

# **TEXAS FACILITIES COMMISSION**

## **PUBLIC-PRIVATE PARTNERSHIP**

### **GUIDELINES**

*Guidelines for the review and selection of proposals for qualifying projects for the Texas Facilities Commission pursuant to Texas Government Code Chapter 2267 (Revised October 2017)*

*The following guidelines satisfy the Texas Facilities Commission's ("TFC's") statutory requirement to adopt guidelines pursuant to Sections 2165.352 and 2267.052 of the Texas Government Code. The guidelines are intended as a general overview of the review, evaluation, and selection process by TFC under Chapter 2267. TFC has authority to utilize various procurement methods to procure and finance Qualifying Projects. The following guidelines do not apply to projects that are procured and financed under methods other than Chapter 2267. In addition, the solicitation documents issued by TFC for a particular, defined Qualifying Project will control in the event of a conflict between these general guidelines and the solicitation documents.*

## I. INTRODUCTION.

### a. OVERVIEW.

Texas Government Code Chapter 2267, Public and Private Facilities and Infrastructure, provides Responsible Governmental Entities with the greatest possible flexibility in contracting with Private Entities or other persons to provide public services through Qualifying Projects. Section 2267.002(a) states:

- (1) there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities in this state that serve a public need and purpose;
- (2) the public need may not be wholly satisfied by existing methods of procurement in which Qualifying Projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;
- (3) there are inadequate resources to develop new education facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and Private Entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;
- (4) financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with Private Entities or other persons to develop Qualifying Projects; and
- (5) authorizing Private Entities or other persons to develop or operate one or more Qualifying Projects may serve the public safety, benefit, and welfare by making the projects available to the public in a more timely or less costly fashion.

Subsection (c) provides that the purpose of Chapter 2267 includes:

- (1) encouraging investment in this state by Private Entities and other persons;
- (2) facilitating bond financing or other similar financing mechanisms, private capital, and other funding sources that support the development or operation of Qualifying Projects in order to expand and accelerate financing for Qualifying Projects that improve and add to the convenience of the public; and
- (3) providing governmental entities with the greatest possible flexibility in contracting with Private Entities or other persons to provide public services through Qualifying Projects subject to this chapter.

A public-private partnership (“P3”) under Chapter 2267 is a contractual agreement between a Responsible Governmental Entity and a Private Entity organized for timely delivering services or facilities in a cost-effective manner that can be more time efficient than using traditional

sources of procurement and public financing. Through this type of contractual agreement, the public and private sector are able to efficiently deliver a service or facility for the utilization of a Responsible Governmental Entity for the benefit of the general public.

TFC is a Responsible Governmental Entity, as defined below, that supports state government through strategic planning; asset management; design, construction, operation, maintenance, and leasing of state facilities; and the reallocation and/or disposal of state and federal surplus property. As noted in TFC's Strategic Plan, three (3) of TFC's primary goals include the following:

- i. to comprehensively plan, design, construct, and optimize state facilities;
- ii. to effectively and cost-efficiently operate state facilities; and
- iii. to conserve energy and water usage.

TFC, in coordination with the Center for Alternative Finance and Procurement, may determine that in some cases, private investment in Qualifying Projects pursuant to Chapter 2267 may be an effective delivery method that can be used to satisfy TFC's goals while providing the best value for the least cost to the State. The determination of best value involves both qualitative factors-- including innovation, enhanced development and use, and faster delivery--and the quantitative analysis of a projects risks--including the transfer of certain risks that reside on the public sector balance sheet in large or complex projects.

**b. CENTER FOR ALTERNATIVE FINANCE AND PROCUREMENT.**

In 2015, the Texas Legislature directed TFC to establish the Center for Alternative Finance and Procurement (hereinafter the "Center" or "CAP"). The statutory mission of the Center is to consult with governmental entities regarding best practices for the procurement and financing of Qualifying Projects and to assist governmental entities in the receipt of proposals, negotiation of Interim and Comprehensive Agreements, and management of Qualifying Projects under Chapters 2267 and 2268 of the Texas Government Code. Gov't Code § 2152.110. CAP provides pre-solicitation evaluation and pre-procurement assessment services to facilitate decision-making concerning the best method to procure a Qualifying Project. The Center is a program area of TFC.

