



Public-Private Partnership Guidelines

September 1,

2011

Effective September 1, 2011, the 82nd Legislature of Texas enacted S.B. 1048, entitled the *Public and Private Facilities and Infrastructure Act*, Chapter 2267, Texas Government Code. Pursuant to Section 2267.052 of the Act, the Commission adopts these Guidelines for the purpose of encouraging private entity participation, creativity, and competition, and to guide the selection of qualifying projects in the public-private partnership development program.



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I. INTRODUCTION.

The Texas Facilities Commission (“the Commission”), charged by law, supports state government through planning and asset management – portfolio planning, acquisition and lease transaction management, contract administration, facilities management design and construction, renovation, operations, and maintenance of state-owned facilities. The Commission manages 28.2 million square feet of owned and leased facilities supporting the needs of more than 100 state agencies throughout 283 Texas cities. The Commission has identified development opportunities consisting of underdeveloped or underutilized properties owned by the State for inclusion in a public-private partnership development program. To encourage consistent and compatible development which enhances the value of State assets, the Commission will consult and work cooperatively with private entities to encourage intensive, high quality development of underdeveloped and underutilized assets within its charge or control. Select property interests, generally a long-term, non-subordinated ground lease, are marketed to private entities, namely, office, retail/commercial, recreational/entertainment, and residential developers with the objective of soliciting or receiving development proposals that demonstrate potential to generate sustainable non-tax revenue sources and which allows the State to participate in the increase in value of its real estate assets over time.

A. GUIDELINES OVERVIEW.

Effective September 1, 2011, the 82nd Texas Legislature enacted S.B. 1048, entitled the *Public and Private Facilities and Infrastructure Act*, Chapter 2267, Texas Government Code. Pursuant to Section 2267.052 of the Act, the Commission adopts these Guidelines for the purpose of encouraging private entity participation, creativity, and competition, and to guide the selection of qualifying projects in the public-private partnership development program. These Guidelines will furnish the private sector with a fair and uniform format:

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

B. DECLARATION OF PURPOSE.

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

1. there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities in this state that serve a public need and purpose;
2. the public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;
3. there are inadequate resources to develop new education facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and private entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;
4. financial incentives exist under state and federal tax provisions that encourage public entities



to enter into partnerships with private entities or other persons to develop qualifying projects; and

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

C. QUALIFYING FACILITIES AND PROJECTS.

The Commission's goal is to encourage redevelopment of underdeveloped and underutilized properties, share risk and expense, and participate in cash flow performance by organizing public-private partnerships. A public-private partnership is a contractual agreement between a public agency (federal, state or local) and a private sector person or entity organized for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public financing. Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared to deliver a service or facility for the use of the general public, e.g., planning, designing, financing, constructing, operating, maintaining, and owning, and each sector shares in the potential risks of the timely and efficient delivery of the service or facility. To be considered under the public-private partnership development program, a proposal must meet the definition of a "qualifying project," as defined hereafter.

D. DESIGNATED CONTACT.

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

Aundre Dukes, Portfolio Manager
Texas Facilities Commission
1711 San Jacinto Blvd., 4th Floor
Austin, Texas 78701
(512) 936-9984

The Commission's designee is available by *appointment only*, Monday – Thursday between 9:00 a.m. – 12:00 p.m., C.S.T.

II. GENERAL PROVISIONS.

A. ABBREVIATIONS.

Unless otherwise specified, whenever the following abbreviations are used in these Guidelines, they have the meanings set forth below:

CAMDS	Comprehensive Asset Management and Development Strategy
CADS	Capital Area Development Strategy
P3	Public-Private Partnership
RFBP	Request for Business Plan
RFEI	Request for Expression of Interest
RFI	Request for Ideas
RFP	Request for Proposals
RFQ	Request for Qualifications
SLCS	Statewide Lease Consolidation Strategy



B. DEFINITIONS.

Unless otherwise specified, whenever the following terms are used in these Guidelines, they have the meanings set forth below:

"Act" means the *Public and Private Facilities and Infrastructure Act*, S.B. 1048, 82nd Legislature, Chapter 2267, Texas Government Code.

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

"Comprehensive Asset Management and Development Strategy" as defined in the Facilities Master Plan Report adopted January 19, 2011 includes long-term portfolio and strategic facility planning, asset level master planning and provisioned the development, implementation and management of the Capital Area Development Strategy ("CADS") and Statewide Lease Consolidation Strategy ("SLCS").

"Comprehensive Agreement" means the comprehensive agreement between the contracting person and the Commission that is required prior to the development or operation of a qualifying project.

"Conceptual Proposal" means a proposal for a qualifying project accepted by the Commission.

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

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

"Detailed Proposal" means a proposal for a qualifying project accepted by the Commission beyond a conceptual level of review that defines and establishes periods related to fixing costs, payment schedules, financing, deliverables, and project schedule.

"Detailed Stage" means the second phase of qualifying project evaluation where the State has completed the conceptual stage and accepted the proposal as a qualifying project but may request additional information regarding a qualifying project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

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

"Development Opportunity" or "Development Opportunities" means certain surface parking lots, parking garages, vacant land, and obsolete buildings or facilities approved by the Commission.

"Governmental Entity" means the Texas Facilities Commission, for the purposes of these Guidelines.

"Interim Agreement" means an agreement, before or in connection with the negotiation of the comprehensive agreement, authorized by these Guidelines between the Commission and a contracting person for the development or operation, or both, of a qualifying project. The Interim Agreement may authorize the contracting person to begin activities or project phases related to the qualifying project including, but not limited to, project planning and development, design, engineering, environmental analysis



and mitigation, surveying, financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities, or any other phase of the qualifying project that constitutes activity on any part of the qualifying project.

