

RED RIVER AUTHORITY OF TEXAS

GUIDELINES FOR PUBLIC-PRIVATE PARTNERSHIPS



August 28, 2012

I. INTRODUCTION

A. Overview

The Red River Authority of Texas (the “Authority”) is authorized by the Public and Private Facilities and Infrastructure Act, Chapter 2267, Texas Government Code, to adopt local guidelines for the purpose of encouraging participation and investment by private entities in the Authority, facilitating financing for public projects, and providing the Authority the greatest possible flexibility to contract with private entities to provide public services.

The Authority has adopted these guidelines to provide a uniform framework to:

1. respond to solicited proposals;
2. submit unsolicited proposals; and
3. provide a fair and transparent valuation 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.

II. GENERAL PROVISIONS

A. Definitions

“**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.

“**Authority**” means the Red River Authority of Texas.

“**Competing Proposal**” means a Proposal received in response to a notice issued by the Authority that it has received an Unsolicited Proposal.

“**Comprehensive Agreement**” means the comprehensive agreement between the contracting person and the Authority that is required prior to development or operation of a Qualifying Project.

“**Conceptual Proposal**” means a proposal for a Qualifying Project accepted by the Authority.

“**Conceptual Stage**” means the initial phase of Qualifying Project evaluation when the Authority 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**” or “**Private Partner**” means a Private Entity that enters into a Comprehensive or Interim Agreement with the Authority on a specific P3 Project.

“**Detailed Proposal**” means a proposal for a Qualifying Project accepted by the Authority 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 when the Authority 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.

“Interim Agreement” means an agreement, before or in connection with the negotiation of a Comprehensive Agreement, between the Authority and a Contracting Person for the development or operation or both of a Qualifying Project.

“Lease payment” means any form of payment, including a land lease, by the Authority to the Private Partner for use of the Qualifying Project.

“Operate” means to finance, maintain, improve, equip, modify, repair, or operate a Qualifying Project.

“P3” means Public-Private Partnership.

“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, including a “Proposer” that submits an unsolicited proposal or “Respondent” that submits a proposal in response to a solicitation.

“Proposer” means a Private Entity that submits an unsolicited proposal or responds to a Authority solicitation for a P3 Qualifying Project.

“Public-Private Partnership Program” or **“P3 Program”** means the Authority’s public-private partnership program implemented in accordance with the Act.

“Qualifying Project” means (A) any water supply facility, public work, waste treatment facility, recreational facility, public building, or other similar facility currently available or to be made available to the Authority for public use, including any structure, parking area, appurtenance, and other property required to operate the structure of facility and any technology infrastructure installed in the structure of facility that is essential to the project’s purpose; or (B) any development or improvements necessary or desirable to unimproved, underdeveloped, or underutilized real estate owned by the Authority.

“Respondent” means a Private Entity that submits a proposal in response to a solicitation issued by the Authority.

“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 or governmental entity in aid of the Qualifying Project.

“Service Contract” means a contract between the Authority and a Contracting Person for the delivery of services to be provided as part of a Qualifying Project in exchange for service payments or other consideration.

“**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 Authority, soliciting responses including but not limited to bids, business plans (RBP), expressions of interest (REI), ideas (RFI), offers (RFO), proposals (RFP), qualifications (RFQ), or any combination thereof.

“**Unsolicited Proposal**” means a proposal initiated by a Private Entity for a Qualified Project for Authority review, consideration, and approval that is not a proposal in response to a written Solicitation issued by the Authority.

“**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.

B. Overview

1. Proposals

The Public-Private Partnership process may be initiated by either a Solicitation or an Unsolicited Proposal submitted by a Private Entity requesting review, consideration, and approval of a Qualifying Project.

The Authority may invite bids or proposals from Private Entities for a Qualifying Project. The procedures and requirements applicable to any particular solicited bid or proposal shall be as specified in the Solicitation.

