

Title 27. Transportation

Chapter V. Arkansas Department of Transportation, State Highway Commission

Subchapter B. Design and Construction

Part 92. Design-Build Guidelines and Procedures

Subpart 1. General Provisions

27 CAR § 92-101. Introduction.

(a) The design-build project delivery (design-build or D-B) method is an alternative delivery method utilized to deliver design-construction projects more efficiently and expeditiously than the more conventional design-bid-build project delivery (DB-B) method.

(b) The D-B method encompasses both project design and construction under a single contract and would provide a single entity with responsibility for the design and construction of the project.

(c) The D-B method is one of the tools the State Highway Commission is authorized to use in delivering a transportation project.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-102. Purpose.

(a) The purpose of this part is to describe general Arkansas Department of Transportation processes for efficiently and effectively procuring and administering design and construction services for a transportation facility utilizing the D-B method.

(b) When implemented for the project, the D-B method would be supported by an approved set of D-B procedures to supplement or replace certain department DB-B procedures on the project.

(c) The D-B methodology is not intended to totally replace the DB-B methodology but to offer an alternative method of project delivery to the department and is intended to be limited to special projects as determined by the department.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-103. Authority.

(a) Acts 2003, No. 460, of the Regular Session of the 84th General Assembly authorized the State Highway Commission to enter into design-build contracts for highway construction projects and is included as Appendix A.

(b) Acts 2013, No. 541, of the Regular Session of the 89th General Assembly expanded the definition of projects eligible to participate in the design-build process by lowering the minimum project cost for projects using the half-cent temporary sales and use tax, pursuant to Arkansas Constitution, Amendment 91, and is included as Appendix B.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-104. Definitions.

The following definitions and acronyms apply to the design-build guidelines, processes, and procedures:

(1)(A) "Adjusted price" means the value calculated at the completion of the proposal evaluation whereby the combination of the FMP, provided by the proposer in the price proposal, is combined with the technical score, determined by the Arkansas Department of Transportation through an evaluation of the technical proposal, by a predetermined and advertised formula.

(B) Although the formula may be presented in many variations from project to project, generally the lowest adjusted price is considered to represent the best value for the project;

(2) "Agreement" means the design-build agreement;

(3)(A) "Alternative technical concept (ATC)" means the process by which a proposer requests the Arkansas Department of Transportation accept a change in the project requirements, that is equal to or better than presented in the RFP, into the DBA.

(B) If the Arkansas Department of Transportation approves the ATC, then the proposer is authorized to include the ATC into the proposal.

(C) A request for consideration of an ATC will normally occur in the RFP phase when the Arkansas Department of Transportation is meeting and communicating privately with each short-list proposer;

(4)(A) "Baseline project documents (BPD)" means the group of preliminary documents provided by the Arkansas Department of Transportation when a variable scope design-build project is developed.

(B) These documents are included in the procurement documents which represent the acceptable base scope, design, and schedule of the project and are in contrast to the final project documents prepared by the design-builder and included in the proposal.

(C) The BPD may include, but not be limited to, a baseline project:

- (i) Description;
- (ii) Scope;
- (iii) Layout;
- (iv) Schematics;
- (v) Schedule;
- (vi) Right-of-way map; and
- (vii) Utilities map;

(5) "Best value (BV)" means the best adjusted price represented by the submitted proposals as determined by the Arkansas Department of Transportation at the completion of the proposal evaluation period;

(6) "Commission" means the State Highway Commission;

(7) "Confidentiality agreement" means a written, signed agreement between the Arkansas Department of Transportation and a firm, or an employee of a firm, whereby the parties wish to share information and agree that the information shall remain private between the parties, generally for a specified period of time, for the good of the project;

(8) "Conflict disclosure statement" means a written statement signed by a

firm, or an authorized employee of a firm, that discloses any and all potential connections, association, relationship, or ownership issue that may currently exist, or known to exist in the future, between the party and another party or condition that may be interpreted as potentially impacting the operation, implementation, or outcome of the project;

(9) "Contract closure" means the end of the project period where all terms of the DBA have been completed including all warranty and maintenance obligations and all financial obligations have been resolved;

(10) "Department" means the Arkansas Department of Transportation;

(11) "Department implementation team (DIT)" means the group of individuals with the collective responsibility to perform contract administration, design reviews, and monitor, or oversee, the design-builder during the implementation phase of the project;

(12) "Department procurement team (DPT)" means a group of individuals including Arkansas Department of Transportation and non-Arkansas Department of Transportation personnel who collectively:

(A) Assist in the preparation of the procurement documents;

(B) Manage the procurement process; and

(C) Participate in recommending a design-builder for the project;

(13)(A) "Department project office (DPO)" means an Arkansas Department of Transportation office which may house Arkansas Department of Transportation and non-Arkansas Department of Transportation personnel provided to administer the project, usually in a separate, off-site location.

(B) After selection of the design-builder, the DPO may be moved to a common location with the design-builder personnel to more efficiently operate and manage the project.

(C) The process is generally referred to as "co-location";

(14)(A) "Department request for clarification (DRFC)" means an Arkansas Department of Transportation generated formal request to a particular proposer requesting additional information to clarify certain elements of the proposer's submitted SOQ or proposal documents.

(B) Any request of this type is at the sole discretion of the Arkansas Department of Transportation, implemented on an as needed basis, to allow an individual proposer to provide additional information to clarify certain aspects of their proposal during evaluation;

(15) "Design-bid-build (DB-B)" means the more traditional project delivery method for design and construction of highways where the Arkansas Department of Transportation, or a consultant working for the Arkansas Department of Transportation, designs the project and then the Arkansas Department of Transportation solicits bids and subsequently enters into an agreement with a contractor to construct the project;

(16) "Design-build (D-B)" means an alternative project delivery method whereby the design and construction phases of the project are combined into a single contract between the Arkansas Department of Transportation and one (1) entity, generally composed of a single contractor or a joint venture between multiple contractors and design firms;

(17) "Design-build agreement (DBA)" or "contract" means the entirety of the agreement between the Arkansas Department of Transportation and the design-builder to deliver the project, including the signed and executed agreement, all exhibits, appendices, completed forms, and general and technical provisions, along with the design-build proposal elements provided by the design-builder prior to selection which cumulatively represent the complete agreement between the parties;

(18)(A) "Design-build proposal", hereinafter referred to as the "proposal", means the submission from a short-list proposer which includes a sealed technical proposal and a sealed price proposal submitted in response to the RFP released by the Arkansas Department of Transportation.

(B) The proposal establishes the short-list proposer's preliminary design, schedule, and price to meet the requirements of the project scope;

(19) "Design-build to a budget", also known as fixed price-best design, means a particular variable scope D-B method where the Arkansas Department of Transportation establishes the project baseline project cost, and subsequently evaluates the proposals for both:

(A) Compliance with the RFP requirements; and

(B) Maximizing the scope to be delivered by the proposer, above the requirements of the baseline project documents (BPDs) provided by the Arkansas Department of Transportation as part of the procurement documents;

(20)(A) "Design-builder" means the short-list proposer selected at the completion of the RFP phase of the procurement process who will be offered the opportunity to enter into the DBA with the Arkansas Department of Transportation for the project.

(B) The design-builder may be comprised of any company, firm, partnership, corporation, association, joint venture, or other legal entity permitted by law to include, but not limited to, the practice of engineering, architecture, and construction contracting, as appropriate, in the State of Arkansas;

(21) "Director of the Department" or "director" means the Director of State Highways and Transportation;

(22)(A) "Evaluation observer" refers to an individual representing an interested or responsible party, such as Arkansas Department of Transportation administration or Federal Highway Administration personnel, that the DPT will allow access to confidential information and meetings during the procurement process, in particular, the evaluation phases of the process leading to selection of the short-list proposers and subsequently, the design-builder.

(B) All such observers must be required to sign a confidentiality agreement prior to any involvement in the procurement process;

(23)(A) "Evaluation scoring criteria (ESC)" means the established and documented evaluation criteria in the RFQ or RFP whereby the SOQ or proposal, respectively, can be uniformly and objectively evaluated and allow a quantitative score to be assigned to the respective submission.

(B) Separate ESC will be prepared for the SOQ evaluation and the proposal evaluation stages and will be referred to hereinafter as the "SOQ ESC" and "proposal ESC", respectively;

(24)(A) "Final acceptance (FA)" or "project final acceptance" means the

occurrence or date where the design-builder has completed or satisfied all of the obligations, events, and conditions of the DBA to the satisfaction of the Arkansas Department of Transportation.

(B) The Arkansas Department of Transportation will provide a formal letter to acknowledge that final acceptance has been confirmed for the project;

(25) "Final design" means the design performed by the design-builder which results in the preparation of the final plans and final specifications to be utilized in the construction of the project;

(26) "Final geotechnical information" means the collection of documents prepared and documentation of activities prepared or performed by the design-builder and provided to the Arkansas Department of Transportation to supplement the preliminary geotechnical information (PGI) and form the basis of the final design of the project, including:

- (A) Borings;
- (B) Laboratory testing;
- (C) Investigations; and
- (D) Professional report or reports;

(27)(A) "Final plans" means the construction plans prepared by the design-builder during the project implementation phase which are utilized to construct the elements of the project.

(B) The final plans will consist of design-builder prepared:

- (i) Plans;
- (ii) Details;
- (iii) Project specific standard sheets; and
- (iv) Arkansas Department of Transportation standard sheets;

(28)(A) "Final specifications" means the specifications compiled and prepared by the design-builder during the project implementation phase to construct the elements of the project.

(B) The final specifications will be a compilation of Arkansas Department of Transportation standard specifications and project-specific special

specifications/provisions;

(29) "Final warranty completion (FWC)" means the occurrence of passing the warranted date or dates for all elements in which a warranty applies in the DBA and the warranted elements are confirmed by the Arkansas Department of Transportation to meet the requirements of the DBA or are restored by the design-builder to sufficiently meet the warranty requirements;

(30) "Fiscal management information system (FMIS)" means the latest version of the financial tracking, analysis, and reporting information system utilized and supported by the Federal Highway Administration Office of Budget and Finance to monitor the use of projects financed, in whole or in part, by federal-aid highway funds;

(31)(A) "Fixed maximum price (FMP)" means the lump-sum maximum price provided in the price proposal by a short-list proposer in response to the RFP released by the Arkansas Department of Transportation.

(B) The FMP represents the design-builder's proposed total price to complete all project work requirements;

(32) "Implementation phase" means the period in a D-B process from the selection of the design-builder to the project final acceptance including the final design and construction of the project;

(33) "Independent assurance (IA)" means one of the quality assurance responsibilities of the Arkansas Department of Transportation during the implementation phase of the project, whereby the Arkansas Department of Transportation performs checks or audits of the methods, procedures, and personnel assigned by the design-builder to provide sampling and testing on the project;

(34) "Instructions to proposers (ITP)" means a component of the RFP intended to provide information and instruction to short-listed proposers relative to general information, a description of the procurement process, formulation and processing of ATCs, submittal requirements, and a description of the procurement selection process;

(35) "Inter-agency agreement (IAA)" means an agreement required between the Arkansas Department of Transportation and another agency, whether federal, state, or local jurisdictions, required to complete the project scope;

(36)(A) "Key personnel" means individual positions or personnel in the proposer organization, as described in the RFQ and RFP, that are of high importance to the successful completion, performance, and management of the project.

(B) These key personnel positions are evaluated by the Arkansas Department of Transportation during the SOQ and proposal evaluations;

(37)(A) "Notice to proceed (NTP)" means a formal notice from the Arkansas Department of Transportation to the design-builder authorizing the design-builder to proceed with all or some portion of the work.

(B) The NTP may provide authorization to proceed with all aspects of the work, however, many times the NTP provides only limited authorization to perform certain portions of the work.

(C) When multiple notices/authorizations are to be utilized as part of the DBA, the notices are usually identified as "NTP1", "NTP2", etc.;

(38) "One-on-one meeting" means a private meeting held after the release of the RFP between the Arkansas Department of Transportation and an individual short-list proposer to convey information and discuss project issues and potential modifications to the design to be included in the respective proposal;

(39) "Over-the-shoulder (OTS)" means an informal meeting or observation process during the project implementation phase whereby the design-builder provides preliminary information concerning design concepts and issues for input by the Arkansas Department of Transportation and/or the DIT participation in design-builder meetings during final design;

(40) "Owner verification, testing, and inspection (OVTI)" means one (1) of the quality assurance responsibilities of the Arkansas Department of Transportation during the implementation phase of the project whereby the Arkansas Department of Transportation performs a limited amount of inspections and testing to confirm, verify, and provide confidence in the testing and construction procedures performed by the design-builder;

(41)(A) "Preliminary design" or "preliminary engineering" means the project preliminary or schematic design performed by the Arkansas Department of

Transportation and provided to the proposer during the procurement process.

(B) The preliminary design provides the basis for the proposer to develop an understanding of the requirements of the project scope;

(42)(A) "Preliminary geotechnical information (PGI)" means all the geotechnical information provided by the Arkansas Department of Transportation to the short-list proposers in the procurement documents to facilitate the preparation of the proposal.

(B) The information could include a combination of existing geotechnical information prepared for previous projects in the project area, with current project geotechnical investigations, and possibly reports, prepared specifically for the project.

(C) The PGI may be provided as part of the RID;

(43)(A) "Preliminary geotechnical report (PGR)" means a report that may be prepared at the conclusion of any preliminary geotechnical investigation or investigations performed by the Arkansas Department of Transportation or by an authorized firm representing the Arkansas Department of Transportation.

(B) If prepared, the PGR should provide a summary of general geological conditions, summary and conclusion of geotechnical investigations, and boring logs, and may or may not include preliminary recommendations for bridge and wall support systems, bearing and sliding capacities, and factors of safety and recommendations regarding limitations on certain construction methodologies, and should be released with the procurement documents as part of the RID;

(44) "Price proposal" means the sealed package including documents which supply support for and will contain the fixed maximum price (FMP) submitted by a short-list proposer in response to the RFP released by the Arkansas Department of Transportation;

(45) "Procurement documents" means all documents released by the Arkansas Department of Transportation as part of the procurement process to select a design-builder for the project;

(46) "Procurement phase" or "procurement process" means the entire process of steps by which the Arkansas Department of Transportation offers to outside parties

(proposers) an opportunity to submit a proposal to undertake the project, including the RFQ and RFP, leading up to selection of the design-builder to design and construct the project;

(47) "Project" means all the work to be included as part of the project scope as described in the procurement documents;

(48)(A) "Project budget" means the maximum amount of funds available to finance the project.

(B) The project budget is determined by the Arkansas Department of Transportation prior to the procurement phase;

(49) "Project description" means the written description of the project, including project limits and specific features, provided by the Arkansas Department of Transportation in the procurement documents;

(50) "Project design criteria (PDC)" means the design criteria provided in the RFP which establishes the basis of the design to be provided in the proposal;

(51)(A) "Project director (PD)" means the individual selected by the Arkansas Department of Transportation to manage and administer the project and represent the Arkansas Department of Transportation in all matters except those matters that require a higher authority by law.

(B) The PD is usually an Arkansas Department of Transportation employee;

(52) "Project environmental documents (PED)" refers to the cumulative documents, usually completed by the Arkansas Department of Transportation prior to the issuance of the RFQ and RFP, required to meet the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., requirements and any other federal or state environmental obligations required of the project;

(53) "Project evaluation team (PET)" means a select group of individuals who are selected to perform the evaluation of the submissions by the proposer or proposers during the procurement process;

(54)(A) "Project limits" means the defined termini of the project and is included in the project scope.

(B) The project limits are usually established by the Arkansas Department of Transportation prior to the procurement phase and are presented in the procurement documents and confirmed in the PED.

(C) In some instances, minor adjustments are implemented during final design with the approval of the Arkansas Department of Transportation.

(D) When the design-build to a budget methodology is utilized for the project, the project limits may be different for each proposal submitted to the Arkansas Department of Transportation in response to the RFP;

(55) "Project management plan (PMP)" means the overall plan submitted by the design-builder, subject to approval by the Arkansas Department of Transportation, that describes the methods used by the design-builder to manage their delivery of all aspects of the project scope of work including the quality management plan;

(56) "Project manager (PM)" means the individual who is selected by the design-builder organization to manage the project and represent the design-builder in all project matters;

(57)(A) "Project review team (PRT)" means the group of individuals selected to monitor and review the final design plans and documents from the design-builder.

(B) The PRT is part of the department implementation team (DIT) and may consist of Arkansas Department of Transportation personnel only or a combination of Arkansas Department of Transportation and non-Arkansas Department of Transportation personnel;

(58) "Project right-of-way map" means a graphic document prepared by the Arkansas Department of Transportation which summarizes and presents all of the existing and proposed rights-of-way, easements, and access limits along the project corridor which would be provided to the proposers as part of the RID in the procurement documents;

(59)(A) "Project risk allocation matrix (RAM)" means an Arkansas Department of Transportation prepared document which identifies the anticipated project risks and establishes the method of addressing each identified risk.

(B) The document also addresses the level of risk that the Arkansas

Department of Transportation is willing to accept and how much risk will be assigned to the design-builder and allocates the risk mitigation to the party, or combination of parties, best able to manage the risk;

(60)(A) "Project schedule" means the baseline project schedule prepared by the Arkansas Department of Transportation prior to the procurement phase and provided to the proposers in the procurement documents which covers the time frame allowed for the design-builder from the DBA execution through the final acceptance of the project by the Arkansas Department of Transportation.

(B) The time period defined by the project schedule covers the periods to design and construct the project as well as meet all interim and final completion milestones including final acceptance.

(C) The final schedule presented in each proposal submitted to the Arkansas Department of Transportation may vary from the project schedule presented in the procurement documents, if proposal-specific schedule adjustments were allowed in the RFP;

(61) "Project scope" means the baseline project scope of work which defines the overall project as provided by the Arkansas Department of Transportation in the procurement documents including, but not limited to, the RFQ and RFP which represent all the work and tasks to be included in the DBA;

(62) "Project timeline" means the overall schedule that includes all of the project activities from initial programming to completion of the project including the:

- (A) Environmental document process;
- (B) Right-of-way acquisition;
- (C) Preliminary design;
- (D) Final design; and
- (E) Construction;

(63)(A) "Project utility agreement (PUA)" means an agreement between the Arkansas Department of Transportation and a utility company, either formal or informal, to authorize the appropriate utility adjustment, whether relocation or protection of the existing utility in place, as required by the project scope.

(B) A PUA is normally obtained by the Arkansas Department of Transportation prior to the issuance of the RFP, although there may be circumstances where a PUA may not be completed until the design-build proposals have been submitted to the Arkansas Department of Transportation;

(64)(A) "Proposal scope of work" means the scope of work defined in a submitted proposal from a short-list proposer in response to the requirements of the RFP.

