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2 PROCUREMENT AND PROPERTY MANAGEMENT  
3 SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS  
4 CHAPTER III: CHIEF PROCUREMENT OFFICER FOR  
5 THE DEPARTMENT OF TRANSPORTATION  
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198

199 AUTHORITY: Authorized and implementing the Illinois Procurement Code [30 ILCS 500],  
 200 Governmental Joint Purchasing Act [30 ILCS 525], Innovation for Transportation Infrastructure  
 201 Act [630 ILCS 10], Section 2705-600 of the Department of Transportation Law [20 ILCS 2705],  
 202 and the Public Private Agreements for the Illiana Expressway Act [605 ILCS 130] and  
 203 authorized by Section 5-25 of the Illinois Procurement Code [30 ILCS 500], Section 2 of the  
 204 Governmental Joint Purchasing Act [30 ILCS 525], Section 2705-600(7) of the Department of  
 205 Transportation Law [20 ILCS 2705], Section 25-101 of the Electronic Commerce Security Act [5  
 206 ILCS 175], Section 15(a) of the Public Private Agreements for the Illiana Expressway Act [605  
 207 ILCS 130], Section 75(b) of the Innovation for Transportation Infrastructure Act [630 ILCS 10],  
 208 and Section 15, Section 19, and Section 35 of Public-Private Partnership for Transportation Act  
 209 [630 ILCS 5].

210

211 SOURCE: Adopted by emergency rulemaking at 22 Ill. Reg. 11602, effective July 1, 1998, for a  
 212 maximum of 150 days; adopted at 22 Ill. Reg. 21060, effective November 25, 1998; emergency  
 213 amendment at 29 Ill. Reg. 7832, effective May 12, 2005, for a maximum of 150 days; emergency  
 214 expired October 8, 2005; amended at 29 Ill. Reg. 18147, effective October 19, 2005; recodified,  
 215 pursuant to PA 96-795, from Department of Transportation, 44 Ill. Adm. Code 660, to Chief

216 Procurement Officer for Department of Transportation, 44 Ill. Adm. Code 6, at 35 Ill. Reg.  
217 10158; amended at 35 Ill. Reg. 16518, effective September 30, 2011; amended at 36 Ill. Reg.  
218 230, effective December 21, 2011; expedited correction at 36 Ill. Reg. 14883, effective  
219 December 21, 2011; amended at 37 Ill. Reg. 5764, effective April 19, 2013; amended at 37 Ill.  
220 Reg. 15878, effective September 27, 2013; amended at 37 Ill. Reg. 19098, effective November  
221 15, 2013; recodified Title of the Part at 39 Ill. Reg. 5903; amended at 40 Ill. Reg. 6693, effective  
222 April 7, 2016; amended at 44 Ill. Reg. 6222, effective April 8, 2020; Subparts C and K recodified  
223 at 44 Ill. Reg. 8590; amended at 48 Ill. Reg. 10137, effective July 1, 2024; amended at 50 Ill.  
224 Reg. \_\_\_\_\_, effective \_\_\_\_\_.

225  
226 SUBPART N: PROCUREMENT OF SERVICES UNDER UNSOLICITED PROPOSAL FOR  
227 PUBLIC-PRIVATE PARTNERSHIP DELIVERY METHOD

228  
229 Section 6.1100 Purpose

230  
231 The purpose of this Subpart is to establish policies and procedures to allow the Department to  
232 receive, review, and implement unsolicited proposals for Public-Private Partnerships in  
233 accordance with the Illinois Procurement Code [30 ILCS 500] and the Public Private  
234 Partnerships for Transportation Act [630 ILCS 5].

235  
236 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

237  
238 Section 6.1110 Definitions

239  
240 As used throughout this Subpart, terms defined in the Illinois Procurement Code and the Public  
241 Private Partnership for Transportation Act have the same meaning as in the Code and the Public  
242 Private Partnership for Transportation Act and as further defined in this Subpart. Each term in  
243 this Subpart has the meaning set forth as follows unless its use clearly requires a different  
244 meaning.

245  
246 "P3 Act" means the Public Private Partnerships for Transportation Act [630 ILCS  
247 5].

248  
249 "Agreement" means the public-private agreement between the selected proposer  
250 and the Department as a result of the unsolicited proposal process.

251  
252 "Award" means the selection of a proposer to enter into an agreement with the  
253 Department.

254  
255 "Best and Final Offers" or "BAFO" means proposal revisions made by the  
256 responsive proposers to both technical and financial proposals as a part of the  
257 procurement process.

258

259 "Best Value" means an approach that provides the most efficient overall technical  
260 and financial solution for the public benefit.

