

*Regulations .01—.10 adopted as an emergency provision effective July 1, 2013 (40:15 Md. R. 1227); adopted permanently effective October 28, 2013 (40:21 Md. R. 1776)*

**Title 11 DEPARTMENT OF TRANSPORTATION**  
**Subtitle 01 OFFICE OF THE SECRETARY**  
**Chapter 17 Public-Private Partnership Program**

**Authority: State Finance and Procurement Article, §§10A-102—10A-105, 10A-201—10A-204, 10A-301, 10A-401—10A-403, and 11-203(h), Annotated Code of Maryland; Ch. 5, Acts of 2013**

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**.01 Purpose.**

The purpose of this chapter is to:

- A. Establish a Maryland Department of Transportation Public-Private Partnership Program (“Program”) to enhance the State's transportation systems, assets, functions, and infrastructure; and
- B. Describe and provide a process for the development, solicitation, evaluation, award, and delivery of public-private partnerships in the Department’s Program.

**.02 Scope.**

- A. In accordance with State Finance and Procurement Article, §10A-101(g)(2), Annotated Code of Maryland, the Department is a reporting agency that may establish public-private partnerships and execute public-private partnership agreements in connection with any public infrastructure assets for which it is responsible.
- B. Within the Department, the Office of the Secretary shall be responsible for administering the Program on behalf of its Modal Administrations.
- C. In accordance with State Finance and Procurement Article, §10A-101(g)(2) and (3), Annotated Code of Maryland, the Maryland Transportation Authority is a separate reporting agency and its public-private partnership program is not included in this chapter.

**.03 Definitions.**

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.

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- (1) “Budget Committees” has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.
- (2) “Department” means the Maryland Department of Transportation.
- (3) “Industry forum” means a pre-solicitation information gathering event that may include public and private sector participants.
- (4) “Industry review meeting” means a meeting during the solicitation process with shortlisted private entities.
- (5) “Modal Administrations” means the State Highway Administration, the Maryland Transit Administration, the Maryland Aviation Administration, the Maryland Port Administration, and the Maryland Motor Vehicle Administration.
- (6) “Multi-step solicitation process” means a public-private partnership solicitation process that includes some or all of the following steps:
  - (a) Issuance of a request for qualifications;
  - (b) Preproposal conference; issuance of a draft request for proposals;
  - (c) Industry review meetings; and
  - (d) Issuance of a final request for proposals.
- (7) “Private entity” has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.
- (8) “Program” means the structure, process, methodology and terms and conditions applicable to the Department’s development, solicitation, evaluation, award, and delivery of transportation public infrastructure assets for which it is responsible in accordance with State Finance and Procurement Article, §10A -101, Annotated Code of Maryland.
- (9) “Public infrastructure asset” has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.
- (10) “Public notice of solicitation” has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.
- (11) “Public-private partnership” has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.

- (12) “Public-private partnership candidate concept application” means the documentation that must be submitted to the Steering Committee to initiate and inform a high-level review of a public-private partnership concept generated from within the Department.
- (13) “Reporting agency” has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.
- (14) “Responsibility determination” has the meaning stated in State Finance and Procurement Article, §10A-101, Annotated Code of Maryland.
- (15) “Secretary” means the Secretary of the Maryland Department of Transportation.
- (16) “Shortlisted private entity” means a private entity that has been both qualified based on its response to a request for qualifications and selected as one of the highest qualified private entities, allowing them to continue in the solicitation process.
- (17) “Steering Committee” is the Transportation Public-Private Partnerships Steering Committee established to advise the Secretary on the structure and implementation of the Department’s Program and comprised of Department and other State employees identified by the Secretary.

#### **.04 Transportation Public-Private Partnerships Steering Committee.**

A. The Steering Committee is established to advise the Secretary on the structure and implementation of the Department’s Program, including, but not limited to, the following:

- (1) Identification of potential public-private partnership opportunities for screening;
- (2) Screening of public-private partnership opportunities, including both high-level and detailed level;
- (3) Prioritization of public-private partnership opportunities for solicitation;
- (4) Developing presolicitation and solicitation plans and processes for public-private partnerships;
- (5) Ongoing monitoring of public-private partnerships; and
- (6) Communication and coordination with other State reporting agencies.

