

# NCDOT Policy



## Public-Private Partnerships

<b>Business Category:</b>	NC Department of Transportation
<b>Business Area:</b>	Public-Private Partnerships
<b>Approval Requirements:</b>	Business Unit Representative, Executive Staff, Legal Counsel, Board of Transportation
<b>Approval Date:</b>	
<b>Last Revision Date:</b>	April 3, 2024
<b>Next Review Date:</b>	This document is required to be updated when state and federal laws are changed or updated regarding public-private partnerships that may impact the requirements outlined in the policy.

### Legislative History:

[Session Law 2006-230](#), approved in August 2006, authorized the Department to enter into agreements with private entities to finance the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges, subject to the approval of the Board of Transportation.

[Session Law 2007-439](#), approved in August 2007, directed the Department to give priority to partnership agreements for highways, roads, streets and bridges and requires the Department to report concurrently to the Board of Transportation and to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on Transportation regarding any such proposed agreement.

[Session Law 2008-164](#), approved in August 2008, expanded the Department's authority to expressly permit the Department to enter into agreements to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines in the State. The 2008 legislation further stipulates that any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to such an agreement entered shall comply with the competitive bidding requirements of Article 2 of Chapter 136 of the General Statutes.

[Session Law 2009-266](#), approved in July 2009, amended language in the General Statutes to clarify that "transportation system" refers to all modes of transportation infrastructure owned and maintained by the Department, including roads, highways, rail, ferry, aviation, public transportation, and bicycle and pedestrian facilities.

[Session Law 2012-184](#), approved in July 2012, requires contracts that have construction capital cost payments made more than 18 months after final acceptance be approved by the Local Government Commission. The legislation permits the Department to act as a conduit issuer for private activity bonds to the extent the bonds do not constitute a debt obligation of the State.

[Session Law 2013-183](#), approved June 2013, outlines reporting requirements prior to execution of

comprehensive agreements and directs the Department to establish standards for such comprehensive

agreements with private partners. The legislation also established the "Strategic Prioritization Funding Plan for Transportation Investments," and created incentives for highway tolling where the Department may revise its project selection based on funding directly attributable to toll revenue.

**Authority:**

The referenced authorities are not to imply that NCDOT is limited to just the below:

***State Law***

[NCGS §136-18\(39\) – Highway DBF](#)

[NCGS §136-18\(39a\) – Highway DBFOM](#)

[NCGS §136-28.1\(l\) – Litter](#)

[NCGS §136-28.1\(m\) – Rest Areas](#)

[NCGS §136-89.188\(a\) – Use of Revenue](#)

[NCGS §136-89.183\(2\) – MPO/RPO approval of tolling](#)

[NCGS §136-89.183\(13\) – NCTA procurement procedures](#)

[NCGS §136-89.187 – Conversion non-tolled to tolled, MPO/RPO approval](#)

[NCGS §136-89.194\(c\) – Alternative Contracting Methods](#)

[NCGS §136-89.213\(a\) – Open Road Tolls](#)

[NCGS §136-18\(43\) – Conduit Issuer](#)

[NCGS §136-18\(44\) – Sponsorship](#)

[NCGS §136-18 \(46\) – Telecommunications](#)

[NCGS §143B-350\(f\)\(12a\) – Powers of the Board](#)

***Federal Law***

[IIJA Section 11508](#)

[Section 106\(h\)\(3\) of title 23](#)

[Section 133\(b\) of title 23](#)

[Section 602\(a\) of title 23](#)

[IIJA Section 70701](#)

[23 CFR § 450.326](#)

**Policy Owner:** NCTA Executive Director, NCDOT Chief Engineer, NCDOT Chief Financial Officer, NCDOT Deputy Secretary for Multi-Modal Transportation

**Definitions:**

“Department” shall mean the North Carolina Department of Transportation as enacted by NCGS § 143B-345.

“Board” shall mean Board of Transportation as enacted by NCGS § 143B-350.

“Project” shall mean a new or existing transportation facility with a defined terminus.

“Public-Private Partnership” (or “P3”) shall mean a contractual agreement between the department and one or more private-sector entities for the purpose of delivering, operating, and/or maintaining a transportation facility.

“Unsolicited Proposal” a written concept for a new or innovative Public-Private Partnership submitted to the Department on the initiative of the offeror for the purpose of entering into a Public-Private Partnership with the Department, and that is not in response to a Request for Proposals, or any other Department-initiated solicitation or program.

“Capital Plan” is the State Transportation Improvement Program, or STIP, which identifies transportation projects that will receive funding in a 10-year period.

**Purpose:**

The primary purpose of Public-Private Partnerships is to leverage public funds or other resources with private investment to accelerate, enhance, or otherwise improve the delivery, operation, or maintenance of public transportation infrastructure. This document sets forth the Department’s requirements for establishing processes and guidelines when considering, evaluating, selecting, and procuring projects that include partnership with one or more private entities that wish to develop, design, build, finance, operate or maintain a transportation facility. The Department should utilize this policy to review and update all existing Public-Private Partnership guidelines and as direction in the development of new Public-Private Partnership guidelines.

**Scope:**

This policy applies to all offices, departments, units, etc., associated with the planning, development, design, construction, operation or maintenance of transportation infrastructure that are considering entering into a Public-Private Partnership.

**Required Public-Private Partnership Guidelines:**

The Department shall include the following in any revised or newly developed P3 guidelines:

- 1) For Public-Private Partnerships that are independent of the Capital Plan, the Department shall develop guidelines that include, at a minimum, the following:
  - Screening criteria or a data-driven process for identifying projects suitable for Public-Private Partnership.
  - A process for notifying and engaging the public regarding the P3.
  - A process for notifying and engaging private-sectors entities that participate in the market targeted by the P3.
  - A procurement and solicitation process that includes clear selection criteria for contract awards.
  - Clear direction on how the Department will implement and oversee the P3.

- 2) In addition to the guidelines and processes listed in paragraph 1, Public-Private Partnerships that are part of the Capital Plan, the Department shall develop guidelines shall also include, at a minimum, the following:
- A process for obtaining any necessary approvals from any Metropolitan Planning Organization or Rural Planning Organization impacted by the P3.
  - A requirement and process for conducting a Value for Money analysis if required by federal law.

#### Guidelines for Unsolicited Proposals

- 1) The Department shall accept Unsolicited Proposals for projects both included in and independent of the Capital Plan. The Department shall include, at a minimum, the following in any guidelines for receiving and evaluating Unsolicited Proposals:
- A process for notifying relevant local planning organizations.
  - A process for posting the Executive Summary as described in paragraph 2 below.
  - Clear criteria that will be utilized in evaluating the unsolicited proposal and making a determination as to whether the unsolicited proposal will be accepted or rejected.
- a. Executive Summary -- At a minimum, Unsolicited Proposal(s) received for any public-private partnership are required to include an Executive Summary in accordance with guidelines established by the Department, covering the major elements of the proposal that do not address the Proposer's price, financing plan, or other confidential or proprietary information or trade secrets the Proposer intends to be exempt from disclosure. The Executive Summary will be a public document.
- b. Competitive Procurement -- any project that is ultimately pursued as a result of the receipt of an Unsolicited Proposal shall be competitively advertised and procured in accordance with the applicable Public-Private Partnership guidelines.
- To the extent allowable by law, the Department may establish guidelines for assessing a fee in connection with the submission and review of an unsolicited proposal. Any fee established may not exceed the anticipated cost of review.

#### Policy Revisions:

This document is required to be updated when state and federal laws are changed or updated regarding public-private partnerships that may impact the requirements outlined in the policy.