.3.3.1 Developing Performance Specifications

In preparing Performance Specifications the writer may do the following:

- Establish the attributes, requirements, criteria, and substantiation for design, construction, and long-term performance;

- Allow flexibility to the extent possible;

- Include prescriptive elements where necessary.

### 3.6.3.3.2 Formatting Performance Specifications

Although there is not an industry-wide format for performance specifications, the format must be consistent with the Department’s current specification format. Formatting for the Department’s performance specifications could include:
♦ Title and Scope;

♦ Applicable Standards & References (i.e., AASHTO, FHWA, Department);

♦ Essential Elements, including:
  o Attributes,
  o Requirements,
  o Criteria, and
  o Substantiation/Performance.

♦ Payment

The Department may “standardize” some Performance Specifications over time while others may be tailor-made for a given Project. Performance specifications may not be prepared for all Project components. They must be prepared where a degree of flexibility is allowed and where innovation and creativity may result in better value, higher quality, and/or lower cost.

3.6.3.4 Reference Documents

The Project team may decide to include reference documents in the RFP that it feels may be useful or of interest to prospective Design-Builders. If such documents are provided, the RFP must clearly stipulate that the documents are provided for information only and not reliance, that the Design-Builder remains solely responsible for performing the scope of work (including any investigations, analyses or studies it deems necessary), that errors in the reference documents will not give rise to a change order (except as otherwise expressly noted in the contract), and that reliance on such information is entirely at the Design-Builder's risk.

Reference documents may include Department manuals (e.g., Construction Manual, etc.), geotechnical investigations, utility strip maps or reports, hazardous materials investigations, environmental documents and decisions, and any applicable agreements (e.g., railroad and Utility agreements) made by the Department prior to the RFP.

The Department cannot require the Design-Builder to comply with information contained in the reference documents. For example, environmental documents included in the reference documents may identify certain mitigation or permit requirements. If the Department expects the Design-Builder to comply with such
requirements, those requirements must be duplicated or referenced and included as mandatory requirements in the RFP and contract.

### 3.6.4 RFP Evaluation Criteria – Technical Proposal

A DB/DBF procurement will generally require submittal of a Technical Proposal and a Financial Proposal. The Technical Proposal is typically qualitatively evaluated, while the Financial Proposal is quantitatively evaluated.

Evaluation criteria for the Technical Proposal must be objective and relevant to the Proposer's ability to successfully execute the Project. Listed below are examples of relevant factors.

- Professional qualifications of the Proposer team
- Experience of the Proposer team
- Performance history of the members of the Proposer team on recent similar completed Projects
- Proposed management plan
- Proposed quality plan
- Ability to design, construct, and/or finance the Project
- Technical approach and solutions
- Schedule and time (may also be quantitatively evaluated and handled as an adjustment to the Financial Proposal)
- Other criteria determined relevant by the Department

The weighting of these evaluation criteria will be as indicated in the RFP and will be proportional to the significance of the criteria to the Project, subject to compliance with NRS 408.3886(2) and the exception therein which makes inapplicable those provisions of the subsection that would result in precluding the granting of federal assistance or reducing the amount of that assistance for a Project. For instance, notwithstanding NRS 408.3886(2), which requires that a relative weight of five (5) percent be assigned to the possession of a certificate of eligibility to receive a preference in bidding on public works, if the Project will be a federal-aid Project or receive TIFIA funding, such evaluation criteria shall not be utilized. See also Chapter 2 regarding best-value procurements.
3.6.5 **RFP Evaluation Criteria: Financial Proposal**

The Financial Proposal in a DB/DBF procurement will center around the Proposer’s price to perform the Project scope of work, often proposed on a lump sum, fixed price basis (though elements of the scope of work may include allowances which are included with the lump sum, fixed price).

The Proposer’s price will generally be evaluated on a present value basis, taking into account the proposed timing of payments (which recognizes the time value of money and that payment of the price faster is more “expensive” than payment of the price over a longer period of time). The amount of the discount to apply to the present value analysis generally reflects the Department’s cost of money and may vary from time to time. The PMT will determine the present value discount with the assistance of the Department’s internal financial personnel and such percentage amount must be identified in the RFP as it will influence the manner in which the Proposer’s develop their pricing.

In addition to the present value analysis, the Proposer’s price may be subject to various adjustments, such as those based on schedule, materials or life cycle costs. The methodology of any adjustments must be expressed in the RFP.

Once the Proposal price value is determined, it will generally be converted into points and combined with the Technical Proposal scores to determine the apparent best value proposer.

At least 30 percent of the evaluation weighting must be based on the proposed cost of design and construction (NRS 408.3886(2)).

See also Chapter 2 regarding best-value procurements.

3.6.6 **RFP Evaluation Criteria: Design-Build-Finance - Financial Proposal**

If a DBF is contemplated, additional example evaluation criteria may include:

- Proposer financial capacity to deliver the Project;
- Demonstration of an ability, experience, and understanding to execute a plan of finance for projects of similar scale and cost;
- Financial score (calculation will be determined in the RFP);
- Viability of financing plan;
♦ Term of repayment (may also be fixed by Department for all Proposers); and
♦ Cost of finance (may also be fixed by Department for all Proposers).

The Financial Proposal may require that the Proposer update some or all of the financial qualification and capacity information provided with the SOQ and also provide a financial plan.

### 3.6.7 The DB/DBF Agreement

#### 3.6.7.1 Required Contract Provisions

Any contract awarded pursuant to NRS 408.3886 must comply with the provisions of NRS 338.020 to 338.090, inclusive, governing wages of laborers and workmen.

The contract must also specify the following:

♦ An amount that is the maximum amount that the Department will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;
♦ An amount that is the maximum amount that the Department will pay for the performance of all the professional services required by the contract; and
♦ A date by which performance of the work required by the contract must be completed.

A Proposer to whom a contract is awarded pursuant to NRS 408.3886 shall assume overall responsibility for ensuring that the design and construction of the Project is completed in a satisfactory manner and shall use the workforce of the prime contractor to construct at least 15 percent of the Project.

#### 3.6.7.2 General Contract Terms

The DB/DBF Agreement may include, but not be limited to, the following:

♦ The right of the Design-Builder to design, construct and potentially finance the Project, the date of termination of the Design-Builder's authority, duties and rights with respect to the Project;
♦ The performance milestones that will be required of the Design-Builder along with any performance security (bonds, reserves, letters of credit, etc.) related to scope of work of the Project;

♦ Responsibilities for the acquisition of necessary environmental approvals (if not then obtained) and other required permits and approvals for the Project, including but not limited to railroad, waterway and utility crossings;

♦ The manner, if any, in which the Design-Builder and the Department will work together to establish interconnections and interoperability between the Project and other public transportation facilities;

♦ Responsibilities for the acquisition of ROW, including the procedures by and conditions under which the Department will exercise its power of eminent domain to facilitate any ROW acquisitions necessary to construct the Project;

♦ The design and construction standards with which the Design-Builder must comply;

♦ The requirements of the Design-Builder to submit plans for the Project scope of work, which may include design and construction of the Project, that conform to standards set forth in the DB/DBF Agreement, and the rights of the Department and other parties to review, comment and/or approve the same,

♦ The requirements of the Design-Builder to submit any design and construction submittals and the rights of the Department and other parties to review, comment, and/or approve the same;

♦ The rights of the Department to inspect, oversee, and audit the Design-Builder’s performance of the DB/DBF Agreement;

♦ The right of the Design-Builder to make and enforce reasonable rules with respect to the Project during any operations and maintenance phase;

♦ The terms, if any, under which the Design-Builder will reimburse the Department for services provided;

♦ The terms, if any, under which the Department will provide any payment to the Design-Builder;

♦ The terms under which compensation would be paid to the Design-Builder in the event of termination of the DB/DBF Agreement (including for convenience, Design-Builder default, Department default or force majeure event);
♦ The terms and conditions of financing for the Project, including any terms or conditions under which the Department will contribute financial or other resources to the Project;

♦ The events that will constitute default by the parties, notice and cure rights (including lenders’ rights), and remedies available to the parties in the event of default;

♦ Lender’s rights and remedies with respect to Design-Builder defaults and Department remedies, if appropriate and applicable;

♦ The events that will constitute force majeure, relief (time) events and compensation events, and the remedies the parties will have in the event of occurrence;

♦ The insurance and bonding/letter of credit requirements the Design-Builder will be required to meet;

♦ The allocation between the Design-Builder and the Department of liabilities for, among others, property damage, personal injury, repair, site conditions, and hazardous waste remediation;

♦ The obligations of the Design-Builder to maintain records, to allow inspection and audit and to provide reports to the Department;

♦ The obligations of the Design-Builder to file appropriate financial statements in the form and frequency set forth in the DB/DBF Agreement;

♦ The conditions under which the Design-Builder or the Department may make distributions or assign its rights and obligations under the agreement and/or its rights to the Project or the DB/DBF Agreement;

♦ The roles and responsibilities of the Department and the Design-Builder with respect to coordinating with external stakeholders and obtaining third party approvals;

♦ The roles and responsibilities of the Department and the Design-Builder with respect to conducting public involvement activities; and

♦ Any other terms and conditions appropriate for the Project.
SECTION 3.7 PROCUREMENT PROCESS

The intent of the Procurement phase is to select and award the project to a Design-Builder. The Procurement phase consists of three (3) sub phases: Solicitation, Evaluation, and Award.

Generally, all DB/DBF Projects will proceed through the DB/DBF Project Procurement Process as summarized in Figure 3-2. However, these procedures may be changed from time to time at the Department’s discretion or to tailor procurement to the needs of a particular Project.

Figure 3-2: DB/DBF Procurement Phase Processes
3.7.1 Procurement Phase - Project Management Tasks and Approvals

The following tasks, activities, and approvals must be performed through coordination between the PMT, the Selection Official, and Department Director. For all listed activities below, a recommendation memo is submitted from the Pioneer Program Manager to the Director and/or the Selection Official.

3.7.1.1 Appointment of the Selection Official

This is the first step in the solicitation phase. The Pioneer Program Manager requests appointment of the selection official which per Department’s internal policies shall be the Department Director or a Deputy Director. The Director may choose to designate the Deputy Director as the Selection Official of a DB/DBF.

3.7.1.2 Project Management Plan and Appointment of the Procurement Team

Based on input of the Project Manager, the Pioneer Program Manager recommends the team compositions of QET, QSC, PET, PSC, PMT, and Observers to the Selection Official. The PMP will be submitted for the Selection Official’s Endorsement.

3.7.1.3 Approval of RFQ Evaluation Criteria and Issuance of Request for Qualifications

The Pioneer Program Manager will compile the RFQ evaluation criteria pursuant to NRS 408.3883(2), and submit it to the Selection Official for approval. The Pioneer Program Manager will also request approval from the Selection Official to proceed with issuing the request for qualifications. After receiving this approval, the project manager will notify the project team of qualification evaluation timelines. Within this request, an insurance recommendation for the project must be included.

3.7.1.4 Approval to Issue Draft Request for Proposal

The request to issue a draft RFP will include the Project Manager, Project teams, and Pioneer Program’s recommendations regarding:
- Risk allocations;
- Project scope, budget, and funding source;
- Financing approach (DBF);
- Target procurement schedule;
- Target NEPA and ROW schedule/approach;
- SEP 14 requirements, if necessary;
- Type of procurement;
- Proposal evaluation approach;
- Technical issues and approach;
- Major risk issues and proposed allocations;
- Inclusion of ATCs;
- Construction schedule;
- Payment approach (price centers, etc.);
- Early completion bonus and liquidated damages;
- Key maintenance of traffic limitations;
- Public relations approach; and
- Insurance;
- Etc.

### 3.7.1.5 Approval of RFP Evaluation Criteria and Issuance of Request for Qualifications

Based on Project scope of work, complexity, technical needs and other factors, the Pioneer Program Manager, with the input of the project team, submits the RFP evaluation criteria to the Selection Official for approval.

### 3.7.1.6 Approval to Issue Request for Proposal

The request to issue the RFP will include recommended changes to the key contract issues, based on industry review.
3.7.1.7 FHWA Approval of the RFP

After receiving the Selection Official’s approval to issue the RFP, the Project Manager will obtain FHWA’s approval, if necessary. Pursuant to 23 CFR 635.309(e), FHWA approval of the RFP (FHWA’s Project authorization) must be obtained prior to issuing the RFP if federal funding, TIFIA financing, or certain other federal actions are involved. Draft RFPs may be issued without FHWA approval.

3.7.1.8 Processing Memo

The Processing Memo is intended to provide information about the Project to all involved parties in the Department. It specifies important tasks and dates related to the project. Please note that Environmental and ROW certifications are not required to be complete by issuance of the memo. ROW and environmental activities can continue after award of the contract through preliminary design. A sample Processing Memo can be found in Appendix G.

3.7.2 Solicitation Phase

The Pioneer Program Manager may establish the PMT and a technical advisory panel in the beginning of the Solicitation process. The solicitation phase processes are outlined in Figure 3-3 and are detailed below. As shown, the Department shall use a multi-process solicitation phase for DB/DBF Projects. The solicitation phase may include a Request for Letter of Interest (RLOI), an Industry Workshop, an Industry Review Process, and will include a Request for Qualifications (RFQ) and a Request for Proposals (RFP). The determination of whether to utilize an RLOI and an Industry Review during the solicitation phase will be a Project-specific decision at the Pioneer Program Manager’s discretion.
Figure 3-3: DB/DBF Solicitation Phase Processes
3.7.2.1 Project Advertisement

Pursuant to NRS 408.3883(1), the PAT will advertise for Statements of Qualification “in a newspaper of general circulation” in Nevada. The announcement must include the information described pursuant to NRS 408.3883(2).

3.7.2.2 Request for Letter of Interest (RLOI)

The RLOI process may be used at the Pioneer Program Manager’s discretion to gauge Proposer interest in participating in the development of a Project or to provide early notification and marketing of a Project to the DB/DBF community. When considering the use of the RLOI process, the Pioneer Program Manager will consider factors such as the time, schedule, need, and resource impacts of issuing an RLOI as well as the potential benefits of such process. If used, the RLOI will provide available information briefly describing the Project, Project location, Project scope, potential delivery method(s), proposed Project schedule, approximate estimated capital costs of the Project, and other relevant Project or procurement information. The RLOI can facilitate the procurement process by providing advance notice of the Project to the industry so that prospective Proposers may begin efforts for teaming arrangements, financial arrangements, and preliminary investigative work. The Project Manager is responsible for overseeing the preparation of, and providing information for, the RLOI. However, the RLOI will actually be distributed by the Administrative Services members of the PAT, and the timeframe for responding to the RLOI will be at the sole discretion of the Project Manager. A sample RLOI is provided in Appendix G.

3.7.2.3 Advertisement of RFQ

The Department may host an Industry Workshop which is designed to provide a brief Project and procurement overview. This time is used to introduce the Project to the industry and field any questions they may have. The service provider involved with the Project or the Project Manager will conduct the Project presentation. After the Project presentation, the PAT, Project Manager or procurement service provider will give an overview of the procurement process.

RFQs will be issued to those firms that submitted LOIs (if applicable) as well as to firms requesting the RFQ in response to an advertisement. RFQs may also be posted on the Department’s website.

When establishing deadlines for SOQ submittal, allow adequate time for Proposers to form teams, seek clarification, and prepare a response, and for the Department to issue any necessary addenda. For smaller, less complex projects, allowing 30
calendar days between RFQ issuance and the SOQ due date may be sufficient to accommodate such needs. For larger, more complex jobs, a timeframe of 45-60 calendar days or more would probably be necessary.

### 3.7.2.4 RFQ Clarifications and Addenda

Proposers may wish to seek clarification on RFQ requirements. Any non-confidential questions thus received, along with the Department’s response, must be made available to all firms that received the RFQ.

To answer questions received from Proposers or to otherwise clarify requirements, correct errors, or to provide supplemental information, it may be necessary to issue formal addenda to the RFQ.

### 3.7.2.5 RFQ Evaluation and Selection Plan

The RFQ E&S plan must be reviewed by the Pioneer Program Manager and approved by the Selection Official prior to issuance of the RFQ.

### 3.7.2.6 Shortlisting

Following completion of the RFQ evaluation, the Department will shortlist the most qualified/highest ranked Proposers. Between three and five Proposers will be shortlisted. If the Department does not receive three SOQs from Proposers that it determined to be qualified, the DB/DBF procurement must be cancelled. The shortlist is limited by statute to no fewer than three and no more than five firms.

### 3.7.2.7 Industry Review

After shortlisting, the Project Manager, in his/her discretion, may utilize an industry review process with the shortlisted Proposers, which includes issuance of one or more drafts of the RFP package, joint and/or individual meetings with shortlisted Proposers, and the receipt and discussion of Proposer comments, input, and feedback on the drafts of the RFP package.

See Chapter 2 for a discussion of the industry review process.

### 3.7.2.8 Issuance of RFP

Following completion of any industry review process and once the PMT has received approval from the Selection Official and, if applicable, FHWA, the Department will
issue the RFP to the shortlisted Proposers. Only shortlisted Proposers are eligible to receive and respond to the RFP.

### 3.7.2.9 RFP Clarifications and Addenda

Proposers may wish to seek clarification on RFP requirements. Any non-confidential questions thus received, along with the Department’s response, must be made available to all firms that received the RFP.

To answer questions received from Proposers or to otherwise clarify requirements, correct errors, or to provide supplemental information, it may be necessary to issue formal addenda to the RFP. If FHWA was required to approve the RFP, material addenda will also require FHWA approval before issuance.

### 3.7.2.10 RFP Evaluation and Selection Plan

The RFP E&S plan must be reviewed by the Pioneer Program Manager and approved by the Selection Official prior to issuance of the RFP. It is possible that the RFP E&S plan will require adjustment and modification through the RFP process before Proposals are received, in which case, additional approvals by the Selection Official will be required.

### 3.7.3 RFP Evaluation Phase

The Evaluation Phase processes are outlined in Figure 3-4 and are detailed below. As shown, the evaluation phase will consist of prescreening and evaluating submitted Proposals and selecting the best apparent Proposer. This phase may also include an optional Proposer interview process and/or an optional BAFO process.

Pursuant to NRS 408.3886(6), the Department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a Design-Builder. At the time of ratification at a public meeting of a selection of a Design-Builder, the PMT will make available to the public a summary setting forth the factors used to select the successful Design-Builder, the rankings of the teams which submitted Proposals, the Financial Proposal amounts submitted by each Proposer, and, if applicable, BAFOs. This will be drafted by the Project Manager and provided to the PAT for distribution.
Figure 3-4: DB/DBF Evaluation Phase Processes
3.7.3.1 Prescreen Proposals

Proposals received by the specified deadline will be prescreened by the PAT for responsiveness and pass/fail items. This screening will determine whether the requirements of form, time of submittal, and basic required information as specified by the RFP are included. Such information, some of it pursuant to NRS 408.3886, will include:

- Separate Technical Proposal and a sealed Financial Proposal;
- Completion of all forms provided in the RFP;
- Insurance certificates and surety commitment letters;
- Cover letter in the format required in the RFP; and
- Legal and financial sub-factors: Properly executed form of proposal, appropriate licenses or commitment to obtain such licenses, required bonds/performance security/insurance and financial evidence showing capability to meet DB/DBF Agreement requirements.

Proposals which do not comply with the above requirements, are not properly signed by an authorized representative of the Proposer or otherwise are not responsive to the requirements of the RFP will be rejected. At the Selection Official’s discretion, the PAT may waive any minor deficiencies in a Proposal, allow a Proposer to correct minor deficiencies in or clarify or supplement the Proposal, or reject a Proposal that does not pass the prescreening process. The PAT will report to the Selection Official regarding the results of the prescreening process.

3.7.3.2 Evaluate and Score Technical Proposals

Both the Technical Proposal and Financial Proposal portions of a submitted Proposal will be evaluated if such Proposal is found to be responsive and achieves a “pass” under the pass/fail evaluation. The Proposal evaluation criteria will be specified in the RFP. It is anticipated that evaluation criteria will be tailored to the specific Project and Project delivery approach and that there may be significant variances as to evaluation criteria for Projects under the Pioneer Program (even for Projects delivered under similar Project delivery methods).

The Technical Proposal evaluation will be performed by the PSC, with assistance by TECs and advisors. The PSC will perform its evaluation as is consistent with the RFP Evaluation and Selection Plan. ATCs which are approved or conditionally approved by the date specified in the RFP will be considered in the evaluation. See also Section 3.6.4 for common Technical Proposal evaluation criteria.
3.7.3.3 Evaluate and Score Financial Proposals

The Financial Proposal evaluation will be performed by the PSC, with assistance by PPCs and advisors. The PSC will perform its evaluation as is consistent with the RFP Evaluation and Selection Plan. See Section 3.6.5 for common Financial Proposal evaluation criteria.

3.7.3.4 Interviews/Presentations

To the extent provided in the RFP, the PSC may, at its sole discretion, choose to request clarification of certain Proposal details and/or communicate with proposers to enhance the PSC’s understanding of proposals, allow reasonable interpretation of proposals, or facilitate the evaluation process. The PSC may elect to modify its scoring based on the communication, but only to reflect clarifications learned from such interviews and in all events, in a manner consistent with the RFP and the Evaluation and Selection Plan (and not on presentation/interview style or materials).

Clarifications and communications shall only be used to obtain a better understanding of a Proposal and to address any ambiguities or inconsistencies in a Proposal and are not an opportunity for a Proposer to change its Proposal or provide additional or new information or materials.

3.7.3.5 Competitive Range

A Competitive Range may be established based on all responsive Proposers score/ranking. In the event of a BAFO, the PAT will notify in writing any Proposer which is not within the Competitive Range.

3.7.3.6 PSC Recommendation

The evaluation and scoring process will be documented in a written report which accompanies the PSC’s recommendation to the Selection Official.

3.7.3.7 Selection Official Review

The Selection Official may accept the PSC’s recommendation, ask for a re-evaluation, or reject all Proposals. If the Selection Official accepts the PSC’s recommendation, he/she may move the Proposal forward for FHWA concurrence (if required) and ratification by the Board or direct that Proposal revisions, also called Best and Final Offers (BAFOs), be sought from any Proposers within the Competitive Range.
3.7.3.8 Debriefings

After conditional or final award of the DB/DBF Agreement, PAT may offer to provide debriefings to unsuccessful Proposers, if requested to do so. Such debriefing will focus on a Proposer’s Proposal and not those of other Proposers and may highlight the strengths and weaknesses of the Proposal.

3.7.4 Best and Final Offers (BAFOs)

Pursuant to NRS 408.3886, the Selection Official may direct the PMT to start a Best and Final Offer (BAFO) process. The Pioneer Program Manager will submit a request to issue the BAFO if the Department determines that:

♦ No Proposal received by the Department:
   a. Is responsive to the request.
   b. Serves a public purpose.
   c. Satisfactorily achieves the goals and needs of the Project for any reason, including, without limitation, the Proposals received:
      i. Are not cost effective,
      ii. Exceed budget amounts or cost estimates, and
      iii. Identify technical or scope ambiguities in the RFP.

♦ A request for BAFOs may result in the submission of a satisfactory Proposal.

In conjunction with preparing a request for BAFOs, the PMT, with approval of the Selection Official, may alter the scope of the Project, revise the estimates of the costs of designing and constructing the Project, and/or revise the selection factors and relative weights. The request for BAFOs will set forth the date and time on which BAFOs must be submitted to the Department.

The PAT may issue a request for BAFO to:

♦ Each Proposer who submitted a responsive Proposal that passes all pass/fail criteria; or

♦ Only those Proposers who submitted responsive Proposals that pass all pass/fail criteria that are within a Competitive Range which is set based on the original Proposals.
The PMT may, when preparing a request for BAFOs:

- Hold individual or joint meetings or discussions, lead by the Project Manager, with Proposers concerning the Project;
- Modify the scope of the Project;
- Modify the terms of any contract;
- Revise the estimates of cost of the Project; and/or
- Revise the criteria for evaluation of the Proposals and the relative weights assigned to criteria.

After receiving BAFOs, the Department will undertake an evaluation using the same general process as with the original Proposals, which consists of the ETs reviewing the Proposals and reporting their findings to the PSC. The PSC may then review the findings before submitting a report and recommendation to the Selection Official. After reviewing all BAFOs and any clarifications or additional information provided by a Proposer pursuant to NRS 408.3886, the PSC may rank each responsive BAFO submitted, with the highest ranked offer as the apparent best value Proposer, and the next highest ranked offer as the second best Proposal, and so on, for each offer. The Selection Official may accept the PSC’s recommendations regarding a BAFO or reject all BAFOs.

### 3.7.5 Award Phase

The Award Phase processes are outlined in Figure 3-5 and are detailed below. As shown, after the Selection Official has accepted the PSC recommendation of a Proposal or after a decision is made through the BAFO process, the Department will notify the Proposers, engage in final negotiations with the apparent best value Proposer, request FHWA concurrence, when necessary, in the award, and present the contract to the Transportation Board for approval and execution.
3.7.5.1 Award Organization and Overview of Responsibilities:

During the award phase, the Project Manager, PMT, PAT, the Selection Official and Department Director are actively involved in contract negotiations. The following is a summary of their roles and responsibilities:

♦ Pioneer Program Manager: Overseeing contract negotiations, ensuring integrity of the process, input into contract terms, review and approval of negotiation summary report and draft final agreement;
♦ Project Manager and PMT: Performing contract negotiations, and overseeing development of final contract;
♦ PAT: Participating in contract negotiations, and overseeing development of final contract;
♦ Attorney General: Review and approval of contact as to form and legality; and
3.7.5.2 DB/DBF Agreement Negotiations

The PMT will, as appropriate, negotiate with the selected Proposer the terms of the DB/DBF Agreement.

The PMT may engage in negotiations regarding Project development elements, Project scope, risk allocations, price, Project financing, financial terms, PPA terms, technical requirements and other matters. The Department will not disclose the contents of any Proposal to competing Proposers during the negotiation and selection process. While the Department will generally reserve in the RFP the right to negotiate any aspect of the DB/DBF Agreement, generally negotiations will be limited and will cover ATCs of unsuccessful Proposers, inclusion of Proposal commitments that exceed the minimum requirements of the DB/DBF Agreement, changed circumstances that have occurred between the Proposal due date and award and other minor changes or modifications. ATCs of unsuccessful Proposers who accept a stipend may be used by the Department pursuant to 23 CFR § 636.113, if such intent is stated in the RFP, and may be incorporated, in whole or in part, into the negotiated scope of the Project or added to the project through the use of a change order after contract execution.

If the Department cannot negotiate a satisfactory contract, as determined by the PMT and approved by the Selection Official, with the apparent best value Proposer, the PMT may suspend or end negotiations with that Proposer by notifying the Proposer in writing of the Department’s decision to suspend or end negotiations. The PMT may then initiate negotiations with the Proposer who was ranked as the next best Proposer during the Proposal evaluation process. The PMT may repeat the process of suspending or ending negotiations and beginning a negotiation with the next best Proposer until the PMT can reach a satisfactory contract or until the Department has attempted to negotiate with every Proposer who the PSC ranked during the Proposal evaluation process.

Prior to executing the contract, the Project Manager will prepare a negotiation summary report for review and approval of the Pioneer Program Manager and the Selection Official.

3.7.5.3 Review and Ratify at Public Meeting

If the PMT successfully negotiates a DB/DBF Agreement with a Proposer, the Department will hold a public meeting to:
♦ Review and ratify the selection of the Proposer and the contract. Ratification of a contract requires approval by the Department and execution of the contract by the Chair of the Transportation Board.

♦ Make available to the public a summary setting forth the criteria used by the Department to select the successful Proposer and the ranking of the Proposers who submitted Proposals and BAFOs, if applicable. The Department will not release to a third party, or otherwise make public, any financial information submitted by a Proposer.

The Department Director will recommend the best value Proposer to the Board for its consideration. The selection or recommendation of the best value Proposer/Proposal shall not be final until the Board has approved the recommendation. Upon approval by the Board, the Governor may execute a DB/DBF Agreement.

**3.7.5.4 Conforming the Contract**

Given the complexity of the documents involved for a DB/DBF Project, the Department may then assemble a conformed contract document that includes the contract, the technical provisions, components of the Design-Builder’s Proposal designated for inclusion in the contract, and the results of any negotiations conducted after selection but prior to contract execution.

Contract execution will then generally proceed according to the Department’s standard practice.

**3.7.5.5 FHWA Concurrence**

The Project Manager will request FHWA concurrence of the Department’s intent to award a DB/DBF Agreement as required under 23 CFR § 635.309(e). The Project Manager will follow current Department processes for obtaining FHWA concurrence.

**3.7.5.6 Public Notice**

Pursuant to NRS 408.3881, the Department will publish public notice in a newspaper of general circulation in Nevada that it intends to hold a public meeting at which the Board will review and ratify the selection. NRS 241.020 also requires that the notice be published on the Department’s web site.
3.7.5.6.1 Board Approval

The following items must be submitted to the director’s office prior to the Board meeting (typically four (4) weeks prior).

♦ Standard Board memo from the Director to the Board that includes summary, background, etc. of the project and the following attachments:
  o Summary of the procurement process, and
  o PSC Recommendation Memo to the Selection Official.

♦ Summary of the contract including:
  o Scope of work,
  o Innovation,
  o Schedule, and
  o Major terms and conditions (incentives and disincentives).

♦ Justification for stipend.

A copy of the final contract ready for signature will be submitted to the Director’s office at least two (2) days prior to the Board Meeting. Sample Board Memo could be found in the Project Management SharePoint site.

3.7.5.7 Review and Ratify Selection at a Public Meeting

Pursuant to NRS 408.3886(6) the Department will;

♦ Review and ratify the selection
♦ Partially reimburse the unsuccessful Proposers if a stipend was provided for in the RFQ and RFP pursuant to NRS 408.3883
♦ Make available to the public a summary setting forth the factors used to select the successful Proposer and the ranking of the Proposers, and if applicable the BAFOs

The Proposer understands that its submission of a price for a Proposal indicates its permission in accordance with 23 CFR § 636.507(c) to reveal such price at a public meeting held to ratify the Department’s selection of a Proposer in accordance with NRS 408.3886(6).
3.7.5.8 DB/DBF Agreement Execution

The Project Manager shall review the contract negotiation summary and provide a recommendation to the Attorney General. The DB/DBF Agreement will be executed after review by the Attorney General’s representative to the Department, the Selection Official, and the Director. The DB/DBF Agreement will be signed by the Chairman of the Board and attested by the Director.

3.7.5.9 Protests

All protests must be filed in accordance with the process and within the timelines specified in the ITP. All protests will be adjudicated in accordance with the process specified in the ITP and will be final. The protest must be filed in writing and the decision will be made in writing. Each Proposer, by submitting its Proposal, will be required to expressly recognize the limitation on its rights to protest as described in the ITP and expressly waives all other rights and remedies and agrees that the decision of the Department is final and conclusive.
SECTION 3.8 CONTRACT ADMINISTRATION PHASE

After DB/DBF Agreement award, the Department will be responsible for administering the contract and providing oversight of the quality of the Project. In DB/DBF, the Design-Builder is responsible for the design details and must design to its price and schedule while meeting the Project’s performance criteria. The Department will provide design compliance reviews and then will satisfy itself that construction complies with the technical provisions and DB/DBF Agreement requirements. The Design-Builder will be responsible for coordination between the design and construction components of the contract.

The Department’s standard procedures for design and construction contract administration continue to apply, but the nature of design submittals and reviews and the scheduling and reviews on the part of the Department will generally be expedited so as to maintain an expedited schedule for concurrent design and construction phases. The Design-Build contract may also permit the Design-Builder to commence elements of construction and other activities at risk while reviews are underway.

3.8.1 Project Management Plan

Prior to proceeding with the Contract Administration phase, the Project Manager must update the PMP for review and approval of the Pioneer Program Manager. The Project Manager plan must reflect addition of the Design-Builder to the Project and define key management processes for the Project team.

3.8.2 Project Team Composition

Once a Project is awarded and the contract is signed, the Contract Administration Team is formed by the Project Manager to oversee the Department’s contractual responsibilities for the term of the contract. The team will provide oversight during the design and construction of the Project. Members may include the Project Manager, Design Manager, Resident Engineer, designers, inspectors, material testers, survey crew, administration staff, finance team and Quality Assurance Manager. The Department may utilize technical, legal, and financial service providers to support the efforts of the Project team.
3.8.2.1 Overview of Team Responsibilities

The roles of the team members are all affected by the Revisions to the Standard Specifications. Every Project will have unique provisions and requirements that will require adaptability by the team members. The Project Manager is in full charge of the Project during the Contract Administration phase and has approval authority over changes to the Project baselines within his/her Project authority.

The Contract Administration Team’s responsibilities will generally include:

- Acting as the Department’s link to the Design-Builder
- Reviewing design submittals for compliance with the technical provisions and other DB/DBF Agreement requirements
- Conducting periodic site reviews over the life of the Project
- Reviewing and approving progress payments or such other payments as are set forth in the DB/DBF Agreement
- Documenting and submitting written pre-notification to the DB team of any disincentives to be imposed which may reduce payment
- Tracking compliance with any required DBE involvement
- Verifying Department receipt of all Project design and construction documentation as required by the contract
- Verifying that appropriate quality control and quality assurance (design and construction) is performed by the DB team and internally by the Project Management Team
- Monitoring the DB team’s compliance with the approved Quality Management Plan
- Ensuring that all environmental obligations are met and permits are in place
- Coordinating with FHWA on Projects with federal funding or requiring FHWA involvement
- Ensuring that each phase of the Project is properly documented
- Supplying all necessary Department contract-related forms
- Completing performance evaluation of the DB team upon Project completion
- Successfully achieve financial close and other financial-related activities if DBF is utilized in Project Delivery
Identifying the DB team’s eligibility for incentive payments, if any
♦ Researching and attempting to resolve any disputes and claims
♦ Assessing and processing any change orders.

3.8.2.2 Project Manager

The Project Manager will remain in full charge of the Project during the Contract Administration phase, reports Project status to the Pioneer Program Manager, and has approval authority over changes to the Project baselines within his/her Project authority.

3.8.2.3 Project Management Team (PMT)

The PMT will typically consist of the Design Manager, Construction Manager (Resident Engineer) and Quality Control manager. The PMT is responsible for supporting the Project Manager in administering, implementing, and maintaining the integrity of the entire contract administration process.

3.8.2.4 Review Team

The Department’s technical experts in the areas of Roadway Design, Structures, Environmental, Hydraulics, Utilities, Right of Way (ROW), Traffic/Safety, Intelligent Transportation Systems (ITS), Construction, Operations and Maintenance, Pavement and Geotechnical, Public Information, Landscaping and Aesthetics, and Rail will support members of the Contract Administration Team to review Project design. With the approval of the Pioneer Program Manager technical, legal, and financial service providers may be utilized to support the efforts of the review Team.

3.8.3 Partnering

The Department’s “Guide to Partnering on NDOT Projects” provides specific guidance on implementing partnering for NDOT Projects. For DB/DBF Projects, particular emphasis will ideally be placed on team building, decision making time frames, issue escalation, and use of a dispute resolution ladder processes.
3.8.4 Communication and Coordination

As successfully completing a DB/DBF Agreement requires close cooperation and collaboration between all parties, frequent effectively-run meetings can be important. A number of potential meetings are described in the following Sections and will be further detailed in the DB/DBF Agreement and technical provisions for a particular Project.

The Department’s Project Manager will, in most cases, coordinate requests for meetings with the Design-Builder’s Project Manager. This individual would be responsible for scheduling the attendance of his or her team members. In many cases, different phases of design and construction will be occurring simultaneously and at a rapid pace, so meeting coordination becomes routine and critical. In these cases, it is essential to establish with the Design-Builder preset meeting dates and times for the duration of the Project so that all parties can reserve times and thereby reduce scheduling difficulties. It may be mandated that at all meetings all parties who will be necessary to the scheduling and decision making process be present or have an attendee participating in their place who has decision making authority.

3.8.4.1 Kickoff Meeting

Shortly after award and issuance of a notice to proceed, in most cases, a kickoff meeting will be held. The Department’s Project Manager may request this meeting through the Design-Builder Project manager. Attendees may include the Department’s Project team and the Design-Builder’s corporate management and key personnel, including key subcontractors and service providers. Objectives may include:

- Identifying key personnel from the Department and the Design-Builder team
- Establishing lines of authority within the Design-Builder and the Department
- Submittals
- Changes
- Record drawing numbering system
- Discuss value engineering ideas
- Clarify ambiguities
- Confirm the design concept
- Discuss mobilization plan
3.8.4.2 Initial Design Conference

As early as possible, an Initial Design Conference shall be held. Participants must include the Project Managers for the Department and the Design-Builder, the Designer of Record, the Design Manager for the Department, and other key designers or reviewers. The objectives are to:

- Confirm the Project program
- Establish lines of communication among designers, Designer of Record, and the Department’s Design Manager
- Establish a drawing numbering system
- Discuss potential alternative design solutions not contemplated in the RFP or Proposal
- Discuss major or complex design features
- Develop design submittal and review schedule and milestones
- Discuss the nature of the reviews (for compliance with Technical Requirements of the RFP and the Proposal)
- Identify critical path Department design review decisions
- Establish an understanding of the design Quality Management Plan (QC/QA program) and the Department’s monitoring plan

3.8.4.3 Pre-Construction Conference

Prior to the commencement of construction, a Pre-Construction Conference shall be held. Participants may include as a minimum the Project Manager for the Department and the Design-Builder, the Resident Engineer, the Construction Superintendent, representatives of major subcontractors and the Designer of Record. The objectives are to:

- Establish lines of communication among those present and their personnel
- Confirm that the approved record drawings are those which will govern construction
♦ Establish an understanding of the construction Quality Management Plan (QC/QA program) and the Department’s monitoring of the plan
♦ Identify all required submittals and timings for reviews
♦ Discuss the construction schedule and critical related issues
♦ Establish schedule and attendees for routine progress meetings
♦ Discuss process for dealing with utility, railroad, and interagency issues
♦ Discuss the process for submittal and approval of Traffic Control Plans
♦ Discuss process for change orders
♦ Discuss process for dispute resolution
♦ Define the submittal and approval process for progress payments
♦ Establish the process for formal acceptance of construction

3.8.4.4 Progress Meetings

Periodic meetings to monitor the progress of the work and address critical issues of scope, quality, schedule, etc. are very important. During the design phase, these progress meetings may be held less frequently, but at a minimum will be held monthly. When construction begins, weekly meetings will be held. The Project Managers for the Department and the Design-Builder, the Resident Engineer, and other appropriate staff must be expected to attend.

3.8.5 Project Quality

3.8.5.1 Design Review and Oversight

The Design-Builder has design responsibility for and carries the primary risk of design details. Its obligation is to meet the performance criteria described by the technical provisions and the other contractual requirements.

The Department’s role is to verify that the design details conform to the obligations described above. Generally, design submittals will be submitted for review and comment, but not for approval (as approvals may shift some design risk back to the Department). To the extent of any Department approvals, the Design Manager, supported by Department design staff assigned to the Project, has approval authority.
A schedule for the required submittals and reviews will be set forth in the DB/DBF Agreement and technical provisions. This schedule will recognize the probable phased approach to construction. Portions of the design (design units) may have to be completed and released for construction while other design work continues. Because most DB/DBF Agreements will have accelerated schedules and because the Design-Builder has assumed design responsibility and risk, Department reviews and approval rights will differ from those in a DBB contract.

The drawings which receive the Department’s final review and are believed to be consistent with the requirements of the DB/DBF Agreement and technical provisions become record drawings signed and sealed by the DB team’s Designer of Record. Construction is required to conform to these record drawings.

### 3.8.5.2 Design Quality Management

The DB/DBF Agreement will require that the DB team submit for review and approval a Design Quality Management Plan, which shall serve as the reference against which the design activities are monitored by the Department. It may include:

- A schedule of design submittals and reviews
- Organization chart of the Design-Builder’s design team and roles filled by key personnel
- Persons responsible for Quality Control of various elements of design
- Persons responsible for Quality Assurance
- The elements and steps of the quality control and quality assurance processes

### 3.8.5.3 Construction Review and Oversight

Periodic review of construction activities will be performed by the Project team to verify compliance with the requirements of the DB/DBF Agreement and the technical provisions. Because of the accelerated schedule of Design-Build Projects, the Project team shall be prepared for such reviews early in the Project, as certain construction work may begin while design of other elements is in progress.

The Department may provide Project survey control established during the development of the Project. In such cases, the Design-Builder will generally be responsible for re-establishing the survey control based on information provided by the Department and for survey control and staking for construction.
3.8.5.4 Construction Quality Control and Quality Assurance

Quality management is the responsibility of the Design-Builder. The Quality Management Plan (QMP) will detail how the Design-Builder will provide quality control and quality assurance for the construction elements of the Project. Quality control testing of materials and inspections will be the responsibility of the Design-Builder, as will the development of record drawings and other QC documentation such as daily diaries and surveying information.

The DB/DBF Agreement will generally require that a Quality Assurance organization within the Design-Builder be created which is independent of the day-to-day construction organization if the Design-Builder is responsible for acceptance sampling and testing. The Quality Assurance organization will perform periodic audits of the Quality Control program, consistent with the QMP. The Department will periodically audit the Quality Control and Quality Assurance programs to comply with FHWA policies. Department tasks will include performing verification or acceptance testing of materials depending on who is responsible for acceptance, and independent assurance sampling and offsite material fabrication inspection. The Department will generally be responsible for determining whether and when substantial completion and final acceptance have occurred.

The Design-Builder may perform some of the sampling and testing responsibilities traditionally performed by the Department. If these traditional tasks are performed by the Design-Builder, Department inspectors will assume verification and auditing duties. These inspection tasks will generally include the following:

- Verifying that the current signed and stamped design plans are onsite and being followed by the Design-Builder’s construction forces;
- Spot-checking construction for compliance with design plans and Project specifications;
- Evaluating construction at any “witness and hold”;
- Reviewing temporary traffic control installations;
- Verifying that members of the Design-Builder’s QC staff
  - Have proper qualifications
  - Are present to observe and control the work
  - Are conducting material sampling and testing
  - Are carrying out the Design-Builder’s quality plan
- Verifying progress and reviewing payment requests;
♦ Verifying force account records;
♦ Auditing safety records;
♦ Auditing environmental compliance records; and
♦ Conducting and managing the review of as-built plans.

3.8.6 Change Management

3.8.6.1 Change Orders

Change Orders document changes from the original scope, budget, schedule, technical requirements, and quality baselines of the DB/DBF Agreement, confirm schedule modifications or set forth other modifications or changes to the DB/DBF Agreement and/or technical provisions. In order for a change order to effectuate a valid modification to the DB/DBF Agreement, it must be reviewed, approved, and submitted by the Project Manager, then reviewed and approved by the Pioneer Program Manager and the Assistant Director of Engineering. If the Project is a federal aid Project, FHWA may also have approval rights over a Change Order.

3.8.6.2 Value Engineering Change Proposals (VECP)

The DB/DBF Agreement may contain provisions addressing Value Engineering Change Proposals, which may be:

♦ Developed by the Design-Builder,
♦ Based on Proposals from the Department, or
♦ Based on information contained in an unsuccessful Proposal that has not been negotiated into the DB/DBF Agreement prior to award/execution.

A conceptual VECP must be submitted to the Department’s Project Manager for review. Generally, the DB/DBF Agreement will set out the requirements of the submittal, which often will include:

♦ Conceptual plans,
♦ An initial estimate of costs,
♦ The impact of the VECP on the Project schedule,
♦ A description of any previous use or testing of the concept on another Department Project or elsewhere,

♦ A statement of the advantages and disadvantages of employing the VECP, and

♦ Such other elements as are set forth in the DB/DBF Agreement.

If the Department accepts the VECP changes, payment may be authorized pursuant to the VECP and/or change order provisions set forth in the DB/DBF Agreement. Reimbursement of the total cost of the revised work will be in accordance with the DB/DBF Agreement’s payment and/or change order provisions.

### 3.8.7 Executing and Monitoring Activities

#### 3.8.7.1 Monitoring of DBE Requirements

On Projects which have DBE requirements, the Project Management Team will monitor compliance with the DB/DBF Agreement’s requirements and with the DBE Plan. The Department’s Project Manager shall request routine reporting from the Design-Build Project manager in accordance with Department procedures. The following components, among others, may be monitored:

♦ Cost of supplies, materials, and equipment;

♦ Fees for professional, service provider, technical or managerial services associated with the design aspects of the Project;

♦ DBE subcontracting to another DBE or other firm; and/or

♦ Percentage of ownership and control of the DBE partner.

#### 3.8.7.2 Subcontractor Approvals

The Design-Builder may utilize the services of any subcontractor listed in its final Proposal. The Department will consider, at its sole discretion, requests for subcontractor substitution. It is unlikely that subcontractors for all elements of the work will be identified in the Proposal. After contract award, the Design-Builder must submit for Department review and approval a process to solicit and select bids for work for which subcontracts were not identified in its Proposal.
3.8.7.3 Federal Law Compliance

On federally funded Projects the contracting component of the Design-Builder must comply with an array of federal requirements, which will be included typically as an exhibit to the DB/DBF Agreement. These statutes include but may not be limited to: Davis-Bacon and Related Acts (as amended) prevailing wage and reporting requirements, Buy America, etc. The Project Management Team will establish a process for monitoring compliance.

3.8.7.4 Liquidated Damages and Incentive Payments

Liquidated damages may be a DB/DBF Agreement term if timely completion of the Project or portions thereof is critical. The objective is to motivate the Design-Builder meet the DB/DBF Agreement’s schedule by reasonably estimating, on a liquidated damages basis, the damages resulting from late completion, or not incorporating ATCs as provided in the Proposal. Liquidated damages may also be imposed for failure to comply with other requirements of the DB/DBF Agreement and technical provisions, or failure to incorporate ATCs, such as hourly lane restrictions or providing additional items of work. The Project Management Team is responsible for determining and assessing liquidated damages. The Construction office must be involved in determining the order of magnitude established for liquidated damages. Determination of liquidated damages must be clearly described in the RFP or incorporated in the conformed contract as necessary.

Conversely, incentives for early completion where the value of the completed Project or portion thereof is high may be made a part of the DB/DBF Agreement. If there are such DB/DBF Agreement terms, the Project Management Team is responsible for determining and approving incentive payments.

3.8.7.5 Progress Payments/Measurement of Quantities

Payment and measurement procedures generally require significant modification to the DB/DBF Agreement due to the lump sum nature of the submitted price. A payment schedule or maximum payment curve will often be required to be included in a Proposal. Such schedule, as negotiated or agreed upon and incorporated into the DB/DBF Agreement, will guide payments made to the DB Team. The Project Management Team is responsible for monitoring the progress of the work and for reviewing and approving periodic requests for payment.
3.8.8 Utility Requirements

The Design-Builder’s scope will generally include all work related to existing utilities that is required to accommodate the Project, other than work specifically identified by the DB/DBF Agreement as the responsibility of either the utility owner or the Department.

