

DRAFT

Illinois Department of Transportation
Bureau of Railroads

CREATE* Program
Rail Projects

Phase II Reports

August 2009

*Chicago Region Environmental And Transportation Efficiency



DRAFT

THIS PAGE INTENTIONALLY BLANK

DRAFT

Table of Contents

1. Purpose of Phase II Reports for CREATE Projects
2. Scope of this Manual
3. Contracting for Professional Services
4. Contracting for Professional Right of Way Services
5. Contracting Phase III Work with the Lowest Qualified Bidder
6. CREATE DBE Forms for all Freight Railroad Bid Packages
7. Phase II Report Types
8. Phase II Report Numbering System
9. Phase II Report Contents
10. IDOT PS&E Review Checklist
11. Contracting for Utility Relocations/Protections

DRAFT

List of Attachments

Attachment 1	Sample Cover Page
Attachment 2	Sample Signature Page
Attachment 3	Sample CREATE Phase II PS&E 100% Design Cost Form 3.1
Attachment 4	Sample CREATE Project Invitation to Bid
Attachment 5	Contract Provisions for Federal-Aid Construction Contracts for CREATE Program Contract Type: Force Account Projects
Attachment 6	Contract Provisions for Federal-Aid Construction Contracts for CREATE Program Contract Type: Non-Force Account Projects
Attachment 7	Illinois Department of Labor Requirements for Prevailing Wages
Attachment 8	Disadvantaged Business Enterprise Policy and Special Provision
Attachment 9	Workers' Compensation Insurance Requirements
Attachment 10	Domestic Steel Requirement
Attachment 11	CREATE Project Bid Package Language - Retainage

DRAFT

1. Purpose of Phase II Reports for CREATE Projects

The purpose of a Phase II Report is to demonstrate compliance with the elements determined to be required in the Phase I Report to the State of Illinois and Federal agencies responsible for approving the project. The Phase II report provides detail about how the work of the project will be accomplished that was not necessarily shown in the Phase I report.

Preparation of the Phase II documents in accordance with the procedures in this manual is a necessary step in progressing the project toward construction. CREATE program procedures established by CREATE railroad and government agency partners require approval of the Phase II documents before Phase III (construction) contract awards can be made by the FHWA. A complete and accurate Phase II Report, along with a draft State/Railroad grant agreement, is required to be submitted by the Illinois Department of Transportation to the FHWA for approval of Phase III funding. As information, a flowchart illustrating the process from Phase II Report approval through Phase III construction is shown in Figure 1 below.

2. Scope of this Manual

This manual describes the required elements for a CREATE Phase II Report, with certain exceptions. This manual does not include procedures regarding:

- Right of Way Acquisitions/Easements (permanent or temporary)
- Utility Relocations
- Procurement Procedures

Procedures for addressing the above items should be discussed with IDOT staff prior to beginning preparation of the Phase II documents.

DRAFT

3. Contracting for Professional Services

When a railroad intends to contract with an outside company for professional services (except professional right of way services) for a CREATE Phase II activities, the procedures listed below shall be followed. Professional services include (but are not limited to) the following:

- Engineering services required for the estimate of cost, planning, design, and preparation of plans and special provisions
- Project studies
- Hydrologic/hydraulic analysis
- Geotechnical services
- Environmental reports
- Surveying
- Construction inspection
- Mechanical/Electrical engineering
- Architecture
- Quality Assurance/Quality Control

Procedure for Approval of Railroad Solicitation Procedures

1. Railroad submits to IDOT & FHWA their CREATE Professional Services Solicitation Procedures for approval. These procedures will comply with the 23 C.F.R. Part 172 federal requirements.
2. IDOT & FHWA review and approves.
3. RR uses these procedures for all professional services solicitations, unless new procedures are submitted for approval.

Procedure for Solicitations for Professional Services

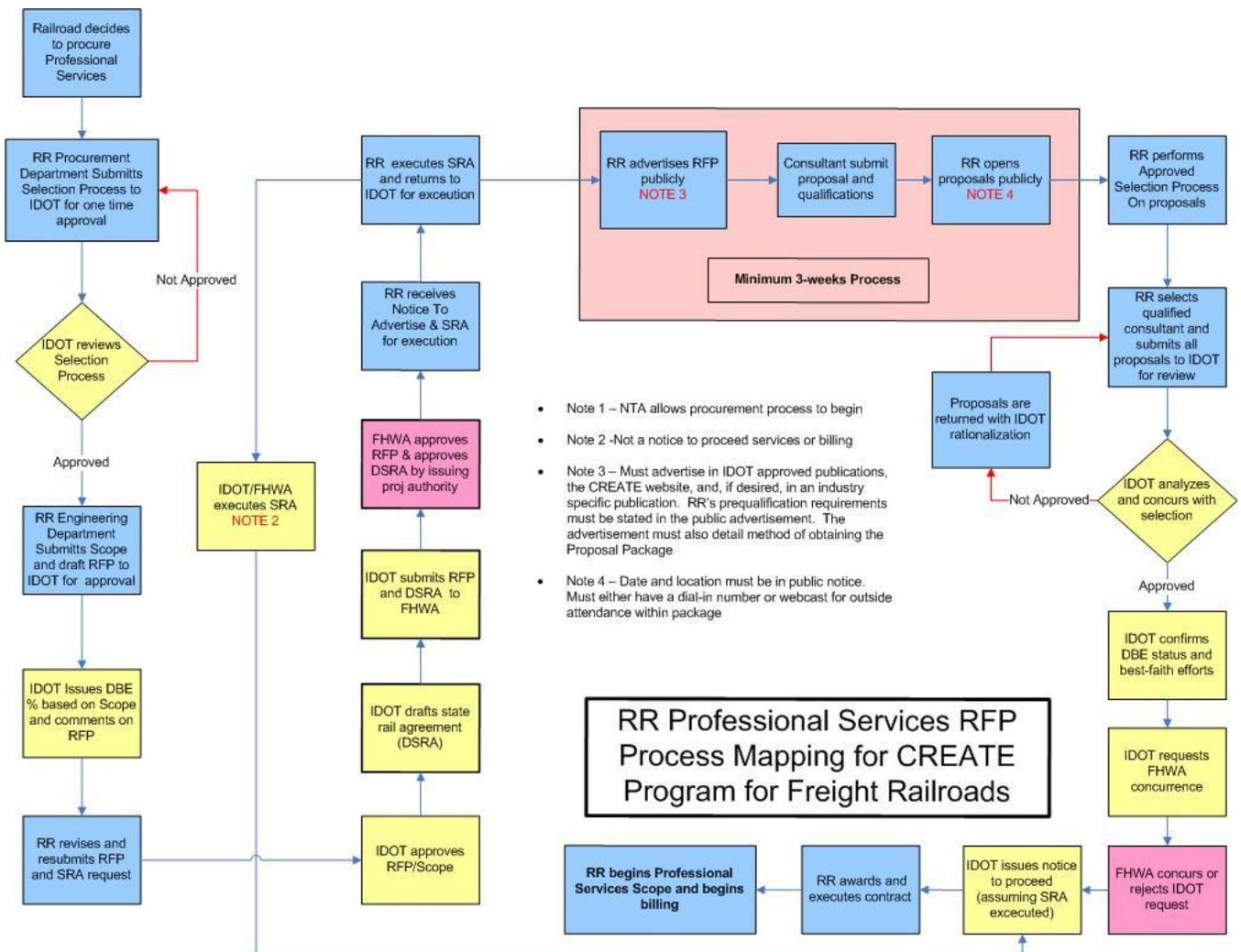
1. RR submits to IDOT the proposed Professional Services solicitation package in compliance with FHWA approved procedures.
2. IDOT issues notice to solicit Professional Services to RR
3. The RR advertises the solicitation for a minimum of three weeks prior to selection. The ad should be placed in a publication which is likely to be seen by all consultants including Disadvantaged Business Enterprise (DBE) firms. To comply with State guidelines, the advertisement must also be placed in the State newspaper.
4. Professional service providers submit proposals.
5. RR analyzes proposals and submits its recommendation to IDOT.
6. IDOT analyzes the proposals, and either recommends rejection, when appropriate, or concurs with RR recommendation. If the selection is recommended to be rejected due to non-compliance of FHWA approved procedures, IDOT sends justification and all proposals back to RR for new

DRAFT

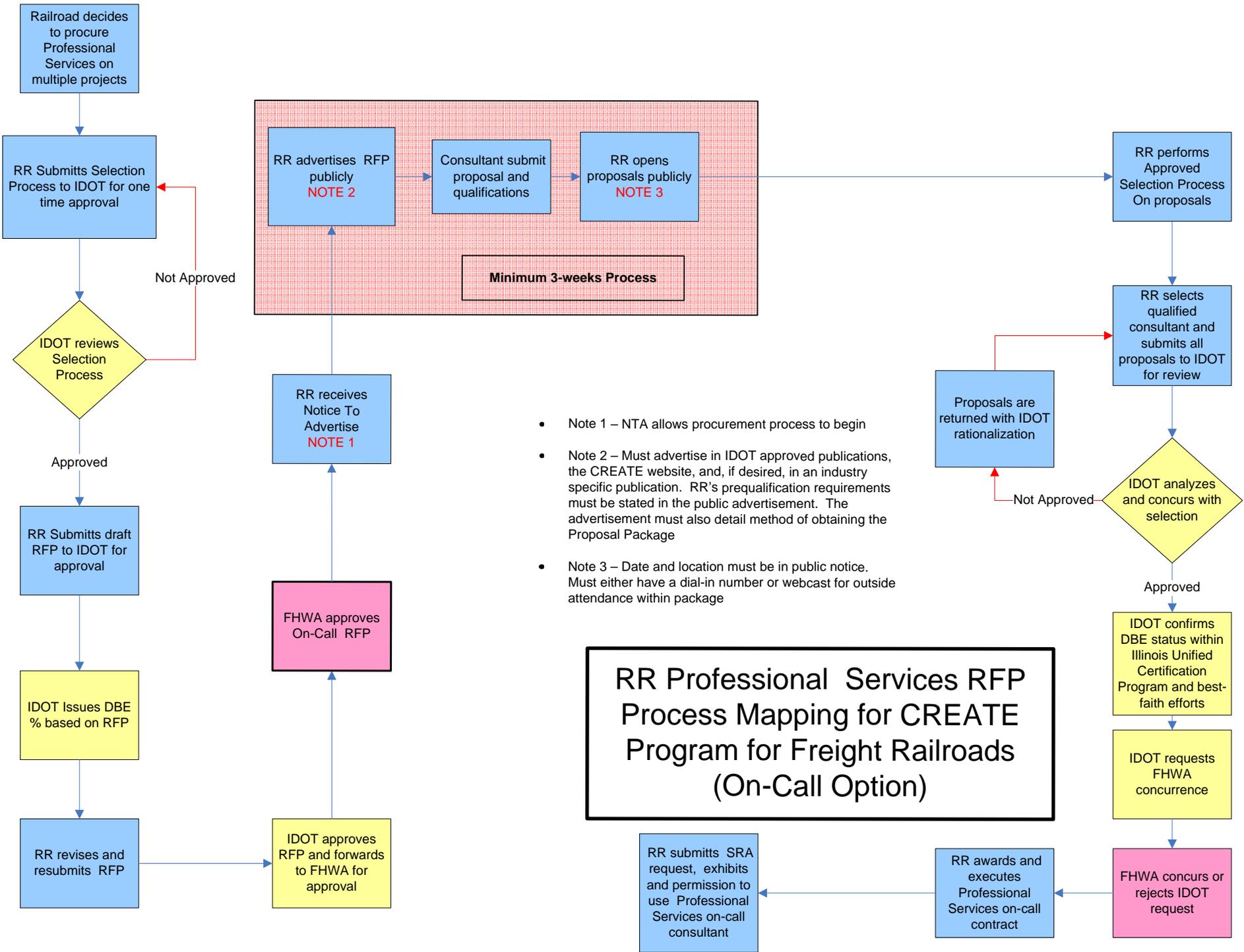
recommendation. If IDOT concurs with RR's initial or subsequent recommendation IDOT issues notice of concurrence.