**c. PURPOSE.**

Chapter 2267 requires that a Responsible Governmental Entity adopt and make publicly available guidelines that enable the Responsible Governmental Entity to comply with the requirements of Chapter 2267 before requesting or considering a proposal for a Qualifying Project. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the Responsible Governmental Entity. Section 2267.052(b) provides that the guidelines must:

- (1) require the Responsible Governmental Entity to:
  - (A) make a representative of the entity available to meet with persons who are considering submitting a proposal; and
  - (B) provide notice of the representative's availability;

- (2) provide reasonable criteria for choosing among competing proposals;
- (3) contain suggested timelines for selecting proposals and negotiating an Interim or Comprehensive Agreement;
- (4) allow the Responsible Governmental Entity to accelerate the selection, review, and documentation timelines for proposals involving a Qualifying Project considered a priority by the entity;
- (5) include financial review and analysis procedures that at a minimum consist of:
  - (A) a cost-benefit analysis;
  - (B) an assessment of opportunity cost;
  - (C) consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and
  - (D) consideration of the results of all studies and analyses related to the proposed Qualifying Project;
- (6) allow the Responsible Governmental Entity to consider the nonfinancial benefits of a proposed Qualifying Project;
- (7) ensure that the Responsible Governmental Entity, for a proposed project to improve real property, evaluates design quality, life-cycle costs, and the proposed project's relationship to any relevant comprehensive planning or zoning requirements;
- (8) include criteria for:
  - (A) the Qualifying Project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities;
  - (B) the creation of and the responsibilities of an oversight committee, with members representing the Responsible Governmental Entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and
  - (C) the Center's role in the review, analysis, or evaluation of the Qualifying Project;
- (9) require the Responsible Governmental Entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g); and

(10) establish criteria, key decision points, and approvals required to ensure that the Responsible Governmental Entity considers the extent of competition before selecting proposals and negotiating an Interim or Comprehensive Agreement.

**d. TFC DESIGNATED CONTACT.**

TFC designates the following individual as TFC's representative to answer questions regarding these guidelines or the TFC process regarding P3s:

Jon Conant, Director, Public-Private Partnerships  
Center for Alternative Finance and Procurement  
Texas Facilities Commission  
1711 San Jacinto Blvd., 4th Floor  
Austin, Texas 78701  
(512) 463-1746

TFC's representative is available by appointment only:

Monday through Thursday between 9:00 a.m. and 4:00 p.m.

**e. OTHER STATUTES AND LAWS.**

i. The following authorities do not apply to a Qualifying Project: Chapters 2155, 2156, and 2166 of the Texas Government Code; any interpretations, rules, or guidelines of the Texas Comptroller of Public Accounts and TFC; and interpretations, rules, or guidelines developed under Chapter 2262 of the Texas Government Code. Gov't Code § 2267.065(a).

ii. TFC is subject to the additional requirements of Subchapter H of Chapter 2165 of the Texas Government Code.

iii. Chapter 2269 of the Texas Government Code. TFC may enter into a comprehensive agreement only in accordance with guidelines that require the contracting person to design and construct the Qualifying Project in accordance with procedures that do not materially conflict with those specified in the following, Gov't Code § 2267.065(b):

A. Subchapter G, Chapter 2269, for facilities projects described by Section 2269.302; or

B. Subchapter H, Chapter 2269, for civil works projects as defined by Section 2269.351.

iv. Chapter 2267 does not authorize TFC or a contracting person to obtain professional services through any process except in accordance with Subchapter A, Chapter 2254 of the Government Code. Gov't Code § 2267.065(c).

