
North Carolina Department of Transportation Public-Private Partnerships Guidelines



AUGUST 2025

PUBLIC-PRIVATE PARTNERSHIPS GUIDELINES

PURPOSE

Per the Public-Private Partnership (P3) Policy as approved by the North Carolina Board of Transportation on April 3, 2024, this document establishes the Department's procedural *guidelines for soliciting, evaluating, selecting*, procuring and administering contracts that include a partnership with one or more private entities that wish to develop, design, enhance, finance, construct, operate and/or maintain a transportation facility. The primary purpose of P3s are 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.

These guidelines are not intended to supersede or replace Department policies enabling private or public entities from funding transportation projects with no further financial interest upon completion of the project. These guidelines are not intended to limit or otherwise apply to the Department's procurement of goods and services in the ordinary course of its operations.

SCOPE

These guidelines will advise the Department in the planning, development, design, construction, operation or maintenance of roads, bridges, highways or other Department of Transportation infrastructure.

AUTHORITY

Session Law 2006-230
Session Law 2009-266
Session Law 2008-164
Session Law 2007-357
Session Law 2007-439
Session Law 2012-184
Session Law 2013-183
General Statute §136-18(39)
General Statute §136-28.1(l)
General Statute §136-28.1(m)
General Statute §143B-350(f)(12a)

BACKGROUND

Session Law 2006-230 first 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. In the 2007 Legislative Session, this provision was revised to clarify that agreements may be made with private entities for transportation infrastructure projects, with priority given to highways, roads, streets and bridges. **Session Law 2007-439** further requires that the Department 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** 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 this State. Furthermore, **Session Law 2008-164** 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** adjusted more generically refers to transportation infrastructure in lieu of reference to highways, roads, streets, bridges, existing rail and properties adjoining existing rail lines.

Session Law 2007-439 specifically permits the use of P3s for two pilot projects for internet access at rest areas and two pilot projects for litter removal.

Session Law 2012-184 provides the Department with greater flexibility in regard to proposal, performance and payment security requirements, as well as developer assignment, for one pilot project. This same session law provides the Department with the ability to fix, charge, revise and collect tolls and to assign that ability to a third-party developer for one pilot project. **Session Law 2012-184** further requires that any projects with more than 18 months of post-construction capital cost payments to be approved by the Local Government Commission.

Session Law 2013-183 further outlines reporting requirements prior to execution of comprehensive agreements and directs the Department to establish standards for such comprehensive agreements with private partners.

General Statute §136-18(39a) restricts the number of P3 agreements the Department can enter into.

DEFINITIONS

Updated Definitions from 2023 Document

Best Value: Through evaluation and scoring of technical proposals, a quality credit is calculated and used to determine a quality value that is deducted from the price proposal to obtain a final adjusted price used to determine the best overall submitted value.

Competitive Negotiation: Competitive negotiation involves the selection of a Proposer or Proposers based on technical merit or qualifications with or without regard to cost, followed by a period of negotiation with the selected Proposer(s).

Comprehensive Agreement: The assemblage of all contract documents and requirements, as defined below and incorporated by reference, the final finance arrangements and other ancillary operating, financing or encroachment agreements as may be executed by the Department and one or more private entities. The document may also be referred to as a Development Agreement or a Comprehensive Development Agreement.

Contract: The assemblage of all contractual documents and requirements that include the request for proposals, all addenda, a proposal (both technical and financial), applicable NCDOT standard specifications and drawings, and other documents as referenced in the request for proposals.

Design-Build: A project delivery method that combines construction and preconstruction services into one contract that may be suitable for P3s.

Design-Build Team: Any company, partnership, corporation, association, joint venture or other legal entity permitted by law to practice engineering, architecture and construction contracting, as appropriate, in the State of North Carolina.

Due Diligence: A term commonly used to describe the steps taken by a person seeking to acquire, invest in or lend money to a business, ensuring that the buyer, investor or lender has reviewed all material information relevant to the transaction. Due diligence efforts form the foundation of each of the project activities.¹

Interim Agreement: An initial agreement that may be entered into by the Department and the successful Proposer upon completion of initial negotiations. This agreement typically defines the preconstruction activities and any compensation therefore that may be necessary to further the development of a Comprehensive Agreement.

Letter of Interest (LOI): A written response that is solicited from potential Proposers through advertisements. It is often employed in pre-qualifying Proposers for specific services, based on their resources and experience, before issuing a Request for Proposals.