7. The RR awards the contract and signs the agreement with the professional service provider.
8. After the State/Rail Agreement (SRA) is fully executed, and a Notice to Proceed (NTP) has been issued to Railroad, consultant begins Professional Services for railroad.

Figure 1 – Contracting for Professional Services



RR Professional Services RFP Process Mapping for CREATE Program for Freight Railroads (On-Call Option)



- Note 1 – NTA allows procurement process to begin
- Note 2 – Must advertise in IDOT approved publications, the CREATE website, and, if desired, in an industry specific publication. RR’s prequalification requirements must be stated in the public advertisement. The advertisement must also detail method of obtaining the Proposal Package
- Note 3 – Date and location must be in public notice. Must either have a dial-in number or webcast for outside attendance within package

DRAFT

4. Contracting for Professional Right of Way Services

Refer to documents on following pages.

CREATE Procedures when Contracting for Professional ROW Services

Procedures

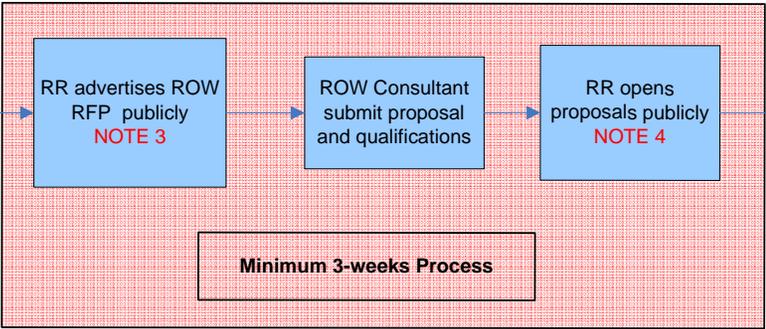
1. RR submits to the IDOT & FHWA their CREATE Professional ROW Services Solicitation Procedures for approval. These procedures will comply with the 23 C.F.R. Part 172 federal requirements
2. IDOT & FHWA review and approves
3. RR uses these procedures for all professional ROW services solicitations, unless new procedures are submitted for approval.

Solicitations

1. RR submits to IDOT the proposed Professional ROW Services solicitation package. This may occur prior to Design Approval and may include multiple segments or projects.
2. IDOT issues notice to solicit Professional ROW Services to RR
3. The RR advertises the solicitation for a minimum of three weeks prior to selection. The ad should be placed in a publication which is likely to be seen by all consultants including Disadvantaged Business Enterprise (DBE) firms. To comply with State guidelines, the advertisement must also be placed in the State newspaper. IDOT recommends that the RR uses a ROW Professional which is pre-qualified with IDOT's Bureau of Land Acquisition (BLA). Call (217) 782-3982 for current list.
4. Consultants submit proposals.
5. RR analyzes proposals and submits its recommendation to IDOT.
6. IDOT analyzes the proposals, and either recommends rejection, when appropriate, or concurs with RR recommendation. If the selection is recommended to be rejected due to non-compliance of FHWA approved procedures, IDOT sends justification and all proposals back to RR for new recommendation. If IDOT concurs with RR's initial or subsequent recommendation IDOT issues notice of concurrence.
7. The RR awards the contract and signs the agreement with the consultant.
8. After Design Approval is obtained and the ROW SRA is fully executed, a Notice to Proceed will be issued to Railroad.
9. Consultant begins Professional ROW Services for railroad in accordance with the "Uniform Act" and state approved procedures within the BLA's Land Acquisition Policies & Procedures Manual (links below).

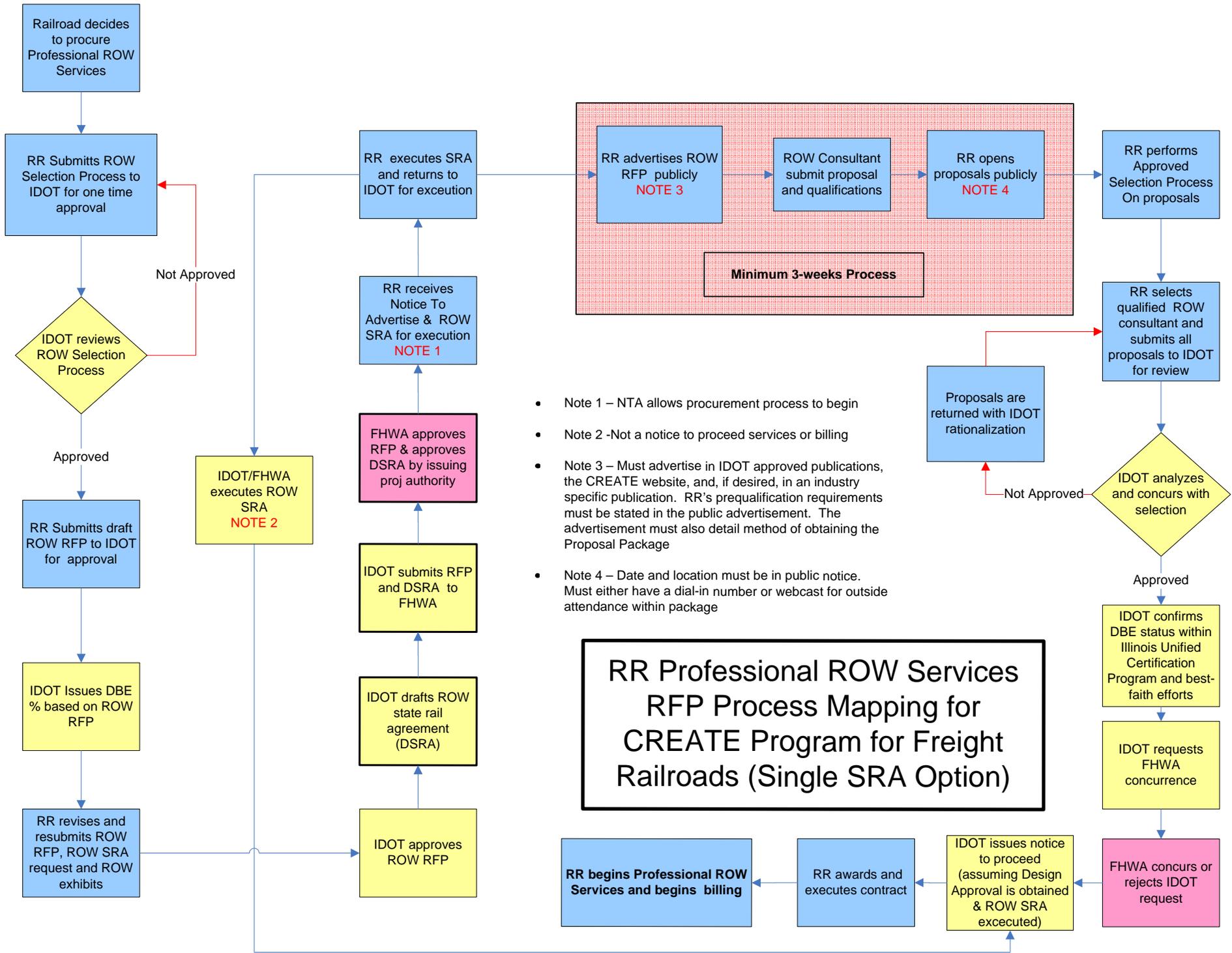
<http://www.dot.state.il.us/landacq/preface.html>

<http://www.dot.state.il.us/landacq/lappm.html>

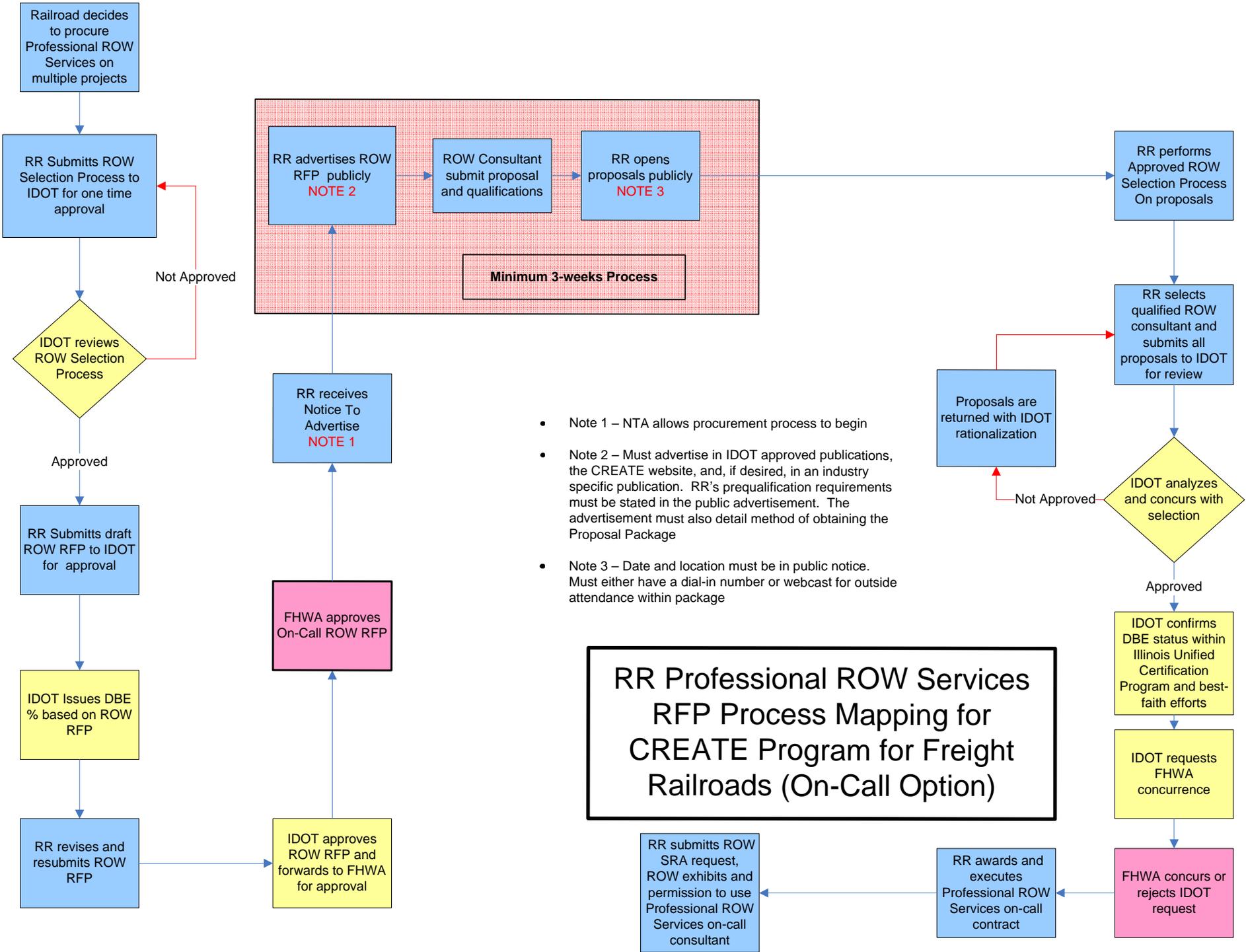


- Note 1 – NTA allows procurement process to begin
- Note 2 -Not a notice to proceed services or billing
- Note 3 – Must advertise in IDOT approved publications, the CREATE website, and, if desired, in an industry specific publication. RR’s prequalification requirements must be stated in the public advertisement. The advertisement must also detail method of obtaining the Proposal Package
- Note 4 – Date and location must be in public notice. Must either have a dial-in number or webcast for outside attendance within package

