

# **Kansas Department of Transportation**

## **Addendum 1**

### **Request for Proposals (Instructions to Proposers)**

#### **De Soto Local Roadway Improvements Project Progressive Design-Build**

**KDOT Project: KA-6796-03**



**November 21, 2022**

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# 1 INTRODUCTION AND GENERAL INFORMATION

## 1.1 Introduction

On August 25, 2022, the Kansas Department of Transportation (**KDOT**) issued a Request for Qualifications (**RFQ**) for the De Soto Local Roadway Improvements Progressive Design-Build Project in Johnson County, Kansas (the **Project**).

Having received statements of qualification (**SOQs**), KDOT short-listed submitting respondents (each a **Proposer**). Only Proposers are eligible to receive this Instructions to Proposers document (**ITP**) along with its Exhibits and Forms and the Progressive Design-Build Contract (**Contract**) and associated documents, collectively constituting a Request for Proposals (**RFP**).

This RFP is the second step of a two-step procurement, as described in the RFQ. This RFP solicits competitive proposals (each a **Proposal**) for a design-build team (**Progressive Design-Builder**) to enter into a Contract to develop, design, and potentially construct the Project.

The Proposer must comply with the terms, conditions, constraints, deadlines, and other requirements of this ITP during the remainder of this procurement.

Capitalized terms and abbreviations used in this ITP have the meanings given, or referred to, in [Exhibit A](#) (Acronyms and Definitions).

## 1.2 Project Description

The Project is located generally along the existing footprint of 103rd Street between Evening Star Road and the Lexington Avenue/K-10 interchange and includes approximately one mile of the section on Main Avenue from 103rd Street south to the proposed Panasonic Energy Company electric vehicle battery manufacturing facility. The roadway is currently a two-lane asphalt roadway, and the Project will upgrade the roadway to approximately 4.5 miles of new, divided 4-lane roadway with curb and gutter as well as sidewalks, on-street bike lanes, and a shared-use path. Additionally, three roundabouts are currently being evaluated at Evening Star Road, Edgerton Road, and Main Avenue. The Project has a substantial construction completion date of June 30, 2024. Completing the Project by this date is critical for associated economic development in the area. The Progressive Design-Builder will be required to accommodate rapidly increasing traffic volumes from adjacent industrial development and coordinate with contractors working in the area for the construction of new water, sewer, and power transmission lines. Due to the dynamic nature of existing and potential future development in the area, KDOT reserves the right to adjust the scope of the Project to meet changing and additional infrastructure development needs.

See the Progressive Design-Build Contract, [Exhibit B](#) (Pre-construction Phase Technical Requirements) for additional information related to Progressive Design-Build delivery and the anticipated scope of Work.

## 1.3 Project Goals

KDOT's goals and objectives for the Project are as follows:

1. Construct a local road network that improves access to existing businesses and surrounding development into the future.

2. Minimize project delivery time. Substantial construction completion (roadway open to traffic with available access to properties) is required by June 30, 2024 in order to facilitate anticipated traffic volumes due to development in the area.
3. Develop a flexible Pre-construction and Construction environment that can adapt to highly dynamic conditions, changing infrastructure needs, and nearby development projects without adversely impacting the Project schedule.
4. Maximize the safety of workers and the traveling public during construction with consideration to minimizing inconvenience.
5. Maximize the value of the Project and achieve the Project goals through implementation of efficient design and innovative construction solutions and management techniques while meeting construction completion deadlines.

## 1.4 Procurement Schedule

Deadlines for the solicitation/procurement are shown in [Table 1](#) (Procurement Schedule).

**Table 1: Procurement Schedule**

<i>Procurement Milestone</i>	<i>(Est.) Schedule/Deadline*</i>
Issue RFP	October 11, 2022
Deadline for Proposer submission of one-on-one agenda and list of participants	October 13, 2022 at 2:00 p.m.
KDOT Pre-Qualification Submittal Deadline (applicable to Lead Contractor, Lead Designer, and Key Personnel Firm seeking to become Pre-Qualified)	October 13, 2022
Deadline for Proposer submission of Proposer RFCs prior to one-on-one discussions	October 14, 2022 at 2:00 p.m.
One-on-one discussions	October 18 – October 19, 2022
Issue Final RFP	November 9, 2022
RFP Update Overview (virtual)	November 10, 2022
Deadline for Proposer submission of one-on-one agenda and list of participants	November 11, 2022 at 2:00 p.m.
One-on-one discussions (in person)	November 14, 2022
Final Deadline for Proposer submission of Proposer RFCs	November 18, 2022 at 2:00 p.m.
Deadline for submission of Organizational and Key Personnel replacement for KDOT approval	November 25, 2022 at 2:00 p.m.
Proposals due ( <b>Proposal Due Date</b> )	<b>December 1, 2022</b> at 2:00 p.m.
Proposer interviews with KDOT	December 19 – December 20, 2022
Selection of Apparent Best Value Proposer	January 13, 2023
Anticipated execution of Contract	February 10, 2023

\* All times in this ITP are Central Standard Time (CST) or Central Daylight Savings Time (CDT), as applicable.

## 2 COMMUNICATIONS AND PUBLIC DISCLOSURE

### 2.1 Project Director, Authorized Representative, and DMS Coordinators

KDOT has designated the Project Director identified below for the Project, including the procurement:

Paul Kulseth  
Kansas Department of Transportation  
2033 Becker Drive, Suite 208  
Lawrence, KS 66047

The Proposer has previously designated an Authorized Representative and two Document Management System (DMS) Coordinators for the procurement in its SOQ. The Authorized Representative and DMS Coordinators so designated shall be the Proposer's Authorized Representative and DMS Coordinators for purposes of this RFP.

The Authorized Representative or DMS Coordinators shall be responsible for initiating and receiving all communication with KDOT and must be delegated the full authority of the Proposer to communicate with KDOT throughout the procurement. All Proposer submissions and communications with KDOT shall be made through the Authorized Representative or the DMS Coordinators.

The Proposer shall ensure that the name and contact information for their Authorized Representative and DMS Coordinators are accurate and current at all times during the procurement. The Proposer shall provide written notice to KDOT of any requested change in its Authorized Representative and DMS Coordinators utilizing Form K (Respondent Authorized Representative and DMS Coordinators) to the RFQ.

### 2.2 Rules of Contact

The rules of contact described in this [Section 2.2](#) apply from release of the RFP until selection of the Apparent Best Value Proposer or until the formal cancellation of the procurement by the Department. The Proposer shall comply with all applicable Laws and refrain from lobbying any Governmental Authority in connection with the procurement. During the procurement, no employee, member, agent, advisor, or consultant of the Proposer may undertake any ex-parte communications, directly or indirectly, regarding this procurement with any representative of the State, the Department, Johnson County, or the City of De Soto including their staff, advisors, contractors, or consultants, except for communications permitted by this RFP.

The Proposer may not communicate with another Proposer regarding the Project, the Proposal, or any other Proposer's Proposal, except that a Proposer may communicate with an individual that is included in more than one Proposer organization, so long as those Proposers have an established, documented protocol to ensure that such individual person or firm will not act as a conduit of information between the respective Proposer organizations.

All communication between the Proposer and KDOT shall occur through the DMS by the Proposer's Authorized Representative or DMS Coordinators until the date of the anticipated execution of the Contract as identified in the Procurement Schedule. The Proposer is responsible for checking the DMS for communication from KDOT. If an instance occurs where the DMS is unavailable, the Proposer shall contact KDOT through the Project E-mail.

### 3 GENERAL REQUIREMENTS FOR PROPOSERS

#### 3.1 Organizational Conflicts of Interest

The Proposer's attention is directed to 23 CFR Section 636 Subpart A which defines "organizational conflict of interest" as follows:

*"Organizational conflict of interest means that because of other activities or relationships with other Persons, a Person is unable or potentially unable to render impartial assistance or advice to the Owner, or the Person's objectivity in performing the Contract Work is or might be otherwise impaired, or a Person has an unfair competitive advantage."*

The Proposer is prohibited from receiving any advice or discussing any aspect relating to the Project or the procurement of the Contract with any Person with an organizational conflict of interest. The Proposer must include a full disclosure of all potential organizational conflicts of interest in their Proposal, including all relevant facts concerning any past, present, or currently planned interests which may present an organizational conflict of interest, as required by 23 CFR Section 636 Subpart A.

Each of the following circumstances shall be deemed an organizational conflict of interest disqualifying the Proposer:

1. Participation by any of the following Persons on more than one Proposer team: Lead Contractor, Lead Designer, or Key Personnel Firm.<sup>1</sup>
2. Participation by an Affiliate of any such Person identified in clause (1) above, on another Proposer's team.

All Proposers affected by the conflict of interest will be disqualified, even if a Proposer is unaware of the conflict of interest, or if the Person or Affiliate causing the conflict is intended to have a different or lesser role than that described above.

By submitting a Proposal, the Proposer represents and warrants that their SOQ disclosed all conflicts of interest that were then-present and have disclosed any additional post-SOQ potential conflicts on a new Form I (Conflict of Interest Disclosure Statement) of the RFQ to be submitted with Form E (Organizational Conflict of Interest Disclosure Certification).

By submitting its Proposal, the Proposer agrees that if an organizational conflict of interest is discovered, the Proposer must make an immediate and full written disclosure to KDOT that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, KDOT may, at its sole discretion, disqualify the Proposer from the procurement.

Members of KDOT's project management team that have assisted with this procurement may not participate on any Proposer team. The Proposer shall disclose all present or planned contractual arrangements with Garver, Burns & McDonnell, and KDOT's selected Independent Cost Estimator.

