



Date: November 18, 2020

To: HPTE Board of Directors

From: Simon Logan, HPTE Liaison and Program Coordinator

Subject: Updates to HPTE Unsolicited Proposal Policy and Public-Private Partnership (P3) Management Manual

Purpose and Requested Action

This memorandum presents the revised HPTE Unsolicited Proposal Policy (USP), and subsequent HPTE P3 Management Manual updates to the HPTE Board of Directors (HPTE Board) for consideration.

The HPTE Board is asked to approve the proposed updates HPTE included as Attachment A and B.

Background

In November 2019, the HPTE Board of Directors approved a new USP. Since January of this year, HPTE has received 12 unsolicited proposals. Six were rejected at the Threshold Review Phase either because there was a moratorium on the corridor or they did not meet the HPTE USP requirements. Following an assessment by the CDOT/HPTE Review Teams, it was decided not to pursue five proposals that passed the Threshold Review during the Phase One (Conceptual Proposal) Evaluation. One proposal is in the Phase Two (Detailed Proposal) stage. HPTE will make further information on the proposal available when the due diligence review has been completed by HPTE and CDOT staff.

As HPTE staff have coordinated the evaluations of the various proposals received, numerous lessons learned were identified to improve the process. As a result, HPTE staff recommends changes to the current HPTE USP and P3 Management Manual to address issues that have arisen over the last year.

Relevant Details:

Proposed changes to the November 2019 Unsolicited Proposal Policy are summarized below. See Appendix A for a redline version.

- *Electronic Payment.* COVID-19 and the reduction in HPTE and CDOT staff working from CDOT HQ identified the need to accept electronic payment from proposers to avoid unnecessary in-person contact. The changes reflect this flexibility.
- *Moratoriums.* The language around moratoriums was revised to put the onus on the proposer to contact HPTE staff in advance to identify any moratoriums on corridors or projects imposed by the HPTE Board and Transportation Commission (TC). This change ensures that if more moratoriums are added, the USP does not need to come back to the board for approval.
- *Transparency and Role of EMT.* The updated USP has language that specifies that the executive summary of a proposal that reached the Phase Two (Detailed Proposal) Evaluation will be released as part of the HPTE Board documents when the due diligence analysis has been completed by HPTE and CDOT staff. Upon completing the Detailed Proposal Evaluation, the HPTE Review Team will recommend the Executive Management Team (EMT). If the EMT approves the proposal to move forward, the HPTE Board and /or the Transportation Commission (if relevant) will decide on whether to forego the Proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation.



The Proposer will be notified of the date of the meeting when the Proposal will be discussed.

- *Introducing competition to get the best value for the state.* This is the largest change in the document. It clarifies when an unsolicited proposal becomes a competitive procurement and the steps HPTE and CDOT staff will take to manage this process to ensure transparency and accountability. Specific steps include:
 - Value for Money Analysis - if relevant to the proposed project.
 - Adequate opportunity for others to compete. This involves publishing an RFQ, draft RFP, and final RFP on the project. The original proposer will have the option to either submit an RFQ or be shortlisted on the merits of their submission, if the HPTE Director deem their submittal sufficient.
 - Timeframe of the procurement.
 - Conditions for reimbursement of original proposer fees as part of the RFP stipend, if they choose to submit a proposal.
 - Transparency and stakeholder engagement. As a general statement of policy, the HPTE will continue to prioritize transparency and accountability in the development and implementation of public-private partnerships for surface transportation projects and follow HPTE's Transparency Policy.
 - HPTE Reserves the right to reject the proposal.
 - Prerequisites to contract negotiation.

Finally, as a result of these changes, the P3 Management Manual also needs to be updated. The language has been updated to direct the reader to the HPTE USP. See Appendix B for a redline version of the USP section of the document.

Options / Decision Matrix

1. **Staff Recommendation:** Approve the Updated HPTE Unsolicited Proposal Policy and resulting P3 Management Manual changes.
2. Review but do not approve the Policy and Management Manual changes. Provide instructions on changes or revisions.

Attachments

- A. HPTE Unsolicited Proposal Policy update (November 2020) redline version
- B. HPTE P3 Management Manual unsolicited proposal excerpt redline version



HPTE Unsolicited Proposal Policy

Revised November, 2020

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1. Overview

This policy and procedure apply to Unsolicited Proposals received by the Colorado High Performance Transportation Enterprise (HPTE). HPTE is statutorily mandated to aggressively pursue public-private partnerships (P3) and other innovative and efficient means of completing surface transportation infrastructure projects in accordance with the provisions of Section [43-4-806](#), Colorado Revised Statutes, as amended.

