TEXAS DEPARTMENT OF TRANSPORTATION

PUBLIC-PRIVATE PARTNERSHIP (P3) GUIDELINES

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I. INTRODUCTION.

The Texas Department of Transportation ("the Department") is charged by law with the management, operation, and development of transportation systems that will serve the mobility needs of people and movement of freight in both rural and urbanized areas of the state, by all modes of transportation including highways and toll roads, aviation, public transportation, railroads, and water traffic. To accomplish this mission, the Department acquires real property interests not only for the construction, maintenance, and operation of highways in the state highway system, but also for the storage of materials and equipment, and for the construction, maintenance, and operation of roadside parks, warehouse and maintenance facilities, administrative office buildings, vehicle and equipment parking lots, ancillary toll facilities, ferries, rail stations and maintenance facilities, airports, and other similar transportation related facilities. In order to expedite and reduce the cost of development, improvement, and operation of needed transportation facilities, the Department will consult and work cooperatively with private entities under these Guidelines to encourage and facilitate investment and financing of these public projects.

A. GUIDELINES OVERVIEW.

Effective September 1, 2011, the 82nd Texas Legislature enacted the *Public and Private Facilities and Infrastructure Act*, Chapter 2267, Texas Government Code. Pursuant to Section 2267.052 of the Act, the Department adopts these Guidelines for the purpose of encouraging private entity participation, creativity, and competition, and to guide the selection of qualifying projects in the public-private partnership development program. These Guidelines will furnish the private sector with a predictable and uniform process:

1. to respond to solicited proposals;

2. to submit unsolicited proposals; and

3. to provide for a fair and transparent evaluation and selection process for both solicited proposals and unsolicited proposals in accordance with Texas law.

The Guidelines, however, are not inflexible rules and will be subject to reasonable waivers, deviations and exceptions that may be necessary during implementation in order to preserve competitive tension while maintaining the integrity of a particular procurement.

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B. DECLARATION OF PURPOSE.

By enacting the Public and Private Facilities and Infrastructure Act, the Texas Legislature found that:

1. there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities in this state that serve a public need and purpose;

2. the public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;

3. there are inadequate resources to develop new education facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and private entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

4. financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with private entities or other persons to develop qualifying projects; and

5. authorizing private entities or other persons to develop or operate one or more qualifying projects may serve the public safety, benefit, and welfare by making the projects available to the public in a more timely or less costly fashion.

C. QUALIFYING FACILITIES AND PROJECTS.

A public-private partnership is a contractual agreement entered into between a public agency (federal, state or local) and a private sector person or entity for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public financing. Through this contractual agreement, the assets and professional skills of both public and private sectors (e.g., planning, designing, financing, constructing, operating, maintaining, and owning) are shared to deliver a service or facility for a public use, and each sector shares in the potential risks of the timely and efficient delivery of the service or facility. To be considered under the Department's public-private partnership development program, a proposal must be a "qualifying project," as defined hereafter in Section II.

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D. DESIGNATED CONTACT.

The Department designates the following representative to meet with private entities who are considering submitting a proposal.

Facilities Management Section Director
Maintenance Division
Texas Department of Transportation
Riverside Annex, Building 150
North Tower, 4th Floor
150 E. Riverside Drive
Austin, Texas 78704
(512) 416-3049

The Department's designee is available *by appointment only,* Monday – Friday between 9:00 a.m. – 4:00 p.m., C.S.T.

E. ILLUSTRATIVE CHART OF DECISION POINTS AND ESTIMATED TIMELINE.

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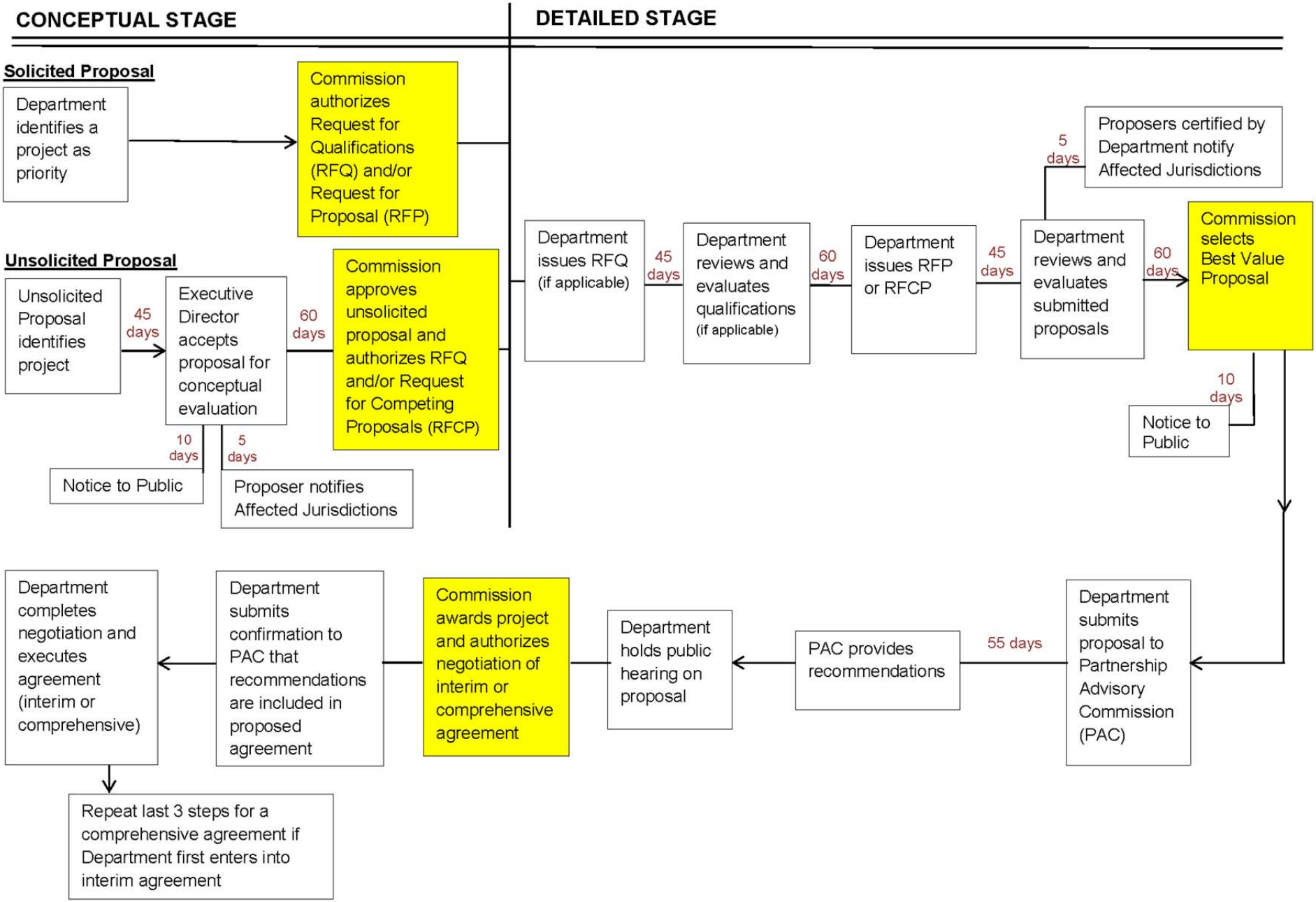
The process detailed in this chart is for illustrative purposes only. The decision points and timelines may vary depending on the complexity of the particular qualifying project.



II. GENERAL PROVISIONS.

A. DEFINITIONS.

Unless otherwise specified, the following terms as used in these Guidelines shall have the meanings set forth below:

"Act" means the *Public and Private Facilities and Infrastructure Act*, Chapter 2267, Texas Government Code.

"Affected jurisdiction" means any county or municipality in which all or a portion of a qualifying project is located.

"Comprehensive agreement" means the comprehensive agreement between the contracting person and the Department for the development or operation of a qualifying project.

"Conceptual stage" means the initial phase of qualifying project evaluation for an unsolicited proposal when the Department makes a determination whether a qualifying project serves a public purpose, meets the criteria for a qualifying project, assesses the qualifications and experience of a private entity, reviews the qualifying project for financial feasibility, and warrants further pursuit.

"Contracting person" means an individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity that enters into a comprehensive or interim agreement with the Department.

"Days" means calendar days unless otherwise indicated.

"Detailed proposal" means a proposal for a qualifying project accepted by the Department for a detailed analysis and evaluation in response to a request for proposals or a request for competing proposals after approval of an unsolicited proposal, that provides information beyond a conceptual level and that also defines and establishes periods related to fixing costs, payment schedules, financing, deliverables, and project schedule.

"Detailed stage" means the phase of qualifying project evaluation after issuance of a request for proposals or qualifications, or issuance of a request for competing proposals after approval of an unsolicited proposal. During this stage, the Department may request additional information regarding a qualifying project prior to entering into

competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

"Develop" or **"Development"** means to plan, design, develop, finance, lease, acquire, install, construct, or expand a qualifying project.

"Executive Director" means the Executive Director of the Department, or a designee not below the level of deputy Executive Director or chief strategy and administrative officer.

"Interim agreement" means an agreement, before or in connection with the negotiation of the comprehensive agreement, authorized by these Guidelines between the Department and a contracting person for the development or operation, or both, of a qualifying project. The interim agreement may authorize the contracting person to begin activities or project phases related to the qualifying project including, but not limited to, project planning and development, design, engineering, environmental analysis and mitigation, surveying, financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities, or any other phase of the qualifying project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by the Department to the contracting person for the use of a qualifying project.