B. The Steering Committee shall be comprised of Department and other State employees as identified by the Secretary.

C. The Steering Committee shall be chaired by a Department employee, as identified by the Secretary, and referred to as the Steering Committee chair.

## **.05 Identification Process.**

A. Public-private partnership concepts and opportunities identified within the Department and its Modal Administrations and through other state, regional, local, and municipal processes.

(1) Potential public-private partnership concepts and opportunities may be identified through periodic transportation planning, communication, and evaluation processes that are carried out within the Department and its Modal Administrations and through other state, regional, local, and municipal processes, including but not limited to: (a) Consolidated transportation program;

(b) Statewide transportation improvement program;

(c) Long-range transportation plans developed by metropolitan planning organizations; and

(d) County priority letters.

(2) Public-Private Partnership Candidate Concept Application.

(a) To initiate a high-level review, screening, and policy analysis of a proposed public-private partnership concept or opportunity, a Public-Private Partnership Candidate Concept Application shall be submitted to the Steering Committee chair by an internal sponsor, either:

(i) A Modal Administration planning office; or

(ii) The Department's planning staff.

(b) A Public-Private Partnership Candidate Concept Application may be submitted at any time, and may be supplemented with additional information as needed.

(c) Relevant supporting information or documentation shall be included in the submission of the Public-Private Partnership Candidate Concept Application, and to the extent such information is available, including but not limited to:

(i) Preliminary ideas of public-private partnership scope, schedule, and project lifecycle considerations;

(ii) Preliminary qualitative evaluation of relevant benefits and cost;

(iii) Preliminary description of financial concepts;

(iv) Rationale for a public-private partnership delivery method relative to a conventional project delivery approach; and

(v) Additional information, as necessary, to support a high-level screening process, as outlined in Regulation .06C(1) of this chapter.

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(d) The format and required contents of the Public-Private Partnership Candidate Concept Application shall be:

(i) Developed by the Steering Committee;

(ii) Approved by the Secretary; and

(iii) Updated by the Steering Committee as needed. B. Unsolicited Proposals.

(1) In accordance with State Finance and Procurement Article, §10A-301, Annotated Code of Maryland, the Department shall be permitted to accept, reject, or evaluate unsolicited proposals for public-private partnerships that will assist the Department in implementing its functions in a manner consistent with State policy.

(2) Assets defined as transportation facilities projects under Transportation Article, §4-101(h), Annotated Code of Maryland:

(a) Are not the direct responsibility of the Department;

(b) Are the direct responsibility of the Maryland Transportation Authority; and (c)

Should not be included in unsolicited proposals submitted to the Department.

(3) An unsolicited proposal may be submitted at any time.

(4) An unsolicited proposal shall:

(a) Be sealed and delivered to the Secretary's Office to the attention of the Steering Committee chair bearing the private entity's name, address, and the words "Public-Private Partnership Unsolicited Proposal" clearly on the outside; and (b) Consist of 15 hardcopies and 1 electronic copy.

(5) Unsolicited Informational Meetings.

(a) Private entities may request meetings with the Department to discuss potential unsolicited proposals prior to submission.

(b) Requests for unsolicited informational meetings shall be submitted to the Steering Committee chair.

(c) The Department may not be required to grant meetings in response to a request.

(d) During unsolicited informational meetings, the Department may provide informal feedback and comments to the private entity.

- (e) The primary purpose of unsolicited informational meetings shall be to avoid private entities spending unnecessary time and resources on the development of unsolicited proposals that do not directly meet the State's transportation needs.
- (f) A formal review and screening of an unsolicited proposal shall be undertaken only after a private entity completes the formal submission process.
- (6) An unsolicited proposal shall be conceptual, containing only the information required for the Steering Committee to conduct a high-level review and screening of the proposed public-private partnership concept.
- (7) An unsolicited proposal shall include, at a minimum, the following:
  - (a) An executive summary of the major elements of the unsolicited proposal, including:
    - (i) The title of the proposed concept;
    - (ii) A brief description and justification of the proposed concept;
    - (iii) The name and address of the public-private partnership private entity; and
    - (iv) A signature of an individual authorized to act on behalf of and bind the private entity, along with the individual's telephone number and email address.
  - (b) Summary of the experience, expertise, technical and financial competence, and professional qualifications of the private entity.
  - (c) A summary narrative that describes:
    - (i) The key components of the proposed public-private partnership concept;
    - (ii) Preliminary ideas of public-private partnership scope, schedule, and project lifecycle considerations;
    - (iii) Preliminary qualitative evaluation of relevant benefits and costs;
    - (iv) Preliminary description of financial concepts;
    - (v) The relevance of the public-private concept to other transportation facilities or other public infrastructure assets; and
    - (vi) A statement of the public-private partnership concept's consistency with existing governmental transportation planning or project documents and governing law.
  - (d) A high-level description of financial feasibility that includes:

- (i) Amounts and sources of any public funding that may be required;
  - (ii) How estimated funding from all relevant sources would be sufficient to support all asset delivery activities, including design, property and equipment acquisition, construction, long term capital replacement activities, financing, operations, and maintenance; and
  - (iii) How estimated funding from all relevant sources would be sufficient to provide for contingencies to meet the terms and conditions under which the public infrastructure asset shall be handed back to the Department at the expiration or termination of the public-private partnership agreement.
- (e) Rationale for a public-private partnership delivery method relative to a conventional project delivery approach.
- (f) Clear indication of any proprietary information that should be protected in accordance with State Finance and Procurement Article, §10A-301(d)(2), Annotated Code of Maryland.
- (g) Additional information, as necessary, to support a high-level screening process, as outlined in Regulation .06C(1) of this chapter.
- (8) Unsolicited Proposal Fee.
- (a) Each unsolicited proposal that addresses a project already in the Consolidated Transportation Program, shall be accompanied by a check in the amount of \$10,000 made payable to the Maryland Department of Transportation.
  - (b) Each unsolicited proposal that does not address a project already in the Consolidated Transportation Program shall be accompanied by a check in the amount of \$25,000 made payable to the Maryland Department of Transportation.
  - (c) The Department reserves the right, in its sole discretion, to determine whether submitted alternates and variations of proposals shall be considered separate proposals that require separate proposal fees.
  - (d) Unsolicited proposal fees are non-refundable.

### **.06 Screening Process.**

- A. The purpose of screening is to assist the Department in determining the appropriateness, viability, and effectiveness of delivering a public infrastructure asset for which it is responsible using a public-private partnership methodology.
- B. The screening methodology is a means to systematically apply uniform and consistent factors to both internally generated public-private partnership concepts and unsolicited public-private partnership concepts.

C. The screening process shall be organized in two phases.

(1) High-Level Screening Phase.

(a) Factors to be considered during the high-level screening may include, but are not limited to:

- (i) Ability to meet State transportation, socioeconomic development, workforce, and environmental goals;
  - (ii) Technical implementation considerations;
  - (iii) Potential need for coordination with other State agencies, including but not limited to the Maryland Transportation Authority;
  - (iv) Opportunities to accelerate asset delivery implementation;
  - (v) Ability to allocate and share risks in a cost effective manner that shall be consistent with State law and in the best interests of the State;
  - (vi) Opportunities to reduce reliance on public funds or finance, or both;
  - (vii) Public affordability considerations;
  - (viii) Potential for increased revenue generation and revenue sharing with the Department; and
    - (ix) Potential impact on the workforce, including existing State employees, if any.
- (b) For internally generated public-private partnership concepts, the high level screening shall be conducted based on the Public-Private Partnership Candidate Concept Application and supporting information provided by the internal sponsor.
- (c) For unsolicited public-private partnership concepts, the high-level screening shall be conducted based on information provided by the private entity in an unsolicited proposal and any supplementary information available within the Department.
- (d) Based on the findings of the high level screening, the Steering Committee may recommend to the Secretary that specific public-private partnership concepts be advanced or not be advanced to the detailed-level screening.
- (e) The Secretary's written approval shall be required to advance or not advance a public-private partnership concept to the detailed-level screening phase.
- (f) Within 45 days after receipt of a Public-Private Partnership Candidate Concept Application or an unsolicited proposal, the Steering Committee shall:



- (i) Notify the internal sponsor or private entity that the concept has been advanced or not advanced to detailed-level screening; or
  - (ii) Request additional information from the internal sponsor or private entity.
- (2) Detailed-Level Screening Phase.
- (a) The detailed-level screening phase shall be more comprehensive than the high-level screening phase.
  - (b) In addition to the findings of the high-level screening phase, analyses and documentation during the detailed-level screening phase may include some or all of the following categories:
    - (i) Scope, design concepts, and phasing schedules;
    - (ii) Compliance with federal and State environmental and transportation planning requirements;
    - (iii) Technical and financial feasibility analyses;
    - (iv) Evaluation of operations and maintenance requirements;
    - (v) Asset lifecycle costs and revenue estimates;
    - (vi) Risk assessment of key asset delivery elements;
    - (vii) In the event that a public-private partnership delivery method may have a potential impact on the workforce or existing State employees, a preliminary assessment of the potential impact and potential options for mitigating that impact, including the protections allotted to State employees that are in effect at the time that the P3 agreement is approved by the Board of Public Works; and
    - (viii) Other analyses determined to be necessary to determine the appropriateness, viability, and effectiveness of a public-private partnership delivery method.
  - (c) The types of analyses and resources committed to a detailed-level screening phase will be determined by the Steering Committee and the Secretary, on a case-by-case basis.
  - (d) Based on the findings of the detailed-level screening, the Steering Committee shall make recommendations to the Secretary as to which public-private partnership concepts should be advanced and which should not be advanced to submission of a pre-solicitation report.
  - (e) The Secretary's written approval shall be required to advance or not advance a public-private partnership concept to submission of a pre-solicitation report.

(f) Within 45 days after advancement of a public-private partnership concept to the detailed-level screening analysis phase, the Steering Committee shall:

- (i) Notify the internal sponsor or private entity that the concept is or is not under development for possible submission of a pre-solicitation report; or
- (ii) Request additional information from the internal sponsor or private entity.

### **.07 Pre-solicitation.**

#### **A. Pre-solicitation Report Development.**

(1) The development of a pre-solicitation report for submission involves a broad range of activities that may run concurrent to the high-level and detailed-level screening phases.

(2) In consultation with the Steering Committee, the Secretary shall determine:

- (a) The tasks required for the development of a pre-solicitation report; and
- (b) The responsible parties within the Department.

(3) The development of a pre-solicitation report containing all elements required in State Finance and Procurement Article, §10A-201(b)(1), Annotated Code of Maryland may entail a variety of tasks, including but not limited to:

(a) Analyses and documentation, including some or all of the following categories:

- (i) Scope, design concepts, and phasing schedules;
- (ii) Compliance with federal and State environmental and transportation planning requirements;
- (iii) Technical and financial feasibility analyses;
- (iv) Evaluation of operations and maintenance requirements;
- (v) Asset lifecycle costs and revenue estimates;
- (vi) Risk assessment of key asset delivery elements;
- (vii) In the event that a public-private partnership delivery method may have a potential impact on existing State employees, analysis of potential impact and potential options for mitigating the impact; and
- (viii) Other analyses determined to be necessary to determine the appropriateness, viability, and effectiveness of a public-private partnership delivery method;

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(b) Issuing public requests for information to obtain additional information that may help the Department confirm or refine key assumptions; and

(c) Organizing public industry forums to obtain additional information that may help the Department confirm or refine key assumptions.

(4) In the event that the proposed public-private partnership delivery method may have a potential impact on existing State employees, the Department shall arrange for meetings between the Secretary and appropriate bargaining unit representatives, if any, for a preliminary discussion of potential impact and potential options for mitigating that impact.

B. The Department may not issue a public notice of solicitation for a public-private partnership until:

(1) A pre-solicitation report concerning the proposed public-private partnership is submitted to the Comptroller, the State Treasurer, the budget committees, and the Department of Legislative Services in accordance with State Finance and Procurement Article, §10A-201(a), Annotated

Code of Maryland that contains the information required by State Finance and Procurement Article, §10A-201(b)(1), Annotated Code of Maryland; and

(2) The Department has sought and received:

(a) The official designation of the Board of Public Works of the public infrastructure asset as a public-private partnership; and

(b) The approval of the Board of Public Works of the method of solicitation.

## **08 Solicitation Process.**

A. General.

(1) The solicitation process for public-private partnerships shall be competitive, regardless of whether the public-private partnership concept originated internally within the Department or from an unsolicited proposal.

(2) For each private entity that responds to a public notice of solicitation, the Department shall make a responsibility determination in accordance with State Finance and Procurement Article, §10A-202(c), Annotated Code of Maryland.

