Transportation Commission of Colorado
August 20, 1998

PUBLIC/PRIVATE PARTNERSHIPS GUIDELINES

Financial Management and Budget Director Heather Dugan detailed the changes made to the Public/Private Initiative Guidelines based on the comments received during the last Commission workshop. The changes were highlighted in bold print in the official agenda on pages 80 through 114.

A letter of comment, submitted by PaineWebber First Vice President Daniel H. Cohen was distributed. Ms. Dugan briefly discussed those comments addressed in the final draft document.

Vice Chairman Cracraft suggested more time should be incorporated in the evaluation and selection process to allow review of the conceptual proposal by the Commission. Also, on page 98 of the official agenda, Vice Chairman Cracraft suggested the first question under Technology should be rephrased to "Is the proposal based on proven technology with a history of successful operating experience?"

Commissioner Aden moved for adoption of the resolution, with the addition of Cracraft's proposed modifications, seconded by Anderson and on a vote of the Commission the following resolution was unanimously adopted.

Resolution Number TC-658

WHEREAS, the purpose of this Resolution is to formally approve certain Public-Private Initiative Program Guidelines, as described in Attachment A (Athe Guidelines@), for use by the Colorado Department of Transportation (CDOT) in its implementation of the Public-Private Initiatives Program Act of 1995, " 43-1-1201 through 1208, C.R.S.; and

WHEREAS, pursuant to ' 43-1-106, C.R.S., the Transportation Commission of Colorado (Commission) has broad authority concerning the management, construction, and maintenance of state highways and other transportation systems in the State, including formulation of general transportation policy and the performance of all other things necessary and appropriate with respect thereto; and

WHEREAS, the Public-Private Initiatives Program Act of 1995, " 43-1-1201 through 1208, C.R.S., together with " 43-3-201 through 43-

3-202.5, C.R.S. concerning turnpikes, is the legislative framework enabling CDOT to enter into Public-Private Initiative (PPI) agreements for transportation system projects, which projects may include turnpike projects, other infrastructure projects, and telecommunications projects; and

WHEREAS, section 43-1-1206 of the Public-Private Initiatives Program Act authorizes the Commission to adopt rules *that it determines are necessary or appropriate* to implement that Act; and

WHEREAS, the Commission determined that section 43-1-1206 is permissive, not mandatory, and that rules are not necessary or appropriate at this time to implement the Act, in part because the Public-Private Initiatives Program is only a pilot program and because the Guidelines are intended only as general statements of policy not meant to be binding as rules; and

WHEREAS, the Commission also determined that the Guidelines will provide guidance and recommend procedures consistent with the Act for possible use by CDOT, in its discretion, concerning the solicitation, evaluation, and selection of proposals for PPIs; and

WHEREAS, the Guidelines pertain to, among other things, the solicitation and evaluation of public-private initiatives, initiative agreements, private contributions, public benefits to be granted in exchange for contributions, and the receipt, content, and proper handling of unsolicited or comparable proposals for transportation system projects; and

WHEREAS, the Guidelines are intended for PPI proposals that are large or complex, and they not intended for small or simple PPI proposals; and

WHEREAS, CDOT may determine, in its discretion, that the use of the more comprehensive process described in the Guidelines is not warranted by the nature or scope of particular PPI proposals, or that such use will not help CDOT in its consideration of a particular proposal, and in either case CDOT may determine that the Guidelines will not be used, but that the procedures already described in the Act itself, and in the Procurement Code, are more appropriate to use for such proposals; and

WHEREAS, the Commission has reviewed the Guidelines described in Attachment A and finds them appropriate.

NOW THEREFORE BE IT RESOLVED:

1. **The Commission approves the Guidelines described in Attachment A.**

2. **The Commission authorizes CDOT to use the Guidelines, in accord with their terms, concerning proposals received under the Public-Private Initiatives Program Act of 1995, " 43-1-1201 through 1208, C.R.S.**

3. **The Commission further authorizes CDOT to elect, in its discretion, not to use the Guidelines where the CDOT Executive Director determines that the use of the more comprehensive process described in the Guidelines is not warranted by the nature or scope of particular PPI proposals, or that such use will not help CDOT in its consideration of a particular proposal. In that case, CDOT will use the procedures already described in the Act and in the Procurement Code for such proposals.**

PUBLIC-PRIVATE INITIATIVE GUIDELINES

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INTRODUCTION

General

The Public-Private Initiatives Program Act of 1995, §§ 43-1-1201 thru 1208, C.R.S., together with §§ 43-3-201 thru 43-3-202.5, C.R.S. concerning turnpikes, (collectively, the Act), is the legislative framework enabling the Colorado Department of Transportation (CDOT) to enter into Public-Private Initiative (PPI) agreements for transportation system projects. Such projects may be large or complex, including turnpike projects, other infrastructure projects, and telecommunications projects.

The Transportation Commission of Colorado (the Commission) has determined that rules are not necessary or appropriate at this time to implement the Act. However, the Commission has also determined that these Guidelines will provide guidance and recommend procedures consistent with the Act for possible use by CDOT, in its discretion, concerning the solicitation, evaluation, and selection of proposals for PPIs that are large or complex.

Definition of PPI

A PPI is a nontraditional arrangement, whereby a private entity supplies resources to accomplish work on any type or aspect of a transportation system project, as a private contribution, in return for the department granting a right or interest in or concerning a transportation system project, as a public benefit, as specifically described in §§ 43-1-1201, C.R.S.

A PPI may include sharing of resources and the means of developing, implementing, and providing transportation system projects or services. A PPI can provide the State with a new source of capital, time and cost savings, risk reduction, and new tax revenues, for transportation system projects.

A PPI may authorize a private entity to acquire, construct, improve, maintain, and/or operate a transportation project that is large in scope or cost, and/or is complex.

Summary of the Act

The Act grants CDOT broad authority and flexibility to solicit and consider proposals, enter into agreements, grant benefits,

and accept contributions, for PPIs for all or any part of a wide variety of transportation system projects.

Such PPIs may include, without limitation, transportation system projects for the design, financing, construction, operation, maintenance, modernizing, upgrading, expanding, reconstruction, and/or improvement of:

1. transportation infrastructure, and related systems,
2. turnpikes, as provided in § 43-3-202.5, C.R.S.
3. telecommunication systems and services,
4. intelligent transportation systems,
5. traffic management and control systems,
6. park and ride facilities,
7. transit stations,
8. vehicles and equipment, and
9. the types of projects listed in §43-1-1202(1), C.R.S.

Private Contribution

The private entity must provide a private contribution of resources to accomplish all, or any part of, the work on a transportation system project. Such resources may include, without limitation, those described in § 43-1-1201(1), C.R.S.

1) funds,
2) financing,

3) income,

4) revenue,

5) cost sharing,

6) technology,

7) staff time/work,

8) equipment use/ownership,

9) professional/technical expertise,

10) data use/ownership, and/or

11) engineering, construction, or maintenance services.

Public Benefit

CDOT must provide a public benefit to the private entity in exchange for the private contribution. Such a benefit may include, without limitation, those specifically described in § 43-1-1201(2), C.R.S.

(1) A lease or easement in, under, or above a state highway right-of-way;

(2) Any use of state highway right-of-way that does not impair highway operation or safety;

(3) All or part of any revenue or income resulting from the private use of a state highway right-of-way;

(4) A money payment for services from available funds; and

(5) Any other authorized by law.

The complete text of the Act is included in the Appendix to these guidelines. Although guidance with regard to application of the Act is provided in these Guidelines, it is incumbent upon all entities--both public and private--participating in PPIs to be aware of and to comply with the provisions of the Act.