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<sup>1</sup> Key Personnel Firms that employ only the Project Controls Manager may participate on more than one Proposer team. If a Key Personnel Firm employs more than one Key Personnel, then, notwithstanding that one of the Key Personnel may be the Project Controls Manager, such Key Personnel Firm shall be subject to the restriction on participation.

## **3.2 Changes to Proposer's Organization**

The Proposer shall submit requests for approval of any replacement sought under this Section 3.2 prior to the deadline set forth in the Procurement Schedule.

KDOT is under no obligation to approve any requests made under this Section 3.2, and KDOT may approve or disapprove a portion of the request or the entire request at its sole discretion. If KDOT fails to respond within such period, the request shall be deemed denied.

### ***3.2.1 Entities on Proposer's Team***

Unless the Proposer has received KDOT's written approval, the Proposer shall not remove or replace its Lead Designer, Lead Contractor, any Key Personnel Firm, or any Subcontractor identified in its SOQ.

If a Proposer wants to remove or replace the Lead Designer, Lead Contractor, any Key Personnel Firm, or any Subcontractor identified in its SOQ, the Proposer shall submit to the Project Director a written request documenting the proposed change. Requests to replace an entity shall include the information required to be submitted for such entity as specified in the RFQ. Requests shall demonstrate, to KDOT's satisfaction, that (a) the current Proposer team, including any replacement entity, meets the criteria set forth in the SOQ and (b) the replacement or removal of any entity identified in its SOQ will not affect, in whole or in part, the basis upon which the Proposer was short-listed. The Proposer shall make these requests no later than the last day for submittal of such requests specified in the Procurement Schedule.

### ***3.2.2 Key Personnel***

Unless the Proposer has received KDOT's written approval, the Proposer shall not replace any Key Personnel that was included in the SOQ: Project Manager, Design Manager, Construction Manager, Roadway Design Manager, and Project Controls Manager. If the Proposer wants to replace any Key Personnel, then the Proposer shall submit a written request to the Project Director documenting the proposed replacement accompanied by:

1. the information required to be submitted for such Key Personnel as specified in the RFQ to demonstrate that the replacement meets the criteria set forth in the SOQ; or
2. information to demonstrate that the replacement of any individual identified in its SOQ will not affect, in whole or in part, the basis upon which the Proposer was short-listed.

The Proposer shall make these requests no later than the last day for submittal of such requests specified in the Procurement Schedule.

## **3.3 Site Access**

The Proposer will not be afforded, nor shall the Proposer seek or arrange for access to the Site for investigation of existing facility conditions or surface/subsurface conditions.

## **3.4 KDOT Pre-Qualification Process**

In order to submit a Proposal, the Lead Contractor, Lead Designer, and each Key Personnel Firm shall be KDOT Pre-Qualified Contractors or KDOT Pre-Qualified Consultants prior to the Proposal Due Date for all classifications of work for which they intend to perform under the Contract. If any of the Lead Contractor or Lead Designer are a partnership, joint venture, or

consortium, then the foregoing shall be construed to apply to the partners or members of the Lead Contractor or Lead Designer.

Information on KDOT Contractor Pre-Qualification and Consultant Pre-Qualification is available at [www.ksdot.org/hwycont.asp](http://www.ksdot.org/hwycont.asp) and [www.ksdot.org/descons.asp](http://www.ksdot.org/descons.asp), respectively.

If not currently a Pre-Qualified Contractor or Consultant, the Proposer shall cause the Lead Contractor, Lead Designer, and each applicable Key Personnel Firm to submit all information required in order to become KDOT Pre-Qualified Contractors or Consultants on or before the date identified in the Procurement Schedule. The Proposer shall, and shall cause the Lead Contractor, Lead Designer, and each applicable Key Personnel Firm to coordinate with KDOT, as KDOT may require, to verify and validate pre-qualification information to the extent deemed necessary by KDOT until pre-qualification requirements have been satisfied. Unless requested by KDOT, the Proposer is not required to provide proof of compliance with this paragraph.

## **4 RFP PROCESS**

### **4.1 Request for Proposals**

#### **4.1.1 Proposer Requests for Clarification**

The Proposer shall be responsible for requesting written clarification or interpretation of:

1. any term, condition, or provision of the RFP that the Proposer seeks to change or omit, with reasons stated therefore;
2. any actual or perceived mistake, discrepancy, deficiency, ambiguity, inconsistency, inaccuracy, inadequacy, defect, error, or omission contained in the RFP; and
3. any term, condition, or provision of the RFP that the Proposer fails to understand.

KDOT will only consider Proposer RFCs if submitted prior to the applicable deadline in the Procurement Schedule using Form A (Proposer Request for Clarification). KDOT will consider Proposer RFCs in drafting Addenda, if any, to the RFP. KDOT may elect to respond to Proposer RFCs through written responses. KDOT intends to respond to all RFCs at one time but reserves the right to respond to Proposer RFCs at its discretion. Any written responses will be for the information of the Proposer only and will not become part of the Contract.

KDOT intends to respond individually to Proposer RFCs identified by the Proposer or deemed by KDOT as “confidential” or “proprietary”. KDOT reserves the right to disagree with the Proposer’s assessment regarding confidentiality or the proprietary nature of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, KDOT will inform the Proposer and may provide the Proposer the opportunity to:

1. withdraw the question,
2. rephrase the question, or
3. have the question answered non-confidentially.

KDOT may also determine that it is appropriate to provide a general response to all Proposers and modify the question to remove information that KDOT determines is confidential or proprietary.



### **4.1.2 Pre-Proposal One-on-One Meetings**

KDOT will offer a ninety-minute one-on-one meeting with the Proposer on the dates in the Procurement Schedule. KDOT will provide the location, options to attend virtually (if any), and other information to the Proposer prior to the meetings. The Proposer shall provide an agenda and a list of participants who will be in attendance on the date shown in the Procurement Schedule.

### **4.1.3 Addenda**

The RFP will only be modified in writing by KDOT. If necessary, KDOT will issue Addenda to modify conditions or requirements of the RFP. The Proposer is responsible for checking the Project DMS regularly to obtain the most current information.

## **4.2 Final Contract**

If awarded, KDOT will award the Contract to the Proposer offering a Proposal that meets the standards set by KDOT and that is determined by KDOT based on the selection criteria outlined in [Section 7](#) (Proposal Evaluation Process) to provide the best value to KDOT and to be in the best interest of the State of Kansas.

KDOT may negotiate any aspect of the Contract after selection of the Apparent Best Value Proposer. The decision to commence negotiations and any topics of negotiation are at KDOT's sole discretion. If KDOT elects to negotiate the Contract, then the Proposer also hereby commits to engage in good faith negotiations. However, nothing in this [Section 4.2](#) is intended to require negotiations before award or restrict negotiations after contracting, understanding that the progressive design-build delivery model contemplates on-going good faith negotiation of contract terms as specifically contemplated in the form of Contract for this Project.

If KDOT is unable to reach agreement with the initial Apparent Best Value Proposer, then KDOT reserves the right to negotiate in order of ranking with Proposers until coming to agreement with the final Apparent Best Value Proposer.

The Proposer will be deemed to have failed to engage in good faith negotiations with KDOT if the Proposer:

1. fails to attend and actively participate in reasonably scheduled negotiation meetings with KDOT; or
2. insists upon terms or conditions for any documents to be negotiated or provided by the Progressive Design-Builder hereunder that are inconsistent with the form of Contract.

## **4.3 Post-Selection Deliverables**

As a condition precedent to execution of the Contract, the final Apparent Best Value Proposer shall deliver the following to KDOT:

1. within five business days after the later of KDOT notification of award to or finalization of negotiations, with Apparent Best Value Proposer:
  - a. evidence of authority to transact business in the State of Kansas for all members of the Apparent Best Value Proposer's team that will transact business in the State, dated no earlier than 30 Days prior to the Proposal Due Date;

- b. if not previously submitted, a copy of the final, executed, and effective organizational documents for the Apparent Best Value Proposer and, if the Apparent Best Value Proposer is a limited liability company, partnership, or joint venture, for each member or partner of the Apparent Best Value Proposer. The final form of the organizational documents may not differ materially from the draft organizational documents included with the Proposal. If the Apparent Best Value Proposer is a joint venture, attach a letter from each joint venturer stating that the joint venturer agrees to be held jointly and severally liable for any and all of the duties and obligations under the Proposal and under any contract arising therefrom.
2. within 14 Days after delivery by KDOT to the Apparent Best Value Proposer of the execution form of the Contract:
  - a. signed Contract (scanned copies of original signatures are acceptable), together with evidence of the signatory authority of the signatories thereto. All original signatures shall be in blue ink;
  - b. approvals of each member or partner of the Progressive Design-Builder of the final form of the Contract, and of due authorization, execution, delivery, and performance of the Contract by the Progressive Design-Builder and, if the Progressive Design-Builder is a joint venture, by its joint venture members;
  - c. all certificates of insurance accompanied by one or more commitment letters from insurance brokers confirming that coverage will be placed for the relevant members of the Proposer's team (Lead Contractor, Lead Designer, and each Key Personnel Firm) in accordance with the Contract Documents; and
  - d. satisfaction of any other conditions to execution of the Contract set forth under applicable Law.

#### **4.4 Proposal Development Costs**

This RFP does not commit KDOT to enter into a Contract, nor does it obligate KDOT to pay for any costs incurred by the Proposer in preparation and submission of the Proposal or in anticipation of an award of the Contract. By submitting a Proposal, the Proposer disclaims any right to be paid for such costs.