2. What is an Unsolicited Proposal?

An Unsolicited Proposal is a written proposal submitted to HPTE on the initiative of the Proposer for the purpose of obtaining a contract with HPTE. It uses unique solutions to offer innovative and efficient means of completing surface transportation infrastructure projects or generates revenue and/or other value that will enable HPTE to better pursue its legislative mandate. It must have the following qualities:

- Innovative, unique and pragmatic;
- Independently originated and developed by the proposer;
- Prepared without HPTE or Colorado Department of Transportation (CDOT) supervision, endorsement, direction, or direct involvement;
- Sufficiently detailed that it supports HPTE’s mission and responsibilities; and
- Must address an HPTE and/or CDOT priority, which can include, but is not limited to, projects already identified in HPTE’s Express Lanes Master Plan (ELMP), CDOT’s 2045 Statewide Transportation Plan, as well as other existing Transportation Plans.⁴
- HPTE and CDOT have the legal authority to impose moratoriums for corridors on which Unsolicited Proposals will not be accepted. Proposers are advised to contact HPTE staff (CDOT_HPTE-USP@state.co.us) to determine if a moratorium exists on a corridor they are considering as part of an Unsolicited Proposal submission.

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An Unsolicited Proposal is not an offer responding to HPTE’s previously published expression of need including a Letter of Interest (LOI), Request for Information (RFI), Request for Qualifications (RFQ), or Request for Proposal (RFP).

3. Unsolicited Proposal Process Overview

HPTE receives and evaluates Unsolicited Proposals using an initial Threshold Review (see Section 4) followed by a two-phased approach. The purpose of Phase One (Conceptual Proposal - see Section 7) is for HPTE to receive written, concept-level proposals² and to screen those proposals to determine whether HPTE would like to review additional information in Phase Two (Detailed Proposal - see Section 9).

In the event that the Unsolicited Proposal proceeds beyond Phase Two or otherwise involves a competitive proposal or sole-source procurement, HPTE will provide an adequate opportunity for interested parties to ~~comment or~~ submit competing

¹ ~~Excluding the I-70 East, I-270, and I-25 North from US 36 to Ft. Collins. As of the publication of these Guidelines, a moratorium on these corridors still exists. Please check with HPTE to see if it has been lifted or any others have been added.~~

² Concept-level proposals should [follow the format outlined in Annex A](#), contain the ideas or concepts needed to understand what it does, how it might address specific transportation objectives, and how it is best used.



proposals, and/or requests for an opportunity to respond using the RFQ and RFP process, within a time frame specified by HPTE staff (minimum of 30 days) specified by HPTE staff, in accordance with Section 15 of this Policy. HPTE may, at any time, choose not to proceed any further with the Unsolicited Proposal.

All Unsolicited Proposal documentation should be submitted both electronically (CDOT_HPTE-USP@state.co.us) and in hard copy (HPTE, 2829 W Howard PI, Denver, CO, 80204), unless HPTE staff direct the proposer to submit only an electronic copy. Requests for confidentiality should also be submitted electronically and in hard copy (see Section 16), unless HPTE staff direct the proposer to submit only an electronic copy.-

4. Threshold Review

Before moving to Phase One, HPTE staff will acknowledge receipt of the Unsolicited Proposal and conduct a Threshold Review to confirm:

- I. A Conceptual Proposal Form has been submitted (see Annex A), and all required information is included;
- II. The Conceptual Proposal complies with the procedures for submission of confidential or proprietary information for use and disclosure of data (see Section 16); and
- III. Receipt of the Conceptual Proposal Evaluation Fee (\$5,000) from the Proposer.

HPTE staff will strive to complete the Threshold Review within 20 business days of receipt of the Unsolicited Proposal submission. The HPTE Director may extend the time allowed to complete the Threshold Review if more time is needed.

5. Application Fee (Phase One - Conceptual Proposal)

HPTE will only accept the submission of an Unsolicited Proposal if, at the time the Unsolicited Proposal is submitted, the person or consortium submitting the Unsolicited Proposal (Proposer) pays HPTE, via check, a fee of \$5,000 to evaluate the Conceptual Proposal. The check should be made out to "The State of Colorado" and addressed to HPTE 2829, W Howard PI, Denver, CO, 80204. HPTE staff may also permit a wire transfer payment if confirmed in writing in advance. This fee is nonrefundable.

HPTE, at its sole discretion, may waive the fee(s) for an Unsolicited Proposal if the Proposer is from a Disadvantaged Business Enterprise, Women-Owned Business, or Emerging Small Business, and determined to be reasonable and in the best interest of the State. These small business programs are designed to assist emerging small business, minority, and women-owned businesses in obtaining work on CDOT projects. These programs are managed by the CDOT Civil Rights & Business Resource Center and require formal certification to qualify for, and participate in, each of the programs.

All costs incurred by the Proposer in preparing and submitting an Unsolicited Proposal will be borne solely and completely by the Proposer. Under no circumstances will the State, HPTE, CDOT or any of their agents, representatives, consultants, directors,



officers or employees be liable for, or otherwise obligated, to reimburse the costs incurred by the Proposer, whether or not selected for negotiations, in developing the Unsolicited Proposal or negotiating an agreement.

