



**Procedures
For
Selecting and Contracting
Public-Private Initiative Agreements
With
Non-Profits**

August 11, 2010



Colorado Department of Human Services

people who help people

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**Colorado Department of Human Services
Public-Private Initiatives Agreements with Non-Profits**

SECTION I

General

The Public Private Initiative (PPI) program 24-38-201 C.R.S Part 2, considers acceptance and allowance for agreements with a Non-Profit (501c3) benefiting the Department of Human Services in cost effective and efficient delivery of services. This act considers that Non Profits can leverage the use of public funds with private donations, thereby furthering cost-effective and efficient delivery of public services. This act does not establish or authorize any new programs.

These contracts may be entered into upon receipt of an UNSOLICITED WRITTEN PROPOSAL submitted by a Non-Profit Entity and NOT in a response to any formal solicitation request, i.e. Request for Proposal, Invitation for Bid, or Documented Quote.

The Department of Human Services (Department) will identify a team of evaluators for the sole purpose of reviewing unsolicited proposals, and whether or not a contract should be entered into. The criteria for contracting will be determined by how the proposal meets the Agency's delivery of services in carrying out its duties in a cost-effective and efficient manner without replacing existing state employees. Under no circumstances may the Agency solicit, assist with the drafting of any PPI proposal, and ensure that proposals are independently originated and submitted by the non-profit entity.

Requirements for considering unsolicited proposals are:

1. Will assist the agency in carrying out its duties in a cost-effective and efficient manner without replacing existing employees.
2. Is independently originated and developed by the proposer.
3. Is prepared without agency supervision, guidance, direction or input.
4. Includes sufficient detail and information to allow the agency to evaluate the proposal in an objective and timely manner and to determine if the proposal benefits the agency.
5. Is not an advance proposal for a known agency requirement that can be acquired by competitive methods, unless:
 - a. The agency has not established a timetable for satisfying a known requirement
 - b. The proposal is likely to significantly shorten a timetable satisfying the known requirement
6. Information requested by Non-Profits intending to submit a proposal to better understand agency requirements, policies and services, are not considered to be an encouragement or offering of assistance, or providing

indirect or direct input, so long as it does not encourage, or aid in the actual drafting and proposal submission.

7. If an unsolicited proposal does not meet the requirements of the above (1-6), then the agency shall return the proposal without further action. If the unsolicited proposal meets all the requirements of the above (1-6), then the agency may further evaluate the proposal.
8. Evaluation of proposals shall be based on the following factors;
 - a. Unique and innovative methods, approaches, or concepts
 - b. Potential contribution of the proposal to the agency's mission
 - c. Scientific, technical or socioeconomic merits of the proposal
 - d. Capabilities, relevant experience, resources or unique combination of these qualities that are integral factors for achieving the proposal objectives
 - e. Cost savings, efficient delivery of services, or enhanced quality of service delivered to the recipient
9. An agency may accept an unsolicited proposal, only if the proposal receives a favorable evaluation, and the agency makes a written determination based on facts and circumstances that the unsolicited proposal is an acceptable basis for an agreement to obtain services either without competition, or except as otherwise provided the proposal requires the agency to spend public monies in the amount that is reasonably expected to exceed \$50,000 in the aggregate for any fiscal year, and provide public notice that the agency will consider comparable proposals.
10. The notice shall:
 - (a) Be given at least fourteen days prior to the date set forth therein for the opening of proposals through any reasonable method, which may include publication on the agency's internet web site, posting on the state's bid information and distribution system, or publication in a newspaper of general circulation.
 - (b) Be provided to any nonprofit entity that expresses, in writing to the agency, an interest in a public-private initiative that is similar in nature and scope to the unsolicited proposal;
 - (c) Outline in summary form the general nature and scope of the unsolicited proposal, including the work to be performed on the project and the terms of any nonprofit contributions offered and public benefits requested concerning the project;
 - (d) Request information to determine if the proposer of a comparable proposal has the necessary experience and qualifications to perform the public-private initiative; and
 - (e) Specify the address to and the date by which comparable proposals must be submitted, allowing a reasonable time to prepare and submit the proposals;
 - (f) Determine, in its discretion, if any submitted proposal is comparable in nature and scope to the unsolicited proposal and warrants further evaluation;