B. Solicitations Relating to Concepts Described in Unsolicited Proposals.

(1) The competitive solicitation process shall protect any proprietary information that is identified as such and included in the unsolicited proposal in accordance with State Finance and Procurement Article, §10A-301(d)(2), Annotated Code of Maryland.

(2) An individual or firm that has submitted an unsolicited proposal may participate in any subsequent competitive solicitation process, in accordance with State Finance and Procurement Article, §10A-301(e), Annotated Code of Maryland.

(3) The private entity shall be responsive to all components of the subsequent competitive solicitation process even if certain information requested by the subsequent competitive solicitation process has already been submitted as part of the unsolicited proposal.

(4) The Department reserves the right to issue a public notice of solicitation relating to a concept described in an unsolicited proposal after the rejection or termination of the evaluation of the unsolicited proposal or any competing proposals. C. Multi-Step Solicitation Process.

(1) The Department may use a multi-step solicitation process that includes, but is not limited to, some or all of the following steps:

(a) Issuance of a request for qualifications;

(b) Preproposal conference;

(c) Issuance of a draft request for proposals;

(d) Industry review meetings; and

(e) Issuance of a final request for proposals.

(2) The determination to utilize some or all of the solicitation steps shall be case-by-case.

(3) The Department may include additional solicitation steps on a case-by-case basis as set forth in the public notice of solicitation.

(4) Request for Qualifications.

(a) The purpose of a request for qualifications is to:

(i) Identify private entities that qualify as participants in the solicitation process; and

(ii) Identify a shortlist of the highest qualified candidates for continuing in the solicitation process, which are the shortlisted private entities.

(b) Based on the responses to the request for qualifications, the Department may:

(i) Identify one or more private entities as qualified; and

(ii) Develop a shortlist of one or more of the highest qualified candidates for continuing in the solicitation process, which are the shortlisted private entities.

(c) Only candidates that have been selected to continue in the solicitation process as shortlisted private entities are eligible to:

- (i) Participate in industry review meetings;
- (ii) Receive drafts of the request for proposals;
- (iii) Submit comments on drafts of the request for proposals;
- (iv) Receive the final request for proposals; and
- (v) Submit a written proposal in response to the final request for proposals.

(5) Preproposal Conference.

- (a) The purpose of a preproposal conference is to facilitate better understanding of solicitation requirements and processes.
- (b) A preproposal conference may be scheduled by the Department after the initial public notice of solicitation for a public-private partnership.
- (c) Preproposal conferences are open to all interested private entities.

(6) Draft Request for Proposals.

- (a) As part of a multi-step solicitation process, the Department may issue one or more draft requests for proposals to shortlisted private entities.
- (b) Draft requests for proposals may include, but are not limited to:
  - (i) Instructions to private entities for responding to the request for proposals;
  - (ii) Technical provisions;
  - (iii) Scope of work; and
  - (iv) Public-private partnership agreement key terms and components.

(c) Only shortlisted private entities may submit written or verbal comments and questions concerning the draft request for proposals to the Department to the extent permitted by the solicitation process.

(d) The Department may use comments and questions from shortlisted private entities for subsequent revisions to the draft request for proposals.

(7) Industry Review Meetings.

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- (a) The Department may conduct industry review meetings as part of a multi-step solicitation process.
- (b) The purpose of industry review meetings is to:
  - (i) Obtain comments and make revisions to the draft request for proposals;
  - (ii) Obtain the best value for the State;
  - (iii) Facilitate the full understanding regarding the requirements of the State for the publicprivate partnership concept;
  - (iv) Facilitate the full understanding of the contents of the proposals required to be submitted by shortlisted private entities; and
  - (v) Finalize the requirements for the request for proposals.
- (c) Agreement negotiations may not be conducted during industry review meetings.
- (d) Industry review meetings are restricted to candidates that have been selected to continue in the solicitation process as shortlisted private entities.
- (e) Industry review meetings may be:
  - (i) Joint workshops with all shortlisted private entities invited to participate; or
  - (ii) One-on-one meetings between the Department and individual shortlisted private entities.
- (f) The Department may use comments and questions obtained from shortlisted private entities through industry review meetings for subsequent revisions to the draft request for proposals.
- (8) Final Request for Proposals.
  - (a) In a solicitation process involving a request for qualifications phase, a final request for proposals shall be issued to shortlisted private entities selected to continue in the solicitation process.
  - (b) The contents of the final request for proposals may be based on information gathered during earlier solicitation phases, including but not limited to:
    - (i) Preproposal conference; (ii) Request for qualifications; and
    - (iii) Industry review meetings.