v. All information submitted to TFC in connection with a Qualifying Project and these guidelines is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code. Trade secrets, proprietary information, financial records, and work product of a proposer,

relating to a Qualifying Project authorized under Chapter 2267, Texas Government Code, are excluded from disclosure under Section 552.110, Texas Government Code, and may not be posted or made available for public inspection except as otherwise agreed to by TFC and the proposer. After submission by TFC of a detailed Qualifying Project proposal to the PAC, the trade secrets, proprietary information, financial records, and work product of the proposer are not protected from disclosure unless expressly excepted from the requirements of Chapter 552 or considered confidential under other law. Any request for information submitted to TFC in connection with a Qualifying Project and these guidelines will be handled in accordance with the requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code. Determinations on whether information may be withheld or must be released under a request are made by the Office of the Attorney General, not TFC.

TFC's public information policy and instructions on how to submit a request are available on TFC's website at:

<http://www.tfc.state.tx.us/divisions/commissionadmin/prog/legal-open-records/>

For additional information on the Public Information Act, contact the Office of the Attorney General, Open Government Hotline, at (512) 478-6736 or toll-free at (877) 673-6839. The Open Government Hotline staff can answer questions about the Public Information Act and Open Meetings Act. However, they cannot provide legal advice to private citizens or governmental entities.

vi. The laws of the United States and the State of Texas are incorporated in these guidelines by reference for all purposes. Compliance by each private entity is mandatory. In the event of any conflict between these guidelines and any federal or state statutory or administrative authority, the terms of the respective statutory or administrative authority shall control.

## II. DEFINITIONS.

*Unless otherwise specified, whenever the following terms are used in these guidelines, they have the meanings set forth below:*

- a. **"Affected Jurisdiction"** means any county or municipality in which all or a portion of a qualifying project is located. Gov't Code § 2267.001(1).
- b. **"Capitol Complex"** means the state-owned property within the area bounded on the north by Martin Luther King, Jr., Boulevard, bounded on the east by Trinity Street, bounded on the south by 10th Street, and bounded on the west by Lavaca Street. Gov't Code § 411.061(a)(1).
- c. **"Comprehensive Agreement"** means the Comprehensive Agreement between the contracting person and TFC as set out by Texas Government Code Section 2267.058 that is required before the development or operation of a Qualifying Project. *See* Gov't Code § 2267.001(2).
- d. **"Contracting Person"** means a person who enters into a Comprehensive or Interim Agreement with TFC pursuant to Chapter 2267. *See* Gov't Code § 2267.001(3).

- e.** “**Interim Agreement**” means an agreement between the Contracting Person and TFC as set out by Texas Government Code Section 2267.059 that proposes the development or operation of the Qualifying Project. Gov’t Code § 2267.001(6).
- f.** “**Lease Payment**” means any form of payment, including a land lease, by a governmental entity to the Contracting Person for the use of a Qualifying Project. Gov’t Code § 2267.001(7).
- g.** “**Lifecycle Cost Analysis**” means a study that calculates the total cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, capital improvement reserves, and when applicable, salvaging the asset.
- h.** “**Partnership Advisory Commission**” (“Commission” or “PAC”) means the Partnership Advisory Commission established under Chapter 2268 of Texas Government Code.
- i.** “**Private Entity**” means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity. Gov’t Code § 2267.001(9-a).
- j.** “**Proposer**” means a Private Entity that submits a proposal to TFC. *See* Gov’t Code § 2267.001(9-c).
- k.** “**Qualifying Project**” or “**Project**” means the Qualifying Project as defined in Texas Government Code Section 2267.001(10) that is proposed or solicited under Texas Government Code Chapter 2267 by TFC.
- l.** “**Request for Proposal**” or “**RFP**” means the written request for proposals for Qualifying Projects issued by TFC pursuant to Chapter 2267.
- m.** “**Responsible Governmental Entity**” means a governmental entity that has the power to develop or operate an applicable Qualifying Project. Gov’t Code § 2267.001(11).
- n.** “**Service Contract**” means a contract between TFC and a contracting person under Section 2267.054 of Texas Government Code. *See* Gov’t Code § 2267.001(13).
- o.** “**Service Payment**” means a payment to a contracting person of a Qualifying Project under a Service Contract. Gov’t Code § 2267.001(14).
- p.** “**User Fee**” means a rate, fee, or other charge imposed by a contracting person for the use of all or part of a qualifying project under a Comprehensive Agreement. Gov’t Code § 2267.001(15).
- q.** “**Value for Money**” means the optimum combination of Life Cycle Cost Analysis and quality (or fitness for purpose) of the good or service to meet the user’s requirement. As part of the initial review of the Qualifying Project, the Value for Money analysis is a tool for determining whether a potential Qualifying Project provides a benefit (e.g., value) to the public when delivered by P3 compared to delivery by traditional procurement methods (e.g., design- bid-build).