Unless otherwise required by Law, all information provided by the Proposer to the Department during the procurement shall become the property of KDOT and shall not be returned to the Proposer.

#### **4.5 Debriefings**

Proposers not selected for award may request a debriefing. Debriefings will be provided at the earliest feasible time after execution of the Contract.

Debriefings shall:

1. be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of any competing Proposal;
2. be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal;
3. provide information on areas in which the unsuccessful Proposer's Proposal had weaknesses or deficiencies; and

4. not include discussion or dissemination of the thoughts, notes, or rankings of individual evaluators.

## **5 PROPOSAL REQUIREMENTS**

### **5.1 Format**

Unless otherwise allowed in this ITP, the Proposal shall be presented in 8.5-inch by 11-inch paper and minimum font size is 11-point.

All pages of the Proposal shall be sequentially numbered and shall not exceed the page limits set forth for such section as described in this ITP. Section dividers will not count toward the page limits. Each electronic file shall not exceed 50MB in file size. The Proposer shall exclusively use United States dollars in its Proposal.

### **5.2 Proposal Delivery Information**

The Proposer shall provide one electronic copy of each component part of the Proposal (including additional electronic documents as required under Exhibit B (Administrative Information Instructions), Exhibit C (Technical Proposal Instructions), and Exhibit D (Financial Proposal Instructions)) to KDOT through the DMS. Each file shall be clearly named and organized according to the format of this ITP. Hard-copy Proposals and Proposals submitted via the Project E-Mail will be rejected.

The Proposer may withdraw its Proposal at any time prior to the time due on the Proposal Due Date. Withdrawal of a Proposal will not prejudice the right of the Proposer to submit a new Proposal so long as such new Proposal is received before the time due on the Proposal Due Date. If the Proposer does not intend to submit a Proposal, KDOT requests a letter stating the same.

## **6 PROPOSAL CONTENTS AND ORGANIZATION**

### **6.1 Contents and Organization of Proposal**

The Proposal shall consist of three separate volumes:

1. the Administrative Information meeting the requirements of Section 6.2 (Administrative Information) and Exhibit B (Administrative Information Instructions);
2. the Technical Proposal meeting the requirements of Section 6.3 (Technical Proposal) and Exhibit C (Technical Proposal Instructions); and
3. the Financial Proposal meeting the requirements of Section 6.4 (Financial Proposal) and Exhibit D (Financial Proposal Instructions).

The Proposal shall be submitted as a series of discrete, searchable PDF files, bookmarked with the section headings described in the corresponding Exhibits (except as expressly stated otherwise with respect to certain Administrative Information and the Technical Proposal, as described below).

File names shall conform to the conventions specified below. Electronic files shall not be locked so as to prevent copying or printing, nor may electronic files be encrypted (e.g., password protected) or otherwise restricted in access.

All blank spaces in the Proposal forms shall be filled in as appropriate or identified as “not applicable” with “n/a” annotation in the applicable space.

No changes shall be made in the Proposal forms by the Proposer other than formatting changes, minor grammatical changes, and “extending” the form by adding additional information, if the form itself affords the Proposer the opportunity to do so, and then in accordance with the instructions therein.

## **6.2 Administrative Information**

The Administrative Information shall be contained in one volume and shall be named using the following naming convention:

**[Proposer Name]\_DeSoto\_Administrative\_Vol\_1**

The Proposer shall provide the Administrative Information including all required attachments and forms. Any attachments shall be clearly labeled as accompanying the Administrative Information.

Corporate, partnership, joint venture, and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements, and limited liability company operating agreements) need not be submitted in searchable PDF format. All such corporate, partnership, joint venture, and limited liability company documents may be submitted in separate PDFs with appropriate file names to distinguish them from the PDF containing the rest of the Administrative Information.

No page limits apply to the Administrative Information.

## **6.3 Technical Proposal**

The Technical Proposal shall be contained in one volume and shall be named using the following naming convention:

**[Proposer Name]\_DeSoto\_Technical\_Vol\_2**

The Technical Proposal shall be sequentially numbered. As described in ITP, Exhibit C, Section 1.4 (Technical Proposal Appendices), appendices and exhibits may be provided as supplemental information to the content provided in response to ITP, Exhibit C, Section 1.1 (General Project Approach), Section 1.2 (Pre-construction Phase Approach), and Section 1.3 (Construction Phase Approach). Appendices will be considered and scored as part of the evaluation of the Technical Proposal.

KDOT may seek, via KDOT RFC, submitted technical information (e.g., drawings, schedules) in their native file format in addition to the .pdf format required.

## **6.4 Financial Proposal**

The Financial Proposal shall be submitted in two separate parts, in separate files: (1) the Resource Allocation and Rates Proposal; and (2) the surety letter. The Resource Allocation and Rates Proposal shall be provided in its native MS Excel format, and the surety letter shall be provided in PDF format.

The file containing the Resource Allocation and Rates Proposal shall be named using the following naming convention:

**[Proposer Name]\_DeSoto\_Financial\_Resource\_Vol\_3**

The Financial Proposal shall also contain a letter from a surety company that satisfies the requirements of Exhibit D (Financial Proposal Instructions). The file containing the surety letter shall be named using the following naming convention:

**[Proposer Name]\_DeSoto\_Financial\_Surety\_Vol\_3**

## **7 PROPOSAL EVALUATION PROCESS**

KDOT's goal is to create a fair and uniform basis for the evaluation of Proposals in compliance with all applicable legal requirements governing this procurement. The Proposal evaluation process will consist of the steps outlined herein.

In each step, KDOT may issue KDOT RFCs to ensure Proposals are fully evaluated, and the Proposer is offered the opportunity to afford KDOT clarifying information to aid in the evaluation, as more fully set forth in Section 7.5 (Department Requests for Clarification).

### **7.1 Responsiveness and Pass/Fail Evaluation**

Upon receipt, the Proposal will be reviewed for responsiveness to the requirements of this ITP. Failure to be organized, conform to formatting and content requirements, and to be a complete and thorough submission will result in the Proposal being declared as non-responsive. The Proposal, if found responsive, will be evaluated on a volume-by-volume basis against pass/fail criteria. Failure to achieve a "pass" rating on a pass/fail element may, in KDOT's sole discretion, result in the Proposal being declared non-responsive.

#### **7.1.1 Administrative Information**

Administrative Information will be evaluated based on the following pass/fail criteria:

1. the Proposer has provided evidence of its legal organization, or if the Proposer is unincorporated, the Proposer has provided evidence of the legal organization of the members/joint venture participants comprising the Proposer team (as the Progressive Design-Builder), in the latter case, reflecting the members/joint venture participants are jointly and severally liable of for any and all of the duties and obligations of the Progressive Design-Builder under the Proposal and under any contract arising therefrom;
2. all Persons required to be pre-qualified under Section 3.4 (KDOT Pre-Qualification Process) are pre-qualified on or before the Proposal Due Date;
3. KDOT's review of the Proposer's submitted Form D (Non-Collusion Affidavit), Form E (Organizational Conflict of Interest Disclosure Certification), Form F (Debarment, Suspension, Ineligibility, and Voluntary Exclusion Certificate), or any combination thereof, discloses no material or adverse information as to the responsibility of the Proposer (as the Progressive Design-Builder) or the responsibility of any of the Major Contractors identified in the Proposal, nor any owner, officer, partner, director, or financial controller of such firms, as applicable.

### 7.1.2 Technical Proposal

Technical Proposals will be evaluated to determine whether any unapproved removals or replacements have been made to the Lead Designer, Lead Contractor (if not the Progressive Design-Builder itself), Key Personnel, and other individual persons identified within the SOQ.

### 7.1.3 Financial Proposal

Financial Proposals will be evaluated on a pass/fail basis based on:

1. the Financial Proposal's inclusion of a surety letter responsive to all criteria set forth in Exhibit D (Financial Proposal Instructions);
2. inclusion of fully-burdened hourly labor rates for each discipline identified which shall be a Proposal Commitment as described in the PDB Contract; and
3. the total hours distributed among all disciplines in Form G (Resource Allocation and Rates Form).

## 7.2 Proposal Scoring

KDOT intends to identify the Proposer with the highest overall score as the Apparent Best Value Proposer. The Proposers' scores are the sum of the Technical Proposal score, the Resource Allocation and Rates Proposal score, and the interview score. Table 2 (Distribution of Points) shows the maximum points allocated to each category. Note that each category is scored separately and each approach in the Technical Proposal is scored separately. KDOT will not apply information in one category or approach to another category or approach.

**Table 2: Distribution of Points**

<b>Category</b>		<b>Maximum Points</b>
Technical Proposal	Project Approach: General	10
	Project Approach: Pre-Construction Phase	25
	Project Approach: Construction Phase	15
Resource Allocation and Rates Proposal		5
Interview		45
Total Points Available		100

### 7.3 Evaluation of Technical Proposals

The Technical Proposal will be scored in the following categories:

1. Project Approach – General;
2. Project Approach – Pre-construction Phase; and
3. Project Approach – Construction Phase.

The evaluation criteria for the Project Approach – General are based on the extent the Proposer demonstrates:

1. an alignment with Project goals and the concepts of progressive design-build delivery;

2. a general management structure that facilitates coordination and collaboration among the parties involved in the Project;
3. effective project management techniques related to scheduling and quality; and
4. an effective approach to forecasting, providing, and maintaining necessary project resources (labor, equipment, material) to deliver the Project.