EXECUTIVE SUMMARY

General

The following Guidelines have been developed by the Commission as general statements for guidance only. They are not intended to be binding as rules.

The purpose of the Guidelines is to provide guidance and procedures consistent with the Act for use by CDOT in the consideration, evaluation, and selection of proposals for PPIs for "qualifying transportation facilities". The purpose is also to give to the Commission and CDOT the greatest flexibility possible in administering the Act that is consistent with applicable law.

The procedures incorporated in the Guidelines are intended to be consistent with the Act, and with applicable provisions of the Colorado Procurement Code (except those concerning unsolicited or comparable proposals), and they are not intended to conflict therewith, and the procedures shall be so construed at all times. Any conflict between these procedures and the Act or the Procurement Code shall be resolved in favor of the Act/the Code to the extent of the conflict.

Scope of Guidelines - "Qualifying Transportation Facility"

The Commission intends that the Guidelines will be applied only to PPI proposals for "qualifying transportation facilities". The term "qualifying transportation facilities" means larger, more costly, more complex transportation projects. To be considered a PPI proposal for "qualifying transportation facilities", a proposal should meet the following criteria:

1) the proposal seeks approval for a private entity to acquire, construct, install, improve, maintain, and/or operate specified transportation facilities; and

2) the transportation facilities so specified are large in size or cost, or complex, including: a "transportation system", as defined in § 43-1-1201, C.R.S; or, a "turnpike", as defined in § 43-3-202(1)(a), C.R.S.; or, a telecommunications project.

The Guidelines are not intended for PPI proposals for small or simple projects. Also, CDOT may determine, in its discretion, that the use of the more comprehensive process described in the Guidelines is not warranted by the nature or scope of a particular PPI proposal, or that such use will not help CDOT in its consideration of a particular proposal. In either case, CDOT may

determine that the Guidelines will not be used, but that the procedures already described in the Act itself, and in the Procurement Code, are more appropriate to use for such proposals.

Proposals/Financing

The Public-Private Initiatives Program Act allows for both solicited and unsolicited project proposals. The major steps involved in evaluating, selecting, and implementing the projects are similar for both solicited and unsolicited proposals, except as otherwise provided in § 43-1-1203, C.R.S. It is anticipated that the private sector will identify many prospective projects, although CDOT is empowered to solicit proposals generally or for specific projects.

Private entities may also propose innovative financing methods, including the imposition of user fees or service payments under the provisions of the Act. The financing arrangements of the private entity may include the issuance of debt, equity, or other securities or obligations. The proposer may enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility. Also, once a project has been selected, if appropriate to the circumstances, a maximum rate of return to the private operator may be negotiated as part of the comprehensive agreement governing the project.

Solicited Proposals

From time to time, on behalf of the Commission, CDOT may issue Requests for Proposals (RFPs), pursuant to § 24-103-203, C.R.S., inviting proposals from private entities for a PPIP for a qualifying transportation facility. The RFP will specify information and documents which must accompany the proposals, the factors which will be used in evaluating the proposals and contain or incorporated by reference other applicable terms and conditions, including any unique capabilities or qualifications which will be required of private entities submitting proposals (proposers). Such RFPs may invite proposers to identify projects or may solicit proposals on CDOT-identified projects.

Unsolicited Proposals

The Act permits CDOT to receive, evaluate, and select for negotiations unsolicited proposals from private entities for a PPIP for a qualifying transportation facility. CDOT will receive such unsolicited proposals at any time pursuant to these Guidelines and and will consider and evaluate such proposal pursuant to the provisions of § 43-1-1203, C.R.S. Once an unsolicited proposal is received, however, if CDOT elects to (or is required by § 43-1-1203(6) to) solicit comparable proposals, CDOT shall comply with § 43-1-1203(6) thru (9), C.R.S. In that event, and any such comparable proposal must be submitted within 30 days after CDOT's publication and posting of a notice that it has received such a proposal, or be excluded from consideration unless (and until)

CDOT terminates consideration of, or negotiation on, the original unsolicited proposal and all comparable proposals that were timely submitted.

Proposal Submission and Review

CDOT requires that proposers for a "qualifying transportation facility" follow a two-step proposal process, all as outlined in more detail in the section in these Guidelines entitled "*Proposal Preparation and Submission Requirements-Unsolicited Proposals.*"

The first submission is a conceptual proposal containing certain specified information on proposer qualifications and experience, project characteristics, project financing, public support, and project compatibility.

CDOT will forward the conceptual proposals received to an Initial Review Committee, composed of CDOT staff, which will determine in its sole opinion whether the one or more conceptual proposals are complete, whether the one or more proposers are qualified, and whether the project as proposed appears in one or more cases technically and financially feasible. The Initial Review Committee will forward only those proposals satisfying its standards to a Public-Private Transportation Advisory Panel (Advisory Panel) composed of individuals having appropriate expertise to evaluate which projects would promote the State's transportation goals and advance the public interest.

CDOT will contact those proposers to receive Advisory Panel consideration and will request that they submit, within a specified period of time, a detailed proposal containing deliverables CDOT will identify, examples of which are set forth in the section on "*Proposal Requirements.*"

Upon receipt of the detailed proposal or proposals, the Advisory Panel will review the conceptual proposal or proposals, the findings and recommendations of the Initial Review Committee, the detailed proposal or proposals, and any comments received from affected public jurisdictions; will evaluate the proposal or proposals taken as a whole in accordance with detailed selection criteria specified herein; and will make final recommendations to the Commission.

Project Selection and Comprehensive Agreement

The Commission will consider the recommendations of the Advisory Panel and select those projects, if any, that it determines are in CDOT's best interests and that satisfy the goals of the Act. Final authorization to acquire, construct, improve, maintain, and/or operate any qualifying transportation facility will be contingent on successful negotiation and execution of a comprehensive agreement between the private operator and CDOT.

The comprehensive agreement will, at a minimum, outline the rights and obligations of the parties, set a maximum rate of return to the private operator (if applicable), determine liability, and establish dates for termination of the private operator's authority and dedication of the facility to the State.

The comprehensive agreement will also include terms and conditions that CDOT determines are in the public interest and to protect transportation and/ or transportation safety, including:

(a) The private entity shall secure and maintain liability insurance coverage during the construction and improvement of any project in amounts appropriate to protect a project's viability, as determined by CDOT.

(b) The standard State Special Provisions shall be attached and apply to the project work.

(c) appropriate contract clauses from those set forth in Articles 105 and 106 of Title 24, C.R.S., of the Colorado Procurement Code, subject to such modifications as the Executive Director deems advisable. Any modifications shall be supported by a written determination of the Executive Director that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

(d) The specific provisions required by § 43-1-1204, C.R.S.

(e) ownership, operation, and maintenance of the system

(f) etc.

CDOT shall advise the Commission and receive direction from the Commission concerning each PPI Agreement for a "qualifying transportation facility" before CDOT executes the Agreement or otherwise obligates the State.

CDOT Rights Reserved

CDOT reserves all rights available to it by law in administering these Guidelines, including without limitation, the rights in its sole and unfettered discretion to:

A. Reject any and all proposals at any time.

B. Terminate evaluation of any and all proposals at any time.

C. Suspend, discontinue and/or terminate comprehensive agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties.

D. Negotiate with proposer concerning any provision in its proposal.

E. Request or obtain additional information about any proposals.

F. Issue addenda to and/or cancel any RFP.

G. Revise, supplement, or withdraw, all or any part of these Guidelines.

H. Decline to return any and all fees required to be paid by proposers hereunder.

I. Elect not to follow any part of the Guidelines if CDOT determines, with reasonable basis, that they are not suitable in a given case.