Metropolitan Planning Organization (MPO): The policy board established: a) for an urbanized area with a population of more than 50,000 individuals, and b) by agreement between the Governor and units of general-purpose local government that together represent at least 75% of the effective population (**Title 23, USC Sec 134**).

Oversight Committee: Guides the evaluation and selection of each P3 project to ensure compliance by the Department with **N.C.G.S. Sections 136-18 (39) and (39a)** and determines the Best Value Proposal.

Pre-Development Agreement: Agreement between the Department and a Private Partner Developer which provides the framework for the Developer to collaborate with the Department in project planning and preliminary design, along with performance of other services. These services may include preparation of a predevelopment plan, community outreach plan, financing plan and implementation plan.

Project: The work specified to be planned, developed, designed, financed, constructed, operated and/or maintained in accordance with the Contract.

Project Manager: The Department staff member assigned to coordinate the development of a project's Request for Proposals and the review of the Proposer's submittals. The Department may also elect to utilize a General Engineering Consultant (GEC) or other such technical expert to serve as the Project Manager.

Proposal: The document submitted by a Proposer that may combine technical details, financing approach and costs in a negotiation or competitive negotiation procurement process.

Proposer: A pre-qualified entity that has submitted a statement of qualifications, proposal or other submission in order to participate in the procurement of a P3 project.

Price Proposal: The sealed "bid" in a competitive procurement process that constitutes the Proposer's price to complete the activities required by the Request for Proposals and the Proposer's Technical Proposal.

Public-Private Partnership (P3): Contractual agreements between a public agency (the Department) and one or more private entity where the private sector takes on project risks such as design, construction, finance, long-term operation and traffic revenue.

Request for Proposals (RFP): A document that describes the procurement process, provides the scope of services and requirements for the project and may be used by the Proposer to submit their proposal. The request for proposals typically forms or describes the basis for the contract and the agreement.

Request for Qualifications (RFQ): A document issued by the Department that solicits statements of qualifications or letters of interest from Proposers.

¹ https://www.fhwa.dot.gov/ipd/pdfs/p3/toolkit/p3_procurement_guide_0319.pdf

Rural Planning Organization (RPO): Organizations from areas with a population size more than 50,000 that plan for rural areas, not served by a Metropolitan Planning Organization (MPO).

Short-list: A list of Proposers that have demonstrated the qualifications to perform the contract, as determined by the Department. Short-listed entities are eligible to receive an RFP and to submit proposals.

Statements of Qualification (SOQ): A document that is requested from a potential Proposer that describes the Proposer's qualifications to perform certain types of work including previous experience, licenses, certifications, personnel, equipment, etc.

Technical Proposal: The proposal as set forth by the Proposer that conveys its design, construction approach, services proposed, schedule or other items as required by the RFP in a competitive procurement process. The Technical Proposal, in whole or in part, may be made a part of the Contract as stipulated in the RFP.

Unsolicited Proposals: Any concept or submittal of a potential P3 received by the Department that is not a result of a direct, specific advertisement.

PROJECT SELECTION

An ad hoc Oversight Committee will convene to guide the evaluation and selection of each P3 project. The membership of the Oversight Committee will include, but not be limited to, representatives from the Office of the Secretary of Transportation, Chief Engineer, Chief Financial Officer and Division Engineer's offices as appropriate based on the nature of the proposed project.

Eligible Projects

Projects may be considered for P3 delivery if they are:

- 1) Projects on local long range transportation plans and have demonstrated local support; and
- 2) Satisfy at least one of the following criteria:
 - a. Projects where design and construction need to be expedited for the public good and innovative delivery and finance/partnership can facilitate acceleration.
 - b. Projects affording opportunities for innovation in design, construction, finance, operation and/or maintenance.
 - c. Projects where significant Department resources, which may include rights-of-way or air rights, are available to leverage private investment.
 - d. Projects for which private investment would fulfill a critical financial need to complete the project.
 - e. Projects that provide access to new private capital to deliver critical transportation needs.
- 3) Additionally, federal law (IIJA Section 70701), requires a Value for Money Analysis for projects over \$750 million that plan to secure a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan.