The evaluation criteria for the Project Approach to the Pre-construction Phase and Construction Phase are the same and are based on the extent the Proposer demonstrates:

1. an alignment with Project goals and the concepts of progressive design-build delivery;
2. an approach that effectively engages Key Personnel and other Project personnel;
3. an efficient and effective approach for coordination and collaboration with KDOT and its advisors, third parties, and stakeholders in connection with the Project;
4. an understanding of KDOT processes, the scope of work, and schedule for the work and demonstration of effective processes to advance and manage the Project in a manner that is cost-effective and ensures quality while maintaining the schedule;
5. an approach that is considerate of impacts to the traveling public.; and
6. innovative approaches, processes, or management strategies that will benefit the Project.

KDOT will add the points awarded for each evaluation factor to determine the Technical Proposal score.

#### **7.4 Evaluation of Resource Allocation and Rates Proposals**

If the responsive Proposal passes all pass/fail criteria, then the Resource Allocation and Rates Proposal section of the Financial Proposal will be evaluated to the extent it includes:

1. a distribution of hours that aligns with the Pre-construction Phase approach described in the Technical Proposal and demonstrates likelihood of successfully completing the tasks during this phase;
2. rates that are reasonable when considering the level of experience identified in the SOQ or Technical Proposal for a particular individual; and
3. rates that are reasonable when considering the level of experience generally expected of an individual filling the identified role.

#### **7.5 Department Requests for Clarification**

KDOT may at any time issue one or more RFCs (each, a KDOT RFC) to the Proposer, requesting additional information or clarification, or may request the Proposer to verify or certify any aspect of its Proposal. The Proposer shall respond to any KDOT RFC within two Business Days (or such other time as is specified in the KDOT RFC) measured from the date of posting of the request.

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

## 7.6 Interviews

The Proposer will be required to attend an interview with KDOT as described in this [Section 7.6](#). The Proposer may bring to its interview any material that it believes is needed to prepare and present Proposer's response to the Team Challenge. The Proposer will be required to attend the interview with all required Key Personnel. The Proposer may bring other individuals so long as the total number of attendees does not exceed 12.

The presentation, team challenge, and Q&A period will last approximately 90 minutes and will be qualitatively evaluated and scored by KDOT. The format of the interview will be as follows:

1. Introduction and Presentation of Project Approach: 15 minutes
2. Team Challenge: 25 minutes
  - a. The Proposer will be given a written challenge to review and propose a course of action to address the elements in the challenge. The Proposer will be given 15 minutes to prepare a response or solution; and
  - b. 10 minutes for Proposer to present solutions and findings to KDOT interview panel.

Note: KDOT's selection panel will be in the room watching the team work together and collaborate.
3. Q&A with the KDOT selection panel: 45 minutes
4. Closing: 5 minutes

The Proposer will be evaluated on their interview performance and ability to work as a team based on the following criteria:

1. demonstrated Project understanding and approach;
2. clearly communicated concepts and approach;
3. demonstrated understanding of the Progressive Design-Build delivery method, including understanding of the Progressive Design-Builder's role at each phase of the Project and required coordination with KDOT and other stakeholders;
4. demonstrated technical expertise, ability to anticipate technical issues, and required levels of expertise for each Project phase; and
5. demonstrated recognition of key points and ideas, including the Progressive Design-Builder's role in Project advancement at each Project phase, likely issues and Project stressors at each Project phase, understanding of the GMP process and pricing transparency, and ideas and ability necessary to effectively collaborate with KDOT and other stakeholders to achieve Project goals.

## 8 DEPARTMENT RIGHTS AND DISCLAIMERS

### 8.1 Nonpublic Process

The procurement of the Project will be conducted in accordance with the Kansas Open Records Act (KORA), K.S.A 45-201, et seq. All records related to this procurement shall be treated as confidential to the extent allowed by K.S.A. 45-221. All records created during the evaluation and selection process, will remain protected records until the Contract has been executed by all necessary officials of the Progressive Design-Builder and the State, except for KDOT's right to



publicly disclose certain information about the Proposals, such as the name and members of each team.

All records pertaining to this procurement will become public information after award of the Contract unless such records are protected under KORA. If the Proposer submits information in its Proposal that it believes is protected from disclosure under KORA and that it wishes to protect from disclosure, the Proposer shall:

1. at the time the Proposal is submitted, clearly mark as confidential all financial information, trade secrets, or other information customarily regarded as confidential business information that it regards as confidential and include a cover sheet identifying each section and page which has been so marked;
2. with respect to each such section and page, include a statement with its response justifying the Proposer's determination that the identified information is protected; and
3. defend any action seeking release of the records it believes to be protected and indemnify, defend, and hold harmless the State, its agents, and its employees from any judgments awarded against the State of Kansas in favor of the party requesting the records, including any and all costs connected with that defense. This indemnification survives KDOT's cancellation or termination of this procurement or award and subsequent execution of a Contract. In submitting a Proposal, the Proposer agrees that this indemnification survives as long as the protected information is in the possession of KDOT.

Unless otherwise provided by law, confidential business information provided to KDOT is not subject to inspection at any time by third persons under Section 45-221 of KORA.

## **8.2 Observers During Evaluation**

The Proposer is advised that observers from federal or other agencies, as well as KDOT consultants, may observe the Proposal evaluation process and will be permitted to review the Proposal.

## **8.3 Improper Conduct and Non-Collusion**

Neither the Proposer nor any of its team members shall undertake any of the prohibited activities identified in Form D (Non-Collusion Affidavit).

## **8.4 Reserved Rights and Disclaimers**

Notwithstanding anything to the contrary contained in the RFP or the Contract, KDOT reserves the right, in its sole discretion, to do any of the following:

1. develop the Project in any manner that it deems necessary or desirable, including modifying the scope of the Project;
2. modify or rephrase Proposer RFCs;
3. exclude from consideration the Proposer if its Proposal contains a material misrepresentation or omission;
4. reject any or all of the Proposals or other submittals or responses;
5. terminate evaluation of any and all submittals, responses, and Proposals;

6. cancel, modify, or withdraw the entire RFP
7. issue a new RFP;
8. investigate the qualifications (including to require additional evidence) of any Proposer or Progressive Design-Builder or any of Lead Designer, Lead Contractor, any Key Personnel Firm, or any Subcontractor, including specifically to seek or obtain information, and consider such information, from any source, including the evaluators' personal experiences or knowledge, that, in each case, has the potential to improve the understanding and evaluation of the Proposals;
9. hold meetings and exchange correspondence with the Proposer to seek an improved understanding and evaluation of the responses to the RFP;
10. require correction of or waive deficiencies, informalities, and minor irregularities in Proposals; or seek clarifications or modifications to a Proposal;
11. disqualify the Proposer if it changes its Proposal without KDOT approval, to include disqualification under subsequent RFPs pertaining to the Project for violating any rules or requirements of this solicitation/procurement set forth in this ITP or in any other communication from, or on behalf of, KDOT;
12. disclose information contained in the Proposal to the public as governed by applicable Law, order of any court having jurisdiction, or by this ITP;
13. appoint evaluation committees to review the Proposal, and seek the assistance of outside technical experts and consultants in Proposal evaluations; and
14. exercise any other right reserved or afforded to KDOT under this ITP, or applicable Law or in equity.

## Exhibit A - Abbreviations and Definitions

### **Abbreviations**

CFR	Code of Federal Regulations	Q&A	Question and Answer
DMS	Document Management System	RFC	Request for Clarification
ITP	Instructions to Proposers	RFP	Request for Proposals
KORA	Kansas Open Records Act	RFQ	Request for Qualifications
		SOQ	Statement of Qualifications

### **Definitions**

Capitalized terms and acronyms used but not defined in the RFP have the meanings given in this Exhibit A, and if not within this Exhibit A, then within the form of Contract.

**“Addenda” or “Addendum”** means KDOT-issued supplemental additions, deletions, and/or modifications to the RFP after the initial release date of the RFP.

**“Administrative Information”** means the portion of the proposal described in Section 6.2 (Administrative Information).

**“Apparent Best Value Proposer”** has the meaning set forth in Section 7.2 (Proposal Scoring).

**“Authorized Representative”** has the meaning set forth in Section 2.1 (Project Director, Authorized Representative, and DMS Coordinators).

**“Document Management System”** means the web-based KDOT DMS to be used by KDOT and Proposers.

**“DMS Coordinator”** has the meaning set forth in Section 2.1 (Project Director, Authorized Representative, and DMS Coordinators).

**“Financial Proposal”** means the portion of the Proposal described in Section 6.4 (Financial Proposal) and Exhibit D (Financial Proposal Instructions).

**“KDOT Request for Clarification”** means an RFC initiated by KDOT.

**“Key Personnel”** means the Project Manager, Design Manager, Construction Manager, Roadway Design Manager, and Project Controls Manager.

**“Lead Contractor”** means the firm, partnership, or joint venture that has primary responsibility for performance of the Construction Work. If selected, the Progressive Design-Builder may be the Lead Contractor.

**“Lead Designer”** means the firm, partnership, or joint venture that has primary responsibility for design services for the Project.

**“Major Contractor”** means any of the following entities: (i) the Lead Contractor; (ii) the Lead Designer; (iii) Key Personnel Firm(s); (iv) Subcontractor(s) responsible for performing more than 15 percent of the design of the Project; and (v) Subcontractor(s) responsible for performing more than 20 percent of the construction of the Project.

**“Procurement Schedule”** has the meaning set forth in Section 1.4 (Procurement Schedule).

**“Professional Engineer”** means a person who is duly licensed and registered by the Kansas State Board of Technical Professions to engage in the practice of engineering in the State of Kansas.

**“Progressive Design-Build”** means a form of alternative delivery by which KDOT contracts early during the development and design process with a single firm that has responsibility for the design and the opportunity to construct a project under a single contract with KDOT.

