

***INTERSTATE-5  
CLARK'S BRANCH TO TUNNEL MILL  
RACE  
DESIGN-BUILD PROJECT  
  
REQUEST FOR QUALIFICATIONS***

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## **1.0 INTRODUCTION AND GENERAL INFORMATION**

This Request for Qualifications (RFQ) seeking a limited number of qualified Proposers, covers the design, construction, and other identified activities for the I-5 Clark's Branch to Tunnel Mill Race Project.

Statements of Qualifications (SOQ) will only be accepted from Proposers intending to provide complete services required under the Contract. Responses from individual engineering, construction, or consultant firms not offering to provide all required services will not be accepted.

This project has been determined to be Environmental Class 2, Categorical Exclusion and the Project falls under the OTIA III Programmatic Agreements and requires utilization of the OTIA III bridge program environmental performance standards. The environmental process is ongoing and is expected to be completed by the Design Builder prior to start of construction. The Design Builder shall complete Part 3, Project Environmental Classification, of the Project Prospectus prior to first construction activity on project. The Project Prospectus, with a draft Part 3, shall be provided with RFP. The final Project scope will include environmental permitting, environmental clearances, and any mitigation that is required by the environmental process.

## **1.1 ABBREVIATIONS AND DEFINITIONS**

This RFQ includes abbreviations and specific defined terms as indicated below.

### **1.1.1 Abbreviations**

AA	Affirmative Action
CFR	Code of Federal Regulations
CS <sup>3</sup>	Context Sensitive and sustainable Solutions
DB	Design-Build
DMWESB	Disadvantaged Business, Minority Business, Women Business, Emerging Small Business Enterprise
EEO	Equal Employment Opportunity
FHWA	Federal Highway Administration, United States Department of Transportation
IA	Independent Assurance
ITP	Instructions To Proposers
JV	Joint Venture
LLC	Limited Liability Company
M.P.	Mile Post
N/A	Not Applicable
NTP	Notice To Proceed
OAR	Oregon Administrative Rules
ODOT	Oregon Department of Transportation
OJT	On-the-Job Training
ORS	Oregon Revised Statutes
PI	Public Information
PSI	Preliminary Site Investigation
QA	Quality Assurance
QC	Quality Control
RFP	Request for Proposals
RFQ	Request for Qualifications
R/W	Right(s)-of-Way

SOQ	Statement of Qualifications
USC	United States Code
US DOT	United States Department of Transportation

**1.1.2 Definitions**

**“Addenda/Addendum”** means supplemental additions, deletions, and modifications to the provisions of the RFQ after the Advertisement date of the RFQ.

**“Advertisement”** means a public announcement inviting prospective Proposers to obtain an RFQ and submit an SOQ. The Advertisement will include a brief description of the Work proposed to be the subject of the procurement, with an announcement where the RFQ may be obtained, the terms and conditions under which SOQs will be received, and such other matters as the Agency may deem advisable to include therein.

**“Affiliate”** means the following:

- A) Any Person which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the following:
  - 1) The Design Builder; or
  - 2) Any other Principal Participant.
  
- B) An Affiliate may also be any Person for which ten percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record, by the following:
  - 1) The Design Builder;
  - 2) Any Principal Participant; or
  - 3) Any Affiliate of the Design Builder under part (A) of this definition.

(For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, by family relationship, or otherwise.)

**“Agency”** means the State of Oregon, acting by and through the Oregon Department of Transportation (ODOT).

**“Agency Project Manager (Agency PM)”** means the engineer representing the Agency and having direct supervision of the administration and execution of the Contract.

**“Clarifications”** means a written or oral exchange of information that takes place between a Proposer and Agency after the receipt of all SOQs during the evaluation process. The purpose of Clarifications is to address minor ambiguities, omissions, errors, or mistakes and clerical revisions in an SOQ.

**“Construction Subcontractor”** means a subcontractor retained by the Design Builder that is involved in the actual construction of the Project.

**“Constructor”** means a Principal Participant or subcontractor retained by the Design Builder that is involved in the actual construction of the Project.

**“Context Sensitive and Sustainable Solutions (CS<sup>3</sup>)”** means transportation solutions for the OTIA III Bridge Delivery Program that reflect social values (community values; cultural, aesthetic, and historic resources; and diversity), maintain safety and mobility, achieve responsible stewardship of the natural environment, support economic prosperity, and optimize long-term performance.

**“Contract”** means the written agreement between the Agency and the Design Builder setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the Work, the furnishing of labor and material, and the basis of payment.

**“Contract Documents”** means the Contract documents identified in the RFP.

**“Deficiency”** means a material failure of an SOQ to meet the Agency’s requirements or a combination of significant Weaknesses in an SOQ that, in the sole judgment of Agency, increases the risk of unsuccessful Contract performance to an unacceptable level.

**“Design-Build”** means a project delivery methodology by which the Agency contracts with a single Person that has responsibility for the design and construction of a project under a single contract with the Agency.

**“Design Builder”** means the Person selected pursuant to the RFP that enters into the Contract with the Agency to design and construct the I-5 Clark’s Branch to Tunnel Mill Race Project (also referred to as the “Design-Build Team”).

**“Designer”** means a Principal Participant, Specialty Subcontractor, or in-house designer that leads the team furnishing or performing the design of the Project.

“Design Professional” means:

- A) An architect who is registered and holds a valid certificate in the practice of architecture in the State of Oregon;
- B) An engineer who is registered and holds a valid certificate in the practice of engineering in the State of Oregon;
- C) A surveyor who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon; and
- D) Such other professional person or entity otherwise registered and holding a valid certificate to provide professional design services in the State of Oregon.

**“Director”** means the Director of the Oregon Department of Transportation.

**“Disadvantaged Business Enterprise (DBE)”** means a for-profit small business concern as defined in 49 Code of Federal Regulations (CFR) Part 26.

**“DMSWEB”** means a Disadvantaged Business Enterprise, Minority Business Enterprise, Women Business Enterprise, and/or Emerging Business Enterprise as certified by the State of Oregon Office of Minority, Women and emerging Small Business.

**“Independent Assurance (IA)”** means activities that are an unbiased and independent (of the Design Builder or Project staff) evaluation of all the sampling and testing procedures, equipment calibration, and qualifications of personnel (Design Builder’s or Agency’s) used in the acceptance program, including the Design Builder’s Quality Control (QC). The IA agent for the Project will be the Agency’s Central Materials Laboratory.

**“Lead Principal Participant”** means the Principal Participant that is designated by the Proposer as having the lead responsibility for managing the Proposer’s organization.

**“Person”** any individual or entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company (LLC), or partnership, or any other entity possessing the legal capacity to contract.

**“Principal Participant”** means any of the following entities:

- A) The Design Builder (or Proposer);
- B) Individual firms, all general partners of a partnership, or JV members (in the case of a JV) of the Design Builder (or Proposer); and/or
- C) All Persons and legal entities holding (directly or indirectly) a 15% or greater interest in the Design Builder (or Proposer).

**“Professional Services”** mean services related to the preparation of plans, Project specifications, and other documents specified in the Contract and required by law to be performed by licensed Design Professionals, as well as services provided by or under the direction of licensed Design Professionals in performance of the Contract.

**“Project”** means the improvements to be designed and constructed by the Design Builder and all other Work product to be provided by the Design Builder in accordance with the Contract Documents.

**“Proposal”** means the offer (in response to an RFP) of the Proposer for the Work, when executed and submitted in the prescribed format and on the prescribed forms.

**“Proposer”** means a Person submitting an SOQ for the Project in response to this RFQ, and if selected for the Short-List, an entity submitting a Proposal.