The Authority is also authorized to receive Unsolicited Proposals. All proposals received without issuance of a Solicitation shall be treated as an Unsolicited Proposal, including any proposals that result from any general publicity of the Authority’s needs that encourage interested parties to submit proposals or competing proposals received in response to a notice issued by the Authority that it has received an Unsolicited Proposal.

2. Review Process

Proposers may be required to follow a two-part proposal submission process, unless waived by the Authority, consisting of an initial Conceptual Stage and subsequent Detailed Stage. The Conceptual Proposal and Detailed Proposal shall each specifically and conceptually identify any facility, building, infrastructure, or improvement included in the proposal, and contain specified information on the Private Entity’s qualifications and experience, project characteristics, project financing, anticipated public support or opposition, project benefit, value, and compatibility, as more specifically described in Section III.

The process for evaluating Unsolicited Proposals consists of four steps:

1) Upon receipt of an Unsolicited Proposal, the Authority will determine whether to accept it for publication and consideration at the Conceptual Stage;

2) if the Proposal is accepted for consideration, the Authority will give public notice of the Proposal, as required by the Act and these Guidelines;

3) the Authority will review the original Unsolicited Proposal and any Competing Proposal at the Conceptual Stage to determine whether to accept it for consideration at the Detailed Stage; and

4) the Authority will conduct in-depth review at the Detailed Stage of the original Unsolicited Proposal and/or any Competing Proposal accepted for consideration.

Unless the Authority determines that analysis of the proposals is to be performed by employees of the Authority, the Authority will engage the services of qualified professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed by the Authority, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal.

The Authority may discontinue its evaluation of any proposal at any time. Furthermore, the Authority may eliminate review at the Conceptual Stage and proceed directly to a review at the Detailed Stage if the Authority determines that it is in its best interest to do so.

C. Proposal Review Fees

Any Private Entity submitting an Unsolicited Proposal or a Competing Proposal shall pay a review fee to the Authority in the amount of \$150.00 at the time it submits the proposal to the Authority. Payments must be made by check, money order, credit card, or electronic transfer. The fee will cover the cost of processing, reviewing, and evaluating the proposal. If the proposal is summarily rejected during preliminary review and the Authority does not proceed to the publication and Conceptual-Stage review, the review fee shall be returned to the Private Entity; otherwise, the review fee is non-refundable.

If the Authority decides to proceed with evaluation of a Conceptual or Detailed Proposal, the Authority may, at its discretion, engage professional advisors, attorneys, or consultants having appropriate experience in analyzing public-private partnership proposals and negotiating comprehensive agreements. The Private Entity shall pay the fees of any advisors, attorneys, or consultants engaged by the Authority to complete the evaluation of the proposal.

D. Texas Public Information Act

The Authority is subject to the Texas Public Information Act, Chapter 552, Texas Government Code. Most information collected, assembled, or maintained by the Authority 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, including trade secrets and confidential commercial, financial, or proprietary information. The Office of the Attorney General determines whether information may be withheld, not the Authority.

All information provided to the Authority will be handled in accordance with the Act and the requirements of the Texas Public Information Act. 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 Authority and a Private Entity or the Contracting Person. The Act further provides that 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 Authority are not open to public inspection.

A Private Entity should identify those portions of a proposal that the Private Entity considers to be trade secrets or confidential commercial, financial, or proprietary information, and should clearly label any such information “CONFIDENTIAL.” Any information labeled confidential will be protected to the extent permitted by law. The Authority will process any third-party request for disclosure of information comprising all or part of a proposal or other information provided by a Private Entity in accordance with the procedures prescribed by the Texas Public Information Act. If an outside individual or entity requests review or copies of the information marked confidential, the Authority will advise the Private Entity of the request. Disclosure is determined by the Office of the Attorney General; not the Authority.