The Project Management Team will monitor the progress of any utility’s relocation and its impact on Project schedule.

3.8.9 Right-of-Way Requirements

If the DB/DBF Agreement calls for the Department to acquire right-of-way and/or construction or access easements, the Department Project Manager will be responsible for coordinating activities with the ROW Division Representative. This individual(s) may be asked to participate in design and construction progress meetings as applicable to assure progress and avoid potential delays to construction activities. Due to the procedural requirements and legal issues associated with right-of-way acquisition, it has one of the higher potentials for adversely affecting schedule and for this reason is one activity that the Project Manager might remain personally involved with.

Design alternates as may be submitted by the Design-Builder must also be reviewed for conformance to existing right-of-way limits, and the Department’s real estate professionals shall be consulted on this as applicable.

3.8.10 Maintenance of Traffic (MOT)

Where applicable, the Project Management Team will monitor the Design-Builder’s MOT activities for compliance with the approved MOT plan required by the DB/DBF Agreement. The maintenance of traffic and minimizing delays, disruption, and inconvenience to the public are often critical to Project success. The MOT plan will address the use of lane closures, barricades, warning signs, flaggers, pilot cars, and detour geometry in accordance with the DB/DBF Agreement and technical provisions (which often will include substantial incorporation of relevant aspects of the Manual on Uniform Traffic Control Devices).

Generally, traffic lanes should be kept open during construction unless otherwise provided for in the contract, and the use of one-way traffic zones should be minimized. All movements of construction traffic on, onto or across the traveled way shall be performed in a manner not to endanger the traveling public.
3.8.11 Schedule and Progress

The Design-Builder will create a Project schedule prepared using Primavera. It will show the order in which the Design-Builder proposes to carry out the work, the date on which it will begin the major items of work and the critical features (including procurement of materials, plant, and equipment), and the contemplated dates for completion as further specified by the terms of the contract. The Project will be planned and documented using this schedule. The objective is to ensure adequate planning and execution of the work and to evaluate its progress. Compliance with the schedule shall be a subject of all progress meetings, as well as actions necessary to remain or get back on schedule.

Monthly, or at such intervals as directed in the DB/DBF Agreement and technical provisions, the following items will be required:

♦ Adjust the schedule to reflect any changes in the scope of the work or the schedule,
♦ Enter on any maximum payment curve the cumulative total percentage of work completed, and
♦ Submit copies of this adjusted schedule to the Department’s Project Manager.

The updated schedule will be a component of progress reports submitted to the Department’s Project Manager. It may include some or all of the following:

♦ Progress narrative,
♦ Quality certifications,
♦ Safety report,
♦ Security report,
♦ Project schedule update,
♦ Contract change order status report,
♦ Quantity calculations,
♦ Updated contract submittals list,
♦ Summary of hazardous and contaminated substance activities,
♦ Statement of materials and labor used, and
♦ Such other items as are set forth in the DB/DBF Agreement and technical provisions.
Progress reports will be submitted and contain information similar to the sample progress report provided in Appendix G.

### 3.8.12 Substantial Completion

The Design-Builder will notify the Department’s Project Manager in writing when it considers the Project substantially complete. The DB/DBF Agreement will set forth the requirements and conditions under which the Project will be considered substantially complete. The Project Managers for the Department and the Design-Builder will inspect the Project and review relevant documentation. The Department’s Project Manager will prepare a written list of outstanding items, if any, to be completed or corrected (“punch list”). After completing or correcting any such items, a written request for re-inspection will be submitted by the Design-Builder. The Department’s Project Manager will re-inspect the Project and issue notification of substantial completion if outstanding issues have been corrected and/or completed.

### 3.8.13 Final Acceptance and Contract Closure

The DB/DBF Agreement will set forth the requirements and conditions under which the Project will be considered eligible for final acceptance. In connection with final acceptance, when all corrections and completions have been accomplished, the Design-Builder will, among other things:

- Submit all special guarantees, warranties, maintenance agreements, final certifications, and similar documents required by the DB/DBF Agreement;
- Deliver tools, spare parts, instructions and similar items required to maintain and operate the Project; and
- Make changeover of all locks to equipment and facilities and deliver keys and/or combinations to the Department’s Project Manager.

A DB/DBF Project ends when all conditions of the contract have been fulfilled. This includes design activities and record drawings, construction activities, QC/QA work, Project documentation, and any warranty periods. The steps of officially completing the Project follow the design-bid-build process. Final acceptance of the Project provides confirmation that the completed product meets the contract terms.

Final acceptance occurs when the warranty period ends and the component’s condition is confirmed to meet the requirements of the provisions or is restored to those requirements.
Upon final acceptance of the work, the Project Manager will recommend the acceptance to the Director who will execute a certificate that the work required by the DB/DBF Agreement has been completed and accepted under the terms of the contract.
CHAPTER 4: UNSOLICITED PROPOSALS
SECTION 4.1 INTRODUCTION

This section addresses Unsolicited Proposals under the Pioneer Program. Solicited DB/DBF Projects are addressed in Chapter 3 of these Guidelines, but DB/DBF Projects may also be undertaken pursuant to Unsolicited Proposals. If an Unsolicited Proposal proposes DB/DBF, this Chapter 4 and NRS 408.5471 et. seq. shall apply.

If the Department determines that a Project which is the subject of an Unsolicited Proposal meets the statutory requirements and is a Project that the Department wishes to advance as a PPP, the Department may request other persons to submit qualifications and, ultimately, Proposals to develop, finance, construct, improve, operate, maintain, or any combination thereof, the transportation facility. If such a determination is made, NRS 408.548 and NAC 408.650 to 408.698, inclusive, shall govern the PPP Project procurement process, which consists of the solicitation phase, evaluation phase, and award phase as shown in Figure 4-1.

![Figure 4-1: Unsolicited Proposal Process](image)

NRS 408.5471 et. seq. do not require that Unsolicited Proposals be competitively solicited. The Department is authorized to accept and negotiate an Unsolicited Proposal without any type of competitive procurement, although in most instances the Department will utilize a competitive process. In the event that the Department decides not to competitively solicit competing Proposals in response to an Unsolicited Proposal, the philosophy of the evaluation and selection process described in these Guidelines for competing Unsolicited Proposals will be applied to the decision-making process.
SECTION 4.2 UNSOLICITED PROPOSAL REQUIREMENTS

The Unsolicited Proposal portion of the Pioneer Program (Unsolicited Proposals Program) will consist of a process of determining Projects that are viable candidates for unsolicited PPPs and selecting qualified and experienced private entities who can demonstrate the capability to successfully design, build, finance, construct, operate and/or maintain a Project or undertake the rehabilitation or expansion of an existing facility. All Projects must be consistent with and must be incorporated into the Department’s Statewide Transportation Plan and the Statewide Transportation Improvement Program (STIP). The Department will only consider Proposers that have proven experience, financial resources, and professional expertise to deliver high-quality, economically feasible Projects.

An Unsolicited Proposal is a request by an entity for a Project that is not the subject of a procurement issued and has not been initiated by the Department to develop a transportation facility. The Department will accept and review Unsolicited Proposals upon submission of the Unsolicited Proposal and the appropriate fee. If the Unsolicited Proposal meets the stated requirements, the Unsolicited Proposal will also be submitted to the affected local governments for review as required by statute. Should the Project be deemed a viable Project by the Department and one which the Department wishes to pursue, then the Department may, but is not required to, solicit for competing Proposals.

The Department reserves the right to streamline, modify and shorten the Project screening process, including omitting or combining screening steps, if the Department determines that doing so is in the best interests of the State and the Department. These procedures may be changed from time to time at the Department’s discretion.
SECTION 4.3 UNSOLICITED PROPOSALS
ORGANIZATIONAL STRUCTURE

The organizational structure of the Unsolicited Proposals Program provides flexibility for managing more than one Project and/or Project type concurrently without placing unnecessary hardship on existing Department resources.

The Department may seek participation in the Unsolicited Proposals Program of local, state, and federal stakeholders. The Unsolicited Proposals Program Manager will ensure that the appropriate internal departmental representatives integrate external stakeholders, such as affected local stakeholders, FHWA, the State Attorney General’s Office, the State Controller’s Office and the State Treasurer’s Office, into the procurement and evaluation processes, as and when appropriate. Such participants may also assist in identifying candidate Projects, contract provisions, and implementation strategies to ensure that those most impacted and those with regulatory responsibility contribute in providing recommendations for the betterment of the Nevada transportation system.

4.3.1 Unsolicited Proposals Roles and Responsibilities

As shown in Figure 4-2, the Department’s Deputy Director/Chief Engineer will serve as the Pioneer Program Director, and the Deputy Director of Southern Nevada will oversee the activities of the Unsolicited Proposals Program Advisory Committee. It is the intent of the Department to utilize existing personnel to the fullest extent possible and to hire outside service providers and/or vendors as necessary to plan for and implement the Unsolicited Proposals Program and Projects.
Figure 4-2: Department Organizational Structure

The organizational chart in Figure 4-3 shows the relationships of the key members of the Unsolicited Proposals Program, which include the Unsolicited Proposals Director, the Unsolicited Proposals Program Manager, and the Project Manager, along with the support teams required to execute the Pioneer Program. These support teams are the Unsolicited Proposals Program Advisory Committee, the Project Review Team, the Development Team, and the Project Management Team.

### 4.3.1.1 Pioneer Program Director

The Deputy Director/Chief Engineer serves as the Pioneer Program Director and oversees the development and implementation of the Unsolicited Proposals Program, reporting all Unsolicited Proposals Program and Project activities to the Department Director. The Program Director role requires tracking directives required for the Pioneer Program, liaising with other public agencies regarding the Unsolicited Proposals Program and Projects in the Program, ensuring compliance with current
statutes and regulations, as well as maintaining knowledge of other agency items affecting the Unsolicited Proposals Program. The Program Director oversees the Program public relations, stakeholder coordination, and informational outreach to the public and local, state, and federal authorities.

As Projects are identified for consideration for the Unsolicited Proposals Program, the Pioneer Program Director reviews all recommendations during various review processes. During the development phase of a Project, key decisions filter through to the Program Director and the Board for review and approval to ensure that the intent of the Program and the direction of the Department are being met.

### 4.3.1.2 Unsolicited Proposals Program Advisory Committee

The Unsolicited Proposals Program Advisory Committee (UPPAC) is chaired by the Deputy Director of Southern Nevada and includes members of the Department and regional transportation commissions, transportation professionals, and other entities affected by Projects being considered. The UPPAC reviews Unsolicited Proposals that are being considered by the Department and provides recommendation to the Pioneer Program Director on whether and how to advance the Project for further evaluation.

### 4.3.1.3 Unsolicited Proposals Program Manager

The Department’s Project Management Chief serves as the Unsolicited Proposals Program Manager under the direction of the Pioneer Program Director. The Unsolicited Proposals Program Manager’s responsibilities include addressing the needs of each Project to accomplish Project goals, ensuring compliance with procedures established for the Unsolicited Proposals Program, and ensuring that appropriate coordination with other agencies and stakeholders is taking place. As part of his/her duties, the Unsolicited Proposals Program Manager assigns a Project Manager to Unsolicited Proposals Program Projects and candidate Projects to lead Project activities. The Unsolicited Proposals Program Manager also reviews Project reports provided by the Project Managers and provides recommendations for advancing Projects to the Pioneer Program Director. The Unsolicited Proposals Program Manager provides reports to the Unsolicited Proposals Program Director on the Unsolicited Proposals Program and on Projects within the Unsolicited Proposals Program.
4.3.1.4 Project Manager

The Project Manager, designated by the Unsolicited Proposals Program Manager, is responsible for scope, budget, schedule and quality process of a Project. The Project Manager manages and oversees a specific Unsolicited Proposals Program Project through selection, procurement, contract execution, and design and construction implementation to maintain consistency in the approach and to provide valuable Project knowledge throughout the entire process. As there may be more than one Project being considered for the Unsolicited Proposals Program at any given time, there may be more than one Project Manager, each assigned a different Project, under the direction of the Unsolicited Proposals Program Manager. The Project Manager is responsible for assembling and managing the teams required to carry the assigned Project through the various Project phases. The Project Manager is also responsible for reporting typical Project items, such as budget, scope, schedule, staffing requirements, and other issues, to the Unsolicited Proposals Program Manager.
Depending on the Project complexities, the Unsolicited Proposals Program Manager may form a Project Management Team. The Project Management Team may be comprised of Project Management Division staff, and/or service providers. The PMT is responsible for supporting the Project Manager in administering, implementing, and maintaining the integrity of the entire procurement and implementation process.

Once a Project is procured and the PPA is signed, the Project Management Team will oversee the Department’s contractual responsibilities for the term of the PPA. The team will provide oversight during the design and construction of the Project, as well as any operations and maintenance phase. Given the length of the term of
some PPAs and the different phases of work (e.g., design and construction and operations and maintenance), it is anticipated that the Project Management Team composition may change over time.

### 4.3.1.6 External Service Providers

The Department may retain individuals or firms to provide consulting services to assist the Department as it deems appropriate with the Pioneer Program and Pioneer Program Projects. Technical, legal, financial, traffic and revenue and insurance service providers under contract directly with the Department or through a sub-service provider agreement can provide the resources and expertise necessary to efficiently and effectively implement the Pioneer Program.

### 4.3.1.7 Project Review Team

The Project Review Team (PRT) is established and lead by the Project Manager to assist, as needed, in conducting the High-Level Project Screening and Project Evaluation for a specific Unsolicited Proposal. For each Unsolicited Proposal being considered, the PRT will include Department representatives and representatives of affected local and federal agencies, each having the technical expertise required for conducting the Project assessments. At the discretion of the Project Manager, and as approved by the Pioneer Program Manager, the PRT may be supported by expert outside technical, legal, and financial service providers. The PRT will make a determination based on the Project assessments as to whether or not the Unsolicited Proposal is a good candidate Project for the Pioneer Program. The PRT will summarize its evaluations and recommendations in a High-Level Project Screening Report and in a Project Evaluation Report and will submit these reports to the Pioneer Program Manager. The Unsolicited Proposal High-Level Project Screening process is described in Section 4.4.4, and the Unsolicited Proposal Project Evaluation Process is described in Section 4.4.6.

### 4.3.1.8 Development Team

The Development Team is assembled and led by the Project Manager once a Project has been approved for procurement. The Development Team prepares the Project-specific technical, legal, and financial requirements for the Project procurement documents, i.e., Request for Letter of Interest (RLOI), Request for Qualifications (RFQ), and the Request for Proposals (RFP). The Department’s technical experts in the areas of Roadway Design, Structures, Environmental, Hydraulics, Utilities, Right of Way (ROW), Traffic/Safety, Intelligent Transportation Systems (ITS), Construction, Operations and Maintenance, Pavement and Geotechnical, Public Information, Landscaping and Aesthetics, and Rail may be
members of the Development Team for the technical portions of the documents depending on the type of project under development. At the Project Manager’s discretion, and as approved by the Pioneer Program Manager, outside technical, legal, and financial service providers may be utilized to support the efforts of the Development Team.
SECTION 4.4  PROJECT IDENTIFICATION PROCESS

The Department has developed a process for the evaluation and selection of Unsolicited Proposals, which constitutes the identification phase in Figure 4-1. The focus of the Unsolicited Proposals Program is to select Projects that promote the priorities of the Department and the Unsolicited Proposals Program; serve a public purpose; and meet the needs identified in state, regional, and local transportation plans.

Generally, all Unsolicited Proposals will proceed through the Project Identification Process as shown in Figure 4-4. However, the Department reserves the right to streamline, modify and shorten the screening process, including omitting or combining screening steps, if the Department determines that doing so is in the best interests of the State and the Department. These procedures may be changed from time to time at the Department’s discretion.
4.4.1 Unsolicited Proposals Application Process

4.4.1.1 Unsolicited Proposals Project Proposal Requirements

Proposers submitting a Project for consideration for the Unsolicited Proposals Program must deliver in a sealed box or boxes five (5) bound hardcopies and five (5) compact discs containing electronic copies of the Unsolicited Proposal to the Department at the following address:

Nevada Department of Transportation
Unsolicited Proposals Program
Agreement Services Division
NDOT reserves the right to request additional copies of a submitted Unsolicited Proposal should NDOT decide that additional copies of the Proposal are necessary for it to complete its review.

Unsolicited Proposals received by Agreement Services will be considered confidential, except as noted otherwise in these Guidelines. Submitted Unsolicited Proposals will be kept secured in Agreement Services, except as required for the High-Level Project Screening and Project Evaluation, or until such time the Proposal is approved by the Pioneer Program Director.

### 4.4.1.2 Unsolicited Proposal Requirements

Unsolicited Proposals shall be clearly marked “Unsolicited Proposal”. Pursuant to NRS 408.5475, an Unsolicited Proposal must include, at a minimum, the following information:

- A topographic map indicating the location of the transportation facility
- A description of the transportation facility, including, without limitation, the conceptual design of the transportation facility and all proposed interconnections with other transportation facilities
- The projected total cost of the transportation facility over its life and the proposed date for the development of or the commencement of the construction of, or improvements to, the transportation facility
- A statement setting forth the method by which the person submitting the request proposes to secure all property interests required for the transportation facility. The statement must include, without limitation:
  - The names and addresses, if known, of the current owners of any property needed for the transportation facility
  - The nature of the property interests to be acquired
  - Any property that the person submitting the request proposes that the Department acquires.
- Information relating to the current transportation plans, if any, of any governmental entity in the jurisdiction of which any portion of the transportation facility is located
♦ A list of all permits and approvals required for the development or construction of or improvement to the transportation facility from local, state, or federal agencies and a projected schedule for obtaining those permits and approvals

♦ A list of the facilities of any utility or existing transportation facility that will be crossed by the transportation facility and a statement of the plans of the person submitting the request to accommodate such crossings

♦ A statement setting forth the general plans of the person submitting the request for financing and operating the transportation facility, which must include, without limitation:
  
  o A plan for the development, financing and operation of the transportation facility, including, without limitation, an indication of the proposed sources of money for the development and operation of the transportation facility, the anticipated use of such money and the anticipated schedule for the receipt of such money

  o A list of any assumptions made by the person about the anticipated use of the transportation facility, including, without limitation, the fees that will be charged for the use of the transportation facility, and a discussion of those assumptions

  o The identification of any risk factors identified by the person submitting the request that are associated with developing, constructing or improving the transportation facility and the plan for addressing those risk factors

  o The identification of any local, state or federal resources that the person anticipates requesting for development and operation of the transportation facility, including, without limitation, an anticipated schedule for the receipt of those resources and the effect of those resources on any statewide or regional program for the improvement of transportation

  o The identification and analysis of any costs or benefits associated with the proposed facility, performed by a professional engineer who is licensed pursuant to Chapter 625 of NRS.

♦ The names and addresses of the persons who may be contacted for further information concerning the request

♦ Any additional material and information that the Department may request which shall include:
The full and legal name of the Proposer. If the Proposer is a consortium, joint venture, or partnership, the Unsolicited Proposal shall identify each of the members of the consortium, joint venture, or partnership.

The Proposal shall identify any construction firms, engineering firms, legal advisors, financial advisors, operators, or other significant service providers or contractors involved in the Proposal.

An executive summary, not greater than five (5) pages. The executive summary shall:

- Generally describe the improvements involved, the location of the improvements, and anticipated benefit to the state, regional, and/or local transportation networks
- Identify the Proposer. If the Proposer is a consortium, joint venture, or partnership, the executive summary shall identify each of the members of the consortium, joint venture, or partnership
- Identify any construction firms, engineering firms, legal advisors, financial advisors, operators, or other significant service providers or contractors involved in the Proposal.

All applicable review fees. Pursuant to NRS 408.5483.4, the Department shall charge a reasonable fee to cover the processing, review, and evaluation of an Unsolicited Proposal submitted pursuant to NRS 408.5475 or 408.548.

- The administration fee shall be made up of two parts, an Application Fee in the amount of $5,000 and a Review Fee in the amount of $30,000. Both checks must be made payable to the Nevada Department of Transportation.
- Both parts of the administration fee shall be submitted in the form of cashier’s checks from a bank authorized to do business in the State of Nevada.
- The administration fee shall be included with the Unsolicited Proposal in two clearly marked separate sealed envelopes.
- Failure to include the administration fee shall result in the Unsolicited Proposal being returned to the Proposer.
- The Application Fee shall be used for the Completeness Review described in Section 4.4.2 below.
Should, pursuant to the Completeness Review described in Section 4.4.2 and/or the Unsolicited Proposals Program Advisory Committee Review described in Section 4.4.3 below, the Department decide that the Unsolicited Proposal lacks merit to be further considered, the Review Fee shall be returned to the Proposer. Otherwise, the Review Fee shall be retained by the Department.

The Department reserves the right to change the administration fee at its discretion.

In addition to the above required, a Proposer must submit adequate information for the Department to perform the High Level Project Screening as outlined in Section 4.4.4.1.

A Proposer shall clearly identify and mark confidential information in the Unsolicited Proposal. However, the final determination of information that is deemed to be confidential shall be made by the Department. Financial information will be considered by the Department to be confidential. All information contained in the executive summary shall be deemed public information and will not remain confidential.

Incomplete Unsolicited Proposals will be rejected and will not be considered for inclusion in the Unsolicited Proposals Program. The Department may reject any Unsolicited Proposal at any time and for any reason in its sole discretion.

### 4.4.2 Completeness Review

Upon receipt of an Unsolicited Proposal, Agreement Services will notify the Pioneer Program Director, the Unsolicited Proposals Program Advisory Committee Chairman, the Unsolicited Proposals Program Manager, and the Proposer in writing that the Department has received the Unsolicited Proposal. The timeframe for the Completeness Review will be established at the sole discretion of Agreement Services and will be based on Agreement Services’ workload, availability of resources, and the complexity of the Unsolicited Proposal.

Agreement Services will notify the Accounting Department in writing that an Unsolicited Proposal has been received. This correspondence will include a request that a work order be assigned to the Unsolicited Proposal. Accounting will assign a work order, by which it will track costs associated with the administration and review of the Proposal, and will notify Agreement Services, the Pioneer Program Director, Unsolicited Proposals Program Manager and the Unsolicited Proposals Program Advisory
Committee of the assigned work order number in writing. This information will be used to help determine the need of future Unsolicited Proposal administration fee adjustments, and, if needed, the amounts of the adjustments.

Once a work order has been established, Agreement Services will send the submitted Application Fee check to Accounting to be deposited by Accounting. Agreement Services will also send the submitted Review Fee check to Accounting to be held in a safe until Agreement Services and Accounting are notified by the Pioneer Program Director or his/her designee that the Unsolicited Proposal has been advanced to the High-Level Project Screening.

Using the Completeness Review Checklist included in Appendix G, Agreement Services will conduct a Completeness Review to ensure that the Proposal contains all of the required information and meets statutory requirements. The Department may, in its discretion, reject any Proposal at any time and for any reason.

Agreement Services may, in its discretion, request a Proposer to correct minor deficiencies in a submitted Unsolicited Proposal. Failure of the Proposer to correct such deficiencies within the time period specified by NDOT will be deemed as the Proposer withdrawing the Unsolicited Proposal. The time period allowed for correcting deficiencies will be based on type and extent of information requested and will be determined by Agreement Services.

If the Unsolicited Proposals Program Project Proposal is withdrawn or if it is rejected by Agreement Services during the Completeness Review, Administrative Services will:

♦ Notify the Pioneer Program Director, the Unsolicited Proposals Program Advisory Committee, and the Unsolicited Proposals Program Manager in writing that the Unsolicited Proposal has been rejected with an explanation as to why.

♦ Notify Accounting in writing that the Unsolicited Proposal has been rejected with instructions to Accounting to return the Review Fee check to Administrative Services (Accounting will then return the Review Fee check to Administrative Services).

♦ Notify the Proposer that the Proposal was rejected and return the Review Fee check to the Proposer.

If the Unsolicited Proposal passes the Completeness Review, Agreement Services will notify the Pioneer Program Director, the Unsolicited Proposals Program Advisory Committee, and the Unsolicited Proposals Program Manager of this in writing, and this correspondence will include the Proposal’s executive summary and the work order number.
4.4.3 Unsolicited Proposals Program Advisory Committee Review

If requested by the Pioneer Program Director, the Unsolicited Proposals Program Advisory Committee will review the Unsolicited Proposal’s executive summary to evaluate the appropriateness of the Project as an Unsolicited Proposal. Upon notification by Agreement Services that the Unsolicited Proposal has passed the Completeness Review, the Unsolicited Proposals Program Advisory Committee Chairman will schedule a meeting of the Unsolicited Proposals Program Advisory Committee. At this meeting, the Unsolicited Proposals Program Manager will present the Unsolicited Proposal to the Committee. After reviewing the Unsolicited Proposal, The Unsolicited Proposals Program Advisory Committee Chairman will notify the Pioneer Program Director in writing of the Committee’s recommendation regarding the Unsolicited Proposal.

If, after the Unsolicited Proposals Program Advisory Committee’s review, the Pioneer Program Director advances the project for a High-Level Project Screening, he/she will notify the Unsolicited Proposals Program Advisory Committee Chairman, the Unsolicited Proposals Program Manager, Agreement Services, and Accounting of this decision in writing.

If the Pioneer Program Director rejects the Unsolicited Proposal after the Unsolicited Proposals Program Advisory Committee’s review, he/she will notify the Unsolicited Proposals Program Advisory Committee Chairman, the Unsolicited Proposals Program Manager, Agreement Services, and Accounting of his/her decision in writing. If the Proposal is rejected, Accounting will send the Review Fee check to Administrative Services. Administrative Services will then notify the Proposer in writing that the Unsolicited Proposal has been rejected and will return the Review Fee check to the Proposer.

4.4.4 High-Level Project Screening

The purpose of the High-Level Project Screening is to determine whether the proposed Project has the potential to be a successful Unsolicited Proposal Project and warrants the dedication of resources for additional evaluation. The High-Level Project Screening should eliminate or defer the consideration of proposed Projects with significant issues or shortcomings. Examples of possible shortcomings may be such factors as strong public and/or political opposition, potentially significant environmental issues that cannot be effectively mitigated, or no apparent benefit to be gained by pursuing the Project other than through the traditional procurement, financing, or delivery processes.
If an Unsolicited Proposal is advanced to a High-Level Project Screening by the Pioneer Program Director, the Unsolicited Proposals Program Manager will assign a Project Manager to establish and lead a Project Review Team (PRT) in conducting the High-Level Project Screening. Accounting will deposit the Review Fee check.

Agreement Services will notify the Proposer in writing if the Unsolicited Proposal is scheduled for a High-Level Project Screening. This correspondence will also notify the Proposer that the Review Fee check is being deposited. The timeframe for the High-Level Project Screening will be established at the sole discretion of the Project Manager and will be based on the Department’s workload, availability of resources, and the complexity of the Unsolicited Proposal.

The PRT may, in its discretion, request additional information or clarifications from the Proposer regarding the Unsolicited Proposal. In such instances, the Project Manager will notify Agreement Services of this request in writing. Agreement Services will submit the requests to the Proposer in writing. Failure of the Proposer to provide the requested information within the specified time period may be deemed as the Proposer withdrawing the Unsolicited Proposal. The time period allowed for responding will be based on the type and extent of information requested and will be determined by the PRT.

Following the report outline provided in Appendix G the PRT will summarize the results of the High-Level Project Screening in a High-Level Project Screening Report. This report will identify the PRT’s recommendation to reject the Unsolicited Proposal or advance it to a Project Evaluation.

The Project Manager will submit the High-Level Project Screening Report to the Unsolicited Proposals Program Manager, who, in turn, will review the report and forward it and his/her recommendation, in writing, to the Pioneer Program Director. The Pioneer Program Director may reject the Unsolicited Proposal, request additional information from the PRT, or advance the Unsolicited Proposal to a Project Evaluation. If additional information is requested, the PRT will provide this information in the time period required by the Pioneer Program Director.

The Pioneer Program Director will notify in writing the Unsolicited Proposals Program Advisory Committee Chairman, Agreement Services, Accounting, and the Unsolicited Proposals Program Manager of his/her decision to either advance the Unsolicited Proposal for a Project Evaluation or to reject it. If the Unsolicited Proposal is rejected, Agreement Services will notify the Proposer of this decision in writing.

### 4.4.4.1 High-Level Project Screening Criteria

In order to be considered for the Unsolicited Proposals Program, the proposed Project should be consistent with the State’s objectives as provided in the current
Statewide Transportation Improvement Program (STIP), the Department’s current Statewide Transportation Plan (NevPLAN), and other pertinent state, regional, and local transportation plans. Successful Projects will comply with the requirements and intent of the Unsolicited Proposals Program as well as sound transportation policy. To this extent, High-Level Project Screening criteria have been identified for the purposes of conducting a high-level assessment of an Unsolicited Proposal. These criteria will be utilized to evaluate the Unsolicited Proposal based on information provided in the Unsolicited Proposal and other readily available information, plans, and/or documents. The High-Level Project Screening criteria are outlined below.

4.4.4.1.1 Consistency with Statewide Transportation Plan and Need

This purpose of this criterion is to determine, at a high level, whether a Project is consistent with an adopted Statewide Transportation Plan. The screening will consider whether or not a project is included in an adopted Statewide Transportation Plan and, if so, what the Project’s ranking is in the plan. If a Project is not included in an adopted Statewide Transportation Plan, the screening will consider whether the Project is a potentially viable alternative to a Project in an adopted Statewide Transportation Plan, whether the Project is included in any local or regional transportation plans, whether the Project meets a transportation need, whether the Project is consistent with the goals and objectives of the adopted Statewide Transportation Plans, and other relevant issues.

4.4.4.1.2 Network Continuity Considerations

The purpose of this criterion is to determine, at a high level, how well a Project fits within the existing and planned transportation system. Network continuity considerations for a Project will include its potential to function as an integral element of an overall network, including its potential to enhance multimodal aspects of a transportation network. If a Project is not an integral element of an overall network, network continuity considerations will include its potential to reasonably operate in isolation; its potential to improve mobility; its potential to enhance the performance and/or viability of an adjacent facility; and other similar considerations.

4.4.4.1.3 Constructability

The purpose of this criterion is to assess, at a high level, the ease or difficulty of constructing a Project. Constructability will be evaluated based on readily available information regarding a number of factors, such as: potential conflicts with existing facilities or developments, constraints due to topographic features or environmental issues, problematic geotechnical conditions, the ease of facility maintenance, the likelihood of multiple construction phases that would
significantly increase the Project costs and schedule, the presence of sufficient construction access, and maintenance of traffic during construction and other applicable factors. As appropriate, this criterion could include transfer stations, depots, or other site-specific issues that may need to be addressed. Because this is a high-level assessment, it is possible that one or more factors that could impact the Project’s constructability may be unknown at the time of the High-Level Project Screening.

4.4.4.1.4 Congestion Relief Potential

The purpose of this criterion is to assess, at a high level, the extent to which a Project will provide congestion relief, taking into consideration current and anticipated future congestion levels within the vicinity of the Project. This assessment will consider a Project’s potential to increase or decrease congestion on an adjacent facility, either by providing additional capacity or expanding the modal options. Where new capacity is being added, the high-level congestion impact assessment will generally be based on the existing facilities being improved, both with and without the improvement. Where new facilities are being added, particularly in non-urban locations, alternative measures of determining congestion relief potential will be utilized.

4.4.4.1.5 Potential Safety Impacts

The purpose of this criterion is to assess, at a high level, the positive and negative safety impacts associated with a Project. Safety is an important consideration for Projects. While most Projects would be expected to have positive impacts on safety, such impacts may come in a number of forms. This assessment will be based on general observations of existing conditions within the vicinity of the proposed Project and on the general nature of the proposed improvements. Because this is a high-level assessment, it is possible that the potential safety impacts may be unknown at the time of the High-Level Project Screening.

4.4.4.1.6 Social Impacts

The purpose of this criterion is to identify, at a high level, potential social impacts of a Project. This evaluation will consider issues such as the general magnitude of ROW required, potential relocation of residences and/or businesses, noise, disruption during construction, aesthetic impacts on adjacent property and environmental justice, and other similar issues. Because this is a high-level assessment, it is possible that some social impacts may be difficult to determine at the time of the High-Level Project Screening.
4.4.4.1.7 Environmental Impacts and Status

The purposes of this criterion are to determine, at a high level, if any previous environmental studies have been conducted for a Project and, if so, the status of these assessments; to identify, at a high level, any potential environmental impacts, including cultural resource impacts, of a Project; and to determine, at a high level, the ease of providing for mitigation of these impacts. The environmental screening will consider both physical impacts on the natural environment and other environmental impacts on adjoining properties and communities caused by the proximity of the Project. Projects that have cleared the environmental process and have received a Record of Decision (ROD), a Finding of No Significant Impact (FONSI) or a Categorical Exclusion (CE) may receive greater consideration in the review process. Because this is a high-level assessment, it is possible that some environmental impacts and statuses may be difficult to determine at the time of the High-Level Project Screening. If an Unsolicited Proposal contemplates a pre-development agreement PPP, that will also be considered in the review process.

4.4.4.1.8 Project Status

The purpose of this criterion is to assess, at a high level, the “readiness” of the Project – the current state of the Project in terms of preliminary engineering, environmental clearances, utility conflicts, ROW needs and acquisition, initial/concept-level/preliminary engineering – and what is necessary to make the Project “ready” for procurement. The screening will consider, at a high level, the risks associated with the Project and who will bear these risks. It will also consider, at a high level, the nature of the PPP proposed and whether or not the Project’s schedule can be expedited through delivery under the Unsolicited Proposals Program.

4.4.4.1.9 Financial Feasibility

The purpose of this criterion is to assess, at a high level, whether or not sufficient funding has been or can be identified. Consideration will be given to Projects that include funding from private entities and/or a means to better leverage public funding of the Project. The Unsolicited Proposal should identify any potential funding shortfall, as well as strategies for closing the shortfall. For anticipated Project funding, all sources and the amount of funding expected from each source should generally be identified in the Unsolicited Proposal. Because this is a high-level assessment, it is possible that detailed funding sources and uses may be difficult to determine at the time of the High-Level Project Screening.
4.4.4.10 Stakeholder and Citizenry Acceptability

The purpose of this criterion is to determine, at a high level, the level of support that a Project has among stakeholders, elected officials, transportation officials, and the public at large. The screening will consider the existing levels of support, the issues raised by any Project opposition, and potential means to mitigate any opposition. Evidence of support may include media coverage, letters of support and/or opposition, polling data, or written comments provided to NDOT. Because this is a high-level assessment, it is possible that the level of support among stakeholders, elected officials, transportation officials, and the general public may be unknown at the time of the High-Level Project Screening.

4.4.4.11 Impact on Other Projects

The purpose of this criterion is to assess, at a high level, the impacts that the proposed Project may have on other projects and the impacts that other projects may have on the proposed Project. Such impacts may include phasing, detours, traffic operations, whether connectivity to the Project would mitigate bottlenecks or congestion on the system, and other similar impacts. Because this is a high-level assessment, it is possible that Project impacts may be unknown or difficult to determine at the time of the High-Level Project Screening.

4.4.5 Intergovernmental Review

Upon the Department’s completion of its High-Level Screening and determination that the Unsolicited Proposal should advance to the Project Evaluation phase, Administrative Services must furnish a copy of the Unsolicited Proposal’s executive summary to each governmental entity that has jurisdiction over an area in which any part of the transportation facility is located. The executive summary must be submitted to the governmental entities not later than 10 days after notification of the Department’s decision to advance the Unsolicited Proposal to the Project Evaluation stage. The submittal shall include a letter:

- Informing the entity of its proposed Project;
- Indicating that the Department has reviewed the Proposal and requested that the Proposer submit the executive summary to the entity; and
- Informing the entity that it must submit its comments to the Department within 30 days after receipt of the executive summary.

In accordance with NRS 408.5483(3), the governmental entity must submit, in writing and within 30 days after receipt, its comments for consideration to the Department. The
governmental entity must indicate whether the proposed transportation facility is compatible with its local, regional or statewide transportation plan or program.

4.4.6 Project Evaluation

The purposes of the Project Evaluation are to ensure that the proposed Project is desirable for delivery under the Unsolicited Proposals Program and has a reasonable potential for success. The Project Evaluation will examine the Unsolicited Proposal using the High-Level Project Screening criteria described in Section 4.4.4, performing a more in-depth evaluation for each criterion. In particular, the Project Evaluation will focus on outstanding issues and risks identified in the High-Level Project Screening Report. The Project Evaluation will also include a more detailed assessment and allocation of Project risks, an analysis of the potential PPP delivery method(s) and consideration of the comments provided by local affected entities during the Intergovernmental Review described in Section 4.4.5. For criteria questions, refer to the Unsolicited Proposal Project Evaluation Criteria Checklist in Appendix G.

If an Unsolicited Proposal is advanced to a Project Evaluation:

♦ The Project Manager will establish and lead a PRT in conducting the Project Evaluation.

♦ The Project Manager will prepare a project management plan following the Department Project Management Guidelines. The PMP must be reviewed by the Program Manager and ultimately endorsed by the PRT.

♦ The Project Manager and the PRT will determine if service provider technical, financial, and/or legal assistance is needed to conduct the Project Evaluation. If service provider support is required, the Project Manager will utilize such resources that are under contract or otherwise follow the Department’s current procurement policy.

♦ Agreement Services will notify the Proposer of this decision in writing. The timeframe for the Project Evaluation will be established at sole the discretion of the Program Manager and will be based on the Department’s workload, availability of resources, and the complexity of the Unsolicited Proposal.

♦ Agreement Services will publish the Unsolicited Proposal’s executive summary on the Department’s website.

♦ The PRT members will sign the Confidentiality Agreement included in Appendix G indicating that they will not release to a third party, or otherwise make public, any financial information submitted by the
Proposer or other information submitted by the Proposer and deemed confidential by the Department.

The PRT may, in its discretion, request additional information or clarifications from the Proposer regarding the Unsolicited Proposal. In such instances, the Project Manager will notify Agreement Services of this request in writing. Agreement Services will submit the requests to the Proposer in writing. Failure of the Proposer to provide the requested information within the specified time period may be deemed as the Proposer withdrawing the Unsolicited Proposal. The time period allowed for responding will be based on the type and extent of information requested and will be determined by the PRT.

Following the report outline provided in Appendix G, the PRT will summarize the results of the Project Evaluation in a Project Evaluation Report. This report will identify the PRT’s recommendation to reject or approve the Project, and the recommended Project delivery method if the Project is recommended.

The Project Manager will submit the Project Evaluation Report to the Unsolicited Proposals Program Manager, who, in turn, will review the report and forward it and his/her recommendation to the Pioneer Program Director. The Pioneer Program Director may reject the Project, request additional information from the PRT, or recommend the Project to the Department Director. If additional information is required, the PRT will provide this information in the time period required by the Pioneer Program Director.

If the Pioneer Program Director approves the Unsolicited Proposal, the Pioneer Program Director will notify the Department Director, the Unsolicited Proposals Program Advisory Committee Chairman, the Unsolicited Proposals Program Manager, Accounting, and Agreement Services of this recommendation in writing.

If the Pioneer Program Director rejects the Unsolicited Proposal, The Pioneer Program Director will notify the Department Director, the Unsolicited Proposals Program Advisory Committee Chairman, the Unsolicited Proposals Program Manager, Accounting, and Agreement Services of this decision in writing with an explanation for the decision. Agreement Services will notify the Proposer in writing that the Unsolicited Proposal was rejected.

4.4.7 Department Director Review and Advancement to Procurement

If the Unsolicited Proposal is recommended for procurement by the Pioneer Program Director, the Pioneer Program Director will meet and/or coordinate with the Department Director as requested by the Department Director to discuss the Unsolicited Proposal.
The Department Director may, in his/her discretion, request additional information or clarifications from the Proposer regarding the Unsolicited Proposals Program Project Proposal. In such instances, the Pioneer Program Director will submit this request in writing to Agreement Services. Agreement Services will submit the request in writing to the Proposer. Failure of the Proposer to provide the requested information within the specified time period will be deemed as the Proposer withdrawing the Unsolicited Proposals Program Project Proposal. The time period allowed for responding will be based on the type and extent of information requested and will be determined by the Department Director.

The Department Director may either reject or approve the Unsolicited Proposal. The Department Director will notify the Pioneer Program Director of this decision in writing. The Pioneer Program Director will notify the UPPAC Chairman, the Unsolicited Proposals Program Manager, Accounting, and Agreement Services of this decision in writing. Agreement Services will notify the Proposer in writing if the Unsolicited Proposal is rejected.

If the Unsolicited Proposal is approved, the Unsolicited Proposals Program Manager will notify the Project Manager of this decision, and the Project Manager will follow current Department processes for obtaining FHWA review and approval of required federal actions. Once the Unsolicited Proposal is approved by the FHWA, if required, it will advance to the Project procurement process.
SECTION 4.5  PPP PROJECT DEVELOPMENT
CONSIDERATIONS

Preparing a Project for a PPA procurement is a unique experience in that the effort involves creating documents much different than those employed in a traditional design-bid-build project. It is important to have a clear understanding of the desired outcomes throughout the PPP Project development stage. Clearly identify and track the desired outcomes (improve traffic flow, minimize traffic impacts during construction, minimize impacts to wetlands, short construction timeline, etc.) throughout development of the Project. If a fast track Project is the driving force, the level of development may be different than if a large amount of innovation is desired.

Internal coordination and commitment of staff to the process is important in PPP Projects in order to produce a clear and concise scope of work. The Project success is dependent on having an effective plan of delivery and having Project team’s insight and input from the beginning.

The PPP Project development typically involves the following steps:

♦ Assemble a Project team.
♦ Define Project goals.
♦ Allocate Project risks.
♦ Perform preliminary engineering.

4.5.1  Assembling the Project Team

Assemble a team to advance the financial, legal, contractual and technical aspects of the Project. The Project Manager will initially focus on development of the RFQ and RFP package; while technical members of the Project team may focus on specific technical requirements. The ultimate size and makeup of the Project team will depend on Project requirements. Understand the adequate level of development of technical specifications and the interaction of the various elements may be necessary. This effort may be significant if the team has had limited exposure to the PPP process.

Unlike the Department’s traditional Project delivery process, in which individual team members may not be active during all phases of a Project’s lifecycle, PPP Projects benefit greatly from the continued involvement of key Department personnel from Project inception to Project completion. For example, the resident engineer and maintenance personnel may participate in the RFP development process to ensure that
construction-phase and O&M issues are given the appropriate attention in both the RFP itself and in the evaluation and selection of the Private Partner. Similarly, the engineers that participate in the preliminary design work and in preparation of the RFP would remain involved after contract award to oversee and review the Private Partner’s design submittals.

4.5.1.1 Project Management Plan (PMP)

The Project manager must prepare a PMP for the Procurement phase of the Project. The PMP must be endorsed by the Pioneer Program Director, Pioneer Program Manager, the Selection Official, and key team members of the Procurement Process. Refer to the latest version of the Project Manager Guidelines on how to prepare a PMP.

4.5.1.2 Service Provider Support for PPA Procurement and Implementation

The Department may require service provider support in preparation and administration of PPAs. The Project Manager and the Project team, through Administrative Services, will work together to develop a preliminary scope of work, service provider man-hour/cost estimates/budgets and a service provider procurement schedule. The Project Manager will submit this information to the Pioneer Program Manager for review and approval. The service provider cost estimate and procurement schedule will be used in preparation of Project cost and schedule estimates. The Pioneer Program Manager will follow Department’s standard processes to obtain Director’s approval for service provider procurement. Potential service providers for PPAs may include technical, financial, legal, insurance and traffic and revenue advisors.

4.5.2 Project Goals

Clear and concise Project goals are critical to the success of any Project. However, when the Department decides to use an alternative delivery method such as PPP, articulation of these goals takes on even greater importance as they set the foundation for the entire Project development process. Decisions made with respect to risk allocation, RFQ/RFP development, and the Proposal evaluation and Private Partner selection process, all stem from the goals established at Project inception.

Early in the Project development process, the Project team, with input from other key stakeholders as necessary, will develop and refine a list of Project goals. As described below, identification of these goals is just an initial step in a process that extends
through the life of the Project. Adherence to these steps will help ensure that the initial reasons for selecting the DB/DBF approach drive the subsequent decision-making processes.

4.5.2.1 Establish Project Goals

Project goals may address schedule, quality, risk allocation, scope and cost/financial considerations. In this respect, they would correlate to the perceived benefits of using the DB/DBF procurement process. For example, a frequently cited benefit of a PPP Project is shorter overall Project duration. This potential benefit can be directly translated into a Project goal of minimizing Project delivery time or meeting a prescribed completion date.

Example Project goals could include the following:

Schedule Issues:
- Substantial Completion (Final Acceptance) by (date/event)
- Substantial Completion (Final Acceptance) within ____ days of Notice to Proceed
- NEPA clearance by _________ (for a PDA Project)

Cost/Financial:
- Cost not to exceed $____
- Maximum annual availability payments not to exceed $____
- Payment to the Private Partner to be paid over ____ years
- Public contribution/funding not to exceed $____

Quality/Innovation:
- Design life of ____ years
- Warranty of ____ years
- Handback condition to provide ____ years of remaining residual life
- Minimize disruption to residents, businesses, and the traveling public during construction
- Provide for ongoing level of service of _________
- Provide aesthetic solution to minimize visual impact
Scope

- Available funding to build _____
- Available funding to build _____ lane miles

Risk Allocation

- Shift ___ risks to Private Partner

4.5.2.1.1 Rank goals in order of importance

Optimizing schedule, cost/financial, scope and quality goals are rarely possible on a single Project. Tradeoffs are often necessary to ensure that the primary goal is achievable. For example, if meeting a scheduled completion date takes precedence over cost, the Department may have to pay a premium for multiple shifts or overtime. Similarly, funding constraints may require the Department to scale back its expectations regarding quality enhancements. But it might be possible to realize multiple goals for cost and time, if for example the cost of time savings is factored into the equation.

Reaching a consensus on the relative importance of individual Project goals will help the Project team make informed decisions regarding risk management strategies intended to increase the likelihood of achieving the primary Project goal (e.g., time savings), even if at the expense of secondary goals (e.g., cost).

4.5.2.1.2 Communicate Goals

Developing and ranking Project goals will help focus the efforts of the Project team in developing solicitation documents that clearly communicate the Department’s expectations to interested Proposers. Announcing these goals in the solicitation documents will allow Proposers to respond with designs and technical concepts tailored to meet or exceed these expectations.

The best manner in which to reward Proposers for meeting the expressed goals in the RFP is through the use of a best-value procurement process. Best-value procurement allows consideration of both price/financial Proposals and other key non-price factors in the evaluation and selection process. The Project goals often correspond directly to the non-price/financial factors, creating a more transparent means of considering such goals in the Private Partner selection process. See Chapter 2 for more information about best-value procurements.

