

# **INSTRUCTION TO PROPOSERS**

## **MICHIGAN DEPARTMENT OF TRANSPORTATION**

### **DELIVERY OF FREEWAY LIGHTING AS A DESIGN-BUILD-FINANCE- OPERATE-MAINTAIN PROJECT**

**Metro Region**

**(Wayne, Oakland and Macomb Counties, and the City of Detroit)**

**Control Section: 84917**

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# REQUEST FOR PROPOSALS: INSTRUCTIONS TO PROPOSERS

## SECTION 1 OVERVIEW

### 1.1 Project Description

This Request for Proposals initiates the second phase of a process for selecting a Project Company to partner with MDOT on designing, building and financing improvements to the existing freeway and tunnel lighting systems in the Detroit Metro Region; and operating and maintaining the existing and improved lighting systems for a period of 15 years (the “Term”). The Freeway Lighting System contains a total of approximately 14,870 lamps of various types. An inventory from a recent MDOT asset survey of the system is detailed in Exhibit G of these Instructions to Proposers (“ITP”).

This opportunity to design, build, finance, operate and maintain (DBFOM) the System (the “Project”) will be procured through a Public-Private Partnership (P3) contracting structure. Over the life of the Project Agreement, the Project Company will provide all financing required for design and construction of improvements, and for operations and maintenance of the System, while MDOT will make regular Service Payments to the Project Company in accordance with the Project Agreement.

During the D&C Term, the Project Company shall evaluate and optimize the operation of the lighting systems to achieve project goals for efficiencies in overall cost and energy consumption, and quality in the optimized system components. The Project Company may optimize the System through any combination of lighting infrastructure improvements and operational efficiencies which provide the required illumination performance and meet the terms of the Project Agreement. The optimization includes making all needed repairs and/or replacements to non-operational components of existing systems and replacing all inefficient components in order to achieve Substantial Completion. The Project Company must operate the System for the duration of the Project in accordance with the Project Agreement.

### 1.2 Project Goals

In performing the Project Operations, the Project Company shall achieve the following goals throughout the Project Term:

#### 1.2.1 Safety

- (a) Provide the traveling public and workers safe conditions during the Project Term;
- (b) Provide and maintain illumination coverage and uniformity required to meet the requirements and standards provided in the Project Agreement; and
- (c) Provide supports, fixtures and supporting infrastructure consistent with current MDOT, FHWA, and AASHTO safety practices, guidelines, policies, and Good Industry Practices.

#### 1.2.2 Efficiency

- (a) Minimize the amount of energy consumed for illumination; and
- (b) Minimize overall Project costs by optimizing costs for D&C Works, lifecycle equipment replacements, operations and maintenance.

#### 1.2.3 Mobility

- (a) Minimize traffic impacts and delays while carrying out the Project Operations; and
- (b) Minimize traffic impacts during operational and maintenance activities.

#### 1.2.4 Quality

- (a) Provide lighting systems that conform to acceptable engineering standards/guidelines for designing and building freeway lighting systems;

- (b) Provide lighting systems that minimize future maintenance cycling; and
- (c) Provide high quality, reliable and safe lighting systems at Project hand-back.

1.2.5 Finance

- (a) Provide a financial plan that minimizes costs and funds to MDOT to deliver the Project.

1.2.6 Schedule

- (a) Achieve Substantial Completion within two years of Commercial and Financial Close.

**1.3 Procurement Process**

MDOT will carry out the procurement and implementation of the Project in accordance with the following stages:

- (a) Phase 1 – Prequalification Stage

The prequalification stage (“**Prequalification Stage**”) preceded the RFP Process and identified the prequalified proposers (the “**Proposers**”). The Prequalification Stage is a stand-alone independent stage and is complete once the Proposers are identified by MDOT, whether identified initially as Proposers or added subsequently in accordance with the Request for Qualifications (RFQ) documents, and have received notification by MDOT that they are prequalified for the RFP Process. The Prequalification Stage has been completed and Proposers identified on May 21, 2014.

- (b) Phase 2 – RFP Process

The RFP procurement process (the “**RFP Process**”) is the competitive procurement process described in detail in Section 3 – RFP Process of this ITP.

- (c) Phase 3 – Implementation of the Project Agreement

Once MDOT and the Preferred Proposer have executed the Project Agreement, the terms and conditions of the Project Agreement shall determine how the Project is to proceed.

## **SECTION 2 THE RFP AND THE DATA ROOM**

### **2.1 RFP**

The Request for Proposals consists of three Parts described below; any other documents that may be issued by Addenda to this Request for Proposals; and any revision, amendments, supplements or modifications to these documents (collectively, the “**RFP**” or “**RFP Documents**”):

- (a) Part 1, these Instructions to Proposers
- (b) Part 2, Volume I, Project Agreement
- (c) Part 2, Volume II, Part A, General Technical Provisions
- (d) Part 2, Volume II, Part B, Capital Improvement Requirements and Provisions
- (e) Part 2, Volume II, Part C, Operations and Maintenance Requirements
- (f) Part 2, Volume III, Applicable Standards and Reference Information Documents

Subject to Section 2.2 of this ITP, the RFP must be read as a whole. Without limitation, all schedules, exhibits and Addenda, if any, submitted as part of this RFP constitute an integral part of this RFP and are incorporated by reference.

### **2.2 Conflicts or Inconsistencies in Documents**

For the purpose of the RFP Process, if there are ambiguities, conflicts or inconsistencies within or between the terms and conditions of the RFP the following shall apply:

- (a) In respect of matters of interpretation related to the RFP Process and all competitive

procurement process matters, this ITP shall prevail over the Exhibits and Forms to this ITP during the RFP Process;

- (b) In respect of all matters of interpretation of the Project and the Project Agreement during the RFP Process, the Project Agreement shall prevail over this ITP and all other Exhibits to this ITP; and
- (c) For the purpose of resolving ambiguities, conflicts or inconsistencies within or between the documents that constitute the Project Agreement, the provisions of the Project Agreement dealing with conflicts or inconsistencies shall govern.

If the Proposer believes that there is any term or condition within or between any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP, the Proposer shall notify MDOT of that ambiguity, conflict or inconsistency with the RFP by the deadline set out in the RFP Schedule for the submission of Requests for Information (RFIs).

If there is a conflict or inconsistency between:

- (a) MDOT electronic version of an RFP Document as contained in the Data Room; and
- (b) Any other version of the same RFP Document (whether in electronic or hard copy), MDOT electronic version as contained in the Data Room shall govern.

If there is any conflict or inconsistency between documents, including this RFP, contained in the Data Room and documents that are downloaded by the Proposer, the documents contained in the Data Room shall govern.

If there is any conflict or inconsistency between two versions of the same RFP Document contained in the Data Room, the RFP Document of the later date or version number shall prevail over the same RFP Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this RFP, the date of each RFP Document shall be determined by the date and time when that document was placed in the Data Room by MDOT.

### **2.3 Compliance with the Terms of this ITP**

Proposers shall comply with all terms of this ITP in submitting their Proposals. Failure by a Proposer or any member of its team to comply with the requirements, restrictions, prohibitions and other terms in this ITP may result in a disqualification of the Proposer from the RFP Process.

### **2.4 Data Room**

MDOT has established an electronic data room (the “**Data Room**”) at a secure website address for:

- (a) The distribution of RFP and Addenda;
- (b) The provision of various types (“Reference Information Documents”) for the Proposers review; and
- (c) The receipt of RFIs from Proposers and the posting of responses to RFIs.

The Data Room will be accessible on approximately the date set out in the RFP Schedule. MDOT may add, delete or amend documents in the Data Room at any time.

Each Proposer will designate one person (the “**Proposer Representative**”) who is solely responsible to ensure that it:

- (a) Contacts the Contact Person at the location and phone number set out in this ITP to arrange access to the Data Room and receipt of a Data Room password;
- (b) Has the appropriate software which allows the Proposer to access and download RFP and Reference Information Documents from the Data Room; and
- (c) Checks the Data Room frequently for the addition, deletion or amendment of RFP,

Reference Information Documents and the posting of responses to RFIs and, at all times during the RFP Process keeps itself informed of and takes into account the most current RFP, Reference Information Documents and responses to RFIs.

### **2.5 Distribution of Documents to Proposers**

MDOT will circulate all RFP documents, including Addenda, by placing them in the Data Room and notifying the Proposer Representative by e-mail that RFP documents or Addenda, as applicable, have been added to the Data Room. Notification to Proposers by MDOT that documents have been added to the Data Room is a courtesy only and Proposers are solely responsible to ensure that they review all documents in the Data Room and, in particular, have reviewed all documents in the Data Room immediately prior to submitting Proposals.

### **2.6 Proposer Due Diligence**

Each Proposer and each Proposer Team Member is solely responsible, at its own cost and expense, to carry out its own independent research, seek independent advice, perform due diligence considered necessary by the Proposer to satisfy itself as to all existing conditions affecting the Project or the Project Agreement. The Proposers' and Proposer Team Members' obligations set out in this ITP apply irrespective of any Reference Information Documents in the Data Room or information contained in the RFP or in responses to RFIs.

