

**COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
PROJECT PROPOSAL GUIDELINES (THE "GUIDELINES")**

1. INTRODUCTION

- 1.1 These Guidelines are intended to provide a project identification and evaluation process to be utilized by the Colorado High Performance Transportation Enterprise (the "Enterprise") in connection with its pursuit of public-private partnerships 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. The Enterprise recognizes that each project will have its unique characteristics and goals and that tailored approaches to assessing and implementing projects will be required for the Enterprise's program to be successful. The Enterprise intends to retain the flexibility to modify or deviate from these Guidelines as it sees fit and in the interest of the State and the public.
- 1.2 These Guidelines may be revised from time to time and such revisions will be promptly posted on the Enterprise's website. Those performing work or otherwise relying on these Guidelines assume all risks related to any revisions. The Enterprise will not be liable for any damages sustained by anyone based on a modification or failure to modify the Guidelines. In addition, the Enterprise, at its sole discretion, may waive or deviate from some or all of these Guidelines 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 the Enterprise, the State or any other party.

2. INTERPRETATION

- 2.1 Definitions. The following definitions are provided to assist in understanding of the Guidelines and may be modified in any Solicitation Documents or Agreements issued by the Enterprise:

"Agreement"	means a binding document or series of documents between the Enterprise (or the Enterprise and CDOT) and a Person that outline the basis on which to plan, finance, design, engineer, construct, install, acquire, operate and maintain (or any combination of these activities) an Eligible Project.
"Bidder"	means a Person or Consortium who seeks to enter into an Agreement in response to Solicitation Documents.
"CDOT"	means, the Colorado Department of Transportation created in Section 24-1-128.7, Colorado Revised Statutes, as amended.
"Consortium"	means two or more Persons acting together for the purpose of seeking to enter into an Agreement.
"Eligible Project"	means any surface transportation infrastructure project as defined in Section 43-4-803(23), Colorado Revised Statutes, as amended.

"Person"	means any individual, sole proprietorship, corporation, partnership, unincorporated association or public entity and includes successors and permitted transferees and their assigns.
"Project Participant"	means any Person or Consortium who or which enters into an Agreement.
"Solicitation Documents"	means procurement documents, including but not limited to requests for information, requests for proposals, requests for qualifications and statements of qualifications, initiated by the Enterprise in connection with an Eligible Project.
"Solicited Proposal"	means a procurement initiated and issued by the Enterprise in connection with an Eligible Project either (i) through a determination by the Enterprise that, based on its findings and evaluations, a procurement for such Eligible Project is in the best interest of the State or (ii) through a determination by the Enterprise that, based on an Unsolicited Proposal, a procurement is in the best interest of the State.
"State"	means the State of Colorado.
"Unsolicited Proposal"	means a submittal by a potential Project Participant with respect to an Eligible Project which has not been initiated by the Enterprise.

2.2 In these Guidelines

- (a) the singular includes the plural and vice versa;
- (b) the headings are inserted for convenience only and shall not affect interpretation of the Guidelines;
- (c) when there are references with general words followed by a list to make it clear that those general words "include" the matters set out in that list, then the contents of the list shall be taken not to limit the generality of those general words; and
- (d) in accordance with these Guidelines the Enterprise is free to exercise its discretion in such matters as it considers necessary or expedient in the light of all circumstances prevailing at the time which the Enterprise considers to be relevant.

3. **UNSOLICITED PROPOSALS**

- 3.1 The Enterprise may consider and evaluate an Unsolicited Proposal, or decline to do so, in accordance with the provisions of this Section 3. The Enterprise may, in its sole discretion, decline to consider and evaluate an Unsolicited Proposal, in which case it shall so notify the Person or Consortium submitting that Unsolicited Proposal. If the Enterprise makes a determination to consider and evaluate an Unsolicited Proposal,

then, upon completion of its evaluation in accordance with the provisions of this Section 3, it shall proceed as provided in Paragraph 3.5 hereof.