(B) The scope of work included in the proposal must be equal to, or exceed the requirements of, the baseline project documents in a variable scope project development provided in the RFP which represent the minimum requirements of the project;

(65)(A) "Proposer" or "proposer team" means an organization that completes all the requirements of the RFQ and submits an SOQ to the Arkansas Department of Transportation in response to the RFQ.

(B) The proposer may consist of a single firm but normally consists of a collection of firms which have organized together to pursue the project;

(66) "Proposer request for clarification (PRFC)" means a proposer-generated formal request to the Arkansas Department of Transportation for additional information or clarification of previously released information during the RFQ and RFP stages of the procurement process;

(67)(A) "Public involvement program" means the Arkansas Department of Transportation plan to inform and engage the public with information concerning the project.

(B) The public involvement program may include:

(i) Providing the public an opportunity for input;

(ii) Education about the project; and

(iii) Meeting with impacted businesses, residential parties, and other project stakeholders to discuss the project;

(68) "Quality management plan (QMP)" means a plan submitted by the design-builder, subject to approval by the Arkansas Department of Transportation, that

describes the methods used by the design-builder to deliver, verify, and control quality on the project, inclusive of quality management in design and construction activities;

(69)(A) "Reference information documents (RID)" means the aggregate collection of documents provided by the Arkansas Department of Transportation to the short-list proposers for reference during proposal preparation, which may include the project:

- (i) Schematics;
- (ii) Standards;
- (iii) Details;
- (iv) Manuals;
- (v) Industry standards and references;
- (vi) Existing or proposed utility plans;
- (vii) Right-of-way maps;
- (viii) PED and approvals;
- (ix) Utility agreements;
- (x) Existing as-built plans;
- (xi) PGI; and
- (xii) PGR.

(B) The RID, as a whole, is not considered part of the contract and is generally provided in the RFP "FOR INFORMATION ONLY", and without representation of warranty by the Arkansas Department of Transportation, except to the extent select RID documents may be incorporated into the DBA by a specific reference;

(70)(A) "Request for proposals (RFP)" means the compilation of documents which define the requirements, the essential components, and criteria of the project prepared by the Arkansas Department of Transportation for the short-list proposers to prepare and submit a proposal to the Arkansas Department of Transportation.

(B) The RFP includes, but is not limited to, the project scope, project design criteria, project schedule, and instructions to proposers (ITP) that describes the procurement process and submittal requirements for the proposal to be submitted to the Arkansas Department of Transportation;

(71)(A) "Request for qualifications (RFQ)" means the document or documents which describes project definition and scope of work, along with other requirements, and possibly criteria, for a potential proposer to determine their interest in the project.

(B) An interested proposer will submit an SOQ to the Arkansas Department of Transportation to evaluate whether the proposer exhibits the requisite experience and ability to perform the work included in the project scope;

(72)(A) "Schedule of values (SOV)" means the cost breakdown provided by the short-list proposer which provides the breakdown of the FMP included in the price proposal into the individual schedule items, tasks, and milestones which make up the totality of the work of the project.

(B) The SOV is utilized by the Arkansas Department of Transportation to anticipate the financial requirements of the project, review the monthly invoices submitted by the design-builder, and for analyzing the impacts of any potential changes in the DBA throughout the project;

(73)(A) "Short-list proposer" means a proposer who has been selected at the end of the SOQ evaluation process as among the most highly qualified respondents to the RFQ.

(B) A short-list proposer will subsequently be invited to submit a proposal in response to the RFP released by the Arkansas Department of Transportation;

(74)(A) "Solicitation of interest (SOI)" or "request for letter of interest" means a letter or brief document released by the Arkansas Department of Transportation requesting a letter of interest from interested firms in regards to pursuing and/or proposing on the project.

(B) The SOI is intended to raise industry awareness of the project and gauge industry interest in participating in the procurement process;

(75)(A) "Statement of qualifications (SOQ)" means the document or documents prepared by the proposer and submitted to the Arkansas Department of Transportation in response to the RFQ.

(B) The SOQ provides the proposer qualifications and experience relative to performing the project work as presented in the RFQ;

(76)(A) "Stipend" means the payment by the Arkansas Department of Transportation to any unsuccessful short-list proposer as partial compensation for the effort and expenses required to develop a complete proposal in response to the RFP issued by the Arkansas Department of Transportation.

(B) Proposals which are considered nonresponsive by the Arkansas Department of Transportation are not normally provided a stipend;

(77)(A) "Substantial completion" or "project substantial completion (SC)" refers to the occurrence or date where the design-builder has completed or satisfied all of the obligations and conditions sufficient to meet the DBA requirements to the satisfaction of the Arkansas Department of Transportation.

(B) The required tasks, obligations, and conditions to be completed by the design-builder for substantial completion should be specifically noted in the DBA and the Arkansas Department of Transportation should provide a formal correspondence to the design-builder acknowledging that SC has been obtained;

(78) "Technical proposal" means the sealed compilation of documents which contain the entirety of the short-list proposer's technical approach to the project including the approach to design, quality, schedule, management, and construction parameters for performing the work included in the project scope in response to the RFP released by the Arkansas Department of Transportation;

(79)(A) "Technical score (TS)" means the compilation of various factors required to evaluate the technical proposal, typically including, but not limited to:

- (i) The overall time needed for completion of the work;
- (ii) Innovative design included in the proposal;
- (iii) The scope and quality of the work;
- (iv) Quality of the project management;
- (v) Project aesthetics;
- (vi) Environmental compliance; and
- (vii) Other criteria.

(B) The factors are determined on a project-by-project basis to reflect the important scope items, goals of the project, elements the Arkansas Department of

Transportation has determined to be most important in delivery of the project, and to differentiate the short-list proposers.

(C) The technical score is determined by the PET at the end of the evaluation of the technical proposal;

(80) "Unsolicited project proposal (UPP)" means a formal proposal submitted to the Arkansas Department of Transportation by a potential design-builder to perform work that has not been formally advertised/solicited by the Arkansas Department of Transportation; and

(81)(A) "Value engineering study (VES)" refers to an Arkansas Department of Transportation process where the preliminary design and/or development of the project is evaluated by individuals both inside and outside the department project office.

(B) The VES can review the design and the development plans for the project and offer suggestions as to how to reduce costs, improve schedules, or add efficiencies into the project development or otherwise add value to the project.

(C) For design-build projects, a VES typically is conducted before the RFP is issued, and the VES includes an evaluation of the contract requirements that are intended to be included in the RFP.

Authority. Arkansas Code § 27-67-206.

Subpart 2. Design-Build Project Candidates — Review and Selection Process

27 CAR § 92-201. Review.

(a)(1) To determine whether the project is a suitable candidate for a design-build (D-B) delivery process, the Arkansas Department of Transportation should conduct a thorough review of the project's key goals and objectives as well as a complete assessment of the project's development status and project risks.

(2) The scope of a candidate project should be fully known and the expected outcomes adequately defined.

(3) Benefit-oriented criteria are typically used to determine whether the

project appears to be a candidate for the implementation of a D-B delivery method.

(4) The project goals, potential benefits, and probable risks should be carefully weighed to determine if D-B is the appropriate delivery method.

(5) The project should be examined for unusual or unique requirements that could be most effectively addressed by the D-B delivery method.

(6) Examples of a candidate project could include one with:

- (A) Severe right-of-way limitations;
- (B) Extensive maintenance of traffic issues;
- (C) Short or restrictive construction schedules;
- (D) Tight budgetary restrictions; and/or
- (E) Time-sensitive staging.

(b) D-B projects should normally fit one (1) or more of the following categories:

(1) A large or emergency project that needs to be expedited for the public benefit, where design and construction phases can be overlapped or completed in a more efficient manner;

(2) A project with complex constructability, maintenance of traffic, and/or other technical or complex design issues where design or construction innovation would be beneficial to the public; and

(3) A large or unusual project that does not lend itself to the normal DB-B method.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-202. Project selection.

(a) Potential D-B projects may be proposed by Arkansas Department of Transportation staff for consideration by the Director of State Highways and Transportation.

(b) The department may also receive an unsolicited project proposal (UPP) for a proposed D-B project by a potential design-builder which should be handled in accordance with the processes outlined in Appendix C.

(c) The final determination of whether a project is selected by the department for utilization of D-B methodology is the responsibility of the State Highway Commission.

Authority. Arkansas Code § 27-67-206.

Subpart 3. Design-Build Project Development Process

27 CAR § 92-301. Overview.

(a) A D-B project will normally advance through the early stages of project development in the same manner as a DB-B project, however, each D-B project is unique and the Arkansas Department of Transportation must carefully assess the project development strategy for each project.

(b) The project development process for D-B projects is generally the same as that used for traditional DB-B projects until approximately the twenty percent (20%) to thirty percent (30%) level of preliminary engineering and associated studies and the environmental process.

(c) At that point, the D-B project development process is differentiated by the fact that preliminary engineering and other preliminary data gathering and studies are assembled and packaged as part of the reference information documents (RID) provided to the short-listed proposers for use in the preparation of their proposal and subsequently for the selected design-builder for use and reference during the final design and construction as discussed in Subpart 4, Design-Build Project Procurement Process.

(d) Typical activities in the project development process for D-B projects are discussed in further detail in the following sections.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-302. Project programming.

(a) Most agencies and other Arkansas Department of Transportation program D-B

projects in the same manner as projects delivered using the more traditional DB-B delivery method.

(b) It is important to note, however, that if D-B delivery is selected, a heightened emphasis on how accurate and current the preliminary documents are including the project scope, project schedule, and budget, as required, to ensure that all federal, state, and any regional or municipal planning, programming, and coordination efforts are accomplished in a timely manner to avoid causing any negative impacts on the D-B project during the procurement phase or implementation phase of the project.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-303. Project scope.

(a)(1) The project scope should be developed using existing work products and/or products from data gathered during the programming process.

(2) These products and data should provide the basis to describe the existing conditions, the proposed project form and limitations, as well as the expected impacts and outcome.

(3) Work product examples to be reviewed include, but are not limited to:

- (A) Preliminary reviews;
- (B) Environmental surveys;
- (C) Photogrammetric surveys;
- (D) Topographic maps;
- (E) Existing soil borings;
- (F) Previous construction plans; and
- (G) Right-of-way maps.

(4) The background information should be sufficient to facilitate the development of the project scope and to guide the initial preliminary engineering and environmental work efforts.

(b)(1) As preliminary engineering and other project development work continues, the project scope should be updated regularly to ensure that key assumptions

regarding scope, schedule, and funding are appropriately modified.

(2) The project scope should accurately describe the work presented in the procurement documents, in particular, the RFQ and the RFP.

(3) In a manner consistent with the DB-B process, the D-B process requires early determination of the project expectations including the project description, project limits, typical section or sections, project schedule, and the budget to be presented to the proposer during the procurement phase.

(4) If the design-build to a budget method is selected for the project, the documents would be presented as the baseline project documents during the procurement phase as the baseline or minimum standard acceptable for the project with the expectation that the short-list proposers will improve on the standard presented within their respective proposals.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-304. Project timeline and project schedule.

(a) The project timeline, which includes the entire project period from initial development through the project final acceptance, must allow sufficient time for all required tasks outside of the D-B period, including:

- (1) Environmental work;
- (2) Right-of-way acquisition;
- (3) Permitting; and
- (4) Utility relocation.

(b) The timeframe of the preliminary project schedule, or baseline project schedule, only includes the final design and construction of the project performed by the design-builder.

(c) The project timeline is a common reason for selecting the D-B delivery method.

(d) By utilizing the D-B method, much of the design and construction may be executed concurrently, saving calendar time in the project schedule.

(e) The project schedule is presented to the proposers in the procurement

documents as the maximum amount of time allowed for the work included in the RFP and ultimately in the DBA.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-305. Project funding.

(a) In all D-B projects, the Arkansas Department of Transportation should identify funding sufficient to support the project, considering total project cost as well as cash flow requirements, prior to the initiation of the procurement process.

(b) If sufficient funding is not committed prior to the initiation of the procurement process, it should certainly be completed before short-list proposers are required to submit their proposals.

(c) The short-list proposers will expect to see evidence in the RFP that the department has identified committed funding, and they will view insufficient funding as a major risk to the project and their participation in the procurement process.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-306. Project risk overview.

(a)(1) Allocation of the project risks inherent in highway projects is a major factor in and underlying the D-B development model.

(2) The definition of ownership and responsibility for each task and its associated risk is an important consideration of the D-B process.

(b)(1) On a traditional DB-B project, the Arkansas Department of Transportation acts in two (2) roles, as both the owner and engineer.

(2) The owner and engineer roles require the department to bear most, if not all, of the risk for the success of the design.

(3) In a D-B project, the guiding principle should be the assignment of risk to the party (owner or design-builder) which can most effectively and economically manage that particular risk.

(4)(A) One key question to be asked in a risk allocation assessment is, "How much is the department willing to pay a design-builder to assume risk that the department typically bears?"

(B) The risk resolution or mitigation will include a cost either way, so the response to the question would need to consider who is better able to mitigate or avoid the risk.

(C) The same question may be appropriate for each individual task on a project to tailor the D-B project development and contracting approach to each particular project.

(c)(1) Project risk is the defining issue that permeates all decisions related to developing the DBA provisions.

(2) High-risk items should be addressed prior to awarding a D-B project to avoid forcing the department to pay a premium on the unknown risk or in the contingency portion of the design-builder proposal.

(3) Some examples of high-risk items include:

- (A) Environmental studies;
- (B) Public endorsement;
- (C) Inter-agency agreements;
- (D) Project utility agreements;
- (E) Right-of-way acquisition; and
- (F) Project funding.

(d)(1) If unanticipated issues or unforeseen conditions arise during the project, such as differing site conditions, hazardous materials, cultural resource sites, endangered species, or other issues of an environmental nature, the department should, unless specified otherwise in the DBA, develop, direct, manage, and monitor the performance of any mitigation plans required of the design-builder to address those issues.

(2) If the responsibility of unforeseen conditions is not directly assigned to the design-builder in the DBA, the design-builder may be asked by the department to perform the associated work to mitigate such unforeseen conditions under a change

order to the DBA.

(3)(A) An example of this approach would be where the department accepts the risk of any environmental discoveries by agreeing to reimburse the design-builder for remediation costs in order to reduce the overall costs submitted in the proposals.

(B) Conversely, in a corridor in which the department has an increased confidence that environmental discoveries are less likely, the department could pass on to the design-builder all risks for unanticipated environmental discoveries.

(e)(1) The department may deviate from the normal position of maintaining responsibility for high-risk or otherwise unforeseen conditions only if a thorough assessment is performed of the department cost versus the department benefit derived from allocating the risk responsibility to the design-builder.

(2) In some cases, the high-risk items may be allocated jointly to both parties, the department and design-builder, or shared in a prorated structure, dependent upon each parties' responsibility and/or ability to most effectively mitigate the respective unanticipated risk.

(3)(A) An example of this approach would be where the department exhibits high confidence that the design-builder would discover hazardous materials during excavation.

(B) In such case, the department could acknowledge the potential discovery of hazardous materials in the RFP and then share the risk with the design-builder so that neither party was required to bear the entire cost in the event of a discovery.

(C) The department could place the risk for remediation on the design-builder, however, cap the design-builder's exposure in the RFP to a specific dollar amount and, if exceeded, the department would cover any additional costs.

(f)(1) The department should begin to identify potential risks early in the project development and to assign responsibility for each of these risks to the appropriate party or parties.

(2) The risk review and assignment is not a one-time project development task but part of a continuing process for the project that could be modified as more

information becomes available.

(g)(1) One suggested method to manage the project risks is the development of a project risk allocation matrix (RAM).

(2) The RAM is a concept suggested from an extensive review of best practices nationally.

(3) An example of a project RAM is included as Appendix D.

(4) The RAM helps to present all relevant associated information concerning an anticipated risk which allows the department to discuss and determine the allocation of risk the department is willing to accept for the project.

(h)(1) The RAM is a summary document, normally prepared in tabular format, listing the determined project risks, along with associated information provided, such as:

(A) The category or risk type;

(B) Risk description;

(C) Risk cost drivers;

(D) The risk assignment or risk allocation; and

(E) The end result or risk treatment.

(2) The RAM should be tailored to each individual project.

(3) It is not intended to be a department-wide, all-inclusive document for every project.

(4) The RAM should be carefully reviewed so that all elements are included that could impact the specific project.

(i)(1) The department should continue to utilize the RAM throughout project development, procurement, and implementation of the project.

(2) The RAM will not only assist in determining which party is responsible for a specific risk, but it will also help the department determine how far to advance each technical element within the preliminary design during development of the RFP to meet the current objectives of the RAM.

(3) The risk allocation decisions, allocations, and treatments are integrated into the DBA so that both parties are clear on respective responsibilities, rights, and

remedies if the other party does not fulfill their obligations.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-307. Preliminary design and engineering.

(a)(1) The level of preliminary design and engineering provided by the Arkansas Department of Transportation for a D-B project can vary from project to project, but a twenty percent (20%) to thirty percent (30%) level of design completed prior to the release of the RFP is not uncommon.

(2) A similar level of completion would enable the key decisions regarding the project scope, project limits, project schedule, project budget, along with impacts and mitigations, as well as other project requirements and commitments, to remain directly under the control of the department.

(3) Care should be taken, however, to avoid advancing the project development process too far which could result in unnecessary restrictions on the proposers and limiting design alternatives and innovation which are a benefit to the department in the application of the D-B delivery method.

(b)(1) The department's preliminary design is placed in the RFP as part of the RID.

(2) The design elements of the preliminary design that must be included by a design-builder are typically defined in the technical provisions as the basic configuration acceptable for the project.

(3) The basic configuration represents the must have elements that a design-builder would not be able to change without agreement from the department.

(4) Examples of basic configuration elements could include the:

(A) Number of lanes;

(B) Locations of interchanges and types of interchanges; and

(C) Project termini.

(5) The basic configuration allows the department to prescribe essential elements of the preliminary design while providing design flexibility to the design-builder.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-308. Environmental documentation.

(a) The preparation of project environmental documents (PED), and the subsequent obtaining of required environmental and regulatory clearances, should normally be performed by the Arkansas Department of Transportation in accordance with the regulations for implementing the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., as promulgated by the Council on Environmental Quality.

(b) The RFQ may be released prior to the conclusion of the National Environmental Policy Act of 1969 review process as long as the RFQ informs proposers of the general status of the National Environmental Policy Act of 1969 process.

(c) The National Environmental Policy Act of 1969 review process is concluded with:

- (1) A categorical exclusion classification;
- (2) An approved finding of no significant impact; or
- (3) An approved record of decision.

(d) Specialty environmental requirements for the project and/or the proposer to consider may be identified in the procurement documents.

(e) Implementation of any environmental commitments and mitigation measures identified during the National Environmental Policy Act of 1969 process should be specifically included as requirements in the procurement documents and should make clear the allocation of cost and schedule risk if a proposer suggests any design features that would require a change or reevaluation of the PED.