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

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

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

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

"Private Entity" means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity. A private entity includes a "Proposer" that submits an unsolicited proposal or a "Respondent" that submits a proposal in response to a solicitation.

"Proposer" means a private entity that submits an unsolicited proposal.

"Qualifying Project(s)" means (i) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or (ii) any improvements necessary or desirable to unimproved real estate owned by a governmental entity.

"Respondent" means a private entity that submits a proposal in response to a solicitation.

"Responsible Governmental Entity" means a governmental entity that has the power to develop or operate an applicable qualifying project.

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

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

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

"Solicitation" means a written request for services, issued by the Commission, soliciting responses including but not limited to: business plans, expressions of interest, ideas, offers, proposals, qualifications,



or any combination thereof.

"State" means the State of Texas acting by and through the Texas Facilities Commission, an agency of the State, which acts by and through its duly-appointed Commissioners.

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

C. PROPOSAL SUBMISSION.

A person submitting a proposal requesting approval of a qualifying project shall specifically and conceptually identify any facility, building, infrastructure or improvement included in the proposal as a part of the qualifying project. Although the Commission has identified development opportunities, they are not exclusive, and private entities are encouraged to submit proposals consistent with the goals set out in the Introduction to these Guidelines.

The process for receipt and review of a proposal is initiated by either a solicitation by the Commission or an unsolicited proposal by a private entity requesting review, consideration and approval. Private entities are required to follow a two-part proposal submission process consisting of a conceptual stage (Part 1) and a detailed stage (Part 2). The conceptual proposal and the detailed proposal shall each contain specified information on the private entity's qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, project benefit, value, and compatibility, as set out in Section V., of these Guidelines.

Private entities are urged to include innovative financing methods, including the imposition of User Fees or other forms of service payments, in a proposal. The P3 program is a flexible development tool that allows the use of innovative financing techniques. The contracting person can be involved in a variety of ways, from designing the facility to undertaking its financing, construction, operation, maintenance, and management. Depending on the circumstances of each qualifying project, types of public-private partnerships, include but are not limited to: Build-Own-Operate (BOO), Build-Operate-Transfer (BOT) or Build-Transfer-Operate (BTO), Buy-Build-Operate (BBO) and types of contract services, include but are not limited to: Operations and Maintenance; Operations, Maintenance and Management; Design-Build-Operate (DBO) including Design-Build-Operate-Transfer and Design-Build-Own-Operate; Developer Financing; Enhanced Use Leasing including Lease-Develop-Operate and Build-Develop-Operate; Lease-Purchase; Turnkey and other methods allowed by law. Proposals should be prepared simply and economically, providing a concise description of the private entity's capabilities to complete the qualifying project and the benefits derived by the State from the qualifying project. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the qualifying project. Proposals must include a comprehensive scope of work and a financial plan for the qualifying project, containing enough detail to allow an analysis by the Commission of the financial feasibility of the qualifying project. For specific applications, the Commission may request in writing, clarification to the submission. The Commission may establish criteria by which the private entity may provide clarification to the submission. The cost analysis of a proposal should not be linked solely to the financing plan, as the Commission may determine to finance the qualifying project through other available means.

The P3 program is intended to encourage proposals from the private sector that offer the provision of private financing in support of the qualifying project, which may include commensurate risk to the private entity, but may also benefit the private entity through innovative approaches to project financing, development and use. Proposals may include in-kind consideration, in an amount that is not less than the fair market value of the real property interest; including but not limited to construction of new facilities, alteration and restoration of existing facilities, and environmental remediation. The Commission shall continue to exercise full and proper due diligence in the evaluation and selection of qualifying



projects. In this regard, the qualifications, capabilities, resources and other attributes of a private entity and its whole team shall be carefully examined for every qualifying project. In addition, private entities shall be held strictly accountable for representations and information provided regarding their qualifications, experience or other contents of their proposals, including all specific aspects of proposed plans to be performed by the private entity.

D. AFFECTED JURISDICTIONS.

Any private entity requesting approval of a proposal from the Commission shall also provide affected jurisdictions with a copy of the proposal by certified mail, express delivery or hand delivery, within three (3) business days after the Commission determines whether to accept such proposal. The private entity is responsible for documenting delivery of the proposal.

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

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

E. PROPOSAL REVIEW FEES.

Contemporaneously with submission of an unsolicited proposal or a competing proposal, the private entity shall pay a preliminary review fee to the Commission in the amount of Five Thousand and No/100 Dollars (\$5,000.00) to cover the internal costs of processing, reviewing and evaluating the proposal. The Commission's Planning & Asset Management Division shall review the proposal in accordance with Section VI., of these Guidelines. If the proposal is summarily rejected during preliminary review, the review fee shall be returned to the private entity; otherwise, the review fee is non-refundable.

As set out in Section VI., of these Guidelines, if the Commission decides to proceed with evaluation of a conceptual or detailed proposal, the Commission may authorize the Planning & Asset Management Division to engage professional advisors, attorneys or consultants having appropriate experience in analyzing public-private partnership proposals and negotiating comprehensive agreements. Thereupon, the private entity shall pay directly the fees of any advisors, attorneys, or consultants engaged by the Planning & Asset Management Division to complete the evaluation of the proposal. Payment shall be made in the manner and amounts set out in an interim agreement between the Commission, the private entity, and such advisors, attorneys, or consultants.

