

## **HPTE Unsolicited Proposal Policy**

*Revised August 2019*

### **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?**

A written proposal that is submitted to HPTE on the initiative of the submitter for the purpose of obtaining a contract with HPTE, not in response to a formal or informal request. An unsolicited proposal is **not**:

- An offer responding to HPTE's previously published expression of need or request for proposals; or
- An advance proposal for property or services that HPTE could acquire through competitive methods (submitted within the budget year before the release of a published request for proposal).

### **3. What differentiates an Unsolicited Proposal?**

An Unsolicited Proposal is distinguishable from a project that has already been identified as part of HPTE's long-term planning process. 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; and
- Sufficiently detailed that its benefits in support of HPTE's mission and responsibilities are apparent.

### **4. Unsolicited Proposal Process Overview**

Unsolicited Proposals shall be submitted to the HPTE office. HPTE receives and evaluates Unsolicited Proposals using a two-phased approach. Phase One is for Conceptual Proposals. Phase Two is for Detailed Proposals. In the event that the project 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 proposals, and/or requests for an opportunity to respond within a time frame (minimum of 30 days) specified by HPTE's staff, in accordance with Section 18 of this Policy. HPTE may, at any time, choose not to proceed any further with the Unsolicited Proposal.

## 5. **Phase One – Conceptual Proposal**

The purpose of Phase One is for HPTE to receive written, concept-level proposals<sup>1</sup> and to screen those proposals to determine whether HPTE would like to review additional information in Phase Two. A concept paper should provide an outline of all aspects of the proposed project and will provide the framework to guide discussions with internal staff on the proposal. The concept-level proposal should be brief (three to five pages) and succinct.

## 6. **Threshold Requirements**

At this phase, HPTE will take the following threshold steps:

1. Acknowledge receipt of the proposal;
2. Determine if the proposal meets the Threshold Requirements of an Unsolicited Proposal (outlined below);
3. Confirm receipt of the fee (\$1,000) from Proposer.

Before initiating a Phase One evaluation, HPTE staff will determine if the conceptual proposal meets the following Threshold Requirements:

- Meets the definition of an Unsolicited Proposal.
- Includes all required content (see Annex A Conceptual Proposal Form);
- Contains sufficient detail to enable HPTE to perform an adequate evaluation, including the following information:
  - Objectives;
  - Method of approach;
  - Nature and extent of the anticipated results; and
  - The manner in which the work will help support the accomplishment of HPTE's mission.
- If submitted by parties external to HPTE, has been approved by a responsible official or other representative authorized to contractually obligate the Proposer;
- Complies with the marking requirements for use and disclosure of data (see Section 12);
- If submitted by parties within CDOT, has been approved with signature by the Division Director and/or their delegee.

## 7. **Application Fee (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 pays HPTE, via check or bank transfer, a fee of \$1,000 to evaluate the Conceptual Proposal. This fee is nonrefundable. HPTE, at its sole discretion, may waive the fee(s) for an unsolicited proposal, in whole or in part, if it determines that its costs have been substantially covered by a portion of the fee or if it is otherwise determined to be reasonable and in the best interest of the State.

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, the Department or any of their agents, representatives, consultants,

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<sup>1</sup> Concept-level proposals should contain the ideas or concepts needed to understand what it does, how it might address specific transportation objectives, and how it is best used.

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 Proposal or negotiating an Agreement.

**8. Additional Process**

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

- I. Log the Proposal and assign it a number;
- II. Set and notify the Proposer of the schedule for internal evaluation (Proposals will be reviewed within 90 days of receipt);
- III. Assemble an internal and external evaluation 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)
- IV. If a meeting would be helpful to more fully understand the Proposal, HPTE will request to schedule a meeting with the Proposer.
- V. Facilitate the evaluation process as needed; and
- VI. Notify the Proposer of HPTE's decision. Possible outcomes include, but are not limited to: discontinuing the process, proceeding to Phase Two, or pursuing a competitive procurement. HPTE will provide a reasonable explanation of the reasons for the decision.

**9. Content - Conceptual Proposal**

Conceptual Proposals should include the information identified in the Conceptual Proposal Cover Sheet (Annex A to this policy).