**“Progressive Design-Build Contract”** means the form of contract to be set forth in the RFP that will detail the rights and responsibilities of KDOT and the Progressive Design-Builder regarding development, design, and the opportunity to construct the Project.

**“Project E-mail”** means [desotoroadimprovements@ksdotike.org](mailto:desotoroadimprovements@ksdotike.org)

**“Proposal Due Date”** has the meaning set forth in Section 1.4 (Procurement Schedule).

**“Proposer”** means a Person submitting a Proposal for the Project in response to this ITP.

**“Proposer Request for Clarification”** means an RFC initiated by a Proposer.

**“Protest Committee”** means a committee appointed by the State Transportation Engineer to review a protest and decision of a Protest Official pursuant to Exhibit E (Protest Procedures).

**“Protest Official”** means the person identified as the Protest Official in Exhibit E (Protest Procedures).

**“Request for Proposals”** means a written solicitation issued by KDOT to the Proposers requesting Proposals to develop, design, and potentially construct the Project and to be used to identify the Proposer offering the best value to the State.

**“Request for Qualifications”** means this written solicitation issued by KDOT seeking SOQs from “Respondents” thereunder that KDOT will use to identify Proposers invited to respond to the RFP for the Project.

**“Requests for Clarification”** has the meaning set forth in Section 4.1.1 (Proposer Requests for Clarification) and Section 7.5 (Department Requests for Clarification).

**“Resource Allocation and Rates Proposal”** means the portion of the Financial Proposal used to submit its resource allocation and rates in Form G (Resource Allocation and Rates Form).

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

**“Technical Proposal”** means the portion of the Proposal described in Section 6.3 (Technical Proposal) and Exhibit C (Technical Proposal Instructions).

## Exhibit B – Administrative Information Instructions

### 1 Transmittal Package

#### 1.1 Proposal Letter (Form H)

The Administrative Information shall include the Proposal Letter substantially in the form of Form H (Proposal Letter). The Proposer shall attach to the Proposal Letter the documents and information described in the Form H section entitled “Additional Information to be Provided with Proposal Letter”.

#### 1.2 Legal Information

The Administrative Information shall include a completed Form B (Proposer and Major Contractor Information) providing proof of prequalification and other information about the Proposer (as the Progressive Design-Builder) and each Major Contractor (identified in the Proposal and regardless of whether identified in the SOQ).

The Administrative Information shall include copies of organizational documentation described in the Form H section entitled “Additional Information to be Provided with Proposal Letter” for the Proposer and the Progressive Design-Builder (if not the Proposer), including any members/joint venture partners of the Proposer and the Progressive Design-Builder, if any, as well as other documentation required by Form H. If any modification to the organizational documents for such entity is contemplated prior to award or if the Proposer intends to form an affiliated entity to be the Progressive Design-Builder, the Proposer shall provide a brief description of the proposed legal structure and draft copies of the underlying organizational documents (described in the Form H section entitled “Additional Information to be Provided with Proposal Letter”) for such proposed entity.

#### 1.3 Reserved

#### 1.4 Non-Collusion Affidavit (Form D)

The Administrative Information shall include Form D (Non-Collusion Affidavit), certifying that the Proposal is not the result of and has not been influenced by collusion.

#### 1.5 Organizational Conflict of Interest Disclosure (Form E)

The Administrative Information shall include a certification on Form E (Organizational Conflict of Interest Disclosure Certification):

1. reaffirming the representations regarding no conflicts submitted in the Proposer’s Form I (Conflict of Interest Disclosure Statement) submission with its SOQ; and
2. including a Form I submission for any additional or changed Proposer team members, in each case, compliant with the requirements of the form.

#### 1.6 Debarment and Suspension Certificate (Form F)

The Administrative Information shall include a certification on Form F (Debarment, Suspension, Ineligibility, and Voluntary Exclusion Certificate) with respect to the Proposer (as the Progressive Design-Builder) and each Major Contractor (identified in the Proposal and regardless as was identified in the SOQ) certifying to KDOT that each are not declared by the United States federal government, or any United States state/commonwealth government, or have not voluntarily declared themselves debarred, suspended, or ineligible from doing

transactions with the United States federal government, state/commonwealth government, or any of their respective agencies and making other certifications as described in Form F.

### **1.7 Certification Regarding Equal Employment Opportunity (Form I)**

The Administrative Information shall include Form I (Equal Employment Opportunity), regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports, from the Proposer (as the Progressive Design-Builder) and each Major Contractor (identified in the Proposal and regardless as was identified in the SOQ).

### **1.8 Reserved**

### **1.9 Certification re Use of Contract Funds For Lobbying (Form K)**

The Administrative Information shall include Form K (Use of Contract Funds for Lobbying), executed by the Proposer certifying that no federal appropriated funds have been or will be paid for lobbying activities, and no other funds have been paid or will be paid to influence governmental decisions regarding the Project.

### **1.10 Key Personnel Commitment (Form L)**

The Administrative Information shall include Form L (Form of Key Personnel Commitment) providing information concerning commitment to the Project of the proposed Key Personnel described in RFQ Section 5.4.3 and incorporated herein by reference. Form L shall reflect any KDOT-approved replacements to Key Personnel submitted in accordance with ITP Section 3.2.2 (Key Personnel). Key Personnel commitments by each Key Personnel's employer consistent with that described in Form L shall include evidence of signature authority by such employer. The Proposer may duplicate the form as necessary to accommodate multiple employers.

The Design Manager and Roadway Design Manager are required to be a Professional Engineer not later than the Proposal Due Date.

The Proposer shall provide evidence, appended to Form L, of the existence and date of each such license.

### **1.11 Israel Boycott Restriction Certification (Form M)**

The Administrative Information shall include Form M (Israel Boycott Restriction Certification) (or several forms) certifying compliance with the State's restriction on boycott of Israel. The Proposer may duplicate the form as necessary for execution by the Proposer and each Major Contractor.

### **1.12 Sexual Harassment Acknowledgement Form (Form N)**

The Administrative Information shall include Form N (Sexual Harassment Acknowledgement Form) (or several forms) concerning acknowledgement of the Department's sexual harassment policy. The Proposer may duplicate the form as necessary for execution by Progressive Design-Builder (if not the Lead Contractor), Lead Contractor, Lead Designer, and each Key Personnel Firm.

## Exhibit C – Technical Proposal Instructions

### 1 Organization

The Technical Proposal shall include a complete and updated organizational chart, highlighting any changes to that provided in the Proposer's SOQ. The one-page, 11-inch by 17-inch organizational chart shall include the names, role, licensing information (e.g., PE license), and description of Work (if applicable) for the Proposer (as the Progressive Design-Builder) and each of the Lead Designer, Lead Contractor (if not the Progressive Design-Builder itself), each Key Personnel Firm, Subcontractors (identified in the Proposal and regardless as was identified in the SOQ), and any Key Personnel.

#### 1.1 General Project Approach

Using a maximum of three pages, describe the Proposer's overall approach to deliver the Work described in the Contract Documents, including Exhibit B (Pre-construction Phase Technical Requirements) of the Contract setting out:

1. The Proposer's approach to coordination and communications with KDOT and KDOT's advisors in connection with the Project;
2. The Proposer's approach to forecasting, providing, and maintaining necessary project resources (labor, equipment, materials) through each phase of the Project, and Proposer's additional capacity that can be leveraged as needed to deliver the Project;
3. The Proposer's approach to supporting KDOT in working with stakeholders and other third parties such as regulatory agencies and utilities; and
4. The Proposer's approach to scheduling and quality management for all phases of the Work.

#### 1.2 Pre-construction Phase Approach

Using a maximum of six pages, describe the Proposer's specific Pre-construction Phase approach, specifically including:

1. The Proposer's overall approach to delivery of the Pre-construction Phase including Proposer's understanding of relevant KDOT processes;
2. The Proposer's approach to minimize impacts to right of way, utilities, and the natural environment;
3. The Proposer's approach to development, quality, and delivery of the Project design in consideration of the Project goals, including collaboration with KDOT and integration of specific design issues, including right of way, permitting, stormwater management (including MS4 requirements and floodplain considerations), and utility impacts/relocations;
4. The Proposer's approach to integrate and optimize the construction schedule with the design schedule and identify factors that may control the Project schedule;
5. The Proposer's approach to development of Work Packages that would optimize Project delivery;
6. The Proposer's approach to ensure that KDOT receives an optimal price for construction, including a description of the major cost components (i.e., cost drivers) for

the Project and the Proposer's approach to obtaining optimal pricing for these major cost drivers;

7. The Proposer's approach to risk identification and mitigation during the Pre-construction Phase of the Project;
8. The Proposer's approach to managing innovation during the Pre-construction Phase including managing potential impacts of innovation on risk management, schedule, safety, costs, and quality; and
9. (i) A description of the Proposer's approach to competitively soliciting subcontractor quotes for both professional services and services related to Construction Work and how subcontracting packages will be developed and advertised to the subcontracting community, (ii) a description of the Proposer's approach to obtaining reasonable proposals from qualified subconsultants as needed, (iii) the Proposer's approach to openness and transparency in the subcontracting solicitation and selection process, and (iv) the Proposer's approach to identifying and enhancing equal employment opportunities.