Under no circumstances shall the State, the Commission, or CDOT be liable for, or obligated to reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing proposals, or in negotiating agreements.

Any and all information CDOT makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding these Guidelines, the proposer must submit the question in writing to the same person responsible for receiving all proposals and CDOT will provide answers in writing.

Timeline

The following schedule is provided for illustrative purposes only and depicts the time frames within which CDOT anticipates completions of each phases of the proposal selection process. Every attempt will be made to move through the process as expeditiously as possible; however, variations in the following schedule may be necessitated due to volume, complexity of proposals received, the need for further information, or other unanticipated circumstances. Again, these timeframes are for illustrative purposes only, they will be adjusted based on size and complexity of the proposal.

Conceptual Proposals--Initial Review	4-- 6 weeks
Detailed Proposal--Final Review	8--16 weeks
Final Project Selection	2-- 4 weeks
Negotiations of Comprehensive Agreement	8 weeks

PROJECT PROPOSALS

Solicited Proposals

The Commission may solicit PPI proposals for ""qualifying transportation facilities" through issuance of a Request for Proposals (RFP), pursuant to § 24-103-203, C.R.S. The RFP may invite private entities to propose projects of their own choosing, or it may specify transportation facilities in specific locations that are to be the subject of proposals. Whether the RFP is for a general solicitation or project-specific, proposers will be encouraged to be as innovative as possible in their proposals.

The Request for Proposals will outline the minimum qualifications and project selection criteria, including any unique capabilities or qualifications which would be required of the proposer. Pre-proposal conferences may be held, as deemed appropriate, and notice of such will be provided in the RFP. Proposers will be instructed as to the format in which to submit proposals and what minimum information, materials, and fees must be submitted in order for the proposal to be considered complete.

Public notice of the Request for Proposals will be posted at least 30 days prior to the date set for receipt of proposals by posting in public area normally used for posting of CDOT public notices and by publication in a newspaper, or newspapers, or other publications of general circulation within and/or outside the State of Colorado, so as to provide reasonable notice to the maximum number of proposers that can be reasonably anticipated to submit proposals. In addition, proposals may be solicited directly from potential proposers.

Unsolicited Proposals

The Act permits CDOT to receive, evaluate, and select for negotiations, unsolicited PPI proposals for ""qualifying transportation facilities" from private entities, pursuant to § 43-1-1203, C.R.S, and CDOT will comply with the procedures described in § 43-1-1203, C.R.S in performing those actions. CDOT will receive unsolicited proposals at any time so long as the proposals meet the requirements of the Act and these Guidelines.

Once an unsolicited proposal is received, **if CDOT elects (or is required by § 43-1-1203(6)) to solicit comparable proposals**, CDOT shall comply with the procedures of § 43-1-1203(6) thru (9), and upon receipt of any and all unsolicited proposals CDOT will post a notice for 30 days in a public area it normally uses for posting public notices and will publish the same notice in one or more newspapers of general circulation. The notice will state that CDOT has received an unsolicited proposal under the Act, that it intends to evaluate the proposal, that it may negotiate a comprehensive agreement with the proposer based on the proposal, and that it will consider comparable competing proposals and give them simultaneous consideration. The notice will summarize the proposed transportation facility or facilities, identify their proposed location and interconnections with other transportation facilities, and provide a conceptual design.

Failure by a prospective proposer to submit a comparable competing proposal within such 30 days period shall preclude such competing proposal from CDOT consideration, unless and until CDOT terminates consideration of, or negotiations on, the original proposal and any and all competing proposals submitted within that period. Submission of one or more competing proposals during such period will not trigger the posting or publication of a new notice or the start of any new 30 day period.

CDOT recognizes that it may receive proposals which have certain characteristics in common yet differ in meaningful ways. In such cases, CDOT reserves the right, in its sole discretion, to treat such a proposal or any portion of such proposal received after the original proposal, as either a competing proposal or a non-competing proposal. Because of the consequences to a proposer for failing to submit within the 30 day period a proposal which CDOT could later deem a competing proposal, prospective proposers are strongly urged to monitor CDOT notices of proposals received, and to be prepared to submit within such 30 day period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, a proposal which is the subject of a notice, so as to be deemed a comparable competing proposal.

In the event CDOT elects to treat a proposal, or part of a proposal, received within the 30 day period as a non-competing proposal, CDOT will follow the above notice requirements to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice.

Upon the expiration of such 30 day period, CDOT will subject the original proposal, together with any and all properly received competing proposals, to the evaluation and selection process described in the Act and as set forth below.

PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS UNSOLICITED PROPOSALS

Proposal Submission

Proposers submitting to CDOT are required to deliver 20 copies of their Conceptual Proposal and, if so requested, of their Detailed Proposal, to the following address:

Mr. Guillermo V. Vidal
Executive Director
State of Colorado, Department of Transportation

4201 E. Arkansas Rm. 260
Denver, Colorado 80222

(303) 757-9204 (Phone)
(303) 757-9656 (Fax)

Proposals are to be sealed in mailing envelopes or packages bearing the proposer's name, address, and the words "Public-Private Initiative Proposal" clearly written on the outside. The cover page must include the title of the proposal, the name and address of the proposing entity, the person authorized to act on behalf of the proposer, and his or her telephone and facsimile numbers.

Proposal Review

A non-refundable, non-negotiable Proposal Review Fee will be required partially to offset the costs of processing and reviewing the proposals. This fee may vary based on complexity and time and resources required to evaluate the proposal. In recognition of time and cost factors affecting proposers, a two phase process is permitted involving a conceptual project proposal for consideration by the Initial Review Committee and a detailed project proposal to be completed for review and consideration by the Advisory Panel.

Prior to entering into the second phase the proposer will be advised of the fee that will be required to complete the evaluation process, the fee must be submitted for each proposal. Failure to submit all fees shall terminate CDOT's consideration of a proposal.

All fees shall be submitted in the form of a cashier's check made payable to the State Treasurer of Colorado, for the State Highway Supplementary Fund. Proposers submitting multiple project proposals will be required to submit a Proposal Review Fee for each project.

Proposal Preparation

Proposals must be signed by an authorized representative of the firm or consortium making the proposal. All information requested under *"Proposal Requirements"* should be submitted. Proposers failing to submit all information requested for conceptual or detailed proposals may be given an opportunity promptly to submit missing information and/or may be given a lowered evaluation of the proposal. Conceptual proposals which lack key information required may be rejected.

Proposals should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to complete the proposed project. Emphasis should be placed on completeness and clarity of content.

Proposals submitted for consideration should include a comprehensive scope of work and provide enough information about the project to determine whether it meets criteria stated herein. In addition, the financial plan for the project must contain enough detail so that an analysis will reveal whether the proposed project financing is feasible.

Proposals should be organized in the order requested herein. All pages of the proposal should be numbered. Evaluation of proposals will be better facilitated if proposers will cross-reference responses by citing the tab number, and subletter, and repeating the text of the requirement. If a response covers more than one page, the tab number and subletter should be repeated at the top of the next page. The proposal should contain a table of contents which cross-references the requirements by category. Information which the proposer desires to present that does not fall within any of the requirements should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration.

Each copy of the proposal should be bound or otherwise contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

Proposer who submit a proposal may be required to give an oral presentation of their proposal to the Initial Review Committee, the Advisory Panel, the Commission, and/or the public. Such presentations will provide opportunities to educate the public and/or clarify aspects of the proposed project.