**10. Submission of Confidential Information**

HPTE neither requests nor encourages the submission of confidential/proprietary information. Information submitted shall be presumptively open for public inspection and therefore will presumptively be made available for inspection, unless otherwise designated as exempt consistent with this Policy. 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.

**11. Procedures for Submission of Confidential/Proprietary Information**

- I. A written request for confidentiality shall be submitted, by the Proposer, with the Proposal documents.
- II. The written request will be enclosed in an envelope marked "REQUEST FOR CONFIDENTIALITY", and attached to the cover of the ORIGINAL copy of the Proposer's Proposal that contains the HPTE invitation for proposal page with the Proposer's ORIGINAL signature.
- III. The written request must state SPECIFICALLY AND IDENTIFY BY PAGE NUMBER, what elements of the 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.
- IV. Confidential/Proprietary information MUST be readily IDENTIFIED, MARKED and SEPARATED /PACKAGED (with Annex B used as a cover sheet) from

the rest of the proposal. Commingling of confidential/proprietary information and other information is NOT acceptable.

- 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 date certain in the event HPTE determines to consider and further evaluate the Unsolicited Proposal. The written determination of the 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 Director and not given further consideration; and/or (2) subject the record to disclosure under State and Federal statute.

HPTE may disclose proprietary or confidential material contained in the Unsolicited Proposal to CDOT personnel, the Transportation Commission or the HPTE Board of Directors through the use of Non-Disclosure Agreements (NDAs). At the time of submission to the 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.

## **12. Evaluation - Conceptual Proposal**

If the proposal meets the Threshold Requirements, HPTE review team<sup>2</sup> will consider the following factors:

- The Proposal offers direct or anticipated benefits to HPTE, CDOT, its customers, and the community;
- The idea submitted is within HPTE's jurisdiction or control and complies with HPTE's statute;
- The Proposal is consistent with HPTE's objectives and goals, as outlined in the HPTE Opportunity Assessment Process (attached as Annex D).
- The 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, without placing other committed projects at risk, and without significantly increasing the cost of the proposed items;
- The Proposal offers unique goods or services that HPTE did not intend to purchase through the normal HPTE contract process; and
- Financial, technical and legal components, or other specific evaluation criteria appropriate for the particular proposal.

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

## **13. Phase Two – Request for Detailed Proposal**

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<sup>2</sup> 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.

If HPTE desires to proceed to Phase Two, HPTE staff will issue a Request for a Detailed Proposal that formally tells the Proposer to proceed to Phase Two. Depending on the circumstances, the request may include the following:

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

HPTE may, at its sole discretion, invite the Proposer(s) to present to the review team, ask and answer questions of the review team, and discuss the Proposal and context with the review team. The purpose of Phase Two is for HPTE to receive more detailed technical and financial information to fully understand and evaluate the Proposal. At this phase, HPTE will decide whether to forego the Proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation.

#### ***Application Fee (Detailed Proposal)***

If HPTE desires to proceed to Phase Two, a second payment must be submitted for the Estimated Detailed Proposal Review. HPTE will only evaluate the Detailed Proposal if the person or consortium submitting the Unsolicited Proposal pays HPTE, via check or bank transfer, a Detailed Proposal Review Fee of \$50,000. This fee is nonrefundable. This second payment will be deposited by HPTE once it determined the Proposal has sufficient merit to move to the Detailed Proposal Evaluation.

As part of the Initial Evaluation, an assessment will be made as to the anticipated complexity of the Detailed Proposal Evaluation. If this assessment leads HPTE to determine that the Detailed Proposal Evaluation costs will be materially greater, the Proposer will be contacted and provided with an additional amount which must be paid by certified check or bank transfer prior to the commencement of the Detailed Proposal Evaluation. If the Proposer does not wish to incur the additional costs, the Estimated Detailed Review Fee check will be returned and the Unsolicited Proposal review process terminated.

#### **14. Processing**

Once the Detailed Proposal is received, HPTE staff will keep a record of the persons on the evaluation team and record the final disposition of the Proposal. Outside advisors will be consulted only if the HPTE review team deems it necessary and beneficial. The use of confidential information continues to apply in Phase Two.