4.5.2.1.3 Adhere to Goals

Once set, Project goals should not change, except in response to unusual conditions or changed circumstances. Holding to these goals means that once
the Private Partner has been selected and the Project is underway, the Department will administer the contract in a manner consistent with these goals. For example, if a Project goal is to enhance innovation, the Private Partner would be given enough freedom during the design phase to incorporate innovative solutions to the performance criteria established in the RFP.

### 4.5.3 Risk Analysis

Quantitative risk analysis must be performed for all PPP Projects. Quantitative Risk Analysis is numerical modeling of the probability that a Project risk will occur, the impact of such risk if it occurs and whether the Project will meet its cost and schedule objectives. Quantitative analysis is based on a simultaneous evaluation of the impacts of all identified and quantified risks. The result of risk analyses will assist the Project team in identifying actions in response to the Project risks, and concentrating on those risks of most significance. This analysis will also aid the Project team in assignment of Project risks (risk allocations).

### 4.5.4 Risk Allocation

Risk management is an inherently iterative process, and one which, particularly under PPP delivery, can take on the added complexity of allocating risks traditionally held by the Department to the Private Partner.

In general, risk is to be allocated to the party best able to manage and mitigate the adverse impacts of the risk. Whether this party is the Department, the Private Partner, or others is entirely dependent upon Project-specific conditions and the willingness of the Department to potentially pay for the Private Partner to assume responsibility for a high-risk item. The Project team must make a concerted effort to identify which, if any, of the possible Project risks can be transferred to the Private Partner.

Note that when allocating risk, every attempt must be made to clearly assign responsibility to either the Department or the Private Partner, as the concept of shared risk, although valid, can lead to disputes regarding responsibility.

If a risk cannot clearly be assigned to one party, an attempt must be made to subdivide the risk category into more discrete components that can be assigned to individual parties. For example, on the whole, local agency permitting is a risk area that will likely be shared between the Department and the Private Partner. Breaking down risk areas in this manner will help the PMT define Private Partner responsibilities when drafting the RFP package.
The risks described below are examples of those risks that are often considered transferable in whole or in part to the Private Partner. As inappropriate risk transfer will result in higher costs to the Department, every effort must be made to carefully evaluate the party that is in the best position to manage such risks.

### 4.5.4.1 Design Issues

Under traditional design-bid-build delivery, the Department acts as both the owner and the designer. In this role, the Department in effect guarantees the completeness and accuracy of the design and retains most, if not all, of the risk for the success of the design.

In a PPP Project where design and construction is part of the Project scope, several design-related risks shift to the Private Partner. Although the Department will continue to retain responsibility for defining the Project scope and design criteria, the Private Partner, as Designer of Record, has ultimate responsibility for the accuracy of the plans, conformance with established standards and technical/contract requirements, and constructability.

Determining the appropriate level of design by the Department therefore requires a careful balancing of the needs, goals, and risks identified for the Project. Providing too much design can restrict innovation and increase design liability for the Department, whereas providing too little design may result in the Department not receiving what it wants or placing undue risk upon the Private Partner.

Agencies experienced in PPP often report higher levels of Project satisfaction with lower levels of preliminary design (with 10 percent to 30 percent often cited as a benchmark). However, this is not to say that the same level of preliminary design must be applied to every PPP Project, or that every element within a single Project must be taken to the same level of design. Each Project, as well as each component of a single Project, must be examined to determine the extent of preliminary or conceptual design needed to clearly convey the Department’s performance expectations. For certain Project elements, defining performance requirements could require close to 100 percent design, whereas for others, very little design may suffice.

### 4.5.4.2 Environmental Studies, Permitting, and Compliance

Under the PPP delivery process, the Department will generally continue to retain responsibility for obtaining the bulk of the environmental approvals required under the National Environmental Policy Act (NEPA). The preliminary engineering and
environmental studies, definition of major Project features, selection of the preferred alternative, and preparation of the appropriate environmental documents will therefore remain the Department’s responsibility, requiring little change to the Project Report and Environmental Document phase of the Department’s traditional design-bid-build process.

However, for PDA Projects, the Private Partner may have a greater involvement in the environmental process, providing support to the Department as it assesses and evaluates Project alternatives. Such support may include providing studies, reports, analyses and undertaking preliminary engineering. In all cases, this work will be managed and be under the supervision of the Department, who will retain responsibility for preparation of the environmental documentation.

There may be some deviation from the Department’s traditional handling of environmental issues involving permit modifications or amendments necessitated by subsequent changes to, or refinement of, the original design by the Private Partner. Responsibility for any such amendments must be transferred to the Private Partner, including responsibility for any schedule and/or cost impacts incurred in awaiting a final approval by the sponsoring or regulatory agency.

In addition, responsibility for obtaining any other environmental clearances required outside of the NEPA process may also be shifted to the Private Partner, particularly if they relate to more construction-specific or O&M permits and approvals, such as those required for soil disturbing operations. However, prior to shifting this risk to the Private Partner, the Department must carefully consider the appropriate level of conceptual design needed to convey environmental conditions and mitigation requirements to the Private Partner.

Typically, taking preliminary highway design to 10 percent to 30 percent is sufficient to provide enough detail to complete early action permit processes, demonstrate constructability, identify impacts and alternates, and minimize risk to both the Department and Private Partner. If, however, the initial Environmental Assessment or Environmental Impact Statement suggests some high-risk elements (e.g., wetland mitigation), the Department may consider securing the necessary permits itself, in advance of the RFP, or providing a higher level of preliminary design and/or environmental studies to offset some of the risk to the Private Partner.

4.5.4.3 Right-of-way (ROW)

The Department will retain responsibility for obtaining ROW for most PPP Projects. However, under certain circumstances (e.g., areas with high real estate costs), it may be advantageous for the Department to delay acquisition until the Private Partner has selected a final design. In such cases, the Department will, at a minimum, delineate the existing ROW as part of its base data collection. Acquisition
of any additional ROW deemed beneficial or necessary as a result of the Private Partner’s final design could then be requested by the Private Partner. The Department would be responsible for assessing the request, including whether the additional ROW remained within the scope of the environmental permits and potentially acquire the additional property. In such cases, the site conditions and the cost and schedule impacts associated with the additional ROW may be borne by the Private Partner. The Department may also handle the acquisition of temporary construction easements it has identified but might transfer responsibility for acquiring additional temporary easements to the Private Partner. In either case, the Private Partner would be responsible for any schedule or cost impacts associated with the acquisition of additional temporary easements.

### 4.5.4.4 Local Agencies, Utilities, and Railroads

The Department has a long-standing relationship with most local agencies, utilities, and railroads. As such, the Department may be in the best position to influence and obtain the required cooperation from these third party entities.

Where practicable, the Department should obtain the required agreements with these parties prior to its issuance of the RFP to avoid schedule impacts. If these have not been secured by the time of advertisement, the status of any outstanding agreements will be stated in the RFP.

In most cases, however, coordination with utilities and railroads will be included in the Private Partner’s scope of work. Since design is not complete before a PPA is entered into, significant coordination with utility owners is typically required and Project design, which is the responsibility of the Private Partner, is a critical element of that coordination. Requiring that the Private Partner pursue Project-specific master utility agreements and/or specific utility agreements relating to specific relocations may be beneficial. In such cases, the RFP would clearly indicate any related design criteria and requirements, the responsibilities of the Private Partner and the allocation of schedule risk associated with utility coordination and delay.

### 4.5.4.5 Construction

Similar to traditional design-bid-build Projects, in a PPP Project where design and construction is part of the Project scope, the Private Partner will have responsibility for actual construction. However, under PPP delivery, construction responsibilities may extend to quality control/quality assurance, surveying, maintenance of traffic, and similar activities traditionally performed by Department personnel. If such responsibilities are transferred to the Private Partner, the Department would still maintain an active oversight role. The Department may also consider the use of Project warranties to help ensure that the Private Partner upholds quality standards.
4.5.4.6 Unforeseen Conditions

Unexpected conditions (e.g., differing site conditions, hazardous materials, endangered species, etc.) that may arise during construction will usually remain the Department’s responsibility and will be treated as changed conditions; however, it is common in PPP Projects to utilize narrower definitions of site-related conditions which entitle the Private Partner to obtain compensation or schedule change orders (thereby shifting risk in a greater manner than in the design-bid-build context).

Whether retaining or transferring this risk, the Department will continue to conduct initial site investigations, providing sufficient detail in the RFP to establish baseline conditions from which Private Partners can develop their Proposals.

4.5.4.7 Public Relations

Gaining the public’s initial acceptance or endorsement of a Project will remain the Department’s responsibility. In conducting the initial public hearings, the Department will discuss any implications of using the PPP delivery method, particularly if selection of the final Project alignment will remain open until after contract award and the Private Partner’s completion of the design phase of the Project.

Once the Project has gained the public’s favor, it may be appropriate for the Private Partner to assume more of a direct role in addressing public concerns regarding final design selections, maintenance of traffic, local business impacts, budget, schedule, and similar construction-related issues. If the Department does anticipate allocating such responsibility to the Private Partner, the RFP would outline the minimum requirements for staff that will be engaged on the Private Partner’s public outreach program.

Private Partner responsibilities for a public outreach might include the development of a community relations program; responding to inquiries or comments from residents, businesses, or other members of the public; public notifications of closures, shutdowns, or emergencies; and maintaining public contact records, telephone trees, websites, and signage throughout the Project to keep the public informed.

Even if public outreach responsibilities are allocated to the Private Partner, it is important for the Department to continue to preserve its relations with the public through an open and ongoing dialogue. Such discussions will be coordinated with those of the Private Partner to minimize the potential for sending mixed messages to the public.
For PPP projects involving an O&M phase, ongoing public relations will also be important and both specifications and procedures need to be developed to account for this post-construction phase aspect of the Private Partner’s scope of work.

4.5.5 Preliminary Engineering

In a PPP Project where design and construction is part of the Project scope, the Private Partner assumes single point responsibility for both the design and construction of the Project. In most cases, the Private Partner will deliver the Project using design-build (however the design-builder will be a subcontractor to the Private Partner). The Department, however, must still include sufficient preliminary design in the solicitation documents to minimize uncertainty and reduce contingency amounts included in the Proposals submitted by prospective Private Partners.

To develop the basic Project configuration for the solicitation documents, the Department must still perform preliminary engineering and design, similar to that required for a traditional design-bid-build Project. With design-build and PPP, however, the challenge is not to progress this design to a point that shifts design risk back to the Department or precludes any innovation and flexibility on the part of the Private Partner, particularly if innovation is a stated goal of the Project.

To a large extent, the information needed to advance the environmental documents and ROW acquisition will drive the level of preliminary design needed. The risks identified during the risk management process will also indicate where the Department needs to focus its preliminary design efforts.

Some additional guidelines to help establish the appropriate level of preliminary engineering are as follows:

♦ Obtain the information needed to support the NEPA process.
♦ Collect base Project data, but, to the extent possible, reserve the analysis of this data for the Private Partner. Interpretations, design recommendations, extrapolations and analysis should not be undertaken by the Department as they may result in retention of risk that otherwise could be transferred to the Private Partner. Base data collection may include:
  o Preliminary survey and mapping to identify existing and future ROW limits and construction easements associated with the Department’s conceptual design;
  o Geotechnical investigations to define Project design criteria, refine the risk management plan, and establish a baseline for changed conditions;
- Subsurface utility investigations (potholing) to locate and classify utilities;
- Hydraulic and hydrologic analyses to determine flow requirements and any special issues of concern;
- Traffic studies to provide the basis for traffic forecasts, noise studies, air quality studies, intersection channelization requirements, lane configurations, pavement designs, and maintenance and protection of traffic during construction;
- Pavement and subgrade investigations for Projects with existing pavement structures; and
- Bridge condition surveys to determine adequacy of existing structures, if applicable.

♦ Define reasonable limits of ROW acquisition, but allow for some flexibility in the final alignment.

♦ Prepare and execute the appropriate agreements with local government/agencies, Utilities, and railroads to the extent possible and focus such agreements on applicable design criteria, review and response times and scope of work allocations between the Private Partner and the affected entity.

♦ Progress roadway design to a 10 percent to 30 percent level of completion, focusing on:
  - Horizontal and vertical alignment;
  - Project limits and ROW;
  - Vertical clearances;
  - Locations of signal and Intelligent Transportation System (ITS) work; and
  - Interchange types and locations.
  - (Please note that if Project components need to be compatible with existing systems, such as ITS facilities, a higher level of design or specification may be necessary.)

♦ Progress design of structures to a point that allows specification of performance requirements. If possible, define the allowable types of structures, rather than require a specific type, which could hinder innovation.

In general, the preliminary engineering effort will identify the Project’s needs and objectives, but not prescribe solutions. For some Projects, the preliminary engineering studies may suggest the need for additional, more detailed investigations (e.g.,
subsurface utility, or pavement subgrade investigations) to minimize contingency costs related to major risks or unknowns. In most cases, the Project team will have to continually refine its risk allocation strategy as additional information becomes available.

4.5.5.1 Preliminary Survey and Mapping

Preliminary mapping provides survey control for the Project and a base map for initial Project development by the Project team and the Private Partners. Obtain a minimum level of mapping information to define a basis for communication of the Project. The necessary level of site mapping must be adequate to provide support for a complete definition of the Project, development of the necessary conceptual design, a basis for estimating the Project cost, and a basis for Private Partners to develop concepts. The recommended survey and mapping tasks include:

- Establishing control throughout the Project.
- Stationing along the control lines to establish feature and design criteria locations.
- Existing cadastral information describing existing and future right-of-way.
- Construction easements associated with the Department’s conceptual design.
- Topographic information, such as contour lines and major site features to define the footprint of the Project as expected by the Department or as intended by the Private Partners. This level of mapping also supports other data gathering investigations and provides the base map for delineating feature locations.

The effort of gathering survey and mapping information is less than is typically needed in the design-bid-build process. How much less is dependent on the Project type and site. Linear rehabilitation Projects may require less than geographically isolated mobility Projects such as interchanges. If the type, size, and/or location of Project concepts are highly dependent on precise information, more detailed information is necessary. Supplement the available data in critical areas with specific information identified during conceptual design. Examples of supplemental information include:

- Existing alignment geometry
- As-built data corrections
- Wetland delineation locations
In defining the limits of the surveying effort, it should be noted that the exact limits of the Project are not known during the Project development phases. Whenever possible, strive to obtain data beyond the limits identified in the Project development package.

### 4.5.5.2 Geotechnical Conditions

Preliminary geotechnical investigations will be conducted by the Department and generally only raw data is provided to the PPP teams as part of the request for Proposals. Typically, no analysis, recommendations or extrapolations will be performed on the data gathered. For example, each PPP team is generally responsible for interpreting core samples obtained by the Department during a preliminary geotechnical investigation. For typical Projects, the Department includes a condition in the contract that states that the raw geotechnical data must be interpreted as the PPP team sees fit. The requirements for further geotechnical investigation will be defined by the Department and included in the Scope of Work. The Proposers may have an opportunity to request supplemental information during preparation of their Proposal if deemed appropriate by the Department. If no supplemental program is offered by the Department, each Proposer will need to obtain any additional data required. Any required permits for additional testing and the cost associated with those additional tests will generally be the responsibility of the PPP teams.

A Project team must consider the following when developing geotechnical information:

- Unknown geotechnical conditions can make it challenging to competitively price a PPP Project. Allocating this area of risk to the Proposers may not be the best choice in all cases.
- The amount of time the Proposers have to formally develop the RFP is very short. The Department must do the time consuming base data collection whenever possible. After the initial Project scope, the Department should perform a preliminary geotechnical investigation.
- After the geotechnical investigation is completed, obtain field data in the approximate location of the Project’s major features. Perform preliminary geotechnical engineering analyses, as necessary, to address feasibility issues and to define Project design criteria such as foundation type constraints. This information will be used to:
  - Establish design parameters in the various supporting areas of typical highway Projects (for example, bridge foundation type, seismic design criteria, pavement design, excavation limits, and embankment design).
Set the basis for determination of changed conditions.

Establish a preliminary Project cost estimate.

The geotechnical data must provide enough information to permit the Proposers to perform a preliminary assessment of geologic features and to address key engineering issues such as foundation type. Providing inadequate data to Proposers may require them to unnecessarily gather additional data, cause Proposers to resist geotechnical/differing site condition risk or result in the Proposers placing too high a risk premium in their pricing/financial Proposals. The Project team should attempt to minimize Proposal development costs by gathering enough data to allow competitive price estimates by the Proposers.

To equalize risk tolerance for competing Proposers, it may be prudent to require all prospective Proposers to design from a baseline geotechnical evaluation provided by Department. In a PPA, the design responsibility and flexibility rests with the Private Partner unless Department specifies more stringent or site-specific criteria.

If the Department performs preliminary geotechnical engineering evaluations or analyses, reference them as conclusions in the design criteria, not as recommendations to the Private Partner.

### 4.5.5.3 Hydraulics

Perform hydrology (investigation/analysis) and/or hydraulic (design) investigations only if it is likely that Proposal concepts will require the information. The focus must be on establishing the design criteria for the Project. The criteria will define how hydrologic conditions (such as water surface levels, flow characteristics, scour potential, and allowable sediment deposition during construction) will be determined by the Private Partner.

Define the hydrologic constraints in a manner that provides the Department adequate control over the results. If the criteria are ambiguous or can lead to significantly different hydraulic results, the initial hydrologic calculations may best be performed by the Department to set the basis for design for all Proposers. The results may be included in the RFP as minimum acceptable parameters.

Some Project areas may require a preliminary hydrologic analysis to provide base data to establish design criteria or to fulfill regulatory requirements. For example:

- Back water analysis for EA/EIS on Projects with water-crossing structures.
♦ Drainage data for site drainage design criteria.
♦ Existing drainage feature evaluation to determine existing conditions and necessary changes.
♦ Local agencies’ requirements, such as ordinances, requirements, and design criteria. If there are differences between local agency and Department design requirements, the design criteria need to indicate that the more restrictive requirements apply.

In summary, do the minimum required to meet the regulatory requirements, define the scope of work design criteria, and reduce the efforts necessary to prepare Proposals.

4.5.5.4 Traffic

Traffic study data is used to support a number of technical areas when developing the Project scope and definition. Accurate traffic data is necessary for:

♦ Forecasting demand
♦ Noise studies
♦ Air quality studies
♦ Intersection channelization
♦ Lane configuration determination
♦ Pavement designs
♦ Design guidelines based on tabulated traffic data values
♦ Effectiveness of operational elements of the Project (such as loop detection systems, video cameras, location and size of variable message signs, etc.)

The Department will perform some of the tasks described as part of the environmental process or allocate them to the Private Partner. In either case, a baseline of data is necessary to set Project parameters as described by the conceptual design or in the design criteria.

In addition to the environmental and design processes, the construction phase of the Project relies on traffic data to determine appropriate means of traffic staging and control. This is typically an important concept to describe in the Proposals. Define the necessary parameters to establish the appropriate and/or acceptable means of maintaining traffic in the design criteria of the Scope of Work or the Special Provisions.
4.5.5.5 Noise

The NEPA process may require a noise study to describe Project impacts and required mitigation measures. Acquiring environmental approvals is the Department’s responsibility and determining the noise impacts of the Project may be part of that process. Maintaining a balance between fulfilling regulatory requirements, allocating risk, and losing innovation benefits requires modification to a typical environmental process.

One means of accomplishing this balance involves using an assumed alignment, rather than a final alignment configuration, for the noise study and environmental applications. Calculate the impact to receivers based on an assumed alignment and document the required mitigation based on the assumed parameters. Prepare the Noise Technical Report, which documents the allowable impact to receivers, the analysis assumptions (including profiles and alignments), and the required mitigation measures to gain NEPA approval.

Development of the Project concept ideally balances variations in the alignment, set by the roadway geometric design criteria, with effects on required mitigation measures. In the RFP, clearly define changes in the alignment that will require an adjustment to the prescribed mitigation measures. If significant variability is allowed in the design criteria, define the reapplication process and how the schedule and cost risk will be allocated.

Make the Department’s noise analysis model available to Proposers in order to maintain consistency of the Proposers’ conceptual designs. In situations where the Proposers are allowed to deviate from Department’s conceptual design, include the noise study as an attachment and provide scoring criteria during the RFP process to assist them in making design decisions.

4.5.5.6 Utility Relocations

It is important to provide utility locations to the Proposers.

Utilities will already have an existing agreement with the Department or a local agency. Prior to issuing the RFP, determine the location and condition of all utilities. In preliminary design, identify any utilities that will be impacted and, whenever possible, relocate them prior to the Private Partner beginning work. As the PPA may shift some risk to the Private Partner for unidentified/misidentified utilities (by providing cost and/or schedule relief for only those utilities that meet a fairly narrow definition for “unidentified” or “misidentified”), reasonable data should be provided for the Proposers to assess and quantify these risks.
If relocation must be done in conjunction with the PPA, give the Private Partner responsibility for and control of the relocation itself. Establishing a cost for potential coordination delays can impact the overall price of a contract.

If the preliminary agreement with a utility (public or private) requires modification as a result of the PPP team's final design, the risk and responsibility for this delay should rest with the PPP team.

In urban environments, consider a full subsurface utility investigation if the conditions of the existing facilities could potentially impact the Project schedule.

**4.5.5.7 Pavement Conditions**

It is important to provide the Proposers with pavement condition reports and the structural composition of the existing pavements.

Provide a full pavement report, where possible, to the Proposers for all roadways within the Project limits, including all shoulders.

**4.5.5.8 Materials (Product Warranty)**

Product warranties may be used to ensure Project quality. Because many of the quality assurance/quality control processes traditionally done by the Department are being transferred to the Private Partner, warranties can act as a means to ensure that high quality standards are being met. It is important to ensure that a very measurable performance measurement for all warranty items be defined in the RFP.

The Department Materials Division will provide the quality requirements for Project materials to the Project team. Material quality can be defined through prescriptive specifications, performance-based design criteria, QC/QA requirements, use of the Qualified Products List (QPL), and/or product warranties. Use of warranties on constructed products, such as pavements, requires significantly more consideration.

**4.5.6 Project Scope and Technical Criteria**

The Project team can use the information gathered through the preliminary engineering effort to finalize the Project scope and technical criteria package for inclusion in the RFP. In developing the scope and design criteria, the Project team must strive to use performance specifications where possible and in a manner consistent with the risk allocation strategy and goals established for the Project. Rather than focusing on how to do the work, performance specifications define the required results. Using performance specifications inherently recognizes that there may be more than one way to achieve
the desired result. If properly written, they provide more flexibility and encourage more innovation and creativity than prescriptive specifications.

4.5.7  PPP Development - Additional Considerations

4.5.7.1 Programming PPP

Budgetary authority must be in place for PPP Projects prior to award of the contract. For federally funded Projects, typically Project funds can be programmed at issuance of the RFP or prior to award. The PPP Project must be listed in the Annual Work Program as well as the Statewide Transportation Improvement Program (STIP). PPP Projects can be programmed using federal, state, local and/or bond funds.

4.5.7.2 Value Engineering (VE)

On Federally funded PPP Projects that are part of the National Highway System, value engineering must be performed if the estimated cost is greater than $25 million prior to the release of the RFP. To avoid scheduling delays and develop a well-defined scope of work, the Project manager will perform the VE at least one month prior to release of the Draft RFP. This study shall be performed prior to Project risk analysis and preferably in conjunction with risk analysis.
SECTION 4.6 DEVELOPING PROCUREMENT DOCUMENTS

A general description of the procurement and selection process can be found in Section 2. The following section discusses procurement documents specifically pertaining to PPP Projects.

The RFQ and RFP are two separate documents created to conduct the two-phase Procurement process.

The RFQ will focus exclusively on the Proposer’s understanding of the Project and its qualifications and experience. The RFP is comprised of the form of PPP, the technical provisions as well as the instruction to Proposers regarding the Proposals (which include the selection process requirements and evaluation criteria).

The RFQ and RFP Packages contain a number of inter-related documents that completely describe the Project, the technical requirements for designing and constructing the Project, the methods for selecting the Private Partner, and the means to administer the contract.

4.6.1 RFQ

A general description of RFQs can found in Chapter 2. The following section discusses RFQs specifically pertaining to PPP Projects.

4.6.2 Industry Review – Optional

Refer to Chapter 2 for information on industry review.

4.6.3 RFP

A general description of RFPs is found in Chapter 2.

4.6.4 One on One Meetings – Optional

Refer to Chapter 2 for information on one-on-one meetings.
4.6.5 Alternative Technical Concepts (ATCs) – Optional

Refer to Chapter 2 for information on ATCs.

4.6.6 Award Criteria – Best Value

Best-value procurement allows Department to consider price/financial Proposal and other key factors (e.g., cost, time, qualifications, quality, and design alternates) in the evaluation and selection process. The inclusion of such factors allows the Department to select the PPP team that best meets the Project's needs and goals. The Department will be using the weighted criteria for a PPP Best Value procurement. See Chapter 2 for more information on best value procurements and evaluation criteria.

4.6.7 Disadvantaged Business Enterprise (DBE) and Subcontracting Goals

The Disadvantaged Business Enterprise (DBE) program encourages the formation and growth of DBEs by providing an equal opportunity for these firms to compete for and participate in the Department’s PPP program. DBE goals are typically incorporated into standard Projects and may be required on Projects that utilize Federal funds. A PPA can continue to incorporate DBE goals with some modifications to the standard requirements. These modifications would account for the difficulty Proposers may face in securing binding quotes from subcontractors based on the limited design that would be available at Proposal time. Many subcontractors (including DBEs) will not assume the risk of providing hard quotes based on incomplete or conceptual plans. DBE inclusion in PPAs must also address if and to the extent the requirement will apply to any O&M phase.

Because of this difficulty, PPP procurement documents typically require Proposers to include in their Proposals a satisfactory plan/program for reaching the applicable targets (as opposed to demonstrating compliance with the targets themselves). After selection and award, the Department will conduct a DBE review that will require the Private Partner to submit evidence that it is indeed carrying out its proposed plan. Typically DBE goals can be met using DBE firms on both the design and construction portions of the contract. Goals set on PPAs will be inclusive of both portions of the contract. Private Partners that fail to meet their committed DBE goals on a contract are subject to sanctions for failing to meet these commitments.
Each proposed PPP Project shall be reviewed for DBE subcontracting possibilities. The Project Manager must consult with the Department’s Contract Compliance Manager for evaluation and setting of percentage goals for the dollar value of the agreement.

The DBE firms listed by the PPP teams must be certified with the Department’s Contract Compliance Section prior to the PPP teams’ submission of final proposal.

### 4.6.8 Value Engineering Change Proposals (VECP)

The Department may add provisions addressing Value Engineering Change Proposals (VECP). The intent of these provisions is to share with the Proposer any substantial cost savings which may result from a VECP approved by the Department. The purpose is to encourage the use of the Proposer’s ingenuity and experience in arriving at alternative designs, methods and procedures which result in a lower-cost approach to accomplish a prescribed function. The share of savings to the Department and to the Proposer will be specified in the RFP.

### 4.6.9 Incentives

A possible way to encourage superior performance is to tie incentives to a Proposer’s performance that exceeds of Project goals. The incentives must focus on key areas of performance that are important to the Department or other stakeholders. Such areas could include schedule, quality, environmental compliance, public relations, and public and worker safety. For availability payment PPPs, the payment mechanism for the availability payments themselves can be set on the basis of achieving certain performance measures.

In developing incentive amounts, the Project team will keep in mind that the incentive amount must be attractive enough to entice the Private Partner to achieve the desired result. The determination of this amount is rarely an exact calculation, and judgment is often necessary, particularly for areas having less tangible, or less quantifiable, benefits, such as improved public relations and environmental compliance. Incentive payments for other areas, such as early completion and safety, have more established (albeit still somewhat subjective) calculation techniques. For example, road user costs typically factor heavily in the determination of an incentive program for early completion. Similarly, user costs can also be used to generate incentives related to maintenance and protection of traffic, particularly if road or lane closures are contemplated. Safety incentive fees are generally related to reduced accident costs, with appropriate indices and indicators of impacts available from the insurance industry.
4.6.10 Insurance/Indemnity

The PPP delivery method creates a single responsible entity in which the Department contracts for both Project design and construction services. PPP may also include an O&M phase. By allowing the Private Partner to optimize its work force, equipment and scheduling, the PPP concept opens up a new degree of flexibility for innovation. However, along with the increased flexibility, the Private Partner must also assume greater responsibility and Project risk.

Regardless of whether the PPP team is headed by a General Contractor, Engineering Firm or even a Joint-venture firm created specifically for the Project, the contractual arrangements and insurance coverage should be examined because of the additional responsibilities assumed under PPP team approach. For example, General Contractors assume new risks associated with design responsibilities, while Engineer-lead PPP teams assume new contractor’s related risks including those related to warranties, guaranties and even strict liability. With O&M phase work, an entire new set of risks present themselves are assumed by the Private Partner, requiring additional thought and analysis of both the risks and appropriate insurance during the O&M period.

As a result, the Department should carefully review the indemnity/liability clauses along with the insurance provisions of any Proposal with both the State’s legal and Risk Management Departments to ensure the provisions are drafted to take into account unique set of risks associated with PPP Projects. PPAs should incorporate language which specifically addresses extended liability insurance, bonding, performance security and warranty requirements to ensure that the finished product will be completed and perform as required within the Project specifications and that any O&M work is performed in accordance with the PPA.
SECTION 4.7  RFP COMPOSITION

The RFP typically includes, among other items:

♦ Instructions to Proposers (ITP) regarding Proposal submittal requirements and the evaluation process by which the Department will select the winning proposal. The ITP is provided in the RFP for informational purposes only and will not become part of the contract.

♦ The general requirements for the project, describing the goals, objectives, and operational constraints for the Project (e.g., environmental or third party issues)

♦ the form of PPA;

♦ PPP technical provisions (Project scope, performance criteria, and preliminary design); and

♦ References to design manuals and standards.

♦ References to O&M manuals and standards, where O&M is involved.

Even though the Department will take design to only a conceptual level under PPP delivery, the time and resources required to draft a PPP RFP package may be similar to that needed to prepare a PS&E package on a more traditional project.

Key elements of the RFP are described below.

4.7.1   Instructions to Proposers

The RFP will include ITP, a standalone document that establishes the rules and procedures that Proposers must follow when preparing and submitting their Proposals. In addition, the ITP will define how the Department will review and evaluate the Proposals received to select the Private Partner.

This document will typically include the following:

♦ Introduction,

♦ General Instructions,

♦ Technical Proposal Instructions,

♦ Financial Proposal Instructions, and

♦ Proposal Forms.
4.7.1.1 Introduction

The ITP will include a general introduction identifying the owner and location of the Project, the contents of the RFP package, and the function of the ITP.

4.7.1.2 General Instructions

The RFP will include general information and instructions to help Proposers prepare responsive Proposals. This information could include the following:

♦ Procurement schedule and process
♦ Project background, goals and objectives
♦ Summary of RFP package
♦ Changes to Proposer’s organization since SOQ submittal (for a two-phase procurement)
♦ Proposal submittal requirements
♦ Explanation of the Proposal evaluation process, including evaluation factors and their relative importance, the evaluation method, and the selection process;
♦ DBE and EEO requirements
♦ Other pertinent provisions (e.g., protest procedures; State and Department rights and disclaimers); and
♦ Proposal forms

4.7.1.3 Technical Proposal Instructions

In their Technical Proposals, Proposers describe how they intend to undertake the Project scope in accordance with the goals and requirements outlined in the Department’s RFP. Typical elements of a Private Partner’s Technical Proposal include the following:

♦ Preliminary plan sheets showing typical sections;
♦ Horizontal and vertical alignments;
♦ Structure locations and identifications;
♦ Roadway layout concepts;
♦ Signing, striping, and lighting concepts; traffic control and phasing schemes, and other design features as identified in the RFP;
♦ Design and construction schedules;
♦ O&M approach and features
♦ Repair, maintenance and rehabilitation schedules
♦ Organizational charts;
♦ Resumes of key personnel not listed in the SOQ;
♦ Management approach;
♦ Quality approach; and
♦ Completed forms and certificates as required by the RFP.

To facilitate and expedite the Department’s review and evaluation of the Proposals submitted by Proposers, the RFP may define a specific format, including page limits and specific content requirements for each of the evaluation factors identified in the RFP.

### 4.7.1.4 Financial Proposal Instructions

The RFP shall include instructions on the required organization and format of the Financial Proposal to facilitate the Department’s review of the information provided. In contrast to a traditional design-bid-build Project, for which a pricing document may consist of a single bid form, pricing/financial documents for a PPP Project may be more complex depending on the nature of the PPP and whether financing is involved in the scope of work. See Section 4.8.10 for sample evaluation criteria for Financial Proposals.

### 4.7.1.5 Proposal Forms

The use of specified forms provides Proposers with a standard format by which to submit certain information requested in the RFP. The standard format, in turn, facilitates the Department’s review of the information provided and also ensures that all information or commitments required by the RFP are provided in the required form. In addition, certain forms are required for federal aid procurements.

Standard forms can be developed to address the following types of information typically sought in a RFP:
♦ Proposal cover letter
♦ Financial Proposal forms
♦ Bond forms (Proposal, performance, and payment)
♦ DBE Utilization Affidavit
♦ Key personnel (management, technical solutions, environmental, quality management, Project support, etc.)
♦ Named subcontractors
♦ Stipend Waiver

4.7.1.6 Alternative Technical Concepts (ATC)

The Project team may choose to include an ATC provision in the RFP. See Chapter 2 for more information about ATCs.

An ATC provision may address the following:

♦ ATC Proposal submittal and review process;
♦ Required contents of an ATC Proposal; and
♦ Confidentiality guidelines (in the event information is proprietary).

When addressing the submittal and review process, the Project team might consider allowing Proposers to submit ATCs for pre-approval during the Proposal preparation period. Pre-approval would allow Proposers to concentrate on developing their Proposals around the accepted ATC.

The Project team may also wish to restrict the ATC process to only those Project components for which design flexibility is allowed and innovations are possible. This will help reduce the time and resources spent by the Department in reviewing ATCs that have little likelihood of acceptance.

4.7.1.7 Stipends

If the Department decides to award stipends to unsuccessful Proposers, the RFP may identify the amount, conditions under which it will be paid, and the process of distribution. See Chapter 2 for further information about stipends. The stipend provision may include the following:

♦ Department’s commitment to pay the stipend;
♦ The amount and timing of the stipend;
♦ Conditions to qualify for the stipend, such as:
  o Submission of a responsive Proposal
  o A minimum technical score
  o Agreement to grant Department ownership of intellectual property included in the Proposal
♦ Option for the Design-Builder to waive the stipend in favor of retaining ownership of Proposal concepts.

4.7.2 Technical Provisions and PPP Contracts

4.7.2.1 Revisions to Standard Specification and Special Provisions

In addition to outlining the procurement process and Proposal submittal requirements, the PPP RFP package serves to communicate the Project scope, technical requirements, performance criteria, design, construction, O&M and quality management requirements, and other expectations the Department may have with respect to the Project. These aspects of the RFP form the basis of the PPA itself, similar to the plans and specifications on a traditional design-bid-build Project. A PPA results in significant changes to the Standard Specifications, particularly Division I, found in the Standard Template Documents.

A PPA may also require the development of O&M specifications, which may not yet exist within the Department or be at the same level of evolution as design and construction standards and specifications.

Although specific contract provisions will vary from Project to Project, the nature of the PPP delivery approach requires careful revision of existing Standard Specifications or the addition of unique special provisions for PPP.

Standard Template Documents including Amendments to Standard Specifications can be found on the Department website. Proposers are able to download these documents along with other components for the RFP. The following is a more detailed discussion of some key provisions.

4.7.2.2 Basic Project Configuration

Because the RFP does not provide the final design, it is necessary to include a basic Project configuration provision to establish the physical constraints or limits within
which Proposers will develop their technical solutions for the design and construction of the Project.

Fundamental constraints typically included in a basic Project configuration provision include the following:

♦ Project Boundaries:
  o ROW plans that depict the limits of ROW or easements obtained or to be obtained by the Department
  o Environmental constraints (e.g., wetland protection)
  o Project limits
♦ Horizontal and vertical alignment;
♦ Vertical clearance requirements;
♦ Critical Project components:
  o Number of lanes
  o Interchanges
  o Ramps
  o Location of major structures
♦ Other factors that may define the limits and constraints of the Project.

The basic configuration provision will be an outgrowth of the Department’s preliminary engineering, risk management and allocation efforts. The Project team can therefore follow the guidelines related to the required level of preliminary engineering to establish the appropriate balance between controlling the base design, and creating opportunities for innovation.

Note that the basic configuration provision defines the Private Partner’s contractual obligations with respect to design and construction constraints (in contrast to a Project description statement, which is provided to Proposers for informational purposes). The provision may therefore also address how the Proposer can request a change to the basic configuration both before the submittal of Proposals and after contract award. The Department has the sole discretion to accept or decline the changes through a proper review and approval process.

After contract execution, the basic Project configuration defines the limits within which the Private Partner can make changes in the information shown on the RFP plans without requesting a change order, and the limits within which the Department may order a change prior to the first design review without executing a change order.
Basic Project configuration also provides the basis for assessing eligibility for certain change orders. If it is necessary to change the basic configuration to meet the requirements of the contract documents or to construct a feasible Project, the Private Partner may be eligible for a change order.

4.7.2.3 Differing Site Conditions

A differing site conditions provision applies to conditions encountered onsite that differ materially from those indicated in the contract. In traditional design-bid-build delivery, the Department typically retains full responsibility and risk for differing site conditions. Under the PPP methodology, however, the responsibility for geotechnical site investigations, and thus the risk for differing site conditions, can be significantly assigned to the Private Partner. When considering shifting responsibility for differing site conditions from the Department to the Private Partner, the Project team shall carefully weigh the risks involved (e.g., higher costs) against the potential benefits to be gained (e.g., time savings).

Because the site information provided in a PPP RFP may be substantially less than that which would be provided to bidders on a design-bid-build Project, the PPP Contract must explicitly define the responsibilities and risks associated with site conditions.

If the Department continues to retain some or all of the risk for differing site conditions, the provision may include the following elements:

- Definition of what is considered to be a differing site condition
- Private Partner’s responsibility
- Department’s responsibility

If this risk is instead allocated to the Private Partner, the provision may state that:

- The Department is not liable for any differing site conditions and will not grant extra costs or time extensions associated with the conditions encountered.
- Information supplied by the Department (e.g., geotechnical report and similar information) is for reference only.

For either risk allocation strategy, best practice suggests limiting the site information provided in the RFP to the data collected, leaving the actual analysis and interpretation of this data to the Private Partner. If the Project team feels that the inclusion of such analytical information would be beneficial, it may be placed in the reference documents, with specific disclaimers as to the Department’s liability.
4.7.2.4 Quality Management During Design and Construction

On a traditional design-bid-build Project, the Department develops the design, specifies the materials to be used, and oversees the construction. Managing quality, during both the design and construction phases, has therefore traditionally been the Department’s responsibility.

The PPP approach presents additional challenges and unique opportunities with regard to quality management. Use of the PPP approach does not diminish the need to perform any of the traditional quality management tasks performed on a design-bid-build Project; however, the party performing these tasks may change. On a PPP Project, the Department may choose to assign specific responsibilities to the Private Partner, while retaining the rest for itself. It is also possible for a third party, retained by either the Department or the Private Partner, to conduct some quality management tasks.

The exact quality management strategy used may therefore vary from Project to Project. As an extension of its risk analysis and risk allocation work, the Project team must consider which party can best meet the quality needs of a particular Project. The approach suggested below has been used by other highway agencies and represents a middle ground between transferring more responsibility for quality management to the Private Partner, while retaining some oversight control for the Department.

With regard to design quality management, the quality control and quality assurance tasks (e.g., checking of calculations and quantities, review of specifications, etc.) that were previously performed by the Department on a traditional design-bid-build Project will be shifted to the Private Partner. Department staff will then assume more of a quality assurance oversight role, in accepting design deliverables, approving design progress payments, approving the final construction as-builts, and performing similar design oversight activities.

In addition to clearly defining these roles and responsibilities, the RFP can also establish when any Department review of design submittals will occur. Advance knowledge of these design review checkpoints will allow the Private Partner to account for these required reviews in its proposed Project schedule. Possible review points would be at the preliminary design phase (minimum 30 percent complete plans), final design review (100 percent plans), and possible intermediate points coinciding with the completion of certain design packages (e.g., roadway, bridge, drainage, etc.).

To increase the frequency with which the Department can provide design feedback outside of this formal review process, the RFP can also require or encourage the
Proposer to request informal reviews to ensure that it is progressing the design in accordance with contract requirements. Such reviews are often called “over-the-shoulder” reviews to indicate that, unlike the formal review checkpoints, the design process will not stop to await comments from the Department.

In reviewing design deliverables, the Department’s review will generally be limited to ensuring that the Private Partner’s design meets the objectives of the contract and is generally one of review and comment (and not approval). By providing too much control over design, the Department risks assuming more design liability for the Project and reducing the potential benefits of PPP.

A similar change to traditional roles and responsibilities will occur with respect to construction quality management, as the Private Partner will assume primary responsibility for construction quality control, including process control sampling and testing. QC tasks will typically be performed by the Private Partner’s construction quality staff, with the Private Partner’s Construction Quality Control Manager responsible for the Private Partner’s QA program to ensure the standards of quality are being met. Department personnel will perform QA oversight and verification sampling and testing if the Private Partner’s tests are used for acceptance, acceptance sampling and testing if the Private Partner’s tests are not used for acceptance, and independent assurance. The responsibility for acceptance testing shall be clearly defined in the RFP.

In developing the construction quality management provision, the Project team will clearly stipulate the following in the RFP:

♦ Private Partner roles and responsibilities
♦ Department roles and responsibilities
♦ Sampling and testing methods
♦ Inspection method and frequency
♦ “Witness and hold” points
♦ Acceptance procedures

The Project team can place additional emphasis on quality by including a quality evaluation factor in the RFQ and/or RFP, particularly if using a best-value procurement process. The RFQ may require the submittal of qualifications related to key personnel that will be performing quality management tasks. The Department could then use the RFP to compete quality management plans submitted by prospective PPP teams.
4.7.2.5 Design Submittal, Review, and Approval

Either as part of a design quality management provision or as a stand-alone provision, the RFP shall specify the submission, review, and, as applicable, approval process related to any designs prepared by the Proposer. At a minimum, the provision shall describe the following:

♦ Review process
  o Conformance to quality management plan
  o Conformance to contract requirements

♦ Required design submissions
  o Preliminary
  o Milestone (e.g., 30 percent, 60 percent, 90 percent design)
  o Feature of the work (e.g., foundation, pavement, bridge, etc.)
  o Complete design
  o As-built

Inclusion of such a provision may:

♦ Provide a checkpoint for both the Department and the Private Partner to discover any defects in the design;
♦ Enhance communication between the parties; and
♦ Motivate the Private Partner to develop a high-quality design so as to not delay construction.

The provisions should also address Department response times, resolution of Department comments and any constraints on the number of concurrent submittals that a Private Partner may submit.

4.7.2.6 Designer of Record

On a PPP Project, the Private Partner, and not the Department, is responsible for the details of design and coordination with construction. The Private Partner's engineer can therefore act as the designer (or engineer) of record.

When the Private Partner will serve as the Project’s Designer of Record, the RFP shall include a provision that defines the following:
♦ Minimum qualifications of the Designer of Record (e.g., experience, certifications, registration, etc.);

♦ Designer responsibilities related to:
  o Design (or review of design);
  o Managing and scheduling of design work to meet the construction schedule;
  o Adequacy and efficiency of design solutions and design documents; and
  o Construction oversight (to ensure that the Project is being constructed in accordance with this design)

♦ Requirements regarding professional liability insurance.

4.7.2.7 Environmental Permitting

On a PPP Project, since the design is incomplete at the procurement stage, the Department has limited control in obtaining any environmental permits that require a more complete design and understanding of the final Project conditions. Because the Private Partner has more control over the final Project design, the PPA can be used to shift some permitting responsibilities from the Department to the Private Partner. The RFP must be clear in identifying which party is responsible for acquiring which permits.

Permit conditions may also result in unexpected design and/or construction requirements that may be more costly or time consuming than anticipated in the Private Partner’s Proposal. The RFP must therefore provide enough detail about environmental conditions and commitments and the general status of the permitting process to clearly convey the level of risk to be absorbed by the Private Partner for environmental compliance issues.

The RFP may also stipulate, regardless of the operator named on the permit (i.e., the Department or the Private Partner), that all environmental violation costs are the responsibility of the Private Partner.

For Projects having extreme environmental sensitivity, the RFP may require the Private Partner to retain a qualified onsite inspector to ensure environmental compliance and to coordinate with the Department on environmental issues as they develop. Under a best-value procurement process, the Department may also structure the evaluation criteria to reward Proposers that offer approaches designed to reduce environmental impacts beyond that approved during the permitting process.
4.7.2.8 Right-of-way (ROW)

For a traditional design-bid-build Project, the Department generally acquires all required ROW before construction begins. Under PPP, however, the conceptual design performed by the Department may not support the identification and acquisition of all ROW required for the Project prior to issuance of the RFP.

When developing a ROW provision for inclusion in the RFP, the Project team may address the status of ROW acquisition and whether responsibility for any subsequent ROW acquisition will fall upon the Department or the Private Partner.

Although the FHWA DB final rule does allow the Department to assign responsibility for ROW acquisition to the Private Partner, it is generally recommended that the Department continue to retain this responsibility for permanent ROW for the Project. The acquisition of additional properties desired by the Private Partner shall typically be the responsibility and risk of the Private Partner in terms of cost, schedule impact and site conditions and shall be subject to the Department’s approval. Acquisition of temporary construction easements not within the ROW that the Department identifies it will obtain for the Project shall generally be the responsibility of the Private Partner.

When the Department retains responsibility for ROW, the associated provision may include:

- A statement that the ROW acquisition is complete or, if this is not yet the case, a statement that all necessary arrangements have been made for completion in the near future;
- ROW parcels that have or have not been purchased;
- The dates on which access to the ROW parcels shall be provided by the Department;
- Responsibilities of the Department, particularly with regard to any Department-driven changes that affect ROW;
- Responsibility of the Private Partner to make every effort to design the required facilities within the available ROW and to reimburse any additional cost due to the Private Partner-driven changes that affect the ROW;
- Conditions for proposing and approving additional ROW purchase if the Private Partner’s design cannot be constrained to the available ROW; and
- Process and responsibilities related to the extra cost and time that could be associated with additional ROW purchase.
If the Department chooses to shift ROW acquisition to the Private Partner, the provision may include:

- A statement that the Private Partner has risk and responsibility for ROW acquisition;
- The scope and current status of the required services (identification of any existing ROW, as well as parcels that need to be acquired by the Private Partner);
- A statement requiring compliance with the Department’s Right-of-way Manual and all relevant laws and regulations;
- Required submittals (e.g., title certificates);
- Payment method and schedule for acquisition cost and service fee; and
- How condemnation will be handled by the Department, including the applicable time periods that apply.