F. TEXAS PUBLIC INFORMATION ACT.

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

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

Trade secrets, financial records, or other records of a private entity or the contracting person



excluded from disclosure under Government Code Section 552.101 may not be posted or made available for public inspection except as otherwise agreed to by the Commission and a private entity or the contracting person; and

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

As to a solicitation, all documents submitted in response to a solicitation should be regarded as public records and subject to disclosure; provided however, such documents will be held in confidence by the Commission as required by the Act and to the requirements of the Public Information Act. The Commission will process any third-party request for disclosure of information comprising all or part of the response to the solicitation or other information in accordance with the procedures prescribed by the Texas Public Information Act. Disclosure is determined by the Office of the Attorney General; not the Commission. Private entities are directed to the Attorney General's web site (www.oag.state.tx.us) which is the Commission's reference for information concerning the application of the provisions of the Public Information Act. The Commission's public information policy and instructions on how to submit a request are available on the Commission's website at:

<http://www.tfc.state.tx.us/divisions/commissionadmin/prog/legal-open-records/>.

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

1. Invoke such exclusion upon submission of the information or other materials contained within the proposal for which protection is sought;
2. Identify the data or other materials for which protection is sought with conspicuous labeling;
3. State the reasons why protection is necessary; and
4. Fully comply with any applicable provisions of Texas law with respect to information the private entity contends should be exempt from disclosure.

The Commission will process any third-party request for disclosure of information comprising all or part of the response to the RFP or other information in accordance with the procedures prescribed by the Public Information Act. Disclosure is determined by the Office of the Attorney General; not the Commission. Private entities are directed to the Attorney General's web site (www.oag.state.tx.us) which is the Commission's reference for information concerning the application of the provisions of the Public Information Act.

All inquiries must be submitted in writing addressed to Texas Facilities Commission, Attention: Legal Department, 1711 San Jacinto Blvd., Austin, Texas 78701, with a copy to Texas Facilities Commission, Attention: Executive Director, 1711 San Jacinto Blvd., Austin, Texas 78701.

G. USE OF PUBLIC FUNDS.

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



expenditure or obligation of public funds shall be incorporated into planning for any qualifying projects.

H. APPLICABILITY OF OTHER LAWS.

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

III. SOLICITED PROPOSALS.

The Commission may invite bids or proposals from private entities for purposes that constitute a qualifying project. The procedures and requirements applicable to any particular solicited bid or proposal shall be specified in the solicitation for that proposal. Chapters 2155, 2156, and 2166, Texas Government Code, any interpretations, rules, or guidelines of the Comptroller and the Texas Facilities Commission, and interpretations, rules, or guidelines developed under Chapter 2262, Texas Government Code, do not apply to a qualifying project under Chapter 2267, Texas Government Code, Public Private Facilities and Infrastructure Act.

All solicitations shall be by issuance of a written solicitation. The response to any written solicitation shall include the same submissions and in the same format as set out in Section V., of these Guidelines.

Any submissions that are not received in response to a solicitation shall be deemed an Unsolicited Proposal under Section IV., of these Guidelines. Such submissions shall include: (a) proposals received in response to a notice issued by the Commission that it has received an Unsolicited Proposal, and (b) proposals received in response to publicity by the Commission concerning particular needs but where the Commission has not issued a formal solicitation.

IV. UNSOLICITED PROPOSALS.

The Act authorizes the Commission to receive, evaluate and select for negotiations unsolicited proposals from private entities to design, develop, finance, lease, acquire, install, construct, expand, improve, renovate, equip, operate, or maintain a qualifying project. The Commission may publicize its needs to encourage interested parties to submit proposals subject to the terms and conditions of the P3 program. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal.

V. PROPOSAL PREPARATION AND SUBMISSION.

A. FORMAT FOR SUBMISSIONS AT CONCEPTUAL STAGE (PART 1).

The Commission shall not be liable for any cost incurred by the private entities in preparing, submitting or presenting the proposal and in satisfying any demonstration or other requirements for an unsuccessful proposal.

1. All proposals must be organized in the manner outlined below and submitted with the applicable review fee defined in these Guidelines. No page limitation is imposed, but brevity is appreciated. All proposals shall be submitted as one (1) original and thirteen (13) copies and one (1) electronic copy (searchable PDF format on CD). The original copy containing original signatures shall be marked **ORIGINAL** on the cover letter.
2. Private entities shall also submit trade secrets, financial records, proprietary or other confidential records exempt from disclosure under Government Code Section 552.101 in a separate, sealed envelope, designated on the cover as **CONFIDENTIAL MATERIALS**. Include a cover letter listing all exempt material. Clearly mark any material believed to be a trade



secret, confidential or proprietary information protected from disclosure under applicable law, such material must be clearly marked in all caps as **CONFIDENTIAL** using a word processing watermark or stamp. Handwritten notices of confidentiality may be disregarded.

- 3. Proposals shall be packaged and submitted in the following format:
 - a. Pages shall be numbered and organized by paginated table of contents corresponding to the tabbed sections identified below.
 - b. The submittal shall be divided into tabbed sections as follows:

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

- c. The contents shall be printed on 3-hole punched 8½" x 11" paper (except A/E drawings and renderings).
 - d. Drawings shall be printed no larger than 36" x 54".
 - e. Supplemental materials in alternate formats may be allowed to describe the proposal in more detail.
- 4. Label: All submissions shall be addressed to Texas Facilities Commission, to the attention of the Planning & Asset Management Division, 1711 San Jacinto Blvd., 4th Floor, Austin, TX 78701, in a sealed envelope marked:

FOR SOLICITED PROPOSALS

DO NOT OPEN IN MAILROOM

Request for Information/Proposal/Business Plan
 Title of the Solicitation
 RF#
 Respondent's Name
 Mailing Address
 Submittal Deadline
 Opening Date Time

NOTE: DURING ANY SOLICITATION, PRIVATE ENTITIES ARE ASKED NOT TO CONTACT MEMBERS OR STAFF OF THE COMMISSION, ANY ELECTED OR APPOINTED OFFICIAL, OR STATE EMPLOYEE.