"Lifecycle cost analysis" means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, estimates of sufficient capital improvement reserves, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate a qualifying project.

"Partnership Advisory Commission" or "PAC" means the advisory commission in the legislative branch established in accordance with Chapter 2268, Texas Government Code, that advises responsible governmental entities on proposals received under the Act.

"Public-Private Partnership Program" or "P3 Program" means the public-private partnership program implemented in accordance with the Act.

"Private entity" means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit

corporation, nonprofit entity, or other business entity. A private entity includes a "proposer" that submits an unsolicited proposal or a "proposer" that submits a proposal in response to a solicitation or request for competing proposals.

"Proposer" means a private entity that submits an unsolicited proposal as well as any proposal in response to a solicitation, including a request for proposals, request for qualifications, and request for competing proposals.

"Qualifying project(s)" means (i) any warehouse, maintenance facility, administrative office building, vehicle and equipment parking facility, roadside park, ancillary toll facility, ferry, rail station and associated maintenance facility, airport and associated maintenance facility, mass transit facility, port facility, power generation facility, fuel supply facility, or other similar structure or facility currently available or to be made available to the Department for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or (ii) any improvements necessary or desirable to unimproved real estate owned by the Department. A qualifying project does not include a highway on the state highway system.

"Request for information" or "RFI" means a process for collecting information from potential providers on certain aspects of a procurement or potential procurement for the development or operation of a qualifying project.

Request for competing proposals" or "RFCP" means a request for submittal of a detailed proposal from private entities to develop or operate a qualifying project after approval by the Commission of an unsolicited proposal.

"Request for proposals" or "RFP" means a request for submittal of a detailed proposal from private entities to develop or operate a qualifying project.

"Request for qualifications" or "RFQ" means a request for submission by a private entity of a description of that entity's experience, technical competence, and capability to develop or operate a qualifying project.

"Revenue" means all revenue, income, earnings, user fees, lease payments, or other service payments that support the development or operation of a qualifying project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the qualifying project.

"Service contract" means a contract between the Department and a contracting person under Section 2267.054, Texas Government Code.

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"Service payment" means a payment to a contracting person of a qualifying project under a service contract.

"Solicitation" means a written request related to the development or operation of a qualifying project by a private entity, issued by the Department, soliciting responses including but not limited to: business plans, expressions of interest, ideas, offers, proposals, qualifications, or any combination thereof.

"State" means the State of Texas acting by and through the Texas Transportation Department, an agency of the State, which acts by and through the Texas Transportation Commission.

"User fee" means a rate, fee, or other charge imposed by a contracting person for the use of all or part of a qualifying project under a comprehensive agreement.

B. PROPOSAL SUBMISSION.

A private entity submitting a proposal that requests approval of a qualifying project shall specifically and conceptually identify any facility, building, infrastructure or improvement included in the proposal as a part of the qualifying project. Although the Department may from time to time identify opportunities for development of qualifying projects and initiate the process for review and approval by a solicitation of proposals and qualifications, those development opportunities are not exclusive. Private entities are encouraged to also develop and submit unsolicited proposals under Section IV that are consistent with the goals set out in the Introduction to these Guidelines.

A private entity submitting an unsolicited proposal is required to follow a two-part proposal submission process consisting of a conceptual stage and a detailed stage. The conceptual proposal and the detailed proposal shall each contain specified information on the private entity's qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit, value, and compatibility, as set out in Section V.

Private entities are urged to include innovative financing methods, including the imposition of user fees or other forms of service payments, in a proposal. The P3 program is a flexible development tool that allows the use of innovative financing techniques. The contracting person can be involved in a variety of ways, from designing the facility to undertaking its financing, construction, operation, maintenance, and management. Depending on the circumstances of each qualifying project, types of public-private partnerships, include but are not limited to: combinations of construction and services involving design, build, finance, maintain, and operate; as well as real property relationships involving ownership, exchange, lease, lease-purchase and other

methods allowed by law. Proposals should be prepared simply and economically, providing a concise description of the private entity's capabilities to complete the qualifying project and the benefits derived by the State from the qualifying project. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the qualifying project. Proposals must include a comprehensive scope of work and a financial plan for the qualifying project, containing enough detail to allow an analysis by the Department of the financial feasibility of the qualifying project. For specific proposals, the Department may follow up with a request for clarification to the submission. The cost analysis of a proposal should not be linked solely to the financing plan, as the Department may determine to finance the qualifying project through other available means.

The P3 program is intended to encourage proposals from the private sector that offer the provision of private financing in support of the qualifying project, which may include commensurate risk to the private entity, but may also benefit the private entity through innovative approaches to project financing, development and use. Proposals may include in-kind consideration, in an amount that is not less than the fair market value of the real property interest, for development of a qualifying project; including but not limited to construction of new facilities, alteration and restoration of existing facilities, and environmental remediation. The Department shall continue to exercise full and proper due diligence in the evaluation and selection of qualifying projects. In this regard, the qualifications, capabilities, resources and other attributes of a private entity and its whole team shall be carefully examined for every qualifying project. In addition, a private entity shall be held strictly accountable for representations and information provided regarding its qualifications, experience and other contents of its proposals, including all specific aspects of proposed plans to be performed by the private entity.

C. TEXAS PUBLIC INFORMATION ACT.

The Department is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. Most information collected, assembled, or maintained by the Department in connection with the transaction of official business is public information subject to disclosure upon written request. The Public Information Act exempts certain categories of information from required public disclosure. The Office of the Attorney General determines whether information may be withheld, not the Department.

All information provided to the Department will be handled in accordance with the Act and the requirements of the Texas Public Information Act while in the Department's possession. The Act provides that:

> trade secrets, financial records, or other records of a private entity or the contracting person excluded from disclosure under Government Code Section

552.101 may not be posted or made available for public inspection except as otherwise agreed to by the Department and a private entity or the contracting person; and

any inspection of procurement transaction records is subject to reasonable restrictions to ensure the security and integrity of the records; provided however, cost estimates relating to a proposed procurement transaction prepared by or for the Department are not open to public inspection.

All documents submitted as a proposal under these Guidelines should be regarded as public records and subject to disclosure; provided however, such documents will be held in confidence by the Department as required by the Act and to the requirements of the Public Information Act. A private entity may identify those portions of a proposal that the private entity considers to be trade secrets or confidential commercial, financial, or proprietary information. The Department will disregard blanket statements regarding the confidentiality of information. In order for confidential and proprietary information and trade secrets to be considered exempt from disclosure, the private entity shall do each of the following:

1. invoke such exclusion upon submission of the information or other materials contained within the proposal for which protection is sought;

2. identify the data or other materials for which protection is sought with conspicuous labeling;

3. state the reasons why protection is necessary; and

4. fully comply with any applicable provisions of Texas law with respect to information the private entity contends should be exempt from disclosure.

The Department will process any third-party request for disclosure of information comprising all or part of the response to the solicitation or other information in accordance with the procedures prescribed by the Texas Public Information Act. Private entities are directed to the Attorney General's web site (www.oag.state.tx.us) which is the Department's reference for information concerning the application of the provisions of the Public Information Act. The Department's public information policy and instructions on how to submit a request are available on the Department's website at:

http://www._____.

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All inquiries must be submitted in writing addressed to Texas Department of Transportation, Attention: Office of General Counsel, 125 E. 11th Street, Austin, Texas 78701, with a copy to Executive Director, 125 E. 11th Street, Austin, Texas 78701.

D. USE OF PUBLIC FUNDS.

The State's constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive development agreement entered into under the P3 program. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any qualifying projects.

E. APPLICABILITY OF OTHER LAWS.

The laws of the United States and the State of Texas are incorporated in these Guidelines by reference for all purposes. Compliance by each private entity is mandatory.

F. ADJUSTMENT OF TIMELINES AND PROCEDURES.

Except for specific time periods and procedures established by Chapters 2267 and 2268, Texas Government Code, the Executive Director, on behalf of the Department, may accelerate and modify the solicitation, evaluation, selection, review, and documentation timelines and procedures set out in these Guidelines for proposals involving a qualifying project considered a priority by the Department; and may extend the timelines for such additional periods of time and add procedures as are determined by the Executive Director to be necessary or convenient to provide for a fair and complete evaluation and selection process. In determining whether to authorize additional time and procedures, the Executive Director will consider the complexity of the proposed qualifying project.

G. RESERVATION OF RIGHTS.

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

1. withdraw a solicitation, including a request for proposals, at any time and issue a new request;

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2. reject any and all proposal submittals, whether solicited or unsolicited, at any time;

3. terminate evaluation of any and all proposal submittals, whether solicited or unsolicited, at any time;

4. issue a request for proposals relating to a project described in an unsolicited proposal after the rejection or termination of the evaluation of the proposal and any competing proposals;

5. suspend, discontinue, or terminate either interim or comprehensive agreement negotiations with any proposer or proposer at any time prior to the actual authorized execution of such agreement by all parties;

6. negotiate with a proposer without being bound by any provision in its proposal, whether solicited or unsolicited;

7. negotiate with a proposer to include aspects of unsuccessful proposals for that project in the interim or comprehensive agreement;

8. request or obtain additional information about any proposal from any source;

9. modify, issue addenda to, or cancel any request for proposals;

10. waive deficiencies in a proposal submittal, accept and review a non-conforming proposal submittal, or permit clarifications or supplements to a proposal submittal; or

11. waive, revise, supplement, or make substitutions for all or any part of these Guidelines.