### 4.7.2.9 Utility Location/Relocation

As part of the risk identification and allocation process, the Project team must consider which party can best manage the risk associated with utility location/relocation.

When the Department decides to retain some or all this responsibility, the RFP shall define the accuracy of any information provided in the RFP related to existing utilities. Information generally used to describe existing utilities includes horizontal and vertical location, size, and type of material. The provision may also address the process for handling any unknown utilities encountered during construction.

If the Department instead decides to assign some or all of the risk of utility location and relocation to the Private Partner, the provision may define:

- What constitutes an unidentified or misidentified utility;
- The Private Partner’s responsibilities with regard to typical utility relocation tasks, such as:
  - identifying existing utilities,
  - contacting and reaching agreements with the utility owners or what happens in the event that reaching such agreements is delayed or not achieved,
  - coordinating relocation,
o covering the costs for such relocation;
o information necessary to obtain federal reimbursement;
o approach to betterments

♦ A list of utilities to be relocated based on the best available information, along with a “use as reference only” statement;
♦ Rules, regulations, and reference documents regarding utility adjustment;
♦ Notification requirements of each utility owner for any service interruption;
♦ Process and responsibility for damages due to newly discovered utility items;
♦ Responsibilities for addressing utility owner delay and lack of cooperation; and
♦ Process of resolving conflicts with the utility owner.

If utilities are a complex, important or time sensitive issue on a Project, the Project team may consider requiring the Private Partner to assign a utilities coordinator to work with the utility firms during design and construction. The coordinator would be responsible for verifying utility locations, obtaining permits, and overseeing any relocation work and adjustments.

4.7.2.10 Insurance

When developing a procurement strategy, the Project team should consult State Risk Management to assist in determining the types of insurance programs available and to evaluate the appropriate approach given a Project’s specific needs, risks, and complexities. Risk Management should be contacted early in RFP development process as insurance premiums can add significant costs to a Project budget. There are alternative insurance programs available that can help reduce costs while provide protection for the various parties involved in the Project.

Standard transportation construction Projects typically require several types of insurance coverage, including workers’ compensation, general liability, builder’s risk, umbrella or excess liability, and other coverage’s related to Project-specific risks (e.g., pollution liability, railroad protective liability, etc.).

On a PPP Project, in addition to such coverage, the Project team must also consider the area of professional liability, or Errors and Omissions (E&O) insurance, as the Private Partner, and not the Department or a Design Service Provider, is the Designer of Record. The professional liability insurance policy may be held in the
name of the PPP entity that enters into a contract with the Department. This means that the Private Partner cannot rely on the insurance policy or policies of its designers to cover professional liability. This protects the Department from dealing with multiple insurance agencies and policies that may or may not cover the risks associated with a particular Project. Project-specific policies may be warranted for professional liability coverage and should be assessed.

The requirement to hold professional liability insurance in addition to the traditional mix of contractor’s insurance policies (e.g., workers’ compensation, general liability, umbrella or excess liability) is sufficient for most PPP Projects. However, for larger, high-risk Projects, some owners have successfully used Owner-Controlled Insurance Programs (OCIP) and Contractor-Controlled Insurance Programs (CCIP) as a means to control risk exposure and potentially realize cost savings.

With a CIP (or “wrap-up” insurance), the interests of the owner, designer, contractor, and subcontractors are all covered under one insurance arrangement. Ideally, such an arrangement will eliminate conflicting insurance provisions, remove overlapping policies, and close coverage gaps. Insurance for a typical CIP on a PPP Project includes the following coverage’s: general liability, builder’s risk, workers’ compensation, design errors and omissions, and excess, umbrella, and any other special coverage’s required. Explicitly excluded from most CIPs is coverage for automobile liability and contractor’s tools and equipment - the idea being that since contractors generally move such items from project to project, they are best insured separately.

If using an OCIP on a Project, the solicitation documents shall specifically set forth the following:

♦ The coverage provided;
♦ Limits of the coverage;
♦ Deductible amounts;
♦ Party responsible for deductibles; and
♦ Duration of insurance beyond the Project completion date.

If using a CCIP on a Project, it is incumbent on the Department to make sure that the contractor provides and maintains adequate insurance coverage.

If available at bid time, the Proposers may have access to the policies themselves to eliminate any concerns they may have regarding adequate limits and scope of coverage, and gaps in insurance.
4.7.2.11 Order of Precedence (Escrowed Documents)

If a conflict arises on a traditional design-bid-build Project with respect to the contract documents, the Department’s standard document coordination clause (Section 105.04 of the Special Specifications) applies.

PPAs, however, include several additional documents (e.g., RFP, PPP Proposal, etc.), some of which are prepared by the Private Partner. The RFP should therefore include a specific PPP order-of-precedence clause to specify which documents take precedence over the others if a conflict exists. See also, Part 5, Section 105.04 of the Standard Template Documents. This clause may also clarify that the Proposal becomes the basis of the contract to the extent that it meets or exceeds the requirements of the other parts of the contract. If the Proposal offers higher quality or additional services than otherwise required in the RFP, then the Proposal standards are the benchmark or basis for contract requirements.

4.7.2.12 Payment Method

On a design-bid-build Project, the Resident Engineer determines payment for work by measuring quantities of work performed and multiplying the quantity measured by the unit price included in the contractor’s bid for that item.

With a few exceptions (e.g., hazardous material removal), work on a PPP Project is generally priced on a lump sum basis, which requires methods other than the standard measurement of quantities to determine progress and payment. There may also be allowances used for certain specific items on a PPP Project (where it is potentially difficult to price at the Proposal stage) and change orders can be priced on a time and materials, unit price or lump sum basis.

For smaller, less complex Projects, progress can be determined by mutual agreement between the Department and the Private Partner of the physical percent complete of each work item, based on a schedule of values included in the Private Partner’s Financial Proposal. In this case, the schedule of values is merely a tool for determining interim payments; any change in quantities from the original assumptions would not affect the lump sum price for the Project.

For larger, more complex Projects, progress and payment will be determined on the basis of a periodic payment schedule developed from a cost-loaded critical path method (CPM) schedule with periodic verification of progress by the Project Manager.

The payment provision must clearly define the scope of the total lump sum price. The lump sum typically includes compensation for all products and services
specified in the RFP, the Proposal, and any changes made prior to contract award, including any ATCs or betterments accepted by the Department.

Payment may also be further limited through the use of a maximum payment curve, which limits the maximum payment during any particular contract period. A maximum payment curve may be proposed by a Proposer or dictated in the RFP (and later the contract) by the PPA. Maximum payment curves can be helpful to match up the use of Project funds with the availability of those funds (which may be over a period of time and may not all be “in hand” upfront).

For certain types of work, unit prices and quantities may remain the most appropriate method for measuring progress and making payment, even on a PPP Project. Such work would include high risk items (e.g., hazardous materials remediation) or work that is difficult to define during the procurement phase of the Project (e.g., relocation of utilities whose location or extent is not well defined). The use of quantities and unit prices would be a means to minimize the risk associated with such unknowns.

### 4.7.2.13 Progress Schedule

PPP delivery adds complexities with regard to cost-loading and progress payments that will likely necessitate modifications to the Department’s standard Project scheduling provision.

For a PPP Project, the scheduling provision may address how the schedule will be used as a basis for measuring progress for payment. For contracts that have separate payment plans for contingency/allowable items, the provision may also specify the associated measurement and payment procedure for such items.

In addition, the schedule may include a detailed set of design activities, along with the required logic to associate them with related construction activities, to ensure that any disruptions to the design process can be tracked as potential delays to the completion of construction.

It is generally very important that a Project schedule be developed very early in the contract phase as incomplete or imprecise schedules can lead to significant problems and disputes in the event of later change orders. Consideration to including provisions in the RFP (e.g., draft 90-day and overall Project schedule submittals as part of the Proposal) and PPP Contract (e.g., requiring approval of a Project schedule within 90 days or progress payments are suspended) to ensure that an acceptable, complete and comprehensive schedule is provided early in the Project design and construction work.
### 4.7.2.14 Project Acceptance

At Project completion, Department personnel will review the work to ensure that the desired quality and performance have been achieved in accordance with the RFP requirements. All work must be accepted for the Private Partner to be eligible for full payment for the work performed.

With PPP, the design must also be accepted for the Private Partner to be eligible for full payment related to design services. Design acceptance occurs concurrently with construction acceptance, and is based upon the Private Partner’s submission of the as-built plans.

The Project acceptance provision may address the following:

- Conditions of substantial completion;
- Procedures and required documents to request a substantial completion inspection;
- Basis of acceptance;
- Procedures and required documents to request a final completion inspection;
- Non-conforming work and punch lists;
- Notice of final acceptance; and
- Final payment including waiver, release and invoice requirements.

### 4.7.2.15 Traffic Control

Based on the needs and goals established for a Project, traffic control during construction may be an important factor to the overall success of a Project. For this reason, preliminary traffic control plans are often completed and evaluated as part of the Private Partner selection process.

A traffic control provision may address the following:

- Submittal of a traffic management plan (or, if including a full plan with the Proposal would be premature, a partial plan or an outline of the Private Partner’s overall approach to work zone management);
- Department’s review and evaluation of the plan (e.g., reviewed for minimum requirements or scored as part of the selection decision);
- Contents of traffic management plan:
Plan for during-construction temporary traffic flow
Plan for post-construction permanent traffic flow

Traffic control analysis
  Worksite and detour route
  Simulation, traffic volume forecast

Traffic control devices (e.g., permanent and temporary signing, pavement markings, ITS devices, etc.)

Restrictions (peak hours, holidays, special events etc.)

Any incentive strategies to minimize road user costs (e.g., lane rental provision)
  Lane rental assesses the contractor daily or hourly rental fees for lanes, shoulders or any combination of lanes and shoulders that are taken out of services in order to minimize the impacts to the flow of traffic. This method is based on daily costs incurred by the Department and roadway user costs.
  Liquidated damages for unpermitted closures

4.7.2.16 Public Relations

Although the Department will continue to take the lead on public outreach, it may delegate certain activities to the Private Partner. Such tasks may include:

  Handling neighborhood complaints;
  Dealing with business owners;
  Attending and participating in public meetings;
  Coordinating with community leaders;
  Maintaining a Project hotline; and
  Maintaining a Project website.

Delegating such responsibilities will help ensure that the Private Partner is sensitive to the needs of the public, both when it is considering possible design solutions and coordinating construction.

If the risk analysis step suggests that public relations will be particularly sensitive for a given Project, the Project team may decide to include a public relations or involvement provision in the RFP. Such a provision would typically require the
prospective Private Partner’s to submit a public relations plan that would be evaluated and scored as part of the Private Partner selection process.

### 4.7.3 PPP Technical Criteria Package

The RFP includes a set of technical criteria that describe the requirements of the work under the PPA. This criteria package typically includes a general Project description and scope, and specific sections dealing with design scope and criteria, construction requirements, O&M requirements and applicable performance criteria, and standards. Some PPP RFPs have incorporated the concept of a basic configuration to define the Project scope.

When developing the design scope, the Project team must clearly specify both the design services required of the Private Partner and the design criteria and requirements to which the Private Partner is expected to conform.

Design services are any tasks that support the design of the facility. The services assigned to the Private Partner will primarily depend on the risk allocation strategy selected for the Project. Design services that may be delegated to the Private Partner include:

- Geotechnical investigations,
- Surveying,
- Permitting,
- Utility coordination/relocation,
- ROW acquisition;
- Preparation of engineering drawings, plans, and construction specifications, and as-built plans, and
- Design Quality Management.

Design requirements are the standards and regulations upon which the Private Partner must base its design. These may include Department standards and design manuals (which may require modification for the Project to fit the PPP delivery), AASHTO design guides, FHWA references, Project reports, and similar information. The Private Partner must adhere to the specific design criteria for the different elements of the Project design; for example roadway design horizontal and vertical alignment criteria (design speed, clearances), and traffic management criteria (number of travel lanes), etc.
4.7.3.1 Construction Requirements

PPP construction requirements are typically captured in the Standard Provisions and related special provisions of the RFP addressing contract administration requirements for construction plans, prerequisites to commencing construction, oversight, quality management, time management, changes, safety, traffic management, payment, substantial completion and final acceptance.

4.7.3.2 Technical Provisions

When developing specific technical provisions for a Project, particularly when using performance specifications, the Project team must keep the following general guidelines in mind.

♦ Contract provisions must focus more on defining the desired performance outcome, not the solution, means or methods to achieve it. For those Project components for which the Department is willing to grant design flexibility to the Private Partner, the Project team must develop performance specifications to the extent possible. Less prescriptive specifications will encourage innovation and will shift design, construction and performance risk from the Department to the Private Partner.

♦ For other Project elements, such as those that interface with existing systems (e.g., street lighting, traffic control systems) and those that will ultimately require routine maintenance and substitution of parts (e.g., signage, median barriers, etc.), prescriptive specifications may be more appropriate.

♦ The level of flexibility allowed in the specifications and the degree of specificity in the plans must be consistent with the risks identified for the Project and the allocation of these risks between the Department and the Private Partner.

Performance specifications inherently mean that there may be more than one way to achieve the desired result. If properly written, they provide more flexibility and encourage more innovation and creativity than prescriptive specifications.

4.7.3.3 Elements of Performance Specifications

Typical Performance Specifications have the following four essential elements borrowed in part from the Construction Specifications Institute Project Resource Manual, Manual of Practice, Methods of Specifying (2005):
♦ Attributes: the critical elements of the work that are of importance to the owner; the means by which the performance characteristics are identified. For example, pavement structure attributes may be measured in terms of rideability (smoothness), durability, and skid resistance;

♦ Performance Requirements: a statement of the desired qualitative results, such as, a skid resistance of 45;

♦ Design Requirements: definitive statements of performance for a particular requirement, usually a statement of results desired at particular times in the life of the Project component (such statements or requirements should not be repeated in Part 3); and

♦ Substantiation/Performance: a statement of what is required and how and when actual performance/conformance will be measured or how predicted performance will be determined.

4.7.3.3.1 Developing Performance Specifications

In preparing Performance Specifications the writer may do the following:

♦ Establish the attributes, requirements, criteria, and substantiation for design, construction, and long-term performance;

♦ Allow flexibility to the extent possible;

♦ Include prescriptive elements where necessary.

4.7.3.3.2 Formatting Performance Specifications

Although there is not an industry-wide format for performance specifications, the format must be consistent with the Department’s current specification format. Formatting for the Department’s performance specifications could include:

♦ Title and Scope;

♦ Applicable Standards & References (i.e., AASHTO, FHWA, Department);

♦ Essential Elements, including:
  o Attributes,
  o Requirements,
  o Criteria, and
♦ Substantiation/Performance.

Payment

The Department may “standardize” some Performance Specifications over time while others may be tailor-made for a given Project. Performance specifications may not be prepared for all Project components. They must be prepared where a degree of flexibility is allowed and where innovation and creativity may result in better value, higher quality, or lower cost.

4.7.3.4 Reference Documents

The Project team may decide to include reference documents in the RFP that it feels may be useful or of interest to prospective Private Partners. If such documents are provided, the RFP must clearly stipulate that the documents are provided for information only and not reliance, that the Private Partner remains solely responsible for performing the scope of work (including any investigations, analyses or studies it deems necessary), that errors in the reference documents will not give rise to a change order (except as otherwise expressly noted in the contract) and that reliance on such information is entirely at the Private Partner’s risk.

Reference documents may include Department manuals (e.g., Construction Manual, etc.), geotechnical investigations, utility strip maps or reports, hazardous materials investigations, environmental documents and decisions, and any applicable agreements (e.g., railroad and Utility agreements) made by the Department prior to the RFP.

The Department cannot require the Private Partner to comply with information contained in the reference documents. For example, environmental documents included in the reference documents may identify certain mitigation or permit requirements. If the Department expects the Private Partner to comply with such requirements, those requirements must be duplicated or referenced and included as mandatory requirements in the RFP and contract.
SECTION 4.8  SOLICITATION PHASE

4.8.1 Procurement Phase - Project Management Tasks and Approvals

The following tasks, activities and approvals must be performed through coordination between the PMT, the Selection Official and Department Director. For all listed activities below, a recommendation memo is submitted from the Pioneer Program Manager to the Director and/or the Selection Official.

4.8.1.1 Appointment of the Selection Official

This is the first step in the solicitation phase. The Pioneer Program Manager requests appointment of the selection official which per Department’s internal policies shall be the Department Director or a Deputy Director. The Director may choose to designate the Deputy Director as the Selection Official of a PPP.

4.8.1.2 Project Management Plan and Appointment of the Procurement Team

Based on input of the Project Manager, the Pioneer Program Manager recommends the team composition of QET, QSC, PET, PSC, PMT, and Observers to the Selection Official. The PMP will be submitted for the Selection Official's Endorsement.

4.8.1.3 Approval of RFQ Evaluation Criteria and Issuance of Request for Qualifications

The Pioneer Program Manager will compile the RFQ evaluation criteria and submit it to the Selection Official for approval. The Pioneer Program Manager will also requests approval from the Selection Official to proceed with issuing the request for qualifications. After receiving this approval, the Project Manager will notify the project team of qualification evaluation timelines. Within this request, insurance recommendation for the Project must be included.
4.8.1.4 Approval to Issue Draft Request for Proposal

The request to issue a draft RFP will include the Project Manager, Project teams and Pioneer Program’s recommendations regarding:

- PPP delivery method/scope of work
- Risk allocations
- Project scope, budget and funding source
- Financing approach
- Target procurement schedule
- Target NEPA and ROW schedule/approach
- SEP 15 requirements, if necessary
- Type of procurement
- Proposal evaluation approach
- Technical issues and approach
- Major risk issues and proposed allocations
- Inclusion of ATCs
- Construction schedule
- Term of PPA
- Payment approach (price centers, etc.)
- Early completion bonus and liquidated damages
- Key maintenance of traffic limitations
- Public relation approach
- Insurance
- Etc.

4.8.1.5 Approval of RFP Evaluation Criteria and Issuance of Request for Qualifications

Based on Project scope of work, complexity, technical needs and other factors, the Pioneer Program Manager, with the input of the project team, submits the RFP evaluation criteria to the Selection Official for approval.
4.8.1.6 Approval to Issue Request for Proposal

The request to issue the RFP will include recommended changes to the key contract issues, based on industry review.

4.8.1.7 FHWA Approval of the RFP

After receiving Selection Official’s approval to issue the RFP, the Project Manager will obtain FHWA’s approval, if necessary. Pursuant to 23 CFR 635.309(e), FHWA approval of the RFP (FHWA’s Project authorization) must be obtained prior to issuing the RFP if federal funding, TIFIA financing, or certain other federal actions are involved. Draft RFPs may be issued without FHWA approval.

4.8.1.8 Processing Memo

The Processing Memo is intended to provide information about the Project to all involved parties in the Department. It specifies important tasks and dates related to the project. Please note that Environmental and ROW certifications are not required to be complete by issuance of the memo. ROW and environmental activities can continue after award of the contract through preliminary design. A sample Processing Memo can be found in Appendix G.

4.8.2 Solicitation Phase Steps

Generally, all Unsolicited Proposal Projects will proceed through the Project Procurement Process as summarized in Figure 4-5 and detailed in Chapter 4 of these Guidelines. However, these procedures may be changed from time to time at the Department’s discretion.
Figure 4-5: Unsolicited Proposal Procurement Process Summary

The solicitation phase processes are outlined in Figure 4-6 and are detailed below. As shown, the Department may use a multi-process solicitation phase for Unsolicited Proposal Projects. The solicitation phase may include an RFQ, an Industry Review, and an RFP. The determination of whether to utilize some or all of these procurement phases will be a Project-specific decision at the Unsolicited Proposal Director’s sole discretion.
Pursuant to NAC 408.650 to 408.698, inclusive, after receiving an Unsolicited Proposal for a Project and after making a determination that the transportation facility serves a public purpose, the Department may issue an RFQ pursuant to NAC 408.650 to 408.698, inclusive, or may issue an RFP pursuant to NRS 408.548 and Sections NAC 408.650 to 408.698, inclusive. Pursuant to NAC 408.650 to 408.698, inclusive, the Department may modify the potential Project submitted in the Unsolicited Proposal. Modification is appropriate or warranted to make the Project more viable, consistent with Department or stakeholder preferences, goals or policies, to ensure appropriate competition and/or to enhance the value to the Department and the public. Modifications
may be limited or extensive and may include an expansion, reduction or change to the proposed Project scope, alignment, delivery method or financial approach.

The Project Manager must, among other activities:

♦ Establish a PMT. The PMT will be responsible for administering, implementing, and maintaining the integrity of the entire procurement process, including the evaluations and selections.

♦ Select members of the Project Administration Team (PAT) for the RFQ and RFP processes. The PAT will serve as a point of contact in the event a team member has questions or encounters issues relative to the evaluation of the RFQ and/or RFP. The PAT will be responsible for ensuring a timely progress of the evaluations, coordination, any consensus meeting(s) or re-evaluations(s), and ensuring appropriate records of the evaluations are maintained.

♦ Establish members of the QSC for the RFQ process.

♦ Establish members of the PSC for the RFP process.

♦ Establish the QETs for the RFQ process and the PETs for the RFP process, consisting of TECs and PPCs.

♦ Oversee preparation of evaluation process and plan for the RFQ and RFP processes, including development of evaluation criteria and subcriteria, the weightings of such evaluation criteria and subcriteria, the QBS or best value methodology for the Project and the numerical translations for adjectival qualitative ratings.

♦ Oversee preparation of the RFQ and RFP.

♦ Oversee development of Project details for inclusion in the RFQ and RFP.

♦ Recommend the final stipend value, if any, and seek the Director's approval.

♦ Oversee preparation of draft contract terms.

♦ Oversee preparation of draft technical provisions using, as appropriate, performance criteria.

♦ Oversee preparation of concept plans and specifications.

♦ Develop a Project Management Plan (PMP) per the requirements of the NDOT Project Management Guidelines.
♦ Oversee the procurement of Service Providers/Advisors as needed.

The Project Manager must accomplish the following activities at the beginning of the Solicitation Phase prior to issuing the RFQ, if used, or if an RFQ will not be used, the RFP:

♦ Develop a Project description sufficient to describe the Project to Proposers as required by NAC 408.650 to 408.698, inclusive
♦ Select members of the PAT, QSC, and ETs for the RFQ process
♦ Develop evaluation criteria for the SOQs
♦ Develop an SOQ Evaluation and Selection Plan
♦ Determine the stipend value, if any
♦ Finalize the schedule for the RFQ
♦ Prepare the RFQ

The Project Manager must complete the following activities before issuing the RFP. These activities may be performed concurrently with RFQ activities, but it is anticipated that some of the activities will continue into the RFP phase after the RFQ is issued.

♦ Select members of the PAT, PSC, and ETs for the RFP process
♦ Develop the schedule for the RFP
♦ Develop evaluation criteria for the Proposals
♦ Develop an RFP Evaluation and Selection Plan
♦ Prepare the RFP, including Instructions to Proposers (ITP), draft agreement (or term sheet), draft technical provisions (performance criteria), concept design and specifications, draft Project schedule, and other available contract documents
♦ Program Project funds, if applicable
♦ Pursuant to 23 CFR 635.309(e), obtain FHWA approval of the RFP (FHWA’s Project authorization) if federal funding, TIFIA financing, or certain other federal actions are involved.

All procurement activities shall be well documented, with the rationale for decisions made. For example, the issues addressed in determining the stipend should be discussed and the logic for the decision described.
4.8.3  

**Stipend**

See Chapter 2 regarding stipends and stipend amounts.

Any reimbursement made pursuant to NAC 408.650 to 408.698, inclusive, will be payable in the manner set forth in the RFP. As a general approach, such payment should be payable not later than the execution date of the contract or financial close (if financing is involved in the Project scope), whichever occurs later.

4.8.4  

**Request for Qualifications (RFQ) - Optional**

The purpose of the RFQ process is to identify qualified candidates for continuing in the procurement process. The Department may shortlist one or more candidates based on their responses to the RFQ.

Per NAC 408.650 to 408.698, inclusive, if the PMT decides to use the RFQ process for a Project, the PAT will issue an RFQ that sets forth the following:

a. The criteria that the Department will use to shortlist a Proposer who submits a qualification submittal. Such criteria may include, without limitation:
   - The capabilities, experience, facilities or techniques of the Proposer
   - How the Proposer’s capabilities, experience, facilities, or techniques, or a combination thereof, help achieve the objectives of the Project
   - Whether the Proposer’s qualifications, capabilities, experience, facilities, or techniques, or a combination thereof, are critical to achieving the objectives of the Project
   - Any other criteria the Department determines is appropriate for the particular Project

b. The relative weight assigned to each criterion used to shortlist a Proposer

c. The date and time by which a qualification submittal must be submitted to the Department. This date and time will be at least 30 days after the date that the notice of the RFQ is first published.

d. A description of the Project, which may include modification to a Project drawn from an Unsolicited Proposal
e. A statement indicating how a Proposer submits a qualification submittal or can obtain any available information from the Department concerning the RFQ, including, without limitation:

- The location where the information can be obtained
- The date and times the information may be accessible for inspection
- The type of information that may be available, including the following:
  
  i. A description of the extent to which any designs required by the request must be completed
  
  ii. The requirements for any design and construction of the Project the Department determines to be necessary
  
  iii. A list of the criteria set forth in NRS 408.5483 that the Department considers to determine whether a transportation facility serves a public purpose
  
  iv. A list of the criteria the Department will use to evaluate a qualification submittal, including without limitation:
     
     - The weight to be assigned to each criterion
     - Whether the criteria that are not related to cost are, when considered as a whole, more or less important or worth more or less weight in the evaluation than criteria related to costs
  
  v. A statement indicating whether or not a stipend will be provided to shortlisted Proposers, and, if a stipend will be provided:
     
     - An estimate of the amount of the stipend
     - The circumstances under which such a Proposer is qualified to receive the stipend
     - The circumstances under which the stipend is payable

f. The general evaluation method the Department will use for the Project

The original entity that submitted the Unsolicited Proposal may be required, in the Department’s discretion, to submit an SOQ in response to the RFQ. Under normal
circumstances, such entity will be so required in order to ensure they are sufficiently qualified to continue in the procurement process, to address potential modifications to the potential Project submitted in the Unsolicited Proposal that have been made by the Department, and to obtain relevant information from such entity (in a manner consistent with all other Proposers).

See Section 2.4.1 regarding RFQs for a description of the RFQ process, components and evaluation. The PMT will review and finalize the RFQ. Pursuant to NRS 408.327 and NAC 408.650 to 408.698, inclusive, the Department will publish a notice of its RFQ for at least 15 days after the Department issues its request in either a newspaper of general circulation in this State or on the Department’s website. The published notice must include, without limitation, items d through f above. The Department may issue addenda to the RFQ from time to time.

SOQs will be received by Agreement Services on behalf of the PMT. The number of copies of the required submittals will be specified in the RFQ. The PMT will ensure that all documents are handled confidentially, that the appropriate ETs supporting the QSC receive appropriate documents, and that the documents are appropriately and safely stored.

### 4.8.5 Shortlist

Following completion of the RFQ evaluation, the Department will shortlist the most qualified/highest ranked Proposers. Typically, 3 to 5 Proposers will be shortlisted. If the Department does not receive 3 SOQs from Proposers that it determined to be qualified, the DB/DBF procurement must be cancelled. It may be noted that increasing the number of shortlisted firms above five might not be in the best interest of the public. The cost to a Proposer for preparing a Proposal is high and increasing the number of shortlisted firms beyond 3 to 5 Proposers might cause some teams to back out of the RFP process.

The number of Proposers shortlisted will vary depending on the number of submittals, the nature of the procurement and the PPA, the planned RFP process and the amounts available for stipends. The statutory authority for Unsolicited Proposals does not have a minimum number of Proposers that must be shortlisted.

### 4.8.6 Industry Review(s) – Optional

After shortlisting, the Project Manager, in his/her discretion, may utilize an industry review process with the shortlisted Proposers, which includes issuance of one or more drafts of the RFP package, joint and/or individual meetings with shortlisted Proposers.
and the receipt and discussion of Proposer comments, input and feedback on the drafts of the RFP package.

Refer to Chapter 2 for information on Industry Reviews.

### 4.8.7 Nevada State Board of Transportation Review

If the Project is approved by the Department Director and by the FHWA, if applicable, then:

- The Project Manager will prepare a draft RFP Letter Of Recommendation (“Board Memo”) to the Board for Director’s review and approval. *This letter should include the shortlisted proposers, key contract terms based on Industry Review.* The Project Manager will forward this letter to the Attorney General's Office, the Pioneer Program Manager, and the Pioneer Program Director, for review and comment. The Project Manager will then revise the RFP based on the comments received before providing the final recommendation letter to the Department Director for his/her signature. The Department Director will follow the Department’s standard processes for submitting the recommendation to the Board. Pursuant to NRS 408.3881 (2), the meeting will be advertised in a newspaper of general circulation in the State of Nevada.

### 4.8.8 Request for Proposals (RFP)

A general description of RFPs is found in Chapter 2.

Some of the activities described in this Section are those which are necessary to continue the solicitation process through developing and issuing an RFP. Because the issuance of the RFP may require approval of the RFP by the FHWA, the RFP-related activities described in this Section may occur prior to, concurrently with, and/or following the RFQ-related activities. It is likely that some will be concurrent and some will continue beyond the issuance of an RFQ. All of these activities must, however, be completed prior to finalizing and issuing the RFP.

Pursuant to NAC 408.650 to 408.698, inclusive, the PMT will issue an RFP that sets forth the following:
The criteria that the Department will use to select the apparent successful Proposer, including, without limitation, the relative weight to be assigned to each criterion.

The date and time on which the Proposal must be submitted to the Department.

A description of the Project, which may include modification to a Project drawn from an Unsolicited Proposal.

A statement indicating how a Proposer submits a Proposal or can obtain any available information from the Department concerning the RFP, including, without limitation:

- The location where the information can be obtained.
- The date and times the information may be accessible for inspection.
- The type of information that may be available, including the following:
  - A description of the extent to which any designs required by the request must be completed.
  - The requirements for any design and construction of the Project the Department determines to be necessary.
  - A list of the criteria set forth in NRS 408.5483 that the Department considers to determine whether a transportation facility serves a public purpose.
  - A list of the criteria the Department will use to evaluate a proposal, including without limitation:
    - The weight to be assigned to each criterion.
    - Whether the criteria that are not related to cost are, when considered as a whole, more or less important or worth more or less weight in the evaluation than criteria related to costs.
  - A statement indicating whether or not a stipend will be provided to shortlisted Proposers, and, if a stipend will be provided:
    - An estimate of the amount of the stipend.
    - The circumstances under which such a Proposer is qualified to receive the stipend.
c. The circumstances under which the stipend is payable

♦ The general evaluation method the Department will use for the Project
♦ The date and time on which Proposals must be submitted to the Department. This date and time will be at least 30 days after the date that the notice of the RFP is first published.

DB/DBF

If a RFQ was not issued, pursuant to NRS 408.327 and NAC 408.650 to 408.698, inclusive, the PAT will publish a notice of its RFP for at least 15 days after the Department issues its request in either a newspaper of general circulation in this State or on the Department’s website. The published notice must include, without limitation, items c through f as outlined above in this Section. The Department may issue addenda to the RFP from time to time.

If a RFQ was issued, pursuant to NAC 408.650 to 408.698, inclusive, the PAT will issue an RFP to the shortlisted Proposers. The RFP must include, without limitation, items c through f as outlined above in this Section. The Department may issue addenda to the RFP from time to time.

4.8.8.1 Proposal Components

The Department may issue an RFP which may require the Proposers to provide a Proposal containing at least two basic components, a Technical Proposal, and a Financial Proposal. The Department may also issue an RFP without first issuing an RFQ. If the Project delivery model is a PDA, then components other than a Technical Proposal and Financial Proposal may be required as indicated below. The RFP may require Proposers to submit information different from or in addition to such information referenced in these Guidelines.

4.8.8.1.1 Technical Proposal

The Department may require the Proposer to provide such technical information regarding the Project scope of work and technical requirements as the PMT deems appropriate. Such required information may include, without limitation:

♦ Design elements and approach
♦ Construction approach
♦ Operations approach
♦ Maintenance approach
♦ Project management approach
♦ Schedule
♦ Phasing
♦ Quality control and assurance approach
♦ Other information as is appropriate for the Project’s development, operations and/or maintenance

The intent of the Technical Proposal is to provide assurance that the Private Partner selected has a sufficient understanding of the Project or desired service, an approach that meets technical and contractual requirements, and that the Private Partner establishes that it has the ability to timely and efficiently deliver the Project or service in a quality manner in accordance with technical and contractual requirements. The Technical Proposal also often affords a Proposer the ability to demonstrate its quality, innovation and creativity, and commitment to exceed minimum technical and contractual requirements.

4.8.8.1.2 Financial Proposal

The type and extent of financial documents to be submitted as part of the Financial Proposal will depend on the Project delivery mechanism. The Financial Proposal may also require that the Proposer update the financial qualification information provided with the SOQ.

If the RFP and Project scope require the Proposer to finance any part of a Project, the Financial Proposal will generally require the submittal of a financial plan and a financial model. The nature of the Project, the Project delivery method, and current market conditions will dictate the contents and level of detail of the financial plan and whether the Financial Proposal is fully or partially committed (e.g., binding and subject only limited conditions) or whether more substantive conditions may be included by the Proposer. Generally, requirements for a financial plan may include that the Proposer:

♦ Identify the financial institution(s)
♦ Provide descriptions of senior debt finance, mezzanine debt finance, equity and quasi-equity finance (including subordinated debt or loan stock), and any other forms of finance
♦ Identify investors, lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers that have given indications/commitments
♦ Describe the type and purpose of each funding source and facility
♦ Describe the proposed steps and timeframes for reaching financial close
♦ Copies of commitments

Proposers may be required to provide specific information for each separate bank, loan facility, or other debt instrument such as commitments, amounts, terms and conditions attaching to the loan, drawdown schedule, capital repayment moratorium, repayment schedule and final maturity date, events of default, security required (including any guarantees), any reserve accounts, interest rate, any proposed hedging arrangements in respect of interest rates, average life of debt, credit ratings, due diligence, and timetables. The financial plan requirements will be detailed in the RFP documents.

Generally, requirements for a financial model submittal may include:
♦ Inputs (specific dates, periods, revenues, expenditures, contingencies and profit margins, macroeconomic assumptions, and inflation)
♦ Outputs (cash balances, returns on equity, cost of capital, net present value (NPV) of construction costs, and reserves),
♦ Calculations.
♦ Detailed back up information
♦ A list of assumptions
♦ Details of how the financial model operates

The RFP will provide details regarding the Proposer’s submission of the financial plan and financial model portions of the Financial Proposal.

Where possible and financially feasible, the Department will seek Proposals that minimize the use of public funds as well as the creation of state-supported debt. If a Proposal includes public or private debt, then the RFP may require the Proposal, to the extent possible, identify the amount of public funds and specify the Project-level approvals by the Department, other appropriate public entities, private lending institutions, and ratings agencies.

4.8.8.1.3 PDA Approach

In the case of a PDA, the Project has typically not advanced to a level where a defined technical approach and firm pricing and financing may be proposed. Environmental approvals may not be in place, the alignment may not be set and the scope of work may not be defined. As a result, the Proposal for a PDA will generally focus on the Proposer’s
♦ Approach to undertaking the PDA scope of work, which will generally include supporting the environmental and Project definition process
♦ Price/Compensation for undertaking this scope of work (or willingness to contribute “sweat equity” or discounting for such scope)
♦ Conceptual approach to developing the Project
♦ Conceptual approach to financing the Project

The Department may also require the Proposer to submit a proposed conceptual development schedule and approach for the development and confirmation of financing alternatives for pre-development. Specific required information may include the following: a preliminary master development plan, preliminary master financial plan, Project Management Plan, Quality Management Plan, and a description of the major challenges and risks relating to completing the activities required, including strategies to mitigate such challenges and risks. A Proposer may also be required to include information related to delivery options, preliminary engineering, environmental approvals, and the public involvement process.

4.8.8.2 One on One Meetings – Optional

Refer to Chapter 2 for information on one-on-one meetings.

4.8.8.3 Alternative Technical Concepts (ATCs) – Optional

Refer to Chapter 2 for information on ATCs.

4.8.8.4 RFP Evaluation and Selection Plan

The PMT will prepare a written RFP Evaluation and Selection Plan so that all members of the PRC will have a common basis for and understanding of the process and criteria used in evaluating the submitted Proposals. The objective is to utilize a disciplined, fair, and uniform basis for the evaluation. The RFP Evaluation and Selection Plan will describe:

♦ The procurement process
♦ The qualifications evaluation and selection organization, functions, and general procedures
♦ Evaluation factors
♦ Evaluation process
4.8.9 **RFP Evaluation Criteria – Technical Proposal**

A PPA procurement will generally require submittal of a Technical Proposal and a Financial Proposal. The Technical Proposal is typically qualitatively evaluated, while the Financial Proposal is quantitatively evaluated.

Evaluation criteria for the Technical Proposal should be objective and relevant to the Proposer’s ability to successfully execute the Project. Listed below are examples of relevant factors.

- Professional qualifications of the Proposer team
- Experience of the Proposer team
- Performance history of the members of the Proposer team on recent similar completed Projects
- Proposed management plan
- Proposed quality plan
- Ability to design, construct, operate, maintain and/or finance the Project
- Technical approach and solutions
- Schedule and time (may also be quantitatively evaluated and handled as an adjustment to the Financial Proposal)
- Other criteria determined relevant by the Department

The weighting of these evaluation criteria will be as indicated in the RFP and will be proportional to the significance of the criteria to the Project. See also Chapter 2 regarding best value procurements.

4.8.10 **RFP Evaluation Criteria – Financial Proposal**

The Financial Proposal in a PPA procurement will vary significantly depending on the Project delivery method. If the Project is a DB/DBF-based PPA or a design-build-operate-maintain PPA, the Financial Proposal centers around the price to be paid to the Private Partner, often proposed on a lump sum, fixed price basis (though elements of the scope of work may include allowances which are included with the lump sum, fixed price).
If the Project is a long-term concession with availability payments, Financial Proposal will focus on the financing structure and the amount of that availability payment to be paid to the Private Partner.

If the Project is a PDA, the Financial Proposal will focus on the amounts to be paid for carrying out the PDA scope, but may also describe potential financial structures to be used when the Project is ready for financing.

4.8.10.1 Pricing-Based Financial Proposals

If pricing is the focus of the Proposal, the Proposer's price will generally be evaluated on a present value basis, taking into account the proposed timing of payments (which recognizes the time value of money and that payment of the price faster is more “expensive” than payment of the price over a longer period of time). The amount of the discount to apply to the present value analysis generally reflects the Department’s cost of money and may vary from time to time. The PMT should determine the present value discount with the assistance of the Department’s internal financial personnel and such percentage amount should be identified in the RFP as it will influence the manner in which the Proposer’s develop their pricing.

In addition to the present value analysis, the Proposer’s price may be subject to various adjustments, such as those based on schedule, materials or life cycle costs. The methodology of any adjustments must be expressed in the RFP.

Once the Proposal price value is determined, it will generally be converted into points and combined with the Technical Proposal scores to determine the apparent best value proposer.

See also Chapter 2 regarding best value procurements.

4.8.10.2 Availability Payment-Based Financial Proposals

If availability payments are the focus of the Proposal, the Proposer will typically be asked to propose its annual availability payment. This proposed availability payment will be the basis of the financial evaluation. In this context, the pricing of carrying out the scope of work is reviewed and is important, but it is the availability payment which is what is important and evaluated (because it is that amount which reflects the “cost” to the Department.
4.8.11 RFP Evaluation Criteria – Where Financing is Part of Financial Proposal

If financing is part of the scope and the PPA, additional example evaluation criteria may include:

♦ Proposer financial capacity to deliver the Project
♦ Financial score (calculation will be determined in the RFP)
♦ Viability of financing plan
SECTION 4.9 EVALUATION PHASE

The evaluation phase processes are outlined in Figure 4-7 and are detailed below. As shown, the evaluation phase will consist of prescreening and evaluating submitted Proposals and selecting the apparent best value Proposer. This phase may also include an optional Proposer interview process and/or an optional BAFO process.
Figure 4-7: Unsolicited Proposal Evaluation Phase Processes
4.9.1 Prescreen Proposals

Proposals received by the specified deadline will be prescreened by the PAT for responsiveness and pass/fail items. This screening will determine whether the Proposal meets the form and time submittal requirements and includes the required information as specified in the RFP. Such information will include, pursuant to NAC 408.650 to 408.698, inclusive:

- Evidence of ability to obtain performance and payment bonds required by the RFP
- Evidence of ability to obtain general liability insurance and professional indemnity insurance as required by the RFP
- Evidence that the Proposer and its key corporate members have not been found liable for breach of contract with respect to a previous Project other than for a legitimate cause
- Evidence that the respondent has not been disqualified from a contract award pursuant to NRS 338.017, 338.13895 or 408.333
- Evidence that the Proposer possesses all relevant licenses and certifications with the State of Nevada
- Separate Technical Proposal and a sealed Financial Proposal
- Completion of all forms provided in the RFP
- Insurance certificates and surety commitment letters
- Cover letter in the format required in the RFP
- Legal and financial sub-factors: Properly executed form of proposal, appropriate licenses or commitment to obtain such licenses, required bonds/performance security/insurance and financial evidence showing capability to meet DB/DBF Agreement requirements

Proposals which do not comply with the above requirements, are not properly signed by an authorized representative of the Proposer, or otherwise are not responsive to the requirements of the RFP will be rejected. At the PAT’s discretion, the PAT may waive any minor deficiencies in a Proposal, allow a Proposer to correct minor deficiencies in or clarify or supplement the Proposal, or reject a Proposal that does not pass the prescreening process. The PAT will have this discretion. The PAT will report to the Selection Official regarding the results of the prescreening process.
4.9.2 Evaluate and Score Technical Proposals

Both the Technical Proposal and Financial Proposal portions of a submitted Proposal will be evaluated if such Proposal is found to be responsive and achieves a “pass” under the pass/fail evaluation. The Proposal evaluation criteria will be specified in the RFP. It is anticipated that evaluation criteria will be tailored to the specific Project and Project delivery approach and that there may be significant variances as to evaluation criteria for Projects under the Pioneer Program (even for Projects delivered under similar Project delivery methods).

The Technical Proposal evaluation will be performed by the PSC, with assistance by TECs and advisors. The PSC will perform its evaluation as is consistent with the RFP Evaluation and Selection Plan. ATCs which are approved or conditionally approved by the date specified in the RFP will be considered in the evaluation. See Section 4.8.9 for common Technical Proposal evaluation criteria.

4.9.3 Evaluate and Score Financial Proposals

The Financial Proposal evaluation will be performed by the PSC, with assistance by PPCs and advisors. The PSC will perform its evaluation as is consistent with the RFP Evaluation and Selection Plan. See Section 4.8.10 for common Financial Proposal evaluation criteria.

The evaluation and scoring process will be documented by the PSC in a written report that will accompany the PSC’s recommendation to the Selection Official.

4.9.3.1 PDAs

Where a PDA delivery approach is used, the evaluation methodology for Proposals is more akin to the evaluation of SOQs (because the Project and the Financial Proposal are still conceptual), though some weighting may be placed on the price/compensation proposed for completing the PDA scope of work.

For hybrid defined Project delivery method/PDA Projects, the evaluation methodology blends aspects of a defined Project delivery method with that of a PDA delivery method. In such Projects, great care must be taken to develop a suitable evaluation methodology and appropriately weight the two different aspects so that their relative value and importance does not create unintended results (e.g., a Proposer being selected on the basis of its highly ranked approach, ideas, and cost for a small second (PDA) phase of a Project despite the fact that it was ranked materially worse than others on the larger, more definite DBFO aspect of the Project).
4.9.3.2 Interviews/Presentations/Clarifications

To the extent provided in the RFP, the PSC may, at its sole discretion, choose to meet with and receive presentations from Proposers, request clarification of certain Proposal details and/or conduct interviews with Proposers prior to completing the evaluation of the RFPs. The PSC may elect to modify its scoring based on the interviews/presentations, but only to reflect clarifications learned from such interviews and in all events, in a manner consistent with the RFP and the Evaluation and Selection Plan (and not on presentation/interview style or materials).

Interviews/presentations/clarifications shall only be used to obtain a better understanding of a Proposal and to address any ambiguities or inconsistencies in a Proposal. Interviews/presentations are not an opportunity for a Proposer to change its Proposal or provide additional or new information or materials.

4.9.4 Competitive Range

A Competitive Range may be established based on all responsive Proposers score/ranking. In the event of a BAFO, the PAT will notify in writing any Proposer which is not within the Competitive Range.

4.9.5 PSC Recommendation

The evaluation and scoring process will be documented in a written report which accompanies the PSC’s recommendation to the Selection Official.

4.9.6 Selection Official Review

The Selection Official will review the PSC’s recommendation and the report documenting its activities. He/she may accept the PSC’s recommendation, ask for a re-evaluation or reject all Proposals. If the Selection Official accepts the PSC’s recommendation, he/she may move the Proposal forward for FHWA concurrence (if required) and ratification by the Board or direct that Proposal revisions, generally called Best and Final Offers (BAFOs) be sought from any Proposers within the Competitive Range.
4.9.7 Debriefings

After conditional or final award of the PPA, PAT may offer to provide a debriefing to unsuccessful Proposers if requested to do so. Such debriefing will focus on that Proposer’s Proposal and not those of other Proposes and may highlight the strengths and weaknesses of the Proposal.

4.9.8 BAFOs

Pursuant to NAC 408.650 to 408.698, inclusive, the Department may issue a request for Best and Final Offers (BAFOs) if the Department determines that:

a. No Proposal received by the Department:
   i. Is responsive to the request
   ii. Serves a public purpose
   iii. Satisfactorily achieves the goals and needs of the Project for any reason, including, without limitation, the Proposals received:
      1. Are not cost effective
      2. Exceed budget amounts or cost estimates
      3. Identify technical or scope ambiguities in the RFP

b. A request for BAFOs may result in the submission of a satisfactory Proposal

In conjunction with preparing a request for BAFOs, the PMT may alter the scope of the Project, revise the form of contract, and/or revise the selection factors and relative weights. The request for BAFOs will set forth the date and time on which BAFOs must be submitted to the Department.

