Unsolicited Proposals for Public-Private Initiatives

This Act authorizes the state department of transportation to accept and evaluate unsolicited proposals for public-private initiatives and authorizes contracts for such initiatives. The Act also changes provisions relating to the department's participation with state funds in mass transportation systems and services.

Submitted as:
Georgia
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Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act may be cited as “An Act to Permit the State Department of Transportation to Consider Unsolicited Proposals for Public-Private Initiatives.”

Section 2. [Definitions.]
(a) As used in this Act:

(1) “Department” means the [department of transportation].

(2) “Private contribution” means resources supplied by a private entity to accomplish all or any part of the work on a transportation system project, including funds, financing, income, revenue, cost sharing, technology, staff, materials, equipment, expertise, data, or engineering, construction, or maintenance services, or other items of value. To the extent that this definition may conflict with any federal law or regulation, for any project utilizing federal funds, the federal definition shall supersede this subsection.

(3) “Public-private initiative” means a nontraditional arrangement between the [department] and one or more private or public entities that provides for:

(A) Acceptance of a private contribution to a transportation system project or service in exchange for a public benefit concerning that project or service;

(B) Sharing of resources and the means of providing transportation system projects or services; or

(C) Cooperation in researching, developing, and implementing transportation system projects or services.

(4) “Transportation system” means the state transportation infrastructure and related systems, including highways, roadways and associated rights of way, bridges, tunnels, overpasses, ferries, airports, port facilities, vehicle parking facilities, park-and-ride lots, transit systems, transportation management systems, intelligent vehicle highway systems, or similar facilities used for the transportation of persons or goods, together with any other property, buildings, structures, parking areas, appurtenances, and facilities needed to operate such system, including any major transportation facility as defined by [insert citation].

(5) “Unsolicited proposal” means a written proposal for a public-private initiative that is submitted by a private entity for the purpose of entering into an agreement with the [department] concerning a transportation system project but that is not in response to a formal solicitation or request issued by the [department].
Section 3. [Requirements for Considering Unsolicited Proposals for Public-Private Initiatives.]

(a) The [department] may receive, consider, evaluate, and accept an unsolicited proposal or a public-private initiative only if the proposal complies with all of the requirements of this section.

(b) The [department] may consider an unsolicited proposal only if the proposal:

1. Is unique and innovative in comparison with and is not substantially similar to other transportation system projects already in the [state transportation improvement program] within the [department] or, if it is similar to a project in the [state transportation improvement program], that such project has not been fully funded by the department or any other entity as of the date the proposal is submitted. Unique or innovative features which may be considered by the [department] in evaluating such a proposal may include but not be limited to unique or innovative financing, construction, design, or other components as compared with other projects or as otherwise defined by [department] rules or regulations;

2. Is independently originated and developed by the proposer; and

3. Includes or is accompanied by:
   A. Such detail and information as the [department] may require by rule or regulation to assist in its evaluation of the proposal and to determine if the proposal benefits the public. Such information shall include a list of any proprietary information included in the proposal which the proposer considers protected trade secrets or other information exempted from disclosure under [insert citation], and an itemized, auditable listing of the costs associated with the development of the proposal; and
   B. Such fees as may be required by the rules and regulations of the [department] for submission of such proposals.

(c) Paragraph (1) of subsection (b) of this section shall not be deemed to prohibit the [department] from encouraging the submission of unsolicited proposals that are well-developed and consistent with the [department’s] general policy priorities by providing written or oral information to any person regarding the policy priorities or the requirements and procedures for submitting an unsolicited proposal.

(d) If the unsolicited proposal does not comply with the requirements of subsection (b) of this section, the [department] shall return the proposal without further action. In taking such action, the [department] shall not disclose either the originality of the research or any proprietary information associated with the proposal to any other person or entity. If the unsolicited proposal complies with all the requirements of subsection (b) of this section, the [department] may further evaluate the proposal pursuant to this section.