### **III. PRE-PROCUREMENT ANALYSIS AND PROJECT SELECTION.**

**a. PROJECT SCREENING.**

TFC utilizes both a high-level and detailed level screening of potential Qualifying Projects over \$30 million. The initial screening process performed by the Center is used to identify projects most likely to deliver Value for Money to the State if delivered under the Act. By applying proven detailed screening criteria to a specific Qualifying Project or group of Qualifying Projects, the Center helps the TFC to prioritize its list of projects to be undertaken under Chapter 2267.

The Center will complete a high-level screening of potential projects based on available information and reasonable assumptions where specific data is not available. Upon completion, the Center will provide a preliminary analysis and recommendations for next steps to TFC staff.

The primary objectives of the high-level screening process are to:

- i. perform the initial quantitative Value for Money analysis that contrasts the Net Present Value (“NPV”) of traditional delivery to one or more alternative delivery options; and
- ii. perform the initial qualitative analysis of the benefits of alternative delivery, such as accelerated delivery, staffing availability, and economic impact.

If the Center’s initial analysis indicates that a potential project should be delivered under Chapter 2267, TFC may authorize (by a vote of the TFC Commissioners) the Center to proceed with a detailed-level screening. During the detailed-level screening, the quantitative assumptions will be analyzed in greater detail to identify the initial modeling scenarios that represent the base case and worst case for comparison purposes against traditional delivery. The quantitative assumptions will be evaluated in greater detail during this phase. The results of this analysis are benchmarked against other projects to provide more certainty through close coordination and interaction with TFC staff.

**b. VALUE FOR MONEY ANALYSIS.**

As part of the detailed-level screening process, the Center, in coordination with TFC staff, shall use a Value for Money analysis in evaluating each Qualifying Project to determine whether a project provides more benefits to the public when delivered by P3 compared to a traditional procurement method. At a minimum, the following tasks will be performed as part of this initial valuation:

- i. conduct a thorough risk analysis of the project that identifies the risks, determines the costs of each risk, and allocates those risks between the State and the Private Entity and subjects the risks to negotiation in the contract;
- ii. determine if the potential project is in the best, long-term financial interest of the State; and
- iii. determine if the potential project will provide a tangible public benefit to the State.



If TFC staff determines that a Value for Money analysis is not appropriate for evaluating a particular proposed Qualifying Project, TFC staff shall submit to the TFC Commissioners a written report stating the reasons for using an alternative analysis methodology.

TFC staff shall coordinate with TFC's Internal Audit Division for review and receipt of comments on the reasonableness of the assumptions used in the Value for Money analysis or alternative analysis methodology used to evaluate a potential project under this section.

**c. PUBLIC PURPOSE.**

Before proceeding to procurement under Chapter 2267 as outlined below Section IV, the TFC Commissioners shall determine that the Qualifying Project serves a public purpose. In making this determination, TFC Commissioners may find that a potential Qualifying Project serves a public purpose if:

- i. there is a public need for or a benefit derived from the type of Qualifying Project proposed;
- ii. the estimated cost of the Qualifying Project is reasonable; and
- iii. it can be anticipated that a Private Entity's participation will result in the timely development or operation of the proposed Qualifying Project.