H. PROCEDURE FOR COMMUNICATION.

If a proposer has a question or request for clarification regarding these Guidelines or any request for proposals and qualifications or a request for competing proposals issued by the Department, the proposer shall submit the question or request for clarification in writing to the person responsible for receiving those submissions, as designated in these Guidelines or the request for proposals and qualifications or request for competing proposals, as applicable, and the Department will provide the responses in writing. A proposer shall also comply with any other provisions in the request for proposals and qualifications or request for competing proposals regulating communications.

I. REQUEST FOR INFORMATION.

At any time prior to the Department's issuance of either a request for qualifications, request for proposals, or request for competing proposals, the Department may solicit a request for information to assist with the scoping and feasibility analysis of a particular qualifying project. The process for a RFI will include formatted questions that will be used for comparative purposes. The information can be requested in written or oral format.

J. CONSENT.

In submitting any proposal, the proposer shall be deemed to have unconditionally and irrevocably consented and agreed to the foregoing provisions and all other provisions of these Guidelines and any applicable solicitation.

K. APPROVALS.

The Department, in its sole discretion, may authorize the successful proposer to seek licensing, permitting, approvals, and participation required from other governmental entities and private parties, subject to such oversight and review by the Department as specified in the interim or comprehensive agreement.

L. ADDITIONAL MATTERS.

Any matter not specifically addressed in these Guidelines which pertains to the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of a qualifying project, shall be deemed to be within the primary purview of the Texas Transportation Commission (the "Commission"), and all decisions pertaining thereto, whether or not addressed in these Guidelines, shall be as determined by the Commission, subject to the provisions of applicable law.

M. COSTS.

Except as provided in Section IV.A., under no circumstances will the State, the Department, or any of their agents, representatives, consultants, directors, officers, or employees be liable for, or otherwise obligated to, reimburse the costs incurred by proposers or proposers, whether or not selected for negotiations, in developing solicited or unsolicited proposals or in negotiating agreements.

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III. SOLICITED PROPOSALS.

A. PROPOSAL.

The Department, in accordance with Commission order and the provisions of this Section, may invite bids or proposals from private entities for purposes that constitute a qualifying project. The procedures and requirements applicable to any particular solicited proposal shall be specified in the solicitation for that proposal. The Commission may either commence the process by authorizing a request for qualifications or authorizing the Department to proceed directly to a request for proposals.

B. REQUEST FOR QUALIFICATIONS.

If authorized by the Commission to issue a request for qualifications for a qualifying project, the Department will set forth the basic criteria for professional experience, technical competence, and capability to complete a proposed project, and such other information as the Department considers relevant or necessary in the request for qualifications and will publish and advertise it as provided in Subsection D. of this Section. The Department may also elect to furnish the RFQ to businesses in the private sector that the Department otherwise believes might be interested and qualified to participate in the qualifying project which is the subject of the RFQ.

At its sole option, the Department may elect to furnish conceptual designs, fundamental details, technical studies and reports or detailed plans of the proposed qualifying project in the RFQ. The RFQ may request one or more conceptual approaches to bring the project to fruition.

The Department, after evaluating the qualification submittals received in response to a RFQ, will identify and approve a "short-list" that is composed of those private entities that are considered most qualified to submit detailed proposals for a proposed qualifying project. In evaluating the qualification submittals, the Department will consider the objective evaluation criteria that the Department considers relevant to the project, which may include the private entity's financial condition, management stability, technical capability, experience, staffing, and organizational structure. The RFQ will include the criteria used to evaluate the qualification submittals and the relative weight given to the criteria. The Department shall advise each entity providing a qualification submittal whether it is on the short-list of qualified entities.

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C. REQUEST FOR PROPOSALS.

If authorized by the Commission, the Department will issue a request for proposals consisting of the submission of detailed documentation regarding the designated qualifying project. The response to any RFP shall be a detailed proposal and include the information and be in the format set out in Section V.B. When the process is commenced with a RFQ, the RFP will be limited to those private entities qualified for the short-list in accordance with Subsection B. of this Section.

D. SOLICITATION.

All solicitations of a RFQ or RFP will be by issuance of a written request. The Department will publish and advertise a notice on the Department's website and TexasOnline or the State's official internet website. The notice shall summarize the qualifying project, identify the proposed location of each project, and include specific information and documentation regarding the nature, timing, and scope of the qualifying project. The notice shall also state that the Department will accept for consideration any proposals or qualifications submittals, as applicable, for a period of not less than forty-five (45) days after the initial publication of the notice, or such additional time as authorized by Commission order. In determining whether to authorize additional time for submission of proposals and qualifications, the Commission will consider the complexity of the proposed project.

Only proposals that comply with the requirements of the Act, these Guidelines, and the Department's solicitation and which contain information sufficient for meaningful evaluation will be considered. Proposals will be evaluated by the Department within sixty (60) days after identification of those proposals determined to be in compliance, based on the evaluation criteria set out in Section VI. and any additional criteria and request for pertinent information set forth in the solicitation.

In order to (i) provide an effective analysis during the detailed evaluation of proposals submitted in response to a request for qualifications or a request for proposals under this Section, or a request for competing proposals to an unsolicited proposal under Section IV., and (ii) assist with the negotiation of a comprehensive agreement, the Department may engage professional financial, technical, legal and other necessary advisors or consultants having appropriate experience in analyzing innovative financing methods, complex real estate development methods, and public-private partnership proposals. The Department may require each private entity submitting a proposal accepted for detailed evaluation to pay the fees of any advisors, attorneys, or consultants engaged by the Department to complete evaluation of the proposal. Payment shall be made in the manner and amounts set out in the request for qualifications, request for proposals, or request for competing proposals, as applicable.

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Any submissions that are not received in response to a solicitation shall be deemed an unsolicited proposal under Section IV.

E. SELECTION OF PROPOSAL.

Based on the evaluation and the evaluation criteria described in Section VI., the Department will rank all proposals that are complete, responsive to the request for proposals or request for competing proposals, as applicable, and in conformance with the requirements of these Guidelines, and may select the proposer whose proposal offers the apparent best value to the Department.

The Department will submit a recommendation to the Commission regarding approval of the proposal it ranks as providing the apparent best value to the Department. The Commission may approve or disapprove the recommendation, and if approved, will select the proposal for a qualifying project it determines to be the apparent best value. The selection will be subject to (i) review and consideration of the findings and recommendations, if any, of the Partnership Advisory Commission and comments from affected jurisdictions and the public, and (ii) a final award by the Commission.

F. AWARD OF QUALIFYING PROJECT.

Following receipt of (i) comments from affected jurisdictions and the public in response to the Department's notice and hearing as provided in Section VII, and (ii) recommendations from the Partnership Advisory Commission or notice that it declined review of the proposal as provided in Section VIII, the Commission may award the qualifying project to the apparent best value proposer. The award will be subject to negotiation of an interim or comprehensive agreement, any necessary federal action, execution by the Executive Director of the agreement, and satisfaction of such other conditions that are identified in the request for proposals or request for competing proposals, as applicable, or by the Commission.

IV. UNSOLICITED PROPOSALS.

A. PROPOSAL SUBMISSION.

The Act authorizes the Department to receive, evaluate and select unsolicited proposals from private entities to design, develop, finance, lease, acquire, install, construct, expand, improve, renovate, equip, operate, or maintain a qualifying project.

The Department may publicize its needs to encourage interested parties to submit proposals subject to the terms and conditions of the P3 program. When such proposals are received without issuance of a RFQ, RFP, or request for competing proposals under Subsection B., the proposal shall be treated as an unsolicited proposal.

Contemporaneously with submission of an unsolicited proposal, the private entity shall pay a preliminary review fee to the Department in the amount of Ten Thousand and No/100 Dollars ($10,000.00) to be applied to offset the internal costs of processing, reviewing and evaluating the proposal. All fees shall be submitted in the form of a cashier's check made payable to the Department. If the proposal is summarily rejected during preliminary review or is not accepted by the Executive Director for a conceptual evaluation, the proposal, all fees, and the accompanying documentation will be returned to the private entity; otherwise, the review fee is non-refundable.

B. PRELIMINARY REVIEW, CONCEPTUAL EVALUATION, ACCEPTANCE, AND APPROVAL OF UNSOLICITED PROPOSAL.

Only proposals that comply with the requirements of the Act and these Guidelines and which contain information sufficient for meaningful evaluation will be considered. Within thirty (30) days of receiving a proposal, the Department's Maintenance Division will complete a preliminary review to determine whether to recommend the proposal for conceptual evaluation. The Department reserves the right at all times to reject any proposal at any time for any reason.

Proposals recommended for conceptual evaluation by the Maintenance Division will be submitted with a summary recommendation to the Executive Director. Within fifteen (15) days of receiving a recommendation, the Executive Director will consider the recommendation and determine if the Department will accept the proposal for conceptual evaluation. If accepted by the Executive Director, the private entity will be notified and the conceptual stage will begin. The proposal will be evaluated by the Department within sixty (60) days following acceptance, based on the evaluation criteria set out in Section VI. The Department may meet with the proposer as necessary to clarify the proposal, or may issue requests for clarification.