Role of the Metropolitan Planning Organization (MPO) and Rural Planning Organization (RPO)

Prior to the Department approving any express lanes or expressway project that includes the collection of tolls, the concept must be approved by the local MPO or RPO. The Department may not proceed without the approval of the MPO or RPO. This includes the conversion of High Occupancy Vehicles lanes to High Occupancy Toll (or express lanes) or other types of managed lanes. Given a tolled facility requires the approval of the local MPO or RPO, the Department can only advance to the due diligence and additional phases with the approval in writing of the local MPO or RPO.

Proposal Solicitation

The Department must provide, to the greatest extent possible, for the solicitation of competitive proposals prior to entering into a P3 agreement. Furthermore, in accordance with **Session Law 2008-164**, any contracts for construction of transportation infrastructure which are awarded pursuant to such an agreement shall comply with the competitive bidding requirements of **Article 2 of this Chapter 136 of the General Statutes**. While finalization of details, such as Comprehensive Agreement terms and conditions, finance plans, lenders' agreements, etc. may occur following the determination of the successful Proposer and prior to the execution of a Comprehensive Agreement or other such contract, the cost and details of construction may not be negotiated except as is permitted in accordance with the Standard Specifications after contract award.

The procurement process for solicited proposals typically includes the following steps:

- 1) Establish an Evaluation Committee,
- 2) Issue a Request for Qualifications (RFQ) and evaluate responses to the RFQ,
- 3) Develop a shortlist of qualified Proposers based on RFQ responses, if appropriate,
- 4) Issue a Request for Proposals (RFP) and evaluate the submissions,
- 5) Negotiate a final contract with the selected Proposer.

Evaluation Committee

The Evaluation Committee performs the evaluation of Statements of Qualification (SOQ) and Proposals. The Evaluation Committee will be comprised of at least five (5) Department employees. To the greatest extent possible, the Evaluation Committee members should have significant NCDOT experience and a thorough understanding of Department policies

and procedures. These members will represent the major areas of the project planning, design, construction, finance and operations. The Evaluation Committee may also include third-party representatives that provide legal, technical, financial and other specialized expertise.

A confidentiality agreement will be signed by all members of the Evaluation Committee that limits their discussion on the Proposals to those persons or Proposer references deemed necessary to assist with the evaluation.

In addition, sub-committees such as, financial, administrative, and technical review committees may be used to review specific portions of a proposal, provided the intent to use such subcommittee(s) is outlined in the RFQ. If a Technical Review Committee is used to review the technical proposals, and a Financial Review Committee is used to review the price proposals, then the review of the price proposals, and technical proposals will occur concurrently.

REQUEST FOR QUALIFICATIONS (RFQ)

The Request for Qualifications (RFQ) will provide a general description of the work and the Proposers' responsibilities, and will include the prequalification requirements, any pre-Proposal conferences, Department point of contact, additional technical or financial qualifications desired, key Proposer firms, contractors and personnel to be identified, and the timeframe for SOQ or LOI to be submitted to the Department. Requirements in the RFQ shall be general and not require Proposers to provide technical evaluation or detailed scheduling of project specifics. Each project's RFQ should be modified to fit the unique needs of that project.

The RFQ will set forth basic evaluation criteria such as professional experience, technical competence, resources, staffing, management stability, legal contracting entity, organizational structure, and the financial capability and stability necessary to complete a project. The RFQ may also request other information deemed necessary by the Department.

The RFQ will include the evaluation criteria to be used in evaluating the LOI or SOQ. The Evaluation Committee will review the responses to the RFQ and identify those Proposers that are best suited for further consideration.

Unless specialized services are otherwise stipulated in the RFQ, the Department's standard pre-qualification requirements apply to each entity providing professional engineering services. Likewise, the standard contractor pre-qualification requirements apply to each contractor entity performing construction work within or utilized by the Proposer. Unless otherwise approved by the Department, each entity must be prequalified prior to the deadline for the submittal of the SOQ.

Any consultant engineers under contract, or previously under contract, with the Department to prepare preliminary plans, planning reports or other project development products for a project will not be allowed to participate in any capacity with the Proposer selected to complete that project. Firms performing location and survey work tasks, geotechnical investigations and/or right of way acquisition activities may be considered for participation on the project. Exceptions to this policy may be granted by the Department, upon written request from the specific firm, if it is determined that the firm's involvement is in the best interest of the public and does not constitute an unfair advantage. This paragraph applies equally to the procurement of a P3 resulting from either a solicited or unsolicited proposal.