**d. PROCUREMENT OPTIONS ANALYSIS.**

Procurement under Chapter 2267 will accommodate several different types of project and service delivery methods. The types of delivery mechanisms will be analyzed as part of the high-level and detailed-level screening processes by, among other attributes, the nature and status of the project, project risk factors, schedule, funding, and goals. The procurement package and solicitation documents for a Qualifying Project will reflect the proposed project delivery mechanisms as set forth by all applicable laws. The Center and TFC will evaluate the appropriate project delivery method for each Qualifying Project.

Possible delivery methods for Qualifying Projects include:

- i. predevelopment agreements (or Interim Agreements) leading to other Comprehensive Agreements (described below);
- ii. a design-build agreement;
- iii. a design-build-operate agreement;
- iv. a design-build-maintain agreement;
- v. a design-build-finance-operate agreement;
- vi. a design-build-operate-maintain agreement;
- vii. a design-build-finance-operate-maintain agreement; and

- viii. an operate-maintain agreement.

#### **IV. PROCUREMENT PROCESS.**

The determination as to whether to utilize some or all of the following procurement phases will be project-specific and will be outlined in the project-specific solicitation documents (e.g., instructions to proposers, RFQ, draft/final RFP, project technical requirements, etc.) along with the tender schedule.

Upon completion of the Center's preliminary Value for Money analysis of a potential Qualifying Project, TFC may initiate the procurement process using one or more of the following processes depending on the complexity of the Qualifying Project:

- i. the issuance of a request for information ("RFI");
- ii. industry informational meetings/forums;
- iii. market sounding meetings;
- iv. issuance of a request for qualifications ("RFQ");
- v. short listing of qualified or preferred bidders;
- vi. industry review meetings, as further discussed below; and/or
- vii. issuance of an RFP in final form.

TFC will prepare a solicitation document that includes general information on the project. This information may include general data on the project site, project scope, budget, and special systems. TFC will also include any draft of proposed agreements (if they exist at that time) or a term sheet outlining the proposed commercial terms for the potential Qualifying Project Interim or Comprehensive Agreement. Finally, selection criteria, and the weighted value for each will also be included in the project solicitation documents to assist potential Private Entities in submitting proposals for the Qualifying Project. TFC will prepare a design criteria package that includes a set of documents which provide sufficient information to develop a response to TFC's solicitation. The level of detail given during each phase, should TFC choose to use a multi-phased approach, will vary depending on the procurement phase.

TFC may schedule one-on-one meetings with each of the qualified respondents to the solicitation. These meetings will serve as an iterative forum for the discussion and mutual understanding among each of the respective working groups from both the public and private sector partners. These one-on-one meetings serve preproposal purposes that will allow TFC to understand what value can be reasonably expected to be created or detracted and the specific changes that could be incorporated into the final solicitation documents, which include, but are not limited to, the proposed Comprehensive or Interim Agreement and technical specifications. The applicable revisions will be discussed with all qualified respondents. Such one-on-one meetings are not negotiations. The meetings serve the best interests of the public and are consistent with best practices for alternative project delivery.

## **V. RFP PROCESS AND PROPOSAL SUBMISSION.**

### **a. GENERAL.**

TFC may request proposals from Private Entities for purposes that constitute a Qualifying Project. Proposal response times specified in the solicitation may range from thirty (30) to one-hundred and eighty (180) days depending on the complexity of the Qualifying Project. All solicitations shall be by an issuance of a written RFP or other solicitation document as appropriate. The procedures and requirements applicable to any particular solicited proposal will be specified in the solicitation documents for that proposal. To the extent that any information in these guidelines conflicts with the RFP issued for a specific solicitation, the solicitation documents control.

Unsolicited proposals will not be accepted or considered.

### **b. ORGANIZATION.**

All proposals must be organized in the manner outlined in the solicitation documents for a particular project issued by TFC which may include, but not be limited to:

- i. number of copies to be submitted and in what medium;
- ii. the format of the proposal;
- iii. submittal address;
- iv. content required;
- v. Private Entity structure, team members, and qualifications;
- vi. financial capacity;
- vii. identification of subcontractors;
- viii. proposal for the Qualifying Project;
- ix. debt and equity commitments;
- x. proposed financial model;
- xi. proposal security as well as payment and performance guarantees;
- xii. description of the type of User Fees, Lease Payments and other Services Payments proposed;
- xiii. the term of the applicable Interim or Comprehensive Agreement proposed;
- xiv. proposed schedule of the Qualifying Project;

- xv. plan for development, financing, and operation of the Qualifying Project; and
- xvi. any additional material and/or information requested by TFC.