Based on the conceptual evaluation, the Executive Director will determine if the proposal will be presented to the Commission for determination of whether or not to approve the proposal for further consideration and undertake a detailed evaluation. If the Commission chooses to approve an unsolicited proposal for detailed stage evaluation, then in order to encourage competition for providing the best value to the Department in accordance with its stated goals and to allow other private entities an opportunity to participate, the Department will publish and advertise a notice on the Department's website and TexasOnline or the State's official internet website. The

notice shall state that the Department (i) has received and accepted an unsolicited proposal under the P3 program, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the private entity based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals and qualifications that comply with Section V.B. for a period of not less than forty-five (45) days after the initial publication of the applicable notice, or such additional time as authorized by Commission order. In determining whether to authorize additional time for submission of competing proposals and qualifications, the Commission will consider the complexity of the proposed project. The notice also shall summarize the qualifying project or projects, identify the proposed location of each project, and include specific information and documentation regarding the nature, timing, and scope of the qualifying project. The Department will analyze the adequacy of the information to be included in the notice and provide more detailed information, if the Department determines necessary, to encourage competition, subject to protection of confidential and proprietary information provided by the proposer in accordance with Texas Government Code, Section 2267.053(g).

In the alternative, the Commission may determine (i) not to proceed further with any proposal, or (ii) proceed using standard procurement procedures consistent with the Department's procurement policies.

The process for a request for competing proposals and qualifications will proceed in the manner described in Section III. B. and C., as applicable.

C. REVIEW OF COMPETING PROPOSALS.

The private entity submitting the original unsolicited proposal shall be required to submit a detailed proposal and qualification submittal in response to the request for competing proposals and qualifications. A proposal and qualification submittal submitted by the entity and any other entity in response to a request must contain the information required by Section V.B. and any other information required in the request for competing proposals and qualifications.

Failure by a prospective proposer to submit a competing proposal and qualification submittal within the forty five (45) day period or such additional time as authorized by the Commission, shall preclude the proposal and qualification submittal from consideration by the Department unless and until the Department terminates consideration of, or negotiations on, the original unsolicited proposal, as supplemented in response to the request for competing proposals and qualifications, and any and all competing proposals and qualification submittals received within that time period. The Department shall not be obligated to grant requests to extend the time period to submit competing proposal and qualification submittals. The receipt of one or more competing

unsolicited proposals during that period will not trigger the posting or publication of a new notice or the commencement of any new time period.

If the Department receives proposals that have certain characteristics in common with the original unsolicited proposal, yet differ in other material respects, the Department reserves the right, in its sole discretion, to treat such a proposal as either a competing proposal and qualification submittal or a noncompeting proposal. Because of the consequences to a proposer of failing to submit a competing proposal and qualification submittal within the forty five (45) day period, or such additional time as authorized by the Commission, prospective proposers are strongly urged to monitor the Department's notices of unsolicited proposals received, and be prepared to submit within that time period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, an unsolicited proposal which is the subject of a notice. A proposal that is deemed to be noncompeting will be evaluated as a new unsolicited proposal in accordance with this Section.

Upon expiration of the forty five (45) day period, or such additional time as authorized by the Commission, the Department will review the detailed proposal and qualification submitted by the original proposer, together with any and all properly submitted competing proposal and qualification submittals, utilizing the evaluation criteria set out in Section VI. If no properly submitted competing proposal and qualification is received, the Department will evaluate the detailed proposal submitted by the original proposer. The process will then proceed in the manner described in Section III. E. and F.

V. PROPOSAL PREPARATION AND SUBMISSION.

A. FORMAT FOR SUBMISSIONS OF UNSOLICITED PROPOSALS (CONCEPTUAL STAGE).

NOTE: THE PRIVATE ENTITY, AT ITS SOLE DISCRETION, MAY INCLUDE ITEMS REQUIRED IN SUBSECTION B. FOR THE DETAILED STAGE SUBMITTAL AS PART OF ITS CONCEPTUAL STAGE SUBMITTAL.

NOTE: EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE GUIDELINES, PRIVATE ENTITIES ARE ASKED NOT TO CONTACT MEMBERS OR STAFF OF THE DEPARTMENT, THE DEPARTMENT, ANY ELECTED OR APPOINTED OFFICIAL, OR STATE EMPLOYEE DURING ANY SOLICITATION.

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The Department shall not be liable for any cost incurred by a private entity in preparing, submitting or presenting the unsolicited proposal and in satisfying any demonstration or other requirements for an unsuccessful proposal. All submittals, at a minimum, shall provide the following unless a waiver of the requirement or requirements is agreed to in writing by the Department.

1. All proposals must be organized in the manner outlined below and submitted with the applicable review fee defined in these Guidelines. The proposal shall be limited to a maximum of fifteen (15) pages, plus any attachments containing supplemental materials and drawings. Brevity is appreciated. All proposals shall be submitted as one (1) original and thirteen (13) copies and one (1) electronic copy (searchable PDF format on CD). The original copy containing original signatures shall be marked **ORIGINAL** on the cover letter.

2. The private entity shall also submit trade secrets, financial records, proprietary or other confidential records exempt from disclosure under Government Code Section 552.101 in a separate, sealed envelope, designated on the cover as **CONFIDENTIAL MATERIALS**. Include a cover letter listing all exempt material. Clearly mark any material believed to be a trade secret, confidential or proprietary information protected from disclosure under applicable law. Such material must be clearly marked in all caps as **CONFIDENTIAL** using a word processing watermark or stamp. Handwritten notices of confidentiality may be disregarded**.**

3. Proposals shall be packaged and submitted in the following format:

   a. Pages shall be numbered and organized by paginated table of contents corresponding to the tabbed sections identified below.

   b. The submittal shall be divided into tabbed sections as follows:

      TAB 1: Executive Summary
      TAB 2: Qualifications
      TAB 3: Financial Capacity
      TAB 4: Proposal
      TAB 5: Addenda and Supplemental Materials

   c. The contents shall be printed on spiral bound 8½" x 11" paper (except A/E drawings and renderings).

   d. Drawings shall be printed no larger than 24" x 36".

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e. Supplemental materials in alternate formats may be included in TAB 5 to describe the proposal in more detail.

4. Label: All **unsolicited proposal submissions** shall be addressed to Texas Department of Transportation, to the attention of Facilities Management Section Director, Maintenance Division, Riverside Annex, Building 150, North Tower, 4th Floor, 150 E. Riverside Drive, Austin, Texas 78704, in a sealed envelope marked:

DO NOT OPEN IN MAILROOM
Property ID
Proposer's Name
Mailing Address
Proposal Date

5. To the greatest extent possible the conceptual stage submittal shall be sufficient to convey the experience and capacity of the development team, the overall quality and character of the qualifying project, as well as the financial and implementation strategies to ensure successful completion of the qualifying project. Submittals shall contain the specified information and be organized in tabbed sections as follows:

TAB 1: COVER LETTER AND EXECUTIVE SUMMARY.

Provide a cover letter, signed by an authorized representative of the private entity, including the information detailed below:

a. Identification:

(1). identify the private entity or consortium of private entities and the legal structure of each entity which will be directly involved in the qualifying project, including their physical address, mailing address, phone number, and email address;

(2). identify the principal(s) including their title, mailing address, phone number, and email address;

(3). identify the person(s) in charge of negotiations, key personnel who will be involved in decision making, and the representative authorized to sign on behalf of the private entity; and

(4). identify the name and address of each individual who may be

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contacted for further information concerning the request.

b. Executive summary: Include an executive summary that highlights the key components of the qualifying project; including but not limited to describing the private entity, it's qualifications and experience with similar projects, highlights of the proposal and qualifying project analyses, and the community impact and benefits of the qualifying project. The executive summary shall be limited to a maximum of five (5) pages.

TAB 2: QUALIFICATIONS.

The private entity must provide demonstrable experience in the development and operation of projects of similar complexity, scope and scale to the proposed qualifying project. The submission must describe relevant experience with respect to the development and operation of other commercial or public-private partnership projects, clearly distinguishing the experience of the private entity (including joint venture partners) from that of consultants and other team members. To substantiate experience and ability to perform, the following information shall be provided:

a. Describe the length of time in business, business experience, public sector experience, and other engagements of the private entity or consortium of private entities.

b. Provide resumes and work experience of each team member.

c. For the private entity and each major subcontractor that will be utilized in the qualifying project, provide a statement listing all prior projects and clients for the past five (5) years and contact information for same. If a private entity or major subcontractor has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the qualifying project and, second, it shall include as many of its most recent projects as possible.

d. At least three (3) development references (name, title, entity, telephone number, mailing address, and contractual relationship) that can be contacted with respect to current and past project experience.

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TAB 3: FINANCIAL CAPACITY.

Establish and demonstrate access to financial resources such as the ability to raise equity and secure debt capital to deliver the qualifying project in a professional and timely manner. To substantiate experience and ability to perform, the following information shall be provided:

a. A qualification statement that reviews all relevant information regarding financial resources of each private entity, including but not limited to bonding capacities and insurance coverage.

b. The most recent credit report or Dun & Bradstreet report and certified financial statements for the past four (4) years of each private entity or consortium of private entities and each partner with an equity interest of five percent (5%) or greater.

c. At least three (3) financial references (name, title, entity, telephone number, mailing address, and contractual relationship) that can be contacted with respect to current and past project experience.