REQUEST FOR PROPOSALS (RFP)

The Request for Proposals (RFP) document contains the directives and scope description for any given project. Any desired project elements, design, construction, finance, operations and maintenance requirements, guiding documents, responsibilities of the Proposer, and responsibilities of the Department are stipulated within the RFP.

The RFP will solicit conceptual or detailed proposals and designate the required contents of responsive proposals, which may include, but not be limited to, the following information:

- 1) Additional information regarding the Proposer's qualifications and demonstrated technical and financial competence.
- 2) A discussion on the feasibility of developing the project as proposed.
- 3) Environmental documentation (National Environmental Policy Act (NEPA, etc.)) and permitting responsibilities
- 4) Detailed engineering or architectural designs.
- 5) Project Schedule and the Proposer's ability to perform the contract in a timely manner.
- 6) Ability and experience in related transportation construction projects of similar type and dollar amounts.
- 7) Availability of experienced personnel, both management and labor workforce, to perform contract.
- 8) A detailed financial plan, including costing methodology, cost proposals and project financing approach.
- 9) Current and long-term operation and maintenance responsibilities related to the infrastructure.
- 10) Any other information the Department deems relevant or necessary for evaluating proposals.

RFP CONTENT

The contents of the RFP vary on a project specific basis. However, the RFP, at a minimum should address the items outlined below:

- 1) Project scope and budget
- 2) Estimated procurement schedule
- 3) Instructions on proposal completion, submission and execution
- 4) Department point of contact during procurement phase
- 5) Notification of any pre-proposal conferences

- 6) Proposal evaluation criteria
- 7) Proposer selection process
- 8) Disadvantaged Business Enterprise (DBE)/Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) goals and reporting in accordance with federal and state requirements
- 9) Oral presentation requirements (as applicable)
- 10) Planning, design and other preconstruction services required
- 11) Submittal requirements
- 12) Permits (as applicable)
- 13) Construction services required
- 14) Operations and Maintenance services required
- 15) Third-party Involvement or restrictions
- 16) Information or services to be provided by the Department
- 17) Professional insurance and bonding or other securities required
- 18) Financing/payment/compensation terms
- 19) Public outreach and communications plan
- 20) Specific requirements, as to the Proposer firms, contractors or personnel to be identified in a proposal
- ~~21)~~ A description of limitations regarding changes to any shortlisted Proposer construction or design firms, and the Department process for approving or denying proposed changes thereto

SELECTION PROCESS

The selection process will generally consist of two phases. For a competitive procurement process, these phases will consist of complete evaluation of the Technical Proposals, and Financial Proposals, as applicable, followed by a determination of the most beneficial proposal using a predetermined algorithm that combines technical score, financial score, as applicable, and Price. For a negotiation or competitive negotiation procurement process, the phases will consist of evaluation of the proposals or SOQ if only a RFQ is used, followed by a period of negotiation.

Proposal Evaluation Criteria

The RFP will clearly outline the criteria to be used to evaluate the Proposals, regardless of procurement process. These criteria may include, but are not limited to:

- 1) Financial plan feasibility
- 2) Project schedule, milestones and history of successful performance and completion of projects in a timely manner
- 3) Reasonableness of assumptions, including those related to ownership, legal liability and operation and maintenance of the project
- 4) Financial exposure and benefit to the Department and the public
- 5) Quality and completeness of public outreach and communication plan
- 6) Rationality of forecasts
- 7) Compatibility with other existing or planned facilities
- 8) Compliance with DBE /MBE/WBE goals
- 9) Proposer's demonstrated capabilities and experience in related transportation construction projects, including type and dollar value of previous contracts
- 10) Design features and approach
- 11) Construction approach
- 12) Operations and Maintenance approach
- 13) Financing approach
- 14) Likelihood of obtaining necessary third-party approvals or support
- 15) Cost and pricing, including user fees and projected usage
- 16) Innovation in planning, development, design, construction, maintenance and financing
- 17) Liability insurance provisions
- 18) Staffing and project coordination capabilities, including governmental liaison and public outreach
- 19) Long term operations and maintenance considerations and life cycle costs
- 20) Traffic Management
- 21) Safety records and plan
- 22) Quality control methods and/or project guarantees
- 23) Natural Environment and Human Environment responsibility
- 24) Oral presentation (as applicable)

REVIEW OF PROPOSALS

The Evaluation Committee will determine whether the proposals are responsive to the requirements of the RFP. If any of the proposals are considered non-responsive, the Department will notify the Proposer of such determination.