The PAT may issue a request for BAFO to:

♦ Each Proposer who submitted a Proposal
♦ Only those Proposers who submitted responsive Proposals that pass all pass/fail criteria or Proposals within a Competitive Range, which is set based on the original Proposals

The PMT may, when preparing a request for BAFOs:

♦ Hold individual or joint meetings or discussions with Proposers concerning the Project
♦ Modify the scope of the Project
♦ Modify the terms of any contract
♦ Revise the estimates of cost of the Project
♦ Revise the criteria for evaluation of the Proposals and the relative weights assigned to criteria

After receiving BAFOs, the Department will undertake an evaluation using the same general process as with the original Proposals. After reviewing all BAFOs and any clarifications or additional information provided by a Proposer pursuant to the Regulations, the PSC may:

♦ Rank each responsive BAFO submitted, with the highest ranked offer as the apparent successful Proposal, and the next highest ranked offer as the second best Proposal, and so on, for each offer.
♦ Reject all BAFOs.
♦ Take any other action, including without limitation, any action set forth in the Regulations for reviewing and processing Unsolicited Proposals or in the RFP.
SECTION 4.10 AWARD PHASE

The award phase processes are outlined in Figure 4-8 and are detailed below. As shown for the award phase, after the Selection Official has accepted the PSC recommendation of a Proposal or after a decision is made through the BAFO process, the Department will notify the Proposers, engage in final negotiations with the apparent best value Proposer, request FHWA concurrence, when necessary, in the award, ratify the intent to award the contract at a public meeting, and execute the contract.

Figure 4-8: Unsolicited Proposal Award Phase Processes
4.10.1  Award Organization and Overview of Responsibilities

During the award phase, the Project Manager, PMT, PAT, the Selection Official and Department Director are actively involved in contract negotiations. The following is a summary of their roles and responsibilities:

♦ Pioneer Program Manager: Overseeing contract negotiations, ensuring integrity of the process, input into contract terms, review and approval of negotiation summary report and draft final agreement.

♦ Project Manager and PMT: Performing contract negotiations, and overseeing development of final contract

♦ PAT: Participating in contract negotiations, and overseeing development of final contract

♦ Selection Official and Director: Decisions regarding contract terms, review and approval of the negotiation summary report and final agreement.

4.10.2  Contract Negotiations

After determining the apparent successful Proposer, pursuant to NAC 408.650 to 408.658, inclusive, the Department will attempt to negotiate a contract for the Project with the apparent successful Proposer pursuant to NAC 408.650 to 408.658, inclusive.

The PMT may engage in negotiations regarding Project development elements, Project scope, risk allocations, price, Project financing, financial terms, PPA terms, technical requirements and other matters. The Department will not disclose the contents of any Proposal to competing Proposers during the negotiation and selection process. While the Department will generally reserve in the RFP the right to negotiate any aspect of the PPA, generally negotiations will be limited and will cover ATCs of unsuccessful Proposers, inclusion of Proposal commitments that exceed the minimum requirements of the PPA, changed circumstances that have occurred between the Proposal due date and award and other minor changes or modifications. ATCs of unsuccessful Proposers who accept a stipend may be used by the Department pursuant to 23 CFR § 636.113, if such intent is stated in the RFP, and may be incorporated, in whole or in part, into the negotiated scope of the Project.

If the Department cannot negotiate a satisfactory contract, as determined by the PMT, with the apparent successful Proposer, the PMT may suspend or end negotiations with that Proposer by notifying the Proposer in writing of the Department’s decision to suspend or end negotiations. The PMT may then initiate negotiations with the Proposer
who was ranked as the next best Proposer during the Proposal evaluation process. The PMT may repeat the process of suspending or ending negotiations and beginning a negotiation with the next best Proposer until the PMT can reach a satisfactory contract or until the PMT has attempted to negotiate with every Proposer who the PSC ranked during the Proposal evaluation process.

Prior to executing the contract, the Project Manager will prepare a negotiation summary report for review and approval of the Pioneer Program Manager and the Selection Official.

### 4.10.3 Contracting

Prior to developing, designing, constructing, financing and/or maintaining a Project, the best value Proposer selected must enter into a PPA with the Department. Because of the unique nature of every Project and the potential for a myriad of different PPP approaches and Project delivery methods, it is anticipated that contracts may differ significantly. For instance, a PPA for a DB/DBF Project will be very different than a PPA for a concession or a PDA. Each contract will define the rights and obligations of the parties with regard to the Project. The Department will consider such policy or legal, financial, and technical advice as it deems necessary or appropriate to successfully develop, structure and negotiate the contract(s). The Department also may seek the advice and involvement of affected state, local or regional public entities during the negotiation process.

A contract awarded by the Department for a Project must:

- Comply with the provisions of NRS 338.020 to 338.090, inclusive
- Contain the provisions required pursuant to NRS 408.5483, including, without limitation:
  - Criteria that address the long-term quality of the transportation facility
  - The date of termination of the authority and duties pursuant to NRS 408.5471 or 408.549, inclusive, of the person whose Proposal was approved by the Department with respect to the transportation facility and for the dedication of the transportation facility to the Department on that date
  - Provision for the imposition by the person whose Proposal was approved by the Department of such rates, fees or other charges as may be established from time to time by agreement of the
parties for use of all or a portion of a transportation facility, other than a bridge or road

- Specify an amount that is the maximum amount the Department will pay for the performance of all the work required by the contract, excluding any amount related to costs, charges, compensation, or fees that may be incurred as a result of termination of the contract or such events, conditions, or circumstances as authorized by the contract.

4.10.3.1 **General Contract Terms**

The PPA may include, but not be limited to, the following:

- The right of the Private Partner to plan, develop, design, construct, finance, operate and maintain, or any combination of the foregoing, the Project, the date of termination of the Private Partner's authority, duties and rights with respect to the Project, and the handback and other conditions under which the Project will be returned to the responsible public entity;

- The performance milestones that will be required of the Private Partner along with any performance security (bonds, reserves, letters of credit, etc.) related to the planning, development, design, construction, finance, operation and/or maintenance of the Project;

- Responsibilities for the acquisition of necessary environmental approvals (if not then obtained) and other required permits and approvals for the Project, including but not limited to railroad, waterway and utility crossings;

- The manner, if any, in which the Private Partner and the Department will work together to establish interconnections and interoperability between the Project and other public transportation facilities;

- Responsibilities for the acquisition of right of way, including the procedures by and conditions under which the Department will exercise its power of eminent domain to facilitate any right of way acquisitions necessary to construct the Project;

- The design, construction, operation, maintenance and handback standards with which the Private Partner must comply;

- The requirements of the Private Partner to submit plans for the Project scope of work, which may include development, design, construction, operation and maintenance of the Project, that conform to standards set
forth in the PPA, and the rights of the Department and other parties to review, comment and/or approve the same,

♦ The requirements of the Private Partner to submit any design and construction submittals and the rights of the Department and other parties to review, comment and/or approve the same;

♦ The rights of the Department and any independent engineer, if any, to inspect, oversee and audit the Private Partner’s performance of the PPA;

♦ The right of the Private Partner to make and enforce reasonable rules with respect to the Project during any operations and maintenance phase;

♦ The terms, if any, under which the Private Partner will reimburse the Department for services provided;

♦ The terms, if any, under which the Private Partner will make upfront, periodic, or other payments to the Department;

♦ The terms, if any, under which the Department will provide any payment or subsidy to the Private Partner;

♦ The terms under which compensation would be paid to the Private Partner in the event of termination of the PPA (including for convenience, Private Partner default, Department default or force majeure event);

♦ Revenue sharing and Refinancing gain provisions, if applicable;

♦ The terms and conditions of financing for the Project, including any terms or conditions under which the Department will contribute financial or other resources to the Project;

♦ If the Project is undertaken on an Availability Payment or similar basis, the terms, conditions and performance measures that apply to the payments to the Private Partner;

♦ The events that will constitute default by the parties, notice and cure rights (including lenders’ rights), and remedies available to the parties in the event of default;

♦ Lender’s rights and remedies with respect to Private Partner defaults and Department remedies, if appropriate and applicable;

♦ The events that will constitute force majeure, relief (time) events and compensation events and the remedies the parties will have in the event of occurrence;
♦ The insurance and bonding/letter of credit requirements the Private Partner will be required to meet at each stage of planning, development, financing, design, construction, operation and maintenance of the Project;

♦ The allocation between the Private Partner and the Department of liabilities for, among others, property damage, personal injury, repair, site conditions and hazardous waste remediation;

♦ The obligations of the Private Partner to maintain records, to allow inspection and audit and to provide reports to the Department;

♦ The obligations of the Private Partner to file appropriate financial statements in the form and frequency set forth in the PPA;

♦ The conditions under which the Private Partner or the Department may make distributions or assign its rights and obligations under the agreement and/or its rights to the Project or the PPA;

♦ The roles and responsibilities of the Department and the Private Partner with respect to coordinating with external stakeholders and obtaining third party approvals;

♦ The roles and responsibilities of the Department and the Private Partner with respect to conducting public involvement activities; and

♦ Any other terms and conditions appropriate for the Project.

### 4.10.3.2 PDA Contract Terms

Given the nature of a PDA, not all of the concepts and provisions described above will apply or be relevant to a PDA Project. Under a PDA, additional concepts or provisions may apply and be included, such as:

♦ An initial scope of work to assist the Department with advancing and defining the Project in order that it may obtain environmental approvals. The scope of work may include some or all of:
  - Project planning and development
  - Advance right-of-way acquisition
  - Design and engineering
  - Support of the environmental analysis and mitigation processes
  - Surveying
  - Conducting transportation and revenue studies
Ascertaining the availability of financing for the proposed facility or facilities

♦ The payment structure, terms and conditions under which the Private Partner shall be compensated for undertaking the PDA scope of work, including whether any such work shall be contributed at a discount or as “sweat equity”

♦ Milestones applicable to the PDA scope activities

♦ Any right of first negotiation, or similar right, and the terms and conditions thereof, in favor of the Private Partner with respect to the design, construction, financing, operation and maintenance, or any combination of the foregoing, of some or all of the Project when the Project is ready to be priced, financed and delivered

♦ What happens if the Department and the Private Partner are unable to agree upon any terms of an agreement under which the Private Partner will plan, design, construct, finance, operate and/or maintain the Project, including the rights of the Department to procure another entity to do the same and any compensation that may be payable to the Private Partner

4.10.3.3 Other PPA Issues

4.10.3.3.1 Liability for Private Obligations

None of the Department, the State of Nevada, or a political subdivision of the State are liable for any financial or other obligation of a Project or service provided by a Private Partner solely because the Private Partner plans, designs, constructs, finances, operates and/or maintains any part of the Project. In connection with any private financing of a Project under the Unsolicited Proposals Program, the credit of the Department and the State of Nevada will not be pledged by a Private Partner financing the Project; provided, however, that the foregoing is not intended to restrict or limit the ability of the Department, the State or any other entity to act as a conduit issuer of private activity bonds or initiate the TIFIA (or similar program) credit facility process with any federal agency. In addition, as to Projects that require a financial contribution (subsidy) or other commitments from the Department, the Department will be liable for meeting its obligations.

4.10.3.3.2 Right-of-Way Interest and Handback

No Project under the Unsolicited Proposals Program will be “sold” to a Private Partner, but leasehold, easement, operating agreement, license, right of entry,
permit or similar rights may be provided to a Private Partner. The State, through the Department, will retain a property interest in all Projects. Upon completion of construction and acceptance, all Projects consisting of highways will be considered part of the State’s highway system. At the end of the PPA term with a Private Partner, the Project will be returned to the Department at the level of technical standards and conditions specified in the PPA. After handback, the Department may evaluate whether to procure a new PPA, or operate and maintain the Project itself.

4.10.3.3 Duration

Contract duration of a PPP agreement (particularly a concession) is a factor that will impact the potential value of a privately financed Project. Subject to any legislative limitations, the Department will determine PPA duration in consideration of Project characteristics and benefits, Department goals, risks, costs, and other matters that may influence the feasibility and timely delivery and financing of the Project.

4.10.3.4 Refinancing Gain Sharing

Where applicable, practicable, and consistent with Project characteristics, goals and needs, the Department will seek to include refinancing gain share provisions in the PPAs. The Department realizes, however, that not all PPA structures are consistent with these provisions, so these provisions will be assessed on a case-by-case basis.

4.10.3.5 Performance Standards

In recognition of the greater risk transfer associated with PPP, the potential private financing involved with the Projects and the desire to harness Private Partner innovation and efficiencies, the Department anticipates developing and utilizing performance-based (or “output-based”) specifications for the Projects. Such specifications will focus on goals, outputs and measurements of the same rather than prescriptive means and methods. It is anticipated that PPA technical provisions, standards, and specifications will differ from the Department’s standard design and construction specifications and standards, in some cases, in a material fashion.

4.10.3.6 Outsourcing and Maintenance

The allocation of maintenance responsibilities and risk will vary by delivery mechanism. Under a PPA for a DB/DBF Project, the Department may retain O&M responsibilities and risk. Under PPAs for Projects involving Maintenance/Asset Management, DBFO, Availability Payment or concessions,
the Department would generally transfer maintenance responsibilities and risks to a Private Partner.

4.10.3.7 Handback Requirements

As part of a PPA involving maintenance, the Department will set minimum performance requirements for the return of a Project to the Department at the end of the PPA term. The Department will reserve authority to conduct periodic inspections and receive asset condition reports. The Department may require the establishment of various procedures and performance security or reserves to ensure compliance with the handback requirements.

4.10.3.4 Conforming the Contract

Given the complexity of the documents involved for a PPA Project, the Department may then assemble a conformed contract document that includes the contract, the technical provisions, components of the Private Partner’s Proposal designated for inclusion in the contract, and the results of any negotiations conducted after selection but prior to contract execution.

Contract execution will then generally proceed according to the Department’s standard practice.

4.10.3.5 FHWA Concurrence

The Project Manager will request FHWA concurrence of the Department’s intent to award a PPA as required under 23 CFR § 635.309(e). The Project Manager will follow current Department processes for obtaining FHWA concurrence.

4.10.3.6 Public Notice

The Department will publish public notice in a newspaper of general circulation in Nevada that it intends to hold a public meeting at which The Board will review and ratify the selection. NRS 241.020 also requires that the notice be published on the Department’s web site.

4.10.3.6.1 Board Approval

The following items must be submitted to the director’s office prior to the board meeting (typically four (4) weeks prior):
♦ Standard Board Memo from the Director to the Board that includes summary, background, etc. of the project and the following attachments
  o Summary of the procurement process
  o Structure of the evaluation teams with titles of evaluation and selection committee members
  o Selection factors and rankings of finalists
♦ Summary of the contract including:
  o Scope of work
  o Price/Financial
  o Schedule
  o Major terms and conditions
♦ Justification for stipend

A copy of the final contract ready for signature will be submitted to the Director’s office at least two (2) days prior to the Board meeting.

4.10.3.7 Review and Ratify Selection at a Public Meeting

If the PMT successfully negotiates a PPA with a Proposer, the Department will hold a public meeting to:

♦ Review and ratify the selection of the Proposer and the contract. Ratification of a contract requires approval by the Department and execution of the contract by the Chair of the Board.

♦ Make available to the public a summary setting forth the criteria used by the Department to select the successful Proposer and the ranking of the Proposers who submitted Proposals and BAFOs, if applicable. The Department will not release to a third party, or otherwise make public, any financial information submitted by a Proposer.

The Department Director will recommend the best value Proposer to the Board for its consideration. The selection or recommendation of the best value Proposer/Proposal shall not be final until the Board has approved the recommendation. Upon approval by the Board, the Department Director may execute a PPA.
4.10.3.8   PPA Execution

The Project Manager shall review the contract negotiation summary and provide a recommendation to the Attorney General. The PPA will be executed after review by the Attorney General’s representative to the Department, the Selection Official, and the Director. The PPA will be signed by the Chairman of the Board and attested by the Director.

4.10.3.9   Protests

All protests must be filed in accordance with the process and within the timelines specified in the ITP. All protests will be adjudicated in accordance with the process specified in the ITP and will be final. The protest must be filed in writing and the decision will be made in writing. Each Proposer, by submitting its Proposal, will be required to expressly recognize the limitation on its rights to protest as described in the ITP and expressly waive all other rights and remedies and agrees that the decision of the Department is final and conclusive.
SECTION 4.11 PPA CONTRACT
ADMINISTRATION – DESIGN
AND CONSTRUCTION PHASE

After PPA award, the Department will be responsible for administering the contract and providing oversight of the quality of the Project. In a PPP involving design and construction, the Private Partner is responsible for the design details and must design to its price and schedule while meeting the Project’s performance criteria. The Department will provide design compliance reviews and then will satisfy itself that construction complies with the technical provisions and PPA requirements. The Private Partner will be responsible for coordination between the design and construction components of the contract.

The Department’s standard procedures for design and construction contract administration continue to apply, but the nature of design submittals and reviews and the scheduling and reviews on the part of the Department will generally be expedited so as to maintain an expedited schedule for concurrent design and construction phases. The Design-Build contract may also permit the Private Partner to commence elements of construction and other activities at risk while reviews are underway.

4.11.1 Project Management Plan

Prior to proceeding with the Contract Administration phase, the Project Manager must update the PMP for review and approval of the Pioneer Program Manager. The Project Manager plan must reflect addition of the Private Partner to the Project and define key management processes for the Project team.

4.11.2 Project Team Composition

Once a Project is awarded and the contract is signed, the Contract Administration Team is formed by the Project Manager to oversee the Department’s contractual responsibilities for the design and construction phase of the contract. The team will provide oversight during the design and construction of the Project. Members may include the Project Manager, Design Manager, Resident Engineer, designers, inspectors, material testers, survey crew, administration staff, finance team and Quality Assurance Manager. The Department may utilize technical, legal and financial service providers to support the efforts of the Project team.
4.11.2.1 Overview of Team Responsibilities

The roles of the team members are all affected by the Revisions to the Standard Specifications. Every Project will have unique provisions and requirements that will require adaptation by the team members. The Project Manager is in full charge of the Project during the Contract Administration phase and has approval authority over changes to the Project baselines within his/her Project authority.

The Contract Administration Team’s responsibilities will generally include:

- Acting as the Department’s link to the Private Partner
- Reviewing design submittals for compliance with the technical provisions and other PPA requirements
- Conducting periodic site reviews over the life of the Project
- Reviewing and approving progress payments or such other payments as are set forth in the PPA
- Documenting and submitting written pre-notification to the DB team of any disincentives to be imposed which may reduce payment
- Tracking compliance with any required DBE involvement
- Verifying Department receipt of all Project design and construction documentation as required by the contract
- Verifying that appropriate quality control and quality assurance (design and construction) is performed by the DB team and internally by the Project Management Team
- Monitoring the DB team’s compliance with the approved Quality Management Plan
- Ensuring that all environmental obligations are met and permits are in place
- Coordinating with FHWA on Projects with federal funding or requiring FHWA involvement
- Ensuring that each phase of the Project is properly documented
- Supplying all necessary Department contract-related forms
- Completing performance evaluation of the DB team upon Project completion
- Successfully achieve financial close and other financial-related activities if DBF is utilized in Project Delivery
Identifying the DB team’s eligibility for incentive payments, if any
♦ Researching and attempting to resolve any disputes and claims
♦ Assessing and processing any change orders.

4.11.2.2 Project Manager

The Project Manager will remain in full charge of the Project during the design and construction phase, reports Project status to the Pioneer Program Manager, and has approval authority over changes to the Project baselines within his/her Project authority.

4.11.2.3 Project Management Team (PMT)

The PMT will typically consist of the Design Manager, Construction Manager (Resident Engineer) and Quality Control manager. The PMT is responsible for supporting the Project Manager in administering, implementing, and maintaining the integrity of the entire contract administration process.

4.11.2.4 Review Team

The Department’s technical experts in the areas of Roadway Design, Structures, Environmental, Hydraulics, Utilities, Right of Way (ROW), Traffic/Safety, Intelligent Transportation Systems (ITS), Construction, Operations and Maintenance, Pavement and Geotechnical, Public Information, Landscaping and Aesthetics, and Rail will support members of the Contract Administration Team to review Project design. With the approval of the Pioneer Program Manager technical, legal, and financial service providers may be utilized to support the efforts of the review Team.

4.11.3 Partnering

The Department’s “Guide to Partnering on NDOT Projects” provides specific guidance on implementing partnering for NDOT Projects. For PPP Projects, particular emphasis will ideally be placed on team building, decision making time frames, issue escalation, and use of a dispute resolution ladder processes.
4.11.4 Communication & Coordination

As successfully completing the design and construction phase of a PPA requires close cooperation and collaboration between all parties, frequent effectively-run meetings can be important. A number of potential meetings are described in the following Sections and will be further detailed in the PPA and technical provisions for a particular Project.

The Department’s Project Manager will in most cases coordinate requests for meetings with the Private Partner’s Project Manager. This individual would be responsible for scheduling the attendance of his or her team members. In many cases, different phases of design and construction will be occurring simultaneously and at a rapid pace, so meeting coordination becomes routine and critical. In these cases, it is essential to establish with the Private Partner preset meeting dates and times for the duration of the Project so that all parties can reserve times and thereby reduce scheduling difficulties. It may be mandated that at all meetings all parties who will be necessary to the scheduling and decision making process be present or have an attendee participating in their place who has decision making authority.

4.11.4.1 Kickoff Meeting

Shortly after award and issuance of a notice to proceed, in most cases, a kickoff meeting will be held. The Department’s Project Manager may request this meeting through the Private Partner’s Project Manager. Attendees may include the Department's Project team and the Private Partner’s corporate management and key personnel, including key subcontractors and service providers. Objectives may include:

♦ Identifying key personnel from the Department and the Private Partner team
♦ Establishing lines of authority within the Private Partner and the Department
♦ Submittals
♦ Changes
♦ Record drawing numbering system
♦ Discuss value engineering ideas
♦ Clarify ambiguities
♦ Confirm the design concept
♦ Discuss mobilization plan
♦ Discuss agendas for Partnering Meeting and Initial Design Conference
♦ Discuss the process for the Private Partner to request incentive payments, if applicable, and the Department’s review of such requests

4.11.4.2 Initial Design Conference

As early as possible, an Initial Design Conference shall be held. Participants must include the Project Managers for the Department and the Private Partner, the Designer of Record, the Design Manager for the Department and other key designers or reviewers. The objectives are to:

♦ Confirm the Project program
♦ Establish lines of communication among designers, Designer of Record, and the Department’s Design Manager
♦ Establish a drawing numbering system
♦ Discuss potential alternative design solutions not contemplated in the RFP or Proposal
♦ Discuss major or complex design features
♦ Develop design submittal schedule and milestones
♦ Discuss the nature of the reviews (for compliance with Technical Requirements of the RFP and the Proposal)
♦ Identify critical path Department design review decisions
♦ Establish an understanding of the design Quality Management Plan (QC/QA program) and the Department’s monitoring of it

4.11.4.3 Pre-Construction Conference

Prior to the commencement of construction, a Pre-Construction Conference shall be held. Participants may include as a minimum the Project Manager for the Department and the Private Partner, the Resident Engineer, the Construction Superintendent, representatives of major subcontractors and the Designer of Record. The objectives are to:

♦ Establish lines of communication among those present and their personnel
♦ Confirm that the approved record drawings are those which will govern construction
♦ Establish an understanding of the construction Quality Management Plan (QC/QA program) and the Department’s monitoring of it
♦ Identify all required submittals and timings for reviews
♦ Discuss the construction schedule and critical related issues
♦ Establish schedule and attendees for routine progress meetings
♦ Discuss process for dealing with utility, railroad and interagency issues
♦ Discuss the process for submittal and approval of Traffic Control Plans
♦ Discuss process for change orders
♦ Discuss process for dispute resolution
♦ Define the submittal and approval process for progress payments
♦ Establish the process for formal acceptance of construction

4.11.4.4 Progress Meetings

Periodic meetings to monitor the progress of the work and address critical issues of scope, quality, schedule, etc. are very important. During the design phase, these progress meetings may be held less frequently, but at a minimum will be held monthly. When construction begins, weekly meetings will be held. The Project Managers for the Department and the Private Partner, the Resident Engineer and other appropriate staff must be expected to attend.

4.11.5 Project Quality

4.11.5.1 Design Review and Oversight

The Private Partner has design responsibility for and carries the primary risk of design details. Its obligation is to meet the performance criteria described by the technical provisions and the other contractual requirements.

The Department’s role is to verify that the design details conform to the obligations described above. Generally, design submittals will be submitted for review and comment, but not for approval (as approvals may shift some design risk back to the Department). To the extent of any Department approvals, the Design Manager, supported by Department design staff assigned to the Project, has approval authority.
A schedule for the required submittals and reviews will be set forth in the PPA and technical provisions. This schedule will recognize the probable phased approach to construction. Portions of the design (design units) may have to be completed and released for construction while other design work continues. Because most PPAs will have accelerated design and construction schedules and because the Private Partner has assumed design responsibility and risk, Department reviews and approval rights will differ from those in a DBB contract.

The drawings which receive the Department’s final review and are believed to be consistent with the requirements of the PPA and technical provisions become record drawings signed and sealed by the DB team’s Designer of Record. Construction is required to conform to these record drawings.

**4.11.5.2 Design Quality Management**

The DB/DBF Agreement will require that the Private Partner submit for review and approval a Design Quality Management Plan, which shall serve as the reference against which the design activities are monitored by the Department. It may include:

- A schedule of design submittals and reviews
- Organization chart of the Private Partner’s design team and roles filled by key personnel
- Persons responsible for Quality Control of various elements of design
- Persons responsible for Quality Assurance
- The elements and steps of the quality control and quality assurance processes

**4.11.5.3 Construction Review and Oversight**

Periodic review of construction activities will be performed by the Project team to verify compliance with the requirements of the PPA and the technical provisions. Because of the accelerated schedule of PPA Projects, the Project team shall be prepared for such reviews early in the Project, as certain construction work may begin while design of other elements is in progress.

The Department may provide Project survey control established during the development of the Project. In such cases, the Private Partner will generally be responsible for re-establishing the survey control based on information provided by the Department and for survey control and staking for construction.
4.11.5.4 Construction Quality Control and Quality Assurance

Quality management is the responsibility of the Private Partner. The Quality Management Plan (QMP) will detail how the Private Partner will provide quality control and quality assurance for the construction elements of the Project. Quality control testing of materials and inspections will be the responsibility of the Private Partner, as will the development of record drawings.

The PPA will generally require that a Quality Assurance organization within the Private Partner be created which is independent of the day-to-day construction organization if the Private Partner is responsible for acceptance sampling and testing. The Quality Assurance organization will perform periodic audits of the Quality Control program, consistent with the QMP. The Department will periodically audit the Quality Control and Quality Assurance programs to comply with FHWA policies. Department tasks will include performing verification or acceptance testing of materials depending on who is responsible for acceptance, and independent assurance sampling and offsite material fabrication inspection. The Department will generally be responsible for determining whether and when substantial completion and final acceptance have occurred.

The Private Partner may perform some of the sampling and testing responsibilities traditionally performed by the Department. If these traditional tasks are performed by the Private Partner, Department inspectors will assume verification and auditing duties. These inspection tasks will generally include the following:

♦ Verifying that the current signed and stamped design plans are onsite and being followed by the Private Partner’s construction forces;
♦ Spot-checking construction for compliance with design plans and Project specifications;
♦ Evaluating construction at any “witness and hold”;
♦ Reviewing temporary traffic control installations;
♦ Verifying that members of the Private Partner’s QC staff
  o Have proper qualifications
  o Are present to observe and control the work
  o Are conducting material sampling and testing
  o Are carrying out the Private Partner’s quality plan
♦ Verifying progress and reviewing payment requests;
♦ Verifying force account records;
♦ Auditing safety records;
♦ Auditing environmental compliance records; and
♦ Conducting and managing the review of as-built plans.

4.11.6 Change Management

4.11.6.1 Change Orders

Change Orders document changes from the original scope, budget, schedule, technical requirements and quality baselines of the PPA, confirm schedule modifications or set forth other modifications or changes to the PPA and/or technical provisions. In order for a change order to effectuate a valid modification to the PPA, it must be reviewed, approved, and submitted by the Project Manager, then reviewed and approved by the Pioneer Program Manager and the Assistant Director of Engineering. If the Project is a federal aid Project, FHWA may also have approval rights over a Change Order.

4.11.6.2 Value Engineering Change Proposals (VECP)

The PPA may contain provisions addressing Value Engineering Change Proposals, which may be:

♦ Developed by the Private Partner
♦ Based on Proposals from the Department or
♦ Based on information contained in an unsuccessful Proposal that has not been negotiated into the DB/DBF Agreement prior to award/execution

A conceptual VECP must be submitted to the Department's Project Manager for review. Generally, the DB/DBF Agreement will set out the requirements of the submittal, which often will include:

♦ Conceptual plans
♦ An initial estimate of costs
♦ The impact of the VECP on the Project schedule
♦ A description of any previous use or testing of the concept on another Department Project or elsewhere
♦ A statement of the advantages and disadvantages of employing the VECP
♦ Such other elements as are set forth in the DB/DBF Agreement

If the Department accepts the VECP changes, payment may be authorized pursuant to the VECP and/or change order provisions set forth in the PPA. Reimbursement of the total cost of the revised work will be in accordance with the PPA’s payment and/or change order provisions.

4.11.7 Executing and Monitoring Activities

4.11.7.1 Monitoring of DBE Requirements

On Projects which have DBE requirements, the Project Management Team will monitor compliance with the PPA’s requirements and with the DBE Plan. The Department’s Project Manager shall request routine reporting from the Private Partner’s Project manager in accordance with Department procedures. The following components, among others, may be monitored:

♦ Cost of supplies, materials and equipment
♦ Fees for professional, service provider, technical or managerial services associated with the design aspects of the Project
♦ DBE subcontracting to another DBE or other firm
♦ Percentage of ownership and control of the DBE partner

4.11.7.2 Subcontractor Approvals

The Private Partner may utilize the services of any subcontractor listed in its final Proposal. The Department will consider, at its sole discretion, requests for subcontractor substitution. It is unlikely that subcontractors for all elements of the work will be identified in the Proposal. After contract award, the Private Partner must submit for Department review and approval a process to solicit and select bids for work for which subcontracts were not identified in its Proposal.

4.11.7.3 Federal Law Compliance

On federally funded Projects the contracting component of the Private Partner must comply with an array of federal requirements, which will be included typically as an exhibit to the PPA. These statutes include but may not be limited to: Davis-Bacon
and Related Acts (as amended) prevailing wage and reporting requirements, Buy America, etc. The Project Management Team will establish a process for monitoring compliance.

### 4.11.7.4 Liquidated Damages and Incentive Payments

Liquidated damages may be a PPA term if timely completion of the Project or portions thereof is critical. The objective is to motivate the Private Partner meet the PPA’s schedule by reasonably estimating, on a liquidated basis, the damages resulting from late completion. Liquidated damages may also be imposed for failure to comply with other requirements of the PPA and technical provisions, such as hourly lane restrictions. The Project Management Team is responsible for determining and assessing liquidated damages.

Conversely, incentives for early completion where the value of the completed Project or portion thereof is high may be made a part of the PPA. If there are such PPA terms, the Project Management Team is responsible for determining and approving incentive payments.

### 4.11.7.5 Progress Payment/Measurement of Quantities

Depending on the nature of the PPP and PPA, payments may not be made to the Private Partner during design and construction. For instance, in an availability payment concession, availability payments often are not commenced until substantial completion.

If, however, payments are to be made during the design and construction phase, payment and measurement procedures generally require significant modification in PPA due to the lump sum nature of the submitted price. A payment schedule or maximum payment curve will often be required to be included in a Proposal. Such schedule, as negotiated or agreed upon and incorporated into the PPA, will guide payments made to the Private Partner. The Project Management Team is responsible for monitoring the progress of the work and for reviewing and approving periodic requests for payment.

### 4.11.8 Utility Requirements

The Private Partner’s scope will generally include all work related to existing utilities that is required to accommodate the Project, other than work specifically identified by the PPA as the responsibility of the utility owner or the Department.
The Project Management Team will monitor the progress of any utility’s relocation and its impact on Project schedule.

**4.11.9 Right-of-Way Requirements**

If the PPA calls for the Department to acquire right-of-way and/or construction or access easements, the Department Project Manager will be responsible for coordinating activities with the ROW Division Representative. This individual(s) may be asked to participate in design and construction progress meetings as applicable to assure progress and avoid potential delays to construction activities. Due to the procedural requirements and legal issues associated with right-of-way acquisition, it has one of the higher potentials for adversely affecting schedule, and for this reason is one activity that the Project Manager might remain personally involved with.

Design alternates as may be submitted by the Private Partner must also be reviewed for conformance to existing right-of-way limits and the Department’s real estate professionals shall be consulted on this as applicable.

**4.11.10 Maintenance of Traffic (MOT)**

Where applicable, the Project Management Team will monitor the Private Partner’s MOT activities for compliance with the approved MOT plan required by the PPA. The maintenance of traffic and minimizing delays, disruption and inconvenience to the public are often critical to Project success. The MOT plan will address the use of lane closures, barricades, warning signs, flaggers, pilot cars and detour geometry in accordance with the PPA and technical provisions (which often will include substantial incorporation of relevant aspects of the Manual on Uniform Traffic Control Devices).

Generally, traffic lanes should be kept open during construction unless otherwise provided for in the contract and the use of one-way traffic zones should be minimized. All movements of construction traffic on, onto or across the traveled way shall be performed in a manner not to endanger the traveling public.

**4.11.11 Schedule and Progress**

The Private Partner will create a Project schedule prepared using Primavera. It will show the order in which the Private Partner proposes to carry out the work, the date on which it will begin the major items of work and the critical features (including procurement of materials, plant and equipment) and the contemplated dates for completion as further specified by the terms of the contract. The Project will be planned
and documented using this schedule. The objective is to ensure adequate planning and execution of the work and to evaluate its progress. Compliance with the schedule shall be a subject of all progress meetings, as well as actions necessary to remain or get back on schedule.

Monthly, or at such intervals as directed in the PPA and technical provisions, the following items will be required:

♦ Adjust the schedule to reflect any changes in the scope of the work or the schedule
♦ Enter on any maximum payment curve the cumulative total percentage of work completed
♦ Submit copies of this adjusted schedule to the Department’s Project Manager

The updated schedule will be a component of progress reports submitted to the Department’s Project Manager. It may include some or all of:

♦ Progress narrative
♦ Quality certifications
♦ Safety report
♦ Security report
♦ Project schedule update
♦ Contract change order status report
♦ Quantity calculations
♦ Updated contract submittals list
♦ Summary of hazardous and contaminated substance activities
♦ Statement of materials and labor used
♦ Such other items as are set forth in the PPA and technical provisions

Progress reports will be submitted and contain information similar to the sample progress report provided in Appendix G.

### 4.11.12 Substantial Completion

The Private Partner will notify the Department’s Project Manager in writing when it considers the Project substantially complete. The PPA will set forth the requirements
and conditions under which the Project will be considered substantially complete. The Project Managers for the Department and the Private Partner will inspect the Project and review relevant documentation. The Department’s Project Manager will prepare a written list of outstanding items, if any, to be completed or corrected (“punch list”). After completing or correcting any such items, a written request for re-inspection will be submitted by the Private Partner. The Department’s Project Manager will re-inspect the Project and issue notification of substantial completion if outstanding issues have been corrected and/or completed.

4.11.13 Final Acceptance

The PPA will set forth the requirements and conditions under which the Project will be considered eligible for final acceptance. In connection with final acceptance, when all corrections and completions have been accomplished, the Private Partner will, among other things:

- Submit all special guarantees, warranties, maintenance agreements, final certifications and similar documents required by the PPA
- Deliver tools, spare parts, instructions and similar items required to maintain and operate the Project
- Make changeover of all locks to equipment and facilities and deliver keys and/or combinations to the Department’s Project Manager

Other elements of final acceptance may include the completion of all design activities and record drawings, construction activities, QC/QA work, Project documentation, and any warranty periods. The steps of officially completing the Project follow the design-bid-build process. Final acceptance of the Project provides confirmation that the completed product meets the contract terms.

Final acceptance occurs when the warranty period ends and the component’s condition is confirmed to meet the requirements of the provisions or is restored to those requirements.

Upon final acceptance of the work, the Project Manager will recommend the acceptance to the Director who will execute a certificate that the work required by the PPA has been completed and accepted under the terms of the contract.
SECTION 5.1  INTRODUCTION

Construction Manager at Risk (CMAR) is a contracting method that involves a general contractor acting as a construction manager (Construction Manager) who provides cost, schedule, and value analysis input in the pre-construction design development phase of a Project and acts as the general contractor to self-perform, subcontract, and manage the construction phase of a Project.

The CMAR project delivery method relies on the construction expertise of the selected Construction Manager and its team members to deliver a better product in less time and at a lower cost than the traditional DBB construction processes. The goal of this coordination and delivery model is to reduce and minimize Project risk, encourage and implement innovations, reduce uncertainty and unknowns thereby reducing contract changes during construction, improve construction delivery schedule, and exceed Project goals.

The Construction Manager works with and become a part of the CMAR Project Team, which also consists of the Department’s Program and Project Managers, the Department’s Design Service Provider(s), the Independent Cost Estimator (ICE), and the Department’s Construction Engineering Service Provider(s). In addition, the Construction Manager shall work with other key stakeholders and/or third parties throughout the process.

5.1.1  How is CMAR Different?

The Department contracts independently, directly, and concurrently with each CMAR Project Team member to execute a CMAR delivered project. The Department selects the Construction Manager on a QBS process and retains responsibility for engineering design and construction engineering and inspection.

The Department negotiates a reasonable cost for construction with the Construction Manager after extensive involvement by the Construction Manager during the pre-construction phase, which is accomplished in order to reduce Project risk and document all facets of the Project. This is in contrast to selection of a contractor via competitive bid for the construction work.
5.1.2 General Roles and Responsibilities of the CMAR Project Team

Figure 5-1 illustrates the relationship of the CMAR Project Team members under the CMAR delivery method, with the following sections offering a brief overview of the roles and responsibilities of these CMAR Project Team members.

5.1.2.1 Department Project Manager

The Project Manager, designated by the Pioneer Program Manager, has a very involved role within the entirety of the CMAR process. The Project Manager works with and becomes a part of the CMAR Project Team, acting as the Department’s representative throughout the various phases of the CMAR process.

Similar to the other delivery methods, the Project Manager is responsible for scope, budget, schedule, and quality process of a Project. The Project Manager also coordinates, manages, and oversees a specific Pioneer Program Project through selection, procurement, award, and implementation to maintain consistency in the approach and to provide valuable Project knowledge throughout the entire process.
As there may be more than one Project being considered for the Pioneer Program at any given time, there may be more than one Project Manager, each assigned a different project, under the direction of the Pioneer Program Manager. The Project Manager is responsible for assembling and managing the teams required for carrying the assigned Project through the various Project phases. The Project Manager is also responsible for reporting typical Project items, such as budget, scope, schedule, staffing requirements, and other issues, to the Pioneer Program Manager.

The Project Manager may engage additional support services (either Department or external support services) to support areas such as schedule development, partnering, and risk management. It is advised that a Project Team member (e.g., risk manager) be identified early in the procurement process to support the Project Manager in the development and continuous tracking of the risk issues, allocation, and resolution.

A guideline checklist of activities associated with the Project Manager’s responsibilities is included in Appendix G.

### 5.1.2.2 Independent Cost Estimator (ICE)

The ICE becomes a part of the CMAR Project Team. During the pre-construction phase, the ICE works to develop and validate Project cost estimates and construction schedules at various design milestones so that assumptions, contingency, risk, and approach to the estimate are fully understood by the CMAR Project Team.

During the construction phase, the ICE may provide continued support to the Project Team with respect to certain tasks may include independent cost support and review, negotiation and conflict management support, continued assistance to the Project Team with respect to further determining cost impacts related to the Project’s construction phase, and construction schedule review.

### 5.1.2.3 Design Service Provider

The Design Service Provider becomes a part of the CMAR Project Team as well. The Design Service Provider is either a resource that the Department has in-house or is procured by the Department through traditional design services procurement procedures for Project design. However, in both cases, the Design Service Provider is contracted directly by the Department, as the owner. The Design Service Provider is responsible for performing all engineering design and construction document development, including professionally signing and sealing all design documents. Upon sealing of the design documents, or any portion thereof, the design is deemed
finalized to enable a determination of the provable cost and the preparation of a Construction Guaranteed Maximum Price (GMP) bid. The point at which the design has progressed in order to determine a provable cost occurs when the CMAR can confidently assign a GMP to each item of work and the Department can measure and account for quantities and payment.

5.1.2.4 Construction Manager

The Construction Manager becomes a part of the CMAR Project Team. During the pre-construction phase, the CMAR Project Team relies on the Construction Manager to fill the role and be responsible for the following during the pre-construction phase:

- The skills and knowledge to estimate the quantities of materials, labor, and equipment needed for construction of a project;
- The skills and knowledge to determine the tasks (work breakdown structure) needed to complete a project and estimate the costs, duration, and sequence of those tasks;
- An understanding of the availability, cost, and capacities of materials, labor, and equipment;
- The skills and knowledge to identify and communicate potential risks (including financial risks) and methods to mitigate;
- The ability to advise the Department, from the point of view of a contractor, regarding constructability, phasing, and other input; and
- The skills to provide the Department with a preliminary estimating model to be used for estimating project costs. The accepted estimating model serves as a basis for all Opinion of Probable Construction Cost (OPCC) estimates for the project at certain milestones and the development of a bid as a cost of the work, plus a fee, with a GMP (Construction GMP bid). A GMP is the guarantee of the prices submitted by the Construction Manager in its Construction GMP bid.

During the construction phase, the Construction Manager adheres to all requirements and procedures outlined in the construction documents.

5.1.3 Benefits of CMAR

Although CMAR can be used to deliver almost any type of project, best practice suggests that the CMAR delivery method provides the greatest benefit on a Project that:
Requires construction input regarding decisions affecting time, materials, means, and methods.

- Has an accelerated schedule.
- Necessitates or is enhanced by cost certainty.
- Demands minimal construction impacts to the public.
- Has a likelihood of implementing innovative processes.
- Requires timely cost information.
- Requires owner control into design decisions.
- Demands a higher quality that may be realized through early collaboration between the Construction Manager and Design Service Provider.
- Is benefited through a team atmosphere and partnering among the members of the CMAR Project Team.
- Has an opportunity to enhance constructability of design and minimize risk through input from the CMAR Project Team.

As a final consideration, the Department must have adequate staff to devote to a CMAR procurement. While not as intensive as the DB delivery method, development of the Project goals, scope of services, procurement documents, and evaluation of the Proposals require a far more intensive effort than in a traditional procurement. Best practice also suggests that key Department personnel remain involved with the Project from its inception to completion of construction.

### 5.1.4 Overview of Delivery Process

The overall Project development and CMAR team solicitation and selection process vary little from one Project to the next, but the individual tasks can be markedly different for each Project.

The general CMAR process includes the following phases:

- Identification Phase: Project Delivery Selection Process (see Section 1.6.1);
- Solicitation Phase (Procurement Process);
- Evaluation Phase (Procurement Process);
- Award Phase (Procurement Process); and
- Implementation Phase: Pre-Construction and Construction phases.
The identification phase is described in Section 1.6.1 of these Guidelines.

The procurement process is divided into three separate phases, the solicitation phase, the evaluation phase, and the award phase. The solicitation phase involves procuring an ICE, Design Service Provider (if needed), and Construction Manager through the various procurement options at the Department’s disposal. The procurement process outlined in Chapter 5 describes the solicitation, evaluation, and award of a Pre-Construction Services Agreement to a Construction Manager only. Both procurement of the ICE and Design Service Provider follow traditional design services procurement procedures described as follows.

- To procure a Design Service Provider for a CMAR-delivered Project, a Request for Proposals (RFP) or RFA via the existing Pre-Qualification or On-Call list is used. This process is initiated by the Project Manager and executed with the assistance of Agreement Services in accordance with traditional design services procurement procedures. A general list of relevant events, chronology, and time durations for procurement are included in the template **CMAR Project Schedule**, which is provided in Appendix G.

- To procure an ICE for a CMAR-delivered Project, the Department establishes an On-Call list of qualified firms to provide ICE services through their standard Request for Qualifications (RFQ) process. A Request for Approach (RFA) is then used to procure ICE services on a Project-by-Project basis. While procurement of ICE services is unique to the CMAR delivery method, the process for procurement is in accordance with traditional design services procurement procedures, a process initiated by the Project Manager and executed with the assistance of Agreement Services. A general list of relevant events, chronology, and time durations for procurement are included in the template **CMAR Project Schedule**, which is provided in Appendix G.

The implementation phase involves implementation and administration of the CMAR Pre-Construction Services Agreement and Construction Contract. During this phase, the CMAR Project Team performs design, construction, and typically quality control/quality assurance functions.
The Department’s CMAR Project delivery process is shown in Figure 5-2.

![Figure 5-2: CMAR Project Delivery Process](image)

### 5.1.5 Procedural Statements (as applicable)

The following are the applicable Nevada Revised Statutes (NRS) and FHWA procedures that govern the CMAR process.

- NRS 338.169 to 338.1696, inclusive
- Full oversight requirements per the FHWA/NDOT Stewardship Agreement (January 2008), as applicable

These governing policies and procedures are referenced throughout Chapter 5 but are subject to change.
SECTION 5.2  PROCUREMENT PROCESS: SOLICITATION PHASE

The solicitation phase outlined below describes the solicitation process to procure a Construction Manager. A general list of relevant events, chronology, and time durations for procurement are included in the template *CMAR Project Schedule*, which is provided in Appendix G. As noted in Section 5.1.4, the procurement process for both the ICE and Design Service Provider follow traditional design services procurement procedures.

5.2.1  Overview of the Solicitation Process

The intent of the solicitation phase is to provide a process to solicit a Construction Manager to successfully apply the CMAR delivery method for a Project. Generally, all CMAR-delivered Projects proceed through the process illustrated on Figure 5-3. However, these procedures may be changed from time to time at the Department's discretion or tailored to meet the needs of a particular Project.

![Figure 5-3: CMAR Solicitation Phase Process](image)

5.2.2  Evaluation Panel

The Evaluation Panel prepares, evaluates, scores, and ranks all Construction Manager RFP submittals. This procurement process is based on the evaluation factors developed by the Evaluation Panel and included in the RFP for CMAR Services (CMAR RFP). This is all done in accordance with NRS 338.1693. The Evaluation Panel also prepares, evaluates, scores, and ranks all interview participants during the procurement process.
5.2.2.1 Selecting the Evaluation Panel

The Evaluation Panel is composed of Department staff (e.g., Department Division Heads) and local public agency representatives (as applicable), which are selected by the Project Manager and approved by the Director’s Front Office, all of which is in accordance with NRS 338.1693. The Evaluation Panel also includes individuals with construction experience per NRS requirements. The Project Manager or the Pioneer Program Manager will prepare a CMAR RFP Evaluation Panel and Schedule Memorandum that lists the members of the Evaluation Panel along with the selected members of the PAT and Observers groups for submittal and approval by the Department Director or designee. This memorandum also provides a general overview of the evaluation and selection process and schedule. A template of the RFP Evaluation Panel and Schedule Memorandum is provided in Appendix G.

5.2.2.2 Developing the Project’s Scope of Services and Cost Estimates

The Project Manager, with support of the PMT, is to develop the Project’s Scope of Services prior to preparing any other procurement document. The Scope of Services becomes the basis for defining the Scope of Services for the ICE, Design Service Provider (if applicable), and Construction Manager. The general Scope of Services is to be communicated to the Evaluation Panel as a critical reference document to be understood prior to the evaluation and selection process.