(c) The Department may issue a final request for proposals without previously:

(i) Issuing a request for qualifications; (ii)

Issuing a draft request for proposals; or

(iii) Conducting industry review meetings.

(9) Information Availability During Solicitation.

(a) The Department may make relevant technical and financial information available to private entities through an electronic data room.

(b) The Department may respond to relevant additional information requests by private entities in support of due diligence reviews, including requests for site inspections.

(c) Information or site access provided to individual private entities pursuant to an additional information request must also be made available to all other interested private entities if a shortlist of qualified private entities has not yet been established.

(d) Information or site access provided to individual private entities pursuant to an additional information request must also be made available to all other shortlisted private entities if a shortlist of qualified private entities has been established.

(e) Private entities may be required to sign confidentiality agreements prior to release of information deemed confidential. D. Reimbursement.

(1) The Department may reimburse a private entity in accordance with State Finance and Procurement Article, §10A-202(f), Annotated Code of Maryland.

(2) If the Department elects to reimburse a private entity, the specific terms, conditions, method, and timing for reimbursing a private entity shall be described in the public notice of solicitation associated with the specific public-private partnership.

(3) The reimbursement terms and conditions may include the requirement for the private entity to execute a stipend agreement and to transfer rights to use the work product produced by the private entity during the solicitation process to the Department as a condition to receiving reimbursement.

(4) The Department shall only consider reimbursement for shortlisted private entities.

(5) Maximum Reimbursement Amount.

- (a) The Department shall not provide a reimbursement in excess of \$3,000,000 to an individual private entity for costs incurred in response to the solicitation of a public-private partnership.
- (b) The Department may establish a reimbursement less than the maximum prescribed herein on a case-by-case basis.
- (6) Except as set forth in the solicitation documents, should the solicitation process or negotiations be suspended, discontinued, or terminated, the private entity shall have no rights of recourse, including reimbursement of the private entity's unsolicited proposal review fees or costs associated, directly or indirectly, with the solicited or unsolicited proposal developments.
- E. Reservation of Rights. The Department reserves all rights available by law and in equity in its public-private partnership solicitation process, including without limitation, the right to:
- (1) Reject any and all submittals, responses, qualifications, and proposals, whether solicited or unsolicited, at any time or for any reason;
  - (2) Issue addenda, supplements, and modifications to a public notice of solicitation;
  - (3) Cancel a solicitation in whole or in part at any time prior to the execution of a public-private partnership agreement, subject to any agreed upon compensation to proposers set forth in the solicitation documents or pursuant to State Finance and Procurement Article, §10A-202(f), Annotated Code of Maryland;
  - (4) Issue a new public notice of solicitation after withdrawal of a public notice of solicitation;
  - (5) Establish protocols for private entities to remedy minor deficiencies in responses to requests for qualifications or proposals within a specified period of time;
  - (6) Disqualify any private entity at any point during a solicitation process for violating any rules or requirements of the solicitation set forth in the public notice of solicitation, in any communication from the Department, or as otherwise set forth by applicable law;
  - (7) Determine whether to pursue federal credit assistance on behalf of the private entities;
  - (8) Publicly disclose information received during the solicitation process as governed by law and by the public notice of solicitation, pursuant to State Finance and Procurement Article, §10A-203(b), Annotated Code of Maryland;
  - (9) Exercise any other rights reserved or afforded to the Department under applicable law and the public notice of solicitation; or
  - (10) Disqualify any private entity for any conflict of interest or other conduct manifesting a lack of responsibility.



F. Additional reservations of Department rights may be included in the solicitation documents for a public-private partnership.

### **.09 Evaluation, Negotiation, and Award.**

A. The Department shall conduct evaluations of submitted responses to the following: requests for qualifications and submitted proposals using the information submitted by the private entity.

- (1) Submitted information shall be evaluated against the requirements of the solicitation and the evaluation criteria that the Department specifies in the solicitation for the particular public-private partnership opportunity.
- (2) The objective of this evaluation process is to select the private entity that provides the best value solution for the State.
- (3) The Department's evaluation criteria shall be clearly set forth in each request for solicitation.
- (4) A failure to provide all requested information may result in the Department eliminating a response or proposal from further consideration.