261  
262 "Best Value Proposal" means the responsive proposal that was determined to  
263 provide best value following the Department evaluation.

264  
265 "Commercial Close" means the execution of an Agreement by the developer and  
266 the Department, at which point agreement is reached on all the commercial terms.

267  
268 "Comprehensive Evaluation" means the thorough assessment of all aspects of an  
269 unsolicited proposal, including its feasibility, benefits, financial plan, and  
270 potential impact on the transportation system.

271  
272 "Counterproposal" means a proposal submitted in response to the Department's  
273 notice that it will accept other proposals for the same project for which an  
274 unsolicited proposal was received.

275  
276 "Counter Proposer" means a private entity that submits a counterproposal.

277  
278 "Department" means the Illinois Department of Transportation.

279  
280 "Developer" means the selected proposer that has executed an Agreement with the  
281 Department.

282  
283 "Eligibility Determination Review" means the process that the Department will  
284 conduct based on pass/fail criteria to determine if an unsolicited proposal should  
285 advance to the preliminary evaluation phase.

286  
287 "Financial Close" means the project milestone at which all project financing  
288 agreements have been executed and all conditions contained in the Agreement  
289 that are necessary to enter into the financing agreements have been met.

290  
291 "Initial Proposer" means the private entity that submits an unsolicited proposal to  
292 the Department.

293  
294 "Multi-Year Improvement Program" or "MYP" means the Department's six-year  
295 plan for projects and estimated investments on the State and local highway  
296 systems.

297  
298 "Prestablished Evaluation Criteria" means project-specific, confidential uniform  
299 evaluation criteria developed by the Department during the comprehensive  
300 evaluation phase.

301

302 "Preliminary Evaluation Phase" means the initial stage in the review process  
303 during which the Department will assess an unsolicited proposal.

304  
305 "Prequalification" means the processes established by the Department in 44 Ill.  
306 Adm. Code 625 for the selection of architectural, engineering, and land surveying  
307 services, and 44 Ill. Adm. Code 650 for construction contractors.

308  
309 "Public-Private Partnership" or "P3" means the partnership between a developer  
310 and the Department relating to one, or more, of the development, financing, and  
311 operation of a transportation project.

312  
313 "Secretary" means the Secretary of Transportation of the State of Illinois.

314  
315 "Selected Proposer" means the responsive proposer that the Department has  
316 determined to have provided the Best Value Proposal.

317  
318 "Short-Listed Proposer" means the initial proposer or any superior counter  
319 proposer that has been selected by the Department as being qualified and  
320 competitive to advance further in the selection process.

321  
322 "State" means the State of Illinois.

323  
324 "Unsolicited proposal" or "UP" means a written proposal for a transportation  
325 project submitted by a private entity to the Department on the initiative of a  
326 private sector entity or entities for the purposes of developing a public-private  
327 partnership that is not in response to a formal or informal request issued by the  
328 Department. (Section 10 of P3 Act)

329  
330 "Value for Money Analysis" means a structured assessment process used to  
331 evaluate the overall economic benefits and costs of an unsolicited proposal that  
332 compares the financial, economic, and qualitative impacts of the proposed project  
333 against traditional public procurement or other feasible alternatives.

334  
335 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

336  
337 **Section 6.1120 Acceptance Period**

338  
339 Public notice of the acceptance period and details regarding the method of unsolicited proposal  
340 submission will be published on the Department's website at least 30 days before the opening  
341 date of the acceptance period.

342  
343 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

344

345 **Section 6.1130 Proposal Review Fee**

346

347 The Department will only accept the submission of an unsolicited proposal, if it is accompanied  
348 by the proposal review fee in accordance with Section 19 of the P3 Act.

349

350 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

351

352 **Section 6.1140 Eligibility Determination Review**

353

354 a) The Department will review each unsolicited proposal to determine if the UP  
355 should be advanced to the preliminary evaluation phase. The Department may  
356 determine that an unsolicited proposal will not be eligible and will not be further  
357 evaluated if, without limitation:

358

359 1) The unsolicited proposal proposes a project that is already in procurement,  
360 planning or otherwise under consideration by the Department.

361

362 2) The unsolicited proposal proposes a project that the Department rejected,  
363 declined, or abandoned within the 24 months preceding the proposer's  
364 submission of such unsolicited proposal.

365

366 3) The unsolicited proposal does not meet the requirements set forth in  
367 Section 19 of the P3 Act.

368

369 4) The unsolicited proposal does not include a detailed cash flow model  
370 projecting all sources and uses of funds on an annual basis from financial  
371 close to the end of the term of the proposed agreement submitted in Excel  
372 format.