- (g) Evaluate each comparable proposal, taking relevant factors into consideration; and
 - (h) Conduct good faith discussions and, if necessary, negotiations concerning each comparable proposal.
11. An agency may accept a comparable proposal submitted pursuant to subsection (9) of this section if the agency determines that the comparable proposal is the most advantageous to the state in comparison to an unsolicited proposal or other submitted proposals. In making the determination, the agency shall use only the proposal evaluation criteria specified in this section and shall not use the methods of source selection set forth in part 2 of article 103 of this title.
 12. If an unsolicited proposal is accepted or if a comparable proposal is accepted pursuant to subsection (9) of this section, the accepting agency shall use the proposal as the basis for negotiation of an agreement.
 13. Subject to the requirements of this section, each agency shall determine its own process for considering, evaluating, and accepting or rejecting unsolicited proposals. If the agency determines that an unsolicited proposal is an acceptable basis for negotiation of an agreement pursuant to this section, the agency's procurement officer shall be responsible for taking the action required by subsection (9) of this section. Before an agency considers an unsolicited proposal or a comparable proposal under this part 2, the agency shall adopt either rules promulgated in accordance with article 4 of this title or other written policy guidelines that it determines are necessary or appropriate to implement this part 2, including rules or guidelines on the evaluation of unsolicited proposals and the receipt, content, and proper handling of unsolicited or comparable proposals. The rules or guidelines shall also require both the nonprofit entity and the agency to disclose any individual or organizational conflicts of interest related to the public-private initiative and to document and properly manage any disclosures..
 14. At the time a principal department of state government submits its annual budget request to the joint budget committee of the general assembly, the department shall report to the committee regarding any public-private initiative agreement then in effect that the department or an agency within the department has entered into pursuant to this part 2. The information reported shall include, at a minimum, a brief description of the purpose and terms of the agreement, the amount of public moneys required to be expended by the state under the terms of the agreement, and the identity of the private partner that is a party to the agreement.
 15. Public-private initiative agreements - cost savings.
 - (1) an agency shall enter into an agreement for each public-private initiative that it accepts.
 - (2) an agency shall include terms and conditions in the agreement that it determines are appropriate in the public interest.

- (3) if an agency achieves cost-savings in a fiscal year by entering into a public-private initiative agreement, the agency shall be eligible to retain a portion of any cost savings resulting from the agreement as provided in section CRS 24-38-103.
- (4) an agency that enters into a public-private initiative agreement with a nonprofit entity is not a partner or a joint venturer with the nonprofit entity for any purpose.

16. Confidentiality

Requests for confidentiality for portions of a submitted proposal must be considered prior to evaluation and selection of an unsolicited proposal. Under no circumstances will an entire proposal be deemed as confidential and proprietary, including cost information. Portions of the proposal that are accepted as "Confidential and or Proprietary" information must be separately marked and sealed, and will not be subject to the Colorado Open Records requests.

17. Organizations banned from contract awards.

Notwithstanding any provision of this part 2 to the contrary, any organization banned from receiving federal funds, and any successor organizations, shall not be awarded a public-private initiative contract pursuant to this part 2.

18. Colorado Open Records Act

All proposals submitted to CDHS become the property of CDHS and are subject to the Colorado Open Records Act (24-72-201 C.R.S). Proposers are advised to familiarize themselves with the provisions of the Colorado Open Records Act. The State, CDHS will not be liable to the proposer for the disclosure of all or part of a proposal submitted under these guidelines.

19. Definitions:

"NONPROFIT CONTRIBUTION" MEANS THE SUPPLY BY A NONPROFIT ENTITY OF RESOURCES TO ACCOMPLISH ALL OR ANY PART OF THE WORK ON A PROJECT OR THE IMPLEMENTATION OR ADMINISTRATION OF A PROGRAM.

"NONPROFIT ENTITY" MEANS A CORPORATION OR ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE THAT IS EXEMPT FROM TAXATION PURSUANT TO SECTION 501 (A) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (A), AS AMENDED, AND IS LISTED AS AN EXEMPT ORGANIZATION IN SECTION 501(c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c) (3), AS AMENDED.

"PROPOSER" MEANS THE NON PROFIT ENTITY SUBMITTING AN UNSOLICITED PROPOSAL

"PUBLIC BENEFIT" MEANS AN AGENCY GRANT OF A RIGHT OR INTEREST IN OR CONCERNING AN AGENCY PROJECT OR PROGRAM.

"PUBLIC-PRIVATE INITIATIVE" MEANS A NONTRADITIONAL ARRANGEMENT BETWEEN AN AGENCY AND ONE OR MORE NONPROFIT ENTITIES THAT PROVIDES FOR:

- (A) ACCEPTANCE OF A NONPROFIT CONTRIBUTION TO AN AGENCY PROJECT OR SERVICE IN EXCHANGE FOR A PUBLIC BENEFIT CONCERNING THE PROJECT OR SERVICE OTHER THAN ONLY A MONEY PAYMENT;
- (B) SHARING OF RESOURCES AND THE MEANS OF PROVIDING PROJECTS OR SERVICES; OR
- (C) COOPERATION IN RESEARCHING, DEVELOPING, AND IMPLEMENTING PROJECTS OR SERVICES.

"UNSOLICITED PROPOSAL" MEANS A WRITTEN PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE THAT IS SUBMITTED BY A NONPROFIT ENTITY FOR THE PURPOSE OF ENTERING INTO AN AGREEMENT WITH AN AGENCY BUT THAT IS NOT IN RESPONSE TO A FORMAL SOLICITATION OR REQUEST ISSUED BY THE AGENCY

SECTION II
DEPARTMENT OF HUMAN SERVICES
PUBLIC PRIVATE INITIATIVE PROCEDURES FOR THE ACCEPTANCE OF
UNSOLICITED PROPOSALS

The Department of Human Services may consider, evaluate and accept UNSOLICITED proposals submitted by a Non-Profit entity. Public Private Initiative consideration of an UNSOLICITED WRITTEN PROPOSAL submitted by a Non-Profit Entity must not circumvent or eliminate contracting for goods or services that meet known requirements of the Agency and are obtained by other competitive means, i.e.; Request for Proposal, Invitation for Bid, or Documented Quote.

Only proposals that are completely independent of any known requirement, that demonstrates efficient, cost saving methods supporting an Agency's mission. The criteria for contracting will be determined by how the proposal meets the Agency's delivery of services in carrying out its duties in a cost-effective and efficient manner without replacing existing state employees. Under no circumstances may the Agency solicit, assist with the drafting of any PPI proposal. The Agency must ensure that proposals are independently originated and submitted by the non-profit entity.

The Department may place on the main CDHS Webpage a link for "Public Private Initiatives", and Colorado BIDS INFORMATION AND DISTRIBUTION SYSTEM. The purpose of this link will inform interested Non Profit Entities of the policy and procedures for submitting Unsolicited Proposals to the Department of Human Services. (See Attachment A).

The initial submission for Unsolicited Proposals must be submitted to the District Procurement Office, in a clearly marked package "Unsolicited Proposal Public Private Initiative" including the CDHS Agency or Program being considered in their proposal.

The submission must include an Organizational Non Conflict of Interest Statement (See Attachment B) along with a Transmittal Letter including the entities affirmation that the proposal is unsolicited, and independently prepared without any encouragement, guidance or assistance from the Department and CDHS Program Staff.

Procurement shall login; assign a number for tracking purposes, and forward to a designated point person and initial evaluator for the Agency/Program identified in the proposal.

REQUIREMENTS FOR CONSIDERING UNSOLICITED PROPOSALS:

1. Will assist the agency in carrying out its duties in a cost-effective and efficient manner without replacing existing employees.
2. Is independently originated and developed by the proposer.
3. Is prepared without agency supervision, guidance, direction or input.
4. Includes sufficient detail and information to allow the agency to evaluate the proposal in an objective and timely manner and to determine if the proposal benefits the agency.
5. Is not an advance proposal for a known agency requirement that can be acquired by competitive methods, unless:
6. The agency has not established a timetable for satisfying a known requirement
7. The proposal is likely to significantly shorten a timetable satisfying the known requirement
8. If an unsolicited proposal does not meet the requirements of the above, then the agency shall return the proposal without further action. If the unsolicited proposal meets all the requirements of the above, then the agency may further evaluate the proposal.

EVALUATION OF UNSOLICITED PROPOSAL

1. Timeline

The following schedule is provided for illustrative purposes only and depicts the time frames when the Agency and Program anticipates completion of each phase of the proposal selection process. Every attempt will be made to move through the process as expeditiously as possible; however, variations in the following schedule may be necessitated due to volume, complexity of proposals received, the need for further information, or other unanticipated circumstances.

Timeframes will be adjusted based on size and complexity of the proposal.

A. Program Review

Procurement will forward unsolicited proposals that have met the submission requirements to the Department, Agency or Program person designated as an evaluator(s) for the initial review and determination if the proposal has merit and should be considered for further evaluation.

If the proposal does not meet the criteria for further review, then the Unsolicited Proposal will be returned with a letter or summary of explanation stating the reasons why the proposal cannot be considered.

Based on the initial review, and the proposal considered to have met or potentially meet the minimum requirements for selection, then the proposal may be considered for further evaluation by a committee comprised of Program, Budget, and other subject matter experts capable of understanding the Agency/Program needs, and impact to the Department.

Proposals that impact any State or Department IT Systems must have OIT approval prior to the final selection.

B. Comparable Proposal Notice

An agency may accept an unsolicited proposal, only if the proposal receives a favorable evaluation, and the agency makes a written determination based on facts and circumstances that the unsolicited proposal is an acceptable basis for an agreement to obtain services either without competition, or except as otherwise provided the proposal requires the agency to spend public monies in the amount that is reasonably expected to exceed \$50,000 in the aggregate for any fiscal year, and provide public notice that the agency will consider comparable proposals.

Notice must be given at least fourteen days prior to the date set forth therein for the opening of proposals through the Division of Procurement Office by posting on the state's bid information and distribution system (BIDS), and

Be provided to any nonprofit entity that expresses, in writing to the agency, an interest in a public-private initiative that is similar in nature and scope to the unsolicited proposal;

Outline in summary form the general nature and scope of the unsolicited proposal, including the work to be performed on the project and the terms of any nonprofit contributions offered and public benefits requested concerning the project;

Request information to determine if the proposer of a comparable proposal has the necessary experience and qualifications to perform the public-private initiative; and

Procurement will be the sole point of Point of Contact. The submission due date and time must allow a minimum of 14 days, or sufficient time for which comparable proposals may be submitted.

Determine, in its discretion, if any submitted proposal is comparable in nature and scope to the unsolicited proposal and warrants further evaluation;

Evaluate each comparable proposal, taking relevant factors into consideration; and

Discussions with submitting entity prior to selecting a proposal considered for contracting may occur for further clarification and understanding of a proposal response. These discussions will be managed through the Procurement Office.

Conduct good faith discussions and, if necessary, negotiations concerning each comparable proposal.

C. Final Review

The review team will establish evaluation criteria that will fairly evaluate all proposals for the selection of the proposal that is most advantageous to the Department, cost considered.

D. Final Project Selection

If an unsolicited proposal is accepted, or if a comparable proposal is accepted pursuant to Sections I and II of these guidelines, the Department shall use the proposal as the basis for negotiation of an agreement. A written determination by the Evaluation Team will be submitted to the Division Procurement Director, to include how the proposal will satisfy Agency requirements, and is an efficient and cost effective method for the delivery of services. The written determination must include a statement that the initial submission of the proposal was unsolicited without agency assistance beyond providing research data requested by the non-profit(s) and void of any known organizational or individual conflict of interest.

Procurement will post a notice on BIDS and send a letter indicating the proposer has been selected and may begin contract development with the Department.

Protest Rights and Appeal of award. The process and selection of an Unsolicited Proposal has the same protest and appeal rights per statutes and rules pertaining to Competitive Sealed Proposals.

2. Post Award

Following the selection and notification of award, the Contracting Agency may begin contract development, in accordance with the Department's Contract Management procedures, using the State Contract Wizard template.

When appropriate, a State Purchase Order may be used. Requests for State Purchase Orders will comply with Procurement's policies and procedures.

The Program will be responsible for submission of a Certification of Personal Services Review to Human Resources and compliance with State Personnel Rules, and the Department of Personnel and Administration's policies pertaining to contractors, and personal services.

Attachment A.

Process for Non Profit Entities

Unsolicited proposals may be submitted by a nonprofit entity, as defined under §24-38-202(2) C.R.S. to the Department of Human Services (Department) at the following address:

Department of Human Services
Procurement Director
7866 W. Mansfield Parkway
Denver, Colorado 80230

SUBMITTAL FORMAT

The Department of Human Services requires proposals be submitted as follows: Printed on 8 ½ by 11" paper, double or single sided, minimum 12 font. Submit One (1) original marked ("Original") and three (3) copies of the proposal, along with an electronic copy of the proposal compatible with Microsoft Office 2000 (WORD and or EXCEL). Excessive or elaborate proposals are discouraged.

Proposals packages must be sealed and identified as an "Unsolicited Public-Private Initiative Proposal" and the name of the agency proposed (i.e.; "Child Welfare Services") on the outside of the package. Faxes or electronic submission (email) will not be considered.

Proposals must be submitted in two parts: Part A Requirements, and Part B Evaluative Features, as described below. Part A and Part B of each proposal should be separated.

Part A:Requirements

1. Transmittal Letter and Company Information

Provide a Transmittal Letter including the following:

1. Name, address, EIN for the nonprofit entity submitting the proposal
2. Name, telephone and e-mail address of a single contact person representing the proposing entity.
3. State the proposal is a firm offer and good for 180 days from receipt of proposal. The proposer must further state their acceptance of State Contract and or State Purchase Order Terms and Conditions. Any exceptions to these terms and conditions may be the basis for disqualifying the proposing entity's proposal.

4. Signed by the person(s) authorized to commit the non-profit entity including printed name, title, and contact information.
5. Proof of Non Profit status, along with a copy of the proposing entity's 501(c)(3) letter from the Internal Revenue Service.
6. Certify that:
 - a. Your proposal was independently originated and developed
 - b. Has been prepared without supervision, guidance, or assistance from any agency or employee of the Department of Human Services.
 - c. Is not an advance proposal for a known requirement of the Department of Human Services.
 - d. State that the proposal and pricing will be good for 180 days from the Department's receipt of your proposal.
7. Disclose any individual or organizational conflicts of interest related to the proposal. Sign and submit Organizational Conflict of Interest Statement (Attachment B).

2. Executive Summary

Provide a brief summary of your organization and organization's mission. Give an overview of the main features of your proposal. Indicate for which Division in the Department the proposal is intended. Include information on how your proposal, will assist the Department in carrying out its duties in a cost-effective and efficient manner

Is consistent with the definition of "Public-Private Initiative" in §24-38-202(4) C.R.S.

Proposals being considered for an award are subject to the requirements of §24-38-203(2) C.R.S. Public Private Initiatives Act. and;

Colorado Open Records Act

All proposals submitted to CDHS become the property of CDHS and are subject to the Colorado Open Records Act (24-72-201 C.R.S). Proposers are advised to familiarize themselves with the provisions of the Colorado Open Records Act. The State, CDHS will not be liable to the proposer for the disclosure of all or part of a proposal submitted under these guidelines.

"Confidential and Proprietary"

Portions of a proposal considered to "Confidential and Proprietary" must be marked as such, and packaged separately from the remaining portions of the proposal. Under no circumstances will an entire proposal be deemed as confidential and proprietary, including cost information.

The Department will review any portion of the proposal marked as "Confidential and or Proprietary" for appropriateness. In the event the Department disagrees with the designation, the vendor will have the

option of removing the “Confidential and Proprietary” designation, or withdrawing their proposal. Information that is accepted as “Confidential and or Proprietary” information must be separately marked and sealed, and will not be subject to the Colorado Open Records requests.

Part B: Evaluative Features

1. Give a detailed description of how your proposal will be implemented. Include all relevant information such as:
 - a. How the proposal contributes to the agency’s mission
 - b. Approach and method being employed
 - c. Scientific, technical, or socioeconomic concepts or principles to be employed in implementing the proposal
 - d. The use of any subcontractors, and their role in the proposal
 - e. Schedules, deliverables, and timeframes
 - f. Any required agency contribution in terms of resources of staff time (aside from normal staff time required for contract oversight and monitoring for a contract of this size and complexity.)
 - g. Other required agency resources (non-staff)
2. Capabilities, Experience, Facilities, Techniques
 - a. Describe your organizations background, and experience with similar projects.
 - b. Provide relevant experience with other governmental and non-governmental entities for the project being proposed.
 - c. Describe how prior contracts were effective and successfully implemented.
 - d. Describe challenges or risks that may be associated with this type of project.
 - e. Provide background, overall and relevant experience of key personnel being proposed.
 - f. Provide the most current Financial Statement. Affirm your organization has sufficient resources for the performance of the services outlined in the proposal through the term of contract.
3. Cost Proposal, Cost Savings and Efficiencies
 - a. Give a full disclosure of all costs to implement the proposal. Include in-kind or cash contributions your entity is committing to the implementation of the proposal.
 - b. Provide a firm fixed price or detail sufficient to determine the annual direct and indirect cost for the initial term of the contract, and subsequent years if applicable. The State fiscal year begins on July 1 ending on June 30, i.e.; July 1, 2011 through June 30, 2012.
 - c. Payment terms will be no less than “net 30”.
4. Additional Information

Provide any additional information relevant to the services being proposed. Including graphs, charts, and spreadsheets.

5. Proposal Clarifications, Discussion, and Negotiation
 - a. When necessary and for the purpose of gaining a better understanding, the Department, at its discretion may request further clarification of any portion of a proposal. The Department may have further discussions with proposers that are reasonably susceptible of being awarded a contract for further discussion and negotiations.
 - b. As there is no guarantee that the Department will require further clarification, or allow proposal revisions, it is incumbent upon the proposing entity to submit their most favorable proposal that clearly describes the services being offered and benefit to the Department.

Attachment B

Organizational Conflict of Interest Statement

The State of Colorado prohibits any business entity or person to be awarded a contract if they have an "Organizational Conflict of Interest" with regard to this initiative and submission of an "UNSOLICITED PROPOSAL", and the resulting contract.

An Organizational Conflict of Interest exists when a person or business entity has an unfair competitive advantage because of other activities or relationships with other persons. No person or business entity who was engaged by the State of Colorado in the preparation and submission of a proposal to the Department of Human Services, in accordance with the Public Private Initiative (PPI) program 24-38-201 C.R.S Part 2, or who had access prior to the proposal submission to procurement sensitive information related to this procurement including but not limited to Requirements, Statements of Work, or Evaluation Criteria will be eligible to directly submit or participate in the submittal of a proposal for this initiative. The State of Colorado considers this to be an Organizational Conflict of Interest. For purposes of this initiative, organizational conflict of interest means that because of other activities or relationships with other persons, a person or business entity has an unfair competitive advantage. All proposers who wish to participate in this initiative and submission of an "UNSOLICITED PROPOSAL" must certify that no organizational conflict of interest exists by completing and signing this certification.

Organizational Conflicts of Interest Prohibition and Non-Conflict Certification

The proposer warrants that, to the best of his/her/its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances, which could give rise to organizational conflicts of interest. The proposer agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State of Colorado, which must include a description of the action, which the successful proposer has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State of Colorado may, at its discretion, cancel the Contract award. In the event the successful proposer was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the contracting officer, the State of Colorado may terminate the Contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State of Colorado's rights.

Organizational Conflict of Interest - Proposer's Signature and Certification

The undersigned on behalf of the proposer hereby certifies that the information contained in this certification is accurate, complete, and current.

Signature and date

Typed or Printed Name

Title

Company Name and Address

HB 10-1010

24-38-201 Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT STATE GOVERNMENT SHOULD DELIVER PUBLIC SERVICES IN THE MOST COST-EFFECTIVE AND EFFICIENT MANNER, THAT NONPROFIT ENTITIES THAT CONTRACT FOR PUBLIC SERVICES LEVERAGE THE USE OF PUBLIC FUNDS WITH PRIVATE DONATIONS, AND THAT INCREASING OPPORTUNITIES FOR NONPROFIT ENTITIES TO CONTRACT WITH STATE AGENCIES WILL FURTHER THE COST-EFFECTIVE AND EFFICIENT DELIVERY OF PUBLIC SERVICES. IT IS THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING THIS PART 2 ONLY TO PROVIDE FLEXIBILITY TO STATE GOVERNMENT SO THAT IT CAN DELIVER PUBLIC SERVICES MORE COST-EFFECTIVELY AND EFFICIENTLY AND NOT TO ESTABLISH OR AUTHORIZE THE ESTABLISHMENT OF NEW PROGRAMS.

24-38-202. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "NONPROFIT CONTRIBUTION" MEANS THE SUPPLY BY A NONPROFIT ENTITY OF RESOURCES TO ACCOMPLISH ALL OR ANY PART OF THE WORK ON A PROJECT OR THE IMPLEMENTATION OR ADMINISTRATION OF A PROGRAM.

(2) "NONPROFIT ENTITY" MEANS A CORPORATION OR ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE THAT IS EXEMPT FROM TAXATION PURSUANT TO SECTION 501 (a) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (a), AS AMENDED, AND IS LISTED AS AN EXEMPT ORGANIZATION IN SECTION 501(c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c) (3), AS AMENDED.

(3) "PUBLIC BENEFIT" MEANS AN AGENCY GRANT OF A RIGHT OR INTEREST IN OR CONCERNING AN AGENCY PROJECT OR PROGRAM.

(4) "PUBLIC-PRIVATE INITIATIVE" MEANS A NONTRADITIONAL ARRANGEMENT BETWEEN AN AGENCY AND ONE OR MORE NONPROFIT ENTITIES THAT PROVIDES FOR:

- (a) ACCEPTANCE OF A NONPROFIT CONTRIBUTION TO AN AGENCY PROJECT OR SERVICE IN EXCHANGE FOR A PUBLIC BENEFIT CONCERNING THE PROJECT OR SERVICE OTHER THAN ONLY A MONEY PAYMENT; (b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING PROJECTS OR SERVICES; OR
- (c) COOPERATION IN RESEARCHING, DEVELOPING, AND IMPLEMENTING PROJECTS OR SERVICES.

(5) "UNSOLICITED PROPOSAL" MEANS A WRITTEN PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE THAT IS SUBMITTED BY A NONPROFIT ENTITY FOR THE PURPOSE OF ENTERING INTO AN AGREEMENT WITH AN AGENCY BUT THAT IS NOT IN RESPONSE TO A FORMAL SOLICITATION OR REQUEST ISSUED BY THE AGENCY.

24-38-203. Unsolicited proposals. (1) AN AGENCY MAY CONSIDER, EVALUATE, AND ACCEPT AN UNSOLICITED PROPOSAL ONLY IF THE PROPOSAL COMPLIES WITH ALL OF THE REQUIREMENTS OF THIS SECTION.

(2) AN AGENCY MAY CONSIDER AN UNSOLICITED PROPOSAL ONLY IF THE PROPOSAL:

- (a) WILL ASSIST THE AGENCY IN CARRYING OUT ITS DUTIES IN A COST-EFFECTIVE AND EFFICIENT MANNER WITHOUT REPLACING EXISTING STATE EMPLOYEES;
- (b) IS INDEPENDENTLY ORIGINATED AND DEVELOPED BY THE PROPOSER;
- (c) IS PREPARED WITHOUT AGENCY SUPERVISION;
- (d) INCLUDES SUFFICIENT DETAIL AND INFORMATION TO ALLOW THE AGENCY TO EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY MANNER AND TO DETERMINE IF THE PROPOSAL BENEFITS THE AGENCY; AND
- (e) IS NOT AN ADVANCE PROPOSAL FOR A KNOWN AGENCY REQUIREMENT THAT CAN BE ACQUIRED BY COMPETITIVE METHODS UNLESS:

- (I) THE AGENCY HAS NOT ESTABLISHED A TIMETABLE FOR SATISFYING THE KNOWN REQUIREMENT; OR
 - (II) THE PROPOSAL IS LIKELY TO SIGNIFICANTLY SHORTEN A TIMETABLE FOR SATISFYING THE KNOWN REQUIREMENT.
- (3) PARAGRAPHS (b) AND (c) OF SUBSECTION (2) OF THIS SECTION SHALL NOT BE DEEMED TO PROHIBIT AN AGENCY FROM ENCOURAGING THE SUBMISSION OF UNSOLICITED PROPOSALS THAT ARE WELL-DEVELOPED AND CONSISTENT WITH THE AGENCY'S GENERAL POLICY PRIORITIES BY PROVIDING WRITTEN OR ORAL INFORMATION TO ANY PERSON REGARDING THE POLICY PRIORITIES OR THE REQUIREMENTS AND PROCEDURES FOR SUBMITTING AN UNSOLICITED PROPOSAL.
- (4) IF AN UNSOLICITED PROPOSAL DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE AGENCY SHALL RETURN THE PROPOSAL WITHOUT FURTHER ACTION. IF AN UNSOLICITED PROPOSAL MEETS ALL OF THE REQUIREMENTS OF SUBSECTION (2), THE AGENCY MAY FURTHER EVALUATE THE PROPOSAL PURSUANT TO THIS SECTION.
- (5) AN AGENCY SHALL BASE ITS EVALUATION OF AN UNSOLICITED PROPOSAL ON THE FOLLOWING FACTORS:
- (a) UNIQUE AND INNOVATIVE METHODS, APPROACHES, OR CONCEPTS DEMONSTRATED BY THE PROPOSAL;
 - (b) SCIENTIFIC, TECHNICAL, OR SOCIOECONOMIC MERITS OF THE PROPOSAL;
 - (c) POTENTIAL CONTRIBUTION OF THE PROPOSAL TO THE AGENCY'S MISSION;
 - (d) CAPABILITIES, RELATED EXPERIENCE, FACILITIES, OR TECHNIQUES OF THE PROPOSER OR UNIQUE COMBINATIONS OF THESE QUALITIES THAT ARE INTEGRAL FACTORS FOR ACHIEVING THE PROPOSAL OBJECTIVES;
 - (e) COST SAVINGS, EFFICIENT DELIVERY OF SERVICES, OR ENHANCED QUALITY OF SERVICE DELIVERED TO THE RECIPIENT; AND
 - (f) ANY OTHER FACTORS APPROPRIATE TO A PARTICULAR PROPOSAL.
- (6) AN AGENCY MAY ACCEPT AN UNSOLICITED PROPOSAL ONLY IF:
- (a) THE UNSOLICITED PROPOSAL RECEIVES A FAVORABLE EVALUATION; AND
 - (b) THE AGENCY MAKES A WRITTEN DETERMINATION BASED ON FACTS AND CIRCUMSTANCES THAT THE UNSOLICITED PROPOSAL IS AN ACCEPTABLE BASIS FOR AN AGREEMENT TO OBTAIN SERVICES EITHER WITHOUT COMPETITION OR, IF APPLICABLE, AFTER THE AGENCY TAKES THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION.
- (7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8) OF THIS SECTION, IF AN UNSOLICITED PROPOSAL REQUIRES AN AGENCY TO SPEND PUBLIC MONEYS IN AN AMOUNT THAT IS REASONABLY EXPECTED TO EXCEED FIFTY THOUSAND DOLLARS IN THE AGGREGATE FOR ANY FISCAL YEAR, THE AGENCY SHALL TAKE THE FOLLOWING ACTIONS BEFORE ACCEPTING THE UNSOLICITED PROPOSAL:
- (a) PROVIDE PUBLIC NOTICE THAT THE AGENCY WILL CONSIDER COMPARABLE PROPOSALS. THE NOTICE SHALL:
 - (I) BE GIVEN AT LEAST FOURTEEN DAYS PRIOR TO THE DATE SET FORTH THEREIN FOR THE OPENING OF PROPOSALS THROUGH ANY REASONABLE METHOD, WHICH MAY INCLUDE PUBLICATION ON THE AGENCY'S INTERNET WEB SITE, POSTING ON THE STATE'S BID INFORMATION AND DISTRIBUTION SYSTEM, OR PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION.
 - (II) BE PROVIDED TO ANY NONPROFIT ENTITY THAT EXPRESSES, IN WRITING TO THE AGENCY, AN INTEREST IN A PUBLIC-PRIVATE INITIATIVE THAT IS SIMILAR IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL;
 - (III) OUTLINE IN SUMMARY FORM THE GENERAL NATURE AND SCOPE OF THE UNSOLICITED PROPOSAL, INCLUDING THE WORK TO BE PERFORMED ON THE PROJECT AND THE TERMS OF ANY NONPROFIT

CONTRIBUTIONS OFFERED AND PUBLIC BENEFITS REQUESTED CONCERNING THE PROJECT;

(IV) REQUEST INFORMATION TO DETERMINE IF THE PROPOSER OF A COMPARABLE PROPOSAL HAS THE NECESSARY EXPERIENCE AND QUALIFICATIONS TO PERFORM THE PUBLIC-PRIVATE INITIATIVE; AND

(V) SPECIFY THE ADDRESS TO AND THE DATE BY WHICH COMPARABLE PROPOSALS MUST BE SUBMITTED, ALLOWING A REASONABLE TIME TO PREPARE AND SUBMIT THE PROPOSALS;

(b) DETERMINE, IN ITS DISCRETION, IF ANY SUBMITTED PROPOSAL IS COMPARABLE IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL AND WARRANTS FURTHER EVALUATION;

(c) EVALUATE EACH COMPARABLE PROPOSAL, TAKING RELEVANT FACTORS INTO CONSIDERATION; AND

(d) CONDUCT GOOD FAITH DISCUSSIONS AND, IF NECESSARY, NEGOTIATIONS CONCERNING EACH COMPARABLE PROPOSAL.

(8) THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION DO NOT APPLY TO AN UNSOLICITED RESEARCH PROPOSAL IF AN AGENCY REASONABLY DETERMINES THAT THE ACTIONS WOULD IMPROPERLY DISCLOSE EITHER THE ORIGINALITY OF THE RESEARCH OR PROPRIETARY INFORMATION ASSOCIATED WITH THE RESEARCH PROPOSAL.

(9) AN AGENCY MAY ACCEPT A COMPARABLE PROPOSAL SUBMITTED PURSUANT TO SUBSECTION (7) OF THIS SECTION IF THE AGENCY DETERMINES THAT THE COMPARABLE PROPOSAL IS THE MOST ADVANTAGEOUS TO THE STATE IN COMPARISON TO AN UNSOLICITED PROPOSAL OR OTHER SUBMITTED PROPOSALS. IN MAKING THE DETERMINATION, THE AGENCY SHALL USE ONLY THE PROPOSAL EVALUATION CRITERIA SPECIFIED IN THIS SECTION AND SHALL NOT USE THE METHODS OF SOURCE SELECTION SET FORTH IN PART 2 OF ARTICLE 103 OF THIS TITLE.

(10) IF AN UNSOLICITED PROPOSAL IS ACCEPTED OR IF A COMPARABLE PROPOSAL IS ACCEPTED PURSUANT TO SUBSECTION (9) OF THIS SECTION, THE ACCEPTING AGENCY SHALL USE THE PROPOSAL AS THE BASIS FOR NEGOTIATION OF AN AGREEMENT.

(11) SUBJECT TO THE REQUIREMENTS OF THIS SECTION, EACH AGENCY SHALL DETERMINE ITS OWN PROCESS FOR CONSIDERING, EVALUATING, AND ACCEPTING OR REJECTING UNSOLICITED PROPOSALS. IF THE AGENCY DETERMINES THAT AN UNSOLICITED PROPOSAL IS AN ACCEPTABLE BASIS FOR NEGOTIATION OF AN AGREEMENT PURSUANT TO THIS SECTION, THE AGENCY'S PROCUREMENT OFFICER SHALL BE RESPONSIBLE FOR TAKING THE ACTION REQUIRED BY SUBSECTION (10) OF THIS SECTION. BEFORE AN AGENCY CONSIDERS AN UNSOLICITED PROPOSAL OR A COMPARABLE PROPOSAL UNDER THIS PART 2, THE AGENCY SHALL ADOPT EITHER RULES PROMULGATED IN ACCORDANCE WITH ARTICLE 4 OF THIS TITLE OR OTHER WRITTEN POLICY GUIDELINES THAT IT DETERMINES ARE NECESSARY OR APPROPRIATE TO IMPLEMENT THIS PART 2, INCLUDING RULES OR GUIDELINES ON THE EVALUATION OF UNSOLICITED PROPOSALS AND THE RECEIPT, CONTENT, AND PROPER HANDLING OF UNSOLICITED OR COMPARABLE PROPOSALS. THE RULES OR GUIDELINES SHALL ALSO REQUIRE BOTH THE NONPROFIT ENTITY AND THE AGENCY TO DISCLOSE ANY INDIVIDUAL OR ORGANIZATIONAL CONFLICTS OF INTEREST RELATED TO THE PUBLIC-PRIVATE INITIATIVE AND TO DOCUMENT AND PROPERLY MANAGE ANY DISCLOSURES.

(12) AT THE TIME A PRINCIPAL DEPARTMENT OF STATE GOVERNMENT SUBMITS ITS ANNUAL BUDGET REQUEST TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, THE DEPARTMENT SHALL REPORT TO THE COMMITTEE REGARDING ANY PUBLIC-PRIVATE INITIATIVE AGREEMENT THEN IN EFFECT THAT THE DEPARTMENT OR AN AGENCY WITHIN THE DEPARTMENT

HAS ENTERED INTO PURSUANT TO THIS PART 2. THE INFORMATION REPORTED SHALL INCLUDE, AT A MINIMUM, A BRIEF DESCRIPTION OF THE PURPOSE AND TERMS OF THE AGREEMENT, THE AMOUNT OF PUBLIC MONEYS REQUIRED TO BE EXPENDED BY THE STATE UNDER THE TERMS OF THE AGREEMENT, AND THE IDENTITY OF THE PRIVATE PARTNER THAT IS A PARTY TO THE AGREEMENT.

24-38-204. Public-private initiative agreements - cost savings.

(1) AN AGENCY SHALL ENTER INTO AN AGREEMENT FOR EACH PUBLIC-PRIVATE INITIATIVE THAT IT ACCEPTS.

(2) AN AGENCY SHALL INCLUDE TERMS AND CONDITIONS IN THE AGREEMENT THAT IT DETERMINES ARE APPROPRIATE IN THE PUBLIC INTEREST.

(3) IF AN AGENCY ACHIEVES COST-SAVINGS IN A FISCAL YEAR BY ENTERING INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT, THE AGENCY SHALL BE ELIGIBLE TO RETAIN A PORTION OF ANY COST SAVINGS RESULTING FROM THE AGREEMENT AS PROVIDED IN SECTION 24-38-103.

(4) AN AGENCY THAT ENTERS INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT WITH A NONPROFIT ENTITY IS NOT A PARTNER OR A JOINT VENTURER WITH THE NONPROFIT ENTITY FOR ANY PURPOSE.

24-38-205. Organizations banned from contract awards.

NOTWITHSTANDING ANY PROVISION OF THIS PART 2 TO THE CONTRARY, ANY ORGANIZATION BANNED FROM RECEIVING FEDERAL FUNDS, AND ANY SUCCESSOR ORGANIZATIONS, SHALL NOT BE AWARDED A PUBLIC-PRIVATE INITIATIVE CONTRACT PURSUANT TO THIS PART 2.

SECTION 2. 24-38-102 (2), Colorado Revised Statutes, is amended to read:

24-38-102. Definitions. As used in this article, unless the context otherwise requires:

(2) "Cost savings" means any money that an agency does not expend from its general fund appropriations for a given fiscal year that is a direct result of cost-cutting measures, "Cost savings" includes INCLUDING an action that would result in a base reduction due to permanent reductions in spending. but In no case shall "cost savings" include or be a result of a case load reduction or personal services contracts that the agency entered into under a managed competition process; EXCEPT THAT "COST SAVINGS" DOES INCLUDE SAVINGS REALIZED FROM PERSONAL SERVICES CONTRACTS ENTERED INTO PURSUANT TO A PUBLIC-PRIVATE INITIATIVE AGREEMENT BETWEEN THE AGENCY AND A NONPROFIT ENTITY IN ACCORDANCE WITH PART 2 OF THIS ARTICLE.

SECTION 3. 24-103-201 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-103-201. Methods of source selection. (1) Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding pursuant to section 24-103-202, except as provided in:

(g) PART 2 OF ARTICLE 38 OF THIS TITLE, CONCERNING PUBLIC-PRIVATE INITIATIVES.