RR Professional ROW Services RFP Process Mapping for CREATE Program for Freight Railroads (Single SRA Option)



RR Professional ROW Services RFP Process Mapping for CREATE Program for Freight Railroads (On-Call Option)



- Note 1 – NTA allows procurement process to begin
- Note 2 – Must advertise in IDOT approved publications, the CREATE website, and, if desired, in an industry specific publication. RR’s prequalification requirements must be stated in the public advertisement. The advertisement must also detail method of obtaining the Proposal Package
- Note 3 – Date and location must be in public notice. Must either have a dial-in number or webcast for outside attendance within package



BUREAU OF STRATEGIC SOURCING AND PROCUREMENT
NOTICE OF AWARD

TO: State Purchasing Officers and BOSSAP Staff
FROM: Lance Traynor, Print Manager
DATE: July 3, 2008
RE: OFFICIAL STATE NEWSPAPER FOR FISCAL YEARS 2009 & 2010

EFFECTIVE JULY 1ST, 2008

Pursuant to Section 1.1550 Official State Newspaper and Section 1.1560 Supplemental Notice of Procurement Code, CMS is giving notice of selection, by way of competitive bidding, a secular newspaper of general circulation printed in English, to be known as the Official State Newspaper. Upon direction of CPO, this newspaper may be used as a substitute for the Bulletin in the event the Bulletin cannot be published, or publication in the Bulletin may be supplemented by publication at discretion of the purchasing agency.

The Arlington Heights *Daily Herald* has been selected the *Official State Newspaper* for the period July 1st, 2008 through June 30th, 2010.

The *Daily Herald* is published seven (7) days a week.

Copy and billing for advertisement will be direct between the agency and the *Daily Herald*. NOTE – The rate per line is \$0.40 per insertion. The annual subscription rate is \$257.40.

In most cases, copy must be received by mail two (2) days before the first insertion date. In emergency cases, copy for such advertisements may be placed by fax machine, or e-mail and must be received by 10:00 a.m. prior to the day of the first insertion. The State Agency transmitting the fax must call the *Daily Herald* immediately at 847-427-4671 to verify receipt of the transmission. **ADVERTISEMENTS SHOULD BE TELEFAXED TO THE DAILY HERALD ONLY IN EMERGENCY CASES.**

The telephone number for the *Daily Herald* legal notices dept. is 847-427-4671
For subscription information, dial 847-427-4333
The Legal Notices Dept. Telefax number is 847-427-1146
The email is legals@dailyherald.com

CONTACT US :

Chicago Sun-Times

350 N. Orleans St., 10th Floor

Chicago, IL 60654

312-321-3000

Cyrus J. Freidheim Jr., publisher

Editorial		
Michael Cooke	Editor in chief	(312) 321-3000
Cheryl L. Reed	Editorial page editor	(312) 321-3000
Donald Hayner	Managing editor	(312) 321-3000
Zach Finken	News editor	(312) 321-3000
Eric White	Design director	(312) 321-3000
Paul Saltzman	Metro editor - day	(312) 321-3000
Dan Haar	Metro editor - night	(312) 321-3000
Phyllis Gilchrist	Dep. metro editor	(312) 321-3000
Nancy Moffett	Asst. city editor	(312) 321-3000
Robert Herguth	Asst. city editor	(312) 321-3000
Dan Miller	Business editor	(312) 321-3000
Polly Smith	Dep. business editor	(312) 321-3000
Amanda Barrett	Features editor	(312) 321-3000
Sue Ontiveros	Dep. features editor	(312) 321-3000
Matt Nickerson	Nation/World editor	(312) 321-3000
Nancy Stuenkel	Photo editor	(312) 321-3000
Stu Courtney	Sports editor	(312) 321-3000
Roman Modrowski	Asst. sports editor	(312) 321-3000
Kirsten Miller	Web editor	(312) 321-3000
Advertising		
Dean Spencer	VP advertising corporate accounts	(312) 321-2353
Jack Metzger	VP advertising new media	(312) 321-2216
Paul Davia	Dir. national advertising	(312) 321-2202
James Burklow	Production manager	(312) 321-2046
John Nocita	Electronic ad manager	(312) 321-2007
Joy Morawez	Ad services coordinator	(312) 321-2007
Classified advertising		
Regina Brown	Dir. classified advertising	(312) 321-2978
Marketing		
Willie Wilkov	Dir. promotions/branding	(312) 321-3286
Circulation		
Courtney Price	Dir. circulations strategy	(312) 321-3286
New Media		
Jack Barry	Interim VP new media	(312) 321-2216
Jack Metzger	VP advertising for new media	(312) 321-2216
John Cary	Sr. director operations	(312) 321-2216
Catherine Williams	Director of content	(312) 321-2216
Kirsten Miller	Web editor	(312) 321-2216

<http://www.tribuneinteractive.com/chicago/exito/hoy/>

Hoy®

EL PULSO DE TU GENTE



< HOME

ENLACES >	¿QUE ES HOY?	PUBLICIDAD	CONTACTENOS
LINKS >	ABOUT HOY	MARKETING KIT	CONTACTS



Hoy es el nuevo diario en español de Chicago de Tribune Publishing. Nuestra misión es ser la fuente más confiable de información y entretenimiento para la comunidad hispana de Chicago. Después de 10 años, el periódico semanal ¡Exito! comienza una etapa nueva y se ha hecho un diario. El lanzamiento será apoyado por una campaña de mercadeo de un millón de dólares en la prensa escrita, la radio y la televisión, así como eventos comunitarios especiales. Visitenos a www.holahoy.com.

Yesterday's Success is Today's News!

Hoy is Chicago's new comprehensive daily Hispanic paper, from Tribune Publishing. Our mission is to be the most trusted daily source of news, entertainment and advertising information for Chicago's Hispanic community. After 10 years the weekly ¡Exito! has begun a new era by turning into a daily newspaper. The launch of this new edition will be supported with a million dollar marketing campaign in print, radio and television, as well as special events in the local communities. Visit us at www.holahoy.com.



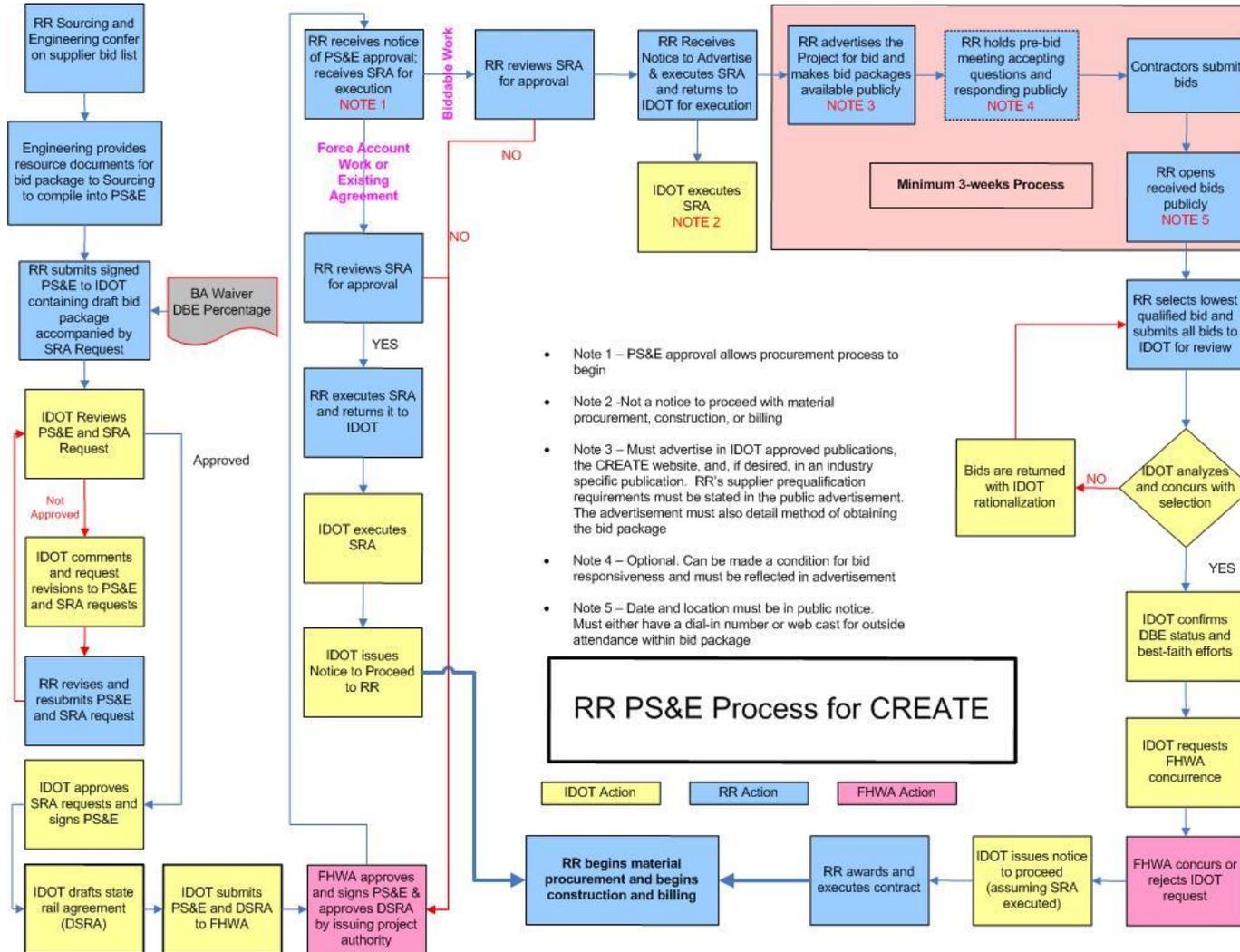
DRAFT

5. Contracting Phase III Work with the Lowest Qualified Bidder (Figure 2)

1. IDOT submits to the FHWA the IDOT & RR signed PS&E package and the draft SRA for approval.
2. FHWA approves and signs the PS&E package and approves the draft SRA
3. IDOT submits a project authorization to FHWA
4. FHWA issues the project authorization
5. IDOT sends RR notice of PS&E approval, authority to begin procurement and SRA for Signature
6. The RR advertises the project and availability of the bid package for a minimum of three weeks prior to bid opening. The ad should be placed in a publication which is likely to be seen by all bidders including Disadvantaged Business Enterprise (DBE) bidders. To comply with State guidelines, the advertisement must also be placed in the State newspaper. The RR sends an electronic copy of the advertisement to IDOT at the same time the ad is placed. A sample advertisement with the minimum required information is shown below. (Since any addendum constitutes a deviation from the approved PS&E, the obligation of Federal-aid funds may be impacted by the change. Therefore, an addendum must be approved by the FHWA prior to release to the prospective bidders.)
7. The RR holds a pre-bid meeting and site visit if required in the PS&E
8. If attendance at a pre-bid meeting is made a required condition of bid responsiveness, the project advertisement and all bidding documents must reflect this requirement. The contracting community must be given adequate notice to comply with such a requirement (usually a minimum of one week after ad date).
9. Contractors submit bids to designated location in ad and PS&E (usually two weeks after pre-bid meeting or 3 weeks after ad date).
10. RR open bids and reads them publicly with call-in number if not read locally
11. RR analyzes bids then submits bids with its recommendation to IDOT for further analysis
12. IDOT analyzes the bids, and either recommends rejection of bids, when appropriate, or concurs with RR recommendation. If the low bid is recommended to be rejected, IDOT sends justification of its recommendation and all bids back to RR for new recommendation. If IDOT concurs with RR's initial or subsequent recommendation, IDOT sends recommended bid to FHWA and requests FHWA's concurrence in contract award and so advises RR and IDOT.
13. FHWA concurs in award.
14. The RR awards the contract and signs the construction agreement with the contractor, provided the SRA is fully executed, and a Notice to Proceed has been issued to Railroad.
15. Construction begins.