Each Proposal found to be responsive will be evaluated by the Evaluation Committee. The Evaluation Committee may solicit input from other Department employees, independent third-party technical, legal, and financial advisors, or Proposer references regarding specific information that may be needed outside their experience or expertise.

Based on the evaluation process and evaluation criteria outlined in the RFP, the Evaluation Committee will score and/or rank the Proposals.

PROCUREMENT ALTERNATIVES

The Department may pursue a negotiated competitive bidding, competitive negotiations or procurement process on select projects. The RFQ and/or RFP will outline the type of procurement to be used in the determination of the successful Proposer.

Competitive Procurement Process

For a competitive procurement process, these phases will consist of a complete evaluation of the technical proposals, and price proposals, followed by a determination of best value proposal.

For a competitive bid procurement process, no negotiations regarding construction costs will occur prior to contract award; however, finalization of details, such as Comprehensive Agreement terms and conditions, finance plans, etc., may occur following the determination of the successful Proposer and prior to the execution of a contract, Comprehensive Agreement, lenders' agreements, or other such instruments. This provision in no way negates the Department's ability to pursue a Best and Final Offer as outlined in the Design-Build Policy and Procedures, issue addenda any time prior to contract award or enact alterations of plans or details of construction of work after contract award.

Negotiated Procurement Process

Under the negotiated procurement process, the Department will attempt to negotiate an Interim Agreement, Comprehensive Agreement, or other such agreement with the Proposer with the highest ranked proposal (or SOQ if only a RFQ is issued). Such negotiations may include modifications to the proposal. If any such agreement cannot be successfully negotiated with the Proposer with the highest ranked proposal to the satisfaction of the Department, or if, in the course of negotiations, the Department deems that the highest ranked proposal will not provide the Department with the anticipated benefit, the Department will formally end negotiations with the Proposer and, in the Department's sole discretion, either:

- 1) Reject all proposals
- 2) Modify the RFP and request a new submission of proposals
- 3) Attempt to negotiate an agreement to the Proposer with the next highest ranked proposal
- 4) Discontinue the project indefinitely

Competitively Negotiated Procurement Process

The use of a competitively negotiated procurement process will be disclosed in the RFQ or RFP; however, in the event that (1) multiple Proposers have provided proposals that are deemed comparable in value by the Evaluation Committee, or (2) the Department deems that it is in the best interest of the Department or the public, the Department may elect to competitively negotiate with two or more Proposers any time after the evaluations of the proposals. Such negotiations may include modifications to the proposals. The Department may competitively negotiate with all Proposers or with only those deemed by the Evaluation Committee to be within a competitive range.

SELECTION PROCESS

The selection process will generally consist of two phases. For a competitive procurement process, these phases will consist of a complete evaluation of the technical proposals, and price proposals, followed by a determination of the best value proposal. For a negotiation or competitive negotiation procurement process, the phases will consist of evaluation of the proposals or SOQ if only a RFQ is used, followed by a period of negotiation.

Stipends

If applicable, the notice of a stipend and the amount of the stipend will be made available to all prospective Proposers. This stipend is partial compensation to each unsuccessful shortlisted Proposer that submits a responsive Proposal. The stipend will be determined on a project specific basis and will be based on the project's size and complexity. No compensation will be paid by the Department for the development of LOIs, SOQs, proposals, negotiations or other documents.

Review of Unsolicited Proposals

The Department is not required to respond in any manner to unsolicited proposals and reserves the right to reject any and all unsolicited proposals without exception. The Department does, however, allow interested parties to suggest potential projects for P3s. If the Department elects to pursue a project, regardless of the manner in which it is suggested, the Department will issue a formal advertisement and/or RFQ in accordance with these guidelines.

The process for accepting and vetting unsolicited proposals will generally include two steps:

- 1) Meeting with NCDOT to informally discuss an idea for an unsolicited proposal (optional)
- 2) Submittal of a conceptual unsolicited proposal and Department screening thereof

Informal Discussion with the Department

Prior to submitting a conceptual unsolicited proposal, individuals or firms may request a meeting with the Department to determine if a given concept is of merit and relevant to the Department's goals. This preliminary meeting is not required. In addition, the Department is not obligated to meet with potential proposers but may do so at its discretion.