### **1.3 Construction Phase Approach**

Using a maximum of six pages, describe the Proposer's specific Construction Phase approach, specifically including:

1. The Proposer's overall approach to delivery of the Construction Phase including Proposer's understanding of relevant KDOT processes;
2. The Proposer's approach to optimizing plans for Work Package implementation and management of associated maintenance of traffic during construction;
3. The scope of work the Proposer intends to self-perform to meet self-performance requirements, the scopes of work that the Proposer intends to subcontract;
4. The Proposer's approach to tracking, documenting, and ensuring compliance with equal employment opportunities requirements with respect to which the Proposer certifies in Form I (Equal Employment Opportunity);
5. The Proposer's approach to risk management during the Construction Phase of the Project; and
6. Proposers approach to managing innovation during the Construction Phase including managing potential impacts of innovation on risk management, schedule, safety, costs, and quality.

### **1.4 Technical Proposal Appendices**

Appendices may be provided as supplemental information to the content provided in response to Section 1.1 (General Project Approach), Section 1.2 (Pre-construction Phase Approach), and Section 1.3 (Construction Phase Approach). Proposers shall clearly reference the Appendices in each of the Sections described above to allow KDOT to properly score the information. Proposer shall also clearly reference within the Appendices which Section described above is being supplemented. Appendices shall not exceed a total of 25 pages. Use of a sheet that exceeds 8.5-inch x 11-inch will be counted as two pages (e.g., 8.5-inch x 14-inch, 11-inch x 17-inch, etc.). Consistent with the general requirements, font size in Appendices shall be no smaller than 11-point.



## Exhibit D – Financial Proposal Instructions

### 1 RESOURCE ALLOCATION AND RATES PROPOSAL

The Proposer shall submit its resource allocation and rates in the form of Form G (Resource Allocation and Rates Form) in its native Excel spreadsheet format available on the DMS.

### 2 SURETY LETTER

The Proposer shall provide a letter from the surety identified in its SOQ, signed by an authorized representative from the surety as evidenced by a current certified power of attorney, using the following language and, where applicable, certifying to the following (where capitalized terms have the meanings given in the ITP):

1. As of the Proposal Due Date, the surety is a licensed bonding surety, authorized to conduct business in the State of Kansas.
2. As of the Proposal Due Date, the surety is listed on the U.S. Department of the Treasury’s “Listing and Approved Sureties” (accessible at the following link: <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>).
3. The surety’s rating is [●] and rated by [●] [ and [●]], which is no less than the KDOT-required minimum A.M. Best and Company rating level of A- or better and Class A-X or better. [NTD: insert rating information]
4. The surety is providing this letter and accompanying certifications/acknowledgements for [●] [NTD: insert Lead Contractor’s name] and that KDOT may rely on the certifications made within.
5. The surety has reviewed the RFP and all Addenda [NTD: modify if no Addenda or only one Addendum].
6. The surety has evaluated [●] [NTD: insert Lead Contractor’s name] financial statements and capability, backlog, and work-in-progress in determining its bonding capacity.
7. The surety understands the bonding requirements associated with Alternative Delivery and any Project-specific requirements identified as anticipated to be required of the selected Progressive Design-Builder under the Contract.
8. As was committed in surety’s certification offered with the Proposer’s SOQ, the surety has performed further diligence (including examination of actual or anticipated material changes in material condition) as to whether the [●] [NTD: insert Lead Contractor’s name] can obtain a bond covering payment and performance under the Contract in an aggregate penal sum of \$40 million and has determined that [●] [NTD: insert Lead Contractor’s name] can, and surety is willing to place, a bond covering payment and performance under the Contract in such aggregated penal sum.

The surety imposes no requirement for additional diligence, analysis, or reporting, nor does the surety qualify, condition, or impose any additional requirements relating to placement of a bond covering payment and performance under the Contract in an aggregate penal sum of \$40 million, and if any such qualification, conditions, or impositions had been in place, the basis for each has been removed or otherwise satisfied.

## Exhibit E – Protest Procedures

This Exhibit E sets forth the exclusive protest remedies available with respect to this RFP. The Proposer, by submitting its Proposal, expressly recognizes the limitation on its rights to protest contained herein, expressly waives all other rights and remedies other than review by a Kansas court under the Kansas Judicial Review Act, K.S.A. 77-601, et seq., and agrees that the decision on any protest, as provided herein, shall be final agency action and conclusive unless wholly arbitrary as determined by a Kansas court. These provisions are included in this RFP expressly in consideration for such waiver and agreement by the Proposer. If the Proposer disregards, disputes, or does not follow the exclusive protest remedies set forth in this RFP, it shall indemnify, defend, and hold KDOT, its directors, officers, officials, employees, agents, representatives, and consultants harmless from and against all liabilities, expenses, costs (including attorneys' fees and costs), fees, and damages incurred or suffered as a result of the Proposer's actions. The submission of a Proposal by the Proposer shall be deemed the Proposer's irrevocable and unconditional agreement with such indemnification obligation.

### 1 KDOT Written Protests Only

All protests must be in writing, whether related to pre-proposal, pre-award, or post-award phases of the procurement. Protests shall be submitted to the Protest Official at the following address:

Kansas Department of Transportation  
Attn: Greg Schieber  
Director of Project Delivery  
Dwight D. Eisenhower State Office Building  
700 SW Harrison Street  
Topeka, KS 66603-3745

Any protest not set forth in writing within the time limits specified in these procedures is null and void and shall not be considered. In addition, protests regarding this RFP made prior to the award of contract shall be filed only after the Proposer has informally discussed the nature and basis of the protest with the Project Director in an effort to remove the grounds for protest. Protests regarding this RFP made after the award of contract shall be filed only after the Proposer has been debriefed by the Project Director and received from the Project Director its proposal evaluation documentation.

The Protest Official may, in his/her discretion, discuss the written protest with the protestor prior to issuance of the Protest Official's written decision. The protestor shall have the burden of proving its protest by clear and convincing evidence. The Protest Official or his/her designee may hold a hearing on the protest or the Protest Official may seek to consider the protest on the basis of written submissions. The Protest Official or his/her designee shall issue a written decision regarding any protest to each Proposer and the written decision shall be deemed to be final the agency action pursuant to the Kansas Judicial Review Act, K.S.A. 77-601, et seq.

The Proposer agrees that any appeal of the Protest Official's decision to the State Transportation Engineer shall be filed within seven Days after the Proposer receives the Protest Official's decision in accordance with Section 6 (Right of Appeal) and any appeal of the Protest Official's decision to the Shawnee County Kansas District Court shall be filed within 30 Days after the Proposer receives the Protest Official's decision. Because of the public interest in expedited procurement and unless the Protest Official's decision provides otherwise, the appeal

of the Protest Official's decision to the State Transportation Engineer does not suspend the 30 Day appeal time for Court review required by the Kansas Judicial Review Act, K.S.A. 77-601, et seq. KDOT may, in its sole discretion, proceed with the procurement during appeal unless prohibited by the Shawnee County Kansas District Court.

## **2 Protest Contents**

All Protests must include the following:

1. The name and address of the Proposer.
2. The Project name and Contract number.
3. A detailed statement of the nature of the protest and the grounds on which the protest is made.
4. All factual and legal documentation in sufficient detail to establish the merits of the protest. Protests must be provided under penalty of perjury.

The protestor must demonstrate or establish a clear violation of a specific law or regulation, or alleged improprieties in the RFP process.

The Protest Official will not be obligated to postpone the Proposal Due Date or Contract award announcement in order to allow a protestor an opportunity to correct a deficient protest or appeal, unless otherwise required by law or regulation or this Exhibit E.

If the protest is denied, the protestor shall be liable for KDOT's costs reasonably incurred in any action to defend against or resolve the protest, including legal and consultant fees and costs, and any unavoidable damages sustained by KDOT as a consequence of the protest. If the protest is granted, KDOT shall not be liable for payment of the protestor's costs.

## **3 Protest Prior to Proposal Due Date**

Protests prior to the Proposal Due Date shall be filed with the Protest Official within seven Days after the protester knew, or should have known, of the actions that it alleges constitute the grounds for the protest.

The Protest Official will promptly make a determination in writing regarding the validity of a protest filed prior to the Proposal Due Date and whether or not the RFP or procurement should be delayed beyond the scheduled Proposal Due Date.

If the Protest Official determines that the scheduled Proposal Due Date should be delayed, all Proposers will be notified by written addendum of the delay and the reason thereof.

If the protest is determined to be valid, the Protest Official will respond in writing to each material issue raised in the protest in a timely manner prior to KDOT proceeding with the procurement.

The failure of the Proposer to file a basis for a protest regarding this RFP shall preclude consideration of that ground in any protest of a selection unless such ground was not, and could not, have been known to the Proposer in time to protest prior to the Proposal Due Date.

## 4 Protest Prior to Award

When a protest or appeal has been filed in a timely manner with the Protest Official prior to award, KDOT, in its sole discretion, may award the Contract before or after resolution of the protest or appeal unless otherwise provided for by law.

## 5 Protest Regarding Award

If the award decision is being protested, a protestor shall protest in writing to the Protest Official as soon as practical, but not later than seven Days after the Project Director or his/her designee has debriefed the Proposer. At each debrief, the Project Director will furnish the Proposers a copy of the evaluation documentation that substantiates the award to the Apparent Best Value Proposer. If the protest has been filed in a timely manner, the Protest Official will promptly make a determination in writing regarding the validity of the protest and whether or not the procurement should be delayed or the award considered for revision.

The Protest Official will respond in writing to each material issue raised in the protest in a timely manner prior to proceeding further with the procurement. If the procurement is delayed, all Proposers will be notified of the delay. The Protest Official or his/her designee shall issue a written decision regarding any protest to each Proposer and the written decision shall be deemed to be final agency action pursuant to the Kansas Judicial Review Act, K.S.A. 77-601, et seq.

Should a protestor wish to appeal the decision of the Protest Official concerning any award decision, a protestor shall follow the procedures as outlined in Section 6 (Right of Appeal).