DRAFT

Figure 2 – CREATE Process: Phase II PS&E Submittal through Phase III Construction



DRAFT

6. CREATE DBE Forms for all Freight Railroad Bid Packages

Refer to documents on following pages.

CREATE DBE forms for all Freight Railroad bid packages

If freight railroads elect to bid CREATE construction work they will be required to include the attached forms in their bid packages and the forms must be filled out by all bidding prime contractors and/or their associated DBE subcontractor(s). Some brief instructions are included below;

- 1) The form "[CREATE Railroad Project DBE Utilization Plan](#)" is to be filled out and executed by the all bidding prime contractors. The PS&E number is found on the plans, the project name is the Railroads name for the project, county is where the construction occurs, the total bid is the bidding primes total cost, the contract DBE% is the goal % required by the bid package and the contract DBE goal (\$) is the bidding prime contractors total cost times the contract goal %. Further, the bidding prime contractor will check which box applies to his or her bid (meet or exceed versus fail to meet) and document the actual DBE goal % that the bidding prime contractor's bid will produce.

- 2) If IDOT's Bureau of Railroads has established a DBE goal for this project greater than 0% then form "[CREATE Railroad Project DBE Utilization Plan Back-Up Page](#)" shall be filled out by all bidding prime contractors and attached to the page described in 1) above. This page shows the detail on all the DBE subcontractors used in the bidding prime contractor's bid. Use as many copies of this form as necessary to accommodate all DBE subcontractors.

- 3) The form "[CREATE Railroad Project DBE Participation Form](#)" will be filled out jointly by both the bidding prime contractor and each participating DBE subcontractor outlined in the form described in 2) above. It must include the agreed upon work detail and cost information and be executed by both the bidding prime contractor and the DBE subcontractor.

Please direct any questions concerning these forms to;

Mr. Lawrence B. Wilson

Illinois Department of Transportation

(312) 793-3507

Lawrence.B.Wilson@illinois.gov

CREATE Railroad Project DBE Utilization Plan

(1) Policy - It is public policy that disadvantageded businesses as defined in Federal Regulations 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal or State funds. Consequently the requirements of 49 CFR Part 23 apply to this contract.

(2) Obligation - The contractor agrees to ensure that disadvantageded businesses as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts or subcontracts financed in whole or in part with Federal or State funds. The contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that said businesses have the maximum opportunity to compete for and perform under this contract. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts.

(3) Project and Bid Identification - Complete the following information concerning the project and bid:

CREATE PS&E Number

Project Name

County

Total Bid

Contract DBE Goal (%)

Contract DBE Goal (\$)

(4) Assurance - I, acting in my capacity as an officer of the undersigned bidder (or bidders if a joint venture), hereby assure the Railroad that on this project my company will: (check one)

Meet or exceed contract award goals and will provide participation as follows:

Disadvantaged Business Participation percent

Attached are the signed statements required of each business participating in this plan and assuring that each business will perform a commercially useful function in the work of the contract.

Fail to meet contract award goals but will demonstrate that good faith efforts were made to meet the goals and that my company will provide participation as follows:

Disadvantaged Business Participation percent

The contract goals should be accordingly modified or waived. Attached is all information required in support of this request. Also attached are participation statements for firms that are participating to the extent of the above percentages.

Signature _____

Company _____

Name (print) _____

Title _____

Date _____

The Railroad is requesting disclosure of information that is necessary to accomplish the purpose as outlined under State and Federal law. Disclosure of this information is **REQUIRED**. Failure to provide any information will result in the contract not being awarded. Please include this completed form with your bid.

CREATE Railroad Project DBE Utilization Plan Back-Up Page

Project Element and Cost Summary - Complete the following information concerning proposed DBE use:

CREATE PS&E #	<input type="text"/>	Project Name	<input type="text"/>
County	<input type="text"/>		
Prime Contractor	<input type="text"/>	Contract DBE Goal (\$)	<input type="text"/>
DBE Sub-Contractor	<input type="text"/>		
Bid Item Number	<input type="text"/>	Sub amount (\$)	<input type="text"/>
DBE Sub-Contractor	<input type="text"/>		
Bid Item Number	<input type="text"/>	Sub amount (\$)	<input type="text"/>
DBE Sub-Contractor	<input type="text"/>		
Bid Item Number	<input type="text"/>	Sub amount (\$)	<input type="text"/>
DBE Sub-Contractor	<input type="text"/>		
Bid Item Number	<input type="text"/>	Sub amount (\$)	<input type="text"/>
DBE Sub-Contractor	<input type="text"/>		
Bid Item Number	<input type="text"/>	Sub amount (\$)	<input type="text"/>
		Cost All DBE Subs (this page)	<input type="text"/>
		Total Cost All DBE Subs (All Pages)	<input type="text"/>

DRAFT

7. Phase II Report Types

Right-of-Way *To be determined*

Final Engineering

Final Engineering (FE) will consist of compiling the necessary scope of work and SRA so as to take the 30% design from Phase I and progress this into a 100% design and PS&E package for the segment of work involved.

Plans, Specifications and Estimates (PS&E's)

A CREATE Phase II Report generally consists of Plans, Specifications and Estimates (PS&E's) and Draft SRAs, along with additional documentation as agreed upon among the CREATE Implementation Committee. Phase II PS&E's may include railroad track, signal, bridge and related construction work for a single CREATE project.

The work included in the PS&E's may be used for construction by railroad force account labor or contracted work, which may or may not be awarded by the lead railroad through competitively bidding. Note, however, that for the same CREATE project designation (e.g. WA6, EW4, P3, etc.), separate Phase II Reports are required for

- Railroad force account work
- Competitively-bid contractor work
- Non-bid contractor work

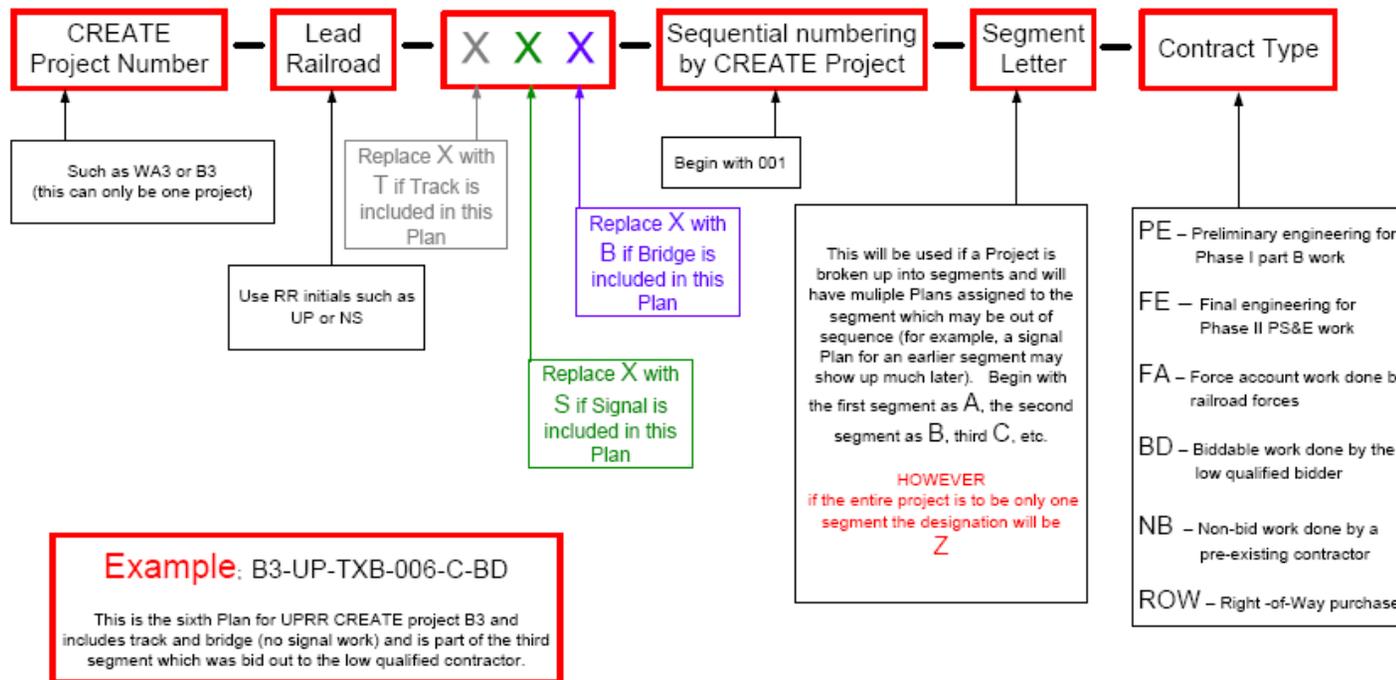
In the following section, "Phase II Report Numbering System", the method of classifying these three types of work is explained under the "contract type" designation.

8. Phase II Report Numbering System

Phase II reports shall be designated using the established CREATE project naming convention. Figure 2 below explains the naming convention and provides an example of a CREATE Phase II name.

DRAFT

Figure 2 – CREATE Phase II Numbering System



DRAFT

9. Phase II Report Contents

COVER PAGE

The cover page shall follow the format of the example in Attachment 1 and shall include:

- CREATE project number
- Full project name
- Project location
- Lead railroad
- Plan number per the naming convention described above
- Date submitted
- CREATE logo

TABLE OF CONTENTS

SIGNATURE PAGE

The signature page shall follow the format of the example in Attachment 2. Include the same information as on the cover page, as well as the State Rail Agreement number. The project description must match the project title and description of work.

CREATE PHASE II PS&E 100% DESIGN COST FORM 3.1

A sample Form 3.1 is included as Attachment 3. Note the following instructions and information:

- Enter the applicable information in the shaded portions of the form.
- Enter the projected duration (years and months) of Phase III (construction) and a **Project Completion Date**.
- The inflation rate shall be 4.50%.
- Enter the source for the cost estimate (e.g. engineer's estimate or railroad's estimate) and the date of the estimate.
- Reference the raw cost estimate.
- The "Confidence of Estimate" contingency shall be 10%.
- The "Project's Management Reserve" shall be 5.00%.
- Note that Construction Management and flagging is considered to be railroad force account work, even if a consultant or contractor is used to perform these services.
- The Phase III cost typically shows the lead railroad's request for Federal funds at a ratio of 80% federal/20% railroad. In some cases, in order to avoid proceed with construction without waiting for federal funding, the railroad may desire to fund 100% of the Phase III cost and possibly obtain a federal portion at a later date.

DRAFT

RAW COST ESTIMATE & SUMMARY UPPER LIMITS SHEET

The raw cost estimate shall be prepared using the methodology of the lead railroad. Include the raw cost estimate in the Phase II documents after Form 3.1. A summary Upper Limits Sheet will be compiled and submitted along with the raw cost estimate. This summary sheet will include Total Labor costs, Total Material costs, Total Support Services costs and Total Other costs.