TAB 4: PROPOSAL.

Provide an overview of the qualifying project including the project development plan, conceptual design of any facility or a conceptual plan for the provision of services, and financial plan. The qualifying project overview, at a minimum, must include:

a. Project Development Plan.

(1). Describe the project development plan, general approach and strategy to advancing project development, the results expected from implementation of the plan and the critical factors for the project's success. Schematic design proposals are not required to be part of this submittal.

(2). Provide an implementation plan and strategy to develop, design, construct and deliver the project. Submit a conceptual development implementation plan with a preliminary schedule including construction start and completion dates, final acceptance dates, and other major milestones.

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(3). Describe the qualified personnel, material, and equipment resources available to the proposer that it will commit to the project. Team roles and responsibilities must be specifically described, including the use of major subcontractors and professional consultants. Discuss the current work backlog of each major participant and the capacity to perform the work. Describe with specificity the turnover history of key personnel during the course of similar projects listed in the submittal.

(4). Based on knowledge of the surrounding area, adjacent land use and the proposed qualifying project, provide a list of factors that may impact the qualifying project and the existing neighborhood or landowners, including potential political, economic, transportation, and environmental factors. Identify any anticipated public support or opposition for the project and any affected jurisdictions.

b. Conceptual Site Plan.

(1). Provide a conceptual site plan that characterizes the context of the design of the qualifying project, which at a minimum, shall include proposed land use and the approximate location and size of proposed structures or facilities, and the relationship of the qualifying project to the surrounding area. The site plan shall indicate all major pedestrian entrances, all proposed outdoor areas and the circulation plan showing how the project relates to public rights-of-way to and within the site for all modes of transportation including pedestrian, cycling, public transportation, and motor vehicles.

(2). To the extent the private entity has identified the preliminary programming of facilities, including if any, the mix of uses, square footage(s), anticipated total project cost and cost per square foot, total parking spaces, parking allocations (shared or exclusive), and types of parking (e.g. structured or surface); describe the proposal.

c. Financial Plan.

(1). Describe the proposed business arrangements (i.e. performance based infrastructure, participation rent, concessions, parking management agreements, service

agreements, etc.).

(2). Describe the plan for the development, financing and operation of the qualifying project showing the anticipated schedule of which funds will be required.

(3). Describe the level and nature of the Department's participation sought by the proposer in connection with the project's development and implementation.

(4). To the extent the private entity has identified the type of user fees, lease payments, and other service payments over the term of any applicable agreement and the methodology for calculation; describe such proposal.

d. Special Conditions.

(1). Contingencies: Describe any contingencies or conditions requested by the private entity.

(2). Use of Federal, State or Local Funding: To the extent the private entity has identified federal, state, or local funding sources; describe such sources.

(3). Other Terms to Be Negotiated: Identify any additional terms or conditions to be included as part of the negotiation process. Include a discussion of any trades or swaps of property and special legislation or plan amendments required to facilitate the qualifying project.

TAB 5: ADDENDA AND SUPPLEMENTAL MATERIALS.

Use this tabbed section to present any item cited or referenced in the proposal.

B. FORMAT FOR SUBMISSIONS OF SOLICITED PROPOSALS (DETAILED STAGE).

NOTE: EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE GUIDELINES, PRIVATE ENTITIES ARE ASKED NOT TO CONTACT MEMBERS OR STAFF OF THE DEPARTMENT, THE DEPARTMENT, ANY ELECTED OR APPOINTED OFFICIAL, OR STATE EMPLOYEE DURING ANY SOLICITATION.

The Department shall not be liable for any cost incurred by a private entity in preparing, submitting or presenting its proposal and in satisfying any demonstration or other requirements for an unsuccessful proposal. All submittals, at a minimum, shall provide the following unless a waiver of the requirement or requirements is agreed to in writing by the Department.

1. All proposals must be organized in the manner outlined below and submitted with the applicable evaluation fees, if any, set out in the request for qualifications, request for proposals, or request for competing proposals. A proposal shall be limited to the maximum number of pages as set out in the applicable solicitation. Brevity is appreciated. All proposals shall be submitted as one (1) original and thirteen (13) copies and one (1) electronic copy (searchable PDF format on CD). The original copy containing original signatures shall be marked **ORIGINAL** on the cover letter.

2. The private entity shall also submit trade secrets, financial records, proprietary or other confidential records exempt from disclosure under Government Code Section 552.101 in a separate, sealed envelope, designated on the cover as **CONFIDENTIAL MATERIALS**. Include a cover letter listing all exempt material. Clearly mark any material believed to be a trade secret, confidential or proprietary information protected from disclosure under applicable law. Such material must be clearly marked in all caps as **CONFIDENTIAL** using a word processing watermark or stamp. Handwritten notices of confidentiality may be disregarded**.**

3. Proposals shall be packaged and submitted in the following format:

   a. Pages shall be numbered and organized by paginated table of contents corresponding to the tabbed sections identified below.

   b. The submittal shall be divided into tabbed sections as follows:

      TAB 1: Executive Summary
      TAB 2: Private Entity and Team
      TAB 3: Qualifications and Financial Capacity
      TAB 4: Proposal
      TAB 5: Project Analyses
      TAB 6: Community Impact
      TAB 7: Miscellaneous
      TAB 8: Addenda and Supplemental Materials

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c. The contents shall be printed on spiral bound 8½" x 11" paper (except A/E drawings and renderings).

d. Drawings shall be printed no larger than 24" x 36".

e. Supplemental materials in alternate formats may be included in TAB 8 to describe the proposal in more detail.

4. All submissions **for solicited proposals** shall be addressed to Texas Department of Transportation, to the attention of Facilities Management Section Director, Maintenance Division, Riverside Annex, Building 150, North Tower, 4th Floor, 150 E. Riverside Drive, Austin, Texas 78704, in a sealed envelope marked:

DO NOT OPEN IN MAILROOM
Request for Information/Proposal/Business Plan
Title of the Solicitation
RF#
Proposer's Name
Mailing Address
Submittal Deadline
Opening Date Time

5. Submissions for the detailed stage evaluation shall contain the specified information and be organized in tabbed sections as follows:

TAB 1: COVER LETTER AND EXECUTIVE SUMMARY.

Provide a cover letter, signed by an authorized representative of the private entity, including the information detailed below:

a. Identification:

(1). identify the private entity or consortium of private entities who will be directly involved in the qualifying project;

(2). identify the principal(s) including their title, mailing address, phone number, and email address;

(3). identify the person(s) in charge of negotiations, key personnel

who will be involved in decision making, and the representative authorized to sign on behalf of the private entity; and

(4). identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the qualifying project.

b. Private Entity Contact Information:

(1). identify the name and address of each individual who may be contacted for further information concerning the request;

(2). physical address (if a consortium, include the address of each partner or member);

(3). mailing address (if a consortium, include the address of each partner or member); and

(4). primary phone and facsimile number.

c. Executive summary: Include an executive summary that highlights the key components of the qualifying project; including but not limited to describing the private entity, it's qualifications and experience with similar projects, highlights of the proposal and qualifying project analyses, and the community impact and benefits of the qualifying project. The executive summary shall be limited to a maximum of five (5) pages.

TAB 2: PRIVATE ENTITY AND TEAM.

a. Identify the Private Entity:

(1). identify the legal structure of the private entity or consortium of private entities and its members or principals making the proposal; and

(2). to the extent the private entity is an entity required by law to register with the State of Texas, and for each member thereof, provide proof of authority to do business in Texas and, as applicable, a certificate of good standing from the Texas Comptroller of Public Accounts and Texas Secretary of State.

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b. Identify the Team:

(1). to the extent a team is created, provide a list including the company name, primary contact, title, address, telephone, and email of each team member and any selected or prospective professional or consultant which may include, but are not limited to analysts, architects, engineers, contractors, legal counsel, marketing firms, real estate brokerage and property management firms;

(2). identify the firms that will provide design, construction and completion guarantees and warranties;

(3). provide an organizational chart that clearly illustrates the team and identifies the role of each team member, including design professional, consultant or major contractor, participating in the development or operation of the qualifying project; and

(4). describe the management structure and the role each team member, partner and any prospective professional, consultant or major subcontractor will fulfill in the development or operation of the qualifying project.

NOTE: ALL MEMBERS OF THE PROPOSER'S TEAM, INCLUDING MAJOR CONTRACTORS AND CONSULTANTS KNOWN TO THE PROPOSER OR PROPOSER MUST BE IDENTIFIED IN THE PROPOSAL SUBMITTED FOR THE CONCEPTUAL STAGE REVIEW. IDENTIFIED TEAM MEMBERS MAY NOT BE SUBSTITUTED OR REPLACED ONCE A QUALIFYING PROJECT IS APPROVED AND COMPREHENSIVE AGREEMENT ENTERED INTO, WITHOUT THE WRITTEN APPROVAL OF THE DEPARTMENT.

TAB 3: QUALIFICATIONS AND FINANCIAL CAPACITY.