FOR UNSOLICITED PROPOSALS

DO NOT OPEN IN MAILROOM

Property ID
 Proposer's Name
 Mailing Address
 Proposal Date

- 5. To the greatest extent possible the conceptual stage submittal shall be sufficient to convey the



experience and capacity of the development team, the overall quality and character of the qualifying project, as well as the financial and implementation strategies to ensure successful completion of the qualifying project. The submittal should be organized in the following order and tabbed sections in accordance with this Section. All submittals, at a minimum shall provide the following unless a waiver of the requirement or requirements is agreed to by the Commission.

B. TAB 1: COVER LETTER AND EXECUTIVE SUMMARY

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

1. Identification
 - a. Identify the private entity or consortium of private entities who will be directly involved in the qualifying project;
 - b. Identify the principal(s) include their title, mailing address, phone number, and email address;
 - c. Identify the person(s) in charge of negotiations, key personnel who will be involved in decision making, and the representative authorized to sign on behalf of the private entity; and
 - d. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the qualifying project.
2. Private Entity Contact Information
 - a. Physical address (if a consortium, include the address of each partner or member);
 - b. Mailing address (if a consortium, include the address of each partner or member);and
 - c. Primary phone and facsimile number.

Include a three (3) to five (5) page executive summary that highlights the key components of the qualifying project; including but not limited to describing the private entity, it's qualifications and experience with similar projects, highlights of the proposal and qualifying project analyses, and the community impact and benefits of the qualifying project.

C. TAB 2: PRIVATE ENTITY AND TEAM.

1. Identify the Private Entity:
 - a. Identify the legal structure of the private entity or consortium of private entities and its members or principals making the proposal; and
 - b. To the extent the private entity is created, and for each member thereof, provide proof of authority to do business in Texas and, as applicable, a certificate of good standing from the Texas Comptroller of Public Accounts and Texas Secretary of State.
2. Identify the Team:
 - a. To the extent a team is created, provide a list including the company name, primary contact, title, address, telephone, and email of each team member and any selected or prospective professional or consultant which may include, but are not limited to analysts, architects, engineers, contractors, legal counsel, marketing firms, real estate brokerage and property management firms;
 - b. Identify the firms that will provide design, construction and completion guarantees and



warranties.

- c. Provide an organizational chart that clearly illustrates the team and identifies the role of each team member, including design professional, consultant or major contractor (over \$1 million), participating in the development or operation of the qualifying project; and
- d. Describe the management structure and the role each team member, partner and any prospective professional, consultant or major subcontractor (over \$1 million) will fulfill in the development or operation of the qualifying project.

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

D. TAB 3: QUALIFICATIONS AND FINANCIAL CAPACITY.

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

1. Describe the length of time in business, business experience, public sector experience, and other engagements of the private entity or consortium of private entities;
2. Describe the design, construction and completion guarantees and warranties;
3. Resumes and work experience of each team member;
4. For the private entity and each major subcontractor (\$1 million or more) that will be utilized in the qualifying project, provide a statement listing all prior projects and clients for the past five (5) years and contact information for same. If a private entity or major subcontractor has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the qualifying project and, second, it shall include as many of its most recent projects as possible. The private entity and major subcontractors shall submit all performance evaluation reports or other documents that are in its possession evaluating the private entity's performance during the preceding five (5) years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful qualifying project development, operation, and completion. For each project identified, provide at least the following information:
 - a. Client and Project Identification:
 - i. Client's name, project name and project location;
 - ii. Primary contact name, address, telephone number, and e-mail address;
 - iii. Private entity's role in the project;
 - iv. Project description including year completed, type, size, unit mix and tenants; and
 - v. Photographs and plans.
 - b. Describe the experience of the private entity or consortium of private entities, key principals and project managers of bringing similar projects to completion on budget and in compliance with design, land use, service and other standards;



- c. Provide the performance schedule from contract to completion including stabilization;
 - d. Identify the construction lender and description of the development cost including a brief explanation of the approach and type of financial structure used to finance the project, including identification of sources and amounts of debt and equity, and public subsidies and incentives, if any;
 - e. Public Involvement: Description of public involvement process and challenges or obstacles, if any, arising from the process, and how the private entity overcame such challenges or obstacles; and
 - f. Public Sector Identification: Identify the affected jurisdiction, including references and contact information, involved in the example projects.
5. At least three (3) development and financial references (name, title, entity, telephone number and contractual relationship) that can be contacted with respect to current and past project experience.
6. A qualification statement that reviews all relevant information regarding technical qualifications and capabilities, resources and business integrity of the private entity, including but not limited to:
 - a. Bonding capacities; and
 - b. Insurance coverage.
7. A qualification statement that includes a mandatory disclosure by the private entity for the past five (5) years any of the following conduct:
 - a. Bankruptcy filings;
 - b. Liquidated damages;
 - c. Fines, assessments or penalties;
 - d. Judgments or awards in contract disputes;
 - e. Contract defaults and/or contract terminations;
 - f. License revocations, suspensions and/or other disciplinary actions;
 - g. Prior debarments or suspensions by a governmental entity;
 - h. Denials of prequalification or findings of non-responsibility;
 - i. Safety past performance data, including fatality incidents;
 - j. Experience ratings;
 - k. Modification ratings;
 - l. Recordable injury rate;
 - m. Workday incidence rate;
 - n. Alleged violations of any federal, state or local civil law;
 - o. Alleged violations of any federal, state or local criminal law;
 - p. Criminal indictments or investigations;
 - q. Legal claims filed by or against the private entity; and
 - r. Claims on payment and performance bonds.