(f) In general, the proposer should retain any risk for modifications to the project scope initiated by the proposer which is not consistent with the PED and any approvals provided by the department in the procurement documents.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-309. Right-of-way coordination.

(a)(1) Right-of-way acquisition will normally be the responsibility of the Arkansas Department of Transportation.

(2) In order to prevent proposers from arbitrarily pricing uncertainty of ROW availability, right-of-way acquisition will typically be initiated upon completion of the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., process prior to completion of the procurement phase.

(3) In some cases, right-of-way acquisition may continue after the completion of the procurement phase if specifically authorized by the Director of State Highways and Transportation.

(4) In cases where right-of-way acquisition will continue after completion of the procurement phase, the RFP and technical provisions must specify the department's right-of-way acquisition/delivery schedule so that the design-builder can plan for access to certain parcels on the specified timeline.

(5) The department must carefully consider what the delivery dates will be for each parcel, including any condemnation processes that may be needed.

(6) A delay in the schedule for right-of-way acquisition in these cases may entitle a design-builder to schedule relief and/or delay damages.

(b)(1) During the implementation phase of the project, the design-builder may, in some cases, request additional right-of-way be acquired for the project to facilitate a feature in the final design, prepared by the design-builder, which deviates from the preliminary design.

(2) Such a request may or may not be approved by the department depending on the circumstances.

(3) If the request is approved, the design-builder is ultimately responsible for the direct costs and the impacts in the project including the project schedule due to the additional right-of-way acquisitions.

Authority. Arkansas Code § 27-67-206.

Codification Notes. "ROW" means right-of-way.

27 CAR § 92-310. Geotechnical considerations.

(a)(1)(A) In a more traditional DB-B project, any geotechnical investigation and subsequent report are provided by the Arkansas Department of Transportation or an authorized representative firm prior to design to enable the department or consultant to design the project and as a resource for the contractor to construct the project.

(B) In a D-B project, there are two (2) different approaches with regard to the generation of the project geotechnical information that should be considered during the project development.

(2)(A) In one approach, the department would provide a complete report with all the geotechnical information for the project, including detailed analyses and recommended design parameters, to the short-list proposers in a manner similar to a DB-B project.

(B) However, this approach is normally not preferred due to the potential impacts to the final design and, more importantly, the risk imputed to the department using this approach.

(3)(A) The second, and preferred, approach would include the department, or an authorized representative firm, collecting samples and providing preliminary information, which may include field sampling and testing, and limited analyses depending on project risk factors.

(B) The information is provided to the short-list proposers and acts as a general common base upon which general concept designs and approaches may be developed.

(C) However, the department and its authorized representative firms should not provide detailed geotechnical interpretive data or analyses unless special site conditions warrant the additional risk assumed by the department performing these services and providing the information to the short-list proposers.

(D) A general breakdown of the tasks and information that may be provided by the department is discussed below.

(b) Geotechnical investigation.

(1)(A) A geotechnical investigation should be performed by the department in preparation for the preliminary design efforts and the department should release the results of the investigation to the short-list proposers as a reference to prepare their proposals.

(B) The preliminary investigation would generally require a thirty percent (30%) level field investigation relative to a full PS&E level investigation required for final design.

(C) The investigation conducted for any specific project may vary significantly from this target, depending on the uncertainty in the details of the preliminary design, such as:

- (i) The potential for variations in alignments;
- (ii) Structure locations;
- (iii) Complexity of the site;
- (iv) The availability of preexisting subsurface information; and
- (v) The potential for risk.

(D) The department should consider these factors when preparing the plan for the geotechnical investigation.

(2) The geotechnical investigation conducted for the project should be sufficient to support the development of the preliminary design and also to provide the appropriate level of confidence for information to be released to the short-list proposers to reduce the risk of differing site condition claims by the design-builder during the implementation phase.

(3) The goals of the geotechnical investigation should include, but not be limited to, the following:

(A) Identify the overall vertical and horizontal distribution of soil and rock types for the preliminary design, and assess how the material properties will affect the design and construction of the project elements;

(B)(i) Define the groundwater and surface water regimes for the preliminary design.

(ii) It is especially important to determine the depth and seasonal and spatial variability of groundwater or surface water.

(iii) The locations of confined water-bearing zones, artesian pressures, and seasonal or tidal variations should also be identified;

(C) Identify and consider any impacts to adjacent facilities that could be caused by the construction of the project;

(D) Identify and characterize any geological hazards that are present within or adjacent to the project limits, e.g., landslides, rockfall, debris flows, liquefaction, soft ground or otherwise unstable soils, or seismic hazards, that could affect the project as well as adjacent facilities that could be impacted by the construction of the project;

(E) Assess the feasibility of the proposed alignments, including the:

(i) Feasibility and schematic evaluation of retaining walls and slope angles for cuts and fills; and

(ii) Effect the construction of the project could have on adjacent facilities;

(F) Assess potential stormwater infiltration or detention sites with regard to their feasibility, and to gather groundwater data in accordance with stormwater regulations;

(G) Identify potential suitability of on-site materials as fill and/or the usability of nearby materials sources;

(H) For structures including, but not limited to, bridges, cut-and-cover tunnels, large culverts, walls, bored tunnels, or other structures or elements requiring trenchless technology, provide adequate subsurface information to assess feasibility of the preliminary design and to help quantify risks;

(I) For projects that may require ground improvement to achieve the preliminary design, provide adequate information to assess feasibility and to assess the potential impacts to adjacent facilities due to the ground improvement; and

(J) For projects that may include the potential for landslides, rockfall areas, and debris flows, provide adequate information to evaluate the feasibility of

various stabilization or containment techniques.

(4) To accomplish these goals, the geotechnical investigation should include, but not be limited to, the following:

(A) A review and compilation of historical records including previous borings, previous reports, and design plans of existing facilities;

(B) A geological site reconnaissance of the project corridor focusing on all key project features and identification of potential geological and geotechnical concerns or potential hazards within and adjacent to the project corridor; and

(C) A subsurface investigation consisting of an appropriate combination of:

(i) Borings;

(ii) Cone penetration tests;

(iii) Field testing;

(iv) Field instrumentation, such as piezometers or inclinometers;

(v) Geophysical surveys; and

(vi) Laboratory testing.

(c) Geotechnical engineering.

(1) The department should conduct the necessary geotechnical engineering for the project to support the development of the preliminary design and evaluate its feasibility during the procurement process.

(2)(A) The focus of any geotechnical analysis or design conducted to develop a design-build project should be to evaluate feasibility, and to minimize the risk of short-list proposers including wide swings in the bids due to geotechnical issues that have not been adequately defined.

(B) Issues of feasibility instead of resulting values are the most important to determine.

(C)(i) For example, if shafts or piles are proposed as foundations for a bridge, the specific foundation loads will not be known accurately enough during the RFQ and RFP development to determine foundation depths and sizes.

(ii) Therefore, detailed analysis of foundation skin friction and end

bearing resistance would be of little use since the design-builder would have to repeat such calculations during final design.

(3)(A) What is of more use is whether shaft or pile foundations are feasible to install, considering impacts to adjacent facilities and ability for equipment of sufficient size to access potential shaft or pile locations, etc.

(B) Enough information must be provided to the short-list proposers so that they can determine what foundation types are feasible and what construction problems may be encountered due to difficult ground conditions such as unanticipated bedrock encountered along the project corridor.

(4) Typically, geotechnical engineering in preparation of a design-build project should assess feasibility and risk associated with the preliminary design and should consist of the following activities:

(A) Feasibility of proposed alignments with consideration to feasible slopes or need for walls, including applicable wall types along the project and the potential impact of those fill or cut slopes and/or walls on adjacent facilities;

(B) Structure foundation feasibility, including:

(i) Wall foundation types;

(ii) Any associated constructability issues that could contribute to risk;

and

(iii) Potential impacts to adjacent facilities;

(C) Seismic hazard assessment, including site-specific ground motion studies (if appropriate for the project corridor and project scope), and the potential for liquefaction and associated seismic hazards caused by liquefaction;

(D) Preliminary assessment of other existing or potential geological hazards such as landslides, rockfall, debris flows, etc., as well as the feasibility of mitigation strategies;

(E) Need for ground improvement to stabilize unstable ground, liquefaction, and excessive settlement, including the feasibility of various ground improvement techniques and their potential impact on adjacent facilities;

(F) Whether or not on-site materials will be usable as construction

materials;

- (G) Feasibility of site conditions present to infiltrate runoff water;
- (H) Need for dewatering, its feasibility, and its potential impact to

adjacent facilities; and

- (I) Any other geotechnical design activities needed to:
 - (i) Assess risks;
 - (ii) Help establish baselines;
 - (iii) Ensure feasibility of the preliminary design; and
 - (iv) Assist the department to develop an estimate for the project.

(5)(A) For soil liquefaction on the project, a preliminary assessment of the depth and extent of the liquefiable soils should be provided to the short-list proposers.

(B) A preliminary assessment of the feasibility of potential mitigation schemes should be provided, as well as an assessment of the impact of liquefaction on the existing and proposed project features.

(C) A complete liquefaction investigation and hazard assessment should be included in the RFP to ensure bidding consistency if one (1) or more of the following is true:

(i) The potential mitigation schemes for liquefaction hazards could affect the decision on whether to widen or replace an existing bridge or similar structure; or

(ii) The design assumptions and parameters needed to perform a liquefaction assessment should be provided to the short-list proposers since these values could vary significantly between short-list proposers such that the project scope could vary significantly.

(D) For example, one short-list proposer assumes no stabilization is needed, while others assume that stabilization is necessary or the bridge must be replaced rather than widened.

(6) Similarly, for complex site conditions and large important structures, it may be advisable to include the results of site-specific seismic ground motion or seismic hazard studies in the RFP rather than just as informational documents.

(d) Preliminary geotechnical report (PGR).

(1) The department may prepare and release a preliminary geotechnical report (PGR) for the project that will:

(A) Document and summarize the data gathered;

(B) Include preliminary analyses; and

(C) Form the common basis for the short-list proposers' preliminary design and cost estimates.

(2)(A) The PGR should contain all the relevant factual geotechnical data gathered for the project and should be included in the RID released with the RFP.

(B) The PGR should contain the following information:

(i) A summary of the site reconnaissance and description of the geological and geotechnical conditions that are anticipated to impact design and construction of the project;

(ii) A description of the geotechnical site exploration program, including any explanatory information needed to understand the boring logs and in-situ field test logs;

(iii) The logs of all borings, test pits, and other site investigations, including any existing subsurface geotechnical data;

(iv) Groundwater measurements;

(v) A description of the geological and seismic setting for the project corridor at a regional level;

(vi) Results of all field tests conducted;

(vii) Installation details, logs, measurements, and results of all geotechnical field instrumentation installed for the project or existing geotechnical instrumentation and measurements and results which are relevant for the project; and

(viii) A description of all laboratory tests conducted and the test results, as well as any previous geotechnical laboratory test results that are relevant for the project.

(3)(A) In addition to presenting the data collected, the PGR can also serve as an interpretive geotechnical document used to establish a common understanding

between the short-list proposer and the department of the subsurface conditions, their potential impacts, and effect of risk on the design and construction of the project.

(B) The PGR should be considered to be the primary interpretation of the project geotechnical subsurface conditions and their potential effect on design and construction of the project as presented in the RFP.

(4)(A) The PGR should establish the geotechnical baseline regarding subsurface conditions present within the project, but specifically focused on the preliminary design as presented in the RFP.

(B) The geotechnical baseline should be primarily focused on conditions that affect construction risk, or possibly provide some guidance on how certain geological conditions are normally interpreted in this geographical region which, for final design purposes, may affect project cost.

(C) The geotechnical baseline should clearly define the specific geotechnical conditions the short-list proposer should consider as the basis for developing the proposal.

(D) The geotechnical baseline is also used to allocate risk between the department and the design-builder.

(E) The geotechnical baseline is not intended to be used directly in the final design.

(F) The selected short-list proposer, the design-builder, will conduct the final geotechnical investigations and will develop the final geotechnical report for use in the final design of the project.

(5)(A) When establishing the geotechnical baseline in the PGR, it must be recognized that subsurface conditions are inherently variable, and that variability can translate to design and construction risk.

(B) The geotechnical baseline, however, must be as clear and concise as possible, conveying to short-list proposers the content and variability in the conditions being addressed.

(C) The geotechnical baseline represents engineering interpretations or assumptions about geotechnical conditions that can affect the design of a project

feature or its constructability, expressed as contractual representations of anticipated geotechnical conditions.

(D) Since the information represents judgment or conclusions based on data collected and, as such, is interpretive by nature, the PGR should generally not be included or drawn into the contract but be provided to the short-list proposers for information only and included in the RID.

(e) Preliminary geotechnical information.

(1)(A) The department should release to the short-list proposers all available geotechnical reference documents, including borings, test results, and any PGR prepared for the project, but also any existing documents that include interpretive or recorded information on the geological and geotechnical conditions along the project corridor.

(B) The collection of such documents is generally referred to as the preliminary geotechnical information (PGI) which should be included in the RID released with the RFP.

(C) These documents could include, but are not limited to, the following:

(i) Geotechnical interpretive reports, which may include a formal PGR, containing results of preliminary geotechnical engineering used to establish the feasibility of the preliminary design and to help quantify geotechnical risks;

(ii) Interpretive geotechnical background information that was used to assess the feasibility of the preliminary design or which could be used by the design-builder as background information in support of the geotechnical design activities, e.g., geological stratigraphy;

(iii) As-built information for existing facilities within or adjacent to the project corridor that may or may not be directly affected by the project;

(iv) Detailed design plans and construction records for existing facilities within or adjacent to the project corridor; and

(v) Historical information about the project corridor.

(2) Based on the size and location of the project, project budget, and level of effort the department determines is appropriate, the volume of information included in

the PGI can vary greatly, but it is intended that all relevant representative information be provided to the short-list proposers in an effort to reduce the risk for both the proposer and the department throughout the project.

Authority. Arkansas Code § 27-67-206.

Codification Notes. "PS&E" means plans, specifications, and estimates.

27 CAR § 92-311. Inter-agency agreement.

(a) An inter-agency agreement (IAA) between the Arkansas Department of Transportation and another state or local agency, such as the Division of Environmental Quality, Union Pacific Railroad, BNSF Railway, or a city or county government, is often required for projects the size of which are attractive as a D-B project.

(b) The IAA required for completion of the project will, in most cases, be obtained by the department prior to issuance of the RFP to ensure all commitments and requirements of the agencies are known when the short-list proposer prepares the proposal in response to the RFP.

(c) There may be some projects where it is advantageous to the department to finalize a particular IAA after submission of the proposals due to the variable nature of the anticipated design and/or construction limits based on the proposal of the selected short-list proposer.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-312. Utilities agreement.

(a) A project utility agreement (PUA), either formal or informal, required for an adjustment, whether for protection only or relocation of the utility, is normally obtained by the Arkansas Department of Transportation prior to the issuance of the RFP.

(b) A PUA may include a master agreement along with several subagreements between the department and the particular utility company.

(c) The subagreement addresses each particular instance where a utility relocation or improvement is required based on the final design from the design-builder.

(d) If the master agreement has been completed and executed with one (1) or more utility company, it may be advantageous to include the PUA in the RID.

(e) In such case, the subagreement is based on the actual design and cannot be completed until the design-builder has the final design in a mid-stage form to identify all the potential impacts to the utility sufficient to complete the subagreement.

(f) The construction work associated with the relocation will be coordinated by the design-builder to match the intended work schedule.

(g) When the utility modifications are included in the project scope and risk is allocated to the design-builder, it is imperative the control of the work remain with the design-builder.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-313. Public involvement.

(a) A D-B project does not reduce the need for a comprehensive public involvement program from what would be required for the more traditional DB-B project.

(b) In most cases, a D-B project will require that the public involvement be more comprehensive or enhanced due to the more aggressive schedule generally required by such projects.

(c) All public involvement and public notification currently required by the Arkansas Department of Transportation under existing statutes for more traditional DB-B projects are required for a D-B project, but the required involvement of the department, timing, and supportive design detail is dependent upon the project type and location.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-314. Public information.

(a) The Arkansas Department of Transportation must maintain superior public communication throughout the duration of any project in order to:

- (1) Maintain the department's role as a good neighbor;
- (2) Maintain a positive opinion; and
- (3) Avoid developing a negative perception of the project.

(b)(1) On any transportation project, the public will recognize that the work is controlled by the department and, as such, the department should provide accurate and timely public information.

(2) In a D-B project, the design-builder can play an important role and provide support staff during the implementation phase of the project to facilitate the interaction between the public and the department.

(3) In most cases, the design-builder possesses a more detailed and intimate understanding of the project maintenance of traffic, traffic staging, and day-to-day issues and impending changes of the project over which the design-builder has direct control.

(4) The department can capitalize on the design-builder's intimate knowledge and expertise by requiring key information and communication protocols in the RFP.

(5) For example, the design-builder can be required to:

- (A) Provide timely information about the project;
- (B) Coordinate and communicate final design details or construction status;
- (C) Provide materials for public meetings or distribution; or
- (D) Attend and actively participate in public meetings.

(c) While the design-builder can be required by the DBA to be cooperative and facilitate a positive impact/experience for the public, the ultimate responsibility for public information remains with the department.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-315. Reference information documents.

(a)(1) As noted in an earlier section, the outcomes of the preliminary engineering and environmental processes for a D-B project provide important information and requirements to be relayed to the short-list proposers as part of the RFP.

(2) The preliminary studies, analyses, and conclusions, if any, should provide a basis for describing the Arkansas Department of Transportation expectations for the project by defining significant unknown issues of the project while leaving opportunities for D-B innovations.

(3) The department-provided information can be relayed as part of the reference information documents (RID) or as part of the project technical and general specifications.

(4) Refer to the list following.

(b)(1) The department should take every effort to incorporate the latest and best reference information and documents in the RID.

(2) Unless specifically noted in the RFP and the DBA, the RID is provided "FOR INFORMATION ONLY".

(3) The short-list proposer should not rely on the accuracy or completeness of the information being provided in the RID.

(4) Final design decisions should be reached by the short-list proposer from information acquired by the short-list proposer or as shown in the technical provisions or exhibits of the RFP.

(5) Refer to Subpart 4, Design-Build Project Procurement Process, for additional details.

(c) The RID provided to the short-list proposers with the RFP should generally include, but is not limited to, the following:

- (1) Preliminary survey and mapping;
- (2) Project environmental documents;
- (3) Inter-agency agreements;
- (4) Value engineering studies;
- (5) Schematic plans;
- (6) Preliminary geotechnical information and preliminary geotechnical report;

- (7) Hydraulic studies and reports;
- (8) Right-of-way maps;
- (9) Traffic studies;
- (10) Noise studies; and
- (11) Existing utility plans, maps, and agreements.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-316. Value engineering.