Conceptual Unsolicited Proposals

A conceptual unsolicited proposal shall be submitted in accordance with these procedures. Proposers submitting a conceptual unsolicited proposal for screening by the Oversight Committee shall submit 12 hard copies and one electronic copy in PDF format to the Department. Per NCDOT's P3 Policy, unsolicited proposal(s) received for any P3 are required to include an executive summary covering the major elements of the proposal that do not address the Proposer's price, financial 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.

This proposal shall include information regarding the key entity(ies) of the Proposer including contact information for the individual authorized to submit on behalf of the entity(ies).

Conceptual unsolicited proposals shall, at a minimum, address the following items:

- 1) Economic viability of the project, including the market outlook for private finance for the project
- 2) Requirements and/or expectations of the Department;
- 3) Project delivery constraints;
- 4) Risks to schedule, finance and other elements;
- 5) Environmental impacts including NEPA/State Environmental Policy Act (SEPA) considerations, mitigation, permitting and any other related issues;
- 6) Other information deemed appropriate by the Department based on preliminary conversations, previous submissions, and/or other project specific requests.

Upon receipt, the Department will not move forward with review until the affected local planning organization(s), MPO and/or RPO, has been notified and given written consent to move forward with the assessment. If so, directed by the Secretary of Transportation, other necessary approvals (i.e. NCDOT Board of Transportation, FHWA, etc.) will be sought by the Department.

The Department may decide to perform an initial screening with assistance from Department staff or third-party advisors, as needed. This initial screening will be broad and comprised of a preliminary review for legal allowances or restrictions, as well as technical, environmental, engineering and financial considerations.

The Department reserves the right to further develop, competitively procure and subsequently implement any conceptual unsolicited proposal without regard to the Proposer's involvement to date in the event that the conceptual unsolicited proposal is, in the Department's sole discretion, materially consistent with a concept previously identified, considered or studied by the Department.

The Proposer will be advised of the Department's determination as to whether or not the conceptual unsolicited proposal is viable and sufficiently related to the goals of the Department. In such case, the Department may gauge industry interest in the proposal concept through the issuance of a request for letters of interest. At the Department's sole discretion, the response to the request for letters of interest may be used to inform the decision as to whether the Department pursues procurement and implementation of the unsolicited proposal.

Proposal Review Fee

NCDOT may charge reasonable amounts to cover the costs of processing, review, and evaluation of the unsolicited proposal. Evaluation will commence upon payment of an initial, non-refundable fee of \$50,000. During its evaluation, NCDOT will assess whether additional fees will be needed to cover the costs to complete the evaluation. The assessment will include coordination with the Proposer of the unsolicited proposal to determine a reasonable fee to cover additional costs.

Procurement

Unsolicited proposals will be publicly and competitively procured in accordance with North Carolina General Statutes, P3 Policy and this Guidelines document.

By virtue of providing an unsolicited proposal that has been reviewed and accepted, the Proposer will be included on the list of Short-listed Proposers for the subsequent procurement, provided however, that (1) the Proposer maintains its team as to the extent originally proposed unless exceptions to the original team have been approved by the Department; and (2) the Proposer is prequalified by the Department to perform the work.

If more than one unsolicited proposal is submitted to and accepted by the Department for any given concept, only the first Proposer, as evidenced by the submission date, will be afforded the automatic inclusion on the list of Short-listed Proposers. For this purpose, the multiple unsolicited proposals on the same concept must be deemed by the Department, in its sole discretion, to be materially consistent and therefore competing with one another. They are competing if they apply to the same project corridor and are within similar project limits within the corridor.

Procurement of a P3 resulting from an unsolicited proposal will proceed in a manner as outlined in this Public-Private Partnerships Guidelines document. If an unsolicited proposal, regardless of development level, does not result in a procurement or successful agreement with a private partner for any reason, yet remains a future viable concept as determined by the Department, the Department reserves the right to further the concept should restraining elements be resolved. In such case, the Proposer will retain its rights to the inclusion on the project's list of Shortlisted Proposers provided a new or revised procurement ensues within three years of the initial date of submittal of the Proposer's conceptual unsolicited proposal. All conceptual unsolicited proposals will become the intellectual property of the Department.