**c. PROPOSAL SUBMISSION.**

TFC shall not be liable for any cost incurred by Private Entities in preparing, submitting, or presenting the proposal or satisfying any other requirements for an unsuccessful proposal. Proposals shall be prepared simply and economically, and in accordance with the associated solicitation documents. After submission, TFC in its sole discretion may request that the Private Entities provide clarification to their proposals to assist in the evaluation of the proposals.

**d. CONFIDENTIAL INFORMATION.**

Private Entities may submit trade secrets, financial records, proprietary, or other confidential records shall in a separate, sealed envelope, designated on the cover as **CONFIDENTIAL MATERIALS**; include a cover letter listing all exempt material; and clearly mark in all caps, 14 point font, red letters as **CONFIDENTIAL** any material believed to be proprietary information protected from disclosure under applicable law. Failure to mark information as such may lead to its disclosure as publicly available records. All information is subject to the requirements of the Texas Public Information Act, Government Code Chapter 552.

**e. AFFECTED JURISDICTIONS.**

A Private Entity whose proposal, other than a proposal for a Service Contract, is accepted for conceptual stage evaluation under Section 2267.053, Texas Government Code, shall notify each Affected Jurisdiction by providing a copy of its proposal by certified mail or hand delivery, within three (3) business days of acceptance. *See* Gov't Code § 2267.055(a). The Private Entity is responsible for documenting delivery of the proposal.

Not later than the 60th day after the date an Affected Jurisdiction receives the required notice, the Affected Jurisdiction that is not the Responsible Governmental Entity for the respective Qualifying Project shall submit in writing to TFC any comments the Affected Jurisdiction has on the proposed Qualifying Project and indicate whether the facility or project is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Gov't Code § 2267.055(b). TFC shall consider the submitted comments before entering into a Comprehensive Agreement with a Contracting Person.

**f. OVERSIGHT COMMITTEE.**

For each Qualifying Project solicitation, TFC will establish an oversight committee to review each Qualifying Project and report to the TFC Commissioners the results of the committee's evaluation of the Qualifying Project, including the schedules, procedures, proposal evaluation criteria, and documentation required in the particular RFP.

**g. PROFESSIONAL CONSULTANTS AND ADVISORS.**

TFC intends to engage professional experts through the Center, including financial, technical, real estate, architectural and engineering design, legal and other related experts needed to effectively protect the State's interest when considering and implementing a Qualifying Project. In addition, TFC intends to use such financial, technical, and legal experts for pre-solicitation assessment of a Qualifying Project. These professionals may also be called upon to assist in the financial analysis, risk allocation analysis, design review, contract negotiation, contract performance monitoring, and to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a Qualifying Project.

## **VI. EVALUATION CRITERIA.**

### **a. GENERAL.**

Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase(s), and during the life cycle of the Qualifying Project. The cost analysis of a proposal should not be linked solely to the financing plan as TFC may determine to finance the Qualifying Project through other available means.

Proposals may include in-kind consideration in an amount that is not less than the fair market value of the real property interest; including but not limited to the construction of new facilities; alteration and restoration of existing facilities; and environmental remediation. TFC shall continue to exercise full and proper due diligence in the evaluation and selection of proposals submitted by Private Entities for a Qualifying Project. In this regard, the qualifications, capabilities, resources, and other attributes of a Private Entity and its whole team shall be carefully examined for every Qualifying Project. In addition, Private Entities shall be held strictly accountable for representations and information provided regarding their qualifications, experience, or other contents of their proposals, including all specific aspects of proposed plans to be performed by the Private Entity.