6. Governance and Oversight

HPTE Board of Directors

The HPTE Board of Directors (HPTE Board) provides oversight of HPTE's activities and consists of three members of the Transportation Commission and four members appointed by the Governor from four geographic areas. Information on Unsolicited Proposals is shared with the HPTE Board at every stage of the process. This includes the release of the executive summary from the proposer, when HPTE staff determine appropriate due diligence steps have been completed as part of the Phase Two: (Detailed Proposal) Phase. The executive summary will be included in the board documents and published on the HPTE website. It is only after completion of the Detailed Proposal Evaluation in Phase Two (see Section 13) that the HPTE Review Team submits a recommendation to the CDOT Executive Management Team (EMT), and the decision is made to proceed (or not proceed), that the HPTE Board and Transportation Commission (if relevant) decides whether to forego the Unsolicited Proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation. The HPTE Board meets on the third Wednesday of each month and the Transportation Commission meets on the third Thursday of each month. HPTE Board meeting dates are available on the HPTE website.

Transportation Commission

The state's transportation system is managed by CDOT under the direction of the Transportation Commission. The Transportation Commission (TC) is comprised of 11 commissioners who represent specific districts. Under State law, the powers and duties of the TC include formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the State.

Information on Unsolicited Proposals will be shared with the Transportation Commission on an as-needed basis, specifically when Unsolicited Proposals are addressing a CDOT need or would require joint collaboration, financial commitments, or joint contracting between HPTE and CDOT.

7. Phase One: Conceptual Proposal Content

If the Conceptual Proposal meets the Threshold Review Requirements, HPTE staff will take the following steps:

- I. Log the Conceptual Proposal and assign it a number;
- II. Assemble an evaluation team (HPTE Review Team), which could include outside third parties, that are technical and financial subject-matter experts to review the Unsolicited Proposal (if an evaluation by others outside of HPTE and CDOT is deemed necessary by HPTE staff);
- III. If a meeting would be helpful to more fully understand the Conceptual Proposal, HPTE will request a meeting with the Proposer; and



IV. Facilitate the evaluation process as needed.

Conceptual Proposals should provide an outline of all aspects of the proposed project and will provide the framework to guide discussions with HPTE staff on the Conceptual Proposal. The Conceptual Proposal should be brief (six pages maximum) and include all information identified in Annex A (Conceptual Proposal Form).

HPTE staff will strive to complete the Conceptual Proposal Evaluation within 40 business days of passing the Threshold Review. The HPTE Director may extend the time allowed to complete the Evaluation of the Conceptual Proposal if more time is needed.

8. Phase One: Conceptual Proposal Evaluation

During the Conceptual Proposal Evaluation, the HPTE Review Team³ will evaluate the Conceptual Proposal for the following:

- I. Determine if the Conceptual Proposal meets the definition of an Unsolicited Proposal;
- II. Confirm the idea submitted is within HPTE's jurisdiction or control and complies with HPTE's statute;
- III. The Conceptual Proposal offers direct or anticipated benefits to HPTE, CDOT, its customers, and the community;
- IV. The Conceptual Proposal is consistent with HPTE's objectives and goals;
- V. The Conceptual Proposal satisfies a need for HPTE that can be accommodated in HPTE's annual long-term capital and operating budgets without displacing other planned expenditures, placing other committed projects at risk, and significantly increasing the cost of the proposed items;
- VI. The Conceptual Proposal offers unique goods or services that HPTE did not intend to purchase through the normal HPTE contract process; and
- VII. Confirm the inclusion of high-level financial, technical and legal components, or other specific evaluation criteria appropriate for the particular proposal. Detailed financial, technical, and legal components are not required until Phase Two (Detailed Proposal).

The burden is on the Proposer to demonstrate these attributes to HPTE.

Upon completion of the Conceptual Proposal Evaluation, HPTE staff will notify the Proposer of HPTE's decision. Possible outcomes include, but are not limited to, proceeding to Phase Two, discontinuing the process, or pursuing a competitive procurement. HPTE will provide a reasonable explanation of the reasons for the decision.

³ Review Team will include (subject to availability and proposal elements) Program Coordinator, Special Projects and Budget Manager, Major Projects Manager, Head of Innovative Project Delivery, Tolling Operations Manager, HPTE Director, other relevant CDOT staff, and outside third parties as deemed necessary by HPTE staff.



9. Phase Two: Detailed Proposal Overview

The purpose of Phase Two is for HPTE to receive more detailed technical and financial information. At this phase, HPTE will decide whether to forego the Conceptual Proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation.

10. Phase Two: Request for Detailed Proposal

If HPTE desires to proceed to Phase Two, HPTE staff will issue a Request for Detailed Proposal that formally tells the Proposer to proceed to Phase Two.

11. Phase Two: Detailed Proposal Evaluation Fee

If HPTE desires to proceed to Phase Two, a second payment must be submitted to HPTE to cover costs associated with the Detailed Proposal Evaluation. HPTE will only evaluate the Detailed Proposal if the Proposer pays HPTE, via check, a Detailed Proposal Review Fee of \$50,000 for the Detailed Proposal Evaluation. The check should be made out to "The State of Colorado" and addressed to HPTE, 2829 W Howard Pl, Denver, CO, 80204. [HPTE staff may also permit a wire transfer payment if confirmed in writing in advance.](#) This fee is nonrefundable.

If HPTE determines that the Detailed Proposal Evaluation costs will be materially greater, the Proposer will be contacted and provided with an additional amount that must be paid by check before the continuation of the Detailed Proposal Evaluation.