Except as explicitly provided in the Project Agreement, MDOT does not represent or warrant the accuracy or completeness of any information set out in the RFP or made available to Proposers or Proposer Team Members in the Data Room as Reference Information Documents or of any other background or reference information or documents prepared by MDOT, any of its representatives or the other Proposers or Proposing Team Members and which may be made available to Proposers or Proposer Team Members by or through MDOT. Proposers and Proposer Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proposers or Proposer Team Members on any and all such information shall be at the Proposers' and Proposer Team Members' sole risk and without recourse against MDOT.

## **SECTION 3 THE RFP PROCESS**

### **3.1 RFP Process Schedule**

The deadline Proposal Due Date and the current general schedule for the RFP Process (the "**RFP Schedule**") are set out in the RFP Schedule.

MDOT may amend the RFP Schedule at its sole discretion:

- (a) At any time prior to the Proposal Due Date for events that are to occur prior to or on the Proposal Due Date, including the Proposal Due Date itself; and
- (b) At any time during the RFP Process for events that are to occur after the Proposal Due Date.

### **3.2 Questions and RFP Document Comments**

The Proposers shall electronically submit all questions and other communications regarding the RFP, the RFP Process and their Proposals to the contact person named below (the "**Contact Person**"); and shall electronically submit the questions through the Data Room in accordance with the RFP using the form provided.

MDOT Project Manager  
Charlie Stein  
MDOT, Innovative Contracting Unit  
E-Mail: [steinc@michigan.gov](mailto:steinc@michigan.gov)

### 3.3 RFI Submission Process

In addition to the requirement set out in ITP Section 3.2, the following rules shall apply to Proposers when submitting questions or RFIs to MDOT during the RFP Process unless otherwise required by statute, rule or legal ruling:

- (a) Proposers are permitted to submit RFIs categorized as follows:
  - (i) RFIs that are of general application and that would apply to other Proposers (“**General RFIs**”); and
  - (ii) RFIs that the Proposer considers to be commercially sensitive or confidential to that particular Proposer (“**Commercially Confidential RFIs**”).
- (b) If MDOT disagrees with the Proposers categorization of an RFI as a Commercially Confidential RFI, MDOT will give the Proposer an opportunity to either resubmit and categorize the RFI as a General RFI or to withdraw the RFI;
- (c) If MDOT determines, at its sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proposer, is of general application or would provide a significant clarification of the RFP or RFP Process to Proposers, MDOT may issue a clarification to Proposers that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and
- (d) If MDOT agrees with the Proposer’s categorization of a Commercially Confidential RFI, then MDOT will provide a response to that RFI to only the Proposer that submitted the RFI.

Responses to RFIs prepared and circulated by MDOT do not form part of the RFP and do not amend the RFP. If, in MDOT’s sole discretion, RFIs require an amendment to the RFP, such amendment will be prepared and circulated by Addendum. Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP. Otherwise, RFIs have no force or effect whatsoever and the Proposer shall not be relied upon them.

Proposers shall submit RFIs in accordance with the deadlines set out in the RFP Schedule.

Proposers shall submit all RFIs to the Contact Person electronically in accordance with the instructions set out in Section 3.2 of this ITP.

MDOT will respond to RFIs in writing and will circulate the responses to all Proposers in accordance with the RFP Schedule. MDOT may, in its sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proposer who submitted the minor or administrative RFI.

It is the Proposer’s obligation to seek clarification from MDOT of any matter it considers to be unclear in accordance with ITP Section 3.3 and by the deadline set out in the RFP Schedule for the submission of RFIs. MDOT is not responsible in any way whatsoever for any misunderstanding by the Proposer or any of its Proposer Team Members of the RFP, Reference Information Documents, responses to RFIs, any documents placed in the Data Room or any other type of information provided by or communication made by MDOT.

### 3.4 RFP Comments

Proposers may submit comments on the RFP, including redline drafts of the Project Agreement, Technical Provisions and Project Documents in general, including published criteria, modifications to the Technical Provisions, and specialized design specifications and design standards. When submitting redlined versions of the Technical Provisions, Proposers must specify whether these are

to be considered a General RFI or a Commercially Confidential RFI, and provide all relevant supporting documentation. The submission schedule for those comments is set out in the RFP Schedule. MDOT reserves the right to accept or deny such changes and is not obliged to respond to each comment made by Proposers under ITP Section 3.3. If MDOT accepts a comment, or part of a comment, and if that acceptance requires a change to the RFP, including the Project Agreement and Project Documents, MDOT shall implement that change by Addendum. In the event of any inadvertent conflict, ambiguity or inconsistency between the criteria or information contained within the RFI submission and the basic Project Documents criteria which might be construed to allow a lower performance level than intended by the Project Documents criteria, the latter shall take precedence and control regardless of any prior MDOT approval.

### **3.5 Communications Restrictions**

#### **3.5.1 Communications with Municipalities, Government Authorities & Utility Companies**

Subject to this Section 3.5 and any special rules set out in the RFP, Proposers, Proposer Team Members and their respective Advisors are not permitted to communicate directly with any Municipality, Government Authority or Utility Company with respect to the Project.

MDOT is not responsible for any representations, statements, assurances, commitments or agreements which Proposers, Proposer Team Members or their respective Advisors receive or believe they may have received from a Municipality, a Government Authority, or a Utility Company. Proposers, Proposer Team Members and their respective Advisors rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against MDOT.

#### **3.5.2 Prohibited Contacts and Lobbying Prohibition**

Proposers and Proposer Team Members and all of their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.

Neither Proposers nor Proposer Team Members or any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP, or the Proposals:

- (a) Any employee of MDOT (other than the MDOT Contact Person outlined in Section 3.2);
- (b) Any employee or representative of:
  - (i) URS Corporation;
  - (ii) KPMG LLP; or
  - (iii) Nossaman, LLP.

If a Proposer or a Proposer Team Member or any of their respective Advisors, employees or representatives, in the opinion of MDOT, contravenes this Section 3.5 MDOT may, in their sole discretion:

- (a) Disqualify the Proposer; or
- (b) Impose conditions on the Proposer's or Proposer Team Member's continued participation in the RFP Process that MDOT considers, in their sole discretion, to be appropriate.

### **3.6 Media Releases, Public Disclosures and Public Announcements**

A Proposer shall not, and shall ensure that its Advisors, employees, representatives and Proposer Team Members, and their respective Advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication

in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP or the Project or any matters related thereto, without the prior written consent of MDOT.

Neither the Proposers nor the Proposer Team Members or any of their respective Advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proposer or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without MDOT's prior written consent. Proposers, Proposer Team Members and their respective Advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.

This Section 3.6 does not prohibit disclosures necessary to permit the Proposer to discuss the Project with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the Project.

### **3.7 Restrictions on Communications between Proposers – No Collusion**

A Proposer and Proposer Team Members and their respective Advisors, employees and representatives shall not discuss or communicate, directly or indirectly, with any other Proposer, any information whatsoever regarding the preparation of its own Proposal or the Proposal of the other Proposer in a fashion that would contravene Applicable Law. Proposers shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proposer.

### **3.8 Meetings with Proposers**

#### **3.8.1 General Proposers Meeting(s)**

MDOT may, in their sole discretion, convene general Proposers meetings (each, a "**Proposers Meeting**") for specific purposes, and will notify Proposers through the RFP Schedule or email. While attendance at a Proposers Meeting is not mandatory, Proposers are strongly encouraged to attend. A Proposer's failure to attend a Proposers Meeting is at the Proposer's sole risk and responsibility.

Proposers may ask questions and seek clarifications at a Proposers Meeting. Notwithstanding oral answers given by MDOT at a Proposers Meeting, those answers shall not be considered final unless issued in writing.

No statement, consent, waiver, acceptance, approval or anything else said or done in any Proposers Meeting by MDOT or any of its respective Advisors, employees or representatives shall amend or waive any provision of the RFP, or be binding on MDOT or be relied upon in any way by Proposers, Proposer Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP.

#### **3.8.2 Commercially Confidential Meetings**

MDOT may, in their sole discretion, convene commercially confidential meetings with Proposers ("**Commercially Confidential Meetings**"). These Commercially Confidential Meetings may be either or both of the following:

- (a) Bilateral meetings between MDOT, including its representatives and Advisors, and individual Proposers, including their representatives and Advisors, to discuss the Project Agreement and the Proposer's suggested amendments to the Project Agreement; and
- (b) Bilateral meetings between MDOT, including its representatives and Advisors, and individual Proposers, including their representatives and Advisors, to discuss either or both of,
  - (i) Project design issues (including Proposers' proposed designs);
  - (ii) Project financial matters; or

(iii) Other matters, as applicable.

If MDOT intends to hold Commercially Confidential Meetings, the dates of those meetings are set out in the RFP Schedule. While attendance at Commercially Confidential Meetings is not mandatory, Proposers are strongly encouraged to attend. A Proposer's failure to attend a Commercially Confidential Meeting is at the Proposer's sole risk and responsibility.

Subject to the requirements described in Section 3.12 – Freedom of Information and Confidentiality, MDOT will use its best efforts to keep all discussions with Proposers at Commercially Confidential Meetings confidential, provided that under no circumstances will MDOT be responsible or liable to a Proposer or any other party as a result of disclosing any materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake or negligence on the part of MDOT or its respective officers, employees, contractors, or consultants. No statement, consent, waiver, acceptance, approval or anything else said or done in any of these Commercially Confidential Meetings by MDOT or any of its respective Advisors, employees or representatives shall amend or waive any provision of the RFP, or be binding on MDOT or be relied upon in any way by Proposers, Proposer Team Members or their Advisors except when and only to the extent expressly confirmed in an Addendum to the RFP.