Colorado Open Records Act

All proposals submitted to CDOT become the property of CDOT and are subject to the Colorado Open Records Act (§§ 24-72-201 *et seq.*, C.R.S.). Proposers are advised to familiarize themselves with the provisions of the Colorado Open Records Act. In no event shall the State, the Commission, or CDOT be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these Guidelines.

In the event that CDOT receives a request for public disclosure of all or a portion of a proposal, CDOT will notify the proposer of the request, providing an opportunity for such proposer to assert, in writing, claimed exemptions under the Colorado Open Records Act other State law. CDOT will come to its own judgment whether or not the requested materials are exempt from disclosure. In the event CDOT elects to disclose the requested materials, it will provide the proposer advance notice of its intent to disclose.

If CDOT, pursuant to an Open Records Act request, denies the right of inspection and does not disclose that information based on the proposers indication that the information is proprietary or confidential or otherwise exempt from disclosure, and if CDOT's nondisclosure of that information is then challenged administratively or judicially, then the proposer submitting that

information shall be primarily responsible to defend against that challenge and to bear all costs and expenses imposed on CDOT as a result of that challenge including, without limitation, as provided in § 24-72-204(5) and (6), C.R.S. If such proposer fails to timely assume that primary responsibility to defend, CDOT may disclose that information without any obligation or liability to such party.

If a proposer has special concerns about proprietary information which it would desire to make available to CDOT, such proposer may wish to suggest for CDOT consideration, prior to submissions of its proposal, methods for safeguarding such information from disclosure consistent with the Open Records Act.

Proposal Requirements

In order to facilitate evaluations by the respective panels of the proposer's capabilities, proposals should be as thorough and detailed as possible so that the respective panels may properly evaluate the proposer's capabilities to complete the proposed project. Proposals should include an executive summary and use cross-reference rather than repetition in explaining the proposed project.

Phase One - Conceptual Proposal

Proposers are required to submit the following, separated by tabs within the conceptual proposal:

TAB 1: Qualifications and Experience:

a. Identify the legal structure of the firm, or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.

b. Describe the experience of each firm and the key principals involved in the proposed project. The lead organization must be identified.

c. Provide the names, addresses, and phone numbers of persons within the firm or consortium who may be contacted for further information.

d. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm(s).

e. Include the address, telephone number, and the name of a specific contact person for an entity for which the firm/consorts or primary members of the consortia have completed a similar project.

f. Provide a financial statement of the firm/consortia and each major partner. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports, if such reports have been filed.

g. Include any planned participation of small, women-, and minority-owned businesses during project development and implementation.

TAB 2: Project Characteristics:

a. Provide a description of the transportation facility or facilities, including the conceptual design and all proposed interconnections with other transportation facilities. Describe the project in sufficient detail so the type and intent of the project, the location, and the communities that may be affected are clearly identified. Describe the assumptions used in developing the project. The project description should be prepared in a way that fully recognizes any federal and/or State requirements to analyze other project alignments and alternatives.

b. Without completing an Environmental Impact Statement, identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts. Identify the projected positive social, economic, and environmental impacts of the project.

c. List the critical factors for the project's success.

d. Identify the proposed schedule for implementing the project, including the estimated time for completion.

e. Address liability for design and construction, and assurances for timely completion of the project.

f. Clearly state the assumptions related to ownership, legal liability, law enforcement, and operation of the facility.

g. Provide information on any phased (partial) openings proposed prior to final completion of the project.

TAB 3: Project Financing:

a. Provide an estimate of the cost of the project by phase (*e.g.* planning, design, construction *etc.*).

b. Submit a plan for the development, financing, and operation of the project, showing: the anticipated schedule on which funds will be required; and proposed sources for such funds.

c. Include a list and discussion of assumptions underlying all major elements of the plan.

d. Identify the proposed risk factors and methods for dealing with these factors.

e. Identify any local, state, and federal resources that the proposer contemplates requesting for the project. Describe the total commitment (financial, services, property, *etc.*) if any, expected from governmental sources, and the timing of any anticipated financial commitment.

TAB 4: Public Support:

a. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall transportation system.

b. Identify any anticipated government support or opposition, or general public support or opposition for the project.

c. Explain the strategy and plans that will be carried out to involve and inform the agencies and the public in areas affected by the project.

TAB 5: Project Compatibility:

a. Describe the significant benefits to the community, region, or state. Identify any state benefits resulting from the project including the achievement of state transportation policies or other state goals.

b. Describe significant benefits to the state's economic conditions.

Phase Two - Specific Deliverables

The following information may be requested in phase two of the evaluation and selection process. Specific requirements and delivery dates will be determined on a case-by-case basis according to the proposed transportation facility.

a. Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed facility or facilities.

b. Provide a list of public utility facilities that will be crossed by the transportation facility and a statement of the private operator's plans to accommodate such crossings.

c. Provide a statement setting out the plan for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the property as well as a list of any property the proposer intends to request the Board to condemn.

d. Provide a detailed listing of all firms who will provide specific design, construction, and completion guarantees. Include a brief description of the guarantees.

e. Provide the proposed total life-cycle cost of the facility or facilities and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. Include the life-cycle cost analysis a detailed analysis of the projected rate of return.

f. If applicable, include a detailed discussion of assumptions about user fees or toll rates, and usage of the facility such as traffic forecasts and assumptions.

g. Identify any known government support or opposition, or general public support or opposition for the project. Government/public support should be demonstrated through resolutions of official bodies, minutes of meetings, letters, *etc.*

h. Demonstrate consistency with state and local transportation plans and local comprehensive plans or indicate the steps required for acceptance into such plans.

i. Provide an explanation of how the proposed transportation facility would impact local transportation plans of each affected locality.

j. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.

h. Provide such additional material and information as CDOT may reasonably request.

EVALUATION AND SELECTION PROCESS

Two Phase Process

Proposals will be submitted and evaluated according to a two phase process. Phase one will require a conceptual proposal to be submitted for a pre-qualification review conducted by the Initial Review Committee. Phase two of the evaluation process will consist of scheduled submission of detailed documentation for final evaluation by the Public-Private Transportation Advisory Panel.

Phase One: Initial Review Committee
Composition

The Initial Review Committee will be comprised of CDOT staff who will evaluate the proposer's qualifications as well as the technical and financial feasibility of each proposal.

The Initial Review Committee will be chaired by the CDOT Chief Engineer.

Purpose

The Initial Review Committee will perform the phase one preliminary qualifications review of each conceptual proposal to determine whether the proposer has, in the sole opinion of the Committee, (1) submitted a complete proposal; (2) assembled a team which is qualified and capable of completing the proposed facility; (3) developed a plan which is technically feasible; and (4) provided a financial plan and financial guarantees which will allow for access to the necessary capital to finance the facility. The Committee may consider the advice of the Commission, the CDOT Controller or other Financial Advisor, other experts, and a representative from the Attorney General's Office, as appropriate, in reaching its decision.

The Initial Review Committee may request formal presentations and/or additional documentations in order to assess project feasibility and proposer's qualifications. Those projects meriting further consideration will be recommended to the State Transportation Commission for approval of the conceptual proposal.

The State Transportation Commission

No later than the second monthly meeting of the Commission following a determination by the Initial Review Committee that a conceptual proposal merits further review, the Commission will review the conceptual proposal and approve or disapprove it for further evaluation and action by CDOT under the Act.

Upon Commission approval, those conceptual proposals will be forwarded to the Public-Private Transportation Advisory Panel, along with the evaluations supporting the determination that based on the proposer's qualifications and technical and financial feasibility, the proposal(s)

merit further review and final evaluation. Proposers whose proposals advance to phase two will be contacted and advised as to the specific deliverables which will be required for the next step.