(a) A value engineering study (VES) is not required for projects delivered using the D-B method (Section 1503(a)(3) of the Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141), however, based on the parameters of a specific project, including size, history, complexity, importance, and the type of design elements included, the Arkansas Department of Transportation may determine that a different perspective on some or all issues of the project is warranted.

(b) In such case, a VES may be of benefit to the project.

(c) The VES may be conducted by the department prior to completion of the procurement phase, ideally before the release of the RFQ, but certainly prior to the release of the RFP to short-list proposers.

(d) For D-B projects, a VES also typically includes a review of the proposed technical provisions and project design criteria (PDC).

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-317. Stipend for unsuccessful proposers.

(a) In the more traditional DB-B process, the Arkansas Department of Transportation does not reimburse the contractors that submit responsive bids but are unsuccessful in selection for the project.

(b) In the D-B process, the costs associated with the preparation of the proposal documents in response to the RFP are significantly higher than a DB-B contractor's

costs to submit a DB-B bid.

(c) It is currently an industry practice to compensate the unsuccessful short-list proposers to address some of the financial investment in the project.

(d) It is in the department's best interest to encourage as many capable firms to respond to the RFP as possible.

(e) The department should pay a stipend to all short-list proposers that submit a responsive, but unsuccessful, D-B proposal.

(f) Providing a stipend to the unsuccessful short-list proposers to pay for a portion of the development cost is an incentive to encourage the industry to participate in the process.

(g) A further discussion of stipend process is included as Appendix H.

Authority. Arkansas Code § 27-67-206.

Subpart 4. Design-Build Project Procurement Process

27 CAR § 92-401. Introduction.

(a)(1) The Arkansas Department of Transportation will normally utilize a two-step process during the procurement phase of the project to select a design-builder.

(2) The first step is the Arkansas Department of Transportation solicitation for potential proposers by releasing a request for qualifications (RFQ) leading to the selection of short-list proposers.

(3) The second step is the release of a detailed request for proposals (RFP) to allow short-list proposers to respond with a proposal, in accordance with the RFP, that ultimately results in a best value determination and selection of the design-builder.

(b)(1)(A) The RFQ and RFP are key parts of the procurement documents that will inform the proposers of the project requirements and the D-B selection process.

(B) The RFQ and RFP are two (2) separate, although related, documents created to conduct the solicitation through the procurement process and allow the Arkansas Department of Transportation to make the final selection of the design-builder

which offers the best value solution for the project.

(2)(A) The RFQ should focus exclusively on the proposer understanding of the project, qualifications, and the proposer's previous experience including, but not limited to:

- (i) Safety;
- (ii) Quality;
- (iii) Fulfilling schedules; and
- (iv) Contract compliance histories on previous D-B projects.

(B) It must include:

- (i) A description of the project;
- (ii) The requirements for submitting an SOQ;
- (iii) The SOQ evaluation process and SOQ evaluation criteria; and
- (iv) Overall procurement schedule.

(C) The SOQ is the document that will provide the qualifications and experience of the proposer relative to the project scope as presented in the RFQ.

(3)(A) The RFP should be comprised of a compilation of documents which define the project components, including project design criteria (PDC).

(B) The RFP describes the project, the requirements for submitting a proposal, the selection process, the evaluation criteria, the technical requirements for designing and constructing the project, and the various documents required to establish the proposer plans and abilities to perform and manage the project.

(C) The RFP should include the requirements for a project management plan (PMP) and quality management plan (QMP), as well as the DBA terms and conditions.

(c)(1) The RFP, including all technical and administrative provisions, references and guidance documents, form the basis of the design-build agreement (DBA).

(2) At the time of the contract award, the relevant components of the RFP and the winning D-B proposal are combined with the administrative agreement to form the overall DBA.

(d)(1) The department procurement team (DPT) efforts in developing a D-B project

are specifically related to clearly establishing:

- (A) Project requirements;
- (B) Performance criteria;
- (C) Project design criteria (PDC); and
- (D) Project goals.

(2) The ideal D-B project solicitation would include a definition of end result criteria to meet all of the project goals while minimizing prescriptive measures on how to obtain the design and construction results.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-402. Project director.

(a)(1) A project of the size and importance that will be attractive to the Arkansas Department of Transportation as a D-B project will extend several years from initial project identification through all the stages of the project, i.e., preliminary engineering, environmental, procurement, and, subsequently, design/construction.

(2) The Arkansas Department of Transportation should designate a project director (PD) early in the project development and designate the PD as the sole contact person for information release throughout the life of the project.

(3) Once a PD is assigned to the project, most Arkansas Department of Transportation communication and correspondence with the outside parties should be shifted to the PD and any other Arkansas Department of Transportation office should refrain from accepting, or responding to, any private entity communication concerning the project.

(4) Communication with government and agency departments, such as the Federal Highway Administration, may continue to be received by the Arkansas Department of Transportation main offices and correspondence forwarded to the PD, or as otherwise determined appropriate by the Arkansas Department of Transportation for the project.

(b)(1) The PD should be responsible to manage and administer the project and

should have delegated authority to represent the Arkansas Department of Transportation in all matters except those issues that require a higher authority by law.

(2) The PD is usually an Arkansas Department of Transportation employee, however, it may be an employee of an outside firm if deemed appropriate by the Arkansas Department of Transportation.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-403. Department procurement team.

(a)(1) Development of the procurement documents and the process utilized to select a design-builder is a unique experience in that the effort involves creating documents other than plans, technical specifications, and selection factors to receive just the lowest responsive bid.

(2) The department procurement team (DPT) must maintain a clear understanding of the desired outcomes throughout the D-B project development and procurement.

(b)(1) The DPT must have an understanding of the tasks and steps leading up to the selection of the design-builder and the methods by which the design-build agreement (DBA) will be administered during the implementation phase.

(2) In contrast to the more traditional DB-B process, additional tasks and steps related to preparing the RFQ and RFP and selection of the design-builder must be addressed.

(3) The composition of the personnel assigned to the DPT may vary widely from project to project, but in general, the DPT should be a multi-disciplined group consisting of engineers and other technical/professional staff with design, construction, materials, contract administration, and legal expertise.

(4) If significant project development is required, additional dedicated team members should be considered.

(5) All team members should agree early in the process on the:

(A) Project goals;

- (B) Project quality expectations;
- (C) Project risks;
- (D) Project risk assignment; and
- (E) Other important issues.

(6) An example of a representative organization chart for the DPT is included as Appendix E-1.

(c)(1) The DPT should develop the evaluation scoring criteria (ESC) in collaboration with other responsible agencies, such as the Federal Highway Administration, for the two (2) steps of the project procurement process requiring evaluation prior to releasing the respective documents.

(2) The ESC for the SOQ must be in final form when released with the RFQ.

(3) The ESC for the proposal, which is provided in response to the RFP, may be included in the RFQ on a preliminary or draft basis, however, must be in final form when subsequently released with the RFP.

(4) While the proposal ESC may be adjusted by the DPT in response to concerns of the Arkansas Department of Transportation, potential proposers, or responsible agencies prior to the release of the RFP, the adjustments should be minor and total reorganization or modification to the proposal ESC is not advised and should be avoided.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-404. Project training.

(a)(1) Each individual assigned to the procurement, evaluation, or monitoring during the procurement process should be required to attend training.

(2) It is important for each individual to understand:

- (A) How a D-B procurement process functions;
- (B) How the RFQ or RFP is organized;
- (C) How the evaluation and selection process should function; and
- (D) What their specific role and responsibilities will be in the process.

(3) It should be stressed that a D-B project requires a more comprehensive contract between the Arkansas Department of Transportation and the design-builder including design, control, and some administrative functions not present in a more traditional DB-B construction contract, and all aspects of the DBA are just as binding as a construction contract.

(4) The department should develop a training curriculum that is available to all individuals prior to their involvement in the procurement process, preferably prior to the issuance of the RFQ.

(b)(1) The training should educate individuals on their respective roles and responsibilities as developers and evaluators and review procedures for each phase of the D-B procurement process including the SOQ and proposal evaluations.

(2) The training will present, in general form, the evaluation scoring criteria (ESC) developed for the project evaluation or evaluations and documented within the respective procurement document.

(c)(1) Each person assigned to be an evaluator or evaluation observer for one (1) or more steps of the procurement process, should attend more in-depth training which should be completed prior to the evaluation of the statement of qualifications (SOQ) and the proposals provided in response to the RFQ and RFP, respectively.

(2) All the evaluators that participate in one (1) or more of the evaluations are referred to as members of the project evaluation team (PET).

(3) PET members must be integrally knowledgeable in the ESC, with an emphasis on their particular portion of the evaluation, so that the scoring among PET members is consistent in common sections and that the PET provides consistent scoring between the respective SOQ or proposals submitted.

(4) As part of the training, the primary risk elements should be discussed as well as how the DPT has allocated and attempted to mitigate the project risks which will be important to fully understand during the evaluation of the SOQ and proposals.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-405. Confidentiality and security.

(a)(1) It is important to understand that the procurement process and the requisite evaluations and selection is a very competitive process.

(2) As such, the Arkansas Department of Transportation as a whole, and the DPT and PET in particular, has the authority and obligation to keep certain proposer information confidential throughout the procurement process.

(3) The proposer information, including firm financial information, proposer team configuration and personnel, schedules, and other proprietary information is held in strictest confidence throughout the process.

(4) While much of the information for the selected design-builder will be released to the public at the end of the process, the unsuccessful proposers' information should remain confidential unless otherwise required for release by statute, judicial mandate, or some other requirement.

(5) Confidentiality is critical to the integrity and validity of the procurement process and acceptance of the evaluations and selection processes.

(6) Each participant in the procurement process must be required to sign a confidentiality agreement and a conflict disclosure statement before contributing to, monitoring of, or observing any phase of the procurement process.

(b)(1) It is recognized that forming a large PET may run counter to this confidentiality requirement and can become a management issue to maintain and oversee.

(2) The Arkansas Department of Transportation should balance the need for specific expertise, observation, or supervision versus the absolute need for confidentiality.

(3) Example forms of a confidentiality agreement and a conflict disclosure statement are included as Appendix F-1 and Appendix F-2, respectively.

(c)(1) The project director (PD), or appointed designee, should be the sole point of contact for all outside correspondence throughout the procurement process in a similar manner to the more traditional DB-B construction advertisement period.

(2) The required personnel and methods of internal and external

communication from the Arkansas Department of Transportation, the department project office (DPO), and the DPT to any other parties should be clear to everyone involved or responsible for the procurement process for the Arkansas Department of Transportation.

(3) This communication protocol, including designation of the Arkansas Department of Transportation's single point of contact, should be clearly stated in the RFQ and RFP.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-406. Proposer request for clarification.

(a) The Arkansas Department of Transportation, and similarly the DPO, should be aware that the development of the D-B proposal involves an extensive design effort by each short-list proposer and will likely generate a greater number of proposer requests for clarification (PRFC) from a proposer than a standard DB-B project.

(b) In addition, responses to PRFC will need to be quickly and efficiently developed and returned.

(c) The internal processes within the DPO and the responsible staff size should be modified to reflect the increased requirements to address the anticipated PRFC prior to the issuance of the RFQ and RFP.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-407. Location and logistics.

(a) Due to the sensitive and confidential nature of the SOQs and proposals, and the necessity for SOQ and proposal details to remain secure, all evaluations should take place in a single secure location, with PET members involved in the evaluation working only at that one (1) location during the evaluation.

(b) Copies of SOQs or proposals, notes, and evaluation materials should remain in a secure locked room at the completion of each day's work.

(c) For instance, the SOQ evaluation might require a week of intensive work in a conference room and adjoining offices reserved for the evaluation.

(d) PET members should be required to establish a schedule that would complete each evaluation process within the timeframe allotted.

(e) Documents will not be accessible to the general public, to proposers, or to other Arkansas Department of Transportation employees not involved in the evaluation process or authorized to observe the process.

Authority. Arkansas Code § 27-67-206.

Subpart 5. Design-Build Procurement Process Overview

27 CAR § 92-501. Generally.

(a) An example of a flow diagram representing a design-build procurement process is included as Appendix G.

(b) Some of the general steps included in the process are discussed in this subpart.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-502. Step 1: Issue solicitation of interest (optional).

(a) Prior to the initiation of the formal procurement process that occurs when an RFQ is released for a D-B project, the Arkansas Department of Transportation may consider releasing a solicitation of interest (SOI) or request for letter of interest requesting a letter of interest (LOI) from interested industry firms.

(b) The information provided with the SOI is limited to a brief project description, history, and information concerning the intended procurement process and a general procurement timeline.

(c) The SOI should inform the industry that the Arkansas Department of Transportation has committed to the procurement process for the project and is continuing to work towards releasing an RFQ with the intention of following with an

RFP.

(d)(1) The LOI provided by the respondents is limited and nontechnical based on the information provided in the SOI and, as such, is an independent, nonbinding document separate from the DBA.

(2) While the LOI is nonbinding, it can be informative to the Arkansas Department of Transportation, indicating what level of interest exists in the industry in pursuing involvement in all or a portion of the project.

(e) The SOI should require that the LOI be delivered to the department project office (DPO) or, if one has not been established, the project director (PD).

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-503. Step 2: Prequalification (optional).

(a)(1) The Arkansas Department of Transportation may require that the proposers, or possibly only the design-builder, or any component firms/personnel be prequalified prior to execution of the DBA with the department.

(2) Where required by state or federal law, the design-builder must be able to provide design or construction services by licensed or registered professional engineers in the state.

(3) The department standard prequalification requirements should apply to each firm providing construction services.

(4) The contractor prequalification requirements would apply to each firm based on the applicable category or categories for which that firm provides services on the project.

(5) Each firm or personnel required to be prequalified must be prequalified prior to the date established in the procurement documents.

(b)(1) The date stipulated for prequalification can vary with the size and complexity of the project and the procurement process.

(2) The following dates are suggested as possible deadlines for prequalification depending on the requirements of the project:

- (A) Fourteen (14) days prior to SOQ submission date;
- (B) SOQ submission date;
- (C) Thirty (30) days prior to proposal submission date; or
- (D) Proposal submission date.

(3) Recognizing that in the pursuit of a large project, a large number of the proposers and their component firms and personnel may be based out-of-state.

(4) If prequalification were required of all teams at or near the RFQ stage, the project prequalification requirements could cause considerable activity by the department reviewing firms or personnel prequalification of ultimately unsuccessful proposers who may not subsequently provide any services to the project after the department expended the time/effort to prequalify.

(c)(1) It may be in the department's best interest to limit prequalification verification or implementation to the selected:

- (A) Short-list proposer (design-builder);
- (B) Component firms; and
- (C) Personnel.

(2) In such case, the following dates are suggested:

- (A) Thirty (30) days prior to DBA execution date; or
- (B) DBA execution date.

(3) If a component firm cannot meet the requirements by the date required, then the selected proposer should be required to develop a plan to replace the impacted firm with another firm approved by the department and capable to meet the requirements.

(4) Ultimately, if the selected proposer is unable to find an adequate replacement, then the department may close negotiations with the selected proposer and enter negotiations with the next highest ranking proposer.

(5) All department standard prequalification requirements should also be applied to a design-builder that might submit an unsolicited project proposal (UPP).

(6) A further discussion of a UPP is included as Appendix C.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-504. Step 3: Prepare the request for qualifications.

(a)(1) The request for qualifications (RFQ) is a request from the Arkansas Department of Transportation to interested proposers to submit a well-defined package typically outlining:

- (A) Historical information related to qualifications;
- (B) Capabilities;
- (C) Experience and past performances on specific issues pertinent to the D-B project;
- (D) Proposer team organization;
- (E) Key personnel;
- (F) Approach to quality management; and
- (G) Safety record.

(b)(1) Formulating a response to the RFQ will require significant research and, depending on the requirements and the size of the project, will require a significant effort of manpower and cost to the proposer.

(2) The Arkansas Department of Transportation should consider the cost of preparing the proposer's statement of qualifications (SOQ) when drafting the requirements in the RFQ.

(3) Consideration should be given to the RFQ requirements to ensure responses will be useful in selecting the short-list proposers, and not merely interesting information.

(4) A detailed approach requirement should not normally be included as a requirement in the RFQ as any solutions offered in the SOQ would not likely be fully investigated and will not be guaranteed due to the amount of design-related work that would be required to adequately address the topic.

(5) The detailed project approach should be included in the proposal in direct response to the specifics required in the RFP.

(c)(1) To ensure an equitable and fair comparison, a uniform SOQ should be rigidly

defined in the RFQ.

(2) The maximum number of pages, font size, and submittal layout should all be defined.

(3) The SOQ evaluation scoring criteria (ESC) should be included in the RFQ to reduce potential proposers' uncertainty of the project goals and priorities.

(4) The RFQ should be structured to request information in a manner that allows the SOQ to be evaluated in an objective manner.

(5) The RFQ should request information about the proposer's key personnel and specific roles on the project which would allow a proposer to demonstrate the team strengths while permitting the project evaluation team (PET) to determine whether a proposer is among the most highly qualified to be selected as a short-list proposer for the project.

(d)(1) The SOQ ESC should be specific enough to ensure that it is clear to the proposer what required technical expertise/values are important for the project.

(2) A clear, well-defined RFQ will help to ensure that the most highly qualified proposers are selected as a short-list proposer and subsequently submitting a proposal in response to the RFP.

(e)(1) The ESC used to evaluate the SOQ must be:

(A) Related to the important aspects of the project;

(B) Clearly defined; and

(C) Measurable.

(2) It is best to request information that is a matter of record and available to the public.

(3) The experience normally provided by a proposer is usually associated with projects that have already been completed by members of the proposer team.

(4) The validity of a proposer's experience should be tied to the key personnel rather than corporate history.

(5) Any requirement for project experience in the RFQ should include a performance element.

(6) Proposers may include out-of-state work from various owners, many in

response to requirements for work experience.

(7) To provide organization to the varied information that could be provided, the RFQ should provide a standardized reference form the proposer is required to fill out which includes the owners of completed projects.

(8) One advantage of this approach is that it places the responsibility of delivering a timely response onto the proposer and also helps to ensure timely, accurate reference information.

(9) The RFQ should define the ideal type of experience for particular positions to obtain the maximum score and include a step-wise point reduction for lesser experience.

(f)(1) If a financial statement is desired by the Arkansas Department of Transportation, then the RFQ should clearly define the specific information that would be acceptable as a minimum requirement.

(2) Many contractors may already have prequalification approval through the Arkansas Department of Transportation Construction Contract Development Section.

(g)(1) The SOQ ESC should focus on specialized capabilities anticipated for the project.

(2) As part of the SOQ ESC, the individual criteria are normally weighted according to their relative importance to the successful completion of the project.