E. Affected Local Jurisdiction

Any Private Entity requesting approval from or submitting a proposal to the Authority must notify each Affected Jurisdiction by providing a copy of the proposal to the Affected Jurisdiction by certified mail, express delivery, or hand delivery. 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. Affected Jurisdictions shall have sixty (60) days from the receipt of the request or proposal to submit written comments on the proposed Qualifying Project to the Authority, and to indicate whether the proposed qualifying project is compatible with the local comprehensive plan, local infrastructure development plan, or capital improvements budget or other government spending plan. The Authority shall consider any comments received within the 60-day period before entering into an Interim or Comprehensive agreement with a Contracting Person.

F. Designated Contact

A Private Entity may address any questions about the Authority's P3 Program to Curtis W. Campbell, General Manager.

All proposal submissions should be addressed to: P.O. Box 240, Wichita Falls, Texas 76307-0240, (940) 723-2236.

III. PROPOSAL PREPARATION AND SUBMISSION

A. Submissions at the Conceptual Stage

An Unsolicited Proposal must be accompanied by the following, unless waived by the Authority:

1. A topographic map, with a 1:2,000 or other appropriate scale, indicating the location of the Qualifying Project;
2. A description of the Qualifying Project, including:
 - A. the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure with sufficient detail so that the type and intent of the project, the location, and the communities affected are clearly identified; and
 - B. a schedule for the initiation of and completion of the Qualifying Project that includes the proposed major responsibilities and timeline for activities to be performed by the Authority and the Private Entity;
3. A preliminary estimate and estimating methodology of the cost of the Qualifying Project;
4. A plan for the development, financing, and operation of the Qualifying Project, including the anticipated schedule on which funds will be required.
5. A statement of the proposed method for securing necessary property interests required for the Qualifying Project;
6. Information relating to any current plans for the development of facilities or technology infrastructure to be used by a governmental entity that is similar to the proposed Qualifying Project;

7. A list of all permits and approvals required for the development and completion of the Qualifying Project from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;
8. A list of any facilities that will be affected by the Qualifying Project and a statement of the Private Entity's plans to accommodate the affected facilities;
9. A statement on the Private Entity's general plans for financing the Qualifying Project, including the sources of the Private Entity's funds and identification of any dedicated revenue source or proposed debt or equity investment for the Private Entity;
10. The name and address of each individual who may be contacted for further information concerning the request;
11. 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; and
12. Any additional material and information the Authority reasonably requests.

B. Format for Submissions at Detailed Stage

Detailed Stage submissions should supplement and finalize the Conceptual Proposal submissions from the Private Entity. If the Authority decides to proceed to the Detailed Stage of review with one or more proposals, the following information should be provided by the Private Entity unless waived by the Authority:

1. Any omitted information;
2. Substantial changes resulting from negotiations;
3. Refinements or tasks identified during Conceptual Stage evaluation; and
4. Additional material and information as the Authority may reasonably request.

IV. PROPOSAL EVALUATION AND SELECTION

A. Evaluation

When evaluating any Proposal, the Authority shall consider the total project cost as one factor, but is not required to select the proposal that offers the lowest total project cost.

The Authority may consider the following factors:

1. The proposed cost of the Qualifying Project;
2. The general reputation, industry experience, and financial capacity of the Private Entity submitting a proposal;
3. The proposed design of the Qualifying Project;
4. The eligibility of the project for accelerated selection, review, and documentation timelines under the Authority's guidelines;
5. Comments from local citizens and affected jurisdictions;
6. Benefits to the public;
7. The Private Entity's good faith effort to comply with the goals of a historically underutilized business plan;
8. The Private Entity's plans to employ local contractors and residents;
9. For a Qualifying Project that involves a continuing role beyond design and construction, the Private Entity's proposed rate of return and opportunities for revenue sharing; and
10. Other criteria that the Authority considers appropriate.

B. Selection

The Authority may approve as a Qualifying Project the development or operation of a facility needed by the Authority, or the design or equipping of a Qualifying Project, if the Authority determines that the project serves the public purpose of the Act. The Authority may determine that the development or operation of the project as a Qualifying Project serves the public purpose if:

1. There is a public need for or benefit derived from the project of the type the Private Entity proposes as a Qualifying Project;
2. The estimated cost of the project is reasonable in relation to similar facilities; and
3. The Private Entity's plans will result in the timely development or operation of the Qualifying Project.