#### **15. Contents - Detailed Proposal**

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 Stockholder's 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.

**16. Evaluation – Detailed Proposal**

Detailed Proposals will be evaluated promptly in accordance with the criteria set out in this section.

***Threshold Review***

Before initiating a comprehensive evaluation, HPTE staff will determine if the Detailed Proposal continues to meet the threshold requirements set out in Phase One and the requirements specifically set out in the Request for Detailed Proposal.

***Evaluation Criteria***

At Phase Two, the review team will consider the same evaluation criteria set forth in Phase One 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 Proposal objectives;
- II. The Proposer's financial capacity to deliver the goods or services defined in the 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 current TABOR authorization;

- 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 Proposal.

**17. Recommendation**

The review team will make a recommendation on the disposition of the Detailed Proposal to HPTE's Director for review and approval. If the HPTE Board of Directors' approval is required, the Proposer will be notified of the date of the meeting when the Proposal will be discussed.

**18. Full and Open Competition Requirements**

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. Before entering into a contract resulting from an Unsolicited Proposal, HPTE will take the following steps.

***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 the 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.

***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 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's 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 any 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 of Directors approves (if required).

## **19. Pre-Development Agreements**

HPTE accepts pre-development agreement applications, which is intended to provide the framework for collaboration between HPTE and the Proposer to deliver the Proposal unless terminated earlier in accordance with this Policy or State or Federal statute. HPTE will work with the Proposer to identify possible off-ramps and costs, which may include some of the following:

- The planning stage;
  - Post environmental studies;
  - Post traffic and revenue study;
  - Post-engineering/design phase;
  - Post pricing phase;
- PDA's expire three years after the date of submission unless mutually agreed to extend by both parties;

HPTE may, at any time, choose not to proceed any further with the PDA process.

## **20. Colorado Open Records Act (CORA)**

Unsolicited Proposals are presumed Public Records except to the extent HPTE and legal counsel determine a record constitutes CORA Exempt Material and if so, whether



the exemption is permanent, or ends on a date certain in the event 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.

**21. Liability**

HPTE recognizes that each 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 Cover Sheet**

Phase One of HPTE's Unsolicited Proposal process involves submitting this cover sheet. Submit only the information required by this cover sheet. If HPTE determines that the 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**

Executive summary of Unsolicited Proposal (1/2 page maximum)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **3. Conceptual Proposal information**

**Title of the proposal:** \_\_\_\_\_

The abstract must include a brief (up to 5 pages total, including the cover sheet information) – but complete – discussion of the following:

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:** \_\_\_\_\_

Proprietary data 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). *Any proprietary data must be clearly designated (using Annex B).*

- Other government entities or private parties have received this proposal.  
Please explain: \_\_\_\_\_
- Other government entities or private parties may provide funding for this proposal.  
Please explain: \_\_\_\_\_
- There are patents, copyrights and/or trademarks applicable to the goods or services proposed. Please explain: \_\_\_\_\_
- There is additional information not requested in this form that would allow HPTE to evaluate this proposal at this conceptual phase.