(3) The actual criteria selected for use within a particular RFQ should be applicable to the project and the proposer's ability to perform the work of the project.

(4) To engage the breadth of the industry availability and experience, it is important to avoid criteria that are so restrictive that few, if any, proposers can meet the minimum requirements.

(h) The department procurement team (DPT) should consider including requirements for the following types of information when developing the RFQ:

(1) Individual experience of the employees of the proposer and other members of the proposer team with the D-B process;

(2) Corporate experience of the proposer or other members of the proposer team with D-B projects;

- (3) History of the proposer team working together;
 - (4) Specialized design and construction capability for the proposer key personnel;
 - (5) Experience with complex construction staging, traffic control, or site conditions;
 - (6) Safety record of the proposer and/or the component firms;
 - (7) Proposer key personnel, such as the PM, design manager, construction manager, etc.;
 - (8) Historical performance of quality on previous projects;
 - (9) Project quality management;
 - (10) Bonding record or proof of bonding ability;
 - (11) Prequalification of the proposer and/or component firms;
 - (12) Proposer and members of the proposer team past performance on awarded contracts such as:
 - (A) Completion;
 - (B) Liquidated damages;
 - (C) Quality;
 - (D) Claims;
 - (E) Fines; and
 - (F) Schedule;
 - (13) Proposer financial capacity;
 - (14) Proposer experience with formal partnering activities;
 - (15) Proposer experience in similar types of work described by the RFQ;
 - (16) Proposer understanding of the local environment and Arkansas Department of Transportation practices;
 - (17) Proposer resource capacity and availability of staff;
 - (18) Proposer scheduling and control systems to track and manage project;
- and
- (19) Proposer specialized expertise that might reduce risk and assure the quality of the work performed on the project.

(i)(1) When defining the required experience of key personnel in the RFQ, the DPT should avoid requiring more experience than absolutely necessary since it will not necessarily provide a better, more qualified product, but could greatly reduce the number of individuals available to participate on the project.

(2) The definition of the individuals to be assigned to the project will allow the proposer to indicate particular personnel, some of whom may be very experienced in the industry but new to a specific firm.

(3) Most RFQ include a stipulation that the key personnel named in the SOQ cannot be substituted without the written consent of the Arkansas Department of Transportation.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-505. Step 4: Evaluate the statement of qualifications.

(a)(1) The evaluation and scoring of the statement of qualifications (SOQ) should be performed by the project evaluation team (PET), which should ideally be comprised of individuals who possess a broad array of experience in the D-B delivery process.

(2) The SOQ ESC will establish the D-B evaluation scoring metrics and the PET members should be trained on the purpose, content, and incorporation of the SOQ ESC into the evaluation in advance of the SOQ evaluation period.

(3) Since the PET will be comprised of individuals from various areas within the Arkansas Department of Transportation, scoring the submittals in a common, secure environment should provide opportunity for sharing of expertise as well as help reduce the required time for outside research by individual PET members.

(b)(1) A common evaluation location will also allow for information exchange and workload sharing during the evaluation process to allow for any weakness in the PET staff to be minimized.

(2) For instance, if an individual on the PET has no past experience with quality management, then he or she may not be the appropriate member to score on that particular section and the scoring can be performed by another PET member.

(3) By allocating the areas of responsibility and working as a team in scoring, the PET can ensure that all SOQ are scored fairly and consistently.

(c)(1) The intended result of the RFQ process is to select the best three (3) to five (5) proposers based on the evaluation scoring of the SOQ.

(2) The top-ranked proposers will herein be referred to as the short-list proposers.

(d)(1) During the SOQ evaluation, the Arkansas Department of Transportation may wish to obtain additional information concerning the personnel or organization.

(2) In such case, the Arkansas Department of Transportation, through the DPT, may issue a formal department request for clarification (DRFC) to the respective proposer to allow a response to provide information to clarify a specific portion of the SOQ.

(3) The DRFC should be focused on a specific area or page in the SOQ and not include a general question.

(4) The response should be brief and considered an addendum to the original submission, and the Arkansas Department of Transportation should not allow the resubmission of the entire SOQ to address the issue.

(5) The Arkansas Department of Transportation is not obligated to request the additional information from a proposer.

(6) While the implementation of this process should be minimized to avoid potential protests, it may be considered in an effort to fairly evaluate the SOQs and, in particular, to avoid classifying the respective SOQ as nonresponsive and rejecting the submittal.

(e)(1) The Arkansas Department of Transportation will subsequently request the short-list proposers to participate in the next step of the selection process by preparing a proposal in response to the impending RFP.

(2) It should be noted that increasing the number of short-list proposers above three (3) might not be in the best interest of the project.

(3) The short-list proposer's cost to prepare a D-B proposal is extremely high and increasing the number of short-list proposers beyond the minimum might cause

some proposers to back out of the RFP portion of the selection process.

(4) Unless the submitted SOQs are likely to result in significantly different proposal results, the number of short-list proposers should be minimized to what the Arkansas Department of Transportation determines would reflect as the right mix to maximize the design/construction value for the project.

(f)(1) The short-list proposers represent the proposers that have been scored the highest in the SOQ evaluation and who are deemed to be most highly qualified to perform the required services of the project.

(2) Following the SOQ evaluation/scoring process by the PET, the PET recommendations for the short-list proposers will be forwarded to the project steering committee for:

- (A) Review;
- (B) Discussion; and
- (C) Confirmation.

(3) Upon confirmation of the project steering committee, the deputy director/chief operating officer will present the short-list proposers to the Director of State Highways and Transportation for approval.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-506. Step 5: Prepare the request for proposals.

(a) General.

(1) The purpose of the request for proposals (RFP) is to furnish sufficient information for a short-list proposer to prepare a detailed proposal which would normally include both a technical proposal and price proposal, although some projects may only require a technical proposal based on the particular project procurement type and requirements.

(2) The RFP should include the:

- (A) Design requirements;
- (B) Design standards;

- (C) Allowable design exceptions;
- (D) Design services required; and
- (E) Project constraints related to:

- (i) Traffic;
- (ii) Utilities;
- (iii) The environment;
- (iv) Right-of-way;
- (v) Construction requirements; and
- (vi) Construction management services required.

(3) The intended Arkansas Department of Transportation roles and responsibilities should also be included in the RFP.

(4) Depending upon the size and complexity of the project, the department should consider issuing a draft of the RFP prior to the issuance of the final RFP.

(5) This practice encourages collaboration with short-list proposers and the refinement of the RFP.

(6) The review of this process may be combined with the one-on-one meeting concept described in Appendix I.

(b) Consideration of the proposer.

(1)(A) Developing the proposal in response to an RFP is a significant effort to the short-list proposer that should not be overlooked in overall project scheduling or underestimated in amount of resources dedicated to the task.

(B) The proposal preparation portion of the procurement process is where the department has the opportunity to refine the:

- (i) Project components;
- (ii) Project scope; and
- (iii) Desired outcome of the project.

(C) The RFP should provide a significant amount of detail about the project and the intended final product.

(2)(A) The primary purpose of the RFP is to outline the desired outcomes and specific requirements for the project as well as specific requirements for the proposal

regarding the technical approach to executing the project and the proposed cost to complete the project.

(B) It is important that the RFP request information regarding:

- (i) Specific design and construction actions;
- (ii) Intended final products;
- (iii) Construction staging;
- (iv) Traffic control; and
- (v) Project management plans.

(C) In addition, the department should consider requesting descriptions or design development of specific project elements to a specified level to demonstrate the intent of the short-list proposer.

(D) Other items, such as project management plans, safety plans, and public information plans, may be outlined as part of the proposal and submitted complete after the contract award for the review of the department.

(3)(A) The RFP should require the short-list proposer to prepare specific design concepts only as needed to demonstrate their project approach.

(B) The requirements should include narratives, sketches, drawings, charts, and graphs to support the description of their concepts required to complete the project as represented by the proposal.

(C) The level of detail required for any given component should be directly related to the importance of the component to the overall project and that importance should be reflected in the ESC developed for the proposals.

(4) The RFP should contain the proposal ESC so that the short-list proposers are not required to guess at how much value is being placed on an individual component.

(5)(A) The RFP should focus submittal requirements based on the key project goals most desired consistent with the allocation of technical points in the proposal ESC.

(B) When specific information is required to properly evaluate and score a technical proposal, only then should it be included as a requirement, however, when the RFP requires an increased level of detail unnecessarily, the RFP is placing an overly

heavy initial design burden on the short-list proposer.

(C) Any excessive efforts and cost may not be appropriate at the level of design represented in the proposal.

(D) It is acceptable to require certain technical components to simply meet the established contractual standards and be scored on the basis of pass/fail, rather than allocating points to each technical component.

(E) The end product will still be required to meet the requirements outlined within the RFP but the short-list proposer can avoid placing an inordinate number of hours advancing portions of the design arbitrarily to meet the required effort for the proposal.

(c) Proposal evaluation/scoring.

(1) The assignment of technical points and weighting factors to produce an ultimate technical score is a common method to reflect what is important to the project, the department, and reflect what areas the department desires innovation/attention on the project.

(2) This method can be a very effective way of conveying the department interest or perceived value to the proposer, however, care should be taken not to disproportionately overvalue a particular area of the proposal that could skew the overall results.

(3)(A) Areas which will receive technical points will vary with each project.

(B) For example, if a primary goal is to maintain minimum public impact with construction traffic, then requiring clear, well-defined maintenance of traffic strategies/commitments is appropriate.

(c) Components of an RFP.

(1) The general components of the RFP include:

(A) Instructions to proposers (ITP):

(i) General requirements;

(ii) Project description;

(iii) Requirements of the proposal, contents list, and evaluation

criteria; and

(iv) Procurement questions and clarifications;

(B) Agreement:

(i) Commencement of construction and construction procedures;

(ii) Environmental issues/requirements and hazardous materials;

(iii) Bonding and surety requirements;

(iv) Warranties;

(v) Payments;

(vi) Scope of work changes;

(vii) Damages;

(viii) Project completion and acceptance;

(ix) Cooperation and governance; and

(x) Project schedule;

(C) Technical provisions:

(i) Project scope; and

(ii) Project technical provisions and project special

specifications/provisions; and

(D) Reference material:

(i) Reference information documents; and

(ii) Project risk allocation matrix.

(2) The following sections, 27 CAR §§ 92-507 – 92-509, describe the preparation and compilation of the various components of the RFP in no particular order.

(3) The development of the components can occur concurrently.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-507. Step 5A: Acquire and organize reference material — Reference information documents.

(a) The reference material available in the project corridor should be gathered by the DPT from the Arkansas Department of Transportation, other agencies, and other

private sources, as applicable, then organized into a reasonable collection of project-specific reference documents.

(b) The collection of these documents could involve several months to obtain along with discussions and meetings with other agencies and other parties which could contribute documents to the collection.

(c) This collection of documents is herein designated the reference information documents or RID.

(d) The RID should be released with the RFP to:

(1) Further define project history, existing conditions, requirements, and approvals; or

(2) Provide any relative project data.

(e) Types of RID materials may include:

(1) Maps;

(2) Traffic forecasts;

(3) Technical reports;

(4) Design details; and

(5) Environmental documentation.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-508. Step 5B: Instructions to proposers.

(a) General requirements.

(1) The general requirements detail how the short-list proposer should respond to the RFP and prepare the proposal.

(2) The general requirements section is similar to the general requirements of a DB-B construction contract and contains process and procedure information related specifically to the evaluation/selection process.

(3) The supplementary submittal requirements of disadvantaged business enterprise and/or minority business enterprise participation and the escrow process of the selected short-list proposer's documents throughout the remainder of the project

should also be described.

(4) The general requirements section should be complementary to the standard specifications and the project-specific special specifications/provisions.

(5) A brief project description, summary of the selection process, and detailed instructions of what must be submitted should be included in the general requirements section.

(b) Proposal contents list and evaluation criteria.

(1) The RFP should provide direction for the short-list proposer to prepare a proposal that describes the proposed approach to the technical aspects of the project in the technical proposal and to present the associated price structure in the price proposal.

(2) The proposal contents list and proposal ESC should describe the specific contents of the technical proposal, price proposal, and how each of the requested details will be evaluated by the project evaluation team (PET).

(c) Project description.

(1)(A) The project description should be a written summary of the work included in the project, the project limits, and should be placed at the beginning of the RFP as an overview of the project.

(B) The project requirements should be described completely and in a manner that will be easily interpreted and understood.

(C) The Arkansas Department of Transportation should conduct adequate research and investigations prior to RFP development to determine the facility requirements and clearly identify the project needs and goals.

(2)(A) The project description should be similar to an executive summary and should function as an index of the key requirements of the project.

(B) The description provides the who, what, when, where, and how parameters of the project.

(C) The actual "how" portion should be determined by the short-list proposer in the proposal.

(D) Significant issues related to the project work should be addressed in

the project description section, but the actual requirements are described in the project design criteria (PDC) or in the project technical provisions.

(E) The project description must reflect any changes in the project scope arising from clarifications provided by the department as it moves through the project development process and early procurement activities.

(3)(A) The project description should define the purpose of the project, its limits, unique conditions, design elements, physical components, schedule issues, and other items as necessary to fully describe the project.

(B) Any third-party issues should be described, such as right-of-way acquisition, utility relocations, environmental mitigation, railroad facilities, and public information to provide the short-list proposer with a complete view of the department goals and expectations for the project.

(C) All documentation of such issues, including plans, agreements, etc., should be included in the reference information documents (RID).

(4)(A) Due to the importance of the project description and the variations that could occur through the course of the procurement process, the description should be checked and updated regularly, as required, throughout the development of the RFP to ensure continued accuracy and consistency.

(B) The project description also serves as a quality assurance mechanism and functions as a standalone administrative aid for communicating the progress of the project within the DPT, the department, project stakeholders, and other interested parties.

(5)(A) Although the project description is a means of providing a description of department intent, it should not be used as the mechanism to communicate contract requirements to the proposer.

(B) The specific requirements of the project should be established in the:

- (i) Project scope;
- (ii) Standard specifications;
- (iii) Specific project special specifications;
- (iv) Technical provisions;

- (v) Preliminary design represented by the schematics; and
- (vi) Project design criteria (PDC).

(C) Even though the project description, in some form, should be included within the RFQ and RFP, it does not provide specific tangible information and is, therefore, a weaker link than the requirements of the DBA and cannot be used as the basis of enforcement on the design-builder should conflicts arise through the course of the project.

(6) Another goal of the project description is to highlight important project issues that are critical to the success of the project by communicating the key issues along with the project goals and expectations in narrative form so the short-list proposer can tailor the proposal to best meet the needs of the public and the department.

(7) When the project description is prepared, those project elements that have generated the most discussion during project development should be highlighted as these elements are most likely the key elements of the project and will also become the basis for establishing the proposal ESC in the RFP.

(8) The project description typically contains the following subsections:

- (A) General overview and funding limit;
- (B) Project purpose and expectations; and
- (C) Project components and termini.

(d) RFP requirements.

(1)(A) The purpose of this subsection is to provide guidance in putting together an RFP to address elements that should be included in the RFP and the relationship and responsibilities the department and the design-builder have within each element.

(B) Key sections of the RFP are discussed below.

(2) Technical proposal requirements.

(A)(i) The RFP should include well-defined requirements for a technical proposal.

(ii) The RFP should include detailed instructions regarding the content

and format of the technical proposal and a full description of the key requirements, the evaluation/scoring process, and the best value formula to be used by the department for determination of the best value for the project.

(B)(i) In the event of short-list proposer questions concerning the project scope, the department should contact all short-list proposers in writing to clarify the issues raised by the questions.

(ii) The selected short-list proposer (design-builder) for the project will be responsible for developing the final design based on the criteria and information contained in the RFP and for the construction of the facility in compliance with the final plans and project specifications developed by the design-builder.

(3) Price proposal requirements.

(A)(i) Unlike a more traditional DB-B project, a D-B project is designed and constructed by a design-builder under a single contract with the department.

(ii) A short-list proposer submitting a response to the RFP must provide the department a fixed maximum price (FMP) that includes both design and construction activities along with any optional parameters that may be required by the RFP.

(B)(i) In most D-B methods, the department will provide the project scope, project schedule, and other requirements, and the short-list proposers will provide the FMP in the price proposal along with a technical proposal which defines the proposer's approach to the project.

(ii) The technical score from the technical proposal will be combined with the FMP to establish an adjusted price for each proposal.

(iii) One particular type of D-B methodology is referred to as the design-build to a budget method, also known as fixed price-best design, where the department publishes a maximum baseline project cost (BPC) as a criterion and the short-list proposers work within that BPC to provide the best possible proposal scope and schedule that will be attractive to the department and be selected as providing the best value.

(C)(i) Regardless of the type of D-B method selected for the project, the

RFP should include well-defined requirements for the price proposal.

(ii) Most D-B projects are bid as lump sum and any short-list proposer must provide an FMP in the price proposal.

(iii) The selected short-list proposer (design-builder) would be compensated throughout the project in accordance with the schedule of values (SOV) included with the proposal.

(iv) The RFP should require the proposer to submit all other bid documentation required prior to the execution of the DBA.

(D) All the bid documentation included as part of the DBA should be held in escrow throughout the course of the project for security and to facilitate future resolution of payment issues and change order requests.

(4) Technical proposal and price proposal inclusion.

(A) The RFP should specify that the technical proposal and price proposal submitted by the selected short-list proposer (design-builder) will be referenced and included as part of the DBA.

(B) The design-builder is obligated to design and construct all elements of the project using the resources, key personnel, procedures, and construction methods upon which the department based its selection.

(C) Design elements not specifically identified in the RFP requirements, but included in the technical proposal, are required to be provided for the project since they are incorporated into the DBA.

(D) Such elements may not be eliminated or revised by the design-builder without the express written approval of the department, otherwise that occurrence would represent a modification to the DBA between the design-builder and the department.

(5) Design requirements.

(A) The design and specifications are essential to the project meeting the requirements as determined by the department and should be clearly defined in the RFP.

(B) Design standards for D-B projects should typically conform to the

department current design policies and standards, including AASHTO design documents, Federal Highway Administration references, and other department design policies, however, it is common for standards from other states to be used on D-B projects with the acceptance of the department, at its sole discretion.

(6) Design services requirements.

(A) The project scope must clearly define the design services required and any requirements for right-of-way acquisition not performed by the department.

(B) Design services may include geotechnical investigation/design, surveying, permitting, and utility coordination, etc.

(C) Most elements of the DB-B design process will typically be relevant and included in the D-B process.

(7) Construction service requirements.

(A) The current edition of the department Standard Specifications, 27 CAR pt. 90, Resident Engineers Manual, and the Materials Field Manual should be the basis for construction unless otherwise stipulated in the RFP and DBA.

(B)(i) The description, construction requirements, and material compliance subsections of the above documents should be required for D-B projects.

(ii) However, any sections that address method of measurement or basis of payment should be clarified and updated to conform to the D-B process.