## 6 Right of Appeal

In the event that a protestor receives an unfavorable decision from the Protest Official to its protest, the protestor shall have the right to a review of the decision of the Protest Official by: submitting a written request for review to the State Transportation Engineer within seven Days after receipt of the decision of the Protest Official and/or filing a petition for judicial review in Shawnee County Kansas District Court within 30 Days after receipt of the decision of the Protest Official, regardless of whether the protestor requests review by the State Transportation Engineer.

If the protestor requests review by the State Transportation Engineer, the State Transportation Engineer will appoint a Protest Committee of at least three members to review the protest and the decision of the Protest Official. The Protest Committee may hold a hearing on the protest or the Protest Committee may seek to consider the protest on the basis of written submissions. The Protest Committee shall issue a written decision regarding any protest to each Proposer and this written decision shall be part of the agency record for judicial review pursuant to the Kansas Judicial Review Act, K.S.A. 77-601, et seq.

If the Protest Committee affirms the decision of the Protest Official, the protestor may initiate or continue with court review of the Protest Official's decision under the Kansas Judicial Review Act, K.S.A. 77-601, et seq. As the review by the Protest Committee and/or State Transportation Engineer is discretionary with the Protestor, this review is not considered an attempt to exhaust administrative remedies, this review is not a prerequisite to seeking judicial review, and this review does not stay the 30Day time period for judicial review of the Protest Official's decision.

If the Protest Committee disagrees with the Protest Official's decision, all documentation on the matter will be submitted to the State Transportation Engineer who will determine whether the decision of the Protest Official will be affirmed or reversed as well as how the agency will proceed with the procurement. Any decision by the State Transportation Engineer shall be deemed new final agency action under the Kansas Judicial Review Act, K.S.A. 77-601, et seq. for which a Protestor may seek review within 30 Days after receipt of the State Transportation Engineer's decision.

## Forms

Form A	Proposer Request for Clarification
Form B	Proposer and Major Contractor Information
Form C	Reserved
Form D	Non-Collusion Affidavit
Form E	Organizational Conflict of Interest Disclosure Certification
Form F	Debarment, Suspension, Ineligibility, and Voluntary Exclusion Certificate
Form G	Resource Allocation and Rates Form
Form H	Proposal Letter
Form I	Equal Employment Opportunity
Form J	Reserved
Form K	Use of Contract Funds for Lobbying
Form L	Form of Key Personnel Commitment
Form M	Israel Boycott Restriction Certification
Form N	Sexual Harassment Acknowledgement Form

## Form A – Proposer Request for Clarification

### INSTRUCTIONS:

1. Submit one copy of this Form A for each set of RFCs being submitted by the Proposer.
2. Submit this form in English (United States) and in Microsoft® Word file format.
3. Specify the relevant document (e.g., the ITP Exhibit, form of Contract, etc.), including the relevant section/subsection/clause number.
4. Indicate whether the question is a Category 1, 2 or 3 question:
  - a. “Category 1” means a potential “go/no-go” issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting Proposal;
  - b. “Category 2” means an issue that, if not resolved in an acceptable fashion, will significantly affect value for money, or taken together with the entirety of other issues, may preclude the Proposer from submitting a Proposal; and
  - c. “Category 3” means an issue that is minor in nature, a clarification, a comment concerning a conflict between documents or within a document, etc. Category 3 questions may include corrections of typographical errors, incorrect cross references, and inconsistencies within the RFP.

**Form A**

<b>NAME OF PROPOSER:</b>	
<b>Address:</b>	
<b>Telephone Number:</b>	
<b>E-mail Address:</b>	
<b>Date:</b>	

<b>No.</b>	<b>Document</b>	<b>Section</b>	<b>Category</b>	<b>Issue Topic</b>	<b>RFP Question</b>



## Form B – Proposer and Major Contractor Information

[To be completed by Proposer and each Major Contractor and signed by authorized signatory or signatories of the respective entity.]

Proposer Name:	
Company Name:	

Under penalty of perjury, I certify that:

1. I am an authorized representative for the company;
2. The company is pre-qualified to perform work as a consultant or contractor for the Department;
3. To the best of my knowledge and belief, following reasonable inquiry, the information submitted in this Proposal as it respects my company is true and correct.

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Form C – Reserved

## Form D – Non-Collusion Affidavit

Proposer:

1. Each of the undersigned, being first duly sworn, deposes and says that:(He/she) is the **[Title]** of **[Company Name]**, which entity is a **[shareholder, partner, joint venture member or other]** of **[Proposer's Name]**, a **[corporation, partnership, limited liability company, joint venture, or other]**, the entity making the foregoing Proposal, and that the answers to the foregoing questions and all other statements therein are true and correct.
2. The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other proposer, or to fix any overhead, profit, or cost element included in the Proposal, or of that of any other proposer, or to secure any advantage against the Kansas Department of Transportation of anyone interested in the proposed Contract; all statements contained in the Proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices, any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, proposal depository or any member, partner, joint venture, or agent thereof to effectuate a collusive or sham proposal.
3. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other proposal, until after award of the Contract or rejection of all proposals and cancellation of the RFP.

[To be completed by the Proposer - Duplicate or modify this form as necessary to accurately describe the entity making the Proposal and so it is signed on behalf of all Proposer partners, members, or joint venturers.]

[Proposer Name]

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Typed or Printed Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Notary Public  
in and for said County and State

\_\_\_\_\_  
My commission expires

## Form E – Organizational Conflict of Interest Disclosure Certification

[To be completed by Proposer.]

Proposer:

### INSTRUCTIONS:

1. Submit one copy of this Form E completed by the Proposer;
2. Include a Form I (Conflict of Interest Disclosure Statement) submission in the form provided in the RFQ for any additional potential conflicts post-SOQ submission; and
3. Include a Form I submission in the form provided in the RFQ for any submission in the form provided in the RFQ for any additional or changed Proposer team members.

**NAME OF PROPOSER:** \_\_\_\_\_ (the “Proposer”)

The Proposer’s attention is directed to ITP Section 3.1 (Organizational Conflicts of Interest) regarding organizational conflicts of interest and the restrictions applicable to such conflicts. Proposers are advised that certain firms will not be allowed to participate on any Proposer’s team for the Project because of their work with KDOT in connection with the De Soto Local Roadway Improvements Progressive Design-Build Project in Johnson County, Kansas (the “Project”) procurement. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the ITP.

### 1. Reaffirmation of Representations Regarding No Conflicts

The Proposer reaffirms that:

1. All relevant facts relating to past, present, or planned interests of the Proposer’s team (including the Lead Contractor, Lead Designer, each Key Personnel Firm, any proposed Subcontractors and their respective employees for the Project) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP were disclosed in Proposer’s Form I submission with its SOQ; and
2. Proposer has attached a completed Form I (in the form required by the SOQ) for any additional organizational conflict of interest in connection with this RFP that arose after Proposer’s Form I submission with its SOQ; and
3. The Proposer has attached a completed Form I (in the form required by the SOQ) for any additional or changed Proposer team members that disclose any facts relating to past, present, or planned interests of such additional or changed Proposer team members which may result in or could be viewed as, an organizational conflict of interest.

### 2. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, the information previously submitted by the Proposer in its Form I submittal with the SOQ remains true and correct in all material respects, no conflict of interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed in Form I previously submitted with Proposer’s SOQ, and in the additional Form I submitted with this Form

E for additional conflicts following SOQ submission and for any additional or changed Proposer team member, if any.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_

Typed or Printed Name

\_\_\_\_\_

Title

\_\_\_\_\_

Company Name

\_\_\_\_\_

Date

## Form F – Debarment, Suspension, Ineligibility, and Voluntary Exclusion Certificate

Proposer:

The undersigned, under penalty of perjury, certifies that, except as noted below, they or any other person associated therewith in the capacity of owner, partner, director, officer, or financial controller:

1. Is not currently suspended, debarred, voluntarily excluded, or disqualified from bidding by any federal or state agency.
2. Has not been suspended, debarred, voluntarily excluded, or disqualified from bidding by any federal or state agency within the past three years.
3. Does not have a proposed debarment pending.
4. Has not been convicted or had a civil judgment rendered against them by a court of competent jurisdiction in any matter involving fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty within the past three years.
5. Is not currently indicted or otherwise criminally or civilly charged by a federal, state, or local government with fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty.
6. Has not had one or more federal, state, or local government contracts terminated for cause or default within the past three years.
7. It is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
8. It is not a corporation that was convicted of a felony criminal violation under a federal law within the preceding 24 months.

If there are any exceptions to this certification, insert the exceptions in the following space.

[Insert exceptions, if any]

Exceptions will not necessarily result in denial of award but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Note: Providing false information may result in criminal prosecution or administrative sanctions.

[To be completed by Proposer and each Major Contractor and signed by authorized signatory or signatories of the respective entities.]

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## **Form G – Resource Allocation and Rates Form**

## Form H – Proposal Letter

Proposer:

[Proposal Date]

Kansas Department of Transportation,  
Attn. Paul Kulseth  
2033 Becker Drive, Suite 208  
Lawrence, KS 66047

The undersigned (“Proposer”) submits this proposal in response to the certain Request for Proposals (the “RFP”) issued by the Kansas Department of Transportation (the “Department”), dated [Date] as amended to solicit proposals for a progressive design-build contractor to enter into a progressive design-build contract (the “Contract”) to develop the De Soto Local Roadway Improvements Project (the “Project”) as more specifically described in the documents provided with the RFP (the “RFP”). Initially capitalized terms that are used but not defined in this proposal shall have the meanings set forth in the RFP.