12. Phase Two: Detailed Proposal Content

In addition to the information provided in Phase One, a Detailed Proposal must, at a minimum, include the following information:

Technical information

- I. Names and professional information of the Proposer's key personnel who would be committed to the project;
- II. Type of support needed from HPTE (e.g., facilities, equipment, materials, or personnel resources);
- III. A sufficiently detailed description of the scope of work being offered to allow HPTE to evaluate the value received for the price proposed;
- IV. Proposed price or total estimated cost for the effort and/or the revenue generated in sufficient detail for meaningful evaluation, including an annual cash flow for the project;
- V. A schedule for the implementation including specific details for any property and/or services to be provided by HPTE; and
- VI. Proposed duration of the effort.

Supporting information

- I. Type of contract preferred;
- II. Description of the organization, previous experience in the field, and facilities to be used;
- III. Required statements, if applicable, about organizational conflicts of interest, and environmental impacts; and



- IV. Information demonstrating to HPTE that the Proposer has the necessary financial resources to complete the project, as determined by HPTE staff. Such information may include (i) financial statements, including an Auditor's Report Letter or an Accountant's Review Letter, Balance Sheets, Statements of Income and Stockholders Equity, and a Statement of Change in Financial Position; (ii) un-audited balance sheets; (iii) names of banks or other financial institutions with which the proposer conducts business; and (iv) letter of credit commitments.

A written request for confidentiality may be submitted by the Proposer with the Detailed Proposal documents. Refer to Section 16 for further information on the procedures for the submission of confidential or proprietary information.

Depending on the circumstances, the Request for Detailed Proposal may also include a request from HPTE to the Proposer for the following:

- o A further description of the problem or opportunity being addressed;
- o Relevant background, context, parameters, and policies;
- o Functional, technical and legal requirements;
- o A cash flow analysis showing capital, maintenance and operating costs and revenues;
- o Requests for other project related information related to scope, budget, schedule, personnel, risks, data, performance measurement, potential impacts, etc.; and
- o Requests for specific modifications or clarifications to the scope of the original Conceptual Proposal.

HPTE may, at its sole discretion, invite the Proposer to present to the HPTE Review Team, ask and answer questions of the HPTE Review Team, and discuss the Detailed Proposal and context.

13. Phase Two: Detailed Proposal Evaluation

HPTE staff will strive to complete the Detailed Proposal Evaluation within 60 business days of receipt of a complete submission from the Proposer in accordance with the criteria set out in this Section. The HPTE Director may extend the time allowed to complete the Detailed Proposal Evaluation if more time is needed.

Evaluation Criteria

In the Detailed Proposal Evaluation, the HPTE Review Team will consider the same evaluation criteria set forth in the Conceptual Proposal Evaluation in addition to the following factors:

- I. The Proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the Detailed Proposal objectives;
- II. The Proposer's financial capacity to deliver the goods or services defined in the Detailed Proposal;



- III. Viability of the proposed schedule and HPTE's ability to meet activities required of HPTE;
- IV. HPTE's capacity to enter into a contract under its enterprise status;
- V. The qualifications, capabilities, and experience of key personnel who are critical in achieving the proposal objectives;
- VI. The specific details of the cost/revenue generated; and
- VII. Other specific evaluation criteria appropriate for the particular Detailed Proposal.

14. Phase Two: Detailed Proposal Recommendation

Upon completion of the Detailed Proposal Evaluation, the HPTE Review Team will make a recommendation to the EMT. If the EMT approves the proposal to move forward, the HPTE Board and ~~for~~ the Transportation Commission (if relevant) will make a decision on whether to forego the Proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation. The Proposer will be notified of the date of the meeting when the Proposal will be discussed.

15. Full and Open Competition Requirements

The HPTE USP process is designed to support HPTE's goal of aggressively pursuing public-private partnerships (P3) and other innovative and efficient means of completing surface transportation infrastructure projects that have not been released as an RFI, RFQ, or RFP. However, there is a point within the USP process that a proposal moves from following the Unsolicited Proposal process to a competitive procurement unless a sole source procurement is approved by the EMT, HPTE Board, and TC. HPTE's receipt of an Unsolicited Proposal does not, by itself, justify a contract award without full and open competition. Unless the Unsolicited Proposal offers a proprietary concept that is essential to contract performance, HPTE will seek competition by posting on the procurement section of the HPTE website per the requirements set forth below. Before entering into a contract resulting from an Unsolicited Proposal, HPTE will take the following steps:

Value for Money Analysis

- I. If, after a Phase Two (Detailed Proposal) Evaluation by the Review Team, the HPTE Director decides the project may be something HPTE and CDOT wish to pursue, a Value for Money (VfM) will be conducted (if necessary). If the VfM study, and the HPTE Director, determines the project is in the best interest of the state, HPTE will publish a notice on the procurement section of the HPTE website and other relevant P3 industry publications, if appropriate.