SCHEMATIC

If the project work differs in any way from the work presented in the Phase I report, provide a track schematic of the proposed project in accordance with the schematic requirements in the IDOT CREATE Phase I Manual. No schematic is needed in the Phase II report if the project work is the same as shown in the Phase I report.

PLANS, SPECIFICATIONS AND ESTIMATES (PS&E's)

Phase II PS&E's shall depict all constructed aspects of the project at the 100% (final) level of design. Note that Phase II PS&E Reports are not bid and/or construction documents. Rather, they are exhibits in an agreement between a railroad and the State and Federal agencies providing funds for the project. The lead railroad may choose to use the Phase II PS&E's in some form as construction documents; however, such use is solely determined by the lead railroad aside from the CREATE Phase II approval process.

Plans shall be prepared using the standards and practices of the lead railroad. The plan and profile shall be based on the initial geometrics shown in the Phase I report. Include a cover sheet at the front of the plan set **and the Professional Engineers seal and signature.**

Each set of Phase II PS&E's shall contain only one type of work, as described above in Figure 2, and repeated below:

- FE – Final engineering for Phase II PS&E work
- FA – Force account work performed by railroad forces
- BD – Biddable work performed by the low qualified bidder
- NB – Non-bid work performed by a pre-existing contractor
- ROW – Right of way purchase

Work of more than one type may be included in the PS&E's, but it must be clearly distinguished as not being included in the documents through means such as different CADD levels, shading, hatching, callouts, etc.

DRAFT

Include the following on the Phase II plans, along with the constructed elements of the project:

- Special waste footprints
- ESR limits
- Soil boring locations
- Construction staging information

Signal Design

Signal design shall follow lead railroad standards and plan preparation requirements.

Specifications

Written construction specifications for the Phase II document may be submitted either in full or as only the specifications table of contents.

Sample PS&E's

Sample CREATE Phase II PS&E documents are included as hyperlinks below:

[[Note: actual documents not linked in this draft document](#)]

DISCREPENCIES FROM PHASE I DESIGN

The lead railroad is responsible to note any changes in the Phase II design from the Phase I design in the following areas:

- Plan and profile
- Intent
- Schedule
- Cost
- Outside environmental document review

Explanation of any such changes shall be included as a section in the Phase II Report documents.

DRAFT

INVITATION TO BID/BID PACKAGE(S)

CREATE procedures for contracting Phase III work with the lowest qualified bidder is included above. A standard Invitation to Bid document shall be used for all CREATE projects. Attachment 4 contains the standard Invitation to Bid.

The CREATE website contains archived actual invitations to bid which may be informative to Phase II report preparers. These samples can be found at

<http://www.createprogram.org/archiveofbids.html>

Pre-Final Bid packages without dates must be included in the PS&E report for review and approval. Railroad may select to incorporate multiple bid packages in the same PS&E report (I.E. Grading & Bridge).

DRAFT

REQUIREMENTS FOR FEDERAL AID PROJECTS

Required contract provisions for CREATE force account and non-force account projects are shown in Attachment 5 and Attachment 6.

PREVAILING WAGES

Illinois Department of Labor requirements for prevailing wages are required to be followed for CREATE projects. The standard language for these requirements that shall be included in Phase II reports is contained in Attachment 7.

SPECIAL PROVISION FOR DBE

The DBE goal shall be established by the Illinois Department of Transportation prior to submittal of Phase II PS&E's. The DBE policy and the DBE Special Provision language are shown in Attachment 8. Blank DBE forms to be included in all bid packages are provided in Attachment 8 as well.

WORKERS' COMPENSATION INSURANCE REQUIREMENTS

Include the worker's compensation insurance requirements in the Phase II report, as shown in Attachment 8.

DOMESTIC STEEL REQUIREMENT

The Domestic Steel Requirement document as shown in Attachment 10 shall be included in the Phase II Report unless the lead railroad has submitted a waiver for exemption. Include the waiver in the Phase II documents, if one has been submitted.

RETAINAGE

Bid package language to be included in the Phase II report is shown in Attachment 11.

ENVIRONMENTAL COMMITMENTS

Provide a list of environmental commitments for the project per the Environmental Class of Action Document (ECAD) prepared in Phase I. Note any changes and approvals for changes, if any.

DRAFT

RIGHT-OF-WAY ACQUISITIONS, PERMEMENT AND/OR TEMPORARY EASEMENTS

Provide a list and exhibits of acquired ROW and Easements needed for the construction of the PS&E report. All property issues must be complete prior to submitting the PS&E Report and must have been secured in accordance with the Uniform Relocation Assistance And Real Property Acquisition For Federal And Federally Assisted Programs (Title 49 - Code of Federal Regulations Part 24).

DRAFT

10. IDOT PS&E Review Checklist

IDOT will use the checklist below to verify that the Phase II PS&E's have been prepared in compliance with the specific procedures established for the CREATE program. Phase II PS&E preparers should satisfy the conditions in the checklist, as appropriate, prior to final submission. Note that the technical accuracy of the PS&E's is the responsibility of the preparer and is not addressed in this checklist.

- 1. Right of Way limits shown; compare to Phase I Report
- 2. District 1 ROW Review
- 3. ESR Boundary with stations shown; compare with Phase I Report
- 4. PESA/PSI Areas shown
- Add Utility Relocations/Protection Areas shown**
- 5. Railroad Signals within \pm 100' from initial geometry in Phase I Report
- 6. Road Closures? If so, then are they shown per the Street Closure Report(s) in the Phase I Report? Are maintenance of traffic drawings and specifications included for road closures?
- 7. Compare PTS&L's to Phase I
- 8. Compare BCR(s) to Phase I
- 9. If any public road is crossed, send plans to Tom Gallenbach in IDOT District 1
- 10. Determine DBE Goal (4 steps)
 - 10a. Railroad sends raw cost summary to IDOT
 - 10b. IDOT establishes DBE goal
 - 10c. IDOT sends DBE goal to railroad
 - 10d. Verify DBE goal in final PS&E's is correct
- 11. Bid Advertisement Draft
- 12. Prevailing Wage Bid
- 13. Buy American Language and Waivers (if applicable)
- 14. Check consultant use and selection
- 15. Specify if water restrictions are required
- 16. Compliance with environmental commitments (create separate checklist for each project if required)
- 17. DBE bid language with goals and forms

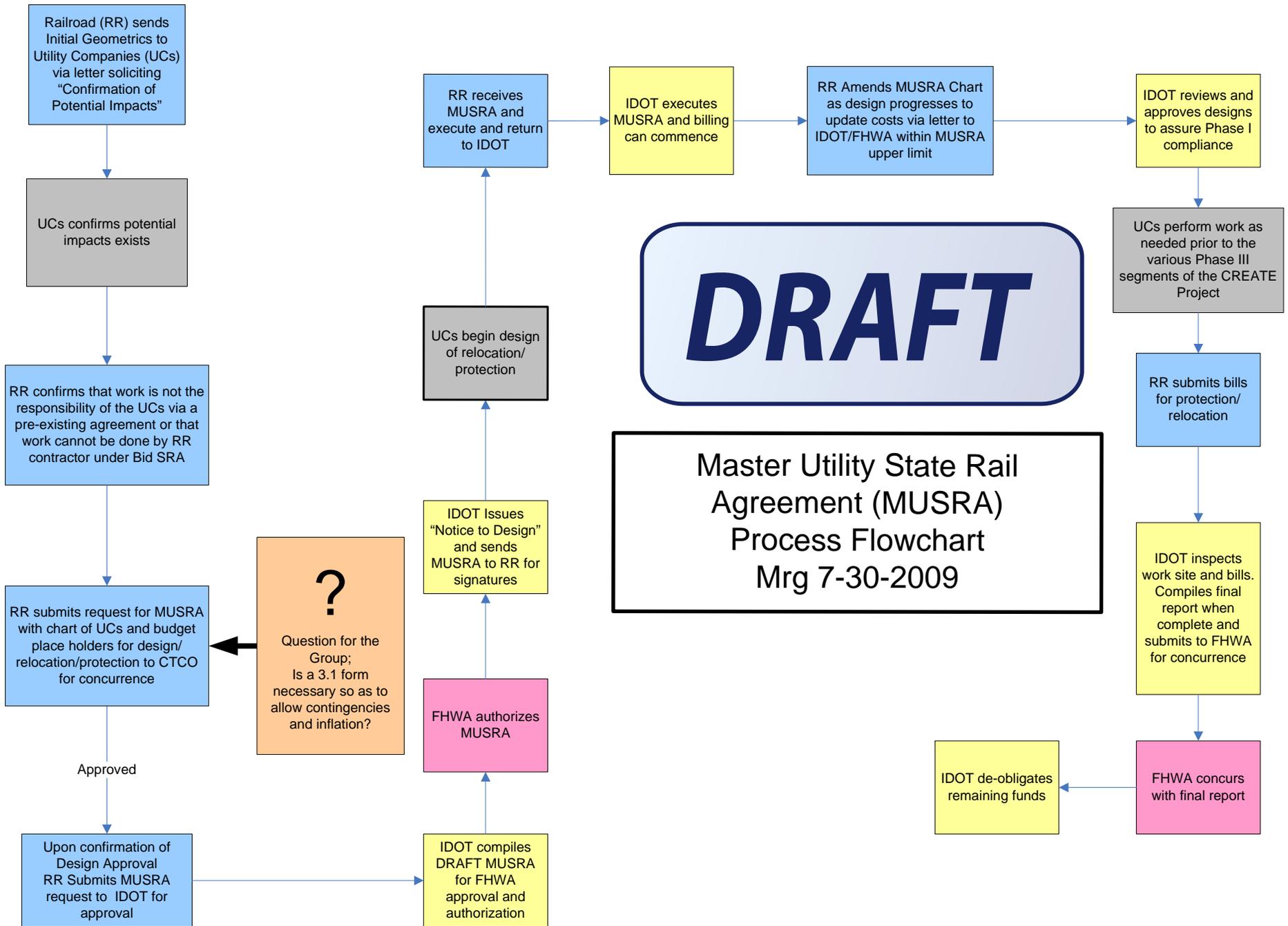
DRAFT

- 18. Form 3.1 with SRA Request
- 19. CADD file of final geometrics to compare with Phase I
- 20. Special instructions for retainage
- 21. DBE participation and utilization forms
- 22. NTP includes new Form 3.1 with bid cost and FHWA concurrence letter

DRAFT

11. Contracting for Utility Relocation/Protection

Refer to documents on following pages.