### **b. PUBLIC PURPOSE.**

Prior to the approval by TFC of a Qualifying Project and the issuance of solicitation documents, TFC will have conducted the requisite Value for Money analyses, unless it finds that a Value for Money Analysis was not in order in accordance with Section III (B) of these Guidelines. In doing so, TFC will confirm that the most appropriate procurement method was identified and selected. In addition to serving a specific public purpose, the Qualifying Project will also be in the best interests of the stakeholders whose needs will be served by the Qualifying Project. During the evaluation period, TFC must determine the extent to which a Qualifying Project meets the objectives and priorities of TFC and the original public purpose and aligns with any applicable TFC plans and design guidelines outlined in the RFP.

TFC shall determine that the Proposal submitted by a private entity for Qualifying Project is consistent with the public purpose stated prior. TFC may determine that a Qualifying Project serves a public purpose if the proposal continues to meet a public need for, or a benefit derived from, the type of Qualifying Project proposed, the estimated cost of the Qualifying Project is reasonable, and it can be anticipated that the Private Entity's plans will result in the timely

development or operation of the project. TFC must include in the Comprehensive Agreement for the Qualifying Project a written declaration of the specific public purpose served by the project.

**c. QUALIFICATIONS AND EXPERIENCE.**

Factors to be considered during any stage of an evaluation to determine whether a Private Entity possesses the requisite qualifications and experience may include, but not be limited to, the following:

- i. experience working with the public sector on relevant and comparable projects;
- ii. experience, training, and preparation with projects of similar size, scope, and complexity;
- iii. the extent of personnel, logistical resources, bonding capacity, and the ability to complete the Qualifying Project in a timely and professional manner;
- iv. demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
- v. demonstrated compliance with applicable laws, codes, standards, regulations, and agreements on past projects;
- vi. leadership structure;
- vii. project manager's experience;
- viii. management and operational plans;
- ix. financial condition and capacity; and
- x. project ownership.

**d. PROJECT CHARACTERISTICS.**

Factors to be considered in evaluating the proposed Qualifying Project characteristics may include:

- i. project scope and scale, land use, and product mix;
- ii. timing of the Qualifying Project;
- iii. design of the Qualifying Project;
- iv. operation of the Qualifying Project;
- v. technology or technical feasibility;

- vi. conformity to laws, regulations, and standards; vii environmental impacts;
- vii. condemnation impacts;
- viii. federal, state and local permits; and
- ix. maintenance of the Qualifying Project.

**e. PROJECT COST AND FINANCING.**

Factors to be considered in evaluating financial implications of a Qualifying Project may include:

- i. cost and cost benefit to the State;
- ii. financing and the impact on the debt or debt burden of the State;
- iii. financial plan, including:
  - A. its overall feasibility and reliability;
  - B. Private Entity's past performance with similar plans and projects;
  - C. the degree to which the Private Entity has conducted due diligence investigatory analysis of the proposed plan; and
  - D. the results of such inquiries or studies;
- iv. opportunity cost of taking an alternative action;
- v. estimated project cost and life-cycle cost analysis; and
- vi. identity, credit history, past performance of any third party that will provide financing for the Qualifying Project and the nature, amount, and timing of their commitment, as applicable.

**f. COMMUNITY IMPACT.**

Factors to be considered in evaluating the Qualifying Project's community impact and compatibility may include:

- i. community benefits, including the economic impact the Qualifying Project will have on the State and Affected Jurisdictions regarding tax revenue, the number of jobs generated, and level of pay and fringe benefits of such jobs;
- ii. stakeholder input;
- iii. community support, opposition, or both;
- iv. compatibility with existing and planned facilities; and

- v. compatibility with local, regional, and state economic development efforts.

**g. OTHER FACTORS.**

Other factors that may be considered by TFC in the evaluation and selection of proposals may include:

- i. the extent the offered consideration generates value and returns to the State and benefits to the public, including in-kind consideration greater than the fair market value of the asset;
- ii. the Private Entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
- iii. the Private Entity's plans to employ local contractors and residents;
- iv. any potentially unacceptable risks to the State;
- v. the historic significance of the property on which the Qualifying Project is proposed to be located; and
- vi. other criteria that TFC deems appropriate.