373

374 5) The unsolicited proposal does not include a value for money analysis,  
375 conducted by an independent third party, demonstrating the project's cost  
376 effectiveness.

377

378 6) The unsolicited proposal does not include a statement executed by the  
379 initial proposer acknowledging that the initial proposer has reviewed the  
380 prequalification requirements provided in Section 6.1270 of this Subpart N  
381 and confirming that all firms and contractors for which prequalification is  
382 required that are included in the unsolicited proposal are either  
383 prequalified or can become prequalified.

384

385 b) If the unsolicited proposal passes the eligibility determination review, the  
386 Department will approve the advancement of the unsolicited proposal to the  
387 preliminary evaluation phase. If an unsolicited proposal does not pass the

388 eligibility determination review, the proposal review fee will be returned to the  
389 initial proposer; however, the contents of the unsolicited proposal will remain the  
390 property of the State.

391 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

392  
393  
394 **Section 6.1150 Submission of Confidential Information and Intellectual Property**  
395 **Protections**

- 396  
397 a) Proposers must clearly identify confidential, proprietary, or trade secret  
398 information. Information not clearly marked confidential may be disclosed.  
399  
400 b) The Department retains all intellectual property rights in submitted proposals. By  
401 submitting a proposal, the proposer grants the Department a non-exclusive,  
402 royalty-free license to use, reproduce, and distribute any intellectual property for  
403 evaluation, project development, and implementation. This does not obligate the  
404 Department to proceed with any proposal or limit a proposer's use of its  
405 intellectual property outside the submission process.

406  
407 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

408  
409 **Section 6.1160 Preliminary Evaluation Phase**

410  
411 The Department will conduct preliminary evaluation of all unsolicited proposals that passed the  
412 eligibility determination review. The criteria that may be considered may include the unsolicited  
413 proposal's suitability for a public-private partnership delivery method, public need and benefits,  
414 economic development opportunities, market demand, stakeholder support, legislative  
415 consideration, and what efficiencies the unsolicited proposal may bring to the Department related  
416 to schedule, cost, and quality.

417  
418 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

419  
420 **Section 6.1170 Process After Preliminary Evaluation Phase**

- 421  
422 a) Authority to Initiate Unsolicited Proposal Procurement Process  
423 The Department may not commence the procurement process for a project until  
424 authorized pursuant to Section 15(d) of the P3 Act.  
425  
426 b) Counterproposals  
427  
428 1) The Department will notify the public about the acceptance of  
429 counterproposals by posting an announcement on its website in

430 accordance with Section 19 of the P3 Act. The notice shall contain the  
431 following:

432  
433  
434  
435  
436  
437  
438

- A) The location and description of the project;
- B) The means of submission; and
- C) The acceptance period for receiving counterproposals.

439 2) Before issuing the request for counterproposals, the Department may  
440 conduct meetings or provide information to the public and interested  
441 participants in anticipation of the solicitation of counterproposals.

442

443 c) Required Elements of a Counterproposal

444 To maintain consistency and facilitate a fair evaluation, counterproposals must  
445 incorporate the same elements outlined in the initial submission of unsolicited  
446 proposals at Section 6.1140.

447

448 d) Counterproposal Review Fee

449 At the time of a counterproposal submittal, the Department will require, the  
450 counter proposer to pay a proposal review fee payable to the Treasurer, State of  
451 Illinois. The Department may waive the counterproposal review fee at its  
452 discretion.

453

454 e) Comprehensive Evaluation Phase

455 The Department will conduct a comprehensive evaluation of unsolicited proposals  
456 determined to be favorable during the preliminary evaluation phase, and  
457 counterproposals received during the counterproposal acceptance period. The  
458 comprehensive evaluation will be based on pre-established criteria, which will  
459 include, but are not limited to, cost, schedule, qualifications and experience of the  
460 proposer, project constructability, alignment with the multi-year program, public  
461 benefit, and other policy considerations.

462

463 f) Best and Final Offer Phase

464

- 1) If counterproposals meeting the unsolicited proposal submission  
466 requirements are received and are determined to be superior to the original  
467 unsolicited proposal during the comprehensive evaluation, the Department  
468 shall proceed with the BAFO phase in accordance with Section 19 of the  
469 P3 Act.