8. Provide a copy of all notices of default, termination, claims of damage received on projects, and claims against performance and payment bonds, received within the past five years.
9. For each major subcontractor that will perform construction or design activities, provide a sworn certification by an authorized representative of the private entity attesting to the fact that the private entity is not currently debarred or suspended by any federal, state or local government entity.
10. Financial Capacity

In this Section establish and demonstrate access to financial resources such as the ability to raise equity and secure debt capital to deliver the qualifying project in a professional and timely manner. To demonstrate financial resources, each proposal must provide the information listed below:

- a. Portfolio: Composition of current real estate portfolio, including the size, value, years of ownership, and asset performance compared to initial *proforma* statements; and any other relevant information.
- b. Pending Projects: A listing and description of all pending projects under enforceable funded contracts, including the status, development schedule, financing method, sources, and amounts, and financial commitments required of the private entity.
- c. Reports and Certified Financial Statements: Provide the most recent credit report or Dun & Bradstreet report and certified financial statements for the past four (4) years of each private entity or consortium of private entities and each partner with an equity interest of twenty percent or greater. Certified financial statements shall include balance sheets, income statements and statements with changes in financial position of any parent organizations and any materially relevant subsidiaries, identification of any projects with negative cash flows, amount of developer's recourse debt, any non-performing loans, and the amount of guarantees and contingent liabilities.
- d. Statement of Public Trading: If the entity is publicly traded, include as part of the electronic copy (searchable PDF format on CD), the stock exchange and trading symbols and a copy of the most recent 10K.
- e. Funding Source Action: Disclose whether any funding sources or financial institutions have threatened to take or have taken adverse action against the private entity, such as, loan acceleration, foreclosure, terminating or restricting the use of funds, anytime during the past five years.

E. TAB 4: PROPOSAL.

Provide an overview of the qualifying project including the conceptual design of any facility or a conceptual plan for the provision of services. The conceptual design for facilities, at a minimum, shall include concept renderings, a concept site plan, and elevations that collectively illustrate the location, size, and context of the qualifying project. The required renderings and drawings include:

1. Concept Plan
 - a. Concept Renderings: Provide a concept design (plan, computer aided model, aerial sketch, photomontage, etc.) that characterizes the context of the urban design of the qualifying project. The concept drawings shall clearly illustrate the relationship of the qualifying project to the principle street and surrounding developments.
 - b. Concept Site Plan: The site plan, in a scale of not less than 1"=32', shall encompass the subject property and portions of contiguous parcels, if any, and clearly illustrate topography in a 1:2,000 or other appropriate scale, include landscape and urban design concept(s), and should be drawn as a ground floor plan of the site. The preliminary site plan shall indicate all major pedestrian entrances, horizontal and vertical



circulation systems, wall openings, all proposed outdoor areas; and the circulation plan showing how the qualifying project relates to public rights-of-way to and within the site, for walking, cycling, public transportation, and motor vehicles.

Summarize the preliminary programming of facilities, including if any, the mix of uses, square footage(s), total parking spaces, parking allocations (shared or exclusive), and types of parking e.g. structured or surface.

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

2. Project Overview

The qualifying project overview, at a minimum, must include:

- a. Describe the proposed business arrangements (i.e. performance based infrastructure, participation rent, concessions, parking management agreements, service agreements, etc.)
- b. Describe the plan for the development, financing and operation of the qualifying project showing the anticipated schedule of which funds will be required.
- c. Describe the type and amount of user fees, lease payments, and other service payments over the term of any applicable interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- d. Describe the implementation strategy for the qualifying project.
- e. Provide a preliminary schedule including permits and approvals from any federal, state, or local agencies, to the extent such are required, and timing of any contemplated requests for federal, state or local resources, and the initiation, construction phasing, completion and opening of the qualifying project including major milestones and the proposed major responsibilities and timeline for activities to be performed by the Commission and the private entity.
- f. To the greatest extent possible the overview must describe the following items:
 - i. Operational and management plan, if applicable;
 - ii. Anticipated cost per square foot, phase, and use;
 - iii. Existing conditions and anticipated site preparation;
 - iv. Other opportunities that will benefit the viability of the qualifying project;
 - v. Adjacent uses and emerging projects that impact the value or influence the use of the qualifying project;
 - vi. Connections to public transportation; and
 - vii. Availability and existing capacity of public infrastructure and required extensions or improvements.

3. Terms, Special Conditions and Other Considerations

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

- a. Terms: State the terms offered for the qualifying project.
- b. Contingencies: State any contingencies or conditions requested by the private entity.
- c. Use of Federal, State or Local Funding: To the extent the private entity has identified federal, state, or local funding sources; describe such sources.



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

F. TAB 5: PROJECT ANALYSES.

In this Section include the project analyses that support the business case of the qualifying project. The Project Analysis Section shall be categorized into four sub-tabbed sections as follows: (1) location and site analysis, (2) marketing and competitive analysis, (3) financial analysis, and (4) political and legal analysis..