(C) All applicable project supplemental or special specifications/provisions should be included in the RFP.

(8) Disadvantaged business enterprise (DBE) requirements.

(A) The RFP should establish the goals for project DBE utilization.

(B) Short-list proposers must be required to submit a DBE affidavit verifying the ability to meet the project DBE goals established and the commitment to achieve those goals.

(C) The affidavit must identify work items and the approximate value of work to be subcontracted to DBEs.

(D) Failure to furnish DBE information required under Subsection 103.08 of the Standard Specifications will disqualify the short-list proposer and forfeiture of the

proposal guaranty.

(E) No stipend will be provided to such disqualified short-list proposer or short-list proposers.

(9) **Boilerplate contract.** When federal-aid funds are used for any project, federal-aid contract requirements such as EEO, wage rates, and training hours forms, including Form 1273, must be included in the DBA so those requirements should be identified in the RFP.

(10) **Professional liability insurance and bonds.**

(A)(i) Professional liability insurance requirements for the design of the project should be included in the RFP.

(ii) The insurance requirements should state that the insurance provided must be project-specific and the minimum dollar amount and term (length of time) should be clearly established in the RFP.

(B) The RFP should require the selected short-list proposer to provide performance and payment bonds for the construction portion of the DBA that comply with the department construction bond requirements.

Authority. Arkansas Code § 27-67-206.

Codification Notes. "AASHTO" means the American Association of State Highways and Transportation Officials.

"DBE" means disadvantaged business enterprise.

"EEO" means equal employment opportunity.

27 CAR § 92-509. Step 5C: Agreement and technical provisions.

(a) **Project scope.**

(1)(A) The primary goal in the development of the project scope is to define, obtain, or develop all pertinent information required to describe performance-based

criteria for the short-list proposers to use in preparing the proposals and for the design-builder to use in preparing the final design for the project.

(B) Examples of items to consider include:

- (i) Operational requirements;
- (ii) Performance expectations;
- (iii) Design standards;
- (iv) Project limits; and
- (v) Regulatory requirements.

(C) The Arkansas Department of Transportation should develop language that describes the requirements of a project feature instead of creating design drawings and technical specifications.

(2)(A) The project scope for a D-B project is significantly more detailed than a professional services contract for a similar type DB-B project.

(B) The D-B scope addresses the design and construction aspects of the work that, in most cases, pursues both design and construction processes along parallel paths and can lead directly to construction of a feature with limited opportunity for department refinement through the design portion of the process.

(3) The project scope may include, but not be limited to, the following items:

(A) Services to be provided by the department;

(B) Project schedule including major project milestones;

(C) Project management plan, inclusive of quality management plan or plans;

(D) Final engineering and final design services:

- (i) Roadway design;
- (ii) Structures and bridge design;
- (iii) Geotechnical analysis;
- (iv) Design surveying;
- (v) Plan for acquiring any additional right-of-way;
- (vi) Permitting;
- (vii) Utility coordination; and

(viii) Maintenance of traffic/traffic control;

(E) Specifications;

(F) Environmental constraints and permitting issues;

(G) Construction engineering:

(i) Construction inspection;

(ii) Off-site work and inspection;

(iii) Material sampling and testing;

(iv) As-built drawings;

(v) Construction surveying; and

(vi) Requirements on types and frequency of:

(a) Reports;

(b) Submittal of shop drawings; and

(c) Level of detail and type of documentation of construction

materials;

(H) Project office and information technology requirements;

(I) Disadvantaged business enterprises participation;

(J) Professional liability and bonding;

(K) Warranty;

(L) Public involvement;

(M) Construction issue resolution and resolution of nonconformance items;

and

(N) Partnering expectations.

(4)(A) The project scope should be tied by direct reference to existing department manuals, memoranda, and guidelines as well as federal references.

(B) The project scope provisions should be developed to be generally cooperative but superseding the cited references where conflicts exist.

(C) The project scope provisions should be provided only where required to fill in the detail of a more generally referenced document or where a project requirement is specifically to supersede the more general document.

(D) In that manner, the project scope provision would provide the specific

criterion that is not present in the more general reference or delineate specific options or choices that the more general reference will allow within the document.

(E) Project-specific information typically contained in preliminary engineering and project environmental documents can be included to the RFP or transferred directly into the relevant project scope section.

(F) The project scope language should convey the envisioned design sequences and the intended result with the goal to ensure the design intent is covered without redundancy, conflict, or discrepancy.

(5)(A) The department should be careful not to utilize too many restrictions in specifying the design procedure and approach as it could negatively impact innovation or design flexibility.

(B) Any outside requirements on the project from third-party partners also should be included in the RFP as it could impact the short-list proposers' approach to the project.

(6)(A) Each project component to be designed and constructed by the design-builder should include provisions defining the requirements for the particular component.

(B) The D-B project scope will involve all of the technical considerations for design and construction that would be required for any typical DB-B project, however, the development of a D-B project scope varies from the DB-B process primarily in the timing of decisions and the attention given to details.

(7)(A) The RFP should only include prescriptive specified material or construction processes where required, and those requirements should be outlined either by the project scope or project-specific special specifications/provisions.

(B) For a D-B contract, performance specifications should be more appropriate as they will describe to the short-list proposer what is expected as an outcome and not how to perform the work.

(8)(A) The performance specifications may address capacity, life span, toughness, ride quality, durability, appearance, conformance with standards, and other measurable features or tenets of the project.

(B) Project requirements should be described completely and in a manner that will be easily interpreted and understood.

(C) The project requirements should also include how the department will measure compliance with the requirement.

(D) The department should conduct adequate research and investigations during the project development leading to project-specific specifications and other project requirements provided in the RFP to determine the project requirements and to document their development in a clear and concise manner.

(9) The department risk allocation decisions to be addressed in the project scope development should be based on the project risk allocation matrix (RAM) and primarily consist of:

(A) What are the relevant items/products applicable to the project?;

(B)(i) If the item/product is irrelevant, based on the project concept, are there factors or other project concepts that could make it relevant?

(ii) For example, certain permits are not applicable unless the design-builder's proposed delivery method requires work in the water; and

(C) If the item/product is allocated to the design-builder, what are the limits constraining the design-builder's decisions?

(10)(A) In addition to the engineered components of the project, there are also administrative and operational components of the usual D-B contract relationship that are required of the design-builder to demonstrate project progress.

(B) Project scope sections must address the administrative, project management, quality management, communications/public involvement, and construction maintenance requirements of the project.

(11)(A) The department involvement in the project scope generally relates to design reviews and owner quality oversight functions such as owner verification, testing, and inspection (OVTI) and any independent assurance (IA) functions in accordance with the RFP requirements.

(B) The RFP should require the design-builder to develop and implement a quality management plan (QMP), as part of an overall project management plan (PMP)

meeting all the requirements of the DBA.

(C) Many activities of the department personnel during execution of a D-B project do not change significantly from a DB-B contracting project, however, the authority and responsibilities may be quite different.

(12)(A) The RFP should specify the format and minimum content requirements as well as the procedure for agency review and acceptance of the QMP, including any updates and changes submitted by the design-builder following initial plan acceptance.

(B) In addition, the RFP should specify the minimum level of QC documentation that must be provided by the design-builder as well as the timeframe and format for providing the information.

(13)(A) The short-list proposer personnel qualifications and minimum staff requirements should be included in the RFP and provisions should specify that the identified key personnel cannot be substituted solely at the discretion of the short-list proposer during the proposal process or after contract award.

(B) The short-list proposer must be required to seek and receive the department permission for substitutions.

(14)(A) Requesting and evaluating the qualification requirements during the selection process will allow the department, through the project evaluation team (PET), to address those types of issues during evaluation of the proposal.

(B) When the short-list proposer qualifications are required in the proposal, it will allow the PET to discern whether qualified staff members have been included in the proposal.

(15)(A) Warranties may be required by the department on the project and, if required, should provide a mechanism for reducing department involvement in the design and construction of the project.

(B) The more the department prescribes the design or construction of a particular component, the less effective a warranty protection will become in terms of enforcement.

(C) The warranty terms should be developed in concert with the ability of the industry to provide appropriate insurance or extend the bond at a reasonable cost.

(D) Warranty terms should be established in the RFP for specific project components and based on the expected performance of that component.

(16)(A) Project components that will be subject to significant wear during the life of the project, such as pavements or bridge deck joints, are good candidates for consideration of a warranty.

(B) A warranty or post-construction maintenance contract should ensure that the component functions within the performance tolerance standard until the end of a stated warranty term and performance standards can be clearly and objectively measured so that future disputes can be avoided.

(C) Components which include products which are requested for manufactured product warranties under current DB-B contracting methods should also be required under a D-B project.

(17)(A) The technical provisions may include:

- (i) Traffic restrictions;
- (ii) Noise limitations;
- (iii) Special environmental regulations; and
- (iv) Other technical requirements.

(B) The technical provisions section should be complementary to the standard specifications and the project-specific special specifications/provisions.

(C) Some of the requirements are discussed in the following pages.

(D) **Traffic control.**

(i)(a) Construction staging and management of traffic that minimizes impact to the traveling public that utilizes the corridor and surrounding areas is a significant issue for any transportation project.

(b) Of all the factors affecting design and construction, traffic control is often one of the limiting factors in determining:

- (1) What can be designed;
- (2) How the project can be constructed; and
- (3) Project duration.

(ii)(a) To quantify the restrictions, stakeholders who operate on and

around the facility should be involved as much as feasible in developing allowable traffic restrictions.

(b) If restrictions and closures are within or affect local government jurisdictions, the local traffic officials should be involved in defining the restrictions.

(c) Allowable traffic restrictions should be clearly defined in the RFP with the stakeholders' consensus where possible.

(E) Public involvement.

(i) Public involvement is an important aspect of any project development process.

(ii) It includes communicating to all interested persons, groups, and government organizations regarding the development of the project, therefore, it is imperative that the level of coordination/involvement, roles, and responsibilities required by the selected short-list proposer (design-builder) be clearly defined in the RFP.

(F) Quality management.

(i)(a) The RFP should address any project quality management requirements that will be required and the selected short-list proposer (design-builder) must follow in addition to the referenced specifications, policies, and procedures that will assist in providing quality products (plans, materials, construction, etc.) that meet the requirements of the project.

(b) Quality management criteria should normally require at least four (4) independent roles, including:

(1) Quality control (QC) testing and inspection provided by the design-builder;

(2) Quality assurance (QA) testing and inspection provided by the design-builder utilizing an independent QA firm;

(3) Owner verification, testing, and inspection (OVTI) which may be provided by the department or an approved representative firm; and

(4) Owner independent assurance (IA) which may be

provided by the department or an approved representative firm.

(ii)(a) The department may designate a separate referee laboratory to resolve material testing disputes between the design-builder and the OVTI laboratory acting in the best interest of the department.

(b) The referee laboratory role is normally provided by an independent party, of the department's sole choice, which is not involved in the four (4) other quality roles on the project.

(c) An example of when the referee laboratory may be required would be where materials tests by both parties provide disparate results which would determine whether a product would remain in the project or must be demolished and reconstructed by the design-builder.

(d) The referee laboratory may be provided by the department, normally at a central office or state level (nondistrict) laboratory, but it cannot share laboratory space or personnel with either of the two (2) primary laboratories.

(iii) The responsibilities for all four (4) roles and the minimum sampling, testing, and inspection frequencies should be defined in the RFP.

(iv)(a) In some cases, the department may continue with its normal independent assurance and compliance monitoring and auditing programs outside the limits of the four (4) roles described above.

(b) In addition, the project director (PD) or an authorized representative should maintain the right to audit records and conduct independent tests at any time in order to verify quality products and services are being provided within the project requirements.

(G) Environmental services.

(i) The preparation and processing of the project environmental documents (PED) required to comply with National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., should normally remain the responsibility of the department and the resulting documents and approvals should be provided to the short-list proposers as part of the reference information documents (RID) included with and referenced in the RFP.

(ii) Any special environmental considerations to be addressed by the selected short-list proposer must also be included in the RFP.

(iii) Construction activities are regulated by environmental rules and regulations that are administered by federal, state, local, and special district governing agencies.

(iv)(a) The time when these permits can be obtained vary with the type of project, its impacts, and the requirements of a specific permitting agency.

(b) Therefore, the party responsible for obtaining required environmental permits and mitigation may vary depending on the type of project.

(v) The description of the various parties and their respective responsibilities required for the project should be clearly defined in the RFP.

(H) Utilities and permits.

(i)(a) The department, through its preliminary investigation of existing utility facilities in the corridor, should provide available information relative to the location and ownership of existing utilities to the short-list proposers in the RID included with the RFP.

(b) On any project, a determination should be obtained as to which firm or agency is responsible for the relocation of existing utilities.

(c) When utility relocation is included in the project scope for the selected short-list proposer (design-builder) to perform, the design-builder, in consultation with the utility companies, shall determine the specific utility conflicts with the final design of the project and make arrangements for the utility relocation or adjustment, as required.

(d) Information regarding prior rights and compensation for utility relocations should be clearly defined in the RFP to minimize costs of unknown risks.

(ii)(a) The normal department internal procedures for a DB-B project should be utilized when the department is responsible for utility relocation and the completed relocation/adjustment information should be provided to the short-list proposers if completed prior to the release of the RFP.

(b) If the relocation/adjustment cannot be completed prior to the execution of the DBA, all preliminary information available should be provided to the short-list proposers in the RID included with the RFP and final relocation/adjustment information should be provided to the design-builder when completed.

(c) The description of the various parties and their respective responsibilities for utility relocation/adjustments should be clearly defined in the RFP.

(I) Right-of-way services.

(i)(a) Right-of-way acquisition in this state is solely the responsibility of the department.

(b) It is desirable that all ROW acquisitions are completed prior to the release of the RFP and at least completed prior to the execution of the DBA.

(ii)(a) In other states and jurisdictions, it has been advantageous in some circumstances to allow the design-builder to acquire the required ROW for a D-B project.

(b) In such case, the design-builder must acquire the needed ROW in accordance with all applicable:

(1) Federal requirements;

(2) State statutes; and

(3) Agency procedures.

(c) Should this alternative be allowed by state statute in the future and is a viable alternative for the project, the establishment of appropriate compensation and eminent domain proceedings must remain the responsibility of the department, and the description of the department and design-builder responsibilities for the project ROW acquisition must be clearly defined in the RFP.

(b) Modifications to department standard specifications.

(1)(A) A project of the size/importance attractive to the department for consideration for D-B project methodology will likely include some project-specific requirements that would fall outside the standard department details and specifications.

(B) Modifying the standard specifications to meet the specific needs of the project and incorporating those modifications appropriately into the RFP and the DBA is

suggested as the best approach rather than preparing a standalone contract including unique project technical specifications.

(C) This approach is suggested due to interdependency of the department standard:

- (i) Specifications;
- (ii) Guidelines;
- (iii) Manuals;
- (iv) Standard details; and
- (v) Other contract forms.

(D) Modifying the standard specifications allows all other cross-references to remain valid through the respective linkages into the RFP and DBA.

(2)(A) Modifying the current department standard specifications generally involves two (2) separate types of modifications.

(B) If a brief modification, addition, or deletion of paragraphs is required of a standard specification, a special provision should be prepared to incorporate the modification.

(C) If a large portion of a standard specification requires modification or a new product or construction type is required for the project, a new special specification should be prepared to meet the requirements of the project.

(3)(A) A programmatic approach to future D-B development should allow the D-B core documentation to evolve with the department standard DB-B core documentation.

(B) A project-by-project upgrading of the D-B special specifications and special provisions will be required but is anticipated to be far less laborious than rewriting a complete standalone contract for each D-B project.

(C) In such case, a provision-by-provision comparison of the previous D-B project contract, contract modifications and special specifications and special provisions would be required to identify the specific changes from the previous D-B project.

Authority. Arkansas Code § 27-67-206.

Codification Notes. "ROW" means right-of-way.

27 CAR § 92-510. Step 5D: Prepare the request for proposals forms.

(a) The request for proposals (RFP) forms should be acquired and/or prepared for the project by the department procurement team (DPT).

(b) The typical D-B proposal forms would include, but are not limited to the:

- (1) Bonding documents;
- (2) Contract forms;
- (3) Prevailing wage information; and
- (4) Federal aid provisions.

(c) These documents should be provided to the proposers in the RFP to demonstrate what the DBA provisions will require.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-511. Step 5E: Publish the RFP documents.

(a) The assembly and printing production of the RFP will be a similar, although more in-depth, operation to the Arkansas Department of Transportation procedure to publish specifications.

(b) The RFP will have attachments, such as the RID, that will be provided in numerous electronic formats requiring hard copy as well as electronic transfer to recipients.

(c) The DPT should prepare a delivery system within the department or using outside sources to provide both the electronic and paper copies of the documents to the short-list proposers during the RFP release and any subsequent addenda prior to receiving the proposals.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-512. Step 5F: Respond to proposer requests for clarification.

(a)(1) A short-list proposer that will develop a proposal will require a clear understanding of the project to be successful.

(2) Project understanding can be derived from the information provided by the Arkansas Department of Transportation in the RFP and through the one-on-one meeting process as a formal interaction with the DPT, Arkansas Department of Transportation staff, and other groups involved in the project development.

(3) The accepted industry understanding is the technical score awarded to a short-list proposer is proportional to the information gained and reflected in the proposal.

(4) Potential proposers will start researching the project understanding very early in the life of the project development.

(b)(1) Prior to initial advertisement of the project, the project information released to interested parties should be documented and released in a consistent form to all that inquire about the project.

(2) A policy must be established early in the project development to determine:

(A) How the Arkansas Department of Transportation will provide unsolicited project information;

(B) How to respond to information requests; and

(C) What types of information will be released.

(3) Once a department project office (DPO) is formed, all communications should be shifted to the DPO and any other Arkansas Department of Transportation offices should refrain from accepting or responding to any nongovernment communications about the project.

(4) When a PD is assigned to the project, all communication should be focused through the PD, or any authorized designee, and all nongovernmental correspondence should be released through the PD.

(c)(1) During the development of the proposal, the short-list proposer will submit a request for clarification (RFC) to the DPT requesting additional information to obtain a

better vision of the project requirements to assist with the preparation of the proposal.

(2) Some RFC can be simple clarification of terms, timelines, or wording.

(3) However, some requests will be more complicated and require a considerable amount of effort to research and respond.

(4) The DPT should be prepared to address and formally respond to the RFC by a preapproved process to facilitate the investigation and response to such requests in a timely manner.

(5) The DPT should define the formal process to be adopted for the project and it should be included in the RFP.

(d)(1) The development of proposals is very competitive in nature and the Arkansas Department of Transportation, the DPT, and the PET should maintain confidentiality during this process.

(2) Any response to an RFC generated based on a confidential communication regarding a short-list proposer's process or as part of a one-on-one meeting should be documented and the response provided only to that particular short-list proposer.