In general, the Scope of Services describes the Project background and the defined elements of Project work. The Scope of Services also details the CMAR Project Team, third party stakeholders, Project-specific goals, and anticipated Project schedules. This information is to be used when developing the CMAR RFP Scope of Services, the ICE Scope of Services, and the Design Service Provider Scope of Services (if applicable).

In addition, the Project Manager, with support of the PMT, is to develop a request to solicit consultant services and obtain budget approval for a request for a RFP to perform construction management at risk (CMAR), also known as a Form 2A. A template Form 2A and associated Form 2A Estimate Worksheet is provided in Appendix G.

5.2.3 Construction Manager Solicitation

An RFP is used in the qualification process when soliciting a Construction Manager for CMAR-delivered Projects. While similarities exist with the process described in Chapter
2, the CMAR RFP process is unique to the CMAR delivery method as illustrated in Figure 5-4 and described further below.

5.2.3.1 Issuing a CMAR Request for Letter of Interest (RLOI) (Optional)

A Request for Letter of Interest (RLOI) may be used at the Pioneer Program Manager’s and Project Manager’s discretion to gauge a Proposer interest in participating in the development of a Project or to provide early notification and marketing of a Project. When considering the use of the RLOI, the Pioneer Program Manager and Project Manager must consider factors such as the time, schedule, need, and resource impacts of issuing an RLOI as well as the potential benefits of such process.

If used, the RLOI provides available information, including brief descriptions of the Project, Project location, Project scope, proposed Project schedule, approximate estimated costs of the Project, and other relevant Project or procurement information.

The RLOI can facilitate the procurement process by providing advance notice of the Project to the industry so that prospective Proposers may begin efforts for teaming arrangements, financial arrangements, and preliminary investigative work. The Project Manager is responsible for overseeing the preparation of, and providing information for, the RLOI. Administrative Services members of the PAT distribute the
RLOI, and the timeframe for responding to the RLOI will be at the sole discretion of the Project Manager.

5.2.3.2 Preparing a CMAR Request for Proposal (RFP)

A CMAR RFP, including the criteria (evaluation factors) by which the Evaluation Panel evaluates and selects a Construction Manager, is prepared as required by NRS 338.1692.

5.2.3.2.1 CMAR RFP Contents

The CMAR RFP is divided into four general sections as expanded upon in the CMAR RFP Template (Appendix G). It is the responsibility of the Project Manager and Evaluation Panel to develop and finalize the CMAR RFP for the Project. While much of the CMAR RFP includes “boilerplate” language, there are many sections that require input from the Project Manager and Evaluation Panel.

A brief description of each section in the CMAR RFP is provided as follows.

- **Introduction and General Information**: This section describes a general overview of the CMAR delivery method, the Project, and Department and federal regulations.
- **RFP Procedures**: This section describes the specific CMAR RFP procedures, including the CMAR RFP schedule, Pre-Proposal Meeting requirements, and protest procedures.
- **Selection Process**: This section describes the various evaluation and selection phases and scoring methodology that the Department has established for the evaluation and selection process.
- **Proposal Contents and Evaluation Factors**: This section lists instructions to the Proposers; lists required responses, documents, and forms to be submitted with each Proposal; and defines the Project-specific Proposal evaluation factors and interview evaluation factors. It is the responsibility of the Project Manager and Evaluation Panel to consider what evaluation factors would best serve the needs and goals of the Project.
- **Appendix A Scope of Services**: This appendix describes the Project background and elements of work. It also includes a listing of the CMAR Project Team and third party stakeholders, Project-specific goals, anticipated Project schedules, and Construction Manager services (pre-construction tasks) to be performed during the pre-construction phase of the Project. It is the responsibility of the Project Manager to consider what tasks, meetings, and roles in which the
Construction Manager will participate and actively be involved during the pre-construction phase.

♦ **Appendix B Scoring Weighting:** This appendix lists the score weightings for each of the evaluation factors listed in the CMAR RFP. It is the responsibility of the Project Manager and Evaluation Panel to consider scoring weightings for each listed evaluation factor in order to best evaluate each Proposal submitted. Based on these weightings, the Project Manager is to prepare the CMAR RFP 6c Evaluation Criteria Memorandum. A template of this memorandum is provided in Appendix G.

♦ **Other Appendices:** The remaining appendices are listed in the CMAR RFP, and these appendices include the required forms, CMAR RFP definitions, and Proposer CMAR RFP checklists for reference.

### 5.2.3.2.2 Developing Evaluation Factors

Evaluation factors must relate to the Proposer’s ability to successfully execute the Project. Listed below are examples of potential evaluation factors and subfactors, which vary depending on the nature of the Project, Project scope, and Project goals. The weighting of these evaluation factors are determined by the Evaluation Panel in accordance with NRS 338.1692.

♦ Proposer Team/Organization
  - Qualifications and experience of the Proposer team on projects of similar size, scope, and construction complexity as the Project
  - Qualifications and experience of key personnel on projects of similar size, scope, and construction complexity as the Project

♦ Project Approach
  - Pre-Construction Approach
  - Construction Approach

♦ Past Project Innovation

♦ Approach to Schedule

### 5.2.3.2.3 Bidder’s Preference

For projects that do not include federal financial participation, a Bidder’s Preference is added to eligible Contractors’ scores consistent with NRS
338.1693. This process is described further in the CMAR RFP and must be accounted for prior to issuance of the CMAR RFP.

5.2.3.2.4 **Disadvantaged Business Enterprise (DBE) Goals**

The Disadvantaged Business Enterprise (DBE) program encourages the formation and growth of DBEs by providing an equal opportunity for these firms to compete for and participate in the CMAR program. DBE goals are typically incorporated into standard Projects and may be required on Projects that utilize federal funds.

Due to the nature of the Construction Manager’s role in the pre-construction phase, there are often insufficient subcontracting opportunities to justify a DBE goal in the Pre-Construction Services Agreement and, therefore, the CMAR RFP. However, each proposed CMAR project is reviewed for DBE subcontracting possibilities at the pre-construction and construction phases. The Project Manager is to consult with the Department’s Contract Compliance Manager for evaluation and setting of percentage goals for the dollar value for both the Pre-Construction Services Agreement (if applicable) and the Construction Contract. If there is a percentage goal or dollar value assigned to the pre-construction phase, the Project Manager will include this information in the CMAR RFP. This Project Manager must coordinate with the Department’s Contract Compliance Manager as early in the process as possible.

The Project Manager should also be aware that if a percentage goal or dollar value is assigned to the pre-construction phase, then sections of the CMAR RFP, Appendix A Scope of Services, and the Pre-Construction Services Agreement must be modified to document the assigned DBE goal.

5.2.3.3 **Developing a CMAR RFP Evaluation and Selection Plan**

Similar to the description in Chapter 2, the Evaluation Panel will assist the Project Manager or the Pioneer Program Manager in preparing a CMAR RFP Evaluation and Selection Plan, which is based on the CMAR RFP and in accordance with NRS 338.1693. The CMAR RFP Evaluation and Selection Plan provides all members of the Evaluation Panel a common basis for and understanding of the process and criteria used in evaluating submitted Proposals and shortlisted Proposer interviews. The objective is to utilize a disciplined, fair, and uniform basis for the evaluations.
The CMAR RFP Evaluation and Selection Plan describes the following:

- The procurement process, in general;
- The RFP evaluation and selection organization, functions, general procedures, roles/responsibilities of each committee, and schedule;
- Evaluation factors from the CMAR RFP; and
- The evaluation and selection process.

The CMAR RFP Evaluation and Selection Plan is reviewed by the Pioneer Program Manager and approved by the Department Director prior to issuance of the CMAR RFP. It is possible that the CMAR RFP Evaluation and Selection Plan will require modification through the CMAR RFP process before Proposals are received. If this is needed, additional approvals by the Department Director are required. A sample of the table of contents for a CMAR RFP Evaluation and Selection Plan is provided in Appendix G.

### 5.2.3.4 Issuing a CMAR Request for Proposal (RFP)

A CMAR RFP is issued in accordance with NRS 338.1692. The following outlines the steps necessary to issue a CMAR RFP.

#### 5.2.3.4.1 Reviewing and Finalizing the RFP

Before issuing and advertising the CMAR RFP, the Department Director reviews and approves the CMAR RFP, including the CMAR RFP 6c Evaluation Criteria Memorandum. Once approved, the Department Director prepares a Request for Release of an RFP Memorandum addressed to FHWA (if applicable), which requests approval of the CMAR RFP for advertisement and issuance. A sample of this memo is provided in Appendix G.

FHWA approves or rejects this request.

#### 5.2.3.4.2 Advertisement of the RFP

A CMAR RFP is then issued to those firms that submitted LOIs (if applicable) as well as to firms attending the Pre-Proposal Meeting (if applicable). A CMAR RFP may also be posted on the Department’s website. Advertisement shall be done in accordance with NRS 338.1692.

When establishing deadlines for submittals, the Project Manager must allow adequate time for Proposers to form teams, seek clarification, and prepare a response, as well as time for the Department to issue any necessary addenda.
For smaller, less complex Projects, allowing 21 calendar days between the CMAR RFP issuance and its due date may be sufficient time to accommodate such needs. For larger, more complex Projects, a timeframe of 21 to 30 calendar days (or more) is to be considered. The appropriate timeframe can be adjusted in CMAR Project Schedule (Appendix G).

5.2.3.4.3 Pre-Proposal Meeting (Optional)

The Department may host a Pre-Proposal Meeting, which provides a brief Project and procurement overview. This meeting may include an overview of the CMAR contract delivery method, an introduction to the Project as scoped, and an opportunity to answer questions about the Project and the CMAR process. The Project Manager may require mandatory attendance by all interested Proposers, with sign-in and attendance required in order to submit a Proposal.

The Project Manager is to conduct the Pre-Proposal Meeting, presenting the CMAR contract delivery method and the scope of the Project. The CMAR portion of the presentation is in template form. The Project portion of the presentation is to match the CMAR RFP and any reference documentation. Aerials, Project scope, stage of design when contracted, Project goals, and an overall picture of the Project can assist the Proposers with their Proposals and must be included in the presentation to the extent possible.

5.2.4 CMAR RFP Approvals

As described, the Department Director reviews and approves the CMAR RFP before advertisement and issuance. The Project Manager and Pioneer Program Manager prepare a CMAR RFP 6c Evaluation Criteria Memorandum for approval by the Department Director. A template of the CMAR RFP 6c Evaluation Criteria Memorandum is provided in Appendix G.

Once approved, the Department Director prepares a Request for Release of an RFP Memorandum for FHWA approval, as applicable per full oversight requirements, to advertise and issue the CMAR RFP. A sample of the Request for Release of an RFP Memorandum is provided in Appendix G. As applicable, FHWA approves or rejects the Department’s requests by providing a letter either rejecting or approving the Department to advertise and issue the CMAR RFP.
5.2.5 **Procurement Clarifications and Addenda**

Proposers may seek clarifications on CMAR RFP requirements. Any non-confidential questions received, along with the Department’s response, are to be made available to all firms that received the CMAR RFP.

To answer questions received from Proposers or to otherwise clarify requirements, correct errors, or to provide supplemental information, it may be necessary to issue formal addenda to the CMAR RFP. If the Department Front Office and/or FHWA are required to approve the CMAR RFP, material addenda also require their approval before issuance.

Additional clarification and addenda requirements are discussed in detail within the CMAR RFP.
SECTION 5.3  PROCUREMENT PROCESS: EVALUATION PHASE

The evaluation phase outlined below describes the evaluation process to procure a Construction Manager. A general list of relevant events, chronology, and time durations for evaluation and selection are included in the template CMAR Project Schedule, which is provided in Appendix G. As noted in Section 5.1.4, the procurement process of the ICE and Design Service Provider follow traditional design services procurement procedures.

5.3.1 Overview of the Evaluation Process

The intent of the evaluation phase is to provide a process for evaluating and selecting a Construction Manager related directly to its qualifications to deliver a Project by the CMAR delivery method. Generally, all CMAR-delivered Projects proceed through the process illustrated on Figure 5-5. However, these procedures may be changed from time to time at the Department’s discretion or may be tailored for the needs of a particular Project.

Figure 5-5: CMAR Evaluation Phase Process

5.3.2 Construction Manager Evaluation

The evaluation phase consists of prescreening, evaluating, shortlisting, interviewing, and selecting the apparent most-qualified firm to provide Construction Manager pre-
construction services for a Project. Figure 5-6 illustrates in detail this process from prescreening to final ranking.

![Diagram of construction manager evaluation phase process]

**Figure 5-6: Construction Manager Evaluation Phase Process**

As described in brief below and in detail in the CMAR RFP Evaluation and Selection Plan, the Department uses a five-step Evaluation and Selection Process (Process), in accordance with NRS 338.1693, to select a Construction Manager for the pre-construction phase and potentially the construction phase of the Project. The evaluation phase is in accordance with NRS 338.1693. As noted, the Project Manager is responsible to create the CMAR RFP Evaluation and Selection Plan. A sample of the table of contents for a CMAR RFP Evaluation and Selection Plan is included in Appendix G.
The CMAR RFP Evaluation and Selection Plan provides the methodology and procedures for evaluation and final selection of a Construction Manager submitting a Proposal in response to the CMAR RFP. The CMAR RFP Evaluation and Selection Plan outlines the various roles and responsibilities of those involved in the Process, and is written to ensure the impartial, fair, and comprehensive evaluation of each Proposal in accordance with Department objectives and the specific Project goals.

It is the responsibility of the individuals involved with the Process to read and adhere to the requirements and process outlined in the CMAR RFP Evaluation and Selection Plan.

Note: The selection of a Construction Manager for the pre-construction phase is similar to that of traditional design services procurement procedures, except the process must follow NRS 338.169 to 338.16995, inclusive.

**5.3.2.1 Evaluating Proposal Responsiveness and Pass/Fail Requirements**

To proceed with evaluation, the Department must receive at least two (2) Proposals. If the Department does not receive two (2) Proposals, the procurement is to be cancelled or re-advertised.

Promptly after receipt of the Proposals, the PAT randomly assigns an identification code for each Proposer, which is used to identify each Proposer throughout the procurement process. The PAT reviews all submitted Proposals to determine whether each is complete and meets all pass/fail requirements as set forth in the CMAR RFP and the CMAR RFP Evaluation and Selection Plan (Appendix G). Only those Proposals determined to meet all pass/fail requirements are moved forward for further evaluation.

The PAT has discretion to request any clarifications necessary when determining a Proposal's pass/fail and/or responsiveness status. If a Proposal is determined non-responsive or receive a “Fail” rating for any pass/fail factor, the entire Proposal may be eliminated from further consideration.

The PAT reports the results of the pass/fail and responsiveness determination to the Department's Front Office. The Selection Official may request the PAT to re-evaluate any Proposal that has “failed” the pass/fail and/or responsiveness evaluation.

The pass/fail requirements for the Proposals are as follows and in accordance with NRS 338.1691 and NRS 338.1692:
The Proposal conforms to the RFP instructions regarding organization, format, and responsiveness to the requirements set forth in the RFP.

♦ The Proposer has delivered a letter(s) of support from a qualified surety.

♦ The Proposer has delivered a properly completed and executed Conflict of Interest Disclosure Statement.

♦ The Proposer’s safety record and safety program are satisfactory as demonstrated by the materials provided.

♦ The Proposer has provided satisfactory evidence that the Proposer is a contractor licensed in this State pursuant to NRS Chapter 624.

♦ The Proposer has not been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475, and/or 408.333.

♦ The Proposer has not been found liable for breach of contract with respect to a previous project, other than for legitimate cause, during the five (5) years immediately preceding the date of advertisement of this RFP.

♦ The Proposer has provided satisfactory evidence that Proposer has obtained or has the ability to obtain insurance as may be required for this Project.

♦ The State Public Works Division has approved Proposer’s application pursuant to NRS 338.1379 (as applicable).

♦ The Proposer has delivered a properly completed and executed Certificate of Compliance pursuant to NRS 284.1729.

♦ The Proposer has delivered all other specified forms and documents (including, without limitation, the forms not listed in the RFP for Construction Manager Services), properly completed and signed (if required), and such forms and documents do not identify any material adverse information.

5.3.2.2 Evaluating and Shortlisting Proposers

The Evaluation Panel evaluates all Proposals that have satisfied the pass/fail and responsiveness determination, using the evaluation factors listed in the CMAR RFP and the CMAR RFP Evaluation and Selection Plan for the purpose of determining a shortlist.

Supported by Department staff, outside consultants (as appropriate), and the PAT, the Evaluation Panel independently evaluates each Proposal in a fair, consistent,
and rational manner. Each panel member develops independent adjectival ratings and notes for the consensus scoring portion of the evaluation as described in the CMAR RFP Evaluation and Selection Plan. Once this has occurred, the Evaluation Panel convenes to work through the process of consensus scoring. The CMAR RFP Evaluation and Selection Plan explains this consensus scoring process. This is also confirmed during the Evaluation Panel Orientation that is to occur prior to commencing the Process. The Evaluation Panel’s consensus score and comments must be consistent with the procedures described in the CMAR RFP Evaluation and Selection Plan. Only the consensus score and comments are retained for documentation of the Process.

The Evaluation Panel uses the consensus score for each Proposal evaluation factor to determine the initial ranking of each evaluated Proposal. The shortlist is determined only by the Proposal score, and the Proposal score is not to be factored into the final selection ranking of the Proposers. The Evaluation Panel prepares a Proposal Ranking and Shortlist Determination Memorandum for the Department Director’s approval, including a summary of the reasons for its ranking (Appendix G). This memorandum is presented by the Evaluation Panel chairperson to the Selection Official, and the Selection Official accepts or rejects the shortlist.

Shortlisted Proposers are invited to participate in the mandatory interview phase of the Process. The number of shortlisted Proposers is within the sole discretion of the Selection Official, but this shortlist must be at least two (2) and not more than five (5) Proposers in accordance with NRS 338.1693. The PAT notifies all Proposers of this competitive shortlist via an emailed notice of shortlisting sent prior to the interview of the shortlisted Proposers.

A detailed overview of the Proposal evaluation process is included in the CMAR RFP Evaluation and Selection Plan and the Evaluation Panel Orientation PowerPoint.

### 5.3.2.3 Interviewing and Final Selection Ranking

Following the determination of a shortlist by the Evaluation Panel and approval by the Selection Official, the PAT notifies and invites the shortlisted Proposers to a mandatory interview pursuant to NRS 338.1693. The Evaluation Panel scores each shortlisted Proposer’s interview packet and interview consistent with the procedures described in the CMAR RFP Evaluation and Selection Plan.

The Evaluation Panel arrives at a consensus interview score for each criterion, and the PAT compiles the scores and records comments for each shortlisted Proposer. The final selection ranking is determined by the interview score only. The Proposer with the highest interview score is considered the apparent most-qualified Proposer.
The Evaluation Panel prepares a *Total Interview Scores and Final Selection Ranking* Memorandum for the Selection Official's approval, including a summary of the reasons for its final selection ranking (Appendix G). This memorandum is presented by the Evaluation Panel chairperson to the Selection Official, and the Selection Official accepts or rejects the final selection ranking of the shortlisted Proposers.

Once the final selection ranking is established and approved, the PAT emails all Proposers notification of the final selection. The PAT sends the Department’s Notice of Intent to Award to the apparent most-qualified firm, and the Project Manager commences negotiations for a Pre-Construction Services Agreement, which is described further in Section 5.4.4.

A detailed overview of the shortlisted Proposer interview process is included the CMAR RFP Evaluation and Selection Plan.

### 5.3.3 Approvals

#### 5.3.3.1 Selection Official

The Selection Official accepts or rejects the shortlist and final selection ranking upon completion of the evaluation and shortlist ranking of all submitted Proposals and interviews.

The CMAR RFP Evaluation and Selection Plan describes the various roles and responsibilities of all Evaluation and Selection committee members related to facilitating communications with the Department’s Front Office and the Selection Official.

#### 5.3.3.2 FHWA

Per full oversight requirements as applicable, the Selection Official requests FHWA concurrence with or objection to the Process by which the Evaluation Panel arrived at to determine the shortlist and final selection ranking of the shortlisted Proposers. The Department makes this request when the evaluation and shortlist ranking of all submitted Proposals is complete and when the interview process is complete.

### 5.3.4 Debriefings

In accordance with NRS 338.1693, there are two points at which the Department offers debriefings to all Proposers. First, upon establishing a shortlist of Proposers, the PAT
may offer a debriefing to unsuccessful Proposers, if requested to do so. Second, after conditional or final award of the Pre-Construction Services Agreement, the PAT may also offer a debriefing to unsuccessful shortlisted Proposers, if requested to do so.

Prior to any debriefing, the Attorney General’s Office must be consulted as to content, form, and function of all debriefings. The Project Manager and members of the PAT are to attend and conduct debriefings. However, the PAT may, at its discretion, invite other members to attend the debriefings.

The debriefing of a Proposer is to focus on that Proposer’s Proposal and interview (as applicable) only, and is not to speak to the Proposal content or interview of other shortlisted Proposers. The debriefing is also a time to provide areas for a shortlisted Proposer to improve its response as well as to highlight the strengths and weaknesses of their Proposal and interview. A debriefing is not to be used to defend the Process or overall selection.
SECTION 5.4  PROCUREMENT PROCESS: AWARD PHASE

The award phase outlined below describes the award of a Pre-Construction Services Agreement to a Construction Manager. A general list of relevant events, chronology, and time durations for award are included in the template *CMAR Project Schedule*, which is provided in Appendix G. As noted in Section 5.1.4, the procurement process of the ICE and Design Service Provider follow traditional design services procurement procedures.

5.4.1  Award Phase Overview

The intent of the award phase is to provide a process for the award of a Pre-Construction Services Agreement to deliver a Project by the CMAR delivery method. Generally, all CMAR-delivered Projects proceed through the process illustrated on Figure 5-7. However, these procedures may be changed from time to time at the Department’s discretion or may be tailored for the needs of a particular Project.

*Figure 5-7: CMAR Award Phase Process*
5.4.2 Issuing a Notice of Intent to Award

A Notice of Intent to Award is issued to the apparent most-qualified firm, and copies are provided to all Proposers in accordance with NRS 338.1693. At this point, the Project Manager contacts the apparent most-qualified Proposer, via email or a formal letter, to begin agreement negotiations. In addition, the Department may choose to commence a pre-negotiation audit of the apparent most-qualified Proposer prior to negotiating an agreement.

5.4.3 Contents of the Form of Pre-Construction Services Agreement

The form of the Pre-Construction Services Agreement is generally included as a template on the Department’s public website, and it covers terms and conditions that include the scope of services, performance and schedule requirements, budget requirements, compensation, ownership of records, insurance, and termination.

The Pre-Construction Services Agreement also identifies specific terms and conditions to be included in the Construction Contract (see form of Pre-Construction Services Agreement). Certain terms and conditions of the Construction Contract are specified in NRS 338.1698, including prevailing wage conditions, the date by which work must be completed, and that the Construction Manager assumes overall responsibility for ensuring that pre-construction or construction is completed in a satisfactory manner.

5.4.4 Negotiating a Pre-Construction Services Agreement

The Department enters into the Pre-Construction Services Agreement negotiations with the apparent most-qualified Proposer in accordance with NRS 338.1693. If an agreement cannot be reached with the first ranked firm, negotiations with that firm are terminated, and negotiations are undertaken with the second ranked firm. The process is repeated until an agreement can be reached or until a determination is made by the Department to reject all Proposers and cancel or re-advertise the procurement.

The Project Manager leads the negotiation process and modifies Appendix A from the CMAR RFP (which becomes Attachment A Scope of Services to the Pre-Construction Services Agreement) and all other applicable attachments to the Pre-Construction Services Agreement. If necessary, the Project Manager attaches additional reference and Project-specific documents as exhibits to the Pre-Construction Services Agreement Attachment A Scope of Services. The Project Manager submits modifications of the
form of the Pre-Construction Services Agreement to the Attorney General for review. The Project Manager is responsible for finalizing the Pre-Construction Services Agreement with the selected Construction Manager. The Project Manager is also responsible for completing a negotiations summary and an agreement summary sheet.

### 5.4.5 Executing a Pre-Construction Services Agreement

Upon completion of successful negotiations and determination of the Pre-Construction Services Agreement language, the Project Manager prepares an Agreement Packet by compiling the following documents:

- Evaluation Panel recommendation memo to the Selection Official, requesting approval of the selected Construction Manager. This memo includes summary, background, and other relevant Project information and the following attachments:
  - Summary of the procurement process
  - Summary of the Pre-Construction Services Agreement including:
    - Scope of work,
    - Schedule,
    - Cost, and
    - Major terms and conditions.
  - A copy of the final Pre-Construction Services Agreement ready for signature

The Project Manager submits the Agreement Packet to the Attorney General’s Office, the Pioneer Program Manager, and the Pioneer Program Director for review and comment. The Project Manager then revises the Agreement Packet based on the comments received, then provides the final Agreement Packet to the Director for his/her signature.

Upon receipt of the Director's approval, the Project Manager forwards the Agreement Packet to Agreement Services. Per full oversight requirements as applicable, Agreement Services issues a memo to request the FHWA’s acceptance or rejection of the award of a Pre-Construction Services Agreement to the Construction Manager.

Upon receipt of the Director's and the FHWA's approval (as applicable), Agreement Services obtains the Construction Manager's signature on the Pre-Construction
Services Agreement and concurrently prepares the Pre-Construction Services Agreement for submission to the Board. If the cost of the Pre-Construction Services Agreement is over $300,000, it must be approved by the Board before execution. If the cost of the Pre-Construction Services Agreement is under $300,000, it can be fully executed and reported to the Board as an informational item.

Upon approval and receipt of appropriate signatures on the Pre-Construction Services Agreement, the Department proceeds with Notice of Award. Agreement Services sends a Notice of Award to the Construction Manager, and sends a copy to all Proposers who participated in the procurement process. The Notice of Award lists all Proposal scores in accordance with NRS 338.1693. At the time of award, the Department makes public all Proposal documents, which may be requested via a public records request. Lastly, the Department debriefs all the shortlisted firms in accordance with Section 5.3.4 and NRS 338.1693.

5.4.6 Approvals

5.4.6.1 FHWA

Per full oversight requirements as applicable, the Department Director issues a memo to request the FHWA’s acceptance or rejection of the intent to award a Pre-Construction Services Agreement.

5.4.6.2 Department Director

The Project Manager provides the final Agreement Packet to the Department Director for his/her signature. The Department Director follows the Department’s standard processes for submitting the recommendation to the Board.

5.4.6.3 Nevada State Board of Transportation

Administrative Services prepares a Board Packet to include the Agreement Packet. Upon receipt, the Board approves or rejects the Board Packet.

5.4.7 Protests

All protests must be filed in accordance with the process and within the timelines specified in the CMAR RFP or applicable traditional design services procurement procedures. All protests are adjudicated in accordance with the process specified and
are to be final. The protest must be filed in writing, and the Department’s decision is made in writing to the protestor. Each Proposer, by submitting its Proposal, is required to expressly recognize the limitation on its rights to protest as described in the applicable procurement documents, and it expressly waives all other rights and remedies and agrees that the decision of the Department is final and conclusive.
SECTION 5.5 IMPLEMENTATION PHASE: PRE-CONSTRUCTION AND CONSTRUCTION

5.5.1 Implementation Phase: Pre-Construction Overview

The intent of the implementation phase for pre-construction services is to provide a process for a Construction Manager to deliver pre-construction services for a Project through the CMAR delivery method.

Generally, all CMAR-delivered Projects proceed through the process illustrated on Figure 5-8. However, these procedures may be changed from time to time at the Department’s discretion or may be tailored for the needs of a particular Project.

Figure 5-8: CMAR Implementation Phase (Pre-Construction Phase) Process
5.5.2 Drafting and Finalizing a Project Management Plan (PMP)

Upon executing a Pre-Construction Services Agreement and issuing a notice to proceed, the Project Manager drafts a Project Management Plan (PMP), which defines the methodology for administrating and executing the CMAR delivery process for the Project. At a minimum, the PMP is to address change management procedures, schedule milestones and updating procedures, communication protocols, documentation processes, the established budget and cost tracking processes, a quality plan, and the approach for implementing the design development activities listed in Section 5.5.4.

5.5.3 CMAR Project Team Alignment Activities

The following alignment activities are critical to establishing the expectation of partnering and Project Team collaboration for the success of the Project. These activities consist of the Project Team kickoff workshop, partnering process, and Initial Approach to Cost Meeting.

5.5.3.1 CMAR Project Team Kickoff Workshop

The CMAR Project Team attends and actively participates in the CMAR Project Team kickoff workshop, which the Department leads. The Project Manager schedules the workshop and determines the agenda items to be covered with the input from the other CMAR Project Team members.

The workshop is an opportunity to orient the CMAR Project Team to the Project, the CMAR project delivery method, the partnering process, and the Project stakeholders. Other workshop activities could involve the following:

- Presentation of Project elements and scope;
- Preliminary identification of Project risks mitigation, innovation, and design needs;
- Requirements for change management;
- Establishing scheduling approach and issues;
- Establishment of a communication and document control plan;
- Establishment of a public outreach strategy and plan; and
- Preliminary discussion of cost/pricing development and process.
The Project Manager may augment this list with other Project-specific activities as determined necessary by the CMAR Project Team.

5.5.3.2 Partnering

The partnering process occurs over the entirety of the pre-construction phase. All CMAR Project Team members are expected to engage in the partnering process to ensure that proactive communication is occurring and expectations are being met among all members of the CMAR Project Team.

To promote an atmosphere of partnering, the Project Manager may elect to establish one or more partnering meetings to occur during the pre-construction phase. The Project Manager determines the time, location, and agenda for these meetings in consultation with the CMAR Project Team members.

The partnering process continues through the construction phase of the Project between the Department and Construction Manager.

5.5.3.3 Initial Approach to Cost Meeting

The purpose of the Initial Approach to Cost Meeting is to establish agreed upon assumptions and approaches to the open book, production-based estimating process during the design development phase. These assumptions and approach include alignment amongst the CMAR Project Team on the definition and assignment of direct and indirect costs, overhead, and profit to items of work, in addition to the development of a list of bid items and estimated quantities by the Department's Roadway Design Division (Engineer's Estimate).

The Project Manager, Design Service Provider, Construction Manager, and ICE attend the meeting, and the meeting could involve the following:

♦ Identifying and concurring on all Project-related work items;
♦ Establishing measurement and payment concepts; and
♦ Establishing a plan to communicate changes in scope, quantity, and phasing.

The Construction Manager is required to actively lead this meeting by:

♦ Directing and opening discussion with the Department and the ICE regarding specific cost assumptions, and by
Leading discussion of the cost/pricing development and process for design input, analysis, evaluation, and resolution of the Construction Manager input into the design and specification development process.

### 5.5.4 Design Development and Compliance Activities

Once the CMAR Project Team is aligned, the CMAR delivery method involves a collaborative and iterative process to perform the following development activities, which drive the CMAR Project Team to finalize a plan set that is biddable, constructible, cost effective, and of high quality. Through applying the process illustrated in Figure 5-9, the CMAR Project Team can simultaneously perform internal processes to prepare the Project for bidding and identify, evaluate, and address all conceivable Project risk, opportunities, innovation, cost, and schedule impacts. The process is designed to encourage collaboration and ownership of these impacts by the CMAR Project Team members.
The goal is to execute the process to the point where the design for the Project or any portion thereof has been sufficiently finalized to enable a determination of the provable cost and the preparation of a Construction GMP bid.

### 5.5.4.1 Design Development Activities

The Project Manager leads the development of the design. Each CMAR Project Team member’s responsibility, in addition to their individual responsibilities, is to respond to input and comment from the other CMAR Project Team members for the following:
Plan and specification clarifications;
Schedule analysis, including acceleration opportunities;
Phasing or sequencing;
Constructability and bidability;
Availability of materials;
Cost/benefit analysis;
Maintenance of traffic;
Staging needs;
Third party impact avoidance and reduction strategies;
Value analysis and innovation;
Risk identification and mitigation; and
Changes to the Project design, cost, schedule, or quality as the design progresses.

The Project Manager establishes meetings or procedures, as necessary, to advance this process. The CMAR Project Team is given assignments and tasks for follow-up during the meetings, as well as a schedule for performing and completing such assignments and tasks. Throughout the development of the design, the CMAR Project Team are to be aware of and communicate any changes in the Project design, cost, schedule, quality, or risks through the change management process defined in the PMP.

The following sections describe the intent of each development activity identified in Figure 5-9 and the potential forums (i.e., meetings) where these activities can be accomplished. The Project Manager is to add, delete, or combine the listed meetings as determined necessary for the Project.

5.5.4.1.1 Risk Reserve Development

The CMAR Project Team is to follow the Department’s risk management process as defined in the Project Management Guidelines (latest edition) to establish a mechanism to control cost attributable to risk. Risk management is an inherently iterative process, and is to be discussed and continuously updated through discussion of risk that will occur throughout the development of the design as described below (e.g., any workshops or meetings associated with the design development activities). The process permits the Construction Manager, ICE, and Engineer to estimate costs independent of identified risks, which enhances the ability to make more accurate cost comparisons. This approach also permits the CMAR Project Team to address risk transfer, mitigation, and retirement of
risks during pre-construction, including advancing early procurement and additional field investigations.

The outcome of this process establishes a contractual mechanism for the Department to control costs attributable to each CMAR Project Team member’s assigned risk. This process culminates in the development of a risk reserve sum (risk reserve). The risk reserve represents an aggregate, probabilistic sum included with the Construction Contract that may be used to mitigate the occurrence of identified risks during construction. The Construction Manager will not be eligible for contract relief events (e.g., price, quantity, and/or contract time adjustments) other than in the case of a design error or if the Department directs a scope change. Specifically, the Department has determined to transfer quantity risk for all contract items to the Construction Manager as allowable under NRS 338.

5.5.4.1.2 Design and Specification Review Meetings (Design Workshops)

The intent of the design and specification review meeting(s) is to allow the CMAR Project Team an opportunity to review and comment on current Project design and to clearly define the Project-specific work items and their methods of measurement and payment so that the work items are fully understood by the CMAR Project Team. The Design and Specification meeting(s) is either scheduled to coincide with the Project’s design milestones (e.g., preliminary, intermediate, and final design) or is regularly scheduled as internal design meetings.

Throughout the development of the design, specifications authors from the Design Division Specification Section are to modify applicable specifications for quantity measures, measurement, and/or payment approach. This would include revision of Division I of the Standard Specifications for Road and Bridge Construction (NDOT 2001) to account for CMAR Project Team decision regarding risk allocation and management. A common example of a needed modification involves the CMAR Project Team’s decision to transfer all quantity risk to the Construction Manager. This requires specification authors to modify Division I specification language to disallow relief events for the Construction Manager concerning quantity overruns.

5.5.4.1.3 Discipline Workshop

A Discipline workshop(s) focuses on specific discipline work effort (e.g., utility, drainage, geometry) for the purpose of improving the design’s bidability, constructability, and quality of the Project. The appropriate members of the CMAR Project Team are to be in attendance.
5.5.4.1.4 Risk, Opportunity, and Innovation Workshop

The Risk, Opportunity, and Innovation workshop centers on identifying, defining, and documenting Project-specific risk, opportunity, and/or innovation, as well as assessing corresponding:

♦ Probability of occurrence,
♦ Potential mitigation or implementation strategies,
♦ Magnitude of cost and quantity impacts, and
♦ Schedule impacts.

The Project Manager or another assigned member (e.g., risk manager) of the CMAR Project Team is specifically tasked with this responsibility. After this initial workshop, all identified risk items forms the basis for tracking and resolving Project risk throughout the development of the design.

When the CMAR Project Team identifies an opportunity or innovation, the Project Manager establishes a procedure to evaluate and assess the item in order to arrive at a decision whether or not to incorporate it into the Project. This process proceeds independent and parallel to all other design development activities, so as to not impact the delivery schedule. The Project Manager or another Department decision maker leads an identified group of CMAR Project Team members specifically tasked with this responsibility.

5.5.4.1.5 Project Cost and Schedule Workshops

The Project Cost and Schedule workshop(s) may involve establishing, modifying, and maintaining the production-based cost model so that the CMAR Project Team continues to collaborate and apply established assumptions, contingencies, risks, and approaches to the estimate process. The meeting may also develop the construction phase schedule with input from the CMAR Project Team.

The Project Manager schedules the number of workshops and determines the agenda and content of the workshop(s) (e.g., a Project cost only workshop, a Project schedule only workshop, or a workshop that includes both elements). The workshop(s) is held to support cost and schedule discussion for the overall Project’s scope or scheduled to support cost and schedule discussion related to a portion of the Project.

The workshop(s) is either scheduled to coincide with the Project’s design milestones (e.g., preliminary, intermediate, and final design) or may occur as needed to address cost and schedule questions that arise during design.
For a workshop that coincides with a design milestone, the Construction Manager develops and provides an Opinion of Probable Construction Cost (OPCC) estimate and corresponding construction schedule for the Project; the Design Service Provider develops the Engineer’s Estimate; and the ICE develops a production-based estimate. Both the Construction Manager and ICE estimates are to be formatted consistent with the agreed upon production-based cost model and the Engineer’s Estimate. The estimates shall reflect and be consistent with the agreed upon methods and measurements of payment anticipated for each bid item. Definitions of the elements included in a production-based estimate are attached to the Pre-Construction Services Agreement Attachment A Scope of Services.

The Department, via a formatted spreadsheet with bid item descriptions, quantities and units corresponding with the Engineer’s Estimate, compares the OPCC, ICE, and Engineer’s estimates to identify items that are not within a satisfactory range as determined by the Project Manager. The Department maintains confidentiality by blinding the prices and restricting access to the Construction Manager’s and ICE’s estimates. The CMAR Project Team attends review meetings as necessary to discuss assumptions, approach to the estimates, and allocations associated with unit prices not in agreement. All CMAR Project Team members are responsible for verifying the quantities and methods of measurement and payment for all Project work items. The objective of this blind bid item comparison process is to ensure that the assumptions, contingency, risk, and approach to the estimate are fully identified, delineated, and understood.

Upon completion of each Project Cost and Schedule workshop, each CMAR Project Team member will resubmit their OPCC estimate reflecting their revised pricing resulting from the workshop dialogue.

Where design questions arise that require cost or schedule information that would be useful to assist in determining the best approach to design, the CMAR Project Team may hold informal cost or schedule meetings as needed. These meetings are focused on specific Project elements and options rather than the total Project cost.

5.5.4.2 Compliance Activities

The Project Manager must be aware of a number of other pre-bidding considerations that must be accounted for in concert with the other activities and tasks described above and in the Pre-Construction Services Agreement Attachment A Scope of Services.
5.5.4.2.1 Preparing a Processing Memo

When the Project reaches the intermediate design stage (approximately 60 percent design), a processing memo is prepared by the Design Estimate Coordinator at the request of the Project Manager. This memo documents approval of the Project by the Assistant Director of Engineering and sets the dates for delivery of the design and specifications package and corresponding estimate package to the Administrative Services Officer and the Project Manager. The memo also sets the dates that the estimates, including Construction Engineering, as well as the right-of-way and environmental certifications will be sent to Financial Management.

5.5.4.2.2 Development of Subcontracting Plan

The Construction Manager shall develop and submit a subcontracting plan prior to soliciting any qualifications, proposals, or bids for subcontracts in accordance with NRS Chapter 338 requirements and the requirements listed in the Pre-Construction Services Agreement Attachment A Scope of Services.

The subcontracting plan describes a reasonable procedure for conducting the procurement and approval processes applicable to all subcontracts of the Construction Manager. The procedure is to include timing for each step of the qualification and proposal processes, with qualification determinations and selections to be made in accordance with NRS 338.16991 and 338.16995. The Department approves the subcontracting plan based on its adherence to the defined requirements and in its sole discretion. The Construction Manager is responsible for obtaining approval of the subcontracting plan from the Department’s Contract Compliance Division prior to submittal to the Project Manager.

It is the Construction Manager’s responsibility to maintain, revise, and obtain approval from the Department for any changes that may arise during the development of design. The Construction Manager is responsible for execution of the subcontracting plan effort in accordance with this plan. These efforts are considered normal costs of doing business by the Construction Manager and are not reimbursable or compensated under the Pre-Construction Services Agreement.

The Project Manager must be aware that NRS specifies timeframes that may be upwards of 60 days to complete prequalification, solicitation, and evaluation of subcontractor proposals.
5.5.4.2.3 Development of DBE Performance Plan

As part of negotiations of the Construction Contract and prior to the award and execution thereof, the Construction Manager, with input from the Department, is to develop a DBE performance plan that will apply during the Construction Contract and for accomplishment of all construction. The Construction Manager is to submit the DBE performance plan no later than the intermediate design milestone, updating the plan as of the final design milestone and submitting an approved final DBE performance plan prior to submittal of the Construction GMP bid for the Project or a portion thereof. The Department’s Contract Compliance Division is to provide the DBE goal requirement at the time of the intermediate design milestone. The Construction Manager is responsible for obtaining approval of the DBE performance plan from the Department’s Contract Compliance Division prior to submittal to the Project Manager.

The DBE performance plan is to address the manner in which the Construction Manager seeks to meet the DBE goals and requirements, as well as address monitoring and reporting requirements. The Department approves the DBE performance plan based on its adherence to the defined requirements listed in the Pre-Construction Services Agreement Attachment A Scope of Services and in its sole discretion.

5.5.5 Finalizing Design and Arriving at a Provable Cost: Completing the Development of Design Process

When the Department determines, with input from the CMAR Project Team, that the design is at a point where the design for the Project or any portion thereof has been sufficiently finalized to enable a determination of the provable cost, a design and specifications package and corresponding estimate are prepared. The point at which the design has progressed in order to determine a provable cost occurs when the Construction Manager can confidently assign a GMP to each item of work and the Department can measure and account for quality and payment. The Design Service Provider provides to the Specifications Division the design and specifications package and corresponding estimate to verify the bid items and ensure that standard Department bid items are being utilized to the extent possible. The Specifications Division confirms or modifies the established bid items and notifies the Design Service Provider of confirmation or changes.
5.5.6 Multiple GMP Process

The Department may consider design finalized for the entire Project or any portion thereof. When the Department determines, with input from the CMAR Project Team, that there is a value to progressing a portion of the Project to a level sufficient for bidding prior to finalization of the overall Project, that portion of the Project is to follow the previously described process separate from the remaining Project work elements. The portion of the work to be contracted separately results in a Project with independent utility and severability from the future anticipated construction contracts for the Project. In this way, the Department maintains its ability to contract with others in the event the Department does not accept the Construction Manager's bid for future work on the Project. A full description of the process is detailed in a document describing the multiple GMP process (Appendix G).

For each individual GMP, the CMAR Project Team releases a design and specifications package and corresponding estimate for the Project, or the applicable portion thereof, to be used during the final OPCC and GMP Bid processes.

5.5.7 Pre-Bidding Requirements

Once a design and specifications package and corresponding estimate are released but before construction bidding can occur, there are a number of pre-bidding requirements that must first be accomplished. These requirements include finalizing the Engineer's Estimate based upon the OPCC process and subsequent meetings. In addition, Contract Compliance works with the CMAR to finalize the Subcontracting and DBE performance plans. There are also certain pre-bid Project considerations that must be performed by the Department prior to the Construction GMP bid. Under the traditional DBB approach, the pre-bid requirements would also include advertisement. However, the CMAR approach does not include a traditional advertisement task because the Construction Manager was previously selected through a QBS for the pre-construction phase. As such, it is recommended that the three noted tracks be addressed in parallel, as illustrated on Figure 5-10.
Figure 5-10: Pre-Bidding Requirements

- **Commence Pre-Bidding Requirements (Figure 5-9)**
  - **Yes**
  - **Entering and Updating the Engineer’s Estimate in the Integrated Project Development (iPD) Software Program**
  - **Obtaining Right-of-Way and Environmental Certifications**
  - Conduction a Final Project Cost and Schedule Meeting
  - Finalizing Engineer’s Estimate and Sending to the Electronic Bidding System (EBS)
  - Programming the Project
  - Conducting a Final Project Cost and Schedule Meeting

- **Finalizing the Design and Specifications Package**
  - **Reject**
  - **Approve**

- **Preparation of the Advertising Package**
  - **Reject**

- **Director’s Approval to Advertise**
  - **Approve**

- **FHWA Approval to Advertise**
  - **Reject**

- **Construction Bidding**

**Per full oversight, as applicable**

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*Figure 5-10: Pre-Bidding Requirements*
5.5.7.1 Finalizing the Subcontracting and DBE Performance Plans

The CMAR is required under the Pre-Construction Services Agreement Attachment A Scope of Services to prepare a Subcontracting plan and DBE performance plan for the Project. Under DBB, the Construction Manager would report the use of their subcontractors and DBEs to the Department at or soon after the bid opening time. The Construction Manager process differs from DBB because the Construction Manager must procure subcontractors under NRS 338.16995. The Construction Manager works with Contract Compliance section to develop plans that are acceptable to the Department and FHWA, as applicable. See Section 5.5.4.2 for a more detailed description of the preparation and submittal process for each respective plan.

5.5.7.2 Entering and Updating the Engineer’s Estimate in the Integrated Project Development (iPD) Software

The Roadway Design Division enters the Engineer’s Estimate into the Integrated Project Development (iPD) system as bid items and their associated costs are identified. The Roadway Design Division also revises the estimate as it is modified by the CMAR Project Team at the direction of the Project Manager. Project costs are associated with funding sources within the estimate. Funding sources are directed by Financial Management.

5.5.7.3 Conducting a Final Project Cost and Schedule Meeting

The primary purpose of the Final Project Cost and Schedule Meeting is to conduct a blind bid item comparison of the CMAR Project Team’s estimates in order to facilitate negotiation (to the extent possible) and determination of pricing acceptable to the Department prior to the construction bid. The Department’s preliminary Engineer’s Estimate, the Construction Manager’s final OPCC estimate, and the ICE’s final independent estimate are compared in the blind bid format as described in Section 5.5.4.1.5. A bid review team evaluates the reasonableness of the Construction Manager’s individual bid item pricing and overall price. The bid review team is comprised of the Project’s Resident Engineer and Constructability Division and led by the Project Manager. Ultimately, the Project Manager decides when the Construction Contract pricing is reasonable.

The Construction Manager also submits a corresponding construction schedule for the Project at the final Project Cost and Schedule Meeting.
The Project Manager and Design Service Provider reconcile and revise any portion of the design and specifications package and corresponding estimate based upon the feedback received from the Final Project and Schedule Meeting and bid review team analysis.

The results of the negotiation and determinations are to be reconciled during a pre-bid resolution meeting, which is described below.