Phase Two: Public-Private Transportation Advisory Panel
Composition

The Public-Private Transportation Advisory Panel (the Advisory Panel) will be comprised of individuals having appropriate expertise and knowledge to objectively evaluate and analyze which projects would promote the State's transportation goals and advance the public interest.

The CDOT Executive Director will chair the Advisory Panel which will include a member of the State Transportation Commission appointed by the Chairman of the Commission, the Chief Engineer, the Director of Office of Financial Management and Budget, and a representative from the engineering and/or the telecommunications academic community as appropriate.

Purpose

The Primary focus of the Advisory Panel's review will be to consider the project proposals using the Evaluation and Selection Criteria to determine whether the project(s) promote the State transportation goals and serve the public interests. The Panel may consider the advice of the CDOT Controller or other Financial Advisor, other experts, and a representative from the Office of the Attorney General, as appropriate, in making its recommendations.

Public Comment

A copy of each proposal submitted shall by provided be the offeror to each affected local jurisdiction. Offerors should provide a copy of the phase one conceptual proposal and the phase two detailed proposal to any and all affected local jurisdictions at such times as the proposal is submitted to CDOT. Those affected local jurisdictions have 30 days from receipt of the detailed proposal to submit written comments to CDOT. Comments will be reviewed by the Advisory Panel. If comments have not been received within the 30 day time frame, CDOT will conclude that the affected local jurisdiction has no comment on the proposal.

Selection

After comments have been received from affected jurisdictions, the Advisory Panel may request proposers to make presentations to the panel. The format of these presentations will include a formal presentation by the proposer, followed by any questions the Advisory Panel may have pertaining to the project proposal or the presentation. The Advisory Panel may also ask the proposer to address concerns expressed through the public comment process. These meetings will allow the Advisory Panel to see clarification of project elements and complete deliverable requirements, and provide proposers with the opportunity to further explain their proposed projects. If there is an issue to which the proposer is unable to respond during the formal presentation, the Advisory Panel may, at its discretion, grant the proposer a reasonable period of time in which to submit a written response.

Following the formal presentations, the Advisory Panel will evaluate proposals using the criteria listed under "*Proposal Evaluation and Selection Criteria.*" The Initial Review Committee's Report, information gathered at the presentations to the Advisory Panel, and the Advisory Panel's evaluation results will be used to select proposals to recommend to the Commission. The Advisory Panel may elect to recommend any number of projects from proposals received.

The State Transportation Commission

The Commission will review the recommendations of the Advisory Panel and select from those projects recommended, projects which (1) satisfy a public need; (2) are compatible with the state transportation and local comprehensive plans; (3) are reasonable in terms of cost; and (4) will result in the timely acquisition, construction of, or improvements to the transportation facility.

Final authorization by the Commission to proceed with a proposal will be contingent on successful negotiation and execution of a comprehensive agreement between the private operator and CDOT. The comprehensive agreement will, among other things, outline the rights and obligations of the parties, set a maximum rate of return to the private operator (if applicable), determine liability, and establish dates for termination of the private operator's authority and dedication of the facility to the State.

PROPOSAL EVALUATION AND SELECTION CRITERIA

The following criteria will be considered in the evaluation and selection of a proposal, but the weighting of the criteria and the final decisions are subject to the sole discretion of the respective evaluating panel or official. Provided, however, that the CDOT Chief Engineer may modify these criteria, as appropriate, to address the needs of a particular solicitation.

Qualifications and Experience
Does the proposer propose a team which is qualified, led, and structured in a manner which will clearly enable the team to complete the proposed project?

1. **Experience with Similar Projects**
   Have members of this team previously worked together constructing, improving, or managing transportation projects of this type and magnitude? Has the lead firm managed, or any of the member firms worked on, a similar privatization project?

2. **Demonstration of Ability to Perform Work**
   What commitments has the team made to carry out the project? Does the team possess the necessary financial, staffing, equipment, and technical resources to successfully complete the project? Do the team and/or member firms have competing financial or workforce commitments that may inhibit success and follow-through on this project?

3. **Leadership Structure**
   Is one firm designated as lead on the project? Does the organization of the team indicate a well thought out approach to managing the project? Is there an agreement/document in place between members?

4. **Project Manager's Experience**
   Is a Project Manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the Project Manager relate to the member firms? Does the Project Manager have experience handling the type and magnitude of project?

5. **Management Approach**
   Have the primary functions and responsibilities of the management team been identified? Have the members of the team developed an approach to facilitate communications among the project participants: Has the firm adequately described its approach to communicating with and meeting the expectations of the State?

6. **Financial Condition**
   Is the financial information submitted on the firms sufficient to determine the firms' capability to fulfill its obligations described in the project proposal?

7. **Project Ownership**
   Does the proposal identify the proposed ownership arrangements for each phase of the project and indicate assumptions on legal liabilities and responsibilities during each phase of the project?

8. **Participation of Small Businesses and Businesses Owned by Women and Minorities**
   What is the level of commitment by the proposers to use small, minority-, and women-owned business enterprises in developing and implementing the project?

Project Characteristics
Is the proposed transportation facility technically feasible?

1. **Project Definition**
   Is the project described in sufficient detail to determine the type and size of the project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (*e.g.* alignments) that may need to be evaluated?

2. **Proposed Project Schedule**
   Is the time-frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project? Does the proposal contain adequate assurances that the project will be completed and will be completed on time?

3. **Operation**
   Does the proposer present a reasonable statement setting forth plans for operation of the facility?

4. **Technology**
   Is the proposal based on proven technology with a history of successful operating experinece? What is the degree of technical innovation associated with the proposal? Will the knowledge or technology gained from the project benefit other areas of the state or nation? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology? Can the proposed project upgrade relevant local technology?

5. **Conforms to Laws, Regulations, and Standards**
   Is the proposed project consistent with applicable state and federal statutes and regulations, or expected modifications of state or federal statutes, regulations, or standards? Does the proposed design meet appropriate state standards?

6. **Federal Permits**

Is the project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required?

7. **Meets/Exceeds Environmental Standards**
Is the proposed project consistent with applicable state and federal environmental statutes and regulations? Does the proposed design meet appropriate state environmental standards? Does the proposal adequately address or improve air quality conformity?

8. **State and Local Permits**
Does the proposal list the required permits and schedule to obtain them? Are there negative impacts known for the project? If so, is there a mitigation plan identified? Are alternatives to standards or regulations needed to avoid those impacts that cannot be mitigated?

9. **Right-of-Way**
Does the proposal set forth the method by which the private operator proposes to secure all property interests required for the transportation facility? Does the statement include: the names and addresses, if known, of the current owners of the property needed for the facility, the nature of the property to be acquired, and a listing of any property that CDOT is expected to be requested to condemn?

10. **Maintenance & Operations**
Does the proposer have a plan to maintain this facility in conformance with agency standards? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, toll collection, and maintenance?

Project Financing

Has the proposer provided a financial plan and financial guarantees which will allow for access to the necessary capital to finance the facility?

1. **Financing**
Did the proposer demonstrate evidence of its ability and commitment to provide sufficient equity in the project as well as the ability to obtain the other necessary financing?

2. **Financial Plan**
Does the financial plan demonstrate a reasonable basis for funding project development and operations? Are the assumptions on which the plan is based well-defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic?

3. **Estimated Cost**
   Is the estimated cost of the facility reasonable in relation to the cost of similar projects?

4. **Life Cycle Cost Analysis**
   Does the Proposal include an appropriately conducted analysis of projected rate of return and life-cycle cost estimate

5. **Business Objective**
   Does the proposer clearly outline his reason for pursuing this project? Do his assumptions appear reasonable?