(3) Responses to RFC provided in a public forum, meeting, or occurring early in the process prior to initiating private communications with the short-list proposers should be released to all short-list proposers.

(4) Any RFC that identifies an error in the RFP documents should be released to all short-list proposers regardless of how the RFC is provided.

(e)(1) Website communication with stakeholders during the project development and advertisement is an effective tool to provide available information and answers to frequently asked questions (FAQs).

(2) The FAQs should be posted on the project website and should be maintained throughout the project development.

(3) A project website could also be used during the selection process to post short-list proposer questions and Arkansas Department of Transportation responses to nonconfidential questions as well as to provide addenda to any publicly released documents.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-513. Step 5G: Alternative technical concepts.

(a)(1) Throughout the RFP phase, each short-list proposer will normally propose modifications to the project scope that the short-list proposer would like the Arkansas Department of Transportation to either include in the RFP or allow the short-list proposer to include in their specific proposal.

(2) When these modifications are allowed by the department to be included in the specific proposal, these modifications are normally referred to as an alternative technical concept (ATC).

(3) The department may or may not allow the ATC process as an option in the project procurement.

(b)(1) If the department allows the ATC process as part of the RFP, the review and approval/denial process must be performed by the DPT for the department in accordance with specific guidelines established for the project.

(2) An example of D-B ATC guidelines is included as Appendix I.

(3) These guidelines are summarized as follows:

(A) An ATC is a confidential request by a short-list proposer to modify a DBA requirement specifically for that short-list proposer prior to the proposal submission;

(B) An ATC is evaluated for approval or denial by the DPT within the deadline set forth in the RFP, which is usually set to occur several weeks before the proposal due date;

(C) Unless specifically noted otherwise in the RFP, any section of the DBA can generally be subject to consideration for an ATC;

(D) In order to be approved, an ATC must be deemed, in the department's sole discretion, to provide an end product that is equal or better on an overall basis than the project would have required without the proposed ATC;

(E) Concepts that simply delete scope, lower performance requirements, lower standards, or reduce contract requirements are not generally acceptable as an

ATC; and

(F)(i) The department generally allows the ATC process for all D-B contracts in order to promote innovation, find the best solutions, and to maintain flexibility in the procurement process.

(ii) However, the allowance of the ATC process as part of the procurement is a decision for each project.

(c)(1) An ATC can bring new design or construction ideas that may not have been used or considered on previous department projects.

(2) The DPT should prearrange a group of technical resource experts within the department who could be available to review ATC proposals on short notice.

(3) Arranging the group in advance would assist to streamline the review and consideration of an ATC in what will need to be an accelerated review process during the proposal preparation period.

(4) For example, designated representatives from the technical disciplines should be available, as are necessary for the project, such as:

- (A) Structures;
- (B) Geotechnical;
- (C) Pavements;
- (D) Roadway design;
- (E) Drainage;
- (F) Traffic; and
- (G) Illumination.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-514. Step 5H: Schedule of values.

(a)(1) Most D-B projects are bid on a lump-sum basis and the RFP should require a bid breakdown to be submitted in the proposal in the form of a schedule of values (SOV).

(2) The RFP should specify any specific subordinate breakdown requirements

of the items in the SOV.

(3) The SOV should be organized into work items, tasks, or milestones identified in the project schedule provided in the proposal.

(4) The SOV configuration can vary depending on the specific project and could consist of only a single item for the entire project, but usually can range up to several hundred items allocated for payment on the project.

(b)(1) The SOV will be used for proposal evaluation during the procurement phase and cost tracking, payment requests, and change order price adjustments in the implementation phase.

(2) The SOV should be carefully reviewed by the project evaluation team (PET) and scrutinized to observe and resolve any unbalanced items.

(3) The PET should compare the SOV against the project schedule provided with the proposal for conformity.

(4) The SOV could become a negotiation effort between the Arkansas Department of Transportation and the selected short-list proposer (design-builder) prior to execution of the DBA.

(c)(1) Where existing features must be modified as part of the project work, the existing conditions may not be known in sufficient detail to assign an accurate cost or price.

(2) In such case, the department procurement team (DPT) should consider assigning unit costs, against a preassigned estimated quantity for high-risk items or items unclear to the Arkansas Department of Transportation and the short-list proposers during the time of the proposal preparation to establish a basis for measuring and payment for the actual work.

(3) A description of the work and the basis for measurement and payment should be included in the project special provisions included with the RFP.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-515. Step 6: Evaluate the proposal.

(a)(1) For most D-B projects, the short-list proposers will be required to submit a proposal which is comprised of a technical proposal and price proposal.

(2) These documents should be submitted to the Arkansas Department of Transportation in separate sealed packages.

(3) The technical proposal for each short-list proposer should be evaluated first while the price proposal is held unopened in a secure location.

(4) At the completion of the technical proposal evaluation for all short-list proposers and when all technical scores are compiled, only then should the price proposals be opened.

(5) After the price proposals are all opened, the fixed maximum price (FMP) for each proposal is recorded and the SOV reviewed and evaluated.

(6) The technical proposal and the price proposal for each proposal will then be combined and the DPT will calculate the adjusted price.

(7) A comparison of each short-list proposer's adjusted price will determine the apparent best value for the project and the preferred short-list proposer, the design-builder.

(b)(1) During the proposal evaluation, the Arkansas Department of Transportation may wish to obtain additional information concerning a specific portion of a proposal.

(2) In such case, the Arkansas Department of Transportation, through the DPT, may issue a formal department request for clarification (DRFC) to the respective short-list proposer to allow a proposal clarification to address a specific area or portion of the proposal that is unclear to the PET.

(3) The DRFC should be focused on a specific area in the proposal and not a general question or reflect a comprehensive issue within the proposal which impacts major or multiple sections.

(4) The responses should be brief and considered an addendum to the original proposal and the Arkansas Department of Transportation should not allow the resubmission of major sections of the proposal to address the issue.

(5) The Arkansas Department of Transportation is not obligated to request the additional information and while the implementation of this process should be

minimized to avoid any potential protests, it may be considered in an effort to fairly evaluate the proposals and, in particular, to avoid classifying the respective proposal as nonresponsive and rejecting the submittal.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-516. Step 6A: Technical proposal evaluation.

(a)(1) The technical proposal should address specific requirements the Arkansas Department of Transportation has established for the project.

(2) The technical proposal should be evaluated and scored on how well it meets the proposal ESC within the RFP.

(3) The project evaluation team (PET) should be prepared to spend significant effort reviewing the scoring distribution in each category, understanding the individual technical evaluation criteria, and applying a consistent approach to ensure that evaluators will select an appropriate score for each criterion.

(b)(1) On D-B projects where only conceptual preliminary development was provided by the department and where flexibility exists in the product performance criteria, completely objective evaluation criteria require significant efforts to derive.

(2) Performance-based design criteria requiring a demonstration of success in implementation (capacity, smoothness, durability, etc.), is difficult to quantify in a technical proposal.

(3) It is very difficult to be specific in the proposal ESC without having specific concepts in mind.

(c)(1) Using the definition of value as quality/price, the quality of each project component can be defined by the contract provisions while the price of each component is defined by the component-estimated cost.

(2) The contract provisions represent the minimum acceptable quality, the dividing line below which a technical proposal would be considered unacceptable or nonresponsive.

(3)(A) The PET members should be provided with the definition of best value

and a defined range of points in determining if a specific product meets or exceeds the contract requirements.

(B) However, the criteria should not be so prescriptive as to award explicit points for specific designs.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-517. Step 6B: Price proposal review.

(a)(1) The price proposal should represent the fixed maximum price (FMP) to the Arkansas Department of Transportation, as defined by the criteria specified in the RFP.

(2) The FMP includes design, construction, management, insurance, bonding, warranties, and maintenance agreements, all as specified in the RFP.

(3) Short-list proposers will be required to perform design and other project tasks to support the development of the price proposal.

(4) Depending on the project, this effort could be considerable.

(b)(1) The price proposal submitted by each short-list proposer should be set aside in a secure environment until all the technical proposals have been evaluated and technical scores determined for each short-list proposer.

(2) Each price proposal will then be opened and the FMP provided therein will be used to combine with the technical scores to determine the adjusted price as described in the next step.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-518. Step 6C: Determination of best value and selection of design-builder.

(a)(1) The best value approach to contract award selects the proposal in which the combination of technical, quality, operating, and pricing factors most closely meet or exceed the Arkansas Department of Transportation's requirements.

(2) The best value approach could be represented by a simple, straightforward

solution with a relatively low cost, or a more complex solution with greater benefits, but a higher cost, being selected.

(3) The lowest price proposal may not be the lowest cost solution to the department when maintenance, operations, and replacement costs are considered.

(4) The highest price proposal may include technical innovations that the department would value very highly.

(5) One of the most difficult parts of selecting a best value proposal relates to establishing a method of evaluating the technical content and price in a way that accurately determines the best value between competing short-list proposers.

(6) A clear definition of quality, which could be based on more quantity, type of materials, higher strength, less inconvenience to the public, component life, serviceability of the final product, etc., must be specified in advance and included in the RFP.

(b)(1) The goal of the procurement process is to select the proposal that represents the best value for the project.

(2) Best value is determined by a comparison of each proposal's adjusted price which is determined through a formula established for the project that combines the proposer's technical score with the FMP.

(3) The adjusted price is equivalent to the lowest responsive bidder in a traditional DB-B project.

(4) The best value proposal may not be the lowest priced proposal but should be the proposal with the lowest adjusted price.

(5) The following three (3) items describe the general steps required to determine the best value for the project:

(A)(i) The PET should complete the evaluation of the technical proposals prior to opening the price proposals.

(ii) The scores must remain confidential until they are combined with the price proposal information;

(B) The PET should open the sealed price proposals and an adjusted price should be calculated for each proposal based on the formula to combine the fixed

maximum price (FMP) with the technical score; and

(C)(i) The formula utilized to combine the technical score and the FMP to determine the adjusted price will be different for each project as the formula will reflect the department vision for the importance of the price versus the technical aspect of each particular project.

(ii) One simple formula for calculating the adjusted price is to divide the FMP in the price proposal by the technical score (as a percentage).

(iii) The proposal that exhibits the best value will be the proposal with the lowest adjusted price.

(iv) An example of a best value selection is included below:

BEST VALUE SELECTION EXAMPLE

Proposer	Technical Score	Fixed Maximum Price	Adjusted Price
A	90	\$66.9 million	\$74.33 million
B	79	\$66.3 million	\$83.92 million
C	84	\$66.8 million	\$79.52 million

(v) In the above example, Proposer A is determined to exhibit the best value for the project.

Authority. Arkansas Code § 27-67-206.

Subpart 6. Design-Build Project Administration Process

27 CAR § 92-601. Design-build contract administration.

(a)(1) After selection of a design-builder and execution of the design-build agreement (DBA), the Arkansas Department of Transportation takes on the roles of

contract administration and quality management during the project implementation phase.

(2) An example of an organization chart for the department personnel involved in the implementation phase is included as Appendix E-3.

(b)(1) For the design-builder, the focus for contract administration should be on the project manager (PM).

(2) All aspects of the project for design and construction, as defined in the specifications, will pass through the PM throughout the life of the project.

(3) The PM will be responsible for management activities, including:

(A) Progress reports;

(B) Scheduling;

(C) Communication;

(D) Project direction;

(E) Change management; and

(F) Oversight of the design-builder's quality control and quality assurance programs.

(c)(1) The responsibilities of the department for contract administration will involve:

(A) Monitoring contract compliance and schedules;

(B) Processing progress payments;

(C) Performing quality assurance activities;

(D) Assisting in permitting and right-of-way acquisitions;

(E) Negotiating contract amendments; and

(F) Resolving disputes.

(2) Technical submittals by the design-builder will require review by the department for conformance to the technical criteria and conformance with the requirements of the DBA.

(3) In some cases, the design and construction will be overlapped and staggered (fast-tracked), requiring timely processing by the department to avoid impacts to the project schedule.

(4) The DBA should define review timelines that the department and any relevant third parties will be entitled to use for submittals.

(5) The DBA should also identify how many cumulative submittals the design-builder will be allowed to submit at any given time.

(d)(1) Progress payment requests prepared by the design-builder will also require review by the department.

(2) The payment requests will require detailed review and comparison with the design-builder project schedule, the schedule of values (SOV), and field verification to complete the review and process the request.

(e)(1) The focus of the department quality assurance program should be on product compliance with the DBA, verification of the design-builder's quality control, and assurance measures along with limited verification inspection and testing and meeting federal quality requirements.

(2) Quality assurance activities focus on monitoring contract execution with respect to the project quality management plan (QMP) which is prepared by the design-builder and approved by the department after contract award.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-602. Department implementation team.

(a)(1) A department implementation team (DIT) will be required to perform the Arkansas Department of Transportation design and construction contract administration throughout the implementation phase of the project.

(2) The DIT required for the project should be similar to the Arkansas Department of Transportation group typically assembled for a DB-B construction project to monitor construction with additional members to monitor the final design development, perform plan reviews, monitor the environmental compliance, quality monitoring/verification, public involvement, and to provide legal advice.

(b)(1) The D-B methodology does not eliminate tasks required during the construction of the project; it only allocates most functions into a single entity.

(2)(A) Typically, all the functions the Arkansas Department of Transportation performs when a design is performed by a consultant and then contracted for construction are performed during the execution of a D-B contract.

(B) However, the functions are performed in a condensed time period and require prompt attention by the DIT to avoid negatively impacting the project schedule.

(3) Depending on the size of the project, the primary DIT members may include:

- (A) The resident engineer;
- (B) The assistant resident engineer;
- (C) The plan reviewer or reviewers/designer or designers;
- (D) Inspector or inspectors;
- (E) Material laboratory technicians;
- (F) Quality specialist or specialists;
- (G) Environmental specialists;
- (H) Public involvement personnel;
- (I) Legal representatives; and
- (J) Administrative personnel.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-603. Roles of the DIT members.

(a)(1) The roles of the DIT members are all impacted by the special provisions of the DBA, including any project-specific special specifications/provisions to Arkansas Department of Transportation standard specifications and administrative specifications.

(2) Each project will include unique provisions and requirements that will require adaptation by the DIT members from the normal department DB-B project procedures.

(3) The DIT should review all the DBA provisions and highlight all unique D-B contract terms for the project review team (PRT) members, who will be responsible for monitoring the design development and performing design reviews early in the

execution of the DBA.

(4) Significant issues related to specific DBA provisions should be raised and addressed between the DIT and the design-builder at the partnering sessions.

(b)(1) As the implementation phase of a D-B project is typically fast-paced through the design, the DIT should be introduced to the DBA provisions through a formal training program.

(2) The program should cover:

(A) The department's role;

(B) Any modifications to the department standard specifications that impact the DIT members; and

(C) What procedures will be used to accommodate the changes.

(3) All typical forms should be reviewed by the department to process submittals and modify them based on the requirements of the contractual roles of the department and the design-builder.

(4) In some cases, the design-builder may be processing some of the typical forms with the review and approval of the department.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-604. Contract administration.

(a)(1) The DBA provisions should define the authority of the:

(A) Resident engineer;

(B) Assistant resident engineer;

(C) IA; and

(D) OVTI personnel.

(2) The provisions should state that the resident engineer will have the authority to enforce the provisions of the DBA.

(3) The DBA, in particular the scope of work, should guide the development of the final design.

(4) The design-builder, not the Arkansas Department of Transportation, will

create the final plans and specifications that become the record documents of the project.

(5) The PRT members should be limited in their review role to checking the plans and specifications for conformance with the project design criteria (PDC) and the remainder of the DIT members should limit their review of the constructed work to verification of the constructed product against the final plans and specifications submitted by the design-builder.

(6) Changes to the project final plans and specifications should only be required by the DIT if they do not conform to the terms of the DBA.

(b)(1) The PRT should avoid providing preferential type comments during the review of the final design or submittals unless the comments are based on contract requirements.

(2) Comments of a preferential type include comments such as how documents are organized or what information is presented.

(3) Any department or project-specific plan content or organizational requirements for the submittals must be incorporated into the RFP through the technical provisions as project requirements, otherwise the design-builder will not be obligated to meet those requirements.

(c)(1) During the execution of the DBA, the design-builder must submit many of the same documents required under a DB-B professional services and construction contract, but the completeness and timing of the submittals may be out of sequence from a more traditional DB-B project.

(2) Some construction submittals will begin to be submitted to the department soon after the design submittals begin when the design process for that particular element is not complete.

(3) Long lead time construction elements will be of primary importance to the design-builder and the design of those elements will have priority over design documents that do not have the same lead time requirements.

(d)(1) The handling of design submittals may be a new issue to the department staff, therefore, DIT members should be trained in the proper procedures to process

the submittals prior to the beginning of the DBA execution.

(2) The efficient and timely handling of the submittals is an important process managed by the DIT.

(3) Timely processing and returning of the submittals is mandatory to avoid potential claims of schedule impact by the design-builder at a later date should the construction schedule fail to meet the intended target date.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-605. Project preconstruction site visit.

(a) The RFP provisions should include a requirement for a preconstruction site visit including the Arkansas Department of Transportation and design-builder.

(b) The site visit is intended to familiarize participants with the project, project limits, project access points, review and discuss major industrial or commercial traffic impacts, and review DBA requirements as it pertains to the project site.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-606. Design and construction document preparation.

(a) Design documents preparation.

(1)(A) The design-builder will initiate the final design effort by completing the necessary investigations and studies required by the proposed design and the DBA.

(B) The scope of work items listed in 27 CAR § 92-509(a) is a guideline to what those submittals might include for the project.

(C) The critical path elements of the project will most likely be centered on the project right-of-way and permit processes.

(D) The Arkansas Department of Transportation will typically acquire the necessary right-of-way for the project based on the preliminary design.

(E) Any additional requirement for right-of-way based on the final design should be addressed immediately by the design-builder to ensure minimal impacts to

the proposed design or project schedule.

(2)(A) Acquiring certain permits is another task that is typically the responsibility of the department, however, preparation of complete permit application packages, based on the impacts of the actual or final design, should be the responsibility of the design-builder.

(B) Any required adjustments in the permit applications or the mitigation requirements will remain with the design-builder throughout the project.

(C) In certain cases, the design-builder could be assigned the responsibility for obtaining certain permits as an agent of the department.

(D) Provisions for the anticipated time for permit acquisition should be written into the RFP scope of work.

(E) Allowances for acquisition time beyond the allotted period, due to circumstances beyond the control of the department or the design-builder, should also be added to the RFP provisions.

(3)(A) The design-builder should determine the need for utility relocations to confirm or extend the conceptual limits of relocation based on the department preliminary design.

(B) Relocations that are dependent on the final design and construction activities should remain under the control of the design-builder along with the risks that pertain to those relocations.