1. Location and Site Analysis

- a. Describe how the proposed design of the improvements and the attributes of the site will demand the maximum income; and
- b. List any public utility facilities that will be affected by the qualifying project and a statement of the plans to accommodate the affected facilities.

2. Market and Competitive Analysis

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

3. Financial Analysis

- a. Explain the financing plan of the qualifying project including identifying the source(s) and amount of debt and equity to be used to capitalize the qualifying project, the relationships (e.g., outside lender, parent company, etc.). In TAB 8: Addenda, include each of the following:
 - i. Loan commitment letters and contact information for funding sources;
 - ii. The sources and anticipated amounts of working capital to cover operating costs and to adequately maintain operations from the start-up through completion; and
 - iii. Letters from lending institutions, not more than three months old, that demonstrate the existence of liquid assets or suitable unencumbered lines of credit to carry out the predevelopment activities. Evidence of the private entity's liquid assets or some acceptable form of equity, shall be equal to the equity requirements of the prospective construction lender.
- b. Using standard estimating techniques provide a development budget detailing any anticipated land acquisition(s), the anticipated pre-development costs, and hard and soft costs from construction through occupancy.
- c. Provide a discounted cash flow analysis, for the duration of the qualifying project, including but not limited to: estimates of costs, operating expenses, capital reserves including replacement and re-tenanting reserves, net operating income, debt service, partnership percentages, disposition benchmarks, and calculations of net present value, internal rate of return.
- d. Include a sensitivity analysis depicting the impacts due to escalations of expenses and revenue growth, and changes in financing terms or interest rates.



- e. Include a list and the methodology of all underlying assumptions incorporated in the plan.
 - f. Indicate if there is a method to refinance for cost savings. Indicate which party or parties would receive the benefit of any cost savings from a refinancing, e.g. would the savings go to the State, would the savings be shared and to what extent, or would the contracting person be the sole beneficiary.
 - g. Outline the financial penalties, if any, that would result should the State terminate a qualifying project early or restructure the cash flows.
 - h. Identify the need, if any, for the State to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement", for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized bond rating agency. If the unenhanced rating is not investment grade, the State may require the use of credit enhancements.
 - i. If the private entity has chosen an underwriter(s), provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc. If the private entity has not yet chosen an underwriter(s), the Commission reserves the right to have input into the selection of that underwriter(s).
4. Political and Legal Analysis
- a. Provide an explanation of how the qualifying project will complement or comply with the Commission's comprehensive asset management and development strategy.
 - b. Identify allocations of risk and liability, and assurances for timely completion of the qualifying project.
 - c. Identify the proposed risk factors and methods for dealing with these factors including a description of methods and remedies associated with any financial default.
 - d. Identify and fully describe any work required or otherwise to be performed by the State.
 - e. Describe the proposed method for securing property interests required for the qualifying project.
 - f. List all permits and approvals required for the development and completion of the qualifying project from federal, state, or local agencies.
 - g. State assumptions related to ownership, legal liability, law enforcement and operation of the qualifying project and the existence of any restrictions on the State's use of the qualifying project.
 - h. Identify any federal, state or local resources that the private entity contemplates requesting for the qualifying project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.

G. TAB 6: COMMUNITY IMPACT.

- 1. State the community benefits, including the economic impact and tax revenues, the qualifying project will have on the State and affected jurisdictions.
- 2. Estimate the number of jobs generated for area residents and level of pay and fringe benefits of such jobs.
- 3. Project the number and value of subcontracts generated for area subcontractors.
- 4. Identify any anticipated public support or opposition for the qualifying project and any



anticipated support or opposition by any affected jurisdiction. Support from the public or affected jurisdictions should be demonstrated through resolution of organizations, minutes of meetings, letters, or other official communications.

5. Identify any anticipated adverse social, economic, environmental and transportation impacts of the qualifying project measured against the State's comprehensive asset management and development strategy, design standards and any applicable ordinances of affected jurisdictions. Specify the strategies or actions to mitigate known impacts of the qualifying project. Indicate if environmental and archaeological assessments have been completed.
6. Identify the projected positive social, economic, environmental and transportation impacts of the qualifying project measured against the State's comprehensive asset management and development strategy, design standards and any applicable ordinances of affected jurisdictions.
7. Identify contingency plans for addressing public needs in the event that all or some of the qualifying project is not completed according to projected schedule.
8. Any additional information as the Commission may reasonably request.

H. **TAB 7: MISCELLANEOUS**

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

I. **TAB 8: ADDENDA**

Use this Section to present any item cited or referenced in the proposal

J. **FORMAT FOR SUBMISSIONS AT DETAILED STAGE (PART 2).**

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

Detailed evaluation stage submissions shall supplement the conceptual evaluation stage submissions. Submissions for the detailed stage evaluation shall be consistent with the format outlined in Section V.A., of these Guidelines, and shall include omitted submittals, substantial changes resulting from negotiations and refinements, or tasks identified during conceptual stage evaluation, unless a waiver of the requirement or requirements is agreed to by the Commission.

Unless previously submitted, the following items shall be submitted as part of the detailed stage submission:

1. Include a lifecycle cost analysis specifying methodology and assumptions of the qualifying project and the proposed start date, anticipated commitment of all parties, equity, debt, and other financing mechanisms, and a schedule of revenues and costs. The lifecycle cost analysis shall include, but not be limited to, a detailed analysis of the projected return, rate of return, expected useful life of the facility, and estimated annual operating expenses.
2. Detailed analysis of the financial feasibility of the qualifying project, including its impact on similar facilities operated or planned by the Commission. Include a detailed description of any financing plan for the project, a comparison of that plan with financing alternatives available to the State, and all underlying data supporting any conclusions reached in the analysis of the selection by the private entity of the financing plan proposed for the qualifying project.