Adequate Opportunity to Compete

- II. The notice shall state that HPTE:
 - 1. Has received and accepted an unsolicited proposal;
 - 2. Conducted a Value for Money analysis (if relevant); and



3. May negotiate an interim or comprehensive agreement with the private entity based on the proposal, and (iv) will accept for consideration any competing proposals and qualifications that comply with the HPTE Unsolicited Proposal Policy using the Request for Qualifications (RFQ) followed by a draft Request for Proposal (RFP) and a finalized RFP, as outlined in the P3 Management Manual.

III. The RFQ notice will be published for a period of no less than forty-five (45) calendar days after the initial publication of the applicable notice, or such additional time as determined by the HPTE Director.

IV. The Original Proposer will have the option to either submit a Statement of Qualifications as required by the RFQ, be shortlisted on the merits of their Phase One and Two submittals, if the HPTE Director deemed their submittals sufficient for that purpose, or submit any additional information they deem appropriate as required in the RFQ.

Timeframe

V. In determining whether to authorize additional time for submission of competing proposals and qualifications, the HPTE Director will consider the complexity of the proposed project and federal oversight and financial participation.

Conditions of Reimbursement of Original Proposer Fees

VI. If the Original Proposer decides not to participate in the RFP, they will not receive the \$55,000 fee and any additional fees paid as part of the evaluation. However, if the Original Proposer submits a proposal in response to the RFP and is not chosen as the Preferred Proposer, the Original Proposer will be entitled to receive the stipend specified in the RFP (which could include the Original Proposer Fee).

Notice

VII. The notice 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.

Confidential information

VIII. HPTE neither requests nor encourages the submission of confidential or proprietary information. If confidential or proprietary information is submitted it should follow the guidance set out in Section 16.



Transparency and Stakeholder Engagement

IX. As a general statement of policy, the HPTE will continue to prioritize transparency and accountability in the development and implementation of public-private partnerships for surface transportation projects. Any Unsolicited Proposal that proceeds beyond Phase Two, that is approved by the HPTE Board and TC, will follow the HPTE Transparency Policy.

HPTE Reserves the Right to Reject the Proposal

+X. In the alternative, HPTE may determine (i) not to proceed further with any proposal, or (ii) proceed using standard procurement procedures consistent with the HPTE and CDOT's procurement policies.

Sole Source Award

If it is impractical, unreasonable, or not in the best interests of the State to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, HPTE may make a sole source award. A sole source award may not be based solely on the unique capability of the Proposer to provide the specific property or services proposed.

Prerequisites to Contract Negotiation

The contracting officer or other designated HPTE representative(s) may commence negotiations only after the following prerequisites have been met:

1. An Unsolicited Proposal has received a favorable comprehensive evaluation including in comparison to any proposals received following publication as provided in this Policy;
2. HPTE staff furnishes the necessary funds, and provides a sole-source justification (if applicable); and
3. HPTE Director, HPTE Board, and TC approves the Unsolicited Proposal (if required).

Receipt

HPTE will acknowledge receipt of the Unsolicited Proposal and may post information to HPTE's website and in any other relevant trade publications that advertise contracting solicitations. At the time of submission to HPTE, the Proposer must also include an Executive Summary covering the major elements of the Unsolicited Proposal that do not address the Proposer's price, financing plan or other confidential or proprietary information or trade secrets that the Proposer intends to be exempt from disclosure. The Executive Summary will be a public document and may be posted on HPTE's website. The Executive Summary may also be used in connection with seeking competitive proposals. Such publication of receipt could occur at any phase of the process, to be determined by HPTE staff.

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Adequate Description

~~HPTE's publication of its receipt of the Unsolicited Proposal will include an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.~~

Interest in the Property or Services

~~HPTE will also publicize its interest in acquiring the property or services described in the Unsolicited Proposal using the same or similar methods provided above.~~

Adequate Opportunity to Compete

~~HPTE will provide an adequate opportunity for interested parties to comment or submit competing proposals, and/or requests for an opportunity to respond within a time frame (minimum of 30 days) specified by HPTE staff.~~

Contract Award Based on Proposals Received

~~Finally, HPTE will publicize its intention to award a contract based on the Unsolicited Proposal or another proposal submitted in response to the publication using the same or similar methods provided above.~~

Contract Resulting from an Unsolicited Proposal

~~Nothing in this policy or otherwise requires HPTE to act or enter into a contract based on an Unsolicited Proposal. HPTE may return and/or reject an Unsolicited Proposal at any time during the process.~~

Sole Source Award

~~If it is impractical, unreasonable, or not in the best interests of the State to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, HPTE may make a sole source award. A sole source award may not be based solely on the unique capability of the Proposer to provide the specific property or services proposed.~~

Competitive Procurement

~~Except as provided above, HPTE may decide to enter into a competitive procurement to obtain all or part of the services or goods incorporated in the Unsolicited Proposal in compliance with the prohibition on the use of confidential information.~~

Prerequisites to Contract Negotiation

~~The contracting officer or other designated HPTE representative(s) may commence negotiations only after the following prerequisites have been met:~~



- ~~I. An Unsolicited Proposal has received a favorable comprehensive evaluation including in comparison to any proposals received following publication as provided in this Policy;~~
- ~~II. HPTE staff furnishes the necessary funds, and provides a sole source justification (if applicable); and~~
- ~~III. HPTE Director or HPTE Board approves the Unsolicited Proposal (if required).~~

16. Submission of Confidential Information

HPTE neither requests nor encourages the submission of confidential or proprietary information. Information submitted shall be presumptively open for public inspection and therefore will presumptively be made available for public inspection unless otherwise designated as exempt consistent with this Policy and Law. Written requests for confidentiality may be submitted to the HPTE Director, provided that the submission must be in STRICT accordance with the following procedures. Adherence to these procedures remains the SOLE RESPONSIBILITY of the Proposer.