(C) The department investigations during the project development should identify significant utility conflicts and address the utilities' special concerns.

(D) The design-builder should be responsible for coordination of all necessary utility relocations.

(E) The department role for any utility relocation should be defined in the RFP and should include the provisions under which additional payment may be provided to the design-builder for the utility relocation work.

(b) Construction documents' preparation.

(1) The design-builder should begin preparation of the final design plans and other documents when the necessary field data and other reference data is collected.

(2) The department will have the opportunity to monitor and review the documents prepared by the design-builder through the project review team (PRT), but the PRT should be aware of their role and avoid requesting preferential modifications which are not defined in the RFP and the DBA.

(3) PRT comments provided to the design-builder should be consistent with the department oversight role on the project to monitor and verify compliance with the DBA.

(4) Construction documents may be prepared in a manner that will allow phased design and/or phased construction of the project, with the final plans broken into appropriate subject-based submissions and, in some cases, partially complete submissions, based on the scheduling priorities.

(5) The PRT review process should be provided with personnel and procedures to accommodate this type of process.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-607. Plan review and oversight.

(a)(1) The typical DB-B process of the Arkansas Department of Transportation involves a design approval decision point that is not incorporated into the D-B process.

(2) When awarding the D-B contract, the department is acknowledging the basics of the D-B design approach and, as such, is accepting the design concepts of the design-builder presented in the proposal.

(3) The post-selection final design process by the design-builder will move forward from the design concepts presented in the proposal, therefore, an early acceptance of design is inherent in the selection process.

(b)(1) The details and requirements necessary for the department approval of design must be included in the RFP.

(2) The acceptance of the proposal authorizes the performance of the final design and production of the final plans and specifications once the appropriate notice to proceed (NTP) is issued by the department.

(3) In a D-B process, the risk inherent to the design is accepted by the design-builder and the PRT review should be limited to the determination of whether the final design meets the intent and requirements of the DBA as stipulated in the RFP.

(4) Language in the RFP should protect the concepts presented in the proposal from significant changes after the DBA is executed through final design or the construction process without the approval of the department.

(c)(1) A proposal element that meets the DBA requirements but does not meet what the department intended would require a change to the DBA initiated by the department.

(2) Should the design-builder include an element or modify a significant facet of the project after the submission of the proposal without the prior authorization of the department, a modification to the DBA would be required to authorize the modification, otherwise the design-builder must remove the element from the final design and construction.

(d)(1) In a D-B process, there is normally no predefined schedule for the department reviews, but the timeframe allowed and the requirements of both contractor and the department should be established in the RFP and DBA.

(2) The design schedule, including department reviews, will be determined and provided by the design-builder, with department concurrence, after the DBA is awarded but generally prior to issuance of the NTP, as the design-builder will be ready to begin the actual final design as soon as the NTP has been received.

(e) The PRT should consist of department or nondepartment personnel who were the technical representatives from each of the design technical groups from the PET, where possible, or outside technical experts can be added to the PRT on an as-needed basis, to be responsible for reviewing the design from the design-builder related to each technical discipline.

(f)(1) PRT design reviews can take numerous forms, ranging from over-the-shoulder (OTS) meetings to more formal review and comment periods.

(2) It is important for the PD to involve the district engineer and his or her staff in the PRT design reviews as needed to identify constructability, maintenance, and

operational issues that may arise while the design is being developed.

(g)(1) In a D-B process, the department and the design-builder both warrant something to each other.

(2) The department should warrant that the project design criteria (PDC) and project limits meet the requirements for the project but not warrant the applicability of the design.

(3) The design-builder warrants that the final design and the constructed product will meet the intended product required by the DBA as stipulated in the RFP.

(4) For these reasons, the PRT should provide only comments related to nonconforming design elements not meeting the DBA requirements during any of the design reviews.

(5) Any comments outside of the type described will be considered preferential comments and should be provided only for the consideration of the design-builder.

(6) The decision to incorporate any of the comments of a preferential nature resides with the design-builder.

(7) The PRT should develop a protocol to delineate the required and preferred types of review comments to be returned and reduce the volume of comments provided to the design-builder.

(h)(1) The department's constructability and maintenance reviews occur simultaneously in the normal DB-B process.

(2) In the D-B process, constructability becomes the responsibility of the design-builder as the designer and constructor are combined on the same team.

(3)(A) The department carries no liability for whether a design is constructible.

(B) However, the department has a vested interest in the design-life of an element and the ability to maintain the element throughout its design-life.

(4) Since the issue of whether an element meets the requirements of the department for long-term maintenance is still a relevant issue in the D-B process, it must be considered in the preparation of the RFP.

(5) Any additional design modifications required to be incorporated into the final design for department maintenance concerns identified during a design review not

detailed in the RFP will likely result in a modification to the DBA initiated by the design-builder.

(6) Due to the repetitious nature of certain transportation details throughout a project, the impact of a minor post-RFP modification of this type can result in a considerable cost increase to the project.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-608. Preconstruction conference/meeting.

(a) Prior to the start of construction, the design-builder should conduct a preconstruction conference.

(b)(1) The traditional preconstruction conference activities associated with DB-B construction should also occur with D-B construction.

(2) However, some portions of the construction could be phased to occur while final design is still ongoing.

(c) The early phases of construction could cause some fabrication and construction to occur very soon after the NTP is issued by the Arkansas Department of Transportation and the parties should be prepared to move forward quickly, therefore, the meeting should be anticipated soon after the NTP.

(d) The preconstruction conference is required to discuss contract administration and work coordination within the parties and with outside parties, such as:

- (1) Local agencies;
- (2) Utilities; and
- (3) Permitting agencies.

(e) The preconstruction conference also allows for:

- (1) Reviewing of DBA terms;
- (2) Discussing the design-builder project schedule; and
- (3) Establishing communication links for beginning the project.

(f) This meeting will usually be scheduled to occur immediately following the preconstruction site visit discussed in a previous section.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-609. Reestablish survey control/construction surveying.

(a) Project survey control should normally be provided by the Arkansas Department of Transportation and be established during the development of the project.

(b) The design-builder will reestablish survey control based on data provided by the department soon after the DBA is executed.

(c)(1) The design-builder should maintain responsibility for the survey control and required staking for construction.

(2) However, the department should conduct necessary quality assurance checks on the control and staking, if determined to be required, in particular, in the vicinity of residential or other environmentally or publicly sensitive areas prior to any construction activities in the impacted area.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-610. Materials testing.

(a)(1) The transition from the more traditional DB-B prescriptive specifications and plans to D-B performance specifications requires a change in methods of measurement of quality.

(2) The Arkansas Department of Transportation should establish the requirements the design-builder must meet when developing the project quality management plan (QMP), which defines the quality control and quality assurance procedures for the products incorporated in or constructed with the project.

(3) Owner verification monitoring and testing functions are maintained under the control of the department to comply with Federal Highway Administration policies.

(4) Department tasks should include:

(A) Owner verification, testing, and inspection (OVTI);

(B) Independent assurance (IA); and

(C) Off-site fabrication inspection.

(5) The design-builder would be responsible for:

(A) Materials testing;

(B) Review of working drawings; and

(C) Full-time construction inspection.

(b) The working drawing review, which is a check on the fabrication drawings as compared to the design drawings, will be conducted by the D-B designer of the facility and the designer must remain responsible for the fabrication and proper installation of the detailed components.

(c)(1) The department materials laboratory may function as under a DB-B construction contract whereby all department required quality assurance samples and tests would be collected and tested according to current department guidelines.

(2) Fabrication inspections should require department involvement in ensuring the required certifications of the fabricators.

(3) However, QC inspection of the fabrication should be part of the QMP and be the responsibility of the design-builder.

Authority. Arkansas Code § 27-67-206.

Codification Notes. "QC" means quality control.

27 CAR § 92-611. Construction inspection.

(a)(1) The Arkansas Department of Transportation inspection in a D-B process should be less extensive than under the DB-B process, depending on the construction schedule and the type of project.

(2) The primary role of the department should be to monitor the progression of the construction against the final plans and specifications prepared by the design-builder.

(b)(1) With mixed assignments on the project site, the department and design-builder inspectors will need to maintain close coordination to ensure none of the

required quality assurance measures are overlooked.

(2) Copies of the working drawings will be forwarded to the department for use in the:

(A) OVTI inspection;

(B) Mandatory inspection (hold points, to be determined for each project);

and

(C) Construction inspection oversight (witness points, to be determined for each project).

(3) Required hold points and witness points should be defined in the RFP and DBA.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-612. Contract changes.

(a)(1) Arkansas Department of Transportation initiated modifications to the DBA after proposal submission should generally be limited to areas which the requirements included in the RFP cannot be easily addressed or known by the design-builder during proposal preparation.

(2) A situation may occur when the preliminary design, provided by the department in the RFP, conflicts with existing conditions or some other circumstance that is identified during construction, which is at no fault of the design-builder.

(3) When such a situation occurs during the project, a modification to the DBA should be in order.

(4) The procedures for authorizing, administering, and executing such modifications should be similar to those required by the department during construction in a DB-B project.

(b)(1) Due to the fast-paced nature of D-B projects, increased attention to contract changes is important to maintain the project schedule and mitigate costly delay claims.

(2) On large-scale or complex projects, the department should consider the establishment of a change review board.

(3) Although highly project dependent, the frequency of board meetings would be anticipated to occur monthly during the first half of the implementation phase, and then shift to bimonthly or on-call basis thereafter as final design would be complete, many foundation elements would be in place, and the anticipated number of changes due to field discoveries would decrease.

(4) The board should consist of department personnel with sufficient experience and stature, with experience diverse enough to allow the board to review all facets of the change order and the confidence to reject or approve the change order for the department.

(c) A common example would be the discovery of additional, previously unknown utilities that must be removed or relocated by the design-builder when the work would be included on the critical path of the design-builder.

(d) In addition, recommended best practice is to maintain a change log for all changes, tracking them from identification of potential changes/first written notice to their resolution (rejection, withdrawal, or resolution in the form of an executed change order).

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-613. Construction documentation.

(a) Much of the construction documentation collected under the DB-B process should still be required under a D-B process, such as materials certifications.

(b) The RFP and DBA should also include provisions that require the submittal of detailed documentation in support of D-B progress payment requests.

(c) All support documentation should be provided with a progress payment request prior to review and consideration by the Arkansas Department of Transportation.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-614. Progress payments.

(a)(1) The selected short-list proposer (design-builder) must meet the requirements of the progress payment process established in the RFP.

(2) Each proposal must include a schedule of values (SOV) in the price proposal.

(3) After selection of the design-builder, the Arkansas Department of Transportation should further review, and negotiate as necessary, issues pertaining to the SOV with the design-builder prior to issuance of NTP1 resulting in the department approval of the SOV.

(4) The progress payment requests should be reviewed for conformance to the DBA requirements, against the actual completion to date, and conformance with the approved SOV.

(b)(1) The progress payment reporting process should also include provisions for updating the current project schedule with each payment request and tracking the percentages of disadvantaged business enterprise (DBE) participation in comparison to the design-builder DBE utilization plan presented in the proposal.

(2) The design-builder should normally prepare the progress payment requests on a monthly basis, which should be reviewed for progress verification as outlined in the DBA.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-615. Warranties.

(a)(1) The RFP may require a warranty for an element, a group of elements, or all of the project work, with a specified number of years (term) and the details as to what elements should be covered by the warranty.

(2) In general, routine maintenance is not intended to be covered by a warranty.

(3) Standard warranty forms or clauses will need to be modified to fit the specific requirements of the project.

(4) Each product or component of the project may have a different warranty

term.

(5) Any warranties that are developed for federal-aid projects on the National Highway System should be tied to specific features or products and warranty items within the control of the design-builder.

(b)(1) Performance requirements for each element must be clear, objective, and measurable to avoid future disputes.

(2) The Arkansas Department of Transportation must carefully consider the design and construction criteria and requirements for warranty elements.

(3) The degree to which an element of design or construction is prescribed by the DBA will influence how much a design-builder is really able to impact the design, construction, or performance of that component.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-616. Contract completion.

(a)(1) The process of officially completing the D-B construction portion of the project is similar to the DB-B construction process where the Arkansas Department of Transportation will conduct a final inspection and provide the design-builder with a list of corrective or incomplete work items.

(2) If none of the noted items are considered significant by the department and the project has been determined to meet the operational requirements established in the RFP, the project has reached project substantial completion (SC).

(3) A letter from the department acknowledging that SC has been obtained should be provided to the design-builder along with the list of corrective or incomplete work items.

(4) The design-builder is responsible for performing the appropriate repairs, collecting all the required documentation, and submitting the documentation to the department on a timely basis, usually weekly or biweekly, to meet the requirements of the list of corrective actions.

(b) During the preparation of the final submission documents, the design-builder

should be required to submit or resubmit missing, incomplete, or inaccurate documents, although some documents may be exempted from a resubmission by the department when, in the department's sole judgment, the completion provides no statutory obligation or perceived value to the department.

(c)(1) The final design of a D-B project described and specified using performance parameters is, in essence, accepted by the department based on the design-builder's final plans and specifications.

(2) The department acceptance of the final design follows the acceptance of the project's basic concepts and preliminary design which occurred when the department selected the design-builder based on the submitted proposal and the preliminary design represented therein.

(3) During execution of the DBA, acceptance of the project's components occurred through the implementation and execution of the quality management plan (QMP).

(d)(1) If the QMP is followed, the construction should lead to an acceptable final product, aside from typical minor corrective work.

(2) Any warranty requirements will extend beyond the project construction completion and should be monitored by the department for compliance on the specific objectives, conditions, and term of the warranty.

(e)(1) A D-B project is complete when all conditions of the DBA have been fulfilled and the department has acknowledged the completion through the issuance of a letter of final acceptance (FA) to the design-builder.

(2) Project completion includes:

(A) All design and construction activities;

(B) Submission of record drawings; and

(C) All documentation submitted to the department in its final form.

(f)(1) The formal letter acknowledging FA provides confirmation that all corrective action items have been completed and all products meet all the DBA requirements, excluding any warranty terms and requirements.

(2) Project components may carry warranty provisions requiring performance

for a prescribed term after FA.

(3) The warranty provisions describe the required condition of the component for the duration of the warranty term.

(4) Measurements for progressive payments or final payments are also based on those provisions.

(5) Final warranty completion (FWC) would occur when each warranty period is completed and each warranted component's condition is confirmed to meet the requirements of the DBA or is restored to sufficiently meet those requirements.

(g)(1)(A) One alternative to including warranty requirements in the RFP and DBA would be to include a maintenance program in the scope of work, which would be established to keep the project at a prescribed minimum condition throughout the prescribed period.

(B) A maintenance program would work well for a project where limits are well defined and other maintenance will be not performed in the project area by the department or some other agency or owner.

(2) For example, a pavement rehabilitation project within a continuous highway section, where the design-builder maintains the new section but the department maintains the remainder of the highway, could create an ambiguous definition of overlapping or gapped responsibility.

(h)(1) A major new bridge would be a highly distinctive project and might be well suited to a maintenance agreement.

(2) The maintenance agreement becomes similar to the warranty condition where the project, or component, condition is confirmed to meet the requirements of the DBA or is restored to meet those requirements.

(i)(1) The tasks associated with the contract closure lie mostly with the department.

(2) After the design-builder has completed all the conditions of the DBA, including all construction, repairs, all warranty periods have expired, and any warranty repairs completed, the department should process the final payment request or requests from the design-builder following the standard department procedures and

provide a formal correspondence to the design-builder that all terms and conditions of the DBA have been completed and the contract closed.

Authority. Arkansas Code § 27-67-206.

27 CAR § 92-617. Federal Highway Administration — Department oversight process for design-build projects.

(a)(1) The organization and operation of Federal Highway Administration oversight for all Arkansas Department of Transportation projects is established in the stewardship and oversight agreement (SOA) which has been developed and executed between the Arkansas Division of the Federal Highway Administration and the department.

(2) The purpose of the SOA is to assist in the implementation of the provisions contained in the Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, and previous federal highway authorization acts.

(3) The SOA covers all major aspects associated with the administration of the federal-aid highway program under Title 23, Title 49, and other associated laws.

(b)(1) The current edition of the SOA became effective upon execution on April 29, 2015, superseding the previous 2009 edition which was effective on October 20, 2009.

(2) Memoranda of understanding (MOU) will be developed between the department and the Federal Highway Administration to augment and further define their roles for design-build (D-B) projects.

(3) A key element of these MOU will be to expand and clarify the processes, delegations, and authorizations required for the delivery of D-B projects which must be accomplished prior to solicitation of any department D-B projects.

(4) It is understood that Attachment C will be updated as needed based on the execution of new:

- (A) Laws;
- (B) Regulations;
- (C) Directives;
- (D) Manuals; and

(E) Operating agreements.

(c) If the D-B project requires the use of federal funds, then the department must obtain a Federal Highway Administration project authorization.

(d)(1) Depending on the scope of the D-B project and the details of the procurement process, the department may be required to obtain the project authorization in multiple steps.

(2) The department may need to obtain one (1) approval for preliminary engineering, another approval for right-of-way acquisition, and another approval of the RFP to reach ultimate project authorization.

(3) To meet the project schedule requirements, the department will need to involve the Federal Highway Administration early in the project development and incorporate their input throughout the D-B process as required.

(4) The specific authorizations, steps, and required approvals will be included in the updated SOA.

(e) Any D-B development process requiring Federal Highway Administration approval must proceed in accordance with the latest executed SOA.

Authority. Arkansas Code § 27-67-206.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained the following at the end of this section:

"Refer to the 2009 SOA for further details concerning the FHWA Oversight Process for D-B projects at <http://www.fhwa.dot.gov/federalaid/stewardship/agreements/pdf/ar.pdf> and any later updated editions on the Department website as they become available.

Note: This section may need to be modified or be superseded upon approval of any future editions of the SOA."

Appendix A. Act 460 of 2003

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/232/27CARpt.92AppendixA.pdf>

Appendix B. Act 541 of 2013

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/233/27CARpt.92AppendixB.pdf>

Appendix C. Unsolicited Project Proposals

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/234/27CARpt.92AppendixC.pdf>

Appendix D. Example of Risk Allocation Matrix

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/235/27CARpt.92AppendixD.pdf>

Appendix E. Example of Department Procurement Team Organization

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/236/27CARpt.92AppendixE.pdf>

Appendix F. Example of Confidentiality Agreement

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/237/27CARpt.92AppendixF.pdf>

Appendix G. Example of Design-Build Procurement Process

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/238/27CARpt.92AppendixG.pdf>

Appendix H. Stipend Determination

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/239/27CARpt.92AppendixH.pdf>

Appendix I. Example of Guidelines for Alternative Technical Concepts

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/240/27CARpt.92AppendixI.pdf>

Appendix J. Example Design-Build Project Procedures

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/241/27CARpt.92AppendixJ.pdf>