On approval of the Qualifying Project, the Authority shall establish a date by which activities related to the Qualifying Project must begin. The Authority may extend the date.

The approval of the Authority is subject to the private entity or other Private Entity entering into an Interim or Comprehensive agreement with the Authority.

V. INTERIM AND COMPREHENSIVE AGREEMENTS

Prior to developing or operating the qualifying project, the selected private entity shall enter into a Comprehensive Agreement with the Authority. 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 project. The Authority may designate a working group to be responsible for negotiating any Interim or Comprehensive agreement. Any Interim or Comprehensive Agreement shall define the rights and obligations of the Authority and the selected proposer with regard to the project.

A. 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. Financial and revenue analysis, including ascertaining the availability of financing for the proposed facility;

6. Establishing a process and 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 may deem appropriate prior to the execution of a comprehensive agreement.

B. Comprehensive Agreement Terms

The scope of the Comprehensive Agreement shall include but is not be limited to:

1. The delivery of letters of credit or other security in connection with the development or operation of the Qualifying Project, and delivery of performance and payment bonds in compliance with Chapter 2253, Texas Government Code, for all construction activities;
2. The review of plans and specifications for the qualifying project by the Authority and approval by the Authority if the plans and specifications conform to standards acceptable to the responsible government entity, except that the Contracting Person may not be required to complete the design of a Qualifying Project before the execution of a Comprehensive Agreement;
3. The rights of the Authority to inspect the qualifying project to ensure compliance with the Comprehensive Agreement;
4. The maintenance of a public liability insurance policy, copies of which must be filed with the Authority accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the Authority and reasonably sufficient to ensure coverage of tort liability to the public and project employees and to enable the continued operation of the Qualifying Project;
5. The monitoring of the practices of the Contracting Person by the Authority to ensure the Qualifying Project is properly maintained;
6. The terms under which the Contracting Person will reimburse the Authority for services provided;
7. The terms under which the Contracting Person will file appropriate financial statements on a periodic basis;

8. The policy and procedures that will govern the rights and responsibilities of the Authority and the Contracting Person if the Comprehensive Agreement is terminated or there is a material default by the Contracting Person including the conditions governing (A) assumption of the duties and responsibilities of the Contracting Person by the Authority and (B) the transfer or purchase of property or the interests of the Contracting Person by the Authority;

9. Any user fees, lease payments, or service payments, if any, established by agreement of the parties. Any payments or fees shall be set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project. A user fee or lease payment established in the Comprehensive Agreement as a source of revenue may be in addition to, or in lieu of, a service payment;

10. The terms and conditions, if any, under which the Authority may make grants or loans to the contracting person from money received from the federal, state, or local government or any agency or instrumentality of the government;

11. Incorporation of the duties of the Contracting Person under the Act or other applicable law; and

12. Such other terms and conditions as the Authority may deem appropriate.

The Comprehensive Agreement may provide for the development or operation of phases or segments of a qualifying project. 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 agreement by written amendment.

VI. 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 Authority will determine whether to accept the unsolicited proposal for conceptual stage evaluation pursuant to the procedures in Section V, above. The Authority 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 Authority 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

Authority's website and TexasOnline or the State's official internet website. The notice shall state that the Authority (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 Authority. 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 Authority accepts a proposal the Authority shall post public notice of the proposal as follows:

Posting shall be on the Authority's website or by another manner considered appropriate by the Authority 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 Authority and the contracting person.

C. Hearing, Notice, and Access to Interim or Comprehensive Agreements

In addition to the posting requirements of Section VI.B, during the proposal review process, not later than thirty (30) days prior to entering into an interim or comprehensive agreement, the Authority 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 Authority, the Authority shall make the interim or comprehensive agreement and procurement records available for public inspection in the following manner:

Posting the agreement on the Authority's website or by another manner considered appropriate by the Authority 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 Authority 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.