The Proposer, its Proposer Team Members and their respective Advisors and representatives and any of their attendees at Commercially Confidential Meetings acknowledge and agree that:

- (a) Any statement made at a Commercially Confidential Meeting by MDOT or any of their Advisors or representatives is not and shall not be deemed or considered to be an indication of a preference by MDOT or a rejection by MDOT of anything said or done by the Proposer, Proposer Team Member or any of their respective Advisors or representatives;
- (c) Any statement made at a Commercially Confidential Meeting by MDOT or any of their Advisors or representatives shall not and will not be relied upon in any way by the Proposer, Proposer Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Project Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum;
- (d) MDOT may share process-related information, including clarifying information, with all Proposers if the need arises; and
- (e) The Proposer, its Proposer Team Members and their respective Advisors and representatives:
  - (i) Shall participate in the Commercially Confidential Meetings in accordance with the guidelines, procedures and processes set out in the ITP;
  - (ii) Waive any and all rights to contest and/or protest the RFP and the processes and guidelines set out herein, including the Commercially Confidential Meetings, based on the fact that such Commercially Confidential Meetings occurred or on the basis that information may have been received during a Commercially Confidential Meeting by another Proposer, Proposer Team Member or their respective Advisors or representatives that was not received by the Proposer, Proposer Team Member or any of their respective Advisors or representatives; and
  - (iii) Agree that the Proposer, its Proposer Team Members and their respective Advisors and representatives must treat information received at a Commercially Confidential Meeting as Confidential Information.

### **3.9 Visiting the Premises**

#### **3.9.1 Scheduled Visits**

If in the RFP Schedule, MDOT has established scheduled dates for visits to see the Premises (“**Scheduled Visits**”) for all Proposers and their representatives and Advisors, the dates and times of the Scheduled Visits will be set out in the RFP Schedule.

#### **3.9.2 Additional Visits to Premises**

Except for Scheduled Visits, if specified in the RFP Schedule, Proposers are not permitted to access Premises which are not accessible by the general public, except by prior written arrangement with the Contact Person.

A Proposer that wishes to arrange a visit to access either the Premises not accessible by the general public, other than a Scheduled Visit (an “**Additional Visit**”), shall submit a request to the Contact Person at least five (5) Business Days prior (or such other time as is set out in the RFP Schedule) to the Proposer’s proposed date and time for an Additional Visit. The request shall set out the:

- (a) Proposed date and time, and alternate date and time, of the proposed Additional Visit;
- (b) Purpose of the Additional Visit;
- (c) Areas of the Premises which are not accessible by the general public for which access is requested; and
- (d) Names, titles and contact information of the Proposer’s representatives who will be attending the Additional Visit.

If the Proposer has received approval for and written confirmation of any Additional Visit from the Contact Person, unless otherwise set out in the Contact Person’s confirmation the following shall apply to the Additional Visit:

- (a) All Proposer and Proposer Team Member representatives shall strictly obey all instructions from MDOT representatives during the visit and shall comply with all site-specific security, safety or other types of requirements;
- (b) All Proposer and Proposer Team Member representatives shall, at all times, make reasonable efforts to avoid disturbing or infringing upon the privacy of any persons occupying, residing or working in close proximity to the Premises not accessible by the general public, as applicable;
- (c) The Proposer and Proposer Team Member representatives shall visit only those specific areas of the Premises not accessible by the general public, as applicable, to which the Proposer has been granted access in the Contact Person’s confirmation; and
- (d) The Proposer acknowledges that because of traffic concerns, or because the Premises not accessible by the general public, or portions thereof, may be in use, unforeseen circumstances can arise and MDOT may, in their sole discretion, cancel or reschedule any Additional Visit, change the areas of access of any Additional Visit or otherwise change any Additional Visit on short notice or no notice to the Proposer and Proposer Team Members or their representatives.

#### **3.10 Changes to Proposers and Key Personnel**

All changes in Key Personnel or Proposer Team Members from a Proposer’s SOQ occurring before the Proposal submission in response to this RFP Process must be approved by MDOT in writing. Changes in Key Personnel must be approved by MDOT 10 days prior to submitting a Proposal in response to this RFP Process. MDOT may disqualify a Proposer if any Key Personnel or Proposer Team Member identified in the SOQ is removed, replaced or added without MDOT’s prior written

approval. To qualify for MDOT approval, the written request must document that the proposed removal, replacement or addition will be equal to or better than the Key Personnel or Proposer Team Member provided in the SOQ. MDOT will use the criteria specified in the Prequalification Process to evaluate all requests however is not obliged to approve such requests and may approve or disapprove such personnel at its sole discretion. MDOT Form 5100G Changes in Key Personnel must be submitted to MDOT's Contact Person.

### **3.11 Addenda/Changes to the RFP**

MDOT may, in their sole discretion, amend or supplement the RFP prior to the Proposal Due Date. MDOT shall issue changes to the RFP by Addenda only. No other statement, whether oral or written, made by MDOT, its Advisors, employees or representatives, including the Contact Person, or any other person, shall amend the RFP. The approximate final date for MDOT to issue an Addendum in respect of the RFP, including the Project Agreement is set out in the Project Schedule. MDOT may issue other Addenda at any time.

The Proposer is solely responsible to ensure that it has received all Addenda issued by MDOT. Proposers may, in writing, seek confirmation of the number of Addenda issued under this RFP Process from the Contact Person. Proposers must acknowledge receipt of Addenda in their proposal letter.

MDOT shall issue Addenda by placing them in the Data Room and notifying the Proposer Representative by electronic correspondence that an Addendum has been placed in the Data Room.

### **3.12 Pre-Proposal Submittals**

The "Pre-Proposal Submittals" are as follows:

(a) Pursuant to Section 3.10

Pre-Proposal Submittal for 3.10 should be provided two (2) days in advance of the proposal submittal date.

(b) Pursuant to Section 4.3.6 (regarding the Market Interest Rate Adjustment)

Pre-Proposal Submittal of the Benchmark Rate(s) should be provided by 12pm EST seven (7) days before the Proposal Due Date and include a snapshot of the applicable rate at 10am EST. Proposers are encouraged to submit Pre-Proposal Submittals for Section 3.12(a) at any time prior to the stated deadlines. Proposer can submit one or more Benchmark Rates, but the Benchmark Rates should be clearly associated with each of the proposed financing options.

MDOT will endeavor to respond to the Pre-Proposal Submittals within 14 days of the Friday in the week in which the Pre-Proposal Submittals were submitted, provided, however, that this time period for MDOT's response may be extended in MDOT's sole discretion based on the number and complexity of the Pre-Proposal Submittals in receipt at any one time. MDOT reserves the right to respond to Pre-Proposal Submittals in whatever order it chooses in order to expedite reviews.

### **3.13 Freedom of Information and Confidentiality**

#### **3.13.1 Freedom of Information Act (FOIA)**

Subject to the Freedom of Information Act (1976 Public Act No. 442, as amended, MCL 15.231, et seq.), MDOT has taken measures to protect the confidentiality of all submitted Proposals during the entire evaluation and selection process. However, under no circumstances will MDOT be responsible or liable to a Proposer or any other party as a result of disclosing any materials, whether the

disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of MDOT or its respective officers, employees, contractors, or consultants. Proposers are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.

### 3.13.2 Confidential Information

For the purpose of this RFP Process, “**Confidential Information**” means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by MDOT in connection with the RFP Process, the RFP or the Project, whether supplied, obtained from or provided before or after the RFP Process.

The Proposer agrees that all Confidential Information:

- (a) Shall remain the sole property of MDOT, as applicable, and the Proposer shall treat it as confidential;
- (b) Shall not be used by the Proposer for any purpose other than developing and submitting a Proposal in response to this RFP Process or the performance of any subsequent agreement relating to the Project with the Preferred Proposer;
- (c) Shall not be disclosed by the Proposer to any person who is not involved in the Proposer’s preparation of its Proposal or the performance of any subsequent agreement relating to the Project with the Preferred Proposer, without prior written consent of MDOT; and
- (d) If requested by MDOT, all Confidential Information shall be returned by the Proposers to MDOT no later than ten (10) days after that request.

Notwithstanding anything else to the contrary in this ITP, the provisions of this ITP shall survive any cancellation of this RFP Process and the conclusion of the RFP Process and shall be legally binding on all Proposers, whether or not they submit a Proposal.

The confidentiality obligations of the Proposer shall not apply to any information which falls within the following exceptions:

- (a) Information that is lawfully in the public domain at the time of first disclosure to the Proposer, or which, after disclosure to the Proposer, becomes part of the public domain other than by a breach of the Proposer’s confidentiality obligations or by any act or fault of the Proposer;
- (b) Information which was in the Proposer’s possession prior to its disclosure to the Proposer by MDOT, and provided that it was not acquired by the Proposer under an obligation of confidence; or
- (c) Information which was lawfully obtained by the Proposer from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.
- (d) Information, the disclosure of which is:
  - (i) Required by Applicable Law, including in accordance with FOIA;
  - (ii) Required by a relevant stock exchange;
  - (iii) Consented to by MDOT; or
  - (iv) Made to a court in the course of proceedings to which Project Company is a party.