Describe: \_\_\_\_\_

\_\_\_\_\_

**6. Signature**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

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

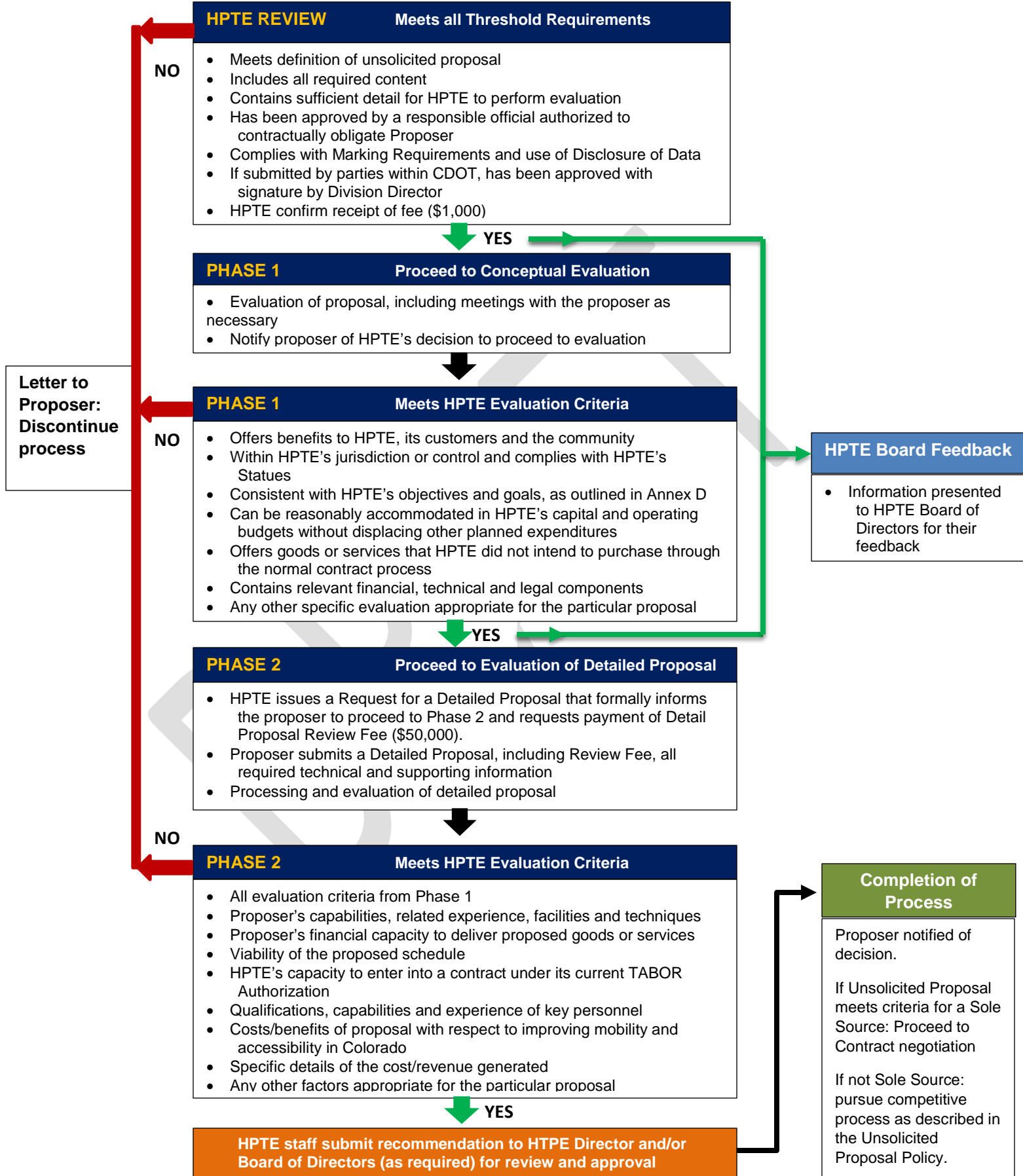
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**Annex B: Unsolicited Proposal use of data prior to contract is prohibited**

All HPTE and CDOT personnel must exercise extreme care to ensure that the information in this 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 Proposal, without the written permission of the Proposer. If a contract is awarded on the basis of this Proposal, the terms of the contract shall control disclosure and use.

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## Annex C: Unsolicited Proposal Policy Flow Chart



## **Annex D: HPTE Opportunity Assessment Process**

The below process is used by HPTE staff to determine which opportunities to pursue. In order for HPTE staff to explore an opportunity identified further, it must meet the requirements in phases one, two and three identified below.

**Phase one: Generates Revenue and Compliant with Statues**

- ✓ Compliant with HPTE statutes, State and Federal Laws
- ✓ Generates revenue

**Phase Two: Supports CDOT Problem Solving**

- ✓ Helps CDOT (Executive Director or Transportation Commission) address a high priority problem
  - The project should be scalable, enhance the transportation system and focused on the long-term

**Phase Three: Trusted, Tested, and has Stakeholder Buy-in**

- ✓ Tested and been proven
- ✓ Public policy acceptability
- ✓ Stakeholder buy-in and has community support

### **Opportunity Assessment Process**