DRAFT

**Attachment 1
Sample Cover Page**

DRAFT

CREATE B6
McCook Interlocking

5/15/2008



PHASE II
SPECIFICATIONS
CREATE PROGRAM
PROJECT B6
CONSTRUCTION CONTRACT
PLAN B6-BOCT-TSX-001-Z-BD

CREATE B6
McCook Interlocking Double Track Connection to BNSF
Grading, Subballast, Erosion Control, and Retaining Wall Construction

Submittal Date: May 2008



DRAFT

**Attachment 2
Sample Signature Page**

DRAFT

CREATE B6
McCook Interlocking

5/15/2008



CREATE PROGRAM PROJECT B6

PHASE II PLANS, SPECIFICATIONS & ESTIMATES (PS&E)

Plan Number B6-BOCT-TSX-001-Z-BD
(Paid for under State Rail Agreement D-20-002-06)

McCook Interlocking Double Connection to BNSF

Grading, Subballast, Erosion Control, and Retaining Wall Construction

Prepared by
CSX TRANSPORTATION
May 2008

CSX Transportation
PS&E Approval


Manager Engineering 5/22/2008
Date

IDOT Bureau of Railroads
PS&E Approval


Chief, Railroad Engineering 5/28/08
Date

Federal Highway Administration
PS&E Approval


FHWA Engineering Project Manager, Date

DRAFT

**Attachment 3
Sample CREATE Phase II PS&E 100% Design
Cost Form 3.1**

CREATE Full Project 3.1 Form

CREATE Project Number Prime Railroad Date of Report Project Schedule Section			Notes
Year Estimate was compiled			
Begin Phase III (month/year)			
End Phase III (month/year)			
Total duration of Phase III		0 Year(s) 0 Month(s)	
Inflation rate		4.50%	
Project Cost Estimate Section		Funding Party	Costs
Phase I Costs			
Part A (Environmental)	IDOT		
Part A (Environmental)	AAR(RR)		
Part A (Environmental)	FHWA		
Part A (Environmental)	CDOT		
Part B (Preliminary Engineering)	IDOT		
Part B (Preliminary Engineering)	AAR(RR)		
Part B (Preliminary Engineering)	RR Non-Match		
Part B (Preliminary Engineering)	RR Match		
Part B (Preliminary Engineering)	FHWA		
Part B (Preliminary Engineering)	CDOT		
Total Phase I Costs			\$0
Phase II Final Engineering Costs			
PSI/Tech Memo	IDOT		
PSI/Tech Memo	AAR(RR)		
PSI/Tech Memo	FHWA		
PSI/Tech Memo	CDOT		
PS&E	IDOT		
PS&E	AAR(RR)		
PS&E	RR Non-Match		
PS&E	RR Match		
PS&E	FHWA		
PS&E	CDOT		
Phase II Final Engineering Costs			\$0
Utility Negotiation Costs			
Phase II ROW Costs			
ROW	IDOT		
ROW	AAR(RR)		
ROW	RR Non-Match		
ROW	RR Match		
ROW	FHWA		
ROW	CDOT		
Total ROW Costs			\$0
Total Phase II Costs			\$0
Phase III Costs			
Construction Estimate			
"Confidence of Estimate" contingency used*			
Total Current Construction Estimate	\$0		
2009 Construction Costs With Inflation	% of Total		\$0
2010 Construction Costs With Inflation	% of Total		\$0
2011 Construction Costs With Inflation	% of Total		\$0
2012 Construction Costs With Inflation	% of Total		\$0
2013 Construction Costs With Inflation	% of Total		\$0
		0.00%	\$0
Construction Management Costs-Force Account	\$0		\$0
Construction Management Costs-Consultant	\$0		\$0
Project's Management Reserve	\$0	5.00%	\$0
Total Phase III Costs			\$0
Total Project Cost All Phases			\$0
*20% at feasibility, 15% at preliminary engineering and 10% at final engineering			

CREATE Phase II PS&E 100% Design Cost Form 3.1

CREATE Project (segment) PS&E Number	
Prime Railroad	
Date of Report	

Project Schedule Section

Year 100% design Estimate was compiled				Notes
Begin Phase III (month/year)				
End Phase III (month/year)				
Total duration of Phase III	0		Year(s)	
	0		Month(s)	
Inflation rate			4.50%	

Costs

Project Cost Estimate Section

Phase III Costs

Construction Estimate (100% Design)					Notes
"Confidence of Estimate" contingency used	10.00%				See attached Raw estimate requires IDOT approval before use
Total Current Construction Estimate	\$0				
2009 Construction Costs With Inflation	% of Total			\$0	
2010 Construction Costs With Inflation	% of Total			\$0	
2011 Construction Costs With Inflation	% of Total			\$0	
2012 Construction Costs With Inflation	% of Total			\$0	
		0.00%		\$0	
Construction Management Costs	\$0	0.00%		\$0	
Project's Management Reserve	\$0	5.00%		\$0	requires Management Committee approval before use
		Total Phase III Costs		\$0	SRA request amount

Requires RR Input

DRAFT

**Attachment 4
Sample CREATE Project Invitation to Bid**

DRAFT

INVITATION TO BID ADVERTISEMENT

You are hereby invited to bid on the CREATE WA3 Project in Chicago, IL (South Cook County) Norfolk Southern Railway Co (Ashland Ave Yard).

Generally the project consists of the following:

Perform grading for extension of switching Lead. Grading includes 7,750 CY unclassified excavation. Includes furnish and Install of 9,100 tons of NS type B crusher run as well as additional bid work items.

Additionally, this project will be funded in part by federal and/or state funds. Therefore, bidder will be required to comply with certain State and Federal policies, such as equal employment opportunity, Veterans Preference, Disadvantaged Business Enterprise participation (7%) and Illinois Department of Labor prevailing wage rates. Construction is expected to start fall 2007 and Performance Bond & Payment Bonds will be required

A pre-bid meeting and site inspection is scheduled for _____ (Chicago time) on _____ at the following location:

Chicago Transportation Coordination Office
1501 S. Canal Street
Chicago, IL 60607-5204
Phone (XXX) XXX-XXXX

Interested contractors are required to attend

A bid package including technical specifications may be obtained from:

Chuck Allen (challen@nscorp.com)
Chicago Transportation Coordination Office (NS Corp.)
1501 S. Canal Street
Chicago, IL 60607-5204

Additionally, bids will be received for this Project until _____ (Chicago time) on _____, and then will be publicly opened and read aloud (call-in number available upon request). Mailed BIDS must be delivered by the time specified above to:

Chuck Allen
Chicago Transportation Coordination Office (NS Corp.)
1501 S. Canal Street
Chicago, IL 60607-5204

For more information on CREATE go to <http://www.createprogram.org/>

DRAFT

CMS

ILLINOIS Rod R. Blagojevich, Governor
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES
Maureen T. O'Donnell, Acting Director

BUREAU OF STRATEGIC SOURCING AND PROCUREMENT NOTICE OF AWARD

TO: State Purchasing Officers and BOSSAP Staff
FROM: Lance Traynor, Print Manager
DATE: July 3, 2008
RE: OFFICIAL STATE NEWSPAPER FOR FISCAL YEARS 2009 & 2010

EFFECTIVE JULY 1ST, 2008

Pursuant to Section 1.1550 Official State Newspaper and Section 1.1560 Supplemental Notice of Procurement Code, CMS is giving notice of selection, by way of competitive bidding, a secular newspaper of general circulation printed in English, to be known as the Official State Newspaper. Upon direction of CPO, this newspaper may be used as a substitute for the Bulletin in the event the Bulletin cannot be published, or publication in the Bulletin may be supplemented by publication at discretion of the purchasing agency.

The Arlington Heights *Daily Herald* has been selected the *Official State Newspaper* for the period July 1st, 2008 through June 30th, 2010.

The *Daily Herald* is published seven (7) days a week.

Copy and billing for advertisement will be direct between the agency and the *Daily Herald*. NOTE – The rate per line is \$0.40 per insertion. The annual subscription rate is \$257.40.

In most cases, copy must be received by mail two (2) days before the first insertion date. In emergency cases, copy for such advertisements may be placed by fax machine, or e-mail and must be received by 10:00 a.m. prior to the day of the first insertion. The State Agency transmitting the fax must call the *Daily Herald* immediately at 847-427-4671 to verify receipt of the transmission. **ADVERTISEMENTS SHOULD BE TELEFAXED TO THE DAILY HERALD ONLY IN EMERGENCY CASES.**

The telephone number for the *Daily Herald* legal notices dept. is 847-427-4671
For subscription information, dial 847-427-4333
The Legal Notices Dept. Telefax number is 847-427-1146
The email is legals@dailyherald.com

DRAFT

CONTACT US :

Chicago Sun-Times
350 N. Orleans St., 10th Floor
Chicago, IL 60654
312-321-3000

Cyrus J. Freidheim Jr., publisher

Editorial		
Michael Cooke	Editor in chief	(312) 321-3000
Cheryl L. Reed	Editorial page editor	(312) 321-3000
Donald Hayner	Managing editor	(312) 321-3000
Zach Finken	News editor	(312) 321-3000
Eric White	Design director	(312) 321-3000
Paul Saltzman	Metro editor - day	(312) 321-3000
Dan Haar	Metro editor - night	(312) 321-3000
Phyllis Gilchrist	Dep. metro editor	(312) 321-3000
Nancy Moffett	Asst. city editor	(312) 321-3000
Robert Herguth	Asst. city editor	(312) 321-3000
Dan Miller	Business editor	(312) 321-3000
Polly Smith	Dep. business editor	(312) 321-3000
Amanda Barrett	Features editor	(312) 321-3000
Sue Ontiveros	Dep. features editor	(312) 321-3000
Matt Nickerson	Nation/World editor	(312) 321-3000
Nancy Stuenkel	Photo editor	(312) 321-3000
Stu Courtney	Sports editor	(312) 321-3000
Roman Modrowski	Asst. sports editor	(312) 321-3000
Kirsten Miller	Web editor	(312) 321-3000
Advertising		
Dean Spencer	VP advertising corporate accounts	(312) 321-2353
Jack Metzger	VP advertising new media	(312) 321-2216
Paul Davia	Dir. national advertising	(312) 321-2202
James Burklow	Production manager	(312) 321-2046
John Nocita	Electronic ad manager	(312) 321-2007
Joy Morawez	Ad services coordinator	(312) 321-2007
Classified advertising		
Regina Brown	Dir. classified advertising	(312) 321-2978
Marketing		
Willie Wilkov	Dir. promotions/branding	(312) 321-3286
Circulation		
Courtney Price	Dir. circulations strategy	(312) 321-3286
New Media		
Jack Barry	Interim VP new media	(312) 321-2216
Jack Metzger	VP advertising for new media	(312) 321-2216
John Cary	Sr. director operations	(312) 321-2216
Catherine Williams	Director of content	(312) 321-2216
Kirsten Miller	Web editor	(312) 321-2216

DRAFT

<http://www.tribuneinteractive.com/chicago/exito/hoy/>

Hoy

EL PULSO DE TU GENTE

LINKS > SÍGUE ES HOY > PUBLICIDAD > CONTACTENOS >
LINKS > ABOUT HOY > MARKETING KIT > CONTACTE >



Hoy es el nuevo diario en español de Chicago de Tribune Publishing. Nuestra misión es ser la fuente más confiable de información y entretenimiento para la comunidad hispana de Chicago. Después de 10 años, el periódico semanal ¡Exitó! comienza una etapa nueva y se ha hecho un diario. El lanzamiento será apoyado por una campaña de mercadeo de un millón de dólares en la prensa escrita, la radio y la televisión, así como eventos comunitarios especiales. Visítanos a www.hoy.com

Yesterday's Success is Today's News!

Hoy is Chicago's new comprehensive daily Hispanic paper, from Tribune Publishing. Our mission is to be the most trusted daily source of news, entertainment and advertising information for Chicago's Hispanic community. After 10 years the weekly ¡Exitó! has begun a new era by turning into a daily newspaper. The launch of this new edition will be supported with a million dollar marketing campaign in print, radio and television, as well as special events in the local communities. Visit us at www.hoy.com

About Hoy | Marketing Kit | Contact Us

DRAFT

Attachment 5

**Contract Provisions for Federal-Aid Construction
Contracts for CREATE Program Contract Type:
Force Account Projects**

DRAFT

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS CREATE Program Contract Type: Force Account Projects

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Safety: Accident Prevention
- V. False Statements Concerning Highway Projects
- VI. Certification Regarding Use of Contract Funds for Lobbying

I. GENERAL

These contract provisions shall apply to all work performed on the contract by the contractor's own organization.