### **3.14 Conflict of Interest**

The Proposing Team shall accept responsibility for being aware of the requirements of Title 23 - Code of Federal Regulations (CFR) 636.116 and include a full disclosure of all potential organizational conflicts of interest.

The Proposer shall complete and return ITP Form D – Conflict of Interest Statements with the submittal package. The Proposing Team will certify via Form D – Conflict of Interest Statements that they have read and understand MDOT’s policy regarding conflict of interest and 23 CFR 636.116, and that each member of the Proposer (including the including the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) has done the same. Each party shall either certify that they have no conflict of interest with the Project, or shall describe the conflict as provided. )

The Proposer agrees to make an immediate and full written disclosure to MDOT if an organizational conflict of interest is discovered during the advertisement/procurement or after award. The disclosure must include a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflict. If an organizational conflict of interest is determined to exist, MDOT may, at its discretion, cancel the Project Agreement. If the Proposer was aware of an organizational conflict of interest prior to the award of the Project Agreement and did not disclose the conflict to MDOT, MDOT may terminate the Project Agreement for default.

### **3.15 Stipend**

#### **3.15.1 Eligibility**

Unsuccessful Proposers who submit a Proposal that is fully compliant with and considered responsive to the requirements of this ITP shall be entitled to receive the Stipend of \$80,000 payable by MDOT to unsuccessful Proposers (or in case of a consortium to any member of the consortium as provided under the section 4.1.4 of this ITP), subject to and on the terms and conditions described in this Section 3.15 (Stipend) and the Stipend Agreement. No Proposer shall be entitled to reimbursement for any of its costs in connection with this ITP except as specified in this Section 3.15 (Stipend). The Stipend is not intended to be compensation, full or partial, to such Proposer for the cost of preparing a Proposal.

Subject to and on the terms and conditions described in this Section 3.15 (Stipend) and the Stipend Agreement, if MDOT cancels this procurement:

- (a) Prior to selection of a Preferred Proposer, all Proposers shall be eligible to receive the Stipend provided that they submitted a Proposal that is fully compliant with and considered responsive to the requirements of this ITP; or
- (b) After selection of a Preferred Proposer but prior to Commercial and Financial Close:
  - (i) All Proposers (including the Preferred Proposer) shall be eligible to receive the Stipend provided that they submitted a Proposal that is fully compliant with and considered responsive to the requirements of this ITP; and
  - (ii) The Preferred Proposer shall be eligible to receive a Preferred Proposer Stipend on a reimbursement basis in accordance with the following table:

<b>Timing of Project Cancellation by MDOT</b>	<b>Requirements for entitlement to Preferred Proposer Stipend</b>	<b>Maximum payment to be made by MDOT</b>
0-2 weeks from date of selection of Preferred Proposer	Submission of evidence of completing activities of at least \$20,000 towards achieving Commercial and Financial Close since the date of selection as Preferred Proposer	\$20,000
2-4 weeks from date of selection of Preferred Proposer	Submission of evidence of completing activities of at least \$20,000 towards achieving Commercial and Financial Close since the date 2 weeks after selection as Preferred Proposer	\$20,000
4-6 weeks from date of selection of Preferred Proposer	Submission of evidence of completing activities of at least \$20,000 towards achieving Commercial and Financial Close since the date 4 weeks after selection as Preferred Proposer	\$20,000
More than 6 weeks from date of selection of Preferred Proposer	Submission of evidence of completing activities of at least \$20,000 towards achieving Commercial and Financial Close since the date 6 weeks after selection as Preferred Proposer	\$20,000

All Proposers eligible to receive a Stipend shall submit a reasonably detailed invoice for such payment to MDOT in order to receive such payment. The invoice may be submitted:

- (a) Not earlier than ten (10) days after notice of selection is posted on MDOT’s website but not later than thirty (30) days thereafter
- (b) If selection does not occur, not before ten (10) days after cancellation of the procurement; or
- (c) In the case of the preferred Proposer Stipend, no later than 10 days after the time for submission of reimbursement claim by Proposer in the table above MDOT will deliver the Stipend or preferred Proposer Stipend within thirty (30) days of its receipt of an invoice therefor from the relevant Proposer.

**3.15.2 Work Product**

Each Proposer agrees that MDOT shall own and be entitled to use all ideas and work product in this Proposal and all work product that is not required to be returned to the Proposer under this RFP (e.g., written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs, concepts, ideas, technology, techniques, methods, processes, drawings, reports, plans, specifications, and other graphic and visual aids generated by or on behalf of Proposer) received by MDOT prior to the cancellation of the procurement and/or contained in its Proposal, in consideration for MDOT’s agreement to make payment as provided herein and in the Stipend Agreement, without any further compensation or consideration to Proposer.

In accordance with Section 3.5, MDOT will have the right to inform the Preferred Proposer regarding the contents of the other Proposals after notification of the Preferred Proposer, and that the Project Agreement may incorporate the above-described work product, ideas or concepts based thereon.

Upon the Proposer's receipt of payment hereunder, this right shall extend to allow MDOT to use such work product, ideas and concepts in the performance of its functions. Payment of the stipend to a Proposer shall operate as a release and waiver by Proposer of any and all claims challenging the procurement process, award and/or cancellation of the procurement process.

### 3.15.3 Stipend Agreement and Proposal Letter

Proposers accepting the foregoing terms in this Section 3.15 and the Stipend shall acknowledge such acceptance by execution of the Stipend Agreement on or after the date of issuance of this ITP. Once executed, the Stipend Agreement shall constitute the irrevocable election by Proposer to accept the stipend described therein and under this Section 3.15.

### **3.16 Proposer Costs**

The Proposer and the Proposer Team Members shall bear all costs and expenses, except as provided in Section 3.15.1, that are incurred by them relating to any aspect of their participation in this RFP Process, including all costs and expenses related to the Proposer's involvement in:

- (a) The preparation, presentation and submission of its Proposal;
- (b) Attendance at any Proposers Meeting, Commercially Confidential Meeting or any other meeting with MDOT;
- (c) Due diligence and information gathering processes;
- (d) Scheduled Visits or Additional Visits;
- (e) Preparation of responses to questions or requests for information from MDOT;
- (f) Preparation of the Proposer's own RFIs during the clarification process; and
- (g) Negotiations.

MDOT is not liable to pay any costs or expenses of any Proposer or Proposer Team Members, or to reimburse or compensate a Proposer or Proposer Team Members under any circumstances, regardless of the outcome of the RFP Process.

### **3.17 Affordability Guidance**

Based on MDOT estimates, the projected payment for the scope of this work according the specifications provided in the RFP equals \$103.8m over the 15-year term (value in nominal dollars and includes energy payments).

### **3.18 On-Site Early Works Disallowed**

Project Company is not allowed to perform any Project Operations within the Premises prior to Commercial and Financial Close.

### **3.19 Off-Site Early Works**

Manufacturing of materials or products, or performance of other off-site preparatory work may be performed at Project Company's sole risk and discretion. If required, MDOT inspection, certification or similar participation in an off-site activity will be subject to resource availability prior to Commercial and Financial Close. Project Company accepts all risks associated with such limitations.

## **SECTION 4 REQUIREMENTS FOR PROPOSAL SUBMITTAL AND ACCEPTANCE**

### **4.1 General Requirements of the Proposal**

#### 4.1.1 Proposal Submission Requirements

Each Proposal must include a technical proposal (the "**Technical Proposal**") and a financial proposal (the "**Financial Proposal**"); each meeting the respective requirements set forth in Exhibit D –

Technical Proposal Submission Requirements, and Exhibit E – Financial Proposal Submission Requirements.

Each Proposer shall submit its Proposal on or prior to the proposal due date indicated on the RFP Schedule (the “**Proposal Due Date**”).

#### 4.1.2 Signatures Required

A Proposal Letter must be submitted and signed by each Proposer on Form C - *Proposal Letter*.

#### 4.1.3 MDOT’s Rights in Work Product

All Work Product Documents, including Proposals, submitted by a Proposer in response to this ITP (collectively, the “**Work Product Documents**”) will become the property of MDOT upon delivery to the MDOT.

#### 4.1.4 Registration Requirement for Payment of Stipend

The State of Michigan has developed a fully integrated financial management system with one master Consultant/Payee file to be used statewide by all State departments and agencies. In order to receive payments, Proposer (in case Proposer is a consortium, any of the members of the consortium can fulfill the obligations under this section 4.1.1 and receive the payment of the Stipend on behalf of the consortium) must be in our master Consultant/Payee file. The Project Company must register at [www.mi.gov/cpexpress](http://www.mi.gov/cpexpress). To ensure this process is completed, new companies must provide proof of registration and a copy of their Request for Taxpayer Identification Number and Certification Form (W-9). Current companies need only submit a W-9. To complete the registration process, you will need to know the National Institute of Government Purchasing (NIGP) commodity/service code(s) for the service classification(s) for which you are applying.