**“Quality Assurance (QA)”** means all planned and systematic oversight actions by the Agency or the Agency’s Representative necessary to provide confidence that the Design Builder is performing QC in accordance with the quality plan, that all Work complies with the Contract and that all materials incorporated in the Work, all equipment, and all elements of the Work will perform satisfactorily for the purpose intended. Oversight actions may include, but are not limited to, monitoring and verification of design through auditing, spot-checking, and participation in the review of the design and monitoring and verification of construction through auditing and spot inspections at production sites and the Project site, including Verification Sampling and Testing.

Quality Assurance also includes IA, the Agency PM's acceptance, documentation of QA activities, final inspection, and final acceptance.

**“Quality Assurance Program”** means the overall quality program and associated activities including Agency QA, Design Builder QC, the Contract quality requirements, and the Design Builder's quality plan.

**“Quality Control (QC)”** means the total of all activities performed by the Design Builder, Designer, subcontractor, producer, or manufacturer to ensure that the Work meets Contract requirements. For design this includes, but is not limited to, procedures for design quality; checking; design review including reviews for constructability; and review and approval of working plans. For construction this includes, but is not limited to, procedures for materials handling and construction quality; inspection, sampling, and testing of materials, plants, production, and construction; material certifications; calibration and maintenance of equipment; production process control; and monitoring of environmental compliance. Quality Control also includes documentation of all QC design and construction efforts.

**“Quality Control Engineer”** means an independent engineering/testing firm employed by the Design Builder responsible for administering and managing the construction QC inspection, sampling, and testing specified in the Contract Documents. The QC Engineer shall not be owned or controlled by any Principal Participant or by any Construction Subcontractor. The Designer or a firm associated with or subsidiary to the Designer may serve as the QC Engineer, except any Designer who is a Principal Participant or any Designer (or subsidiary of a Designer) that is an Affiliate of any Principal Participant or Construction Subcontractor shall not serve in the capacity of QC Engineer.

**“Quality Control Manager”** means the individual employed by the Design Builder who is responsible for the overall QC program of the Design Builder, including the quality of management, design, and construction.

**“Reference Documents”** means the documents provided with and so designated in the RFP. The Reference Documents, including plans contained therein and/or so designated, are not Contract Documents, and are provided to the Design Builder for informational purposes only.

**“Region”** means one of five geographical subdivisions of the State of Oregon used to designate or identify the location of the proposed Work.

**“Region Manager”** means the manager, acting through the Director, who is delegated the authority and responsibility to execute the total Agency prescribed work plans for his/her respective Region.

**“Request For Proposals”** means a written solicitation issued by the Agency seeking Proposals to be used to identify the Proposer offering the best value to the State of Oregon. The RFP includes the Instructions to Proposers (ITP), Contract Documents, and Reference Documents. This document is issued only to Persons who are on the Short-List.

**“Request For Qualifications”** means the written solicitation issued by the Agency seeking SOQs to be used to identify and short-list the most highly qualified Proposers to receive the RFP for the Project.

**“Short-List”** means the list of those Proposers that have submitted SOQs that the Agency determines, through evaluation of the SOQs, are the most highly qualified Proposers and will be invited to submit Proposals in response to the RFP.

**“Specialty Subcontractor”** means those consultants or subcontractors identified by Proposer/Design Builder to perform Work critical to the success of the Project such as the Designer, QC Engineer, or subcontractor for bridges, retaining structures, pavement, landscaping, or other specialty Work.

**“Statement of Qualifications”** means the information prepared and submitted by a Proposer in response to this RFQ.

**“Verification Sampling and Testing”** means sampling and testing performed to validate the quality of the product. The Agency will perform Verification Sampling and Testing.

**“Weakness”** means a flaw in the SOQ that, in the sole discretion of Agency, increases the risk of unsuccessful Contract performance. A significant Weakness in the SOQ is a flaw that, in the sole discretion of Agency, appreciably increases the risk of unsuccessful Contract performance.

**“Work”** means the furnishing of all labor, material, equipment, and other incidentals necessary to the successful completion of the Project and the carrying out of all the duties and obligations imposed by the Contract.

## 1.2 PROJECT GOALS

The following are the Agency’s goals for the Project:

- A) Minimize impacts to freight mobility within the State by placing a high priority on maintenance of traffic and public safety;
- B) Implement the project in a manner sensitive to the communities and landscape (CS<sup>3</sup>), achieve enhanced environmental performance and comprehensive environmental compliance;
- C) Stimulate Oregon’s economy by maximizing Oregon company participation in delivering the project;
- D) Maximize use of women owned and minority business enterprises;
- E) Proactively engage communities and stakeholders in execution of the project from planning to construction;
- F) Develop and implement an effective quality program to facilitate achievement of program goals; and
- G) Rapid initiation and timely completion of construction.

## 1.3 ROLE OF THE AGENCY

During the various phases of the Project, the Agency and/or the Agency’s Representative is responsible for the following activities:

- A) The appropriate environmental clearances except those specifically assigned to the Design Builder;

- B) Overall program administration;
- C) Preparation of the RFQ and RFP, evaluation of SOQs and Proposals, determination of the Short-List and selection of the Design Builder;
- D) Contract procurement and administration;
- E) Quality Assurance oversight and audit of Design Builder design and construction;
- F) Verification Sampling and Testing and Independent Assurance;
- G) Providing all information and data included in the RFP;
- H) Land acquisition for Rights-of-Way (R/W) and permanent easements; and
- I) Approval and acceptance of Work and payment for Work.

As permitted by law and at the Agency's sole discretion, it may use its consultants in fulfilling the responsibilities noted in this Section 1.3.

**1.4 PROJECT DESCRIPTION, DESIGN BUILDER RESPONSIBILITIES, AND PROJECT STATUS**

*See Appendix A.*

**1.5 PROJECT SCHEDULE**

The anticipated time of Contract execution is the date specified in Section 2.2, with all Work required to carry non-restricted continuous traffic in each direction on permanent replacement Structures no later than October 31, 2006 and Project Completion by July 31, 2007.

*See Section 2.2 for procurement schedule.*

**1.6 CONTRACT TYPE**

The Contract will be a fixed price, DB Contract.

**1.7 PAYMENT AND LIQUIDATED AND/OR GENERAL DAMAGES**

The Contract will provide for periodic payments with 5% retainage. The final 5% of the Contract Amount will be paid upon Final Acceptance of the Project. The form of retainage will be specified in the RFP.

The Contract will provide for liquidated damages relating to failure to meet the specified completion dates.

**1.8 GOVERNING LAW**

The laws of the State of Oregon will govern the procurement and the Contract.

**1.9 QUALITY ASSURANCE/QUALITY CONTROL**

The Design Builder will be required to plan, implement, and provide a QC program for the Work. This program shall be developed by the Design Builder using 23 CFR Part 637 and the ODOT Manual of Field Test Procedures.

The Design Builder's QC program must follow the requirements of 23 CFR Part 637 and the Contract Documents. The Agency will review the Design Builder's program to assure that it meets

guidelines and minimum requirements established by the Agency, but Agency's review of the QC program will not constitute Agency agreement that it meets these criteria. The Design Builder shall maintain ownership of the program, shall be fully responsible for its execution, and shall maintain sole responsibility for the quality and workmanship of the Work.

The Agency will establish and maintain its own QA and/or an independent QA organization to oversee and/or perform quality audits of the Design Builder's management, design, construction and maintenance activities; the Design Builder's QC procedures, Verification Sampling and Testing; and the quality of the final product.