(e) Within [30 days] of receipt of an unsolicited proposal that meets the requirements of subsection (b) of this section, the [department] shall provide public notice of the proposed project. This notice shall:

1. Be published in a newspaper of general circulation which is a legal organ and upon such electronic website providing for general public access as the department may develop for such purpose or in the same manner as publications providing notice as described in [insert citation];

2. Be provided to any person or entity that expresses in writing to the [department] an interest in the subject matter of the proposal and to any member of the [General Assembly] whose [House or Senate district] would be affected by such proposal;

3. Outline the general nature and scope of the unsolicited proposal, including the location of the transportation system project and the work to be performed on the project; and

4. Specify the address to which any comparable proposal must be submitted.
(f) Any person or entity who elects to submit a competing proposal for the proposed qualifying project to the [department] shall submit a written letter of intent to do so by no later than [30 days] after the [department’s] initial publication of the notice. Any letter of intent received by the [department] after the expiration of the [30-day] period shall not be valid and any competing proposal submitted thereafter by a person or entity who has not submitted a timely letter of intent shall not be considered by the department and shall be returned to the person or entity who did not submit a letter of intent by the deadline. For those people or entities who elect to submit a competing proposal and submit a timely letter of intent with the [department], any such competing proposal shall be submitted to the [department] by no later than [90 days] after the [department’s] initial publication of the notice required by this section. Only those competing, compliant proposals submitted by such deadline shall be considered by the [department].

(g) Upon receipt of a proposal properly submitted in response to the notice described in subsection (e) of this section that fully meets the requirements of subsection (b) of this section, the [department] shall:

1. Determine, in its discretion, if any submitted proposal is comparable in nature and scope to the unsolicited proposal and whether it warrants further evaluation;
2. Evaluate any comparable proposal; and
3. Conduct good faith discussions and, if necessary, negotiation concerning each comparable proposal.

(h) The [department] shall base its evaluation of the unsolicited proposal or comparable proposals on the following factors:

1. Unique and innovative methods, approaches, or concepts demonstrated by the proposal;
2. Scientific, technical, or socioeconomic merits of the proposal;
3. Potential contribution of the proposal to the [department’s] mission;
4. Capabilities, related experience, facilities, or techniques of the proposer as described in the proposal or unique combinations of these qualities that are integral factors for achieving the proposal objectives;
5. Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives; and
6. Any other factors appropriate to a particular proposal.

(i) Once the [department] has concluded its evaluation of the unsolicited proposal and any comparable proposals, the [department] may execute a commitment agreement with the entity submitting the most desirable proposal as determined by the [department’s] evaluation process. At least [two weeks] prior to approval of any project, the [department] shall present to the [House and Senate transportation committees] a report with respect to the proposed commitment agreement. Such commitment agreement shall indicate the [department’s] commitment to undertake a public-private initiative to execute the proposal if, after public comment:

1. The [department] determines that the project is financially feasible and in the public interest; and
2. The [department] and the proposer can arrive at agreeable terms and conditions, including the price of the project.

(j) The [department] may execute a commitment agreement relating to an unsolicited proposal or conforming comparable proposal only if:

1. The proposal receives a favorable evaluation;
The [department] makes a written determination based on facts and circumstances that the proposal is an acceptable basis for an agreement to obtain services from the entity making the proposal; and

(3) The specific commitment agreement is specifically approved by affirmative vote of the [state transportation board].

(k) Once the commitment agreement is signed by the parties, prior to final contracting for any public-private initiative from the unsolicited or conforming comparable proposal, the [department]:

(1) Should provide public notice that the [department] will receive public comment with respect to such proposal. The notice shall:

(A) Be published in a newspaper of general circulation and which is a legal organ, and upon such electronic website providing for general public access as the [department] may develop for such specific purpose, or in the same manner as publications providing notice as described in [insert citation], or both, allowing at least [14 days] and no more than [45 days] for public comment to be submitted for consideration;

(B) Be provided to any person or entity that expresses in writing to the department an interest in the subject matter of the proposal;

(C) Outline the general nature and scope of the proposal, including the location of the transportation system project and the work to be performed on the project; and

(D) Specify the address to which any public comment must be submitted; and

(2) In its discretion, may provide additional opportunity for public comment at a public meeting or meetings. In such event, notice of such meetings shall be provided in the same manner as described in paragraph (1) of this subsection.