- 3.2 In determining whether to consider and evaluate an Unsolicited Proposal, the Enterprise shall have regard to all or any facts and matters which the Enterprise considers to be relevant, including:
- (a) the resources available to the Enterprise, both from its own staff and from any necessary or desirable consultants and external resources, to enable it to conduct the evaluation;
 - (b) the extent to which the Unsolicited Proposal appears to offer benefits to the State by fulfilling requirements related to an Eligible Project identified by the Enterprise or CDOT as a priority;
 - (c) the extent to which the Unsolicited Proposal presents a financing plan that efficiently includes Enterprise/CDOT funding and/or maximizes project revenues to present a viable funding proposal;
 - (d) the extent to which the Unsolicited Proposal may significantly shorten a timetable for satisfying a known requirement in any plan set out by CDOT or the Enterprise; and
 - (e) the extent to which the Enterprise or CDOT is already developing its own plans for meeting the requirement which the Unsolicited Proposal is seeking to address.
- 3.3 Except as otherwise determined by the Enterprise, the Enterprise will only consider an Unsolicited Proposal if the Enterprise is given a royalty-free license in any and all intellectual property rights comprised in the Unsolicited Proposal to the full extent necessary to enable the Enterprise to accept the proposal (with or without amendments) for the purpose of seeking competitive proposals as contemplated in Subparagraph 3.5(a) hereof. The Person or Consortium making an Unsolicited Proposal may identify appropriate material contained therein as proprietary or confidential; however, the Enterprise may disclose proprietary or confidential material contained in the Unsolicited Proposal to CDOT personnel, the Transportation Commission or the Enterprise Board of Directors. At the time of submission to the Enterprise 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 will be posted on the Enterprise's website. The executive summary will also be used in connection with seeking competitive proposals as contemplated in Subparagraph 3.5(a) hereof. In the event the Enterprise determines that it is unable to effectively solicit competitive proposals due to the scope of the material in the Unsolicited Proposal that has been designated as proprietary or confidential, the Enterprise may either (i) negotiate with the Person or Consortium submitting the Unsolicited Proposal to allow the use of so much of such proprietary or confidential information as the Enterprise determines is required for use in connection with seeking competitive proposals or (ii) determine not to proceed further with the Unsolicited Proposal.
- 3.4 The Enterprise will only accept submission of an Unsolicited Proposal if, at the time the Unsolicited Proposal is submitted, the Person or Consortium making the Unsolicited Proposal pays to the Enterprise an initial fee of \$1,000. Such initial fee shall be nonrefundable, whether or not the Enterprise chooses to consider and evaluate the

Unsolicited Proposal. If the Enterprise decides to proceed to consider and evaluate an Unsolicited Proposal, then it may make it a condition of proceeding that the Person or Consortium making the Unsolicited Proposal agrees to pay an amount to be determined by the Enterprise to cover the actual costs incurred by the Enterprise in considering and evaluating the Unsolicited Proposal. The Person or Consortium making the Unsolicited Proposal may withdraw such Unsolicited Proposal if it is unwilling to pay such actual costs. In the event that, following a solicitation based upon an Unsolicited Proposal, an award is made for the Eligible Project described in the Unsolicited Proposal to a Bidder other than the Person or Consortium making the Unsolicited Proposal, the Enterprise will require that the successful Bidder pay the Enterprise an amount sufficient for the Enterprise to reimburse the Person or Consortium making the Unsolicited Proposal for amounts paid by such Person or Consortium to the Enterprise for the actual costs incurred by the Enterprise to consider and evaluate the Unsolicited Proposal.

3.5 On completion of the evaluation of an Unsolicited Proposal, the Enterprise may:

- (a) seek proposals for the Eligible Project described in the Unsolicited Proposal either (i) in accordance with the procedures set forth in Section 4 hereof, subject to such amendments to the Unsolicited Proposal as the Enterprise may consider appropriate, or (ii) in accordance with such alternative procedures as the Enterprise may determine are appropriate under the relevant circumstances and will encourage competition, provide transparency and ensure nondiscriminatory treatment of potential bidders, subject, however, in either case to exceptions of the type described in Paragraph 4.8 hereof; or
- (b) notify the proposer(s) that the Enterprise will not proceed any further with the Unsolicited Proposal, and provide a general description of the reasons for that decision.