The private entity must provide demonstrable experience in the development and operation of qualifying projects of similar complexity, scope and scale to the proposed. The submission must describe relevant experience with respect to the development and operation of other commercial or public-private partnership projects, clearly distinguishing the experience of the private entity (including joint venture partners) from that of consultants and other team members. To substantiate experience and ability to perform, the following information shall be provided:

a. Describe the length of time in business, business experience, public

sector experience, and other engagements of the private entity or consortium of private entities.

b. Describe the design, construction and completion guarantees and warranties.

c. Provide resumes and work experience of each team member.

d. For the private entity and each major subcontractor that will be utilized in the qualifying project, provide a statement listing all prior projects and clients for the past five (5) years and contact information for same. If a private entity or major subcontractor has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the qualifying project and, second, it shall include as many of its most recent projects as possible. The private entity and major subcontractors shall submit all performance evaluation reports or other documents that are in its possession evaluating the private entity's performance during the preceding five (5) years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful qualifying project development, operation, and completion. For each project identified, provide at least the following information:

(1). Client and Project Identification:

i. client's name, project name and project location;

ii. primary contact name, address, telephone number, and e-mail address;

iii. private entity's role in the project;

iv. project description including year completed, type, size, unit mix and tenants; and

v. photographs and plans.

(2). Describe the experience of the private entity or consortium of private entities, key principals and project managers of bringing similar projects to completion on budget and in compliance with design, land use, service and other standards.

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(3). Provide the performance schedule from contract to completion.

(4). Identify the construction lender and description of the development cost including a brief explanation of the approach and type of financial structure used to finance the project, including identification of sources and amounts of debt and equity, and public subsidies and incentives, if any.

(5). Public Involvement: Description of public involvement process and challenges or obstacles, if any, arising from the process, and how the private entity overcame such challenges or obstacles.

(6). Public Sector Identification: Identify the affected jurisdiction, including references and contact information, involved in the example projects.

e. At least three (3) development and three (3) financial references (name, title, entity, mailbox address, telephone number and contractual relationship) that can be contacted with respect to current and past project experience.

f. A qualification statement that reviews all relevant information regarding technical qualifications and capabilities, resources and business integrity of the private entity, including but not limited to:

(1). bonding capacities; and

(2). insurance coverage.

g. A qualification statement that includes a mandatory disclosure by the private entity for the past five (5) years of any of the following conduct:

(1). bankruptcy filings;

(2). liquidated damages;

(3). fines, assessments or penalties;

(4). judgments or awards in contract disputes;

(5). contract defaults and/or contract terminations;

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(6). license revocations, suspensions and/or other disciplinary actions;

(7). prior debarments or suspensions by a governmental entity;

(8). denials of prequalification or findings of non-responsibility;

(9). safety past performance data, including fatality incidents;

(10). experience ratings;

(11). modification ratings;

(12). recordable injury rate;

(13). workday accident incidence rate;

(14). alleged violations of any federal, state or local civil law;

(15). alleged violations of any federal, state or local criminal law;

(16). criminal indictments or investigations;

(17). legal claims filed by or against the private entity; and

(18). claims on payment and performance bonds.

h. Provide a copy of all notices of default, termination, claims of damage received on projects, and claims against performance and payment bonds, received within the past five (5) years.

i. For each major subcontractor that will perform construction or design activities, provide a sworn certification by an authorized representative of the private entity attesting to the fact that the private entity is not currently debarred or suspended by any federal, state or local government entity.

j. Financial Capacity.

In this part establish and demonstrate access to financial resources such as the ability to raise equity and secure debt capital to deliver the qualifying project in a

professional and timely manner. To demonstrate financial resources, each proposal must provide the information listed below:

(1). Portfolio: Composition of current real estate portfolio, including the size, value, years of ownership, and asset performance compared to initial *proforma* statements; and any other relevant information.

(2). Pending Projects: A listing and description of all pending projects under enforceable funded contracts, including the status, development schedule, financing method, sources, and amounts, and financial commitments required of the private entity.

(3). Reports and Certified Financial Statements: Provide the most recent credit report or Dun & Bradstreet report and certified financial statements for the past four (4) years of each private entity or consortium of private entities and each partner with an equity interest of five percent (5%) or greater. Certified financial statements shall include balance sheets, income statements and statements with changes in financial position of any parent organizations and any materially relevant subsidiaries, identification of any projects with negative cash flows, amount of developer's recourse debt, any non-performing loans, and the amount of guarantees and contingent liabilities.

(4). Statement of Public Trading: If the entity is publicly traded, include as part of the electronic copy (searchable PDF format on CD), the stock exchange and trading symbols and a copy of the most recent 10K.

(5). Funding Source Action: Disclose whether any funding sources or financial institutions have threatened to take or have taken adverse action against the private entity, such as, loan acceleration, foreclosure, terminating or restricting the use of funds, anytime during the past five (5) years.

TAB 4: PROPOSAL.

Provide an overview of the qualifying project including the conceptual design of any facility or a conceptual plan for the provision of services. The conceptual design for facilities, at a minimum, shall include concept renderings, a concept

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site plan, and elevations that collectively illustrate the location, size, and context of the qualifying project. The required renderings and drawings include:

a. Concept Plan.

(1). Concept Renderings: Provide a concept design (plan, computer aided model, aerial sketch, photomontage, etc.) that characterizes the context of the design of the qualifying project. The concept drawings shall clearly illustrate the relationship of the qualifying project to the principal street and surrounding developments.

(2). Concept Site Plan: The site plan, in a scale of not less than 1"=30', shall encompass the subject property and portions of contiguous parcels, if any, and clearly illustrate topography in a 1:2,000 or other appropriate scale, include landscape and design concept(s), and should be drawn as a ground floor plan of the site. The preliminary site plan shall indicate all major pedestrian entrances, horizontal and vertical circulation systems, wall openings, all proposed outdoor areas; and the circulation plan showing how the qualifying project relates to public rights-of-way to and within the site, for walking, cycling, public transportation, and motor vehicles.
Summarize the preliminary programming of facilities, including if any, the mix of uses, square footage(s), total parking spaces, parking allocations (shared or exclusive), and types of parking e.g. structured or surface.

(3). Elevations: Provide exterior building elevations, illustrating the massing, openings, materials, colors, and related elements, and any roof top structures or equipment.

b. Project Overview.

The qualifying project overview, at a minimum, must:

(1). Describe the proposed business arrangements (i.e. performance based infrastructure, participation rent, concessions, parking management agreements, service agreements, etc.).

(2). Describe the plan for the development, financing and operation of the qualifying project showing the anticipated schedule of

which funds will be required.

(3). Describe the type and amount of user fees, lease payments, and other service payments over the term of any applicable interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.

(4). Describe the implementation strategy for the qualifying project.

(5). Provide a list of permits and approvals for the development and completion of the qualifying project from any federal, state, or local agencies, to the extent such are required, and a preliminary schedule and timing of any contemplated requests for federal, state or local resources, and the initiation, construction phasing, completion and opening of the qualifying project including major milestones and the proposed major responsibilities and timeline for activities to be performed by the Department and the private entity.

(6). Provide information relating to any current plans for the development of facilities or technology infrastructure to be used by a governmental entity that are similar to the qualifying project being proposed by the person for each affected jurisdiction.

(7). To the greatest extent possible the overview must describe the following items:

i. operational and management plan, if applicable;

ii. anticipated cost per square foot, phase, and use;

iii. existing conditions and anticipated site preparation;

iv. other opportunities that will benefit the viability of the qualifying project;

v. adjacent uses and emerging projects that impact the value or influence the use of the qualifying project;

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vi. connections to public transportation; and

vii. availability and existing capacity of public infrastructure and required extensions or improvements.

c. Terms, Special Conditions and Other Considerations.

This part is reserved for a description of any special conditions the proposal may offer to, or request from the Department.

(1). Terms: State the terms offered for the qualifying project.

(2). Contingencies: State any contingencies or conditions requested by the private entity.

(3). Use of Federal, State or Local Funding: To the extent the private entity has identified federal, state, or local funding sources; describe such sources.

(4). Other Terms to Be Negotiated: Identify any additional terms or conditions to be included as part of the negotiation process. Include in this part a discussion of any trades or swaps of property and special legislation or plan amendments required to facilitate the qualifying project.

TAB 5: PROJECT ANALYSES.

In this tabbed section include the project analyses that support the business case of the qualifying project. The project analysis shall be categorized into four sub-tabbed sections as follows: (a) location and site analysis, (b) marketing and competitive analysis, (c) financial analysis, and (d) political and legal analysis.

a. Location and Site Analysis.

(1). Describe how the proposed design of the improvements and the attributes of the site will demand the maximum return.

(2). List any public utility facilities that will be affected by the qualifying project and a statement of the plans to accommodate the affected facilities.

b. Market and Competitive Analysis.

Provide a market study that supports the revenue assumptions and viability of the qualifying project. To indicate feasibility, forecast the supply and demand relationship, including but not limited to, geospatial data and geographic information, demographic and psychographic data, traffic counts, rent levels, absorption rates, and identify underserved trade areas for the project type. Include any supporting due diligence studies, analyses, or reports. Submit detailed market information for any specialized or non-standardized use.

c. Financial Analysis.

(1). Include a lifecycle cost analysis specifying methodology and assumptions of the qualifying project and the proposed project and construction schedules with the start date, anticipated commitment of all parties, equity, debt, and other financing mechanisms, and a schedule of revenues, costs, and sources and applications of funds. The lifecycle cost analysis shall include, but not be limited to, a detailed analysis of the projected return, rate of return, expected useful life of the facility, and estimated annual operating expenses.