Public Support

Has the proposer garnered sufficient public support for the proposed project?

1. **Community Benefits**
   Will this project bring a significant transportation and economic benefit to the community, the region, and/or the state?

2. **Community Support**
   What is the extent of support or opposition for the project? Does the project proposal demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts this project may have on those needs? Is there a demonstrated ability to work with the community?

3. **Public Involvement Strategy**
   What strategies are proposed to involve local and state elected officials in developing this project? What level of community involvement has been identified for the project? Is there a clear strategy for informing, educating, and obtaining community input through the development and life of the project?

Project Compatibility

Is the proposed project compatible with state and local comprehensive plans?

1. **Compatibility with the Existing Transportation System**
   Does the project propose improvements that are compatible with the present and planned transportation system? Does the project provide continuity with existing and planned state and local facilities?

2. **Fulfills Policies and Goals**
   Does the proposed project help achieve performance, safety, mobility, or transportation demand management goals? Does the project improve connections among the transportation modes?

3. **Enhance Community-Wide Transportation System**
   Are there identified project benefits to the affected community transportation system? Does this project enhance adjacent transportation facilities?

4. **Consistency with Local, Regional, and State Transportation Plans**
   Is the project consistent with city and county comprehensive plans and regional transportation plans? Is this project consistent with plans and documents of the Colorado Multimodal Long Range Plan? If not, are steps proposed that will achieve consistency with such plans?

5. **Economic Development**
   Will the proposed project enhance the state's economic development efforts? Is the project critical to attracting or maintaining competitive industries and businesses to the region, consistent with state objectives?

VALUATION OF PPI PROPOSALS

There are 2 different valuations that CDOT may need to make concerning particular types of PPI proposals, as follows:

1. Pursuant to § 43-1-1202(1)(d), C.R.S.. In exchange for a "private contribution" from a private party for a PPI, CDOT may grant a "public benefit" in the form of a lease, easement, or franchise, in or concerning a transportation system project.

In such a case, CDOT must perform a valuation of both the "private contribution", and of the lease or easement or franchise, to determine that such values "reasonably relate" to each other.

CDOT may perform such valuations in any commercially reasonable manner, based on then current industry standards. CDOT may use its own personnel, or consultant services, or use existing information, or any combination thereof, to perform such valuations.

The Commission interprets "reasonably relate" to mean that the value of the lease, easement, or franchise must be at least equal to the value of the private contribution.

If the valuations show that the value of the lease, easement, or franchise is not at least equal to the value of the private contribution, the PPI will be rejected and will not be accepted by CDOT.

2. Pursuant to § 43-1-1204(5), C.R.S. In exchange for a private contribution from a telecommunications provider, CDOT may allow that provider to install its telecommunications facilities in state highway (or other public) right-of-way, or otherwise use that right-of-way.

If that private contribution from a telecommunications provider is other than cash, such as in-kind telecommunication services for CDOT's use, then CDOT must perform a valuation of that private contribution (e.g., of in-kind services) to arrive at a cash value for that contribution. This valuation can be the same as the valuation of the private contribution described in #1 above, i.e., the same cash figure can be used.

CDOT may perform such valuations in any commercially reasonable manner, based on then current industry standards. CDOT may use its own personnel, or consultant services, or use existing information, or any combination thereof, to perform such valuations.

In performing this valuation, CDOT will consider (but is not limited to): the cost to CDOT to purchase an equivalent level of use of telecommunication services/equipment in the then current market place; and the cost of the actual installation of such telecommunication services/equipment. The resulting cash equivalent valuation must be a reasonable estimate of the fair market value of the service or product provided to CDOT.

CDOT will include the results of that valuation in the PPI Agreement with that telecommunications provider. If any other similarly situated telecommunications provider(s) desires to install its telecommunications facilities in that same section of state highway (or other public) right-of-way, or otherwise use that same section of right-of-way, the other telecommunications provider(s) may have equal access to the same section of right-of-way by compensating CDOT the equivalent of that valuation as adjusted for inflation.

Provided, however, that CDOT may increase that valuation in direct proportion to any increase resulting from the applicable inflation rate since the initial installation or use of the right-of-way by the first telecommunication provider.

THE COMPREHENSIVE AGREEMENT

Prior to starting or proceeding with any part of a proposal, the proposer(s) selected must enter into a comprehensive agreement with CDOT. A working group chaired by the Commission, and including the Chief Engineer, and a representative of the Office of the Attorney General, and appropriate CDOT staff, will be responsible for negotiating the comprehensive agreement. Each comprehensive agreement will define the rights and obligations of CDOT and the respective private proposer/operator with regard to the project, and will include all provisions required by § 43-1-1204, C.R.S.

The terms of the comprehensive agreement shall include but not be limited to:

1. The description of the Transportation Facility, the duration of the operator's rights to operate the Transportation Facility, and the conditions under which the Transportation Facility will be dedicated to the responsible public entity;

2. The mechanism by which user fees, if any, may be established from time to time upon agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the private operator the rate of return on investment specified in the comprehensive agreement;

    a. A copy of any service contract shall be filed with CDOT.

    b. A schedule of the current user fees shall be made available by the private operator to any member of the public on request.

    c. Classifications according to reasonable categories for assessments of user fees may be made.

3. The performance milestones that will be required of the operator;

4. The right of the operator to cross, subject to applicable permit requirements and other requirements of law, any highway rights-of-way;

5. The manner in which utilities are to be crossed or relocated and the obligation to pay the cost thereof;

6. The manner in which the operator and CDOT will work together to establish interconnections and interoperability between the Transportation Facility and other public transportation facilities;

7. The procedures by and conditions under which CDOT will exercise its power of eminent domain, if at all, to facilitate the Transportation Facility;

8. The design, construction, operation, and maintenance standards with which the operator must comply;

9. The requirements of the operator to submit plans and specifications for the Transportation Facility to CDOT for approval;

10. The rights of CDOT to inspect construction of or improvements to the Transportation Facility;

11. The obligation of the operator to maintain the Transportation Facility and the rights of CDOT to monitor the operator's maintenance;

12. The right of the operator to make and enforce, with the consent of CDOT, reasonable rules with respect to the Transportation Facility;

13. The terms under which the operator will reimburse CDOT for services provided;

14. The reasonable maximum rate of return on investment authorized for the operator to earn, if any, and the formula by which such rate of return will be calculated and the distribution of project revenues;

15. The terms and conditions under which CDOT may contribute financial and/or in-kind resources, if any, for the Transportation Facility;

16. The events that will constitute operator defaults, operator's rights to notice and cure and the remedies available to CDOT;

17. The events that will constitute CDOT defaults, CDOT's rights to notice and cure and the remedies available to the operator;

18. Lender's rights and remedies with respect to operator defaults and CDOT remedies;

19. The events that will constitute *force majeure* and the remedies the parties will have in the event of occurrence;

20. The insurance and bonding requirements the operator will be required to meet at each stage;

21. The allocation between the operator and CDOT of liabilities for, among others, property damage, personal injury, Transportation Facility repair, and hazardous waste remediation;

22. The obligations of the operator to maintain records, to allow inspection and audit and to provide regular reports to CDOT;

23. The conditions under which the operator may assign its rights under the comprehensive agreement and/or its rights to the Transportation Facility; and

24. Other requirements of the Act.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

APPENDIX

43-1-1201. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Private contribution" means the supply by a private entity of resources to accomplish all or any part of the work on a transportation system project, including funds, financing, income, revenue, cost sharing, technology, staff, equipment, expertise, data, or engineering, construction, or maintenance services.

