

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

SB 257 (As passed)

Status: Enacted into law in 2003.

Suggested State Legislation

(Title, enacting clause, etc.)

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

3

4

Section 2. [*Definitions.*]

5

(a) As used in this Act:

6

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

7

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

13

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

15

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

17

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

19

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

21

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

28

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

32

33 Section 3. [*Requirements for Considering Unsolicited Proposals for Public-Private*
34 *Initiatives.*]

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

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

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

47 (2) Is independently originated and developed by the proposer; and

48 (3) Includes or is accompanied by:

49 (A) Such detail and information as the [department] may require by rule
50 or regulation to assist in its evaluation of the proposal and to determine if the proposal benefits
51 the public. Such information shall include a list of any proprietary information included in the
52 proposal which the proposer considers protected trade secrets or other information exempted
53 from disclosure under [insert citation], and an itemized, auditable listing of the costs associated
54 with the development of the proposal; and

55 (B) Such fees as may be required by the rules and regulations of the
56 [department] for submission of such proposals.

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

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

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

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

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

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

80 (4) Specify the address to which any comparable proposal must be submitted.

81 (f) Any person or entity who elects to submit a competing proposal for the proposed
82 qualifying project to the [department] shall submit a written letter of intent to do so by no later
83 than [30 days] after the [department's] initial publication of the notice. Any letter of intent
84 received by the [department] after the expiration of the [30-day] period shall not be valid and
85 any competing proposal submitted thereafter by a person or entity who has not submitted a
86 timely letter of intent shall not be considered by the department and shall be returned to the
87 person or entity who did not submit a letter of intent by the deadline. For those people or entities
88 who elect to submit a competing proposal and submit a timely letter of intent with the
89 [department], any such competing proposal shall be submitted to the [department] by no later
90 than [90 days] after the [department's] initial publication of the notice required by this section.
91 Only those competing, compliant proposals submitted by such deadline shall be considered by
92 the [department].

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

96 (1) Determine, in its discretion, if any submitted proposal is comparable in nature
97 and scope to the unsolicited proposal and whether it warrants further evaluation;

98 (2) Evaluate any comparable proposal; and

99 (3) Conduct good faith discussions and, if necessary, negotiation concerning each
100 comparable proposal.

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

103 (1) Unique and innovative methods, approaches, or concepts demonstrated by the
104 proposal;

105 (2) Scientific, technical, or socioeconomic merits of the proposal;

106 (3) Potential contribution of the proposal to the [department's] mission;

107 (4) Capabilities, related experience, facilities, or techniques of the proposer as
108 described in the proposal or unique combinations of these qualities that are integral factors for
109 achieving the proposal objectives;

110 (5) Qualifications, capabilities, and experience of the proposed principal
111 investigator, team leader, or key personnel who are critical in achieving the proposal objectives;
112 and

113 (6) Any other factors appropriate to a particular proposal.

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

122 (1) The [department] determines that the project is financially feasible and in the
123 public interest; and

124 (2) The [department] and the proposer can arrive at agreeable terms and
125 conditions, including the price of the project.

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

128 (1) The proposal receives a favorable evaluation;

129 (2) The [department] makes a written determination based on facts and
130 circumstances that the proposal is an acceptable basis for an agreement to obtain services from
131 the entity making the proposal; and

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

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

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

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

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

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

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

149 and

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

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

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

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

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

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

175
176 Section 4. *[Authority of Department of Transportation to Contract with Proposers of*
177 *Public-Private Initiatives.]*

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

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

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

205

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

211

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

218

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

220

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

222

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