(2). Explain the financing plan of the qualifying project including identifying the source(s) and amount of debt and equity to be used to capitalize the qualifying project, the relationships (e.g., outside lender, parent company, etc.). In TAB 8: Addenda and Supplemental Materials, include each of the following:

i. loan commitment letters and contact information for funding sources;

ii. the sources and anticipated amounts of working capital to cover operating costs and to adequately maintain operations from the start-up through completion; and

iii. letters from lending institutions, not more than three (3) months old, that demonstrate the existence of liquid assets or suitable unencumbered lines of credit to carry out the predevelopment activities. Evidence of the private entity's liquid assets or some acceptable

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form of equity, shall be equal to the equity requirements of the prospective construction lender.

(3). Using standard estimating techniques provide a development budget detailing any anticipated land acquisition(s), the anticipated pre-development costs, and hard and soft costs from construction through occupancy.

(4). Provide a discounted cash flow analysis, for the duration of the qualifying project, including but not limited to: estimates of costs, operating expenses, capital reserves including replacement and re-tenanting reserves, net operating income, debt service, partnership percentages, disposition benchmarks, and calculations of net present value, internal rate of return.

(5). Include a sensitivity analysis depicting the impacts due to escalations of expenses and revenue growth, and changes in financing terms or interest rates.

(6). Include a list and the methodology of all underlying assumptions incorporated in the plan.

(7). Indicate if there is a method to refinance for cost savings. Indicate which party or parties would receive the benefit of any cost savings from a refinancing, e.g. would the savings go to the State, would the savings be shared and to what extent, or would the contracting person be the sole beneficiary.

(8). Outline the financial penalties, if any, that would result should the State terminate a qualifying project early or restructure the cash flows.

(9). Identify the need, if any, for the State to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement", for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized bond rating agency. If the unenhanced rating is not investment grade, the State may require the use of credit enhancements.

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(10). If the private entity has chosen an underwriter(s), provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc. If the private entity has not yet chosen an underwriter(s), the Department reserves the right to have input into the selection of that underwriter(s).

(11). Provide a detailed analysis of the financial feasibility of the qualifying project, including its impact on similar facilities operated or planned by the Department. Include a detailed description of any financing plan for the project, a comparison of that plan with financing alternatives available to the State, and all underlying data supporting any conclusions reached in the analysis of the selection by the private entity of the financing plan proposed for the qualifying project.

d. Political and Legal Analysis.

(1). Provide an explanation of how the qualifying project will complement or comply with the Department's mission.

(2). Identify allocations of risk and liability, and assurances for timely completion of the qualifying project.

(3). Identify the proposed risk factors and methods for dealing with these factors including a description of methods and remedies associated with any financial default.

(4). Identify and fully describe any work required or otherwise to be performed by the State.

(5). Describe the proposed method for securing property interests required for the qualifying project.

(6). List all permits and approvals required for the development and completion of the qualifying project from federal, state, or local agencies.

(7). Identify assumptions related to ownership, legal liability, law enforcement and operation of the qualifying project and the

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existence of any restrictions on the State's use of the qualifying project.

(8). Identify any federal, state or local resources that the private entity contemplates requesting for the qualifying project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.

TAB 6: COMMUNITY IMPACT.

a. State the community benefits, including the economic impact and tax revenues, the qualifying project will have on the State and affected jurisdictions.

b. Estimate the number of jobs generated for area residents and level of pay and fringe benefits of such jobs.

c. Project the number and value of subcontracts generated for area subcontractors.

d. Identify any anticipated public support or opposition for the qualifying project and any affected jurisdictions. Public support or opposition should be demonstrated through resolution of organizations, minutes of meetings, letters, or other official communications.

e. Identify any anticipated adverse social, economic, environmental and transportation impacts of the qualifying project measured against the Department's mission, design standards and any applicable ordinances of affected jurisdictions. Specify the strategies or actions to mitigate known impacts of the qualifying project. Indicate if environmental and archaeological assessments have been completed.

f. Identify the projected positive social, economic, environmental and transportation impacts of the qualifying project measured against the Department’s mission, design standards and any applicable ordinances of affected jurisdictions.

g. Identify contingency plans for addressing public needs in the event that all or some of the qualifying project is not completed according to projected schedule.

h. Any additional information as the Department may reasonably request.

TAB 7: MISCELLANEOUS.

Use this tabbed section to present additional information such as letters of recommendation, letters of interest from prospective lenders or tenants, additional information concerning the development team, and other information that supports the proposal.

TAB 8: ADDENDA AND SUPPLEMENTAL MATERIALS.

Use this tabbed section to present any item cited or referenced in the proposal.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA.

A. CONCEPTUAL AND DETAILED EVALUATION.

1. In the conceptual stage, the Department will initially consider the following criteria in determining whether to move to the detailed stage with regard to a proposal:

    a. whether the project proposed is a qualifying project; and

    b. whether the qualifying project serves a public purpose, which the Department will determine in accordance with Texas Government Code, Section 2267.053(c);

2. For both the conceptual stage and the detailed stage, the Department will consider the following criteria in determining whether to ultimately enter into negotiations for an interim or comprehensive agreement with regard to a proposal:

    a. qualifications and experience of the private entity as more particularly described in Subsection B. below;

    b. project characteristics as more particularly described in Subsection C. below;

    c. project cost and financing as more particularly described in Subsection D. below;

d. community impact as more particularly described in Subsection E below; and

e. other factors as more particularly described in Subsection F. below.

B. QUALIFICATIONS AND EXPERIENCE.

Factors to be considered in either stage of evaluation to determine whether the private entity possesses the requisite qualifications and experience will include, along with the specified information required under a solicitation, the following:

1. experience working with the public sector on public-private real estate development projects;

2. experience, training and preparation with projects of similar size, scope and complexity;

3. the extent of personnel, logistical resources, bonding capacity, and the ability to complete the qualifying project in a timely and professional manner;

4. demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;

5. demonstrated compliance with applicable laws, codes, standards, regulations, and agreements on past projects;

6. leadership structure;

7. project manager's experience;

8. management and operational plans;

9. financial condition and capacity; and

10. project ownership.

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C. PROJECT CHARACTERISTICS.

Factors to be considered in evaluating the qualifying project characteristics will include, but are not limited to:

1. project scope and scale, land use and product mix;
2. the extent that the timing of the qualifying project is consistent with the Department's timing for satisfaction of its current and future needs;
3. data and reports resulting from project;
4. operation of the qualifying project;
5. technology; technical feasibility;
6. conformity to laws, regulations, and standards;
7. environmental impacts;
8. condemnation impacts;
9. federal, state and local permits;
10. maintenance of the qualifying project;
11. duration of the project; and
12. involvement or impact of the project on multiple public entities.

D. PROJECT COST AND FINANCING.

Factors to be considered in evaluating whether the proposed financing allows adequate access to the necessary capital to finance the qualifying project will include:

1. cost and cost benefit to the State;
2. financing and the impact on the debt or debt burden of the State;
3. financial plan, including overall feasibility and reliability of plan; operator's past performance with similar plans and similar projects; the

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degree to which the private entity has conducted due diligence investigation and analysis of proposed financial plan and the results of any such inquiries or studies;

4. estimated project cost and life-cycle cost analysis;

5. the identity, credit history, past performance of any third party that will provide financing for the qualifying project and the nature, amount, and timing of their commitment, as applicable;

6. opportunity cost; and

7. the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market.

NOTE: IN THE EVENT THAT ANY QUALIFYING PROJECT IS FINANCED THROUGH THE ISSUANCE OF OBLIGATIONS THAT ARE DEEMED TO BE TAX-SUPPORTED DEBT OF THE STATE, OR IF FINANCING SUCH A QUALIFYING PROJECT MAY IMPACT THE STATE'S DEBT RATING OR FINANCIAL POSITION, THE STATE SHALL SELECT ITS OWN FINANCE TEAM, SOURCE, AND FINANCING VEHICLE.

E. COMMUNITY IMPACT.

Factors to be considered in evaluating the qualifying project's community impact and compatibility with the Department's mission will include:

1. community benefits, including the economic impact the qualifying project will have on the State and affected jurisdictions in terms of tax revenue, the number of jobs generated and level of pay and fringe benefits of such jobs;

2. stakeholder input;

3. community support or opposition, or both;

4. compatibility with existing and planned facilities; and

5. compatibility with local, regional, and state economic development efforts.

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F. OTHER FACTORS.

Other factors that may be considered by the Department in the evaluation and selection of proposals include:

1. the extent the offered consideration generates value and returns to the State and benefits to the public, including in-kind consideration greater than the fair market value of the asset;

2. the proposed cost of the qualifying project;

3. the general reputation, industry experience, and financial capacity of the private entity;

4. the proposed design of the qualifying project;

5. the eligibility of the project for accelerated selection, review, and documentation timelines under these Guidelines;

6. comments from local citizens and affected jurisdictions;

7. the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;

8. the private entity's plans to employ local contractors and residents;

9. for a qualifying project that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing; and

10. other criteria that the Department deems appropriate.

VII. NOTICE, POSTING AND HEARING REQUIREMENTS.

A. AFFECTED JURISDICTIONS.

In accordance with Section 2267.055, Texas Government Code, a person submitting a proposal shall notify each affected jurisdiction by providing a copy of its

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proposal to the affected jurisdiction. For proposals submitted pursuant to a RFP and for proposals submitted pursuant to a request for competing proposals, a private entity whose proposal is accepted for detailed stage evaluation by the Department shall provide the required notice. For unsolicited proposals, the private entity whose unsolicited proposal is accepted by the Executive Director for consideration shall provide the required notice. A copy of the proposal shall be sent by certified mail, express delivery or hand delivery, within five (5) days after the applicable action. The private entity is responsible for documenting delivery of the proposal.