(2) "Public benefit" means a department grant of a right or interest in or concerning a transportation system project, including:

(a) A lease or easement in, under, or above a state highway right-of-way, notwithstanding section 43-1-210;

(b) Any use of state highway right-of-way that does not impair highway operation or safety, notwithstanding section 43-3-101 (3);

(c) All or part of any revenue or income resulting from the private use of a state highway right-of-way;

(d) A money payment for services from available funds; and

(e) Any other benefit that is specifically authorized by law.

(3) "Public-private initiative" means a nontraditional arrangement between the department and one or more private or public entities that provides for:

(a) Acceptance of a private contribution to a transportation system project or service in exchange for a public benefit concerning that project or service other than only a money payment;

(b) Sharing of resources and the means of providing transportation system projects or services; or

(c) Cooperation in researching, developing, and implementing transportation system projects or services.

(4) "Retail goods and services" means all goods and services sold to the public other than communications services.

(5) "Transportation system" means the state transportation infrastructure and related systems, including highways and associated rights-of-way, bridges, vehicles, equipment, park and ride lots, transit stations, transportation management systems, and intelligent vehicle highway systems.

(6) "Unsolicited proposal" means a written proposal for a public-private initiative that is submitted by a private entity for the purpose of entering into an agreement with the department but that is not in response to a formal solicitation or request issued by the department.

43-1-1202. Department powers. (1) Notwithstanding any other law, the department may:

(a) Solicit and consider proposals, enter into agreements, grant benefits, and accept contributions for public-private initiatives pursuant to this part 12 concerning any of the following:

(I) Use of advanced transportation technologies for traveller information services;

(II) Systems for road weather information, safety warning, advanced traffic management, information broadcasting, real-time transit information, route finding and vehicle navigation, and collision avoidance;

(III) Hazardous and nonhazardous incident detection, response, and removal and facilitation of emergency medical response;

(IV) Promotion of private investment in traffic operations centers, use of telecommunications, use of telecommuting to reduce transportation demand, conversion of defense technologies to civilian transportation uses, operational efficiency on urban and rural roads, and electronic payment for transportation services;

(V) Voluntary emissions testing and mitigation;

(VI) Ride matching and reservation in support of demand management;

(VII) Safety monitoring systems;

(VIII) Commercial fleet management and electronic clearance of ports of entry;

(IX) Development of national standards and protocols for intelligent transportation systems; and

(X) Design, financing, construction, operation, maintenance, and improvement of turnpike projects within the state pursuant to part 2 of article 3 of this title;

(b) Solicit proposals for public-private initiatives as competitive sealed proposals pursuant to section 24-103-203, C.R.S.;

(c) Consider and accept unsolicited proposals pursuant to section 43-1-1203;

(d) Grant a public benefit in or concerning a transportation system project in exchange for a private contribution to that project, but the term of any lease, easement, or franchise granted by the department as a public benefit under this part 12 shall:

(I) Reasonably relate to the value of the private contribution as determined by the department; and

(II) Not exceed ninety-nine years;

(e) Accept a private contribution to a transportation system project;

(f) Exercise any power of the department authorized by law to facilitate the development and performance of public-private initiatives.

(2) Services shall not be provided under this part 12 unless they are consistent and compatible with the use and zoning of the land adjacent to the right-of-way.

(3) Retail goods and services shall not be authorized under this part 12. This subsection (3) shall not prohibit retail goods and services existing on April 17, 1995, nor any vending facilities defined in section 26-8.5-101, C.R.S.

43-1-1203. Unsolicited and comparable proposals. (1) The department may consider, evaluate, and accept an unsolicited proposal for a public-private initiative only if the proposal complies with all of the requirements of this section.

(2) The department may consider an unsolicited proposal only if the proposal:

(a) Is innovative and unique;

(b) Is independently originated and developed by the proposer;

(c) Is prepared without department supervision;

(d) Is not an advance proposal for a known department requirement that can be acquired by competitive methods; and

(e) Includes sufficient detail and information for the department to evaluate the proposal in an objective and timely manner and to determine if the proposal benefits the department.

(3) If the unsolicited proposal does not comply with the requirements of subsection (2) of this section, the department shall return the proposal without further action. If the unsolicited proposal complies with all the requirements of subsection (2) of this section, the department may further evaluate the proposal pursuant to this section.

(4) The department shall base its evaluation of the unsolicited proposal on the following factors:

(a) Unique and innovative methods, approaches, or concepts demonstrated by the proposal;

(b) Scientific, technical, or socioeconomic merits of the proposal;

(c) Potential contribution of the proposal to the department's mission;

(d) Capabilities, related experience, facilities, or techniques of the proposer or unique combinations of these qualities that are integral factors for achieving the proposal objectives;

(e) Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives; and

(f) Any other factors appropriate to a particular proposal.

(5) The department may accept an unsolicited proposal only if:

(a) The unsolicited proposal receives a favorable evaluation; and

(b) The department makes a written determination based on facts and circumstances that the unsolicited proposal is an acceptable basis for an agreement to obtain services either without competition or after the actions are taken pursuant to subsection (6) of this section, as applicable.

(6) If the unsolicited proposal requires the department to spend public moneys in an amount that is reasonably expected to exceed fifty thousand dollars in the aggregate for any fiscal year, including an unsolicited proposal for a public project as defined in section 24-92-102 (8), C.R.S., the department shall take the following actions, except as otherwise provided in subsection (7) of this section, before accepting the unsolicited proposal:

(a) Provide public notice that the department will consider comparable proposals. The notice shall:

(I) Be given at least fourteen days prior to the date set forth therein for the opening of proposals, pursuant to rules. Such notice may include publication in a newspaper of general circulation at least fourteen days prior to considering comparable proposals.

(II) Be provided to any person or entity that expresses, in writing to the department, an interest in a public-private initiative that is similar in nature and scope to the unsolicited proposal;

(III) Outline the general nature and scope of the unsolicited proposal, including the location of the transportation system project, the work to be performed on the project, and the terms of any private contributions offered and public benefits requested concerning the project;

(IV) Request information to determine if the proposer of a comparable proposal has the necessary experience and qualifications to perform the public-private initiative; and

(V) Specify the address to and the date by which the comparable proposals must be submitted, allowing a reasonable time to prepare and submit the proposals;

(b) Determine, in its discretion, if any submitted proposal is comparable in nature and scope to the unsolicited proposal and warrants further evaluation;

(c) Evaluate each comparable proposal, taking relevant factors into consideration; and

(d) Conduct good faith discussions and, if necessary, negotiations concerning each comparable proposal.

(7) The actions required by subsection (6) of this section do not apply to an unsolicited research proposal if the department reasonably determines that the actions would improperly disclose either the originality of the research or proprietary information associated with the research proposal.

(8) The department may accept a comparable proposal submitted pursuant to subsection (6) of this section if the department determines that the comparable proposal is the most advantageous to the state in comparison to an unsolicited proposal or other submitted proposals.

(9) If the unsolicited proposal is accepted or if a comparable proposal is accepted pursuant to subsection (8) of this section, the department shall use the proposal as the basis for negotiation of an agreement.

(10) The department's procurement officer or the procurement officer's designee has the authority to make the determinations and take the actions required by this section.

43-1-1204. Public-private initiative agreement. (1) The department shall enter into an agreement for each public-private initiative.

(2) The department shall include terms and conditions in the agreement that it determines are appropriate in the public interest and to protect highway and traffic safety.

(3) The agreement shall provide that:

(a) The private entity shall not pledge or cause a lien to be created on the transportation system or right-of-way involved in the transportation system project;

(b) The department owns the highway and right-of-way involved in the transportation system project at all times.