(l) In taking the actions required by subsections (e) and (k) of this section, the [department] shall not disclose either the originality of the research or any proprietary information associated with the proposal as listed by the proposer required by paragraph (3) of subsection (b) of this section.

(m) The provisions of [insert citation] to the contrary notwithstanding, no proposal shall become a ‘public record’ nor be subject to disclosure as such until such time as a commitment agreement has been signed and notice of solicitation of public comment has been published as required in subsection (k) of this section. At all times thereafter, the [department] shall not disclose trade secret or proprietary information, or both, specifically designated by the proposer as required by paragraph (3) of subsection (b) of this section which meets the definition of a trade secret under [insert citation].

(n) The power of eminent domain shall not be delegated to any private entity under any public-private initiative commenced or proposed pursuant to this Act.

(o) The [department] or the [department’s] designee has the authority to make the determination and take the actions required by this section.

(p) If the [department] rejects or declines to accept an unsolicited proposal but, within a period of [two years] following the submission of such proposal the [department] contracts for a substantially similar project, the [department] shall reimburse the proposer of the unsolicited proposal for the auditable costs associated with the preparation and development of the proposal upon a request for reimbursement to the [department]. This provision shall not apply if the [department] accepts a conforming comparable proposal through the procedures outlined in subsections (f) and (g) of this section.

Section 4. [Authority of Department of Transportation to Contract with Proposers of Public-Private Initiatives.]
(a) If the [department] follows the evaluation criteria set forth in section 3 of this Act and if an unsolicited proposal contains all the information required by that section and the proposal is accepted by the [department] as demonstrated by the execution of a commitment agreement, upon completion of the public comment period, the [department] shall have the authority to contract with the proposer for a public-private initiative based upon the proposal without subjecting such contract to public bid as required by [insert citation]. Such contracts shall be in compliance with all other applicable federal and state laws and each specific contract shall be specifically approved by affirmative vote of the [state transportation board].

(b) Any agreement entered into pursuant to this Act may authorize funding to include tolls, fares, or other user fees and tax increments for use of the transportation facility that is the subject of the proposal. The [department] may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive such assistance. Any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation as provided by the Constitution and laws of this state. The [department] may determine that it serves the public purpose of this Act for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the federal, state, or local government or any instrumentality thereof, including, but not limited to, the [state road and tollway authority]. The [department] may agree to make grants or loans to the operator from time to time from amounts received from the federal, state, or local government or any agency or instrumentality, including, but not limited to, the [state road and tollway authority].

(c) The [department], in its sole discretion, may reject any unsolicited proposal at any time until a contract is signed with the entity submitting the proposal. In the event that a proposal is rejected but the [department] subsequently proceeds with all or part of such proposal within a period of [two years], the entity submitting the proposal shall be entitled to reimbursement of the costs of developing the proposal as indicated in subsection (p) of section 3 of this Act.

Section 5. [Awarding Contracts to Lowest Bidders.] Except as authorized by sections 3 and 4 of this Act, the [department] shall award the contract to the lowest reliable bidder, provided that the [department] shall have the right to reject any and all such bids whether such right is reserved in the public notice or not and, in such case, the [department] may readvertise, perform the work itself, or abandon the project.

Section 6. [Relating to Operation of Facilities or Systems and Financial Assistance to Systems.] The [department’s] participation with state funds in those programs specified in [insert citation] may be in cash, products, or in-kind services. The [department’s] participation with state funds shall be limited to a maximum of [15 percent] of the cost of the program. The remainder shall be provided from sources other than [department] funds or from revenues from the operation of public mass transportation systems.

Section 7. [Severability.] [Insert severability clause.]

Section 8. [Repealer.] [Insert repealer clause.]

Section 9. [Effective Date.] [Insert effective date.]