In accordance with Section 2267.055, Texas Government Code, affected jurisdiction(s) have sixty (60) days after the date an affected jurisdiction receives the notice required by Subsection 2267.055(a), to submit in writing to the Department any comments the affected jurisdiction has on the qualifying project and indicate whether the facility or qualifying project is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.

When providing the proposal to the affected jurisdiction(s), the private entity may withhold information deemed to be confidential and not subject to release under the Texas Public Information Act, in accordance with Section II. C.

B. NOTICE AND ACCESS TO ACCEPTED PROPOSALS.

Not later than the tenth (10th) day after the date the Executive Director accepts an unsolicited proposal for conceptual stage evaluation or, if pursuant to a RFP or request for competing proposals, the Commission approves a proposal as the best value to develop or operate a qualifying project, the Department will post public notice of the proposal as follows:

Posting will be on the Department's website and by any other manner considered appropriate by the Department to provide maximum notice to the public of the opportunity to inspect the proposal including a summary of the proposal, the location where at least one redacted copy of the proposal is available for public inspection, and the contact person.

Trade secrets, financial records, or other designated records of the contracting person excluded from disclosure under Section 552.101 of the Texas Public Information Act may not be posted or made available for public inspection except as otherwise agreed to by the Department and the contracting person.

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C. HEARING ON THE PROPOSAL.

During the period that follows the Commission's selection of a proposal as the apparent best value as provided in Section III.E. and prior to award of the qualifying project as provided in Section III.F. above, but not later than thirty (30) days prior to entering into an interim or comprehensive agreement, the Department will hold a public hearing on the proposal.

D. NOTICE AND ACCESS TO INTERIM OR COMPREHENSIVE AGREEMENTS.

Once the negotiation phase for an interim or a comprehensive agreement is complete and before an interim or comprehensive agreement is executed, the Department will post the proposed agreement on the Department's website and by any other manner considered appropriate by the Department to provide maximum notice to the public of the opportunity to inspect the proposed agreement including a summary of the agreement, the location where a redacted copy of the proposed agreement is available for public inspection, and the contact person.

After an interim or comprehensive agreement has been executed, the Department will make procurement records available for public inspection upon request. For purposes of this subsection, procurement records do not include the trade secrets of the contracting person or financial records, including balance sheets or financial statements of the contracting person, that are not generally available to the public through regulatory disclosure or other means. Cost estimates relating to a qualifying project prepared by or for the Department are not open to public inspection.

Any inspection of procurement transaction records under this Section is subject to reasonable restrictions to ensure the security and integrity of the records.

This Section applies to any accepted proposal regardless of whether the process of bargaining results in an interim or comprehensive agreement.

VIII. INTERIM AND COMPREHENSIVE AGREEMENTS.

A. NEGOTIATION OF INTERIM OR COMPREHENSIVE AGREEMENT.

Before beginning to negotiate an interim or comprehensive agreement, the Department will submit a copy of the detailed proposal selected as the best value proposal to the Partnership Advisory Commission (PAC) for review and comment in accordance with Chapter 2268, Texas Government Code. Upon receipt of

recommendations from the PAC or notice that it declined review of the proposal, the Department may begin negotiation.

The Executive Director is responsible for negotiating any interim or comprehensive agreement. The Executive Director will appoint an oversight committee consisting of representatives of the Maintenance Division, other Department representatives, and independent attorneys, advisors or consultants, if any, that will review the terms of the proposed interim or comprehensive agreement and assist in confirming that the terms meet the requirements of Texas Government Code, Chapters 2267 and 2268, these Guidelines, the RFP or RFCP, as applicable, and such other conditions that are identified by the Commission after consideration of any comments of affected jurisdictions and the public. Timelines for the work of the oversight committee will be developed consistent with the scope of the qualifying project.

If an interim or comprehensive agreement satisfactory to the Department cannot be negotiated with the selected proposer, or if, in the course of negotiations, it appears that the proposal will not provide the Department with the overall best value, the Department will formally end negotiations with that proposer and, in its sole discretion, either:

1. reject all proposals;

2. modify the request for proposals and begin again the submission of proposals; or

3. proceed to the next most highly ranked proposal and attempt to negotiate an interim or comprehensive agreement with that entity in accordance with this Section.

Not later than the thirtieth (30th) day before the date an interim or comprehensive agreement is executed, the Department will submit to the PAC and the chairs of the House Appropriations Committee and Senate Finance Committee or their designees a copy of the proposed interim or comprehensive agreement, and a report describing the extent to which the PAC's recommendations were addressed in the proposed interim or comprehensive agreement.

Any interim or comprehensive agreement shall define the rights and obligations of the Department and the contracting person with regard to the qualifying project, and shall establish a date by which activities related to the qualifying project must begin, which date may be extended by agreement of the parties.

Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the

qualifying project. Prior to developing or operating the qualifying project, the private entity shall enter into a comprehensive agreement with the Department.

B. MINIMUM INTERIM AGREEMENT TERMS.

The scope of an interim agreement may include but is not limited to:

1. project planning and development;

2. design and engineering;

3. environmental analysis and mitigation;

4. surveying;

5. ascertaining the availability of financing for the proposed facility through financial and revenue analysis;

6. the timing of the negotiation of the comprehensive agreement; and

7. any other provisions related to any aspect of the development or operation of a qualifying project that the parties deem appropriate prior to the execution of a comprehensive agreement.

C. MINIMUM COMPREHENSIVE AGREEMENT TERMS.

The Executive Director, in accordance with any terms and conditions identified by the Commission, must approve any comprehensive agreement entered into pursuant to the P3 program between the Department and the contracting person. The Department shall accept no liability for development or operation of the qualifying project prior to entering into a comprehensive agreement. Each comprehensive agreement shall define the rights and obligations of the Department and the contracting person with regard to the qualifying project. The terms of the comprehensive agreement shall be tailored to address the specifics of the qualifying project and shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

2. The review of plans and specifications for the qualifying project by the Department.

3. The rights of the Department to inspect the qualifying project to ensure compliance with the comprehensive agreement.

4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the qualifying project and the tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. The monitoring of the practices of the contracting person by the Department to ensure proper maintenance.

6. The terms under which the contracting person will reimburse the Department for services provided.

7. The policy and procedures that will govern the rights and responsibilities of the Department and the contracting person in the event that the comprehensive agreement is terminated or there is a material default by the contracting person including the conditions governing assumption of the duties and responsibilities of the contracting person by the Department and the transfer or purchase of property or other interests of the contracting person by the Department.

8. The terms under which the contracting person will file financial statements prepared in accordance with generally accepted accounting principles on a periodic basis but not less than annually.

9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project.

10. A copy of any service contract.

11. A schedule of the current user fees or lease payments.

12. Classifications according to reasonable categories for assessment of user fees.

13. The terms and conditions under which the Department may contribute financial resources, if any, for the qualifying project.

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14. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action.

15. The terms and conditions under which the State will be required to pay money to the private entity and the amount of any such payments for the qualifying project.

16. A periodic reporting procedure that incorporates a description of the impact of the qualifying project on the State and affected jurisdictions.

17. Other requirements of the P3 program or applicable law or that the Department deems appropriate.

D. ADDITIONAL PROVISIONS FOR COMPREHENSIVE AGREEMENT.

With respect to construction projects, the Department generally anticipates addressing the following in the comprehensive agreement:

1. The contracting person will be expected to assume single-point responsibility and liability for all planning, designing, financing, constructing, operating, and maintaining the qualifying project.

2. The contracting person shall perform a comprehensive geotechnical investigation of subsurface conditions at the qualifying project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the private entity in the comprehensive agreement.

3. The Department encourages the private entity to propose a formula for the mutual sharing of cost savings realized during construction by virtue of value engineering initiatives, guaranteed maximum price with saving sharing provisions, trade allowances or otherwise. Mutually agreed upon terms for the sharing of such savings will be incorporated in the comprehensive agreement.

4. The Department may enter into comprehensive agreements with private entities that have formed business associations such as joint ventures, limited partnerships and limited liability companies. However, in such cases, the Department requires that one or more of the principal members of the business association provide a

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performance guaranty of all obligations undertaken in the comprehensive agreement. This requirement is in addition to the statutory requirement for a performance bond. Individuals, corporations and other businesses interested in entering public-private partnerships with the Department under the P3 program must be willing to provide this security if their proposal is submitted as part of a business association or other entity that limits the liability of its members, owners or partners. Any changes in the terms of the interim or comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the interim or comprehensive agreement only by written amendment. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project. Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with proposals play a critical role in the competitive evaluation process and the ultimate selection of a proposal by the Department. Accordingly, as part of the comprehensive agreement, the prospective contracting person and its team members shall certify that all material representations, information and data provided in support of or in connection with, a proposal are true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information and data provided for the proposal, the prospective contracting person shall immediately notify the Department of same. Any violation of this Section of the comprehensive agreement shall give the Department the right to terminate the comprehensive agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

IX. GOVERNING PROVISIONS.

In the event of any conflict between these Guidelines and any federal or state statutory or administrative authority, the terms of the respective statutory or administrative authority shall control.

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