These codes are listed on the Department of Management, Technology and Budget website. Completion of the State of Michigan Consultant/Payee Registration process does not guarantee you will receive contracts with the State of Michigan. The Proposer must also submit form 5100J, Consultant Data and Signature Sheet. Additional information may also be required from the Proposer to be awarded a contract.

### **4.2 Requirements to Submit a Compliant Proposal**

If the Proposal does not fully comply with the instructions and rules contained in this ITP, including complying with and completing all the Exhibits and Forms, it may be considered non-compliant and the Proposer will be ineligible to receive the Stipend.

If a Proposal is deemed non-compliant, MDOT may disqualify the Proposal from further consideration. Each Proposer, by submittal of its Proposal, is deemed to have agreed to the foregoing.

Each Proposal must be submitted in the format which is specified in this ITP.

In addition, any revisions to, or the replacement of, the Proposal already submitted to MDOT may not be submitted unless expressly approved or requested by MDOT in writing.

Without limiting the other submission requirements set forth in this ITP, a Proposal may be considered non-compliant and may be disqualified from the RFP Process for any of the following reasons:

- (a) The Proposer fails to properly identify a Proposal or any portion thereof;
- (b) The Proposal is submitted in a hard copy or in an electronic format other than as specified in this ITP;
- (c) The Proposal Letter is improperly signed;

- (d) The Proposal Security is not provided in accordance with this ITP;
- (e) Any part of the Proposal or required information is missing from the Proposal package and/or otherwise does not meet the Proposal submittal requirements of this Section 4;
- (f) MDOT determines that the Proposal contains irregularities that make the Proposal incomplete, indefinite or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, items not required by this ITP or unauthorized additions; or
- (g) The Proposal is noncompliant with any other instructions, requirements, terms or conditions of this ITP for any reason.

MDOT reserves the right in its sole discretion to seek or obtain data from any source that has the potential to improve the understanding and evaluation of Proposals received in response to this RFP; seek and receive clarifications of Proposals; or waive any deficiencies irregularities or technicalities in considering and evaluating Proposals.

### **4.3 Proposal Content, Format and Organization**

#### **4.3.1 Proposal Content**

The term “**Proposal**” means a Proposer’s proposal, in its entirety, in response to this ITP. A Preferred Proposer, if and when selected, shall be granted an award of the Project pursuant to ITP Section 8.1. Each Proposer acknowledges and agrees that it is solely at risk for its Proposal, and MDOT will bear no obligation or liability whatsoever for any action, inaction or change in circumstances that may affect the Project, including any changes to Applicable Law, occurring after the Proposal Due Date.

Each Proposer shall be required to submit a Proposal which:

- (a) does not include any reservation, qualification, assumption or condition that contemplates a deviation from any of the Technical Proposal Submission Requirements, Financial Proposal Submission Requirements or the terms of the final Project Agreement version issued by MDOT prior to the Proposal Due Date;
- (b) Demonstrates full compliance with the requirements (including all documents, forms and other submissions) set forth in the following:
  - (i) Exhibit D (Technical Proposal Submission Requirements) (collectively, the “**Technical Proposal**”);
  - (ii) Exhibit E (Financial Proposal Submission Requirements) (collectively, the “**Financial Proposal**”); and
  - (iii) Exhibit H (Current Federal Wage Decision)

To facilitate the review and evaluation of each of the Technical Proposal and the Financial Proposal by MDOT, the Proposer must include, with the information required by the submission requirements for each Proposal, the corresponding headings and numbers used in the Technical Proposal Submission Requirements and the Financial Proposal Submission Requirements, as applicable.

#### **4.3.2 Proposal Format and Organization**

Each binder of the Proposal (or any portion thereof required to be submitted on the Proposal Due Date must be labeled to indicate its contents and will include tabs and dividers as appropriate to facilitate MDOT’s review of its contents. The original Technical Proposal and Financial Proposal must be clearly identified as “ORIGINAL.” Each copy of the Proposal must also be sequentially numbered (e.g., copy 1 of 10, copy 2 of 10, etc.), bound, and labeled as a “COPY.”

Any electronic copy of a Proposal (or portion thereof) must be provided in searchable PDF format (on a USB flash drive for the purpose of Proposal Technical Commitments) and must also be provided in electronic searchable PDF form submitted through the Data Room.

Each Proposal shall contain concise written material and drawings, enabling a clear understanding and evaluation of the capabilities of Proposer and the characteristics and benefits of the Proposal. Legibility, clarity, and completeness of each portion of a Proposal are essential.

Proposals shall be organized and presented in accordance with the following requirements:

- (a) Technical Proposal – Each Proposer shall deliver to MDOT on the Proposal Due Date:
  - (i) One (1) unbound, double-sided, reproducible, original hard copy of its Technical Proposal;
  - (ii) Ten (10) bound double-sided copies thereof (with the exception of drawings, appendices, exhibits or other pertinent data which may require a paper size larger than 8½" x 11", of which only five (5) bound, single sided copies are required);
  - (iii) Ten (10) electronic copies thereof, each on separate USB flash drives.

All of the documents comprising the original copy of the Technical Proposal, together with the electronic copies thereof, shall be packaged in one or more sealed containers labeled: "[Proposer Name]: Original Technical Proposal for The Delivery of Freeway Lighting as a Public-Private Partnership Project." Each of the containers that include the required hard copy duplicates of the Technical Proposal, together with the electronic copies thereof on USB flash drives, must be sealed and labeled: "[Proposer Name]: Copies of the Technical Proposal for The Delivery of Freeway Lighting as a Public-Private Partnership Project."

- (b) Financial Proposal – Each Proposer shall deliver to MDOT on the Proposal Due Date:
  - (i) One (1) unbound, double-sided, reproducible, original hard copy of its Financial Proposal (or portions thereof, as applicable) and one (1) USB flash drive containing an electronic version of the Proposer's Financial Model in native format, both labeled as the "Financial Proposal ORIGINAL";
  - (ii) Two (2) bound double-sided copies of the Financial Proposal;
  - (iii) Ten (10) USB flash drives each containing an electronic PDF copy of the Financial Proposal and the Financial Model in native format.

The Financial Proposal must be organized in binders and shall be packaged in one or more sealed containers labeled: "[Proposer Name]: Original Financial Proposal for The Delivery of Freeway Lighting as a Public-Private Partnership Project."

The Proposer assumes the risk of errors, omissions, defects and deficiencies in its Financial Model. The Proposer shall deliver to MDOT a letter from its lenders, or its CFO, or its CEO or its investment committee, as applicable, affirming that the assumptions and logic used within the Financial Model are materially consistent with the project's documentations; and that the Service Payments were sized consistently with Schedule 3 - Payment Mechanism of the Project Agreement.

#### 4.3.3 Proposal Security

As security for its commitment to enter into the Project Agreement in accordance with its Proposal Technical Commitments if it becomes the Preferred Proposer, each Proposer shall submit to MDOT security in the form of Form I (the "Proposal Security"). The Proposer shall provide as part of its Proposal one original copy of the Proposal Security and three certified copies of the Proposal Security enclosed in a single envelope labeled "[Proposer Name]: Proposal Security for the Delivery

of Freeway Lighting as a Public-Private Partnership Project." The original of the Proposal Security shall be stamped "original."

Each Proposer shall provide Proposal Security in an amount equal to \$750,000. The Proposer may submit more than one demand guarantee as its Proposal Security; provided that the amount of all such Proposal Securities will equal \$750,000 in the aggregate.

The Proposal Security shall be issued by an Eligible Security Issuer, and the Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. At any time following the Proposer's submission of its Proposal Security to MDOT, if any issuer thereof shall fail to be an Eligible Security Issuer, the Proposer shall promptly after becoming aware of it notify MDOT in writing of such change, and within 10 days of such notice, deliver to MDOT a new Proposal Security from a replacement Eligible Security Issuer. Upon MDOT's receipt of such replacement Proposal Security, MDOT shall promptly return the replaced Proposal Security to the Proposer.

The Proposal Security shall remain valid for 180 days from the Proposal Due Date.

#### 4.3.4 Forfeiture of Proposal Security

By submitting its Proposal, each Proposer understands and agrees that MDOT shall be entitled to draw on such Proposer's Proposal Security in its entirety if any of the following events occurs:

- (a) The Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet one or more commitments made in its Proposal;
- (b) Following notification by MDOT of the Proposer that such Proposer is the Preferred Proposer,
  - (i) the Preferred Proposer fails to negotiate in good faith as expressly defined in Section 8.2, or
  - (ii) the Preferred Proposer fails to provide the documents as, when, and to the extent required under, or satisfy the conditions set forth in, Section 9.2;
- (c) Commercial and Financial Close does not occur by the Commercial and Financial Close Deadline, or as it may have been extended pursuant to Section 10 – Reserved Rights of this ITP; and
  - (i) the Proposer has not satisfied each of the Proposer Conditions Precedent to Commercial and Financial Close on or before the Commercial and Financial Close Deadline, and
  - (ii) the failure of the Commercial and Financial Close to occur by the Commercial and Financial Close Deadline is attributable to either:
    - (A) any action or omission of the Proposer, or
    - (B) the Proposer failing to honor any commitment made in its Proposal; or
- (d) the Security Provider becomes ineligible and Proposer fails to notify, after becoming aware of it, MDOT of the ineligibility of the issuer of the Proposal Security or fails to deliver replacement Proposal Security, if applicable, in each case in accordance with Section 4.3.3, the Proposer fails to deliver replacement Proposal Security pursuant to Section 4.3.3 five days prior to the expiration of the Proposal Security then in effect.

#### 4.3.5 Return of Proposal Security to unsuccessful Proposers

Except for any Proposal Security which has been forfeited, the Proposal Security will be returned to the respective unsuccessful Proposers upon the earliest of:

- (a) Expiry of the Proposal Validity Period, if extended;

- (b) Ten (10) Business Days following Commercial and Financial Close; or
- (c) Ten (10) Business Days following cancellation of the procurement by MDOT.

#### 4.3.6 Market Interest Rate Adjustment

Except with respect to a financing transaction relating to a Lender commitment identified in Proposer's plan of finance in respect of the Project that offers a fixed interest rate through the Proposal Validity Period with no change in underlying interest rate, MDOT will bear the risk and have the benefit of 100% of the changes in the applicable Benchmark Rate(s) for the period between the date such rates are provided to MDOT by the Proposer in accordance with the RFP Schedule and ending on the earlier of Commercial and Financial Close Deadline or the date on which the Benchmark Rate becomes fixed, or as it may have been extended, pursuant to Section 8.2. MDOT will not provide protection for any other type of financing instrument included in a Proposer's Financial Model.

On the Commercial and Financial Close Date, the Proposer shall update the Financial Model submitted at the time of the Proposal based only on changes to the applicable Benchmark Rate(s). The Financial Model shall then be solved for Adjusted Service Payments such that Base Case Equity IRR remains unchanged compared to the Base Case Equity IRR in the model submitted at the time of the Proposal.

#### 4.3.7 Conflict or Inconsistency in Copies of Proposals

If there is any conflict or inconsistency between the content of the original hard copy of a Proposal (or a portion thereof) and a copy (whether electronic or hard copy) of the Proposal, the original hard copy shall prevail over the copy and MDOT will evaluate the Proposal (or portion thereof) based on the original hard copy content.

In the case of each Proposer's Financial Model, if there is any conflict or inconsistency between the content of different electronic copies thereof, the electronic copy contained on the USB flash drive labeled as the "ORIGINAL" shall prevail over other electronic copies, and MDOT will evaluate the Financial Model (or portion thereof) based on the content of the "ORIGINAL" USB flash drive.

#### **4.4 Proposal Delivery – Due Dates and Location**

A Proposal shall be delivered in sealed containers no later than 2:00 P.M. prevailing Eastern Time on the Proposal Due Date, as specified in the RFP Schedule.

Each Proposal shall be delivered to the following address:

MDOT, Innovative Contracting Unit  
Charlie Stein, Project Manager  
425 W. Ottawa Street  
P. O. Box 30050  
Mail Code: B220  
Lansing, MI 48909  
E-Mail: [steinc@michigan.gov](mailto:steinc@michigan.gov)

MDOT may reject any late Proposals without consideration or evaluation.

#### **4.5 Currency**

All required pricing, revenue and cost information shall be provided in US\$ currency only. Where pricing is to be provided in 2015 dollars, such pricing shall be as of the Proposal Due Date.

## **SECTION 5 PROPOSAL SUBMISSION, VALIDITY AND WITHDRAWAL**

### **5.1 Submission of Proposal**

Each Proposer shall submit its Proposal before the Proposal Due Date. For the purposes of the RFP Process, the determination of whether the Proposal is submitted before the Proposal Due Date shall be based on the time and date stamp the Proposer must ensure it receives from MDOT at the address for submission set out in the Section 4.4. A Proposal received after the Proposal Due Date, in each case as documented by the time and date stamp, shall be returned unopened to the sender.

Proposers shall submit their Proposals by sending them by pre-paid courier or hand delivery to MDOT. It is the sole responsibility of the Proposer to ensure that the Proposal is received by MDOT prior to the Proposal Due Date and to ensure it receives a date and time stamp receipt from MDOT confirming the timely delivery of the Proposal. MDOT will not accept Proposals delivered by electronic mail.

Proposers shall provide such number and type of hard and electronic copies of Proposals as specified in Section 4.3.2.

### **5.2 Modification of Proposals**

A Proposer may modify its Proposal in writing prior to the specified time on the Proposal Due Date. The modification shall conform in all respects to the requirements for submission of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be sequentially numbered so MDOT can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms. Line item changes will not be accepted. Proposer shall deliver any such modification(s) in the types and manner described in Article 4. No facsimile or other electronically transmitted modifications will be permitted.

### **5.3 Withdrawal and Validity of Proposals**

A Proposer may withdraw its Proposal only by giving written notice before the Proposal Due Date to the Contact Person. MDOT will return, unopened, a Proposal that has been withdrawn in accordance with this ITP Section 5.2. Any proposal withdrawn will not be considered responsive and will be considered ineligible to receive a Stipend.

All Proposals are valid for a period of 180 days after the Proposal Due Date. No Proposer shall withdraw its Proposal within this 180-day period, unless notified by MDOT that:

- (a) No Project Agreement for the Project will be awarded by MDOT pursuant to the RFP;
- (b) MDOT has awarded the Project Agreement to another Proposer, and MDOT has received the executed Project Agreement and all other required documents from Proposer;
- (c) MDOT does not intend to award the Project Agreement to the Proposer; or
- (d) The Proposer is not notified during the 180-day period that MDOT has selected the Proposer as the Preferred Proposer to enter into negotiations of the Project Agreement.

Any Proposer may elect, in its sole discretion, to extend the validity of its Proposal beyond the 180-day period set forth above.

Notwithstanding the foregoing, if a Proposer's commitment for a Bank Debt Financing or Private Placement expires on or after 120 days after the Proposal Due Date but before Commercial and Financial Close, then:

- (a) The Proposer shall conduct negotiations with the Core Lender(s) and any other members of the lending group from whom Proposer has obtained commitments to renew or extend the

- Core Lender(s)' commitments to a date no earlier than 180 days after the Proposal Due Date; and
- (b) The Proposer shall be entitled to the risk sharing and relief set forth in Section 4.3.6 of this ITP for the period commencing on the date that is 120 days after the Proposal Due Date through and until the earlier of:
- (i) Commercial and Financial Close; or
  - (ii) 180 days after the Proposal Due Date.

If Commercial and Financial Close is achieved, the provisions of Section 4.3.6 of the ITP shall apply. If the sole reason that Commercial and Financial Close has not occurred within the 120-day commitment period is due to an event set forth under Section 9.2.2 and Preferred Proposer has otherwise complied with all of its obligations under this paragraph within the 180-day Proposal validity period, Section 9.2.4(c) shall apply.

## **SECTION 6 EVALUATION OF PROPOSALS**

### **6.1 Evaluation Criteria**

MDOT's goal in the evaluation process is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable rules and requirements governing this procurement.

#### **6.1.1 Technical Evaluation Criteria (20 points):**

The evaluation criteria for the Technical Proposal are summarized below and described in detail in Exhibit D - Technical Proposal Submission Requirements:

- (a) Project Management and Execution Plan
- (b) Improved Illumination System Design
- (c) D&C Work Plan
- (d) Operations and Maintenance Plan

#### **6.1.2 Financial Evaluation Criteria (80 points):**

The evaluation criteria for the Financial Proposal are summarized below and described in detail in Exhibit E - Finance Proposal Submission Requirements:

- (a) Price – The Proposer shall provide the proposed Service Payment in accordance with Schedule 3 – Payment Mechanism to the Project Agreement and use the table in the format as shown in the Appendix B of Schedule 3 – Payment Mechanism. For the calculation of the inflated portion of the Availability Payments, the Proposer has to assume an annual inflation rate of 2.5% applied in accordance with the Project Agreement. For any partial period (annual or otherwise) to which the annual inflation rate is applied, the inflation rate will be a fraction of the annual inflation rate corresponding to the actual number of days in the partial period divided by 365. The actual Service Payments made to the Proposer during the O&M term will be calculated based on the Cumulative Annual Escalation Rate, per Schedule 1 of the Project Agreement. The lowest total net present value of the Total MDOT Payments (Service Payments plus MDOT's Energy Payments) using the Excel XNPV formula and assuming:
- (i) A 5% discount rate;
  - (ii) Using end-of-quarterly period calculations; and
  - (iii) The Commercial and Financial Close Date as the first day of the calculation proposed will receive the maximum financial score (or 80 points).

- The financial score of the other bidders will be equal to the maximum financial score multiplied by a fraction where the numerator is lowest net present value of total MDOT Payments proposed by any of the Proposers and the denominator is the net present value of total MDOT Payments proposed by the Proposer for whom the financial score is calculated.
- (b) Description of Financing Plan – The Proposer shall provide sources and uses of funds during the construction and operations period, rationale for choosing funding approach, and indicative timelines for commercial and financial close and substantial completion.
  - (c) Funding Sources - The Proposer shall provide a detailed financial plan setting out how the project will be funded at each stage.
  - (d) Financial Capacity of Proposer - The Proposer shall demonstrate its financial soundness and stability to deliver the requirements of the project, including its equity investment.

Items (b) through (d) above will be evaluated on a pass/fail basis and (a) will account for 100% of the financial score.