**5.5.7.4 Conducting a Pre-Bid Resolution Meeting**

A Pre-Bid Resolution Meeting is held after the final Project Cost and Schedule Meeting, after analysis by the bid review team, and after updates to the design and specifications package have been made. During this meeting any final negotiations or discussions of Project costs occurs, and final changes or updates to the Engineer’s Estimate or design and specifications package are determined. The CMAR Project Team is provided preparatory instructions for submission of the Construction GMP bid. The Project Manager instructs the Roadway Design Division to make any required updates to the Engineer’s Estimate, so that it is in finalized status. The Project Manager also instructs the Specifications Division and/or Design Service Provider to update the special provisions and/or plans as necessary to prepare the Project for the Construction GMP bid submission.

**5.5.7.5 Finalizing the Engineer’s Estimate and Sending to the Electronic Bidding Subsystem (EBS)**

Once the design, specifications package, and Engineer's Estimate are finalized, the Roadway Design Division finalizes all bid items, quantities, units of measure, and funding sources in the iPD Engineer’s Estimate. Project Accounting, Financial Management, and Specifications Checking sections are to review the final iPD estimate and apply their approvals. Construction Administration also reviews the estimate and is to request a revision or update, as required. The Specifications Division sends the Engineer’s Estimate to the Electronic Bidding System (EBS) in iPD, thus issuing a contract number for the Project.

**5.5.7.6 Obtaining Right-of-Way and Environmental Certifications**

Routing of the processing memo (as described in Section 5.5.4.2.1) notifies the Right-of-Way and Environmental sections to begin work to certify the Project. When certifications are complete, each is forwarded to Contract Services. Issues encountered with the certifications are resolved with the Project Manager.
5.5.7.7 Programming the Project

Routing of the processing memo (as outlined in Section 5.5.4.2.1) notifies Financial Management to program the Project. Once programming is complete, Financial Management prepares the Programming Papers and forwards them to Contract Services. Issues encountered with the programming are resolved with the Project Manager, the Department Director, and FHWA, as applicable.

5.5.7.8 Finalizing the Design and Specifications Package

Once the design, specifications, and Engineer’s Estimate have been finalized, contract documents are sent to Contract Services, who manages the assembly and execution of the bid documents. The Project’s contract number is added to the title sheet of the plans. The plans are forwarded to the Department Director’s Office for signature of the title sheet. Upon title sheet signature, the original signed title sheet and .pdf versions of the final plans and special provisions are sent to Contract Services.

5.5.7.9 Preparing the Advertising Package

Contract Services verifies completion of all clearances, agreements, and approvals necessary for letting of the Project documents to bid. Any required revisions are made prior to assembling the final bid document package. The following items are required prior to contract advertising:

♦ Processing Memo,
♦ Right-of-Way Certification,
♦ Environmental Certification,
♦ Traffic Control Memorandum (if applicable to the Project),
♦ Programming Papers,
♦ Construction Resident Engineer Assignment, and
♦ Public Outreach Plan (if applicable, as determined by the PM).

It is noted that Programming Papers are usually secured the day of or day before bidding. Contracts may be bid without securing construction resident engineer assignment, although it is not preferred.

Contract Services assembles the contract documents, which are comprised of the following components:
Design Plans,
Special Provisions,
Prevailing Wage Rates,
Final Subcontracting Plan,
Final Construction Schedule,
Bid Proposal,
Established DBE Requirements,
Anti-Collusion and Suspension/Debarment Affidavits (as required), and
Sample Contract and Bonds.

Contract Services then obtains the Director’s and FHWA’s approval, as applicable, to advertise the Project. Upon completion of these approvals, Administrative Services issues a Project Release Memorandum to the CMAR Project Team and other applicable Department individuals advising that the Project has been released and is ready for the construction bidding process.

The bid documents are posted to the Department’s E-Plan Room accessed via the Department’s website. Documents are password-protected, and the password is issued to the Construction Manager (who may share the password with its subcontractors) and the ICE. This is to ensure that all members of the CMAR Project Team, as well as subcontractors, are bidding on identical contract documents. This also eliminates confusion about exactly which version or set of bid items are being bid upon, which is consistent with the DBB processes.

5.5.8 Construction Bidding Process

While there are various payment and pricing requirements in accordance with NRS 338.1696, the Department has decided to assign the Construction Manager all quantity risk, institute a risk reserve under the sole discretion of the Department, and implement a contract type that accounts for the cost of the work, plus a fee, with a GMP, otherwise known as the Construction GMP bid.

5.5.8.1 Construction GMP Bid Process

Having completed the design development process, including finalizing the Engineer’s Estimate, finalizing the plans and special provisions, and posting the contract documents to the E-Plan Room, the CMAR Project Team proceeds through the Construction GMP bid process (Figure 5-11).
Figure 5-11: Construction GMP Bid Process

Construction Bidding

Construction Manager creates bid (GMP)

ICE creates independent bid estimate

First bid submittal. Submit GMP and ICE into EBS

Is GMP or ICE below approved funding?

Yes

Compare submittals for cost reasonableness

Is the GMP reasonable?

Yes

Contract Services Review

Contract Compliance Review

Resolve Minor Deficiencies or Procure Traditional Design Bid Build

No

Negotiate by clarifying and updating contract documents and distributing to Project Team

Second bid submittal. Submit updated GMP and ICE into EBS

Compare submittals for cost reasonableness

Is the GMP reasonable?

Yes

Contract Award

No

Procure Traditional Design Bid Build

Procure Traditional Design Bid Build

No

Yes
5.5.8.1.1 Bid Submittal

Contract Services sends the contract to the Secure Vault in iPD, and makes it available in the Contractors Desktop Application (CDA) software, ready for the acceptance of bid prices. The Construction Manager and ICE then enter their respective bids into the CDA. Contract Services “opens” the bids in iPD, but it does not broadcast or publicize the bid opening. Bid tabulations depicting the unit and total prices for all bidders, as well as the Engineer’s Estimate, are generated by Contract Services. This information is sent to the Project Manager and any other member of the CMAR Project Team as directed by the Project Manager. Note: Bid information remains confidential until award of the Construction Contract. The Project Manager compares the Construction Manager and ICE bids against the Engineer’s Estimate, and analyzes the information for significant variance in individual contract items between the three bids (e.g., item cost differences as well as the overall Construction GMP bid). The Project Manager is to consult applicable Division Heads and the ICE, as needed, for clarification.

If any of the following occur, the process proceeds to additional discussion and negotiations between the Department and the Construction Manager.

- The Construction Manager’s Construction GMP bid or ICE’s bid is greater than the Project budget.
- The items within the Construction GMP bid vary excessively higher or lower from the ICE or Engineer’s Estimates.

The Department reserves the right to determine the items for discussion with focus on the items with the greatest cost impact and/or variance. The Department maintains confidentiality of the bid prices by blinding the prices and restricting access to the submitted bids. All negotiations are to be open book. The Department is to have access to all Construction GMP bid proposal documents, quotations, takeoffs, subcontract bids, and other construction cost estimates during negotiations.

If any clarifications or alternations are identified for the design plans and specifications, the Design Service Provider will revise those documents and reissue the documents for development of a final Construction GMP bid submittal. Revisions are processed as supplemental notices to the original contract documents and follow the same process as DBB supplemental notices regarding programming, certifications, approvals, etc.

The Construction GMP bid can be offered no more than two (2) times. After the second and final Construction GMP bid, the Department reserves the right, in its sole discretion, to terminate the bidding process and undertake such other actions relating to the Project, as the Department determines, including, without
limitation, the right to procure the Construction Contract scope of work by someone else or pursuant to some other delivery method.

The Construction GMP bid submittal is managed through Contract Services. Care is to be taken to designate the projects viewable by the general contracting community within EBS as a CMAR delivered project.

If the Department finds the Construction GMP bid to be acceptable (i.e., the Project is within budget; the bid appears reasonable and balanced), the Project Manager requests Contract Services to begin the bid review process.

5.5.8.1.2 Contract Services Review

Contract Services performs a review of all required contract documents for bidding, including required affidavits and reports. Contract Services then requests that Contract Compliance perform subcontractor and DBE compliance reviews.

5.5.8.1.3 Contract Compliance Review

Contract Compliance performs subcontractor and DBE compliance reviews, and approves the subcontractors and DBEs in iPD. Contract Compliance is to notify Contract Services of their approval, and the Construction Contract moves to the award stage.

5.5.9 Construction Contract Award

The Construction Contract award process is illustrated on Figure 5-12.
5.5.9.1 Preparing a Recommendation to Award Memorandum

The Project Manager prepares and forwards a Negotiation Summary Memorandum and Cost Estimation Summary Report to Contract Services. The Negotiation Summary Memorandum is addressed to the Department Director, and summarizes the OPCC bid, Construction GMP bid, and negotiation processes. The memo also details why the Construction GMP bid is acceptable to the CMAR Project Team. The Cost Estimation Summary Report depicts a graphical representation of each of the OPCC and Construction GMP bid amounts from the Construction Manager, ICE, and Engineer. This report also details the evolution of each bid to eventually reach the agreed-upon Construction GMP. An example of these reports is included under the sample Board Memorandum included in Appendix G.

Upon receipt of the Negotiation Summary, Contract Services requests FHWA’s concurrence in award (as applicable) of a Construction Contract to the Construction Manager in the amount of the Construction GMP bid.

Contract Services prepares a memo to the Director requesting concurrence in award of a Construction Contract to the Construction Manager in the amount of the
Construction GMP bid. The Award Packet is assembled to include the following items, and forwarded to the Director’s Office:

♦ *Negotiation Summary* Memorandum;
♦ *Cost Estimation Summary* Memorandum;
♦ FHWA’s Concurrence in Award (if applicable); and
♦ A Bid Tabulation Report showing the Construction Manager’s Construction GMP bid detail, the ICE’s Cost Estimate detail, and the Engineer’s Estimate detail.

The concurrence memo is signed by the Assistant Director - Engineering and the Department Director. The memo is returned to Contract Services. The signed concurrence memo and related backup becomes the line item detail for the Construction Contract when it is presented to the Board for approval.

### 5.5.9.2 Issuing a Notice of Intent to Award and Conditional Notice to Proceed

Upon receipt of the Contract Compliance subcontractor and DBE approvals, FHWA concurrence in award (as applicable), and the Director’s approval to award, Contract Services sends a Notice of Intent to Award and Conditional Notice to Proceed letter to the Construction Manager. The Construction Contract and Performance Bond and Labor and Materials Bond for execution are also attached to this notice.

The Notice to Proceed is conditional upon full execution of the Construction Contract, and the Construction Manager is not under any circumstances to begin construction work without an executed Construction Contract. The Construction Manager is not start work prior to the Notice to Proceed without the written authorization of the Department.

The Construction Manager signs the Construction Contract, executes the bonds, and returns each to Contract Services. Contract Services obtains the Deputy Attorney General’s signature as to Legality and Form on the Construction Contract and Bonds, and then forwards the original documents to the Department Director’s Office and the Board Report Coordinator.

### 5.5.9.3 Nevada State Board of Transportation Review

Contract Services places the Construction Contract on the next available Transportation Board Meeting Contracts for Approval agenda item. Contract Services then prepares the Contracts for Approval Report Packet by entering the
Construction Contract on the Contracts for Approval Report, and including the *Concurrence in Award* Memorandum and related backup as the Line Item Detail.

The Deputy Director or Assistant Director-Engineering presents the Construction Contract at the Board meeting and answers any questions Board members may have. The Project Manager and other members of the CMAR Project Team may also be present and available to answer questions at the Board meeting.

Upon approval of the Contracts for Approval agenda item, the Board Report Coordinator requests the Governor’s signature on the Construction Contract (at the meeting). Upon receipt of the Governor’s signature, the Board Report Coordinator requests the Department Director’s signature on the Construction Contract (also at the meeting), ultimately returning the Construction Contract and Bonds to Contract Services.

### 5.5.9.4 Notice of Award and Construction Contract Execution

Following approval to award the Project, Contract Services balances the funding in iPD (modifying funding from the Engineer’s Estimate amount to the Construction Manager’s Construction GMP bid amount) and issues the Notice of Award. Upon receipt of the Notice of Award, Financial Management performs the final programming function in the federal Financial Management Information System (FMIS), validates the funding in iPD, and performs the “send to construction” function in iPD.

Once the Construction Contract has been sent to Construction Administration, Construction Administration sets up the contract in the Contract Management System (CMS), and then it notifies Contract Services that the CMS system is ready.

Contract Services then issues the Notice of Execution, which removes the conditions of the Notice to Proceed, and the Construction Manager may commence Project construction at that time.

### 5.5.9.5 Approvals

#### 5.5.9.5.1 Department Director

The Department Director reviews the supporting documentation and approves the *Recommendation to Award* Memorandum, recommending award of a Construction Contract to the Construction Manager in the amount of the Construction GMP bid.
5.5.9.5.2   **FHWA**

Per full oversight requirements as applicable, FHWA reviews the *Bid Tabulation* Report and approves the award of a Construction Contract to the Construction Manager in the amount of the Construction GMP bid.

5.5.9.5.3   **Nevada State Board of Transportation**

The Department Director follows the Department’s standard processes for submitting the Construction Contract to the Board for approval to award. All CMAR projects (or phases thereof) require Board approval regardless of any dollar limits or thresholds established for DBB contracts.

A copy of the final Construction Contract ready for signature will be submitted to the Department Director’s office at least two days prior to the Board meeting. A sample Board Memorandum is provided in Appendix G.

Upon receipt from the Department Director, the Board approves or rejects the Board Packet. Upon approval and appropriate signatures, the Department proceeds with Notice of Award.

5.5.10   **Implementation Phase: Construction**

Upon Notice to Proceed, the Department manages construction similarly to its traditional DBB delivery method. Regardless of whether one or more Construction Contract(s) are executed by either the Construction Manager or another contractor for any portion of the Project, the Construction Manager is to diligently continue work towards performing the scope of services under the Pre-Construction Services Agreement, including, without limitation, sufficiently finalizing the design of the Project acceptable to the Department.

Commencement of the construction phase does not excuse the Construction Manager from completion of, and is not deemed a waiver or acceptance of, the pre-construction phase services as specified in the Pre-Construction Services Agreement.

Once a GMP is awarded that includes a risk reserve, the Construction Manager commences construction. The Construction Manager is responsible to bring to the Department’s attention any risk events as each occurs. This notification includes a summary of the event, projected impact upon cost and schedule, and justification of eligibility under the risk reserve. The Project Manager and Construction Resident Engineer review the request. If the Department’s review of the request finds the event to be eligible under the definition of the risk reserve contained within the Project specifications, and the Construction Manager to be in the best position to mitigate the
risk, the Construction Manager and Department are to negotiate a sum to be drawn from the risk reserve to be paid to the Construction Manager to mitigate the risk event. The costs estimated to mitigate the risk during pre-construction guide these negotiations. Upon final completion and acceptance of construction by the Department, any balance of the risk reserve is retained by the Department. If an event occurs that was not anticipated within the risk reserve, the Department and Construction Manager negotiate a formal change order. This risk reserve approach improves a project’s construction cost certainty, protects the Construction Manager in the event of unanticipated changes in the scope, and assures the Department that the awarded GMP is not inflated to include unidentified risks.

Form RRE (Record of Authorization of Risk Reserve Expenditures) is to be used by the Resident Engineer to document and receive approvals, including that of the Project Manager, for use of the risk reserve (Appendix G).

5.5.11 Program, Project, and Legislative Reporting

With the approval of MAP-21, the use of the CMAR delivery method for federally-funded projects no longer requires separate approval of programmatic or project-level SEP-14 applications. However, periodic Nevada State Legislature CMAR Program and project reporting is required under NRS 338.1908. Furthermore, as the federal rulemaking process evolves, it is anticipated that reporting will continue to be valuable for rulemaking, for other states/agencies considering the CMAR delivery method, and for the Department to analyze the effectiveness of the CMAR delivery method and its performance.

The following sections discuss general CMAR Program and project reporting guidelines, in addition to specific Legislative reporting requirements. Overall, the Department is committed to measuring performance and documenting results on its CMAR Program, projects, and other projects delivered by different delivery methods (e.g., DBB) on an on-going basis. To accomplish this, data collection and evaluation are critical to accurate and full reporting. The Project Manager is responsible for gathering applicable data from his/her project and for authoring any specific CMAR project report in accordance with the following reporting guidelines. The Pioneer Program Manager is responsible for evaluating data and authoring CMAR Program and Legislative reports in accordance with these same guidelines.
5.5.11.1 Program Reporting Guidelines

The methodology for measure program performance will be developed by the Project Manager and Pioneer Program Manager for annual CMAR Program reporting purposes.

5.5.11.2 Project Reporting Guidelines

The following provides a list of data that will be used by the CMAR Project Team, Project Manager, and Pioneer Program Manager for project reporting purposes. The Project Manager is ultimately responsible for gathering the following data, with assistance from the Pioneer Program Manager and CMAR Project Team. Of note, much of the information gathered on a project level can be used for evaluation purposes under the annual Program report.

♦ The Project Manager is to assess how the Project goals were met, exceeded, or failed to be reached.
♦ The Project Manager is to document the Construction Manager and ICE procurement process, including Evaluation Factor weighting and observer involvement.
♦ The Project Manager is to document the pre-construction and construction phase, including the makeup of the CMAR Project Team, the cost of pre-construction, and other construction efforts (e.g., early acquisition of long-lead items, innovations applied, and schedule performance).
♦ The Project Manager is to list the Engineer’s Estimate, ICE’s Construction GMP bid, Construction Manager’s GMP bid, and Construction Contract award.
♦ The Project Manager is to evaluate and document the how the CMAR process advanced opportunities for innovation, advanced opportunities to manage risk, impacted cost, impacted schedule, and dealt with the complexity of design and construction.

5.5.11.3 Legislative Reporting Guidelines

The Department is to provide two reports to the Nevada State Legislature. The Annual CMAR Legislative Report is to be submitted on or before January 1 of each year, and the CMAR Program Legislative Report is to be submitted on or before January 31, 2017. The following sections provide general requirements for each of these reports per NRS 338.1908. The Pioneer Program Manager is responsible for
evaluating data and authoring both Legislative reports in accordance with these reporting guidelines.

5.5.11.3.1 Annual CMAR Legislative Report

The Department is to annually submit a report documenting each CMAR project entered into during the immediately preceding year to the Director of the Legislative Counsel Bureau. This includes documenting CMAR Project work for any Pre-Construction Services Agreement or Construction Contract. In order to meet the January 1st deadline, the Project Management Division is to prepare and internally submit to the appropriate internal divisions its draft of the Annual CMAR Legislative Report for review and approval on or before November 1st. The Annual CMAR Legislative Report is to include:

♦ A description of the Project;
♦ The name of the Construction Manager;
♦ If the Project has not been completed at the time the Annual CMAR Legislative Report is submitted, a report on the progress of the Project; and/or
♦ If the Project has been completed at the time the Annual CMAR Legislative Report is submitted, an explanation of whether the Department is satisfied with the Project and with the contractual arrangement with the Construction Manager.

Information from the Annual CMAR Legislative Report is to be included in the Department’s annual Performance Management Report.

5.5.11.3.2 CMAR Program Legislative Report

The Department is to submit an overall Program report documenting the benefits of the CMAR Program. This report is submitted to the Director of the Legislative Counsel Bureau and is to include cost, innovative, and schedule performance measures as determined by the Pioneer Program Manager.
# APPENDICES

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APPENDIX A

DEFINITIONS

Advance Construction: States or local governments independently raise upfront capital required for a federally approved project and preserve eligibility for future federal-aid reimbursement for that project. At a later date, the state can obligate federal-aid highway funds for reimbursement of the federal share. This tool allows states to take advantage of access to a variety of capital sources, including its own funds, local funds, anticipation notes, revenue bonds, bank loans, etc., to speed project completion.

Agreement Services: A division of the Nevada Department of Transportation that serves as the receiver, distributor, and coordinator of Proposals. Agreement Services also performs a Completeness Review on behalf of the Department.

Amortization: The gradual reduction of an amount of debt over time.

Application Fee: A fee that, along with the Review Fee, is paid by submitters of Unsolicited Proposals in order for their Proposals to proceed through the review process. The fee, which is $5,000, is made payable to the Nevada Department of Transportation.

Asset: Any item of economic value, either physical in nature (such as land) or a right to ownership, expressed in cost or some other value, which an individual or entity owns.

Authorized Emergency Vehicle: A vehicle of any fire department, police department, sheriff's office, coroner, Nevada Highway Patrol, ambulance service (public or private), military, or any other emergency vehicle as defined in NRS 484.787 and 484.789.

Automatic Vehicle Identification (AVI) Technology: An electronic toll collection (ETC) system using wireless radio frequency identification (RFID) transponders with readers that automatically identify vehicles as they enter and exit a tolling facility.

Availability Payments: Periodic (typically annual) payments made by a sponsoring agency to a project delivery team upon completion of a project and its availability for public use, often made in lieu of toll revenues when it is not possible or practical to charge drivers a toll to use the facility. Availability payments also can be based on the availability of facility capacity, traffic volumes, facility condition, and other operational and maintenance milestones.
Bankruptcy: A proceeding in a federal court in which an insolvent debtor's assets are liquidated and the debtor is relieved of certain obligations and liability. Chapter 7 of the Bankruptcy Reform Act deals with liquidation, while Chapter 11 deals with reorganization.

Basis Point: A shorthand financial reference to one-hundredth of one percent (.01 percent) used in connection with yield and interest rates.

Bidder’s Preference: A five percent addition to the total Proposal score for a Proposer that is qualified to receive a preference for bidding public works pursuant to NRS 338.1693(3).

Board: See Nevada State Board of Transportation.

Bona Fide Emergency: When an authorized emergency vehicle, as defined herein, responds to or returns from an emergency call.

Bond: A debt instrument issued for a period of more than one year with the purpose of raising capital by borrowing. The federal government, states, cities, corporations, and many other types of institutions sell bonds. Generally, a bond is a promise to repay the principal along with interest on a specified date. Some bonds, such as zero-coupon bonds, do not pay interest, but all bonds require the repayment of principal. When an investor buys a bond, the investor becomes a creditor of the issuer. The buyer does not gain any kind of ownership rights to the issuer, as in the case of equities. On the other hand, a bond holder has a greater claim on an issuer's income than a shareholder in the case of financial distress. Some bonds are tax-exempt, and these are typically issued by municipal, county, or state governments, whose interest payments are not subject to federal income tax, and sometimes also state or local income tax.

Bond Counsel: A lawyer or law firm, with expertise in bond law, retained by the issuer to render an opinion upon the closing of a municipal bond issue regarding the legality of issuance and other matters including the description of security pledged and an opinion as to the tax-exempt status of the bond.

Bond Insurance: A financial guarantee provided by a major insurance company (usually AAA rated), as to the timely repayment of interest and principal of a bond issue.

Budget Authority: Authority provided by law to enter into financial obligations that will result in immediate or future outlays of federal government funds. Budget authority includes the credit subsidy costs for direct loan and loan guarantee programs. Basic forms of budget authority include appropriations, borrowing
authority, contract authority, and authority to obligate and expend offsetting receipts and collections.

**Build-Operate-Transfer:** Public-private partnership arrangement involving private construction, private operation for given period of time, and eventual transfer to public ownership.

**Build-Own-Operate:** A private contractor constructs and operates a facility while retaining ownership. The private sector is under no obligation to the government to purchase the facility or take title.

**Capital Expenditures (CapEx):** Long-term expenditures for property, plant, and equipment.

**Capital Reserves:** Funds that remain in a bank and are not loaned out. These funds can be used to support a variety of credit enhancement tools. Capital reserves also can be used to leverage the lending institution, or borrow against reserves to expand the pool of available loan funds.

**Capitalized Interest:** A specified portion of the original bond proceeds which will be used to pay interest on the bonds until revenue from planned sources becomes available upon completion of construction.

**Cash Flow:** Cash receipts minus cash payments over a given period of time.

**Categorical Exclusion (CE):** A category of actions which do not have a significant environmental effect and neither an Environmental Assessment nor an Environmental Impact Statement is required.

**Collateral:** Any property pledged as security for a loan.

**Commercial:** Adjective used to signify a business activity, regardless of whether that activity has been undertaken by an individual or business.

**Commercial Risk:** The various risks that can affect a project during operations, such as changes in input and output prices, fluctuations in demand, or significant changes in project scope or technology.

**Competing Proposal:** A written proposal that an entity submits in response to a procurement solicitation notice issued by the Department.

**Competitive Range:** A range of scores established by the PAT that is deemed to have a reasonable chance for the Proposer being selected for award of a project. The Competitive Range, if used, is established during the RFP process of the evaluation phase for projects.
Completeness Review: A review of the Pioneer Program Project Proposal by Agreement Services to ensure that the Proposal contains all required information and statutory requirements.

Completion Guarantee: A guarantee that ensures a project will achieve physical and/or financial completion. A turnkey contractor guarantees physical completion and the achievement of certain operations performance requirements. The guarantees are normally secured by performance bonds and/or penalties in the form of liquidated damages. Alternatively, project sponsors sometimes provide lenders with completion guarantees by agreeing to pay the scheduled debt service in the event the project company does not or cannot pay.

Concession: Long-term lease agreement that involves the lease of publicly financed facilities to a private sector entity (concessionaire) for a specified time period. Under the lease, the private sector entity agrees to pay an upfront fee to the public agency in order to obtain the rights to collect the revenue generated by the facility for a defined period of time (usually from 25 to 99 years). In addition to the concession fee, the concessionaire operates and maintains the facility, which may include capital improvements.

Concession Benefits: Rights to receive revenues and other benefits (often from tolling) for a fixed period of time, including transferring responsibility for increasing user fees to the private sector; generating large up-front revenues for the public agency; transferring most project, financial, operational, and other risks to the private concessionaire; and gaining private sector efficiencies in operations and maintenance activities.

Congestion Pricing: The policy of charging drivers a fee that varies with the level of traffic on a congested roadway. Congestion pricing is designed to allocate roadway space, a scarce resource, in a more economically feasible manner.

Consortium: All of the participants or developers associated with a specific project. In the early stage of a project, it may be a loose association not a legal or contractual entity or joint venture.

Construction Contract: A contract primarily related to the CMAR delivery method between the Construction Manager and the Department providing for the construction of a project, or any portion thereof. A Construction Contract may be entered into in accordance with NRS Chapter 338 and the Pre-Construction Services Agreement.
**Construction Manager:** The Proposer selected pursuant to the CMAR procurement process and awarded the Pre-Construction Services Agreement to provide CMAR services for a project.

**Construction Manager at Risk (CMAR):** A procurement or project delivery method that involves a general contractor acting as a construction manager (Construction Manager) in the pre-construction design and construction phases of a project.

**CMAR Project Team:** The entire CMAR team, which may consist of the Construction Manager, the Department's Program and Project Managers, the Department's Design Service Provider(s), the Independent Cost Estimator (ICE), the Department's Construction Engineering Service Provider(s), and any other key stakeholders or third parties identified by the Department.

**Contract Terms and Conditions:** The legal obligations and requirements on which the contract will be executed including the pertinent definitions.

**Contingencies:** Existing conditions, situations, or circumstances which involve uncertainty and which could result in gains or losses. For example, guaranteed loans represent contingent liabilities which, in the event of default by the borrowers, the federal government would be liable to cover the losses of the guarantors, and thereby sustain the loss itself.

**Davis-Bacon Act:** A federal law that requires prevailing wages to be utilized on federally-funded projects. The prime contractor for all Design-Build and CMAR projects shall comply with the regulations of the Davis-Bacon Act.

**Debt:** An amount of money or property owed to any person, organization, or entity. Included as debts are amounts due a governmental entity from fees, duties, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, taxes, interest, forfeitures, and other sources.

**Debt Service Coverage Ratio:** The margin of safety for payment of debt service on a revenue bond, reflecting the number of times (e.g., 1:2) by which annual revenues after operations and maintenance costs exceed annual debt service.

**Debt to Equity Ratio (D/E):** A financial ratio that indicates the relative proportion of debt and equity used to finance a company's assets or a project.

**Default:** When a covenant has been broken or an adverse event has occurred. A monetary default occurs when a repayment is not made on time. Other defaults may include failure to meet a project parameter, milestone or other contractual obligation, such as insurance and bonding requirements.
Demonstration Project: A Nevada Department of Transportation project that serves as a model for future transportation projects.

Department: The Nevada Department of Transportation (NDOT).

Depreciation: A regular reduction in asset value over time.

Design-Bid-Build (DBB): The traditional, public-sector project delivery method where design and construction are separately procured in sequential steps for project development. One contract is bid for the design phase, and then a second contract is bid for the construction phase of the project.

Design-Build (DB/DBF): A procurement or project delivery method whereby a single entity (a contractor with sub-consultants, or team of contractors and engineers, often with sub-consultants) is entrusted with both design and construction of a project. The term encompasses design-build-maintain, design-build-operate, design-build-finance (DBF), and other contracts that include services in addition to design and construction.

Design-Build-Finance-Operate (DBFO): A project delivery approach in which responsibilities for designing, building, financing and operating are bundled together and transferred to private sector partners. There is a great deal of variety in DBFO arrangements in the United States, and especially the degree to which financial responsibilities are actually transferred to the private sector. One commonality that cuts across all DBFO projects is that they are either partly or wholly financed by debt leveraging revenue streams dedicated to the project. Direct user fees (tolls) are the most common revenue source. However, other revenue sources may include lease payments, shadow tolls, and/or vehicle registration fees. Future revenues are leveraged to issue bonds or other debt that provide funds for capital and project development costs. They are also often supplemented by public sector grants in the form of money or contributions in kind, such as right-of-way. In certain cases, private partners may be required to make equity investments as well.

Designer of Record: A registered engineer who is in responsible charge of the design.

Design Service Provider: The Department’s in-house designer, design consultant, or combination thereof that is responsible for the design of the project. The term is primarily used for the CMAR delivery method.

Developer Financing: A type of financing where a private party finances the construction or expansion of a public facility in exchange for operational and
revenue right or for purposes of advancing the development of a private enterprise such as residential housing, commercial stores, and/or industrial facilities. This type of financing may take the form of capacity credits, impact fees, or exactions.

**Direct Loan:** A disbursement of funds by the government to a non-federal borrower under a contract that requires repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by a non-federal lender. The term also includes the sale of a government asset on credit terms of more than 90 days duration. The term does not include the acquisition of federally guaranteed non-federal loans in satisfaction of default or other guarantee claims or the price-support loans of the Commodity Credit Corporation.

**Discount Rate:** The interest rate used in discounting future cash flows.

**Due Diligence:** A thorough assessment of the transaction which covers financial, legal, technical, and insurance aspects of the project in order to ensure that there are no undisclosed or potential problems.

**Dynamic Pricing:** Tolls that vary in real-time in response to changing congestion levels, as opposed to variable pricing that can follow a fixed schedule with respect to time of day, season, etc.

**Electronic Toll Collection (ETC):** An automated toll collection system deploying various communications and electronic technologies to support the collection of tolls based the automatic identification and/or classification of vehicles. Such systems do not require tollbooths or the need for vehicles to stop.

**Eligible Project:** A project that meets the required screening criteria through the Pioneer Program and has been recommended by the Pioneer Program Advisory Panel and had received approval from the Program Director, Department Director, and Board (as applicable) to proceed forward in the program.

**Equity:** Commitment of money from public or private sources for project financing with an anticipated rate of return pay-out.

**Evaluation Panel:** A panel comprised of at least three members, at least two of which have experience in the construction industry, representing the Department and, as determined by the Department, in its sole discretion, other local agencies or industry representatives that will evaluate CMAR Proposals and conduct and evaluate CMAR Proposer interviews.
**Financial Close:** The date on which all project contracts and financing documentation are signed and conditions precedent to initial drawing of the debt have been satisfied or waived.

**Financial Evaluation Team (FET):** A committee that assists the QRC and PRC in reviewing the financial capability issues and approaches described in the SOQ and Financial Proposals for Pioneer Program Projects. Members are selected by the designated Project Manager.

**Financial Proposal:** One of two main components, along with the Technical Proposal, of a PPP Proposal that contains both a financial plan and a financial model for a project.

**Finding of No Significant Impact (FONSI):** A finding released as the result of an Environmental Assessment that finds no significant environmental impact of a proposed project.

**Force Majeure:** Events that are beyond the control of a contracting party, such as earthquakes, epidemics, blockades, wars, acts of sabotage, and archeological site discoveries.

**General Obligation Bonds:** A municipal bond backed by the credit and "taxing power" of the issuing jurisdiction rather than the revenue from a given project. General obligation bonds are issued with the belief that the entity will be able to repay its debt obligation through taxation or other generalized funds. No assets are used as collateral.

**Grace Period:** The period within which a default is resolved without incurring penalty, interest, or other charges.

**Greenfield:** A site or project location where there is no existing infrastructure.

**Guarantee:** An agreement to repay a loan or ensure performance. It may be limited in time and amount.

**Guaranteed Maximum Price (GMP):** The guarantee of the pricing submitted by the Construction Manager. Whether these prices are lump sum or quantity based, the price is guaranteed not to be exceeded in construction of the project, or a portion thereof, in accordance with the requirements of the construction documents and the Construction Contract.

**Guarantor:** A party who agrees to guarantee repayment or performance.
**Handback:** The terms, conditions, requirements, and procedures governing the condition in which Concessionaire is to deliver the project and project right-of-way to the Owner upon expiration or earlier termination of the agreement. Such requirements may be set forth in the Technical Requirements of the agreement.

**High-Level Project Screening:** A screening process by the Pioneer Program Advisory Committee that is used to determine whether the project has the potential to be successful as a PPP or DB/DBF Project.

**High-Level Project Screening Criteria:** Criteria used to perform a High-Level Project Screening process.

**High-Level Project Screening Report:** A report that summarizes the results of the High-Level Screening process. The report is submitted to the Pioneer Program Director for consideration.

**High Occupancy Vehicle (HOV):** Vehicles having more than one occupant. Examples include carpoolers, vanpools, and buses. Transportation systems may encourage HOV use by having designated HOV lanes.

**High Occupancy Vehicle (HOV) Lane:** Exclusive road or traffic lane limited to buses, vanpools, carpools, emergency vehicles, and in some cases, single occupant motorcycles. HOV lanes typically have higher operating speeds and lower traffic volumes than adjacent general purpose lanes. HOV lanes have proven to be successful in major metropolitan areas across the U.S.; however, their full effectiveness is usually not realized until about one to two years after implementation.

**High-Occupancy Toll (HOT) Lane:** A managed, limited-access, and normally barrier-separated highway lane(s) that provides free or reduced cost access to HOVs, and also makes excess capacity available for a price/fee to other vehicles not meeting occupancy requirements.

**Independent Cost Estimator (ICE):** A team or individual that provides independent cost estimating development services for projects advancing through design and into construction. An ICE is to complete independent cost estimates with contractor-style (production-based) methodologies and estimating software. The term is primarily used for the CMAR delivery method.

**Implementation Team:** A team comprised of various Department staff that provides oversight of the Design-Build team. Some of the duties of the Implementation Team include arranging and participating in project meetings, reviewing design submittals, conducting periodic site reviews, and approving progress payments.
Independent Engineer: A consulting firm that helps lenders by evaluating the technical aspects of a project (e.g., completion schedule, technical feasibility, etc.). See Lenders’ Engineer.

Industry Review Meeting: A meeting between the Department and short-listed candidates for the development of a project. The purpose of the meeting is to exchange information regarding key elements of a proposed project to facilitate its development in a manner acceptable to the Department and potential developers.

Initial Review Committee (IRC): A committee that is selected and formed by the designated Project Manager to review PPP Projects that pass the Completeness Review. Proposals that pass the Initial Review will advance to a High-Level Screening.

Innovative Contracting: Alternative contracting practices meant to improve the efficiency and quality of roadway construction, maintenance, or operation. Examples of what is considered innovative contracting include: A+B contracting, lane rental, the use of warranties, design-build, design-build-operate, and design-build-finance-operate-maintain.

Innovative Finance: Alternative methods of financing construction, maintenance, or operation of transportation facilities. The term innovative finance covers a broad variety of non-traditional financing, including the use of private funds.

Institutional Investor: A financial institution such as a mutual fund, insurance company, or pension fund that purchases securities in large quantities.

Instructions to Proposers (ITP): That part of a solicitation or procurement document which instructs the proposers on how to assemble the proposals including required forms, information, alignment of sections, number of copies to be submitted, evaluation criteria, and other information relevant to the evaluation of the proposal.

Intelligent Transportation Systems (ITS): The application of advanced electronics and communication technologies to enhance the capacity and efficiency of transportation systems, including traveler information, public transportation, and commercial vehicle operations.

Interest: Sum paid or calculated for the use of borrowed funds in order to compensate for the time value of money owed.
**Internal Rate of Return:** Interest rate that equates the present value of the expected future cash flows net of on-going costs for operations, maintenance, repair, reserve funds, and taxes, to the initial capital cost outlay or investment. This is the rate at which the net present value of the project equals zero.

**Interoperability:** The ability of two or more electronic toll collection systems and agencies to exchange information related to roadway usage by a vehicle equipped with a transponder to facilitate the payment of a toll. Interoperability can occur intrastate and interstate.

**Investment Grade:** Describes the top four rating categories of relatively secure bonds suitable for a conservative investor. Standard & Poor's rating service looks upon all bonds between the AAA and BBB ratings as investment grade. Generally speaking, any bonds rated below BBB are considered to have speculative features and are deemed sub-investment grade or junk bonds.

**Lane Availability Concession:** Under this contracting mechanism, fees are paid to a concessionaire based on the number of days the lanes are available to traffic, the level of service, or other performance-based parameters.

**Lease:** The owner of an asset (the "lessor") agrees to make available an asset to another in exchange for payment from the user (the "lessee"). The lessor receives the benefit of depreciation as a tax deduction and has the asset as security.

**Leverage:** A financial mechanism used to increase available funds usually by issuing debt (typically bonds) or by guaranteeing or otherwise assuming liability for others' debt in an amount greater than cash balances.

**Liability:** Amount owed (i.e., payable) by an individual or entity, such as for services rendered, expenses incurred, assets acquired, construction performed, and amounts received but not yet earned.

**Life-Cycle Costs:** The costs of a project over its entire life: from project inception to the end of a transportation facility's design life.

**Liquidity:** Refers to an investor's ability to sell an investment as a means of payment or easily convert it to cash without risk of loss of nominal value.

**Loan:** Legally binding document which obligates a specific value of funds available for disbursement. The amount of funds disbursed is to be repaid (with or without interest and late fees) in accordance with the terms of a promissory note and/or repayment schedule.
Loan Guarantee: Contingent liability created when a person or entity assures a lender who has made a commitment to disburse funds to a borrower that the lender will be repaid to the extent of a guarantee in the event of default by the debtor.

Major Partner: With respect to a limited liability company or joint venture, each firm, business organization, or person that has an ownership interest therein in excess of 5 percent, unless the Department has provided an alternate definition that applies only to a specific project or series of projects.

Major Subcontractor: Any subcontractor designated in the proposal to perform 10 percent or more of the scope of work for a proposed project, unless the Department has provided an alternate definition that applies only to a specific project or series of projects.

Managed Lane: A lane(s) designed and operated to achieve stated operational goals by managing access to the lane according to classifications such as user group, pricing, or other criteria. A managed lane facility typically provides improved travel conditions to eligible users.

Maturity: The date on which a debt becomes due for pay off.

NDOT: The Nevada Department of Transportation.

Net Income: Total revenue minus total expenses, which reflects the amount earned or lost in a given period of time.

Net Present Value: Amount by which the total present value of cash inflows, net of ongoing costs for operations, maintenance, repair, reserve funds, and taxes and discounted at the cost of capital over the period of the contract exceed the project’s capital cost outlay.

Nevada State Board of Transportation: Final authority for the Department that approves and ratifies all projects and contracts per NRS Chapter 408 and Board policy as part of the Pioneer Program.

Notice of Award: Written notice of the Department’s award to the selected firm of the Department’s award of the Agreement or Contract.

Notice of Execution: Notice that all relevant signatures have been obtained on Agreement or Contract.
Notice of Intent to Award: Written notice of the Department’s intent to award an Agreement or Contract to a Proposer or bidder. Award is contingent on successful negotiations and/or Board approval.

Notice to Proceed: Written notice to the selected firm to proceed with the work specified in the applicable Agreement or Contract.

Obligation Authority: The amount of budgetary resources (including new budget authority, balances of unobligated budget authority carried over from prior years, and obligation limitations) available for obligation in a given fiscal year. With regard to the federal-aid highway program, obligation authority often refers to the amount of federal-aid obligation limitation, established annually by Congress in appropriation acts, that is allocated to the states and controls the amount of apportioned contract authority that can be obligated by the states in a given fiscal year.

Open Road Tolling: Fully automated electronic tolling in an open road environment allowing vehicles to travel at normal speeds when passing through toll collection points.

Operating Risk: Cost, technology, and management components which adversely affect operating expenses, output, or throughput.

Operations and Maintenance Agreement: A contract obligating a party to operate and maintain a project.

Opinion of Probable Construction Cost (OPCC): The estimated construction cost prepared by the Construction Manager at established milestones during the pre-construction phase for each item of work to construct the project. The term is primarily used for the CMAR delivery method.

Opportunity Cost: The cost of pursuing one course of action measured in terms of forgone return offered by the most attractive alternative investment.

Pass-Through Financing: An innovative financing and project delivery method where a developer (typically private) finances, constructs, maintains, and/or operate a project contingent upon periodic payments to the developer for each vehicle that drives on the road. The per-vehicle amount is paid by the sponsoring governmental entity (not the driver) to the developer.

Pay-As-You-Go Financing: Describes government financing of capital outlays from current revenues or grants rather than by borrowing.
**Penalty:** Punitive charge or consequence assessed for non-compliance with contractual or statutory requirements or delinquent debts.

**Photo monitoring system:** A system where a sensor, working in conjunction with an electronic toll collection system, is installed in the toll lanes to produce an automatic image of the vehicle and the vehicle license plate as it passes through the toll facility. The photo monitoring system may produce:

1. One or more photographs;
2. One or more microphotographs;
3. A videotape; or
4. Any other recorded images that capture each vehicle that passes through the toll facility.

**Pioneer Program:** A program that represents a concerted effort by the Department to focus on identifying alternative funding sources and alternative project delivery methods.

**Pioneer Program Director:** The Deputy Director/Chief Engineer of the Department who oversees the development and implementation of the Pioneer Program, reporting all program and project activities to the Department Director.

**Pioneer Program Manager:** The Department’s Project Management Chief serves as the Pioneer Program Manager under the direction of the Pioneer Program Director.

**Pioneer Program Project (Project):** A project that is identified through the Pioneer Program project identification process.

**Pioneer Program Project Proposal (Proposal):** A proposal that is submitted for a Pioneer Program Project.

**Pre-Construction Services Agreement:** An agreement between the Construction Manager and the Department for pre-construction services for the project. The term is primarily used for the CMAR delivery method.

**Present Value (PV):** The value of future cash flows discounted to the present at certain interest rate (such as the entity's cost of capital or funds), assuming compounded interest.

**Price Proposal:** A component of a DB/DBF Proposal that contains the price for performing project duties. The Price Proposal is evaluated along with the Quality Proposal to determine overall Proposal scores that are used to select the Design-Build team for a project.
**Principal:** Amount loaned to a borrower which excludes interest, penalties, administrative costs, loan fees, and prepaid charges.

**Private Sector Partner/Private Partner:** A person, entity, or organization that is not the federal government, a state, or a political subdivision of the state and that proposes to enter into an agreement with the state to participate in any or all portions of the design, development, construction, improvement, expansion, extension, delivery, operation, maintenance, or financing of a project eligible under the Pioneer Program.

**Project:** See Pioneer Program Project.

**Project Administration Team (PAT):** A team that is responsible for ensuring a timely progress of evaluations, coordinating any consensus meeting(s) or re-evaluations, and ensuring appropriate records of the evaluation are maintained. The PAT will also serve as a point of contact in the event that a team member has questions or encounters issues relative to the evaluations.

**Project Company:** A special-purpose entity created to develop, own, and operate a project.

**Project Development Agreement (PDA):** A form of PPP where the project has not advanced to a level where the technical approach has been defined. Requirements for the Proposer may include a preliminary master development plan and a preliminary master financial plan.

**Project Development Checklist:** A checklist that is intended to facilitate an evolving risk assessment of candidate Pioneer Program Projects by the Department.

**Project Evaluation:** A detailed examination by the Project Review Team of a Pioneer Program Project using the High-Level Project Screening Criteria that focuses on issues identified in the High-Level Screening Report. It also includes a more detailed assessment and allocation of Project risks.

**Project Evaluation Report:** A summary of the Project Evaluation by the Project Review Team that identifies its recommendation to either reject the project or recommend it for implementation. The term is primarily used for Unsolicited Proposals.

**Project Identification Process:** The process by which all candidate Pioneer Program Projects are evaluated and proceed. The term is primarily used for Unsolicited Proposals.
**Project Management Director:** The director of the Project Management Department who oversees all Project Managers and submits recommendations to the Pioneer Program Director for evaluation.

**Project Management Team (PMT):** A team that is responsible for administering, implementing, and maintaining the integrity of the entire project procurement process, including the RFQ, RFP, evaluations, negotiations, and selections.

**Project Manager:** The person who is selected by the Department's Project Management Chief to establish and lead a project from delivery method selection through the project procurement process, including the RFQ, RFP, evaluations, negotiations, and selections.

**Project Scoping Report (PSR):** A summary report that is submitted by a Proposer that identifies relevant project information for use in the High-Level Screening and project identification phase.

**Project Team:** Generally comprised of Department technical staff and are assembled and led by the Project Manager once a project has been approved for Pioneer Program Delivery. Composition, roles, and responsibilities of Project teams may vary for a given delivery method and are defined under each project delivery method.

**Proposal:** A written submission to the department satisfying the requirements of a Letter of Interest (LOI), Request for Qualifications (RFQ), Request for Proposal (RFP), or another specific request by the Department for qualifications or information from a proposer/contractor with regards to a project.

**Proposal Evaluation Team (PET):** The Proposal Evaluation Team (PET) is established by the Project Manager to assist the PSC during the Proposal evaluation process in accordance with the RFP Evaluation and Selection Plan. The term is primarily used for the DB/DBF and PPP Proposal process.

**Proposal Bond:** A surety that shall be obtained by Proposers for DB/DBF Projects that insures the project at a set percentage of the bid price.

**Proposal Selection Committee (PSC):** A team that evaluates Proposals against criteria established in the RFP and set forth in the RFP Evaluation and Selection Plan, with assistance and support of the PAT and PET(s). Members are selected by the designated Project Manager. The term is primarily used for the DB/DBF and PPP Proposal process.
**Proposer:** A person, business entity, a consortium of business entities or a public sector entity that submit a Proposal for review and evaluation under these rules, whether the Proposal was solicited or unsolicited by the Department.

**Public Facility:** A building, structure, vehicle, vessel or the like where ownership is retained by the public sector and where the facility is available for use by the general public. This does not include any facilities that are owned by the private sector.