**VII. ESTIMATED TIMELINES AND AWARD PROCESS**

**a. EVALUATION PERIOD AND SELECTION OF THE SUCCESSFUL PROPOSER.**

i. Approximately, ninety (90) to one hundred and eighty (180) days after issuing the final RFP documents, TFC will select the Proposer that submits the proposal offering the best value for the State on the basis of the published selection criteria and its ranking on evaluations. TFC reserves the right to perform a best and final offer ("BAFO") process.

ii. TFC shall make a best value determination in evaluating the proposals received and consider the total project cost as one factor in evaluating the proposals. TFC is not required to select the proposal that offers the lowest total project cost.

iii. Upon selection of successful proposal, TFC will post a copy of the detailed Qualifying Project on TFC's website excluding information protected from disclosure under Section 552.110, Texas Government Code.

**b. PUBLIC HEARING ON THE SUCCESSFUL QUALIFYING PROJECT.**

Before submitting a detailed Qualifying Project to the PAC, TFC must hold a public hearing on the project in the Affected Jurisdiction where the property is located.

After the public hearing, TFC shall notify the Proposer of proposed changes to the proposal for the Qualifying Project, as TFC determines appropriate, based on the public comments and include the public comments in the documents submitted to the PAC. This public hearing process may take approximately thirty (30) to sixty (60) days.



**c. SUBMISSION TO THE PAC AND LEGISLATURE.**

TFC must provide copies of the proposal and any comments made during the public hearing to the presiding officer of the PAC and the chairs of House Appropriations and Senate Finance Committees.

**d. APPROVAL BY THE PAC.**

Within forty-five (45) days of receiving the detailed proposal, the PAC shall hold a public meeting and approve or disapprove the proposal.

**e. COMPREHENSIVE AGREEMENT.**

Upon approval by the PAC of the submitted proposal, TFC may negotiate an Interim or Comprehensive Agreement with the Proposer of the successful proposal. It is anticipated that the negotiation of the Comprehensive Agreement would take approximately ninety (90) to one hundred and eighty (180) days, depending on the complexity of the Qualifying Project.

On completion of the negotiation phase for the Comprehensive Agreement and before the agreement is executed, TFC shall post to its public website the oversight committee's review report and other evaluation documentation for each proposal.

**f. SUBMISSION OF QUALIFYING PROJECT CONTRACT TO CONTRACT ADVISORY TEAM.**

i. Not later than the 60th day before the date TFC is scheduled to decide on approval of a Comprehensive Agreement for a Qualifying Project, TFC must submit to the Contract Advisory Team (the "CAT") established under Subchapter C, Chapter 2262, Texas Government Code, documentation of the modifications to a proposed Qualifying Project made during TFC's evaluation and negotiation process for the project, including a copy of:

- A. the final draft of the contract;
- B. the detailed Qualifying Project; and
- C. any executed Interim Agreement or other agreement.

ii. CAT shall review the documentation submitted and provide written comments and recommendations to TFC. The review must focus on, but not be limited to, best practices for contract management and administration.

iii. TFC staff shall provide to the TFC Commissioners members:

- A. a copy of CAT's written comments and recommendations; and
- B. the staff's response to the comments and recommendations.

**g. FINAL APPROVAL.**

After making the proposed Comprehensive Agreement available as required by Section 2267.066(e), TFC shall hold a public hearing on the final version of the proposed Comprehensive Agreement and vote on the proposed Comprehensive Agreement after the hearing. The hearing must be held not later than the 10th day before the date TFC enters into a Comprehensive Agreement with a Contracting Person.

**h. SUBMISSION TO PAC.**

Before executing an Interim or Comprehensive Agreement, TFC must submit copies of the detailed proposals, including drafts of any Interim Agreement and the Comprehensive Agreement, to the PAC in accordance with Chapter 2268, Texas Government Code.

TFC and the Contracting Person may then execute the Interim or Comprehensive Agreement thirty (30) days after submission to the PAC.