(4) Notwithstanding the fact that the department enters into an agreement for a public-private initiative, the department is not a partner or a joint venturer with the private entity for any purpose.

(5) The department shall not enter into any exclusive arrangement, lease, or other agreement for use of the public rights-of-way by a telecommunications provider that in any way discriminates or prevents a similar arrangement being made with any other telecommunications provider. All leases of rights-of-way to telecommunications providers must be done on a nondiscriminatory same-term basis. If a telecommunications provider compensates the state in other than cash, a cash equivalent value must be imputed and attached to the agreement, and any other telecommunications provider may have equal access to the right-of-way for the cash equivalent. The cash equivalent shall be an estimate of the fair market value of the service or product provided to the state, and a telecommunications provider may ask a court of competent

jurisdiction to review the imputed monetary amount which the court may lower to the reasonable fair market value if necessary.

43-1-1205. Revenue - disposition - use. The department shall deposit any private contribution of money and any department share of revenue or income resulting from a transportation system project, if any, in the state highway supplementary fund created in section 43-1-219. The department shall use the contributed moneys for transportation purposes.

43-1-1206. Rules. The transportation commission created pursuant to section 43-1-106 shall adopt rules that it determines are necessary or appropriate to implement this part 12, including rules on the solicitation and evaluation of public-private initiatives, initiative agreements, private contributions, public benefits to be granted in exchange for contributions, and the receipt, content, and proper handling of unsolicited or comparable proposals for transportation system projects.

43-1-1207. Applicability - public highway use by public and private entities. This part 12 is subject to applicable state and federal laws to the extent that such laws authorize the use of public highways by any public or private entity.

43-1-1208. Repeal of part. This part 12 is repealed, effective July 1, 2000. The repeal of this part 12 shall have no effect on contracts entered into on or before July 1, 2000.

43-3-201. Legislative declaration. The development and improvement of the public highways and roads within the state of Colorado being essential to the well-being and prosperity of the state and the inhabitants thereof, it is declared to be the policy and purpose of the general assembly to provide for such development and improvement by conferring additional powers on the department of transportation as a body corporate under the laws of the state of Colorado.

43-3-202. Powers granted to department. (1) In addition to the powers now possessed by it, the department of transportation has power:

(a) To formulate, by its own initiative or by recommendation of the governor, plans for the development and improvement of the state highway system by the construction of turnpikes within the state and to conduct engineering surveys and perform any other acts necessary in determining the feasibility of such plans. **"Turnpike" means any highway or express highway, tunnel, or toll tunnel constructed under the provisions of this part 2 and includes all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations, and administration, storage, and other buildings which the department of transportation may deem necessary for the operation of such turnpike, together with all property, rights, easements, and interests which may be acquired by the department of transportation for the construction or the operation of such turnpike.**

(b) To design, finance, construct, operate, maintain, improve, and reconstruct turnpikes in the state and to acquire, construct, operate, control, and use the turnpikes and all works, facilities, and means necessary or convenient to the full exercise of the powers granted in this section. It is declared that such turnpikes are public highways of the state.

(c) To take all steps and adopt all proceedings and to make and enter into all contracts or agreements with other states, the United States, or any of its agencies, instrumentalities, or departments, including, without limiting the generality of the foregoing, the reconstruction finance corporation or with public corporations within the state necessary or incidental to the performance of its duties and the execution of its powers under this part 2; but any contract relating to the financing of any such construction, maintenance, improvement, or reconstruction shall be approved by the governor before the same becomes effective;

(c.5) To make and enter into contracts or agreements with one or more public or private entities to design, finance, construct, operate, maintain, reconstruct, or improve a turnpike project by means of a public-private initiative pursuant to section 43-3-202.5 and part 12 of article 1 of this title;

(d) To establish, revise periodically, and collect fees, fares, and tolls for the privilege of traveling along and over the turnpikes and for such other uses as may be made available by the establishment of such turnpikes, to adopt such rules governing the use of the turnpikes as the department of transportation may determine to be advisable, and to exercise such other powers and authority as may be necessary or convenient to the practical and full operation and use thereof;

(e) To set aside in a special sinking fund and to pledge any and all fees, fares, and tolls and all income however derived to the payment of the principal of and the interest on the bonds authorized in this part 2 to be issued;

(f) To set aside in a special sinking fund and to pledge from the proceeds in the state highway fund derived from the imposition of licenses, registration, and other charges with respect to the operation of any motor vehicle upon any public highway of the state and the proceeds from the imposition of any excise tax on gasoline or other liquid motor fuel an amount sufficient to insure the payment of the principal and interest on the bonds authorized in this part 2 to be issued promptly as the same respectively become due; except that any such pledge shall first be approved by joint resolution of the senate and house of representatives and further except that the amount so set aside and pledged shall not exceed in any one year one hundred percent of the total of the following:

(I) The amount of principal and interest falling due during such year; and

(II) The amount required to be paid into the special sinking fund as a reasonable reserve for the payment of the bonds authorized in this part 2 in accordance with the resolution of the transportation commission authorizing their issuance as approved by the joint resolution of the senate and house of representatives.

(g) To accept grants and permits from and to cooperate with the United States or any agency, instrumentality, or department thereof in the construction, reconstruction, maintenance, improvement, operation, and financing of turnpikes or their appurtenances and to do all things necessary to avail itself of such cooperation;

(h) To designate as a turnpike project a described territory or a described portion of the highway system of the state to be constructed or improved under this part 2;

(i) To cooperate, negotiate, and contract with other states in any manner necessary to effect the purposes of this part 2;

(j) To require that each contractor to whom is awarded any contract for the construction, erection, repair, maintenance, or improvement of any turnpike, as defined in paragraph (a) of this subsection (1), shall, before entering upon the performance of any work included in said contract, execute, deliver to, and file with the department of transportation a good and sufficient bond to be approved by the department of transportation in an amount to be fixed by the department of transportation, which amount shall be not less than twenty-five percent of the total amount payable by the terms of said contract. Such bond shall be duly executed by a qualified corporate surety, conditioned for the faithful performance of the contract according to the terms thereof, and, in addition, shall provide that, if the contractor or his subcontractors fail to duly pay for any labor, materials, motor vehicle or team hire, sustenance, provisions, provender, or other supplies used or consumed by such contractor or his subcontractor or contractors in performance of the work contracted to be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight percent per annum.

43-3-202.5. Public-private initiatives - legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The department of transportation is in need of funds to invest in new infrastructure projects, including turnpikes, within the state transportation system, and public-private partnerships can provide the state with a new source of capital for such projects;

(b) Privately-developed transportation projects can result in time and cost savings, risk reduction, and new tax revenues to the state; and

(c) Public-private agreements can be utilized by the state not only for the development of new turnpikes but also for the modernization and improvement of existing turnpikes.

(2) The department of transportation may enter into public-private initiatives pursuant to part 12 of article 1 of this title for the following purposes:

(a) To design, finance, construct, and operate a new turnpike project within the state; or

(b) To improve an existing turnpike project in the state by modernizing, upgrading, expanding, or maintaining an existing turnpike facility.

(3) (a) The department of transportation is authorized to solicit and consider proposals, enter into agreements, grant public benefits, and accept contributions for public-private initiatives pursuant to part 12 of article 3 of this title concerning the purposes set forth in subsection (2) of this section.

(b) As used in this subsection (3), "public benefit" has the same meaning as set forth in section 43-1-1201 (2).

(4) A public-private initiative under this section shall include a provision that the public or private entity shall secure and maintain liability insurance coverage during the construction and improvement of any turnpike project in amounts appropriate to protect a project's viability.