II. NONDISCRIMINATION

This provision is applicable to all Federal-aid construction contracts of \$10,000 or more.

The contractor must comply with all applicable equal employment opportunity (EEO) and non-discrimination provisions of the Federal Government.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract that the contractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

V. FALSE STATEMENTS CONCERNING FEDERAL-AID PROJECTS

This provision is applicable to all Federal-aid construction contracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted ([FHWA - 1022 - Notice - Federal Aid Projects \(False Statements\)](#)) on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

DRAFT

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

VI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

DRAFT

Attachment 6

**Contract Provisions for Federal-Aid Construction
Contracts for CREATE Program Contract Type:
Non-Force Account Projects**

DRAFT

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS CREATE Program Contract Types: Contracting with Lowest Qualified Bidder Existing Continuing Contracts Contract without Competitive Bidding

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Job-site Posters
- V. Safety: Accident Prevention
- VI. False Statements Concerning Highway Projects
- VII. Implementation of Clean Air Act and Federal Water Pollution Control Act
- VIII. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
- IX. Certification Regarding Use of Contract Funds for Lobbying

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

II. NONDISCRIMINATION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more. This provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements. The contractor must comply with all applicable equal employment opportunity (EEO) and non-discrimination provisions of the Federal Government.

The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR Parts 60-1 and 60-4 and the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract.

The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

1. Equal Employment Opportunity: In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

DRAFT

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

DRAFT

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate against anyone in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.
- c. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.
- d. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

10. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

- a. The records kept by the contractor shall document the following:
 - (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
- b. The contractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies

DRAFT

nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV – JOB SITE POSTERS

[EEOC-P/E-1 - Equal Opportunity is the Law](#)
[OSHA 3165 - Job Safety & Health Protection](#)
[WH 1420 - Your Rights under the Family and Medical Leave Act of 1993](#)
[WH 1462 - Notice: Employee Polygraph Protection Act](#)
[FHWA - 1022 - Notice - Federal Aid Projects \(False Statements\)](#)
[WH-1284 Notice to Workers with Disabilities/Special Minimum Wage Poster](#)

V. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

VI. FALSE STATEMENTS CONCERNING FEDERAL-AID PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

VII. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

DRAFT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

VIII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction prime contracts, subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29.

1. Instructions for Certification - Primary Transactions:

For purposes of this certification, a primary transaction means any transaction between the contracting agency (a USDOT grant recipient / sub-recipient) and a contractor or supplier.

- a. By signing and submitting this proposal, the prospective participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and General sections of rules implementing Executive Order 12549. The prospective participant may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Secondary Transactions," provided by the contracting agency, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Excluded Parties List System, an internet-based list of persons and firms who are excluded or disqualified from covered transactions (see: <http://epls.arnet.gov/>).
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Transactions

DRAFT

a. The prospective participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1b) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

3. Instructions for Certification - Secondary Transactions:

This provision is applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29.

For the purposes of this certification, a secondary transaction means any transaction between a prime contractor and a subcontractor or supplier under a Federal-aid construction contract. This term also means any further transactions between a subcontractor or supplier and other subcontractors or suppliers under a Federal-aid construction contract.

a. By signing and submitting this proposal, the prospective participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and General sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 49 CFR Part 29 (or 48 CFR Part 9 or any rules implementing Executive Order 12549), debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Secondary Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Excluded Party List System.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph (e) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

DRAFT

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Secondary Transactions:

a. The prospective participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

IX. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

DRAFT

**Attachment 7
Illinois Department of Labor Requirements for
Prevailing Wages**

DRAFT

ILLINOIS DEPARTMENT OF LABOR PREVAILING WAGES

As required by Prevailing Wage Act (820 ILCS 130/0.01, et seq.) not less than the rates of wages ascertained by the Illinois Department of Labor and as revised during the performance of a Contract shall be paid to all laborers, workers and mechanics performing work under the Contract. Post the scale of wages in a prominent and easily accessible place at the site of work. If the Illinois Department of Labor revises the prevailing rates of wages to be paid as listed in the specification of rates, the contractor shall post the revised rates of wages and shall pay not less than the revised rates of wages. Current wage rate information shall be obtained by visiting the Illinois Department of Labor web site at <http://www.state.il.us/agency/idol/> or by calling 312-793-2814. It is the responsibility of the contractor to review the rates applicable to the work of the contract at regular intervals in order to insure the timely payment of current rates. Provision of this information to the contractor by means of the Illinois Department of Labor web site satisfies the notification of revisions by the Department to the contractor pursuant to the Act, and the contractor agrees that no additional notice is required. The contractor shall notify each of its subcontractors of the revised rates of wages.

DRAFT

**Attachment 8
Disadvantaged Business Enterprise Policy and
Special Provision**

DRAFT

DISADVANTAGED BUSINESS POLICY

I. NOTICE

This proposal contains the special provision entitled "Required Disadvantaged Business Participation." Inclusion of this Special Provision in this contract satisfies the obligations of the Department of Transportation under federal law as implemented by 49 CFR 23 and under the Illinois "Minority and Female Business Enterprise Act."

II. POLICY

It is public policy that the businesses defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with State or Federal funds. Consequently, the requirements of 49 CFR Part 23 apply to this contract.

III. OBLIGATION

The Contractor agrees to ensure that the businesses defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of this contract. In this regard, the Contractor shall take all necessary and reasonable steps, in accordance with 49 CFR Part 23, to ensure that the said businesses have the maximum opportunity to compete for and perform portions of this contract. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

The Contractor shall include the above Policy and Obligation statements of this Special Provision in every subcontract, including procurement of materials and leases of equipment.

IV. DBE/WBE CONTRACTOR FINANCE PROGRAM

On contracts where a loan has been obtained through the DBE/WBE Contractor Finance Program, the Contractor shall cooperate with the Department by making all payments due to the DBE/WBE Contractor by means of a two-payee check payable to the Lender (Bank) and the Borrower (DBE/WBE Contractor).

V. BREACH OF CONTRACT

Failure to carry out the requirements set forth above and in the Special Provision shall constitute a breach of contract and may result in termination of the contract or liquidated damages as provided in the special provision.

(Rev. 9/21/92)

DRAFT

State of Illinois
Department of Transportation

SPECIAL PROVISION FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

- I. **FEDERAL OBLIGATION:** The Department of Transportation, as a recipient of federal financial assistance, is required to take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts. Consequently, the federal regulatory provisions of 49 CFR part 26 apply to this contract concerning the utilization of disadvantaged business enterprises. This Special Provision will also be used by the Department to satisfy the requirements of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575. For the purposes of this Special Provision, a disadvantaged business enterprise (DBE) means a business certified by the Department in accordance with the requirements of 49 CFR part 26 and listed in the DBE Directory or most recent addendum.

- II. **CONTRACTOR ASSURANCE:** The Contractor makes the following assurance and agrees to include the assurance in each subcontract that the Contractor signs with a subcontractor:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

- III. **OVERALL GOAL SET FOR THE DEPARTMENT:** As a requirement of compliance with 49 CFR part 26, the Department has set an overall goal for DBE participation in its federally assisted contracts. That goal is 22.77% of all federal-aid funds the Department will expend in its federally assisted contracts for the subject reporting fiscal year. The Department is required to make a good faith effort to achieve this goal. The dollar amount paid to all approved DBE firms performing work called for in this contract is eligible to be credited toward fulfillment of the Department's overall goal.

- IV. **CONTRACT GOAL TO BE ACHIEVED BY THE CONTRACTOR:** This contract includes a specific DBE utilization goal established by the Department. The goal has been included because the Department has determined that the work of this contract has subcontracting opportunities that may be suitable for performance by DBE companies. This determination is based on an assessment of the type of work, the location of the work, and the availability of DBE companies to do a part of the work. The assessment indicates that, in the absence of unlawful discrimination, and in an arena of fair and open competition, DBE companies can be expected to perform **4.0%** of the work. This percentage is set as the DBE participation goal for this contract. Consequently, in addition to the other award criteria established for this contract, the Department will award this contract to a bidder who makes a good faith effort to meet this goal of DBE participation in the performance of the work. A bidder makes a good faith effort for award consideration if either of the following is done in accordance with the procedures set forth in this Special Provision:
 - A. The bidder documents that firmly committed DBE participation has been obtained to meet the goal; or
 - B. The bidder documents that a good faith effort has been made to meet the goal, even though the effort did not succeed in obtaining enough DBE participation to meet the goal.

DRAFT

- V. DBE LOCATOR REFERENCES: Bidders may consult the DBE Directory as a reference source for DBE companies certified by the Department. In addition, the Department maintains a letting and item specific DBE locator information system whereby DBE companies can register their interest in providing quotes on particular bid items advertised for letting. Information concerning DBE companies willing to quote work for particular contracts may be obtained by contacting the Department's Bureau of Small Business Enterprises at telephone number (217)785-4611, or by visiting the Department's web site at www.dot.state.il.us.
- VI. BIDDING PROCEDURES: Compliance with the bidding procedures of this Special Provision is required prior to the award of the contract and the failure of the as-read low bidder to comply will render the bid nonresponsive.
- A. In order to assure the timely award of the contract, the as-read low bidder must submit a Disadvantaged Business Utilization Plan on Department form SBE 2026 within seven (7) working days after the date of letting. To meet the seven (7) day requirement, the bidder may send the Plan by certified mail or delivery service within the seven (7) working day period. If a question arises concerning the mailing date of a Plan, the mailing date will be established by the U.S. Postal Service postmark on the original certified mail receipt from the U.S. Postal Service or the receipt issued by a delivery service. It is the responsibility of the as-read low bidder to ensure that the postmark or receipt date is affixed within the seven (7) working days if the bidder intends to rely upon mailing or delivery to satisfy the submission day requirement. The Plan is to be submitted to the Department of Transportation, Bureau of Small Business Enterprises, Contract Compliance Section, 2300 South Dirksen Parkway, Room 319, Springfield, Illinois 62764 (Telefax: (217) 785-1524). It is the responsibility of the bidder to obtain confirmation of telefax delivery. The Department will not accept a Utilization Plan if it does not meet the seven (7) day submittal requirement, and the bid will be declared nonresponsive. In the event the bid is declared nonresponsive due to a failure to submit a Plan or failure to comply with the bidding procedures set forth herein, the Department may elect to cause the forfeiture of the penal sum of the bidder's proposal guaranty, and may deny authorization to bid the project if re-advertised for bids. The Department reserves the right to invite any other bidder to submit a Utilization Plan at any time for award consideration or to extend the time for award.
- B. The Utilization Plan shall indicate that the bidder either has obtained sufficient DBE participation commitments to meet the contract goal or has not obtained enough DBE participation commitments in spite of a good faith effort to meet the goal. The Utilization Plan shall further provide the name, telephone number and telefax number of a responsible official of the bidder designated for purposes of notification of plan approval or disapproval under the procedures of this Special Provision.
- C. The Utilization Plan shall include a DBE Participation Commitment Statement, Department form SBE 2025, for each DBE proposed for the performance of work to achieve the contract goal. The signatures on these forms must be original signatures. All elements of information indicated on the said form shall be provided, including but not limited to the following:
1. The name and address of each DBE to be used;
 2. A description, including pay item numbers, of the commercially useful work to be done by each DBE;
 3. The price to be paid to each DBE for the identified work specifically stating the quantity, unit price and total subcontract price for the work to be completed by the DBE. If partial pay items are to be performed by the DBE, indicate the portion of each item, a unit price where appropriate and the subcontract price amount;
 4. A commitment statement signed by the bidder and each DBE evidencing availability and intent to perform commercially useful work on the project; and
 5. If the bidder is a joint venture comprised of DBE firms and non-DBE firms, the plan must also include a clear identification of the portion of the work to be performed by the DBE partner(s).