## **6.2 Steps in the Evaluation Process**

### **6.2.1 Step 1 – Compliance of Proposals**

In Step 1, MDOT will open and review the contents of each Proposal to assess whether it is in compliance with the terms and conditions of the ITP, including whether all documents required to be submitted have been appropriately submitted.

If, in the sole discretion of MDOT, a Proposal does not comply with the requirements set out in the ITP, MDOT may, in their sole discretion, without liability, cost or penalty, eliminate the Proposal and the Proposal shall not be given any further consideration.

For purposes of this RFP, “comply” and “compliance” mean that the Proposal conforms to the requirements of the RFP without material deviation. A “material deviation” in a Proposal is any failure to comply with an RFP Document requirement that, in the sole discretion of MDOT:

- (a) Impedes, in any material way, the ability of MDOT to evaluate the Proposal;
- (b) Affects MDOT’s ability to enforce the Proposer’s obligations pursuant to the RFP; or
- (c) Constitutes an attempt by the Proposer to revise MDOT’s or the Proposer’s rights or obligations under the RFP in a way not permitted by this RFP.

A Proposer’s submission of a complete but poor quality Proposal shall not be considered a failure to comply but may affect the Proposer’s evaluation score.

### **6.2.2 Step 2 – Review of the Proposal Submission Form**

In Step 2, MDOT shall review the Proposal Submission Form to:

- (a) Ensure that the form has been properly completed and signed;
- (b) Ensure that there have been no changes to the Proposer or Proposer Team Members from their Prequalification Stage submissions, except for changes that have been approved by MDOT in accordance with this ITP; and
- (c) Assess the Conflict of Interest and Confidential Information

### **6.2.3 Step 3 – Pass/Fail Review of the Financial Submission**

Sections 2.2-2.4 of Exhibit E, of the Financial Submission will be evaluated on a Pass/Fail basis.

If, in the sole discretion of MDOT, a Proposal does not comply with the Pass/Fail requirements set out in the ITP, MDOT may, in their sole discretion, without liability, cost or penalty, eliminate the Proposal and the Proposal shall not be given any further consideration.

#### 6.2.4 Step 4 – Review and Scoring of the Technical Submission

The Technical Submission will be evaluated and scored in accordance with Section 6.1.1 of this ITP.

#### 6.2.5 Step 5 – Review and Scoring of the Financial Submission

The Financial Submission will be evaluated and scored in accordance with Section 6.1.2 of this ITP.

#### 6.2.6 Step 6 – Ranking the Proposers

In Step 5, the Evaluation Committee shall rank only those Proposers that have met all requirements in Steps 1 through 4 and shall base the ranking on the Final Proposal Score.

In the event of a tie in the Final Proposal Score between two Proposers, MDOT may, in their sole discretion, give the higher ranking to the Proposer with the higher Financial Score.

### 6.3 **Requests for Clarification**

MDOT may, at any time, issue requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify certain aspects of its Proposal. Proposers shall respond to any such requests within three Business Days from receipt of the request (or within such other time as is specified by MDOT in any clarification or additional information soliciting correspondence). The scope, length and topics to be addressed in clarifications shall be prescribed by, and subject to the discretion of, MDOT.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

### 6.4 **Requests for Proposal Revisions**

MDOT may, at any time after receipt of Proposals and prior to award and execution of the Project Agreement, determine that it is appropriate to request changes to the Proposals (“**Proposal Revisions**”). Only Proposers that submitted responsive Proposals will be permitted to submit Proposal Revisions. If Proposal Revisions are requested, MDOT will follow the procedures for revised proposals described in Title 23 CFR Part 636. MDOT may request Proposal Revisions with or without discussions as described therein. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, then the term “Proposal,” as used in the RFP Documents, shall mean the original Proposal, as modified by the Proposal Revision.

Upon receipt of Proposal Revisions, the relevant Evaluation Committees and advisors, as appropriate, will re-evaluate the Proposals as revised, and will revise ratings and value estimates as appropriate following the process described above.

## **SECTION 7 GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS**

### 7.1 **MDOT’s Discretion in Determining Compliance, Scoring and Ranking**

MDOT shall, in their sole discretion, determine:

- (a) Whether a Proposal is compliant with the ITP;
- (b) Whether a failure to comply constitutes a material deviation;
- (c) The Final Proposal Score of a Proposal;
- (d) The rankings of the Proposals; and
- (e) Whether a Proposal or a Proposer,
  - (i) is disqualified; or
  - (ii) will cease to be considered in the evaluation process.

MDOT's discretion in determining compliance, scores, ranking and disqualification of the Proposers and their Proposal is not limited or restricted in any way by the fact that a prequalification process preceded this RFP Process.

## **7.2 Disqualification**

MDOT may, in its sole discretion, disqualify a Proposal or reverse their decision to make an award (even if the award has already been made to a Preferred Proposer under this RFP) at any time prior to Commercial and Financial Close with respect to the Preferred Proposer and to the remaining Proposers, if:

- (a) The Proposal is determined to be noncompliant;
- (b) The Proposer fails to cooperate in any attempt by MDOT to verify any information provided by the Proposer in its Proposal;
- (c) The Proposer contravenes Section 3.5;
- (d) The Proposer fails to comply with Applicable Law;
- (e) The Proposal contains false or misleading information or a misrepresentation;
- (f) The Proposal, in the opinion of MDOT, reveals a material Conflict of Interest as described in Section 3.14;
- (g) If the Proposer or a Proposer Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proposers or its Proposer Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proposer's Proposal or otherwise contravened Section 3.7; or
- (h) The Proposer has committed a material breach of any existing agreement between the Proposer and MDOT.

## **SECTION 8 PROPOSER OBLIGATIONS; PREFERRED PROPOSER OBLIGATIONS**

### **8.1 Preferred Proposer Selection and Award**

Based on the Final Proposal Scores, MDOT may, in their sole discretion, at any time prior to the expiration of the Proposal Validity Period (180 days after proposal acceptance) identify the highest ranked Proposer as the Preferred Proposer and accept the Proposer's Proposal as submitted.

### **8.2 Preferred Proposer Obligations**

The Preferred Proposer shall:

- (a) Achieve Commercial and Financial Close:
  - (i) prior to or on the Commercial and Financial Deadline; or
  - (ii) if the Commercial and Financial Close Deadline has passed and MDOT has given its consent, prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable) based on the Project Agreement in substantially the same form and content as finalized prior to the Proposal Due Date or on the Project Agreement as revised and agreed to by the Proposer and MDOT;
- (b) Execute the Project Agreement, subject only to revision in respect of the following:
  - (i) Minor changes, additions and modifications necessary to create a legally complete and binding agreement;
  - (ii) Changes, additions and modifications to those provisions which require:

- (A) the insertion or deletion of information relating to the Preferred Proposer's corporate and funding structure which are not inconsistent with the principles set out in the Project Agreement; or
- (B) the insertion or deletion of information or the modification of provisions of the Project Agreement required in order to reflect accurately the nature of the Preferred Proposer's relationships with its principal subcontractors.

MDOT may proceed with the Preferred Proposer to finalize the Project Documents. By submitting its Proposal, each Proposer commits to enter into the form of Project Documents included in the RFP, without variation except to fill in blanks and include information that the form of PA indicates is required from the Proposal; provided, however, that, at MDOT's request, the Preferred Proposer shall negotiate in good faith with MDOT regarding any other aspect of the Project Documents; provided that neither MDOT nor the Preferred Proposer shall negotiate any matter (or be required to agree to any matter) that is inconsistent with this ITP.

If MDOT elects to negotiate and finalize the Project Documents with the Preferred Proposer and a Project Agreement satisfactory to MDOT, in its sole discretion, cannot be negotiated and finalized with the Preferred Proposer, MDOT may formally suspend or end negotiations and finalization with that Preferred Proposer.

The Preferred Proposer will be deemed to have failed to engage in good faith negotiations with MDOT and shall forfeit its Proposal Security and will not be entitled to any Stipend if the Preferred Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with MDOT or insists upon terms or conditions for any documents to be negotiated or provided by the Project Company hereunder that are inconsistent with the Project Documents.

Within fifteen (15) days after MDOT announces the Preferred Proposer, the Preferred Proposer shall provide to the MDOT Contact Person an anticipated schedule for achieving the Commercial and Financial Close milestone dates:

- (a) Commencement and completion of financing documentation; and
- (b) Receipt of an indicative rating(s) from rating agencies (if applicable) or an underwriting support letter (assuming the letter provides sufficient detail to support the credit worthiness of the loan); and
- (c) Final pricing of the financing, for review and approval by MDOT, acting reasonably (the "Financing Schedule").

Parties may agree to extend one or more of the dates identified in the Financing Schedule so long as the extension(s) do not impact the Commercial and Financial Close Deadline.

The Preferred Proposer shall provide access and shall promptly make available to MDOT and their Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by MDOT from time to time in connection with MDOT's due diligence investigations. The Preferred Proposer shall provide to MDOT within three business days (or another period established by mutual written agreement), final versions of all documents required to be delivered by the Preferred Proposer in accordance with this ITP, together with such other documentation as MDOT may reasonably request from time to time.