AGREEMENTS

The Department may enter into one or more agreements with the successful Proposer. The agreements may be Interim Agreements, covering primarily project development or preconstruction activities, Comprehensive Agreements, financing agreements, operating agreements, or any other agreement appropriate to the project.

The Department may seek policy, legal, financial and/or technical advice as may be needed to successfully negotiate or execute the agreement(s).

The agreements may include, but not be limited to the following items:

- 1) Appropriation of responsibilities among parties
- 2) Allocation of risk among parties
- 3) Allocation of resources and costs among parties
- 4) Allocation of cost overruns
- 5) Penalties for non-performance
- 6) Incentives for performance
- 7) Invoicing and payment procedures
- 8) Bonding and insurance requirements
- 9) Limitations on user fees
- 10) Revenue sharing
- 11) Encroachment agreements
- 12) Environmental documentation (NEPA, permitting, etc.) requirements
- 13) Asset management requirements
- 14) Hand back provisions and expectations
- 15) Costs for third-party constraints such as railroads and utility companies
- 16) Cooperation with other existing or planned facilities
- 17) Rights-of-Way dedicated and the Department's use of eminent domain
- 18) Planning, development, design, construction, operation and maintenance standards
- 19) Submittal requirements
- 20) Inspection requirements and rights
- 21) Terms of reimbursement for services provided by the Department
- 22) Maximum rate or return on investment
- 23) Default of contract provisions
- 24) Force Majeure
- 25) Liability for personal injury, facility repair and unknown hazardous waste remediation
- 26) Record retention and audit requirements
- 27) Submission and review of financial statements
- 28) Other requirements suitable to the type, size, complexity and duration of the contract

Execution of the agreement(s) shall be subject to the concurrence of the Secretary of Transportation and the Board of Transportation. Execution of the Agreement(s) is also dependent on all necessary federal actions.

The Local Government Commission (LGC) shall approve all projects that include the issuance of debt or debt-like instruments to pay for capital costs or projects where the final non-retainage payment for completed transportation infrastructure is made later than 18 months after final acceptance by the Department.

PROTECTION AGAINST DISCLOSURE

All SOQ, LOI and Proposals submitted to the Department become the property of the Department upon their submission and may be, except as provided by North Carolina law, subject to the Public Records Act. If a Proposer wishes to provide the Department with information that the Proposer believes constitutes a trade secret, proprietary information or other information exempt from disclosure, the Proposer shall specifically designate that information as such in its proposal. Further, the Proposer shall identify the statute on which the confidential status is claimed as well as the specific material that the Proposer believes is confidential under that statute.

The Proposer's designation shall not be determinative of the trade secret, proprietary or exempted nature of the information so designated as a matter of law.

RESERVATIONS

The Department reserves all rights available to it by law in administering these policies and procedures, including without limitation the right in its sole discretion to:

- 1) Withdraw a RFQ or a RFP at any time and either issue a new request or suspend the solicitation indefinitely.
- 2) Reject any and all SOQ, LOI or Proposals at any time.
- 3) Terminate evaluation of any and all SOQ, LOI or Proposals at any time.
- 4) Issue a RFQ and RFQP for competing proposals for any project presented to the Department in the form of an Unsolicited Proposal.
- 5) Suspend, discontinue or terminate negotiations with any Proposer at any time prior to the actual authorized execution of a final development agreement by all parties.
- 6) Negotiate with a Proposer or Proposers without being bound by any provision in its Proposal.

- 7) Negotiate with a Proposer to include in the development agreement any aspect of unsuccessful Proposals.
- 8) Request or obtain additional information about any Technical Proposal from any source at any time.
- 9) Modify or issue addenda to any RFQ or RFP at any time, including after review of competing Proposals.
- 10) Permit or request clarifications or supplements to SOQ and Proposals, either for responsive or non-responsive Proposals.
- 11) Ensure information provided to Proposers is done so for convenience and is without representation or warranty of any kind.
- 12) Enter into a contract with a Proposer with the next best value proposal (or next highest ranked proposer) in the event that the Department cannot finalize a contract, including financial close as applicable, with the Proposer with the best value proposal (or highest ranked Proposer) or the Proposer fails to satisfy all obligations to be performed prior to contract execution, including financial close as applicable, as described in the RFP.
- 13) Amend, supersede or supplement any part of these Policy and Procedures, provided the amendment or supplement is clearly denoted in the RFQ or RFP as appropriate.
- 14) Reject any and all unsolicited proposals without exception.