In consideration of KDOT supplying us, at our request, with the RFP and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] [if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in words “jointly and severally” and delete the brackets; otherwise delete the entire phrase] and agrees that the Proposer shall keep this proposal open for acceptance for 120 days after the Proposal Due Date without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the entity on whose behalf this proposal is submitted, without first obtaining the prior written consent of KDOT, in KDOT’s sole discretion.

If selected by KDOT, the Proposer agrees:

1. to negotiate the terms of the Contract with KDOT in good faith and in accordance with the requirements of the RFP, if applicable;
2. to enter into and perform its obligations as set forth in the Contract, including compliance with all commitments contained in its Proposal, and without varying or amending the Contract terms (except for modifications agreed to by KDOT in its sole discretion);
3. to satisfy all other conditions to award of the Contract; and
4. to perform its obligations as set forth in the Instructions to Proposers (ITP), as amended, and the form of Progressive Design-Build Agreement, including compliance with all commitments contained in this Proposal.

Enclosed, and by reference incorporated herein and made a part of this Proposal, are the following:

1. Administrative Proposal, including Proposal Security;
2. Technical Proposal; and
3. Financial Proposal.

The Proposer acknowledges receipt, understanding, and full consideration of Addenda.

The Proposer certifies that it has carefully examined and is fully familiar with all of the provisions of all of the RFP, and is satisfied that such provisions provide sufficient detail regarding the Work to be performed and do not contain internal inconsistencies; that it has carefully checked all the words, figures, and statements in this Proposal; that it has conducted such other investigations which are prudent and reasonable in preparing this Proposal, including undertaking all activities sufficient to familiarize itself with the Project and undertaking a thorough review of all of the RFP, including the Reference Information Documents; and that it has notified the Department of any deficiencies in or omissions from the RFP or any other documents provided by the Department.

The Proposer represents that all statements made in the Statement of Qualifications previously delivered to the Department are true and correct as of the date hereof, except as otherwise specified in the enclosed Proposal. The Proposer agrees that such Statement of Qualifications, except as modified by the enclosed Proposal, is incorporated in this Proposal as if fully set forth therein.

The Proposer represents that all statements made in the Proposal are true, correct, and accurate as of the date hereof.

The Proposer understands that the Department is not bound to accept any Proposal that it may receive.

The Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer.

The Proposer consents to the Department's disclosure of its Proposal pursuant to the applicable provisions of Kansas law after award of the Contract. The Proposer acknowledges and agrees to the disclosure terms described in ITP Section 8.4 (Reserved Rights and Disclaimers). The Proposer expressly waives any right to contest such disclosures as may exist under applicable law.

The Proposer agrees that the Department will not be responsible for any errors or omissions in its Proposal.

This Proposal shall be governed by and construed in all respects according to the laws of the State of Kansas.

[To be signed by authorized signatory or signatories of the Proposer, use appropriate signature blocks]

Sample signature block for corporation or limited liability company:

[Proposer Name]

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Sample signature block for partnership or joint venture:

[Proposer Name]

By: [General Partner or Member's Name]

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Sample signature block for attorney in fact:

[Proposer Name]

For: [Name]

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Proposer's Business Address:

[Name]

[Street Address]

[City, State, ZIP]

[Country]

Proposer's State or Country of Incorporation: [State or Country]

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**ADDITIONAL INFORMATION TO BE PROVIDED WITH PROPOSAL LETTER:**

1. Describe in detail the legal structure of the Proposer/ Progressive Design-Builder:
  - a. If the Proposer/Progressive Design-Builder is a corporation or includes a corporation as a joint venture member, partner, or member, provide articles of incorporation and bylaws for the Proposer/ Progressive Design-Builder and each corporation, in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
  - b. If the Proposer/Progressive Design-Builder is a partnership or includes a partnership as a joint venture member, partner, or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/ Progressive Design-Builder (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture), in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
  - c. If the Proposer/Progressive Design-Builder is a joint venture or includes a joint venture as a joint venture member, partner, or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/Progressive Design-Builder (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company, and joint venture agreement for a joint venture), in each case certified by an appropriate individual with each such entity. If any entity is not yet formed, so state and indicate that these documents will be provided prior to award.
  - d. If the Proposer/Progressive Design-Builder is a limited liability company or includes a limited liability company as a joint venture member, partner, or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation/formation and organizational documentation for the Proposer/Progressive Design-Builder (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture), in each case certified by an appropriate individual within each such entity. If any entity is not yet formed, so state and indicate that this information will be provided prior to award.
2. Attach evidence to the Proposal and to each letter that the person signing has authority to do so.

With respect to authorization of execution and delivery of the Proposal and validity thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate and authorized officer of the corporation.

- a. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing

- such authorization, in each case, certified by an appropriate and authorized officer of each general partner.
- b. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and, if required by its operating agreement, a manager/managing member resolution providing such authorization, certified by an appropriate and authorized officer of the managing members. If there is no managing member, each member shall provide the foregoing information.
  - c. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate and authorized officer of such joint venture member.
  - d. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable. The required resolutions shall provide that the Proposer is authorized to enter into the Contract if selected for award, and that persons signing the Proposal on behalf of such Proposer are also authorized to execute the Contract if awarded to the Proposer.
3. The Progressive Design-Builder partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to the Department, in its sole discretion, stating that in the event of a dispute between or among joint venture members, partners, or members, as applicable, no joint venture member, partner, or member, as applicable, shall be entitled to stop, hinder, or delay Work on the Project. Proposers should submit the applicable agreement to the Department and identify on a cover page where in the agreement the provision can be found. If the Progressive Design-Builder is not yet formed, provide draft organizational documents and indicate where the provision is found.

## Form I – Equal Employment Opportunity

Proposer:

The undersigned certifies that:

1. (It/He/She) [has/has not] \_\_\_\_\_ developed affirmative action programs on file at each establishment pursuant to 41 CFR § 60-4 and
2. (It/He/She) [has/has not] \_\_\_\_\_ participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, (it/he/she) has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

[To be completed by Proposer and each Major Contractor and signed by authorized signatory or signatories of the respective entity, except as excluded below.]

[Insert Proposer or Major Contractor's Name.]

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**NOTE:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)) and must be submitted by the Proposers and proposed subcontractors only in connection with contracts and subcontracts, which are subject to the equal opportunity clause. Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the executive orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the executive orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.



## Form J – Reserved

## Form K – Use of Contract Funds for Lobbying

Proposer:

The undersigned certifies, to the best of its knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

[To be completed by the Proposer].

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Form L – Form of Key Personnel Commitment

Proposer’s Name:

The Proposer hereby commits that, if awarded the Project, the Proposer will use the individuals listed below for their stated positions and that such individuals will be available to fulfill their Project-related responsibilities, in each case consistent with the Contract Documents.

Key Personnel:

<b>Role</b>	<b>Key Personnel Name (First/Last)</b>	<b>Firm’s Name</b>
Project Manager		
Design Manager*		
Construction Manager		
Roadway Design Manager*		
Project Controls Manager		

\*Append evidence of the existence and date of each Professional Engineer license to this Form L.

[To be completed by Proposer]

By: \_\_\_\_\_  
Signature – Proposer Authorized Representative

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

[To be completed by each Key Personnel Firm and signed by authorized signatory or signatories of the respective entity.]

If the Proposer is awarded the Project as employer of the Key Personnel in this Form L, I hereby commit that the Proposer may use the following individuals for their stated positions and that such individuals will be available to fulfill their Project-related responsibilities, in each case consistent with the Contract Documents:

By: \_\_\_\_\_  
Signature – Authorized signatory of relevant employer\*\*

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\*\* insert evidence of signature authority.

## Form M – Israel Boycott Restriction Certification

Proposer:

Pursuant to K.S.A. 2021 Supp. 75-3740e-g, the Progressive Design-Builder (if not the Lead Contractor), Lead Contractor, Lead Designer, and each Key Personnel Firm shall provide a written certification that the person or company is not currently engaged in a boycott of Israel.

By signing below, the applicable entity agrees and certifies that they are not currently engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the State of Kansas. If at any time after signing this certification the entity decides to engage in a boycott of Israel, the entity must notify the Department in writing.

[To be completed by Proposer and each Major Contractor and signed by authorized signatory or signatories of the respective entity.]

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Form N – Sexual Harassment Acknowledgement Form

WHEREAS, sexual harassment and retaliation for sexual harassment claims are unacceptable forms of discrimination that must not be tolerated in the workplace; and

WHEREAS, state and federal employment discrimination laws prohibit sexual harassment and retaliation in the workplace; and

WHEREAS, officers and employees of the State of Kansas are entitled to working conditions that are free from sexual harassment, discrimination, and retaliation; and

WHEREAS, the Governor and all officers and employees of the State of Kansas should seek to foster a culture that does not tolerate sexual harassment, retaliation, and unlawful discrimination.

NOW THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order as follows:

1. All Executive Branch department and agency heads shall have available and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, or retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within 90 days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.
7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.
8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination and shall not be interpreted to in any way diminish such

laws and regulations. The Order provides conduct requirements for covered persons and is not intended to create any new right or benefit enforceable against the State of Kansas.

9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

Agreement to Comply with the Policy Against Sexual Harassment, Discrimination, and Retaliation:

I hereby acknowledge that I have received a copy of the State of Kansas Policy Against Sexual Harassment, Discrimination, and Retaliation established by Executive Order 18-04 and agree to comply with the provisions of this policy.

[To be completed by Proposer and each Major Contractor and signed by authorized signatory or signatories of the respective entity.]

[Insert company name]

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date