4. **SOLICITED PROPOSALS**

- 4.1 The Enterprise may solicit proposals in connection with an Eligible Project when it determines either that, based on its findings and evaluations, a procurement for such Eligible Project is in the best interest of the State or that, based on an Unsolicited Proposal, a procurement for such Eligible Project is in the best interest of the State.
- 4.2 In connection with any Solicited Proposal, the Enterprise will issue such Solicitation Documents as it determines may be appropriate under the circumstances. The Solicitation Documents may include such terms and requirements as are determined by the Enterprise to be appropriate and may request submission of such information, including financial and technical information, as the Enterprise determines to be necessary or useful in evaluating any proposal and the viability of the relevant Eligible Project.
- 4.3 The Enterprise may provide in the Solicitation Documents that the solicitation will take place in successive stages, in order to reduce the number of proposals to be negotiated at each stage, by applying criteria as set forth in the Solicitation Documents.
- 4.4 Prior to issuing any Solicitation Documents, the Enterprise may request expressions of interest in relation to an Eligible Project and take such other preliminary steps as it may deem appropriate to engage with potential Bidders, including but not limited to, conducting meetings with industry participants in order to inform the industry of the opportunity and to hear industry suggestions which may, in the Enterprise's sole discretion, be incorporated into the Solicitation Documents.

- 4.5 For the purpose of encouraging competition, providing transparency and ensuring the nondiscriminatory treatment of potential Bidders, the Enterprise shall, except in certain circumstances as set forth in Paragraph 4.8, provide public notices in connection with its solicitations by such means and in such forms as shall be appropriate under the circumstances, including the publication of the applicable Solicitation Documents. Such public notices may precede or be accompanied by the applicable Solicitation Documents and may include an estimated timetable relating to the solicitation process if available.
- 4.6 The Enterprise may consider requests for further information relating to the Solicitation Documents as may be reasonably requested by a Bidder, and, if the Enterprise determines it appropriate under the circumstances to provide such further information, it will supply such information to all Bidders, provided that the request for such information is received in sufficient time to enable the Enterprise to supply it.
- 4.7 If the Bidder consists of or includes a Consortium, the Bidder may rely on the capacities of the members of the Consortium in responding to and complying with the requirements set forth in the Solicitation Documents regardless of whether or not the members of the Consortium have entered into a legal relationship for purposes of submitting a proposal. If the Enterprise awards an Agreement to a Consortium, it may, if the Enterprise deems it to be necessary or expedient for the satisfactory performance of the Agreement, require the Consortium to form a legal entity before entering into, or as a term of, the Agreement.
- 4.8 The Enterprise may elect not to provide a public notice in connection with the solicitation of work or services relating to an Eligible Project in certain circumstances, including the following:
- (a) when, for technical, artistic or design reasons, or for reasons connected with the protection of exclusive rights, an Agreement may be awarded only to a particular Bidder;
 - (b) when for reasons of extreme urgency brought about by events unforeseeable by the Enterprise there is insufficient time to provide for the step of issuing a public notice;
 - (c) when the Enterprise wants a Project Participant which has entered into an Agreement with the Enterprise to carry out additional work or to provide additional services
 - (i) which were not included in the project initially considered or in the original Agreement but which through unforeseen circumstances have become necessary; and
 - (ii) which cannot for technical or economic reasons be carried out or provided separately from those under the original Agreement without major inconvenience to the Enterprise; and
 - (d) when the Enterprise wants a Project Participant which has entered into an Agreement with the Enterprise to carry out new work or to provide new services which are a repetition of the work or services provided under the original Agreement and which are in accordance with the project for the purpose of which the first Agreement was entered into.
- 4.9 All material submitted by Bidders in response to Solicitation Documents will be the property of the Enterprise. As may be further provided in the Solicitation Documents, any

material submitted by Bidders and requested to be treated as proprietary or confidential will be identified and treated in accordance with the relevant procedures set forth in the Solicitation Documents. After a final determination is made by the Enterprise in connection with a Solicited Proposal, all material submitted by Bidders, except material treated as proprietary or confidential in accordance with the Solicitation Documents, will become public record and open to inspection.