DRAFT

D. The contract will not be awarded until the Utilization Plan submitted by the bidder is approved. The Utilization Plan will be approved by the Department if the Plan commits sufficient commercially useful DBE work performance to meet the contract goal. The Utilization Plan will not be approved by the Department if the Plan does not commit sufficient DBE performance to meet the contract goal unless the bidder documents that it made a good faith effort to meet the goal. The good faith procedures of Section VIII of this special provision apply. If the Utilization Plan is not approved because it is deficient in a technical matter, unless waived by the Department, the bidder will be notified and will be allowed no less than a five (5) working day period in order to cure the deficiency.

VII. CALCULATING DBE PARTICIPATION: The Utilization Plan values represent work anticipated to be performed and paid for upon satisfactory completion. The Department is only able to count toward the achievement of the overall goal and the contract goal the value of payments made for the work actually performed by DBE companies. In addition, a DBE must perform a commercially useful function on the contract to be counted. A commercially useful function is generally performed when the DBE is responsible for the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The Department and Contractor are governed by the provisions of 49 CFR part 26.55(c) on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR part 26.55, the provisions of which govern over the summary contained herein.

A. DBE as the Contractor: 100% goal credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goals.

B. DBE as a joint venture Contractor: 100% goal credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.

C. DBE as a subcontractor: 100% goal credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE subcontractor in turn subcontracts to a non-DBE firm does not count toward the DBE goal.

D. DBE as a trucker: 100% goal credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed and insured by the DBE must be used on the contract. Credit will be given for the full value of all such DBE trucks operated using DBE employed drivers. Goal credit will be limited to the value of the reasonable fee or commission received by the DBE if trucks are leased from a non-DBE company.

E. DBE as a material supplier:

1. 60% goal credit for the cost of the materials or supplies purchased from a DBE regular dealer.
2. 100% goal credit for the cost of materials or supplies obtained from a DBE manufacturer.
3. 100% credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.

VIII. GOOD FAITH EFFORT PROCEDURES: If the bidder cannot obtain sufficient DBE commitments to meet the contract goal, the bidder must document in the Utilization Plan the good faith efforts made in the attempt to meet the goal. This means that the bidder must show that all necessary and reasonable steps were taken to achieve the contract goal. Necessary and reasonable steps are those which could reasonably be expected to obtain sufficient DBE participation. The Department will consider the quality, quantity and intensity of the kinds of efforts that the bidder has made. Mere *pro forma* efforts are not good faith efforts; rather, the bidder is expected to have taken those efforts that would be reasonably expected of a bidder actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

DRAFT

- A. The following is a list of types of action that the Department will consider as part of the evaluation of the bidder's good faith efforts to obtain participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of the Department may be relevant in appropriate cases, and will be considered by the Department.
1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBE companies that have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBE companies to respond to the solicitation. The bidder must determine with certainty if the DBE companies are interested by taking appropriate steps to follow up initial solicitations.
 2. Selecting portions of the work to be performed by DBE companies in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 3. Providing interested DBE companies with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 4. (a) Negotiating in good faith with interested DBE companies. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE companies that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE companies to perform the work.

(b) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBE companies is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBE companies if the price difference is excessive or unreasonable.
 5. Not rejecting DBE companies as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 6. Making efforts to assist interested DBE companies in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 7. Making efforts to assist interested DBE companies in obtaining necessary equipment, supplies, materials, or related assistance or services.
 8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE companies.
- B. If the Department determines that the Contractor has made a good faith effort to secure the work commitment of DBE companies to meet the contract goal, the Department will award the contract provided that it is otherwise eligible for award. If the Department determines that a good faith effort has not been made, the Department will notify the bidder of that preliminary determination by contacting the responsible company official designated in the Utilization Plan. The preliminary determination shall include a statement of reasons why good faith efforts have not been found, and may include additional good faith efforts that the bidder could take. The notification will

DRAFT

designate a five (5) working day period during which the bidder shall take additional efforts. The bidder is not limited by a statement of additional efforts, but may take other action beyond any stated additional efforts in order to obtain additional DBE commitments. The bidder shall submit an amended Utilization Plan if additional DBE commitments to meet the contract goal are secured. If additional DBE commitments sufficient to meet the contract goal are not secured, the bidder shall report the final good faith efforts made in the time allotted. All additional efforts taken by the bidder will be considered as part of the bidder's good faith efforts. If the bidder is not able to meet the goal after taking additional efforts, the Department will make a pre-final determination of the good faith efforts of the bidder and will notify the designated responsible company official of the reasons for an adverse determination.

- C. The bidder may request administrative reconsideration of a pre-final determination adverse to the bidder within the five (5) working days after the notification date of the determination by delivering the request to the Department of Transportation, Division of Aeronautics, 1 Langhorne Bond Drive, Capital Airport, Springfield, IL 62707-8415 (Telefax: 217-785-4533). Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The pre-final determination shall become final if a request is not made and delivered. A request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the contract goal. In addition, the request shall be considered a consent by the bidder to extend the time for award. The request will be forwarded to the Department's Reconsideration Officer. The Reconsideration Officer will extend an opportunity to the bidder to meet in person in order to consider all issues of whether the bidder made a good faith effort to meet the goal. After the review by the Reconsideration Officer, the bidder will be sent a written decision within ten (10) working days after receipt of the request for reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. A final decision by the Reconsideration Officer that a good faith effort was made shall approve the Utilization Plan submitted by the bidder and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid nonresponsive.

IX. **CONTRACT COMPLIANCE:** Compliance with this Special Provision is an essential part of the contract. The Department is prohibited by federal regulations from crediting the participation of a DBE included in the Utilization Plan toward either the contract goal or the Department's overall goal until the amount to be applied toward the goals has been paid to the DBE. The following administrative procedures and remedies govern the compliance by the Contractor with the contractual obligations established by the Utilization Plan. After approval of the Plan and award of the contract, the Utilization Plan and individual DBE Participation Statements become part of the contract. If the contractor did not succeed in obtaining enough DBE participation to achieve the advertised contract goal, and the Utilization Plan was approved and contract awarded based upon a determination of good faith, the total dollar value of DBE work calculated in the approved Utilization Plan as a percentage of the awarded contract value shall become the amended contract goal.

- A. No amendment to the Utilization Plan may be made without prior written approval from the Division of Aeronautics. All requests for amendment to the Utilization Plan shall be submitted to the Department of Transportation, Division of Aeronautics, 1 Langhorne Bond Drive, Capital Airport, Springfield, IL 62707-8415. Telephone number (217) 785-8514. Telefax number (217) 785-4533.
- B. All work indicated for performance by an approved DBE shall be performed, managed and supervised by the DBE executing the Participation Statement. The Contractor shall not terminate for convenience a DBE listed in the Utilization Plan and then perform the work of the terminated DBE with its own forces, those of an affiliate or those of another subcontractor, whether DBE or not, without first obtaining the written consent of the Bureau of Small Business Enterprises to amend the Utilization Plan. If a DBE listed in the Utilization Plan is terminated for reasons other than convenience, or fails to complete its work on the contract for any reason, the Contractor shall make good faith efforts to find another DBE to substitute for the terminated DBE. The good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, but only to the extent needed to meet the contract goal or the amended contract goal. The Contractor shall notify the Division of Aeronautics of any termination for reasons other than convenience, and shall obtain approval for inclusion of the substitute DBE in the Utilization Plan. If good faith efforts following a termination of a DBE for cause are not successful, the Contractor shall contact the Division and provide a full accounting of the efforts undertaken to obtain substitute DBE participation. The Division will evaluate the good faith efforts in light of all circumstances surrounding the performance status of the contract, and determine whether the contract goal should be amended.

DRAFT

- C. The Contractor shall maintain a record of payments for work performed to the DBE participants. The records shall be made available to the Department for inspection upon request. After the performance of the final item of work or delivery of material by a DBE and final payment therefor to the DBE by the Contractor, but not later than thirty (30) calendar days after payment has been made by the Department to the Contractor for such work or material without regard to any retainage withheld by the Department, the Contractor shall submit a DBE Payment Report on Department form SBE 2115 to the Division's Chief Engineer. If full and final payment has not been made to the DBE, the Report shall indicate whether a disagreement as to the payment required exists between the Contractor and the DBE or if the Contractor believes that the work has not been satisfactorily completed. If the Contractor does not have the full amount of work indicated in the Utilization Plan performed by the DBE companies indicated in the Plan, the Department will deduct from contract payments to the Contractor the amount of the goal not achieved as liquidated and ascertained damages.
- D. The Department reserves the right to withhold payment to the Contractor to enforce the provisions of this Special Provision. Final payment shall not be made on the contract until such time as the Contractor submits sufficient documentation demonstrating achievement of the goal in accordance with this Special Provision or after liquidated damages have been determined and collected.

DRAFT

**Attachment 9
Workers' Compensation Insurance Requirements**

DRAFT

WORKERS' COMPENSATION INSURANCE

Prior to the execution of his construction contract by the Illinois Department of Transportation, Division of Aeronautics, hereinafter referred to as "Division", the Contractor shall furnish to the Division certificates of insurance covering Workers' Compensation, or satisfactory evidence that this liability is otherwise taken care of in accordance with Section 4.(a) of the "Workers' Compensation Act of the State of Illinois" as amended.

Such insurance, or other means of protection as herein provided, shall be kept in force until all work to be performed under the terms of the contract has been completed and accepted in accordance with the specifications, and it is hereby understood and agreed that the maintenance of such insurance or other protection, until acceptance of the work by the Division is a part of the contract. Failure to maintain such insurance, cancellation by the Industrial Commission of its approval of such other means of protection as might have been elected, or any other act which results in lack of protection under the said "Workers' Compensation Act" may be considered as a breach of the contract.

DRAFT

**Attachment 10
Domestic Steel Requirement**

DRAFT

SPECIAL PROVISION FOR DOMESTIC SOURCE FOR STEEL

Control of Materials: All steel products, as defined by the Illinois Steel Products Procurement Act, incorporated into this project shall be manufactured or produced in the United States and, in addition, shall be domestically fabricated.

The Purchaser shall obtain from the steel producer and/or fabricator, in addition to the mill analysis, a certification that all steel products meet these domestic source requirements.

DRAFT

**Attachment 11
Retainage**

DRAFT

CREATE Program Bid Package Language for Railroad Biddable PS&E's –

Retainage

If the contract designates that retainage will be withheld from the prime contractor, the Railroad shall make prompt and regular incremental acceptances of portions, as determined by the Railroad, of the biddable work and pay retainage to the prime contractor based on these acceptances. After receiving a retainage payment for work satisfactorily completed and accepted, the prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors related to that item of work. The time period for payment shall be the same as described elsewhere in the contract.

If the contract does not designate that retainage will be withheld from the prime contractor, if the contract does not preclude the prime contractor from withholding retainage from subcontractors, and if the prime contractor keeps any retainage from subcontractors, then the prime contractor must make prompt and full payment, including any retainage, to the subcontractor within the same time period for any other payment, as described elsewhere in the contract, after the subcontractor's work is satisfactorily completed.

Any delay or postponement of payment may take place only for good cause and with the Railroad's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Federal regulation 49 CFR 26.29. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor.