

## **VI-4    *UNSOLICITED PROPOSALS***

1.0    **Applicability.** This policy and procedure applies to Unsolicited Proposals received by RTD. It is not designed to address unsolicited proposals regarding the acquisition, lease, sale or shared use of RTD real property. Persons interested in pursuing negotiations regarding real property interests with the Regional Transportation District should direct their communications to RTD's Manager of Real Property at 303-299-2440.

1.1    ***What is an Unsolicited Proposal?*** A written proposal that is submitted to RTD on the initiative of the submitter for the purpose of obtaining a contract with RTD, not in response to a formal or informal request.

1.2    ***What distinguishes an Unsolicited Proposal?*** It must have the following qualities:

- a.      Innovative and unique;
- b.      Independently originated and developed by the proposer;
- c.      Prepared without RTD's supervision, endorsement, direction, or direct involvement; and
- d.      Sufficiently detailed that its benefits in support of RTD's mission and responsibilities are apparent.

An Unsolicited Proposal is distinguishable from a project already part of RTD's long-term budget planning process if it uses innovative and unique solutions to offer added value, such as enhanced financing options or materially advancing delivery dates. Sales tax bonds and certificates of participation are not unique and innovative financing tools.

1.3    ***Should proposers interested in a published solicitation submit an Unsolicited Proposal?*** No. An Unsolicited Proposal is not:

- a. An offer responding to RTD's previously published expression of need or request for proposals; or
- b. An advance proposal for property or services that RTD could acquire through competitive methods (submitted within the budget year before release of a published request for proposal).

2.0 **Process Overview.** Unsolicited Proposals shall be submitted to the RTD Contracts and Procurement office. RTD receives and evaluates Unsolicited Proposals using a two-phased approach. Phase One is for Conceptual Proposals. Phase Two is for Detailed Proposals. In the event that the project proceeds beyond Phase Two or otherwise involves a competitive proposal or sole source procurement, RTD's general procurement procedures and policies will apply. RTD may, at any time, choose not to proceed any further with the Unsolicited Proposal.

3.0 **Phase One – Conceptual Proposal.**

3.1 **Introduction – Conceptual Proposal.** The purpose of Phase One is for RTD to receive written, concept-level proposals and to screen those proposals to determine whether RTD would like to review additional information in Phase Two.

3.2 **Process – Conceptual Proposal.** A team of persons will be identified to review the proposal and determine the next steps, including whether to proceed to Phase Two

3.2.1 **Threshold Requirements.** At this phase, RTD Contracts and Procurement staff will take the following threshold steps:

- a. Promptly acknowledge receipt of the proposal; and

- b. Determine whether the proposal meets the threshold requirements of an Unsolicited Proposal (described below).

3.2.2 Additional Process. If the proposal meets the threshold requirements, RTD Contracts and Procurement staff will take the following steps:

- a. Log in the proposal and assign it a number;
- b. Set and notify the proposer of the schedule for internal evaluation;
- c. Assemble an evaluation team that includes technical and financial subject-matter experts related to the Unsolicited Proposal (If evaluation by others outside of RTD is deemed necessary, the proposer's permission will be requested.);
- d. Schedule a meeting with the proposer, if a meeting is requested and would be helpful to more fully understand the proposal;
- e. Facilitate the evaluation process as needed; and
- f. Notify the proposer of RTD's decision. The possible outcomes may be to discontinue the process, proceed to Phase Two, or pursue a competitive procurement. RTD will provide a general explanation of the reasons for the decision.

3.2.3 Prohibition on Use of Confidential Information.

- a. RTD personnel shall not use any data, or any confidential patented, trademarked, or copyrighted part of an Unsolicited Proposal or confidential technical or financial proprietary information as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the proposer is notified of and agrees to the intended use. Concepts or ideas are not considered proprietary by RTD but specific implementing methodologies that are unique to the proposer will be recognized.
- b. The Contracts and Procurement staff shall place a cover sheet (attached as Exhibit B) on the proposal, unless the proposer clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal.

**3.3 Content – Conceptual Proposal.** Conceptual Proposals should include the information identified in the Conceptual Proposal Form (Exhibit A to this Policy).

**3.4 Evaluation – Conceptual Proposal.** Conceptual Proposals will be evaluated promptly in accordance with the criteria set out in this section.

3.4.1 **Threshold Review.** Before initiating an evaluation, the RTD Contracts and Procurement staff will determine if the Conceptual Proposal meets the following threshold requirements:

- a. Meets the definition of an Unsolicited Proposal;
- b. Contains the required content;

- c. Has been approved by a responsible official or other representative authorized to contractually obligate the proposer; and
- d. Complies with the marking requirements for use and disclosure of data.

3.4.2 Evaluation Process. At Phase One, the evaluation process will include the following:

3.4.2.1 If a financial evaluation team has been assembled, that team will have access to the technical proposal for purposes of determining the proposed project scope;

3.4.2.2 The proposer(s) will have no interaction with the evaluation team

3.4.3 Evaluation Criteria. At Phase One, the evaluation team will determine the evaluation criteria as necessary to reflect the specific proposal, but generally will consider the following factors:

3.4.3.1 The proposal offers direct or anticipated benefits to RTD, its passengers, and the community;

3.4.3.2 The proposal satisfies a need for RTD that can be accommodated in RTD's annual long-term capital and operating budgets without displacing other planned expenditures, without placing other committed projects at risk, and without significantly increasing the cost of the proposed items. The proposal is consistent with RTD's objectives and goals;

3.4.3.3 The proposal offers unique goods or services that RTD did not intend to purchase through the normal RTD contract process;

3.4.3.4 If the proposal contains significant financial, technical and legal components, those disciplines have approved an action that proceeds to Phase Two; and

3.4.3.5 Other factors appropriate for the particular proposal.

#### 4 Phase Two – Detailed Proposal.

4.2 Introduction – Detailed Proposal. The purpose of Phase Two is for RTD to receive more detailed technical and financial information to fully understand and evaluate the proposal. At this phase, RTD will decide whether to forego the proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation.

4.2.1 Process – Detailed Proposal. Request for Detailed Proposal. If RTD desires to proceed to Phase Two, RTD Contracts and Procurement will issue a Request for a Detailed Proposal that formally tells the proposer to proceed to Phase Two. Depending on the circumstances, the Request may include the following:

4.2.1.1 Essential terms and conditions that could be part of a subsequent agreement between RTD and the proposer;

4.2.1.2 A goal for participation of disadvantaged/small business enterprises (DBE/SBE);

4.2.1.3 Schedule and important deadlines for the proposer;

4.2.1.4 Specific technical, financial or other information necessary to fully evaluate the proposal;

4.2.1.5 Evaluation criteria; and

4.2.1.6 Requests for specific modifications or clarifications to the scope of the original proposal.

4.2.2 Processing. Once the Detailed Proposal is received, the Contracts and Procurement office will keep a record of the persons on the evaluation team and record the final disposition of the proposal. Outside advisors will be consulted only if the RTD evaluation team deems it necessary and beneficial; if evaluation by others outside of RTD is deemed necessary, the proposer's permission will be requested. The prohibition on the use of confidential information continues to apply in Phase Two.

4.2.3 Content – Detailed Proposal. In addition to the information provided in Phase One, a Detailed Proposal must, at a minimum, include the following information.

4.2.4 Technical information.

4.2.4.1 Names and professional information of the proposer's key personnel who would be committed to the project;

4.2.4.2 Type of support needed from RTD; e.g., facilities, equipment, materials, or personnel resources; and

4.2.4.3 A sufficiently detailed description of the scope of work being offered to allow RTD to evaluate the value received for the price proposed;

4.2.4.4 Proposed price or total estimated cost for the effort and/or the revenue generated in sufficient detail for meaningful evaluation, including an annual cash flow for the project;

4.2.4.5 A schedule for the implementation including specific details for any property and/or services to be provided by RTD; and

4.2.4.6 Proposed duration of effort.

#### 4.2.5 Supporting information.

4.2.5.1 Type of contract preferred;

4.2.5.2 Description of the organization, previous experience in the field, and facilities to be used;

4.2.5.3 Required statements, if applicable, about organizational conflicts of interest, and environmental impacts; and

4.2.5.4 Information demonstrating to RTD that the proposer has the necessary financial resources to complete the project, as determined by RTD Contracts and Procurement staff. Such information may include (i) financial statements, including an Auditor's Report Letter or an Accountant's Review Letter, Balance Sheets, Statements of Income and Stockholder's Equity, and a Statement of Change in Financial Position; (ii) un-audited balance sheets; (iii) names of banks or other financial institutions with which the proposer conducts business; and (iv) letter of credit commitments.

4.2.6 Evaluation – Detailed Proposal. Detailed Proposals will be evaluated promptly in accordance with the criteria set out in this section.

4.2.6.1 Threshold Review. Before initiating a comprehensive evaluation, the RTD Contracts and Procurement staff will determine if the Detailed Proposal continues to meet the threshold requirements set out in Phase One and the requirements specifically set out in the Request for Detailed Proposal.

4.2.6.2 Evaluation Criteria. At Phase Two, the evaluation team will consider the same evaluation criteria set forth in Phase One in addition to following factors:



4.2.6.2.1 The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives;

4.2.6.2.2 The proposer's financial capacity to deliver the goods or services defined in the proposal;

4.2.6.2.3 Viability of the proposed schedule and RTD's ability to meet activities required of RTD;

4.2.6.2.4 RTD's capacity to enter into a contract under its current TABOR authorization;

4.2.6.2.5 The qualifications, capabilities, and experience of key personnel who are critical in achieving the proposal objectives;

4.2.6.2.6 The specific details of the cost/revenue generated; and

4.2.6.2.7 Any other factors appropriate for the particular proposal.

4.2.6.3 Recommendation. The evaluation team will make a recommendation on the disposition of the Detailed Proposal to RTD's General Manager for review and approval. If Board of Directors' approval is required, the proposer will be notified of the date of the meeting when the proposal will be discussed.

4.3 Full and Open Competition. RTD's receipt of an Unsolicited Proposal does not, by itself, justify a contract award without full and open competition. Unless the Unsolicited Proposal offers a proprietary concept that is essential to contract performance, RTD will seek competition. Before entering into a

contract resulting from an Unsolicited Proposal, RTD will take the following steps.

4.3.1 Receipt. RTD will publicize its receipt of the Unsolicited Proposal by posting on RTD's website for purchasing opportunities and advertising in the *Denver Post* legal notices section and in any other relevant trade publications that advertise contracting solicitations. Such publication of receipt could occur at any phase of the process, to be determined by the RTD Contracts and Procurement Staff.

4.3.2 Adequate Description. RTD's publication of its receipt of the Unsolicited Proposal will include an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.

4.3.3 Interest in the Property or Services. RTD also will publicize its interest in acquiring the property or services described in the proposal using the same or similar methods provided above.

4.3.4 Adequate Opportunity to Compete. RTD will provide an adequate opportunity for interested parties to comment or submit competing proposals, and/or requests for an opportunity to respond within a time frame (minimum of 14 days) specified by RTD's Contracts and Procurement staff.

4.3.5 Contract Award Based on Proposals Received. Finally, RTD will publicize its intention to award a contract based on the Unsolicited Proposal or another proposal submitted in response to the publication using the same or similar methods provided above.

4.4 Contract Resulting from an Unsolicited Proposal. Nothing in this policy or otherwise requires RTD to act or enter into a contract based on an Unsolicited

Proposal. RTD may return and/or reject an Unsolicited Proposal at any time during the process.

4.4.1 Sole Source Award. If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, RTD may make a sole source award, as provided in RTD's Sole Source Award policy. A sole source award may not be based solely on the unique capability of the proposer to provide the specific property or services proposed.

4.4.2 Competitive Procurement. Except as provided above, RTD may decide to enter into a competitive procurement to obtain any or part of the services or goods incorporated in the Unsolicited Proposal in compliance with the prohibition on the use of confidential information.

4.4.3 Prerequisites to Contract Negotiation. The contracting officer or other designated RTD representative(s) may commence negotiations only after the following prerequisites have been met.

4.4.3.1 An Unsolicited Proposal has received a favorable comprehensive evaluation including in comparison to any proposals received following publication as provided in this policy;

4.4.3.2 The RTD technical office sponsoring the contract supports its recommendation, furnishes the necessary funds, and provides a sole-source justification (if applicable); and

4.4.3.3 RTD General Manager or RTD Board of Directors approves (if required).

## EXHIBIT A

### UNSOLICITED PROPOSALS SUBMITTED TO RTD PHASE ONE: CONCEPTUAL PROPOSAL FORM

Phase One of RTD's Unsolicited Proposal process involves submitting this form. Submit only the information required by this form. If RTD determines that the proposal should proceed to Phase Two, RTD will issue a Request for Detailed Proposal.

#### **PART 1.                    BASIC INFORMATION**

**Proposer Information:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Further Contact Information: \_\_\_\_\_

Type of Organization: \_\_\_\_\_

Technical Personnel Names & Contact Information:

\_\_\_\_\_

Business Personnel Names & Contact Information:

\_\_\_\_\_

*These individuals should be responsible for answering RTD's technical or business questions concerning the proposal or any subsequent agreement concerning the Proposal.*

#### **PART 2.                    TECHNICAL INFORMATION**

**Title of the Proposal:** \_\_\_\_\_

☐ Abstract of the Proposal is attached. To move forward in the Unsolicited Proposal process, the Abstract must include a brief – but complete – discussion of the following:

- (1) Objectives;
- (2) Method of approach;
- (3) Nature and extent of anticipated results; and
- (4) Manner in which the work will help support accomplishment of RTD's mission.

**Technical expertise the proposer needs from RTD:** \_\_\_\_\_

**PART 3.                    FINANCIAL INFORMATION**

**Proposed Price or Total Estimated Cost:** \_\_\_\_\_

\_\_\_\_\_

**Revenue:** \_\_\_\_\_

\_\_\_\_\_

*Be concise but provide sufficient detail for RTD to meaningfully evaluate the Proposal.*

**Financial information the proposer needs from RTD:** \_\_\_\_\_

\_\_\_\_\_

**PART 4.            PROCEDURAL INFORMATION**

**Period of Time for which the proposal is valid:** \_\_\_\_\_

- ☐ Proprietary data has been submitted with this proposal and is deemed confidential by the proposer in the event of a request submitted to RTD under the Colorado Open Records Act. *Any proprietary data must be clearly designated.*
- ☐ Other government entities or private parties have received this proposal.  
Please explain: \_\_\_\_\_
- ☐ Other government entities or private parties may provide funding for this proposal.  
Please explain: \_\_\_\_\_
- ☐ There are patents, copyrights and/or trademarks applicable to the goods or services proposed.  
Please explain: \_\_\_\_\_
- ☐ A meeting with RTD staff is requested.  
Questions, comments or concerns that the proposer intends to raise at a meeting, if granted: \_\_\_\_\_

\_\_\_\_\_

- ☐ There is additional information not requested in this form that would allow RTD to evaluate this proposal at this conceptual phase. Describe: \_\_\_\_\_

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**PART 5 . SIGNATURE.**

Name:

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Date:

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Title:

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*The individual who signs this form must be authorized to represent and contractually obligate the Proposer.*

## **EXHIBIT B**

### **UNSOLICITED PROPOSAL USE OF DATA PRIOR TO CONTRACT IS PROHIBITED**

All RTD personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the proposer. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use.