B. The processes for evaluating submitted responses to request for qualifications and for evaluating submitted proposals to requests for proposals shall be described and submitted to the Board of Public Works as part of the pre-solicitation process the Board of Public Works shall approve.

C. The Secretary shall establish one or more evaluation committees on a case-by-case basis that may:

- (1) Be comprised of:
    - (a) Secretary's Office employees;
    - (b) Modal Administration employees; and
    - (c) Other State employees;
  - (2) Review statements of qualifications;
  - (3) Review proposals; and
  - (4) Seek advice from the Department, other State agencies and State employees, and outside experts and consultants during the evaluation process.
- D. Best and Final Offers.

(1) After the evaluation of all responsive proposals, the Secretary may request best and final offers from private entities determined by the evaluation committees to be eligible to submit best and final offers.

(2) The Secretary may request multiple iterations of best and final offers.

(3) A best and final offer process is not required.

E. After an apparent best value private entity has been selected by the evaluation committees, in consultation with the Secretary, the Department may enter into negotiations with that private entity.

F. The Secretary may determine that negotiations be completed by a negotiations committee either comprised of members of the evaluation committees or established separately from the evaluation committee that may:

(1) Be comprised of:

(a) Secretary's Office employees;

(b) Modal Administration employees; and

(c) Other State employees;

(2) Review the apparent best value private entity's response to the request for proposals;

(3) Review the apparent best value private entity's best and final offer, if any; and

(4) Receive assistance from outside experts and consultants during the evaluation process.

G. The Department, in its sole discretion, may initiate negotiations with a private entity other than the apparent best value private entity if:

(1) Negotiations with the apparent best value private entity are unsuccessful; or

(2) The apparent best value private entity does not provide sufficient information or timely feedback to finalize the agreement in accordance with the Department's schedule for the publicprivate partnership solicitation.

H. After completion of successful negotiations, the negotiations committee shall recommend a best value private entity to the Secretary for review and approval.

I. After the Secretary provides written approval of the best value private entity, the Department shall:

*Regulations .01—.10 adopted as an emergency provision effective July 1, 2013 (40:15 Md. R. 1227); adopted permanently effective October 28, 2013 (40:21 Md. R. 1776)*

- (1) Finalize and prepare the public-private partnership agreement for execution, in coordination with the best value private entity;
- (2) Commence the final agreement review process in accordance with State Finance and Procurement Article, §10A-203, Annotated Code of Maryland; and
- (3) Arrange for meetings between the Secretary and appropriate bargaining unit representatives to provide notice and discuss plans for impacted State employees, in the event that the proposed public-private partnership delivery method has an impact on existing State employees.

#### J. Final Agreement Review.

- (1) The Secretary shall comply with the final agreement review process established in State Finance and Procurement Article, §10A-203, Annotated Code of Maryland.
- (2) A final agreement report shall accompany a final agreement submitted under State Finance and Procurement Article, §10A-203, Annotated Code of Maryland, containing the following items, if relevant:
  - (a) The financial plan, including annual cash flows, for any public-private partnership including:
    - (i) State contributions;
    - (ii) Federal loans or credit assistance;
    - (iii) Private investment;
    - (iv) Local contributions; and
    - (v) Other funding contributions;
  - (b) The ongoing financial costs and increases associated with any operating and maintenance contracts;
  - (c) The impact any public private partnership agreement may have on the State's debt affordability measures;
  - (d) The authority a private entity may have to recover its investment through tolls or other fees, including how future increases in tolls or other fees may increase;
  - (e) An analysis of why the proposed agreement is more advantageous than a conventional project delivery;

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- (f) A description, including the estimated value, of any land, buildings, or other structures or assets that are transferred or exchanged with a private entity as part of the public private partnership;
- (g) A summary of the performance measures included in the ongoing operation of the public private partnership;
- (h) A summary of the penalties associated with non-performance relating to the ongoing maintenance and operation; and
- (i) A plan for how the long-term operating and maintenance contract will be overseen by the agency.

**.10 Delivery.**

Procedures for Public-Private Partnership Agreements. In the development of a public-private partnership agreement, the Secretary shall comply with the provisions established in State Finance and Procurement Article, §10A-401, Annotated Code of Maryland.