- 4.10 The evaluation of Solicited Proposals shall be made by a committee selected by the Director of the Enterprise to evaluate the merits of all responses received in connection with Solicited Proposals. The specific evaluation criteria to be utilized by the committee and any weighting of such criteria will be specified in the Solicitation Documents. Failure of a Bidder to provide in its proposal any information requested by the Solicitation Documents may result in disqualification of the proposal. During the evaluation process, meetings may be scheduled with Bidders, either individually or as a group, to the extent the committee determines that additional information or clarification is needed that would assist in the evaluation process. The recommendations of the committee will be forwarded to the Director of the Enterprise for final approval by the Board or, if the authority is delegated, by the Director.
- 4.11 The Enterprise reserves the right to reject any and all proposals received in response to Solicitation Documents or to cancel the Solicited Proposal process if it is in the best interest of the Enterprise or the State to do so. The Enterprise may reject any proposal received in response to Solicitation Documents if the Bidder, any member of a Consortium acting as a Bidder or any Person who has powers of representation, decision or control of the Bidder or any member of a Consortium acting as the Bidder is ineligible to contract with the State, CDOT or the Enterprise under applicable provisions of federal or state law or under any rules or regulations applicable to the State, CDOT or the Enterprise.
- 4.12 The Enterprise will not be liable for any costs incurred by Bidders prior to the execution of the relevant Agreement or other contract. All costs to prepare and submit responses to Solicitation Documents shall be borne solely by the Bidders. Nothing in Paragraph 4.12 will prevent the Enterprise, in its sole discretion, from offering stipends and/or cancellation payments to Bidders on such terms as may be determined by the Enterprise.
- 4.13 The award in connection with a Solicited Proposal will be made to the Bidder whose proposal is determined to be the most advantageous to the State and the Enterprise, and shall be subject to negotiation and execution of an acceptable Agreement.
- 4.14 At the Enterprise's discretion, it may solicit a proposal that complies with the Colorado Procurement Code (CRS § 24-103-101, et al.). If the Enterprise determines that a solicitation will comply with the procurement code, the following shall occur to the extent that they have not already occurred following HPTE's process for Solicited Proposals outlined above:
 - (a) Prior to a solicitation being advertised, a representative of the Enterprise shall meet with CDOT's Purchasing Director to discuss the solicitation and process, to discuss all written determinations that must be made under the Procurement Code and the development of the official file;
 - (b) CDOT's Purchasing Director may determine "competitive sealed proposals" is the most advantageous and practical procurement method for HPTE solicited proposals, and if this determination is made, Colorado Procurement Rule R-24-103-203 shall be followed;

- (c) the Solicited Proposal will be advertised for a minimum of thirty (30) days unless CDOT's Purchasing Director determines a shorter time is warranted;
- (d) If CDOT's Purchasing Director, pursuant to Colorado Procurement Rule R-24-102-202.5-.2, determines that the Colorado Bid Information and Distribution System (BID) is not likely to yield adequate competition, the Solicited Proposal will be advertised on the Enterprise's website and not on BIDS;
- (e) the Solicited Proposal shall state the evaluation factors;
- (f) If a Solicited Proposals warrants it, a shortlist will be created and individuals or firms will be given a minimum of seven business days to prepare for an interview;

The award shall be made to the responsible offeror whose Solicited Proposal is determined in writing to be the most advantageous to the Enterprise, taking into consideration the price and the evaluation factors set forth in the Solicited Proposal. No other factors or criteria shall be used in the evaluation.