## **SECTION 9 AWARD, EXECUTION, COMMERCIAL & FINANCIAL CLOSE DEADLINE**

### **9.1 Continuation of Proposal Security**

- (a) As a condition precedent to being announced Preferred Proposer, the relevant Proposer agrees that the Proposal Security will remain in full force and effect as security for the

Proposer's performance of its obligations to achieve Commercial and Financial Close.

- (b) The Proposal Security for the Preferred Proposer shall be returned at such time as:
  - (i) the Preferred Proposer has satisfied all conditions set forth in Section 9.2;
  - (ii) the Proposal Validity Period, as extended, has expired; or
  - (iii) MDOT cancels the procurement.

## **9.2 Conditions Precedent to Commercial and Financial Close**

### **9.2.1 Proposer Conditions Precedent**

The occurrence of Commercial and Financial Close is subject to the fulfillment of the Project Conditions Precedent by Proposer (or waiver of such Proposer Conditions Precedent by MDOT).

The Proposer must provide MDOT with evidence and documentation relevant to the satisfaction of each Condition Precedent in advance and with sufficient time for MDOT to review and approve such evidence of documentation. MDOT shall have 7 Business Days from receipt to review and respond to any initial submittals of evidence and documentation relevant to the satisfaction of each Condition Precedent and 4 Business Days to review and respond to subsequent submittals of evidence and documentation relevant to the satisfaction of each Condition Precedent.

#### **(a) MDOT Project Documents**

Delivery of counterparts of each of the Project Documents to be executed by MDOT that have been executed by the relevant parties to the documents (other than MDOT).

#### **(b) Other Project Documents**

Delivery to MDOT in accordance with the Submittal Requirements drafts of those proposed initial Financing Documents that will contain the material commercial terms relating to the initial Project Debt not later than ten (10) Business Days prior to the proposed date for Commercial and Financial Close.

#### **(c) Delivery to MDOT of copies of each of the Project Documents to which MDOT is not a party that have been executed by the relevant parties to the documents.**

#### **(d) Delivery to MDOT of a certificate of the Project Company that all conditions precedent to the Financing Document coming into force and all conditions precedent to funding and drawdown of the facilities for the Project have been satisfied (or waived in accordance with their terms) other than the giving of the MDOT Notice under Section 9.2.3.**

#### **(e) Delivery to MDOT of all Permits, Licenses and Approvals that will be immediately necessary for the D&C Works (excluding the NEPA Documents) following Commercial and Financial Close.**

#### **(f) Project Management Plan**

Delivery to MDOT of the aspects of the Project Management Plan meeting the requirements of Article 3 (Project Management Plan) of the General Technical Provisions reviewed and approved in accordance with the Submittal Requirements.

#### **(g) Insurance**

Delivery to MDOT of a certificate from an insurance broker certifying that all insurances required to be effected and maintained in accordance with the Project Agreement in connection with the Project Operations to be performed during the D&C Term (whether MDOT is required to be an insured or not) are in force and effect, and such evidence as is necessary to demonstrate the compliance of each such policy with the requirements of the Project Agreement.

(h) Financial Model

Delivery to MDOT of unrestricted electronic version of the Financial Model, which version incorporates any amendments from the Financial Model (if any) agreed by the Parties by the Commercial and Financial Close Date, together with the books and documents setting forth all assumptions, calculations and methodology used in the preparation of the Financial Model and any other documentation necessary or reasonably requested (in a timely fashion to allow for the production of any such documentation prior to the Commercial and Financial Deadline) by MDOT to operate the Financial Model.

(i) Proposer Opinions

Delivery to MDOT of an opinion or opinions from counsel for Proposer, which counsel shall be approved by MDOT in its reasonable discretion (which may be in-house or outside counsel, or a combination thereof, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the state of the formation/organization of the Person for which the opinion is rendered (i.e., Proposer, joint venture member, etc.) and the qualification to do business in Michigan and the enforceability opinion shall be provided by an attorney licensed in the State, in substantially the form of Schedule, provided, however, that:

- (i) the organization/authorization/execution opinion for a Person formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware but who will issue an opinion under Delaware law; and
- (ii) opinions from multiple legal counsel are acceptable as long as the letters in the aggregate provide the opinions required in Form G to this ITP.

(j) Equity Investment

- (i) Delivery to MDOT of evidence to MDOT's reasonable satisfaction that all Equity Letters of Credit as required by the Project Agreement have been issued and are in full force and effect.
- (ii) Delivery to MDOT of evidence from Proposer that the Construction Equity Ratio is greater than or equal to ten percent (10%).

(k) D&C Performance Security

Delivery to MDOT of evidence that the D&C Performance Security has been issued and is in full force and effect.

9.2.2 MDOT Conditions Precedent to the Commercial and Financial Close Date

The occurrence of Commercial and Financial Close is subject to the fulfillment of the following MDOT Conditions Precedent by MDOT (or waiver of such MDOT Conditions Precedent by Proposer).

(a) MDOT Project Documents

Delivery to Proposer by MDOT of each of the Project Documents to be executed by MDOT that have been executed by MDOT.

(b) Attorney General Ratification

Delivery to Proposer of evidence that the Office of the Attorney General approves the final form of the Project Agreement.

(c) NEPA Documents

Delivery to Proposer of the NEPA Documents.

9.2.3 Waiver of Conditions Precedent and Satisfaction of Commercial and Financial Close

- (a) A Proposer Condition Precedent is only waived if MDOT gives written notice of the waiver of the Proposer Condition Precedent to the Proposer no later than ten [10] Business Days prior to the Commercial and Financial Close Deadline.
- (b) When the last of the Proposer Conditions Precedent to be satisfied or waived has been satisfied or waived, MDOT shall provide notice confirming that all of the Proposer Conditions Precedent have been satisfied or waived and the date upon which the last of the Conditions Precedent was satisfied or waived.
- (c) A MDOT Condition Precedent is only waived if Proposer gives notice of the waiver of the MDOT Condition Precedent to MDOT.
- (d) When the last of the MDOT Conditions Precedent to be satisfied or waived has been satisfied or waived, Proposer shall provide notice confirming that all of the MDOT Conditions Precedent have been satisfied or waived and the date upon which the last of the MDOT Conditions Precedent was satisfied or waived.

9.2.4 Failure to satisfy Condition Precedent

- (a) Subject to the provisions of Section 4.3.4, if a Proposer Condition Precedent has not been satisfied or waived by the Commercial and Financial Close Deadline, then MDOT may terminate the RFP Process and call on the Proposal Security in accordance with Section 4.3.4(c) and the Proposer will not be entitled to bring any Claim against MDOT arising out of or in connection with:
  - (i) the failure of the Conditions Precedent to be satisfied; or
  - (ii) the termination of the RFP Process or the Project.
- (b) If an MDOT Condition Precedent has not been satisfied or waived by the Commercial and Financial Close Deadline, then:
  - (i) upon Proposer giving not less than 5 Business Days' Notice to MDOT, the Proposer may terminate the RFP Process and the Proposer will be entitled to be paid a Stipend in accordance with Section 3.15 of the ITP and MDOT will immediately release the Proposer's Proposal Security to the Proposer.
  - (ii) Proposer will not otherwise be entitled to bring any Claim against MDOT arising out of or in connection with:
    - (A) the failure of the Conditions Precedent to be satisfied; or
    - (B) the termination of the RFP Process or the Project.

## **SECTION 10 RESERVED RIGHTS**

MDOT may, in their sole discretion:

- (a) Develop the Project in any manner that it deems necessary;
- (b) Reject any or all of the Proposals in full or in part;
- (c) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this ITP;
- (d) Seek and receive clarifications to a Proposal;
- (e) Waive any deficiencies, irregularities or technicalities in considering and evaluating a Proposal, accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;

- (f) Accept any Proposal;
- (g) If only one Proposal is received, elect to accept or reject it;
- (h) Elect to discontinue the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Proposer but before Commercial and Financial Close;
- (i) Develop some or all of the Project itself (including finance some or all of the Project itself);
- (j) Disqualify any Proposer that violates the terms of the ITP;
- (k) Exercise any other right reserved or afforded to MDOT under this ITP and Applicable Law.
- (l) Suspend or terminate negotiations at any time, recommence negotiations with the Preferred Proposer after negotiations have been suspended, elect not to commence Project Agreement negotiations with any responding Proposer, engage in negotiations with other than the highest ranked Proposer;
- (m) Consider information relating to a Proposer or Proposal based on information outside of the Proposal available to the evaluators, including the evaluators' personal experiences or knowledge;
- (n) Modify the procurement process (with appropriate notice to Proposers);
- (o) Offer a Proposer the opportunity to cure its failure to meet required financial qualifications by providing a guaranty (or guaranties) of the Project Agreement by a third party;
- (p) Not issue a notice to proceed after execution of the Project Agreement;
- (q) Alter the RFP Schedule, the RFP Process or any other aspect of this RFP, which for greater certainty, includes the right to schedule Financial Close on the day after Commercial and Financial Close; and
- (r) Cancel this RFP Process and subsequently advertise or call for new submissions for the same or different subject matter of these RFP with the same or different participants.

## **SECTION 11 NOTIFICATION AND DEBRIEFING**

Proposing Teams may request feedback via face-to-face meeting, phone or email after the award of the Project Agreement. Such debriefings will be considered, and may be provided at the discretion of the Contact Person.