Procedures for Submission of Confidential or Proprietary Information

- I. A written request for confidentiality shall be submitted by the Proposer with the Unsolicited Proposal documents both electronically (CDOT_HPTE-USP@state.co.us) and in hard copy.
- II. The written request will be enclosed in a separate envelope or e-mail marked "REQUEST FOR CONFIDENTIALITY," and attached to the cover of the ORIGINAL copy of the Proposer's Unsolicited Proposal that contains the Proposer's ORIGINAL signature.
- III. Confidential or proprietary information MUST be readily IDENTIFIED, MARKED, and SEPARATED (with Annex B used as a cover sheet) from the rest of the Unsolicited Proposal. Commingling of confidential/proprietary information and other information is NOT acceptable.
- IV. The written request must state SPECIFICALLY AND IDENTIFY BY PAGE NUMBER, what elements of the Unsolicited Proposal are to remain confidential. The request must also IDENTIFY THE BASIS for the claim of confidentiality, OTHER than a recitation of a SPECIFIC State or Federal statute.
- V. The HPTE Director and HPTE legal counsel will make a written determination as to the apparent validity of any request for confidentiality, and if so, whether the exemption is permanent, or ends on a certain date if HPTE decides to further evaluate the Unsolicited Proposal. The written determination of the HPTE Director will be sent to the Proposer.
- VI. Proposals that are determined to be at variance with this procedure may be: (1) declared non-responsive by the HPTE Director and not given further consideration; and/or (2) subject the record to disclosure under State and Federal statute.

HPTE will use its best efforts to restrict the number of people that have access to the proprietary or confidential material contained in the Unsolicited Proposal, but may



disclose this information, if deemed necessary by HPTE, to CDOT personnel, third parties, public agency partners, the Transportation Commission or the HPTE Board through, the use of Non-Disclosure Agreements (NDAs), confidentiality clauses included in third-party contracts, and/or the attorney-client privilege. At the time of submission to HPTE, the Proposer must also include an Executive Summary covering the major elements of the Unsolicited Proposal that do not address the Proposer's price, financing plan, or other confidential or proprietary information or trade secrets that the Proposer intends to be exempt from disclosure. The Executive Summary will be a public document and may be posted on the HPTE website. The Executive Summary may also be used in connection with seeking competitive proposals.

17. Colorado Open Records Act (CORA) C.R.S. § 24-72-201, et seq

Unsolicited Proposals are presumed public records except to the extent HPTE and its legal counsel determine a record constitutes CORA exempt material and, if so, whether the exemption is permanent or ends on a certain date if HPTE determines to consider and further evaluate the Unsolicited Proposal. To the extent practicable, determinations as to whether specific materials contained in an Unsolicited Proposal constitute public records will be made consistent with determinations for other proposal submissions as set forth in Appendix A of the HPTE [Open Records Policy](#) relating to public-private partnerships. Proposers shall be responsible for all costs associated with defending any request for disclosure of any record claimed by the Proposer to be exempt from disclosure under CORA.

18. Liability

HPTE recognizes that each Unsolicited Proposal will have its unique characteristics and goals and that tailored approaches to assessing and implementing projects will be required for HPTE's program to be successful. HPTE intends to retain the flexibility to modify or deviate from this Policy as it sees fit and in the interest of the State and the public.

This Policy may be revised from time to time, and such revisions will be promptly posted on the HPTE's website. Those performing work or otherwise relying on this Policy assume all risks related to any revisions. HPTE will not be liable for any damages sustained by anyone based on a modification or failure to modify the Policy. In addition, the HPTE, at its sole discretion, may waive or deviate from some or all of this Policy where it deems such waiver(s) or deviation to be in the best interest of the State. In no event shall any such waiver or deviation result in any liability for HPTE, the State, or any other party.



Annex A: Conceptual Proposal Form

Phase One of HPTE's Unsolicited Proposal process involves submitting all required information and completing each section identified below. The Conceptual Proposal must be no longer than six pages in total. If HPTE determines that the Unsolicited Proposal should proceed to Phase Two, HPTE will issue a Request for Detailed Proposal.

1. Basic Information

Proposer Information:

Name: _____

Address: _____

Further contact information: _____

Type of organization: _____

Technical personnel names & contact information: _____

Business personnel names & contact information: _____

These individuals should be responsible for answering HPTE's technical or business questions concerning the proposal or any subsequent agreement concerning the proposal.

2. Conceptual Proposal Executive Summary

Title of the proposal: _____

Executive summary (1/2 page maximum)



3. Conceptual Proposal - Key Information

Title of the proposal: _____

Key information must include:

1. Objectives;
2. Method of approach;
3. Nature and extent of anticipated results; and
4. Manner in which the work will help support accomplishment of HPTE's mission.

Technical expertise the Proposer needs from HPTE: _____

4. Financial Information

Proposed price or total estimated cost: _____

Proposed method of revenue generation: _____

Be concise but provide sufficient detail for HPTE to meaningfully evaluate the proposal.
Financial information the Proposer needs from HPTE:

5. Procedural Information

Period of time for which the proposal is valid: _____

6. Request for Confidentiality

A request for confidentiality has been submitted with this proposal and is deemed confidential by the Proposer in the event of a request submitted to HPTE under the Colorado Open Records Act (CORA). Proprietary data has been separated, clearly designated, identifies the basis for the claim of confidentiality, and follows all the procedures outlined in Section 16.

Yes No

7. Signature

Name: _____

Date: _____

Title: _____

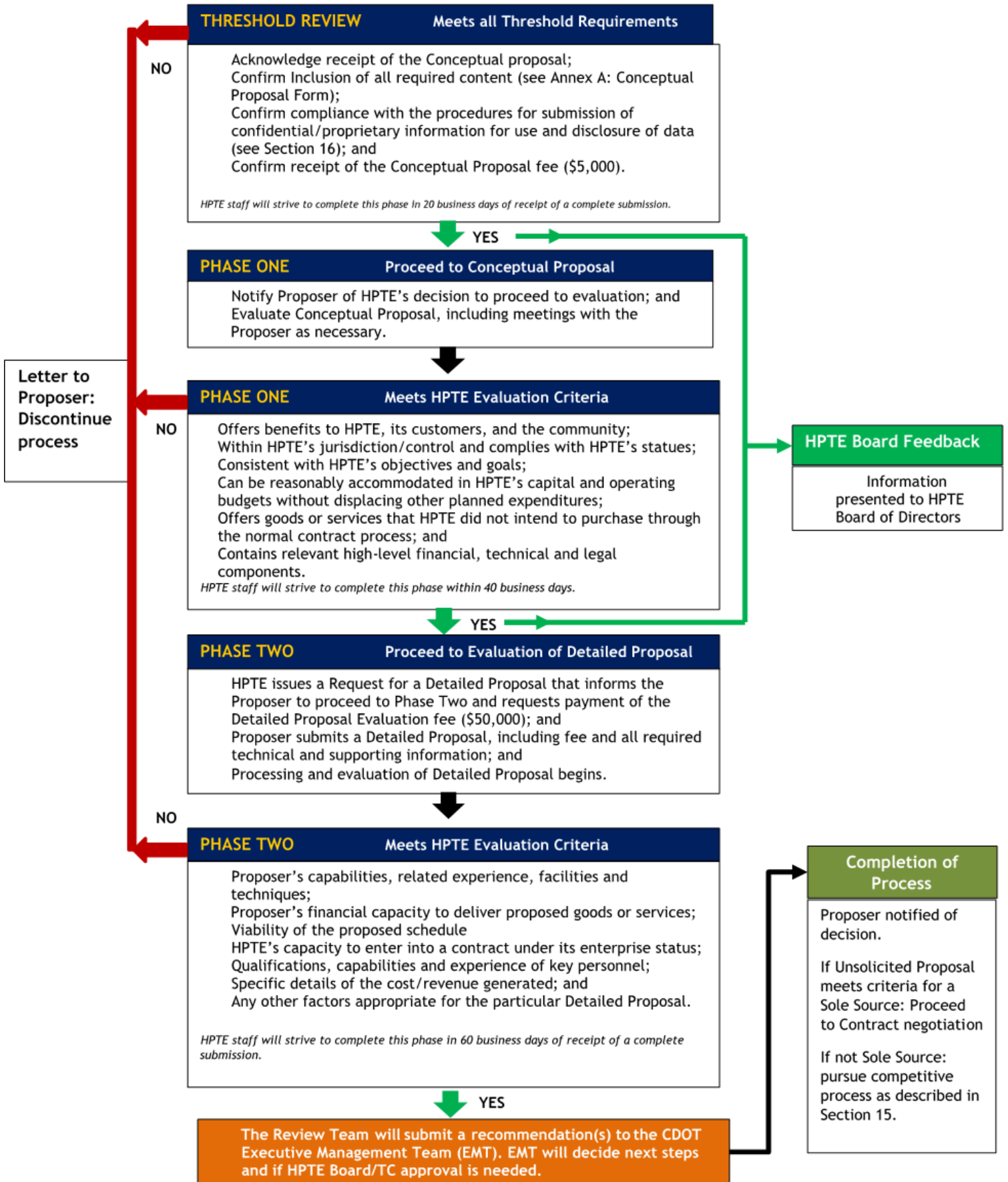
The individual who signs this form must be authorized to represent and contractually obligate the Proposer.



Annex B: Unsolicited Proposal use of data prior to the contract is prohibited

All HPTE and CDOT personnel must exercise extreme care to ensure that the information in this Unsolicited Proposal is not disclosed to an individual who has not been authorized access to such data and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the Unsolicited Proposal, without the written permission of the Proposer. If a contract is awarded on the basis of this Unsolicited Proposal, the terms of the contract shall control disclosure and use.

Annex C: Unsolicited Proposal Policy Flow Chart



HPTE P3 Management Manual unsolicited proposal excerpt redline version

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i. Unsolicited Proposal Process

The HPTE legal authority allows for the submission of unsolicited proposals. As a general policy, HPTE **would prefer to use a solicited procurement process** as this provides an efficient and effective procurement process with a more probable outcome for both the public sector and the interest industry participants. However, this is not to say that unsolicited proposals will not be considered. Interested industry participants are encouraged to meet with the HPTE Director to discuss ideas in one-on-one sessions prior to submitting an unsolicited proposal.

To be considered by HPTE staff, all unsolicited proposals must follow the HPTE Unsolicited Proposal Policy (updated November 2020) steps, which include:

1. Threshold Review

- a. All proposals must be submitted using the form provided in Annex A of the policy.
- b. \$5,000 must be paid to HPTE to cover costs associated with the Phase One Evaluation.
- c. The proposer must highlight any elements of the submission they deem confidential and submit them separately, using the guidelines in section 16 of the policy. HPTE does not encourage the submission of confidential or proprietary information.

2. Phase One: Conceptual Proposal

- a. A Review Team, consisting of HPTE and CDOT staff, is formed to evaluate the submission based on the criteria outlined in section 8 of the policy.
- b. The Review Team may request to meet with the proposer to clarify elements of the submission.

3. Phase Two: Detailed Proposal

- a. If the Review Team decides to move forward with the submission, an invitation to submit a detailed proposal will be sent to the proposer with a list of key information that should be included.
- b. The proposer must pay HPTE \$50,000 to cover costs associated with the Phase Two Detailed Proposal Evaluation. If additional funds from the proposer are deemed necessary by the HPTE Director, the proposer must pay the identified fee before the evaluation can proceed.
- c. HPTE and CDOT advisers are added at this stage to provide additional due diligence on the proposal submission.

- d. The Review Team will use the evaluation criteria set out in section 13 of the policy, in addition to any criteria they deem relevant to the submission.
- e. The Review Team may request to meet with the proposer to clarify the details of the submission.
- f. The Review Team will make a recommendation to the CDOT Executive Management Team (EMT). If the EMT decides to move forward, the proposal will be brought before the HPTE Board and Transportation Commission (if relevant) to approve or reject.

Under no circumstances is the HPTE required to accept the unsolicited proposal. The HPTE may discontinue the process at any point prior to commercial/financial close when determined in the best interest of the state.

~~Should the HPTE receive an unsolicited proposal, the following guidelines are outlined, with more detailed direction contained in the CDOT and HPTE interagency agreements. The detailed guidelines will govern for any conflicts between the detailed guidelines and the P3 manual.~~

~~§. The HPTE Director will provide the unsolicited proposal to the applicable Region's Director where the project is located for review. The review will use similar criteria as those outlined in the previous High-Level Screening of Potential P3 Projects section for the initial screening. The Region Director will make the necessary region resources available for the initial screening.~~

~~§. The assigned P3 Project Manager, with input from the CDOT PMO and Region Director for the region where the unsolicited proposal project is located, will make an initial recommendation to the HPTE Director and CDOT Executive Director to either reject the unsolicited proposal or perform more due diligence. This initial recommendation should generally be made no later than 45 days after receipt of the unsolicited proposal by the HPTE.~~

~~§. The HPTE Director may require that an additional fee, beyond the mandatory \$1,000 be paid by the private team that submits the unsolicited proposal to cover the cost of providing the due diligence review of the unsolicited proposal. If a fee is requested in writing by the HPTE Director and the unsolicited proposal team fails to pay the fee, the HPTE Director will return the unsolicited proposal without further consideration.~~

~~§. If the HPTE Director, in coordination with the CDOT Executive Director, decides to reject the unsolicited proposal, the HPTE Director will provide a written notification of rejection of the unsolicited proposal to the submitter.~~

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~~§. If the recommendation is to continue with due diligence of the unsolicited proposal the HPTE Director, in coordination with the CDOT Executive Director, will present the~~

~~recommendation to the Transportation Commission and HPTE Board to move the unsolicited proposal forward as a proposed P3 project for additional due diligence to determine if the P3 approach is the best value for the project. The HPTE Director will notify the unsolicited proposer in writing that the project is moving to the more detailed due diligence stage. This notice should generally be delivered no later than 120 days after submittal of the unsolicited proposal.~~

~~§. If the due diligence supports the P3 project as the best value and the HPTE Director and CDOT Executive Director concur, HPTE will authorize an advertisement for open competition for a time period determined by the HPTE Director in coordination with the CDOT Executive Director based on the size and complexity of the project. The time period for advertisement will generally be no less than 30 days and, after receipt of any other proposals, the P3 Project Team will evaluate all proposals and recommend the preferred proposer as the best value proposal to the HPTE Board.~~

~~§. Under no circumstances is the HPTE required to accept the unsolicited proposal. The HPTE may discontinue the process at any point prior to commercial/financial close when determined in the best interest of the state.~~