3. Additional material and information as the Commission deems appropriate.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA.

A. PRELIMINARY REVIEW

Within thirty days (30) of receiving a proposal, the Commission's Planning & Asset Management Division will complete a preliminary review to determine whether to recommend the proposal for conceptual evaluation. The Commission reserves the right at all times to reject any proposal at anytime for any reason.

Proposals recommended for conceptual evaluation by the Planning & Asset Management Division shall be submitted with a summary recommendation to the Executive Director. The Executive Director shall consider the recommendation and determine if the proposal will be presented to the Commissioners so that at its next general meeting, or any special meeting, the Commissioners may determine whether or not to undertake conceptual stage evaluation of the proposal. If the Commissioners vote against undertaking the conceptual evaluation, the Commission shall cease evaluation and the review fee shall be returned.

B. CONCEPTUAL AND DETAILED EVALUATION (TWO-PART PROCESS).

The format for submissions at the conceptual evaluation stage is found at Section V.A., of these Guidelines.

1. The Commission will determine at the conceptual evaluation stage (Part 1) of review whether it will proceed using:
 - a. Standard procurement procedures consistent with the Commission's procurement policies; or
 - b. Guidelines developed by the Commission adopted as required by the Act.
2. After reviewing the original proposal, and any competing proposals submitted during the notice period, the Commission may determine:
 - a. Not to proceed further with any proposal;
 - b. To proceed to the detailed evaluation stage (Part 2) of review with the original proposal;
 - c. To proceed to the detailed evaluation stage (Part 2) with a competing proposal; or
 - d. To proceed to the detailed evaluation stage (Part 2) with multiple proposals.
3. Discussions between the Commission and private entities about the need for infrastructure improvements shall not limit the ability of the Commission to later determine to use standard procurement procedures to meet its infrastructure needs. The Commission retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

C. QUALIFICATIONS AND EXPERIENCE.

Factors to be considered in either stage of evaluation to determine whether the private entity possesses the requisite qualifications and experience will include, along with the specified information required under sections V.A. and V.B., above, the following:

1. Experience working with the public sector on public-private real estate development projects.
2. Experience, training and preparation with projects of similar size, scope and complexity;
3. The extent of personnel, logistical resources, bonding capacity, and the ability to complete the



qualifying project in a timely and professional manner;

4. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
5. Demonstrated compliance with applicable laws, codes, standards, regulations, and agreements on past projects;
6. Leadership structure;
7. Project manager's experience;
8. Management and operational plans;
9. Financial condition and capacity; and
10. Project ownership.

D. PROJECT CHARACTERISTICS.

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

1. Project scope and scale, land use and product mix;
2. The extent that the timing of the qualifying project is consistent with the Commission's timing of its comprehensive asset management and development strategy;
3. Data and reports resulting from project analyses;
4. Operation of the qualifying project;
5. Technology; technical feasibility;
6. Conformity to laws, regulations, and standards;
7. Environmental impacts;
8. Condemnation impacts;
9. Federal, state and local permits; and
10. Maintenance of the qualifying project.

E. PROJECT COST AND FINANCING.

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

1. Cost and cost benefit to the State;
2. Financing and the impact on the debt or debt burden of the State;
3. Financial plan, including overall feasibility and reliability of plan; operator's past performance with similar plans and similar projects; the degree to which the private entity has conducted due diligence investigation and analysis of proposed financial plan and the results of any such inquiries or studies;
4. Estimated project cost and life-cycle cost analysis; and
5. The identity, credit history, past performance of any third party that will provide financing for the qualifying project and the nature, amount, and timing of their commitment, as applicable.



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

F. COMMUNITY IMPACT.

Factors to be considered in evaluating the qualifying project's community impact and compatibility with the State's comprehensive asset management and development strategy include:

1. Community benefits, including the economic impact the qualifying project will have on the State and affected jurisdictions in terms of tax revenue, the number of jobs generated and level of pay and fringe benefits of such jobs;
2. Stakeholder input;
3. Community support or opposition, or both;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

G. OTHER FACTORS.

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

1. The extent the offered consideration generates value and returns to the State and benefits to the public, including in-kind consideration greater than the fair market value of the asset;
2. The proposed cost of the qualifying project;
3. The general reputation, industry experience, and financial capacity of the private entity;
4. The proposed design of the qualifying project;
5. Opportunity cost of taking an alternative action;
6. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
7. The private entity's plans to employ local contractors and residents; and
8. Other criteria that the Commission deems appropriate.

VII. INTERIM AND COMPREHENSIVE AGREEMENTS.

Before entering into the negotiation of an interim or comprehensive agreement, the Commission must submit copies of detailed proposals to the Partnership Advisory Commission for review and comment in accordance with Chapter 2268, Texas Government Code. The Planning & Asset Management Division is responsible for negotiating any interim or comprehensive agreement. An oversight committee consisting of the Planning & Asset Management Division and independent attorneys, advisors or consultants, if any, will review the terms of the proposed interim or comprehensive agreement. Review criteria shall include, but not be limited to, the scope, total cost, and duration of the qualifying project. Timelines for the work of the oversight committee will be developed consistent with the scope of the qualifying project.

Any interim or comprehensive agreement shall define the rights and obligations of the State and the contracting person with regard to the qualifying project. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities



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

A. MINIMUM INTERIM AGREEMENT TERMS.

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

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Surveying;
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. The timing of the negotiation of the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties deem appropriate prior to the execution of a comprehensive agreement.