#### **1.10 INSURANCE, BONDING, LICENSING, AND SECURITIES**

The Design Builder shall provide specified insurance, including professional liability insurance covering design. Details of the insurance requirements will be provided in the RFP.

Proposers on the Short-List submitting a Proposal shall provide Proposal bonds or other form of security acceptable to the Agency in the amount shown in Section 4.3.2.2, Table 4.3. The Design Builder will be required to provide performance and payment bonds and/or other security acceptable to the Agency that cover both design services and construction work as provided in the RFP.

Prior to Contract execution, the selected Design Builder and its subconsultants and subcontractors participating in this procurement and/or the Contract must obtain all licenses and take all necessary steps to conduct business in the State of Oregon and perform the Work required under the Contract, including proposing and carrying out contracts, consistent with the laws of the State of Oregon.

The Design Builder may be required to provide a number of other financial commitments, including commitments from Parent company and other guarantors:

#### **1.11 RULES OF CONTACT**

The following rules of contact shall apply during the Contract procurement for the I-5: Clark's Branch to Tunnel Mill Race Project. The rules are designed to promote a fair, unbiased, legally defensible procurement process. The Agency is the single source of information regarding the Contract procurement.

The selection process began upon the date of issuance of this RFQ, and is anticipated to be completed with the execution of the Contract on the date specified in Section 2.2. These rules of contact are now in effect. The specific rules are as follows:

- A) After submittal of SOQs, no Proposer or any of its team members may communicate with another Proposer or members of another Proposer's team with regard to the Project or the SOQs, except that a Proposer may communicate with a subcontractor that is on both its team and another Proposer's team, as long as the subcontractor's work level does not exceed the level of participation deemed an organizational conflict of interest under Section 1.18.1.A, and so long as those Proposers establish a documented, auditable protocol to ensure that the subcontractor will not act as a conduit of information between the teams. (Communications of a general nature among Proposers and team members is allowed during Agency sponsored workshops and meetings.);
- B) Contact between the Proposers and the Agency (questions and responses to questions) shall only be through the Agency's and Proposers' designated representatives;

- C) The Proposers shall not contact Agency employees, including department heads, members of the evaluation teams or selection committee; and any official who will evaluate SOQs regarding the I-5: Clark's Branch to Tunnel Mill Race Project, except through the process identified above;
- D) The Proposers shall not contact stakeholder staff regarding the I-5: Clark's Branch to Tunnel Mill Race Project. Stakeholder staff include employees of the Agency, Douglas County, and Lane County.
- E) Any contact determined to be improper, at the sole discretion of the Agency, may result in disqualification of a Proposer;
- F) In order to facilitate the efficient flow of information during the procurement process, Agency will post information on the Project website and utilize E-mail alerts and notifications, however, any official contact regarding the I-5: Clark's Branch to Tunnel Mill Race Project will be disseminated from the Agency in writing on Agency letterhead and signed by the Agency designated representative; and
- G) The Agency will not be responsible for any oral communication or any other information or contact that occurs outside the official communication process specified herein.

#### **1.12 PROPOSER QUESTIONS**

The Agency will consider questions submitted in writing by Proposers regarding the RFQ, including requests for clarification of RFQ provisions. All such requests must be submitted in writing in the format shown on Form RFQ-C (Appendix C) to the Agency Design-Build Consultant:

**Attn: Michael Murphy**  
**Parsons Brinckerhoff Quade & Douglas, Inc.**  
**200 Hawthorne Avenue SE**  
**Suite D-450**  
**Salem, OR 97301-5289**  
[murphymic@pbworld.com](mailto:murphymic@pbworld.com)

Include an electronic copy of the questions on Form RFQ-C (Appendix C) on floppy disk, CD-ROM, or by E-mail with the written request. Only written requests to the above addressee will be considered. No oral requests will be considered. No requests for additional information or clarification to any other Agency office, consultant, employee, or the Federal Highway Administration (FHWA) will be considered.

Only requests received by 1:00 p.m. (Pacific Daylight Time) on the date specified in Section 2.2 will be addressed. Questions will not be accepted by phone. Only E-mailed, mailed, or faxed inquiries (confirmed by mail by the requesting Proposer) will be accepted.

Questions must include the requestor's name, address, telephone and fax numbers, and the Proposer he/she represents.

A response to questions will be issued without attribution and posted on the Project Web site. An E-mail notification will be sent to all known recipients of this RFQ not later than 10 days prior to the SOQ due date specified in Section 2.2.

**1.13 REQUEST FOR QUALIFICATIONS ADDENDA**

If necessary, the Agency will issue Addenda to modify conditions or requirements of this RFQ to recipients of this RFQ not later than seven days prior to the SOQ due date (or if within seven days prior to the SOQ due date, the SOQ due date shall be revised to accommodate such minimum seven day period).

**1.14 NOTIFICATION OF FIRMS ON THE SHORT-LIST**

Each Proposer will be notified in writing whether or not it has been selected for the Short-List. Notifications may be expected not later than the date specified in Section 2.2.

**1.15 COSTS**

Proposers are solely responsible for all costs and expenses of any nature associated with responding to this RFQ, attending briefing(s), providing supplemental information, and all subsequent costs and expenses (if selected for the Short-List).

**1.16 INELIGIBLE FIRMS**

The Proposer is responsible for being aware of and comply with the requirements of 23 CFR 636.116 and Exhibit A and for including a full disclosure of all potential organizational conflicts of interest as defined therein in its SOQ. In addition, any firm that is rendered ineligible on the SOQ due date specified in Section 2.2 through any state or federal action is ineligible to participate on any Design Build Team.

**1.17 PRE-STATEMENT OF QUALIFICATION INFORMATIONAL MEETINGS**

A pre-SOQ informational meeting for this Project will be held at 1:00 pm on July 22, 2004, at the Transportation Building, Room 122, 355 Capitol St. NE, Salem, OR 97301. Attendance by at least one member of a Proposer team at the pre-SOQ informational meeting is mandatory.

**1.18 ORGANIZATIONAL CONFLICT AND CONFIDENTIALITY REQUIREMENTS**

**1.18.1 Organization**

In addition to the conditions in Section 1.16, each of the following circumstances shall be deemed an organizational conflict of interest disqualifying the affected Proposers:

- A) Participation by any of the following Persons on more than one Proposer's team: a Principal Participant, Designer, subconsultant responsible for performing more than 15% of the design, or subcontractor responsible for performing more than 20% of the construction; or
- B) Participation of an Affiliate of any Person identified in clause A) above on another Proposer's team;

All Proposers affected by an actual conflict of interest will be disqualified, even if the Person or Affiliate causing the conflict is intended to have a different or lesser role than that described above. Firms serving solely as a QC Engineer, environmental coordinator, or Public Information coordinator may be on multiple teams, unless disqualified in some other way.

It is a requirement of the Agency that Proposer organizations, including Principal Participants and Specialty Subcontractors, and key management personnel identified in the SOQ remain available for the duration of the procurement process and the subsequent Contract. A Proposer may propose substitutions for participants after the SOQ submittal; however, such changes will require written approval by the Agency, which approval may be granted or withheld in the Agency's sole

discretion. Requests for changes must be made in writing no later than 30 calendar days prior to the due date for submittal of Proposals. Requests for changes in any of the Principal Participants, Designer, QC Engineer, other firms meeting criteria listed in Section 1.18.1 A), or Specialty Subcontractors will be particularly scrutinized. Requests for substitutions of key management personnel solely for the convenience of the Proposer/Design Builder will be denied.

### **1.18.2 Confidentiality**

The Proposer may be given access to records which are confidential under state laws solely for the purpose of performing the required services under the Contract. The Proposer, and at the option of Agency, the Proposer's employees, agents, subcontractors and subconsultants, shall be required to sign a nondisclosure statement prior to their receipt of such documents obligating each employee, agent, subcontractor, or subconsultant of the Proposer to comply with the limitations and provisions of the statement.

### **1.18.3 Minimum Requirements**

The Proposer must meet all legal, financial, and SOQ responsiveness pass/fail requirements in Section 3.3.1 and not fall within any of the limiting categories specified in Section 6.1 M).

### **1.19 PROPOSAL STIPEND**

The Agency will pay a stipend to Proposers on the Short-List who submit Proposals in response to the RFP. The stipend amount is \$110,000, and shall be paid to each Proposer not chosen as the successful Proposer and which meets the following terms and conditions:

- A) A Proposal rating of pass on all "pass/fail" criteria and an overall quality rating of at least "acceptable-" for all evaluation factors; and
- B) Compliance with the DMWSEB requirements.

In consideration for the offer of payment of this stipend, the Agency will have all rights and ownership of the information contained in the Proposals received.

### **1.20 PREQUALIFICATION**

Submission of an SOQ in response to this RFQ is in lieu of a pre-qualification process as required by Oregon Revised Statutes (ORS) Section 279.039 and Oregon Administrative Rules (OAR) Chapter 734 Division 10. Use of an RFQ/SOQ process is specifically addressed in the competitive bidding exemption request made by ODOT in conformance with ORS 279.015. *See* Section 1.22 for additional information on the exemption from competitive bidding.

### **1.21 FOREIGN CORPORATIONS**

Oregon Revised Statutes 60.701 requires that foreign corporations be registered by the State of Oregon, Office of the Secretary of State, before conducting business in the state. A foreign corporation (*see* ORS 60.001) means a corporation-for-profit incorporated under a law other than the law of the State of Oregon. This registration must be accomplished prior to Award of Contract.

### **1.22 EXEMPTION FROM COMPETITIVE BIDDING**

Under current Oregon law, the use of procurement processes other than the conventional "low bid" model requires that the Director of the Oregon Department of Transportation grant an exemption for the Project, based on findings of fact. This Project will receive an exemption before execution of the Contract.

**1.23 FEDERAL REQUIRED PROVISIONS**

RESERVED, (State Funded Project)

**2.0 PROCUREMENT PROCESS**

**2.1 OVERALL PROCUREMENT PROCESS**

The process for procurement of the Contract will be in accordance with the laws and rules of the State of Oregon, using best value as a basis of selection. The intent of the Agency is to award the Contract to the Proposer that provides the Proposal with the best combination of price and quality.

The procurement process will include the following two steps:

- A) Request For Qualifications (determination of the Short-List); and
- B) Request For Proposals (selection of the Design Builder from responsible Proposers on the Short-List that submit responsive Proposals).

Evaluation of the SOQs and Proposals will be based on information submitted in the SOQs and Proposals or otherwise available to the Agency.

Pass/fail and quality evaluation factors will be utilized in both the RFQ and RFP phases.

The selection of the Design Builder for the Contract will be based on both pass/fail factors and a combined evaluation of quality and price factors.

**2.1.1 Request For Qualifications Step**

Statements Of Qualifications submitted in response to this RFQ must include a response to each pass/fail and quality evaluation factor. The Short-List of Proposers that will be invited to submit Proposals will be determined based on evaluation of pass/fail and quality factors set forth herein. This RFQ sets out what is required during the RFQ step of the procurement (*see* Section 4.0 for SOQ submittal requirements).

At the end of the SOQ evaluations, the Agency will determine the Short-List. Proposers on the Short-List will then be invited to provide Proposals. SOQ ratings will not carry-over to the RFP step.

**2.1.2 Request For Proposals Step**

The RFP will provide further specific instructions on what to submit, the evaluation factors, the objectives and requirements for evaluation, and the evaluation rating guidelines for the RFP step of the procurement.

Evaluation factors for the RFP will include, but not be limited to, the following:

- A) Pass/Fail:
  - 1) Legal (including compliance with state licensing requirements);
  - 2) Financial; and

- 3) Responsiveness of Proposal;
- B) Quality (these factors may also include subfactors):
  - 1) Experience and Qualifications;
  - 2) Management Approach;
  - 3) Technical Solutions;
  - 4) Project Support; and
  - 5) Price.

Information to be submitted in the Proposals will include, but not be limited to, the following:

- 1) Legal documents demonstrating the Proposer's ability to enter into a Contract with the Agency;
- 2) A Proposal bond;
- 3) Specified certificates and representations;
- 4) A letter of commitment from surety(ies) for payment and performance bonds;
- 5) A description of the Proposer's management approach, including schedule and organization;
- 6) The Proposer's technical approach including concepts for three (3) representative work locations from the eleven (11) listed in Appendix A.
- 7) The qualifications of nominated technical key personnel;
- 8) A letter of commitment for nominated key personnel;
- 9) Specified design documents and conceptual diagrams and sketches; and
- 10) The Price Proposal.

While Price is an important factor in the RFP phase of the procurement, quality (including time) is also a significant factor in determining the success of the Project. The RFP requirements and evaluation and selection criteria are being designed to provide a comprehensive evaluation of quality (including time) that, when combined with price, will result in the selection of the best value Design Builder. The Agency will perform an assessment of the price and the quality factors and select the Design Builder representing the best value to the state of Oregon.

The weighting of price versus quality in the selection will be set forth in the RFP.

## **2.2 PROCUREMENT SCHEDULE**

The following represents the current schedule for the Project. The final schedule for the Project will be stated in the RFP and will include solicitation, short-list and award protest periods, and the schedule is also subject to change at the discretion of the Agency.

<b>Activity</b>	<b>Due Date</b>
Issue Request For Qualifications	July 14, 2004
Pre-Statement Of Qualifications informational meeting	July 22, 2004
Final date for receipt of Proposers' questions	July 28, 2004
Issue date for final Addendum and/or answers to Proposers' questions	August 4, 2004
Statement Of Qualifications due date	August 11, 2004
Short-List announced	August 25, 2004
Issue Request For Proposals	August 31, 2004
Pre-Proposal Meeting	September 14, 2004
Proposal due date	November 1, 2004
Selection/Notice of Intent to Award	November 22, 2004
Contract execution/Award	December 6, 2004
Notice To Proceed	December 9, 2004

**3.0 EVALUATION PROCESS FOR THE STATEMENTS OF QUALIFICATIONS**

**3.1 EVALUATION OBJECTIVES**

The objective of the RFQ step of the procurement is to create a Short-List of the most highly qualified Proposers with the general capability (technical, financial, legal, and management), capacity, and experience necessary to successfully undertake and complete the Work. The Design Builder will have primary responsibility to plan, design, manage, and control the Project and to complete the Project on or ahead of schedule. The Agency has set high responsibility standards for the Design Builder that are reflected in the quality evaluation factors of this RFQ and will be reflected in the RFP and the Contract. Specific objectives relating to each of the quality evaluation factors listed in Section 3.3 are included in Sections 4.3.2.1 through 4.2.3.6 of this RFQ.

**3.2 REVIEW AND EVALUATION OF THE STATEMENTS OF QUALIFICATIONS**

The information submitted in accordance with Section 4.0 will be evaluated in accordance with both the pass/fail factors listed in Section 3.3.1 and the factors for quality rating for the RFQ provided in Section 3.3.2.

**3.3 EVALUATION FACTORS FOR THE REQUEST FOR QUALIFICATIONS/ STATEMENT OF QUALIFICATIONS**

This Section 3.3 outlines the evaluation factors for the RFQ phase of the procurement. The tentative evaluation factors for the RFP phase of the procurement are listed in Section 2.1.2.

The Agency has identified for this Project the Project Goals and the following factors and/or subfactors that are of particular importance to the Agency. This information is provided here to assist Proposers in organizing their teams and preparing their SOQs.

**3.3.1 Pass/Fail Evaluation Factors**

The pass/fail evaluation factors are as follows:

- A) Legal: The Proposer has presented evidence showing its organization has the legal ability to enter into and perform the Contract to design and build the Project and comply with state licensing requirements;
- B) Financial: The Proposer has a demonstrated ability to provide required bonds and acceptable guaranties (if required) and meet other financial requirements of undertaking and completing the Work; and
- C) Proposal responsiveness: All information requested in this RFQ provided in the format specified in Appendix B.

The pass/fail ratings for the above factors will be based on the following criteria:

- 1) Proper identification of all Principal Participants;
- 2) Demonstrated capability to enter into a contractual relationship with the Agency and a declaration of willingness to do so;
- 3) Demonstrated capability to provide required bonds and guaranties and meet other financial requirements of undertaking and completing the Work; and
- 4) Proper submittal of the required information per the requirements of the RFQ.

If a Proposer passes all pass/fail evaluations, its SOQ will be further evaluated using the factors for quality rating set forth in Section 3.3.2. If a Proposal fails any single pass/fail requirement resulting in a Deficiency, the SOQ shall be rated as unacceptable, the quality factors will not be rated, and the Proposer will not be included on the Short-List.

**3.3.2 Quality Evaluation Factors**

The quality evaluation factors are of equal weight.

The quality evaluation factors are as follows:

- A) Experience: Demonstrated experience relevant to the size, complexity, and composition of the anticipated Project and the experience of the Principal Participants, Designer, QC Engineer, and other subcontractors. Identification of each Principal Participant, the Designer, the QC Engineer, and other consultants and subcontractors; the proposed organization for the Project, including the split among Principal Participants; and disclosure of management key personnel and major subcontractors;
- B) Past Performance: Demonstrated record of performance, including:
  - Completion schedule;
  - Quality of work product;
  - Completion within contract price;
  - Claims history related to performance (including number of claims submitted that were ultimately disallowed or significantly reduced, number of disputes submitted to formal dispute resolution and disposition of such actions, and claims brought against the firm);

- Record of terminations for cause and defaults;
  - Lawsuits related to alleged breach of contract and ultimate disposition thereof disciplinary action, including suspension;
  - Safety record;
  - Environmental compliance record;
  - Client references;
  - Awards, citations, and commendations; and
  - Record of DMWESB performance of those certified DMWESB firms with which it has had a contractual relationship during the last 36 months, specifically those firms from the State of Oregon.;
- C) Backlog/Capacity: Current workload and/or future commitments of Principal Participants, the Designer, the QC Engineer, and other subcontractors, including projects presently being proposed that may impact the Proposer during the life of this Project; and
- D) Project Understanding: Knowledge and understanding of specific Project goals, issues and risks and the challenges, benefits, and responsibilities associated with DB contracts including an explanation of how the Proposer will ensure success of the Work and this Project.

During evaluation, ratings will be assigned for various sub-factors (*see* Section 4.3.2) within each quality evaluation factor. The ratings assigned to each sub-factor will be compiled to determine an overall consensus quality evaluation factor rating. The consensus ratings assigned to the quality evaluation factors will be compiled to determine an overall consensus quality rating for the SOQ. Numerical scores will not be assigned.

Quality ratings for each quality evaluation factor, sub-factor, and the overall quality rating for the SOQ will be based on the following quality rating criteria:

**EXCEPTIONAL**: The Proposer has provided information relative to its qualifications which is considered to significantly exceed stated objectives/requirements in a beneficial way and indicates a consistently outstanding level of quality. There are no Weaknesses.

**GOOD**: The Proposer has presented information relative to its qualifications which is considered to exceed stated objectives/requirements and offers a generally better than acceptable quality. Weaknesses, if any, are very minor and correction is not necessary.

**ACCEPTABLE**: The Proposer has presented information relative to its qualifications which is considered to meet the stated objectives/requirements and has an acceptable level of quality. Weaknesses are minor and can be corrected.

**UNACCEPTABLE**: The Proposer has presented information relative to its qualifications that contains significant Weaknesses and/or Deficiencies and/or unacceptable quality. The SOQ fails to meet the stated objectives and/or requirements and/or lacks essential information and is conflicting and/or unproductive. Weaknesses/Deficiencies are so major and/or extensive that a major revision to the SOQ would be necessary and/or are not correctable.

The evaluators may also use a plus (+) or minus (-) suffix to further differentiate the strengths or limitations within a quality rating.

Any SOQ that receives a rating of unacceptable for one or more quality evaluation factors (as set forth above in subparagraph A through D) shall receive an overall SOQ rating of unacceptable and will not be eligible for inclusion on the Short-List.

### **3.4 REQUESTS FOR CLARIFICATION**

The Proposer shall provide accurate and complete information to the Agency. If information is not complete, the Agency, at its sole discretion, shall either declare the SOQ non-responsive or notify the Proposer of the missing information and request a clarification electronically, giving the date by which the Proposer must respond. Any insufficient statements or incomplete affidavits will be returned directly to the Proposer by the Agency with notations of the insufficiencies or omissions and with a request for Clarifications and/or submittal of corrected, supplemental, or missing documents. If a response is not provided by the Proposer within the time specified in the request from the Agency, the SOQ shall be declared non-responsive.

The Agency may waive technical irregularities in the form of the SOQ of the Proposer that do not alter the quality or quantity of the information provided.

All requests and responses shall be in writing by certified mail, courier, E-mail or fax and, if by E-mail or fax, confirmed by priority mail/express delivery service. Responses shall be limited to answering the specific information requested by the Agency.

The Agency does not anticipate conducting interviews during the RFQ phase, but reserves the right to do so. If the Agency elects to conduct interviews, the Proposers will be notified in writing.

In addition to the electronic response requested above, Proposers must submit mailed follow-up responses to inquiries by the Agency to the address indicated below within three business days of the date of request from the Agency except as otherwise specified in writing by the Agency. Responses shall be submitted to the address specified in Section 4.2.

In the event a material error is discovered in the RFQ during the SOQ evaluation process, the Agency will issue an Addendum to all Proposers that have submitted SOQs requesting revised SOQs based upon the corrected RFQ.

### **3.5 DETERMINATION OF THE SHORT-LIST**

The Agency will establish a Short-List of an appropriate number (as determined by the Agency) of the most highly qualified Proposers in order to ensure adequate competition (typically a minimum of three; maximum of five). The Short-List will be created by eliminating the lowest rated Proposers until an appropriate number of acceptable Proposers remain. Neither the overall ratings nor the ranking of the Proposers on the Short-List will be disclosed to Proposers during the procurement process. For this Project the Agency intends to short-list three (3) Proposers.

Letters announcing the Short-List shall be issued and include the Proposers' Rights of Protest allowed during the initiation of the RFP process.

Subject to applicable Oregon law, contents of SOQs, less proprietary information to the extent protected under applicable Oregon law, will become public information upon issuance of Notice of Intent to Award.