470

- 471           2)     Before determining the best value proposal, the Department will provide  
472                 public notice of proposals and counterproposals to impacted communities  
473                 and hold a public meeting in accordance with Section 19 of the P3 Act.  
474
- 475           3)     The successful short-listed proposer shall be the proposer offering the best  
476                 value to the Department, as determined by the evaluation process. The  
477                 Department will document the rationale for the selection, including a  
478                 summary of the evaluation process and the final determination.  
479

480           (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
481

482     **Section 6.1180 Negotiation of Agreement**  
483

484     The Department will notify the selected proposer of the Department's selection, and the parties  
485     shall begin negotiations. The Department will notify all other short-listed proposers that their  
486     proposal was not selected.  
487

- 488           a)     If a mutually acceptable agreement cannot be reached, the Department may  
489                 terminate negotiations. In such cases, the Department may:  
490
- 491                 1)     Reject all proposals and conclude the procurement process.  
492
- 493                 2)     Initiate negotiations with the short-listed proposer that submitted the next  
494                 highest-ranked proposal. If those negotiations fail, the Department may,  
495                 at its discretion, negotiate with the third-ranked proposer.  
496
- 497           b)     The Department may require the selected proposer furnish a proposal bond in an  
498                 amount determined necessary to ensure compliance with the proposal  
499                 commitments and protect the interests of the Department.  
500
- 501           c)     The Department may enter into an interim agreement with the selected proposer  
502                 to facilitate project development prior to finalizing negotiation of the Agreement.  
503                 Any such interim agreement shall comply with the requirements of Section 30 of  
504                 the P3 Act and may authorize the selected proposer to initiate specific non-  
505                 construction, project-related activities for which compensation may be provided.  
506

507           (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
508

509     **Section 6.1190 Public Meeting on Selected Proposal**  
510

511     Before finalizing any agreement, the Department will hold one or more public meetings to allow  
512     stakeholders, community members, and interested parties to review and provide input on the  
513     proposed project and the selected proposal. At least seven days prior to each meeting, the

514 Department will issue a public notice including location and time of the meeting, the subject  
515 matter, a summary of the agreement, and the Department's determination that the selected  
516 proposal serves the public purpose of the P3 Act.

517  
518 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
519

520 **Section 6.1200 Protests and Appeals**

521  
522 All protests and appeals shall be governed by 44 Ill. Adm. Code 6, Subpart G.

523  
524 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
525

526 **Section 6.1210 Termination, Suspension, or Withdrawal of Proposals**

527  
528 The Department reserves the right to reject any proposal, suspend the evaluation process, or  
529 decline to award an agreement at any time at its discretion. A proposer may withdraw its  
530 proposal prior to commercial close by submitting a written request; provided, however,  
531 withdrawal after selection for award may be subject to Department-established conditions to  
532 protect procurement integrity, including termination compensation.

533  
534 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
535

536 **Section 6.1220 Commercial Close**

537  
538 The Department and selected proposer will negotiate the Agreement based on the selected  
539 proposer's proposal. Any such Agreement shall comply with the requirements of Section 35 of  
540 P3 Act. Commercial close is achieved upon full execution of the Agreement or such later date as  
541 provided in the Agreement.

542  
543 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
544

545 **Section 6.1230 Financial Close**

546  
547 The developer shall finalize a comprehensive finance plan consistent with the Agreement's  
548 financial structure. The Department will review and approve all financial documentation.

549  
550 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)  
551

552 **Section 6.1240 Notice of Execution**

553  
554 The Department will publish notice and a copy of the executed Agreement on its website and in  
555 newspapers of general circulation within the county or counties where the project is located. The

556 notice will inform the public that any action to contest the validity of the Agreement must be  
557 filed no later than 60 days from the date of publication.

558  
559 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

560  
561 **Section 6.1250 Project Implementation**

562  
563 The Department will provide oversight and ensure contract compliance through design reviews,  
564 constructability reviews, construction acceptance, utility relocation oversight, independent  
565 quality assurance surveys, independent material testing, construction documentation, risk  
566 mitigation, and oversight of construction activities, including construction management,  
567 maintenance of traffic, permit compliance, and other services, such as value engineering,  
568 stakeholder coordination, or public involvement management, through and in addition to the use  
569 of owner's representatives.

570  
571 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

572  
573 **Section 6.1260 Use of Prequalified Firms and Contractors**

574  
575 All firms and contractors that are proposed to perform services subject to the prequalification  
576 requirements of 44 Ill. Adm. Code 625 or 650 in an unsolicited proposal or counterproposal must  
577 be prequalified by the counterproposal due date stated in the notice for counterproposal  
578 acceptance. The developer is responsible for ensuring compliance with this requirement and  
579 shall ensure that selected firms and contractors maintain their prequalification status throughout  
580 the duration of their engagement on the project.

581  
582 (Source: Added at 50 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)