**Public-Private Agreement (PPA):** An agreement that a Proposer and the Department enter into for a DB/DBF or a PPP Project.

**Public-Private Partnership (PPP):** A contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional. These agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system. While the public sector usually retains ownership of the facility or system, the private party is often given additional decision rights in determining how the project or task will be completed most cost effectively. The term public-private partnership defines an expansive set of relationships from relatively simple contracts (e.g., A+B contracting), to development agreements that can be very complicated and technical (e.g., design-build-finance-operate-maintain). In the context of these guidelines, the term “public-private partnership” is used for any scenario under which the private sector would be more of a partner than they are under the traditional method of procurement.

**Purchase-Leaseback:** A transaction in which an investor purchases assets from the owner and then leases them back to the same individual.

**Qualifications Evaluation Team (QET):** The Qualifications Evaluation Team (QET) is established by the Project Manager to assist the QSC during the SOQ evaluation process in accordance with the RFQ Evaluation and Selection Plan. The term is primarily used for the DB/DBF and PPP Proposal process.

**Qualifications Selection Committee (QSC):** A committee selected by the designated Project Manager that will evaluate SOQs against criteria established in the RFQ and set forth in the RFQ Evaluation and Selection Plan, with assistance and support of the PAT and QET(s). The QSC shall consist of the designated Project Manager and Department staff with the experience to evaluate the qualifications of Proposers. The term is primarily used for the DB/DBF and PPP Proposal process.
Quality Management Plan (QMP): A document that the Design-Build team prepares that details how the team will provide quality control and quality assurance for the construction elements of a project.

Quality Proposal: A component of a DB/DBF Proposal that describes the scope of work for a project. The Quality Proposal is evaluated along with the Price Proposal to determine overall Proposal scores that are used to select the Design-Build team for a project.

Ramp-Up Phase: The initial operational phase in a project's life-cycle during which the project's revenue stream is established.

Rate Covenant: A contractual agreement in the legal documentation of a bond issue requiring the issuer to charge rates or fees for the use of specified facilities or operations at least sufficient to achieve a stated minimum debt service coverage level.

Rating: An evaluation of creditworthiness provided by a rating agency.

Rating Agency: An organization that assesses and issues opinions regarding the relative credit quality of bond issues. The three major municipal bond rating agencies are Fitch Investors Service, Moody's Investors Service, and Standard and Poor.

Record of Decision (ROD): A public document that signals formal federal approval of an Environmental Assessment or an Environmental Impact Statement. The ROD authorizes the respective state to proceed with design, land acquisition, and construction of a proposed project based on the availability of funds.

Reference Information: Support or background information related to and provided to proposers as appropriate for each project development, including at a minimum basic configuration or layout of the project, existing geotechnical information, existing memorandums of understanding between the Department and other agencies or municipalities, existing studies, and other information regarding liability and risk assignment.

Refinancing: Prepayment of the existing debt and substitution of new debt on more attractive terms (e.g., at a lower cost, with a longer maturity, or with fewer or less restrictive covenants).

Repayment Agreement: Agreement that establishes the terms and conditions governing the recovery of a debt of the lender and borrower when credit is initially extended or a debt is rescheduled.
**Request for Letter of Interest (RLOI):** A request that is prepared by Agreement Services to gauge Proposer interest in participating in the development of a project. The RLOI can facilitate the procurement process by providing advance notice of the project to the industry so that prospective Proposers may begin efforts for teaming arrangements, financial arrangements, and preliminary investigative work.

**Reserve Account:** A separate cash account used to meet future payment obligations such as debt service, maintenance, or capital expenditure.

**Revenue Bonds:** Instruments of indebtedness issued by the public sector to finance the construction or maintenance of a transportation facility. Revenue bonds, unlike general obligation bonds, are not backed by the full faith and credit of the government, but are instead dependent on revenues from the roadway they finance.

**Revenues:** All rates, rents, fees, assessments, charges, and other receipts derived by a project sponsor from a project.

**Review Fee:** A fee that, along with the Application Fee, is paid by submitters of Unsolicited Proposals in order for the Proposals to proceed through the review process. The fee, which is $30,000, is made payable to the Nevada Department of Transportation.

**Secured Debt:** Debt for which collateral has been pledged.

**Securitization:** Packaging up a stream of receivables or assets, such as toll revenues or other user fees, to fund via the capital markets. This can be used for issuing bonds.

**Security:** A legal right of access to value through mortgages, contracts, cash accounts, guarantees, insurances, pledges, or cash flow, including licenses, concessions, and other assets.

**Selection Official:** The Department Director or his/her designee who is responsible for either accepting or rejecting the recommendation of the applicable evaluation committee or panel concerning the evaluation of the SOQs, and either accepting or rejecting the recommendation of the applicable evaluation committee or panel concerning the evaluation of the Proposals. The Selection Official may also issue a request for BAFOs after reviewing the Proposals. Once the Selection Official accepts a Proposal, he/she may move the Proposal forward for FHWA concurrence and ratification by the Board.
Senior Debt: A debt obligation having a priority claim on the source of repayment of a debt.

SEP-14: Special Experimental Project Number 14 allows state transportation and local transportation agencies using federal-aid funds to apply for permission to use a variety of alternative procurement approaches to deliver projects.

SEP-15: Special Experimental Project Number 15 allows state and local transportation agencies using federal-aid funds to apply for permission to use alternative approaches to transportation planning, financing, contracting, environmental clearance, and right-of-way acquisition that may be more efficient than traditional approaches.

Shadow Tolling (Pass-Through Tolling): Shadow tolls are per vehicle amounts paid to a facility operator by a third party such as a sponsoring governmental entity. Shadow tolls are not paid by facility users. Shadow toll amounts paid to a facility operator vary by contract and are typically based upon the type of vehicle and distance traveled.

Single Occupant Vehicle (SOV): A vehicle occupied by only one person.

Special Purpose Vehicle: An entity established for a particular purpose, such as obtaining off-balance sheet financing, gaining tax advantages, or isolating the sponsors’ other assets from the project’s creditors.

State: The government of the State of Nevada, including all agencies, organizations, boards, commissions, elected, or appointed officials, who are empowered to act on behalf of the State of Nevada.

State Infrastructure Bank (SIB): A state or multi-state revolving fund that provides loans, credit enhancement, and other forms of financial assistance to surface transportation projects.

Statewide Transportation Improvement Program (STIP): A short-term transportation planning document covering at least a three-year period and updated at least every two years. The STIP includes a priority list of projects to be carried out in each of the three years. Projects included in the STIP must be consistent with the long-term transportation plan, must conform to regional air quality implementation plans, and must be financially constrained (achievable within existing or reasonably anticipated funding sources).

Statewide Transportation Plan (NevPlan): The transportation plan covers a 20-year period and includes both short- and long-term actions that develop and
maintain an integrated, intermodal transportation system. The plan must conform to regional air quality implementation plans and be financially constrained.

**Subordinated Debt:** Debt having a secondary or junior claim on an underlying security or source of debt repayment relative to another issue with a higher priority claim.

**Technical Advisory Panel:** A committee that is formed by the Project Manager to provide technical advice during the RFQ and RFP process for DB/DBF Projects.

**Technical Proposal:** One of two main components, along with the Financial Proposal, of a PPP Proposal that describes the proposed scope of work for a project. The scope could include such things as design elements and approach, construction approach, maintenance approach, project management approach, schedule, phasing, quality control and assurance approach, etc.

**Technical Provisions (TP):** The specifications contained in procurement documents to which the project must be designed, built, maintained, operated, and handed back, as appropriate. Technical provisions may be performance-based and/or specific directives addressing design and construction elements such as geotechnical, roadway, structures, drainage, rail, operations, maintenance, etc.

**Toll Collection System:** Any system that identifies a toll and collects its payment. A toll collection system may include manual cash collection, electronic toll collection, and a photo monitoring system.

**Toll Violation:** A record of an unpaid toll which occurs when a customer does not pay the proper amount.

**Tolling:** The process of collecting revenue whereby road users are charged a fee per roadway use. Tolls may be collected on a flat-fee basis, time basis, or distance basis and/or may vary by type of vehicle.

**Transponder:** A radio frequency identification (RFID) unit attached to a toll customer's vehicle that transmits a radio signal to a reader mounted in the toll facility. The purpose of the transponder is to automatically identify the toll customer's vehicle as it passes through the toll facility.

**Turnkey:** A generic term for a variety of public-private partnership arrangements whereby a public sector entity awards a contract to one or more private firms to undertake the development, construction, and/or operation of an infrastructure project for a predetermined period of time before turning the project back over to
the public entity. Turnkeys may take various forms, including design-build-transfer and build-operate-transfer.

**Unsolicited Advisory Committee (UAC):** A committee that may consist of members of the Department and regional transportation commissions, transportation professionals, and other entities being affected by projects being considered. The committee may perform a High-Level Screening for proposed projects and provide a recommendation to the Pioneer Program Director.

**Unsolicited Proposal:** A submittal by an entity that conforms to the statutory authority and Regulations with respect to a project that has not been initiated by the Department.

**User Fees:** Direct payment for a service provided, which can include, but is not limited to tolls, fees, charges, tariffs, etc.

**Utility Relocation Master Plan:** A plan that is produced by the Design-Build team that documents what utilities are anticipated to be relocated as part of the project.

**Value Engineering Change Proposal (VECP):** A Proposal that is submitted to the Department by the Design-Build team when the team identifies a change to a project that could result in a cost savings to the Department. The purpose is to encourage the use of the Design-Builder’s ingenuity and experience in arriving at alternative designs, methods, and procedures, which result in a lower-cost approach to accomplish a prescribed function.

**Value for Money:** The estimated project cost savings associated with using a PPP delivery approach, when the project delivery team is paid directly by the sponsoring agency instead of from the proceeds coming from direct user charges.

**Variable Pricing:** Time-of-day pricing for tolls that can vary by facility location, traffic levels, congestion, season, day-of-week, air quality impact, or other factors.

**Wrapped Bonds:** Bonds that carry a significantly lower corporate spread because they are guaranteed by a monoline insurance company.

**Zero Coupon Bond:** A bond that is originally issued at a deep discount from its par or face amount and which bears no current interest. The bond is bought at a discount price which implies a stated rate of return calculated on the basis of the bond being payable at par at maturity.
APPENDIX B

LIST OF ACRONYMS

This list of acronyms represents commonly used industry (transportation, financing, and public-private partnership) terms and acronyms. Some, but not all, have been referred to in the Guidelines.

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AADT</td>
<td>Annual Average Daily Traffic</td>
</tr>
<tr>
<td>AASHTO</td>
<td>American Association of State Highway &amp; Transportation Officials</td>
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<tr>
<td>ARTBA</td>
<td>American Road and Transportation Builders Association</td>
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<tr>
<td>ATC</td>
<td>Alternative Technical Concepts</td>
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<td>AVI</td>
<td>Automated Vehicle Identification</td>
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<td>BAFO</td>
<td>Best and Final Offer</td>
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<tr>
<td>BEA</td>
<td>Bureau of Economic Analysis</td>
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<tr>
<td>BLS</td>
<td>Bureau of Labor Statistics</td>
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<tr>
<td>BLM</td>
<td>Bureau of Land Management</td>
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<tr>
<td>BOO</td>
<td>Build-Own-Operate</td>
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<tr>
<td>BOT/BTO</td>
<td>Build-Operate-Transfer/Build-Transfer-Operate</td>
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<tr>
<td>BVS</td>
<td>Best-Value Selection</td>
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<td>CAPEX</td>
<td>Capital Expenditures</td>
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<td>CATX</td>
<td>Category Exclusion</td>
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<tr>
<td>CAGR</td>
<td>Compound Annual Growth Rate</td>
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<td>CDA</td>
<td>Contractors Desktop Application</td>
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<td>CE</td>
<td>Categorical Exclusion</td>
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<td>CFR</td>
<td>Code of Federal Regulations</td>
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<td>CM</td>
<td>Construction Manager</td>
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<td>CMAR</td>
<td>Construction Manager at Risk</td>
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<td>CMAQ</td>
<td>Congestion Management and Air Quality</td>
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<td>COP</td>
<td>Certificates of Participation</td>
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<td>CMS</td>
<td>Contract Management System</td>
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<td>CPI</td>
<td>Consumer Price Index</td>
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<td>CPM</td>
<td>Critical Path Method</td>
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<td>DB</td>
<td>Design-Build</td>
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<td>DBB</td>
<td>Design-Bid-Build</td>
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<td>DBE</td>
<td>Disadvantaged Business Enterprise</td>
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<tr>
<td>DBF</td>
<td>Design-Build-Finance</td>
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<tr>
<td>DBFO</td>
<td>Design-Build-Finance-Operate</td>
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<tr>
<td>DBOM</td>
<td>Design-Build-Operate-Maintain</td>
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<tr>
<td>DBFOM</td>
<td>Design-Build-Operate-Maintain-Finance</td>
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<tr>
<td>D/E</td>
<td>Debt to Equity Ratio</td>
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<tr>
<td>DEIS</td>
<td>Draft Environmental Impact Statement</td>
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<td>DSCR</td>
<td>Debt Service Coverage Ratio</td>
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<td>DMV</td>
<td>Department of Motor Vehicles</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<td>EA</td>
<td>Environmental Assessment</td>
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<td>EBS</td>
<td>Electronic Bidding System</td>
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<td>EIS</td>
<td>Environmental Impact Statement</td>
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<td>ENR</td>
<td>Engineering News Record</td>
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<td>EPA</td>
<td>Environmental Protection Agency</td>
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<td>EPD</td>
<td>Escrowed Proposal Document</td>
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<td>ESA</td>
<td>Endangered Species Act</td>
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<td>ET</td>
<td>Evaluation Team</td>
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<td>ETC</td>
<td>Electronic Toll Collection</td>
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<td>FET</td>
<td>Financial Evaluation Team</td>
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<td>FHWA</td>
<td>Federal Highway Administration</td>
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<tr>
<td>FMIS</td>
<td>Financial Management Information System</td>
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<tr>
<td>FONSI</td>
<td>Finding of No Significant Impact</td>
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<tr>
<td>FTA</td>
<td>Federal Transit Administration</td>
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<tr>
<td>GAAP</td>
<td>Generally Accepted Accounting Principals</td>
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<tr>
<td>GAN</td>
<td>Grant Anticipation Notes or Bonds</td>
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<tr>
<td>GAO</td>
<td>General Accounting Office</td>
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<tr>
<td>GARVEEs</td>
<td>Grant Anticipation Revenue Vehicles (bonds or notes)</td>
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<tr>
<td>GASB</td>
<td>Governmental Accounting Standards Board</td>
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<tr>
<td>GMP</td>
<td>Guaranteed Maximum Price</td>
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<td>GSP</td>
<td>Gross State Product</td>
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<tr>
<td>HOT</td>
<td>High Occupancy Toll</td>
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<td>HOV</td>
<td>High Occupancy Vehicle</td>
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<td>iPDP</td>
<td>Integrated Project Development</td>
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<td>ICE</td>
<td>Independent Cost Estimator</td>
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<tr>
<td>IRR</td>
<td>Internal Rate of Return</td>
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<tr>
<td>ISTEAE</td>
<td>Intermodal Surface Transportation Efficiency Act of 1991</td>
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<td>ITP</td>
<td>Instructions to Proposers</td>
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<td>IRC</td>
<td>Initial Review Committee</td>
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<tr>
<td>LLC</td>
<td>Limited Liability Company</td>
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<td>LOI</td>
<td>Letter of Interest</td>
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<td>LOS</td>
<td>Level of Service</td>
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<tr>
<td>MAC</td>
<td>Material Adverse Change</td>
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<td>MOT</td>
<td>Maintenance of Traffic</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>MPO</td>
<td>Metropolitan Planning Organization</td>
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<td>NDOT</td>
<td>Nevada Department of Transportation</td>
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<td>NEPA</td>
<td>National Environmental Policy Act of 1969</td>
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<td>NevPlan</td>
<td>Statewide Transportation Plan</td>
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<td>NPV</td>
<td>Net Present Value</td>
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<td>NRS</td>
<td>Nevada Revised Statutes</td>
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<td>NTP</td>
<td>Notice to Proceed</td>
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<td>OPCC</td>
<td>Opinion of Probable Construction Cost</td>
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<td>OPEX</td>
<td>Operational Expenditures</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>O&amp;M</td>
<td>Operations and Maintenance</td>
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<td>OSHA</td>
<td>Occupational Safety and Health Administration</td>
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<td>PAB</td>
<td>Private Activity Bonds</td>
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<td>Project Administration Team</td>
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<td>Project Development Agreement</td>
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<td>PPA</td>
<td>Public-Private Agreement</td>
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<td>PPP</td>
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<tr>
<td>PSC</td>
<td>Proposal Selection Committee</td>
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<td>PSR</td>
<td>Project Scoping Report</td>
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<td>PT</td>
<td>Project Team</td>
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<td>Request for Approach</td>
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<td>RFP</td>
<td>Request for Proposals</td>
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<td>RFQ</td>
<td>Request for Qualifications</td>
</tr>
<tr>
<td>RLOI</td>
<td>Request for Letter of Interest</td>
</tr>
<tr>
<td>ROD</td>
<td>Record of Decision</td>
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<tr>
<td>ROW</td>
<td>Right-of-Way</td>
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<tr>
<td>SAFETEA-LU</td>
<td>Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users</td>
</tr>
<tr>
<td>SEP-14</td>
<td>Special Experimental Project -14</td>
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<tr>
<td>SEP-15</td>
<td>Special Experimental Project -15</td>
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<td>SIB</td>
<td>State Infrastructure Banks</td>
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<td>SOQ</td>
<td>Statement of Qualifications</td>
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<td>Single Occupancy Vehicle</td>
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<td>SPE</td>
<td>Special Purpose Entity</td>
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<td>Special Purpose Vehicle</td>
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<td>STIP</td>
<td>Statewide Transportation Improvement Plan</td>
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<tr>
<td>TFA</td>
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<td>TIF</td>
<td>Tax Increment Financing</td>
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<td>VEC</td>
<td>Value Engineering Change Proposals</td>
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<td>VES</td>
<td>Violation Enforcement System</td>
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</table>
Appendix C

DB/DBF PROJECT DEVELOPMENT PROCESS FLOWCHART
APPENDIX D

UNSOLICITED PPP PROJECT DEVELOPMENT PROCESS FLOWCHART

PPP Project Development Process

Identification Phase → Solicitation Phase → Evaluation Phase → Award Phase → Contract Administration Phase

Completeness Review → RLOI (Optional) → PAT Prescreen Proposals → FHWA Concurrence → TBD

Initial Review → RFQ (Optional) → PSC Evaluation and Selection → PMT Negotiates Contract

UAC Review (Optional) → PAT Prescreen (RFQ) → Selection Official Review → Contract Execution

High-Level Project Screening → QSC Evaluation (RFQ) → BAFO (Optional) → Board Review and Ratification

Project Evaluation → Shortlist (RFQ) → PSC Selection (BAFO) → Contract Execution

Director Review → Industry Review (Optional) → Selection Official Review (BAFO)

FHWA Review (Federal Action Only) → FHWA Review (Federal Action Only) → RFP (Optional)

Director Review → FHWA Review (Federal Action Only)
APPENDIX E

CMAR PROJECT DEVELOPMENT PROCESS FLOWCHART

CMAR Project Development Process

Identification Phase
- Project Analysis
- Director Review
- FHWA Review (if applicable)
- RLOI (Optional)

Solicitation Phase
- Prepare RFP
- Prepare E&S Plan
- Director’s Review
- FHWA Review (if applicable)
- RFP

Evaluation Phase
- PAT Prescreen Proposals
- Evaluate Proposals
- Recommended Shortlist
- Selection Official’s Review
- Shortlist
- Interview
- Recommended Final Ranking
- Selection Official’s Review
- FHWA Review (if applicable)

Award Phase
- Agreement Negotiations
- Director’s Review
- Board Approval
- Agreement Execution

Implementation Phase
- Project Team Alignment
- Design Development
- Finalizing Design
- Pre-Bidding Requirements
- Construction GMP Bid
- Construction Contract
- FHWA Review (if applicable)
- Director’s Review
- Board Approval
- Notice to Proceed

Execution Phase
- Project Team Alignment
- Design Development
- Finalizing Design
- Pre-Bidding Requirements
- Construction GMP Bid
- Construction Contract
- FHWA Review (if applicable)
- Director’s Review
- Board Approval
- Notice to Proceed

Implementation Phase
- Project Team Alignment
- Design Development
- Finalizing Design
- Pre-Bidding Requirements
- Construction GMP Bid
- Construction Contract
- FHWA Review (if applicable)
- Director’s Review
- Board Approval
- Notice to Proceed
APPENDIX F

Project Delivery Selection Tool (PDSA)
Overview

This Project Delivery Selection Approach (PDSA) provides a process to assist the Department in their selection of an appropriate project delivery method. The PDSA includes generic forms and questions for use by Department staff, the Project Manager, and the Project Delivery Selection Committee (PDSC). Every PDSC member must be generally familiar with the alternative contracting delivery methods discussed herein, the overview of these delivery methods provided below, and the applicable reference links attached. By applying the PDSA, the PDSC can arrive at a recommended project delivery method for each project evaluated. However, the Project Manager and Pioneer Program Manager are responsible for filling out the PDSA and the Project Delivery Method Recommendation Form. This recommendation will be forwarded to the Pioneer Program Director and the Department Director for a final determination on a delivery method.

The primary objectives of this document are to:

- Present a structured approach to assist Department staff in making project delivery method recommendations;
- Assist the Department in determining if there is a dominant or obvious choice of project delivery method for the project being evaluated; and
- Provide a project delivery method recommendation based on a consensus opinion by the Project Delivery Selection Committee (PDSC).

Background

Currently, there are three types of project delivery methods available for publicly-funded transportation projects in Nevada. The two most common are the Design-Bid-Build (DBB) and the Design-Build (DB), with the Construction Manager at Risk (CMAR) method now considered for evaluation. The following paragraphs only briefly describe each delivery method. For a more complete description, see Section 1.4 of the Pioneer Program Guidelines and the attached reference links.

- DBB is the traditional project delivery method in which an agency designs a project and awards a construction contract to the lowest bidder based on the agency’s completed construction documents. The agency “owns” the details of design during construction and the risk associated with any changed conditions, unknowns, errors, or omissions that are encountered during construction.
DB is a project delivery method in which the agency contracts a single entity to complete design and construction of a project. Characteristically, a project is approximately 25 to 30 percent designed with a well-defined scope and knowledge of project risks at the point invitations to bid are requested via a value-based procurement. The design-builder retains the risks associated with design, quantities, constructability, etc. normally retained by the agency, resulting in greater cost and schedule certainty.

CMAR is a project delivery method by which the agency leads a coordinated team, which works to develop design and construction documents in a manner to minimize overall project risk, improve project delivery schedule, and apply potential innovation to meet or exceed project goals. The other two members of the team, the designer and contractor, individually and independently are contracted and directly are accountable to the agency. Characteristically, a project is approximately 5 to 10 percent designed with a partially defined scope and vague knowledge and definition of associated risk when invitations to participate on the project’s pre-construction team are released. The procurement of the contractor is done through qualifications and/or value-based selection for pre-construction and construction services. The contractor is obtained early in the design phase, allowing for the contractor to offer expertise with regard to the schedule, budget, constructability, as well as the identification, evaluation, and mitigation of risk. Upon final design of the project, or a portion thereof, the agency will ask the contractor to submit a fixed-price bid. The agency and the contractor may negotiate reassignment of risk if the agency finds the bid too high. If the parties cannot agree on a price, the agency may release the project for bid using the DBB method. The contractor may enter into a fixed-price contract with the agency based on a reasonable final cost and time of construction (agreeable to the agency) to complete the project. This method allows the agency to control the development of scope, understand and allocate project risk, encourage the use of new construction techniques, and phase project delivery to reduce overall delivery costs and schedule.

It should be noted that one can use different methods on the same project, and the objective is to recommend the best delivery method for the project. Each project delivery method is distinguished by how risk is managed and how the project’s scope, schedule, and budget are managed. Each of the delivery methods poses both overlapping and unique advantages as well as associated disadvantages in their use. Each project must be evaluated individually, taking into consideration project goals, prioritization of project goals as each relates to the Department’s overall mission, and the attributes of each delivery method in meeting or exceeding a project’s goals.
Step-by-step Project Delivery Selection Approach

The PDSC should use their professional judgment when recommending the most appropriate delivery method. This PDSA provides a systematic approach to understanding the delivery options; defining project goals, challenges, and opportunities; evaluating potential delivery methods; compiling the results in descending preference; and, lastly, recommending the appropriate delivery method for the project.
Step 1 is for the Project Manager, with assistance from the Project Management Team (PMT) (defined below) and other Department staff as necessary, to research and understand the various elements of the project. The following is a list of representative information that the Project Manager must consider in order to provide the PDSC the necessary information to appropriately apply the PDSA. The checklist is not exhaustive, and certain elements might not be known at the time of evaluation. Other items can be added if they influence the project delivery decision, and relevant information can be appended.

1) Project Name
2) Project Location
3) Project Sponsor
   - Local
   - State
   - Federal
4) Project Description
   - Purpose and Need
5) Estimated Project Cost Range (Total)
6) Budget Availability (Yr. and Qtr.)
7) On State Transportation Improvement Program (STIP)? (Fiscal Year)
8) NEPA Status
9) Right of Way Status
10) Desired Project Delivery Date (Yr. and Qtr.): Start of construction and substantial completion of construction
    - Established by what entity?
    - For what purpose?
11) Funding Source(s): Local, State, FHWA, etc.
12) Project Corridor
    - Corridor Plans
    - Adjacent Projects (status of existing and future projects [3 to 5 years])
13) Major Project Features: Pavement, bridge, sound barriers, etc.
14) Schedule Milestones: Milestones could include start of construction, end of construction, deliverables, etc.
15) Stakeholders
    - Third Party
    - Regulatory Agencies
    - Utility
    - Railroad
    - General Public
    - Other Governmental Interest
16) Major Challenges
Step 1: Understanding the Project

- With Right of Way, Utilities, Environmental Approvals, Permits, and Clearances
- During Construction Phase
- Specialty Items or Constructability Issues

17) Sources of Risk

- Design Risk by Discipline: Potential risk related to Utility, Structure, Right of Way Acquisition, Environmental Commitments, Definition of Scope, etc.
- Construction Risk: Potential risk for Geotechnical, Dewatering, Material Sources, Maintenance of Traffic, Environmental Constraints, Long-lead Items, Utilities, etc.

18) Potential for Innovation

19) Availability of Department Resources to Support Delivery Schedule

20) Prior Project Work (including design) and Project Status
Step 2: Defining the Project Goals, Challenges, and Opportunities

Given that the understanding of the project is completed (Step 1), Step 2 is for the Project Manager, with assistance from the PMT and the Department staff as necessary and input from the Pioneer Program Director and other significant stakeholders as necessary, to clearly define and agree on measurable project goals, challenges, and opportunities in which the PDSC will use to appropriately apply the PDSA.

Typically, the project goals can be defined in five to ten items. Examples are provided in Appendix B. The PDSC is to consult the Project Manager, the Deputy Director (as applicable), and other significant stakeholders to assist in understanding and developing the project goals. These goals are intended to remain consistent over the life of the project.

Project Goals (Enter the project-specific goals as follows):

1. Goal #1
2. Goal #2
3. Goal #3
4. Goal #4
5. Goal #5
Once the Project Manager has defined the project goals, it is critical to define elements of the project that would create the greatest challenges and opportunities related to achieving these project goals. Below are examples of various elements one might consider.

### Opportunities

What opportunities enhance achieving project goals?

- Innovations to reduce maintenance of traffic impacts
- Improve water quality
- Life cycle benefits
- Enhance safety

### Challenges

What challenges hinder achieving project goals?

- Utility conflicts
- Railroad conflicts
- Right-of-way acquisition delays
- Lack of definition of aesthetics
- Undefined project limits

Do these elements constitute a good description of the issues of complexity or risks associated with delivery of the project? Yes: [ ] No: [ ]

If no, the Project Manager should reevaluate the project goals and the project opportunities and challenges until they represent a good description of the issues of complexity or risks associated with delivery of the project.

**End Result:** The Project Manager will have an understanding of the project goals and a clear definition of challenges, opportunities, issues of complexity, and associated risks that can be communicated to the PDSC to appropriately apply the PDSA.
Step 3: Evaluating the Appropriateness of a Delivery Method

Step 3 is for the PDSC to evaluate the appropriateness of each delivery method to the project. NDOT and the Federal Highway Administration (FHWA) have identified five criteria for determining the appropriateness of applying an alternative delivery method. These criteria are:

1. Cost Impacts
2. Schedule Impacts
3. Opportunity to Manage Risk
4. Complexity of Design and Construction Phasing
5. Opportunity for Innovation

This tool provides a list of typical advantages and disadvantages associated with each delivery method that are to be considered when evaluating a delivery method’s appropriateness for the specific project. This list of advantages and disadvantages is not exhaustive, and the PDSC will supplement additional characteristics, when appropriate, that further describe the advantages and disadvantages of the delivery method from their knowledge of the method and their professional judgment.

Based on their understanding of the delivery method’s advantages and disadvantages as well as the Project’s goals, challenges, opportunities, risks, and complexities, the PDSC will form a consensus opinion of the most appropriate delivery method for each of the five criteria, and then summarize the key issues considered in arriving at this opinion.

For each of the five (5) criteria, the PDSC should consider the preferred delivery method in descending order by circling the “green,” “yellow,” or “orange” markers. Note: Each delivery method must be rated by one of the three colors under each criterion, and each color may only be used once under each criterion.
Step 4: Compiling the Results and Recommendation

Criterion 1: Cost Impacts

Overview: This criterion considers aspects of project cost and must be evaluated with respect to previously defined budget goals of the project, e.g., the ability of a given delivery method to handle budget restrictions, identify early and precise cost estimates, and control of all project costs, not just construction. In other words, this criterion assesses the abilities of each delivery method in terms of cost estimating and project budget control.

<table>
<thead>
<tr>
<th>Delivery Method</th>
<th>Potential Advantages</th>
<th>Potential Disadvantages</th>
<th>Preference (Circle One)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DBB</td>
<td>• NDOT is assured the lowest price of the bid package because of competitive bidding.</td>
<td>• NDOT may experience less cost certainty from change orders stemming from errors, omissions, and unknowns.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• NDOT may benefit from documentation of a fair price due to competitive bidding.</td>
<td>• Once the bid is open, NDOT may incur costs associated with any changes.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• NDOT may benefit from cost certainty at the award of construction (e.g., no or limited change orders) due to the contractor’s ownership or increased knowledge of project risks.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• NDOT may benefit from cost certainty because the contractor accepts the risks associated with design, quantities, constructability, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• NDOT may benefit from Alternative Technical Concepts from losing Proposers who received a stipend.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMAR</td>
<td>• NDOT may benefit from cost certainty at the award of construction (e.g., no or limited change orders) due to the contractor’s ownership or increased knowledge of project risks.</td>
<td>• NDOT pays for contractor involvement in design work.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• NDOT may reduce overall project costs from avoidance, allocation, or mitigation of a project’s risks during design development.</td>
<td>• NDOT is not assured of receiving the lowest price without competitive bidding.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• NDT may reduce overall project costs from contractor input on constructability, cost saving innovations, and value engineering input.</td>
<td>• NDOT experiences increased internal costs for staff to administer procurement and support the design phase.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• NDT may make better quality design solutions with contractor input on cost.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Summary of key issues justifying the above opinion:

1 Note: Each delivery method must be rated by one of the three colors, and a color may only be used once. ⚫ = Most appropriate ⚫ = Neutral ⚫ = Least Appropriate
Step 4: Compiling the Results and Recommendation

Criterion 2: Schedule Impacts

Overview: This criterion considers aspects of project schedule including the ability to shorten the schedule and the opportunity to control and prevent time growth. In other words, this criterion addresses the abilities of each delivery method in terms of schedule compression and control.

<table>
<thead>
<tr>
<th>Delivery Method</th>
<th>Potential Advantages</th>
<th>Potential Disadvantages</th>
<th>Preference (Circle One$^2$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DBB</td>
<td>• NDOT can expect a higher probability of completing construction on schedule because third-party agreements (e.g., right-of-way acquisition, utilities, railroads) are normally completed prior to construction beginning.</td>
<td>• NDOT may experience a delay in project completion stemming from time extensions to resolve errors, omissions, and unknowns in construction. • NDOT may have a delay in schedule due to the awarding of an under-qualified, low-bid contractor. • NDOT may experience schedule delay because the DBB process is normally sequential with few options to accelerate delivery.</td>
<td></td>
</tr>
<tr>
<td>DB</td>
<td>• NDOT can expect a higher probability of completing construction on schedule because the contractor accepts the schedule risks associated with design, quantities, constructability, etc. • NDOT may benefit from the potential for a shortened project delivery due to parallel design and construction activity.</td>
<td>• NDOT may have to allot considerable time and staff effort for the preparation and evaluation of the RFQ and RFP as well as during the design phase.</td>
<td></td>
</tr>
<tr>
<td>CMAR</td>
<td>• NDOT may be able to compress the schedule through an early start and the shortening of the amount of time between design and construction (e.g., early procurement of long lead items, utility relocation, earthwork, etc.). • NDOT may be take advantage of an innovative approach to maintenance of traffic, reducing delay to the travelling public.</td>
<td>• NDOT may experience an increase in schedule due to the time needed to agree on price or, in the extreme case in the absence of an agreement, requiring advertising for competitive bids. • NDOT may have to allot considerable time and staff effort for the preparation and evaluation of the RFP as well as during the pre-construction phase.</td>
<td></td>
</tr>
</tbody>
</table>

Summary of key issues justifying the above opinion:

| Note: Each delivery method must be rated by one of the three colors, and a color may only be used once.  = Most appropriate = Neutral = Least Appropriate |

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Rev. 1
Page 10
Criterion 3: Opportunity to Manage Risk

Overview: Every project has some level of risk during various phases of its project development, and each delivery method handles risks differently in their ability to identify, quantify, and mitigate risks. The most effective approach to manage and allocate risks is to assign project risks to the parties in the best position to manage them.

<table>
<thead>
<tr>
<th>Delivery Method</th>
<th>Potential Advantages</th>
<th>Potential Disadvantages</th>
<th>Preference (Circle One)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DBB</td>
<td>• NDOT has the ability to mitigate risks that they may be positioned best to manage (e.g., third party utilities and right-of-way acquisitions), reducing potential risks and offering more project certainty.</td>
<td>• NDOT may experience more change orders because they own risks associated with design, quantities, constructability, etc. • NDOT is in the position of managing risk during construction, which is the most expensive time to resolve issues.</td>
<td>Green Yellow Red</td>
</tr>
<tr>
<td>DB</td>
<td>• NDOT may experience fewer change orders because the contractor owns the risks associated with design, quantities, constructability, etc. • NDOT is able to relinquish risks better managed by the contractor because the contractor’s design and approach are tailored to the contractor’s abilities.</td>
<td>• NDOT may experience fewer bidders because of an increase in proposal costs. • NDOT may inappropriately relinquish risk to the contractor that NDOT is more capable of managing, causing a negative impact to schedule, cost, or the public. • NDOT may experience less innovation as the contractor may not introduce new construction methods or techniques to avoid taking on risk.</td>
<td>Green Yellow Red</td>
</tr>
<tr>
<td>CMAR</td>
<td>• NDOT may reduce project risks resulting in improvements to schedule, cost, safety, quality, and public impacts because of contractor input during development of design. • NDOT may reduce the risk of design rework and project unknowns (e.g., reduce right-of-way impacts and acquisitions and identify utilities before construction).</td>
<td>• NDT is least able to manage the risk of the public’s and industry’s perception of cost reasonableness. • NDOT is least able to manage the risk of the public’s and industry’s perception of a CMAR selection.</td>
<td>Green Yellow Red</td>
</tr>
</tbody>
</table>

Summary of key issues justifying the above opinion:

[Blank line]

Note: Each delivery method must be rated by one of the three colors, and a color may only be used once. Green = Most appropriate Yellow = Neutral Red = Least Appropriate
**Criterion 4: Complexity of Design and Construction Phasing**

**Overview:** This criterion considers aspects of a project that are unique or more complex than normally encountered. The factors may be associated with the unique project scope, goals, and objectives specified by the Department. Complexity may occur in the uniqueness of design, maintenance of traffic, phasing of the project, constructability, location of the project, unknowns, etc.

| Delivery Method | Potential Advantages | Potential Disadvantages | Preference (Circle One)
|-----------------|----------------------|-------------------------|----------------|
| DBB             | • NDOT has more time to develop design solutions. | • NDOT would not gain constructability value from a contractor until after award, thereby potentially losing the benefit of cost savings.  
• NDOT could experience a limitation for potential innovative constructability concepts.  
• NDOT may incur a higher number of change orders from an inexperienced, low-bid contractor. | [Circle] [ ] [ ] |
| DB              | • NDOT can transfer risk that could be better managed by the contractor, potentially improving constructability and reducing errors and change orders.  
• NDOT gains the benefit of innovative ideas being integrated early in the design process. | • NDOT has less control of the design and implementation.  
• NDOT may incur unexpected project results due to the difficulty in scoping the unique issues and complexities of a project. | [Circle] [ ] [ ] |
| CMAR            | • NDOT gains the benefit of innovative ideas being integrated early in the design process.  
• NDOT may potentially reduce and mitigate project complexity through design, thereby gaining more certainty to cost, quality, and schedule delivery and construction. | • NDOT may be in an undesirable negotiating position having to retain the contractor for subsequent construction project phases. | [Circle] [ ] [ ] |

Summary of key issues justifying the above opinion:

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**Note:** Each delivery method must be rated by one of the three colors, and a color may only be used once. [Circle] = Most appropriate, [ ] = Neutral, [ ] = Least Appropriate
### Criterion 5: Opportunity for Innovation

**Overview:** This criterion considers the opportunity for encouraging and integrating innovation for new designs, products, technologies, project approaches, and construction techniques to achieve the project's goals.

<table>
<thead>
<tr>
<th>Delivery Method</th>
<th>Potential Advantages</th>
<th>Potential Disadvantages</th>
<th>Preference (Circle One(^5))</th>
</tr>
</thead>
</table>
| DBB             | • NDOT can select innovation independent of the contractor’s experience or abilities.  
• NDOT may gain greater buy-in of the agency for the implementation of innovation ideas given the agency’s control of the value engineering process.  
• NDOT has more time to explore and integrate opportunities for innovation. | • NDOT may be limited to integrate innovations by using a low-bid contractor instead of a contractor selected on qualifications.  
• NDOT may incur cost and/or schedule impacts from introduction of NDOT-derived innovations that may not be constructible.  
• NDOT may have to dedicate additional resources to approve and confirm the success of innovative concepts. | |  |
| DB              | • NDOT gains the benefit of contractor-derived innovative ideas being introduced early in the design process. | • NDOT may not experience the full opportunity to innovate because innovation may be limited by contractor abilities, comfort, and time constraints to prepare an RFP.  
• NDOT may not realize savings from innovations because the saving usually accrues to the contractor. | |  |
| CMAR            | • NDOT can encourage innovation because risk is better identified and communicated.  
• NDOT can reduce the constraints related to the contractor’s abilities, level of comfort with innovative concepts, or time constraints, providing for increased opportunities for innovation.  
• NDOT can benefit from contractor participation in helping to mitigate potential risk through the introduction of new technologies or innovative delivery. | • NDOT may experience difficulty in negotiating the guaranteed maximum price due to inherent unknowns associated with the introduction of new innovative concepts. | |  |

Summary of key issues justifying the above opinion:

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\(^5\) **Note:** Each delivery method must be rated by one of the three colors, and a color may only be used once. (Most appropriate) \(\bigcirc\) (Neutral) \(\bigcirc\) (Least Appropriate)
Step 4a involves the color coding of each criterion cell based on the colors assigned in Step 3. An example of a completed table is provided.\(^6\)

<table>
<thead>
<tr>
<th>Step 4a</th>
<th>Criterion</th>
<th>Delivery Method Preference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>DBB</td>
</tr>
<tr>
<td>Criterion 1: Cost Impacts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criterion 2: Schedule Impacts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criterion 3: Opportunity to Manage Risk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criterion 4: Complexity of Design and Construction Phasing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criterion 5: Opportunity for Innovation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Step 4b is where the Project Manager and the PDSC summarize the delivery method preference. The PDSC will indicate (with a green, yellow, and orange color coding) the recommended delivery method for the project under evaluation. The recommended delivery method will be identified as green in a table similar to the example below, which shows that the CMAR delivery method is the recommended delivery method for the evaluated project.

<table>
<thead>
<tr>
<th>Step 4b</th>
<th>Recommended Delivery Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DBB</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Project Manager and Pioneer Program Manager are to use the attached *Project Delivery Method Recommendation* Form to provide a delivery method recommendation to the Pioneer Program Director and Department Director for the project. When determining this recommendation, the Pioneer Program Manager will also consider factors such as program-level considerations, the number of projects to be delivered under a given method at a given time, the capacity of Department staffing to support project procurement and execution, FHWA input, current market conditions, and other factors. The Pioneer Program Director and

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\(^6\) Instruction for electronic users: To use this table electronically and fill in the assigned colors for each criterion and delivery method, the user must double click on the table above to access the table. Once the table is open, an EXCEL toolbar will exist where the WORD toolbar does now. On this toolbar, the user can click on three color styles (green, yellow, and orange) that are located just to the right of the conditional formatting button in order to color code the chosen cell. Complete this step for each cell. Once done, move and click the cursor on any narrative section outside of the table to return to the document.
Department Director will review the recommendation to make a final decision on a delivery method.

Additional instructions are included in Section 1.6.1 of the Pioneer Program Guidelines.
For NDOT guidelines, see the Pioneer Program Guidelines at:

For the approved FHWA SEP-14 application, see:

For further material concerning various project delivery methods, see the Transportation Research Board’s Evaluation of Project Delivery Methods at:
Appendix B: Examples of Project Goals

The following project goals are examples for reference when defining and documenting goals specific to a project.

**General Project Goals**

Schedule:

- Minimize project delivery time on a phase or the entire project in a desire to reach guaranteed maximum price in six months.
- Reach substantial completion by (month, year).

Cost:

- Minimize project cost.
- Maximize project budget.
- Complete the project on budget.

Quality:

- Meet or exceed maintenance of traffic requirements.
  - Maintain x lanes of traffic in each direction at all times during construction except for bridge replacements as noted below.
  - Limit road shut down to one consecutive 72-hour period through the duration of project.
- Provide the lowest life-cycle costs.

Note: Goals should be consistent with environmental documents when applicable.

**DB-oriented Project Goals**

Schedule Issues:

- Substantial Completion (Final Acceptance) by (date/event)
- Substantial Completion (Final Acceptance) within ____ days of Notice to Proceed

Cost/Financial:

- Cost not to exceed $____
- Maintenance costs not to exceed $____
- Payment to the service provider to be paid over ____ years
- Borrowing cost not to exceed ____%
Appendix B: Examples of Project Goals

Quality/Innovation:

- Design life of ____ years
- Warranty of ____ years
- Minimize disruption to residents, businesses, and the traveling public during construction
- Provide aesthetic solution to minimize visual impact

Scope:

- Available funding to build ______
- Available funding to build ______ lane miles

Risk Allocation:

- Shift ___ risks to Design-Builder

CMAR-oriented Project Goals

- Minimize conflict of the work effort with the adjacent contractor, while achieving seamless construction from the vantage point of the public between the Department’s Project and the RTC’s Moana Lane Widening Project.
- Minimize delays and impacts to the traveling public, local residents, and local businesses, while maintaining pedestrian movement at all times during construction.
- Establish open, timely, and accurate communication and coordination with the public and the Project stakeholders through the Department.
- Reach a fair and reasonable Construction GMP in order to award a Construction Contract on October 8, 2012 or earlier so as to achieve seamless construction from the vantage point of the public between this Project and the RTC’s Moana Lane Widening Project.
- Achieve the Project schedule of completing work within one (1) concurrent construction season and achieve substantial completion no later than July 1, 2013.
- Build a professional and collaborative Project Team.
- Strive to achieve zero (0) change orders on the Project.
Project Delivery Method Recommendation Form

Project Name: ____________________________________________________________

<table>
<thead>
<tr>
<th>Step 4a</th>
<th>Criterion</th>
<th>Delivery Method Preference</th>
</tr>
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<tbody>
<tr>
<td></td>
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<td>DBB</td>
</tr>
<tr>
<td>Criterion 1: Cost Impacts</td>
<td></td>
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<tr>
<td>Criterion 2: Schedule Impacts</td>
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<tr>
<td>Criterion 3: Opportunity to Manage Risk</td>
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<tr>
<td>Criterion 4: Complexity of Design and Construction Phasing</td>
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<tr>
<td>Criterion 5: Opportunity for Innovation</td>
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</table>

- **= Most appropriate  = Neutral  = Least Appropriate**

<table>
<thead>
<tr>
<th>Step 4b</th>
<th>Recommended Delivery Method</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>DBB</td>
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</tbody>
</table>

Summary of key issues justifying the above opinion:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
APPENDIX G

List of Documents available in Sharepoint

Design-Build and PPP Forms:
- Project Evaluation Results Letter
- Board Recommendation Letter
- Sample RLOI
- Sample RFQ Evaluation and Selection Plan Table of Contents
- Sample RFQ/RFP Evaluation and Selection Plan Forms
- Sample RFP Evaluation and Selection Plan Table of Contents
- Sample Progress Report
- Completeness Review Checklist
- Proposer Conflict of Interest and Disclosure Agreement/Certification Form
- Consultant Conflict of Interest and Disclosure Agreement/Certification Form
- Unsolicited Proposals Project Evaluation Criteria Checklist
- The Role of Due Diligence in Determining Project Value
- Outline of Project Development Process
- Template for High-Level Screening Report
- Template for Detailed Screening Report
- Risk Matrix Template
- Project Evaluation Report Outline
- Template Protest Letter Response
- Sample Board Memo

CMAR Forms:
- Project Manager CMAR Activity/Responsibility Checklist
- Template CMAR Project Schedule
- Template CMAR RFP Evaluation Panel and Schedule Memorandum
- Template CMAR Form 2A and Form 2A Estimate Worksheet
- Template *FHWA PDSA Approval Letter*
- Template CMAR RFP
- Template *CMAR RFP 6c Evaluation Criteria* Memorandum
- Sample RFP Evaluation and Selection Plan Table of Contents
- Sample *Request for Release of an RFP* Memorandum to FHWA
- Template *Proposal Ranking and Shortlist Determination* Memorandum
- Template *Total Interview Scores and Final Selection Ranking* Memorandum
- Form RRE: Record of Authorization of Risk Reserve Expenditures
- Sample Board Memorandum
- CMAR Processing Memorandum
- Multiple GMP Process Document
APPENDIX H

REFERENCES

For more information on the topics in these Guidelines, see:


4. Utah Department of Transportation (UDOT).