**4.0 STATEMENTS OF QUALIFICATIONS SUBMITTAL REQUIREMENTS**

**4.1 DATE AND TIME OF RECEIPT**

All SOQs must be received no later than 1:00 pm (Pacific Daylight Time) on the SOQ due date specified in Section 2.2. The SOQs must be clearly identified and marked “Confidential” and be enclosed in sealed containers. Late submittals will not be considered and will be returned unopened to the address indicated on the cover of the package.

**4.2 SUBMITTAL ADDRESS**

**Attn: Robert Burns  
Oregon Department of Transportation  
680 Cottage Street NE, Suite A  
Salem, OR 97301**

Each Proposer shall be responsible for obtaining a written receipt appropriate to the means of delivery from the Agency office specified in this Section 4.2 at time of delivery of its SOQ. It is the Proposer’s sole responsibility to ensure delivery of its SOQ to the Agency at the time and place specified herein, and the Agency shall have no liability or responsibility therefor.

**4.3 CONTENT OF STATEMENTS OF QUALIFICATIONS**

This section describes the specific information that must be included in the SOQ. An outline of the required format for the SOQ is provided in Appendix B. Required forms for the SOQ are contained in Appendix C. Any material modification to the forms may result in the SOQ being declared non-responsive.

Proposers should provide brief, concise information that addresses the objectives and the requirements of the Project consistent with the evaluation factors described in Section 3.3. Lengthy narratives containing extraneous information are discouraged. Proposers are responsible for verifying that the contact names and telephone numbers provided on the reference forms and résumé materials are correct and that the contacts listed will be available and in a position to confirm the data being supplied. If the Agency is unable to reach a contact, the Proposer may be notified by telephone, fax, or E-mail and allowed 24 hours to provide an alternate contact. If the Agency is still unable to verify the information submitted for evaluation, the information will not be scored.

If the Proposer submits information in its SOQ that it believes to be trade secret records under ORS 192.501(2) and that it wishes to protect from disclosure, the Proposer must do the following:

- A) Clearly mark all financial information, trade secrets, or other information customarily regarded as trade secret as such in its SOQ at the time the SOQ is submitted and include a cover sheet identifying each section and page which has been so marked, including the following legend:

“This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”
- B) Include a statement with its SOQ justifying the Proposer’s determination that certain records are trade secret for each record so defined; and
- C) Defend any action seeking release of the records it believes to be trade secret and indemnify, defend, and hold harmless the State of Oregon, its agents, and its employees

from any judgments awarded against the State of Oregon in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives the State of Oregon's cancellation or termination of this procurement or Award and subsequent execution of a Contract. In submitting an SOQ, the Proposer agrees that this indemnification survives as long as the confidential business information is in possession of the State.

Unless otherwise provided by law, trade secret information provided to the Agency is not subject to inspection at any time by third persons under ORS.192.510(2).

All records pertaining to this procurement will become public information after execution of the Contract, unless such records are determined to be trade secret under ORS 192.510(2). Any records marked as trade secret by a Proposer in its SOQ and, if short-listed, in its Proposal will be returned to the unsuccessful Proposers after the execution of the Contract with the Design Builder. The records marked trade secret by the successful Proposer in its SOQ and Proposal will remain confidential and will be returned to the Design Builder upon completion and final acceptance of its Work under the Contract.

#### **4.3.1 Cover Letter**

The Proposer shall provide a one-page letter indicating its desire to be considered for the Project and stating the official names and roles of all Principal Participants and the Designer, QC Engineer, subconsultants, and subcontractors meeting the criteria in Section 1.18.1 A), and Specialty Subcontractors. The Proposer shall identify a single point of contact for the Proposer and the address and telephone and fax numbers where questions should be directed. Authorized representatives of the Proposer's organization shall sign the letter. If the Proposer is not yet a legal entity or is a joint venture or general partnership, authorized representatives of all Principal Participants shall sign the letter.

The Proposer shall attach the Acknowledgment of Receipt (Appendix C) acknowledging receipt of the RFQ and any Addenda and/or responses to questions issued by the Agency.

#### **4.3.2 Evaluation Factor Objectives and Requirements**

In providing the SOQ, Proposers should be guided by the Project goals in Section 1.2 and the objectives listed in Sections 4.3.2.1 through 4.3.2.6. An objective is stated for each evaluation factor to provide Proposers the expectations of the Agency. The requirements for each evaluation factor and the information to be submitted are listed and described in detail. The SOQ evaluation ratings of Section 3.3 will be based on how well the SOQ responds to the requirements and meets or exceeds the Project goals and the objectives for each of the evaluation factors.

##### **4.3.2.1 Legal**

- A) Objective: To identify legally constituted Proposers able to submit Proposals and enter into the Contract and complete the Work that either have or commit to obtain all required licenses.
- B) Requirements and information to be provided in Section 1 of the SOQ:
  - 1) Form L-1 (Appendix C), Proposer's Organization Information, for the Proposer's organization; and

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- 2) Form L-2 (Appendix C), Principal Participant and Designer Certification, for each Principal Participant and the Designer covering the last five years.
- C) If a JV, LLC, or partnership:
- 1) Identity of the Lead Principal Participant of the entity, if any (Form L-1, Appendix C);
  - 2) Percent equity share held by each member (Lead Participant column of Form L-1, Appendix C); and
  - 3) An express statement from each of the equity members of the entity as to their joint and several liabilities in accordance with Section 1.10.
- D) Requirements and information to be provided in Appendix A to the SOQ:
- 1) Submit a notarized power of attorney for each Principal Participant indicating the authority of the Principal Participant's representative to sign for that Principal Participant; and
  - 2) Submit a notarized power of attorney from each Principal Participant indicating the authority of the Proposer's designated point of contact to sign documents for and on behalf of the Proposer's organization.
- E) If a JV, LLC, or partnership:
- 1) If the Proposer has already been legally constituted, provide full details of the organizational structure and supporting organization/formation documents including a copy, as applicable, of the JV agreement, LLC operating agreement, or partnership agreement;
  - 2) If the Proposer has not yet been legally formed, provide a brief description of the proposed legal structure and draft copies of the underlying documents, including the following:
    - a) All significant terms of the JV, LLC, or partnership agreements, including the rules relative to the administration of the JV, LLC, or partnership, including dealing with deadlock situations;
    - b) Description of how the JV, LLC, or partnership will operate administratively and technically; and
    - c) A memorandum of agreement or teaming agreement.

### 4.3.2.2 Financial

- A) Objective: To identify Proposers with demonstrated capability to undertake the financial responsibilities associated with the Project, including bonding and guaranties.
- B) Requirements and information to be submitted – Surety Letter(s):

- 1) Provide a letter from a surety or insurance company indicating that the Proposer is capable of obtaining Proposal, performance, and payment bonds covering the Contract;
- 2) The bonding/security capacity levels in Table 4.3 represent minimum levels necessary to pass the pass/fail criteria of Section 3.3.1;
- 3) The surety or insurance company submitting such letter must be listed on Treasury Department Circular 570, and be on the list of surety or insurance companies authorized to do business in the State of Oregon at the time of Award;
- 4) The letter must specifically state that the surety/insurance company has evaluated the Proposer’s (and each Principal Participant's) backlog and work-in-progress in determining its bonding capacity and the letter must expressly identify the Proposer’s (and each Principal Participant's) amount of current backlog and utilized bonding capacity; and
- 5) Letters indicating “unlimited” bonding/security capability are not acceptable.

**Table 4.3**

Proposal Bond/Security	Payment Bond/Security	Performance Bond/Security
10% of Proposal Amount	100% of Contract Amount	100% of Contract Amount

- C) The Contract amount is not anticipated to exceed \$25 million.

**4.3.2.3 Experience of the Firms**

- A) Objective:
- 1) To identify and short-list the best qualified design and construction firms available, based on demonstrated experience, expertise, and capacity in and record of producing quality work on projects similar in nature to the Project;
  - 2) To identify Proposers that have the following:
    - a) The experience in successfully managing, designing, and constructing projects of the size and complexity of this Project;
    - b) Superior records of completing contracts on time and within budget;
    - c) Experience in successfully managing the maintenance of traffic and public information aspects of projects of the size and complexity of this Project;
    - d) Demonstrated experience in successfully:
      - Addressing environmental issues encountered in project permitting and implementation;
      - Maintaining environmental compliance during design and construction; and

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- Implementing environmental protection and mitigation measures;
  - e) Records of managing contracts to minimize delays, claims, dispute proceedings, litigation, and arbitration; and
  - f) Good safety records (Work Zone and Job Site);
- 3) To identify Proposers who will effectively manage all aspects of the Contract in a quality, timely, and effective manner and will integrate the different parts of its organization collectively and with the Agency in a cohesive and seamless manner; and
  - 4) To identify Proposers that have the technical and management experience and expertise to plan, organize, and execute the design and construction and assure the quality and safety of the Project.
- B) Requirements and information to be submitted:
- 1) Firm Experience: Using Form E-1 (Appendix C), Past Project Description, provide no more than ten (10) past project descriptions, with a minimum of two past projects per each Principal Participant and the Designer and additional past project descriptions from the QC Engineer, other team members meeting the criteria listed in Section 1.18.1 A) and Specialty Subcontractors highlighting experience in the last five (5) years relevant to the Project. Describe those projects having a scope and challenges comparable to that anticipated for the Project; and
  - 2) Using Form E-2 (Appendix C), Subcontractor Information, except for the designated Designer and QC Engineer (that have already been included in Forms L-1 and E-1, Appendix C), identify subcontractors (including consultants) the Proposer plans to use, to the extent they are known, indicating what portion of the Work each identified subcontractor is anticipated to undertake. Submit a maximum one-page summary of experience for each listed subcontractor, including consultants.
  - 3) Company brochures may be included in Appendix B and will not count towards the page limit.
  - 4) Using Form E-3 (Appendix C), Proposed Key Personnel Information, provide requested information on Key Personnel. If more than one key position is filled by the same person, so indicate. Provide two references for the Project Manager nominee and at least one reference for all other key personnel. Indicate the name, position, company or agency and current phone and fax numbers for each reference. References shall be owners or clients for whom the key personnel have worked within the past five (5) years and shall not be current or past employers of the key personnel. Project Key Personnel shall meet the following qualifications:
    - **Project Manager:** Shall have demonstrated a minimum of 15 years experience in construction and management of construction on large highway projects that included work of a similar scope, nature and complexity as the I-5: Clark's Branch to Tunnel Mill Race Project, including environmental

and community information requirements. Should have Design-Build experience.

- **Design Manager:** Shall be an Oregon-registered professional engineer who is an employee of the Designer. Shall have demonstrated experience in managing design for large, multi-disciplinary highway projects with similar scope and complexity of the I-5: Clark's Branch to Tunnel Mill Race Project.
  - **Quality Control Manager:** Shall be an Oregon-registered professional engineer and have demonstrated a minimum of 10 years experience in highway design and/or construction with at least five (5) years experience in quality assurance/quality control activities, including preparation and implementation of Quality Plans and procedures for design and/or construction.
- 5) Submit resumes following Form E-3 outlining key personnel experience and qualifications. Resumes shall be a maximum of one page each. Resumes should highlight the following information:
- Proposed role on Project and experience in area of responsibility;
  - History of employment with participant;
  - Experience in the management, design and/or construction of projects, especially any Design-Build projects; and
  - Project role, if any, in projects included in firm experience.

#### 4.3.2.4 Past Performance

A) Objective:

- 1) To avoid Proposers with firms or personnel with a history of legal, financial, environmental compliance, and project delivery problems that could adversely impact the Project generally;
- 2) To obtain the commitment of the Proposer, Principal Participants, and Designer regarding representations made in the SOQ;
- 3) To identify Proposers with a record of meeting environmental compliance requirements; and
- 4) To identify Proposers with a record of meeting DBE participation requirements.

B) Requirements and information to be submitted:

- 1) Using Form PP-1 (Appendix C), Past Performance, provide the information requested in bulleted subparagraphs below. If a Proposer has no record of relevant past performance or if the information relative to a category is not available enter a declarative statement to that effect on Form PP-1. If the record of relevant past performance does not exist and/or is not available, the Proposer shall receive a rating of "acceptable -" for this factor. Attach additional sheets to Form PP-1 as necessary. For each instance of litigation, claim, dispute proceeding, arbitration, assessment of liquidated damages, or termination for cause or default, provide the owner's name and the name of its current representative (and current phone and fax numbers) who can be contacted for additional information. With respect to the information solicited in this Section 4.3.2.4, failure to provide this information, conditional or qualified submissions

to requests or questions posed (i.e., “to our knowledge,” “to the extent of available information,” “such information is not readily available,” or “such information is not maintained in the manner requested,”), incomplete or inaccurate submissions, or non-responsive submissions may, in the sole discretion of the Agency, lead to a lower evaluation rating for this quality factor or result in a Deficiency that would cause the Agency to declare the SOQ non-responsive.

- Awards, Citations, and/or Commendations: List awards, citations and/or commendations for performance relevant to this Project received by any Principal Participant, Designer, other firms meeting criteria of Section 1.18.1 A), and/or Specialty Subcontractors within the last five (5) years. Describe the work for which award(s), citation(s), and/or commendation(s) were received. Copies of award(s), citation(s), and/or commendation(s) may be included in Appendix C of the SOQ;
  - Claims, Dispute Proceedings, Litigation, and Arbitration Proceedings: Provide a list of all claims, dispute proceedings, litigation, and arbitration proceedings involving amounts in excess of \$100,000 and related to performance in which any Principal Participant, Designer, or other firms meeting criteria in Section 1.18.1.A) has been involved during the past three (3) years. Include all claims, dispute proceedings, litigation, environmental enforcement, and arbitration proceedings initiated by or against owners and federal, state, and local regulatory agencies. Indicate whether the claim, dispute proceeding, litigation, environmental enforcement, or arbitration proceeding was resolved against the Proposer or its insurers/sureties or resulted in reduction in compensation to the Proposer. Indicate any unresolved, outstanding claims, dispute proceedings, litigation, environmental enforcement, and arbitration proceedings;
  - Liquidated Damages: Describe any contract which resulted in assessment of liquidated damages against any Principal Participant over the past three (3) years. Describe the causes of the delays and the amounts assessed. Describe any outstanding damage claims by or damages due and owing to any owner/agency;
  - Termination for Cause or Default: Describe the conditions surrounding any contract (or portion thereof) entered into by any Principal Participant, Designer, or other firm meeting criteria listed in Section 1.18.1 A) over the past three (3) years that has been terminated for cause or default or which required completion by another party. Describe the reasons for termination and the amounts involved; and
  - Disciplinary Action: Indicate any disciplinary action taken against any Principal Participant, Designer, or other firm meeting the criteria in Section 1.18.1 A) within the past three (3) years by any governmental agency or licensing board, including suspension from the right to propose/bid or removal from any proposer/bidder list;
- 2) Safety: Submit Form S (Appendix C), Safety Questionnaire, for each Principal Participant and Construction Subcontractor meeting criteria listed in Section 1.18.1.A);
- 3) Environmental Compliance; Submit Form PP-2 (Appendix C), Environmental Past Performance, for each Principal Participant and Construction Subcontractor meeting criteria listed in Section 1.18.1 A). Limit Environmental Past

Performance information to the office(s)/division(s) of the firms that will be performing Work on the Project; and

- 4) Disadvantaged Business Enterprise Participation: Submit Form DBE (Appendix C), Record of DMWESB Participation for each Principal Participant and the Designer reflecting the record of DMWESB performance in their contracts for the past three years. Limit DMWESB information to the office/division of the firms that will be performing Work on the Project.

**4.3.2.5 Backlog/Capacity**

- A) Objective: To identify Proposers with sufficient available capacity, considering current, committed, and potential workload and past level of contract activity, to successfully complete the design and construction of the Project.
- B) Requirements and information to be submitted:
  - 1) Submit Form B (Appendix C), Backlog Information, for each Principal Participant, Designer, QC Engineer, and other firm meeting criteria in Section 1.18.1 A). Limit backlog information to the office(s)/division(s) of the firms that will be performing Work on the Project; and
  - 2) Submit Form R (Appendix C), Past Revenue, for each Principal Participant, Designer, QC Engineer, and other firm meeting criteria in Section 1.18.1 A). Limit revenue information to the office(s)/division(s) of the firms that will be performing Work on the Project.

**4.3.2.6 Project Understanding**

- A) Objective:
  - 1) To identify those Proposers demonstrating an understanding of the management, technical, and maintenance of traffic issues and risks associated with the Project; and
  - 2) To identify those Proposers demonstrating an understanding of how the DB process and the Proposer's organization will contribute to the success of the Project and meeting the Agency's Project goals, and understanding of the risk sharing and the teaming relationship between the Design Builder and the Agency.
- B) Requirements and information to be submitted:
  - 1) List and briefly describe the significant issues and risks facing the selected Proposer and/or the Agency; and
  - 2) Briefly describe how the Proposer will use its organization and the DB process to ensure a successful Project, considering the Agency's Project goals listed in Section 1.2.

**5.0 AGENCY RIGHTS AND DISCLAIMERS**

**5.1 AGENCY RIGHTS**

The Agency may investigate the qualifications of any Proposer under consideration, may require confirmation of information furnished by a Proposer, and may require additional evidence of qualifications to perform the Work described in this RFQ. The Agency reserves the right, in its sole and absolute discretion and without recourse by Proposers, to take any of the following actions:

- A) Reject any or all SOQs;
- B) Issue a new RFQ;
- C) Cancel, modify, or withdraw the RFQ;
- D) Issue Addenda, supplements, and modifications to this RFQ;
- E) Modify the RFQ process (with appropriate notice to Proposers);
- F) Appoint a selection committee and evaluation teams to review SOQs and seek the assistance of outside technical experts in the SOQ evaluations;
- G) Approve or disapprove the use of particular subcontractors and/or substitutions and/or changes in SOQs;
- H) Revise and modify, at any time before the SOQ due date, the factors it will consider in evaluating SOQs and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the Agency shall circulate an Addendum to all registered Proposers setting forth the changes to the evaluation criteria or methodology. The Agency may extend the SOQ due date if such changes are deemed by the Agency, in its sole discretion, to be material and substantive;
- I) Hold meetings and exchange correspondence with the Proposers responding to this SOQ to seek an improved understanding and evaluation of the SOQs. If individual Proposer informational meetings are held, all Proposers submitting a responsive SOQ shall be afforded an opportunity to participate in an individual Proposer informational meeting;
- J) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the SOQs;
- K) Waive Weaknesses, informalities, and minor irregularities in SOQs;
- L) Disregard the SOQ from any team that changes its submitted SOQ without Agency written approval; and/or
- M) Refuse to issue an RFQ to a prospective Proposer and refuse to receive or open an SOQ, once submitted, or reject an SOQ if such refusal or rejection is based upon, but not limited to, the following:
  - 1) Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material,

- supplies, or services legally due on previous or ongoing contracts with the Agency (or State of Oregon);
- 2) Default on the part of a Principal Participant or Designer under previous contracts with the Agency (or State of Oregon);
  - 3) Unsatisfactory performance by the Proposer, a Principal Participant, and/or Designer under previous contracts with the Agency (or State of Oregon);
  - 4) Issuance of a notice of debarment or suspension to the Proposer, a Principal Participant, and/or Designer;
  - 5) Submittal by the Proposer of more than one SOQ for the same Work under the Proposer's own name or under a different name;
  - 6) Existence of an organizational conflict of interest under Section 1.18, or a finding of evidence of collusion between a prospective Proposer (or any Principal Participant or Designer) and other Proposer(s) (or Principal Participants or Designer) in the preparation of any SOQ, proposal, or bid for any Agency construction project; and/or
  - 7) Uncompleted work or default on a contract in another jurisdiction for which the prospective Proposer or a Principal Participant is responsible which in the judgment of the Agency might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded.

The RFQ does not commit the Agency to enter into a Contract, nor does it obligate the Agency to pay for any costs incurred in preparation and submission of the SOQs or in anticipation of a Contract. By submitting an SOQ, a Proposer disclaims any right to be paid for such costs.

The execution and performance of a Contract pursuant to this RFQ and any subsequent RFP is contingent upon sufficient appropriations and authorizations being made by the Legislature of Oregon, or the Congress of the United States if federal funds are involved, for performance of a Contract between the successful Proposer and the Agency.

In no event shall the Agency be bound by, or liable for, any obligations with respect to the Work or the Project until such time (if at all) as the Contract, in form and substance satisfactory to the Agency, has been executed and authorized by the Agency and approved by all required parties and, then only to the extent set forth therein.

## **5.2 AGENCY DISCLAIMERS**

In issuing this RFQ and undertaking the procurement process contemplated hereby, the Agency specifically disclaims the following:

- A) Any obligation to Award or execute a Contract pursuant to this RFQ; and
- B) Any obligation to reimburse a Proposer for any costs it incurs under this procurement.

In submitting an SOQ in response to this RFQ, the Proposer is specifically acknowledging these disclaimers.

**6.0 DMWSEB ENTERPRISE PROGRAM AND EQUAL EMPLOYMENT OPPORTUNITY**

**6.1 POLICIES**

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (US DOT) assisted contract or in the administration of 49 CFR Part 26. The Proposers shall take necessary and reasonable steps to ensure that businesses owned and controlled by socially and economically disadvantaged individuals are provided with a fair opportunity to participate in this Project.

**6.2 DMWSEB ENTERPRISE PARTICIPATION GOAL**

The level of expected Disadvantaged Business Enterprise, Minority Business Enterprise, Women Business, and Emerging Business Enterprise (DMWESB) participation on the Design-Build Contract established by the Agency is an aspirational goal, established, for DMWESB participation of at least 13% for the Work.

**6.3 EQUAL EMPLOYMENT OPPORTUNITY**

In connection with this RFQ and the Contract, Proposers shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, and/or being physically challenged. Proposers shall take Affirmative Action to ensure that all applicants are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, being physically challenged, or on the basis of sexual preference. Such action shall include, but not be limited to, the following: layoff or termination; rates of pay or other forms of compensation; and employment, job assignment, upgrading, demotion, transfer recruitment/recruitment advertising, and selection for training, including apprenticeship, pre-apprenticeship, and/or OJT.

**7.0 COMPLIANCE WITH APPLICABLE LAWS**

In connection with this RFQ and the Contract, Proposers shall comply with all applicable laws in all aspects in connection with the procurement process of this Project and the performance of the Contract.