B. MINIMUM COMPREHENSIVE AGREEMENT TERMS.

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

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review of plans and specifications for the qualifying project by the Commission;
3. The rights of the Commission to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the qualifying project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the contracting person by the Commission to ensure proper maintenance;
6. The terms under which the contracting person will reimburse the Commission for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the Commission and the contracting person in the event that the comprehensive agreement is terminated or there is a material default by the contracting person including the conditions governing assumption of the duties and responsibilities of the contracting person by the Commission and the transfer or purchase of property or other interests of the contracting person by the Commission;
8. The terms under which the contracting person will file financial statements prepared in accordance with generally accepted accounting principles on a periodic basis but not less than



annually;

9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;
10. A copy of any service contract;
11. A schedule of the current user fees or lease payments;
12. Classifications according to reasonable categories for assessment of user fees;
13. The terms and conditions under which the Commission may contribute financial resources, if any, for the qualifying project;
14. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
15. The terms and conditions under which the State will be required to pay money to the private entity and the amount of any such payments for the qualifying project.
16. A periodic reporting procedure that incorporates a description of the impact of the qualifying project on the State and affected jurisdictions; and
17. Other requirements of the P3 program or applicable law or that the Commission deems appropriate.

C. ADDITIONAL PROVISIONS FOR COMPREHENSIVE AGREEMENT.

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

1. The contracting person will be expected to assume single-point responsibility and liability for all planning, designing, financing, constructing, operating, and maintaining the qualifying project.
2. The contracting person shall perform a comprehensive geotechnical investigation of subsurface conditions at the qualifying project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the private entity in the comprehensive agreement.
3. The Commission encourages the private entity to propose a formula for the mutual sharing of cost savings realized during construction by virtue of value engineering initiatives, guaranteed maximum price with saving sharing provisions, trade allowances or otherwise. Mutually agreed upon terms for the sharing of such savings will be incorporated in the comprehensive agreement.
4. The Commission is may enter into comprehensive agreements with private entities that have formed business associations such as joint ventures, limited partnerships and limited liability companies. However, in such cases, the Commission requires that one or more of the principal members of the business association provide a performance guaranty of all obligations undertaken in the comprehensive agreement. This requirement is in addition to the statutory requirement for a performance bond. Individuals, corporations and other businesses interested in entering public-private partnerships with the Commission under the P3 program must be willing to provide this security if their proposal is submitted as part of a business association or other entity that limits the liability of its members, owners or partners. Any changes in the terms of the interim or comprehensive agreement as may be agreed upon by the parties from time to



time shall be added to the interim or comprehensive agreement only by written amendment. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project. Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with proposals play a critical role in the competitive evaluation process and the ultimate selection of a proposal by the Commission. Accordingly, as part of the comprehensive agreement, the prospective contracting person and its team members shall certify that all material representations, information and data provided in support of or in connection with, a proposal are true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information and data provided for the proposal, the prospective contracting person shall immediately notify the Commission of same. Any violation of this Section of the comprehensive agreement shall give the Commission the right to terminate the comprehensive agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

VIII. NOTICE, POSTING AND HEARING REQUIREMENTS.

A. PUBLIC NOTICE OF DECISION TO ACCEPT AND CONSIDER UNSOLICITED PROPOSALS.

Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee by the private entity or private entities, the Commission will determine whether to accept the unsolicited proposal for conceptual stage evaluation pursuant to the procedures in Section VI., above. The Commission reserves the right to reject any and all proposals at any time.

To encourage competition and partnerships with private entities and other persons in accordance with its stated goals if the Commission chooses to accept an unsolicited proposal for conceptual stage evaluation, it shall post a notice in a public area regularly used by the State for posting of public notices for a period of not less than forty-five (45) days and advertise the notice on the Commission's website and TexasOnline or the State's official internet website. The notice shall state that the Commission (i) has received and accepted an unsolicited proposal under the P3 program, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the private entity based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the Guidelines adopted by the Commission. The notice also shall summarize the qualifying project or projects, and identify their proposed locations.

B. NOTICE AND ACCESS TO ACCEPTED PROPOSALS

Not later than the 10th day after the date the Commissioners accept a proposal the Commission shall post public notice of the proposal as follows:

Posting shall be on the Commission's website or by another manner considered appropriate by the Commission to provide maximum notice to the public of the opportunity to inspect the proposal including a summary of the proposal, the location where a redacted copy of the proposal is available for public inspection, and the contact person.

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



C. HEARING, NOTICE AND ACCESS TO INTERIM OR COMPREHENSIVE AGREEMENTS

In addition to the posting requirements of Section IV.A.2, during the proposal review process, not later than thirty (30) days prior to entering into an interim or comprehensive agreement, the Commission shall hold a public hearing on the proposal.

Once the negotiation phase for an interim or a comprehensive agreement is complete and a decision to award has been made by the Commission, the Commission shall make the interim or comprehensive agreement and procurement records available for public inspection in the following manner:

Posting the agreement on the Commission's website or by another manner considered appropriate by the Commission to provide maximum notice to the public of the opportunity to inspect the proposal including a summary of the proposed comprehensive agreement, the location where a redacted copy of the proposed comprehensive agreement is available for public inspection, and the contact person.

For purposes of this subsection, procurement records do not include the trade secrets of the contracting person or financial records, including balance sheets or financial statements of the contracting person, that are not generally available to the public through regulatory disclosure or other means. Cost estimates relating to a qualifying project prepared by or for the Commission are not open to public inspection.

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

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

IX. GOVERNING PROVISIONS.

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